

Local Members' Interest	
Mark Sutton	South Staffordshire - Brewood

Countryside and Rights of Way Panel – 28th April 2023

Wildlife and Countryside Act 1981

Review of decision of the Countryside and Rights of Way Panel made on 16th July 2021 to make an order to add a public footpath from Stretton to the highway to the east of Bickford Grange Farm

Report of the Director for Corporate Services

Recommendation

1. That, after reviewing all available evidence and the Addendum Report, to confirm the Panel's decision made on 16th July 2021, that:

(a) the evidence submitted by the applicant is sufficient to show that the alleged public footpath is reasonably alleged to subsist as shown running between A-B-C on the plan at page 2 of the bundle of documents attached to the Addendum Report and should be added to the Definitive Map and Statement of Public Rights of Way as such, and

(b) an Order should be made to add a public footpath from Stretton to the highway to the east of Bickford Grange Farm as shown running between A-B-C on the plan at page 2 of the bundle of documents attached to the Addendum Report to the Definitive Map and Statement of Public Rights of Way for the District of South Staffordshire

PART A

Why is it coming here – what decision is required?

2. 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.

3. To consider the Addendum Report attached, in connection with a review of its decision made on 16 July 2021 to order modification of the Definitive Map and Statement of Public Rights of Way pursuant to the provisions of the 1981 Act.
4. The review arises from an undertaking given to the High Court by the Council which is noted in Appendix 1 of the Order of Mrs. Justice Lang DBE dated 1 December 2022 and shown at Page 5 of the Addendum Report.
5. The Addendum Report has been drafted by William Webster who acted for the Council in the Judicial Review proceedings in the High Court ("the JR claim").
6. To decide, having regard to and having considered the Addendum Report and all the available evidence, and after applying the relevant legal tests, whether to confirm the decision made on 16 July 2021.

Burden and Standard of Proof

7. 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 whether on the balance of probabilities either:
 - (a) the alleged right subsists or;
 - (b) is reasonably alleged to subsist.
8. 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.
9. 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".
10. If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

Summary

11. 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.
12. 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.
13. 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.
14. 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".
15. If the conclusion is that either test is satisfied then the Definitive Map and Statement should be modified.

Conclusion

16. It is your officers opinion that the Council would be acting lawfully if it confirmed the decision made by the Panel on 16 July 2021 for the reasons set out in the Addendum Report. The officers consider that it would be reasonable for the Panel to find on the evidence summarised in the Addendum Report that the claimed footpath "subsists or is reasonably alleged to subsist" over the relevant land within the meaning of section 53(3)(c)(i) of the 1981 Act and should be added to the DMS.

Recommended Option

17. To confirm the decision made by the Panel on 16th July 2021 to make an order to add a public footpath from Stretton to the highway to the east of Bickford Grange Farm based upon the reasons contained in the Addendum Report and outlined above.

Other options Available

18. To rescind the decision made by the Panel on 16th July 2021 and reject the application to add a public footpath from Stretton to the highway to the east of Bickford Grange Farm.

Legal Implications

19. The legal implications are contained within the report.

Resource and Financial Implications

20. The costs of determining applications are met from existing provisions.
21. 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

22. 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 the 1981 Act. The Secretary of State would appoint an Inspector to consider the matter afresh, including any representations or previously unconsidered evidence.
23. 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.
24. Should the Council decide not to make an Order the applicants may appeal that decision under 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.
25. 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

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

J Tradewell

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INDEX TO APPENDICES

Appendix A	Copy of Addendum Report by William Webster with appendices
Appendix B	Copy of Objectors response to Addendum Report with appendices