

<b>Local Members' Interest</b>	
John Francis	Stafford – Stafford South East

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

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

#### **Application for an alleged Footpath from FP0.1415, Stowe Parish to Ridding Lane, Gratwich, Leigh Parish**

#### **Report of the Director of Strategy, Change and Governance**

### **Recommendation**

1. That the evidence submitted by the applicant and that discovered by the County Council is sufficient to conclude on the balance of probabilities that 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 this report and should be added to the Definitive Map and Statement of Public Rights of Way as such.
2. 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 C-D on the plan attached at Appendix A to this report and should be added to the Definitive Map and Statement of Public Rights of Way as such.
3. That an Order be made to add the alleged right of way shown on the plan attached at Appendix A and marked A-B-C-D to the Definitive Map and Statement of Public Rights of Way for the District of East Staffordshire as a Public Footpath.

### **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.
2. To consider an application attached at Appendix B made by Mr Martin Reay for an Order to modify the Definitive Map and Statement for the area by adding an alleged Public Footpath from FP0.1415 to Ridding Lane in Gratwich. The effect of such an Order, should the application be successful, would:
  - (i) Add an alleged Public Footpath at FP0.1415 in Stowe to Ridding Lane in Leigh to the Definitive Map of Public Rights of Way under the provisions of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981.

(ii) The lines of the alleged Public Footpath which are the subject of the application are shown highlighted and marked A-B-C-D on the plan attached as Appendix A.

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.

### **Evidence submitted by the applicant**

#### **1910 Finance Act**

1. The applicant has submitted in support of his claim evidence from the 1910 Finance Act. The 1910 Finance Act involved completing a national survey of land by the Inland Revenue so that an incremental value duty could be levied when ownership was transferred.
2. The applicant produced two sets of field books with an accompanying map, copy attached at Appendix C. The field books record what the surveyor found at each property and the 'Domesday Book', which contained the complete register of properties and valuations.
3. Land was valued for each owner/occupier and this land was given a hereditament number. Landowners could claim tax relief where a highway crossed their land. Although the existence of a public right of way may be admitted it is not usually described or a route shown on the plan.
4. In this case there is a route and description contained in the 1910 Finance Act material. It refers to two plots which cover the area of land over which the claimed way runs. These are plot numbers 172 and 175.
5. Plot number 172 is at the western terminus of the claimed footpath starting at Round House (A-B on the plan attached at Appendix A). In the accompanying field book entry under the '*Charges, Easements and Restrictions affecting market value of Fee Simple*' it states a public road through fields 29, 32, 60, 59 and footpaths 59, 49, 48 and 33. There is also an entry for a deduction allowed for footpaths and a right of way.
6. On the section of the map that covers plot 175, it is presented as a double pecked line running through Shaw Farm shown on the plan as B-C which is attached at Appendix A. The accompanying field book entry states there are footpaths which run through fields 50, 51, 53A, 54, 55, 56, 57 and 58. There is also an entry for a deduction allowed for footpaths.
7. The east end of the claimed route is shown separate from the taxable land holdings of plot numbers 172 and 175, it runs from point C-D on the plan attached at Appendix A. The route appears to be a public road at each end with footpath connecting them together.

#### **Plan of Gratwich Estate to be sold by auction**

8. The plan numbers all fields and private roads to be sold at the auction dated 4 July 1918, a copy attached at Appendix D
9. The existing public roads are not numbered on the plan because they are not a part of the land subject to the sale.
10. Part of the claimed route (C-D on the plan at Appendix A) runs along the west side of field1 is shown on the estate plan and is not a part of the land being sold.

## **Ordnance Survey Maps**

11. The Ordnance Survey would record any physical feature on the ground; a route being recorded on the map is not an indication of status it is an indication that the route was physically on the ground when the map was compiled.
12. All the maps the applicant submitted show the claimed route as a part of the longer route from Fradswell to Gratwich, copies of the map are attached at Appendix E.

