

# APPENDIX O

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Your Reference: LG614G

Date: 21 November 2019

For the attention of Ms A Wilde  
On behalf of the Director of Strategy, Governance and Change  
Staffordshire Legal Services  
Staffordshire County Council

DX 712320  
Stafford 5

**By Email Only: [samantha.finney@staffordshire.gov.uk](mailto:samantha.finney@staffordshire.gov.uk)**

Dear Sirs

**WILDLIFE AND COUNTRYSIDE ACT 1981  
APPLICATION FOR ADDITION TO DEFINITIVE MAP  
OUR CLIENTS MR PAC MONCKTON AND SOMERFORD HOME FARM**

We write further to your letter of 8 November 2019 to provide our clients' comments on the Report.

In short, our clients' position remains that there is insufficient evidence to reasonably allege that a Public Footpath subsists along the route. Our clients' disagree with the Report's findings to the contrary.

The contents of this letter do not constitute the entirety of our clients' objections and we reserve our clients' rights to raise further matters in future submissions.

## **PROCEDURE**

The Report refers to letters from the Applicant to the Council dated 5 December 2018 and 10 December 2018. It appears that these provided comments on our clients' evidence. It is irregular that these letters were not provided to us, especially as we were in contact with Council officers at this time requesting updates on the matter.

We should be grateful if copies of these letters could be provided by return.

## **EVIDENCE**

### **Finance Act Maps**

As acknowledged in the Report, we have previously provided a detailed analysis of the Finance Act documents. The Report does not deal with these submissions save by simply stating that the officers consider this analysis to be incorrect at paragraph 38.

We should be grateful if you could confirm what particular issues the officers have with our analysis and why their own interpretation differs.

### **Quarter Session Orders**

At paragraph 44, the Report states that the 1828 Order is a confirmation of the stopping up provided for in the 1827 Order. It states that no mention is made of the reservation of a footpath in the 1828 Order because it was only concerned with stopping up. That is a misunderstanding of what the order was intended to do.

The 1827 Order was not only concerned with stopping up, it included the reservation of a footpath as a limitation to the effect of stopping up.

If the reservation was not explicitly confirmed in the 1828 Order; that would indicate that the stopping up was confirmed without the reservation. There does not appear to be any other reason for the omission.

Even were the reservation of the footpath confirmed (which is not accepted), on the basis that the Orders were primarily concerned with stopping up, it is clear that any footpath so reserved would only be along the road to be stopped up.

As such, at its very highest, the 1827 Order only evidences that the Quarter Sessions thought it needed to reserve a public footpath up to the southernmost point marked K where the road turns to the East and not to the northernmost point K adjacent to the text stating "To Bigford & Milton" as appears to be suggested by the Applicant and the Report.

### **LAW**

The Report contains errors of law.

At paragraph 37 the Report states that as the application is made under s. 53(c)(i) (which the writer understands to be an erroneous reference to s. 53(3)(c)(i)) of the Wildlife and Countryside Act 1981 ("the WCA"), the principles of dedication and acceptance are not applicable. This is incorrect.

s. 53(3)(c)(i)WCA is a not a standalone ground to create a public right of way. The provision requires the prior subsistence of a right of way.

Such a right of way would not subsist unless created by express dedication, by presumed dedication (either at common law or by statute) or by following the process under the relevant statute. Therefore questions concerning dedication and acceptance can be, and often are, fundamental to the determination of s. 53(3)(c)(i) applications.

At paragraph 48 of the Report, it appears that there is a concession that no dedication of the claimed route took place. However, it appears to be suggested that such a dedication was not necessary because the claimed route was created by the Quarter Sessions Orders. Even without considering the question of confirmation, clearly no new public right of way was created by either the 1827 Order or the 1828 Order.

Taking the Quarter Session evidence at its highest, a highway along part of the claimed route was stopped up subject to the reservation of a footpath along part of this route. If there were to be a footpath along the remainder of the claimed route, this would have to have been created other than by the 1827 or 1828 Order. It is therefore incorrect that evidence of lack of capacity to dedicate is not relevant.

No evidence of how the rest of the claimed route might have come to be a footpath has been provided and where the landowners can demonstrate a lack of capacity to dedicate, this is strongly indicative that no footpath subsists along the claimed route.

## **CONFIRMATION**

Whilst our clients are reluctant to spend further time and costs on this matter, there are a number of serious implications which would follow from the decision to confirm the Order and as such our clients will undoubtedly exhaust every possible avenue to oppose a decision to make the order sought.

Firstly, our clients are concerned with issues of health and safety if members of the public are permitted to cross their active farmyard. Secondly, our clients would have to restrict their operations on the area affected and this will involve making a number of redundancies. Thirdly, our clients would need to re-locate some operations from the area affected to other areas and this would require the pursuit of planning consent to build on what would otherwise remain as green field sites.

Whilst our clients appreciate that these are not considerations the Panel can take into account, they nonetheless wish to make clear their reasons for continuing to rigorously oppose the application.

It would be a great shame if this already prolonged matter required further time and costs to be incurred by all parties on the basis of the highly questionable evidence provided and the flawed and incomplete reasoning contained in the Report.

Yours faithfully

A handwritten signature in black ink that reads "Michelmores LLP". The signature is written in a cursive, slightly slanted style.

**MICHELMORES LLP**

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