

Local Members' Interest	
John Francis	South East Stafford

## Countryside and Rights of Way Panel

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### Wildlife and Countryside Act 1981

#### Application for an Alleged Public Footpath from PF11 to Drointon Lane in Stowe, Stowe-by-Chartley 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 show that the alleged Public Footpath which is not shown on the Definitive Map and Statement either subsists or can be reasonably alleged to subsist along the route marked A to B on the plan attached at Appendix B.
2. That an Order should **not** be made to add the alleged route to the Definitive Map and Statement of Public Rights of Way for the Parish of Stowe-by-Chartley.

#### 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 a modification Order to modify the Definitive Map and Statement for the District of Stowe. The effect of such an Order, should the application be successful, would:
  - (i) Add an alleged footpath marked A to 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;
  - (ii) The lines of the claimed footpath which are the subject of the application are shown highlighted and marked A to B on the plan attached at 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**

4. An application has been made for the County Council to make an Order to modify the Definitive Map and Statement of Public Rights of Way by adding a footpath leading off PF11 Stowe by Chartley and across fields in a northerly direction emerging at the Drointon Lane in Stowe.
5. Mr Reay has submitted a traced copy of the Stowe Inclosure Award map dated 1791 as part of his evidence. There are no physical features showing a possible footpath on the tracing.
6. The Applicant has submitted an extract taken from the Inclosure Award 1791 which states “*a schedule of the ancient enclosed lands and also the allotments in Hixton in the Parishes of Stow and Colwich shewing the Parishes and tithings they lie in*”. The narratives continue “*Stow Church Road – one other public footway from Hixton towards Stow Church leading from a stile in an ancient enclosure of the said Thomas Clifford called New Piece in a northwardly direction over the westwardly end of the first allotment to the said Thomas Clifton in Hixton in the Parish of Colwich into and over in the said northwardly direction the eleventh allotment to the said Robert Earl Ferrers in Hixton in the Parish of Stow to a stile in an ancient inclosure of the said Robert Earl Ferrers called the Hook*”.
7. The traced copy of the Stowe Inclosure Award together with the field numbers and their associated field names and narrative can be found at Appendix C.
8. The Applicant supplied a traced copy of the Tithe map of 1850. The tracing included a note advising “*map or plan referred to in the Apportionment of the Rent Charge in lieu of tithes in the Parish of Stow in the County of Stafford 1850*”.
9. The tracing shows a physical feature depicted as a footpath commencing at the southerly edge of a field numbered 1914 and continuing in a northerly direction across field numbered 1922 at which point the claimed footpath joins a physical feature suggesting a track. The claimed footpath/track continues northerly along unmarked land and ends at the northerly part of field numbered 1940. At this point the physical feature continues northwards and ends on the Drointon Lane. The field numbers are identified with field names in an attached document. The copy of the Tithe map and field numbers and names can be found at Appendix D
10. An Estate Map of land in Colwich and Stowe from the 19<sup>th</sup> Century was provided by the Applicant which appears to be similar to the Tithe map. This is attached at Appendix E.
11. The Applicant has submitted a note with a coloured key highlighting the names of noteworthy fields identified in the Tithe and Inclosure maps, together with a plan

of the route showing his interpretation of the claimed route. This is attached at Appendix F.

12. The Applicant has submitted a coloured key highlighting the Applicant's understanding of the paths and a lane taken from an Estate map. The note and drawing can be found at Appendix G.
13. The Applicant has submitted a note with coloured key highlighting the names of fields identified in the Tithe and Inclosure maps together with a plan of the route showing his interpretation of the claimed route. These can be found at Appendix H.
14. The Applicant has submitted an extract from the Ordnance Survey 6-inch, 1<sup>st</sup> Edition map of 1890. This map does not show any physical features to suggest that the claimed route exists. This can be found at Appendix I.
15. The Applicant has submitted an extract from the Ordnance Survey 6-inch 2<sup>nd</sup> Edition map of 1901. This map does not show any physical features to suggest the claimed route exists. This can be found at Appendix J.
16. The Applicant has submitted the extract from an Ordnance Survey 6-inch 3<sup>rd</sup> edition map from 1924 as further supporting evidence. This map does not show any physical features to suggest the claimed route exists, and can be found at Appendix K.
17. The Applicant has submitted a 25-inch County Series 2<sup>nd</sup> Edition Ordnance Survey map dated 1901. This map does not show any physical features to suggest that the claimed route exists. This can be found at Appendix L.
18. The Applicant has submitted a 25-inch County Series 3<sup>rd</sup> Edition Ordnance Survey map dated 1923. This map does not show any physical features to suggest that the claimed route exists. The map can be found at Appendix M.
19. The Applicant has submitted a copy of an Ordnance Survey 1 inch first edition map dated 1836 of the area. There is no evidence of the route on the copy. The map can be found at Appendix N.
20. The Applicant submitted an Ordnance Survey 25-inch National Grid map of 1971. This map does not show any physical features to suggest the claimed route exists. This can be found at Appendix O.
21. The Applicant submitted an Ordnance Survey 25-inch National Grid map of 1972. This map does not show any physical features to suggest that the claimed route exists. This can be found at Appendix P
22. A copy of the Definitive Map at the time of the application was submitted by the Applicant as supporting evidence and is also attached. The panel's attention may be drawn to the fact that this shows the route of the current PF11. This map may be found at Appendix Q.
23. The Applicant has submitted a Chartley Castle Estate Sale map and accompanying notes from the Estate Sale catalogue dated 1904 as supporting evidence for the application. The map does not show any physical features to suggest that the claimed route exists. The notes and plan can be found at Appendix R.

