

Local Members' Interest		
Cllr Pert	Jeremy	Stafford - Eccleshall

Countryside and Rights of Way Panel

Wildlife and Countryside Act 1981

Application for the Addition of a Public Footpath from B5026 to the Highway at Oxleasows, Chebsey

Report of the Director for Corporate Services

Recommendation

1. That the evidence submitted by the applicant at Appendix "A" is **sufficient** to show that a Public Footpath may be Reasonably Alleged to subsist along the route marked A to B on the plan attached at Appendix B.
2. That an Order **should** be made to add the right of way shown marked A to B on the plan attached at Appendix "B" to the Definitive Map and Statement of Public Rights of Way for the Borough of Stafford.

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 dated 1999 to modify the Definitive Map and Statement for the area by adding a Public Footpath under the provisions of section 53(3) of the Wildlife and Countryside Act 1981.
3. The line of the alleged Public Right of Way is shown on the plan attached at Appendix "B" and marked A to B.
4. 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.
5. This application (referenced LJ612Gb) was submitted at the same time and by the same applicant as three other applications (referenced LJ612Ga, LJ612Gc, and LJ612Gd) all of which are alleged to subsist in the parish of Chebsey.

6. Although the four applications are all within the same parish, they are not connected or linked in any way and so each will be considered as a separate application and on their own merits.

Evidence Submitted by the Applicant

7. In support of the application the Applicant has submitted a tracing of a Deposited Railway Plan for 1898.
8. This can be found at Appendix "C".
9. The Applicant also submitted an Ordnance Survey plan (2nd edition) for 1901.
10. This can be found at Appendix "D".

Evidence Submitted by the Landowners

11. One landowner was identified by the Applicant and two response letters were received from the NFU West Midlands Region on their behalf.
12. These can be found at Appendix "E".

Comments Received from Statutory

13. The Ramblers Association submitted a response letter to the application.
14. Chebsey Parish Council submitted a response letter to the application.
15. These can be found at Appendix "F".

Comments on Evidence

16. In this case it is the existence of the route that is brought into question.
17. The evidence relies heavily upon the Deposited Railway Plan of 1898 and is supported by an Ordnance Survey plan of near contemporary date.
18. Railway Plans were produced by the railway companies and were necessary for major schemes of works authorised by private Acts of Parliament.
19. From 1838 it was required by statute that the plans and associated book of reference were deposited with the local public authorities, and they are now typically held by the relevant county records office.
20. The plan in each case would be drawn up by surveyors showing the intended line of the railway and the limits of deviation from that line. It was not the primary purpose of the plans to record highways of any description, but they were typically included as a consequence of surveying the land.
21. The plan would allot plot numbers to each strip of land affected by the proposed railway while the associated book of reference listed who owned each plot and a brief description of its use eg whether it was agricultural, highway etc.
22. In this case we have "Plot 27" described as a "*field and public footpath*".

23. The landowners are given as the Earl of Lichfield, Chebsey Parish Council and Stone Rural District Council.
24. It would appear that the Earl of Lichfield was the owner of the soil and that the interest of the *councils* related to the parish and its surveyor of highways, explaining the annotation from the book of reference.
25. This indicated that the maintenance of the highway – in this case a public footpath - was vested in the parish and district councils.
26. In some books of reference and plans this is more explicitly referenced to the Surveyor of Highways who was engaged by the parish.
27. In this case the evidence is presented as a plan and book of reference together on a tracing produced by the applicant - however, the details are clear and are supported by the other evidence supplied.
28. The surveys generally only recorded a descriptive of the land that would be crossed by the railway and as such the plans only show the relevant lengths that fell into the relevant plots.
29. This is true of the plot – and plan – in question, and the full length of the route is not shown from the northernmost end.
30. However, the case will succeed or fail on the grounds of reasonable allegation – the lower test – and this needs to be taken into account when the evidence is assessed.
31. Although only a small part of the route is shown, enough of it is recorded to show that this route most likely corresponded to the *one* shown on the contemporary ordnance survey plan.
32. Given that we know there was a public footpath leaving the highway at the southernmost point from the deposited railway plan, we also know it would have joined a highway at some point at the northernmost end.
33. In the absence of any other routes depicted on the OS plans in that vicinity it is reasonable to allege that the most likely route the public footpath took was along the line marked FP on the OS plans to meet the road.
34. The surrounding fields shown on the deposited railway plan also correspond to those shown on the 1901 OS plan and so we can be certain this is indeed the same route.
35. Although OS plans are no indication of status, they can support other evidence of probity and in a matter like this can show the continuation of a route not recorded in the respective railway plan.
36. In this case the physical existence and line of the route marked “FP” on the OS plans is sufficient to reasonably allege that the route did indeed follow this course.
37. There are no other footpaths in the vicinity marked on OS plans for this period and the dates are near contemporary with the railway plan.
38. What we have is an entire footpath marked as such on the OS plan and the lower part of it identified as a “public footpath” from a document of probity.

