Local Members' Interest Cllr K Flunder	Biddulph South and Endon

Countryside and Rights of Way Panel

Wildlife and Countryside Act 1981

Application for the Upgrade of Public Footpaths 13 & 77 Endon & Stanley to Bridleways

Report of the Director for Corporate Services

Recommendation

1. That the evidence submitted by the Applicant at Appendix A is sufficient to show that on the balance of probabilities Public Bridleway's subsist along the routes marked A to B and C to D on the plan attached at Appendix B to this report and should therefore be added to the Definitive Map and Statement of Public Rights of Way as such.

2. That an Order should be made to **add** the alleged rights of way shown on the plan attached at Appendix B and marked A to B and C to D 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 made on the 10th of April 1996 on behalf of the North Staffordshire Bridleways Association for an Order to modify the Definitive Map and Statement for the area by upgrading Public Footpaths 13 & 77 Endon & Stanley to Public Bridleways under the provisions of Section 53(3) of the Wildlife and Countryside Act 1981. The lines of the alleged public bridleways as claimed by the Applicant are shown on the plan attached at Appendix B.

3. To decide, having regard to and having considered the Application and all the available evidence, and after applying the relevant legal tests, whether to accept or reject the application.

Evidence Submitted by the Applicant

4. In support of the application the Applicant has submitted 13 user evidence forms, although two of these were from the same applicant, and have been marked accordingly (in the matrix of salient points) as “User 9a” and “User 9b”.
5. The number of users therefore will be taken as 12 throughout the report and for absolute clarity all other users excepting User 9 have expressly referred to both routes in their evidence forms.
6. These can be found at Appendix C.
7. The Applicant had originally submitted 4 letters of support although 3 others were submitted later.
8. These can be found at Appendix D.
9. In addition, the Applicant has submitted a copy of the ordnance survey map of 1836 for the relevant area.
10. This can be found at Appendix E.
11. A summary of the salient points from the user evidence forms has been added to a matrix.
12. This can be found at Appendix F.

Evidence Submitted by the Landowners

13. A total of 16 adjoining landowners returned owner evidence forms.
14. These can be found at Appendix G.

Evidence Discovered by the County Council

15. Staffordshire County Council established that there were another 14 adjoining landowners, and these were also consulted in respect of the claimed route.

Comments Received From Statutory Consultees

16. Staffordshire Moorlands District Council responded in support of upgrading the routes to bridleway status.
17. The Peak & Northern Footpaths Society responded stating that they had no comment provided the surface of the paths is maintained in good condition.
18. The Ramblers Association responded stating that they repudiated the application to upgrade the routes due to public safety reasons, an exposition of which can be found in the relevant section of this report.
19. These responses can be found at Appendix H.

Comments Received Following Circulation of the Draft Report

20. Following the circulation of the draft report a phone call was received from someone with an interest in the land (PF77) and who had returned one of the original response forms. He stated that the alleged route was already used as a bridleway and that this is the status the route should be.

21. A second landowner with an interest in the land (PF13) also contacted officers and also stated that she believed the alleged route was already a bridleway and had been so for at least 40 years.

22. Cllr Flunder also contacted officers for an overview of the case and suggested that he would look further into it and would relay any comments ahead of the CROW Panel meeting in January.

23. Officers clarified that if anything of significance was discovered then due to the recent postal delays the matter could be deferred.

Comments on Evidence

24. Section 31 of the Highways Act 1980 sets out the test that must be satisfied under statute for a way to become a public highway through usage by the public.

25. In 1932 the Rights of Way Act introduced the statutory presumption of dedication by the landowner of a public right of way which could be proven by evidence of twenty years usage as of right and without interruption.

26. This presumption could be rebutted by the landowner proving that he had no such intention. However, the onus is on the landowner to do so.

27. The land that the paths cross is not of a character that would prevent the dedication of a way and there are no exceptional factors in this claim.

28. In this case it is not the existence of a public right of way that is brought into question as the routes already have the status of public footpaths. The claim is that the routes have higher rights and that these rights are consistent with those of a public bridleway.

29. For clarity the application is for two public footpaths to be upgraded to two public bridleways and to be added to the Definitive Map and Statement as such.

30. As the evidence in each case relates to both routes - and is clearly indicated as such - the assessment and the relevant period will apply to both, and all discussions will relate to both.

31. The routes, being in close proximity to each other appear to have been used as part of a continuous route connected to - and by - other parts of the adjoining highway network.

32. From the user evidence forms it is clear, that the relevant period to which most of the evidence relates runs retrospectively from 1995 to 1975.

33. The date of the application (1996) does not in its own right constitute or result from any challenge, and although this was when most of the user evidence forms were completed – the greater part of it falls between 1975 and 1995.

