

<b>Local Members' Interest</b>	
Ian Parry	Stafford - Stone Rural

## **Countryside and Rights of Way Panel -**

### **Wildlife and Countryside Act 1981**

#### **Application for an alleged Public footpath from Jolpool Lane Near Hardwick Grove to the B5027 Near Whitehouse Lane, Sandon**

#### **Report of the Director of Corporate Services**

#### **Recommendation**

1. That the evidence submitted by the applicant and that discovered by the County Council is sufficient to conclude that a public footpath did exist. It is reasonable to allege that a right of way did exist which is not shown on the Definitive Map and Statement, subsists along the route shown marked A-B on the map found at Appendix B
2. That an Order be made to add the alleged public footpath shown marked A to B on the map attached at Appendix B to the Definitive Map and Statement of Public Rights of Way for the parish of Sandon and Burston in the Borough of Stafford.

### **PART A**

#### **Why is it coming here – what decision is required?**

3. 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.
4. To consider an application attached at Appendix A from Mr Martin Reay for an Order to modify the Definitive Map and Statement for the area by adding an alleged Public Footpath from Jolpool Lane (nr Hardwick Grove) to the B5027 (nr Whitehouse Lane) Sandon under provisions of Section 53(3) of the Wildlife and Countryside Act 1981. The lines of the alleged Public Footpath which are the subject of the application are shown highlighted in red and marked A-B on the attached map which can be found in Appendix B
5. 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**

6. The applicant has submitted in support of his claim the following documents:
  - a) evidence from the 1910 Finance Act which consists of a map and an extract from the accompanying Book of Reference. A copy is attached at Appendix C
  - b) a copy of Parish Survey 1952 for the Sandon Area at Appendix D
  - c) a photocopied segment from the 1954 Draft Definitive Map and Statement at Appendix E

## **Documentary Evidence**

7. In the 1910 Finance Act material where deductions were made it is usually considered fairly good evidence for public rights of way as the landowner is admitting their existence.
8. While it would have been to a landowner's advantage to acknowledge a public right of way if it existed and therefore claim the corresponding deduction, they were not required to do so.
9. Therefore, if there was a footpath through a hereditament it would probably be shown in the valuation book. Although, the valuation book entry was not produced in this instance the claimed route is acknowledged in the base mapping and field book entry.
10. Until 1894 the parish was generally responsible for the maintenance of public highways. This responsibility was discharged by the Surveyor of Highways.
11. The Surveyor kept records detailing the amounts of money spent and what upon. These records may name or describe a route and also its status. It may also be possible to ascertain from the record of the nature of repairs or materials used an indication of the highway rights; a carriage road would have a different need from a footpath.
12. Parishes and the surveyors would be reluctant to admit liability for a route unless it was a public highway.
13. References to highways within the parish may well be included in the parish minutes long after they ceased to be responsible for highways. In those circumstances they may be evidence as to the reputation of a way but each instance will depend upon its own circumstances.
14. These records or minutes rarely include maps or plans. Routes are often referred to by name which may make it possible to identify the way.
15. Reference may be needed to old maps to assist in identifying a route by its old name as over time names may well have changed. The records may indicate a route is public but not the nature of the rights over it.
16. The 1949 Act parish survey may have produced correspondence and entries in the minutes of parish meetings, which is in addition to the parish survey cards and maps.
17. Where a route can be clearly identified these minutes may be the deciding factor in determining its status. In other cases they may act as supporting evidence.
18. On their own they would not provide enough evidence for the inclusion of a route on the Definitive Map and Statement.

## **Evidence submitted by the Landowners**

19. The Council had written to the Landowners detailed on the Form 3 submitted by Mr Reay. Mr Seabridge informed the Council that the Route did not cross his land and instead suggested it crossed over a Mr. Haynes' land. Mr Haynes was contacted however he did not respond.
20. Mr Silvester had since passed away and therefore his Wife Mrs Silvester completed the Owner/Occupier evidence form. She stated that although they did not own the land, they had been a tenant of Harrowby Estate for 50 years and her late husband had farmed the land at Hardwick Grove during this time. During this period Mr and Mrs Silvester had never been aware of a public right of way crossing the land.
21. The landowners have since changed and the Council have written to them and to date, no response has been received.

## **Comments received from statutory consultees**

22. The Council have written to the statutory consultees and to date only one reply was received. This was from the Ramblers Association confirming that they support Application however they do not provide any supporting evidence.

