

Local Members' Interest	
Cllr G Heath	Leek Rural Staffordshire Moorlands

## Countryside and Rights of Way Panel -

### Wildlife and Countryside Act 1981

#### Application to upgrade Part of FP41, FP84 & FP 0.1791 Leekfrith Parish to a Bridleway

#### Report of the Director for Corporate Services

#### Recommendation

1. That the evidence submitted by the Applicant and that discovered by the County Council, is **insufficient** to show that part of public footpath 41, public footpath 84 and public footpath 0.1791 Leekfrith Parish should be added as a highway of a different description, namely a Bridleway, to the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.
2. That no Order be made to upgrade the alleged right of way shown on the plan attached at Appendix B to the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.

### 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, for an Order to modify the Definitive Map and Statement for the District of Staffordshire Moorlands. The effect of such an Order, should the application be successful, would:
  - (i) Upgrade part of public footpath 41, public footpath 84 and public footpath 0.1791 Leekfrith Parish to Public Bridleway status on the Definitive Map and Statement of Public Rights of Way under the provisions of Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981.
  - (ii) The lines of the route which is the subject of the application are shown highlighted 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.
4. For the application to be successful under section 53(3)(C)(ii) the historical evidence is required to be significant enough to determine that a route existed irrespective of whether there are any physical features remaining on the ground at the time of the user evidence forms.

### **Evidence submitted by the applicant**

1. The application submitted to upgrade part of public footpath 41, public footpath 84 and public footpath 0.1791 Leekfrith Parish can be found at Appendix A.
2. The application is supported by 10 user evidence forms and historical documentary evidence.
3. There is a long history in this matter, which is explained further below.
4. A handwritten letter received from the Councillor for the Leek and Rural Division dated 25 July 2001, provided what appears to be instruction from User C regarding a S.53 application concerning this route. 10 user evidence forms were provided with that letter together with a map of the route subject to the claim. The letter from the Councillor can be found at Appendix C and the user evidence forms can be found at Appendix D.
5. It appears that the Council, at that time, accepted the application omitting the required statutory documentary, form 1 and form 3. The only information that appears to have been received by the Council at that time was the user evidence and a plan of the route in question accompanying the letter from the Councillor.
6. Nonetheless, the S.53 application was accepted by the Council and entered onto the applications list in May 2006. No application was uploaded to the register, so it is assumed that no application was available at that time to upload, the only document uploaded to the register was the plan.
7. In the meantime, further correspondence was made between the original Applicant, User C, and the Council in relation to obstructions on the route in question, however; as the route in question only had existing Public Footpath status, consequently the only rights which the County Council were, and are able to enforce, are those which accord with its current status as a Public Footpath. With regard to the issues and obstructions for equestrian use over the route were therefore not a matter for the S.53 process and were dealt with under separate cover to this S53 application.
8. The Staffordshire Bridleways Group, now acting on behalf of User C, who had submitted the original claim, submitted a new application for the said route dated 18 March 2019, this new application can be found at Appendix A.
9. With no original application form from User C, or a Form 1 and Form 3 evident on the Council file from 2001, the application submitted by the Staffordshire Bridleways Group dated the 18 March 2019 will be considered the relevant application in this case to enable the matter to proceed.

## User Evidence Submitted

10. For the application to be successful on the basis of user evidence it will have to be shown that the public have used the alleged route, as of right and without interruption, for a period of at least 20 years prior to the status of the route being brought into question, or that it can be inferred by the landowner's conduct that he had actually dedicated the routes as a public right of way, and the right of way had been accepted by the public.
11. The evidence of use takes the form of ten user statements made by members of the locality in 2001 who claim to have used the route over varying periods of time.
12. For clarification, Staffordshire Bridleways Group refer to 9 user evidence forms provided in 2001 within their application, there were however ten user evidence forms submitted with the letter from the Councillor in 2001 and on the Council file and these are attached to this report at Appendix D. (The letter from Staffordshire Bridleways Group, dated 27<sup>th</sup> August 2019, Appendix E, refers to a missing user evidence form from User J, which is on the original Council file and admissible in the case).
13. The salient points of the user evidence forms are given in a matrix which can be found at Appendix F.
14. In order for the right of the public to have been brought into question, the right must be challenged by some means sufficient to bring it home to the public that their right to use the way is being challenged.
15. Members will be aware that there must be evidence of use for a 20-year period prior to the use of the route being challenged.
16. As referred to earlier in the report, the issue of obstructions on the footpath were reported to the Council and duly investigated by the Council and Ranger at that time.
17. Of the evidence submitted, in 2001, each user has indicated that the route was blocked for use of vehicles and on horseback between 15 and 20 years prior to the date of submission of the evidence. User evidence suggests that "barbed wire fences" and "posts" were erected across the route when Peak District National Park acquired the land in 1985.
18. Your officers have examined all the user evidence and the relevant twenty-year period for this application has been calculated retrospectively from **1965 to 1985**.

