

<b>Local Members' Interest</b>	
Councillor Martin Tittley	Lichfield -Lichfield Rural
Councillor Philip Atkins	East Staffordshire – Uttoxeter Rural

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

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

#### **Application for an alleged Bridleway from Blithbury Road to Bridleway 28, Abbots Bromley**

#### **Report of the Director of Corporate Services**

#### **Recommendation**

1. That the evidence submitted by the applicants and that discovered by the County Council is sufficient to show that the alleged public bridleway at Blithbury Road to Bridleway 28, Abbots Bromley subsists. Plan attached at Appendix B.
2. That the evidence submitted by the applicant and that discovered by the County Council is sufficient to show that, on a balance of probabilities, FP 0.376(a) (shown A-B on the attached plan) and FP 0.421 (shown C-D on the attached Plan) should be shown as a highway of a different description, namely a bridleway to the Definitive Map and Statement of Public Rights of Way.
3. That evidence submitted by the applicant and that discovered by the County Council is sufficient to show that, on a balance of probabilities a public bridle way (shown B-C on the attached plan) which is not shown on the Definitive Map and Statement of Public Rights of Way exists.
4. That an Order be made under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement of Public Rights of Way for the District of Lichfield by upgrading FP 0.376(a) (A-B on the plan) and FP 0.421 (C-D on the plan) to a public bridleway and to add part B-C on plan as a public bridleway.

### **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 A from Mr Martin Reay for an Order to modify the Definitive Map and Statement for the District of Lichfield. The effect of such an Order, should the application be successful, would:
  - (i) upgrade part A-B from a footpath to a bridleway, add a bridleway to part B-C and upgrade part C-D from a footpath to a bridleway.
  - (ii) The lines of the alleged bridleway which are the subject of the application are shown highlighted and marked A-B-C-D on the plan attached as Appendix B.
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**

1. The applicant has submitted in support of the application;
  - Deposited Railway Plan – Q/Rum/172 (1845). Copy at Appendix C.
  - Deposited Railway Plan – Q/Rum/159 (1845). Copy at Appendix D.
  - Inclosure Award – Q/RDC58 pt2 map 11 (1806). Copy at Appendix E.
  - Hamstall Ridware Tithe Map. Copy at Appendix F.
  - 3 Ordnance Survey Maps. Copy at Appendix G.
  - Greenwoods Map (1820). Copy at Appendix H.
  - Teesdale Map (1832). Copy at Appendix I.

### **Documentary Evidence Submitted**

#### **Deposited Railway Plans**

2. Railway Plans had to be produced and deposited prior to a railway company obtaining an Act of Parliament authorising the construction of their intended railway.
3. The maps covered a corridor of land defining the limits of deviation either side of the line of the intended railway, with plot numbers for the land and public and private routes, which are referred to in a book of reference.
4. They showed the status of routes divided by the proposed line, the accuracy of which would have been in the interest of those affected.
5. The plans were drawn to comply with parliamentary requirements. The Bill and plans were open to consultation and debate and as such, they carry good evidential weight, though it is not conclusive.
6. The Book of Reference for a railway which was proposed but not actually built can also provide cogent evidence for the existence of public rights over a way. This is based on the fact that the application was open for public scrutiny and objection.

#### **Inclosure Ward**

7. The Inclosure Act was designed to enclose the old commons, manorial waste and smaller holdings in order to increase agricultural productivity.
8. The Inclosure Act empowered an Inclosure commissioner to survey and divide up the land, allotting it to named individuals, including the setting out of highways. After

all the procedures were followed and completed the commissioner would issue the final Award and accompanying Award Map.

9. The Inclosure Commissioners had to follow laid down procedures to ensure their actions were legal. If they had not, then the Award itself and its provisions would not be valid.
10. If a pre-existing route is laid down in an Inclosure Award it is good evidence of its existence, though not of its status unless this is referred to in the Award.
11. When Considering an Award, the wording, powers and context all have to be taken into consideration to determine its evidential value. Any extract should not be evaluated on its own but rather considered with the remainder of the Award and the enabling Act.

