

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

Countryside and Rights of Way Panel -

Wildlife and Countryside Act 1981

Application to upgrade Public Footpath 21 Hixon to a Public Bridleway

Report for the Director for Corporate Services

Recommendation

1. That the evidence submitted by the applicant and that discovered by the County Council is sufficient to show that, on a balance of probabilities, public bridle rights exist along the lines of Public Footpath No 21, Hixon.
2. That Public Footpath No 21 Hixon which is subject to the claim is upgraded to a public bridleway on 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 evidence that has been submitted in support of two other applications for the addition of bridleways in the parish of Ingestre, that was submitted by the applicant, Mr Martin Reay. Details of those applications are attached at Appendix A. This report is to consider whether an Order should be made 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) Upgrade Public Footpath No 21 Hixon to Public Bridleway status on the Definitive Map and Statement of Public Rights of Way under the provisions of Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981.
 - (ii) The line of the Public Footpath which is the subject of the application is shown highlighted and marked I – J 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, Mr Martin Reay, with previous applications submitted evidence of a Colwich Inclosure Award dated 1791. A copy of which is attached at Appendix C. The applicant states that the award lists a bridle road to Stafford. The Award also mentions a foot road leading along the bridle road. He also submitted a Quarter Session Order dated 1801. A copy of which is attached at Appendix D.
2. The plan with the Colwich Inclosure Award 1791 clearly shows Trent Walk, which is referred to in the award as “one public bridle road leading from the westwardly end of the said public carriage road therein before set out called the Shirley Wich Road across the said turnpike road into and over in a westerly direction the sixth allotment...to a bridge over the canal and across the said bridge into and over the fifth allotment...to and from an ancient Ford in the River Trent called Ingestre Ford...”.
3. The award goes on to state “...and we hereby order and direct that all the said private carriage roads and also the aforesaid public bridle roads shall from time to time be supported and kept in repair in the same manner and by the same means as the other public roads within the said hamlet of Hixton are by law to be amended and kept in repair”.
4. The award also refers to the bridges on the Stafford road and states “...the public bridle road herein before set out and called the Stafford Bridle Road and we do hereby order and direct that all and every one of the footbridges gates and stiles and other conveniences necessary for the passage an accommodation of persons travelling on foot in over and along the several footways herein before set out shall be erected and set up and at all times hereinafter repaired supported maintained and kept in repair by the persons in whose fence or upon whose land such footbridges gates and stiles and other convenience are necessary”.
5. The text of the Inclosure Award clearly states that the route in question has bridle rights over it.
6. The Quarter Session Order sets out a diversion which stopped up a length of bridleway that passed in front of Ingestre Hall.
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. The route subject to this report continues from Trent Walk and passed the River Trent, connecting to the A51.

Evidence submitted by the Landowners

10. A number of landowners have submitted a relatively large amount of evidence in relation to the other applications that were made for the addition of bridleways, in the parish of Ingestre.

