

DEFINITIVE MAP MODIFICATION ORDER APPLICATION TO UPGRADE GRINDON PARISH FOOTPATH 12 (PART) TO A RESTRICTED BYWAY

STAFFORDSHIRE MOORLANDS BRIDLEWAYS GROUP STATEMENT AND EVIDENCE IN SUPPORT OF THE APPLICATION

STAFFORDSHIRE COUNTY COUNCIL REFERENCE 017019DW

PLANNING INSPECTORATE DIRECTION DECISION REFERENCE FPS/D3450/14D/128

THE APPLICATION

This application was submitted to Staffordshire County Council by Mrs Louise Redfern on behalf of Staffordshire Moorlands Bridleways Group (SMBG) and was accepted by the Council on 11 April 2018.

SMBG applied to the Secretary of State for Housing, Communities and Local Government on 16 June 2019 for the issue of a Direction for this application to be decided by the County Council. On 14 October 2019 the Secretary of State, through the Planning Inspectorate, directed the County Council to determine this application not later than 6 months from the date of this decision i.e 13 April 2020.

It is regrettable that the County Council have exceeded the determination date by nearly 3 years before considering this application.

GRINDON FOOTPATH 12

Grindon Footpath 12 starts at the end of the County Road (Fleets Lane) south west of Buckfurlong Farm. It then runs in fields alongside the western wall of the remainder of Fleets Lane (which is a track enclosed by walls on both sides) At the end of the enclosed track the southern section of Grindon Footpath 12 runs along the western side of fields alongside stone wall field boundaries. The southern end of Grindon Footpath 12 terminates at its junction with Grindon Bridleway 9.

THE CLAIMED ROUTE

The section of Grindon Footpath 12 the subject of the application to be upgraded to a restricted byway is the southern section. This starts at the southern end of the Fleets Lane track and ends at the junction with Grindon Bridleway 9.

Please note that Fleets Lane will be subject to a separate application to upgrade this route to a restricted byway, as will the section of Grindon Bridleway 9 from its junction with Grindon Footpath to the D1129 Back o th Brook Road, Waterfall, as SMBG has historical and user evidence to support the addition and upgrade of these routes.

ITEMS TO BE DELETED OR AMENDED IN CROW PANEL REPORT

The main body of this letter sets out SMBG's views on the evidence submitted at the time of the application and new evidence obtained since that date. However, there are some paragraphs in the report to the CROW Panel that should either be deleted or amended.

Paragraphs 6 - 9. Evidence submitted by the landowners. SMBG's response to the landowners evidence is contained later in this letter. However, the majority of the evidence submitted by both landowners is not relevant in coming to a decision on the application. This evidence should either not be included in the report or it should be made clear that these are not material facts to be considered by the CROW Panel in assessing the status of the route.

Paragraph 24 - you refer to the fact that the Ordnance Survey Manual is not conclusive evidence but that it provides some supporting evidence. As you are aware, evidence for the change in status of a route does not have to be conclusive. The test is "on the balance of probability". SMBG considers that your wording downgrades the validity of this evidence as one of the supporting documents for the upgrade of this route to a restricted byway. Please amend this to make the position clear.

Paragraph 30 - again this refers to "conclusively" which is the incorrect wording and needs amending.

ADDITIONAL HISTORICAL EVIDENCE

The following additional historical evidence is submitted by Staffordshire Moorlands Bridleways Group in support of this application.

Waterfall Tithe Map

Appendix 1 is an extract of the Waterfall Tithe Map dated 1844 and the Tithe Award index for Number 206 on the map.

The Tithe Map shows the route from Waterfall village along the current D1129 Back o' th' Brook Road coloured sienna. This is shown in the same way on the Tithe Map as other public roads in the area. The road is marked number 206 on the The Map. The Tithe Award Index states that this is a public road with the owner being "Highways, Surveyors of"

Where this road crosses the Parish Boundary into Grindon Parish it is marked "To Grindon". This is evidence that this route was a public road between villages. A public road would not have terminated at an administrative boundary. This is evidence of a through road from the north east sector of Waterfall village to the centre of Grindon village - not a footpath or bridleway.