## **Evidence submitted by the Landowners**

13. When the application was submitted, the applicant revealed four landowners for the whole of the land over which the application route runs.
14. Shaw Farm owner Mr and Mrs Cotton completed an owner evidence form, a copy of which is attached at Appendix F. In this they comment that there is no path to use and they do not believe a public right of way exists.
15. Mr Sanders, owner of Shaw Cottage Farm also completed an owner evidence form; a copy is attached at Appendix G. The only information Mr Sanders discloses is he is not the owner or occupier of any of the land affected by the proposal or adjacent to it.
16. Woodhouse Farm owner Mr David Steptoe completed an owner evidence form; a copy is attached at Appendix H. He also discloses he is not the owner of any affected land. He further states he believes at one point there was a horse drawn track from Shaw Lane to Yew Tree Farm. A major landowner to the north of the alleged route whose land is affected is Mr D Atkins. He also claims the southern part of the claimed route is land belonging to Mr Johnson of Chartley Hall. An evidence form has been sent out to Mr Atkins; however Mr Johnson could not be determined as the current landowner of the affected land. To date no evidence form has been received from Mr Atkins.
17. An owner evidence form was also sent out to Mr Vernon of Red Barn Farm; however no response has been received.

## **Comments received from statutory consultees**

18. Leigh Parish Councillors have raised no objections to the alleged footpath and claim you can see why the footpath may have existed, however they have offered no evidence to support this.
19. East Staffordshire Borough Council responded to the application stating they have no comments to offer on the issue.
20. The Ramblers Association commented on the application with they have no evidence to submit on the matter at this time, but they do offer the observation that there does seem to be evidence on the ground to support the application and would like to note that the alleged path would be of considerable amenity value in joining the Blithe valley (Kingstone paths 12 and 0.635) more directly to the paths around Chartley Park and to the west.
21. The Byways & Bridleways Trust has replied stating they support the applicant's conclusion that the way in question is the old public road from Fradswell to Gratwich.
22. The Cyclist' Touring Club 'Right to Ride' representative claims although members do often cycle in the area because the application is for a footpath which they are not legally allowed to ride along, they are unable to offer any useful evidence either for or against the proposal.

## Comments on Evidence

23. In the 1910 Finance Act material where deductions were made it is usually considered fairly good evidence for public rights of way as the landowner is admitting their existence.
24. While it would have been to a landowner's advantage to acknowledge a public right of way if it existed and therefore claim the corresponding deduction, they were not required to do so.
25. Therefore, if there was a footpath through a hereditament it would probably be shown in the valuation book. Although, the valuation book entry was not produced in this instance the claimed route is acknowledged in the base mapping and field book entry.
26. Whilst OS maps can provide useful supporting evidence of public rights of way, they cannot be relied upon alone to indicate the public status of a route shown.
27. The Planning Inspectorate publication "*Wildlife and Countryside Act 1981 Definitive Map Orders: Consistency Guidelines*", when considering the evidential weight of OS mapping it was quoted in *Norfolk County Council v Mason* [2004] by Cooke J, who observed that "*Throughout its long history the OS has had a reputation of accuracy and excellence.....It has one major, self-imposed, limitation; it portrays physical features, but it expresses no opinion of public or private rights...*"
28. OS mapping evidence should therefore be carefully considered alongside other documentary evidence and in this case, Officers have viewed 1910 Finance Act evidence which would support the existence of the claimed route as a public right of way.
29. The 1910 Finance Act map shows a route from Round House running through hereditaments 172 and 175, through Shaw Farm and terminating at Shaw Lane. The corresponding field book entry books show deductions indicating the landowner acknowledged a public right of way through their land.
30. In the particulars and plans of the Gratwich Estate sale it numbers all fields and private lanes to be sold at the auction. All of the existing public roads are not numbered and not a part of the land included in the sale. This includes the part on the claimed route shown on the plan at Appendix A as C-D which is separate from the taxable land holdings (A-B-C on the same plan) is supported by the 1910 Finance Act material. The applicant alleges this could indicate that part C-D is a public road, as it has been excluded from the sale. If this part of the claimed route was not public in nature then the route it connects would be a cul-de-sac. A state that would be unsuitable in this specific setting as they are unusual in a rural area unless they are to a place of natural beauty or some other feature such as a lake.
31. The courts in *Eyre v New Forest* considered the situation in which two apparent cul-de-sac are created by reason of uncertainty over the status of a short, linking section. It was held that, where a short section of uncertain status exists it can be presumed that's its status is that of the two highways linked by it. If one follows the line of reasoning in that argument it would support the existence of a public right and that it was at least that of a footpath.

