

<b>Local Members' Interest</b>	
Cllr P Atkins, OBE	East Staffordshire- Uttoxeter Rural

**Countryside and Rights of Way Panel -**

**Wildlife and Countryside Act 1981**

**Application for the addition of an alleged Public Footpath from Public Footpath 23, Ellastone along Green Lane to Public Footpath 3, Denstone**

**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 conclude that a Public Bridleway which is not shown on the map is reasonably alleged to subsist along the route shown on the plan attached at Appendix B to this report and should be added to the Definitive Map and Statement of Public Rights of way as such, rather than the claimed for Public Footpath.
2. That an Order be made to add the alleged right of way shown marked A-B on the plan attached at Appendix B to this report, to the Definitive Map and Statement of Public Rights of Way for the District of East Staffordshire 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 East Staffordshire. The effect of such an Order, should the application be successful, would:
  - (i) add an alleged Public Footpath from Footpath 23, Ellastone to Footpath 3, Denstone 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 alleged Public Footpath 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 of a 1910 Finance Act Plan & Field Books, Deposited Railway Plan 1845, Ramshorn Tithe Map 1847, Prestwood Tithe Map 1844, Estate Plan 1861/62, Yates Map 1775, Wright & Charrington Motoring Cycling and Touring Map of the early 1900's and Ordnance Survey Maps dated 1815- 1830 and 1836-1840.
2. The applicant has provided a tracing of the 1847 Ramshorn Tithe Map. Copies are attached at Appendix C. The tracing appears to show the alleged route on the map separate from adjacent landholdings and it is coloured in orange. To the south the route comes from the direction of Alton and leads up to Wooton in the north. There is nothing on the tracing to indicate the status of the route. There is no key or award with the map.
3. The map of the Prestwood Tithe Award 1844 is also a tracing. Copies are attached at Appendix D. The alleged route appears to be what is marked as route 47 on the map. The route is separate from adjacent landholdings and is two unbroken single lines running parallel. Near to the southern end of the route, the two unbroken lines become two dotted lines running parallel through plot 21 and as the route continues out of plot 21 the route again becomes two unbroken single lines running parallel.
4. The line of the route marked as 47 on the map does not follow exactly the same line as the alleged route as route 47 runs in a more easterly direction, whereas the alleged route, depicted on modern maps as Green Lane runs in a more northern/vertical direction.
5. On the tracing plot 21 is recorded as follows: "Earl of Shrewsbury Pasture". Route 47 is recorded as: Earl of Shrewsbury Lane- Pasture". There is no key or award with the map.
6. The Deposited Railway Plan dated 1845 is a tracing of a plan from the Manchester & Rugby Direct Railway. Copies are attached at Appendix E.
7. On the map there is a route separate from adjacent landholdings and marked with the number 41. Part of the route is marked in yellow. There is also a Book of Reference with the map. Under the section "Number of Plan- 41", the description provided is: "Occupation and Public Bridle Road" and under Owner, it states: "Charles Walker and William Cox, Surveyors of Highways". This indicates who was deemed to have responsibility for the maintenance of the route, the status and the nature of the rights over it.
8. In relation to the 1910 Finance Act material, the map shows the alleged route depicted as Green Lane, as it is in modern day. At the southern end of the route the way veers in a westerly direction and connects to what is currently shown on the Definitive Map as Public Footpath 3 Denstone. Green Lane is shown as being separate from adjacent landholdings but also with two dotted lines running along the line of Green Lane.

