Dear Mr Adkins

Reference: Draft Report Produced For Definitive Map Modification Application LJ 665G

Thank you for your letter of 17th July and attached draft report for bridleway claim LJ665G. I totally disagree with the conclusions and recommendations contained within the draft report - that an order should not be made to modify the application route from footpaths to bridleways on the definitive map of rights of way. You draft report misinterprets what the evidence for the claim concludes. It also contains a number of misleading statements, some of which include misinformation or missing information that is very likely to confuse readers and leave them poorly informed to make a decisions for the application. My following response to the draft report is by reference to the numbered sections contained within it:

1) Section 1
The report refers to the application route comprising: ***"Public Footpaths 67 & 68 in Madeley and Footpath 15 in Keele***". There is no Footpath 15 in Keele recorded on the definitive map of rights of way. The route being referred to was recorded as **Keele 15 Road Used as a Public Path** but has been modified and renumbered, by Staffordshire County Council, and is now shown on the definitive map as Whitmore Footpath 24.

2) Section 21
Section 21 the draft report refers to the application being for: **"*one continuous route to Whitmore Road in the east***". This is misleading as the eastern end of the application route adjoins Three Mile Lane and **not** Whitmore Road. Three Mile Lane is the name that Staffordshire County Council has assigned to the road concerned, as displayed on the National Street Gazetteer and its statutory section 36(6) Highways Act list of roads and streets maintainable at public expense. This misnaming of the road within the draft report, repeated elsewhere within it, introduces confusion for readers. This is because in some sections of the report the road concerned is referred to (correctly) as Three Mile Lane and in others it is referred to as Whitmore Road.

3) Section 23
In this section you state: "***Firstly, the Finance Act 1910 shows the eastern point of the claimed route between Three Mile Lane and Stoney Low Farm as separate from taxable holdings. The associated Field Book entry for the hereditament numbered 203 shows the annotation "right of way across farm" and given that there is only one-track crossing plot 203 this could refer to the claim route".*** These statements are confusing. The eastern end of the application route is, as stated, excluded from adjoining hereditaments on the 1910 Finance Act Plan. This, in isolation, is good evidence of user rights that are greater than just a public footpath. The eastern end of the application route is not within hereditament 203 as your statement seems to imply. As you will see from the attached copy of the 1910 Finance Act Plan, the abutting hereditament numbers to the **eastern** end of the application route are 926 and 284 with no hereditament number assigned to the application route. This is because it was excluded from assessment for incremental duty tax purposes over the three quarter mile section between Three Mile Lane and the railway bridge where hereditament 203 commences. Hereditament 203 is contained on a separate Finance Act Plan with a reference number of IR 132 6 35 assigned by the National Archives at Kew. It also crosses hereditament number 142 which I will comment on separately. This **western** section of the application route is not excluded from the adjoining hereditaments for assessment of incremental duty tax. There is, therefore, a clear and concise division of evidence for the application route that lays to the east of the railway bridge where Keel Park Station was once located and the western side of the railway.

4) Section 34

Section 34 your report leaves readers in confusion regarding which section or sections of the application route were recorded as Roads Used as Public Paths under the 1949 National Parks and Access to the Countryside Act. For the elimination of doubt over where the former Roads Used as Public Paths were located, which your report has failed to identify, these were over the section of the application route between Three Mile Lane and Stony Low in the area where the railway bridge is now located.

I will firstly deal with and comment on the evidence of public bridleway rights over the eastern section of the application route from Three Mile Lane to where Keele Park Station was once located. The evidence for bridleway rights as a minimum over this section of the application route are extremely compelling and include the following:

A) The eastern end of the application route, between Three Mile Lane and the railway bridge where Keele Park Station once stood, was recorded under the terms of the 1949 National Parks and Access to the Countryside Act as Keele 15 Road Used as a Public Path and Madeley 68 Road Used as a Public Path. Copies of the survey cards are attached confirming this and providing concise location details. As part of a review of Roads Used as a Public Path these two routes were reclassified to public footpaths by Staffordshire County Council. Keele 15 was also renumbered at some point to Whitmore 24. However, a court judgment in 1975 concluded that Roads Used as a Public Path, based on the wording of the 1949 National Parks and Access to the Countryside Act, could not simply be reclassified to footpaths. In December 1977, as a consequence of this judgement, the Department of Environment was directed to distribute the attached circular to all order making authorities, explaining the implications of the judgement. When the 1981 Wildlife and Countryside Act came into force and replaced the 1949 Act it robustly recognised the judgement conclusions, within section 54, by legislating that a Road Used as a Public Path could not be reclassified as a footpath unless bridleway rights could be shown **not** to exist over it. Evidence of a route having being recorded as a Road Used as a Public Path is, therefore, admissible evidence that at least bridleway rights subsist over it – unless evidence is found to conclusively show that bridleway rights **do not** exist. The Secretary of State considered this matter in an appeal against Staffordshire County Council deciding not to make a bridleway order for former Roads Used as Public Paths in Alton Parish that it had reclassified to footpaths. Attached is an extract from the appeal decision which directed Staffordshire County Council to make the bridleway order applied for in the application.

B) The exclusion of the eastern end of the application route from adjoining hereditaments, for incremental duty tax assessment under the 1910 Finance Act, carries much greater evidential weight than your draft report concludes. Attached is a broad summary of the 1910 Finance Act implications related to routes that are excluded from adjoining hereditaments and allowances for rights of way over land. This was written by the British Horse Society related to another definitive map modification application but its content is informative. Their position on the evidential value of routes that were excluded from adjoining hereditaments, under the 1910 Act, is supported by both case law and Secretary of State appeal decisions in similar circumstances to the application route for claim LJ665G.

C) Between 1895 and October 1906 there was a railway station located next to the application route. This was known as Keele Park Station and was opened to enable the public to commute to and from Keele Park Racecourse. It was closed when a decision was taken to shut the racecourse in Keele and move it to Uttoxeter. Attached is a copy OS map from the period showing its location and the distance from it to the entrance of Keele Park Racecourse along the application route. It seems more likely than not that access to and egress from the station would have been exercised by the public in carriages and by other transport as well as on foot. This is particularly the case as some race meetings were two day events so visitors with baggage would have been very unlikely to have simply carried it to the race meeting and their lodgings. Also attached is a recent photograph of the bridge

that carries the application route over the railway. The platforms were located on the southern side of the bridge on both the east and west side of it, because it was a double track line at that time with the platforms directly exiting onto the application route on either side of the bridge. This can clearly be seen in the attached copy OS map. As section 33 of your draft report correctly concedes, a bridge of such substantial structure is unlikely to have been built to accommodate just a footpath.

D) The 1858 Newcastle, Silverdale and Madeley Junction Railway Plan, created for statutory legal process to build the branch line, records the application to be: "An Occupation Road **and Public Bridle Road"**. This plan was noted to be copied to the Surveyor of Highways for Madeley, as required by law, and is included as a an appendix to your draft report. The railway plan records the application route for this claim to be an Occupation Road and **Public Bridle Road** on **both sides** of the railway crossing where the bridge over the now closed railway line is located. The plan only shows a short section of the application route, annotated Occupation Road and Public Bridle Road, within a **"Deviation Limit"** marked on the plan which the railway was required to limit any works within. An informed viewer of the plan will readily accept that the status of the route, beyond the "Deviation Limit" for the railway line to be positioned within, would enjoy the same legal user status as the section depicted on the plan and noted as route 28 with Public Bridle Road rights subsisting over it. There would be no purpose or value for the railway company to concern itself with depicting the status or line of the route outside of the area affected by its plans, for which it was required to provide suitable crossings for any user rights that existed which would become cut off. Further, no evidence has been found to show that the Surveyor of Highways challenged the Public Bridle Road rights asserted for the route shown on the railway plan, to either the east or the west of the bridge.

E) The 1834 Highway Bridleway Diversion Order, referenced in section 24 of the draft report, confirms that the eastern commencement point of the application route, named as Ram Lane on the Order Plan, is described as leading to Madeley. In the absence of any subsequent legal event having been found to stop up the highway, this again provides good evidence of public bridleway rights over the application route. The legal maxim is, of course, once a highway always a highway unless stopped up by legal process. Although the 1834 diversion plan only shows a short section at the eastern commencement point of the public bridleway, larger area maps from the period confirm its continuity follows the application route. Attached is a copy 1833 first edition OS map for the area depicting and confirming that the application route was contiguous with and part of Ram Lane - which is designated as the bridleway within the 1834 Order and on the Order Plan.