## Documentary Evidence Submitted

19. In terms of documentary evidence, an Extract of Peakland Roads and Trackways 2<sup>nd</sup> Edition by A E Dodd and E M Dodd was submitted in support of the upgrade of the route, this can be found at Appendix G.
20. A further extract from British History Online – A history of the County of Stafford Volume 7 Published by Victoria County History 1996 which can be found at Appendix H.
21. Finally, the Emanuel Bowen map extract of Staffordshire dated 1749 provides evidence of a route on the ground at that time in the Leekfrith parish and this can be found at Appendix I.

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

22. Officers have conducted research into historical documentation and the Parish Survey cards dated 1951 show that Public Footpath 41, subject to part of the claimed route, is recorded as a public footpath, as it is shown currently on the definitive map, and has been of that description for 20 years. This evidence can be found at Appendix J.
23. Leekfrith Public Footpath 84 does not have a parish card as it was added to the definitive map in 1995 under a path creation agreement. A copy of the path creation agreement can be found at Appendix K.
24. Leekfrith Public Footpath 0.1791 does not have a parish card as it was added as a public footpath after an objection to its omission during the consultation following the draft map publication in 1967.
25. The Council has sought evidence in relation to the objection to the omission and the S.o.R.o.W. book which is the written record of the objections received and the outcome, together with the objection map and records sheet, these are attached at Appendix L.
26. This evidence confirms that route 0.1791 should be included on the definitive map with the status of a 'FP' Public Footpath on 24<sup>th</sup> April 1957.
27. A copy of the Rights of Way hearing held on 20 July 1956 was obtained by the Council. In the hearing it was decided to add the route to the Definitive Map and Statement of Public Rights of Way. The Route was apparently not included in the original Parish Survey card and as a consequence the Peak District and Northern Counties Footpaths Preservation Society objected to its omission. At the conclusion of this hearing it was determined to add the way to the Definitive Map and Statement as a Public Footpath. This is the only record of the hearing as no other details were recorded. This can be found at Appendix M.
28. From the additional information obtained by the Council, there is no evidence to suggest that there were ever any higher rights than those of a public footpath over public footpaths 41, 84 and 0.1791 Leekfrith Parish.

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

29. The Peak District National Park completed a landowner evidence form in 2002 following a consultation upon receipt of the original application, in which they said that they owned the land since 1980 and had instigated that they accepted bridleway status along the route since 2002. They said they had obstructed the route with a fence in 1985 – 2002, the position of the gate was not marked on the map. The landowner evidence form can be found at Appendix N.
30. The landowner evidence form suggests that Peak District National Park had accepted bridleway status of the route in 2002 and removed the fence from the route.
31. The Staffordshire Wildlife Trust, who purchased the land from Peak District National Park in 2013, were consulted in 2019 following the submission of the 2019 application and submitted a Landowner Evidence form which can be found at Appendix O.
32. The Staffordshire Wildlife Trust became freeholders of the land in 2013 and do not recognise bridleway status over the route in question.
33. It appears that the landowner of Harpers End, over which part of public footpath 0.1791 runs, was not originally consulted in 2001, although was subsequently

contacted in 2019 following receipt of the 2019 application. The owner sent an email in response to the 2019 application to oppose the upgrade of the route to Bridleway status. A copy of their email dated 5<sup>th</sup> April 2019 can be found at Appendix P.

34. The proprietor of Harpers End Farm have again been consulted in October 2022 however no response has been received to date.

