

Local Members' Interest	
Councillor Ian Parry	Stafford – Stone Rural

Countryside and Rights of Way Panel – 6 March 2020

Wildlife and Countryside Act 1981

Application for alleged footpath from the junction of FP2, FP3 & FP4, Fradswell to Fradswell Church

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 is reasonably alleged to subsist along the route shown A-B-C on the plan attached at 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 A and marked A-B-C to the Definitive Map and Statement of Public Rights of Way for the District of Stafford.

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 from Mr Martin Reay for an Order to modify the Definitive Map and Statement for the District of Stafford. The effect of such an Order, should the application be successful, would:
 - (i) Add an alleged public footpath from the junction of FP2, FP3 and FP4, Fradswell to Fradswell Church to the Definitive Map of Public Rights of Way under the provisions of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981.
 - (ii) The lines of the alleged public footpath which are the subject of the application are shown highlighted and marked A-B-C on the plan attached as 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.

Evidence submitted by the applicant

1. The applicant has submitted in support of his application;
 - Fradswell Tithe Map
 - Stafford District Surveyors of Highways Report Book dated 1899
 - Stafford District Surveyors of Highways Letter Book dated 1900
 - Ordnance Survey map dated 1887 & 1901
 - Ordnance Survey map dated 1836
 - Estate Sale Plan dated 1920
 - Photographs of the path taken January 2015

Documentary Evidence Submitted

Fradswell Tithe Map

2. Tithe maps and apportionments were drawn up following the Tithe Commutation Act 1836. Tithes were a local payment in kind of one tenth of the produce of land and levied for the upkeep of the local church and clergy.
3. Tithe apportionments are documents recording the land subject to the tithe, the names of all tithe owners and their tenants and the rent-charge due on each plot or parcel of land. Each plot is given a number relating to its position on an accompanying map. Within a township a number of plots would be recorded for which no rent-charge was due. These include such features as roads, rivers and canals.
4. The Tithe Map shows where each plot numbered on the apportionment is located.
5. Tithe maps can be considered persuasive evidence of a route being a highway however it cannot be regarded as conclusive evidence. This is because the tithes were never intended to be used to determine highway rights, the representation of the route on the tithe is evidence that the route was a physical feature on the ground when the tithe was drafted. Copy of the Tithe Map can be found at Appendix C.

Stafford District Surveyors of Highways Report Book & Letter Book

6. The Highway Act 1835 placed highways under the direction of parish surveyors. The surveyor's duty was to keep the highways in repair and record the maintenance as such.
7. The records were kept in a report book and was occasionally accompanied by a letter book. It recorded the work undertaken and from time to time detailed the status of the route.
8. To accept liability for maintenance is not a burden that local authorities would take on lightly and so the appearance on either document is a good indication that the route is at least a public highway. A copy can be found at Appendix D.

Ordnance Maps

9. Ordnance Survey Maps date back to the early 1800's and their purpose is to show physical features on, and the contours of the ground. In doing so they included all manner of ways from tracks leading only to remote properties, footpaths crossing fields, as well as the main highway.
10. They do not distinguish between public and private rights of way. From 1888 the maps carried a disclaimer that the depiction of a way on map did not mean it was

public. They are evidence only of the physical existence of a way on the ground at the date of the survey.

11. There may be annotations next to some minor routes such as FP or BP however they do not indicate whether the way was public or private. Such annotations might indicate that the route was only capable of having that type of traffic use but would only be supporting evidence and not conclusive.
12. They do not have any evidential weight but may be supportive of an application by showing that there was a physical feature on the ground. On the contrary the absence of a feature on the map does not mean it does not exist. Copies can be found at Appendix E.

Estate Sale Plan

13. These were maps drawn up for the owners of private estates for their own use for example in the sale of the land. Some maps are very detailed whilst others are limited to broad outlines.
14. They may provide a physical evidence of a route in a similar manner to OS maps but need to be approached with some caution as they were drawn up with a specific purpose.
15. Some estate plans may distinguish between public and private ways.
16. The evidential value is limited to supporting evidence of the physical existence of a way. Where the estate owner has listed a way as public it would add to the supporting evidence however it could not be relied upon to prove dedication. A copy of the Estate Sale Plan can be found at Appendix F.

Other evidence discovered by the County Council

17. Officers have conducted research into historical documentation at the County Council's Record Office. No further evidence was discovered to support or refute the alleged route.

Evidence submitted by the Landowners

18. At the time of the application, Mr and Mrs Dash purchased Fradswell Hall and the adjacent field marked A-B on the plan attached at Appendix A approximately 10 years ago. They completed an owner/occupier evidence form which is attached at Appendix G.
19. They state they were not aware of any route through their property or adjacent fields. There is nothing stated on their deeds to the land.
20. They claim not to have seen anyone using the route and have never given anyone permission to use the route.
21. They state the field has regularly been used for the keeping of livestock and is fully fenced and has thick hedgerow surrounding it for this purpose.
22. They further state that anyone wishing to access the church and churchyard uses the entrance gate and drive which is clearly visible and accessible from the road.
23. They object to the application, they claim the field is steep and muddy and it would appear to make sense to use this route to the church when the church has its own well-maintained driveway and car park which is clearly marked, fenced and gated.
24. Milwich with Fradswell Parish Council own the land affected by the claimed route marked B-C on the plan attached at Appendix A. The land was transferred from Weston with Gayton Parish Council in 2003 as an asset. They completed an owner/occupier evidence form which is attached at Appendix H.

