

Local Members' Interest	
Stafford - Eccleshall	Cllr Jeremey Pert

Countryside and Rights of Way Panel

Wildlife and Countryside Act 1981

Application for the addition of a Byway Open to All Traffic from Clayalders Bank to Footpath 62 Eccleshall

Report of the Director for Corporate Services

Recommendation

1. That the evidence submitted by the applicant is insufficient to reasonably allege that a public right of way of any status which is not shown on the Definitive Map and Statement, shown marked A to B on the plan attached at Appendix A to this report exists.
2. That no order should be made to add the alleged public right of way, shown A to B on the plan attached at Appendix A, to the Definitive Map and Statement of Public Rights of Way as a byway open to all traffic, or as a public right of way of any other status.

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 B) from Mr Martin Reay for a Definitive Map Modification Order to modify the Definitive Map for the area by adding the Byway Open to All Traffic shown A-B on the Plan at Appendix A (the Application Route) to the Definitive Map. The application was dated 6th August 1999 and was acknowledged by the County on 18th August 1999.

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 provided a 1910 Finance Act Plan which shows the alleged route separate from taxable land and holdings. The route is shown running from what appears to be Clayalders Bank and appears to terminate at a plot of land and does not connect with another highway at that point. Public footpath no 62 is not shown on this plan. A copy of the 1910 Finance Act Plan is attached to this report at Appendix C.
2. Podmore Tithe Map dated 1838 which shows the alleged route without a plot number running from the route now known as Clayalders Bank, runs past Burley Cottage which is plot 46 and continues to plot 31 where it terminates. Plot 31 is described as "near Hollins" and owned by William Whittingham. This map does not appear to show what is now public footpath 62. A copy of the Podmore Tithe Map dated 1838 is attached to this report at Appendix D.
3. An O.S. Map dated 1817 which shows a route in the vicinity of the alleged route leading from what appears to be Clayalders Bank but does not meet with a highway at the other end. This map does not appear to show what is now public footpath 62. A copy of the OS map dated 1817 is attached to this report at Appendix E
4. A Teesdale Map dated 1832 which also appears to show a route in the vicinity of the alleged route. Like the O.S Map, the route appears to lead from Clayalders bank but does not show it meeting a highway at the other end. The map does not show public footpath 62. A copy of the Teesdale Map dated 1832 is attached to this report at Appendix F

Analysis of Documentary Evidence

Finance Act 1910

5. The Finance Act 1910 was created to map lands for the purposes of taxation. It consisted of three documents, the field book, the valuation book and the increment value duty plan.
6. Evidence of the possible existence of a public right of way in Finance Act documentation usually arises in one of two ways; reference to it in one or more of the various documents forming part of the valuation process, or exclusion of a route from the assessable parcels of land shown on the map record. However, a route may be excluded from the adjoining land for other reasons, such as where a route is a private road for the use of a number of people without its ownership being assigned to any one person.

7. In this case the applicant has provided a copy of the increment value duty plan. The alleged route is shown as being separate from the surrounding land holdings and terminating at a plot of land. It does not meet with any other highway at that point. .
8. Consequently, it is possible that the route was private and was used by a number of people for accessing land.
9. The applicant did not provide a copy of the field book and your officer has not been able to locate a copy. Without a copy of the field book it is unclear if the landowner did claim tax relief on this particular parcel of land. Whilst the deduction entry would not have described the route it may have provided evidence of its existence and status. However, as the route is shown as separate from adjoining land holdings it is not likely to have been referred to in the field book in any event.

Tithe Maps

10. Tithe maps and their accompanying apportionments (books of reference) were produced solely for the purpose of identifying titheable land, and were not concerned with recording or establishing public rights of way. They do however provide some of the earliest accurate large-scale mapping and may provide good evidence of the physical existence of a route. If a route was excluded from adjoining land it may be supporting evidence that a route has public status, however, this is not conclusive and there may be other reasons for the land being excluded and on its own it is not sufficient to draw any such conclusion.
11. The route is shown clearly on the Tithe Map however it terminates within a plot of land and does not meet with a highway at that point which would suggest that the route may have been private in nature for the purpose of accessing private land. The book of reference does not refer to a public route of any description.

Ordnance Survey Maps

12. Ordnance Survey Maps provide excellent evidence of the physical existence of the features they show at the time of the survey, but they are silent on matters of status. From the 1880's onwards the maps included a disclaimer to the effect that the depiction of any path, track or way is not evidence of the existence of any public rights of way. In *Moser v Ambleside Urban District Council* (1925) 89 JP 118 at 119, Pollock MR stated: "If the proper rule applicable to ordnance maps is to be applied, it seems to me that those maps are not indicative of the rights of the parties, they are only indicative of what are the physical qualities of the area which they delineate.....".
13. The alleged route is depicted on a copy of Ordnance Survey map dated 1817. It shows the physical existence of the route, however, it does not infer any public status.

