

Cllr Paul Northcott	District of Newcastle– Newcastle Rural
---------------------	--

Countryside and Rights of Way Panel

Wildlife and Countryside act 1981

Application for Upgrading of Public Footpaths 67 & 68 Madeley and Footpath 15 Keele to Bridleways

Report of the Director of Corporate Services

Recommendation

1. That the evidence submitted by the applicant and that discovered by the County Council is not sufficient to show, on a balance of probabilities, that Public Footpaths 67 & 68 in Madeley and Footpath 15 in Keele should be added as a highway of a different description, namely a Bridleway to the Definitive Map and Statement of Public Rights of Way for the District of Newcastle Rural.
2. That an Order should not be made to add the alleged right of way shown on the plan attached at Appendix B and marked A-B, C-D, E-F to the Definitive Map and Statement of Public Rights of Way for the District of Newcastle, Newcastle Rural.
3. For clarity it is highlighted that the route identified in the report as PF15 Keele has since been renumbered by Staffordshire County Council as PF24 Whitmore. Further clarity of this routes' former RUPP status is also highlighted within the report. The necessary consultation with Whitmore Parish Council was of course undertaken as required.

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 Mr Martin Reay for an order to modify the Definitive Map and Statement for the area by upgrading public footpaths 67 & 68 Madeley and Public Footpath 15 Keele to public bridleways under the provisions of Section 53(3) (c) (ii) of the Wildlife and Countryside Act 1981. The lines of the alleged public bridleways as claimed by the applicant are shown on the plan attached at 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.

Evidence Submitted by the Applicant

4. The routes applied for are shown between points A-B, C-D and E-F on the plan attached at Appendix B. Collectively the applicant refers to the entire route as running from “Three Mile Lane to Netherset Hay Lane”.

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.
6. In support of the application the applicant Mr Martin Reay has submitted six various pieces of evidence as detailed below. These may be found attached at Appendix C.
7. These are i) a Deposited Railway Plan of 1858, ii) a Highways Diversion Order of 1834, iii) a second Highways Stopping Up Order of 1834, iv) The Finance Act 1910, v) a Parish Survey and vi) County Maps.

Evidence Submitted by the Landowner/s

8. When the application was submitted the applicant identified three owners or occupiers of the affected land, i) Mr Ward of Netherset Hay Farm, Netherset Lane, Madeley, ii) Mr Robinson of Stoneylow Farm, Three Mile Lane, Keele and iii) Mrs Smith of Keele Kennels, Three Mile Lane, Keele. One further landowner was subsequently identified as Mr Ford of Stoney Low Farm, Keele, Newcastle, Staffs, ST5 5HQ.
9. Mr Ford indicated in the Owner/Occupier Questionnaire that he considered the route only to have the status of a public footpath. He also indicated that he was the sole freehold landowner.
10. The other landowners identified by the applicant did not submit any evidence in respect of the application.

Evidence Discovered By the County Council

11. The three Parish Survey Cards for the routes in question were extracted from the records of Staffordshire County Council and their details assessed in respect of each route.
12. These being the Parish Survey Cards for Keele 15, Madeley 67 and Madeley 68

Comments Received from Statutory Consultees

13. Responses were received from the various organisations.
14. Michael Rowley, Secretary of the Byways & Bridleways Trust stated that he “saw no practical obstacles to restoring this way to its former status” and submitted a copy of a booklet entitled “Madeley, Staffs; Aspects of Its Landscape, Archaeology and History” by Gordon Lancaster. Mr Lancaster was the Secretary to the Madeley Conservation Group. The evidence was interpreted as showing the route “clearly as an ancient way” and that Mr Lancaster’s research suggested the route was a “cart way and deserving of classification as a pre-1835 county road”.
15. Michael Rowley also stated that despite the indication from the above-mentioned book that the route was originally a cart way or county road he was “nevertheless content with bridleway status”.
16. Michael Rowley also stated that the Madeley Conservation Group supported the claim.
17. Mrs M Oxer, Clerk to Madeley Parish Council stated that it fully supports the application.
18. Mrs C Beeley, Hon Secretary of the North Staffordshire Bridleways Association stated that it fully supports the application and “had always believed that this was and should be a bridle path”. Adding that “its upgrading would be particularly useful in solving the problem of horse riders getting between Keele and Madeley without having to cross the motorway on a bridleway bridge”.
19. Paul Fenton of The Right to Ride Network stated that the upgrade would “improve access considerably for the area if given bridleway status wondering why the paths

were downgraded from a bridleway in the first place. Stating “I would like to back the proposal for bridleway status”.