34. Although this will be the relevant period there appears to have been equestrian use for at least twenty years prior to this time – and although of less probity to the claim it none the less sets the scene.

35. Turning to an exposition of the user evidence forms within this twenty-year relevant period we find that the majority – eleven out of the thirteen were using the routes on horseback, while just six were doing so by foot.

36. This predilection for equestrian use is therefore obvious from the outset and provides an undisputed consistency throughout the evidence.

37. Although the legislation does not specify a minimum level of user it is generally taken that anything below six would be evidentially weak and anything over six would be evidentially strong.

38. In this case eleven out of thirteen represents approximately 85% of all user evidence testifying to equestrian use – which is significant and greatly increases the overall probity.

39. When this is combined with the frequency of use it is clear that the route was used by horses and on a very regular basis, with a predilection for use at least once weekly and sometimes daily.

40. This frequency of use is consistently high throughout the user evidence forms and is sufficient to have brought it to the attention of the relevant landowners.

41. It is reasonable to believe that a horse is more noteworthy than a person in this respect and with eleven regular users testifying they used it at least once weekly throughout a twenty-year period, then again it would be reasonable to believe that this had not escaped the notice of the landowner.

42. As for the reasons people were using the routes then again, we have a specific predilection in the evidence, and this appears to have been mainly for “pleasure” purposes.

43. The use appears to have been consistent with that of a typical pleasure ride or hack.

44. The user evidence is also clear on the width of the routes in question, in that PF13 is stated as being the width of one vehicle or thereabouts – and PF77 is stated as being the width of two vehicles or thereabouts.

45. These widths are quantified in some cases with approximate measurements, although they are mere approximations, and the width is perhaps best illustrated as in point 40 above.

46. It is sufficient to say that both routes were clearly wide enough to physically accommodate the testified equine use – and so do not detract anything from the claim.

47. Turning to the question of stiles and gates along the routes it is notable that none of the 13 users testified to any being present along either route.

48. This is not only true of any *recognised* stiles or gates that may have been along the paths in question - but also of any unauthorised ones erected as a challenge to keep the horses out.

49. From the user evidence we see a complete lack of obstruction of any kind and at any point along either route. Not only does this eliminate the possibility that “force” has been used to access the routes – it also removes the question of “challenge” by any physical means.

50. This lack of challenge also extends to any verbal incidents as none of the users ever reported being questioned or turned back by any landowner while accessing the claimed routes.

51. A fatal challenge can also come in the form of signage and again none of the users who supplied witness statements noted any kind of signage along the routes -respecting of course the comments in point 48 below.

52. As these were - and are - existing public footpaths it is unlikely that any prohibitive signage would have been employed or displayed.

53. In similar manner no permissions had ever been granted to any of the users – again reinforcing the fact that this use was "as of right" - one user even stating that "*no permission was necessary".*

54. Turning to the line of the route being used it is clear from the evidence that all 12 users have used the same routes throughout the twenty-year relevant period. This is testified to on the accompanying plans.

55. In each case the lines of the route have been highlighted and the connecting lines indicated to show how the wider network that was being used. This clearly shows the lines of the two definitive public footpaths – which existing as they do – leave little doubt about the lines in question.

56. Turning to the comments noted within the user evidence forms we find that one user stated that "*it has always been a bridlepath*" – clearly supporting the contention that its use was "as of right".

57. The current legal status of the routes is of course that of "public footpaths".

58. One user also indicated that the purpose of using the route was to go from *"Endon Riding School…in a circular route to Moss Hill and through to Edge Lane and returning to the riding school"* (sic).

59. On consideration of the user evidence, it is therefore clear that use of both routes has been "as of right", and without secrecy, force, or permission.

60. As such all points satisfy the higher test with regard to the balance of probabilities.

61. There is near perfect consistency in the evidence, and this also applies to the plans submitted with each form – the line of the route is consistently shown and clear.

62. Turning to the 4 letters of support also submitted by the applicant we find additional comments supportive of the claim.

63. One such supporting letter from an adjoining landowner stated that they had lived at their address for around 30 years and confirmed that PF77 had "*unhindered access to pedestrians, horse riders and vehicles"* during this 30-year period.

64. Another, again from one of the adjoining landowners stated that they had lived there since 1947 (as at 1996) and that it was "*currently used by pedestrians, some vehicles and horse riders"* - although these comments only related to PF77 as no knowledge was had of PF13.

