

<b>Local Members' Interest</b>	
Gill Heath	Staffordshire Moorlands – Leek Rural

## **Countryside and Rights of Way Panel**

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### **Wildlife and Countryside Act 1981**

#### **Application to Upgrade Public Footpath 82 Ipstones Parish and Public Bridleway 85 Ipstones Parish to a Restricted Byway**

#### **Report of the Director for Corporate Services**

#### **Recommendation**

1. That the evidence submitted by the Applicant and that discovered by the County Council is sufficient to show that, on the balance of probabilities, Public Footpath, 82 Ipstones **should** be added as a highway of a different description, namely a Restricted Byway to the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.
2. That the evidence discovered by the County Council is sufficient to show that on the balance of probabilities Public Bridleway, 85 Ipstones **should** be added as a highway of a different description, namely a Restricted Byway to the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.
3. That an Order should be made under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by upgrading Public Footpath 82, Ipstones to a Restricted Byway along the route shown between points A to B, and by upgrading Public Bridleway 85, Ipstones to a Restricted Byway along the route shown between points C to D on the plan attached at Appendix B at page 23.

#### **PART A**

#### **Why is it coming here – what decision is required?**

1. Staffordshire County Council is the authority responsible for maintaining the Definitive Map and Statement of Public Rights of Way as laid out in section 53 of the Wildlife and Countryside Act 1981 ("the 1981 Act"). Determination of applications made under the Act to modify the Definitive Map and Statement of Public Rights of Way, falls within the terms of reference of the Countryside and Rights of Way Panel of the County Council's Regulatory Committee ("the Panel"). The Panel is acting in a quasi-judicial capacity when determining these matters and must only consider the facts, the evidence, the law and the relevant legal tests. All other issues and concerns must be disregarded. The purpose of this investigation is to establish what public rights, if any, already exist even

though they are not currently recorded on the Definitive Map and statement of Public Rights of Way.

2. To consider an application attached at Appendix A on page 19 from Brian Smith of the Staffordshire Moorlands Bridleways Group for an Order to modify the Definitive Map and Statement for the District of Staffordshire Moorlands. Additionally, to consider an extension to the application route following further evidence discovered by the County Council that would further modify the Definitive Map and Statement for the District of Staffordshire Moorlands. The effect of such an Order, should the application be successful, would:

- (i) Upgrade Public Footpath 82 Ipstones Parish to a Restricted Byway on the Definitive Map of Public Rights of Way under the provisions of Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981.

- (ii) The line of the alleged Restricted Byway which is the subject of the application is shown highlighted and marked A to B on the plan attached at Appendix B at page 23.

- (ii) Upgrade Public Bridleway 85, Ipstones to a Restricted Byway on the Definitive Map of Public Rights of Way under the provisions of Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981.

- (iv) The line of the alleged Restricted Byway which is the subject of documentation discovered by the County Council is shown highlighted and marked C to D on the plan attached at Appendix B at page 23.

3. To decide, having regard to and having considered the Application and all the available evidence, and after applying the relevant legal tests, whether to accept or reject the application to upgrade Public Footpath 82, Ipstones to a Restricted Byway. Additionally, to decide having regard to and having considered the evidence discovered by the Council and after applying the relevant legal tests whether to accept or reject the upgrade of Public Bridleway 85, Ipstones to a Restricted Byway.

### **Evidence Submitted by the Applicant**

4. In support of the application the Applicant submitted a document that he evidenced as a copy of the 1910 Finance Act Name Book, Revised 1922. However, it appears to the County Council to have been incorrectly labelled and is understood to be an Ordnance Survey name book due to its appearance and reference number.
5. The Applicant has submitted a copy of Yates' Map and its associated key, dated 1798.
6. The Applicant has submitted a copy of Smith's Map and its associated key, dated 1817.
7. The Applicant has submitted a copy of the Definitive Map which was current at the date of the application in 2014 showing the route of current Public Footpath 82, Ipstones Parish which he has highlighted, along Mellow Lane.
8. Copies of this evidence can be found at Appendix C between pages 25-31.

