

Local Members' Interest	
Cllr J Francis	Stafford- Stafford Trent Valley

Countryside and Rights of Way Panel -

Wildlife and Countryside Act 1981

Application for the addition of an alleged Public Footpath from Grindley Lane to F.P. 29 Stowe

Report of the Director of Corporate Services

Recommendation

1. That the evidence submitted by the applicant and that discovered by the County Council is sufficient to show that the alleged public footpath at Grindley Lane to Footpath 29 at Stowe, subsists.
2. That an Order be made under Section 53 (3) (c) (i) to add the alleged right of way shown on the plan attached at Appendix B and marked A to B to the Definitive Map and Statement of Public Rights of Way for the District of Stafford 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 A from Mr Martin Reay for an Order to modify the Definitive Map and Statement for the District of Stowe-by-Chartley. The effect of such an Order, should the application be successful, would:
 - (i) Add an alleged Public Footpath from Grindley Lane to Footpath 29 at Stowe 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 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 his claim evidence of Deposited Railway Plans dated 1845 and 1863 and an Ordnance Survey Map dated 1884.
2. The Deposited Railway Plan 1845 is recorded as being from Macclesfield and Lichfield or Churnett and Blythe Junction Railway. The applicant has provided tracings.
3. The tracing shows a route numbered 21. Connected from route 21 and running parallel above route 21 is a single dotted line numbered 20b, which then connects with another single dotted line numbered 20c. The line runs through plot 20. The applicant has annotated the tracings, advising: "20b- Earl Ferrers- Public Foot Road". "20c Earl Ferrers- Public Foot Road". "21- Surveyors of Highways- Parish Road". The applicant alleges: "the claimed path is shown as 20b leading parallel to the highway no. 21". A copy is attached at Appendix C.
4. The 1863 Deposited Railway Plan is recorded as being from the North & South Staffs Junction Railway and Branches. The applicant has provided tracings.
5. The tracing shows a route numbered 77 running from the direction of the village of Grindley to the north to the direction of Blythe Bridge in the south. Running parallel above route 77 is a single dotted line running through a plot of land numbered 78.
6. The applicant has annotated the tracings, advising that under the heading of "Parish of Stowe" – 77- "Public Road- Surveyors of Highways. 78- "Field and Public Footpath- Earl of Ferrers and Surveyors of Highways". The applicant alleges: "the claimed path is shown as 78 leading parallel to the highway". A copy is attached at Appendix D.
7. The Ordnance Survey Map dated 1884 shows a dotted line running above Grindley Lane and connecting to a footbridge. There is nothing on the map to depict what the route is or whether there is a public right of way. A copy is attached at Appendix E.

Evidence submitted by the Landowners

8. The application was initially served on a Mr Johnson of Small Farm and Mr Fleming of Grindley Farm House.
9. Officers were informed that the area of land affected belonged to a Mr Slaney of Dowry Farm, Blythe Bridge, therefore the applicant was notified, and an application was submitted to Mr Slaney.
10. There has been no response from Mr Slaney to date.

Comments received from statutory consultees

11. Stafford Borough Council have advised that they have no comments to make on this application. They have not provided any evidence either to support or refute the application. A copy of the letter is attached at Appendix F.
12. The Ramblers Association have confirmed that the application has their full support, however they have not provided any evidence to support the application. A copy of the letter is attached at Appendix G.

Comments on Evidence

13. In relation to the Deposited Railway Plans, where a railway was planned the intended route was surveyed. Surveys, plans and books of reference were compiled which showed who owned the land crossed by the proposed railway. It was not the

primary purpose of deposited plans to record highways of any description. The plan allotted plot numbers to each strip of land affected.

14. On review of the 1845 tracings the claimed route is shown as 20b, which runs above and parallel to route 21. The claimed route at 20b also connects to another route numbered 20c. In relation to the alleged route Earl Ferrers is recorded as the landowner responsible for the maintenance of the route and from the tracings it states that at the time it was classed as a Public Foot Road, which would suggest the existence of a public right of way. Route 21 is recorded as a Parish Road and therefore can be considered to be a Public Highway as the person responsible for maintenance of the route is recorded as the Surveyor of Highways.
15. By 1863 the tracings show that there is still a route running parallel along a main route. In this case the alleged route is now numbered 78 and the main route, which is assumed to be Grindley Lane is numbered 77.
16. From the tracings route 77 is recorded as being a Public Road and the person responsible for maintenance of the route is recorded as the Surveyor of Highways. Therefore, as with the 1845 tracings route 77 can be considered to be a Public Highway.
17. The tracings show that route 78 (the alleged route) is recorded as a Field and a Public Footpath and the person responsible for the maintenance of the route is Earl Ferrers and the Surveyors of Highways, which would indicate that the way was public.
18. In the case of public highways, the person responsible for maintenance may be listed as the Surveyor of Highways, which would indicate that the way was public. By 1863 the alleged route is no longer classed as being the sole responsibility of Earl Ferrers but also the Surveyors of Highways. This may lend weight to the fact that the alleged route was classified as a public right of way at this time. However there is no evidence provided with the tracings to indicate whether one party had greater liability for the maintenance of the route or whether they were jointly liable or why there was a change in the recording of who had responsibility for the route.
19. It is worth noting that in both the 1845 and 1863 Plans the alleged route is recorded as being a public footpath, which would suggest that there was a public right of way.
20. Although both sets of tracings are from the same alleged area, the tracings are very different with the tracings from 1845 providing more detail in regards to the surrounding area, whereas the 1863 tracings are more minimal and do not show the continuation of the route or where it leads or connects to. However, Railway Deposited Plans recorded the details of the land crossed by the intended construction and therefore as a result only parts of the affected land were shown. This may explain why only part of the alleged way is shown and not the entirety of the way, although this is only conjecture.
21. The Ordnance Survey Map of 1884 shows that there is a physical existence of a way on the ground but there is no indication as to what the route is or whether there is a public right of way. The map appears to show the route running along the same line as the Plans from the Deposited Railway Plans.
22. The 1884 Map shows the route connecting to a footbridge whereas the alleged claim states that the route connects to footpath 29. There is no indication from the 1884 map that there is a specific footpath that the alleged route connects to.

