

Local Members' Interest	
Cllr P Northcott	Newcastle- Newcastle Rural

Countryside and Rights of Way Panel -

Wildlife and Countryside Act 1981

Application for the addition of a Public Bridleway along Glass House Lane from Public Footpath 56 by the road at Chipnall Mill to Public Footpath 71 by the road at Glass Houses, Loggerheads

Report of the Director for Corporate Services

Recommendation

1. That the evidence submitted by the applicant and that discovered by the County Council is sufficient to reasonably allege that the alleged bridleway along Glass House Lane from Public Footpath 56 by the road at Chipnall Mill to Public Footpath 71 by the road at Glass Houses, Loggerheads subsists.
2. That an Order under Section 53 (3) (c) (i) 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 Newcastle 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 Loggerheads. The effect of such an Order, should the application be successful, would:
 - (i) add an alleged Public Bridleway along Glass House Lane from Public Footpath 56 by the road at Chipnall Mill to Public Footpath 71 by the road at Glass Houses, Loggerheads to the Definitive Map and Statement 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 A – B 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 has submitted in support of his claim evidence from the 1910 Finance Act, Deposited Railway Plan from 1845 and Deposited Railway Plan Route Map from 1845, Drayton in Hales Tithe Map, 1932 Rights of Way Act Deposit, Wright & Charrington Motoring Cycling & Touring Map of the early 1900's and Ordnance Survey maps dated 1817 and 1834.
2. Mr Reay has provided a tracing of the Drayton in Hales Tithe Map. There is no date on the Tithe Award Map. There is no apportionment with the tracing of the map. A copy of the tracing is attached at Appendix C.
3. The map shows a route numbered 298 starting from Chipnall Mill, which continues vertically in a northerly direction. The route then becomes route 303. Route 298 is described as James Hudson Road and route 303 is described as Rev. Buchanon Road.
4. It is not clear what route 303 connects to as it appears to become two dotted lines running parallel to each other and running through plot 289. The route is separate to adjacent landholdings. There is no annotation along the route to indicate the status of the route and as there is no Award or apportionment with the tracing there is nothing to indicate the status of the route or who if anyone was responsible for the route.
5. Mr Reay alleges that the claimed route is shown as 298, James Hudson Road and 303 Rev. Buchanon Road. The route shown on the Tithe Map appears to proceed in a more northerly direction than the alleged route, which takes a more north easterly direction. However, it appears to apply to the alleged route as the route connects at Chipnall Mill in the south and continues in a northerly direction in a similar manner to the alleged route.
6. In relation to the 1910 Finance Act material, only maps of the area have been provided, there are no field books with the material. Two maps have been provided, one map is taken from a map of Staffordshire and the other is taken from a map of Shropshire, as the route in question borders the county of Shropshire. Neither maps are dated.
7. Mr Reay alleges that the map of Staffordshire shows part of the claimed route between Glass Houses and Chipnall Mill separate from taxable land holdings. He claims that the remainder of the route runs through plot 26. Copies of the documentation are attached at Appendix D.
8. Both maps show a route running from Chipnall Mill running in a north easterly direction, running along the same route as the alleged way. At Chipnall Mill the route starts as two dotted lines, there is no depiction of what the route is. The route then connects with what appears to be a main carriageway, which runs separate to adjacent landholdings. The Staffordshire map shows the route running through Plot 26 but does not show the length of the alleged route in its entirety. The Shropshire map depicts the same route running through plot 570 and connecting with Glass Houses in the same manner as the alleged route does on current mapping.
9. There is no annotation on either of the maps depicting the status of the routes and as there are no field book entries there is nothing to indicate the nature of the route or whether any tax deductions were made in relation to the route.

