

Cllr Gillian Pardesi	District of Stafford – Stafford Central
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## **Countryside and Rights of Way Panel**

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### **Wildlife and Countryside Act 1981**

#### **Application for Alleged Public Footpath Between Weston Road and Knight Avenue, Stafford**

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

#### **Recommendation**

1. That the evidence submitted by the applicant at Appendix A **is sufficient** to show that a Public Footpath is **reasonably alleged** to subsist along the route marked A to B on the plan attached at Appendix B to this report and should therefore be added to the Definitive Map and Statement of Public Rights of Way as such.
2. That an Order **should** be made to add the alleged right of way shown on the plan attached at Appendix B and marked A to B 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 made on the 26<sup>th</sup> September 1996 by Mr Martin Reay for an Order to modify the Definitive Map and Statement for the area by adding a public footpath between Weston Road and Knight Avenue, Stafford under the provisions of Section 53(3) of the Wildlife and Countryside Act 1981. The line of the alleged public footpath as claimed by the applicant 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.

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

4. In support of the application the applicant Mr Martin Reay has submitted 13 x user evidence forms.
5. A further 3 x user evidence forms were received shortly after the application, and these were considered together with the first submissions.
6. All 16 x user evidence Forms can be seen at Appendix C.
7. A summary of the salient points from the user evidence forms has been compiled into a table and this is attached at Appendix D.

### **Evidence Submitted by the Landowners**

8. Two landowners were identified by the applicant, namely Stafford District General Hospital and Westbury Homes, (Holdings) Ltd.
9. Mr E P Miles, Director of Facilities, at Stafford District General Hospital returned the landowner response form. This can be seen at Appendix E.
10. Mr Ian Keay, Layout Designer for Westbury Homes returned the landowner response form. This can also be seen at Appendix E.
11. In addition, Mr E P Miles also provided a "Deposited Plan and Statement" dated 22<sup>nd</sup> April 1997. This document is held on file and is referred to in the report although given that the date of submission is *after* the relevant period (and therefore not relevant to the claim) it is not appended in full to the report. The associated Plan however is pertinent to the application and this can be seen at Appendix F.
12. For clarity Westbury Homes is now part of the Persimmon Homes Group and as such the latter have been consulted as if they were the same entity.

### **Comments Received From Statutory Consultees**

13. The Ramblers Association stated that they supported the application. The letter can be seen at Appendix G.

### **Comments on Evidence**

14. Section 31 of the Highways Act 1980 sets out the test that must be satisfied under statute for a way to become a public highway through usage by the public.
15. In 1932 the Rights of Way Act introduced the statutory presumption of dedication by the landowner of a public right of way which could be proven by evidence of 20 years usage as of right and without interruption.
16. This presumption could be rebutted by the landowner providing that he had shown that he had no such intention to dedicate the route. However, the onus is on the landowner to do so.

17. The land that the path crosses is in addition not of a character that would prevent the dedication of the way. This is important as it can of course be fatal to any claim.
18. For the application to be successful, it will have to be shown that the public have used the alleged route, "as of right" and without interruption, for a continuous period of at least 20 years prior to the status of the route having been brought into question.
19. For the route to be brought into question there needs to be a challenge to its use that is significant enough to bring it to the attention of the public that their use is being challenged.
20. As there was no identifiable challenge to the public's use of the claimed route the requisite 20-year period of use shall be calculated retrospectively from the date of the application.
21. The relevant period for this application will therefore be from 1976-96.
22. Of the 16 users who provided evidence forms, a total of 8, stated they had used the route throughout the relevant 20-year period.
23. Of the 8 users that had used the route throughout the 20-year period a total of 7 had done so on a very regular basis, being daily, weekly or once or twice a day.
24. Of the remaining 8 users who did not use the route throughout the entire relevant period none of them had used the route right up until 1996.
25. This means that on this occasion it is not possible to combine part users of the given relevant period - as it is impossible to overlap usage across the entire period.
26. The usage falls short of 1996 by only a year or two in most cases although despite it being a minor anomaly it still falls short of the relevant period.
27. In this case therefore the total number of users that can be said to be relevant to the claim is 8. This figure being 50% of the total users is nonetheless significant enough to support the claim.
28. The remaining 8 users who fall short of covering the entire 20-year relevant period do in addition present periods of use over many years - one being of at least 34 years duration.
29. Although outside the relevant period this does provide a background context against which the relevant users can be considered – it sets the scene.
30. Of the 8 users that had used the route throughout the 20-year period a total of 7 also stated that the route was 6 feet wide, while the remaining users, where a measurement was given, testified to a similar figure, in either Imperial or metric.
31. Although the width of the route is of limited note to the matter of legal status, it does reinforce the general consistency that is seen throughout this application. It supports the contention that all users were using the same route.
32. Again, the route appears to have been free from gates and other obstructions throughout its length, although most users recorded a single stile being present and in the same location.