## **Evidence Discovered by Staffordshire County Council**

9. A Section 36 application under the Highways Act of 1980 along PF82 Ipstones Parish had been received by Staffordshire County Council from Staffordshire Moorlands Bridleway Preservation Group prior to this current Section 53 claim. The s36 application was in support of PF82 Ipstones Parish (also known as Mellow Lane) being listed as an ancient highway. The s36 application included the evidence provided within the current s53 application as well as additional evidence. Staffordshire County Council also discovered further evidence in the course of the investigation of the s36 claim. A report relating to the s36 application was completed and circulated to the relevant landowners.
10. The report and subsequent comments received from the landowners were considered by the County Solicitor under the Council's delegated powers for decision making. The County Solicitor concluded that there was sufficient evidence to show that PF82 (Mellow Lane) was an ancient highway.
11. Copies of the s36 report and transcript of the decision dated 2<sup>nd</sup> June 2023 can be found at Appendix D between pages 33-99.
12. The Railway plan and Book of reference for the Leek, Caldon Low and Hartington Light Railway were considered. This evidence can be found at Appendix D between pages 100-106.
13. The Parish Survey Card for Public Footpath 82 Ipstones (Mellow Lane) and Public Bridleway 85 Ipstones, their associated Parish survey plan and a key to abbreviations were considered. This can be found between pages 107-112. The Parish Survey card and analysis for Mellow Lane can also be found within the s36 Report.
14. A historical map of 1900's series from National Library of Scotland was considered at page 113.
15. Yates map of 1775 from the National Library of Scotland's records was studied. This can be found at page 114.
16. An Ordnance survey plan titled Staffordshire Sheet XIII NE published in 1888 was considered. This can be found at page 115.
17. An Ordnance Survey plan dated 1967 for Buxton and Matlock was considered. This can be found at page 116.
18. Copies of this evidence can be found at Appendix D between pages 33-116.

## **Evidence Submitted by the Landowners**

19. Mellow Lane is a privately owned lane. When the s53 application was submitted to the County Council, an initial consultation letter was sent to the owners of Mellow Lane Farm although there is no response on the file.
20. In the course of investigating the s36 application a number of additional landowners were identified, and it was established that the previous landowners of Mellow Lane Farm (who had been contacted in relation to the s53 application) no longer had an interest in the property. Two freehold

landowners now own different stretches of Mellow Lane, one of which owns Mellow Lane Farm. Three further landowners own land which is adjacent to Mellow Lane. They were all contacted for comment.

21. Two of the five landowners responded. Their evidence and comments regarding the s36 application can be found within the Addendum to the s36 report between pages 75-94 and page 98 at Appendix D.
22. On consideration of the evidence for Mellow Lane, it became apparent that Public Bridleway 85, Ipstones could also be considered to be upgraded. A further 17 landowners with interests along the route were identified and contacted.
23. Landowners along Public Bridleway 85 and Mellow Lane were sent evidence forms. Landowner 1's Solicitor (who was also identified as Landowner 1 within the s36 Mellow Lane report) responded by letter which included evidence of the land ownership but no further evidence regarding the rights along Mellow Lane and the Bridleway. Landowner 2 (who was identified as Landowner 2 within the s36 Mellow Lane report) completed and returned a landowner evidence form. With regard to Public Bridleway 85, three user forms were received from two freeholders and one with an interest in the land along Bridleway 85. One further form was received from a landowner not directly affected by the potential upgrade.
24. Uncompleted land evidence forms were returned to Staffordshire County Council from two landowners.
25. Landowner correspondence and landowner evidence forms in relation to both Mellow Lane and Bridleway 85 can be found at Appendix E at pages 118-184.

### **Comments Received from Statutory Consultees**

26. At the time that the s53 application was presented to the County Council, Ipstones Parish Council was consulted regarding the application and responded that members did not have any objections to the application although they did not have any evidence to offer. The Peak and Northern Footpath Society also had no evidence and did not object.
27. A representative of the Byways and Bridleways Trust advised that he rode "both ways on motorcycles in the 1970s and 1980s on a number of occasions when they were RUPPs."
28. Following the discovery of the evidence concerning Public Bridleway 85, Ipstones the District Council, Parish Council and County Councillor were all contacted regarding Mellow Lane and Bridleway 85. The Parish Council responded supporting the upgrade although they did not have any evidence to offer.
29. The interested organisations were also contacted regarding Public Bridleway 85 and Mellow Lane. The representative for the Byways and Bridleways trust advised that he considered that the route showed "substantial historical evidence to support a finding that both ways carry public vehicular rights and should be shown on the list of streets".

30. The evidence and comments from the Statutory Consultees and user groups can be found at Appendix F between pages 186 and 190.
31. In the course of the s36 application statutory consultees were consulted. Their evidence and comments can be found within the addendum to the s36 report between pages 69-74 at Appendix D.