5) Section 42 and 43

Based on the above summary of evidence I strongly refute the commentary in the draft report at section 42 and 43. The comment in these sections, related to the overall application, state:

- **"*The evidence in this case is limited to the Deposited Railway Plan of 1858"***
- ***"The other submitted evidence is either not directly relevant to the claimed route or is evidentially weak and of limited supporting value"***

These comments demonstrate a lack of understanding or misunderstanding of public rights of way law, related precedents created by legal judgments and historical Secretary of State decisions for opposed orders referred for confirmation and appeal decisions where orders have been refused by an order making authority. Also, these comments totally contradict your statement within section 34 of the report (your comments on the evidence related to the 1834 bridleway diversion order) that: "***This provides strong evidence that Ram Lane was a bridleway***". From the attached 1833 OS map you will see that there can be no

misunderstanding that the application route, in 1833 and by legal order in 1834, was part of what was then named Ram Lane which follows the application route.

It is absolutely clear that, collectively, the above evidence I have summarised **exceeds** the test threshold required, to conclude that on the balance of probability public bridleway rights exist over the application route between Three Mile Lane and the bridge crossing the railway where Keele Park Station was once located – and beyond. Your comments at section 42 and 43 of the draft report, verbatim quoted above, can only be interpreted as misleading at best for the Panel who decide whether an order should be made or not.

Turning to the western section of the application route and other sections of your draft report my observations are as follows:

A) The western end of the application route, from the bridge where Keele Park Station was once located to the junction with Netherset Hay Lane in Madeley, comprises wholly of what is recorded on the definitive map of rights of way as Madeley Footpath 67. For ease of reference attached is a plan of the route recorded on the definitive records. This route crosses hereditaments 203 and 142 on the 1910 Finance Act records, which are covered by two separate Finance Act Plans numbered IR 132 6 35 and IR 132 6 136 which are National Archives reference numbers. A copy Plan of IR 132 6 136 is attached which you do not have a copy of. Inspection of these plans confirm that:

- Madeley Footpath 67 follows the **precise route** depicted on the 1910 Finance Act Plans.
- It is the **only** path shown on the 1910 Finance Act Plans crossing hereditaments 203 and 142.

So, there can be no doubt or ambiguity that Madeley Footpath 67 **is** the route for which a deduction in duty value was applied for and granted for **a public right of way** ove**r** the land recorded in the Field Book. At section 33 you state that the deduction in duty value expressed for a right of way over hereditament 203 ***"could refer to the claimed route".*** Introducing doubt that the route shown on the Finance Act Plan may not be the application route is not justified and again is likely to mislead readers. Large scale Ordnance Survey maps, for a range of many years before and after the 1910 Finance Act survey was undertaken, all confirm that there are no other possible routes depicted on the ground that could be confused with the route for which a deduction in duty value was granted. The **only** route depicted is the application route which corresponds exactly with Madeley Footpath 67.

B) The only references in your draft report, related to the assessment value shown on the 1910 Field Book for hereditament 207 is: ***"The associated Field Book entry for hereditament number 203 shows the annotation "right of way across Farm" …. this could refer to the claimed route."*** A more concise explanation of the Field Book entries is that a reduction in duty vale of £20.00 was allowed for an accepted public right of way over hereditament 203. It is unfortunate that the entry does not specifically use the words "Public Footpath" or "Public Bridleway" as a description. It is, however helpful that the 1858 Newcastle, Silverdale and Madeley Junction Railway Plans throws light on and clarifies the public user rights subsisting over the route - which are clearly Public Bridle Road rights.

C) As explained for the eastern end of the application route, the 1858 Railway Plans, created by statutory requirement and copied to the Surveyor of Highways, records that the route both to the east and west of the bridge to be built is an: "Occupation Road and Public Bridle Road". The Railway Plan, taken in context with all the other evidence, again shows that on the balance of probability a Public Bridleway exists over the application route to the west of the railway line.

This communication does not introduce any new evidence - it merely sets out what I strongly believe is a correct interpretation of the evidence and conclusions to be drawn from it.