14. The map appears to show the route leading from Clayalders Bank to a plot of land, and is not a through route. Consequently this does not appear to support the contention that the route had public status.
15. **Teesdale Map** The Teesdale Map was a commercial map and such maps were produced in the early 1800's and were often produced to record specific activities such as mining and encroachment.
16. The plan appears to depict the alleged route as leading from Clayalders Bank but it does not appear to meet with another highway or lead to a regional centre and consequently this does not appear to support the contention that the route has public status. In any event, such maps support the physical existence of a route but do not infer any public status.

Evidence submitted by the Landowners

17. There is only one landowner affected by the application and the landowner was contacted when the application was accepted and a response was received. The landowner stated that at the time that the land had been in their ownership for approximately 3 years and that they were the sole freehold owner. They informed the Council that access was granted to the occupants of Burley Cottage to use the lane but only up to the cottage itself. They did not have access beyond the cottage. A copy of the landowner evidence is attached to this report at Appendix G
18. A map was submitted to show the extent of their ownership stating that the land surrounding Burley cottage was owned by them, and this included the lane. A copy of the map is attached to this report at Appendix G
19. No further evidence was provided by the landowner, however they did indicate they would be happy to attend a public inquiry if necessary.
20. The occupier of Burley Cottage was contacted when the application was accepted but no response was received.

Comments received from statutory consultees

21. Eccleshall Parish Council responded to the statutory consultation stating that they wish to support the application as they considered the addition would enhance the footpath network. However they did not submit any further evidence either in support of or against the application. A copy of the correspondence from Eccleshall Parish Council is attached to this report at Appendix H
22. The Ramblers Association also stated that they wished to support the applications as did the Byways and Bridleways trust. However they did not submit any further evidence either in support of or against the application. A copy of the correspondence from the Ramblers Association is attached to this report at Appendix H
23. No further comments received from any other consultee.

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 a Definitive Map Modification Order should be made to add the route to the Definitive Map .

Summary

- 28.** 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.
- 29.** The application is for the status of a Byway Open to All Traffic which is defined in Section 66(1) of the Wildlife and Countryside Act 1981 as highway "over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purposes for which footpaths and bridleways are so used".
- 30.** Under the Natural Environment and Rural Communities Act 2006 (NERC) subsection (1), restrictions have been placed on the recording of public rights of way for mechanically propelled vehicles on the Definitive Map and Statement.
- 31.** Section 67 of the NERC Act subsections (2) to (8) provides exceptions to the extinguishment of certain unrecorded rights of way for mechanically propelled vehicles. One exception is if, before the 'relevant date' (subsection (4), 20th January 2005), an application had been properly made for a Definitive Map Modification Order to add a Byway Open to All Traffic to the Definitive Map. This application was properly made before the 'relevant date' and consequently this exception does apply. Consequently if the evidence was sufficient to show that a byway open to all traffic is reasonably alleged to subsist then it should be added as a byway open to all traffic rather than a restricted byway.

- 32. The Finance Act 1910 Map shows the lane as separate to adjoining land holdings, however it does not connect with a highway at both ends and appears to lead to a parcel of land suggesting that this is private in nature.
- 33. The alleged route is shown on an OS map dated 1817 and on the Teesdale Map dated 1832. However, both of these maps appear to show the route leading to a parcel of land and the route does not connect with a highway at both ends. These maps show only that there was a physical feature which existed at the time, but they do not provide evidence of public rights of way.
- 34. The alleged route is also shown on Tithe map for the area which shows the lane as separate to adjoining land holdings, however it does not connect with a highway at both ends and appears to lead to a parcel of land suggesting that it is private in nature.
- 35. When the totality of the evidence is considered it would suggest that the route is private in nature and it does not suggest any specific type of traffic that would have used the route.

Conclusion

- 36. In light of the evidence, as set out above, it is your officer's opinion that the evidence is insufficient to reasonably allege that a public right of way of any description subsists along the alleged route.
- 37. It is the opinion of your officers that the County Council should not make a Modification Order to add a byway open to all traffic, or a public right of way of any description to the Definitive Map and Statement of Public Rights of Way.

Recommended Option

- 38. 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

- 39. The Panel has the authority/discretion 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 as a Restricted Byway or a public right of way of a different description.

Legal Implications

40. The legal implications are contained within the report.

Resource and Financial Implications

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

42. 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

43. 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.

44. 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.

45. 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.

46. 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

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

J Tradewell

Director for Corporate Services

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Background File:LJ626G

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