

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

Countryside and Rights of Way Panel -

Wildlife and Countryside Act 1981

Application for the addition of an alleged Public Bridleway from Trent Walk Bridge to the public road at the south east corner of Home Farm

Report for 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 for the District of Stafford subsists along the route shown marked G to H on the plan attached at Appendix B 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 G to H 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 applications attached at Appendix A from Mr Martin Beddall on behalf of the Cyclists Touring Club and 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 bridleway from Trent Walk Bridge to the public road at the south east corner of Home Farm 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 line of the alleged bridleway which is the subject of the applications are shown highlighted and marked G – H on the plan attached as Appendix B.
3. To decide, having regard to and having considered the applications 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 application from Mr Martin Beddall is supported by statements from members of the public who claim to have used the alleged bridleway over varying periods of time. Mr Martin Reay has also provided statements from members of the public in support of his application, as well as a Quarter Session Order dated 1801. Copies of the user evidence statements are attached at Appendix C to this report. The Quarter Session Order dated 1801 is attached at Appendix D.
2. 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 period of at least 20 years prior to the status of the route being brought into question, or that it can be inferred by the landowner's conduct that he had actually dedicated the route as a public right of way, and the right of way had been accepted by the public.
3. In order for the right of the public to have been brought into question, the right must be challenged by some means sufficient to bring it home to the public that their right to use the way is being challenged.
4. In this instance there does not appear to be any challenge to the actual usage of the route by any person nor have there been any physical impediments.
5. Where there is no identifiable event which has brought into question the use of a way, Section 31(7B) of the Highways Act 1980 (as amended by Section 69 of the Natural Environment and Rural Communities Act 2006) provides that the date of an application for a modification order under Section 53 can be used as the date at which the public's use was brought into question.
6. In the absence of any other major or identifiable challenge to the public's use of the claimed route the date of the initial application, 4 June 1999, will be used as the challenge date. Accordingly, the requisite 20 year period of use should be calculated retrospectively from this date. The years 1979 to 1999 are the 20 year period whereby the majority of users provide evidence of use.
7. A summary of the salient points from the user evidence forms have been compiled in a table. This is attached at Appendix E.
8. An examination of the forms will show that of the 23 submitted 8 users have over 20 years usage, which have all recorded usage that covers the relevant 20 year period, from 1979 to 1999.
9. Two users, Lisa McLeavy and Stephen Spencer, when their evidence is combined together, also provide evidence of use between 1986 to 2000, which is another 20 year period.
10. The remaining 13 users all state to have used the alleged route for varying periods of time but all of which is for less than 20 years.
11. 22 of the 23 users claim they were not an owner, tenant or related to anyone owning or tenanted the land crossed by the alleged route.
12. None of the users have stated that they were charged a monetary sum for using the alleged route.
13. Mr Oliver Bacon states that he used the route from the 1940's to the present day and when he was working for a farmer. He states that he uses the route once a month using a landrover and on foot. He also advises that there is a gate at Trent Lane, which is always open and has been since 1960.

14. Mr G Reay alleges to have used the route between 1945 to 1999, which covers the requisite 20 year period, on a daily basis by car and on foot. He alleges that local people have always used the way from Hixon and Shirleywich to Ingestre.
15. Mr Colin Hutchinson states he has used the route from 1979 to 1999, which covers the requisite 20 year period. He claims to use the route 4 times a year on foot and cycling. He states that the road shown as Trent Walk and Trent Lane maybe part of an ancient highway from Staffordshire Hanyards towards Hixon and Uttoxeter.
16. One user, Mr John Rowbottom states that he was turned back from using the route by the son's owner in 1999 but the remaining users state that they have never been turned back or told to seek permission to use the route.
17. Despite the application being for the addition of a bridleway, only 2 of the users claim to have used the alleged route on horseback. 12 of the users claim to have used the alleged route by bicycle, 15 of the users use the route on foot and 4 users claim to have used the route using a motorised vehicle.
18. The width of the route does vary amongst the users, but the minimum would appear to be 10 feet with some users stating that the maximum width is 20 feet.
19. The table shows that the frequency of use varies greatly with 2 users being once a month, 1 user being daily and 4 users being yearly with the remaining users being best termed occasional.
20. 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.
21. 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.
22. 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.
23. 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.
24. The road on the Order Map runs from Ingestre in a northwestwardly direction then turns northeastwardly to join Trent Walk and thence northwestwardly again towards the northern part of the park.