Accordingly, as you have stated in your communication of 17th July, please place your report, unaltered from the version you have sent to me, before the Countryside and Rights of Way Panel together with this communication in full with all its attachments. It is then for the Panel to make its own decision on the matter and for me to appeal that decision, if it is negative, and let the Secretary of State decide whether an order should be made or not.

Please kindly confirm safe receipt of this email and the date of the Countryside and Rights of Way Panel meeting that will be determining this application.

Regards

Martin Reay


MINERAL RAILWAY
Hunnerford House Farm
Pt 192
203
202
Stony Lane
17-5
CHORLTON PM.

16. Inland Revenue Valuation / Finance Act 1910 Maps

a. Date. The valuation records were produced in the few years after 1910.

b. Relevance. The Finance (1909–10) Act 1910 caused every property in England and Wales to be valued. The purpose was to charge a tax on any increase in value when the property was later sold or inherited. The valuation involved complicated calculations which are not relevant for highway purposes. However, two features do affect highways: public vehicular roads were usually excluded from adjoining landholdings and shown as 'white roads', and discounts could be requested for land crossed by footpaths or bridleways. This is known because s.35 of the 1910 Act provided,

> *"No duty under this Part of this Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority."*

It is noted that a highway authority was a rating authority. There was no obligation for a land owner to claim any of the other discounts available (applying for discounts was an entirely voluntary act), but Section 25 authorised the discount for footpaths and bridleways if they were claimed:

> *"The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user, and to any right of common and to any easements affecting the land, and ... [other exclusions.]"*

All land had to be valued unless it was exempted by the Act. There were harsh penalties for making false declarations, and Section 94 provided:

> *"If any person for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of any duty under this Act, either for himself or for any other person, or in any return made with reference to any duty under this Act, knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour."*

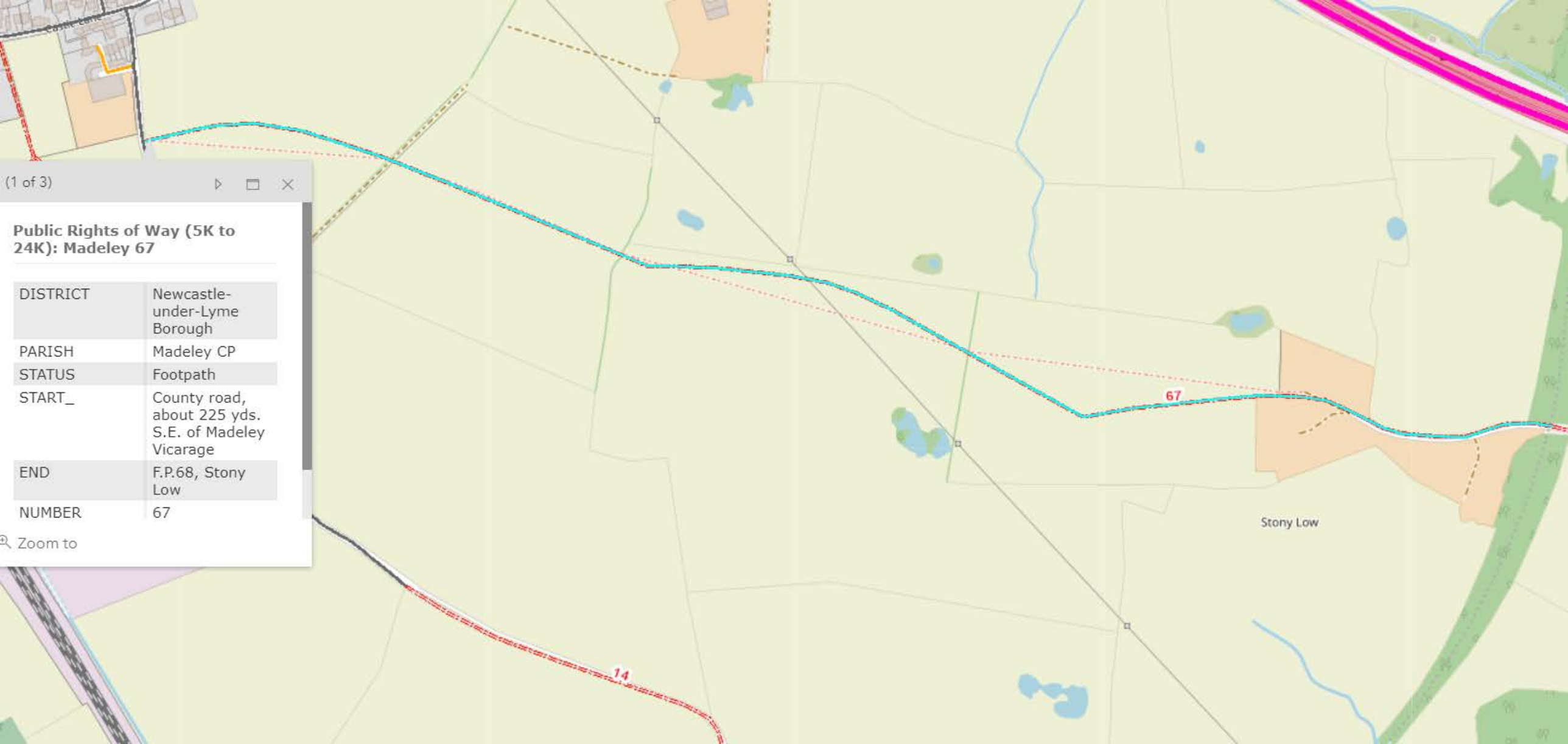
As it appears to be a highway from other evidence, and no duty was assessed in the Inland Revenue Valuation, and the Inland Revenue were under a duty to collect all taxes applying, and hence value the land unless certain that an exemption applied, it is surely for anyone who argues that a different reason for the non-valuation of this white road to show which other exemption could have applied.

