

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 the B5026 to the Public Path at the Railway Boundary, 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 is 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.
4. The line of the alleged Public Right of Way is shown on the plan attached at Appendix "B" and marked A to B.
5. 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.

6. This application (referenced LJ612Gc) was submitted at the same time and by the same applicant as three other applications (referenced LJ612Ga, LJ612Gb, and LJ612Gd) all of which are alleged to subsist in the parish of Chebsey.
7. 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

8. In support of the application the Applicant has submitted a tracing of a Deposited Railway Plan for 1898.
9. This can be found at Appendix "C".
10. The Applicant submitted an Ordnance Survey plan (1st edition) for 1889.
11. This can be found at Appendix "D".

Evidence Submitted by the Landowners

12. One landowner was identified by the Applicant and two response letters were received from the NFU West Midlands Region on behalf of him.
13. These can be found at Appendix "E".
14. Four other landowners were identified by Officers, all of whom were duly consulted.

Comments Received from Statutory Consultees

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

Comments on Evidence

18. In this case it is the existence of the route that is brought into question.
19. The evidence relies heavily upon the Deposited Railway Plan of 1898 and is supported by an Ordnance Survey plan of near contemporary date.
20. Railway Plans were produced by the railway companies and were necessary for major schemes of works authorised by private Acts of Parliament.
21. 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.
22. 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.

23. 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 13" 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.
28. In some books of reference and plans this is more explicitly referenced to the Surveyor of Highways who was engaged by the parish.
29. 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.
30. 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.
31. However, the case will succeed or fail on the grounds of reasonable allegation – the lower test – and this has to be taken into account when the evidence is assessed.
32. A significant part of the route, is shown on the deposited plan, and certainly enough to show that the route corresponded to the *one* shown on the contemporary OS plan.
33. Given that we can identify a public footpath leaving the highway at the southernmost point from the deposited railway plan, and given we know its direction and length we can only conclude that it ran to meet the railway boundary.
34. 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 – in this case the railway boundary end is missing.
35. There are no other footpaths in the vicinity marked on OS plan for this period and the dates are near contemporary with the railway plan.
36. What we have is a significant length of footpath on the OS plan and the greater part of it identified as a "public footpath" from a document of probity.
37. Although insufficient to prove a case on the balance of probability there is enough to make out a case based on reasonable allegation.
38. 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.

39. 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.
40. 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.
41. 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 no bearing on the matter.
42. The objection by the NFU on behalf of their member is noted although it is not possible to give it any probity.
43. The application only seeks to show the existence of the alleged route or not - *purpose* and *necessity* cannot be taken into account for this decision.
44. 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*”.
45. Chebsey Parish Council were less supporting 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.
46. Again, these opinions both for and against are noted although none add anything of probity to the claim. The only relevant question relates to whether the alleged route ever existed 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.

Public Footpath 11, Chebsey

47. The application is complicated somewhat in that Network Rail applied for a diversion of PF11 where the claimed route originally terminated at its northernmost end.
48. The diversion effectively saw the route of PF11 relocated south away from the railway boundary to effectively bisect the claimed route at its approximate mid-way point.
49. Although noted this does not change the application route as such and in the interests of expediency the entire route should remain as the claimed route.
50. If members were minded to accept the application, then the public rights at the northernmost section between the railway boundary and the current route of PF11 could be effectively extinguished at the same time that any Order was made on the lower section.

51. For clarity a plan can be seen at Appendix G, where the route marked A to A1 would be the eventual claimed route and A1 to B indicate the public rights that would ultimately be extinguished.
52. This would be a matter for discussion with the Rights of Way team should the application be successful.

Conclusion

53. Taking all of the evidence together we have a clearly marked deposited railway plan supported by an ordnance survey plan.
54. The probity of a deposited plan supported by an OS map is enough to satisfy the lower test of reasonable allegation for the addition of the route.
55. 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

56. 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.
57. That the route shall be to the standard minimum width of **1.5 metres** throughout its length

Other options Available

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

Legal Implications

59. The legal implications are contained within the report.

Resource and Financial Implications

60. The costs of determining applications are met from existing provisions.
61. 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

62. 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 14 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.

63. 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.
64. 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.
65. 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.
66. There are no additional risk implications.

Equal Opportunity Implications

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

J Tradewell

Director for Corporate Services

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Background File: LJ612Gc

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