Comments received from statutory consultees

11. No responses have been received from statutory consultees regarding this application and report.

Comments on Evidence

12. Inclosure Acts were designed to enclose the old commons, manorial waste and smaller holdings in order to increase agricultural productivity. The earliest acts date from the early 1600's. The first General Inclosure Act was made in 1801, which was intended to standardise the clauses used in inclosure acts. These standard clauses and procedures were to be referred to or included in local acts. Unless specifically excluded in a local act the provisions of the general acts were to be treated as included.
13. The local Inclosure Act empowered an inclosure commissioner to survey and divide up the land, allotting it to named individuals, including the setting out of highways. After all the procedures were followed and completed the commissioner would issue the final Award and accompanying Award Map. The Inclosure Commissioners had to follow laid down procedures to ensure their actions were legal. If they had not then the Award itself, and its provisions, would not be valid.
14. The Act either laid down the powers of the Inclosure Commissioners in relation to highways, both public and private, or made reference to the general act. They may have been able to create, divert, stop up and list existing routes as well as determining who was liable for their maintenance. In this case, the Act predates the first General Inclosure Award, therefore it predates the standard clauses and procedures that were created by the first General Inclosure Act.
15. The creation of new routes may have depended on the extinguishment of another. If this new way was not properly set out in accordance with the provisions laid down in the Act, the old route may still exist.
16. If a pre-existing route is laid down in an Inclosure Award it is good evidence of its existence, though not of its status unless this is referred to in the Award. If a route is shown on an Award Map and described or referred to within the Award it can provide good supportive evidence of the existence of a way.
17. The text in the Award gives rise to the presumption that the remaining section of the route must also be a public right of way.
18. The Award clearly refers to Trent Walk as a "public bridle road" and refers to its continuation to the "canal" (the Trent and Mersey Canal) and the River Trent. The route subject to this report starts at the point where Trent Walk meets the River Trent and then continues across the Trent and Mersey Canal, connecting with the A51.
19. The fact that the Award clearly sets out that Trent Walk has the status of a public bridleway adds strong weight that the route continuing from Trent Walk with also have the same status, as it is unlikely that a route would connect to another route that did not have the same status.
20. Also, the Award states that all public bridle roads shall be "supported and kept in repair in the same manner" as the other public roads in the hamlet of Hixton.
21. The Award predates the 1801 diversion order by some 10 years as well as the construction of the bridge over the River Trent. At that time, in 1791, the river appears to have been crossed by a ford.

22. This coincides with the Quarter Session Order dated 1801. The consent with the Order 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.
23. What the consent shows is that the Earl clearly 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 onto the Turnpike Road.
24. When the two documents are reviewed together there is a strong argument that the route continuing from Trent Walk and passed the River Trent had the same status as Trent Walk itself as a public bridleway and the route has higher rights over it than a footpath.

Burden and Standard of Proof

25. With regard to the status of the route, the burden is on the applicant to show, on the balance of probabilities, that it is more likely than not, that the Definitive Map and Statement are wrong. The existing classification of the route, as a footpath, must remain unless and until the Panel is of the view that the Definitive Map and Statement are wrong. If the evidence is evenly balanced then the existing classification of the route as a footpath on the Definitive Map and Statement prevails.

Summary

26. The Panel need to be satisfied that, on the balance of probabilities, the evidence that has been discovered shows that a highway shown on the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
27. When considering an Award the wording, powers and context all have to be taken into consideration to determine its evidential value. Any extract should not be evaluated on its own but rather considered with the remainder of the Award and the enabling Act.
28. An Inclosure Award has been determined by the courts to be conclusive evidence in respect of public highways in the absence of later legal events such as Quarter Session Orders. In this case there is no evidence of a legal event having taken place that extinguished or diverted the bridle road connecting with the bridle bridge, that connects to the other side of the River Trent.
29. In light of the evidence provided by the Quarter Session Order and the Inclosure Award it is clear that Trent Walk has the status of a public bridleway and there is strong evidence that the alleged route, which connects and continues on from Trent Walk at the time of the Inclosure Award and Quarter Session Order had the same status and therefore as no evidence has to light to confirm that any rights have been extinguished over this route, the evidence is supportive of the alleged route having rights over it higher than a footpath.

Conclusion

30. The question is not whether PF21 is a public highway but rather what is the nature of the public rights over the route.

31. The evidence to overturn the current designation on the map must satisfy the civil legal test, that of the balance of probabilities.
32. In light of the evidence, as set out above, it is the opinion of your officers that based upon the balance of probabilities the route which is the subject of the application is more likely than not a public bridleway.
33. It is the opinion of your officers that the County Council should make a Modification Order to upgrade the route to bridleway status on the Definitive Map and Statement of Public Rights of Way.

Recommended Option

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

Other options Available

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

Legal Implications

36. The legal implications are contained within the report.

Resource and Financial Implications

37. The costs of determining applications are met from existing provisions.
38. 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

39. 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.
40. 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.
41. 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.

42. 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

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

J Tradewell

Director for Corporate Services

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Background File: LE624G (e)

INDEX TO APPENDICES

| | |
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| Appendix A | Copy of application and associated submitted letters and documents |
| Appendix B | Plan of claimed route |
| Appendix C | Copy of Colwich Inclosure Award 1791 |
| Appendix D | Copy of Quarter Session Order dated 1801 |