### **Analysis of Documentary Evidence from Applicant**

32. The Applicant provided as evidence what appears to be an Ordnance Survey revised Name Book. This revision was dated 1922. This can be found at page 25 and 26. There is a descriptive remark referring specifically to Mellow Lane as being "a public road branching off highway Rd about 10 chains north of Cockintake and extending in a northerly direction to about 12 chains south of Black Brook (new name)".
33. There is no associated plan provided with the Name Book. On consideration of the draft definitive map of 1954 however (which may be found at page 31, and was produced approximately 32 years later), Cockintake, Mellow Lane and Blackbrook are all shown on the plan. The Ordnance survey plan of 1836 (located within the s36 report at page 55) also identifies Mellow Lane. Mellow Lane referred to in the name book can therefore be identified with a reasonable amount of certainty.
34. Ordnance Survey name books are documents that list named routes that would be included on OS maps. Depending on the level of detail in the book, they can provide an indication regarding status of a route. The document supports Mellow Lane being public and a road, so it is likely that the draftsmen considered the route to have higher rights than that of a footpath. The document however needs to be considered in conjunction with the other evidence.
35. The Applicant also supplied Yates' map which depicts a physical feature on the ground. The plan however is small scale. Using the definitive map of 1954 at page 31, it could be speculated that when comparing the 1954 Definitive map and Yates' map at page 27, both Bridleway 85 and Mellow Lane could potentially be identified on Yates' map. On consideration firstly of the draft Definitive map, there is a major road junction at Bottom House and approximately 200 meters to the East of this junction (off the Leek to Ashbourne Road (also known as the A523)), the current Bridleway 85 leaves the Leek to Ashbourne Road at Lower Berkhamstych and loops southerly and then south easterly before joining the road to Uttoxeter (which itself leads off the Leek to Ashbourne Road).
36. Mellow lane leaves Public Bridleway 85 just after the swing to the south easterly direction and heads in a southerly direction to join the Ipstones Edge to Casey Hill Road. Yates' map does not provide any evidence as to whether Public Bridleway or Mellow Lane are public or private routes. The status however being on such a small-scale map does suggests that both Public Bridleway 85 and Mellow Lane may be carriage roads.
37. Comments and analysis of Yates' 1798 map as evidence for Mellow Lane can be found within the s36 report (pages 33-39).



38. The Applicant has submitted a map drafted by Smith at pages 29-30. This shows a physical feature on the map within the general location of Public Bridleway 85 and Mellow Lane. The Applicant has written on the back of the plan "Smith's map c.1817 with key showing Mellow Lane as a "Cross Road"". The applicant has highlighted the cross road symbol on the key.
39. With regard to Smith's map, this again depicts a physical feature in the same area as that of Yates' map, but whether this can be identified as both Public Bridleway 85 and Mellow Lane is uncertain. Smith's map is almost identical to Yates' map with regard to scale and of identified ways, although Smith's map identifies Ipstones Edge with the physical feature on his map, leading on to the Ipstones Edge Road. A key has been provided which again shows the depicted ways on the plan as being cross roads.
40. Further comments and analysis of this plan as evidence for Mellow Lane can be found within the s36 report between pages 33-39. In precis of the report's comments regarding Yates and Smith's plans and the issue of the cross roads, the letter from the Director at the Planning Inspectorate dated 2<sup>nd</sup> May 1997 (at page 57) explains that because a route (in this case the route in the general location of Public Bridleway 85 and Mellow Lane) are depicted as cross roads it suggests that such roads were public roads where no toll was payable. The fact that these routes appear to be depicted as cross roads on old plans does not automatically indicate public rights but overall are supportive of higher rights. Thus, these plans need to be considered in conjunction with the further evidence that has been submitted.
41. The fact that Smith and Yates' plans are small scale would suggest that any highways with lower status than carriage ways are unlikely to be depicted. The routes on the plans do therefore suggest carriage way rights and it seems probable that they depict Public Bridleway 85 and Mellow Lane.