33. This stile is identified as being at or near the "bend" to the rear of Tithe Barn Road.
34. The existence of a stile could be relevant as this would have been installed almost certainly by the landowner. If a stile was provided it could suggest that the landowner was aware that the route was being used.
35. One of the users does clarify that the stile was not installed until the new housing estate was completed however without further exposition it is impossible to pursue this point further.
36. In total 7 of the 8 relevant users testified to using the route on foot rather than by any other means and as such this is the only possible status that can be considered based on the evidence provided.
37. The remaining relevant user did not indicate how they used the route although in all probability this too was by foot. However, without this point being specified it is impossible to say with full certainty.
38. A number of the user evidence forms also bear reference to further supporting evidence.
39. Doris Disbray, who submitted a user evidence form stated that "many people have used the path" and referred to parents "*taking children to and from school*".
40. Clearly if this route was being used by children to travel to and from school then it would have probably been in regular use by those users and the presence of children on the route could not, in all probability, have escaped the notice of the adjacent landowner.
41. Judy Reay who also submitted a user evidence form stated that "*many have used the path daily for 25 years*". This again supports the claim that significant numbers of people were using the route over a significant period of time.
42. Martin Reay who submitted a user evidence form stated that "*many local people have used the path over the previous 20 years*." Again, this bears reference to high numbers of users over a long period of time.
43. D J Carter indicated in his user evidence form that the path was used on a "*daily basis*" however that he had only known it for 7 years. Again, this is suggestive of frequency of use although has limited weight due to the user not being one of the 8 relevant users.
44. The user evidence form submitted by Mr Ivan Harold Dodd stated that he had used the path since childhood, - the 1950's - and also indicated that the path was shown on the 1901 OS Map "*as a track through woods to Weston Road*".
45. A copy of the 1901 OS Map was not supplied although if it had been evidenced the weight attached to it would be limited to showing the physical feature, if it exists, of the route upon the ground.
46. Elizabeth Ann Harris whose usage did not cover the relevant period, but which was nonetheless over a protracted period of time stated that she used the route on "*most days*" for 19 years to get to school, work and the shops at Littleworth.
47. Mr & Mrs Bannister indicated in their user evidence form that the route was a "*pleasant walk among trees and lovely to be off a road and so safe for the*

*children*". Although this is of limited value to the claim it does reiterate the use of the route by children and again over significant periods of time.

48. Catherine Reay stated in her user evidence form that "*the path has been constantly used for walking dogs, taking children to school (away from the Weston Road traffic and noise) and for peaceful walks among the trees and shrubs.*"
49. Again, the use of the route by children is referred to – this use would likely be very conspicuous to the adjacent landowner and not something that could easily be missed.
50. Turning to the landowner response form submitted by Mr E P Miles of Stafford General Hospital it can be seen that in 1996 the hospital had been freehold landowners for the previous 48 years.
51. An additional note added by Mr E P Miles stated that "The current signs stating: '*Stafford District General Hospital Private Property*' were erected approximately six years ago, replacing faded and missing '*Private*' signs."
52. This statement suggests that the new signage was erected in 1990 calculating back from 1996.
53. The signage locations are marked by blue triangle symbols on the plan attached to the landowner response form.
54. Signage can be fatal to any claim although it has to be clear to the user that the landowner is referring to the usage of the route in question.
55. Wording to this end can be very specific, even verbose in some instances, where the user is left in little doubt that the landowner has no intention of dedicating the route.
56. The wording is important, and the signage erected by the hospital appears in this case to have been insufficient to bring this home to the user.
57. The earlier signs are described as "faded" and "missing" both points which detract from their legal weight. It cannot be upheld that the landowner was *clearly* expressing his intention not to dedicate.
58. In addition, the earlier signs merely stated "Private" which again may not have brought home to the user that the route itself, rather than the hospital grounds, were "private".
59. The later signage does not appear to have been significantly more informative than the earlier examples.
60. Although the new signage identified the landowner it again merely affirms that property is private.
61. Neither the earlier nor later signs specifically state the landowner's non- intention to dedicate the route. As such even when taken together they are insufficient to defeat the claim.
62. Turning to the question as to whether either landowner challenged usage of the route then the landowner response forms are revealing.
63. The first landowner, Stafford Hospital, stated in the form that they had never given anyone permission to use the route.

