

Cllr Mark Winnington	District of Stafford Borough
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## **Countryside and Rights of Way Panel**

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

#### **Application for the Upgrade of Public Footpath 26, Seighford Parish to Bridleway Status**

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

#### **Recommendation**

1. That the evidence submitted in the application at Appendix A is sufficient to show that Public Footpath 26, Seighford Parish which is shown on the Definitive Map and statement and shown along the route marked A to B on the plan attached at Appendix B to this report should be upgraded to bridleway status and added to the Definitive Map and Statement of Public Rights of Way as such.
2. That an Order should be made to upgrade 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 Stafford Borough.

### **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.
2. To consider an application attached at Appendix A made by Martin Reay for an order to modify the Definitive Map and Statement for the area by upgrading Footpath 26 Seighford Parish to bridleway status under the provisions of Section 53(3) of the Wildlife and Countryside Act 1981.
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.
4. The route applied for is shown between points A to B on the plan attached at Appendix B being Public Footpath 26, Seighford.
5. For the application to be successful under section 53(3) (C) (i) the historical evidence is required to be significant enough to determine that a route

existed irrespective of whether there are any physical features remaining on the ground.

### **Evidence Submitted by the Applicant**

6. In support of the application the applicant Mr Martin Reay has submitted five pieces of evidence.
7. These five pieces of evidence are i) A Surveyors of Highways Report Book, ii) Auction Particulars (1813), iii) Finance Act (1910), iv) Seighford/Worston Tithe Map, v) County Maps 1798-late 1800's. These may be seen at Appendix "C".
8. For clarity the county maps referred to are Bacons Map (1870), Wright & Charrington's Motorway, Cycling & Touring Map (late 1800's). Savory's Eclipse County Map (late 1800's), John Bartholomew's Map (mid-late 1800's), Walker's Map (mid 1800's), C.S. Smith Map (1808), John Tate's Map 1798, Ordnance Survey (1830).
9. In his application the applicant states that *"the route seems to be the bridleway from Worston and Shallowford to Great Bridgeford and Stafford. The route stays to the east of the river Sow and avoids crossing it. The alternative route from Worston and Shallowford to Great Bridgeford and Stafford is along Worston Lane which crossed the River Sow through a ford and was slightly further. The ford was replaced with a bridge last century. This created better conditions on the alternative route and became the main route from Worston to Great Bridgeford and Stafford. The route of the bridleway was not legally closed though and remains today only as a footpath. This application seeks to give the route its proper status as a bridleway."*

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

10. When the application was submitted the applicant identified two landowners relevant to the application, Mr G.A. Brown of Bridgeford Hall Farm, Great Bridgeford, Staffordshire ST18 9SL and Mrs P MacGregor, of Worston Stables, Worston, Great Bridgeford, Staffordshire ST18 9QA.
11. These two landowners returned the standard evidence forms confirming the extent of their ownership.

### **Other Evidence Discovered By The County Council**

12. Confirmation of land ownership was later found to be split between two landowners, one being MacGregor and Whitfeld jointly and the other being Mr J Holt of Field House Farm, Blurtons Lane, Eccleshall, ST21 6JH. Mr G.A Brown, referred to above (at point 10) owning land adjoining the route.

### **Comments Received From Statutory Consultees**

13. The Peak & Northern Footpaths Society responded in support of the application.
14. Seighford Parish Council responded stating they had no objection to the footpath being upgraded to bridleway status, provided no access be given to powered vehicles.

15. The Border Bridleways Association responded stating they supported the proposal as it would remove a bridleway from cul-de-sac status and provide safe off-road riding.
16. North Staffordshire Bridleways Association responded stating “great support for this bridleway claim”. They added “If the definitive status of the route was upgraded, it would be of great benefit to local horse riders as it connects two fairly good riding roads and is an alternative to having to ride along the busy A5103 main road – which is a feeder route to the nearby M6 junction. It also provides an alternative to having to use a very narrow and hazardous railway bridge. In addition, it would add some off-road content to a circular ride connected to The Potteries Ring Route at Stone.”
17. The Ramblers Association responded stating that *“the documentary evidence appears to be conclusive in confirming this route as once capable of carrying horse drawn vehicles and therefore a bridleway which was subsequently downgraded to a footpath. The return to bridleway status would be of benefit to horse riders in this area, providing a safe and quiet link between Worston Lane and Cherry Lane. The northern half of the footpath is at present fenced off from a paddock. The footbridge over the brook near Cherry Lane will need to be improved if the upgrading is approved”*.
18. These responses from Statutory Consultees may be seen at Appendix “D”.