65. Another adjoining landowner stated in their letter that they had lived on Stoney Lane (PF77) for 65 years and had "*seen horse riders using the lane frequently since the early 1930's*." they went on to clarify that they had "*always understood it to be a bridleway".*

66. Another supporting letter from an adjoining landowner stated that they had lived in Stoney Lane (PF77) for 40 years and had "*seen riders using the lane frequently*".

67. A letter from a relevant landowner on the lower section of the route (PF13) stated that they had lived at Moss Hall Farm for 20 years and could confirm that PF13 had indeed been used by horse riders throughout that time and "*almost daily*" by the Endon Riding School.

68. Again, another relevant landowner on the lower section of the route (PF13) stated they had lived there for 67 years (calculated from information in the letter) and that PF13 was "*precisely a bridlepath and should not be referred to as any other."* They continued "*During my years of being here I can see these paths used very much by horse riders and they still use it".*

69. Another supporting letter was received from a witness who submitted a user evidence form. Interestingly this stated that they had attended a Public Inquiry in 1977 where the wider network was discussed and where reference was made to a *"complete route*" running from Public Bridleway 1 at the southernmost end along Public Footpath 13 and then Public Bridleway 15 and Public Bridleway 18 to Public Footpath 77 at the northernmost end.

70. The Public Inquiry appeared to be considering the status of these connecting routes although the "*complete route*" referred to need not have applied to a complete *bridleway* route of course – merely to a public right of way.

71. When taken together the letters all support one another and testify to both PF13 and PF77 as having been used extensively by horse riders and over a protracted period of time.

72. Turning to the 16 landowners who returned owner evidence forms we can again see a high degree of consistency. For clarity one of the routes in question – currently PF77 – adjoins a number of different properties.

73. The owners of a number of these properties returned landowner evidence forms and an exposition of these is given below.

74. Again, in many respects these confirm all the details in the user evidence forms and letters and basically each supports the another.

75. Firstly, all of the owner evidence forms testified to having never erected any signage on the routes – which of course supports the same element within the user evidence forms - from the evidence of both owner and user this is clear.

76. Secondly all of the owner evidence forms confirm that no one has ever been challenged using the routes by either blocking them with gates or other obstructions. Nor has anyone ever been stopped or turned back while using the two claimed lines.

77. Indeed, a primary landowner along the lower section of the route stated that he had only ever asked people to keep their dogs on leads due to cattle in the fields.

78. Again, this in no way constitutes a challenge as it relates purely to the correct use of a public footpath – the current status of the claimed routes.

79. Interestingly, one adjoining landowner who supplied evidence stated, *"I understand that it was originally a pack saddle-path route for merchants carrying goods from Burslem and the right of way was restricted to that width."*

80. Clearly this comment from an adjoining landowner is supportive of the claim from an historical perspective, although again the matter is being tested on user evidence. That said the point is noted.

81. The same landowner also stated that there were originally four gates on Stoney Lane although from the evidence it was clear that these fell outside of the relevant period and so would not defeat the claim.

82. This also applies to the locking of the said gates – also highlighted in the evidence but having taken place "years ago".

83. In his summation the landowner stated he had "no objection to the use of Stoney Lane as a bridlepath" but went on to clarify that he felt a restriction on vehicular traffic would be necessary – as it was often used as a short cut.

84. One other landowner whose property adjoined the route stated, "*I just know there has always been a bridlepath for as long as I have lived here- and was born here".*

85. Clearly it does not state whether or not he had lived there continually, although it is reasonable to believe he did from the context. If so, then it could be posited that the route has been used as a bridleway for the greater part of 80 years – including the full term of the relevant period…conjecture.

86. Although the owner-evidence forms related primarily to adjoining landowners they were consistent in their outlook and offered nothing to defeat the claim.

87. Turning to the evidence submitted by the statutory consultees we find that Staffordshire Moorlands District Council supported the application, and the Ramblers Association did not.

88. The Ramblers Association after initially supporting the upgrade changed their stance due to perceived public safety issues on the route. This was due to the newly tarmacadamed surface on part of the route – referred to by the Ramblers Association as "*a steep gradient and a slippy metalled surface*". (sic).

89. The Ramblers Association highlighted that they had spoken to a local resident who informed them that there had been "*numerous reports of incidents of horses sliding and riders falling on this stretch".* These incidents although noted are anecdotal and not pertinent to the legal existence – or not – of the route.

90. That said the Ramblers Association also stated that after speaking to a number of residents in the area that they appeared to "*support a bridleway*" but were "*extremely anxious*" about it becoming a "*traffic byway*".

91. While the traffic flow and metalled surface questions were extant the Ramblers Association could only repudiate the proposal to upgrade PF77 to a bridleway. This could be mitigated somewhat by an anti-slip surface – in which case parts of it could be suitable for a bridleway – they suggested.