64. They further stated that they had never taken steps to prevent the public's access by locking gates or erecting some other form of obstruction.
65. Furthermore, they had never stopped or turned back anyone using the route.
66. The second landowner, Westbury Homes, stated in the form that they had owned the land for 2.5 years.
67. They had also never given anyone permission to use the path.
68. They further stated they had never taken steps to prevent the public's access by locking gates or erecting some other form of obstruction.
69. Furthermore, they had never stopped or turned back anyone using the route.
70. Turning again to the first landowner, the hospital, they also evidenced a "Deposited Statement & Plan" that they had lodged with Staffordshire County Council in 1997.
71. A "Deposited Statement & Plan" can be a useful means of defeating any claim as the landowner clearly lodges his intention not to dedicate the route with the relevant local authority.
72. It is a legal document – a statutory declaration – signed in the presence of a notary.
73. In this case the deposition was only made in response to the S53 application and therefore was not in existence during the relevant period between 1976-1996.
74. The "Deposited Statement and Plan" is dated the 22<sup>nd</sup> April 1997 and gives a denial that any of the routes indicated on the Plan have been dedicated to the public.
75. Five different ways are shown on the plan and are numbered 1 to 5. Three of these routes, named as Route A, Route B and Route E all run from Weston Road to Knights Avenue.
76. It is Route E however that appears to be most consistent with the route in question.
77. As the "Deposited Plan and Statement" were only lodged with Staffordshire County Council *after* the application was submitted – the record has little bearing on the earlier 20-year relevant period.
78. The deposited plan does however show quite clearly the split in landownership between the two landowners with the sections passing through the hospital grounds emboldened.
79. Westbury Homes, the second landowner, added that the land formed a tree belt to the south-west and north-west boundaries of the Westbury Homes Development known as Westbury Park, off Weston Road, Stafford.
80. Westbury Homes also indicated that at the time of the land purchase a land survey was carried out and identified a path through the tree belt – which they refer to as the preferred route.
81. This preferred route was shown on their submitted plan by a line marked with a dot-dash and differed somewhat at the northernmost end section to that which was the subject of the S53 claim.

82. The suggestion was that the preferred route was clearer on the ground and did not “fade away” at the northernmost end as the S53 route was shown to do.
83. Taking all the above into account it is clear from the available user evidence that there have been no interruptions to usage over the relevant 20-year period.
84. The application was made in 1996 and may have been in response to the new housing development – although this point is not expressly made within the application.
85. All the user evidence plans depict the route in the same location and following the same line although two lines have not been continued along the entire length – stopping short of the end at the northernmost section.
86. One user evidence plan, as indicated by Mrs G R Boon did originally appear to include the northernmost section although this was subsequently crossed out, with her instead including a corresponding (lengthwise) section of Weston Road.
87. One user evidence plan does show the route cutting through a “jitty” to Tithe Barn Road, although notwithstanding it is also shown to continue on to the same end point as shown on all the plans.
88. Despite these minor discrepancies there does appear to be a consistent line that the route has followed throughout the 20-year relevant period.
89. Neither the legislation nor the case law sets out a minimum level of user that is expected or required to support a claim that a route exists.
90. The case law does suggest that the amount of usage should be such that it is enough to bring home to a reasonable landowner that the public are using a way and that use is as if it was a public highway ie “as of right”.
91. The user evidence forms testify to many years use of the route and clearly indicate a relevant period between 1976-96.
92. The amount of user evidence that spans the relevant 20-year period is exactly half that of all the submitted users.
93. This could be considered sufficient to bring that use home to the attention of any landowner – especially an adjacent landowner.
94. The frequency of use, mostly on a daily or weekly basis could also be considered significant enough to ratify its use to any neighbouring landowner.
95. Further the use of the route by numbers of children travelling to and from school without challenge and over many years, would clearly satisfy the requirement of “without secrecy”.
96. The totality of the evidence suggests that use has been without secrecy, force or permission and as “of right”.
97. Although one of the landowners (Stafford Hospital) lodged a deposited plan and statement with the Council this only occurred after the application was made (and in response to it) and it was not extant during the relevant 20-year period.
98. The signage erected by one of the landowners (Stafford Hospital) was not sufficiently worded to bring home to the user that the landowner had no intention to dedicate the route.
99. As such all points seem satisfied based on the evidence provided.