Evidence submitted by the Landowners

25. A number of landowners have submitted a relatively large amount of evidence. The evidence refutes the alleged route being public or that the route is extensively used by members of the public in any way.

Comments received from statutory consultees

26. Ingestre with Tixall Parish Council responded on 19 July 1999 with a letter advising that two members of the parish council have a direct interest in the alleged bridleway and they therefore did not wish to comment further.
27. The Peak and Northern Footpaths Society have stated that they are happy to support the creation of a bridleway at this location, but they have no evidence in support of the application.
28. The Ramblers Association responded saying they would support this application as a logical extension of the existing path over Ingestre Bridge, which terminates at the River Trent. Completion of the route to Home Farm would allow a circular walk from the Haywoods to Hixon then Ingestre and back.
29. The Right to Ride network also responded saying the proposals will have no adverse effect on cyclists. The proposals will only be beneficial since the designation allows use by cycle over the proposed route and will avoid use of the A51.
30. Copies of the above correspondence are attached at Appendix F.

Comments on Evidence

31. 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.
32. It is clear from the available user evidence that there have been no interruptions to their use prior to the date of the application.
33. None of the users used force or sought permission to use the route and that usage has not been in secrecy.
34. The evidence forms do not support any contention that the users are drawn from a particular section of society or that use is limited to members of a particular area. While it is usual for the evidence to come from people who live in a locality there is nothing to suggest that this is a prerequisite for use in this instance.
35. The statutory test refers to use of over 20 years and in the evidence submitted there are 9 users who have used the path over that period of time. The remaining evidence suggests use continues throughout that time but is for lesser periods or do not fall into the period of use.
36. Neither the legislation nor the applicable case law sets out a minimum level of user that is expected or required to support a claim that a route exists. 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, i.e. "as of right".
37. The frequency of use could be said to be sporadic given that only 1 user uses the route daily, 2 users being once a month and 4 users using the route once a year, therefore it could be argued that this usage was not enough to bring it to a landowner's attention if they were present.
38. The remaining part of the s31 test considers whether the landowner has undertaken any action to rebut the statutory presumption of dedication. For a presumption of dedication under s31 of the Highways Act 1980 ("the 1980 Act") to be raised against a landowner the Court in *R v Redcar and Cleveland* [2010] 2 All ER 613 said that it must be brought home to a landowner that a right is being asserted across his land. This is true even where the owner is absent or cannot be identified. It is how the matter would appear to a reasonable landowner who was present.

39. If the use was such that it would go unnoticed by a reasonable landowner, that if it was used by so few and so sporadic that it would not be apparent the way was being used, then it could be the case that no presumption of dedication would arise.
40. Once a presumption of dedication is raised then the burden lies with the owner to demonstrate by his actions that there was no intention to dedicate. Often this is evidenced by way of notices or obstructions to prevent people accessing or using the path. A number of users have made reference to gates along the alleged route, including 3 users stating that there is a gate at Trent Lodge, with one user stating that there is a bridle gate at the side of the gate to Trent Lodge. Also, two users claim that there is a gate at Home Farm. Whilst there is reference to gates along the alleged route none of the users have specifically stated that the presence of these gates has prevented access along the alleged route and due to the small number of users who have referred to gates it can be argued that there is no evidence of any acts by a landowner to rebut the presumption of dedication.
41. In considering whether a public highway of whatever description exists the evidence also needs to be considered not only under statute but the common law. The burden of proof is reversed, in that it is for the user to prove the owner dedicated the route and the use does not have to be for 20 years. The former can be inferred from the use but as the judge in *Nicholson v Secretary of State* (1996) said “...*the more notorious it is the more readily will dedication be inferred.*”
42. Only 8 users have provided evidence of 20 years uninterrupted usage of the route but when the application is considered under common law 23 members of the public have provided evidence of use of the route, which could be argued that this use is such that it would have been obvious that the owner must, if he was present, have acquiesced and so there was inferred dedication.
43. However, as only two users claim to have used the alleged route on horseback this evidence of use does not wholly support the status of the route being claimed, in that there is little evidence of the route being specifically used by horse riders.
44. The majority of users indicate that the route is predominantly used by walkers and cyclists and a small number having used the route with motorised vehicles. However, the fact that the evidence shows that the route is used by walkers, horse riders and cyclists does lend some weight to the contention that the route has bridle rights over it, as it is being used in a manner, which is consistent with use of a bridleway.
45. The evidence of use specifically relates to the section of the alleged route known as Trent Walk and Home Farm Court.
46. The application submitted by Mr Martin Reay includes the section of the route including Trent Walk, which is referred to by a number of users.
47. The Quarter Session Order dated 1801 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.
48. The consent from the Earl of Talbot shows that there was an intention for there to be a network of public bridleways in place from the direction of Hoo Mill.
49. It would appear that the Earl of Talbot allowed the route from Dog Kennel Gate to Trent Walk as part of the diversion and that people used the route as part of the bridleway network surrounding Ingestre Park. Whilst there is no specific mention of Trent Walk in relation to the diversion, Trent Walk is referred to in the Order as a bridleway and also the Order states that there is a Public Bridle Bridge along Trent Walk, over the River Trent, which provides strong evidence that the section of route, Trent Walk, included in this application does have the status of a public bridleway and