Ordnance Survey Maps

Appendix 2 is an extract of Ordnance Survey First Series Map Sheet 72 dated 1856. This shows the section of Grindon Footpath 12 claimed as a restricted byway in an identical manner to the rest of the route from Waterfall to Grindon village. This old map shows the claimed route in the same manner as other local routes which are public vehicular highway and restricted byways today. These maps were made for sale to the public, and so are unlikely to show routes that the public could not use. In Hollins and Oldham (1995) the judge examined various maps from 1777 to 1830, Maps of this type were maps for the benefit of wealthy people and were expensive to purchase. There was "no point showing a road to a purchaser if he did not have the right to use it"

The depiction of the claimed route as a vehicular road on this map dated 1856 supports the upgrade of part of Grindon Footpath 12 to a restricted byway, as the highest status of user at those dates would be horse driven carriages.

Appendix 3 is a selection of extracts of Ordnance Survey one inch to 1 mile scale maps showing the claimed route. These maps have published dates of 1897, 1889, 1908, 1921, 1940, 1953, 1962 and 1967 - covering a period of 70 years.

The 1889 map shows the claimed route as two lines - the west line being solid and eastern one as a broken line. The map key shows this type of marking as an "ordinary metalled road unfenced"

The 1897 map shows the claimed route as a "Metalled road, second class, unfenced". Footpaths are shown by a single hatched line.

The 1908 map shows the claimed route in the same manner as the 1897 map. The 1908 map key shows the route as "Metalled roads, second class, unfenced". This map key shows footpaths as a single line - evidence that this route was considered to be of higher status than footpath.

The 1921 map shows the claimed route in the same manner as the 1889 and 1908 maps. The 1921 map key shows the route as "Roads under 14 feet wide - bad". The map key shows footpaths and bridleways by a single line - evidence that this route was considered to be of higher status than a footpath or bridleway.

The 1940 map shows the claimed route as an minor road. Footpath and bridleways are shown by a single line whereas the claimed route is shown as a double line.

The 1953 map shows the claimed route as two lines - the western side being a solid line and the eastern side being a dashed line. The map key shows this "under 14 ft of metalling, untarred and unfenced" (on the eastern side). The map key also shows footpaths as a single dotted line and tracks and a single dashed line - evidence that the claimed route has a higher status than that of footpath.

The 1962 map shows the claimed route as an unmetalled, unfenced minor road as "under 14 ft, untarred and unfenced on the eastern side.

The 1967 map shows the claimed route in a similar manner to the 1962 map.

USER EVIDENCE

Two user evidence forms from [REDACTED] and [REDACTED] will be posted to you. These two people have both regularly used the route with carriage drive and ridden horses - supporting the upgrade to a restricted byway.

At SMBG's last Committee meeting held on 6 February 2023 I was advised that three other people will provide user evidence for this route. User evidence forms have been sent to them and I will let you have these as soon as I receive them.

My husband and I have ridden the applied for route from the Waterfall (southern) end to the gate at the end of Fleets Lane . However, this has been sporadic as the gate at the end of Fleets Lane has usually been locked and therefore we have been obstructed from

continuing along Fleets Lane into the centre of Grindon village. We have had to continue our ride along Grindon Bridleway 9 instead. However, we have always regarded the application route as part of an old road from Waterfall to Grindon.

COMMENTS ON EVIDENCE ALREADY PROVIDED

Local Government Act 1929 Handover Map and Schedule

The County Council took over the responsibilities of Rural District Councils for roads on 1 April 1930 by virtue of the Local Government Act 1929. Handover maps and schedules were produced for this purpose. These were internal documents produced by the County Surveyor, based on evidence provided by Rural District Councils. as it would be unlikely that the County Surveyor would have had knowledge of all minor highways.

