

Local Members' Interest	
Cllr John Francis	Stafford - Trent Valley

Countryside and Rights of Way Panel

Wildlife and Countryside Act 1981

Alleged Public Footpath from Public Bridleway 25 to Public Bridleway 13, Colwich Parish

Report of the Director for Corporate Services

Recommendation

1. That the evidence submitted by the Applicant and that discovered by the County Council is **not** sufficient to conclude that the alleged Public Footpath which is not shown on the Definitive Map and Statement subsists along the route marked A to B on the map attached at Appendix B and so should **not** be added to the Definitive Map and Statement of Public Rights of Way as such.

That an Order should **not** be made to add the alleged route shown marked A to B on the map attached at Appendix B to the Definitive Map and Statement of Public Rights of Way.

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 the Applicant for an Order to modify the Definitive Map and Statement for the District of Colwich. The effect of such an Order, should the application be successful, would:
 - (i) Add an alleged Public Footpath between points A to B on the plan at Appendix B 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.
3. To decide, having regard to and having considered the Application and all the available evidence, and after applying the relevant legal tests, whether to accept or reject the application.

Evidence Submitted by the Applicant

4. The Applicant submitted two deposited railway plans for the Stafford and Rugby Railway dated 1840, together with an accompanying extract from the Branch Book of Reference. These can be found at Appendix C.
5. The Applicant submitted Ordnance Survey maps dated 1817, 1894, 1902 and 1924. These can be found at Appendix D.
6. The Applicant has submitted a further copy of the Ordnance Survey map of 1817 with the route highlighted in red. This can be found at Appendix E.
7. The Applicant has submitted a traced plan accompanying the Tithes Award 1845, made in the year 1839 by JD Lofthouse. This is a Stafford Record Office document ref: D1274/2. This can be found at Appendix F.
8. The Applicant has submitted a copy of the Online map which shows the current numbered paths located within the area. This can be found at Appendix G.
9. The Applicant has submitted typed notes from the Staffordshire Record Office. These can be found at Appendix H.

Evidence Discovered by the County Council

10. Officers have discovered an 1820s map of the Beau Desert Estate. This plan was copied by JL Gibbons of Walsall in 1863. This can be found at Appendix I

Evidence Submitted by the Landowner

11. One Landowner was identified by the Applicant being Staffordshire County Council.
12. A further landowner, Mr P Till was later identified and he has submitted evidence through Birketts Solicitors. This can be found at Appendix J.

Comments Received from Statutory Consultees

13. The Ramblers Association supported the Application stating - "regarding a proposed upgrade for a footpath between Bridleway 25 and 13 we support this amendment." This was received from Mr Bell on behalf of the said Association. This can be found at Appendix K
14. The Byways and Bridleways trust also supported the application stating they "support Mr Reay's Application". This was signed by Mr Rowley on behalf of the Trust and can be found at Appendix L

Comments on Evidence

15. The evidence that the Applicant supplied, and which is referred to in the Application are two deposited railway plans.
16. The railway plans can be read in conjunction with the Book of Reference which provides the status and maintenance of the ways and the ownership of land over which the alleged route crosses. In relation to the orientation in both of the railway plans, the Public Highway runs from East to West and a short stretch of road leads off the Public Highway at right angles in a southerly direction. (The actual orientation of the public highway (known as the A513) is North-Westerly, South-Easterly with the short stretch of road leading in a South-Westerly

direction). For ease of understanding however, your Officers are using the orientation as per the Railway plans).