92. The health and safety concerns, although noted have no material bearing on the claim as it is only the legal existence of higher rights – or not – that the assessment seeks to prove.

93. If the application was successful, these concerns would of course be considered at an appropriate later stage.

94. As such there is nothing of direct relevance to the claim within the comments and representations of the statutory consultees.

95. Taking all of the evidence together we find a somewhat replete and consistent case where, unusually, the user evidence and the owner evidence appears to support each other.

Comments on All Available Material

96. There is no significant evidence that would support any higher rights than those applied for.

97. Although some reference is made to vehicles accessing the route this appears to be limited to persons accessing their properties along the route – and more particularly on PF77.

98. Nor has a case been made out for any higher rights.

99. The evidence is presented in a detailed and cogent way, and this clearly supports the claim.

100. The evidence is consistent both with itself and with the additional details that subsequently came to light in the form of written letters.

101. When the evidence is taken together there is significantly more to show that a public way of higher status exists along both of the routes in question – and this status is that of bridleway.

102. The probity of the user evidence is good and it is clear that no attempt by any landowner has ever been made to challenge the use of either route as a bridleway.

Burden and Standard of Proof

103. An application for a modification order based upon evidence of use can be made under either s53(3)(b) or (c)(i) and that this should be considered the relevant section for determination purposes.

104. There is a two-stage test, one of which must be satisfied before a Modification Order can be made. All the evidence must be evaluated and weighed, and a conclusion reached as to whether:

(a) on the balance of probabilities, the alleged right subsists; or

(b) is reasonably alleged to subsist.

105. Thus, there are two separate tests. 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.

106. 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.

107. 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".

108. If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

109. In this case it is not a matter of whether a right of way exists as both routes are already shown as public footpaths on the Definitive Map and Statement.

110. What is brought into question is their status and as such it will be necessary to satisfy the higher test.

111. This test will be therefore on the balance of probabilities.

Summary

112. 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.

113. This 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.

114. In considering the evidence of use by the public in this case the claimed use was sufficient to draw attention to the landowner that a public right of way of a different status was being asserted over the land.

115. If it is decided that the statutory test fails or is inapplicable, consideration should be given to the issue of common law dedication; that is, whether the available evidence shows that the owner of the land over which a way passes has dedicated it to the public.

116. An implication of dedication may be shown at common law if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication. Evidence of the use of a way by the public as of right may support an inference of dedication and may also be evidence of the acceptance of a dedication by the public.

117. Before a presumption of dedication can be raised under statute, Section 31 of the 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.

118. In this case there was no challenge to the use of the route and the relevant twenty-year period was confirmed from the evidence.

119. There is no clear evidence to suggest that the users were unable to use the alleged route uninterrupted for the twenty-year period and in light of the number of users who came forward to provide evidence of use this is supportive of the usage of the alleged route for the relevant period.

120. Also, no clear overt actions have come to light that would indicate a clear intention not to dedicate.

121. Once a presumption of dedication is raised then the burden lies with the owner to demonstrate by his actions that there was no intention to dedicate. Here there is no evidence of any acts by any landowner to rebut the presumption of dedication in the 1980 Act during the requisite twenty-year period.

122. Taking everything together it appears that the evidence is sufficient to say that on the balance of probabilities a right of way, with the status of a public bridleway, subsists along both routes being PF13 and PF77 Endon and Stanley respectively.

Conclusion

123. 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 the upgrade of two public footpaths to public bridleways.

124. Taking everything into consideration it is apparent from the evidence that two rights of way with the status of public bridleways which are not shown on the Definitive Map or Statement **subsist** on the balance of probabilities.

Recommended Option

125. To accept the application based upon the reasons contained in the report and outlined above and that the two routes should be added to the Definitive Map and Statement for the District of Staffordshire Moorlands.

126. That the width of the route shall be to the standard minimum width of **3 metres** in respect of PF77 and **2 metres** in respect of PF13.

Other Options Available

127. To decide to reject the application and not make an Order to add the route to the Definitive Map and Statement of Public Rights of Way**.**

Legal Implications

128. The legal implications are contained within the report.

Resource and Financial Implications

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

130. 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

131. 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.

132. 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.

133. 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.

134. 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

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

J Tradewell

Director for Corporate Services

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Appendices

Appendix "A"	**Application**
Appendix "B"	**Plan**
Appendix "C1 - C4"	**User Evidence Forms**
Appendix "D"	**Supportive Letters (7)**
Appendix "E"	**OS Maps and Plans**
Appendix "F"	**Salient Points From User Evidence Forms**
Appendix "G1 – G4"	**Landowner Response Forms**
Appendix "H"	**Statutory Consultee Responses**