

Cllr Gillian Pardesi	District of Stafford – Stafford Central
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Countryside and Rights of Way Panel

Wildlife and Countryside Act 1981

Application for Alleged Public Footpath Between Weston Road and Tixall Road Stafford

Report of the Director for Corporate Services

Recommendation

1. That the evidence submitted by the Applicant at Appendix A is **sufficient** to show that a Public Footpath can be 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 Stafford.

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 in 1996 by Derek Arthur Luker and Pamela Luker for an Order to modify the Definitive Map and Statement for the area by adding a public footpath between Weston Road and Tixall Road, Stafford 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 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 route applied for is shown between points A-B on the plan attached at Appendix B.
5. In support of the application the applicant has submitted 18 user evidence forms. These are attached at Appendix C.

6. A summary of the salient points from the user evidence forms has been compiled into a table. This is attached at Appendix D.

Evidence Submitted by the Landowners

7. One landowner was identified by the applicant being Stafford Borough Council, Civic Offices, Riverside, Stafford, ST16 3AQ.
8. Stafford Borough Council returned a completed landowner response form indicating they were the sole freehold landowners. This is attached at Appendix E.

Evidence Discovered by Staffordshire County Council

9. The Council did pursue the matter further at the time of the application and obtained copies of the ordnance survey maps of 1889, 1902 and 1938.
10. A Public Right of Way Survey Form completed under the heading "Rights of Way Act 1932" stated (at point 19) that a route ran "*from Tixall Road, near allotments, across Kingston Hill, to Tixall Road by Kingston Pool Covert – Ingestre Estate*". This is attached at Appendix F.

Comments Received From Statutory Consultees

11. Hopton and Coton Parish Council responded stating they believed the footpath warranted being added to the Definitive Map as it was so well used. They added that members of the parish council had "*walked along the path whilst on a walk organised by the Ramblers Association and on that occasion, it was noted that the path was obviously walked regularly*".
12. The Ramblers Association responded stating that they supported the application and believed the footpath should be added to the Definitive Map, adding that it links the Weeping Cross Estates with excellent walking country around Hopton and Northeast Stafford.
13. These responses are attached at Appendix G.

Comments on Evidence

14. 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.
15. 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.
16. 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.
17. For clarity the application is for a public footpath to be added to the Definitive Map and Statement.
18. 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 continuous period of at least 20 years prior to the status of the route having been brought into question.
19. For the route to be brought into question there needs to be a challenge to its use that is significant enough to bring it to the attention of the public that their use is being challenged.
20. As there was no identifiable challenge to the public's use of the claimed route the requisite 20-year period of use shall be calculated retrospectively from the date of the application.
21. The relevant period for the application will therefore be from 1976-96.
22. Of the 18 users who provided evidence forms, a total of 12 stated that they had used the route throughout the relevant 20-year period.
23. Of the 12 users that had used the route throughout the 20-year period a total of 4 had done so on a very regular basis being daily, weekly or more than once per week. This constitutes a third of the relevant users.

24. Of the remaining 6 users who did not use the route throughout the entire relevant period 2 of them can be combined to make the equivalent of another complete user.
25. Thus, the user evidence provided by David Moseley between 1956-80 may be combined with that of J F Middleton between 1977-96. This usage when taken together covers the entire period from 1976-96.
26. This would give a maximum figure of 13 users for the entire relevant period which being over half gives significant weight to the application.
27. Each of the 12 individual users who used the route throughout the 20-year relevant period stated the width they believed the route to be.
28. This ranged from 2 feet to 6 feet with most stating a perceived width of between 3 to 5 feet.
29. It was highlighted that the width of the route varied along its length in more than one user evidence form.
30. Although the width of the route is of limited note to the matter of legal status, it does show a certain consistency in the range of widths described by the users.
31. A total of 6 users who used the route throughout the relevant period stated there was a stile at the Weston Road end of the alleged route while only 2 stated there was a stile at the Tixall Road end - one more alluded to the memory of a stile though did not specify where.
32. Another user indicated that the stile had been destroyed by "vandals".
33. Apart from this the route appears to have been free from gates and other obstructions throughout its length, although there were references to large tree branches blocking the route on occasions.
34. These however, it seems were more likely the result of natural actions rather than the deliberate actions of a landowner – as they are referred to specifically as "fallen" branches.
35. The landowner is not stated to have replaced the stile removed by "vandals" and the resultant gap appears to have been left open.
36. The presence of a stile could indicate that the landowner had provided this for public access - or at least had the knowledge that the public were using the route.
37. The two references to the stile at the Tixall Road end of the route appear to be historical as one user states it was present when they were a child.
38. Of the 12 individual users who used the route throughout the relevant period 10 stated that they did so on foot – one of these also using a bicycle along the route.
39. Of the 2 users whose combined usage could also be taken into account both stated they used the route on foot.
40. The fact that several users were able to use a bicycle on the route suggests that the route was easily accessible for both walkers and cyclists and indicates that it was not obstructed by a fence or gate.
41. Within the user evidence forms there is reference to the route being resurfaced which is taken by the user to mean the path was intended to be used as a right of way. Another user states that "stones" were used in the resurfacing work.
42. Again, it is unlikely that anyone other than the landowner would have resurfaced the route and if so this was almost certainly done for the benefit of people using it – although this does not necessarily imply a public use.
43. Turning to the reasons users were accessing the alleged route we can see a dominance of pleasure over work use, with 9 users covering the entire relevant period stating "pleasure" and only one of these 9 adding "work" use to that of pleasure.

