

Cllr Ross Ward	District of Staffordshire Moorlands
----------------	-------------------------------------

Countryside and Rights of Way Panel

Wildlife and Countryside act 1981

Application for Upgrading of Public Footpath No 8 Caverswall to Bridleway Status.

Report of the Director of Corporate Services

Recommendation

1. That the evidence submitted with the application at Appendix A is sufficient to show that a Public Bridleway subsists along the route marked A to B on the plan attached at Appendix B to this report and should therefore be added to the Definitive Map and Statement of Public Rights of Way as such.
2. That an Order 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 Staffordshire Moorlands, Caverswall.

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 on the 27th March 2001 by Mrs C A Howell, Clerk to Caverswall Parish Council for an order to modify the Definitive Map and Statement for the area by upgrading Public Footpath 8 Caverswall to a public bridleway under the provisions of Section 53(3) of the Wildlife and Countryside Act 1981. The line of the alleged public bridleway as claimed by the applicant is shown on the plan at Appendix B and marked A to 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. In support of the application the applicant Mrs C A Howell on behalf of Caverswall Parish Council has submitted 24 user evidence forms, and a copy of "The Spirit of the Place" by M J W Roberts (pages 10 & 11). The evidence forms are attached to this report at Appendix C.
5. A summary of the salient points from the user evidence forms has been compiled in a table. This is attached at Appendix D.

Evidence Submitted by the Landowner/s

6. Mr C Dale of Highfield Stud Farm, Abbey Green Road, Leek ST13 8SA returned the Right of Way Evidence Form indicating that he believed the route was a "footpath" and "bridleway", that he had not erected any signage on the route, although the previous owner a Mr Myatt had. He also stated that "3 years ago a bar was put across at (the) junction with Leek Road to prevent road vehicles gaining access". This owner evidence form can be seen at Appendix E.

Comments Received From Statutory Consultees

7. M Rowley of the Byways and Bridleways Trust stated that the extract supplied as evidence by the applicant and entitled "The Spirit of the Place" was "neither accurate nor relevant" adding that it is well established that the A34/A50 is the route from Chesterton (Holditch) via Trent Vale to Rocester. This letter can be found at Appendix F.
8. M Rowley also stated that vehicular rights exist over the route of PF8 and this was recognised by J W Vernon, Barrister, the Inspector who held the Cheadle Public Enquiry in 1978 and who submitted the report to the Secretary of State on 21/07/78.
9. M Rowley attached a copy of the 1978 Report which gave a detailed description of PF8. The route was referred to as RP8 at this time, the abbreviated acronym for RUPP – a Road Used as A Public Path. This can be found at Appendix G.
10. M Rowley also attached a copy of decision letter from the Department of the Environment and Transport dated 15/02/80. This can be found at Appendix H.
11. For clarity the 1980 report referred to in point 10 above stated (in relation to "RP8) that the reclassification of this road used as a public path (hereinafter referred to as RUPP) should remain as a footpath in the Draft Revised Map and Statement".
12. M Rowley confirmed that he had also inspected the 1910 Record Plans relating to PF8 at Stafford County Record Office in 1977 and that he had "ridden RP8 Caverswall by motorcycle for a period in excess of 20 years" Although the 1910 Record Plans likely referred to the Finance Act no further exposition of this was given.
13. M Rowley highlighted that his use of the path with a motor vehicle was irrespective of the routes' reclassification as Footpath status in 1978 as reclassification, according to "leading counsel" did not extinguish prior vehicular rights.