#### **Hamstall Ridware Tithe Map**

12. Tithe Awards were prepared under the Tithe Commutation Act 1836, which commuted the payment of a tax (tithe) in kind, to a monetary payment.
13. The purpose of the Award was to record productive land on which a tax could be levied. The Tithe Map and Award were independently produced by parishes and the quality of the maps is variable.

#### **Ordnance Survey Maps**

14. Ordnance Survey Maps date back to the early 1800's and their purpose is to show physical features on, and the contours of the ground. In doing so they included all manner of ways from tracks leading only to remote properties, footpaths crossing fields, as well as the main highway.
15. They do not distinguish between public and private rights of way. From 1888 the maps carried a disclaimer that the depiction of a way on a map did not mean it was public. They are evidence only of the physical existence of a way on the ground at the date of the survey.
16. There may be annotations next to some minor routes such as FP or BP however they do not indicate whether the way was public or private. Such annotations might indicate that the route was only capable of having that type of traffic use but would only be supporting evidence and not conclusive

#### **Greenwood Map 1820, Teesdale Map 1832 and Wright & Charrington Map 1890**

17. Early commercial maps can sometimes be of value in defining the historic origins of a route, and may attribute some value, especially if several such maps consistently show the route. They are however generally considered to be evidence of the physical existence of a route rather than its status.

#### **Evidence submitted by the Landowners**

18. Mr Wood has been the owner of Hay End Farm for 31 years at the time of the application. His landownership covers part A-B on the attached plan at Appendix B. Mr Wood does not have any objections to the public using the route between A-B on foot, however he objects to the route being upgraded to a bridleway stating the route passes his garden and anyone passing on horseback could overlook his property. A copy of the owner/occupier evidence form can be found at Appendix J.
19. Mr Hall is the owner of Rookery Farm for the past 58 years. He states that bridleway 28 has never been used by a horse for the following reasons; the old lane is no longer to be seen from either end, there is a small section which still remains and this was planted with trees by his father some sixty years ago as cover for wildlife

and shelter/shade for livestock, horses would not be able to pass through unless felled. He further reasons that about twenty years ago a Council Officer made a visit to view bridleway 28 and decided a footpath would be the sensible option. A copy of the owner/occupier evidence form can be found at K.

20. Mr Mycock has been the owner of Townend Farm for 30 years at the time of the application. He objects to the application; he claims he erected signs which state 'Private' and 'No Admission'.
21. Mr Mycock subsequently wrote a letter along with a photocopy of 1923 Ordnance Survey Map stating the area of land on which the proposed bridleway is situated was not a public road. He further states the map does not show any public rights of way from Hayend until after crossing the River Blythe and the Little Blythe. He comments on the 1880 Ordnance Survey Map stating it shows an occupational road to the wood at Hayend.
22. Mr Mycock further states in his letter that when the Definitive Map was being produced conclusive evidence was put forward to prove there was no public access over the proposed route.
23. Any objection that was made would be to the existence of the route at that time and this predates some significant years.
24. A response was sent to Mr Mycock regarding his letter which explained there are problems with placing reliance on them and the maps carry disclaimers as to the exact status of any route shown on them. In essence this means that any route may or may not be a public right of way. They are merely an indicator of the physical existence of a route. A copy of the owner/occupier evidence form can be found at Appendix L.

#### **Comments received from statutory consultees**

25. Hamstall Ridware Parish Council were consulted at the time of the application and stated they had received to re-establish bridleway 28 and from the records and maps there appears to be some doubt that this route ever existed as such, at least within living memory. They further state there are a number of walkable bridleways, footpaths and roads already exist within the parish, they advise to make careful note of all the relevant facts when considering the application, as they feel that to grant it would cause unnecessary intrusion on the privacy of the landowner and would be of little benefit to the general public.
26. Officers wrote to Hamstall Ridware Parish Council to clarify the application is not to re-establish bridleway 28 but to upgrade parts of footpath 0.376A. The Parish Council have since not responded.
27. East Staffordshire Borough Council were also consulted at the time of the application and stated they have no comments to make and look forward to confirmation of its addition to the definitive rights of way in due course.
28. Lichfield District Council were consulted at the time of the application. They responded with acknowledgement of the application and stated they would write again in due course; however, no further responses have been received. Copies of the correspondences can be found at Appendix M.