39. Although insufficient to prove a case on the balance of probability there is just enough to make out a case for reasonable allegation.
40. Turning to the landowner responses we find that the NFU made representations on behalf of the landowner and stated that they *strongly opposed* any creation of new rights of way - including a completed response form from the landowner.
41. This form identified the respondent as the sole freehold landowner and although the statements given could refute a claim based on user evidence, they are not pertinent to an historical claim.
42. Essentially the landowner highlighted that he had never erected prohibitive signage, had never given any permissions to use the route, had never attempted to prevent public access by locking gates or creating an obstruction – and had never challenged anyone using the route.
43. Again, these responses need to be viewed in the context of the route in question – this was an historical claim and so although the landowner response is noted the details given have little bearing on the matter.
44. The objection by the NFU on behalf of their member is noted although it is not possible to give it any probity. The application only seeks to prove the existence or not of the alleged route - *purpose* and *necessity* cannot be taken into account for this decision.
45. Turning to the comments received from the statutory consultees it can be seen that the Ramblers Association supported the application highlighting that “*Chebsey seems to be short of Public Rights of Way (PROW)*” and that “*we support any initiative to create or recognise PROWs*”. Adding that it was a “*pity that these are not more substantial*”.
46. Chebsey Parish Council were less supportive of the route stating that they were unaware of any evidence suggesting the path had been used in recent years and that it would not be an asset to the footpath network. They ratified this by adding there appears to be no justification for adding it to the definitive map.
47. Again, these opinions both for and against are noted although none add anything of probity to the claim.
48. The only relevant question relates to whether the alleged route ever existed and if so whether any legal event has occurred to remove it. There is evidence for the former, but no evidence for the latter.

Conclusion

49. Taking all of the evidence together we have a clearly marked deposited railway plan supported by an ordnance survey plan.
50. Although only part of the route is shown on the railway plan this is not uncommon given the nature of these plans.
51. The probity of a deposited plan and an OS map is enough to satisfy the lower test of reasonable allegation for the addition of the route.
52. In light of the evidence, as set out above, it is your officers’ opinion that the evidence is **sufficient** to show that the route can be reasonably alleged to subsist and with the status of a public footpath.

Recommended Option

53. To **accept** the application based upon the reasons contained in the report and outlined above and to make a Modification Order to add the route which is the subject of this application as a Public Footpath to the Definitive Map and Statement of Public Rights of Way, for the Borough of Stafford.
54. That the route shall be to the standard minimum width of **1.5 metres** throughout its length

Other options Available

55. To decide to reject the application to add the route as a public footpath.

Legal Implications

56. The legal implications are contained within the report.

Resource and Financial Implications

57. The costs of determining applications are met from existing provisions.
58. 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

59. 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, Food and Rural Affairs under Section 15 of the Wildlife and Countryside Act 1981. The Secretary of State would appoint an Inspector to consider the matter afresh, including any representations or previously unconsidered evidence.
60. 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.
61. 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.
62. 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.

63. There are no additional risk implications.

Equal Opportunity Implications

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

J Tradewell

Director for Corporate Services

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Background File: LJ612Gb

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