14. The Staffordshire Moorlands Bridleways Preservation Group commented in 2001 that an obstruction and signs had been erected on the route. They stated the obstruction was “a barrier with a small stile” and signage stating, “No Horses or Vehicles”. They also stated that they would submit a request for a modification order to remove the footpath from the definitive map as it was, they believed “a pre-1835 vehicular road”. Photographs submitted with their letter show the barrier and signage. While an additional copy of Cary’s Map of Staffordshire was also attached showing the route with perceived “road” status. They stated that “the erection of a stile to be outside the requirements of Section 147 of the Highways Act 1980” and “a misfeasance”. This can be found at Appendix I.
15. The Staffordshire Moorlands Bridleways Preservation Group also consulted solicitors DLA & Partners concerning the erection of the obstruction on the route. DLA commented that the Group did not accept the route was “only a footpath”. They went on to state that the obstruction or stile covered over half the width of the route leaving only a small squeeze stile. This they stated was an “obstruction of a highway” and quoted that “as early as 1630 the courts held that if a new gate be erected across a public highway it is a common nuisance and any of the Kings subjects passing that way may cut it down and destroy it”. It was also confirmed that person’s unknown had since removed the stile. This can be found at Appendix J.
16. DLA Solicitors also commented on the erection of the signage by the County Council stating, “No horses or vehicles”. They reiterated that the route was originally shown on the Definitive Map as a road used as a public path (RUPP) and cited the case “R v Secretary of State for the Environment ex parte Hood” that held “designation on the Definitive Map as a RUPP provided conclusive evidence of the existence of a public right of way on horseback at least.” They felt the erection of signage stating “No Horses” was tactless and that this was contrary to section 57 of the National Parks and Access to the Countryside Act 1949.
17. North Staffordshire Bridleways Association commented in support of the application stating that “as a former RUPP we believe that it must have a minimum of bridleway rights”. They also indicated that the route was shown in the same way on old maps as the adjacent lane – now a Byway Open to all Traffic – (BOAT 9). They also stated that PF8 had been used by local horse riders for as long as the Association had been in existence, approximately 10 years. It was also part of one of their circular routes “around The Potteries”. Immediate complaints had been received by the Association as soon as the stile had been erected. This can be seen at Appendix K.

Comments on Evidence

18. Section 31 of the Highways Act 1980 sets out the test that must be satisfied under statute for a way to become a public highway through usage by the public.
19. In 1932 the Rights of Way Act introduced the statutory presumption of dedication by the landowner of a public right of way which could be proven by evidence of 20 years usage as of right and without interruption. This presumption could be rebutted by the landowner proving that he had no such intention. However, the

onus is on the landowner to do so. The land that the path crosses is not of a character that would prevent the dedication of a way.

20. As the applicant has submitted both historical and user evidence in respect of the claim then the validity of both needs to be assessed.
21. For clarity the claim is for the upgrade of an existing right of way to bridleway status.
22. The claimed bridleway was originally classified as a RUPP until its reclassification as a Public Footpath in 1978. The details established at this time are important as they give significant insight into the historical use and past status of the path. The 1978 evidence is detailed and relevant to the applicants claim for bridleway status.
23. The salient points of the 1978 inspection and report are outlined below:
 - A total width of approximately 25 feet – with a useable width of approximately 8 feet. This is a greater width than would be typical for a way with the status of a “footpath”.
 - Evidence of “old metalling” at certain points. Again, suggestive of a route that once had higher rights as it is unlikely that a footpath would have been given such a surface. However, this point could also be applied to a bridleway.
 - A concrete culvert carrying a stream beneath the route. This would have had an associated cost at the point of installation and would not normally be necessary for a route that only had footpath status.
 - A mainly soil or grass surface which has been “destroyed by galloping horses”. This point adds to the evidence that horses were indeed using the route in sufficient numbers to cause surface damage. As such this point of the 1978 report is significant as it demonstrates its use by horses.
 - The County Council’s view at the time stated that the overall width of the route was suggestive of a “drovers track” and that “it served no essential transport need”.
24. The 1978 report presented 12 x findings of fact, most of which mirrored those in point 23 above. However, they also included the point that Cheadle Auto Club had used the route with motor vehicles (without challenge) for over 20 years between 1950-72 but that the route was subsequently closed to 4 wheeled motor vehicles. The key point here is that the auto club had used the route “infrequently” and so their use may not have conflicted with other users, notably on horseback.
25. In addition, the British Horse Society claimed the way should have been reclassified as a byway (for use by pony and trap) or as a bridleway. However, the National Farmers’ Union (on behalf of local farmers), the Peak and Northern Footpath Society and Caverswall and Werrington Parish Council opposed these proposals favouring the status of a public footpath.
26. Further evidence appeared in the Inspectors Conclusions relating to the historical status of the path. The applicant claims the route had been used as a bridleway

since the year 200AD and submitted a published account to that effect. However, the Inspectors report of 1978 showed that:

