

**IN THE MATTER OF THE PROPOSED 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
AN APPLICATION FOR THE ADDITION OF A PUBLIC BRIDLEWAY TO THE
DEFINITIVE MAP**

GROUND OF OBJECTION

Introduction

1. The RNC Hall 1990 Settlement for ARC Hall ("**the Objector**"), is the legal owner of land over which the alleged bridleway is proposed (the "**Route**").
2. The Objector continues to strongly object to the proposal to add the Route to the Definitive Map.
3. These grounds of objection are prepared in response to Staffordshire County Council's ("**the Council**") draft (undated) report to the Countryside and Rights of Way Panel (the "**Report**") and the original application of Mr Reay ("**the Applicant**") dated 23 March 2000 for the addition of the Route to the Definitive Map and Statement of Public Rights of Way (the "**Definitive Map**").
4. The Report recommends that the Panel should accept the application and make an Order to add the Route as a public right of way to the Definitive Map. A copy of the Report (with appendices extracted) is enclosed at Tab 1/3-12.
5. The Objectors disagree with this recommendation and contend that the application should not be accepted.
6. These grounds of objection are accompanied by a tabbed bundle of documents, with references below following the format [tab/page number].

Objections in summary

7. The Objectors contend that the Applicant has not provided sufficient evidence to show that the alleged route subsists or can be reasonably alleged to subsist along the trajectory of the Route.
8. The documentation provided to date by the Applicant is incomplete and inadequate to meet the required threshold to make an order.
9. In the event that the Council decides to make an order modifying the Definitive Map on the basis of the evidence provided by the Applicant, the Objector submits that the Applicant will be unable to meet the higher threshold required for the confirmation of an order by the Secretary of State under section 53(6) and Schedule 15 of the Wildlife and Countryside Act 1981, i.e. that the Route existed '*on the balance of probabilities*'.

Factual Background

10. The Route crosses the freehold title owned by the Objector, and another title owned by the Cheswardine Hall Estate.
11. The Applicant made an application dated 23 March 2020 to add the Route to the Definitive Map. This application appears to have originally been supported by historical documentary evidence including the following documents:
 - a. Tithe maps;
 - b. 1910 Finance Act sheets;
 - c. Deposited Railway Plan 1845 & Deposited Railway Plan Route Map 1845;
 - d. Ordnance Survey Maps;
 - e. 1932 Rights of Way Act Deposit;
 - f. Wright & Charrington Motoring Cycling & Touring Map of the early 1900's

12. The Objector submitted a landowner questionnaire dated 22 June 2000 in response to the Application registering its objection to the original Application.
13. The Application did not at the time lead the Council to make a modification order and the Council drafted a report recommending that the Route was not added as a new right of way to the Definitive Map (the "**Initial Report**"). This was communicated to the Objector by letter on 23 March 2021.
14. Following the production of the Initial Report, the Applicant responded to the Council setting out his comments (in red amendment) to the Initial Report. Please see Tab 2/14-24. As part of his additional comments, the Applicant also provided copies of further documentation including additional Ordnance Survey maps, the SCC List of Streets, a screen of the Street Gazetteer Find My Street, and the Rights of Way Improvement Plan for Staffordshire.
15. This new documentation appears to have resulted in the Council altering its decision and recommending that the Route be added as a public bridleway to the Definitive Map.
16. The Objector contends that this additional documentation is not sufficient to overturn the original recommendation by the Council in its Initial Report.

Legal framework

17. The Applicant's evidence appears to be based on section 53(3)(c)(i) of the Wildlife and Countryside Act 1981. Section 53(c)(i) sets out that the surveying authority (in this case the Council) should make a modification to the Definitive Map upon:

(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows—

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path a restricted byway or, subject to section 54A, a byway open to all traffic

18. To make a Modification Order, the Council needs to be satisfied that a right of way "*subsists or is reasonably alleged to subsist*".

19. This test has been interpreted by the Courts to mean whether a reasonable person, having considered all the relevant evidence available, could reasonably allege a right of way to exist: *R v Secretary of State ex p Bagshaw and Norton* (1994) 68 P&CR 402.
20. Although the Application does not set out the basis of the Applicant's case, the Objector assumes that the Applicant is relying upon the common law test for dedication (rather than the statutory test based upon user). The application appears to be relying on the basis that sufficient evidence has been provided to show dedication by the landowner of the Route as a public right of way and acceptance by the public of the dedication of the Route as a public right of way.