10. Mr Reay has provided a Deposited Railway Plan Route Map Q/Rum/20ba dated 1845 and tracings of a Deposited Railway Plan of the Trent Valley Continuation and Holyhead Junction Railway Q/Rum/198, also dated 1845. Copies are attached at Appendix E.
11. The Map appears to show a route running along the alleged way. There is nothing on the map to indicate the status of the route. The claimed route is east of the Liverpool and Birmingham Junction Canal.
12. In relation to the tracing of the Deposited Railway Plan, Mr Reay alleges the claimed route is shown running through number 4 and 5, with 4 being a highway and 5 being a public bridle road.
13. On review of the tracing it appears that the route depicted as number 4 is likely to be the alleged route as it starts at Chipnall Mill and runs in a northerly direction, as does the alleged route. Route 4 is described as: "Drayton in Hales- Highway- Surveyor of Highways". This would suggest that this route is a public highway.
14. In relation to 5 this is referred to as: "Plantation, Public Bridle Road & Footpath- Surveyor of Highways & Thomas Hudson".
15. There is no Book of Reference with the tracing and therefore there is no evidence to confirm the type of land being affected.
16. Both the 1817 and 1834 Ordnance Survey Maps show the physical existence of a route along the alleged way, connecting from Chipnall Mill to Glass Houses. The 1817 map is not as clear as the 1834 map, but the route can still be made out. There is no key with either map and there is no indication as to the status of the route. Copies are attached at Appendix F.
17. In relation to the 1932 Rights of Way Act Register Mr Reay alleges that part of the claimed route is shown as 2a- Hales Estate Road. In his opinion the route must have carried higher rights than a footpath. No original documents have been provided, only a map of the area with a key. Copies are attached at Appendix G.
18. Part of the alleged route has been marked as 2a and is coloured in orange. Mr Reay has provided a key stating that boundaries of the Hales Estate are marked in red, footpaths are marked in yellow and roads are marked in orange, therefore if the key is accurate this would indicate that the route is a road. Route 2a connects with what is now Public Footpath Number 71 at Glass Houses. At the other end of the route the way connects with another route, which looking at the key appears to be a boundary of the Hales Estate, as it is coloured in red. Route 2a does not cover the whole of the alleged route, as it does not start at Chipnall Mill, as the alleged route does. Route 2a appears to stop where the Hydraulic Ram is depicted on the current mapping.
19. Mr Reay is of the opinion that the route must have carried higher rights than a footpath. There is no indication from the 1932 Rights of Way Act Register as to whether route 2a is public or private.
20. The Wright and Charrington Motoring Cycling and Touring map shows the physical existence of a route along the way. There is no indication as to the status of the route. Copies are attached at Appendix H.

Evidence submitted by the Landowners

21. The landowner, Mr Hall, has submitted a landowner questionnaire and German Chartered Surveyors have also provided a letter as representatives of the Hales Estate, copies of which are attached at Appendix I.

22. Mr Hall does not consider the route to be public. He has never given anyone permission to use the route and he has never seen anyone using the route.

Comments received from statutory consultees

23. The Byways and Bridleways Trust have replied stating that they support the application but have not submitted any evidence.
24. Loggerheads Parish Council responded with a letter dated 10th July 2000 advising that they had no strong objection to the application but would query access to the proposed bridleway as the only option would appear to be from the footpath, which in their opinion would limit the full use of a bridleway.

Comments on Evidence

25. The sole purpose of the tithe documentation was to identify land subject to paying the tithe. The tracings appear to show the alleged route as a highway as it is adjacent to separate landholdings. A highway crossing land would reduce its productivity although this would be true whether the route had public or private status. As confirmed in the case of *Merstham Manor Ltd v Coulsdon UDC* [1937] the important point from the perspective of the tithe commissioner was that the land would be untitheable and not the status of the way.
26. As the route is separate from adjacent landholdings it is more likely to have had higher rights over it than a footpath. There is no apportionment with the documentation and therefore there is no evidence as to who the owner of the route was or whether a tithe was apportioned to the route. In addition, there is no key with the map and therefore there is nothing to indicate the status of the route or the nature of the rights over the route.
27. The tithe documentation on its own does not provide evidence as to the public nature of the alleged route. It could be argued that as the route is separate from the landholdings it is likely to hold the status of at least a bridleway if not having higher rights, but there is no evidence as to what the route's status was at the time the map was drawn up.
28. Where a canal or railway was planned the intended route was surveyed. From the surveys and plans and books of reference were compiled which showed who owned the land crossed by the proposed canal or railway. The book of reference often lists who was responsible for the maintenance of a route, the status and the nature of the rights over it. A copy of the book of reference for the 1845 plan has not been provided, but information is recorded on the tracing, which shows that it was the Surveyor of Highways who was responsible for the route in question. This would indicate that the way was public, as they would not want to take on unwanted maintenance responsibilities for any potential bridges or tunnels that would be needed along the alleged route.
29. On review of the tracings, it appears that route 4 becomes route 26, although it could be argued that they are two separate routes. Route 4 runs from Chipnall Mill to the south and runs in a northerly direction.
30. In relation to plot 5 it is recorded as "Plantation, Public Bridle Road & Footpath". Although, it appears that the alleged route follows the line of the route numbered 4, this route does run adjacent to number 5 and in light of the public nature of 5 it is likely that both routes have public rights over them, although this is not definitive.