### **Comments on Evidence**

19. Section 53 (3) (c) (i) of the WCA 1981 sets out the legislation through which a route may be added to the Definitive Map and Statement based solely on documentary or historical evidence.
20. The legislation accepts that the route may no longer be visible on the ground and that there may be no physical features remaining of the route.
21. The route in this case is still visible as it is the line of Public Footpath 26 Seighford.
22. Of the five pieces of evidence presented by the applicant all rely in whole or in part on historical maps or plans.
23. The Planning Inspectorate Consistency Guidelines section 12 paragraph 45 indicates that when dealing with old maps and plans it is the consistent occurrence of a route in successive documents that strengthens the evidence for its existence, a one off appearance could, it suggests, be an error and that “consistent depiction over a number of years is a positive indication”.
24. Each of the five pieces of evidence submitted should be considered independently and a legal weight attributed to each.
25. Firstly, the Worston/Seighford Tithe Map of 1845 shows the route passing through plot 18 as a narrow open road. The symbol used to denote the way is consistent with that which was used to denote bridleways on tithe maps where they cross fields. However, tithe maps showed both public and private routes and so this alone cannot provide definitive proof of the status of a way. However, the tithe map may be used as good supporting evidence.

26. Secondly the county maps that are submitted as evidence date from 1798 to the late 1800's all appear to indicate the route as an open road between Worston and Great Bridgford.
27. Given that these maps have no bearing independently on the legal status of a route some of the earlier ones, predating 1835 may, with other evidence provide supporting evidence for an ancient highway. In addition, where routes are shown on these maps, while their legal weight is minimal, they may be suggestive of ways with a higher status than a footpath.
28. The Planning Inspectorate Consistency Guidelines s12 p45 state that "when dealing with old maps and plans it is the consistent occurrence of a route in successive documents that strengthens the evidence for its existence, a one off appearance could, it suggests, be an error and that "consistent depiction over a number of years is a positive indication".
29. Thirdly the auction particulars of the Worston Estate Sale, 1813 have an accompanying plan and this indicates the route was a "Bridleway from Stafford". The auction catalogue for Lot 1 indicates plot 249 "Gospel Field" and states that "Lord Anson has a right of carriage way through this field". This does suggest the path had higher rights but is not clear as to whether these were public or private.
30. Fourthly the 1910 Finance Act shows the route passing through plot 1107 of Field 42. It then links to the end of Cherry Lane which is shown separate from taxable land as a road. The field book entry for 1107 indicates that there are public rights of way including a bridle road and two footpaths. It is the applicant's belief that this route is the bridle road referred to. This is supported by the fact that the Surveyors of Highways Report Book of 1903 (7 years previous) also refers to the route as a bridle path.
31. The Finance Act is often referred to as "The Second Domesday Book" as it was concerned with mapping lands throughout the United Kingdom for the purposes of taxation. As landowners could claim tax relief for public rights of way the deductions would be shown in the Field Books. When the evidence from the Field Book and associated plan are taken together it can provide strong evidence for the existence of a way. In many cases the right or status were also recorded.
32. As the Finance Act surveys were carried out under statute by a public body and misrepresentation carried severe criminal penalties the evidence is considered to have significant legal weight. When viewed with the other maps submitted by the applicant the evidence for the route having had the status of a bridleway is supported.
33. Finally, the Surveyors of Highways Report Book of 1903, referred to above shows that a complaint was received from Worston about the condition of the bridleway at the Worston end. The surveyor states that "the other end of the bridleway on the Great Bridgford side of the brook has been repaired by the parish, but this length is more of the nature of a road as it has a hedge on either side." When viewed alongside the nearest cotemporary Ordnance Survey Map of 1901 then the route is shown to cross over a brook and into Cherry Lane on the Great Bridgford side. This appears to be only possible route that the Surveyors of Highways could be referring to.

