

Local Members' Interest	
Jeremy Pert	Eccleshall

Countryside and Rights of Way Panel -

Wildlife and Countryside Act 1981

**Application for an alleged Public Bridleway from Blorepipe Farm to Bridleway
No.49 at Bishops Wood, Eccleshall Parish**

Report of the Director for Corporate Services

Recommendation

1. That the evidence submitted by the applicants and that discovered by the County Council is sufficient to conclude that a Public Bridleway, which is not shown in 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 this report, and should be added to the Definitive Map and Statement of Public Rights of Way as such.
2. 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 the Definitive Map and Statement of Public Rights of Way for the District of Stafford.

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) from Mr Martin Reay for a Definitive Map Modification Order to modify the Definitive Map for the area by adding the Public Bridleway shown A-B on the Plan at Appendix A (the Application Route) to the Definitive Map.
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.

Line of the alleged route

The alleged route commences at Langot Lane and heads in a north westerly direction until it meets public bridleway Adbaston 43.

Evidence submitted by the applicant

1. The applicant has submitted in support of his application a tracing of a Deposited Railway Plan map dated 1845 and extract from the accompanying book of reference. Officers have obtained a clearer copy of the map and reference book from the Councils Records Office. The records are for the Trent Valley and Holyhead Junction Railway.
2. The Railway Plan map shows the entire length of the alleged route. The original map is oriented South to North. To assist the Panel Officers have provided a copy which is orientated North to South. A copy of which can be found at Appendix C.
3. The line of the alleged route is also annotated with numbers 334, 342a, 343a, 358a and ends at 399. The numbers are listed in the accompanying book of reference and are described as being a "Highway" and under the ownership of the "Surveyors of Highways". A copy of which can be found at Appendix D.
4. The applicant has also submitted a copy of the 1inch to mile OS map dated 1834. The map shows the entirety of the alleged route and a copy is attached at Appendix E.
5. The applicant has submitted a copy of the 2nd edition 1902 OS map. A copy can be found at Appendix F.
6. The applicant has also submitted evidence from the J & C Walker map dated 1851. Officers have obtained a copy from the County Council's archives centre. The map does not show the alleged route. A copy can be seen at Appendix G.
7. The applicant has also submitted a copy of the Wright & Cherrington motoring, cycling and touring road map dated between 1880 – 1920. Although the map is faded it does show the entirety of the alleged route. Officers have been unable to locate an original of the map. A copy of which is located at Appendix H.
8. Officers have verified the veracity of each of piece of evidence above in the County Council's records office and archives centre.

Other evidence discovered by the County Council

9. Officers have conducted research into historical documentation at the County Council's Record Office. Officers have been unable to obtain any evidence.

Evidence submitted by the Landowners

10. Mr Andrew Jones has submitted a landowner questionnaire. He states that he brought the property in 2010/2011 and there was no right of way brought to his attention by his solicitor. It was however brought to his attention by someone asking to use the route in 2015/2016. He also states that there is a wildlife scheme on the land in question which was set up in 2011/2012 and this would not work well with a public right of way. A copy of his questionnaire is attached at Appendix I.

Comments received from statutory consultees

11. The Ramblers' Association have responded and state that they support the application as it is an obvious continuation of the road from Chipnall through Lipleigh Heath Farm and Bishops Wood past the Glasshouse to Blore Pipe and believe that the addition of the route would be a great benefit to walkers.

12. The Secretary of the Diocese of Lichfield has responded and states that they cannot find any records of land over which the alleged route passes.
13. Eccleshall Parish Council have responded and state that the Council support the application.
14. Stafford Borough Council state they have no comments to make on this application.
15. The North Staffordshire Bridleways Association have responded and state they have known the route for a number of years and at no time has anyone tried to prevent or objected to them using it.