31. The documentation supports the existence of a public right of way that is likely to have the status higher than a footpath.
32. The 1910 Finance Act Plan of Staffordshire shows part of the alleged route and the Plan for Shropshire shows the whole of the alleged route as separate from adjacent landholdings.
33. A landowner could claim tax relief for public rights of way and these deductions would be shown in the Field Books. Unfortunately, no copies of the Field Books have been provided and therefore there is no evidence as to whether any deductions were made for public rights of way in relation to the map. However, the fact that the route is recorded on the map provides evidence of the existence of a way.
34. The fact that the route is shown separate from the adjacent land, would suggest that the route was a public highway. The separation could mean that the adjacent owners believed that the route was a public highway and thus need not be shown within their property as it would have been exempt from taxation. This would have been unlikely to occur where the route in question only had the status of footpath or bridleway. The latter would have more likely to have been dealt with by means of a deduction for user in the field book.
35. It could also be said that the route is shown excluded because it could be a private right of way.
36. The Finance Act maps are good evidence that a public highway existed, however there is no evidence to support that the way was public or had bridleway status.
37. Ordnance Survey Maps date back to the early 1800's and their purpose is to show physical features on, and the contours of the ground. They do not distinguish between public and private rights of way as can be seen with both the 1817 and 1834 maps, which only show the physical existence of the route and not the nature of the route.
38. These maps do not have any evidential value but they do support alongside the Finance Act material, Tithe Map and Deposited Railway Plan that there was a physical feature on the ground.
39. This can also be said for the Wright & Charrington Motoring Cycling and Touring Map. The map shows the physical existence of the route but not whether it is a public right of way. The Planning Inspectorate has confirmed that *"What is looked for is a general picture of whether the route seemed important enough to get into these documents fairly regularly. A one-off appearance could be an error... consistent depiction over a number of years is a positive indication"*. This approach has been approved by the courts, as seen in *Fortune v Wiltshire Council*.
40. In relation to the 1932 Rights of Way Act Deposit this shows part of the alleged route marked as 2a and coloured in orange. No original documents have been provided but from the key to the plan that has been provided it would appear that route 2a is a road, which connects to the boundary of the Hales Estate.
41. It can be confirmed that the route is not a footpath as footpaths are coloured yellow on the map. It is unclear from the documentation however, whether the road is a public or private road or exactly what the nature of the rights were over the route. It could be argued that because the route is a road and has higher status than a footpath, it will have at least the status of a bridleway, although this is not absolute.

