

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 Highway to Chebsey to the Highway to Norton Bridge, 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. 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 LJ612Gd) was submitted at the same time and by the same applicant as three other applications (referenced LJ612Ga, LJ612Gb, and LJ612Gc) 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 1872.
8. This can be found at Appendix "C".
9. The Applicant submitted an Ordnance Survey plan (6" to 1 mile) for 1880.
10. This can be found at Appendix "D".

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

11. Two landowners were identified by the Applicant, but no responses were received during the initial consultation.

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

12. The parish survey card and plan for 1951 were examined by officers after being highlighted by the Applicant.
13. These can be found at Appendix "E".

### **Comments 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 found at Appendix "F".

### **Subsequent Evidence Submitted by the Applicant**

17. The Applicant later sent in a copy of an extract from a book entitled "*Ripples of Time, A Historical Journey Along the River Sow with Bruce Braithwaite*".
18. No date was given for the book although Officers were able to confirm it was written in 1987.
19. This can be found at Appendix "G".

### **Comments on Evidence**

20. In this case it is the existence of the route that is brought into question.
21. The evidence relies heavily upon the Deposited Railway Plan of 1872 and is supported by an Ordnance Survey plan of near contemporary date.
22. Railway Plans were produced by the railway companies and were necessary for major schemes of works authorised by private Acts of Parliament.
23. 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.

24. 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.
25. 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.
26. 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.
27. In this case we have "Plot 1" described as a "*field, pond and public footpath*". The landowners are given as the Earl of Lichfield and the Surveyor of Highways.
28. It would appear that the Earl of Lichfield was the owner of the soil and that the interest of the *Surveyor of Highways* related to the public route, explaining the annotation from the book of reference.
29. This indicated that the maintenance of the highway – in this case almost certainly public footpath - was vested in the Surveyor of Highways.
30. 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.
31. 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.
32. In this case the entirety of the route is shown on the plan and the burial ground gives an added point of reference on the OS plan.
33. 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.
34. There are no other footpaths in the vicinity marked on OS plan for this period and the date is near contemporary with the railway plan.
35. In addition to the above evidence the Parish Survey Card and Plan of 1951 also show the relevant route.
36. Here it is annotated as Footpath 6 and is clearly depicted on the plan.
37. The associated notes state that "*FP6 leaves Norton Bridge – Shallowford Road by FG opposite the Quaker Farm and at the site of a duck pond. It proceeds to the left of the Quaker Burial Ground (an area enclosed by trees) and reaches the Chebsey Lane by rails slightly above the point shown on the OS. These rails are left free of BW*".
38. The Parish Survey Card also states that the route started at "*Quaker Farm on Norton Bridge – Shallowford Road and finished at Chebsey Lane, above the Quaker Burial Ground.*"
39. The grounds at the time for believing it was a public footpath were given as "*dedication usage*".
40. 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.
41. What we have is an entire footpath marked as such on the OS plan and its identification as a "public footpath" from a document of probity – the Parish Survey Card.

42. Turning to the landowners' representations we find that neither landowner identified by the Applicant submitted any evidence to either support or refute the claim.
43. Turning to the extract from the book we find a reference to what is described as "*an unusual story about Shallowford*".
44. The extract comprises one paragraph on page 30 of the book and describes what is effectively a ghost story – the witnesses describing seeing an apparition of a 17<sup>th</sup> century Quaker using the alleged route.
45. The sighting resulted in a 19<sup>th</sup> century map of the area being consulted and the said path identified which allegedly led from a gate in the now unbroken hedge to the Quakers burial ground nearby.
46. Although a fascinating tale which might *levitate* somewhere between user and historical evidence its probity is limited as the details are anecdotal and any book may be reflective of the opinions of its author.
47. Turning to the comments received from the statutory consultees it can be seen that the Rambler 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*".
48. 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.
49. Again, these opinions both for and against are noted although none add anything of probity to the application. 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 good evidence for the former, but no evidence for the latter.

## Conclusion

50. Taking all of the evidence together we have a clearly marked deposited railway plan supported by an Ordnance Survey plan and ratified by a parish survey card and associated plan.
51. The full extent of the route is depicted on all of the noted plans.
52. The probity of a deposited plan and a parish survey card – and plan is good and with the OS map more than enough to satisfy the lower test of reasonable allegation for the addition of the route.
53. Although insufficient to prove a case on the balance of probability there is sufficient evidence to make out a case based on reasonable allegation.
54. In light of the evidence, as set out above, it is your officers' opinion that the evidence **does** show that a public right of way subsists, with the status of a Public Footpath.
55. It is the opinion of your officers that the County Council **should** therefore 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.

### **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.

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J Tradewell

Director for Corporate Services

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**Background File: LJ612Gd**

### INDEX TO APPENDICES

Appendix A	Application
Appendix B	Plan
Appendix C	Railway Plan 1872
Appendix D	Ordnance Survey Plan 1880
Appendix E	Parish Survey Card and Plan 1951
Appendix F	Statutory Consultee Responses
Appendix G	Extract From Book