



Protective Marking Scheme Level 3

Ms J Turner on behalf of the Staffordshire
Moorlands Bridleways Group

Via e-mail

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My Ref: 001060

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Date: 28 May 2021

Dear Ms Turner,

Re: s53 application to upgrade FP14 Cheadle to a Restricted Byway

Thank you for your comments in relation to the draft report.

In relation to the factual inaccuracies in the report, in relation to paragraphs 2,3 and 5 these have been amended.

Regarding the wording of the title, we note your opinion that the wording should be taken to mean that the thirty feet wide routes carry all three types of roads, including Public Carriage, Drift and Foot Roads. On review of the text taken from Section 8 of the Inclosure Consolidation Act 1801, it states: "so as such Roads and Highways shall be, and remain thirty Feet wide at the least, and so as the same shall be set out in such Directions as shall, upon the Whole, appear to him or them most commodious to the Publick". The legal definition of a "road" is a highway which is a generic term defined in law as covering routes from a footpath to a major highway. This would indicate that all roads and highways, which does cover footpaths that are open to the public should have been at least thirty feet in width. Therefore, this does not categorically show that because the route was thirty feet in width that it would have been accessible for carriages or other non-motorised vehicles.

The 1831 Inclosure Award has been reviewed by officers at the Staffordshire Records Office. Its title is: "An Act inclosing lands in the parish of Cheadle". The preamble to the Award states who the commissioners were and that they had the

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authority to set out, divide, allot the land and make plans and surveys of the land. It confirms that surveys already used could be used but where surveys were incorrect, fresh surveys should be undertaken. The determination of commissioners was to be final if their decisions were not objected to or an action brought.

The map for Plan 1 in the Award, shows the alleged route, which on the map is called Tean Road. In the north, Tean Road connects from another road, which is not named and continues in a south westerly direction, it then connects to Alton Turnpike Road (part of Old Inclosures), then runs in a south westerly direction, then connecting with Mobberley Road, then continues south to Gorsty Hill.

The first part of the Act deals with the setting out of public and private roads. The title "Roads" is in the left-hand corner. The main part of the text in relation to "roads" for Plan 1 states: "do hereby testify and declare that we have set out and appoint and do hereby set out and appoint the following public and private roads". The first section is Public Carriage Drift and Foot Roads. The first route referred to is Winnow Dale Road, which is specifically referred to as a "public carriage drift and foot road". The remaining routes under this section are referred to as "another road".

Tean Road specifically is referred to "Another road called Tean Road". The text in relation to Tean Road refers to the full route, including the other roads it connects to and where it leads to and from. Nowhere in the Award does it specify the nature of the rights over the route. Therefore, it is not clear that all the routes listed under this section including Tean Road fall into the category of all three types of Roads listed in the heading and were used by vehicles.

In relation to Appendix 1, although the alleged route is connected to the Alton Turnpike Road, this doesn't clarify the nature of any rights over the alleged route or automatically mean that the alleged route has the same rights over it as the route it connects to, although there is a possibility that it may.

Regarding Appendix 2, the existence of the route has never been in question as it is currently a public footpath. The fact that it is a public route is not in dispute either. The map at Appendix 2 supports the existence of the route as set out in the 1831 Inclosure Award but it does not provide any evidence as to the nature of the rights over the alleged route.

It is noted that the Ordnance Survey First Series map at Appendix 3a shows the alleged route as set out in the 1831 Inclosure Award. The purpose of Ordnance Survey Maps was to show the physical features on the ground; therefore, they are evidence only of the physical existence of a way on the ground at the date of the survey. Whilst we note that the alleged route is depicted as "Other Roads" as

shown in the legend in Appendix 3b, this is supportive but not conclusive evidence.

Appendix 5 and 6 shows a Mile Stone along the alleged route. It is not disputed that the alleged route is a public route. Although, the route referred to in Appendix 5 has the depiction FP, there is no clarification as to whether this is a public or private footpath and therefore it cannot be said with certainty that the route is connecting to a public carriageway. Whilst it is appreciated that there is a Mile Stone along the alleged route and it is more likely that this would be placed along a public route, this is not conclusive evidence that the alleged route is a public carriageway.

Whilst it is noted that the photograph at Appendix 8 appears to show old stone tracks on both sides where metal rimmed carriage wheels would have run, when all the evidence is reviewed together it is not conclusive to show on the balance of probabilities that the alleged route is a public carriageway.

County Council officers have also reviewed parish survey cards for the area, that were completed as part of The National Parks and Access to the Countryside Act 1949, Survey of Rights of Way. The survey card records the alleged route as "Path No 14" and with the "Path Symbol- FP", denoting that it is a footpath. It records that there are no known grounds for the footpath being public. The first half of the footpath went through strictly private grounds belonging to the old seat of the Earl of Shrewsbury. There is no mention of the route being used by vehicles or being used in any other way, other than as a footpath.

In conclusion, whilst we note the comments you have provided, it is officers opinion that when the evidence is reviewed in totality it is not conclusive to show that on a balance of probabilities that the alleged route at the time of the 1831 Inclosure Award was a public carriageway and that vehicles used the route, therefore the recommendation is unchanged that Public Footpath 14, Cheadle should not be reclassified as a Restricted Byway.

Yours sincerely

H.J.Titchener

Hannah Titchener
on behalf of Director for Corporate Services

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