

<b>Local Members' Interest</b>	
Cllr Ian Parry	Stafford-Stone Rural

## **Countryside and Rights of Way Panel**

### **Wildlife and Countryside Act 1981**

#### **Application for two alleged footpaths leading off Sandon and Burston Footpath 25**

#### **Report of the Director for Corporate Services**

#### **Recommendation**

1. That the evidence submitted with the application at Appendix A, and that discovered by the County Council is sufficient to conclude that the two alleged Public Footpaths, one of which is between Jolpool Lane (previously known as the Hardiwick Road) and Sandon and Burston PF25, and the second of which leads from Sandon and Burston PF25 to the B5027 (Uttoxeter Road) which are not shown on the Definitive Map and Statement are reasonably alleged to subsist along the routes marked A to B and C to D on the plan attached at Appendix B.
2. That an Order be made to add the two routes shown as A to B and C to D on the plan attached at Appendix B to the Definitive Map and Statement of Public Rights of Way as Public Footpaths.

### **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 Sandon by:
  - a. adding a Public Footpath from Jolpool Lane (previously known as Hardiwick Road) to the current Sandon and Burston PF25 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. The line of the alleged footpath is shown marked A to B on the plan attached as Appendix B to this report and/or:

- b. adding a Public Footpath from the current Sandon and Burston PF25 to the Uttoxeter Road (B5027) 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. The line of the alleged footpath is shown marked C to D on the plan attached as Appendix B to this report.
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 its Definitive Map and Statement of Public Rights of Way by adding two stretches of footpath leading off current Footpath Sandon and Burston PF25. Mr Martin Reay submitted the application in June 1997.
5. The Applicant has submitted a tracing of the Sandon Inclosure Award map together with transcript from the Inclosure Award. This document is attached at Appendix A.

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

6. The Applicant identified one landowner.
7. The Landowner has responded with a Landowner's Evidence form completed by Estate Manager on behalf of the Landowner, although no evidence was offered. This document can be found at Appendix C

#### **Other evidence discovered by Staffordshire County Council**

8. A photograph of the Inclosure Award (containing one of the applicant's excerpts of transcript) has been obtained by your Officers. A copy of this can be found at Appendix D.
9. Two photographs of the Inclosure Award Plan have been obtained by your Officers. A copy of these can be found at Appendix D.
10. The Sandon Inclosure Act of 1814 was considered, the relevant pages of which can be found at Appendix E.
11. The Parish Cards for Sandon were obtained, and these can be found at Appendix F.
12. An Ordnance Survey Map of 1887 was considered, and this can be found at Appendix G.
13. Tithe maps of the area were considered, and these may be found at Appendix H.

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

14. The Parish Council, Borough Council and County Council have been consulted and no evidence has been provided by any of the Councils.
15. The Byways and Bridleways Trust advised that they had no objection to the application. A copy of their email can be found at Appendix I

### **Comments on Evidence**

16. The evidence that the Applicant has supplied is a traced copy of the Inclosure Award Map showing the footpaths claimed in the application alongside two brief excerpts of transcript from the Inclosure Award.
17. The transcript provided by the Applicant from the Inclosure Award states "the lands and grounds by the said ..... including public and private carriage roads and footpaths and ways and I have annexed hereto a map or plan of the said lands and grounds so surveyed and admeasured as delineated the situation of the several allotments with their respective Boundaries and such other particulars as I think necessary and on which are also delineated the directions of the public and private roads and ways and foot paths which I have set out and adjudged necessary...."
18. The applicant's transcript continues "one foot road or way leading out of the Hardwick Road at Hardwick in a northeasterly direction over the allotment 10 into the Leek Turnpike Road".
19. The evidence discovered by your Officers from the Inclosure Plan shows a footpath leading off Jolpool Lane (known on the plan as Hardiwick Road) approximately half way between the village of Hardiwick (the village being situated at the most Southerly edge of allotment 10) and the Uttoxeter Road (B5027) which is the most Northerly edge of allotment 10. This footpath travels in an easterly direction approximately to a point half way across this allotment at which point it turns North Easterly and exits on the B5027 (known on the plan as the Uttoxeter Turnpike Road) next to the crossroads of the B5027 and the Hilderstone Road (B5066) being known on the plan at the Leek Turnpike Road.
20. The current Sandon and Burston PF25 follows the mid-section of the route shown in the Inclosure Plan but has a route that commences just north of the hamlet of Hardiwick and exits on the Uttoxeter Road along the westerly boundary of a field. The current Sandon and Burston PF25 plan does not show the two footpaths which the applicant wishes to have added to the Definitive Map and Statement in order to replicate the Inclosure Plan route. The current Sandon and Burston PF25 can be seen as a broken grey line at Appendix B and also as a red line on the plan at Appendix F.
21. There is a possible slight discrepancy between the Inclosure transcript and plan. Claimed route A to B commences just north of the village of Hardiwick and Hardiwick Grove although it may be considered that the general area is known as Hardiwick in the Inclosure transcript.