c. Archive. The extracts below are from the records that were passed from the IR Valuation Offices to The National Archives at Kew. The National Archives document reference is IR 132/5/88.

d. Meaning. The entire route is shown as a white road, separated from the adjoining hereditaments by continuous red boundaries.

e. Assessment.

(1) As the land is unvalued, this suggests it belonged to a rating authority. As it is not held by a local authority or government department for any other known reason, this suggests that it belonged to a highway authority. Had it only been a bridleway, the Inland Revenue would probably have valued the land and allowed a deduction instead, since this would have resulted in a greater tax levy. Had it been held by a rating authority for another purpose there would be some evidence of that holding, yet none has been found.


(1 of 3)
Public Rights of Way (5K to 24K): Madeley 67
DISTRICT
Newcastle-under-Lyme Borough
PARISH
Madeley CP
STATUS
Footpath
START_
County road, about 225 yds. S.E. of Madeley Vicarage
END
F.P.68, Stony Low
NUMBER
67
Zoom to
67
14
Stony Low

Circular 123/77 (Department of the Environment)

Circular 187/77 (Welsh Office)

12 December 1977

Sir,

Roads used as Public Paths

1. We are directed by the Secretary of State for the Environment and the Secretary of State for Wales to refer to the reclassification of "roads used as public paths" (RUPPs) in the special review under Part III of Schedule 3 to the Countryside Act 1968 and to the Court of Appeal's decision in the case of Hood v the Secretary of State for the Environment. The Court of Appeal held that, in the absence of new evidence, or evidence not previously considered by the surveying authority (described as "new evidence" in the sub-paragraphs below), a RUPP could not be reclassified at a special review as a footpath because of the conclusive presumption contained in Section 32(4)(b) of the National Parks and Access to the Countryside Act 1949 that there are equestrian rights over a RUPP.

2. This Circular explains how, in the view of the Secretaries of State, the decision of the Court of Appeal affects the special review.

3. The decision has no effect on any reclassification of a RUPP (or any objection to such a reclassification) which is based on "new evidence", within the terms of Section 33 of the 1949 Act as amended by Part I of Schedule 3 to the 1968 Act.

4. Where there is no claim to "new evidence" the Secretaries of State are advised that in their consideration of objections they could not uphold the council's reclassification from a RUPP to a footpath in circumstances other than those described in sub-paragraph (b)(ii) below. It therefore appears to them that the effect upon their consideration of objections is as follows:

(a) If a council has reclassified a RUPP as a footpath and an objector claims that it should be shown as a bridleway, the Secretaries of State must (in the absence of "new evidence") direct the council to reclassify it as a bridleway.