### Comments User evidence

35. Turning to the user evidence that was provided in support of the application. It is essential to the claim to note that **none** of the ten user evidence forms submitted have alleged to use the route for the full requisite twenty-year period, 1965 – 1985.
36. For clarity the claim is for the upgrade of an existing right of way to bridleway status.
37. The application was only made as a consequence of an obstruction in 1985 to horse riders accessing the public footpaths - when a gate and fence were erected along the route. The relevant period between 1965-1985 is therefore the period critical to the claim.
38. Whilst the only two users, User A and User B claim to have used the route for 20+ years, this is not for the full requisite 20-year period 1965-1985 and this evidence is fatal to the claim as explained further below.
39. User A claims to have been a tenant of the land over which part of existing public footpath 0.1791 route runs from 1961 – 1978 and an owner of the land from 1978 to 1984 and therefore this evidence cannot be counted in this case as User A was the occupant of the land.
40. Whilst User A would have had capacity to dedicate the route during ownership of the land during 1978-1984 only part of the route was owned and therefore as the land was not owned in its entirety of the route it could only be argued for part of the route.
41. It is evident that the map and route submitted by User A is not the same route as that claimed in the application. User A appears to have marked several routes on the map within the local area which again this evidence does not support the claim.
42. User A has provided no evidence to suggest that there was an intention to dedicate the alleged route and no overt steps were taken to dedicate the route.
43. User B, a local farmer, purports to have used the route for “mapping safety vehicles” for the “Army” once or twice a year and indicates that the route was used for the purposes of work-related activities and therefore holds no significant use of the route “as of right” and therefore does not support the claim.
44. User H used the route from 1947 to 1951 for grouse beating and between 1975 to 1982 for the purposes of work. Again, this usage does not equate to the full 20-year period or fall within the requisite 20-year period pertinent to the claim. Also, the fact that use was for work purposes is not compliant with the relevant legal tests, i.e “as of right”.
45. User H also states that the route was used “to visit neighbours and walk on the Roaches” and that this use was on foot and via motor vehicle, subsequently this evidence does not support the claim for bridleway status along the route.
46. It is noteworthy that two of the said users, the original Applicant, User C and User D, are of the same abode, being a local farm to the route in question.

47. User H and User I have evidenced a slightly different route from the route applied for; along FP41 and FP 0.1791 omitting any reference to public footpath 84.
48. The original 10 submitted user evidence forms were not submitted with a map of the route in question, although grid reference numbers were included on the forms. Users were subsequently asked, in 2002, to provide evidence together with a map of the route. Of these 10 users, 6 returned evidence forms with an accompanying map in March 2002.
49. Of the remaining users, User C, the original Applicant, used the route for 18 years, and User D (of the same abode), used the route for 15 years, both resided in neighbouring farm to the route in question.
50. User E claims to have used the route on horseback for 6 years, User F used the route on horseback for 12 years and User J used the route for 8 years with a 5-year break followed by a further 10 years use, 18 years in total.
51. Although these users fall outside of the relevant period and therefore add little probity to the claim itself, they are still signed statements that offer a degree of contextual information. It could be argued that this is some evidence of reputation of the route being used as a bridleway.
52. That said, there is no valid user evidence provided to indicate that the equestrian usage has been for the full 20-year requisite period 1965-1985.
53. The statutory test refers to use over 20 years and in the evidence submitted there is no valid individual user who has used the route for the requisite twenty years period.
54. Neither the legislation nor the applicable case law sets out a minimum level of user that is expected or required to support a claim that a route exists. The case law does suggest that the amount of usage should be such that it is enough to bring home to a reasonable landowner that the public are using a way and that use is as if it was a public highway, i.e. "as of right".
55. The frequency of use could be said to be sporadic given the user evidence provided; the fact that there is only evidence from only 7 relevant members of the public using the route on horseback suggests that the route is not widely used by horse riders and therefore it may not be enough to bring it to a landowner's attention if they were present.
56. All the users have confirmed that they have never paid to use the way or that they have never been given permission to use the way. None of the users have used force to use the route. Therefore, on balance it can be argued that usage has not been in secrecy.
57. The remaining part of the s31 test considers whether the landowner has undertaken any action to rebut the statutory presumption of dedication. Often this is evidenced by way of notices or obstructions to prevent people accessing or using the path. For a presumption of dedication under s31 of the Highways Act 1980 ("the 1980 Act") to be raised against a landowner the Court in *R v Redcar and Cleveland* [2010] 2 All ER 613 said that it must be brought home to a landowner that a right is being asserted across his land. This is true even where the owner is absent or cannot be identified. It is how the matter would appear to a reasonable landowner who was present.
58. All users have stated that a fence was erected in 1985 to prevent use of the way on horseback and that a locked gate was put in place. This was investigated by Staffordshire County Council in relation to an obstruction on the public footpath in

2001 when the original application was made. This would indicate that there was an intention by the landowners not to dedicate the route for use by horse riders.