#### **Comments on Evidence**

29. The 1845 Deposited Railway plan (Q/Rum/172, Appendix C) shows the southern end of the claimed route. In the wording it states '13 – Public Bridle Road – Lord Leigh'. This supports part A-B on the attached plan as a bridleway.

30. The 1845 Deposited Railway plan (Q/Rum/159, Appendix D) shows the existing bridleway in Abbots Bromley Parish as a public road, unlike the other which states public bridle road. The route continues south along 3, Hamstall Ridware and is shown as a public road continuing south to the south west corner of field 5. This supports part C-D on the attached plan as a public road.
31. The 1806 Inclosure Award (Q/RDC/58 pt 2 map 11, Appendix E) shows the route in its entirety as a road to Bromley Hurst from Hamstall Ridware. However, it is not set out in the Award and so cannot determine the status of the route. This offers limited support to the application as it only confirms the existence of a route.
32. The Hamstall Ridware Tithe Map (SMS 417,430, Appendix F) shows the claimed route as an untaxed lane along the same route as the Inclosure Map. The inference that can be drawn for the tithe records is that the bridleway was exempt from tithe payment. However, there is no annotation indicating that the route was a 'road' whether public or private. The records do not provide evidence or what purpose it was used. It does not provide evidence of the status of the route just its existence.
33. The three Ordnance Survey Maps (Appendix G) all show the claimed route. However as stated previously the evidential value to these maps are limited solely because they only show a physical feature and not the status of a route.
34. The Greenwoods, Teesdale and the Wright & Charrington Maps (Appendix H & I) show the route as a 'cross road'. In modern usage the term 'cross road' is generally taken to mean the point where two roads cross. However, old maps and documents may attach a different meaning to the term. These include a highway running between and joining other highways.
35. In the case of *Hollins v Oldham* [1995] which considered the term 'cross road', Judge Howarth stated "Burdett's map of 1777 identifies two types of roads on its key: firstly turnpike roads, that is to say roads which could only be used upon payment of a toll and, secondly, other types of roads which are called cross roads. That does not mean a place where two roads cross (as one would understand it to be in this case) but a road called a cross road".
36. Consideration needs to be given of the term 'cross road' in relation to each particular map or document. That a cross road appears on an old map or document does not automatically indicate public rights, the designation of a way will depend on the analysis of the particular map and categorisation of other ways shown on the map.
37. Further in *Hollins v Oldham* [1995] the judge analysed the two categorisations and concluded that a 'cross road' must mean a public road for which no toll was payable, stating "*This latter category, it seems to me, must mean a public road in respect of which no toll is payable. This map was probably produced for the benefit of wealthy people who wished to travel either on horseback or by means of horse and carriage. The cost of such plans when they were produced would have been so expensive that no other kind of purchaser could be envisaged. There is no point; it seems to me, in showing a road to such a purchaser which he did not have the right to use.*"
38. The Judge additionally acknowledged that just because a mapmaker regarded a way as a public right of way of a particular status does not mean that he was necessarily correct. He stated "*Pingot Lane must have been considered, rightly or wrongly, by Burdett as being either a bridle way or a highway for vehicles.*"

39. Therefore, in reaching a conclusion in relation to a particular piece of evidence, it is necessary to consider it with the totality of all other relevant evidence, as illustrated in the judgement: *“The whole of the documents have to be examined to assess their reliability. It seems to me that I have to assess each piece of documentary evidence to see how far I can rely upon it. This applies just as much to official documents such as definitive map or ordnance survey sheets or tithe surveys as it does to other records such as commercially produced maps. They have all been produced by human beings and are so liable to error to some extent.”*
40. In considering this evidence, the recording of a way as a ‘cross road’ on a map or other document may not be proof that the way was a public highway or enjoyed a particular status at that time. It is another part of the whole and has to be considered in light of the rest of the material available.