(b) (i) If a council has reclassified a RUPP as a footpath and an objector claims that it should be shown as a byway open to all traffic, then, provided that the tests laid down in paragraph 10 of Part III of Schedule 3 to the 1968 Act are satisfied, the Secretaries of State must (in the absence of "new evidence") direct the Council to reclassify it as a byway open to all traffic.
(ii) But if these tests are not satisfied, then, since the Secretaries of State take the view that they may only consider and determine the objection before them, and have no power to direct any reclassification other than that sought in that objection, the way must remain on the map reclassified as a footpath.

(c) If a council has reclassified a RUPP as a byway open to all traffic or a bridleway and there is an objection that it should have been reclassified as a footpath, the Secretaries of State cannot (in the absence of "new evidence") give effect to that objection.

5. County councils who have not yet published a draft map for the special review are asked to take account of the Court's decision when reclassifying RUPPs, and in publishing the draft map to make clear

the classes of objection to which the Secretaries of State consider themselves now unable to give effect, as mentioned above. Where a draft map has been published, the Secretaries of State will similarly be notifying those who have made objections which fall into these classes and are not clearly based on "new evidence".

6. There will, however, be cases where some former RUPPs will be shown as footpaths on definitive maps resulting from the special review. This could be the case where the special review was completed prior to the Hood decision. It may also happen in the future where for instance a county council, otherwise than as the result of "new evidence", reclassifies a RUPP as a footpath and no objection is made, (or, if one is, the Secretary of State has not given effect to it). In such a case it appears to be open to the county council at their next general review to have regard to the Court's decision and consider the use of their powers under Part I of Schedule 3 to the 1968 Act (amendment to Section 33 of the 1949 Act) to restore the footpath to its former status of RUPP-though they appear to have no power to reclassify it a second time. In the meantime the Secretaries of State consider it desirable that county councils should, on the definitive maps resulting from the special review, put some suitable note against such footpaths in order that the general public may be aware of the position.

7. The Secretaries of State recognise that certain anomalies are inherent in the position as described above. If experience shows that a significant number of these cannot be dealt with satisfactorily under local authorities' other powers in consultation with the various interests concerned the Secretaries of State will be willing in due course to consider the possibility of amending legislation.