9. Accompanying the map is a Field Book, which refers to plot 558 on the map. Under section, "Charges, Easements, and Restrictions affecting market value of Fee Simple", it states "There is a Public Bridle Road (stopped at one end) through OS 14". "There are public footpaths through OS no's 21, 14(2)". Under Public Rights of Way or user a deduction is made of £25. OS 14 forms part of plot 558. The very southern end of Green Lane runs through plot 558. Part of the southern end of the route also runs through plot 559, with the majority of Green Lane (the alleged route) running through plot 143.
10. As stated in the field book there is a footpath running through OS 14, which is shown on the map as two dotted lines running parallel and with the annotation FP running alongside it. Along Green Lane there are two dotted lines running parallel that stops when the route changes direction to the west and connects with the route marked as FP on OS 14. Copies are attached at Appendix F.
11. Both Ordnance Survey Maps of 1815- 30 and 1836- 40 and the Wright & Charrington Motoring Cycling and Touring Map show the physical existence of the route, depicted as two single lines running parallel. There is no indication from the maps as to the status of the route or the nature of any rights over the route. Copies are attached at Appendix G.
12. The Yates map of 1775 shows the physical existence of the route, depicted as two dotted lines running parallel. Again, there is no indication from the map regarding the status of the route or the nature of any rights over the route. A copy is attached at Appendix H.
13. The applicant has provided a tracing of the Plan of the Earl of Shrewsbury and Earl of Talbot Estate, a township of Prestwood 1861/1862. Copies attached at Appendix I. The tracing of the map appears to be taken from the Prestwood Tithe Map. The alleged route is marked as route 47 and is separate from adjacent landholdings. At the southern end of the route, the way connects with plot 21. There is no key with the map and nothing to indicate the status of the route.

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

14. A letter was received from J C Bamford Excavators Ltd dated 27 April 2000 in response to the application and letter sent to Mr Lawrence at Cote Farm. The letter advised that a response would be sent in due course in response to the application. A copy is attached at Appendix J. No further correspondence has been received to date.

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

15. Denstone Parish Council responded to the application with a letter dated 10 May 2000. They advised that the proposed right of way is a well-made track on the JCB estate. It links the end of footpath 3 to Westhouse Lane and they are unaware of any problems experienced in using it. The Council has no objections to the route being added to the map.
16. A further letter was received from Denstone Parish Council dated 18 August 2001 advising that at Westhouse Lane there is a padlocked gate and a notice saying, "Private Land- No Access without Permission". They further advise that the notice was put up by the JCB

test site people. They state that this section of Green Lane is a well-made track and without access to it for walkers Footpath 3 has no purpose. Copies of the correspondence received from Denstone Parish Council are attached at Appendix K.

- 17.** East Staffordshire Borough Council responded stating that the authority had no comments to make on the proposed addition. They have neither provided any evidence to support or refute the application.
- 18.** The Ramblers Association advised that they have no evidence to submit in relation to the application.
- 19.** The Byways and Bridleways Trust responded stating that they are of the opinion that the historical evidence presented justifies a higher status than a footpath. They are of the view that the route is an old cart road. They argue that in the absence of any formal stopping up or diversion order, the alleged stopping up (as referred to in the 1910 Finance Act Field Book) is open to question. Without any legal stopping up the way should be shown as one status throughout the entirety of the length of the route, including the continuation over plot 558. They are of the view that the route should be recorded as a Byway.
- 20.** Copies of the correspondence from the further consultees are attached at Appendix L.

### **Comments on Evidence**

- 21.** The sole purpose of the tithe documentation was to identify land subject to paying the tithe. Both tithe maps of 1847 and 1844 show the alleged route as separate from adjacent landholdings. Commissioners would often use highways to orientate the map and locate the plots shown. A highway crossing land would reduce its productivity and thus its value although this would be true whether the route had public or private status.
- 22.** Where a route was shown separate from adjacent landholdings it would be more likely to have higher rights over it than a footpath or bridleway, although these could be either public or private. The important point from the perspective of the tithe commissioner was that the land would be untitheable and not the status of the way.
- 23.** The Ramshorn Tithe Map does not have a key with the map or an apportionment, there is no number attached to the route and there is nothing to indicate the status of the route. The route could have public or private status and there is nothing from the tracing to indicate the nature of any rights over the alleged route.
- 24.** The Prestwood Tithe Map numbers the alleged route as 47. A small part of the route, towards the southern end runs through plot 21 and is depicted as two dotted lines, with the rest of the route shown with two unbroken lines and separate to adjacent landholdings. There is no key with the tracing of the map.
- 25.** On the tracing of the map, route 47 is marked as "Earl of Shrewsbury Lane- Pasture" and plot 21 is marked as "Earl of Shrewsbury Pasture". This indicates that the route was owned and maintained by the Earl of Shrewsbury, which could suggest that the route was private. However,

the fact that there is an owner of the route is not inconsistent with the route being a public highway.

