Local Members' Interest	
Cllr J Francis	Stafford- Stafford Trent Valley

Countryside and Rights of Way Panel -

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Wildlife and Countryside Act 1981

Application for the addition of a Public Bridleway from Byway No 3 north of Stable Farm to Trent Walk, Ingestre

Report of the Director for Corporate Services

Recommendation

1. That the evidence submitted by the applicants and that discovered by the County Council is sufficient to show that a Public Bridleway which is not shown on the Definitive Map and Statement subsists.

2. That an Order be made to add the alleged right of way shown on the plan attached at Appendix B and marked C to D to the Definitive Map and Statement of Public Rights of Way for the District of Stafford as a Public Bridleway.

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 Bridleway from Byway No 3 north of Stable Farm to Trent Walk, Ingestre 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 Bridleway which are the subject of the application are shown highlighted and marked C – D 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 originally submitted an application but then sought to amend the application by commencing the route from the highway north of Stable Farm (byway No 3) to the west end of Trent Walk, Ingestre.

2. In support of his application, Mr Reay has submitted evidence of a Quarter Session Order dated 1801 and Estate maps of Ingestre.

3. The Quarter Session Order dated 1801 sets out a diversion which stopped up a length of bridleway that passed in front of Ingestre Hall and turned the bridleway onto a new line leading to a point on the Stafford and Uttoxeter Turnpike Road, which is now the A518, Weston Road near the County Showground.

4. The text of the order describes the original bridleway as running from Hopton to Stafford. The original route passed in front of Ingestre Hall from Dog Kennel Gate to Tixall Gate and thence passed Hanyard terminating at Halfway House. From that junction to reach Stafford it would have passed along what is now Tixall Road to come out on the A518, now called Weston Road, terminating at the same point as it currently does.

5. By way of identification and orientation the feature on the map showing a bow in Tixall Road is still in existence. Weston Road was at the time of the Order part of the Turnpike Road from Stafford to Uttoxeter. Copies of the original order and the accompanying Map are attached at Appendix C. Officers have transcribed the text of the Order and a copy of the transcript is attached at Appendix D.

6. A length of some seven hundred and thirty-nine yards of the old bridleway was to be stopped up, this being the section from Dog Kennel Gate to Tixall Park Gate. The bridleway was to be diverted onto a new line which took the bridleway from the end of Dog Kennel Gate in a north-westerly direction, which is the subject of this report and then looping round to terminate on the A518, through where the land now occupied by the County Showground, which is subject to a separate report. This route was to be some two thousand six hundred and twenty-six yards in length. A map showing the lines of the routes set out on the Order Map has been produced to assist in identifying the line of the ways on a current Ordnance Survey Map and is attached at Appendix E.

7. Earl Talbot, in a deposition that accompanies the order, describes the original bridleway as running from a place called Trent Walk which later in the missive is described as being located at the end of the bridge over the River Trent. On the Order Plan Trent Walk is shown written above the line of the route running towards the River Trent.

8. The Earl then specifically consents to the new bridleway being made through his lands and that he is to have the land that the old route ran over sold to and vested in him. He goes on to declare that he will maintain the new bridleway and that the bridge he has erected over the River Trent will be a Public Bridle Bridge that he will also maintain.

9. A certificate of completion accompanies the Order stating that the Justices were satisfied that the new bridleway was fit for purpose and ordered that the land over which the extinguished part crossed be given to the Earl in compensation for the new route over his lands.

10. The road on the Order Map runs from Ingestre in a northwestwardly direction then turns to northeastwardly to join Trent Walk and thence northwestwardly again towards the northern part of the park.

11. The Ingestre Estate Diversion Plan was contained within the papers of the Chetwynd Estate of Earl Talbot comprising correspondence to and from is agents. The Plan is

entitled “Sketch of the Roads about Ingestre intended to be diverted”. The document is part of a series of papers dated from 1792 to 1800.

12. The plan shows the road that was diverted on the 1801 Order as well as the new route. The map is not to any scale but does show the various roads in the area including the way from Trent Walk over the river bridge towards Amerton. A copy of the Plan is attached at Appendix F.

Evidence submitted by the Landowners

13. A number of the landowners have submitted a relatively large amount of evidence but none of the evidence refutes the 1801 Quarter Session Order.

Comments received from statutory consultees

14. Ingestre with Tixall Parish Council responded to the application stating that two members of the Parish Council have a direct interest in the alleged bridleway and therefore they do not wish to comment. A copy is attached at Appendix G.

Comments on Evidence

15. The authenticity and content of the 1801 Order as well as the veracity of the attached copies has been verified by your officers.

16. The combination of the Order and the attached plan provides a fairly accurate description of the path intended to be diverted and the new bridle path. In particular the Order refers to the stopping up of a small section of the lane running between “Dog Kennel Gate” and “Tixall Park Gate”, both of which are marked on the Order Plan. There is no reference to any other part of the old bridleway being stopped up.