Comments on Evidence

20. Section 53 (3) (c) (i) of the WCA 1980 sets out the legislation through which a route may be added to the Definitive Map & Statement based solely on documentary or historical evidence, or both.
21. The legislation accepts that the route may no longer be visible on the ground and that there may be no physical features to suggest the route was ever there. In this case the line of the route is still visible on the ground in the form of the public footpaths concerned. However, the physical appearance is in no way indicative of the status of the route.
22. The six pieces of evidence submitted by the applicant cover the entire lengths of the three public footpaths identified in the application namely PF67 & PF68 Madeley and PF15 Keele.
23. The three public footpaths run in an approximately east-westerly direction between two roads, namely Netherset Hay Lane in the west to Whitmore Road in the east. The three paths join end to end to form one continuous route, with PF67 forming the greater part of the route from Netherset Hay Lane in the West to the railway. From the other side of the railway PF68 and PF15 form one continuous route to Whitmore Road in the east.
24. The six pieces of evidence submitted by the applicant are considered in more detail below:
25. Firstly, The Finance Act 1910 shows the eastern point of the claimed route between Three Mile Lane and Stoney Low Farm as separate from taxable holdings. The associated Field Book entry for the hereditament numbered 203 shows the annotation “right of way across farm” and given that there is only one-track crossing plot 203 this could refer to the claimed route.
26. Secondly, The Highway Bridleway Diversion Order of 1834 is given as evidence by the applicant. The western end of the bridleway on this 1834 Diversion Order constitutes the eastern end of the claimed route. The 1834 Order created a new line of bridleway part of which was Ram Lane and Ram Lane is described as leading to Madeley. The route crosses the Whitmore to Keele Road at Ram Lane before reaching point A on the plan. This provides strong evidence that Ram Lane was a bridleway. The applicant indicates that Ram Lane is the claimed route. The map evidence shows the lane continuing from point A on the Order plan through Stoney Low to Madeley.
27. Thirdly, the Highway Stopping Up Order of 1834 was included by the applicant as it overlaps the Bridleway Diversion Order and shows the line of the Keele to Whitmore Road.
28. Fourthly, the Deposited Railway Plan of The Newcastle, Silverdale and Madeley Junction Railway 1858 shows the western end of the claimed route between Netherset Hay Lane and a point south of Hungerford House Farm as “an occupation road and public bridle road” This appears to have been recorded by the Surveyors of Highways.
29. Fifthly, the parish plan submitted with the evidence shows part of the route as a road used as a public path (RUPP).
30. The sixth and final piece of evidence submitted by the applicant consists of various county maps namely the Madeley Tithe Map, Bacons Map, Walkers Map, and ordnance survey maps of 1834, 1876.

31. When all six pieces of evidence are taken together it becomes apparent that the existence of a right of way is supported - but not necessarily the existence of a bridleway.
32. For example, the Finance act 1910 does support the existence of a route, noting in the field book that there was a "right of way across farm". However, it does not state "bridleway" or "bridle road". The fact that the route is shown separately to the adjoining land is merely an indication that it is a right of way and has no bearing on its status. There is nothing to suggest that the right of way had any higher status than a public footpath and no reference to the term "bridleway" or "bridle road" in the field book itself.
33. The two Highway Orders referred to, one for a Diversion and the other for a Stopping Up relate to a nearby associated bridleway in 1834 and only provide evidence for that bridleway concerned. The fact that a small section of the claimed route is also given on the same plan does not have a significant bearing on the bridleway in question. This could have been added in error, is not described in the annotations and is at best very weak circumstantial evidence. This circumstantial evidence being indicated by the overlap where a small section (several metres) of the claimed route is highlighted as bridleway.
34. The Deposited Railway Plan of 1858 does record the western end of the route as "an occupation road and public bridleway". This would appear to be evidence of the status of this section of the route, although it has no bearing on the eastern section of the way. At best therefore the Railway Plan only indicates the *probable* status of one small section of the route by annotation.
35. However, the Railway Plan does show that there is a bridge along the route over the railway. This could be significant as the financial burden of constructing bridges or tunnels to carry highways was more arduous for public highways crossing railways and was laid down by statute. The presence of a bridge could therefore be indicative of the route being a carriageway or having a higher status than a footpath. It does provide tentative evidence however that the route was of a higher designation than a public footpath.
36. The parish plan that shows part of the route as a RUPP is not clear within the evidence submitted by the applicant. If this is taken to be the same as the "occupation road" then its evidential value is limited to that specific section of the route referred to above. If this refers to another section of the route, then again this is limited to the section concerned. It is only referring to "part" of a path as stated by the applicant.
37. The various maps submitted by the applicant, including the Ordnance Survey plans all record the physical feature of the route although do not attest to its status, whatever this might be. They can be used as supporting evidence although in this case this is weak due to the small number of maps submitted and the small scale of the county map submissions. There are only three county maps and two Ordnance Survey maps given in evidence to support the route.
38. The three Parish Survey Cards as held by Staffordshire County Council reveal the status of the routes in 1951 and these details are given below:
39. The Parish Survey Card for Keele 15 dated 30th August 1951 records the route as a CRB stating "this is a farm lane giving access to Stony Low Farm and leading from there into Madeley, although only the first 700 yards are within the Keele Parish Boundary, and only this section was covered by the survey. It is an open lane, with no gates or other obstructions, is about 8 feet wide and well fenced on both sides."
40. The Parish Survey Card for PF15 Keele indicates that the path started at The Gables, Keele and finished at Stony Low Farm. It was recorded as a "CRB" although this has been struck through and replaced with the letters "RP". The letters "RP" being