Grounds of Objection

21. The Applicant relies solely on historical documentation. The Application and the Updated Report are, however, silent in describing the basis on which a public bridleway over the Route is alleged or reasonably alleged to have arisen.
22. To date, the Applicant has not provided any evidence to indicate dedication, acceptance, or use, of the Route, nor does he identify any specific act at any particular time by the Objector or its predecessors in title which could be said to amount to dedication.
23. As there is no evidence of public user without interruption, the burden of proving that a dedication of a right of way has taken place falls upon the person making this assertion.
24. The failure of the Applicant to set out his case in these terms and to specify a date at which the Objector or his predecessors in title can have been inferred to have dedicated the Route as a public right of way presents a significant, and fatal, weakness to the strength of his Application.
25. The evidence in support of the application is deficient and therefore does not meet the relevant threshold to justify the making of a modification order on the basis that the Route subsists or is reasonably alleged to subsist.
26. The Applicant's attempts to rely on the historical documentation provided to infer the Route's status as a public right of way are speculative at best. The evidence is

insufficient to meet the threshold either when considered separately or cumulatively as a whole.

27. The Council has also not to date provided any evidence from its own archives to demonstrate the existence of the Route as a public right of way. The Council have also not provided any historical evidence of any internal deliberations or discussions in relation to the Route. It is contended that aside from the substantive issues, this alone makes any decision of the Committee to make the Modification Order vulnerable to challenge.
28. The Objector sets out below its comments in relation to each of the items of evidence provided by the Applicant to date.

Drayton in Hales Tithe Map and Apportionment

29. This information provided by the Applicant is highly selective and should not be given any weight by the Council in coming to its decision.
30. The Tithe Map shows a route marked as 298 and described as James Hudson Road proceeding in a northerly direction and then connecting to a route marked as 303 and described as Rev Buchanan Road. The Applicant submits that Route 303 matches up with the line of the Route.
31. Route No. 303 is designated in a different way from route 298 as it is marked by two dashed lines as opposed to a solid black line. It also appears to run in a slightly different trajectory from the Route (running in a more northerly as opposed to a north-easterly direction).
32. The Objector submits that the Tithe map provides no information as to the status or nature of the Route. There are no identifying marks on the map to indicate that this is recognised as a public right of way. Indeed, the fact that the route is shown separate from the land of adjacent landowners may be an indication that the Route was considered a private right of way
33. The copies of the documents produced by the Applicant are also incomplete as no apportionment has been provided with the evidence.
34. The Applicant is therefore purely relying on the alleged appearance of the Route on the Tithe Map. There is no information as to the status of the Route or whether a tithe was apportioned.

35. This omission is highly material. If there were documentation to show a tithe apportionment, this would indicate that the Route was only used at most as a private route. Tithe would not be payable if the Route was used as a public right of way.
36. In the absence of this information, the Council is unable to give any weight to this aspect of the Applicant's evidence.

Finance Act 1910 documentation

37. The information provided by the Applicant is again selective and circumstantial at best. It is unfortunate that the Applicant makes a habit of this, particularly where it causes inconvenience and expense to objectors who have to remedy the deficiencies. As part of its Application, the Applicant had not included copies of the relevant Field Books with his Application. Consequently, the Applicant had provided no information to suggest that any deductions were made for public rights of way.
38. We enclose copies of the Field Book entries for hereditaments no. 26, 570 and 571 which were obtained from the National Archives in Kew Gardens. Please see Tabs 3, 4 and 5/27-40.
39. The Objector acknowledges that the 1910 Finance Act plans show the existence of the Route. They would show its existence whether private or public. They do not provide evidence that the Route is a public right of way and do not show the size or type of path the Route is alleged to be. There is no indication or labelling on any of the plans indicating the nature or status of the route.
40. The south-western part of the Route is located within Hereditament 26. On the first page of the Field Book entry for Hereditament 610 for 'Fixed Charges, Easements, Common Rights and Restrictions', an entry of 'footpath' is recorded. There is no clarity as to where the described footpath is located. The Objectors submit that this could equally refer to the northward track through field 605 as opposed to the Route.
41. Hereditaments 570 and 571 relate to the parcels of land at Glass Houses and fall within the freehold title owned by the Objector.
42. In relation to Hereditament 570, the Field Book entries refer to '*footpaths*' in the list of restrictions and a deduction of £25 is recorded as having been made. The Objectors submit that the '*footpaths*' valued here are more likely to refer to the tracks shown on the 1910 Map plans heading northward from the lane over OS573.