24. The Applicant has submitted a nineteenth century Estate map which includes Thomas Clifford's allotment (which he understands to be pre-1815). There are no physical features to suggest the claimed route on this map. This can be found at Appendix S.
25. The Applicant has submitted a screenshot copy of an aerial survey of the area (1947 series) map dated 11<sup>th</sup> August 1945 (although it has the date 27/1/2006 superimposed). Your officers cannot find any suggestion of a path along the claimed route on the screenshot. This can be found at Appendix T.
26. A second aerial screenshot of the area also dated 11<sup>th</sup> August 1945 was submitted by the Applicant as further evidence. Your Officers cannot identify any route on the plan due to the scale and quality of the screenshot. This can be found at Appendix U.
27. The Applicant has submitted a screenshot copy of the relevant section of Teesdale's map date 1831-2. The date of 16<sup>th</sup> January 2001 is imposed on the plan. The plan shows a pecked line but this does not follow the route of the claimed footpath. This is attached at Appendix V.
28. The Applicant has submitted a screenshot copy of the relevant section of Greenwood's map from 1820. This screenshot shows a pecked line but your officers do not consider that this is the route of the claimed footpath. This can be found at Appendix W.
29. The Applicant has submitted evidence from the Parish survey cards, advising that there is no reference to the route. This is attached at Appendix X.
30. A list of research notes and sources of evidence to be considered has been submitted by the Applicant and this can be found at Appendix Y.
31. An accompanying letter to the application with the Applicant's sketch of land from the Inclosure map may be found at Appendix Z(a)

#### **Evidence submitted by the Landowners**

32. The Landowners as provided by the Applicant have been consulted and no responses have been submitted.

#### **Comments received from statutory consultees**

33. The only consultees who have responded to the initial consultation are the Byways and Bridleways Trust. The Trust has made comments regarding the possibility that the way is not restricted to a footpath claim and that as the application was made prior to the National Environment and Rural Communities Act 2006 the way is open to be classified as a Byway Open to All Traffic (BOAT). The Trust did not provide any evidence to support this claim. A copy of the email is attached at Appendix Z(b)

#### **Comments on Evidence**

34. The evidence that the Applicant has listed in his application include the Inclosure Map of 1791 and the Tithe map of 1850. For ease of reference your Officers have included a map showing both the Inclosure Award field names and that

which your Officers believe corresponds with the Tithe map field names which have been superimposed on the same plan. This can be found at Appendix Z(c)

35. The tracing of the Inclosure map of 1791 does not show the route that the alleged footpath takes, although the field book states “*Stow Church Road – one other public footway from Hixton towards Stow Church leading from a stile in an ancient enclosure of the said Thomas Clifford called New Piece in a northwardly direction over the westwardly end of the first allotment to the said Thomas Clifford in Hixton in the Parish of Colwich into and over in the said northwardly direction the eleventh allotment to the said Robert Earl Ferrers in Hixton in the Parish of Stow to a stile in an ancient Inclosure of the said Robert Earl Ferrers called the Hook*”.
36. The Inclosure map of 1791 narrative corresponds with the current Stowe by Chartley PF11 in that it initially starts at a stile at New Piece and crosses the first allotment of Thomas Clifford in a northerly direction to the boundary of the field of Robert Earl Ferrers. It is at this boundary where the Applicant believes that the footpath diverges from the current PF11 Stowe by Chartley and it is here that your Officers believe that the Applicant’s claimed route commences - marked A on Appendix B.
37. The claimed route from point A, crosses Robert Earl Ferrers 11<sup>th</sup> allotment in a northerly direction and heads through a further field owned by Robert Earl Ferrers called the Hook (pars) in a northerly direction, at its most Westerly boundary. To the north of this field, there is a further field named Far Hooks also owned by Robert Lord Ferrers, but it is unclear from the Inclosure narrative as to whether the field named Far Hooks is considered to be “the Hook” as referred to in the narrative. It is at the “Hook” that the Inclosure evidence ceases. The evidence therefore covers a path across two or possibly three fields ending at the start of a third field or possibly fourth field. It is your Officers opinion that the narrative without illustration on the award map is not convincing evidence on its own.
38. Whilst 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 situation the narrative offers only a relatively short spur off current PF11. There are no physical features shown on the plan, and as can be seen on further consideration of the evidence, there is little additional supporting evidence, other than the Tithe map.
39. The Tithe map of 1850 does show physical features of a footpath and a track. The current PF11 concurs with the Tithe map as commencing at a stile at the southerly end of Stowefields (known as Thomas Clifford’s first allotment in the Inclosure narrative) across Stowefields in a northerly direction to the boundary of Wheat Hill (known as Robert Earl Ferrers 11<sup>th</sup> allotment in the Inclosure award). It is at this boundary where the Applicant believes that the footpath diverges from

