

<b>Local Members' Interest</b>	
Cllr P Northcott	Newcastle- Newcastle Rural

## **Countryside and Rights of Way Panel -**

### **Wildlife and Countryside Act 1981**

#### **Application for the addition of a Public Bridleway along Glass House Lane from Public Footpath 56 by the road at Chipnall Mill to Public Footpath 71 by the road at Glass Houses, Loggerheads**

#### **Report of the Director for Corporate Services**

### **Recommendation**

1. That the evidence submitted by the applicant and that discovered by the County Council is sufficient to reasonably allege that the alleged public bridleway along Glass House Lane from Public Footpath 56 by the road at Chipnall Mill to Public Footpath 71 by the road at Glass Houses, Loggerheads subsists.
2. That an Order under Section 53(3)(c)(i) should be made to add the alleged right of way shown on the plan attached at Appendix B and marked A to B to the Definitive Map and Statement of Public Rights of Way for the District of Newcastle as a Public Bridleway.

### **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 Mr Martin Reay for an Order to modify the Definitive Map and Statement for the District of Loggerheads. The effect of such an Order, should the application be successful, would:

(i) add an alleged Public Bridleway along Glass House Lane from Public Footpath 56 by the road at Chipnall Mill to Public Footpath 71 by the road at Glass Houses, Loggerheads to the Definitive Map and Statement of Public Rights of Way under the provisions of Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981.

(ii) The lines of the alleged Public Bridleway 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 submitted several historical documents in support of the application. These documents are: 1910 Finance Act Plans/Maps (Appendix C), Deposited Railway Plan dated 1845 (Appendix D), Drayton in Hales Tithe Map (Appendix E), 1932 Rights of Way Act Deposit map (Appendix F), OS maps (Appendix G), Wright & Charrington Motoring Cycling and touring map dated 1900's (Appendix H).

### **Evidence submitted by the Landowners**

2. Landowner 1 submitted a landowner questionnaire on receipt of the application and German Chartered Surveyors have also provided a letter as representatives of the landowner, copies of which are attached at Appendix I.
3. Landowner 1 does not consider the route to be public. They have never given anyone permission to use the route and they have never seen anyone using the route.

### **Comments received from statutory consultees**

4. The Byways and Bridleways Trust have replied stating that they support the application but have not submitted any specific evidence.
5. Loggerheads Parish Council responded with a letter dated 10<sup>th</sup> July 2000 advising that they had no strong objection to the application but would query access to the proposed bridleway as the only option would appear to be from the footpath, which in their opinion would limit the full use of a bridleway. Copies are attached at Appendix J.

### **Analysis of Documentary Evidence**

6. The sole purpose of the tithe documentation was to identify land subject to paying the tithe. The apportionment of tithes was recorded in a schedule and on a map. Apportionments are statutory documents which were in the public domain and tithe maps have been treated by the courts as good

evidence as to whether land was titheable or not titheable. However, tithe maps were not intended to establish or record rights of way.

- 7.** Tithe Commissioners were appointed to survey the land and they would often use highways to orientate the map and locate the plots shown. A highway crossing land would reduce its productivity although this would be true whether the route had public or private status. The type of highway would also have a bearing on the amount of tithe payable. A bridleway or footpath would be likely to have less impact on the cultivation of the land compared to a vehicular route, i.e., use with carriages and carts. Where a route was shown separate from adjacent landholdings it would be more likely to have higher rights over it although these could be either public or private. The fact that there is an owner or a tithe is apportioned to a route is not inconsistent with it being a public highway. The important perspective from the tithe commissioner was that the land would be untitheable and not the status of the way. It is unlikely that a tithe map will show public footpaths and bridleways as their effect on the tithe payable was likely to be negligible.
- 8.** The tracing provided by the applicant of the Drayton in Hales Tithe Map shows a route running alongside the same line as the alleged route, which is shown separate from the adjacent land. The route appears to be numbered 298 and connects to Chipnall Mill and what appears to be the parish boundary to the south. To the north the route connects to another route numbered 303.
- 9.** Officers have reviewed the tithe map and apportionment in the County Records Office. The apportionment for the route numbered 298 states that the landowner was Thomas Hudson and the description given for the way is a "road".
- 10.** The annotation of a road to or from a named settlement is suggestive of public rights. Tithe maps are generally good evidence of the topography of the roads they portray but they are not necessarily good evidence either of public rights or the nature of any public right that might exist. The tithe map supports the physical existence of the route. The exact status of the route is unclear. The fact that a specific landowner has been listed as owning the route might suggest that the route is private, however the fact that at the southern end of the route it refers to Chipnall Mill and Cheswardine, this might suggest that the route was indeed public. The fact that the route is shown separate from the adjacent land and is referred to as a "road" is highly suggestive that the route has rights over it higher than a footpath.
- 11.** Major works such as the construction of canals and railways have normally been authorised by private Acts of Parliament. The reason for this was that in the 18<sup>th</sup> and 19<sup>th</sup> centuries there were no powers to acquire land compulsorily. Consequently, where there was a canal or railway planned the intended route was surveyed. From the surveys, plans and books of reference were compiled which showed who owned the land crossed by the proposed canal or railway. This then formed part of an Act of Parliament.