## **Comments on All Available Material**

34. The most significant evidence available to support any higher rights is the Finance Act which shows the route in the same way that a bridleway would be recorded. It also states that the route is a "bridle road". This is a strong indication that the route had a public status.
35. The material when taken together also supports the status of the route to be a bridleway.

## **Burden and Standard of Proof**

36. With regard to the status of the route, the burden is on the applicant to show, that on the balance of probabilities, that it is more likely to subsist as a bridleway than not. The existing situation must remain unless and until the Panel is of the view that the Definitive Map and Statement should be amended. If the evidence is evenly balanced, then the existing Definitive Map and Statement prevails.

## **Summary**

37. The test requires the evidence to show that the route seemed important enough to be shown on maps or plans in various distinct documents which when taken together provide persuasive evidence of its existence. Or that the route appears in a definitive legal document, particularly an Inclosure Award, and again may be supported by other relevant evidence.
38. The evidence in this case is from five independent sources and all sources appear to show the route as a bridleway, in most cases referring to the route as in fact a "bridleway".
39. The route already has the status of a public footpath and the evidence from the Finance Act could suggest that the Footpath may have once been the same route as the bridleway.
40. Evidence from the applicant that supports the existence of a bridleway status runs from 1798-1910, a period of 112 years.
41. There are both private and public sources of evidence with the Auction Particulars and the Finance Act respectively.
42. The route did appear to feature in a succession of maps over a number of years. However, the maps only provide tentative evidence of the route's status as a bridleway and their legal weight is limited to showing the existence of the route regardless of status.
43. The Finance Act does carry significant weight, however, that said, the weight of the Finance Act is not sufficient enough in its own right and the strength of the supporting evidence should be good.
44. Having accepted that the county maps, tithe map and Ordnance Survey plan are all of limited legal weight then the evidence rests on the Auction Particulars for 1813 and the Surveyors of Highways Report Book for 1903.
45. The Auction Particulars were a privately produced sales catalogue and refer to the route as a "bridleway from Stafford". Given that this was never intended to be a public or legal document and given that it was produced at

the behest of the landowner then it has limited legal weight. Again, it could only be viewed as supporting evidence at best.

46. This leaves the Surveyors of Highways Report Book of 1903. Although on face value this appears persuasive the weight rests on the interpretation of the information given within it. Critically the Report Book bears references to hedges either side of the route indicating that its status was “more of the nature of a road”.
47. Taking the Finance Act and the Surveyor of Highways Report Book together therefore and supported by the other three categories of evidence, the balance would, in this case appear to tip towards the status of a bridleway.

### **Conclusion**

48. In light of the evidence, as set out above, it is your Officers opinion that the evidence is significant enough to show that a bridleway subsists on the balance of probabilities.
49. The evidence of the Finance Act 1910 when taken together with the Surveyors of Highways Report Book 1903, the tithe map 1839 and other maps as supporting evidence then it can be shown that the route appears to be shown consistently, in most cases, as a bridleway.
50. It is the Opinion of your Officers that the County Council should make a Modification Order to upgrade Public Footpath 26 Seighford which is the subject of this application to a bridleway on the Definitive Map and Statement of Public Rights of way for the District of Stafford.

### **Recommended Option**

51. To accept the application and make the Order to upgrade the route from a footpath to a bridleway on the Definitive Map and Statement of Public rights of Way.

### **Other Options Available**

52. To decide not to accept the application and therefore not to make the Order to add the 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 14 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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### **INDEX TO APPENDICES**

Appendix A	Application
Appendix B	Plan
Appendix C	Evidence Submitted By Applicant
Appendix D	Responses From Statutory Consultees
Addendum	Responses to Draft Report