

## Minutes of the Countryside and Rights of Way Panel Meeting held on 9 May 2019

Present: Julia Jessel (Chairman)

<b>Attendance</b>	
David Brookes	Paul Snape
Alan Dudson	

**Apologies:** Mike Worthington

### **PART ONE**

#### **88. Declaration of Interest in accordance with Standing Order 16.2**

There were no Declarations of Interest made at this meeting.

#### **89. Minutes of meeting held on 5 April 2019**

**RESOLVED** - That the minutes of the meeting held on 5 April 2019 be confirmed and signed by the Chairman.

#### **90. Adjournment**

The Chairman informed the Panel that the consultants who had drafted the reports under items Nos. 4, 5 and 6 on the Agenda had been delayed in traffic on their way to County Buildings. Therefore, the Panel adjourned their meeting for approximately 45 minutes until the consultants had arrived.

#### **91. Wildlife and Countryside Act 1981 Section 53 - Application for Definitive Map Modification Order to Add a Public Footpath from Gallowstree Lane to Keele Road, Newcastle-under-Lyme to the Definitive Map and Statement of Public Rights of Way**

The Panel considered a report of the Director of Corporate Services regarding an application by Mrs. A.M. Norrey on behalf of Thistleberry Residents' Association for a Modification Order under Section 53 of the Wildlife and Countryside Act 1981 to add a Footpath from Gallowstree Lane to Keele Road, Newcastle-under-Lyme 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. The Director also made reference to case law which dealt with the weight to be given to the evidence and gave guidance on the legal tests which they should apply. 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 location plan of the alleged Right of Way; (ii) a copy of the application and associated submitted User Evidence Form; (iii) copies additional User Evidence Forms; (iv) further submissions by the applicants; (v) Ordnance Survey maps; (vi) an objection from an adjoining property owner and; (vii) a table giving a summary of all the submitted user evidence.

During the discussion which ensued, the Panel sought clarification of (i) the width of the claimed Right of Way; (ii) whether any further representations had been received since publication of the report; (iii) various photographs/scans of documents included in the Appendices which had not been reproduced with sufficient clarity and; (iv) statements submitted by users who had been denied access (Appendix C to the report). In reply, the Director stated that the existing width of the path varied but it's definitive width would be determined in the event they decided that an Order should be made and subsequently confirmed; (ii) no further representations had been received; (iii) explained the content of the photographs/scans and; (iv) said that the challenges to use had occurred towards the end of the relevant 20 year period (1987-2007) arising from activity on an adjacent building site.

Following their detailed consideration of the application, the Panel decided that from the available evidence and in the absence of any contrary evidence to demonstrate a lack of intention to dedicate on the part of the landowners, the application met the test of 'Reasonable Allegation' as set out in Section 53(3)(c)(i) of the Act.

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

(b) That the evidence submitted by the applicant 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 marked A-B-C-D on the plan attached at Appendix A to the report.

(c) That an Order be made under Section 53 (c)(i) of the Wildlife and Countryside Act to add the alleged Public Right of Way shown A-B-C-D on the plan attached at Appendix A to the report to the Definitive Map and Statement of Public Rights of Way as a Public Footpath.

## **92. Wildlife and Countryside Act 1981 Section 53 - Application for Definitive Map Modification Order to Add a Byway Open to All Traffic along Camsey Lane, Burntwood to the Definitive Map and Statement of Public Rights of Way**

The Panel considered a report of the Director of Corporate Services 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 along Camsey Lane, Burntwood 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. The Director also made reference to case law which dealt with the weight to be given to the evidence and gave guidance on the legal tests which they could apply. 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 location plan of the claimed route; (ii) a copy of the application and associated submitted documents; (iii) Deposited Railway Plans (1845); (iv) Deposited Railway Plans (1846); (v) Tythe Map; (vi) Quarter Session Order (1862); (vii) Quarter Session Order (1872); (viii) Finance Act 1910 Index Plan; (ix) Greenwood's Map (1820); (x) Teesdale's Map (1831); (xi) Ordnance Survey Maps; (xii) User Evidence Forms x 3; (xiii) Objections to original application; (xiv) a Landowner Evidence Form; (xv) Objections arising out of the current investigation.