an abbreviation of the acronym RUPP. The Survey Card also stated that there was “no documentary evidence available, but the path has been open to the public for many years”.

41. The Parish Survey Card for Madeley 68 indicates that the path started at “FP67 at Stony Low” and finished at the “Parish Boundary about 675 yards east of Stony Low”. It was recorded as a “RP” being an abbreviation of the acronym RUPP.
42. The Parish Survey Card for Madeley 67 indicates that the path started at the “County road about 225 yards S.E. of Madeley Vicarage” and finished at “RP68, Stony Low.” It was recorded as a FP (Footpath).
43. As can be seen from the Parish Survey Cards two of the routes were considered to be RUPPs, and one was considered to have the status of a Public Footpath. Madeley 67 was further re-iterated as a Public Footpath within the survey card notes for Madeley 68.
44. The cards demonstrate that there is not a complete consistency of status along the entire route.

An Explanation of RUPP's

45. Given that parts of the route were formerly recorded as RUPPs an explanation of these is given below. This demonstrates how RUPPs came about and their relevance to any application.
46. The Ministry of Town and Country Planning (“The Ministry”) issued Circular 81 in March 1950 and referred to a pamphlet issued by the Commons, Open spaces and Footpath Preservation Society entitled “Survey of Rights of Way”. The pamphlet and the methods for conducting a survey that were described within it were approved by the Ministry as being suitable for that purpose. The ministry subsequently circulated copies of that pamphlet to County Councils for distribution to parish councils carrying out surveys under the 1949 Act.
47. The acronym CRF was one of the symbols suggested for use. In Part 3(m) it stated that “highways which the public were entitled to use with vehicles but which, in practice are mainly used by them as footpaths or bridleways, should be marked on the map CRF or CRB.
48. Whilst these terms were useful as descriptions neither had any legal standing nor were suitable for inclusion on the Definitive Map and Statement. The 1949 National Parks and Access to the Countryside Act (“the 1949 Act”) laid down only three types of route that could be shown on any subsequent map and statement, ie: Footpath, Bridleway or Road Used as a Public Path (RUPP). The expression RUPP was intended to include a public carriage or cart road or green, unmetalled lane mainly used as a footpath or bridleway.
49. The description would include those routes which were annotated on the surveys as CRF and as a result each route was recorded on the Map and Statement as a RUPP.
50. There was no challenge to the inclusion of the routes as RUPPs at any stage in the Definitive Map process following the parish survey.
51. The 1949 Act provided for five yearly reviews of the Definitive Map to take account of any changes to the rights of way network. Before the first general review could be undertaken in Staffordshire the Countryside Act 1968 (“the 1968 Act”) required a “Special Review” to reclassify all RUPP's to either footpaths, bridleways or a new category, byways open to all traffic (BOAT's).

