

Local Members' Interest	
Dave Jones	Keele, Knutton and Silverdale (Newcastle)

Countryside and Rights of Way Panel -

Wildlife and Countryside Act 1981

Application for Alleged Public Footpath Between A525 Keele Road and Lymes Road Keele

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 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 to B to C on the plan attached to Appendix B to this report and should be added to the Definitive Map and Statement of Public Rights of Way as such.
2. That an Order be made to add the alleged right of way shown on the plan attached at Appendix B and marked A to B to C to the Definitive Map and Statement of Public Rights of Way for the District of Newcastle Under Lyme.
3. That an Order be made to extinguish a non-definitive public right of way from C to D and shown on the plan attached at Appendix which is not shown on the Definitive Map and Statement of Public Rights of Way for the District of Newcastle Under Lyme.

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 made by Mr Martin Reay for an order to modify the Definitive Map and Statement for the area by adding an alleged public footpath from A525 Keele Road and Lymes Road, Keele under the provisions of Section 53 (3) of the Wildlife and Countryside Act 1981. The line of the alleged Public Footpath as claimed by Mr Reay is shown on the plan attached at 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.

Background

A report was circulated to all interested parties and additional material and correspondence received as a consequence. This is referred to in the body of the report and more specifically in the section entitled 'Comments received on Draft Report'.

Evidence submitted by the applicant

1. The applicant has submitted in support of his claim evidence from an 1814 Quarter Session. The 1814 Quarter Session Order stops up an old footpath and creates a new footpath, being the alleged route. The 1814 Quarter Session Order is attached at Appendix C.
2. The applicant submitted a plan showing other public footpaths in the same area as the alleged footpath and a letter describing when the other public footpaths were stopped up. This neither supports nor refutes the claim for the alleged public footpath.
3. The applicant sent a letter dated 4th October 2018 providing comments on the allegation that the Newcastle to Nantwich Turnpike Road disconnected from the alleged route, the letter is attached at Appendix D.

Other evidence discovered by the County Council

4. Officers have undertaken extensive research and have not been able to locate any material that contradicts the 1814 Quarter Session. Quarter Sessions from 1834 and 1847 do contain material relating to public rights of way within Keele however they do not relate to the alleged footpath.

Evidence submitted by the Landowners

5. A landowner, Mr Summerfield has submitted a landowner questionnaire, a copy of which is attached at Appendix E. In this Mr Summerfield comments that he has never known anyone attempt to use the alleged footpath.
6. A landowner, Mr McBain has submitted a landowner questionnaire, a copy of which is attached at Appendix F Mr McBain also provided a cover letter explaining why he does not feel it would be appropriate to establish a right of way along the proposed route.
7. A landowner Mrs Swann advised she does not agree with the footpath being created, attached at Appendix G
8. A landowner Mr Williams has completed a land owner questionnaire and provided a cover letter requesting that when considering the proposed route consideration is given to the major changes over the past few decades, this is attached at Appendix H.
9. A landowner, Keele University responded on 13th August 1998 with a completed land owner questionnaire. In the cover letter they advised that they believe that the footpath was closed in 1840, and that the alleged route now has obstructions so could not be used. This is attached at Appendix I.
10. Keele University have now instructed Knights LLP solicitors on their behalf; their correspondence is attached at Appendix J. Knights solicitors have provided copies or references to several historic documents as well as comments on other aspects of the draft report. This material comments etc is referenced within the section 'Comments on Draft Report'. Knights, on behalf of Keele University, strongly object to the alleged footpath.

Comments received from statutory consultees

11. Newcastle Borough Council replied on 17th July 1998 stating that they have no evidence to support or object the application, however due to the various buildings that now exist on the route they do not think it is reasonable to claim the right of way. The letter is attached at Appendix K.
12. Keele Parish Council replied on 14th July 1998 stating that the footpath has not existed since it was stopped up in 1840 by active Quarter Session. Evidence was provided by extracts from the book titled 'History of Keele', the extract contained highlighted reference to Tithe map Keele Parish 1849, Quarter Session Sept 1834, Quarter session Epiphany 1840 and Quarter Session 1847, this attached at Appendix L.
13. Newcastle Borough Councillor Anthony Kearon responded on 3rd July 2018 in collaboration with Keele Parish Council. They state that the alleged route would have a significant negative impact for residents and businesses and provide a unsatisfactory experience for walkers. They ask that if the panel accept the s53 application that the route is varied before being implemented. They also advise of a more feasible and pleasant route through the university grounds. The email is attached at Appendix M.
14. County Councillor for Keele, Knutton & Silverdale Councillor Dave Jones responded on 3rd July 2018. Cllr Jones advises of the negative impact the footpath will have on the landowners and the difficulty as the footpath crosses several buildings. Cllr Jones asks the panel to consider re-routing the path and discusses alternative routes, the email is attached at Appendix N.