22. There is again a slight possible discrepancy as to where the route C to D ends at the northernly section (the transcript suggesting that the footpath exits on the Leek Road), the route is very close to the transcript and there are no other marked paths in that area. The interpretation is that the path meets the Leek Road (now known as the Hilderstone Road) at the crossroads of the Leek Road and the Uttoxeter Road. Since the road names and route are recorded on the Plan, together with the word Foot Road along the route on the Plan, this is highly suggestive that the transcript and Plan both relate to the same footpath.

An Inclosure Award has been determined by the courts to be conclusive evidence in respect of public highways (Dunlop v Secretary of State for the Environment and Cambridge CC (1995) in the absence of later legal events such as Quarter Session Orders. In this case we have both the Transcript and the Plan relating to the alleged route, they are shown with clarity and complement each other. Furthermore, no evidence has come to light that either route has been extinguished/stopped up or diverted following the Award.

23. The Inclosure Award suggests the alleged route to be a public route due to the transcript being listed under the heading "Public Foot Roads" (Appendix D) The Award clearly sets out the powers of the Commissioner and there is nothing to suggest that the Award is invalid. Furthermore, as already detailed, it is your Officers opinion that the transcript supports the plan.
24. Inclosure Acts were designed to enclose the old commons, manorial waste and smaller holdings in order to increase agricultural productivity. They were often promoted on behalf of the bigger landowners to enable them to increase the profitability of their land. The first General Inclosure Act was made in 1801 and subsequent private Inclosure Acts, of which this is an example, followed.
25. The Inclosure Act for Sandon was titled "An Act for Inclosing Lands in the Parish of Sandon in the County of Stafford" and received Royal Assent on 18<sup>th</sup> May 1814. The Act allowed for the creation of the Award and is referred to within the Award. The award and plan are the evidence on which this footpath is claimed and the relevant pages of the Act can found at Appendix E.
26. The local Inclosure Act empowered an Inclosure Commissioner(s) to survey and divide up the land, allotting it to named individuals, including the setting out of highways. The 1814 Sandon Act gave the commissioner power over the Highways and reads "*and be it further Enacted, that the said Commissioner shall, and he is hereby authorised and required in all cases where in his judgment it shall appear to be requisite and proper.....to divert and turn any old or accustomed public Road Way or Path .....or to stop or to discontinue any such Road Ways and Paths....Provided always that no such Road Way or Path shall be diverted,*

*turned, stopped up or discontinued, without the Concurrence and Order of Two Justices, and subject to such Appeal as mentioned or referred to in and by the said recited Act”...*

