

Local Members' Interest	
Cllr M Deaville	Staffordshire Moorlands-Cheadle and Checkley

Countryside and Rights of Way Panel -

Wildlife and Countryside Act 1981

Application to upgrade Public Footpath 14 Cheadle to a Restricted Byway

Report of the Director of Corporate Services

Recommendation

1. That the evidence submitted by the applicant and that discovered by the County Council is insufficient to show that, on a balance of probabilities, a restricted byway exists along the lines of Public Footpath No 14 Cheadle.
2. That Public Footpath No 14 Cheadle which is subject to the claim remains as a footpath as currently shown on the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.

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 from Mr Brian Smith on behalf of the Staffordshire Moorlands Bridleways Group for an Order to modify the Definitive Map and Statement for the District of Staffordshire Moorlands. The effect of such an Order, should the application be successful, would:
 - (i) Upgrade Public Footpath No 14 Cheadle to Restricted Byway status on the Definitive Map and Statement of Public Rights of Way under the provisions of Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981. The line of the Public Footpath which is the subject of the application is shown highlighted and marked A-B on the plan attached as 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

1. The applicant has submitted in support of his application evidence of an Inclosure Award and map dated 1831. Copies are attached at Appendix C.
2. The map with the Inclosure Award shows the alleged route marked as Tean Road. The route connects with a carriageway to the north east, which is not named. The route runs in a southerly direction through what appears to be fields and enclosures. The route is separate from adjacent landholdings. The route runs across plots 2,7,8,11 and 12 and alongside Old Inclosure. The route then connects with Alton Turnpike Road to the south.
3. The title of the Award is “Public Carriage Drift and Foot Roads thirty feet wide” and the alleged route is referred to under the section “Tean Road on Plan 1”.
4. The Award refers to Tean Road, which starts in the south and continues in a northerly direction. It is a long route and it connects and crosses over other routes. The first part of the Award does not relate to the alleged route even though it refers to Tean Road. It is clear that Tean Road is a very long route, with the alleged route only covering the very northern part of the route, after it has connected with Alton Turnpike Road.
5. The Award states: “and out of the said Cheadle and Alton Turnpike Road about an equal distance between the said Counslow Toll Gate and the Green Man Inn and continuing nearly in a northwardly direction to or near to a certain place called the Old Furnace and which said road leaves towards Oakamoor”. This passage refers specifically to the alleged part of the route.

Evidence submitted by the Landowners

6. Mrs Hurst from Lower Grange Farm responded to the application via e-mail. She advised that she owns Counslow Wood. She is of the opinion that the footpath in question is a perfectly adequate footpath and as a landowner she would not want to be responsible for any greater usage.

Comments received from statutory consultees

7. Cheadle Town Council has advised that the application has been put before the Footpaths Sub Committee and Council Committee, with both committees voting in support of the application and confirming that they have no objections to the upgrade in status. The only objection was from one councillor who stated that it was their belief that vehicular access was permitted a number of years ago.
8. The Cycling Touring Club have confirmed that they would like to add their support for this application, but they have not submitted any evidence.
9. The Peak and Northern Footpath Society have replied stating that they do not have any evidence to support the claim or any evidence against the claim.

Comments on Evidence

10. What is not in dispute is the fact that the route is a public highway, the question relates to the status and nature of the public rights over it.
11. Inclosure Awards were designed to enclose the old commons, manorial waste and smaller holdings in order to increase agricultural productivity. The first General Inclosure Act was made in 1801, which was intended to standardise the clauses used

in private and local acts. The documentation provided is after the First General Inclosure Act.

12. A local Inclosure Act empowered an Inclosure Commissioner to survey and divide up the land, allotting it to named individuals, including the setting out of highways. After all the procedures were followed and completed the commissioner would issue the final Award and accompanying award map.
13. Unfortunately, only an extract of the award has been provided and not the full award and also the preamble to the award has not been provided and therefore it is not clear exactly what powers the commissioners had.
14. In the Award the alleged route falls under the section “Public Carriage Drift and Foot Roads”. From the map the alleged route forms part of Tean Road and this is clearly a route separate from adjacent landholdings. There is nothing on the map to indicate the nature of any rights over the alleged route. There is nothing to differentiate between the public carriage, drift and foot roads on the map.
15. The Award outlines the direction the route takes and as it falls under the title “Public Carriage Drift and Foot Roads” this is highly supportive that the route does have public status. The route is shown on the map as a highway separate from adjacent landholdings and therefore it is likely to be a public carriageway. However, there is nothing in the text of the Award to indicate the status of Tean Road, it merely refers to Tean Road as continuing from Alton Turnpike Road but there is nothing to identify the status of Alton Turnpike Road, other than it is clearly a road that is also separate from adjacent landholdings. There is nothing in the Award to indicate who had responsibility for the maintenance of the alleged route. Usually the Award would specify if it was the Surveyor of Highways or an individual landowner. In this case it is not clear. Tean Road continues in a southerly direction but nowhere in the Award does it refer to the nature of any rights over any part of Tean Road.
16. There is nothing in the Award that specifies the rights over the alleged route and although it is clear the route is a road and therefore is more likely to have rights over it higher than a footpath, there is nothing to indicate the exact nature of any rights over it and whether this would have included non-mechanically propelled vehicles. It is likely that at the time the Award and map were created and the fact that the route is identified as a road that carts and carriages may have used the route in the 1830’s but there is nothing in the Award that makes this clear and therefore there is nothing to implicitly suggest that the route should be reclassified as a public restricted byway.
17. There has been some controversy over the usage of language, e.g. the meaning of “private carriage road”. The courts have determined that its meaning should be taken as in today’s usage.
18. Tean Road, the alleged route appears to be a pre-existing route and as it is laid down in the Inclosure Award and is shown on the Award Map it is good supportive evidence of the existence of a way, although not of its status as this is not referred to in the Award.

