

<b>Local Members' Interest</b>	
Uttoxeter Rural	Cllr. P Atkins

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

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

#### **Application for the Addition of an Alleged Public Footpath from Mill Lane to Public Footpath 12 Kingstone**

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

### **Recommendation**

1. That the evidence submitted by the Applicant in the application 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 to this report and therefore should be added to the Definitive Map and Statement of Public Rights of Way as such.
2. That an Order be made to add the alleged Public Footpath marked "A to B" on the attached map at Appendix B to the Definitive Map and Statement of Public Rights of Way for the Borough of East Staffordshire.

### **PART A**

#### **Why is it coming here – What decision is required?**

3. 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.
4. To consider an application attached at Appendix A for an Order to modify the Definitive Map and Statement for the Borough of East Staffordshire. The effect of such an Order, should the application be successful, would:
  - (i) add a Public Footpath from Mill Lane in a north westerly direction towards Gratwich to Public Footpath 12 Kingstone on the Definitive

Map of Public Rights of Way under the provisions of Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981.

(ii) The line of the route which is the subject to the application is shown highlighted and marked A to B on the plan attached at Appendix B.

5. 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.

### **Documentary Evidence Submitted**

6. In support of the application the Applicant submitted a tracing of the Derby, Uttoxeter and Stafford Deposited Railway plan dated 1845 (Q/RUM/213) and 1846 (Q/RUM/211a).
7. These can be found at Appendix C.
8. The Applicant also submitted 2 Ordnance Survey Maps dated 1887 and 1901.
9. These can be found at Appendix D.

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

10. Officers have conducted research into the extent of the way and reviewed the Derby, Uttoxeter and Stafford Deposited Railway plan dated 1845 (Q/RUM/213) and 1846 (Q/RUM/211a) at Stafford Records Office.

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

11. The Landowners, as provided by the Applicant were consulted at the time of the application, and following recent HMLR searches, existing landowners were contacted in October 2023 and no responses have been submitted.

### **Comments Received from Statutory Consultees**

12. East Staffordshire Borough Council responded to the initial consultation and confirmed that they had no objections to the application.
13. The Ramblers Association also submitted a response and confirmed that they had no evidence to offer in relation to the claim.
14. These responses can be seen at Appendix E.

### **Comments on Evidence**

15. It is the existence of the route that is brought into question in this case.
16. The evidence relies upon the Deposited Railway Plan of 1845 and 1846 and is supported by two Ordnance Survey plans of 1887 and 1901.

17. Railway schemes were produced by railway companies and were necessary for major schemes of works authorised by Acts of Parliament.
18. Statute required, from 1838, that the plans of these works and the accompanying book of reference were deposited with the local public authorities and are now typically held by county records offices. This was true for routes that never came to fruition as well as for those that were constructed.
19. Surveyors compiled details of landowners and landholdings which then formed part of an Act of Parliament. However, it was not their primary purpose to record highways, but they were typically included as a consequence of surveying the land.
20. Where there was a proposed railway in the 18th and 19th century, the intended route would be surveyed to assess the suitability of the land for the construction of a railway.
21. The surveyor then created plans and books of reference which ultimately recorded highways and showed who owned the land and where the proposed railway was to cross the land.
22. The plan would allot plot numbers to each strip of land affected by the proposed railway while the book of reference listed who owned or had responsibilities over the plot and a brief description of its use.
23. The evidence is submitted as a tracing of the Deposited Railway Plan dated 1845 and 1846. Officers have viewed the documents at Stafford Records Office for clarity. Photographs of the deposited railway plan and book of reference are also attached at Appendix C.
24. The Deposited Railway Plan for the Derby, Uttoxeter and Stafford Railway shows the alleged route in the plots 19, 21, 22, 23 and 27.
25. The accompanying book of reference records the existence of a "field and footpath" within these plots which is overseen by the Surveyor of Highways.
26. The details of the owners and occupiers are consistent with those which typically accompany deposited plans and referred to within the associated book of reference.
27. The landowners are given as the Earl Talbot and the Surveyor of Highways in respect of plot numbers 19, 21, 22, and 23 and Earl Ferrers and the Surveyor of Highways in respect of plot 27.
28. It would suggest therefore that the Earl Talbot and Earl Ferrers were the owners of the soil in the respective plots and that the Surveyor of Highways was responsible for the maintenance of the highway, in this case a footpath, explaining the annotation from the book of reference.
29. The notation of Surveyor of Highways is persuasive evidence that a public right existed over the land.
30. The railway plan can be said to show that the Surveyor of Highways did not object to the description of the route when they had the opportunity to do so at the end of the first survey.