- Both the Tuke and Yates Maps of 1798 show the route marked by double dotted lines which the Inspector interpreted as indicating an “unenclosed cart track”. On both maps the route ends at a brook where Caverswall Common begins.
- The 1840 Ordnance Survey Map showed the route as a continuation of what later became the county road to Roughcote. As such it appears to have been a minor north-south vehicular route, although this has no bearing on its status as a public right of way, again it suggests that the route had higher rights than a footpath.
- The Finance Act maps of 1910 show that the route was treated in the same way as public roads and indicates that the way had some “public vehicular status”.
- Given that the route was designated as a RUPP on the First Definitive Map it seems probable that the route historically had “public vehicular rights” over it.
- However, given the stream is prone to rise and flood the route and overgrowth either side has reduced the width to approximately 8 feet, together with a muddy surface area it is impractical for a wide variety of motor vehicles.

27. The summary of the 1978 report was that the route, that had been included as a RUPP on the First Definitive Map, should not be reclassified as a Byway Open to All Traffic (BOAT) and should remain with the new classification of Public Footpath as directed by the County Council.

28. Of relevance to the application is the point made in the 1978 report that “Classification of the way as a bridleway was not raised prior to the hearing and accordingly cannot be considered”. Thus, the question as to whether the route would have been reclassified as a bridleway at this time remains open. If an application for bridleway status had been submitted by any party at this time then given the evidence contained in the 1978 report then there would have been strong evidence to support it.

29. Staffordshire County Councils’ response to the Staffordshire Moorlands Bridleways Group points raised through solicitors DLA stated that the way was originally classified as a RUPP but was downgraded to a Footpath at the 1st Review. As there were objections to this downgrade a Public Inquiry was held on the 4th and 5th April 1978 for the former Cheadle Rural District Council. At that inquiry the Inspector upheld the reclassification of former RUPP No 8 Caverswall to a Footpath. This remains the status unless higher rights can be proven.

30. Staffordshire County Council further stated that given that the legal status of the route was a Public Footpath then the landowner had the right to apply to the County Council for a stile to be erected on the way for the purpose of stock control under the Highways Act 1980 s147. The landowner had done this and had been granted permission to erect the stile. This demonstrated the fact that the stile was not an illegal obstruction as DLA solicitors had claimed. The removal of a stile in this instance would therefore constitute an offence of criminal

damage. This also applied to the erection of signage stating “No Horses” as the route had the legal status of a public footpath. Significantly to the application was the point that this was not in prejudice to any higher rights which may subsequently be proven to exist.

31. In summary the County Council stated that the route was “currently classified as a footpath” and that “the stile has lawful authority and is therefore not an obstruction”. It added that an application had been received in 2001 to upgrade the route to a BOAT. This point demonstrates there has been a long-held belief that the route had higher rights than those limited by footpath status.
32. The stile was later removed through the instruction of Staffordshire County Councils Rights of Way Officer, Ms Noreen Moore due to the provisions of the Disability Discrimination Act and the implementation of the Countryside and Rights of Way act 2000. This required the County Council to consider the needs of disabled people who wished to use public routes.
33. The historical information which led to the original designation of PF8 as a RUPP was based on the evidence which in 1949 was weighted heavily in its favour. A RUPP was a category of right of way that included public carriage roads, cart roads and green unmetalled lanes which were mainly used as footpaths or bridleways. This suggests that at the time of the original classification following the 1949 Act the route was considered to be at least superior to a footpath and at least laid down the possibility that the route had been, or could be demonstrated to become, through evidence, a bridleway.
34. When the RUPPs were reclassified (at the 1st Review) and the County Council allocated the route the status of “footpath” objections were received that resulted in the 1978 Inquiry. It appears that the only alternative classification that was considered in 1978 was that of a Byway Open to All Traffic (BOAT). As such consideration was only given as to whether the RUPP had any higher “vehicular rights”. The Inquiry concluded that it did not and as such should remain as a Public Footpath. However, as the bridleway groups and users on horseback did not present a case for its reclassification as a bridleway, the option was not satisfactorily considered. To reiterate point (X) from the 1978 report *“Classification of the way as a bridleway was not raised prior to the hearing and accordingly cannot be considered.”*
35. The reason for this oversight may have been created by the fact that when the RUPP’s were first classified there was some ambiguity in their exact designation. At the time the parish surveyors were able to classify routes by two different acronyms, CRB and CRF. The first referred to *“highways which the public are entitled to use with vehicles but which, in practice are mainly used by them as footpaths or bridleways”*. The second referred to *“a public carriage or cart road or green unmetalled lane mainly used as a footpath or bridleway”*. As the acronyms could not be included on the Definitive Map as such the routes were mostly categorized as RUPPs. In doing so the original vehicular rights of the path were unclear although both had been used by people on foot or by horse. The rights and status of a bridleway being obscured by the focus on the existence of vehicular rights.
36. Of the 24 user evidence forms received 10 of them were using the route weekly on horseback throughout the relevant 20year period. The remaining users stated