the current PF11 Stowe by Chartley and it is here that your Officers believe that the Applicant's claimed route commences - marked A on Appendix B.

40. The claimed route from point A commences at the south-east corner of Wheat Hill on the Tithe Map leading in a northerly direction and entering a parcel of land held by Colwich Parish. At the Northern end of Wheat Hill the physical feature on the map suggests the footpath meets with a track. The track crosses a parcel of land held by the Parish in a northerly direction and enters the southerly boundary of a field parcel known as Big Piece. At the northerly end of Big Piece, the physical feature changes back from that of a likely track to a footpath. The physical feature then continues through land held by Colwich Parish, a parcel of land called (pars) Overhill through to Peake's Flatt and exiting on to the Driントon Road. The Tithe map shows a likely footpath from point A to point B in accordance with the Application.
41. The Tithe map does not have a supporting narrative to provide any evidence whether or not this is a footpath and if so whether it is a public footpath. It could at best, provide limited evidence supporting the Inclosure award as to some sort of short spur northwards off current PF11, but 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 your Officers opinion that these two main pieces of evidence that the Applicant relies on are insufficient to claim that the footpath subsists or alternatively can be reasonably alleged to subsist.
42. The Nineteenth Century Estate map of Land in Colwich and Stowe at Appendix E appears to show remarkable similarities to the Tithe map. Your officers consider that the similarities are such that the Tithe map may well have been the basis for the Estate map. Such Estate maps were commissioned by individual landowners or institutions for their own benefit. While it may provide evidence of the reputation of a route, or of the existence of a feature on the ground at the time of the survey, it cannot provide evidence of the status of the route. Such a personal map was not intended to illustrate, highlight and encourage public rights. Therefore, limited legal weight can be given to the plan.
43. The Applicant provided notes with coloured plans which illustrates the route and fields on a plan that he has provided, but the plan only shows a highlighted route of the Applicant's interpretation of what he considers a lane and footpath and relevant named fields from the Tithe and Inclosure maps. It is your Officers opinion that the plan does not add any further evidence to that already provided by the Tithe map and Inclosure narrative at Appendix F.
44. A second set of notes with coloured plans illustrate what the Applicant considers to be paths and a lane taken from estate maps, these particulars are not in your Officers' possession. The notes and plans drafted by the applicant however can be found at Appendix G.