17. A short stretch of road runs concurrently with Bridleway 25 and is categorised as a Public Road within the extract from the Book of Reference. Both the Highway and the Public Road were reported to be overseen at the time by the Surveyor of Highways for Shugborough. At the end of the short stretch of Public Road the alleged route commences in a southerly direction.
18. The footpath on the larger scale railway plan has been labelled "Common Lane and Footway to Brockton". The line of the footpath shown on the railway plan only shows the commencement of the claimed right of way from where it leaves Bridleway 25. The route identified however is shown to follow a southerly direction relatively close to, and parallel with the length of a large pool and the northerly edge of a second pool immediately to its East. There is no further evidence provided by this document.
19. The second Stafford and Rugby Railway plan is a smaller scale copy which shows the route labelled on the map as "Footway to Brocton". Once again however the path is limited to an illustration of the commencement of the route and nothing further assists with understanding the direction or length of the claimed right of way.
20. The Applicant also provided a copy of a two-inch Ordnance Survey map dated 1817. This map although difficult to read could appear to show a visible feature on the ground leading off what is now known as the A513, in a southerly direction (in accordance with the plan orientation) narrowing down to become a feature close to and parallel with what is understood to be large pools (identified in the Railway plan), which are immediately to its East. The feature runs to the East of Beggars Hill and therefore runs between the Hill and the pools. At the southerly end of the southerly pool, the visible feature on the map turns almost at right angles Westerly and then South Westerly where the Applicant suggests the claimed route meets up with what is now known as Bridleway 13. This plan is the only one which appears to show the claimed route. It does not however confirm whether this is a public or private way.
21. The Applicant has supplied further evidence which includes an 1894 Ordnance Survey map although this does not appear to show the alleged route, although there are visible features at the start of the route for about 20 metres. He has also supplied Ordnance Survey plans of 1902 and 1924 which do not show any suggestion of features for the claimed footpaths on the plans.
22. The Applicant has also supplied a tracing of the Tithe Map which shows the field numbers at the time of the survey which would have corresponded with a book of reference. However, no narrative from the Award has been supplied and the plan itself does not appear to show the claimed route.
23. Furthermore, the Applicant has submitted a copy of the route highlighted in red on what is believed to be an enlarged copy of the Ordnance Survey map of 1817. This however does not appear to add any evidence to the claim, except to assist your Officers with identification of the alleged route.

24. The Applicant has submitted a copy of the Online map with a pencil mark along the claimed route. This does not appear to hold any evidence but again assists your Officers with the identification of the alleged route.
25. Turning to the Beau Desert plan of the early 1820's, this shows (again in relation to the orientation of the plan) a visible feature on the ground running in a Southerly direction, along the Eastern side of Beggar's Hill. This plan does not show the actual pools but clumps of trees. The claimed path almost turns at right angles in a North-Westerly direction at roughly the same point as that shown in the Ordnance Survey Map but it does not appear to link with Bridleway 13. There is no evidence as to whether this is a public or private route.
26. The submission which was received from the Landowner contends (within the Executive Summary), that the whole route needs to be reasonably alleged to exist for an Order to be made and considers that there is insufficient evidence for this claim. Your Officers have studied the evidence and also consider that there is insufficient evidence to be able to reasonably allege that the whole of the claimed route exists.
27. With regard to point 3 of the Landowner's response, the evidence provided by the Applicant was limited and furthermore, the Ramblers Association and the Byways and Bridleways Trust have not provided any supporting evidence.
28. The Landowner contends that the evidence provided by the Ordnance Survey map of 1817 to be of poor quality and considers that the route cannot be discerned from the plan that has been provided.
29. The Beau Desert Estate Map does appear to provide evidence of a physical feature on the ground initially leading South-Westerly then turning at right angles and heading in a North-Westerly direction. Only part of the route appears to follow the line of the alleged route. However the Estate Map was prepared for private purposes and provides no evidence of whether it had a public or private status. It also can at best, only show part of the route. Your Officers consider that the weight of evidence of an Estate map together with the fact that the status of any visible features (of which there is only part of the claimed route) is not known, does make the evidence of very limited value.
30. The Landowner raised concerns with regard to the origins of one of the Railway plans and the fact that only an extract from the Book of Reference had been included. On the larger scale plan, the Landowner contends that there is not a public right of way beyond parcel 27. Your Officers consider that the stretch of path that has been identified in the plan is very limited and does not join Bridleway 13. Furthermore, railway plans are only considered to be of limited supporting evidence by the courts.
31. The Landowner has provided further Ordnance Survey maps for your Officer's consideration which they contend do not show any features on the ground that could suggest the claimed route. These can be found with the Landowner's Submission at Appendix J
32. The Landowner has also submitted a Bartholomew map for the period 1897 to 1907 for your Officer's consideration. The Landowner contends that any route

would have been shown had it been available and for public use. This can be found at Appendix J.

