

Minutes of the Countryside and Rights of Way Panel Meeting held on 6 March 2020

Present: Julia Jessel (Chairman)

Attendance

David Brookes
Alan Dudson

Ian Lawson (Substitute)
Paul Snape

PART ONE

128. Declaration of Interest in accordance with Standing Order 16.2

There were no Declarations of Interest made.

129. Minutes of meeting held on 3 December 2019

RESOLVED – That the minutes of the meeting held on 3 December 2019 be confirmed and signed by the Chairman.

130. Wildlife and Countryside Act 1981, Section 53 - Application to Add a Byway Open to All Traffic from Harley Thorn Lane to Public Road Leading Underneath A519

The Panel considered a report of the Director of Corporate Services (Schedule 1 to the signed minutes) regarding an application by Mr. M. Reay for a Modification Order under Section 53 of the Wildlife and Countryside Act 1981 to add a Byway Open to All Traffic (BOAT) from Harley Thorn Lane to Public Road leading underneath A519, Swynnerton Parish to the County Council's Definitive Map and Statement of Public Rights of Way.

The report was presented verbally to take Members through the various legal, documentary and historical evidence relevant to the application. In applying these tests, Members were made aware that they should examine the evidence in its totality.

During their consideration of the application, Members had regard to the appendices attached to the report including:- (i) a copy of a plan of the claimed route; (ii) a copy of the application and associated letters and submitted documents; (iii) a copy of a map of the Newcastle and Eccleshall Roads Proposed Line of Improvement; (iv) a copy of a Tythe Award Map of the Parish of Swynnerton dated 1849; (v) a copy of a Tithe Awards Map of the Township of Beech dated 1850; (vi) copies of Ordnance Survey Maps; (viii) Copies of submitted User Evidence Forms.

In response to a question by the Chairman the Director confirmed that the recommendation contained in the report was to add the alleged route to the Definitive Map and Statement as a Restricted Byway notwithstanding that the application was for

a BOAT. He then clarified the legal definition of a restricted Byway contrasting it with that of a BOAT.

Following their detailed consideration of the application, the Panel decided that from the totality of available evidence there was insufficient to satisfy either (i) the test of 'balance of probabilities' or; (ii) lesser test of 'reasonable allegation' as set out in paragraph 53(3)(c)(i) of the Act in respect of a BOAT. However, they were of the view that a route which was not currently shown on the Definitive Map and Statement with the status of Restricted Byway was reasonably alleged to subsist.

RESOLVED – (a) That the report be received and noted.

(b) That the evidence submitted by the applicant is sufficient to conclude that a Restricted Byway which was not shown on the Definitive Map and Statement of Public Rights of Way and marked A to B on the plan attached at Appendix A to the report is reasonably alleged to subsist.

(c) That an Order be made to add a Public Right of Way shown A to B on the plan attached at Appendix A to the Definitive Map and Statement of Public Rights of Way as a Restricted Byway.

131. Wildlife and Countryside Act 1981, Section 53 - Application to Upgrade Public Footpath No. 11 Heaton Parish to Restricted Byway Status

The Panel considered a report of the Director of Corporate Services (Schedule 2 to the signed minutes) regarding an application by Mrs. J. Turner for a Modification Order under Section 53 of the Wildlife and Countryside Act 1981 to upgrade Public Footpath No. 11 Heaton Parish to Restricted Byway status on the County Council's Definitive Map and Statement of Public Rights of Way.

The report was presented verbally to take Members through the various legal and documentary and historical evidence relevant to the application. In applying these tests Members were made aware that they should examine the evidence in its totality.

During their consideration of the application, Members had regard to the appendices attached to the report including:- (i) a copy of the application and associated submitted letters and documents; (ii) a copy of a plan of the claimed route; (iii) a copy of Heaton Enclosure Award Map and Statement; (iv) a copy of Heaton Parish Survey Cards; (v) a copy of a Landowner Evidence Form submitted by Miss. K Bellfield; (vi) a copy of a Landowner Evidence Form submitted by Mr. K. Tideswell.

In presenting his report the Director clarified the provisions of the Countryside Act 1968 in respect of the reclassification of former Roads Used as Public Paths to either Byway Open to All Traffic (BOAT), Public Footpath or Bridleway status in light of paragraph 10 which he said was incorrect. He went on to highlight the provisions of the Countryside and Rights of Way Act 2000 which had introduced Restricted Byway Status to take account of those BOATs which were unsuitable for use by motor vehicles together with the various exceptions contained in the Natural Environment and Rural Communities Act 2006, none of which were applicable in this instance.