it was part of a wider bridleway network in the area, that would also connect to the proposed new diverted public bridleway.

50. When the user evidence is reviewed in conjunction with the Quarter Session Order it can be argued that the section marked G-H on the map, clearly does have bridle rights over it, as the Quarter Session Order specifically refers to the section of the alleged route, Trent Walk as a bridleway and this was not part of the route stopped up under the Order. Also, when reviewed alongside the evidence of use of the whole of the alleged route, including Home Farm Court there is supporting evidence under common law that the route is used by members of the public, in a way which is consistent with the route having the status of bridleway.

Comments on report

51. Following circulation of the report comments were received from the landowner of Birch Hall Farm, Mr Tavernor. He objects to the proposal to add a public bridleway along the line of the alleged route. He is of the opinion that the 1801 Order is not clear enough to show the specific intention of the Order and it does not clearly identify the exact line of any bridleway. He is of the opinion that the evidence should be beyond all doubt when showing the existence of a route. He also states that when his family farmed a field in Ingestre they would access it via Trent Lane, where there was a gate house (Trent Lodge) with double gates and a lady would open the gate using a wheel in her house. He further states that anyone found using the alleged route would be challenged by landowners or their staff and those users who claim not to have been challenged must not have been seen by landowners.
52. A letter was sent to Mr Tavernor in response to his comments. Officers advised that when applying the relevant legal tests, it is not necessary to show that the evidence proves the existence of a route beyond all doubt, it is only necessary to show that on the balance of probabilities it is more likely than not that the route exists, or it can reasonably be alleged from the evidence that the route exists. The legal tests do not require that the evidence show that the route exists beyond all doubt. In relation to the user evidence, Mr Tavernor's comments have been noted, in particular about the gate house. What is not clear is how long the gate house was manned for and whether this is a practice that has continued in modern times and during the period when the users have provided evidence of use. Although, Mr Tavernor's comments have been noted, officers' recommendation remains unchanged. A copy of Mr Tavernor's comments and officers' response is attached at Appendix G.
53. Comments were also received from the owner of Trent Lodge, Mrs Eccleshall, raising objections to the proposed alleged public bridleway. She states that the user evidence is unreliable and inaccurate and that a gate house situated along Trent Walk has prevented members of the public accessing the route and signs have been erected and taken down consistently advising that the route is private. She is of the opinion that the number of users who have provided evidence of use is very small. She also states that Sandwell Council have confirmed that the 1801 Order is not the original and has possibly been amended and is therefore not accurate. She is of the opinion that the route is an access road only. She further states that there would be safety concerns if the route became a public bridleway as a golf course is being built alongside Trent Walk and there is a risk of injury to the public from stray golf balls. She also states that various people own shooting rights for Alder's Coppice and Poplars Coppice, which run along Trent Walk, with members of the public being at risk of being accidentally peppered with gunshot.
54. A letter was sent to Mrs Eccleshall in response to her comments. Officers advised that in relation to the 1801 Order, the names of the Justices of the Peace are on the

document and the documentation shows it is verified by them and the Earl of Talbot. The document has been verified by Dr Fowkes, a consultant archivist and historical researcher, who never raised any issue with the document not being the original or having been doctored in any way. We also have no record on file of receiving this information from Sandwell Borough Council directly. It is acknowledged the comments provided by Mrs Eccleshall and Mr Tavernor do raise issues over the credibility of the user evidence. In relation to the amount of user evidence, there is no statutory minimum level of user required, as long as enough people have used the way for a sufficient length of time to make it clear to a reasonable landowner that the people are asserting a right. In relation to the safety concerns raised, whilst it is not our intention to belittle any legitimate concerns, issues relating to safety have to be disregarded under the law as it currently stands. A copy of Mrs Eccleshall's comments and officer's response is attached at Appendix H.

