

Date: 06 November 2023

Countryside and Rights of Way Panel - Friday 10th November 2023

Dear Sir / Madam,

I have recently forwarded to you a copy of the agenda for the next meeting of the Countryside and Rights of Way Panel.

I am now able to enclose a copy of the following reports that were unavailable when the agenda was circulated.

5. **Wildlife and Countryside Act 1981 - Application for upgrade BF20 Betley Parish to a Bridleway** (Pages 1 - 6)

John Tradewell
Deputy Chief Executive and Director of Corporate Services





North Staffordshire Bridleways Association

Affiliated to the British Horse Society

<http://www.north-staffordshire-bridleways-association.org/>



Valerie Whalley
9 Maer Village
Maer
Staffs ST5 5EF

Stephanie Clarkson
Staffordshire Legal Services
Staffordshire County Council 1
Staffordshire Place
Tipping Street
Stafford
ST16 2DH

3 November 2023

Your Reference. LB 607G

Dear Ms Clarkson

Definitive Map Modification LB607G Betley Parish

We have read the papers related to the above numbered application which were placed on the Council's website today. Yet again, we are disappointed at your comments and how these will mislead Panel Members who will decide this application on 10 November 2023.

There are many aspects within these papers that we continue to disagree with, including your added comments on our representations to the draft report that was circulated. Just one example of these, from many we could cite, is shown in the first attachment. You imply that adjoining landowners to Betley footpath 20 would have acquired a private right of access along it, with mechanically propelled vehicles, by way of section 67(5) of the Natural Environment and Rural Communities Act 2006. That is misleading at best. The correct interpretation of Section 67(5) is as follows (in our words but you can read the legislation for yourself in attachment 2):

Where an unrecorded public right of way with mechanically propelled vehicles was extinguished, by Section 67 of the Natural Environment and Rural Communities Act, landowners who reasonably need access to land along it acquire a private right of way that benefits that land - or part of the land. So, before any other qualification is considered, it firstly has to be proven that a public right of way with mechanically propelled vehicles existed prior to commencement of Section 67, to qualify adjoining land to benefit from any private right of way provisions.

Are you suggesting that before commencement of the NERC Act Betley Footpath 20 had unrecorded public rights over it with mechanically propelled vehicles? Because this is the first and primary qualifying factor to acquisition of any private right of way. If you don't have that evidence you are misleading members by what you have written. If you do have that evidence it opens up a whole new interpretation of the facts.

There are many other comments you have made which are simply not correct or are misleading. We do not now have sufficient time to elaborate on all of them this side of November 10th. However, if we find it necessary to appeal a decision not to make an Order for a bridleway in this case we will set them **all** out in concise detail to the Secretary of State.

Please ensure that a copy of this email and attachments is placed before the Panel Members who will decide the application, in good time before the meeting so they can be fully digested.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'V Whalley', written in a cursive style.

Valerie Whalley
Secretary
For North Staffordshire Bridleways Association

Enclosures.

c.c. mark.winnington@staffordshire.gov.uk (Chair of the Panel)

david.smith1@staffordshire.gov.uk (Deputy Chair)

With regard to the comments in the fifth paragraph I note that the representative has directed the Council to the Road Traffic Act 1988 s34 paragraph 1(1). The Council, whilst aware of this legislation considers that the Natural Environment and Rural Communities Act 2006 s67 paragraph 5 provides that where any existing public right of way was reasonably necessary to enable a person with an interest in land to obtain access to the land, then no offence is committed.

- (1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement—
- (a) was not shown in a definitive map and statement, or
 - (b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.

But this is subject to subsections (2) to (8).

- (2) Subsection (1) does not apply to an existing public right of way if—
- (a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles,
 - (b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c. 66) (list of highways maintainable at public expense),
 - (c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles,
 - (d) it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or
 - (e) it was created by virtue of use by such vehicles during a period ending before 1st December 1930.
- (3) Subsection (1) does not apply to an existing public right of way over a way if—
- (a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c. 69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,
 - (b) before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or
 - (c) before commencement, a person with an interest in land has made such an application and, immediately before commencement, use of the way for mechanically propelled vehicles—
 - (i) was reasonably necessary to enable that person to obtain access to the land, or
 - (ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only.
- (4) “The relevant date” means—
- (a) in relation to England, 20th January 2005;
 - (b) in relation to Wales, 19th May 2005.
- (5) Where, immediately before commencement, the exercise of an existing public right of way to which subsection (1) applies—
- (a) was reasonably necessary to enable a person with an interest in land to obtain access to the land, or
 - (b) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only,

the right becomes a private right of way for mechanically propelled vehicles for the benefit of the land or (as the case may be) the part of the land.