45. The third set of notes provided by the Applicant appears to incorporate both the Inclosure award map and Tithe map. The attached plan at Appendix H, appears to identify the fields to illustrate the points he wishes to make. As they are a note of his own conclusions, they are not evidence, but form his opinion of the evidential worth of the documents. It does not show the claimed route.
46. The Applicant also provided Ordnance Survey maps. The Ordnance Survey 6-inch, 1<sup>st</sup> Edition map of 1890, The Ordnance Survey 6-inch 2<sup>nd</sup> Edition map of 1901 and the Ordnance Survey 6-inch 3<sup>rd</sup> Edition of 1924 all show the route taken by PF11 but do not show any physical features within the location of the claimed footpath. Again the 25-inch County Series 2<sup>nd</sup> Edition Ordnance Survey map dated 1901 and the 25-inch County Series 3<sup>rd</sup> Edition Ordnance Survey map dated 1923 show the route of PF11 and do not show any physical features which could even suggest a footpath. These maps can be found between Appendices I to M.
47. A screen shot of an Ordnance Survey 1 inch first edition dated 1836 does not show any evidence of physical features on the ground to suggest the existence of any footpath between Hixon Heath and Stowe. Please see Appendix N.
48. The Ordnance Survey 25-inch National Grid maps of 1971 does not show any evidence of any physical features, and the Ordnance Survey 25-inch National Grid map of 1972 shows the current route taken by PF11 but there is no suggestion of physical features to suggest a footpath for the claimed footpath. These maps can be found between Appendices O and P.
49. The copy of the Definitive map does not show any features to support the claimed footpath and this may be found at Appendix Q
50. The Applicant has forwarded a Chartley Castle Estate Sale map and accompanying notes from the Estate Sale catalogue dated 1904 as supporting evidence for the application. These can be found at Appendix R. Once again, there are no physical features on the accompanying map (or indeed in the catalogue notes) to support the claimed footpath. Estate Sale catalogues do not tend to mention public rights and at the turn of the twentieth century were not publicly maintainable so the owner may not have been keen to point this out.
51. The Applicant has included a further Estate map from the nineteenth century showing Thomas Clifford's allotments (which he believes to be pre-1815). It does not show physical features on the ground along the route of the claimed footpath but simply assists with the understanding of the Inclosure Award narrative. This may be found at Appendix S.
52. The Applicant has supplied two screenshots taken from an aerial survey of the area (1947 series) dated 11<sup>th</sup> August 1945. Your Officers cannot see any evidence of features on the ground which could suggest a footpath in either of the photographs and so again it does not support the existence of the claimed route - Appendices T and U.
53. Teesdale's map of 1831-1832 has been provided by the Applicant but does not show any physical features on the ground that could suggest any sort of path, and

this is also true of Greenwood's map of 1820 – this can be found at Appendices V and W.

54. The Applicant has submitted a note concerning the Parish survey cards advising that there is no reference to the route on the survey cards. The Applicant has also enclosed the list of research that was undertaken. This can be found at Appendices X and Y.
55. An accompanying letter to the application with the Applicant's sketch of land from the Inclosure award map was also attached although this evidence is a very rough loose sketch of the allotments on the Inclosure award map and do not provide any further supporting evidence. They are the Applicant's interpretation and therefore is not supportive evidence. Appendix Z(a).
56. Mr Rowley of the Byways and Bridleways trust believed that the application could be considered for Byway Open to All Traffic (BOAT) status, although the claim is for a footpath and your Officers are of the opinion that there is not sufficient evidence for the lesser rights of a footpath. The Trust's email can be found at Appendix Z(b).

### **Burden and Standard of Proof**

57. 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 be requisite in consequence of certain 'events'. In relation to 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.
58. 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 judgment on that evidence must be made, before either question can be answered.
59. For the first to be satisfied, it is necessary to show that on the balance of probabilities the right of way does subsist.
60. 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 be less than that which is necessary to establish the right of way "does subsist".
61. If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

### **Summary**

62. There is limited evidence in favour of the claimed footpath which comprises of the Inclosure Award, Tithe map and Estate plan. The Inclosure Award narrative suggests that a historical path of some description may have existed leading off PF11 in a northerly direction, ending part way along the claimed route. The lack of a physical feature shown on the Inclosure plan, however, does not assist the claim. The Tithe map also suggests that there may have been a physical feature across the claimed route but again without the narrative this evidence is has limited probity. The Estate plan is the final piece of evidence but there is no narrative. The Tithe map and Estate plan do show the same physical features but do not explain the status of the route or whether it was a public or private route.
63. This combination of evidence however is not sufficient for your Officers to be able to reasonably allege that the path subsists. It could be summarised that aside from the mention in the Inclosure text and a line on the Tithe map there is no supporting material to establish a physical record of a route. Case law such as Fortune and Wiltshire does suggest that where there is a consistent depiction of a path then the totality of the evidence may support its existence. This however is absent in this particular case.
64. 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 or higher 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**

65. In light of the evidence, as set out above, 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 map and statement can on the balance of probabilities be shown to subsist or that it can be reasonably alleged to subsist.
66. It is the opinion of your Officers therefore that the County Council should not make a Modification Order for a footpath between points A to B as shown on the map at Appendix A on the Definitive Map and Statement of Public Rights of Way.

### **Recommended Option**

67. To reject the application based upon the reasons contained in the report and outlined above.

### **Other options Available**

68. To decide to accept the application.

### **Legal Implications**

69. The legal implications are contained within the report.

### **Resource and Financial Implications**

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

71. 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**

72. 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.
73. 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.
74. 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.
75. Should the Council decide not to make an Order the Applicant 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.
76. 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.
77. There are no additional risk implications.

### **Equal Opportunity Implications**

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

J Tradewell

Director for Corporate Services

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**Background File: LG607G**

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