### **Burden and Standard of Proof**

41. With regard to the status of the routes for the upgrade of A-B and C-D, the burden is on the applicants to show, on the balance of probabilities, that it is more likely than not, that the Definitive Map and Statement are wrong. The existing classification of the routes, as footpaths, must remain unless and until the Panel is of the view that the Definitive Map and Statement are wrong. If the evidence is evenly balanced, then the existing classification of the routes as a footpath on the Definitive Map and Statement prevails.
42. With regard to the addition of B-C, the question is whether it is more likely than not the route exists having considered all the relevant evidence available to the Council.

### **Summary**

43. The application is made under under Section 53(2) of the 1981 Act, relying on the occurrence of the event specified in 53(3)(c)(ii) of the Act.
44. The Panel need to be satisfied that, on the balance of probabilities, the evidence that has been discovered shows that a highway shown in the map and statement as a highway of a particular description (A-B and C-D) ought to be there shown as a highway of a different description.
45. Additionally, the panel need to be satisfied that on a balance of probabilities the evidence shows that a public bridleway that is not shown on the map and statement (B-C) exists.
46. The 1845 Deposited Railway Plan shows the existing bridleway in Abbots Bromley as a public road. This supports part C-D on the attached plan as a public road.
47. The 1806 Inclosure Award shows the route in its entirety. However, it is not set out in the Award and so we cannot determine the status of the route. It only offers the physical existence of the route.
48. The Hamstall Ridware Tithe Map shows the claimed route as an untaxed lane along the same route as the Inclosure Map. It can be assumed the bridleway was exempt from the tithe payment. There is no annotation indicating that the route was a road whether public or private. It does not provide proof of the status of the route just its existence.
49. The three Ordnance Survey Maps all show the claimed route, however as stated previously the evidential value of these maps are limited to only showing the existence of the route.

50. The Greenwoods, Teesdale and Charrington Maps show the route as a 'cross road'. A 'cross road' which appears on an old map or document does not automatically indicate public rights. The designation of a way will depend on the examination of the particular map and categorisation of other ways shown on the map.
51. If A-B is seen as a public bridle road and C-D of the same, a connecting road (B-C), would be highly unlikely to have lesser or higher rights.
52. Therefore, in considering a particular piece of evidence, its is necessary to consider it with the totality of all other relevant evidence.

### **Conclusion**

53. In light of the evidence, as set out above, it is your officers' opinion that the evidence shows on a balance of probabilities that a public right of way (A-B and C-D) should be shown as a highway of a different description, namely a bridleway to the Definitive Map and Statement of Public Rights of Way.
54. It is also your officers' opinion that the evidence shows that a public right of way (B-C) with the status of a bridleway, which is not shown on the map and statement on a balance of probabilities exists.
55. It is the opinion of your officers that the County Council should make a Modification Order to upgrade A-B and C-D to a bridleway status on the Definitive Map and Statement of Public Rights of Way.
56. It is also the opinion of your officers that the County Council should make a Modification Order to add B-C as a bridleway to the Definitive Map and Statement of Public Rights of Way.

### **Recommended Option**

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

### **Other options Available**

58. To decide to reject the application to upgrade and add the alleged route to the map and statement.

### **Legal Implications**

59. The legal implications are contained within the report.

### **Resource and Financial Implications**

60. The costs of determining applications are met from existing provisions.
61. 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**

62. 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.

63. 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.
64. 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.
65. 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**

66. There are no direct equality implications arising from this report.

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J Tradewell

Director of Corporate Services

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**Background File:** LJ663G

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