Comments on Draft Report

42. Following circulation of the report comments were received from Mr Alexander Hall of the Hales Estate dated 16 April 2021 advising that they agreed with the original recommendation to reject the application. A copy is attached at Appendix J.
43. The applicant also provided further comments and evidence following circulation of the report. It has come to light that the application route is a public highway, shown on the National Street Gazetteer and on the Council's statutory section 36 Highways Act list of roads and streets maintainable at public expense. The alleged route is named Glass House Lane and is unclassified road G2065.
44. The applicant states that Staffordshire County Council, within its Statutory Rights of Way Improvement Plan, state that G classified roads enjoy public user rights for all classes of user. The applicant has submitted further documents including a copy of Staffordshire County Council's List of Streets for the area in question, Rights of Way Improvement Plan for Staffordshire, National Street Gazetteer, a current OS map of the area and a further map from the 1910 Finance Act Plan, showing the application route continuing into Shropshire. Copy of response and documents is attached at Appendix K.
45. Officers have examined this further submitted material. On review of the National Street Gazetteer the alleged route runs along the same line as a route described as: "Glass House Lane, Glass Houses, Newcastle under Lyme". The Staffordshire County Council List of Streets does refer to Glass House Lane as the unclassified road G2065 and the Rights of Way Improvement Plan for Staffordshire does confirm that "G" class roads are available to walkers, cyclists, horse riders and motorised users.
46. In light of the further documentation submitted it would appear that the alleged route is public. Although the initial evidence submitted with the application did provide evidence that the right of way had rights over it higher than a footpath, the documentation did not provide any conclusive evidence that the route had public status. Due to the fact that the alleged route is maintainable at public expense and the historical evidence supports the route having status higher than a footpath it can be reasonably alleged that the route is a public bridleway and therefore the officer's recommendation is to amend the original decision and to accept the application.
47. Following circulation of the amended report in response to the further documents provided by the applicant, comments were received from Michelmores LLP on behalf of the landowner, Mr Hall of Hales Estate. They object to the application. Copies of the correspondence are attached at Appendix L. They contend that the applicant has not provided sufficient evidence to show that the alleged route subsists or can be reasonably alleged to subsist. A copy of officer's response to the objections is also attached at Appendix L.
48. Michelmores LLP state the applicant has not provided any evidence of use of the alleged route and they have failed to show dedication by the landowner of the route as a public right of way or acceptance or use of the route. They further state that the landowner has never given permission for members of the public to use the route. The application is submitted under s.53(3)(c)(i) of the Wildlife and Countryside Act 1981 and under this section an application can be submitted either on historical or user evidence or a combination of both. The applicant has submitted the application based on historical/documentary evidence and therefore they do not need to show evidence of use of the route. The applicant is arguing that the historical/documentary evidence shows the existence of a public right of way along the alleged line with the status of bridleway and therefore should be included on the Definitive Map and Statement of Public Rights of Way.
49. They are also of the opinion that the historical evidence submitted by the applicant is insufficient to meet the threshold either when considered separately or cumulatively as a

whole. They have taken each piece of historical evidence submitted by the applicant and provided comments as to why they are of the opinion that each piece of evidence does not show a public right of way along the line of the alleged route with the status of a public bridleway. A copy of their comments and officers' response to those comments are detailed in Appendix L.

50. They contend that the further evidence submitted by the applicant does not carry enough evidential weight to show that the alleged route is a public right of way with the status of a public bridleway. They state that the List of Streets is not a definitive record of public rights of way. They further state that no public maintenance work has been carried out to the route and no confirmation has been provided as to when the route was recorded as maintainable at public expense. Officers acknowledge that the List of Streets is not a definitive record of public rights of way. In relation to the other points they do not assist in showing whether the route is a public right of way or the nature of any rights over the alleged route.
51. It is Officers opinion that the further evidence submitted by the applicant, when reviewed alongside the original evidence shows that overall it can be reasonably alleged that the route is a public right of way with the status of bridleway. The Deposited Railway Plan provides supportive evidence of the route being public and the 1910 Finance Act material and Drayton in the Hales Tithe Map are supportive of the route having higher rights over it. Therefore, even though each piece of evidence on their own does not conclusively show that the alleged route is public and has the status of a public bridleway when each piece of evidence is reviewed cumulatively it can be reasonably alleged the route subsists as a public right of way with the status of public bridleway.

Burden and Standard of Proof

52. 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.
53. 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.
54. 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.
55. 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".
56. If the conclusion is that either test is satisfied then the Definitive Map and Statement should be modified.

Summary

57. All the documentation is supportive of the route physically existing. Whilst the Finance Act and Tithe Map material are helpful, it does not hold as much weight as a legal

order such as a Quarter Session or Inclosure Award. Therefore, the evidence needs to be looked at as a whole.