The County Council's view is that the Handover Map and Schedule relates to maintenance of a route, not with the type of public user, and as such, does not prove any particular right or status.

SMBG does not concur with this view. Although the legal definition of a road includes all highways, it seems clear that the term was not used in this way at the time the handover map and schedule were compiled by the county surveyor and his staff who were responsible for maintaining the highways. The common usage of the term "road" was a route for vehicles. Thus, although all vehicular routes were regarded as county roads, footpaths and bridleways were not.

Although the Handover Map and Schedule was an internal document for the use of the County Surveyor, it does provide important evidence as to what the Council as highway authority believed to be the roads for which it was responsible. Therefore as the County Surveyor produced records for his own use, the definition of a road would be that used in his department, rather than the strict legal definition.

The 1929 Handover Map for Leek Rural District Council area shows the route of Grindon Footpath 12 as a blue line. Other routes in the vicinity are shown either as blue or black lines. There is no map key.

The Handover Schedule does not list individual roads. **Appendix 4** is an extract of the Schedule for Rural District Roads. This shows that Grindon Parish has 2 miles of "Scheduled Roads, Waterbound" and 8.5 miles of "Other Roads, Waterbound, Gravel or Flint etc".. This is evidence that the applied route was in one of these two categories. The Schedule makes no mention of footpaths or bridleways.

Appendix 5 is an extract of the Handover Map for the Grindon area. As there is no map key, SMBG has assigned numbers to each route marked by blue or black lines in order to ascertain the status of these routes.

Appendix 6 numbers these routes in red ink, giving their names and current status. The evidence provided has been obtained from

1. www.findmystreet.co.uk. This Website shows every street in England and Wales that is held in the National Street Gazetteer. This website is used by Staffordshire County Council to keep an up to date list of streets that are maintainable at public expense

under s.36 of the Highways Act 1980. This website replaces the List of Streets previously held by the County Council. It provides evidence of the street name and whether it is maintained by the County Council.

2. Staffordshire County Council List of Streets dated 16/04/2018. This List provides road numbers which are not held by the Find My Street website.

This information can be provided to you if required.

The part of Grindon FP 12 claimed as a restricted byway is the **ONLY** route listed that is of footpath status. (Fleets Lane, which forms the northern section of the old Waterfall to Grindon road is no longer a Highway Maintained at Public Expense (HMPE's) other than a very short section at the northern end)

All other routes are HMPE's and have C, D or G classifications. There is no indication of the handover of any footpaths or bridleways. All routes (excepting the application route and Fleets Lane) are shown in the same way on the plan are recorded as "ordinary" public roads today.

As the county surveyor would be unlikely to take on additional maintenance responsibility unnecessarily, the showing of a route on a handover map is good evidence that at that time a route was considered to have public vehicular rights.

Additional evidence to support SMBG's view is contained in **Appendix 7**. This is a report by the County Clerk and Chief Executive to the Staffordshire Moorlands Area Highway Committee in November 1993. This relates to Waterhouses Public Footpaths 95 and 96. SMBG made an application in February 1993 for these two footpaths to be upgraded to bridleways on the Definitive Map. However in 1991 the Highways Committee decided that prior consultation with the Highways Committee should take place where potential public vehicular rights were involved.

The Staffordshire Moorlands Area Highway Committee recommended that the Highways Committee be recommended :

- a). That the evidence submitted by SMBG, along with the evidence discovered by the County Council, is sufficient to show that **public vehicular rights** exist along the entire length of Waterhouses Footpaths 95 and 96.
- b) That the lengths of public footpath shown marked A-B and B-C on the attached plan be admitted as unclassified publicly maintainable highways.
- c) That a Traffic Regulation Order (TRO) be made to prohibit all vehicles on the lengths of unclassified publicly maintainable highways with exemption for access.

