

Local Members' Interest	
Phillip Atkins	East Staffs Borough

Countryside and Rights of Way Panel -

Wildlife and Countryside Act 1981

Application for Adding of footpath from Hollyhurst Lane to Blythe Bridge Bank Kingstone

Report of the Director for Corporate Services

Recommendation

1. That the evidence submitted by the applicant and that discovered by the County Council is insufficient to conclude that a public footpath does exist.
2. That an Order should not be made to amend the Definitive Map and Statement of Public Rights of Way for the District of East Staffordshire.

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. The purpose of this investigation is to establish what public rights, if any, already exist even though they are not currently recorded on the Definitive Map and Statement of Public Rights of Way.
2. To consider an application attached at Appendix A from Martin Reay for an Order to modify the Definitive Map and Statement for the District of East Staffordshire. The effect of such an Order, should the application be successful, would:
 - (i) see the addition of a footpath from Hollyhurst lane to Blythe Bridge Bank;
 - (ii) The lines of the alleged footpath which are the subject of the application are shown highlighted and marked A – B on the plan attached as Appendix B.

3. 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.

Application Details- Documentary Evidence submitted by the applicant

1. The applicant has submitted in support of his claim:
 - i) a deposited railway plan and
 - ii) a tithe map for the area of Kingstone.

Copies of the above can be found at Appendix C

Analysis of Documentary Evidence

Deposited Railway Plan

2. The applicant has provided a traced copy of a Deposited Railway Plan dated 1845. It is alleged that this plan shows the claimed route as a public foot road.
3. On review of the tracing, the alleged route is shown as 43a. Reverend Egerton Arden Bagot is recorded as the landowner responsible for the maintenance of the route. From the tracings it shows that at the time it was classed as a Public Foot Road, which could suggest the existence of a public right of way.
4. No updated plans were submitted so we must assume this was the final version plan which was deposited.
5. Deposited Railway Plans were drawn up to show where a railway was intended to run, and the proposed route was surveyed. Surveys, plans and books of reference were compiled which showed who owned the land crossed by the proposed railway. It was not the primary purpose of deposited plans to record highways of any description. The plan allotted plot numbers to each strip of land affected.
6. These Acts and plans should not be considered conclusive evidence but looked at and evaluated alongside other historical evidence. They should be regarded as good, or persuasive, evidence to support the existence of a public right of way.
7. The Deposited Railway Plan that has been provided does support the physical existence of the route as a public footpath however this evidence alone is not strong enough to warrant adding the route to the Definitive Map based on reasonable allegation as this was not the primary purpose of this type of document.
8. The applicant has also provided a copy of the Kingstone tithe map dated 1838 which appears to show a route along the same line as the alleged route as an untaxed path.
9. The sole purpose of the tithe documentation was to identify land subject to paying the tithe. Commissioners would often use highways to orientate the map and locate the plots shown but their primary purpose

was not concerned with highways. Some awards did show footpaths and bridleways as they affected the value of the land and carriageways were shown as separate.

- 10.** On their own tithe maps and awards are not evidence as to the public nature of a particular route but may add to the supporting evidence.
- 11.** The tracing of the tithe that has been provided appears to show a route which follows a similar line to the alleged route. However, there is nothing to distinguish the status of the route or whether it was public or private.
- 12.** The line of the alleged route on the tracing provided by the applicant starts at Hollyhurst Lane and follows a generally North eastly direction before curving to the west and eventually joining Blythe Bridge Bank. This follows a similar route to the route that appears on the Deposited Railway Plan.
- 13.** However, officers have compared this tracing to the tithe map the County Records Office hold and their digitised tithe maps online. On review of the tithe map there does not appear to be a route running along the same line as the alleged route.
- 14.** The plot numbers shown on the tracing provided by the applicant and the digitised tithe map also do not match. A screen shot of the digitised tithe map showing the area of land in question can be found at Appendix D.
- 15.** It is not clear to officers why the plot numbers on the tracing provided by the applicant differ from the online map, and as the online map is a record of the original map we must take that the online map is a true record of the document and what it shows.
- 16.** The tithe map which has been viewed online is the Kingstone tithe map dated 1838 which is the same document as stated on the tracing provided by the applicant.