52. The County Council prepared its First (General) and Special Review of the definitive Map in 1969. The review had a relevant date of 30th September 1969 and was duly advertised in the London Gazette and local newspapers and placed on public deposit between August and December 1971.
53. There were no objections to the reclassification and the First Revised Definitive Map was completed in February 1988 with a relevant date of 30th September 1989. The Second Revised Definitive Map showed no change in the status of the ways from the previous Definitive Map. No application to question the validity of the Second revised Map was made to the High Court.
54. However, when considering the inclusion of routes onto the first definitive map and statement produced after the 1950 survey it is important to bear in mind the rationale behind the legislation.
55. In *R v Secretary of State for the Environment Ex p Hood* (1975) (The Hood Case) QB Lord Denning summarised this as "The object of the statute is this: it is to have all our ancient highways mapped out, put on record and made conclusive, so that people can know what their rights are. Our old highways came into existence before 1835. They were created in the days when people went on foot or on horseback or in carts. They went to the fields to work, or to the village, or to the church. They grew up time out of mind. The law of England was: Once a Highway, always a Highway. But nowadays with the bicycle, the motor car and the bus, many of them have fallen into disuse. They have become overgrown and no longer passable. But yet it is important that they should be preserved and known, so that those who love the countryside can enjoy it and take their walks and rides there. That was the object of the National Parks and Access to the Countryside Act 1968".
56. The intent was to record not only what rights could currently be exercised but what rights were considered to exist. The 1949 Act required that inclusion be based upon whether in the opinion of the council a "right of way subsisted or is reasonably alleged to subsist..." It was then to be tested by the process, as Lord Denning summarised, "First, a draft map; next a provisional map; and finally, a definitive map. There were opportunities both for landowners and the public to make their representations as and when each map passed through each stage".
57. The description on the survey cards ought to support the belief that there might be higher rights in existence but does not provide any evidence of this. The entry as RUPP on the First Definitive Map and Statement would appear to be based mainly on a description of the way rather than a reflection of any rights considered to exist.
58. The fact that routes were classed as RUPP's is not conclusive evidence that they are bridleways. Throughout the Definitive Maps history since being created under the 1949 Act the legislation has contained provisions to amend or correct the map and statement if new evidence was discovered. Prior to the 1981 Act this could only be done where there was a review of the map and statement taking place. For example, under the 1949 Act this would be every five years and at that stage amendments could be made and s33(2)(e) allowed for the status of a highway to be changed. Since the 1981 Act came into force the map and statement are subject to continuous review.
59. Where a reclassification exercise was being undertaken as provided for under the 1968 Act then a RUPP could only be reclassified as a footpath if there was evidence which showed it was not a bridleway, if no evidence existed then it should be reclassified as a bridleway.
60. However, Staffordshire County Council had undertaken their reclassification exercise in 1969 which was before the Hood case had been decided. There was no provision under the 1968 Act for that review to be abandoned and so the County Council completed the process.

61. The County Council was not the only Authority that had commenced this process and, in an attempt, to guide the surveying authorities the Department of the Environment and the Welsh Office issued Circular 123/1977. This stated that it was recognised that anomalies would arise, and that legislation would be considered if they could not be satisfactorily dealt with under existing procedures. This proved to be the case and the amending legislation was the 1981 Act.
62. Circular 123/1977 gave guidance on the procedures to be adopted when reclassifying roads used as public paths. The Circular provided that "in the absence of new evidence, or evidence not previously considered by the surveying authority....a RUPP could not be reclassified at a special review as a footpath because of the conclusive presumptions contained in section 32(4)(b) of the 1949 Act that there are bridleway rights over a RUPP.
63. The County Council continued with the first (General) and Special Review and a number of objections were received to the new Definitive Map. A series of hearings were held and where the objection related to the reclassification of a RUPP the guidelines laid down as a result of the Hood decision were followed. It was not open to the County Council to refer routes which were not objected to, and which were RUPP's, which had been reclassified to footpaths, to an Inquiry. Nor was it open to an Inspector to consider such where the objections were withdrawn prior to the hearing. Accordingly, the County Council concluded the Review after all objections had been determined.
64. In the interim, before the process of determining the objections was completed, the 1981 Act came into force and superseded the Countryside 1968 Act. As a consequence, when the First (General) and Special Review was completed the County Council was unable to commence another review under the auspices of the 1968 Act to address the issue of the reclassified RUPP's. This power had been removed by the 1981 Act which laid down a new process to be followed, the procedures provided by Section 54.
65. The applicant, by making reference to the fact that the way was once classified as a RUPP, is in effect contending that there is a presumption that bridleway rights still appertain as a consequence. However, the fact that the route was reclassified means the presumption is no longer in effect as this only arises under specific circumstances set out by statute as referred to in the Hood case. That presumption arose under S34(4)(b) of the Countryside Act 1968, a section that was repealed in full by virtue of the coming into force of the Wildlife & Countryside Act 1981. A saving for RUPPs that had not been reclassified was enshrined in S54 of the latter Act.
66. The contention that a reclassified RUPP would support evidence of actual bridle rights without other evidence is insufficient. The correct approach to the issue of RUPPs reclassified as footpaths is outlined in the case of Trevelyan where Latham J stated that the relevant question is set out in Section 53(3)(c): is there evidence, which when considered with all other evidence, shows the correct classification of a way. This entails an evaluation of all the available evidence in order to determine the correct status of a way. As the judge stated "it seems to me that there is no room for any assumptions or presumptions. The Act specifically refers to evidence...the fact of the inclusion of the right of way on the Definitive Map is obviously some evidence of its existence. But the weight to be given to that evidence will depend on an assessment of the extent to which there is material to show its inclusion was the result of inquiry, consultation, or the mere ipse dixit of the person drawing up the relevant part of the map....".
67. Accordingly, one cannot start from the premise that there is a presumption that bridle rights automatically apply to reclassified ways. The fact that originally, they were classified as RUPPs may indeed be some evidence of bridle rights, but the weight to be attached to that evidence will depend upon each case's circumstances and not as a

