

## **Minutes of the Countryside and Rights of Way Panel Meeting held on 8 February 2019**

Present: Julia Jessel (Chairman)

### **Attendance**

David Brookes  
Alan Dudson

Mike Worthington

**Apologies:** Paul Snape

### **PART ONE**

#### **76. Declaration of Interest in accordance with Standing Order 16.2**

There were no Declarations of Interest made at this meeting.

#### **77. Minutes of meeting held on 4 December 2018**

**RESOLVED** – That the minutes of the meeting held on 4 December 2018 be confirmed and signed by the Chairman.

#### **78. Wildlife and Countryside Act 1981, Section 53 - Application to Realign Public Footpath No. 34 Swynnerton Parish**

The Panel considered a report of the Director of Corporate Services regarding an application by Mr. and Mrs. Dixon for a Modification Order under Section 53 of the Wildlife and Countryside Act 1981 to realign Public Footpath No. 34 Swynnerton Parish on the County Council's Definitive Map and Statement.

The report was presented verbally to take Members through the various legal, documentary and historical evidence relevant to the application. The Director also made reference to case law which dealt with the weight to be given to that evidence and gave guidance on the legal tests which they should apply. In applying these tests, Members were made aware that they should examine the evidence in its totality.

During their consideration of the application, Members had regard to the appendices attached to the report including:- (i) a copy of the application; (ii) a copy of the County Council's current Definitive Map showing Public Footpath No. 34 Swynnerton Parish; (iii) a copy of an enlarged plan showing alignments of the current route and claimed correct line; (iv) a copy of a Submission by the Applicant's Agent; (v) a copy of the 1880 Ordnance Survey Map; (vi) a copy of the 1901 Ordnance Survey Map; (vii) a copy of the 1924 Ordnance Survey Map; (viii) a copy of the 1959 Ordnance Survey Map; (ix) a copy of the 1963 Ordnance Survey Map; (x) copies of Tithe Maps and Awards; (xi) a copy of the Definitive Statement; (xii) copies of the Parish Survey Record; (xiii) a copy of the Parish Survey Map extract; (xiv) an aerial photograph of the area; (xv) a copy of

Circular Walk, Yarnfield; (xvi) a scanned copy of Parish Survey Record Cards and accompanying Parish Survey Maps extract; (xvii) copies of the first Definitive Map of 1954 and Definitive Map of 1969; (xviii) a copy of Mr. Beeston's comments and attachment dated 3 October 2018; (xix) a copy of Mr. Dixon's response and attachments dated 12 October 2018; (xx) a copy of Mr. Beeston's response; (xxi) a copy of Swynnerton Parish Council's response dated 5 October 2018; (xii) a copy of a Staffordshire County Council map indicating points A, B, C along the Definitive route of Public Footpath No. 34 Swynnerton Parish.

In presenting the report the Director referred to the Panel's site inspection of the alleged correct and definitive lines of the path which they had undertaken prior to the commencement of the meeting. The purpose of the inspection had been to gain a better understanding of the physical features in the area.

Following detailed consideration of the application, the Panel decided that from the available evidence which was finely balanced, the civil test of 'Balance of Probabilities' ie that it was more likely than not the Definitive Map and Statement was wrong, had not been met and in consequence the existing depiction of the route currently shown on the Definitive Map should remain.

**RESOLVED** – (a) That the report be received and noted.

(b) That the evidence submitted by the applicant and that discovered by the County Council is insufficient to show that an error on the Definitive Map and Statement for the District of Stafford exists.

(c) That an Order **NOT** be made to amend the Definitive Map and Statement of Public Rights of Way for the District of Stafford to realign the route of Public Footpath No. 34 Swynnerton Parish to the line shown in the application.

### **79. Wildlife and Countryside Act 1981, Section 53 - Alleged Public Footpath from the Draycott/Cheadle Road to New Haden Road, Cheadle**

The Panel considered a report of the Director of Corporate Services regarding an application by Mrs. C. Towle for a Modification Order under Section 53 of the Wildlife and Countryside Act 1981 to add a Public Footpath running from Draycott/Cheadle Road to New Haden Road (Huntly Lane), Cheadle to the County Council's Definitive Map and Statement of Public Rights of Way.

The report was presented verbally to take Members through the various legal, documentary and historical evidence relevant to the application. The Director also made reference to case law which dealt with the weight to be given to that evidence and gave Members guidance on the legal tests which they should apply. In applying these tests, Members were made aware that they should examine the evidence in its totality.