25. They state the route has always been recognised as a public right of way and they have seen members of the public use the route on foot.
26. They submitted as evidence a letter from Weston with Gayton parish Council listing 3 parcels of land which were transferred as an asset to Milwich with Fradswell Parish Council. Number 3 in the list details the land as 'Access footway from Church Lane to junction of Footpath No. 2, 3 and 4, Fradswell, acquired pre-1980 and given no value'.

Comments received from statutory consultees

27. Milwich with Fradswell Parish Council were consulted at the time of the application and state they would support the application/they have no objections or comments. No evidence was provided to support the claim.

Comments on Evidence

Fradswell Tithe Map

28. The Fradswell Tithe map shows the section from B-C on the plan. The purpose of the mapping was not to record public highways, but since the process was part of a statutory process under the Tithe Commutation Act 1836, the evidence of public rights they contain must be given the appropriate weight.
29. On their own tithe maps and awards are not evidence as to the public nature of a particular route but may add to the supporting evidence. They would not of themselves support a modification to the Definitive Map and Statement.

Stafford District Surveyors of Highways Report Book & Letter Book

30. The information is only concerned with the maintenance of a route and not its status, however in this case the report book *states* "The road is not more than 70-80 yards long and leads to the school and also to a public footpath which runs across the fields to the church. The Roadman says that it used to be the public highway many years ago but was closed just beyond the school when a new road was cut. The late Parish Surveyor says he always considered it as one of his roads although he never did anything to it".
31. The road 70- 80 yards mentioned by the Surveyor supports part B-C on the map. Additionally, the public footpath which runs across the fields to the church also mentioned by the Surveyor supports A-B.

Ordnance Survey Maps

32. The Ordnance Survey Maps all show the route from A-B-C and the old road leading up to the school. However, they do not indicate whether the route is public or private.

Estate Sale Plan

33. The Estate Sale Plan also shows the route from A-B-C and the old road leading to the school. Also, this evidence only shows the physical feature of the route and does not determine whether the route is public or private.
34. Since the claimed route ends at the Church yard this could be classed as a cul de sac. It is unusual that a public highway simply terminates at a point which leads to no particular destination. The usual rule is that it has some purpose even if it is a cul-de-sac. It is often to points of interest or even particular properties. In this instance there are no properties and the only place of interest in the vicinity is the Church.
35. The courts in *Eyre v New Forest Wills J* considered the situation in which two apparent cul-de-sac are created by reason of uncertainty over the status of a short, linking section (in that case a track over a common). He held that, where a short

section of uncertain status exists it can be presumed that its status is that of the two highways linked by it. If one follows the line of reasoning in that argument it would support the existence of a public right and that it was at least that of footpath.

Burden and Standard of Proof

36. In this instance the applicable section of the Wildlife and Countryside Act 1981 is section 53(3)(c)(i). This section relates to the discovery of evidence of two separate events:
 - (a) Evidence that a right of way which is not shown on the map subsists; or
 - (b) Evidence that a right of way which is not shown on the map is reasonably alleged to subsist.
37. Thus, there are two separate tests, one of which must be satisfied before a Modification Order can be made. To answer either question must involve an evaluation of the evidence and a judgement on that evidence.
38. For the first test to be satisfied, it will be necessary to show that on the balance of probabilities the right of way does subsist.
39. 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".
40. If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

Summary

41. The title award on itself is not sufficient to support the application, however with additional evidence it can be supportive of the route.
42. The information provided by the letter book is concerned with the maintenance of the route. The local authority does not take the liability for the maintenance lightly and so to undertake the work and it is documented is a good indication that the route is at least public.
43. The Roadman mentions in the letter book that it used to be a public highway until a new road was cut. The road 70-80 yards mentioned by the surveyor supports part B-C on the map. Also, the public footpath which runs across the fields to the church also mentioned by the surveyor supports A-B.
44. The Ordnance Survey Maps show the route in its entirety however they only show a physical feature on the ground. It does not determine whether the route is public or private nor the status of the route.
45. The Estate Sale Plan may provide physical evidence of a route in a similar way to the Ordnance Survey Maps, nonetheless they need to be approached with caution as they are drawn up for a specific purpose for the owners of private estates.
46. There is no mention of the status of the route in the sale plan and so it is limited to supporting evidence of the physical existence of the way.
47. Since the claimed route ends at the Church this could be classed as a cul-de-sac. The usual rule is that it has some purpose even if it is a cul-de-sac. It often leads to a point of interest, in this instance the only point of interest is the Church.

Conclusion

48. In light of the evidence, as set out above, it is your officers' opinion that the evidence shows that a public right of way, with the status of a public footpath, which is not shown on the map and statement is reasonably alleged to subsist.
49. It is the opinion of your officers that the County Council should make a Modification Order to upgrade the routes to bridleway status on the Definitive Map and Statement of Public Rights of Way.

Recommended Option

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

Other options Available

51. To decide to reject the application to add a public footpath.

Legal Implications

52. The legal implications are contained within the report.

Resource and Financial Implications

53. The costs of determining applications are met from existing provisions.
54. 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

55. 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.
56. 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.
57. Should the Council decide not to make an Order the applicants may appeal that decision under Schedule ?? of the 1981 Act 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.
58. 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

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

J Tradewell

Director of Corporate Services

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Appendix B	Plan of claimed route
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Appendix E	Ordnance Survey Maps
Appendix F	Estate Sale Plan
Appendix G	Owner/occupier evidence form Mr & Mrs Dash
Appendix H	Owner/occupier evidence form Milwich with Fradswell Parish Council