55. Following receipt of officer's response letter, further correspondence was received from Mrs Eccleshall, with a copy of a memo that was sent internally at Sandwell Metropolitan Borough Council from the Director of Planning & Transportation to Legal Services. The memo advises that the Council should object to the proposals and questions the validity of the 1801 Order. There is nothing further in the memo that has caused officers to change their recommendation and the issue regarding the validity of the 1801 Order has been addressed as above.
56. The Council also received comments from the owner of 3 Home Farm Court and Heathcroft Paddock raising objections to the proposal. Ms Davies Rowley states that in the periods under consideration, there have been businesses, friends and associates of the relevant landowners using the route to an extent that means trespassers could have gone unnoticed by landowners. She further advises that in 1998, when she was taking riding lessons at Ingestre stables, she was challenged by the landowner, Mr Tavernor. She states there is currently signage and regular challenges of users of the route and there has been ever since she moved to the village in 2002.
57. A letter was sent to Ms Davies Rowley in response to her comments. Officers responded advising that the evidence has to be considered as to whether the landowner has taken any action to rebut the presumption of dedication, that is whether they have taken any action to stop members of the public at large using the alleged route. The evidence also has to be considered from the time the application was made and the relevant twenty-year period prior to this date or any challenge to use of the route. The current position or usage of the route cannot be taken into consideration. Copies of Ms Davies Rowley comments and officers' response is attached at Appendix I.

Burden and Standard of Proof

58. An application for a modification order based upon evidence of use can be made under either s53(3)(b) or (c). Officers consider that the application falls under s53(3)(c)(i) and that this should be considered the relevant section for determination purposes.
59. 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
60. 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.

61. 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”.
62. If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

Summary

63. The application is made under Section 53(2) of the 1981 Act, relying on the user evidence specified in 53(3)(c)(i) of the Act.
64. 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.
65. This requires consideration of whether there has been use of a way by the public, as of right and without interruption, for a period of twenty 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.
66. 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 full period of twenty years. In this case, there does not appear to have been any specific action that constitutes a challenge to members of the public being able to use the route, therefore the years of usage are from 1979 to 1999.
67. In this instance your officers consider that whilst the evidence of use of the way for twenty years, as of right and without interruption is relatively small, there is still significant evidence that the way has been used by a significant number of people over a relatively long time period, and that use is on the balance of probabilities, under common law, enough to make a landowner aware of the use.
68. Whilst there is limited evidence from the users that the way is being predominantly used by horse riders, there is evidence that the route is being used in a way that is compatible with the route having bridle rights over it. When this is reviewed in conjunction with the Quarter Session Order, which refers to the section of the alleged route, Trent Walk as a bridleway, the evidence in totality is supportive that the route in question does have bridle rights over it. No evidence has come to light that the rights alluded to in this Order were ever extinguished and therefore it has legal effect.
69. Therefore, your officers consider that the use is sufficient to satisfy the test when considered on the balance of probabilities.
70. With regard to the second part of the relevant section, whether the route can be said to be reasonably alleged to exist, your officers also consider that this test has been satisfied.

Conclusion

71. In light of the evidence, as set out above, it is your officer’s opinion that the evidence does show that a public right of way, with the status of bridleway, which is not shown on the map and statement subsists.

72. It is the opinion of your officers that the County Council should make a Modification Order to add the public bridleway which is the subject of this application to the Definitive Map for the District of Stafford.

Recommended Option

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

Other options Available

74. To decide to reject the application and not make an Order to add the route to the Definitive Map and Statement of Public Rights of Way.

Legal Implications

75. The legal implications are contained within the report.

Resource and Financial Implications

76. The costs of determining applications are met from existing provisions.
77. 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

78. 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 15 of the 1981 Act. The Secretary of State would appoint an Inspector to consider the matter afresh, including any representations or previously unconsidered evidence.
79. 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.
80. 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.
81. 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

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

J Tradewell

Director for Corporate Services

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Background File: LE624G (d)

INDEX TO APPENDICES

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Appendix F	Copies of correspondence from statutory consultees
Appendix G	Copy of letter from landowner, Mr Tavernor with response to draft report and copy of officers' response.
Appendix H	Copy of correspondence from landowner, Mrs Eccleshall with response to draft report and copy of officers' response.
Appendix I	Copy of correspondence from landowner, Ms Davies with response to draft report and copy of officers response.