### **Analysis of Documentary Evidence from Staffordshire County Council**

42. A report to consider a request from the Staffordshire Moorlands Bridleways Preservation Group (SMBPG) to add Mellow Lane, Ipstones to the list of streets that are highways maintainable at public expense under S36(6) Highways Act 1980 can be found at Appendix D, between pages 33-99.
43. The outcome of the report was that Mellow Lane was accepted as an ancient highway.
44. There is significance in a road being listed as an ancient highway under the Highways Act 1835. Highways in existence before 1835 were predominantly maintained by the local inhabitants and were known as Ancient Highways. As a result of these routes having been maintained by local inhabitants (and not subsequently extinguished) they continue to be maintainable at public expense under s38(2)(a) of the Highway's Act 1959 and therefore s36(1) of the Highways Act 1980.
45. The representative of the SMBPG provided evidence for the s36 application for Mellow Lane to be recognised as an ancient highway. By coincidence,

the historical evidence provided by the SMBPG also showed evidence for potentially higher rights along Public Bridleway 85. This included a copy of Ordnance Surveyors drawing OSD:348 drawing of 1836 (a year after the Highway's Act was passed) which can be found at page 55, which shows a physical feature on the ground which is identified as Mellow Lane on the plan. A similar physical feature to that of Mellow Lane can also be seen along the route of the current Public Bridleway 85.

46. The representative of SMBPG has also provided John Cary's map of 1806 which can be found at page 53 which shows a physical route in the same (very approximate) area as that of the Public Bridleway and Mellow Lane but the quality is poor and the plan is too small a scale to be able to draw any conclusions from it.
47. The representative of SMBPG also submitted Teesdales map dated 1831/2 which can be found at page 51 which shows physical features on the ground in the same area as those depicted in the Ordnance Survey map. The scale however is very small and the map unclear without any place names to provide context. Whether the routes can be assumed to be that shown in Yates, Smiths and Cary's map is a matter of conjecture. The uniformity of the routes shown on the various plans do however support the existence of a road with high public rights between the Leek to Ashbourne Road and the Ipstones Edge to Casey Hill Road.
48. The scale of the maps may have a bearing on what they show, if too small a scale they might only be capable of showing carriage roads. If this is the case then it would show the routes to be what would now be classified as a restricted byway. These maps still do not explain whether they are private or public roads. Individually therefore they do not carry much legal and evidential weight. Furthermore, mapmakers often based their work on other existing maps.
49. The Leek, Caldon Low and Hartington Light Railway Book of Reference and plan (dated 1897) which can be found between pages 100-106 were considered for the immediate area of Bridleway 85 and Mellow Lane. The route of the track is indicated by a solid black line which crosses Bridleway 85 at two points along the Bridleway's length. The Public Bridleway has parcel numbers 91, 105 and 125 along its length and Mellow Lane has parcel number 102. Parcels 91, 102 and 125 are described in the accompanying Book of Reference as Roads in the ownership of Ipstones Parish Council, Rural District Council of Cheadle. Parcel 105 was described as a road and in the ownership of Dryden Henry Sneyd Trustees of Ipstones Schools, Ipstones Parish Council, Rural District Council of Cheadle.
50. The book of reference specifically identifies public footpaths and occupational roads leading officers to conclude that this is a bridleway or did at the time of the development of the railway, carry vehicular rights. The markings could suggest carriage rights. The book however does not appear to have distinguished between public and private rights.
51. Major works such as the construction of railways have normally been authorised by private Acts of Parliament. The reason for this was that in

the 18<sup>th</sup> and 19<sup>th</sup> Centuries there were no powers to acquire land compulsorily. Consequently, where there was a railway planned the intended route was surveyed. From the surveys, plans and books of reference were compiled which showed who owned the land crossed by the proposed railway. This then formed part of an Act of Parliament.

52. Statute required, from 1838, that the plans of these works and the accompanying book of reference were deposited with the local public authorities. This was true for routes that never came to fruition as well as for those that were constructed.
53. In compiling the plans for the route of the railway, the surveyors drew up a map showing the intended line of the construction with the limits of deviation from that line. It was not the primary purpose of deposited plans to record highways of any description but this came about as a consequence of the need to survey the land.
54. The plan allotted plot numbers to each strip of land affected by the passing of the canal or railway. The Book of Reference listed who owned the land crossed and the type of land, e.g. agricultural, or a highway.
55. The process, including the plans and books of reference were open to public inspection and objections could be made which resulted in corrections. There were many vested interests involved and in the case of highways the surveyor, or the parish, would not have admitted to maintenance responsibilities they did not have.
56. Due to the financial implications, and time required to construct public highway crossings, either bridges or level crossings, over the railway or canal, surveyors were diligent in ensuring the correct designation was recorded.
57. Penalties for not providing public crossing facilities were also onerous. There was no requirement to bridge public footpaths so a public highway which crosses over a canal or railway by a bridge is usually a bridleway at least.
58. These Acts and plans should not be considered to be conclusive evidence but looked at and evaluated alongside other historical evidence. They should be regarded as good, or persuasive, evidence to support the existence of a public right of way.
59. The Parish Survey Cards were considered for the immediate area of Public Bridleway 85 and Mellow Lane. These can be found at pages 107-112 (The Parish Survey card and analysis for Mellow Lane can be found within the s36 Report between pages 32-99). Survey cards were produced following the passing of The National Parks and Access to the Countryside Act 1949. This Act required all County Councils in England and Wales (as Surveying Authorities) to survey and map all rights of way in their area. The legislation concerned Public Footpaths, Public Bridleways and Roads Used as a Public Path.
60. The Act provided a lengthy process for drawing up a Definitive Map and Statement for the area. The Authority was required to consult with District



