

<b>Local Members' Interest</b>	
Councillor Mark Winnington	Stafford - Gnosall and Doxey

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

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

#### **Application for an Addition of a Public Bridleway between the A519 and Public Bridleways 8 & 28, Forton Parish**

#### **For the Director for Corporate Services**

#### **Recommendation**

1. That the evidence submitted by the Applicant and that discovered by the County Council is **not** sufficient to conclude that a Public Bridleway which is not shown on the Definitive Map and Statement subsists or can be reasonably alleged to subsist along the route marked A to B on the map attached at Appendix B and so should **not** be added to the Definitive Map and Statement of Public Rights of Way as such.
2. That an Order should **not** be made to add the alleged route shown marked A to B on the map attached at Appendix B to the Definitive Map and Statement of Public Rights of Way for the Parish of Forton.

### **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 Stafford. The effect of such an Order, should the application be successful, would:
  - (i) Add an alleged Public Bridleway between points A to B on the plan at Appendix B 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.

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 submitted a tracing taken from the Plan of the Newport Branch of the Birmingham and Liverpool Junction Canal dated 1826, together with a copy of an extract from the Book of Reference. These can be found at Appendix C.
2. The Applicant submitted a 1-inch to 1-mile Ordnance Survey Map dated 1834, together with an undated Wright and Carrington Map ci. 1890-1910 (motoring cycling and touring roadmap). These are attached at Appendix D.

### **Documentary Evidence Submitted**

#### **Deposited Canal Plan (Q/RUM/61/1826)**

3. Deposited Canal Plans had to be produced and deposited prior to a canal company obtaining an Act of Parliament authorising the construction of their intended canal or railway. The map supplied by the Applicant is of the Newport Branch of the Birmingham and Liverpool Junction Canal 1826.
4. The deposited maps covered a corridor of land defining the limits of deviation either side of the line of the intended canal, with plot numbers for the land and public and private routes, which are referred to in a book of reference.
5. They showed the status of routes divided by the proposed line, the accuracy of which would have been in the interest of those affected.
6. The plans were drawn to comply with parliamentary requirements. The Bill and plans were open to consultation and debate and as such, they carry good evidential weight, though it is not conclusive.

#### **Ordnance Survey Maps**

7. Ordnance Survey Maps date back to the early 1800's and their purpose is to show physical features on, and the contours of the ground. In doing so they included all manner of ways from tracks leading only to remote properties, footpaths crossing fields, as well as the main highway.

8. They do not distinguish between public and private rights of way. From 1888 the maps carried a disclaimer that the depiction of a way on a map did not mean it was public. They are evidence only of the physical existence of a way on the ground at the date of the survey.
9. There may be annotations next to some minor routes such as FP or BP however they do not indicate whether the way was public or private. Such annotations might indicate that the route was only capable of having that type of traffic use but would only be supporting evidence and not conclusive.

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

10. Officers have conducted research into historical documentation at the County Council's Record Office and viewed the original Deposited Canal Plan and Reference book for information purposes. These can be found at Appendix E.
11. Officers have studied the 1836 Tithe Map and record book for the Parish of Forton, these documents can be viewed online, and the evidence can be found at Appendix F.

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

12. Aqualate Estate subsequently responded to the application stating that the land over which the alleged Bridleway is situated was not and has never been considered a public bridleway. Their response can be found at Appendix G.
13. The existing landowner over which the alleged Bridleway runs responded to the application in 1999 indicating that the lane is private, and signs have been in place to that effect throughout occupation and purchase of the land in 1977 and no members of the public have ever been seen using the alleged route. A copy of the landowner response form can be found at Appendix H.

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

14. The Ramblers Association responded and whilst they support the application they have advised that they have no further evidence to submit in relation to the application.
15. A consultee has written to the Council following consultation in 1999 requesting that the application be for a BOAT (byway open to all traffic). A copy of the letter can be found at Appendix I.