they used the way either regularly or seasonally. For the purpose of the claim however only horseback use is relevant.

37. It is clear from the user evidence that there have been no interruptions to use over the relevant 20year period. The application was only made as a consequence of a challenge in 2001 to horse riders accessing the path -when a stile was erected to prevent motorbikes using the route. The relevant period between 1981-2001 is therefore the period critical to the claim.
38. All of the user evidence plans show the route marked along the same line. The route had been used for pleasure and occasionally work purposes and formed part of a well-used circular route.
39. The stile had been erected to prevent motorbikes accessing the route on both anti-social and safety grounds. This had been an acceptable solution from a rights of way perspective as the route had the status of a Public Footpath and no higher rights. The stile was installed without prejudice to any future application on the route.
40. The horse riders who had used the route for the relevant 20year period had done so without either seeking or being granted permission and had done so without secrecy. The land in question being accessed as part of a local "circular ride" as well as for general riding purposes.
41. The statutory test refers to use over 20 years and in the evidence submitted as there are at least 10 users who satisfy this criteria having used the route on horseback then legal weight is given to the application. One user claims to have used the route for "training horses" and another for "exercising horses". This was done on a weekly basis by one and several times per week by another.
42. Neither the legislation nor the applicable case law sets out a minimum level of user that is expected or required to support a claim that a route exists. The case law does suggest that the amount of usage should be such that it is enough to bring home to a reasonable landowner that the public are using a way and that use is as if it was a public highway, ie. "as of right".
43. The total user evidence that spans the relevant period of 20 years is almost half that of the amount of submitted users. This could be considered sufficient enough to bring that use home to a landowner. In addition, it is more likely than not that horses would be noticed using a route than persons using the route on foot.
44. The user evidence forms and signed statement testifying to many years use of the route provide significant evidence that this has been done as of right, without permission and by its nature without secrecy. The fact that stiles were only installed when motorbikes became a problem suggests that no one prior to this had complained about horses accessing the path. In addition, the evidence records three individuals who had known the way for periods of 66 years, 50 years and 50 years respectively – however their personal use was solely on foot and as such of little value as supporting evidence to the bridleway claim.
45. A Caverswall Parish Council Meeting of 19th February 2001 was attended by over 50 local residents who expressed their "astonishment, outrage and anger" over the erection of stiles on the route on the 31st January 2001. Concern was voiced about a lack of public consultation and the perceived change of use from a Bridleway to a Footpath. However, it was acknowledged that the route was PF8.

The route was highlighted as having been a “bridle path since 200AD” as stated in the book “The Spirit of the Place” by M J W Roberts. The relevant extract from this book was forwarded by the Parish Council including a copy of a photo with the subtitle “Green Lane – An Extension of the old Salt Way which may just possibly be of Roman origin”.

Comments on all Available Material

46. For the application to be successful, it will have to be shown that the public have used the alleged route, as of right and without interruption, for a period of at least 20 years prior to the status of the route being brought into question, or that it can be inferred by the landowners conduct that he had actually dedicated the route as a public right of way, and the right of way had been accepted by the public.
47. In order for the right of the public to have been brought into question, the right must be challenged by some means sufficient to bring it home to the public that their right to use the way is being challenged.
48. There was an identifiable challenge to the public’s use of the claimed route in 2001 as outlined in this report. Accordingly, the requisite 20-year period of use should be calculated retrospectively from this date.
49. There is some evidence to support higher rights than those applied for given the original classification of the route as a RUPP. However, the Public Inquiry of 1978 rejected its reclassification as a Byway Open to All Traffic and no one has raised the matter since.
50. The material when taken together appears to be consistent – and the landowners evidence supports the user evidence in the route’s usage as a bridleway.