The Chairman then invited the County Councillor for Cheadle and Checkley County Electoral Division (the 'Local Member') to address the Panel. In response, he said that he noted the comments on the application which had been received from Cheadle Town Council ie (i) that Public Footpath No. 19 Cheadle Town could be used as an alternative

route and (ii) that the route of the alleged path crossed over land which incorporated two air shafts, was close to the site of a quarry and comprised unstable land. In reply, the Director of Corporate Services advised the Panel that in law, both (i) and (ii) above were not material considerations to be taken into account in their determination of the application. However, the Local Member said that he wanted to ensure that the concerns of the Town Council were noted.

The Local Member also sought clarification of the user evidence which had been submitted in support of the application.

Members had regard to the appendices attached to the report including:- (i) a plan of the claimed route; (ii) a copy of the application; (iii) a copy of the accompanying User Evidence Forms; (iv) a table of usage; (v) a copy of additional evidence; (vi) a copy of historical evidence and; (v) copies of landowner responses.

In the discussion which ensued, a Member expressed his serious concerns regarding the potential health safety implications for path users in the event the Panel decided to approve the application and make a Modification Order. He therefore proposed that determination of the application be deferred pending a site visit by the Panel to gain a better understanding of the physical features on the ground and Rights of Way network in the area. Following a show of hands which indicated 2 for and 2 against the proposal, the Chairman exercised her casting vote and declared the motion lost.

Following their detailed consideration of the application, the Panel decided that from the available evidence the civil test of 'Balance of Probabilities' was satisfied in relation to Section 53(c)(i) of the Act ie 'that a Right of Way which is not shown in the Map and Statement subsists owing to the user evidence which had been submitted which showed that the public had used the alleged route, as of right and without interruption, for a period of at least 20 years prior to the status of the route being brought into question and the absence of an identifiable event which brought into question the use of the path.

With regard to the lesser test of 'Reasonable Allegation' they decided that this was also satisfied.

**RESOLVED** – (a) That the report be received and noted.

(b) That the evidence submitted by the applicant and that discovered by the County Council is sufficient to show that a Public Footpath which is not shown on the Definitive Map and Statement for the District of Staffordshire Moorlands subsists along the route shown marked A to B to C to D on the plan attached at Appendix A to the report and should be added to the Definitive Map and Statement of Public Rights as Way as such.

(c) That an Order be made to add the alleged right of way shown on the plan attached at Appendix A and marked A to B to C to D on the plan to the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands as a Public Footpath.

**NOTE BY CLERK:** Mr. D. Brookes requested his name be recorded in the minutes as having voted against the recommendations.

**80. Wildlife and Countryside Act 1981, Section 53 - Alleged Public Footpath at Coney Greave Lane to Footpath No. 19, Cheadle**

The Panel considered a report of the Director of Corporate Services regarding an application by Mrs. C. Towle for a Modification Order under Section 53 of the Wildlife and Countryside Act 1981 to add a Public Footpath running from Coney Greave Lane to Public Footpath No. 19 Cheadle to the County Council's Definitive Map and Statement of Public Rights of Way.

The report was presented verbally to take Members through the various legal, documentary and historical evidence relevant to the application. The Director also made reference to case law which dealt with the weight to be given to that evidence and gave guidance on the legal tests which they should apply. In applying these tests, Members were made aware that they should examine the evidence in its totality.

Members had regard to the appendices attached to the report including;- (i) a plan of the claimed route; (ii) a copy of the application; (iii) copies of User Evidence Forms; (iv) a table summarising data from the User Evidence Forms; (v) documentary evidence; (vi) a copy of a Landowner Form submitted by Mr. S.W. Campbell; (vi) a copy of a Landowner Form submitted by Mr. H, Harley; (vii) copies of correspondence received from various Statutory Consultees.

Following their detailed consideration of the application, the Panel decided that from the available evidence, the civil test of 'Balance of Probabilities' was satisfied in relation to Section 53(3)(c)(i) of the Act ie 'that a Right of Way which is not shown in the map and statement subsists' owing to the user evidence submitted which showed that the public had used the alleged route, as of right and without interruption, for a period of at least 20 years prior to the status of the route being brought into question and the absence of an identifiable event which brought into question the use of the path.

