

'Local Members' Interest	
Cllr Phillip Atkins	District of East Staffordshire – Uttoxeter Rural

## Countryside and Rights of Way Panel

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### Wildlife and Countryside Act 1981

#### Application for an Alleged Public Footpath From B5027 to the Footpath at The Bents (PF34) Leigh Parish.

#### 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 conclude that a Public Footpath, which is not shown on the Definitive Map & Statement is **reasonably alleged to subsist**, 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 East Staffordshire as a Public Footpath.

## 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 10<sup>th</sup> April 2000 by the applicant, Mr Martin Reay, for an order to modify the Definitive Map and Statement for the area by adding an alleged public footpath from the B5027 to Footpath 34, Leigh under the provisions of Section 53(3) of the Wildlife and Countryside Act 1981. The line of the alleged Public Footpath as claimed by the applicant is shown on the plan marked A to B 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. In support of the application the applicant Mr Martin Reay has submitted the Deposited Railway Plan of the *South Union or Manchester Potteries and London Railway* dated 1845 and accompanying notes. These can be found at Appendix "C".

### **Evidence Submitted by the Landowner/s**

5. There were two landowners identified by the applicant, both named Mr Williams and listed to different addresses.

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

6. Whilst acknowledgements were received from various organisations none presented any evidence or had any comments that would either support or refute the application.

### **Comments on Evidence**

7. The alleged route runs from the B5027 to the Footpath at The Bents. The footpath at the Bents is PF34 Leigh,
8. The evidence is submitted as a detailed tracing of the plan which has been copied onto white paper for further clarity. The tracing consists of two separate sheets, one marked Q/Rum/211a (1845) and the other marked Q/Rum/213 (1845).
9. The first plan Q/Rum/211a (1845) has a list of annotations added to the same sheet beneath the plan itself referencing owners and occupiers of the land concerned.
10. The second plan Q/Rum/213 (1845) does not have any additional annotations on the same sheet.
11. The Plans are viewed together to give the best exposition of the details contained within, although as the tracing sheets are identical to the paper sheets only the latter
12. are attached to this report.
13. The details of owners and occupiers are consistent with those which typically accompany deposited plans and are more usually referred to within the associated Book of Reference.
14. The Plans and associated Reference Books were formal documents that may provide persuasive evidence depending on their quality and detail. Major works such as the construction of railways and canals have always been authorised by private Acts of Parliament.

15. This was due to there being no power of compulsory purchase at that time, therefore Surveyors compiled details of landowners and landholdings which then formed part of an Act of Parliament. However, it was not the primary purpose to record highways of any description and where they are shown they may not be complete or wholly accurate.
16. Statute required that from 1838 plans of these works and the accompanying Book of Reference were deposited with the local public authorities. This was true for routes that never came to fruition as well as for those that were constructed.
17. The evidence in this case dates to 1845, some years after the 1838 Statute meaning the records are available to us.
18. The Deposited Plan shows the route of the alleged path as a single dotted line passing through different land holdings with the name of each owner or occupier clearly given.
19. It was standard practice for the Deposited Plan to allot plot numbers to each strip of land affected by the passing of a new or proposed railway.
20. In this case the associated notes which are taken as the Book of Reference listed who owned or occupied the land in question. It also distinguished whether the land was agricultural and whether part of it comprised the highway.
21. The plans bear reference to the "Surveyor of Highways" in relationship to each of the land holdings through which the route passes, again as would be expected in an associated Book of Reference.
22. The Surveyor of Highways may be listed independently or, as in this case, jointly with the landowner.
23. This joint liability may have indicated that one party's liability was greater than the others, although this disparity is not critical to the claim. It is more important to note that the Surveyor of Highways was indeed recorded as being jointly liable giving extra legal probity to the claim.
24. In the absence of any other evidence, deposited railway plans may be sufficient to reasonably allege a public highway subsists – although insufficient to show a route subsists on the balance of probabilities.
25. The applicant has not produced any other evidence in support of the application and as such the Deposited Plan is clearly a stand-alone document. Notwithstanding it is a detailed plan and references numerous plots each time identifying the route with the annotation 'Surveyor of Highways'.
26. The fact that numerous plots are named, and that each plot has been ascribed both a landowner and surveyor probably gives greater legal probity to the claim. It is unlikely that an error would have been repeated and copied across a multitude of entries.
27. Although we have just one source of evidence the details within it are clear, the line of the route can be referenced against the watercourse and field boundaries and there is even reference to the "footpath" itself written within the annotations.

28. A number of the plots also bear reference to an “occupation road” in addition to the said “footpath”. However, it is the annotation “footpath” that appears consistently throughout the reference notes.
29. Not only are there numerous landowners mentioned along the alleged route, it is further ratified by the presence of the Surveyor in each case. Taken together, and as a series, it would appear more likely than not that the alleged route was somewhat significant.
30. Again, although the evidence would not be significant enough to satisfy the test on the balance of probabilities, it may be significant enough to reasonably allege that the route subsists.

#### **Comments on All Available Material**

31. There is no evidence that we are aware of that would support any higher rights than those applied for.
32. The material when taken together appears to be consistent.
33. The evidence is presented in a detailed and cogent way which quite clearly supports the validity of the claim.

#### **Burden and Standard of Proof**

34. There is a two-stage test, one of which must be satisfied before a Modification Order can be made. All the evidence must be evaluated and weighed, and a conclusion reached whether on the balance of probabilities that the route subsists or that the route can be reasonably alleged to subsist.
35. 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.
36. 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 a right of way “does subsist”.
37. If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

#### **Summary**

38. The application is made under Section 53(2) of the 1981 Act relying on the occurrence of the event specified in 53(3)(i) of the Act.
39. If the test is considered in the first part of the section, that is 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 is more probable than not’ the burden is discharged, but if the probabilities are equal it is not.*”

40. In this instance your officers consider that the evidence is insufficient to satisfy the test set out when considered on the balance of probabilities. The evidence being limited to the deposited railway plan alone.
41. With regard to the second part of the relevant section (the lesser test) whether the route can be reasonably alleged to exist, your officers consider that, having viewed all the available evidence, that the lesser test is satisfied, and the route can therefore be **reasonably alleged to exist**.

## **Conclusion**

42. It is open to the Panel when considering applications to come to a decision on the matter other than that which is the subject of the application. In this instance the claim is for the addition of a footpath.
43. When the totality of the evidence is considered there is little to tip the balance to satisfy the test set out in s53(3)(C)(i) above, that is on the balance of probabilities. As the balance has not been tipped sufficiently either way the courts have said that the current situation will prevail.
44. However, when the lesser test is considered, that of reasonable allegation, then the evidence supplied is indeed sufficient to '**reasonably allege**' that a public right of way subsists.
45. It is the Opinion of your Officers that the County Council should make a Modification Order to **add** the public footpath which is the subject of this application to the Definitive Map and Statement of Public Rights of Way for the District of East Staffordshire.
46. That the path shall be a minimum width of 1.5 metres throughout.

## **Recommended Option**

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

## **Other Options Available**

48. To decide 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.

## **Legal Implications**

49. The legal implications are contained within the report.

## **Resource and Financial Implications**

50. The costs of determining applications are met from existing provisions.
51. 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**

52. 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.

53. 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.
54. 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.
55. 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

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

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**Background File:** LK600G

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### INDEX TO APPENDICES

Appendix "A"	Application
Appendix "B"	Plan
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