## **Comments on Evidence**

### **Deposited Canal Plan (Newport Branch)**

- 16.** Where there was a proposed railway or canal in the 18<sup>th</sup> and 19<sup>th</sup> century, the intended route would be surveyed in order to assess the suitability of the land for construction of a railway or canal. The surveyor then created plans and books of reference which ultimately recorded highways and showed who owned the land where the proposed railway or canal were to cross the land.
- 17.** The Applicant submitted a tracing of a deposited Canal Plan dated 1826. The plan shows a route in the Forton Parish, just south of the Sutton Parish, the claimed route is numbered 33.
- 18.** The Book of Reference which accompanies the plan refers to route 33 as a "Lane". The owner and occupation of plot 33 is recorded as "Surveyor of Highways". The notation of Surveyor of Highways could indicate the way was considered public at the time.
- 19.** In the case of highways, the Book of Reference often, but not always, lists who was responsible for the maintenance of a route, the status and the nature of the rights over it. In the case of public highways the landowner or person responsible for maintenance may be listed as the Surveyor of Highways which would indicate the way was public.
- 20.** It is important to note that the Surveyor of Highways was recorded as being liable giving extra probity to the claim.
- 21.** The Deposited Canal Plan can be said to show that the Surveyor of Highways did not object to the designation of the route when they had the opportunity at the end of the first survey to do so.
- 22.** The Deposited Canal Plan dated 1826 shows only part of the claimed route and therefore it cannot be determined where the "Lane" commenced and ended despite the Applicant inferring that the whole of the route is depicted on the Deposited Canal Plan.
- 23.** The Forton Surveyor of Highways would appear to be of the opinion that the lane was one which was publicly maintainable. However, the status is not easily defined by the use of the word 'Lane'.
- 24.** The entry in the book of reference suggests that the alleged route was in the ownership of the 'Surveyor of Highways', this may be persuasive evidence of a public right of some description. However, the weight to be given to this can only be determined when it is considered alongside all the other available evidence.

### **Ordnance Survey Map** 1-inch to 1-mile Ordnance Survey Map dated 1834

- 25.** In relation to the Ordnance Survey Map submitted by the Applicant in support of this application, the route identified would appear to leave the

main carriageway, now the A519, however this map is not suggestive that the route in question links to a highway or a place of public resort at its most southerly point and therefore it is not suggestive of a public right of way.

26. As stated in *Folkestone Corporation v Brockman* [1914] AC 338, 354; if the way leads from one recognised highway to another, or from one inhabited settlement to another, the inference may be relatively easy to draw. If, on the other hand the way leads nowhere, the inference may be more difficult to draw.
27. The Ordnance Survey Map dated 1834 submitted by the Applicant appears to show a route in the proximity of the alleged route running from A519 ending to the north east of the River Meece; however this only shows the existence of a physical feature and does not show the status or nature of the claimed route.
28. The evidential value of Ordnance Survey Maps has been considered by the Courts to be limited solely to being evidence of whether there was a visible feature on the ground.
29. Your officers have examined Ordnance Survey Maps dated 1891-1925. The maps support the physical existence of a route but do not provide any evidence as to whether the rights over the route were public or private or the nature of any such rights. Such evidence is not, on its own conclusive proof, and therefore must be considered alongside all other evidence as stated in *Maltbridge Island Management Co. V Secretary of State for the Environment* [1998] EGCS 134
30. The fact that the lane on the 1891 Ordnance Survey appears to be named, "Shiple Lane" and "Sheeple Lane" on the 1903 and 1925 Ordnance Survey Maps is simply a recording of a physical feature. It is likely that there may have been something along the lane to indicate the name; for example a sign. The fact that it is recorded with a name on the Ordnance Survey Map does not in itself give the lane any status.
31. Whilst the naming of the lane on the Ordnance Survey Map carries some inference of public status, it is not itself persuasive evidence.
32. Although the actual Ordnance Survey Maps themselves are no indication of the status and nature of the route, it could be argued that there are implications of "evidence" to be gleaned from these maps.
33. That said, Ordnance Survey Maps carry very little legal probity and evidence is limited and supportive at best.