59. Under the common law test the person claiming a public highway exists has to prove that there has been an intention to dedicate by a landowner.
60. Whilst the term of years of use does not have to span that set out in statute it must still be sufficient to raise the awareness to an owner that the land is being used as a public route. There is simply not enough evidence of use to support the claim that the path is a bridleway. For an area which is clearly easily accessible by the public, the lack of user evidence submitted does not suggest that the claimed route enjoys the reputation amongst the public as being a bridleway.
61. Of the evidence submitted, three users have implied that they have used the route for the purposes of work related activities; The question of implied permission has been the subject of a decision in the House of Lords, *R v City of Sunderland ex parte Beresford* [2003] UKHL 60.
62. The information statements provided support the contention that the equestrian users are drawn from a particular section of society and that equestrian use is limited to members of the local area and neighbouring farmland. The evidence provided clearly shows that the route was only used on horseback or motorised vehicle predominantly by people living in the local area or at neighbouring farms. It would suggest that this is a prerequisite for use in this instance.

### **Comments on Documentary Evidence**

63. The legislation accepts that the route may no longer be visible on the ground and that there may be no physical features to suggest the route was ever there. In this case the line of the route is still visible on the ground in the form of the public footpaths concerned. However, the physical appearance is in no way indicative of the status of the route.
64. The three pieces of evidence submitted by the Applicant are considered in more detail below:
65. The Applicant refers to the front cover of the book illustration is “the pre-turnpike road from Leek to Buxton passing between Hen cloud and Five Clouds, Roaches”. Printed 1980. Very little can be gleaned from this evidence, and it provides no legal weight to the claim. A photograph of the route in question may relate to physical evidence of the route on the ground, however this is not in question in this case, the route has existing public footpath status, the question here is whether or not bridleway status exists, and this cannot be determined by the illustration and description in the authors text provided.
66. The extract evidence submitted from British History Online refers to a pre-turnpike road “from Upper Hulme the road ran northwest to a gap between Hen Cloud and the Roaches and on to Flash”, it cannot be established whether the route is the same which is subject to this claim and therefore there is very little evidential weight gained from this evidence.
67. The Emanuel Bowen map extract dated 1749 provides evidence of a route on the ground at that time in the Leekfrith Parish. Whilst the map indicates what appears to be a road, the exact location and line of the route is not clear nor can the rights over such a road be identified from this evidence.

## **Comments All Available Material**

68. There is no evidence submitted that would conclusively support any higher rights than those applied for. However, the references to the “pre-turnpike road” should be noted, whilst also considering the fact that these are isolated annotations in documents which are normally used at best as supporting evidence.
69. The other pieces of evidence either do not relate to the claimed route directly or are evidentially weak.
70. The user evidence provided is not supportive of the claim as not one pertinent user claims to have used the route for the requisite 20-year period.
71. The landowner evidence submitted from Peak District National Parks indicates that they “accepted bridleway status” in 2002, however this is only in respect of part of the alleged route over which Peak District National Parks had an interest in. This status was not accepted by every landowner along the route, therefore Peak District National Parks had insufficient capacity to dedicate the whole of the route for equestrian use.
72. There is not enough evidence from the Peak District National Park Landowner evidence form to show that there was an intention to dedicate the route. The landowner must be shown to have intended to dedicate the way as a public right of way and the dedication must be accepted by the public. None of the users have provided any evidence that they have used the route after 1985, despite the application being submitted in 2001.
73. There is evidence of an intention not to dedicate the route from Peak District National Park in 1985 as a gate/fence was installed which prevented equestrian use, therefore showing an intention not to dedicate the route to horse riders. This is relevant as this was at the time most users claim to have been using the route. The removal of the gates/fence in 2002 is irrelevant to the claim as this does not fall into the relevant 20-year period and is not during the time the evidence of use is provided.
74. The evidence sought by the Council, the Parish Survey Cards in respect of public footpath 41, the path creation order of public footpath 84 and the documentation in support of public footpath 0.1791, would suggest that all three routes referred to in this claim are Public Footpaths with no higher status.

