

Cllr Paul Northcott	LJ665G – District of Newcastle– Newcastle Rural
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## **Countryside and Rights of Way Panel**

### **Wildlife and Countryside act 1981**

#### **Application for Upgrading of Public Footpaths 67 & 68 Madeley and Footpath 15 Keele to Bridleways**

#### **Report of the Director of Corporate Services**

#### **Recommendation**

1. That the evidence submitted by the applicant and that discovered by the County Council is not sufficient to show, on a balance of probabilities, that Public Footpaths 67 & 68 in Madeley and Footpath 15 in Keele should be added as a highway of a different description, namely a Bridleway to the Definitive Map and Statement of Public Rights of Way for the District of Newcastle Rural.
2. That an Order should not be made to add the alleged right of way shown on the plan attached at Appendix B and marked A-B, C-D, E-F to the Definitive Map and Statement of Public Rights of Way for the District of Newcastle, Newcastle Rural.

### **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 upgrading public footpaths 67 & 68 Madeley and Public Footpath 15 Keele to public bridleways under the provisions of Section 53(3) (c) (ii) of the Wildlife and Countryside Act 1981. The lines of the alleged public bridleways as claimed by the applicant are 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.

#### **Evidence Submitted by the Applicant**

4. The routes applied for are shown between points A-B, C-D and E-F on the plan attached at Appendix B. Collectively the applicant refers to the entire route as running from “Three Mile Lane to Netherset Hay Lane”.

5. For the application to be successful under section 53(3)(C)(i) the historical evidence is required to be significant enough to determine that a route existed irrespective of whether there are any physical features remaining on the ground.
6. In support of the application the applicant Mr Martin Reay has submitted six various pieces of evidence as detailed below. These may be found attached at Appendix C.
7. These are i) a Deposited Railway Plan of 1858, ii) a Highways Diversion Order of 1834, iii) a second Highways Stopping Up Order of 1834, iv) The Finance Act 1910, v) a Parish Survey and vi) County Maps.

#### **Evidence Submitted by the Landowner/s**

8. When the application was submitted the applicant identified three owners or occupiers of the affected land, i) Mr Ward of Netherset Hay Farm, Netherset Lane, Madeley, ii) Mr Robinson of Stoneylow Farm, Three Mile Lane, Keele and iii) Mrs Smith of Keele Kennels, Three Mile Lane, Keele. One further landowner was subsequently identified as Mr Ford of Stoney Low Farm, Keele, Newcastle, Staffs, ST5 5HQ.
9. Mr Ford indicated in the Owner/Occupier Questionnaire that he considered the route only to have the status of a public footpath. He also indicated that he was the sole freehold landowner.
10. The other landowners identified by the applicant did not submit any evidence in respect of the application.

#### **Comments Received from Statutory Consultees**

11. Responses were received from the various organisations.
12. Michael Rowley, Secretary of the Byways & Bridleways Trust stated that he “saw no practical obstacles to restoring this way to its former status” and submitted a copy of a booklet entitled “Madeley, Staffs; Aspects of Its Landscape, Archaeology and History” by Gordon Lancaster. Mr Lancaster was the Secretary to the Madeley Conservation Group. The evidence was interpreted as showing the route “clearly as an ancient way” and that Mr Lancaster’s research suggested the route was a “cart way and deserving of classification as a pre-1835 county road”.
13. Michael Rowley also stated that despite the indication from the above-mentioned book that the route was originally a cart way or county road he was “nevertheless content with bridleway status”.
14. Michael Rowley also stated that the Madeley Conservation Group supported the claim.
15. Mrs M Oxe, Clerk to Madeley Parish Council stated that it fully supports the application.
16. Mrs C Beeley, Hon Secretary of the North Staffordshire Bridleways Association stated that it fully supports the application and “had always believed that this was and should be a bridle path”. Adding that “its upgrading would be particularly useful in solving the problem of horse riders getting between Keele and Madeley without having to cross the motorway on a bridleway bridge”.
17. Paul Fenton of The Right to Ride Network stated that the upgrade would “improve access considerably for the area if given bridleway status wondering why the paths were downgraded from a bridleway in the first place. Stating “I would like to back the proposal for bridleway status”.