**RESOLVED** – (a) That the report be received and noted.

(b) That the evidence submitted by the applicant and that discovered by the County Council is sufficient to conclude that a Public Footpath which is not shown on the Definitive Map and Statement is reasonably alleged to subsist along the route shown marked A to B on the plan attached at Appendix A to the report and should be added to the Definitive Map and Statement of Public Rights of Way as such.

(c) That an Order be made to add the alleged Public Footpath at Coney Greave Lane to the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.

**81. Wildlife and Countryside Act 1981, Section 53 - Alleged Public Footpath from FP 0.1415, Stowe Parish to Ridding Lane, Gratwich, Leigh Parish**

The Panel considered a report of the Director of Corporate Services regarding an application by Mr. M. Reay for a Modification Order under Section 53 of the Wildlife and Countryside Act 1981 to add a Public Footpath running from Public Footpath No. 0.1415

Stowe Parish to Ridding Lane, Gratwich, Leigh Parish to the County Council's Definitive Map of Public Rights of Way.

The report was presented verbally to take Members through the various legal, documentary and historical evidence relevant to the application, The Director also made reference to case law which dealt with the weight to be given to that evidence and gave guidance on the legal tests which they should apply. In applying these tests, Members were made aware they should examine the evidence in its totality.

Members had regard to the appendices attached to the report including:- (i) a copy of the application and associated submitted letters and documents; (ii) a plan of the claimed route; (iii) copies of the 1910 Finance Act maps and Field Book entries; (iv) a plan of the Gratwich estate; (v) copies of Ordnance Survey Maps; (vi) a copy of Landowner Evidence Form from Mr. and Mrs. Cotton; (vii) a copy of Landowner Evidence Form from Mr. MG Sanders; (viii) a copy of Landowner Evidence Form from Mr. D. Steptoe.

Following their detailed consideration of the application, the Panel decided that from the available evidence, the civil test of 'Balance of Probabilities' was satisfied in relation to Section 53(3)(c)(i) of the Act ie 'that a Right of Way which is not shown in the map and statement subsists' in respect of that part of the alleged route marked A-B-C on the plan attached to the application owing to the documentary evidence which had been submitted, in particular the 1910 finance Act Maps and Field Book entries. However, with regard to that part of the alleged route marked C-D on the plan they decided that neither the civil test of 'Balance of Probabilities' or lesser test of Reasonable Allegation had been met owing to (i) the absence of sufficient documentary evidence and (ii) sufficient user evidence which showed that the public had used the alleged route, as of right and without interruption, for a period of at least 20 years prior to the status of the route being brought into question.

**RESOLVED** – (a) That the report be received and noted.

(b) That the evidence submitted by the applicant and that discovered by the County Council is sufficient to conclude that on the balance of probabilities a Public Footpath which is not shown on the Definitive Map and Statement subsists along the route shown marked A-B-C on the plan attached at Appendix A to the report and should be added to the Definitive Map and Statement of Public Rights of Way as such.

(c) That the evidence submitted by the applicant and that discovered by the County Council is insufficient to conclude that a Public Footpath which is not shown on the Definitive Map and Statement is reasonably alleged to subsist along the route shown marked C-D on the plan attached at Appendix A to the report should be added to the Definitive Map and Statement of Public Rights of Way as such.

(d) That an Order be made to add the alleged Right of Way shown on the plan attached at Appendix A to the report and marked A-B-C to the Definitive Map and Statement of Public Rights of Way for the District of East Staffordshire as a Public Footpath.

## **82. Exclusion of the Public**

**RESOLVED** – That the public be excluded from the meeting for the following items of business which involves the likely disclosure of exempt information as defined in the paragraphs of Part 1 of Schedule 12A (as amended) of the Local Government Act 1972, indicated below.”

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## **PART TWO**

### **83. Wildlife and Countryside Act 1981, Section 53 - Applications for Modification Orders to the County Council's Definitive Map of Public Rights of Way - Update**

The Panel received an exempt oral report of the Director of Corporate Services regarding the progress made in determining the backlog of outstanding applications for Modification Orders under Section 53 of the Wildlife and Countryside Act 1981 to the County Council's Definitive Map of Public Rights of Way. They noted that although they continued to make progress in determining applications, the backlog was likely to increase in the future owing to the volume of new applications being submitted by the public. They also noted the likelihood of further Directions being received from the Secretary of State for the Environment, Food and Rural Affairs together with the Corporate Complaints received arising from the non-determination of applications included in the current backlog.

**Chairman**