Comments on Evidence

Deposited Railway Plan Records

16. Statute required, from 1838, that the plans of these works and the associated book of reference were deposited with the local public authorities. This was true for routes that never came to fruition as well as for those that were constructed.
17. In compiling the plans for the route of the railway the surveyors drew up a map showing the intended line of the construction with the limits of deviation from that line. It was not the primary purpose of deposited plans to record highways of any description but came about as a consequence of the need to survey the land.
18. In the case of public highways, the landowner or person responsible for maintenance may be listed as the Surveyor of Highways which would indicate the way was public. The Surveyor of Highways may also be listed as jointly liable with a landowner. For this particular set of records, the owner is described as being the Surveyors of the Highways.
19. It was not until The Railways Clauses Consolidation Act 1845 was introduced that the requirements for railways were expanded, with public rights of way which cross the route of a railway to be retained unless their closure has been duly authorised. Although it was not the primary purpose of the deposited plans, they can show whether a route was public or not.
20. The Railway plans may well have been published in 1845, but that does not necessarily mean that they were drawn up at the same time as the Railways Clauses Consolidation Act. The plans would have taken time to draw up and so it is unlikely that the act would have been taken into consideration at this point.
21. The book of reference describes the route as a "Highway". While the Surveyor did not record a specific class of highway this term would be suggestive of rights of at least a public bridleway, or greater.
22. The financial implication that a railway line would have had on a public highway must also be taken into consideration. There were potential penalties for not providing public crossing points where there was a public highway. The railway surveyor undertaking the plans would have needed to be accurate in his plans as there were great financial implications in place. Whoever funded the construction of a railway would have wanted to know the precise costs. Any public highway crossing a potential railway would mean that provision may have been required to allow the public to pass and re-pass over it safely. The Railway Clauses Consolidation Act provided that a public highway must either be carried over the

railway or the railway must be carried over the highway, but a level crossing or bridge must be installed to allow public access.

23. For both sets of records it was the responsibility of the Railway Surveyor to carry out a survey(s) in order to assess the suitability of the land for the construction of a potential railway line. The Railway Surveyor would have made enquiries and physically assessed the land for existing highways crossing the proposed line of deviation.
24. It was the Railway Surveyor who recorded the status of a highway in his survey. The landowner may have informed the Railway Surveyor of the status of a route passing over his land but the decision to record its status lay with the Surveyor. There is no record of the landowners admitting the accuracy of the Surveyors records, therefore less weight can be attached to this particular set of evidence.
25. The Highways Act 1835 set out that all public highways except for turnpike roads were maintainable at public expense and the parish was to maintain them. However, footpaths were not automatically publicly maintainable after 1835 and it was rare for them to be maintained and mentioned in records.
26. The Highways Act 1835 also set up the new procedures for railway planning and creation in that they could no longer set out new highways or that they were in fact publicly maintainable without the agreement of the Surveyor of the Highways.
27. However, from viewing OS maps dated from 1834 to 1902 Officers have been unable to locate any historical record of any railway lines which run through the area in which the footpath is alleged. There is also no contemporary record of any disused railway lines on OS maps. The absence of a line would indicate that this particular railway plan was never brought to fruition.
28. Where schemes were not completed, the plans were still produced to form the basis for legislation and were still in the public domain. Whilst they are likely to provide useful topographical details, they may not be as reliable as those that have passed through the whole parliamentary process. As above, the weight to be attached will need to be determined alongside all the other available evidence.
29. The book of reference also refers to a highway numbered 399 which continues from the route shown 334, 342a, 343a, 358a. Highway 399 is currently a Public Bridleway known as Adbaston 43 and Eccleshall 131. One can reasonably assume that as the application route is a continuation of the existing public bridleway that it does have the status of a public nature.

Wright & Cherrington Motoring, Cycling and Touring road map

30. Although the Wright & Cherrington map is faded and on a small scale it does show the entirety of the alleged route.
31. During the 16th, 17th and 18th Centuries there were several maps drawn up by private individuals. These maps are often known by the name of the person who was responsible for drawing or surveying them.
32. The evidential value is limited to supporting evidence of the physical existence of a way, though if the map predates 1835 the map may, with other evidence, be supporting evidence for the existence of an “ancient highway”.
33. The courts have considered the evidence of old maps and found that while the weight of evidence attached to these was small, they were suggestive of higher rights than footpath.