## Comments on Evidence

18. Section 53 (3) (c) (i) of the WCA 1980 sets out the legislation through which a route may be added to the Definitive Map & Statement based solely on documentary or historical evidence, or both.
19. The legislation accepts that the route may no longer be visible on the ground and that there may be no physical features to suggest the route was ever there. In this case the line of the route is still visible on the ground in the form of the public footpaths concerned. However, the physical appearance is in no way indicative of the status of the route.
20. The six pieces of evidence submitted by the applicant cover the entire lengths of the three public footpaths identified in the application namely PF67 & PF68 Madeley and PF15 Keele.
21. The three public footpaths run in an approximately east-westerly direction between two roads, namely Netherset Hay Lane in the west to Whitmore Road in the east. The three paths join end to end to form one continuous route, with PF67 forming the greater part of the route from Netherset Hay Lane in the West to the railway. From the other side of the railway PF68 and PF15 form one continuous route to Whitmore Road in the east.
22. The six pieces of evidence submitted by the applicant are considered in more detail below:
23. Firstly, The Finance Act 1910 shows the eastern point of the claimed route between Three Mile Lane and Stoney Low Farm as separate from taxable holdings. The associated Field Book entry for the hereditament numbered 203 shows the annotation "right of way across farm" and given that there is only one-track crossing plot 203 this could refer to the claimed route.
24. Secondly, The Highway Bridleway Diversion Order of 1834 is given as evidence by the applicant. The western end of the bridleway on this 1834 Diversion Order constitutes the eastern end of the claimed route. The 1834 Order created a new line of bridleway part of which was Ram Lane and Ram Lane is described as leading to Madeley. The route crosses the Whitmore to Keele Road at Ram Lane before reaching point A on the plan. This provides strong evidence that Ram Lane was a bridleway. The applicant indicates that Ram Lane is the claimed route. The map evidence shows the lane continuing from point A on the Order plan through Stoney Low to Madeley.
25. Thirdly, the Highway Stopping Up Order of 1834 was included by the applicant as it overlaps the Bridleway Diversion Order and shows the line of the Keele to Whitmore Road.
26. Fourthly, the Deposited Railway Plan of The Newcastle, Silverdale and Madeley Junction Railway 1858 shows the western end of the claimed route between Netherset Hay Lane and a point south of Hungerford House Farm as "an occupation road and public bridle road" This appears to have been recorded by the Surveyors of Highways.
27. Fifthly, the parish plan submitted with the evidence shows part of the route as a road used as a public path (RUPP).
28. The sixth and final piece of evidence submitted by the applicant consists of various county maps namely the Madeley Tithe Map, Bacons Map, Walkers Map, and ordnance survey maps of 1834, 1876.
29. When all six pieces of evidence are taken together it becomes apparent that the existence of a right of way is supported - but not necessarily the existence of a bridleway.

30. For example, the Finance act 1910 does support the existence of a route, noting in the field book that there was a “right of way across farm”. However, it does not state “bridleway” or “bridle road”. The fact that the route is shown separately to the adjoining land is merely an indication that it is a right of way and has no bearing on its status. There is nothing to suggest that the right of way had any higher status than a public footpath and no reference to the term “bridleway” or “bridle road” in the field book itself.
31. The two Highway Orders referred to, one for a Diversion and the other for a Stopping Up relate to a nearby associated bridleway in 1834 and only provide evidence for that bridleway concerned. The fact that a small section of the claimed route is also given on the same plan does not have a significant bearing on the bridleway in question. This could have been added in error, is not described in the annotations and is at best very weak circumstantial evidence. This circumstantial evidence being indicated by the overlap where a small section (several metres) of the claimed route is highlighted as bridleway.
32. The Deposited Railway Plan of 1858 does record the western end of the route as “an occupation road and public bridleway”. This would appear to be evidence of the status of this section of the route, although it has no bearing on the eastern section of the way. At best therefore the Railway Plan only indicates the *probable* status of one small section of the route by annotation.
33. However, the Railway Plan does show that there is a bridge along the route over the railway. This could be significant as the financial burden of constructing bridges or tunnels to carry highways was more arduous for public highways crossing railways and was laid down by statute. The presence of a bridge could therefore be indicative of the route being a carriageway or having a higher status than a footpath. It does provide tentative evidence however that the route was of a higher designation than a public footpath.
34. The parish plan that shows part of the route as a RUPP is not clear within the evidence submitted by the applicant. If this is taken to be the same as the “occupation road” then its evidential value is limited to that specific section of the route referred to above. If this refers to another section of the route, then again this is limited to the section concerned. It is only referring to “part” of a path as stated by the applicant.
35. The various maps submitted by the applicant, including the Ordnance Survey plans all record the physical feature of the route although do not attest to its status, whatever this might be. They can be used as supporting evidence although in this case this is weak due to the small number of maps submitted and the small scale of the county map submissions. There are only three county maps and two Ordnance Survey maps given in evidence to support the route.

