

Local Members' Interest		
Cllr Pert	Jeremy	Stafford - Eccleshall

## Countryside and Rights of Way Panel

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### Wildlife and Countryside Act 1981

#### Application for the Addition of a Public Footpath From the B5026 to the Highway to Chebsey, Parish of 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").
2. 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 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. 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 LJ612Ga) was submitted at the same time and by the same applicant as three other applications (referenced LJ612Gb,

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 its 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 two Ordnance Survey plans (1<sup>st</sup> and 2<sup>nd</sup> edition) for 1889 and 1901.
10. These can be found at Appendix "D".

#### **Evidence Submitted by the Landowners**

11. Two landowners were identified by the Applicant and a response letter was received from the NFU West Midlands Region on behalf of one of these.
12. A second letter was later received from the same party.
13. These can be found at Appendix "E".

#### **Evidence Received from Statutory Consultees**

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

#### **Evidence Discovered by the County Council**

17. The Parish Survey Card and associated Plan of 1951 were examined by officers after being highlighted by the applicant.
18. These can be found at Appendix G.

#### **Comments on Evidence**

19. In this case it is the existence of the route that is brought into question.
20. The evidence relies heavily upon the Deposited Railway Plan of 1898 and is supported by two Ordnance Survey plans of near contemporary date.
21. Railway Plans were produced by the railway companies and were necessary for major schemes of works authorised by private Acts of Parliament.

22. 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.
23. 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.
24. 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.
25. In this case we have "Plot 16" described as a "*field and public footpath*". The landowners are given as the Earl of Lichfield, Chebsey Parish Council and Stone Rural District Council.
26. 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.
27. This indicated that the maintenance of the highway – in this case a public footpath - was vested in the parish and district council. In some books of reference and plans this is more explicitly referenced to the Surveyor of Highways who was engaged by the parish.
28. In this case the evidence is presented as a plan and book of reference together on a tracing produced by the applicant - the details are clear and are supported by the other evidence supplied.
29. The surveys generally only recorded a descriptive of the land that would actually be crossed by the railway and as such the plans only show the relevant lengths that fell into the relevant plots.
30. This is true of the plot – and plan – in question, and the full length of the route is not shown from the southernmost end. Again, this is to be expected with such plans.
31. 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.
32. Although the entire route is not shown, enough of it is recorded to show that this route most likely corresponded to the *ones* shown on the contemporary ordnance survey plans.
33. 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 deposited railway plan.
34. 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.
35. There are no other footpaths in this vicinity marked on OS plans for this period and the dates are near contemporary with the railway plan.

36. Furthermore, the Parish Survey Card of 1951 also identifies a footpath along this line and indicates that it *“starts about 200 yards southeast of Oxleasons Farm and finishes at sharp road bend about 100 yards from Smallwood Pit”*.
37. The survey card also has a corresponding plan which again shows very clearly the line of the route in question and again this matches the route shown on both the deposited railway plan and OS map.
38. The description of the alleged route – identified by a number 8 on the parish survey card - states that it is a continuation of the route marked 12 and that its reason for inclusion in the survey was due to “usage”.
39. However, it also noted that the *“rails on the Stone-Eccleshall Road are grown up and wired”*. This suggested that the route had fallen into disuse by 1951 and that it was obscured by undergrowth.
40. The phrase *“grown up”* or up growth refers to weeds or trees growing up from the ground to obscure a route – as opposed to “overgrowth” which hangs down from neighbouring trees.
41. Undergrowth is more transient than overgrowth and is more subject to the seasons so its presence may have less impact on the use of any route than heavier wooded overgrowth.
42. The survey card goes on to state that *“between the two fields there are the remains of a W.G. in the midst of a complete block”*.
43. This suggests that there was a “wicket gate” on the boundary between the two fields that the alleged route crossed and that otherwise there was no way through.
44. Again, this is evidence that the route existed and was used – although it does not indicate its status.
45. The survey card goes on to say, *“there is a hurdle at its junction with the lane”*.
46. This may have related to a stile – or the remnants of a stile - where the footboard had been removed but the rails of the fence still allowed access – or it could have been installed as such.
47. Either way a “hurdle” suggests people were gaining access and egress to the route at this point.
48. Lastly, the survey card states that both footpaths numbered 8 and 12 were *“almost unusable”* and this was quantified further by the comment *“now impossible to walk”* the words highlighted and circled in pencil on the original card.
49. The date the alleged route was investigated from the survey card was the 2<sup>nd</sup> August 1951 and therefore it seems apparent that the path was inaccessible from at least this moment in time, although it had clearly been used within memory due to its inclusion in the survey.
50. 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.

51. They included a completed *response form* from the landowner.
52. 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 a documentary or historical claim.
53. 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.
54. Again, these responses need to be viewed in the context of the route – this was an historical claim and so although the landowner response is noted the details have no bearing on the matter.
55. Even if the route had been inaccessible and unused since the time of the 1950's survey it does not detract from the historical evidence of the deposited railway plan, parish survey card and contemporary ordnance survey maps.
56. The objection by the NFU on behalf of their member is noted although it is not possible to give any probity to the grounds given.
57. The fact that the landowner believes there is “no necessity” for the alleged route and that they “cannot see a purpose” for it, is not sufficient grounds to counter it in law,
58. This application only seeks to support or refute the existence of the alleged route - *purpose* and *necessity* cannot be taken into account for this decision.
59. 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*”.
60. Chebsey Parish Council were less supporting of the route stating 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.
61. Again, these opinions both for and against were noted although none adds anything of probity to the claim. The only relevant question relates to whether the alleged route subsists or not 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**

62. Taking all of the evidence together we have a clearly marked deposited railway plan supported by two ordnance survey plans and ratified by a parish survey card and associated plan.
63. Although only part of the route is shown on the railway plan this is not uncommon given the nature of these plans.
64. The full extent of the route is depicted on the parish survey plan, and OS maps.

65. The probity of a deposited plan and a parish survey card – and plan is good and with the OS maps more than enough to satisfy the lower test of reasonable allegation for the addition of the route.
66. 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**

67. 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.
68. That the route shall be to the standard minimum width of **1.5 metres** throughout its length.

### **Other options Available**

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

### **Legal Implications**

70. The legal implications are contained within the report.

### **Resource and Financial Implications**

71. The costs of determining applications are met from existing provisions.
72. 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**

73. 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.
74. 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.

75. Should the Council decide not to make an Order the applicant 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.
76. 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.
77. There are no additional risk implications.

**Equal Opportunity Implications**

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

J Tradewell

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**Background File:** LJ612Ga

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