

WOOTTON MANOR ESTATE RWO/199

THIRD RESPONSE

REBUTTAL OF THE ASSERTIONS MADE BY MR SMITH

1. Correspondence with the Duke of Devonshire

Mr Smith has questioned our references to the Chatsworth correspondence between the Duke and JEA Gwynne. These are held at the Compton Archives in Eastbourne and are available for anyone to view by request to the Duke of Devonshire's Estate. The Letter books to be found there are copies of the letters and correspondence between the Duke of Devonshire's Agents and JEA Gwynne's Agents, bound into several very large volumes.

We were given permission to take digital images of all those that pertained to Wootton for our research. But not to reproduce them in the public domain.

We have faithfully referenced and transcribed the letters: should Mr Smith wish to see the originals he is able to make his own application to the Estate Office for a viewing.

We stand by our inclusion of this correspondence as evidence that supports the private nature of the back drive.

2. Parish Boundaries

Mr Smith has claimed that Parish boundaries follow the middle of public roads. This is true in some cases, but in reality they also follow private tracks, streams, ditches and significant field boundaries between owners, farms, manors and earlier territorial divisions now lost to us.

Accordingly we do not advise weight is given to the fact that the back drive is in part also the Parish Boundary.

3. Reorganisation of the fields when the track was removed and enclosed.

We are clear that the fields that formerly bounded a driftway at the north end of the claimed route were reorganised in the early nineteenth century.

This is shown the following series of maps

1778 Map of Sussex by Yeakell and Gardiner Shows the driftway and the irregular fields which would have been enclosed from the adjacent woodland.

1795 Gardiner and Gream (partly after Yeakell and Gardiner) also shows the driftway and fields

1789-1806 Ordnance Surveyor's Draft Drawings for 1" 1st Edition shows the driftway and fields

1839 Survey for Tithe map Fields north of the old turnpike shows the same area with the field pattern completely reorganised and no driftway.

We are clear that between 1819 (date of the New Turnpike) and 1839-40 (Survey for Tithe Map) William Harison reorganised the fields and removed the trackway north of the Old Turnpike in the area known as the Hide.

We asked Dr Nicola Bannister to comment on the Archaeology of this boundary change: she states

"The field boundary running north from The Hide Cottage to the Gorselands, comprises a rounded bank with a ditch topped by a thorn hedge intermixed with trees. Such a boundary is characteristic of Late post-medieval and Early modern field enclosures. Other boundaries at Wootton have a more species-rich hedge and with often more substantial earthworks which are indicative of older field boundaries.

The boundary has a slightly curved alignment, which mirrors the approximate alignment of the former driftway. Thus the alignment of the western boundary of the former driftway is of considerable antiquity but the physical boundary is likely to be 19th century.

The eastern boundary of the former driftway no longer exists.

The reorganisation of the fields would have also involved the laying of land drains and the laying out of ditches and ponds which lie to the east of the above boundary. Since the 1819-1840 reorganisation some of those boundaries and shaws have also been removed creating the larger fields seen today.

I would clarify that with further consideration the approximate alignment is medieval (i.e. the western drift way line) but the physical hedge today is 19th century"

We have argued and continue to assert that the fact that Mr Harison was willing and able to do away with the driftway in his farm reorganisation in the early nineteenth century remains good evidence that this was considered a private way.

4. Maps and the evidence they provide

Mr Smith makes play of the inaccuracy of old maps at the same time as relying on them.

He asserts that non-tithed land must be evidence of a public way, which is palpable nonsense: any unproductive land was not tithed, and there is no evidential value in relation to public rights of way in the fact that at the time farmers and landowners would have been concerned to avoid paying tithe tax on non-productive land.

He asserts that despite the Ordnance Survey's clear warning he still draws "inferences" that routes shown were public but without providing any other evidence therefor.

5. Mr Smith's assertions on the character of Mr Gwynne

We find the assertion by Mr Smith that the legal status of a claimed right of way can be discovered by reference to biography to be meaningless in this context.

Either the wider public (as opposed to farm workers, tenants and employees) used the claimed route as of right, or they didn't. What the landowner might have thought about it (even if family biography can reveal what he thought) is simply irrelevant.

6. Conclusions

We do not believe Mr Smith has proved on the balance of evidence that the Wootton back drive was ever used as of right by the wider public.

We are clear the back drive has existed for the benefit of Wootton farm and the wider Estate, and all the farm workers and estate tenants and employees would have used it.

But we are equally clear that the southern section of the original route was done away with under the provisions for private agreements under the Railway Act and replaced by the one agreed between the then current owner and the railway company on a new route.

And equally clear that the new route was defended as being private by JEA Gwynne in the late nineteenth century in correspondence with the Duke of Devonshire.

And equally clear that the northern end of the claimed route no longer exists, having been removed by the then owner in the early nineteenth century.

Should the matter be taken to a public enquiry we are confident that the mixture of assertion, suggestion and "inference" that Mr Smith argues in support of his case would be found, under cross examination, to bear no weight.

Accordingly, we ask that the County Council reject this speculative application as unproven.

RH & RW Clutton

For and on behalf of the Wootton Manor Estate

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29 June 2018