- 26.** Where the route runs through plot 21 the status of the route may have changed, as it appears that the route ran through a field and this is likely to have reduced the productivity of the land. However, with no apportionment there is no evidence as to the status of any part of the route. The fact that the majority of the route is shown as separate from the adjacent land is suggestive that the route has higher rights over it than a footpath or a bridleway but there is no conclusive evidence from the Award as to the nature of any rights over the alleged route or whether the route is public or private.
- 27.** The 1910 Finance Act material was concerned with mapping lands for the purposes of taxation. The material consists of the Plan and Field Book. The Plan is based on an Ordnance Survey Map. A landowner could claim tax relief for public rights of way. As shown in the Field Book a deduction is made for a Public Bridle Road through OS 14, plot 558, which is most likely to refer to the very southern part of the alleged route.
- 28.** On the Plan the alleged route is referred to as Green Lane, as it is on modern day mapping. Green Lane is shown as being separate from adjacent landholdings. It also has two dotted lines running parallel through the middle of Green Lane.
- 29.** The Field Book shows that a deduction was made for a footpath through OS 14. When looking at the map there is clearly a route running through Plot 558, OS 14, which is shown as two dotted lines and with the annotation FP alongside it. Therefore, this is not related to the alleged route.
- 30.** The Field Book also refers to a deduction being made for a Public Bridle Road, which is stopped at one end, through OS 14. As the southern end of Green Lane runs through Plot 558 and OS 14 and stops when it connects to a single line, which then becomes Paul's Lane it is likely that the Field Book is referring to the south westerly part of the alleged route. There is no other route depicted on the map running through plot 558, OS 14, which could be classified as a Public Bridle Road, again suggesting that Green Lane (the alleged route) is the route referred to in the Field Book.
- 31.** The majority of Green Lane (the alleged route) runs through plots 559 and 143. Unfortunately, we do not have the field books for these plots of land and therefore we cannot ascertain as to whether the alleged route is described in the same manner as the section of route in plot 558, supporting that the entirety of Green Lane had the status of a Public Bridle Road.
- 32.** The fact that the field book refers to the Public Bridle Road being "stopped at one end", suggests that the route at the southern end ceased to be a Public Bridle Road, it does not conclusively show that this section of the route had been legally stopped up. This type of material does not have the same weight as a Quarter Session Order or an Extinguishment Order in confirming that a route has legally been extinguished and therefore ceases to exist. The evidence is not conclusive that any section of the alleged route has had any rights legally extinguished over it.
- 33.** The fact that the alleged route is shown separate from the adjacent land is suggestive that the route was a public highway. Where a route

is depicted in this way it is likely that the routes status would have been higher than a footpath or bridleway. It is unusual that although the route is depicted as a highway on the map, the route appears to be dealt with by means of a deduction for user in the field book. The fact that the field book refers to a section of the alleged route as a "Public Bridle Road" is highly supportive that the entirety of the route had public status and the route had at least the status of a bridleway.