We are, Sir, your obedient Servants,

MISS J E COLLINS, Senior Principal

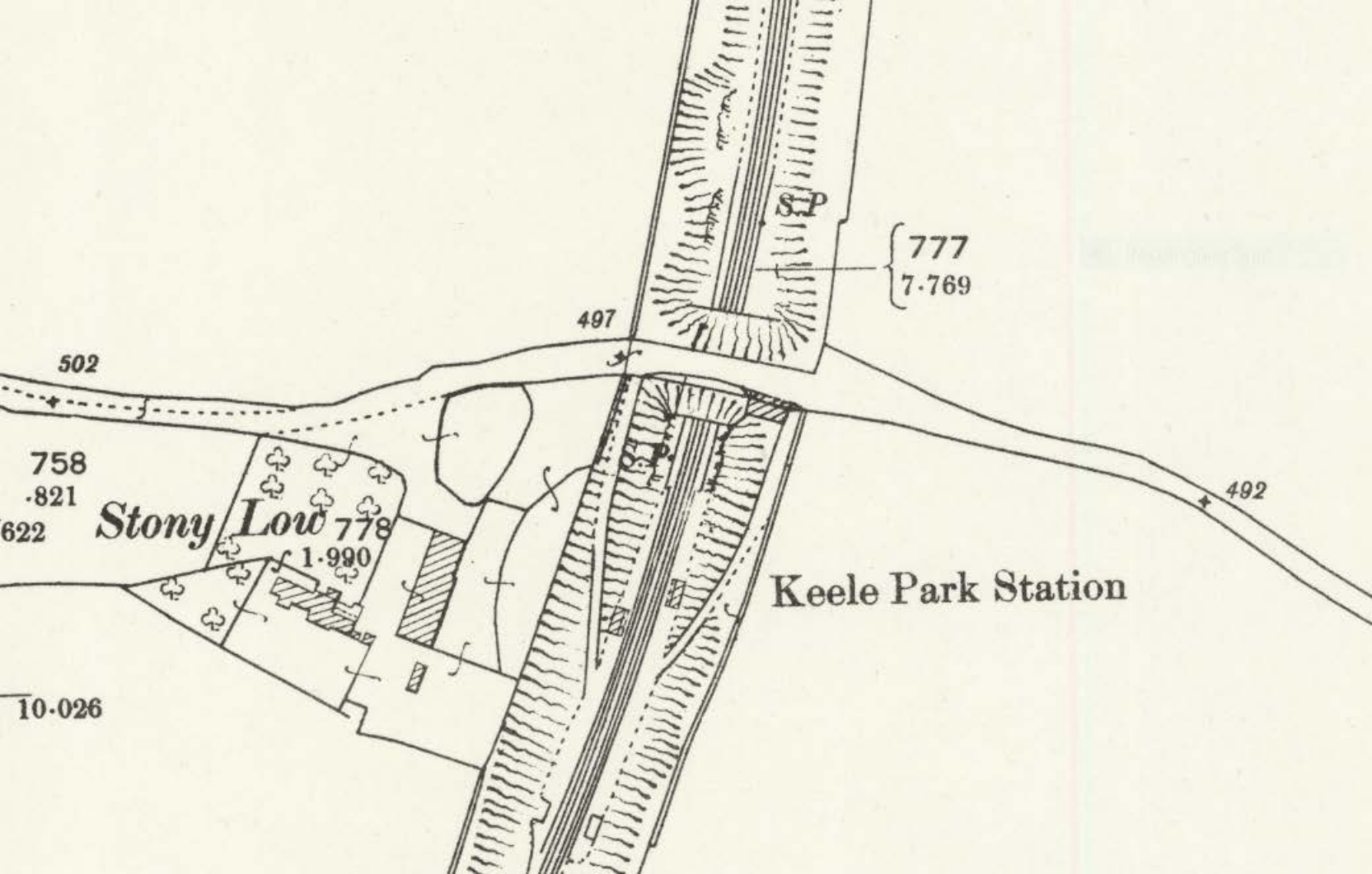
B H EVANS, Assistant Secretary


17-5 NW
SW
Vicarage
Almshouses
Pt 158
Pt 142
688
1·155
686
2·830
687
1·182
689
2·032
691
5·780
693
9·278
684
1·728
685
1·920
709
9·147
706
6·751
711
676
708
5·547
707
1·218
705
5·648
710
9·477
727
1·658
728
3·692
L E Y
F.P.
F.B.
S.P.

20. The route was reclassified to footpath in 1988, although the review which led to the reclassification was begun much earlier. It is argued by the applicants that this effective downgrading of the route without positive evidence was in error and should not have taken place. In particular the 1981 Act, Section 54, which required authorities to reclassify RUPPs, states that, if public bridleway rights have not been shown not to exist, then a route should be shown on the definitive map as a bridleway. They maintain that this was the situation in 1988. However, the passage of time means that, even if this was the case, the error cannot effectively be reversed administratively. Nevertheless, the fact that the route was originally believed to have been of a higher status than footpath must in my view carry some weight in the determination of its correct current status.


Werburgh's Wood
Pt 6657
Pt 926
Pt 204
Stony Lane
Keele Park Station
Pt 964

15. Road used as public path from county road opposite The Gables, Keele, to parish boundary about 700 yards west of The Gables (description of route).
Map reference: 17NW


S.P
777
7·769
497
502
758
·821
622
Stony Low 778
1·990
492
Keele Park Station
10·026


Show Search Panel
Background map - ESRI World Imagery
Turn off measurement tools
Measure distance
Click to start drawing. Double-click to stop.
1.205 kilometres / 0.749 miles
Keele Park Station
774
26·100
775
9·240
776
1·470
777
7·769
779
18·870
780
15·091
442
18·941
452
14·921
451
14·798
453
1·111
454
1·045
458
25·044
460
21·846
4 F.R.H.
Paddock
B.M.505·9
497
492
488
487
504
512
516
518
508
500
672

67. Footpath from county road about 250 yards southeast of Madeley Vicarage, to junction with Roadpath 68, Stony Low. Map reference: 17NW
68. Road used as a public path from continuation of Footpath 67 at Stony Low, to parish boundary about 675 yards east of Stony Low. Map reference: 17NW