## Burden and Standard of Proof

32. There is a two stage test, one of which must be satisfied before a Modification Order can be made. All the evidence must be evaluated and weighed and a conclusion reached whether on the balance of probabilities either:
  - (a) the alleged right subsists or;
  - (b) is reasonably alleged to subsist.
33. Thus there are two separate tests. For the first test to be satisfied, it will be necessary to show that on the balance of probabilities the right of way does exist.
34. For the second test to be satisfied, the question is whether a reasonable person could reasonably allege a right of way exists having considered all the relevant evidence available to the Council. The evidence necessary to establish a right of way which is “reasonably alleged to subsist” over land must be less than that which is necessary to establish the right of way “does subsist”.
35. If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

### **Summary**

36. Finance Act evidence has been referred to in the Courts and at public inquiries as being the determining factor in deciding whether a claimed route has public rights. It cannot, where it allows a deduction, be regarded as being neutral. However, as the Court of Appeal in *Fortune v Wiltshire Council* [2012] Civ 334 stated such evidence must be considered as one part of the overall picture.
37. In many instances there would be a deduction for a public footpath and on the accompanying maps there would be various routes shown with no indication as to which route the latter referred to. Here the various routes on the maps are already, aside from the claimed route, admitted as public footpaths and so the capacity for confusion or mistake is not as prevalent.
38. Part C-D of the alleged route is not included in the sale of the estate. This does not necessarily indicate that the route is of a public status. It could be a private road giving access to the other farming land or possibly an occupational road. There is a possibility that this part of the claimed route did not belong to a particular landowner. Officers cannot be certain of the reason why it was not included in the sale of the estate or whether it was public or private and with the absence of evidence to confirm the former or latter, it would be pure speculation.

### **Conclusion**

39. It is the opinion of your officers that based upon the balance of probabilities and in light of the documentary evidence as set out above, the evidence does support the existence of public footpath rights over the claimed route A-B-C, which is not shown on the map and statement subsists.
40. However, part C-D not being present in the taxable land holdings as explained above, cannot be considered to exist on a balance of probabilities. In the absence of any contrary evidence this part of the claimed route can be said to reasonably allege to subsist.
41. It is the opinion of your officers that the County Council should make a Modification Order to add the public footpath on the Definitive Map and Statement of Public Rights of Way.

### **Recommended Option**

42. To accept the application based upon the reasons contained in the report and outlined above.

### **Other options Available**

43. To decide to reject the application to add the claimed route to the Definitive Map and Statement.

### **Legal Implications**

44. The legal implications are contained within the report.

### **Resource and Financial Implications**

45. The costs of determining applications are met from existing provisions.
46. 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**

47. 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 14 of the 1981 Act. The Secretary of State would appoint an Inspector to consider the matter afresh, including any representations or previously unconsidered evidence.
48. 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.
49. 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.
50. 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**

51. There are no direct equality implications arising from this report.
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Director of Strategy, Change and Governance

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**Background File:** LJ659G

## INDEX TO APPENDICES

Appendix A	Copy of application and associated submitted letters and documents
Appendix B	Plan of claimed route
Appendix C	Copy of 1910 Finance Act Maps and Field Book Entries
Appendix D	Plan of Gratwich Estate
Appendix E	Copies of Ordnance Survey Maps
Appendix F	Copy of Landowner Evidence Form – Mr & Mrs Cotton
Appendix G	Copy of Landowner Evidence Form – Mr Sanders
Appendix H	Copy of Landowner Evidence Form – Mr David Steptoe