Councils and Parish Councils in the survey process whose duty it was to collect and furnish the Surveying Authority with the relevant information. Objections and appeals by landowners were part of the process resulting in the Map and Statement being amended and redrafted. The Definitive map for the parish of Ipstones was dated 27<sup>th</sup> February 1960. As a result of this, Mellow Lane is currently listed as a footpath and Bridleway 85 Ipstones as a public bridleway.

61. At the time of the survey in the 1950s, Mellow Lane was listed as CRF 82 on the draft Definitive map. Parish Card number 82 providing the narrative for the route and explained that the route was public due to "common usage by public for more than 30 years without objection". A description of the route advised that the CRF 82 "starts from the Ipstones Edge – Casey Head road some 500 yards East of Cadlow on North side of Road SS (&)[?] FG and cart track over rough common land to second SS (&)[?] FG leading into Mellow Lane, this continues past Mellowlane Farm and joins up with Newbarn Lane being CRF No85. Road very rough and little used for vehicular traffic except by local farmers. No obstruction. This road is known locally as Mellow Lane".
62. The route currently known as Public Bridleway 85 was listed as CRF85 on the draft Definitive map. Parish card number 85 provided the narrative for the route, the route having been "used by public for more than 30 years without objection". A description of the route reported that the route "starts from the west side of Ellastone road almost midway between Blackbrook Bridge and Gutter Farm, open entrance from road and being cartroad to three smallholdings at Blackbrook open gates and stile after 200 yds and crossing railway at line level to open fieldgate after 30 yds and with three more field-gates & styles to where road is joined by Mellow Lane. Road again crosses railway and has fieldgates on either side of the crossing and after a further 300-400 yds crossing Blackbrook and through F.G.&S. passing Newbarn Farm and continues on through one more F.G.&S to exit by open gap onto the Leek – Ashbourne Road at Lower Berkhamsytch. Road has variable surface and is apparently little used except by one or two local farmers. Stiles and gates in good order. "
63. The surveyors marked the cards with an abbreviation which was in line with a government circular (Ministry of Town and Country Planning - Circular 81/50 – January 1950) which tried to assist Parish Councils in identifying different status of ways. In this case the local surveyor identified the routes as path number 82 and path number 85 on the respective survey cards and on the associated plan as CRF82 and CRF85 in red ink on the plan. This denotes a CRF (a cart road being predominantly used as a footpath).
64. The Surveying Authority amended the path symbols initially identified as CRF82 to RP and CRF85 to an RP (i.e. a RUPP – a road used as a public path) in pencil in line with terminology used within the National Parks and Countryside Act of 1949. The associated plan does not have this amendment. It is unclear at what point in time this amendment occurred. A RUPP is defined as "a way such as public carriage roads, cart roads or

green unmetalled lanes which were mainly used as footpaths or bridleways".