### **Comments on all Available Material**

100. There is no evidence that we are aware of which would support any higher rights than those applied for.
101. The material when taken together appears to be consistent.
102. The evidence is presented in a detailed and cogent way which quite clearly supports the validity of the claim.

### **Burden and Standard of Proof**

103. The route in question is an addition and as such will be considered under the test of reasonable allegation.
104. That is to say the question is whether a reasonable person could reasonably allege a right of way subsists having considered all the relevant evidence available to the Council.
105. 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 a right of way “does subsist”.
106. If a conclusion is reached that this is the case, then the definitive Map and Statement should be modified.

### **Summary**

107. The application is made under Section 53(2) of the 1981 Act relying on the occurrence of the event specified in 53(3)(i) of the Act.
108. The relevant statutory provision, in relation to the dedication of a public right of way, is found in Section 31 of the Highways Act 1980 (“the 1980 Act”) which sets out the requirements for both the statutory test and common law dedication.
109. The test requires consideration of whether there has been use of a way by the public, as of right, without interruption, for a period of 20-years prior to its status being brought into question and, if so whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.
110. Before a presumption of dedication can be raised under statute, Section 31 of the 1980 Act requires that a way must be shown to have been actually used by the public, as of right and without interruption, and for this use to have continued for a period of 20- years. In this case, the view taken was the status of the route was brought into question in 1996.
111. Therefore, it needs to be demonstrated that there was public use for 20-years prior to the challenge being made and usage between 1976-1996 is taken to satisfy the first part of the statutory test. In total 8 out of the 16 users have 20-years recorded usage that covers the relevant 20-year period. This is half of all users and therefore significant enough to have alerted the landowner to its use.
112. When one considers this test, which is objective in its nature, then it is clear from the available evidence that there is nothing to substantiate a case that there was a lack of intention to dedicate.



113. The signage and the replacement signage were present although the former was insufficient in that it was “faded”, signs were “missing” and the wording was not specific enough. The latter were doubtless an improvement although still failed to contain specific enough wording to give a clear indication that the landowner was stating an intention not to dedicate.
114. The Deposited Statement and Plan were lodged with the Council only after the application was made – and indeed in response to it – as indicated by the covering letter. As such it was not extant during the relevant 20-year period.
115. Any such Deposited Statement and Plan would only be effective from the date of the declaration- covering in this case the 20-year period 1997-2017.
116. An implication of dedication may also be shown at common law level if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication. Evidence of the use of a way by the public, as of right, may support an inference of dedication, and may also be evidence of the acceptance of a dedication by the public.
117. For clarification all points appear to be satisfied in this case, there is a “way over land”, the character of that land does not prohibit use by statute, it has been enjoyed by the public, and in sufficient numbers over a sufficient period of time and it has been used without secrecy, force or permission.

### **Conclusion**

118. In light of the evidence, as set out above, it is your Officers opinion that the evidence does show that a right of way is **reasonably alleged** to subsist.
119. It is the opinion of your Officers that the County Council **should** make a Modification Order to add the public footpath which is the subject of this application to the Definitive Map and Statement of Public Rights of Way for the District of Stafford.
120. Given that the width has been consistently stated to be 6 feet throughout the application, it is recommended that it is made to a width of **1.8 metres**.

### **Recommended Option**

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

### **Other Options Available**

122. To decide to reject the application and not to make an Order to add the route to the Definitive Map and Statement of public rights of way.

### **Legal Implications**

123. The legal implications are contained within the report.

### **Resource and Financial Implications**

124. The costs of determining applications are met from existing provisions.
125. 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**

126. 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.
127. 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.
128. 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.
129. If the Panel makes its decision based upon the facts, the applicable law and applies the relevant legal test the risk of challenge to any decision being successful, or being made, is lessened. There are no additional risk implications.

## **Equal Opportunity Implications**

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

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J Tradewell

Director For Corporate Services

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**Background File:** LF617G

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