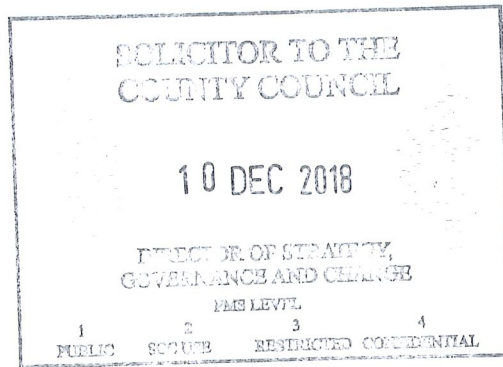


APPENDIX N



53 Tithe Barn Rd.,
STAFFORD
ST16 3PL

Dear Amy

Following are some further observations regarding the landowner representations for definitive map modification application LG614G. I have summarised these as follows:

1) Highway Order and attached Plan

It is argued that the Quarter Session Highway Order and attached Plan of 3rd December 1827, which stopped-up certain highway rights in Stretton and ordered the reserving of others was, quote: ***focused on considering an application to stop up rights of way, and not whether or not they were public rights of way;*** . I do not accept that the Justices were considering anything other than public rights of way on 3rd December 1827 because:

a) The stopping-up of specified highways within the 1827 Highway Order was subsequently appealed. In 1828 the appeal was heard and the 1827 Order was upheld. The highways to ***“remain open”*** with reserved rights for users on foot, as shown on the 1827 Order Plan, were unaffected by the appeal. The text of the appeal decision by the Court does, however, clarify that the 1827 Order and its subsequent appeal was dealing with ***“public highways”*** in the area of Stretton. Attached is a transcript of the relevant text from the 1828 Order and highlighted which clarifies this.

b) The 1828 appeal and Sealed Order includes exactly the same Plan that was attached to the 1827 Order. The Plan attached to the 1828 appeal Order therefore confirms the earlier decision that the noted highway on the Plan, by legal Order, was to ***“remain open”*** as a reserved footway and endure for that purpose. The application route can be nothing other than a public right of way when taken in context with the above observations and comments. Attached is a copy of the heading from the 1828 appeal Order Plan with the relevant text highlighted in yellow.

2) Conclusions from the 1827 and 1828 Legal Orders and Attached Plans

It is clear from the 1827 and 1828 Orders and attached Plans that, neither the existence of nor public user rights over the highways identified to ***remain open*** were questioned in any at the time, by the landowners or the Justices making the Orders. Accordingly, the legal maxim of once a highway always a highway unless stopped-up by legal process clearly applies. The claimed public right of way to be added to the definitive map, corresponding to the 1827 and 1828 Order Plans, ordering the route to ***“remain open”*** as a footway is, therefore, indefeasible - unless compelling evidence can be produced to show that the rights were later extinguished by legal process. Nothing has been shown in the representations to evidence such an event.

3) "Remodeling" Of the Estate between 1854 and 1865

It is argued that remodelling of the estate between 1854 and 1865, and some later works up-to the 1870s, created obstructions to the claimed route. It is argued that any constructions obstructing the path were inherently unlikely to have been undertaken, unless the claimed path had first been extinguished by a legal order that has been lost in time or by the path having been diverted. An example of such obstructions is cited to be building of the entrance lodge at the commencement point of the claimed path, asserting that the claim route passes through a moat constructed around the lodge that flooded and obstructed passage across that section of the way. This assertion is entirely groundless:

a) The claimed path passes over the bridge that was historically built to traverse the moat and not to the side of it and through the moat as suggested.

b) The land and bridge that was built is shown on the 1910 Finance Act Plan to be excluded from hereditaments 1283 and 1268 and is recorded to be part of the public carriageway now known as Lapley Lane. This is further corroborated by the 25" to the Mile OS tinted map of 1884 which shows the bridge to be contiguous with and part of the adjoining carriageway. Both are tinted in sienna as shown on the attached copy.

While OS maps do not prove highway rights the way the bridge is depicted on it, supported by the Finance Act Plan for which the sanction for providing false evidence to the Commissioners was six months in jail with hard labour, provides compelling evidence that the bridge forms part of the public highway. In any event, the line of the claimed footpath, which is recorded on the attached 1884 OS map up to the bridge, would cross over the bridge if projected south and not round the side of it and through the moat as asserted.

4) Other Obstructions to the Claim Route Cited in the Representation

I have carefully inspected 25 inch to the mile Ordnance Survey maps, published between 1884 and 1902, to identify any other obstructions of the claim route asserted within the landowner's representations. Despite these surveys having been undertaken at least fourteen years after the last works that are asserted to have obstructed the claim route, I cannot identify any obstructions that would render the path inaccessible at that time. Further:

a) It is a legal right for users to divert around any obstruction on a public path in order to overcome an obstruction on it. This is a qualified legal right and any diversion taken must be over land that is in the ownership of the proprietor who owns the subsoil of the public right of way.

b) Other than a legal event or Order, only the destruction of a public right of way is able to extinguish user rights right over it (such as coastal or river erosion destroying a path).