33. Turning now to the probity of the evidence, in relation to the railway plans, major works such as the construction of canals and railways were normally authorised by private Acts of Parliament. The reason for this was that in the 18th and 19th Centuries there were no powers to acquire land compulsorily. Consequently, where there was a canal or railway planned the intended route was surveyed. From the surveys, plans and books of reference were compiled which showed who owned the land crossed by the proposed canal or railway. This then formed part of an Act of Parliament.
34. The plan only recorded the details of the land crossed by the intended construction. As a result, only parts of the affected land were shown as is the case here.
35. These Acts and plans should not be considered to be conclusive evidence but looked at and evaluated alongside other historical evidence. They should be regarded as good, or persuasive, evidence to support the alleged existence of a public right of way.
36. Ordnance Survey maps date back to the early 1800's and their purpose is to show physical features on the ground. In so doing they included all manner of ways from tracks leading only to remote properties, footpaths crossing fields, as well as the main highway. They do not distinguish between public and private rights of way and from 1888 the maps carried a disclaimer that the depiction of a way on a map did not mean it was public.
37. The evidential value of Ordnance Survey maps has been considered by the courts to be limited solely to being evidence of whether there was a visible feature on the ground at the time of the survey.
38. On their own Tithe maps and awards are not evidence as to the public nature of a particular route but may add to the supporting evidence. It is not on its own conclusive proof. The Tithe map in this situation does not add any evidence to support the claimed route.
39. Estate maps were maps drawn up for the owners of private estates for their own use. They show physical evidence of a route but need to be approached with some caution as they were drawn up with a specific purpose for their owner. Some estate plans may distinguish between public and private ways, but are of limited value as evidence.
40. The Bartholomew Maps are usually regarded to be of limited evidential value, but were favourites with tourists and cyclists who preferred the half inch to the mile scale. They were produced from the Ordnance Survey's 1" to the Mile maps. The copy provided by the Landowner was published between 1897 and 1907. This therefore is of limited additional value to the Ordnance Survey maps.

Burden and Standard of Proof

41. Section 53(2) of the Wildlife and Countryside Act 1981 requires the County Council to make such modifications to its Definitive Map and Statement as appear to it be requisite in consequence of certain 'events'. In relation to the part

of the route shown A to B the applicable section of the Wildlife and Countryside Act 1981 is 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. Some evaluation of the evidence and a judgement on that evidence must be made, before either question can be answered.
43. For the first to be satisfied, it will be necessary to show that on a balance of probabilities the right of way does exist.
44. 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 "subsists".
45. If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

Summary

46. The Application is made under Section 53(2) of the 1981 Act, relying on the occurrence of the event specified in 53(3)(c)(i) of the Act.
47. For the purposes of this application there are two relevant "events" which must occur before the Definitive Map and Statement can be modified.
48. With regard to the existence of a claimed footpath between Bridleway 13 and Bridleway 25, it must be decided either on the balance of probabilities that a footpath subsists or alternatively can be reasonably alleged to subsist.
49. If either part of the test is satisfied, then the Definitive Map and Statement can be modified.
50. The panel must consider all of the available evidence and decide whether or not the evidence submitted and discovered supports the view that the routes have public footpath rights over them. A decision must be based on a consideration of all the available evidence. Matters relating to the desirability and suitability of having a public footpath are not part of the statutory criteria against which a decision can be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981.

Conclusion

51. Your Officers have considered the evidence and it is your Officers opinion that the evidence fails to show that a public right of way, with the status of footpath, which is not shown on the Definitive Map and Statement is reasonably alleged to subsist.

52. It is the opinion of your Officers that the County Council should **not** make a Modification Order for a footpath between points A and B as shown on the map at Appendix B on the Definitive Map and Statement of Public Rights of Way.

Recommended Option

53. To reject the Application based upon the reasons contained in the report and outlined above.

Other options Available

54. To decide to accept the Application to add the claimed way to the Definitive Map and Statement.

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 Wildlife and Countryside Act 1981. 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 not confirm the Order; however there is always a risk that an Inspector may decide that the County Council should have made the Order. If the Secretary of State disregards the Council's decision and considers that an Order should be made the Order 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

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