17. The Order clearly sets out that the old bridleway is to be diverted and turned in consideration for the new route so as to make the same more commodious to the public. The use of the word commodious is taken to mean that it would be to the public benefit as in more advantageous or easier to use.

18. The consent states that the bridge over the River Trent is to be maintained by the Earl of Talbot and used as a public bridle bridge as part of the diversion, clearly implying that the full length of Trent Walk and the bridge at that time were to be public bridleways.

19. What the consent does show is that the Earl intended for there to be a network of public bridleways in place from the direction of Hoo Mill which lay to the south passing through Dog Kennel Gate and thence to pass by Trent Walk and the bridge over the Trent and on to the Turnpike Road.

20. The fact that the new bridleway is longer and would entail a lengthier journey time does suggest that the route being more commodious is misleading. Rather one could speculate that the purpose might have been to move the public highway that passed directly in front of the Earl’s dwelling leading to more privacy for the Earl. Of course the latter is not a valid reason for a diversion either at that time or today.

21. Despite the intent of the Order being open to question and that the route does not seem, on the face of it, to be more commodious, it still has legal effect. The time to challenge the order was when it was made. In the absence of such, and given it was subsequently confirmed it has legal effect.

22. The Order has been examined by Dr D Fowkes, FSA, a consultant archivist and historical researcher. Dr Fowkes states in his letter that "there is no doubt that the length of bridleway stopped up is only the 739 yards in front of the Hall" in substitution of a much longer section of route through the earl's own land away from the Hall. A copy of the letter from Dr Fowkes is attached at Appendix H.

23. If one considers the old bridleway it is apparent that it ran in front of the Hall from the Tixall Park Gate to Dog Kennel Gate and thence towards Trent Walk. There is also a route shown from Ingestre leading to Dog Kennel Gate.

24. The new bridleway, whilst the Order mentions it as commencing from the end of Trent Walk, also encompassed that part of the old way not stopped up, that is from Dog Kennel Gate to Trent Walk and is the route subject of this report.

25. It would appear that the Earl of Talbot allowed the route from Dog Kennel Gate to Trent Walk as part of the diversion, making an illegal diversion by changing the angle of the route and that people used the route as part of the bridleway network surrounding Ingestre Park. There is no conclusive evidence from the Quarter Session Order that this part of the route had nay rights extinguished and when reviewed in conjunction with the Ingestre Estate Plans there appears to be an intention that this part of the route would be used by the public as a bridleway, connecting with the new diverted bridleway to Hopton and connecting to Trent Walk, which also appears to have bridleway status due to reference being made to a Bridle Bridge along this stretch of way and over the River Trent.

26. Although, specific reference is not made to this route in the Quarter Session Order it can be argued that the Earl of Talbot dedicated the route to the public under common law. The Earl of Talbot as landowner, had the capacity to dedicate and as the route ran through his land, any use by the public is likely to have been brought to the attention of the Earl. There is no evidence that anyone questioned the angle at which the route was at.

27. There is no evidence to suggest that the Earl took any action, such as erecting locked gates or putting up notices to stop the public using this section of route and it would appear that the alleged route was also intended to form part of the bridleway network. Therefore, it can be argued that the Earl would have been aware of any usage of the way as a bridleway and this use was accepted. Furthermore, there is no evidence in the Order that this part of the route was legally extinguished.

28. Whilst it is difficult to ascertain the exact line for the alleged route, the evidence has settled on the line marked on the map at Appendix B and marked C- D and the evidence suggests that this route was used as a bridleway at the discretion of the Earl of Talbot. The alleged route now passes at an angle through properties that have been built in recent years. Due to the age of the historical documentation and the development of new housing in the area of the alleged route, as stated it has been difficult to ascertain the exact line the alleged route would have taken at the time of the 1801 Order. However, overlaying the Order Map onto a modern Ordnance Survey Map has assisted in providing an accurate summation in where the route lay.

29. In the case of R (on the application of Roxlena Ltd) v Cumbria District Council it was determined that it was not lawful for a council to reject a recommendation for adding a route to the definitive map and statement because there was insufficient evidence of the alignment of the new rights of way on the map, particularly where it was impossible to discern from available evidence with sufficient precision where the route would run on the ground. It was stated: "The obligation on the surveying authority is to make a judgement on the basis of the best evidence it has". In this case, this has

been done based on the Quarter Session Order and the Order map overlayed on the Definitive Map attached at Appendix E.

30. When taking everything into consideration, the bridleway in its entirety would therefore be from the direction of Ingestre through Dog Kennel Gate to Trent Walk and then along the line of the newly created bridleway towards Hopton Heath, including the alleged route subject to this application.

31. No Orders or other documentation have been discovered to suggest that the bridleway from Dog Kennel Gate to Trent Walk have ever been the subject of an Order extinguishing any public highway rights.

32. In the absence of any contrary evidence the existence of the diversion Order, the landowner consent and confirmation Order all provide strong evidence that the public bridleway still exists.

33. In summation the effect of the order therefore is that the diverted bridleway in its entirety, from Dog Kennel Walk to Hopton Heath, remains a public bridleway, not just from Trent Walk to Hopton Heath.