Following their detailed consideration of the application, the Panel decided that from the available evidence the test of 'balance of probabilities' as set out in paragraph 53(3)(c)(i) of the Act was met in that Public Footpath No. 11 Heaton Parish should be added to the Definitive Map and Statement as a Highway of a different description, namely a Restricted Byway.

RESOLVED – (a) That the report be received and noted.

(b) That the evidence submitted by the applicants and that discovered by the County Council is sufficient to show that, on the balance of probabilities Public Footpath No. 11 Heaton Parish ought to be shown as a Highway of a different description on the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.

(c) 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 by upgrading Public Footpath No. 11 Heaton Parish to a Restricted Byway along the route shown between points A to B on the Plan attached at Appendix B to the report.

132. Wildlife and Countryside Act 1981, Section 53 - Application to Add a Public Footpath from the Junction of Footpaths Nos. 2, 3 & 4, Fradswell Parish to Fradswell Church

The Panel considered a report of the Director of Corporate Services (Schedule 3 to the signed minutes) regarding an application by Mr. M. Reay for a Modification Order under Section 53 of the Wildlife and Countryside Act 1981 to add a Public Footpath from the junction of Public Footpaths Nos. 2, 3 and 4 Fradswell Parish to Fradswell Church to the County Council's Definitive Map and Statement of Public Rights of Way.

The report was presented verbally to take Members through the various legal documentary and historical evidence relevant to the application. In applying these tests Members were made aware that they should examine the evidence in its totality.

During their consideration of the application, Members had regard to the appendices attached to the report including:- (i) a copy of the application and associated letters and submitted documents; (ii) a copy of a plan of the claimed route; (iii) a copy of Fradswell Tithe Map; (iv) a copy of Stafford and District Surveyors of Highways Letter and Report Book; (v) a copy of Ordnance Survey Maps; (vi) a copy of Estate Sale Plan; (vii) a copy of Owner/Occupier Evidence Form submitted by Mr. and Mrs. Dash; (viii) a copy of Owner/Occupier evidence form submitted by Milwich with Fradswell Parish Council.

In response to a request for clarification, the Director explained that although the alleged Footpath could be regarded as a cul-de-sac, it led to St. James the Less Church, Fradswell which was a legitimate point of interest. Also, the gate to the Church could be kept locked in the event the route was added to the Definitive Map and Statement.

Following their detailed consideration of the application, the Panel decided that from the totality of the available evidence and the absence of conflicting evidence to refute the

claim, the lesser test of 'Reasonable Allegation' as set out in paragraph 53(3)(c)(i) of the Act was met in that the Right of Way was reasonably alleged to subsist.

RESOLVED – (a) That the report be received and noted.

(b) That the evidence submitted by the applicants 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 A-B-C on the plan attached at Appendix B to the report and should be added to the Definitive Map and Statement of Public Rights of Way as such.

(c) That an Order be made to added the alleged Right of Way shown on the plan at Appendix B to the report and marked A-B-C to the Definitive Map and Statement of Public Rights of Way for the District of Stafford.

133. Date of Next Meeting - 3 April 2020 at 10.00 am, County Buildings, Stafford

RESOLVED – That the date, time and venue of the next meeting be noted.

134. Exclusion of the Public

RESOLVED – That the public be excluded from the meeting for the following items of business which involve the likely disclosure of exempt information as defined in the paragraphs of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended) indicated below”.

PART TWO

135. Options for Resolution of Issues on Bridleway No. 2 Salt and Enson Parishes

(exemption paragraphs 2, 6a and 6b)

The Panel received an exempt joint report (Schedule 4 to the signed minutes) from the Director of Corporate Services and Director of Families and Communities regarding options for the resolution of issues on Public Bridleway No. 2 Salt and Enson Parishes and took decisions thereon.

136. Wildlife and Countryside Act 1981, Section 53 Modification Orders - Update

(exemption paragraphs 2, 6a and 6b)

The Panel received an exempt oral report of the Director of Corporate Services updating them on the efforts being made by the County Council to resolve the backlog of applications for Modification Orders under Section 53 of the Wildlife and Countryside Act 1981.

Chairman