

December 31<sup>st</sup>, 2021

**Leigh Crescent Garages Appeal APP/J3720/W/21/3281552**  
**Appeal against retention of Condition 10 of planning permission 20/01850/FUL**  
**Submission from Long Itchington Parish Council**

In not accepting the condition placed upon the granting of planning permission for three dwellings on this site, the appellant has exposed a conflict between the value placed on additional homes versus the value placed on a long standing right of way. The two do not need to be mutually exclusive. Inevitably the appellant places far greater importance on the building of three dwellings than on retention of the right of way. The community accepts the permission to build three dwellings but places great value on the retention of the right of way. The Parish Council has suggested a compromise to the appellant, whereby houses are built, and the right of way is retained. The appellant has not responded to this proposal.

**Background**

The appellant has attempted over several years to gain planning permission for a small number of dwellings on the site of dis-used garages. The appellant has continually ignored the fact that a long established and well used right of way crosses the site. Stratford District Council in its granting of planning permission for three dwellings agreed that condition 10 should be imposed in order to retain such access, thus recognising the importance of this access for the public. This access not only serves the residents of Long Itchington but is also an important pedestrian route for narrow boat visitors using the canal and residents living on boats along the canal to easily access village amenities, such as the shop and our various pubs and restaurants. The right of way has been used for 60+ years.

**Legal basis for retention of footpath**

We rely on the common law presumption that if land has been used by the public as a right of way and without interruption it is indeed a highway. We argue that historical usage of this path deems it to be officially a right of way. Our legal advice (attached) supports this view. "It doesn't matter whether a landowner was aware of this use because as held *R v Oxfordshire County Council, ex parte Sunningwell (1999) UKHL 28* "as of right" can still exist even if the landowner knows about the use and does nothing about it."

**Importance of retention of condition 10.**

The route between Leigh Crescent and the towpath of the Grand Union Canal serves many different and important purposes:

- 1) It is a safe route to school (Long Itchington Academy) for residents living south of the canal, most particularly at Model Village and provides pedestrians who have mobility issues or pushchairs with **step free access to school**
- 2) It provides narrow boat users holidaying on the canal with easy access to the local shop to purchase essentials. Large numbers of visitors to Long Itchington enjoy the canal in this way.
- 3) It is an essential route for the 20+ residents of Long Itchington who form our narrow boat community all year round.
- 4) It is a well-used route for residents of Long Itchington walking or cycling from Leigh Crescent to the towpath – a much loved outdoor space for enjoyment and exercise. The towpath is part of Sustrans Route 41
- 5) It gives easy access for residents to the Two Boats Inn and the Blue Lias Inn, both hostelrys on the canal.
- 6) The Shop at Leigh Crescent relies heavily on trade from pedestrians accessing their services via this path; this includes a post office.

### **Application for right of way to be added to the Definitive Map**

The Parish Council has lodged an application with Warwickshire County Council to have the right of way added to the Definitive Map and in so doing the footpath has now been entered on the register.

The applications' register is at the link below, The Parish Council's application is numbered MZ916PC.

[The Definitive Map and Statement – Warwickshire County Council](#)

The application itself can be found at

[Register of definitive map modification orders – Stratford-on-Avon – Warwickshire County Council](#)

Since lodging our application with WCC, further footpath users have filed footpath user forms with Warwickshire County Council Rights of Way team, and the number of bona fide user forms now stands at 52, a very large number of residents prepared to attest to their usage of the footpath. Many are elderly and remember usage from childhood. The oldest resident born in 1936 remembers using the path from 1959. We believe this is when the estate of houses at Leigh Crescent was built. Indeed, residents remember its existence prior to housebuilding. Until very recently it had been assumed that the right of way was indeed registered with WCC.

### **Planning reasons for retention of condition 10**

Within the Core Strategy we refer to policies AS10, CS9, CS7, CS15, CS25 and CS26 to support our position – see attached argument from our legal counsel.

### **Conclusion**

The building of dwellings on this site would not necessarily preclude the retention of a right of way (condition 10). The landowner would need to re-draw the plans to allow for the access. This could be achieved with the co-operation of both Long Itchington Parish Council and SDC planners.

It is an important right of way which is essential to protect. There is a clear legal basis for this right of way. Stratford District Council in imposing condition 10 are reflecting this.