

<b>Local Members' Interest</b>	
Cllr J Francis	Stafford- Stafford Trent Valley

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

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

#### **Application for an alleged Public Bridleway between Trent Walk and Fiddlers Lodge Report of the Director for Corporate Services**

#### **Recommendation**

1. That the evidence submitted by the applicant and that discovered by the County Council is sufficient to show that the alleged public bridleway between Trent Walk and Fiddlers Lodge subsists.
2. That an Order 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 as a Public Bridleway.

#### **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 Martin Reay as a member of the Ramblers Association for an Order to modify the Definitive Map and Statement for the District of Stafford. The effect of such an Order, should the application be successful, would:
  - (i) add an alleged Public Bridleway from Trent Walk to Fiddlers Lodge, Stafford to the Definitive Map and Statement of Public Rights of Way under the provisions of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981.
  - (ii) The lines of the alleged Public Bridleway which are the subject of the application are 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 claim evidence of a Quarter Session Order dated 1801 and a plan for diverting a highway in the parish of Ingestre.
2. The Quarter Session Order dated 1801 sets out a diversion which stopped up a length of bridleway that passed in front of Ingestre Hall and turned the bridleway onto a new line leading to a point on the Stafford and Uttoxeter Turnpike Road which is now the A518, Weston Road near the County Showground.
3. The text of the order describes the original bridleway as running from Hopton to Stafford. The original route passed in front of Ingestre Hall from Dog Kennel Gate to Tixall Gate and thence passed Hanyard terminating at Halfway House. From that junction to reach Stafford it would have passed along what is now Tixall Road to come out on the A518, now called Weston Road terminating at the same point as it currently does.
4. By way of identification and orientation the feature on the map showing a bow in Tixall Road is still in existence. Weston Road was at the time of the Order part of the Turnpike Road from Stafford to Uttoxeter. Copies of the original order and the accompanying map are attached at Appendix C. Officers have transcribed the text of the Order and a copy of the transcript is attached at Appendix D.
5. A length of some seven hundred and thirty-nine yards of the old bridleway was to be stopped up, this being the section from Dog Kennel Gate to Tixall Park Gate. The bridleway was to be diverted onto a new line which took the bridleway from the end of Dog Kennel Gate in a north-westerly direction and then looping round to terminate on the A518, through where the land now occupied by the County Showground. This route was to be some two thousand six hundred and twenty-six yards in length. A map showing the lines of the routes set out on the Order Map has been produced to assist in identifying the line of the ways on a current Ordnance Survey map and is attached at Appendix E.
6. Earl Talbot, in a deposition that accompanies the order, describes the original bridleway as running from a place called Trent Walk which later in the missive is described as being located at the end of the bridge over the River Trent. On the Order Plan Trent Walk is shown written above the line of the route running towards the River Trent.
7. The Earl then specifically consents to the new bridleway being made through his lands and that he is to have the land that the old route ran over sold to and vested in him. He goes on to declare that he will maintain the new bridleway and that the bridge he has erected over the River Trent will be a Public Bridle Bridge that he will also maintain.
8. A certificate of completion accompanies the Order stating that the Justices were satisfied that the new bridleway was fit for purpose and ordered that the land over which the extinguished part crossed be given to the Earl in compensation for the new route over his lands.
9. The road on the Order Map runs from Ingestre in a northwestwardly direction then turns northeastwardly to join Trent Walk and thence northwestwardly again towards the northern part of the park.
10. The Ingestre Estate Diversion Plan was contained within the papers of the Chetwynd Estate of Earl Talbot comprising correspondence to and from his agents. The Plan is entitled "Sketch of the Roads about Ingestre intended to be diverted". The map is not to any scale but does show the various roads in the area including the way from Trent Walk over the river bridge towards Amerton. A copy of the plan is attached at Appendix F.

## **Other evidence discovered by the County Council**

11. Officers have conducted research into historical documentation and copies of an order extinguishing a non- definitive bridleway have been discovered alongside a creation order for a bridleway that is now included on the Definitive Map and Statement as Hopton and Coton 19. The extinguishment affected the final section of the route set out in the 1801 Quarter Session Order stopping it up completely. The effect of the Creation Order was to substitute a new line. Copies are attached at Appendix G.

## **Evidence submitted by the Landowners**

12. A number of the landowners have submitted a relatively large amount of evidence but none of the evidence refutes the 1801 Quarter Session Order.

## **Comments received from statutory consultees**

13. The Ramblers Association support the application and believe that this bridleway should be included on the Definitive Map. They state that it provides a direct link between existing bridleways across the Ingestre Estate. It links with the bridleway recently created as part of the diversion of FP19 in the parish of Hopton & Coton. They have not submitted any specific evidence which supports or refutes the application.
14. Stafford Borough Council responded to the application stating that they have no comments to make on the proposal.
15. The Peak and Northern Footpaths Society responded stating that they have no evidence for or against the application.
16. Hixon Parish Council stated that they have no comment to make on the application.
17. Copies of the above correspondence are attached at Appendix H.