- 34.** Claims for deductions were investigated by the valuers to ensure that these were valid. The legislation set out that it was an offence to make a false claim under the Act and was punishable by a fine and up to 6 months imprisonment. Given this consideration it would have been most unlikely that a landowner would have made a claim unless it was well founded. Overall, the 1910 Finance Act evidence is highly suggestive that the alleged route had public bridle road status.
- 35.** In relation to the 1845 Deposited Railway Plan, when compiling the plan for the route of a railway, the surveyors would draw up a map showing the intended line of the construction and allotting plot numbers to each strip of land affected by the proposed railway. It was not the primary purpose of deposited plans to record highways of any description.
- 36.** The plan has allotted plot numbers to each strip of land affected by the passing of the railway. The Book of Reference accompanying the plan lists who owned the land crossed and the type of land affected. The Book of Reference shows that the alleged route, marked on the plan as 41 is described as being an "Occupation and Public Bridle Road" and the owner was "Charles Walker and William Cox, Surveyors of Highways".
- 37.** In the case of public highways, the landowner or person responsible for maintenance is often listed as the Surveyor of Highways, indicating that the way was public. Where the Surveyor of Highways is listed as jointly liable with a landowner, the liability for one party may be higher than the others. This evidence is supportive that the route is public as an owner is recorded as the Surveyor of Highways, and the surveyor would not have wanted to take on unwanted maintenance responsibilities. Also, the route is referred to as a "Public Bridle Road", which supports the route having the status of a bridleway.
- 38.** When reviewed in conjunction with the Finance Act material both sets of documents are highly supportive that the alleged route had public bridle road status and therefore the alleged route has at least bridle rights over it, suggesting that the routes status is actually higher than the claimed status of footpath.
- 39.** The purpose of Ordnance Survey Maps was to show physical features on, and the contours of, the ground. Both Ordnance Survey Maps show the physical existence of the alleged route but neither map shows whether the route had public or private status or the nature of any rights over the alleged route. This is merely evidence of the physical existence of a way at the date of the survey.
- 40.** Similarly, the Yates Map of 1775 and the Wright & Charrington Motoring Cycling and Touring Map of the early 1900's show the physical existence of the route. There is nothing on either map to indicate whether the status of the route was public or private or the nature of the rights over the route.

41. In relation to estate maps, these were drawn up for the owners of private estates for their own use. In this case the estate plan was drawn up in relation to the town of Prestwood and for the Earl of Shrewsbury and Earl of Talbot.
42. The tracing of the map is quite limited, and the source of the map appears to be taken from a Prestwood Tithe Map.
43. This type of evidence needs to be treated with caution as often Estate Plans were drawn up with a specific purpose, for the owner. There is nothing on the tracing to distinguish whether the route in question has public or private status or the nature of any rights over the alleged route.

### **Comments on report**

44. Following circulation of the report comments were received from the legal representatives (Hill Dickinson LLP) of the landowners, Bamford Property Ltd objecting to the inclusion of the route onto the Definitive Map and Statement of Public Rights of Way. They argue that there is no evidence in the 1910 Finance Act Plans relating to the majority of the claimed route and the Field Book entry for plot 558 does not relate to the alleged route, as it lies outside of plot 558. In the alternative, if the alleged route does lie in plot 558, the reference in the Field Book for plot 558 to a public bridle road does not necessarily relate to the alleged route. They state that the reference could relate to Paul's Lane.
45. They also state that the Field Book refers to the public bridle road being stopped up and therefore ceasing to exist as a Public Bridle Road, which they argue is supported by the Deposited Railway Plan. They further state that the abstract of title supports the view that the claimed route is a private right of way and not a public right of way. The route has been gated at its northern and southern ends, with the gates being locked at night. A copy of their correspondence is attached at Appendix M.
46. Officers' opinion remains unchanged. It is officers' opinion that the southern part of the alleged route runs through plot 558. It is officers' opinion that the Public Bridle Road referred to in the Field Book is most likely to refer to the alleged route. Officers acknowledge in the report that this is not conclusive but there is a two-stage legal test, whereby the evidence needs to either show an alleged route on the balance of probabilities or it can reasonably be alleged. Paul's Lane does not run through OS 14 and therefore it is unlikely that the deduction referred to in the field book relates to Paul's Lane. In relation to the Field Book referring to the public bridleway being "stopped at one end", officers are of the view that this does not automatically mean that the route has been stopped up, i.e., extinguished but that the route terminated at one end. Also, the purpose of Finance Act documentation was not to legally extinguish routes and therefore it does not have the same evidential weight as a Quarter Session Order or an Extinguishment Order.
47. In relation to the Railway Deposited Plan officers remain of the opinion that route 41 is the claimed route. On balance it is still officers' opinion that the route depicted on the plan is the alleged route and it is likely that it is a bridle road under the surveyors of highway and therefore a public bridleway. The abstract of title is not conclusive evidence when it comes to public rights of way. Officers acknowledge that neither piece of evidence on their own hold strong evidential weight but when the lower test of reasonable allegation is applied it can

reasonably be alleged that the route exists as a public bridleway. A copy of officer's response is attached at Appendix M.