- 12.** In compiling the plans for the route of a railway, the surveyors drew up a map showing the intended line of the construction. It was not the primary purpose of deposited plans to record highways of any description but came about as a consequence of the need to survey the land.
- 13.** The plan allotted plot numbers to each strip of land affected by the passing of the railway. The Book of Reference listed who owned the land crossed and the type of land. In the case of highways, the book of reference often, but not always, lists who was responsible for the maintenance of a route, the status and the nature of the rights over it. In the case of public highways, the landowner or person responsible for maintenance may be listed as the Surveyor of Highways which would indicate the way was public. The process, including the plans and books of reference were open to public inspection and objections could be made which resulted in corrections. Landowners would not have wished unnecessarily to cede ownership, Highway Authorities would not have wanted to take on unwarranted maintenance responsibilities, and Parish Councils would not have wished their parishioners to lose rights.
- 14.** The applicant has provided a tracing of the 1845 Railway Deposited Plan for Trent Valley Continuation and Holyhead Junction Railway. The tracing shows a route running along the same line as the alleged route and this route is numbered 26. Officers have viewed the Railway Deposited Plan and Book of Reference in the County Records Office. The map/plan shows route 26 separate from the adjacent land and it connects to the area of Chipnall Mill to the south. The plan does not show where the route connects to in the north. On review of the Book of Reference for the Cheswardine/Chipnall area route 26 is recorded as "Highway- Surveyor of Highways".
- 15.** Therefore, the Railway Deposited Plan evidence supports the physical existence of a route along the line of the alleged route. It also supports the route being public at the time the plan was drafted as the Surveyor of Highways is listed as having responsibility for the route. Therefore, this could be persuasive evidence of a public right of some description. What is not clear from the documentation is the exact nature of the rights over the alleged route as the term "highway" is a generic term and does not provide any clarity as to how the route was being used at the time. Railway Deposited Plans can be good evidence to support a claim that a highway existed at the time they were made.
- 16.** The 1910 Finance Act Plan of Staffordshire shows part of the alleged route and the Plan for Shropshire shows the whole of the alleged route as separate from adjacent landholdings.
- 17.** A landowner could claim tax relief for public rights of way and these deductions would be shown in the Field Books. The fact that the route is recorded on the map provides evidence of the existence of a way along the line of the alleged route.
- 18.** The fact that the route is shown separate from the adjacent land, could suggest that the route was a public highway. The separation could mean that the adjacent owners believed that the route was a public highway and thus need not be shown within their property as it would have been exempt

from taxation in any event. This would have been unlikely to occur where the route in question only had the status of footpath or bridleway, as these rights of way would have more likely to have been dealt with by means of a deduction for user in the field book.

- 19.** It could also be said that the route is shown excluded because there is no owner and that it was a private right of way.
- 20.** The Finance Act maps are good evidence that a public highway existed. In this case the Finance Act evidence supports the physical existence of a route along the line of the alleged route and that the route was likely to have rights over it higher than a footpath or bridleway as the route is shown separate from the adjacent land. However, there is nothing to indicate the exact nature of the rights over the alleged route or whether the route was in fact public or private.
- 21.** Ordnance Survey Maps date back to the early 1800's and their purpose is to show physical features on, and the contours of the ground. They do not distinguish between public and private rights of way as can be seen with both the 1817 and 1834 maps, which only show the physical existence of the route and not the nature of the route.
- 22.** These maps do not have any evidential value but they do support alongside the Finance Act material, Tithe Map and Deposited Railway Plan that there was a physical feature on the ground.
- 23.** This can also be said for the Wright & Charrington Motoring Cycling and Touring Map. The map shows the physical existence of the route but not whether it is a public right of way. The Planning Inspectorate has confirmed that "*What is looked for is a general picture of whether the route seemed important enough to get into these documents fairly regularly. A one-off appearance could be an error... consistent depiction over a number of years is a positive indication*". This approach has been approved by the courts, as seen in *Fortune v Wiltshire Council*.
- 24.** The applicant has also provided a map that they state was deposited as part of the 1932 Rights of Way Act Register. Officers have viewed this map and the accompanying Rights of Way Act 1932 Register document at the County Records Office. The 1932 Rights of Way Act contained a provision that allowed landowners to deposit at any time to the county council a map and statement indicating what routes they admitted to being public rights of way across their land. The declaration was valid for six years and meant that during this six-year period no additional public rights of way could be dedicated or considered to have existed over the land in question.
- 25.** The map provided as part of this documentation is an OS map depicting the Drayton in Hales area. On the map is marked in red the boundary of the Hales Estate. In the area of the Hales Estate some routes are coloured yellow and some routes are coloured orange/brown. The key with the map shows that routes coloured yellow were considered footpaths and routes coloured orange/brown were considered to be roads.
- 26.** The northern section of the route (which connects to Glass Houses) is numbered 2a and is coloured orange/brown. The southern section of the