general rule. The character of the way does not lead to a presumption that a particular type of public right is attached to it.

68. As the Council cannot undertake another RUPP reclassification the correct approach to determining whether a route has bridleway rights is to consider the matter under the provisions of S53 of the 1981 Act and consider all of the available evidence.

Comment on All Available Material

69. There is no evidence submitted that would conclusively support any higher rights than those applied for. However, the references to the “occupation road” and “road used as a public path” should be noted, whilst also considering the fact that these are two isolated annotations in documents which are normally used at best as supporting evidence.
70. The most significant document submitted with the evidence is the Deposited Railway Plan of 1858. This is the document that specifically annotates the route as a “bridleway” and which provides evidence that a bridge was constructed along the route taking it across the railway.
71. The other pieces of evidence including the Highway Orders, county maps and ordnance survey sheets either do not relate to the claimed route directly or are evidentially weak.

Burden and Standard of Proof

72. 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 than not that the way subsists. 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.
73. If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

Summary

74. The application is made under Section 53(2) of the 1981 Act, relying on the occurrence of the event specified in 53(3)(c)(ii) of the Act. Therefore, the Panel need to be satisfied that, on the balance of probabilities, the evidence that has been discovered shows that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
75. The evidence in this case is limited to the Deposited Railway Plan of 1858.
76. The other submitted evidence is either not directly relevant to the claimed route or is evidentially weak and of limited supporting value.
77. The Railway Plan has increased legal weight as the railway was constructed and would have been authorised by Act of Parliament. These completed railway plans therefore have greater legal weight than those railways which were subsequently discarded or not completed.
78. However, it was not the primary purpose of these documents to record rights of way.
79. There is no question in this case as to the existence of a public right of way as the entire route is comprised of three successive and joining public footpaths. It is the status that is brought into question by the applicant.
80. In cases where historical or documentary evidence is provided what is looked for is a general picture of whether a route seemed important enough to get into documents

fairly regularly. *Fortune v Wiltshire Council 2012*. No further supporting evidence is available in this case in respect of the alleged status of the route.

Conclusion

81. In light of the evidence, as set out above, it is your Officers opinion that the evidence is not significant enough to show that a public bridleway subsists on the balance of probabilities. Further independent evidence would be needed to achieve this.
82. Although the documentary evidence of the railway plan is good, this would need to be supported by other *good* evidence for it to be given sufficient weight.
83. It is the Opinion of your Officers that the County Council should not make a Modification Order to upgrade the public footpaths that are the subject of this application to the Definitive Map and Statement of Public Rights of Way for the District of Newcastle-Newcastle Rural.

Recommended Option

84. Not to accept the application and not to make an Order to add the route to the Definitive Map and Statement of Public Rights of Way.

Other Options Available

85. To decide to accept the application and to make an Order to add the route to the Definitive Map and Statement of Public Rights of Way.

Legal Implications

86. The legal implications are contained within the report.

Resource and Financial Implications

87. The costs of determining applications are met from existing provisions.
88. 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

89. 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.
90. 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.
91. 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.
92. 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

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

J Tradewell

Director of Corporate Services

Report Author: David Adkins

Ext: 276187

Background File: LJ665G

INDEX TO APPENDICES

Appendix A	Copy of Application and Associated Documents
Appendix B	Plan of Claimed Route
Appendix C	Evidence <ul style="list-style-type: none">i) Deposited Railway Plan 1858ii) Highways Diversion Order 1834iii) Highways Stopping Up Order 1834iv) Finance Act 1910v) Parish Survey (undated)vi) County Map and details 1830s-1880s