65. Although the definition of a RUPP implied that such a right of way was subject to vehicular rights, the 1949 Act provided that the showing of a way as a RUPP on the definitive map was conclusive evidence *only* of the public's right to use it on foot or on horseback. The courts have determined that even though a route was previously classified as a RUPP this does not automatically mean it has rights over it that are higher than a footpath.
66. A decision was made by the County Council that CRF 82 (Mellow Lane) status was that of a footpath and CRF 85 status was that of a Public Bridleway in 1954 when the draft map was completed. This draft map became the first definitive map in the early 1960s.
67. As a result of confusion concerning what rights RUPPs bestowed, the Countryside Act 1968 required all highway authorities to reclassify RUPPs in their area, initially as public footpaths, public bridleways and where public vehicular rights were demonstrated to exist, the RUPP would be reclassified with the new identification of a Byway Open to All Traffic (BOAT).
68. The First Special Review of the Definitive Map and Statement was undertaken by Staffordshire County Council in 1969. In reviewing the evidence reliance could not be placed solely upon the fact that a route that once had the status of a RUPP proved that higher rights existed. The review reconfirmed that there were only acknowledged rights on foot for Mellow Lane and bridleway rights for Public Bridleway 85.
69. The Wildlife and Countryside Act 1981 required that all routes previously claimed as RUPPs were to be reclassified as Byways Open to all Traffic which was a highway over which the public had a right of way for vehicular and all other kinds of traffic but which was used by the public mainly for the purpose for which footpaths and bridleways were used. Subsequently the Countryside and Rights of Way Act 2000 provided a provision for BOATs to be dispensed with and in May 2006 when the relevant sections came into force, all RUPPs automatically were converted to Restricted Byways. It is considered that this is why the application was made for a Restricted Byway.
70. With regard to the Parish Card evidence therefore, there is conflicting evidence as to whether at the time of the initial survey in the 1950s the route carried vehicular rights.
71. A historical map which can be found at page 113 obtained from the National Library or Scotland from the 1900's series shows a physical feature along the routes of Bridleway 85 and Mellow Lane although does not indicate its status or whether it is a public or private way.
72. Yates' map of 1775 which can be found at page 114 also shows a physical feature along the routes of Bridleway 85 and Mellow Lane although again does not indicate its status or whether it would carry public or private rights.

73. The Ordnance survey plan titled Staffordshire Sheet XIII NE published in 1888 was considered, which can be found at page 115. This reflects the physical features shown in the historical maps including that of Yates' over 100 years earlier.
74. An Ordnance Survey plan dated 1967 for Buxton and Matlock was considered which can be found at page 116. This reflected the routes as being Roads used as Public Paths on Staffordshire County Council's Definitive map. Subsequently the Countryside Act 1968 required all Council's to reclassify their Roads used as Public Paths resulting in Public Bridleway 85 and Public Footpath 82.

### **Analysis of Documentary Evidence from Landowners**

75. No evidence was provided by any landowner at the time of the presentation of the s53 application.
76. In the course of contacting parties for completion of the s36 report correspondence with a landowner's solicitor was received and responded to. The landowner (Landowner 1) through her Solicitor, objected to the route being a publicly maintainable highway. A second landowner (Landowner 2) responded supporting public maintenance of the route. This evidence can be found within the addendum to the s36 report between pages 75-94 and page 98.
77. Landowner 1's Solicitor has responded to the initial s53 application consultation which can be found between pages 118-132 and has included evidence of the land ownership but no further evidence regarding the rights along Mellow Lane and the Public Bridleway. The landowner through her Solicitor considered that Mellow Lane and the Public Bridleway should not be upgraded from their current status'. The landowner also expressed concern over the security of livestock within their fields should the gates need changing, and they also expressed concerns regarding safety at the junction of the road between the bridleway and Ellastone Road. With regard to the gates on the land and the road junction, while not wishing to undermine or belittle these legitimate concerns unfortunately they cannot be taken into account when establishing whether or not higher rights along Mellow Lane and the Public Bridleway exist.
78. Landowner 2, (also referred to as Landowner 2 within the s36 report) forwarded a user evidence form regarding the s53 application which can be found between pages 133-142. In her user evidence form she state that she considered the route to have higher rights than a Public Bridleway (although it is unclear as to whether this is Mellow Lane or also Public Bridleway 85). She explained that horse riders used to ride down Mellow Lane but approximately 8 years ago access gates were locked. She also advised that approximately 45 years ago she used to ride the length of Mellow Lane from Pelham Farm Stables.
79. Landowner 3's representative advised in their evidence form (which can be found between pages 143- 152), that they considered Public Bridleway 85 to be best described as a bridleway. They advised that the land had

been in ownership by the railway since 1845 and that due to Statutory incompatibility the railway could not dedicate or increase a right of way over its own land. This however is a separate issue because the current application is an external application based on historical evidence. If the route is proved to have higher public rights then these will take priority.