Comments on Original Evidence Submitted

15. From 1555 the Justices of the Peace held Highway Sessions 3 times a year, at these sessions parishes could be indicted for failing to maintain routes and ordered to carry out works, routes could be diverted or extinguished.
16. These sessions were known as Quarter Sessions and the orders made were a Court order which can only be overturned by another court or by statute. The Orders are evidence of what they contain. Case law has shown that circumstances may change over time which mean the results of an order may change, for example a footpath created may be deemed to cease to exist due to changes with the highway network where it is no longer accessible. This is discussed in the correspondence from Knights solicitors and the response to that from officers.
17. The 1814 Quarter Session diverted a public footpath, the new route being the alleged path. The plan enclosed with the Quarter Session clearly shows the old route and the new route of the public footpath. There is a notice of completion which confirms that the diversion was undertaken. As a consequence, the new route came into being as a public highway.
18. The extract from the book 'History of Keele' does not hold evidential weight. The evidence referenced in the book has been reviewed and does not confirm the route was ever extinguished.

Comments received on Draft Report

19. Keele University, via their Knights solicitors, has responded to the draft report on 3rd July 2018. The letter contained various points relating to the claimed route and referenced various documentary evidence held in the County Council Archives. Copies of these documents are attached at Appendix O.
20. In summary, Knights stated that the Council's research into the alleged route is insufficient and that from 1834 the alleged route did not meet a public highway and therefore ceased to exist as a highway. A copy of this letter is attached at Appendix J.

21. The Council responded to this letter on the 8th October 2018 stating the alleged route when created did terminate on Moore Lane which was stopped up in 1834. However, the alleged route did still meet a public highway, that being Lymes Road. Until the diversion that created Lymes Road was complete, the original public highway would still have been in existence. The alleged route crossed the original public highway and therefore at no time did the alleged route not meet a public highway. A copy of this letter is attached at Appendix P.
22. Knights solicitors responded to the Council's reply stating that they accepted the Council's position in relation to the fact that the claimed route did in fact meet a public highway. They further commented that the plan produced is not sufficient as an Order plan and that it is not accurately depicting where the claimed route runs through the Keele University estate. Your officers have considered the old maps and have used their expertise and the tools at their disposal to document the correct line of the route to the best of their ability and this is the plan which appears at Appendix Q.
23. On undertaking the above exercise, plotting the line, it transpired that the Quarter Session footpath beyond Lymes Road does in fact meet a public highway, the motorway. Pedestrians are prohibited in law from using a motorway and so the implication of its actual termination point still means that this section (C to D) is not only a cul-de-sac but also a route which the case law might support as an implied extinguishment.
24. In considering this point it could be said that had the existence of the footpath been apparent or drawn to the attention of the relevant authorities at the time the M6 was constructed they would have made an extinguishment order as the route from C to D is no longer required for public use and serves no purpose.

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.

Summary

29. 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.
30. The documentary evidence shows a footpath was created by a legal order.
31. The fact that the route is not shown on any other maps after this time does not mean that it ceased to have any public status as the rule of law is that 'once a highway, always a highway'. That it fell into disuse and there was no further record of its existence is immaterial nor can the existence of any obstructions have any

bearing. No stopping up orders have been discovered to prove that the footpath was extinguished.

Conclusion

32. It is the opinion of your officers that based upon the balance of probabilities and in light of the evidence, as set out above, that a public right of way, with the status of a public footpath, which is not shown on the map and statement subsists

Recommended Option

33. To accept the application based upon the reasons contained in the report and outlined above and make an order to add the claimed route shown A to B to C as a Public Footpath to the Definitive Map and Statement of Public Rights of Way for the Borough of Newcastle Under Lyme and also to extinguish the line of the route extending beyond Lymes Road and shown C to D.

Other options Available

34. To add a public footpath as shown in its entirety on the Quarter Sessions Order, that is from A to B to C to D and shown on the plan at Appendix R .
35. To not make an Order extinguishing the line of the route extending beyond Lymes Road, shown C to D.
36. To decide to reject the application.

Legal Implications

37. The legal implications are contained within the report.

Resource and Financial Implications

38. The costs of determining applications are met from existing provisions.
39. 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

40. 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.
41. 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.
42. 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.
43. 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

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

J Tradewell

Director of Corporate Services

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Background File: LH610G

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