These recommendations were approved by the Highways Committee on 7 January 1994. I do not have a copy of the Minutes of this Committee meeting so please consult your records if you wish to confirm this.

This route is now the G1414 and Waterhouses Footpaths 95 and 96 have been deleted from your Council's online map of public rights of way.

Although the report to the Staffordshire Moorlands Highways Committee concerned Waterhouses Footpaths 95 and 96, there are a number of general statements included within it that can be applied to the claimed route.

The first sentence of Paragraph 4.2 of the report states *"The two editions of the Yates Map dated 1775 and 1799 show that a road/track linking Slade House with Weags Barn has existed since at least 1775."*

This is evidence that the County Clerk and Chief Executive accepted that old maps as showing roads/tracks, and supports SMBG's view that the route shown on the Ordnance Survey First Series Map Sheet 72 dated 1856 shows the claimed route as a vehicular road at that time (and also on subsequent OS maps). The route of Grindon FP 12 (part), the subject of the current application is shown in the same manner on the 1856 map as this route.

Paragraph 7.4 of the report states "prior to the Local Government Act 1929, responsibility for the maintenance of unclassified roads in the area rested with the former Mayfield Rural District Council (with Parish Councils being responsible for Public Footpaths). The above mentioned evidence would appear to support the evidence submitted by Mrs Povey (SMBG) that a public vehicular right of way exists along Public Footpaths 96 Waterhouses Parish"

Paragraph 9.1 of the report states". From the evidence contained in the Rural District Roads Schedule for the Rural District of Mayfield compiled under the Local Government Act 1929 and (supported by the evidence contained in the plans and book of references for the Leek Cauldon Lowe and Hartington Light Railway, it would appear? (this word is not clear) that public vehicular rights exist along the entire length of Public Footpath No's 95 and 96"

This report supports SMBG's view that the inclusion of a route within the 1929 Handover map is evidence of it having public vehicular rights at that time. The evidence contained in Appendix 7 that all routes marked on the Handover Map for Leek Rural District Council (with the exception of the claimed route) are public vehicular routes today confirms this.

Evidence submitted by the Byways and Bridleways Trust is that they are of the opinion that the route is an old road. *"which was used regularly in the 1970's and 1980's by member of the North Midland Group of the Trail Rider Fellowship"*. Evidence submitted by the landowners that motorcyclists have attempted to use this route since they purchased the land in 2010 - [REDACTED] and 2009 - [REDACTED] (which they have tried to prevent due to its current footpath status) supports the upgrade of this route to a BOAT - a higher status than the restricted byway SMBG have applied for.

In view of the above evidence, SMBG does not agree with the County Council's comments in paragraphs 17 - 19 of your report that the 1929 Handover Map and Schedule for Leek Rural District Council area merely shows that the County were responsible for maintenance of the route and that no type of public user can be attributed to this documentation.

The historical evidence provided by SMBG shows that this route was considered to have public vehicular rights in 1929, and this is supported by the use of Trail Rider Fellowship Members in the 1970's and 1980's.

Ordnance Survey Bench Marks

The presence of bench marks along the claimed route is supporting evidence that is "is likely to be a road" as stated in paragraph 24 of your report. Benchmarks are not shown along the route of Grindon Bridleway 9 also shown on the 25" to 1 mile OS map provided as evidence. Your use of the word "conclusive" is misleading to the CROW Panel as it infers that the evidence should be conclusive in order to have any value. Please amend your report accordingly.

Landowners evidence

I shall refer to the evidence given by the two landowners as follows:

██████ - Landowner 1

██████ - Landowner 2

Landowner 1 evidence

Most of the evidence given by this landowner does not provide material evidence to assess the status of the claimed route.

Question 11 - The landowners evidence refers to stiles. There are no obstructions (other than the locked gate at the end of Fleets Lane) that prevent horse and carriages or motor vehicles using the route. Photographs of the claimed route will be sent to you shortly to confirm this.