Burden and Standard of Proof

51. 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, 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.
52. If a conclusion is reached that the test is satisfied, then the Definitive Map and Statement should be modified.

Summary

53. 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.
54. The relevant statutory provision, in relation to the dedication of a public right of way, is found in Section 31 of the Highways Act 1980 (“the 1980 Act”) which sets out the requirements for both the statutory test and common law dedication.
55. The test requires consideration of whether there has been use of a way by the public, as of right without interruption, for a period of twenty years prior to its status being brought into question and, if so whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.
56. Before a presumption of dedication can be raised under statute, Section 31 of the 1980 Act requires that a way must be shown to have been actually used by the

public, as of right and without interruption, and for this use to have continued for a period of twenty years. In this case, the view taken was the status of the route was brought into question in 2001.

57. Therefore, it needs to be demonstrated that there was public use between 1981 to 2001 to satisfy the first part of the statutory test. In total 13 out of the 23 users have over 20 years recorded usage on horseback that covers the relevant 20-year period. This is over half of all users and therefore significant enough to have alerted the landowner to its use.
58. If the test in the first part of Section 31 is considered as to whether the way subsists and the balance of probabilities, the courts have indicated that this can be satisfied by considering whether it is more probable, or more likely than not. As Lord Denning in the case of Miller said, "If the evidence is such that the tribunal can say 'we think it more probable than not' the burden is discharged, but if the probabilities are equal it is not".
59. In this instance your officers consider that the use is sufficient to satisfy the statutory test set out in s31 when considered on the balance of probabilities.
60. In this instance there is also evidence for a common law dedication, in that available evidence shows that the owner of the land over which the way passes has dedicated it to the public.
61. An implication of dedication may be shown at common law level if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication. Evidence of the use of a way by the public, as of right, may support an inference of dedication, and may also be evidence of the acceptance of a dedication by the public.
62. No evidence has been submitted to show that the usage has been challenged by the landowner or that there has been an intention not to dedicate during the 20 year relevant period. In light of this it can be reasonably considered that there has been a common law dedication of the route as a public footpath.
63. For clarification all points appear to be satisfied in this case, there is a "way over land", the character of the land does not prohibit use by statute, it has been enjoyed by the public, and in sufficient numbers over a sufficient period of time. It has been used without force, secrecy and permission.

Conclusion

64. In light of the evidence as set out above it is your Officers opinion that the evidence does show that a public right of way subsists with the status of a bridleway.
65. It is the opinion of your Officers that the County council should make a Modification Order to add the public bridleway which is the subject of this application to the Definitive Map and Statement of Public Rights of Way for the district of Staffordshire Moorlands, Caverswall with a minimum width of 3 metres.

Recommended Option

66. To accept the application based upon the reasons contained in the report and outlined above.

Other Options Available

67. To decide to reject the application and not to make an Order to add the route to the Definitive Map and Statement of Public Rights of Way.

Legal Implications

68. The legal implications are contained within the report.

Resource and Financial Implications

69. The cost of determining applications are met from existing provisions.

70. 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

71. 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.

72. 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.

73. 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.

74. 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

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

J Tradewell

Director of Corporate Services

Report Author: David Adkins

Ext: 27618 **Background File:** LL602G

Index to Appendices

Appendix A	Application
Appendix B	Plan
Appendix C	User Evidence Forms and Extract – Spirit of the Place
Appendix D	Salient Points of User Evidence Forms
Appendix E	Owner Evidence Form
Appendix F	M Rowley Letter
Appendix G	1978 Inquiry
Appendix H	1980 Report
Appendix I	Staffordshire Moorlands Bridleways Preservation Group - Letter
Appendix J	DLA Solicitors Letter
Appendix K	North Staffordshire Bridleways Association Letter