27. After all the procedures were followed and completed the Commissioner(s) would issue the final Award and accompanying Award Map.
28. Your Officers considered the Parish Survey cards which were collated following the passing of the National Parks and Access to the Countryside Act 1949. This Act required all Surveying Authorities to carry out a survey of their area and provide a map showing all the public footpaths, Bridleways and Roads Used as Public Paths. These cards however do not provide any evidence for the claimed routes although they do show the current footpath Sandon and Burston 25. The relevant card can be found at Appendix F
29. The Ordnance Survey map from 1887 does not show any physical evidence of route A to B. Route C to D appears to be a route a third of the way across the field and exiting on the Uttoxeter Road. Ordnance Survey maps were used simply to show physical features and contours on the ground. This plan therefore does not show any supporting evidence for either of the claimed routes. The Ordnance Survey map can be found at Appendix G.
30. Tithe maps were also considered by your Officers. Tithe maps were compiled by the Tithe Commissioners from the late 1830s and through the 1840s. The sole purpose of the tithe documentation was to identify land subject to Tithe (payment of money to the Church). The tithes were based on the seven year average of the land's productivity. On their own, tithe maps and awards are not evidence as to the public nature of a particular route but would be supporting evidence. In this case with regard to claimed route A to B, there does not appear to be any evidence of its existence (either along the northern edge of field number 105 or field number 107). Claimed route C to D shows the foot path to come to an abrupt end at the edge of field parcel number 94. The Tithe maps can be found at Appendix H.
31. The Parish Survey cards, Ordnance Survey maps and Tithe maps do not provide any evidence for the two claimed routes. The tithe map was drafted some 25-35 years following the Inclosure, the Ordnance Survey maps were drafted 73 years after the Act and the parish survey cards were all produced around 138 years after the Act. The lack of supporting evidence does not however mean that the routes no longer legally exist. It may simply be that the routes have fallen into disuse as they were no longer seen to be necessary or commodious.

## **Burden and Standard of Proof**

32. 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 to be requisite in consequence of certain 'events'. In relation to the two claimed routes shown A to B and C to D the requirements of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 are that the evidence discovered by the Council, when considered with all other relevant evidence available, should show:-
  - (a) That a right of way which is not shown on the map subsists; OR
  - (b) That a right of way, which is not shown on the map, is reasonably alleged to subsist.
33. 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
34. For the first test to be satisfied, it will be necessary to show that on the balance of probabilities the right of way does exist.
35. 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 "does subsist".
36. If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

## **Summary**

37. 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.
38. For the purpose of this application, there are two relevant "events" one of which must occur before the Definitive Map and Statement can be modified.
39. With regard to the existence of both the claimed footpaths between firstly Jolpool Lane (previously known as Hardiwick Road) and Sandon and Burston PF25 (claimed route A to B), and secondly Sandon and Burston PF25 and the Uttoxeter Road (B5027), (claimed route C to D) it must be decided that either on the balance of probabilities that the footpaths subsist or alternatively that the footpaths can be reasonably alleged to subsist.
40. With regard to the balance of probabilities, the courts have indicated that this can be satisfied by considering whether it is more probable, or more likely than not. As Lord Denning in the case of Miller v Minister of Pensions (1947) said "if the evidence is such that the tribunal can say "we think it



more probable than not" the burden is discharged, but if the probabilities are equal it is not"

41. In this instance your officers consider that the evidence is insufficient to satisfy the test when considered on the balance of probabilities.
42. With regard to the second part of the test as to whether the route can be said to be reasonably alleged to exist, your officers consider that the test would be satisfied.
43. If the conclusion is that either test is satisfied then the Definitive Map and Statement should be modified.
44. 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**

45. In light of the evidence, as set out above, it is your Officer's opinion that the evidence shows that both claimed public rights of way, both with the status of footpaths which are not shown on the map and statement are reasonably alleged to subsist.
46. It is the opinion of your officers that the County Council should make a Modification Order to add the alleged routes A to B and C to D to the Definitive Map and Statement of Public Rights of Way both routes with a width of 1.5 metres.

### **Recommended Option**

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

### **Other options Available**

48. To decide to reject the whole or part of the application.

### **Legal Implications**

49. The legal implications are contained within the report.

### **Resource and Financial Implications**

50. The costs of determining applications are met from existing provisions.
51. 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**

52. 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.

53. 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.
54. 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.
55. 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.
56. There are no additional risk implications.

**Equal Opportunity Implications**

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

---

J Tradewell  
Director for Corporate Services  
**Report Author: Stephanie Clarkson**  
Ext. No: 276292  
**Background File: 008617**



## INDEX TO APPENDICES

Appendix A	Copy of Application and Applicant's traced copy of Inclosure Award and Transcript
Appendix B	Plan of claimed routes
Appendix C	Landowner Evidence form
Appendix D	Photograph of Inclosure Award and Photographs of Inclosure Award Map
Appendix E	Relevant pages from the Sandon Act 1814
Appendix F	Parish Survey Cards
Appendix G	Ordnance Survey map 1887
Appendix H	Tithe Map
Appendix I	Email from Byways and Bridleways trust