So, I disagree that it is likely that user rights were extinguished over the application route by a lost legal Order or other legal event

5) Inconsistencies within the Landowners Representations

There are inconsistencies within the landowners representations. Following, in no particular order, are some obvious examples:

a) Regarding the Stretton Estate, the landowners assert that: ***“During the Congrave ownership up to at least 1925 the estate was copyhold in tenure.”*** The 1910 Finance Act Field Books record that the lands comprising the estate were freehold at that time and **not** copyhold as asserted. Also, there is no inability of a landowner to dedicate highway rights over copyhold land, although usually the consent of both landowner and copyholder would be required (see Halsbury’s Laws volume 21).

b) The landowners argue that: ***“Since its construction [in the 1870s] the bridge has been secured by a locked padlock”***. This assertion is made with no supporting evidence that has or could be provided evidencing that the gate has been secured, by a padlock, for at least the last 130 years. Further, the gate referred to at the bridge actually comprises of a pedestrian gate which is separate to the vehicular access gate. The wider gate provides vehicular access and there is an additional pedestrian gate to the side of it. This gate provides access to the application route and attached is a photograph of it taken in the spring of 2009. When the application for this claim was submitted by me, now more than 21 years ago, the pedestrian gate was certainly **not** locked as being claimed by the landowners.

c) The landowners argue that: ***“The Order extinguishes all and any public rights of way between points C, B and F which”*** Again, this is incorrect. The 1827 order did extinguish user rights between points C, B and F, but **not all and any public rights between those points** as argued. The express qualification of extinguishing some user rights, within the Order and recorded on the Order Plan by way of brown tint was, quote: ***“But subject to a right of footway from the point marked C to the point marked K on the said plan”***. So, the reserved right of way on foot, between points C and K on the Order Plan, was emphatically confirmed by the Order. This was not affected by the 1807 appeal for the reasons previously stated (the appeal was not asked to nor did it scrutinise the Order to reserve footpath rights over the claim route).

6) Finance Act and Route Evidence

The landowner’s representation asserts that their research shows the applicant has misinterpreted the Finance Act documents I have the following comments concerning the application route and the Finance Act records:

a) The claimed public path, up to the northern boundary shown on the 1827 and 1828 Order Plans and tinted brown thereon, requires no further comment. Its depiction and

definition on the 1827 and 1828 Order Plans, and the express reserved of footpath rights over it, are sufficient to conclude that acceptance and retention of the right of way now being claimed is evidenced by the recorded legal events which took place in 1827 and 1828.

It is notable, however, that the owner of hereditament 1268 acknowledged that a public path crossed the hereditament, as shown on the Finance Act Field Book. The claim states: **"Public path as on ordnance"**. There is only one route crossing the hereditament depicted on the Ordnance Survey map in a manner indicating it is public in nature which could be attributed to this admission. This is the section of the application route corresponding to the 1827 and 1828 Order Plan and is the only path shown on the OS map crossing hereditament 1268 noted F.P.