Question 15 - The landowners evidence refers to pedal and motor cyclists attempting to use the route "using footpath from Grindon along Fleets Lane".

This evidence supports the evidence supplied by the Byways and Bridleways Trust that they are of the opinion that the route is an old road. "which was used regularly in the 1970's and 1980's by members of the North Midland Group of the Trail Rider Fellowship".

Please note that Grindon FP 12 does not go along Fleets Lane which is a walled track that is currently undesignated on the Definitive Map - the footpath is in fields alongside the western wall boundary of the track.

Question 22 - The landowner comments that there is an existing bridleway over the land "approx 250 yards from the proposed application route and is parallel to the existing route".

This is not a material issue to be taken into account into assessing the status of the claimed route. For clarification purposes only, the southern end of the claimed route joins Grindon Bridleway 9 but Bridleway 9 takes a north-easterly direction away from the claimed route and ends at Weags Bridge Road approximately 0.7 miles away from the centre of Grindon village where Fleets Lane ends. The claimed route together with Fleets Lane provides a direct route to the centre of Grindon village.

Landowner 2 evidence

Most of the evidence given by this landowner does not provide material evidence to assess the status of the claimed route.

Question 11 - Whilst the removal of notices is not condoned - SMBG considers that this is evidence that motorcyclists, horse riders horse drawn carriages using the route considered that they had higher rights than the current footpath designation.

Question 16 - The landowner refers to "footpath via Fleets Lane". This is incorrect - see comments under Landowner 1 Question 15.

Question 22 - the landowners comment that there is a already a bridleway that "serves virtually the same route as that applied for" is incorrect - see SMBG comments under Landowner 1 Question 22. This is not a material matter to be taken into account when deciding the correct status of the route.

CONCLUSION

The County Council needs to have a discovery of evidence which shows, on the 'balance of probabilities', that the claimed higher rights exist, not the much higher threshold test of 'beyond reasonable doubt' which is required in criminal courts.

The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and Another* [2012] EWCA Civ 334, Lewison LJ said, at paragraph 22

"In the nature of things where an inquiry goes back over many years (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from circumstantial evidence. The nature of the evidence that the fact finding tribunal may consider in deciding whether or not to draw an inference is almost limitless"

Pollock CB directed the jury in *R v Exall* (1866) 4 F & F 922:

"It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength."

SMBG considers that the evidence submitted meets the "balance of probabilities" test ie. is it more likely than not that the claimed route is a restricted byway? and that the evidence submitted as a whole is more than sufficient for this application to be approved and the route upgraded to a restricted byway on the Definitive Map of Public Rights of Way. Please note that SMBG will be submitting an appeal if the CROW Panel does not approve this application.

Yours sincerely



Julie Turner
Rights of Way Officer
Staffordshire Moorlands Bridleways Group

APPENDICES

Appendix 1 Extract of the Waterfall Tithe Map dated 1844 and the Tithe Award index for Number 206 on the map.

Appendix 2 Extract of Ordnance Survey First Series Map Sheet 72 dated 1856

Appendix 3 Extracts of Ordnance Survey one inch to 1 mile scale maps showing the claimed route. These maps have published dates of 1889, 1897, 1908, 1921, 1940, 1953, 1962 and 1967 - covering a period of 78 years.

Appendix 4 Extract of 1929 Handover Schedule for Rural District Roads, Leek Rural District Council area

Appendix 5 Extract of the Leek Rural District Council area 1929 Handover Map for the Grindon area, with route numbers assigned by SMBG.

Appendix 6 Table of route numbers assigned by SMBG on 1929 Handover map extract giving their names and current status.

Appendix 7 Report by the County Clerk and Chief Executive to Staffordshire Moorlands Area Highway Committee in November 1993 and Highways Committee in January 1994