80. Landowner 4's evidence form can be found between pages 153 and 163. The representative advised that they considered Public Bridleway 85 to be best described as a bridleway. They currently lease land over which Public Bridleway 85 extends. The landowner advised that level crossings which Public Bridleway 85 intersects are private access crossings/routes, and that Mellow Lane is also a private route for access to a limited number of properties. Whilst this is acknowledged, if public rights are found to exist along the route, they will run concurrently with the private rights.
81. This landowner further points out that due to trespass on the railway being an offence, no rights can have been established concerning any public usage. The evidence for the route however is based on documentary evidence and not user evidence and therefore rights obtained through use are not relevant to the application.
82. The landowner evidence form received from Landowner 5 which can be found between pages 164-175 refers to a County Council letter of 12<sup>th</sup> September 2023 which is attached. The landowner considers that the bridleway is the best description of the route, and also explains the current use of the land over which the current bridleway crosses. The landowner has placed signs on his land to prevent further rights being established whilst ensuring that the current rights are respected. The application and evidence discovered by the County Council however show historical rights which may be higher than those currently established, and so prevention of current usage would not prevent an upgrade based on such documentary evidence.
83. In a covering letter enclosing the landowner form, the landowner summarised the situation around his property, and highlighted the fact that he locked a gate along the route following a neighbour access dispute. An officer from the County Council Rights of way enforcement team was called out to attend the property and was satisfied that the situation regarding the legal rights along the bridleway had not been compromised.
84. Landowner 6 whose evidence form can be found at pages 176- 184, had received a landowner evidence form. It was understood from a Land Registry search that her property (Little Paradise Farm) was along the route of Public Bridleway 85. The location of the Farm however is not along either Mellow Lane or Public Bridleway 85 although she has access to her property along the bridleway. The landowner describes the route as a bridleway but "used as a byway open to all traffic for decades".

### **Analysis of Documentary Evidence from Statutory Consultees**

85. The Byways and Bridleways Trust responded to initial consultation following the presentation of the s53 application. The representative

advised that he and another rode on motorcycles along the route in the 1970's and 1980's when the route was classified as a RUPP. The transcript can be found at page 187.

86. The Peak & Northern Footpath Society responded to the presentation of the s53 application and advised that whilst they did not have any evidence to support the claim they did not object to the upgrading of footpath 82 Ipstones (Mellow Lane). This can be found at page 186.
87. Following the discovery of potentially higher rights along Bridleway 85 the user groups were recontacted. The representative of the Byways and Bridleways group advised that he considered the route showed "substantial historical evidence to support a finding that both ways carry public vehicular rights and should be shown on the list of streets". There is evidence of higher rights for both Mellow Lane and Public Bridleway 85 but the documentary evidence would suggest that these were carriageway rights and not more contemporary public vehicular rights. The representative advised that he and a friend have used the routes as public vehicular routes in the past but there is no evidence to suggest that this was commonplace. Landowner 1's Solicitor in the addendum to the s36 report, suggests that the previous owner of Mellow Lane in or around the 1970-80's "had problems with motorbikes using the area" and that a "restriction" was put in place. There is however no evidence of the restriction.
88. Ipstones Parish Council could not provide any evidence but supported the upgrade of the footpath (although it is unclear as to whether or not this includes the bridleway). The transcript of the email can be found at page 189.
89. The responses to the Statutory Consultees and user groups can be found in Appendix F.
90. Comments were received in the course of contacting the consultees for the s36 application. These comments can be found within the addendum to s36 report between pages 69 and 74.

### **Legal tests**

91. With regard to the status of the routes, the burden is on the applicant with regard to Public Footpath 82 and the burden is on the County Council in relation to Public Bridleway 85 to show, on the balance of probabilities, that it is more likely than not, that the Definitive Map and Statement are incorrect. The existing classification of the routes, as a footpath and as a bridleway, must remain unless and until the Panel is of the view that the Definitive Map and Statement are wrong. If the evidence is evenly balanced, then the existing classification of the routes as a footpath and a bridleway on the Definitive Map and Statement prevails.

### **Summary**

92. The application for the upgrade of Mellow Lane and the discovery of evidence for the upgrade of Public Bridleway 85 are made under Section



53(2) of the 1981 Act, relying on the occurrence of events specified in 53(3)(c)(ii) of the Act.