44. The reason for use may not be material to the application although it does appear to establish a trend in that this route was used mainly for social rather than work purposes.
45. Clearly this establishes the alleged route primarily as a pleasure route and its use as such appears to have been repeated throughout the relevant 20-year period.
46. Turning to the possibility that there was an alteration in the line of the route - as suggested by users Hayward and Potter - there appears to be no further exposition on this point by other users in the evidence.
47. The most that can be said of it from the evidence forms is that the "end" of the route was diverted by just a few yards.
48. Without further details as to what length constitutes the "end" it is not possible to comment further, and its absence from the other user evidence suggests the anomaly is more likely insignificant to the claim.
49. A number of the user evidence forms were without an individual plan but bundled together and attached to one plan – this route was consistent with all others given in the evidence and for completeness is attached at Appendix H.
50. Turning to the landowner evidence form submitted by Stafford Borough Council it can be seen that they indicated they had been the sole freehold landowners for the last 6 years (as of 1996).
51. The landowner evidence form also indicates that they had never given anyone permission to use the route. This could add to the strength of the claim as it suggests that the use was "as of right".
52. Similarly, the landowner indicated that they had never erected any signage along the route. Clearly if no signage has been erected then it is not obvious to any user that the way is private.
53. Furthermore, the landowner stated that he had never stopped or turned back anyone using the route – suggesting that no one had ever been challenged whilst using it. Again, this is significant and could strengthen the Applicant's case.
54. Most significant of all is that the landowner stated that he believed the route to be "public".
55. Clearly if the landowner is of the belief that the route is a public route, then he would not have taken steps to prevent its use.
56. The critical point is that that it is not the opinion of the landowner that is important, rather the actions – or non-actions - that resulted from this opinion.
57. By accepting the route to be a public route and by his actions thereof the landowner could be said to have shown an intent to dedicate the route.
58. Neither the legislation nor the case law sets out a minimum level of user that is expected or required to support a claim that a route exists.
59. 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, "as of right".
60. The user evidence forms testify to many years use of the route and clearly indicate a relevant period between 1976-96.
61. The amount of user evidence that spans the relevant 20-year period is over half of that which was submitted – at approximately 67%.
62. This is increased to a figure of 13 out of 18 with the additional combined usage taking the overall percentage up to approximately 78%.

63. This clearly shows that the amount of user evidence over the 20-year relevant period is significant.
64. This could be considered sufficient to bring that use home to the attention of any landowner – especially an adjacent landowner.
65. The frequency of use which appears most often – weekly usage - could also be considered significant enough to ratify its use to any landowner – particularly as in this case a neighbouring one.
66. The totality of the evidence suggests that use has been without secrecy, force or permission as “of right” and with a significant number of users throughout the relevant period.
67. Taken together with the landowners’ submission, stating that he believed the route to be a “public path” then an intention to dedicate the alleged route is somewhat plausible.
68. Further a lack of signage, and challenges on the route by the landowner at any time strengthen the applicants claim – as does the critical lack of permission.

Comments on All Available Material

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

Burden and standard of Proof

72. The route is an “addition” and as such will be considered under the test of reasonable allegation.
73. That is to say the question is whether a reasonable person could reasonably allege a right of way subsists having considered all the relevant evidence available to the Council.
74. The evidence necessary to establish a right of way that is “reasonably alleged to subsist” over land must be less than that which is necessary to establish a right of way “does subsist”.
75. If a conclusion is reached that this is the case, then the Definitive Map and Statement should be modified.

Summary

76. 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.
77. 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.
78. 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 20-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.
79. 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 20-years. In this case, the view taken was the status of the route was brought into question in 1996.
80. Therefore, it needs to be demonstrated that there was public use for 20-years prior to the challenge being made and usage between 1976-96 is taken to satisfy the first part of the statutory test. In total 13 out of the 18 users have 20-years recorded usage 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.

81. When one considers this test, which is objective in its nature, then it is clear from the available evidence that there is nothing to substantiate a case that there was a lack of intention to dedicate.
82. An implication of dedication may also 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.
83. For clarification all points appear to be satisfied in this case, there is a “way over land” the character of that land does not prohibit use by statute, it has been enjoyed by the public, and in sufficient numbers over a sufficient period of time and it has been used without secrecy, force or permission.

Conclusion

84. In light of the evidence, as set out above, it is your Officers opinion that the evidence does show that a right of way is **reasonably alleged** to subsist.
85. 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 Stafford.
86. Given that the width has been stated as being between 2 feet and 6 feet throughout the application with an apparent predilection for 5-6 feet it is recommended that it is made to the recognised width of (5’11”) **1.8 metres** throughout.

Recommended Option

87. To accept the application based upon the reasons contained within the report and outlined above.

Other Options Available

88. 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

89. The legal implications are contained within the report.

Resource and Financial Implications

90. The costs of determining applications are met from existing provisions.
91. 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

92. 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.
93. 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.

94. 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.

95. If the Panel makes its decision based upon the facts, the applicable law and applies the relevant legal test the risk of challenge to any decision being successful, or being made, is lessened. There are no additional risk implications.

Equal Opportunity Implications

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

J Tradewell

Director For Corporate Services

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Background File: LF612G

Index to Appendices

Appendix A	Application
Appendix B	Plan
Appendix C	User Evidence Forms
Appendix D	Salient Points
Appendix E	Landowner Response Forms
Appendix F	Evidence Discovered by Staffordshire County Council
Appendix G	Responses From Statutory Consultees
Appendix H	Plan Affixed to Bundle