#### **Comment on All Available Material**

36. There is no evidence submitted that would conclusively support any higher rights than those applied for. However, the references to the “occupation road” and “road used as a public path” should be noted, whilst also considering the fact that these are two isolated annotations in documents which are normally used at best as supporting evidence.
37. The most significant document submitted with the evidence is the Deposited Railway Plan of 1858. This is the document that specifically annotates the route as a “bridleway” and which provides evidence that a bridge was constructed along the route taking it across the railway.
38. The other pieces of evidence including the Highway Orders, county maps and Ordnance Survey sheets either do not relate to the claimed route directly or are evidentially weak.

## **Burden and Standard of Proof**

39. With regard to the status of the route, the burden is on the applicant to show, that on the balance of probabilities, that it is more likely than not that the way subsists. The existing situation must remain unless and until the Panel is of the view that the Definitive Map and Statement should be amended. If the evidence is evenly balanced, then the existing Definitive Map and Statement prevails.
40. If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

## **Summary**

41. The application is made under Section 53(2) of the 1981 Act, relying on the occurrence of the event specified in 53(3)(c)(ii) of the Act. Therefore, the Panel need to be satisfied that, on the balance of probabilities, the evidence that has been discovered shows that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
42. The evidence in this case is limited to the Deposited Railway Plan of 1858.
43. The other submitted evidence is either not directly relevant to the claimed route or is evidentially weak and of limited supporting value.
44. The Railway Plan has increased legal weight as the railway was constructed and would have been authorised by Act of Parliament. These completed railway plans therefore have greater legal weight than those railways which were subsequently discarded or not completed.
45. However, it was not the primary purpose of these documents to record rights of way.
46. There is no question in this case as to the existence of a public right of way as the entire route is comprised of three successive and joining public footpaths. It is the status that is brought into question by the applicant.
47. In cases where historical or documentary evidence is provided what is looked for is a general picture of whether a route seemed important enough to get into documents fairly regularly. *Fortune v Wiltshire Council 2012*. No further supporting evidence is available in this case in respect of the alleged status of the route.

## **Conclusion**

48. In light of the evidence, as set out above, it is your Officers opinion that the evidence is not significant enough to show that a public bridleway subsists on the balance of probabilities. Further independent evidence would be needed to achieve this.
49. Although the documentary evidence of the railway plan is good, this would need to be supported by other *good* evidence for it to be given sufficient weight.
50. It is the Opinion of your Officers that the County Council should not make a Modification Order to upgrade the public footpaths that are the subject of this application to the Definitive Map and Statement of Public Rights of Way for the District of Newcastle- Newcastle Rural.

## **Recommended Option**

51. Not to accept the application and not to make an Order to add the route to the Definitive Map and Statement of Public Rights of Way.

## **Other Options Available**

52. To decide to accept the application and to make an Order to add the route to the Definitive Map and Statement of Public Rights of Way.

## **Legal Implications**

53. The legal implications are contained within the report.

### **Resource and Financial Implications**

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

55. 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**

56. 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.

57. 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.

58. Should the Council decide not to make an Order the applicants may appeal that decision under Schedule 14 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.

59. 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**

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

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