93. The Panel need to be satisfied that, on the balance of probabilities, the evidence that has been submitted and that discovered shows that the highways shown on the map and statement as highways of a particular description ought to be there shown as highways of a different description.
94. The County Solicitor concluded that there was sufficient evidence to show that Mellow Lane was an ancient highway based on the documentary evidence. The significance of this is that it had carriage way rights and was a public route.
95. The Ordnance Survey map provided by the applicant for the s36 report and dated 1836 names the route as Mellow Lane. It also depicts a physical feature along Public Bridleway 85 similar to that of Mellow Lane. This is good supporting evidence that the routes should be upgraded.
96. The Ordnance Survey Name Book shows Mellow Lane to be classified as a road. Again, this is good supporting evidence that the route should be upgraded.
97. The discovery by the County Council of the railway plan is strong evidence to support the contention that Public Bridleway 85 also should have higher rights.
98. The prominent map draftsmen at the time also depict routes in the area of Mellow Lane and Public Bridleway 85 on their plans and specify that the roads are cross roads. It is up to the Panel however to decide whether they consider that the routes shown on these public maps are Mellow Lane and Public Bridleway 85. If they are of the opinion that the routes depicted are Mellow Lane and Public Bridleway 85, the information provided by the Director, Highways and Transport at the Planning Inspectorate regarding his interpretation of the term cross roads again adds weight to the fact that Mellow Lane and Bridleway 85 did carry public rights and were carriage roads linking two main roads. Whilst not strong evidence it is good supporting evidence.
99. The final evidence is the Parish Survey Cards. These show an element of confusion with regard to the recording of the rights since their initial drafting. These cards do provide some evidence of higher rights than a footpath and a bridleway because within the description they refer to the routes as being cart roads and they also make reference to the fact that vehicles can use the routes. Parish Survey Cards however are not considered to be evidentially strong in their own right.

## **Conclusion**

100. It is the opinion that based upon the balance of probabilities and in light of the evidence, as set out above, that Public Footpath 82 on the Definitive Map and Statement with the current status of a footpath should be upgraded to that of a Restricted Byway.

101. It is the opinion that based upon the balance of probabilities and in light of the evidence, as set out above, that Public Bridleway 85 on the Definitive Map and Statement with the current status of a bridleway should be upgraded to that of a Restricted Byway.
102. It is the opinion that the County Council should make a Modification Order to upgrade the current footpath and also the current bridleway to that of a Restricted Byway on the Definitive Map and Statement of Public Rights of Way with a minimum width of 3 metres.

### **Recommended Option**

103. To accept the application based upon the reasons contained in the report and outlined above and to decide to make an Order to upgrade the current footpath to that of a Restricted Byway and to amend the Definitive Map and Statement of Public Rights of Way.
104. To accept the discovery of evidence based upon the reasons contained in the report and outlined above and to decide to make an Order to upgrade the current bridleway to that of a Restricted Byway and to amend the Definitive Map and Statement of Public Rights of Way.

### **Other Options Available**

105. The Panel has the authority and discretion to reach a different decision and therefore can reject the application and recommend that an Order should not be made to amend the Definitive Map and Statement of Public Rights of Way.
106. The Panel also has the authority and discretion to reach a different decision and therefore can reject the further evidence and recommend that an Order should not be made to amend the Definitive Map and Statement of Public Rights of Way.

### **Legal Implications**

107. The legal implications are contained within the report.

### **Resource and Financial Implications**

108. The costs of determining applications are met from existing provisions.
109. There are, however, additional resource and financial implications if decisions of the Registration Authority are challenged by way of appeal to the Secretary of State for Environment, Food and Rural Affairs or a further appeal to the High Court for Judicial Review.

### **Risk Implications**

110. In the event of the Council making an Order any person may object to that order and if such objections are not withdrawn the matter is referred to the Secretary of State for Environment under Schedule 15 of the 1981 Act. The Secretary of State would appoint an Inspector to consider the matter afresh, including any representations or previously unconsidered evidence.
111. The Secretary of State may uphold the Council's decision and confirm the Order; however there is always a risk that an Inspector may decide that

the County Council should not have made the Order and decide not to confirm it. If the Secretary of State upholds the Council's decision and confirms the Order it may still be challenged by way of Judicial Review in the High Court.

- 112. Should the Council decide not to make an Order the applicants may appeal that decision under Schedule 14 of the 1981 Act to the Secretary of State who will follow a similar process to that outlined above. After consideration by an Inspector the County Council could be directed to make an Order.
- 113. If the Panel makes its decision based upon the facts, the applicable law and applies the relevant legal tests the risk of a challenge to any decision being successful, or being made, are lessened. There are no additional risk implications.

### **Equal Opportunity Implications**

- 114. There are no direct equality implications arising from this report.

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J Tradewell

Director for Corporate Services

**Background File:** 008636DW

## INDEX TO APPENDICES

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