

Local Members' Interest	
Jeremy Pert	Stafford - Eccleshall

Countryside and Rights of Way Panel -

Wildlife and Countryside Act 1981

Application for a Public footpath from A5013 near Walton Grove to B5405 leading to footpath 0.1592 Seighford

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 conclude that a Public Footpath which is not shown on the Definitive Map and Statement, on the balance of probabilities, does subsist along the route shown marked A to B and C to E 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 for the District of Stafford Borough 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 and C to E 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 B from Mr Martin Reay for an Order to modify the Definitive Map and Statement for the area by adding an alleged Public Footpath from the A5013 near Walton Grove to B5405 leading to footpath 0.1592 under the provisions of Section 53(3) of the Wildlife and Countryside Act 1981. The lines of the alleged Public Footpath which are the subject of the application are shown highlighted and marked A – B and C-E on the plan attached as Appendix A.
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 the following documents:
 - a) evidence from the 1910 Finance Act which consists of a plan and an extract from the accompanying Book of Reference. A copy is attached at Appendix C.
 - b) a Deposited Railway Plan which is dated 1845 and accompanying Book of Reference. A copy is attached at Appendix D.
 - c) a copy of the Walton (Eccleshall) Tithe Award Map. A copy is attached at Appendix E.
 - d) a copy of a Seighford Tithe Award Map. A copy is attached at Appendix F.
 - e) a Deposited Railway Plan which is dated 1863 and accompanying Book of Reference. A copy is attached at Appendix G.
 - f) a 25in to 1 mile Ordnance Survey Map dated 1880's. A copy is attached at Appendix H.
 - g) a copy of the parish survey cards for Eccleshall. A copy is attached at Appendix I.
 - h) a extract of the Surveyors of Highways report book from 1902. A copy is attached at Appendix J.

Evidence submitted by the Landowners

2. The Council had written to the land owners who are affected by this application at the time the application was made, and responses were received. No evidence was provided in support or against the application other than to state that the landowner did not believe that the route was public at that time.
3. The landowners have since changed and the Council have written to them and to date, no response has been received.

Evidence discovered by the Council

4. It appears that part of the claimed route between points B and C on the attached map formed part of a previous application that has already been determined by the Countryside and Rights of Way Panel. The part of the claimed route between B and C on the Plan therefore does not need to be considered as part of this application.

Comments received from statutory consultees

5. The Council have written to the statutory consultees and to date no responses have been received either in support or against the application.

Comments on Evidence

6. The evidence provided by the Finance Act material shows that tax relief was granted for footpaths that crossed the plots referred to. An examination of the maps shows that there are a number of footpaths in Plots 804, 952 and 994 and the routes are annotated on the accompanying map. There is reference made in the book of reference to public footpaths through Plots 804, 952 and 994.
7. The 1910 Finance Act was enacted in order to allow for tax to be levied on land based upon the difference between its 1910 valuation and the amount that resulted from any eventual sale or transfer. It was therefore important to the landowner that any deductions for factors that could affect the value were properly recorded and accounted for. From the Inland Revenue perspective, it was important to ensure that any false claims were not made, and reductions granted which should not be. There were penalties for making false claims which might have led some owners to avoid making any claim in case these were not substantiated.
8. The field book entries were originally compiled by entering into them the information provided by the landowner and would include any claims for easements, rights of

way etc. For Plots 804, 952, 994 it would seem that the landowner did make a claim for footpaths.

9. For all three plots the valuers did note that there were public footpaths and made a note on the field book regarding such. They granted relief for the paths that crossed the land which they would not have done unless satisfied of their existence. The whole purpose of the legislation was to raise taxes and their role was to maximise the amount levied and only allow relief where such was proven. The claimed route is one of the footpaths shown on the plan and the field book entries to appear to detail the footpaths.
10. The fact that an allowance was made provides evidence that at that point in time the inspector was satisfied that the claimed routes were of the type to attract tax relief. It does say in the field book entry that there are public rights of way or user or refers to public footpaths and thus provides evidence that they were public highways with a recognised status of public footpath.
11. The applicant submitted a tracing of a deposited Railway Plan dated 1845. The plan shows a route running from Seighford Parish to Walton, the relevant part of which is numbered 1a. This part of the route falls between points B and C of the claimed route and as previously mentioned, has been already been determined and therefore does not need to be revisited in this application.
12. The applicant has also submitted a further Railway Plan dated 1863. This plan shows the part of the claimed route which runs to the south of Onecote Covert. This part of the route is shown as a dotted line on the plan.
13. Deposited railway plans are good evidence of a public route, although not conclusive, as they were mainly concerned with the ownership of land. The deposited Railway Plan dated 1863 shows only part of the claimed route.
14. In the case of highways the Book of Reference often, but not always, lists who was responsible for the maintenance of a route, the status and the nature of the rights over it. 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. This may be where the liability for one party is higher than the others.
15. The railway plan can be said to show that the Surveyor of Highways did not object to the designation of the routes when they had the opportunity to do so. The Surveyor of Highways would appear to be of the opinion that the route was a footpath that was publicly maintainable.
16. The Walton Tithe Map submitted, appears to show the part of the claimed route which falls between points B and C and as previously mentioned, has been already been determined and therefore does not need to be revisited in this application.
17. The Seighford Tithe Map submitted, appears to show the part of the claimed route which falls between points B and C and as previously mentioned, has been already been determined and therefore does not need to be revisited in this application.
18. The applicant has also submitted an Ordnance Survey Map. Ordnance Survey Maps date back to the late 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. They do not distinguish between public and private rights of way however. A copy of this map is attached at Appendix H.