#### **Forton Parish Tithe Map 1836**

34. Your officers examined the Tithe Map and Award for the Forton Parish. Tithe Maps were prepared under the Tithe Commutation Act 1836, which commuted the payment of a tax (tithe) in kind, to a monetary payment.

- 35.** The sole purpose of the tithe documentation was to identify land subject to paying the tithe. 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.
- 36.** Where a route is 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 untithable and not the status of the way.
- 37.** The Tithe map appears to show the alleged route on the map separate from adjacent landholdings and the alleged route is numbered 540 on the map.
- 38.** On the Award, plot 540 Forton recorded owner is "Sir Thomas Fletcher Fenton Boughey Baronet" and the occupier "Joseph Snape". The plot name is "Lane Adjoining plot 474".
- 39.** Plot 474 is said to be owned by William Liddal and is named "Far Bare Croft" with the use of the plot recorded as a "Meadow".
- 40.** As the award suggests the plot name is "Lane adjoining plot 474" which use is described as a Meadow, this could be suggestive that the lane is a private lane for access to neighbouring farmland.
- 41.** The tithe map suggests that at the most northern end of the alleged route, a plot number 492 with a plot name of "Stone Quarry" appears to be preventing the alleged route linking with the A519.
- 42.** In the case of Maltbridge Island Management Company v Secretary of State for the Environment and Hertfordshire County Council [1998] EWHC Admin 820 (31 July 1998) Mr Justice Sullivan considered the status of Tithe Maps and stated: "The Tithe Map and apportionment evidence is undoubtedly relevant as to both the existence, and physical extent of a way at the relevant time. Because both public and private roads were not titheable, the mere fact that a road is shown on, or mentioned in a Tithe Map or Apportionment, is no indication as to whether it is public or private"
- 43.** An undated letter from the Applicant accompanying the application states "I have claimed a continuation through to the A519 because this is what is shown on the 1in to 1mile OS". There is no evidence, other than the 1834 Ordnance Survey Map, to suggest that the Lane subject to the claim actually links with the A519.
- 44.** The Deposited Canal Plan does not indicate the entirety of the alleged route and if this does in fact meet with the A519 and is therefore insufficient to suggest that the alleged route links to the A519.



45. The previous landowner, in their letter at Appendix G indicates that the "alleged track to the northern end of Sheeplerley Lane is a recent creation and did not exist at the time of the sale in 1977".
46. The Ordnance Maps maps of 1891 - 1925 refer to an "old quarry" at the northerly point of Sheeplerley Lane, the bridge over the canal at this point is referred to as Quarry Bridge. These maps appear to show that Sheeplerley Lane meets with a track at its southerly end.
47. There is limited evidence in favour of the claimed bridleway which comprises of the Deposited Canal Map and the 1834 1in to 1mile Ordnance Survey Map submitted by the Applicant.
48. The lack of evidence submitted coupled with the detachment from the highway at its southerly point in the 1834 Ordnance Survey Map relied upon and at its northerly point in later maps is not considered strong enough evidence to meet the lesser test of reasonable allegation.
49. The Tithe Map would also suggest that the alleged route, did not meet with an adjoining highway at its most southerly point and that the lane adjoins to a plot with meadow use. Nor is there any evidence on the Tithe Map to show that the claimed route joined the main highway, now the A519.
50. Whilst evidence of a right of way is depicted at the southerly end of the claimed route on the Ordnance Survey Maps discovered by officers and shown on the Definitive Map and Statement recorded as bridleway 8 and 28, this is not what is depicted and relied upon in the historical evidence submitted by the Applicant in support of this application. These rights of way only exist in later Ordnance Survey Maps which do not show the route at its northerly end connecting with the A519.
51. On balance, with sections of route missing the overall contention is that the evidence cannot be strong enough to support the claim.
52. No other evidence has come to light in support of the application and as such the evidence submitted is ambiguous.
53. It can be argued that the material available relating to canal schemes is generally more limited, both in quality and scope, than that for railway schemes as canal maps and their associated books of reference do not always differentiate between public and private roads. (*source: [www.gov.co.uk](http://www.gov.co.uk) Wildlife and Countryside Act 1981 – Definitive Map Orders: consistency Guidelines*).