31. The Surveyor of Highways would appear to be of the opinion that the alleged route was a footpath that was publicly maintainable.
32. The plots on the map marked 25 and 30, adjoining plot 27, connect to existing Public Footpath 12, Kingstone, and the book of reference also identifies these plots as being "field and footpath" overseen by the Surveyor of Highways.
33. The plot numbers and references are exactly the same in each deposited plan and record book which was deposited in both 1845 and 1846.
34. The Ordnance Survey Maps dated 1887 and 1901 depict a parallel dashed line along the same line as the claimed route.
35. Ordnance Survey Maps provide evidence of the physical existence of the features they show at the time of the survey; however they are unable to provide evidence of status.
36. From the early 1880's the maps included a disclaimer to the effect that the depiction of any path, track or way was not evidence of the existence of any public rights of way.
37. Although Ordnance Survey Plans are no indication of status, they can support evidence of probity, the Deposited Railway Plans in this case and the physical existence of the claimed route.

### **Legal Tests**

38. 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 the route:
  - (a) subsists on the balance of probabilities;  
or;
  - (b) is reasonably alleged to subsist.
39. 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.
40. 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".
41. If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

## Summary

42. In this instance the applicable section of the Wildlife and Countryside Act 1981 is section 53(3)(c)(i).
43. Railway plans recorded public rights of way in the vicinity of the intended route of the railway, although it was not their primary purpose, they do provide good evidence in support of a public route.
44. They have been admitted by the courts as evidence of public rights of way.
45. The status of a public right of way affected the cost of the line and so railways plans were unlikely to show a route with a higher status than was actually the case.
46. The railway scheme authorisation process allowed parties involved to scrutinise the plans. Landowners may have been reluctant to cede their ownership and highway authorities would have been cautious not to take on additional maintenance responsibilities.
47. In this instance the railway plan records the alleged footpath on the plan in its entirety.
48. The overseer of the route in the deposited railway plan is listed as the Surveyor of Highways, and the route is described as a "field and footpath" which is suggestive that the route is a public right of way.
49. The Deposited Railway Plan is supported by the Ordnance Survey Maps showing the alleged route as a through road connecting public routes in the parish.
50. The probity of the documentary evidence presented in this case shows the existence of a right of way across the land on the alignment of the alleged route.
51. Consequently, it is Officers' opinion that the second test would succeed as the evidence adduced is such that it is reasonable to allege that a public right of way subsists over the claimed route.
52. With regard to the question of "reasonably alleged to subsist" as laid down in Section 53(c)(i), this has been discussed in the case of R-v-Secretary of State, ex parte Bagshaw and Norton [1995] JPEL 1019. In that case Owen J. stated that the "the wording of the section indicates, as I consider, that the evidence necessary to establish that a right of way is reasonably alleged to subsist must be less than that which is necessary to establish that a right does subsist".

## Conclusion

53. Taking the evidence together the Deposited Railway Plan is supported by two Ordnance Survey Maps.
54. The entirety of the route is depicted on the railway plan and links with connecting routes in the parish.
55. The full extent of the route is also depicted on the Ordnance Survey Maps.

56. The probity of a deposited plan coupled with the Ordnance Survey Maps satisfies the lower test of reasonable allegation for the addition of the route.
57. In light of the evidence, as set out above, it is Officers' opinion that the evidence is sufficient to show that the route can be reasonably alleged to subsist and with the status of a public footpath.

### **Recommended Option**

58. To **accept** the application based upon the reasons contained in the report and outlined above and make an Order to add the route subject to this application as a Public Footpath to the Definitive Map and Statement of Public Rights of Way, for the Borough of East Staffordshire.
59. That the route shall be to the standard minimum width of 1.5 metres throughout its length.

### **Other options Available**

60. To reject the application to add the route as a Public Footpath to the Definitive Map and Statement of Public Rights of Way.

### **Legal Implications**

61. The legal implications are contained within the report.

### **Resource and Financial Implications**

62. The costs of determining applications are met from existing provisions.
63. 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**

64. 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.
65. 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.

66. Should the Council decide not to make an Order the Applicant 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.
67. 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**

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

---

J Tradewell

Director for Corporate Services

**Background File:** LJ666G

## INDEX TO APPENDICES

Appendix A	Application Form 1
Appendix B	Plan of claimed route
Appendix C	Deposited Railway Plans 1845 and 1846
Appendix D	Ordnance Survey Maps 1886 and 1901
Appendix E	Responses from Statutory Consultees