19. 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.
20. Also submitted with the application was reference to the parish survey. Attached at Appendix I are the survey cards. The evidential worth of the parish survey is limited given that the evidence that supported the claim was simply because the route was known. The parish survey does appear to correspond to part of the claimed route.
21. The claim made for this footpath in the parish survey was objected to and consequently the claim could not be substantiated and so the route was not added to the Definitive Map and Statement.
22. The material given in support of this application is considered to be fresh evidence which was not considered at the time of the parish survey and therefore adjudication is required by the Panel on this fresh evidence.
23. The applicant has also submitted copies of the Surveyor of Highways report book from 1902. This extract details the footbridge between Onecote and Seighford. There does only appear to be one footpath between Onecote and Seighford and this is the claimed route.
24. A summation of the evidence highlights the fact that the Finance Act evidence, the Railway Plan and the Parish Survey cards refer to the existence of any public rights. The evidence of the older OS map points to the physical existence of a route which would support its existence at the time the valuation took place and give credence to the deduction in the former documents.

Burden and Standard of Proof

25. There is a two stage test, one of which must be satisfied before a Modification Order can be made. All the evidence must be evaluated and weighed, and a conclusion reached whether on the balance of probabilities either:
 - (a) the alleged right subsists or;
 - (b) is reasonably alleged to subsist.
26. Thus 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.
27. 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".
28. If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.
29. With regard to the status of the routes, 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 is 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 footpath on the Definitive Map and Statement prevails.

Summary

30. The application is made under under Section 53(2) of the 1981 Act, relying on the occurrence of the event specified in 53(3)(i) of the Act.

31. If one considers the test in the first part of the section, i.e. whether the way subsists and the balance of probabilities, the courts have indicated that this can be satisfied by considering whether it is more probable, or more likely, than not. As Lord Denning in the case of *Miller* said "*If the evidence is such that the tribunal can say 'we think it more probable than not' the burden is discharged, but if the probabilities are equal it is not.*"
32. In this instance your officers consider that the evidence is sufficient to satisfy the test set out when considered on the balance of probabilities. The evidence does show that there is a footpath along the claimed route but this evidence is sparse.
33. With regard to the second part of the relevant section, whether the route can be said to be reasonably alleged to exist, your officers consider that the test would also be satisfied.
34. There is no contrary evidence to it. As the judge set out in *ex parte Bagshaw* if it is reasonable to accept one set of evidence and reasonable to reject the other and by doing so the right could be said to exist then the test of reasonable allegation would be satisfied. Here there is only one set of evidence to weigh in the balance and with nothing to offset it can be reasonably alleged that the route subsists.

Conclusion

35. When the totality of the evidence is considered it is clear that it would satisfy the test set out in s53(3)(b) above, that is on the balance of probabilities.
36. Even when the lesser test is considered, that of reasonable allegation as under s53(3)(c)(i) that is also satisfied. As the courts have indicated, if it is reasonable to take 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 evidence to show that the claimed route is a footpath, so it does clearly satisfy the test.
37. Taking everything into consideration it is apparent that from the evidence that, on the balance of probabilities, a right of way, with the status of footpath, which is not shown on the map subsists.

Recommended Option

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

Other options Available

39. To decide to reject the application.
40. To make an Order to add the route as a public footpath.

Legal Implications

41. The legal implications are contained within the report.

Resource and Financial Implications

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

44. 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.

45. 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.
46. 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.
47. 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

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

J Tradewell

Director of Corporate Services

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INDEX TO APPENDICES

Appendix A	Plan of claimed route
Appendix B	Copy of application
Appendix C	Finance Act 1910 Plan and Book of Reference
Appendix D	Railway Plan 1845 and Book of Reference
Appendix E	Walton Tithe Map
Appendix F	Seighford Tithe Map
Appendix G	Railway Plan 1845
Appendix H	OS plan 1880's
Appendix I	Parish survey cards
Appendix J	Surveyor of Highways report book 1902