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

54. The application is made under Section 53(2) of the Wildlife and Countryside Act 1981, relying on the occurrence of the event specified in 53(3)(i) of the Act.

- 55.** 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.
- 56.** 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.
- 57.** 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.
- 58.** 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".
- 59.** If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

### **Summary**

- 60.** In this instance your officers consider that the evidence is insufficient to satisfy the test set out when considered on the balance of probabilities. The evidence being largely limited to the Deposited Canal Plan.
- 61.** With regard to the second part of the relevant section whether the route can be reasonably alleged to exist, your officers consider that, having considered all the evidence, that the test would not be satisfied.
- 62.** There is limited evidence in favour of the claimed bridleway which comprises of the 1826 Deposited Canal Plan and the 1846 Ordnance Survey Map. The Deposited Canal plan narrative supports that a historical way of some description may have existed along the alleged route, however the claimed route is not shown in its entirety.
- 63.** With the discrepancies in terms of the route linking to a highway at both its most northerly section to the A519 and at its most southerly section; it cannot be established from the evidence provided where this route commenced and ended. This in particular does not support the contention that the route was used by members of the public.
- 64.** The 1846 Ordnance Survey Map is suggestive of a way on the ground at best. Whilst the claimed route appears to have similar physical features, the alleged route does not link to a highway of any description at its southerly most point; it cannot be established if the route is public or private, nor does the Ordnance Survey map explain the nature of the route.



65. Based on there being only one reference to the Surveyor of Highways on the Deposited Canal Plan and given that the reference is not clear (as to whether it relates to the whole lane or just the bridge) the paucity and ambiguity of the evidence, coupled with its detachment from the A519 highway, as claimed in the application, is not considered enough to add the route as a public right of way to the Definitive Map and Statement.
66. The combination of evidence is not sufficient for your officers to be able to reasonably allege that the way subsists.
67. It could be summarised that aside from the mention in the Deposited Canal Plan to the Surveyor of highways there is no supporting material to establish the nature or the status of the route. The historical documents are suggestive that the lane was used for the purposes of access to neighbouring farmland.

### **Conclusion**

68. It is open to the Panel when considering applications to come to a decision on the matter other than that which is subject of the application. In this instance the claim is for a bridleway; but it is open to the Panel to decide that the evidence supports the route having a different status.
69. In light of the evidence, as set out above, it is your officers' opinion that the evidence shows that a public right of way, with the status of a public bridleway, which is not shown on the Definitive Map and Statement does **not** subsist on the balance of probabilities and is therefore not sufficient to satisfy the test set out in s53(3)(c)(i) above.
70. Your officers also consider that the evidence is insufficient to conclude that the route can be reasonably alleged to subsist.
71. It is the opinion of your officers that the County Council should not make a Modification Order to add the route as a bridleway on the Definitive Map and Statement of Public Rights of Way for the District of Stafford.

### **Recommended Option**

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

### **Other options Available**

73. To decide to accept the application and make an order to add the route to the Definitive Map and Statement of Public Rights of Way.

### **Legal Implications**

74. The legal implications are contained within the report.

### **Resource and Financial Implications**

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

**76.** 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**

**77.** 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 15 of the 1981 Act. The Secretary of State would appoint an Inspector to consider the matter afresh, including any representations or previously unconsidered evidence.

**78.** 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.

**79.** 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.

**80.** 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**

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

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J Tradewell

Director for Corporate Services

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## INDEX TO APPENDICES

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