- 58.** The Drayton Tithe Map on its own does not provide evidence as to the public nature of the route but as the route is separate from adjacent landholdings it does add to supporting evidence, along with the 1910 Finance Act material that the status of the route is likely to have been greater than a footpath but it does not provide any conclusive evidence that the route had bridleway status. The fact that the way is shown separate could signify that the route was private. As stated in the case of *Maltbridge Island Management Co v Secretary of State for the Environment* [1998], this “type of evidence may be supportive of the existence of a public right of way but the weight to be given to such documents is a matter for the tribunal of fact, in this case the Panel. Such evidence is not on its own conclusive proof”.
- 59.** Similarly, with the Deposited Railway Plan this shows the alleged route as separate from adjacent landholdings and as the route is recorded as being under the responsibility of the Surveyor of Highways this is supportive that the route is a public highway and that it is likely the route’s status was higher than a footpath but again there is no conclusive evidence to show that the route had bridleway status. The railway plan is the only document to suggest that the way is public and even this is not definitive.
- 60.** In the case of *Fortune v Wilson* it was concluded that where routes are shown excluded from adjacent land there is a good possibility that the route was considered to have rights higher than a footpath or bridleway and that it was a public highway. Therefore, it can be strongly argued that the alleged route had the reputation of having public status but the nature of the rights over the route is not clear. As there were no field book entries accompanying the map it has not been possible to determine if and whether any deductions were made in relation to the alleged route or the status of the route.
- 61.** The Finance Act map is an Ordnance Survey map and it was used to draw on plot numbers, in a similar way to the tithe map. The route would have been used to orientate the plots of land. The map merely shows the physical existence of the route. The fact that the route is shown as being separate could be due to two or three landowners having passage over the land, again highlighting that this could be a private route.
- 62.** The Ordnance Survey Maps and Wright and Charrington Motoring Cycling and Touring Map provide evidence of the physical existence of the route but on their own they are limited in value as they do not record the status of the route. Due to the early dates of the Ordnance Survey Maps they would only show major carriageways and would not show footpaths. Even though the route is shown to physically exist, the route could be a private way.
- 63.** The 1932 Rights of Way Act Deposit is supportive of the alleged route having higher rights than a footpath as it is recorded as being a road. However, there is nothing to confirm whether it was a public or private road and therefore it cannot be said with any certainty that the route had the status of a public bridleway.
- 64.** Overall, from the documentation originally submitted with the application it is supportive that the alleged route existed and it was likely to be a highway and whilst there is limited evidence that it was public, there is no conclusive evidence that the way has ever had public bridleway status. However, when reviewed with the further evidence submitted from the applicant there does appear to be evidence that the alleged route is a public right of way that can be said to have bridle rights over it.

Conclusion

65. The application is to be considered under s53(3)(c)(i) as mentioned above, and so the question of whether the application should succeed needs to be evaluated against both tests in that section.
66. Whilst there is evidence from the Drayton Tithe Map and 1910 Finance Act material that the route existed and was a carriageway there is no conclusive evidence as to whether the route was public or private and whilst it can be shown that the way's status was greater than a footpath, there is no clear evidence that the way has bridleway status.
67. Therefore, it is your officer's opinion that the application has not passed the test on the balance of probabilities.
68. When the lesser test is considered, that of reasonable allegation, it is your officer's opinion that in considering the further evidence provided by the applicant this test is satisfied. This further evidence shows that the route is an unclassified road maintainable at public expense and as such this route is available to walkers, cyclists, horse riders and motorised users. When this is reviewed in conjunction with the historical evidence which shows the existence of the way and the Railway documentation that is supportive of public rights and that it is a carriageway separate from adjacent landholdings, it can be reasonably alleged that the route is a public right of way with bridle rights over it.
69. It is your officer's opinion that the County Council should make a Modification Order to mark the route as Public Bridleway status on the Definitive Map and Statement of Public Rights of Way.

Recommended Option

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

Other options Available

71. To decide to reject the application to modify the Definitive Map and Statement for the District of Newcastle.

Legal Implications

72. The legal implications are contained within the report.

Resource and Financial Implications

73. The costs of determining applications are met from existing provisions.
74. 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

75. 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.
76. 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.
77. Should the Council decide not to make an Order the applicants may appeal that decision under Schedule 15 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.
78. 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

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

J Tradewell

Director of Corporate Services

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Background File: LK601G

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