



Your Ref:
My Ref: RCA/Astonspc
Date: 28th December 2022

Jane Imbush
Chairperson to the Parish Council
Aston Tirrold & Aston Upthorpe Parish Council
c/o The Clerk to the Parish Council
15 Chilton Fields
Chilton
Oxon. OX11 0SQ

By email only: jimbushpc@gmail.com

Dear Jane

**Re: Review of Documentation regarding Public and Private Rights of Way
Lane and Footpath Leading off Aston Street, Aston Tirrold**

Thank you for sending through a copy of the letter from Freeths Solicitors dated 16th November 2022 regarding the above matter, and also the improved copies of the Enclosure Award and Map. I have now had the opportunity to look through these documents and the assessment of the situation, as set out in the letter from Freeths Solicitors is, in my view, correct

As you have correctly identified, the route in question is on the Definitive Map as a public footpath. The Definitive Map provides conclusive evidence of the public footpath rights. This conclusive status is however without prejudice to any other higher public rights of way. It should also be noted that the Definitive Map does not record private rights of way.

In addition to the public footpath rights, the route is set out in the enclosure award as a Private Carriage Road and Driftway at a width of 30 feet (Route No 6). The enclosure award is a legally binding document and is effectively conclusive as to the existence of the private carriageway right referred to. This essentially means that the route is subject to both public pedestrian rights and also private rights for all purposes in connection with access to the land it serves. It is possible, and not that unusual, for such rights to co-exist.

The enclosure award will set out who is responsible for the maintenance of the road. This may be the adjoining landowners, or it may actually rest with the Parish Council. It would be necessary to check the enclosure award further on this point. In addition, as the route is on the Definitive Map, and existed when the National Parks and Access to the Countryside Act 1949 came into effect, the route is also maintainable at public expense (to the standard of footpath) by the County Council. As a result, any person wishing to undertake works on the lane would require the consent of the County Council. Notwithstanding this requirement, the County Council could not reasonably withhold consent because of the private rights over the road. At best they could influence when and how works were undertaken, but not prevent them being undertaken altogether. This would apply to the full 30 feet width of the land/public footpath.

Moving on, and on a related point, I am sure that someone will raise the issue of Section 34 of the Road Traffic Act 1988 (As Amended) which provides the criminal offence of driving a mechanically propelled vehicle on a footpath without lawful authority. In response, I can advise that the enclosure award will provide the necessary "lawful authority" and therefore a defence against such charges.

Finally, with regard to registration of the footpath with the Land Registry, in my view such an application would fail unless the Parish Council can provide some actual evidence of land ownership. The fact that the route is currently unregistered (with the Land Registry) and recorded on the Definitive Map as a footpath, does not give rise to any presumption of ownership by the Parish Council.

On the contrary, by virtue of the legal presumption "*ad medium filum*", in the absence of evidence to the contrary, the lane will belong to the adjoining landowners, with each owning to the centre of their respective sections. The exception to this would be if the land could be shown to still belong to the Lord of the Manor. In my view this is unlikely as it was common practice for the Lord of the Manor to be compensated as part of the enclosure award process, and as such he/she can no longer claim ownership of such land. The matter would be further complicated by the fact that the surface of the lane is "*vested*" in the County Council because the footpath is a highway maintainable at public expense. The County Council therefore have a special interest on the land which may or may not be a bar to land registration.

I trust that the above information and advice has answered your queries. If I can be of further assistance, please do not hesitate to contact me

Yours sincerely

A handwritten signature in black ink, appearing to read 'Robin Carr', with a long horizontal flourish extending to the right.

Robin Carr FIPROW
Principal Consultant