Evidence submitted by the Landowners

- 17.** The Council had written to the Landowners detailed on the Form 3 submitted by the applicant.
- 18.** Only one Landowner responded. However the owner/occupier form he completed stated that he was in fact a tenant farmer and did not own any of the affected land.
- 19.** He provided address' for the two Landowners that the applicant had already provided.
- 20.** No response was received from either Landowner.

Comments received from statutory consultees

- 21.** The Council had written to the statutory consultees when the application was received and to date has received two responses.
- 22.** The Ramblers' Association district footpath secretary at the time acknowledged receipt of the letter however he could not provide any supporting evidence in relation to the alleged route.
- 23.** The second response was received from The Peak and Northern Footpaths Society, who also had no evidence to support the alleged route.

Legal tests

- 24.** There is a two stage test, one of which must be satisfied before a Modification Order can be made. All the evidence must be evaluated and weighed and a conclusion reached whether on the balance of probabilities either:
 - (a) the alleged right subsists or;
 - (b) is reasonably alleged to subsist.
- 25.** Thus there are two separate tests. For the first test to be satisfied, it will be necessary to show that on the balance of probabilities the right of way does exist.
- 26.** For the second test to be satisfied, the question is whether a reasonable person could reasonably allege a right of way exists having considered all the relevant evidence available to the Council. The evidence necessary to establish a right of way which is "reasonably alleged to subsist" over land must be less than that which is necessary to establish the right of way "does subsist".
- 27.** If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

Summary

- 28.** The application is made under Section 53(2) of the 1981 Act.
- 29.** In this instance the applicable section of the Wildlife and Countryside Act 1981 is section 53(3)(c)(i).
- 30.** The evidence provided it not strong enough to support the inclusion of a route on the Definitive Map and Statement. The evidence would not satisfy the Second Test that is, the route cannot be reasonably alleged to subsist.
- 31.** The Deposited Railway Plan received no objections in 1845, one could argue that this supports the physical existence of the route as a public footpath. The route is clearly marked as a foot road and has been given

the number 43A. However, this evidence alone is not sufficient to add the route to the Definitive Map.

32. When we consider tithe maps in general, they are not considered to be firm evidence on their own.
33. When we consider the tithe map that has been provided by the applicant and the evidence that has been discovered by officers when comparing the tithe map with the online map this evidence can not be considered to support the claim that a route should be added to the Definitive Map.
34. Having considered all evidence presented and having further looked into this, it is your Officers opinion that the evidence is not strong enough to support the claim that a route exists as a public footpath either on the balance of probabilities or reasonable allegation.

Conclusion

35. In light of the evidence, as set out above, it is your officers opinion that the evidence fails to show that a public right of way, with the status of Public Footpath, which is not shown on the map and statement does exist.
36. It is the opinion of your officers that the County Council should not make a Modification Order to add the alleged footpath on the Definitive Map and Statement of Public Rights of Way.

Recommended Option

37. To **reject** the application based upon the reasons contained in the report and outlined above and to decide to **not** make an Order to add the alleged route to the Definitive Map and Statement of Public Rights of Way.

Other options Available

38. The Panel has the authority to reach a different decision and therefore can accept the application to make an Order to add the alleged route to the Definitive Map and Statement of Public Rights of Way.

Legal Implications

39. The legal implications are contained within the report.

Resource and Financial Implications

40. The costs of determining applications are met from existing provisions.
41. 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

42. 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 under Schedule 15 of the 1981 Act. The Secretary of State would appoint an Inspector to consider the

matter afresh, including any representations or previously unconsidered evidence.

- 43.** 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.
- 44.** 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.
- 45.** 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. There are no additional risk implications.

Equal Opportunity Implications

- 46.** There are no direct equality implications arising from this report.

J Tradewell

Director for Corporate Services

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INDEX TO APPENDICES

Appendix A	Copy of application and associated submitted letters and documents
Appendix B	Plan of claimed route
Appendix C	Documentary Evidence
Appendix D	Evidence discovered by officers