Comments on Draft Report

19. Following circulation of the draft report comments were received from Staffordshire Moorlands Bridleways Group, enclosing further documents. Copies of which are attached at Appendix D.
20. Staffordshire Moorlands Bridleways Group state that the Cheadle Inclosure Award dated 1831 lists the alleged route, Tean Road under the heading “Public Carriage, Drift

and Foot Roads thirty feet wide” and they argue that there is nothing to distinguish which type of road Tean Road falls under and that is because it is all three types of Road. They refer to the Inclosure Consolidation Act 1801 stating that thirty feet is the minimum width for a public carriage road and as this is the heading Tean Road falls under it must be a public carriage road.

21. They have also submitted several Ordnance Survey Maps, which shows the alleged route set out in the same manner as the 1831 Inclosure Award and depicting the alleged route as a road. They have also provided up to date photographs of the alleged route, which they state shows the route having a stoned surface on part of the route, showing old stone tracks on both sides with ruts where metal rimmed carriage wheels would have run.
22. Officers have examined the additional documentation provided by the applicants and a copy of your officer’s reply to the further evidence is attached at Appendix E.
23. On further review of the Inclosure Award 1831 it is not clear that the alleged route, Tean Road falls into the category of all three types of Roads listed in the heading of the Award and was therefore used by vehicles. The first route referred to under this section, is Winnow Dale Road, which is specifically referred to as a “public carriage drift and foot road”. The remaining routes under this section, including Tean Road are referred to as “another road”.
24. In relation to the Ordnance Survey Maps the purpose of Ordnance Survey Maps was to show the physical features on the ground, therefore, they are evidence only of the physical existence of a way on the ground at the date of the survey. The maps do not categorically show the nature of any rights over the alleged route or that the route was used by vehicles.
25. County Council officers have also reviewed parish survey cards for the area, that were completed as part of The National Parks and Access to the Countryside Act 1949, Survey of Rights of Way. The survey card records the alleged route as “Path No 14” and with the “Path Symbol- FP”, denoting that it is a footpath. It records that there are no known grounds for the footpath being public. The first half of the footpath went through strictly private grounds belonging to the old seat of the Earl of Shrewsbury. There is no mention of the route being used by vehicles or being used in any other way, other than as a footpath.
26. The applicant then provided a Cheadle Above Park Tithe Map dated 1842. The map shows the alleged route coloured sienna. All other adjoining routes depicted in the same manner are also coloured sienna. The applicant states that these routes are all now “ordinary” vehicular roads. There is no numbering along the alleged route so there is no description of the route in the Tithe Award.
27. The courts have said that tithe documentation may be supportive of the existence of a public right of way but the weight to be given to such documents is a matter for the tribunal of fact, in this case the Panel. Such evidence on its own is not conclusive proof. Routes shown may be in the same colouring, often sienna, as present public highways which may indicate similar status, i.e. public but not the nature of the rights. As the route is not numbered and there is no key with the map and no description of the route there is no indication as to the nature of any rights over the alleged route.
28. In conclusion, it is your officer’s opinion that the further evidence provided does not alter the conclusions of this report.

Burden and Standard of Proof

29. With regard to the status of the route, the burden is on the applicant to show, on the balance of probabilities, that it is more likely than not, that the Definitive Map and Statement are wrong. The existing classification of the route, as a footpath, must remain unless and until the Panel is of the view that the Definitive Map and Statement are wrong. If the evidence is evenly balanced then the existing classification of the route as a footpath on the Definitive Map and Statement prevails.

Summary

30. 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 on the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
31. The Inclosure Award documentation does not lend support to the route being a restricted byway. There is nothing in the Award or depicted on the map to indicate the nature of any rights over the alleged route. Whilst it is clear that the route is classified as a road and is separate from adjacent landholdings and therefore likely to have rights over it higher than a footpath there is nothing to specifically imply the nature of the rights over the route and therefore when considering the test of balance of probabilities, it cannot just be assumed that the route has the status of a restricted byway.
32. In summation, the evidence is insufficient to support any status other than that already recorded.

Conclusion

33. The question is not whether PF14 is a public highway but rather what are the nature of the public rights over the route.
34. The evidence to overturn the current designation on the map must satisfy the civil test, that of the balance of probabilities.
35. In light of the evidence, as set out above, it is the opinion of your officers that based upon the balance of probabilities the route which is the subject of the application is more likely than not a public footpath.
36. It is the opinion of your officers that the County Council should not make a Modification Order to upgrade the route to a restricted byway on the Definitive Map and Statement of Public Rights of Way.

Recommended Option

37. To reject the application based upon the reasons contained in the report and outlined above.

Other options Available

38. To decide to accept the application to upgrade Public Footpath 14 Cheadle Parish to a Restricted Byway.

Legal Implications

39. The legal implications are contained within the report.

Resource and Financial Implications

40. The costs of determining applications are met from existing provisions.
41. 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

42. 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.
43. 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.
44. Should the Council decide not to make an Order the applicants may appeal that decision 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.
45. 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

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

J Tradewell

Director of Corporate Services

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INDEX TO APPENDICES

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Appendix B	Plan of claimed route
Appendix C	Copy of Inclosure Award and map dated 1831
Appendix D	Copy of letter and appendices from Staffordshire Moorlands Bridleways Group in response to draft report
Appendix E	Officers response to draft report comments