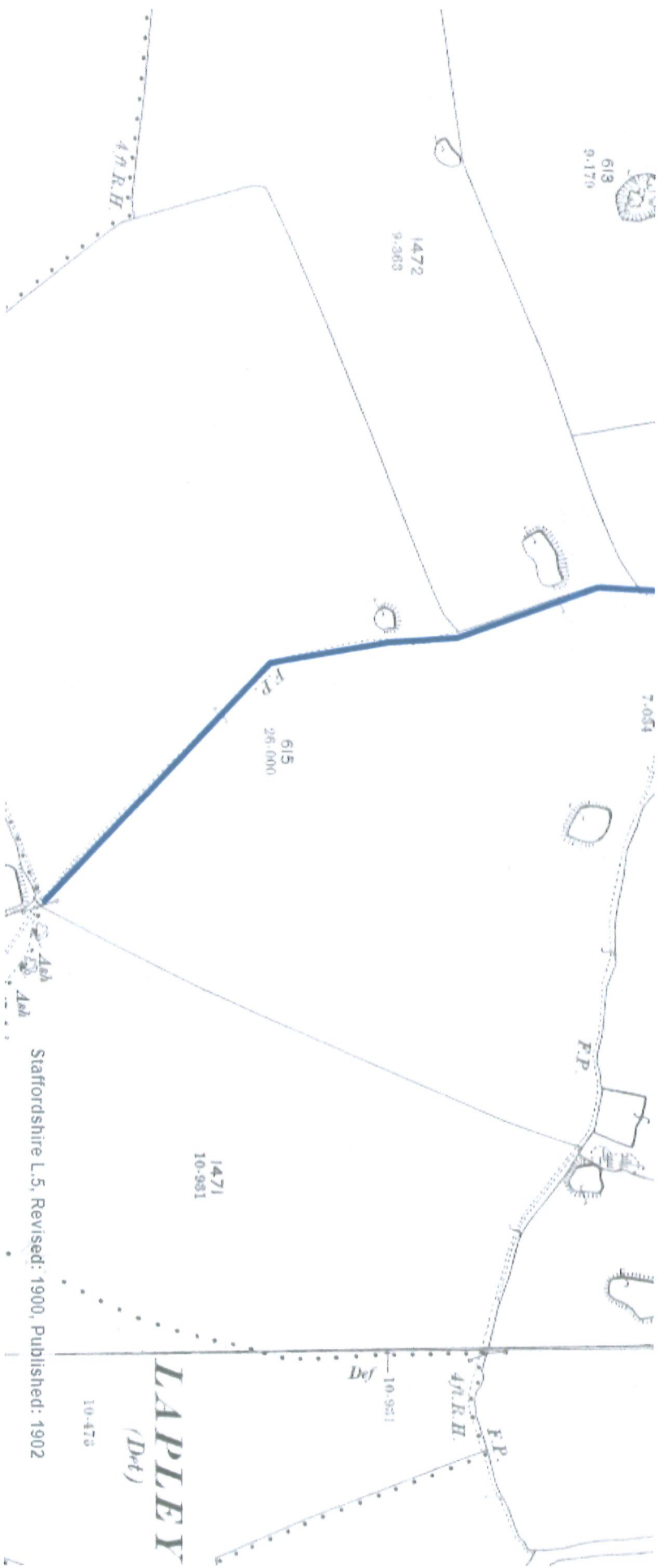
c) In 1827 and 1828 the Justices were only considering the highways within the boundaries depicted on the Order Plan. However, the brown tinted path shown on the 1827 and 1828 Order Plan, over which footpath rights were reserved by legal Order, continues beyond the plan boundary. At the point identified as K on the Order plan its continuation to the north is noted: **"To Bickford and Whiston."** The courts have considered whether a dead end public right of way can exist which does not connect one public place to another public place. The conclusion was that dead end paths can exist, but only where there is reasonable justification for their existence - such as access to a beauty spot or viewpoint for instance. The southern end the application route would **not** meet the test for it to be a dead end highway – and it was recorded to continue to Bickford and Whiston on the 1827 and 1828 Order Plans in any case. From the first large scale Ordnance Survey maps produced, the extension of the path north from point K on the 1827 and 1828 Order Plans follows the claim route (towards Bickford and Whiston). Attached are three copies of the 1902 25" to the mile survey map, depicting the continuing route to the north beyond the boundary of the 1827 and 1828 Order Plans. The route is noted F.P. on the survey and is the only route "to Bickford and Whiston" that could comprise the continuation of the path north.

d) The northern section of the application route crosses Finance Act hereditament 610. The Finance Act records confirm that the landowner of hereditament 610 claimed a reduction in duty value for roads and a public path over the land. It is asserted that the public path claimed for is now more likely to be that shown on the definitive to Whiston Hall than the application route. I disagree. Firstly, there are two footpaths now entered on the definitive map that lead to Whiston Hall that are noted as F.P. on the base map used to create the 1910 Finance Act Plan (see attached). These are now recorded as footpaths 0138 and 0140 on the definitive map. However, the definitive map modification application route is the only one, connecting with to the 1827 and 1828 Order Plan route and heading north to Bickford and Whiston, that is shown as F.P. on the base Finance Act Plan. It is therefore much more likely that the application route comprises the path being claimed for within the Finance Act records.

I trust that the above input clarifies matters.

Regards Manton Reay

and the [illegible] mentioned footway 4,787 yards or thereabouts are respectively useless and unnecessary. We do therefore order that the said several Highways, bridleways and footways hereinbefore described and which are respectively coloured on the said plan blue be forthwith stopped up. (But subject to a right of footway from the point marked C to the point marked K on the said plan). Given under our hands and seals the day and year aforesaid [signed etc.]



Staffordshire L.S. Revised: 1900. Published: 1902

Epiphany Session 1830, quarter sessions appeal decision

Order for stopping up roads in the [illegible] Stretton in the Parishes of Lapley and Pentridge.

Upon the motion of W Shutt and proof having been [illegible] of the notices directed to be given in and by a certain act of parliament made and passed in the 55th year of the reign of his late majesty King George the Third entitled An Act to amend an act of the [illegible] year of his present Majesty for the amendment and [illegible] of the public highways insofar as the same relates to notice of Appeal against [illegible] or diverting a public Highway and to extend the provisions of the same act to the stopping up of unnecessary Roads having been given and published it is ordered by the Court that a certain order under the hands and seals of Richard Levitt and John Clare Clerk two of his Majesty's justices of the peace for this county being [Bury] date the 3^d day of December last cast and made for stopping up a certain Highway in the Parish of Stretton in the said county leading from the Round Town through Stretton from the point marked A on the plan thereto annexed by B to the point marked C on the said plan and at the end of Mill Lane for the length of 1,002 yards or thereabouts Also a certain part of another Highway in the said Parish communicating between the Roads from the Crown Inn and Round Oak to Stretton from the point marked C

Plan of Roads at and near Strathore

N.B.

Those parts coloured blue are intended to be discontinued,
and those coloured brown if they are intended to remain open.
The parts coloured red are newly made.