route is not part of the Hales Estate. The alleged route connects to a footpath to the north and the estate boundary to the south.

- 27.** The Rights of Way Register lists route 2a and the description provided is: "from a point a short distance northwest of Glass House Farm to the said farm and then to a point on the south boundary of the estate approaching Chipnall Mill- Hales Estate". The statutory declaration was made by Annabella Heywood of Hales Hall, Cheadle and it is dated 28 February 1940.
- 28.** This documentation supports the physical existence of a route along the line of the alleged route. It also supports the northern section of the route being public and that it had rights over it higher than a footpath, although it is not clear from the description "road" what the exact nature of the rights were considered to be over the route at that time.
- 29.** The applicant provided further comments and evidence in relation to the application following investigations commencing on the application and the applicant disagreeing with officers' initial interpretation of the evidence. This included a copy of Staffordshire County Council's List of Streets for the area in question, Rights of Way Improvement Plan for Staffordshire, National Street Gazetteer, a current OS map of the area and a further map from the 1910 Finance Act Plan, showing the application route continuing into Shropshire. Copies of this evidence can be found at Appendix K.
- 30.** On review of the National Street Gazetteer the alleged route runs along the same line as a route described as: "Glass House Lane, Glass Houses, Newcastle under Lyme". The route is recorded on the Gazetteer as having no classification. It also states that the route is maintainable at public expense. The fact that the route is on the County Council's List of Streets is supportive of the report being a public highway, as the county council would not want to take on maintenance responsibility for the route unnecessarily. However, the List of Streets is evidence only of whether the local authority has maintenance liability for the route, it gives no guidance as to the nature of any public rights that exists over the route. Only the Definitive Map records public rights of way.
- 31.** The applicant has provided a document listing streets in Staffordshire and they claim that the alleged route is recorded as unclassified road G2065. On this document, Glass House Lane is depicted twice with the above-mentioned classification and also the classification D2065. How the route came to be on the County Council's List of Streets is unclear. It has been confirmed that there is no parish survey card for the route and therefore the alleged route has never appeared on the Definitive Map of Public Rights of Way.
- 32.** The Rights of Way Improvement Plan for Staffordshire document states that "G" class roads are available for walkers, cyclists, horse riders and motorised users. It is unclear as to where this document has originated from or who the author of the document was. Officers argue that even though the route is recorded as an unclassified road, this does not automatically mean that it has public vehicular rights over it. The term unclassified road has no legal meaning in terms of defining what rights

exist over them. It cannot be assumed that this type of route carries public vehicular rights. Therefore, officers would argue that this evidence does not add anything to the case, other than supporting the routes status as a public highway.

### **Comments on Draft Report**

- 33.** Following circulation of an initial draft of the report comments were received from Michelmores LLP on behalf of Landowner 1. They object to the application. Copies of the correspondence are attached at Appendix K. They contend that the applicant has not provided sufficient evidence to show that the alleged route subsists or can be reasonably alleged to subsist. A copy of officer's response to the objections is also attached at Appendix K.
- 34.** Michelmores LLP state the applicant has not provided any evidence of use of the alleged route and they have failed to show dedication by the landowner of the route as a public right of way or acceptance of use of the route. They further state that the landowner has never given permission for members of the public to use the route. The application is submitted under s.53(3)(c)(i) of the Wildlife and Countryside Act 1981 and under this section an application can be submitted either on historical or user evidence or a combination of both. The applicant has submitted the application based on historical/documentary evidence and therefore they do not need to show evidence of use of the route. The applicant is arguing that the historical/documentary evidence shows the existence of a public right of way along the alleged line with the status of bridleway and therefore should be included on the Definitive Map and Statement of Public Rights of Way.
- 35.** Michelmores are also of the opinion that the historical evidence submitted by the applicant is insufficient to meet the threshold either when considered separately or cumulatively as a whole. They have taken each piece of historical evidence submitted by the applicant and provided comments as to why they are of the opinion that each piece of evidence does not show a public right of way along the line of the alleged route with the status of a public bridleway. A copy of their comments and officers' response to those comments are detailed in Appendix K.
- 36.** They contend that the further evidence submitted by the applicant does not carry enough evidential weight to show that the alleged route is a public right of way with the status of a public bridleway. They state that the List of Streets is not a definitive record of public rights of way. They further state that no public maintenance work has been carried out to the route and no confirmation has been provided as to when the route was recorded as maintainable at public expense. Officers acknowledge that the List of Streets is not a definitive record of public rights of way. In relation to the other points they do not assist in showing whether the route is a public right of way or the nature of any rights over the alleged route.
- 37.** A second landowner was also identified following circulation of the draft report and they provided comment on the application. They object to the application and raised concerns about members of the public accessing their