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

- 48.** 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.
- 49.** 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.
- 50.** 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.
- 51.** 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".
- 52.** If the conclusion is that either test is satisfied then the Definitive Map and Statement should be modified.

### **Summary**

- 53.** In relation to the 1910 Finance Act material it has been concluded that where Plans show public highways this provides good evidence of their public status. The courts have 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 footpath or bridleway and that it was a public highway.
- 54.** Although the route is shown separate from the adjacent land there is evidence from the field book for plot 558 that the alleged route was classed as a public bridle road, as from the Plan there does not appear to be another route that could be the route being referred to in the field book. This provides good supporting evidence of the routes status as a public highway as misrepresentation carried severe criminal penalties. However, the recording of rights of way was not the primary purpose of the survey. The documentation is also supportive of the route having bridle rights over it. Although, without sight of the field books for the other plots of land that the alleged route runs through, the evidence is not conclusive that the entirety of the alleged route was classified as a Public Bridle Road.
- 55.** On their own Finance Act material would not provide sufficient evidence for a modification of the Definitive Map and Statement. Other supporting evidence would be required.



56. Railway Deposited Plan evidence should not be considered to be conclusive evidence but can be regarded as good evidence to support the existence of a public right of way.
57. The Railway Deposited Plan dated 1845 supports the routes existence as public and that it had bridle rights over it, as one of the owners is recorded as the Surveyor of Highways and the route is recorded as a "Public Bridle Road". When this evidence is reviewed alongside the Finance Act material, which also provides some supporting evidence that the route had the status of a Public Bridle Road it could be reasonably alleged that a public highway subsists as a bridleway along the line of the alleged route.
58. Similarly, tithe maps and awards on their own are not evidence as to the public nature of a particular route. The courts have said that the 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.
59. In this case, neither Tithe maps confirm whether the route was public or private or the nature of any rights over the alleged route. At best, they are suggestive of higher rights over the alleged route than a footpath or bridleway as the route is depicted as being separate from the adjacent land.
60. In relation to the maps, their evidential value has been considered by the courts to be limited solely to being evidence of whether there was a visible feature on the ground. The Planning Inspectorate have stated regarding old maps: *"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"*. The maps support the physical existence of the route but do not provide any evidence as to whether the route was public or private or the nature of any rights over the alleged route. The same can be said of the Prestwood Estate Plan in that it only provides evidence of the physical existence of the route.

## **Conclusion**

61. It is open to the Panel when considering applications to come to a decision on the matter other than that which is the subject of the application. In this instance the claim is for a footpath but it is open to the Panel to decide that the evidence supports the route having a different status.
62. When the totality of the evidence is considered, it is officers' opinion that the evidence does not satisfy the test set out in s53(3)(b), that is on the balance of probabilities. The evidential weight of the documents provided is not strong enough on their own to conclude on the balance of probabilities that the route had the status of a public footpath or that it had higher rights over it.
63. However, when the lesser test is considered, that of reasonable allegation as under s53(3)(c)(i) that is satisfied. The Finance Act material and Railway Deposited Plan in particular provide supporting evidence of the route's existence as a public highway and that the route was considered to be a "Public Bridle Road", supporting the routes status as a bridleway. Whilst the applicant has alleged a public

footpath the evidence discovered by officers supports the contention that it can be reasonably alleged that the route is a Bridleway.

64. In light of the evidence, as set out above, it is the opinion of officers that the evidence shows that a right of way, with the status of bridleway, which is not shown on the map, is reasonably alleged to subsist.

### **Recommended Option**

65. To make an Order to add the claimed route as a Public Bridleway to the Definitive Map and Statement of Public Rights of Way for the District of East Staffordshire.

### **Other options Available**

66. To reject the application.
67. To accept the application as made, that is to make an Order to add the route to the Definitive Map and Statement of Public Rights of Way as a Public Footpath.

### **Legal Implications**

68. The legal implications are contained within the report.

### **Resource and Financial Implications**

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

71. 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.
72. 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.
73. 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.

**74.** 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**

**75.** There are no direct equality implications arising from this report.

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J Tradewell

Director for Corporate Services

**Report Author:** Hannah Titchener

Ext. No: 854190

**Background File:** LK602G

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