Comments on report

23. Following circulation of the report comments were received from the landowner, advising that they have many stiles on their farm, which are not maintained. They also advise that the field is used for crops.

Burden and Standard of Proof

24. In this instance the applicable section of the Wildlife and Countryside Act 1981 is section 53 (3) (c) (i). This section relates to the discovery of evidence of two separate events:
 - (a) Evidence that a right of way which is not shown on the map subsists: or
 - (b) Evidence that a right of way which is not shown on the map is reasonably alleged to subsist
25. Thus, there are two separate tests, one of which must be satisfied before a Modification Order can be made. To answer either question must involve an evaluation of the evidence and a judgement on that evidence.
26. For the first test to be satisfied it will be necessary to show that on a balance of probabilities the right of way does subsist.
27. For the second test to be satisfied the question is whether a reasonable person could reasonably allege a right of way subsists, 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 by definition be less than that which is necessary to establish the right of way “does subsist”.
28. If the conclusion is that either test is satisfied, then the Definitive Map and Statement should be modified.

Summary

29. In relation to Railway Deposited Plans, statute required, from 1838, that the plans for the construction of railways and the accompanying Book of Reference were deposited with the local public authorities. This was the case for routes that never came to fruition as well as for those that were constructed.
30. There were many vested interests and in the case of highways the surveyor, or the parish would not have wanted to take on unwanted maintenance responsibilities. In light of the fact that the 1863 Plans record the alleged route as being the responsibility of Earl Ferrers and the Surveyors of Highways, this evidence is persuasive to support the existence of a public right of way.
31. Both the 1845 and 1863 Plans show a route running along a similar line as the claimed route and both plans record that the routes were public footpaths, however from the tracings provided there is no evidence to confirm or refute whether the railway lines were constructed, therefore they may not be completely reliable.
32. These plans on their own cannot be considered conclusive evidence but need to be looked at alongside other evidence. In the case of *Fortune v Wilson* it was stated that: “What is looked for is a general picture of whether the route seemed important enough to get into these documents fairly regularly. A one- off appearance could be an error... consistent depiction over a number of years is a positive indication”. This approach has been approved by the courts.
33. The evidential value of Ordnance Survey Maps has been considered by the courts to be limited solely to being evidence of whether there was a visible feature on the ground at the time of the survey, as confirmed in *Attorney- General v Antrobus* [1905] 2 Ch 188.

34. The 1884 OS Map shows that there was a route running along the same line as the claimed route, however there is no annotation on the map and therefore no indication as to what the route was or what its status was at the time.
35. Reviewed in conjunction with the Deposited Railway Plans and the fact that both plans record a public footpath this would suggest a public right of way, but this is not conclusive. As emphasised in the case of *R v Isle of Wight CC ex parte O'Keefe* it is important to look at the evidence as a whole.

Conclusion

36. 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.
37. 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.
38. There is no conclusive evidence and therefore it does not satisfy the higher test of balance of probability.
39. When the lesser test is considered, that of reasonable allegation, that is clearly satisfied. Taking everything into consideration it is apparent that the evidence shows that a public right of way, with the status of a footpath, which is not shown on the map and statement is reasonably alleged to subsist.

Recommended Option

40. To make an Order adding the public footpath, on the lines shown attached at Appendix B to the Definitive Map and Statement.

Other options Available

41. To decide to reject the application and refuse to make an Order to add the claimed way to the Definitive Map and Statement.

Legal Implications

42. The legal implications are contained within the report.

Resource and Financial Implications

43. The costs of determining applications are met from existing provisions.
44. 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

45. 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.

46. 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.
47. 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.
48. 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

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

J Tradewell

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INDEX TO APPENDICES

Appendix A	Copy of application and associated submitted letters and documents
Appendix B	Plan of claimed route
Appendix C	Deposited Railway Plan 1845 submitted by the applicant
Appendix D	Deposited Railway Plan 1863 submitted by the applicant
Appendix E	Ordnance Survey Map 1884 submitted by the applicant
Appendix F	Letter from Stafford Borough Council dated 18.08.2000
Appendix G	Letter from the Ramblers Association dated 19.7.2000