land and causing disruption to their livestock. Whilst it is not our intention to belittle any legitimate concerns raised, the courts have decided that issues relating to safety, security, privacy, suitability, future maintenance, and wildlife concerns cannot be taken into consideration. Only evidence regarding the existence or not of a public right of way can be taken into consideration.

### **Legal tests**

- 38.** In this instance the applicable section of the Wildlife and Countryside Act 1981 is section 53(3)(c)(i). This section relates to the discovery of evidence of two separate events:
  - (a) Evidence that a right of way which is not shown on the map subsists;  
or
  - (b) Evidence that a right of way which is not shown on the map is reasonably alleged to subsist.
- 39.** Thus, there are two separate tests, one of which must be satisfied before a Modification Order can be made. To answer either question must involve an evaluation of the evidence and a judgement on that evidence.
- 40.** For the first test to be satisfied, it will be necessary to show that on a balance of probabilities the right of way does subsist.
- 41.** For the second test to be satisfied the question is whether a reasonable person could reasonably allege a right of way subsists, 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 by definition be less than that which is necessary to establish the right of way does "subsist".
- 42.** If the conclusion is that either test is satisfied then the Definitive Map and Statement should be modified.

### **Summary**

- 43.** The application is made under Section 53(2) of the 1981 Act, relying on the occurrence of the event specified in 53(3)(c)(i) of the Act.
- 44.** None of the pieces of evidence individually can be considered evidentially strong, however each document has provided some evidence in support of the application and specifically the existence of a public right of way along the line of the applied for route. Therefore, when all of the evidence is considered together it provides a wider understanding regarding the alleged route and therefore does hold evidential weight.
- 45.** All the documentary evidence supports the physical existence of the route. The Railway Deposited Plan and the 1932 Rights of Way Act Deposit documentation supports the route having public status. Along with these documents the Drayton in Hales Tithe Map and the 1910 Finance Act evidence support the route having rights over it higher than



a footpath, as the route is shown separate from the adjacent land and is depicted as a main carriageway/highway.

46. Although there is evidence that the routes status is likely to be higher than a footpath the descriptions given of the route do not clearly identify the nature of the rights over the route. In light of the strong evidence of the routes physical existence and the fact that the route is not depicted as a minor highway but with there being no clear evidence that the route was used by carriages or carts and therefore would have had vehicular rights over it, the applied for status of a public bridleway is appropriate, given that the route was more than a footpath but not necessarily used by carriages and carts.
47. However, when all the evidence is considered together, as there is no one piece of evidence that is evidentially strong in showing the existence of the route with a particular status and the nature of the rights over the route, officers consider that the evidence is insufficient to show on a balance of probabilities that the route exists as a public bridleway.
48. However, given that several pieces of evidence have been provided that have given an indication regarding the routes existence and the status and rights over the route, officers consider that the evidence is sufficient to reasonably allege the physical existence of the route with the status of at least a public bridleway.

### **Conclusion**

49. In light of the evidence, as set out above, it is your officer's opinion that the evidence shows that a public right of way, with the status of bridleway, which is not shown on the map and statement is reasonably alleged to subsist.
50. It is the opinion of your officers that the County Council should make a Modification Order to add the route onto the Definitive Map and Statement of Public Rights of Way.

### **Recommended Option**

51. To accept the application based upon the reasons contained in the report and outlined above and to decide to make an Order to add the alleged route to the Definitive Map and Statement of Public Rights of Way.

### **Other options Available**

52. The Panel has the discretion to reach a different decision and therefore can reject the application to not make an Order to add the alleged route to the Definitive Map and Statement of Public Rights of Way.

### **Legal Implications**

53. The legal implications are contained within the report.

## **Resource and Financial Implications**

- 54.** The costs of determining applications are met from existing provisions.
- 55.** 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**

- 56.** 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.
- 57.** 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.
- 58.** 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.
- 59.** 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**

- 60.** 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:** LK601G

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