34. The remaining conclusion one can draw from the Order is the relative accuracy of the map when it is compared with current road layout. The map at Appendix E shows the overlay corresponding closely with the network and so some reliance can be placed upon it when considering a plan of the diverted routes and those that remained. Although, as already stated the case of Roxlena shows that where there are "shortcomings of the evidence on the exact alignment of claimed routes", this does not prevent an order being made.

35. The Ingestre Estate Diversion Plan is not to scale but does show the routes that crossed the Earl's lands, and which were diverted as part of the order.

36. The effect and weight of the estate plan would under usual circumstances be considered to have less evidential value than an OS map. At best it is a record of physical features that the estate agent believed existed.

37. In this case the probative value is enhanced by the existence of the 1801 Diversion Order. The plan was drawn up before the Order was made, certainly at least a year beforehand or given the papers date from 1792 to 1800, the intent may have existed for a greater time period. It supports that the alleged route formed part of the diversion and there is no evidence that the route has legally been extinguished.

Comments on report

38. Following circulation of the report comments were received from the applicant, Mr Reay. This included some further documents, such as a document produced by Staffordshire County Council several years ago to assist with the alignment of the route between points C to D.

39. Mr Reay also provided another document produced by Staffordshire County Council, which also assists with the alignment of the route between points C to D. This document also relates to the 1801 Quarter Session Order. Copies of both documents are attached at Appendix I.

40. Correspondence was also received from Ingestre with Tixall Parish Council, which included a letter, which they believe showed that the alleged route had been extinguished. On review of the correspondence, at the time of the letter an attempt was made to try and resolve concerns about the alleged route by having the route diverted, which would require all landowners affected by the alleged route agreeing to the diversion. In order for the diversion to take place, the original route would need to first be

legally extinguished. In order for the extinguishment to take place it would have required all landowners to accept the existence of the route. Unfortunately, an agreement could not be reached by all the landowners affected by the proposal to the extinguishment and diversion of the route and therefore it did not take effect and the alleged route was never extinguished.

Burden and Standard of Proof

41. 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.

42. 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.

43. For the first test to be satisfied it will be necessary to show that on a balance of probabilities the right of way does subsist.

44. For the second test to be satisfied 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. The evidence necessary to establish a right of way which is "reasonably alleged to subsist" over land must by definition be less than that which is necessary to establish the right of way "does subsist".

45. If the conclusion is that either test is satisfied, then the Definitive Map and Statement should be modified.

Summary

46. Quarter Session Orders can often be relied upon their own to prove the status and public nature of a route. The orders made by the Justices of the Peace were Court Orders, which could only be overturned by another court or by statute.

47. After the 1773 Highways Act these orders could also widen, divert and extinguish routes. In the case of a diversion, this did not take effect until the new route was laid out and certified by the Justices as being satisfactory.

48. In this case, the diversion Order, the confirmation Order and the landowner consent all provide strong evidence that a public bridleway exists along the alleged route, particularly when compared with the current road layout, which corresponds closely with the network.

49. It appears from the evidence in the Quarter Session Order that this section of route was included as part of the diversion, arguably illegally by the Earl of Talbot, but the route was used by the public and therefore it can be argued that it was dedicated under common law. There is no evidence that there has been any legal event that extinguishes any legal rights over this alleged route and therefore it can be argued that the route does have bridleway status.

Conclusion

50. 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 Public Bridleway, which is not shown on the map and statement does subsist.

51. The Quarter Session Order is a legal document and there is evidence of common law dedication. No other documentation has come to light to show that any rights over the alleged route have been extinguished or the route was stopped up and therefore this supports the contention that the alleged route has bridleway status.

52. Therefore, it is the opinion of your officers that the County Council should make a Modification Order to add this route to the Definitive Map and Statement of Public Rights of Way as a Public Bridleway.

Recommended Option

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

Other options Available

54. To decide to reject the application for the addition of a Public Bridleway from Byway No 3 north of Stable Farm to Trent Walk, Ingestre.

Legal Implications

55. The legal implications are contained within the report.

Resource and Financial Implications

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

57. 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

58. 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.

59. 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.

60. 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.

61. 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

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

J Tradewell

Director for Corporate Services

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Background File: LE624G (b)

INDEX TO APPENDICES

Appendix A	Copy of application and associated submitted letters and documents
Appendix B	Plan of claimed route
Appendix C	Copy of Quarter Session Order and accompanying map dated 1801
Appendix D	Transcript of text from the Quarter Session Order dated 1801
Appendix E	Map of Justice Order Plan 1801 routes overlayed on the Definitive Map of Public Rights of Way
Appendix F	Copy of Ingestre Estate Plans
Appendix G	Copy of correspondence from Ingestre with Tixall Parish Council
Appendix H	Copy of correspondence from Dr Fowkes
Appendix I	Copy of documents provided by the applicant, produced by Staffordshire County Council showing the alignment of the route between points C to D.