34. It is not surprising that the route is shown on the Wright & Cherrington map. The route would have provided access from Langot Lane to the old Glassworks in Bishop's Wood. The map, however, does not indicate any public status of any routes depicted on it but it does provide a useful topography of the area.
35. On the other hand, the route is shown on the map which could also indicate that it had higher rights than that of a footpath. The map must be looked at in conjunction with all other evidence. On its own it would not be supportive of the existence of a public highway.

Walker Map (1851)

36. The Walker map does not show the alleged route. However, just because the route was not recorded on the map does not mean it did not exist.

OS Map

37. The applicant has also submitted an OS map of the area dated 1834 and 1902. The maps show the entirety of the alleged route.
38. 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 so doing they included all manner of ways from tracks leading only to remote properties, footpaths crossing fields, as well as the main highway.
39. 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; a practice continued into modern times along with a proviso advising individuals to consult the local definitive map for public rights of way.
40. The route shown on the 1902 OS map displays the annotation "B.R." meaning Bridle Road. Whilst this is a good indication that the route was indeed a bridleway it provides no evidence as to any public rights over the way.
41. The map does not hold any evidential weight in support of the application. It merely shows that there was a physical feature on the ground at the time it was surveyed. However, the physical existence of the route is not disputed, as it exists today.

Burden and Standard of Proof

42. 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.
43. 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".
44. If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

Summary

45. The Deposited Railway plans provide good evidence that there was a public bridleway which follows the same way as the claimed route. The route is depicted on the accompanying railway plan map and referred to in the records.
46. Even though this particular stretch of railway was never constructed it was important that the railway surveyors be as accurate as possible with their plans due to the financial applications they could have had.
47. As the alleged bridleway is shown within the railway plans this is strong evidence that it was indeed public. The Surveyor of the Highways could have objected to its inclusion within the records however this does not appear to be the case.
48. In the absence of further supporting evidence the railway plans and books of reference may be sufficient, dependant upon the particular document, to reasonably allege a public highway subsists.
49. Wright & Cherrington Map does show the alleged route. This map however, along with many other historic maps, are not indicative of the status of the route but can be very useful when assessing the topography of an area.
50. The OS maps are also useful in providing evidence of the physical existence of a route. They do not however provide any indication of public rights over a route. An assertion cannot be made as to the nature of a route

Conclusion

51. The application is to be considered under s53(3)(c)(i) as mentioned above, and so the question of whether the application should succeed needs to be evaluated against both tests in that section.
52. When the totality of the evidence is considered it is finely balanced as to whether it would satisfy the first part of the test set out in s53(3)(c)(i) above, that is whether on the balance of probabilities a public footpath subsists.
53. However, when the lesser test is considered, that of reasonable allegation, that is clearly satisfied. As the courts have indicated, if it is reasonable to consider any conflicting evidence and reasonable to accept the evidence of existence then an order should be made, and the material be tested during that process. Here there is no conflicting evidence to weigh in the balance and so it does clearly satisfy the test.
54. Taking everything into consideration it is apparent that the evidence shows that a public right of way, with the status of bridleway, which is not shown on the map and statement is reasonably alleged to subsist.
55. It is the opinion of your officers that the County Council should make a Modification Order to add the alleged Public Bridleway marked A to B on Appendix A.
56. It is the Panel's decision, as to whether a modification to the Definitive Map and Statement should be made based upon the totality of the evidence.

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 add a Public Bridleway.

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, Food and Rural Affairs under Section 14 of the Wildlife and Countryside Act 1981. The Secretary of State would appoint an Inspector to consider the matter afresh, including any representations or previously unconsidered evidence. 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.
63. 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 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.
66. There are no additional risk implications.

Equal Opportunity Implications

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

J Tradewell

Director for Corporate Services

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