Following their detailed consideration of the application, the Panel decided that from the evidence available, the application met the civil test of 'Balance of Probabilities'. Furthermore, rights for mechanically propelled vehicles had been preserved owing to the application being submitted prior to 30 January 2005 and having regard to the provisions of the Natural Environment and Rural Communities Act 2006.

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

(b) That the evidence submitted by the applicant is sufficient to conclude on the balance of probabilities a Byway Open to All Traffic which is not shown on the Definitive Map and Statement subsists along the route A-B on the plan attached at Appendix A to the report.

(c) That an Order be made under Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to add the alleged Public Right of Way shown A-B on the plan attached at Appendix A to the report as a Byway Open to All Traffic.

### **93. Wildlife and Countryside Act 1981, Section 53 - Application for Definitive Map Modification Order to Upgrade Public Footpaths Chapel & Hill Chorlton No. 4, Whitmore No. 8 and Swynnerton No. 58 to Bridleway and for the addition of a Bridleway**

The Panel considered a report of the Director of Corporate Services regarding an application by Mr. M. Reay for a Modification Order under Section 53 of the Wildlife and Countryside Act 1981 to (i) upgrade Public Footpaths Nos. 4 Chapel and Hill Chorlton Parish, 8 Whitmore Parish and 58 Swynnerton Parish to Bridleway Status and; (ii) add a length of Public Bridleway from Public Footpath No. 58 to Bent Lane, 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 and documentary evidence relevant to the application. The Director also made reference to case law which dealt with the weight to be given to the evidence and gave guidance on the legal tests which they should apply. 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 location plan of the alleged Right of Way; (ii) a copy of the application; (iii) Greenwoods Map (1820); (iv) Teesdale's Map (1831); (v) Hill Chorlton Enclosure Award (1803); (vi) Deposited Railway Plans (1830); (vii) Deposited Railway Plans (1831); (viii) Deposited Railway Plans (1833); (ix) Deposited Railway Plans (1873); (x) Estate Map (1838); (xi) Estate Map (1839); (xii) Estate Map (1843); (xiii) Tithe Maps; (xiv) Ordnance Survey Maps; (xv) 1910 Finance Act Index Plan; (xvi) Johnson and Bacon's Road Atlas (1961); (xvii) two User Evidence Forms and; (xviii) Extract of the Definitive Map and Statement.

In the discussion which ensued, Members sought clarification of (i) various items of evidence contained in the Appendices and; (ii) the objection submitted by the Swinnerton Estate at the time the application was made.

Following their detailed consideration of the application, the Panel decided that from the available evidence, the application met the civil test of 'Balance of Probabilities'.

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

(b) That the evidence submitted by the applicant is sufficient to conclude on the balance of probabilities (i) Highways shown in the Definitive Map as highways of particular descriptions ought to be there shown as a Highways of different descriptions along the route marked A-B on the plan attached at Appendix A to the report and; (ii) a Public Bridleway which is not shown on the Definitive Map subsists along the route marked B-C on the plan attached at Appendix A to the report.

(c) That an Order be made under Section 53 (c) (ii) of the Wildlife and Countryside Act 1981 to Modify the Definitive Map and Statement by upgrading Public Footpaths Nos. 4 Chapel and Hill Chorlton Parish, 8 Whitmore Parish and 58 Swynnerton Parish to Public Bridleway status along the route shown A-B on the plan attached at Appendix A to the report.

(d) That an Order be made under Section 53 (c) (i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by adding the alleged Public Right of Way marked B-C on the plan attached at Appendix A to the report as a Public Bridleway.

**94. HS2 Rail Link**

The Director of Corporate Services informed them that the Director of Economy Infrastructure and Skills had undertaken to provide an update on the implications of the HS2 development for the work of the Panel to their next meeting.

**Chairman**