## **Comments on Evidence**

23. The evidence provided by the Finance Act material shows that tax relief was granted for footpaths that crossed the plot referred to. An examination of the maps shows that there was a public footpath that crossed over Plot 44 and Plot 63.
24. The 1910 Finance Act was enacted in order to allow for tax to be levied on land based upon the difference between its 1910 valuation and the amount that resulted from any eventual sale or transfer. It was therefore important to the landowner that any deductions for factors that could affect the value were properly recorded and accounted for. From the valuers perspective, it was important to ensure that any false claims were not made, and reductions granted which should not be. There were penalties for making false claims which might have led some owners to avoid making any claim in case these were not substantiated.
25. The field book entries were originally compiled by entering into them the information provided by the landowner and would include any claims for easements, rights of way etc. For Plot 44 and Plot 63 it would seem that the landowner did make a claim for a footpath, as there are no other footpaths crossing the land which the alleged route runs over it is clear that the field book entry relates to the claimed route.
26. In relation to Plot 44 and Plot 63 the valuers did note that there were public footpaths and made a note on the field book regarding such. The field Book states that relief was given to the value of £10 for plot 63 and £20 for Plot 44. The Land owners would not have been granted relief for the claimed route that crossed the land unless the Valuer was satisfied that the footpath did indeed exist. The whole purpose of the legislation was to raise taxes and their role was to maximise the amount levied and only allow relief where such was proven. The claimed route is the footpath shown on the map and the field book entries to appear to detail the footpath.

27. The applicant also submitted with the application the Parish Survey for Sandon 1952. It has an entry for a FP26, it states the grounds for believing this footpath to be a public right of way are 'usage' The Applicant suggests that this is the exact path he is claiming as a route between Hollywood and Hardiwick Grove. Although the evidential worth of a Parish Survey can be limited it is worth noting that the survey took place over two days (21<sup>st</sup> October to 23<sup>rd</sup> October 1952) and N.A.Cope who conducted the survey deemed the usage enough to record that the route was a footpath that was used regularly enough to warrant it being recorded.
28. The applicant has also made reference to the fact the alleged footpath appears on the 1954 draft definitive map and Statement. However further research has shown that an objection was received from the Earl of Harrowby's agent T.W. Knowles. The objector states that the footpath was not shown on the Footpath map for the Harrowby estate dated 1897. As no counter objection was received, the route did not appear on the first copy of the definitive map or any subsequent reviews. A copy of the information mentioned can be found at appendix E

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

29. 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 either:
  - (a) the alleged right subsists or;
  - (b) is reasonably alleged to subsist.
30. 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.
31. 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 the right of way "does subsist".
32. If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

### **Summary**

33. The application is made under under Section 53(1) of the 1981 Act, relying on the occurrence of the event specified in 53(3)(i) of the Act.
34. If one considers the test in the first part of the section, i.e. 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.*"
35. When the totality of the evidence is considered it is clear that it would satisfy the Second Test that is the route is reasonably alleged.
36. The route is clearly detailed in the 1910 Finance Act field book entries which is considered to be good evidence in favour of the route However this is not conclusive .
37. The route had been recorded on Parish Survey Cards from 1952 and would appear the evidence pointed towards usage. Also satisfying the second test.

38. Although the applicant claims the route appeared on the draft definitive map, research has shown that it was not added to the final definitive Map as an objection was received. However this does not mean that the route did not exist merely that not counter objection was received.
39. Having considered all evidence presented and having further looked into this evidence it is apparent that a right of way does exist with the status of footpath and it is not shown on the map and statement is reasonably alleged to subsist.
40. In conclusion the officers recommendation is that an Order be made to add the alleged public footpath shown marked A to B on the map attached at Appendix B to the Definitive Map and Statement of Public Rights of Way for the parish of Sandon and Burston in the Borough of Stafford.

### **Conclusion**

41. Considering the evidence as a whole, it is your Officers opinion that the evidence shows that a public right of way, with the status of a footpath, which is not shown on the map and statement subsists.
42. It is the opinion of your Officers that the County Council ought to make a Modification Order to add the footpath which is the subject of this application to the Definitive Map and Statement of Public Rights of Way for the Borough of Stafford.

### **Legal Implications**

43. The legal implications are contained within the report.

### **Resource and Financial Implications**

44. The costs of determining applications are met from existing provisions.
45. 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**

46. 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.
47. 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.
48. 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.
49. 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**

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

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J Tradewell

Director of Corporate Services

**Report Author:** Rebecca Buckley

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**Background File:** LJ610G

## INDEX TO APPENDICES

Appendix A	Map of claimed route
Appendix B	Copy of application
Appendix C	Finance Act 1910 Map and Book of Reference
Appendix D	Parish Survey Card
Appendix E	Draft Definitive map and Statement