## **Burden and Standard of Proof**

75. With regard to the status of the routes, the burden is on the applicant to show, on the balance of probabilities, that it is more likely than not, that the Definitive Map and Statement are incorrect. The existing classification of the routes, as public footpath 41, public footpath 84 and public footpath 0.1791, must remain unless and until the Panel is of the view that the Definitive Map and Statement are wrong. If the evidence is evenly balanced, then the existing classification of the routes as footpaths on the Definitive Map and Statement prevails.
76. If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

## **Summary**

77. The application is made under Section 53(2) of the 1981 Act, relying on the occurrence of the event specified in 53(3)(c)(ii) of the Act. Therefore, the Panel need to be satisfied that, on the balance of probabilities, the evidence that has been discovered shows that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
78. The relevant statutory provision, in relation to the dedication of a public right of way, is found in Section 31 of the Highways Act 1980 ("the 1980 Act") which sets out the requirements for both the statutory test and common law dedication.
79. For the statutory test to be satisfied it will be necessary to show that on a balance of probabilities the right of way does subsist.
80. If the conclusion is that on the balance of probabilities the test is satisfied, then the Definitive Map and Statement should be modified.
81. Section 53(2) of the 1981 Act requires consideration of whether there has been use of a way by the public, as of right and without interruption, for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.
82. Before a presumption of dedication can be raised under statute, Section 31 of the Highways Act 1980 Act requires that a way must be shown to have been actually used by the public, as of right and without interruption, and for this use to have continued for a full period of twenty years. In this case, the view taken was the status of the route was brought into question in 1985.
83. Therefore, it needs to be demonstrated that there was public use between 1965 to 1985 to satisfy the first part of the statutory test. In total there is not one relevant user who have recorded usage on horseback that covers the relevant 20-year period.
84. The amount of user evidence is lacking and therefore it is not sufficient to show that there was a presumption of dedication for horse riders to use this route as a bridleway.
85. Of the documentary evidence provided by the Applicant none of the evidence supports the contention that the route has bridleway status.
86. The evidence sought by the Council supports the context that the status of a public footpath on the Definitive Map and Statement are correct.
87. There is no question in this case as to the existence of a public right of way as the entire route is comprised of three successive and joining public footpaths. It is the status that is brought into question by the Applicant.
88. Regarding the historical evidence, although the evidence refers to the existence of a physical route in the general area of the line of the alleged route which may have had the status higher than that of a footpath, this evidence does not show if the route was public or private or provide the exact location of the route.
89. The Parish Survey Cards and evidence discovered by the Council provide evidence to suggest that the route is more likely than not to have the status of a public footpath.
90. When the historical and user evidence is reviewed in totality it can be said that bridleway status, on a balance of probabilities, does not subsist.

91. This application is not for an inclusion but to upgrade and when all the user and documentary evidence is reviewed in conjunction with each other there is insufficient evidence to support any status other than that already recorded and therefore the relevant legal test has not been satisfied.
92. In this instance your officers consider that the use is insufficient to satisfy the test set out in s31 when considered on the balance of probabilities.

### **Conclusion**

93. The question is not whether public footpath 41 (part), public footpath 84 and public footpath 0.1791 Leekfrith Parish are public highways but rather what the nature of the public rights are over the routes.
94. The evidence to overturn the current designation on the map must satisfy the civil legal test, that of the balance of probabilities.
95. In light of the evidence, as set out above, it is the opinion of your officers that based upon the balance of probabilities the routes which are the subject of the application are more likely than not public footpaths.
96. It is the Opinion of your Officers that the County Council should not make a Modification Order to upgrade the public footpaths that are the subject of this application to the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.

### **Recommended Option**

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

### **Other options Available**

98. To decide to accept the application to upgrade part of public footpath 41, public footpath 84 and public footpath 0.1791 to bridleway status.

### **Legal Implications**

99. The legal implications are contained within the report.

### **Resource and Financial Implications**

100. The costs of determining applications are met from existing provisions.
101. 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**

102. 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.
103. 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.

104. Should the Council decide not to make an Order the applicants may appeal that decision under Schedule 14 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.
105. 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**

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

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J Tradewell

Director for Corporate Services

**Report Author: Laura James**

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**Background File: LL612G**

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