## **Comments on Evidence**

18. The authenticity and content of the 1801 Order as well as the veracity of the attached copies has been verified by your officers.
19. The combination of the Order and the attached plan provides a fairly accurate description of the path intended to be diverted and the new bridle path. In particular the Order refers to the stopping up of a small section of the lane running between "Dog Kennel Gate" and "Tixall Park Gate", both of which are marked on the Order Plan. There is no reference to any other part of the old bridleway being stopped up.
20. The Order clearly sets out that the old bridleway is to be diverted and turned in consideration for the new route so as to make the same more commodious to the public. The use of the word commodious is taken to mean that it would be to the public benefit as in more advantageous or easier to use.
21. The Order Plan shows the diverted route as going passed Birch Hall Farm, towards and passed the Old Lodge Covert, through to Hopton Heath where it joined the Stafford to Uttoxeter Turnpike road.
22. The consent states that the bridge over the River Trent is to be maintained by the Earl of Talbot and used as a public bridle bridge as part of the diversion, clearly implying

that the full length of Trent Walk and the bridge at that time were to be public bridleways. The implications of whether those routes ought to be added to the Definitive Map and Statement is addressed in a separate report.

- 23.** What the consent does show is that the Earl intended for there to be a network of public bridleways in place from the direction of Hoo Mill which lay to the south passing through Dog Kennel Gate and thence to pass by Trent Walk and the bridge over the Trent and on to the Turnpike Road.
- 24.** Turnpike Roads were public highways but ones upon which a toll was levied for use by horse and cart. They were established under Acts of Parliament during the eighteenth and nineteenth centuries and often took over existing main highways using the proceeds of tolls or monies raised on the future revenue to improve what were at the time rapidly deteriorating ways. The main road from Stafford to Uttoxeter would have been typical of such types of highway.
- 25.** The fact that the new bridleway is longer and would entail a lengthier journey time does suggest that the route being more commodious is misleading. Rather one could speculate that the purpose might have been to move the public highway that passed directly in front of the Earl's dwelling leading to more privacy for the Earl. Of course the latter is not a valid reason for a diversion either at that time or today.
- 26.** Despite the intent of the Order being open to question and that the route does not seem, on the face of it, to be more commodious, it still has legal effect. The time to challenge the order was when it was made. In the absence of such, and given it was subsequently confirmed it has legal effect.
- 27.** The Order has been examined by Dr D Fowkes, FSA, a consultant archivist and historical researcher. Dr Fowkes states in his letter that "there is no doubt that the length of bridleway stopped up is only the 739 yards in front of the Hall" in substitution of a much longer section of route through the earl's own land away from the Hall. A copy of the letter from Dr Fowkes is attached at Appendix I.
- 28.** If one considers the old bridleway it is apparent that it ran in front of the Hall from the Tixall Park Gate to Dog Kennel Gate and thence towards Trent Walk. There is also a route shown from Ingestre leading to Dog Kennel Gate.
- 29.** The new bridleway, whilst the Order mentions it as commencing from the end of Trent Walk, also encompassed that part of the old way not stopped up, that is from Dog Kennel Gate to Trent Walk. The bridleway in its entirety would therefore be from the direction of Ingestre through Dog Kennel Gate to Trent Walk and then along the line of the newly created bridleway towards Hopton Heath.
- 30.** No Orders or other documentation have been discovered to suggest that the bridleway between Trent Walk and Fiddlers Lodge or from Dog Kennel Gate to Trent Walk have ever been the subject of an Order extinguishing any public highway rights.
- 31.** In the absence of any contrary evidence the existence of the diversion Order, the landowner consent and confirmation Order all provide strong evidence that the public bridleway still exists.
- 32.** In summation the effect of the order therefore is that the diverted bridleway in its entirety, from Trent Walk to Hopton Heath, remains a public bridleway.
- 33.** The remaining conclusion one can draw from the Order is the relative accuracy of the map when it is compared with current road layout. The map at Appendix E shows the overlay corresponding closely with the network and so some reliance can be placed upon it when considering a plan of the diverted routes and those that remained.

34. The Ingestre Estate Diversion Plan is not to scale but does show the routes that crossed the Earl's lands, and which were diverted as part of the order.
35. The effect and weight of the estate plan would under usual circumstances be considered to have less evidential value than an OS map. At best it is a record of physical features that the estate agent believed existed.
36. In this case the probative value is enhanced by the existence of the 1801 Diversion Order. The plan was drawn up before the Order was made, certainly at least a year beforehand or given the papers date from 1792 to 1800, the intent may have existed for a greater time period. It is the fact that the intent was actually carried out by seeking an Order from the Justices that adds to the evidential weight.
37. In addition, in 1995 an Order was made to create a length of bridleway in the parishes of Hopton & Coton and Ingestre with Tixall. This length of bridleway commenced at Fiddlers Lodge, at the A518 Stafford and connected to Public Footpath 18 Hopton & Coton. This route was then diverted to the County Showground.
38. At the time the diversion was made, there were no objections to the Order. Staffordshire County Council were satisfied that the bridleway existed despite not being on the Definitive Map and Statement and therefore proceeded to divert a non-definitive way. The Order could only be confirmed if Staffordshire County Council were satisfied the bridleway existed based upon the balance of probabilities. As it was confirmed this must have been the case. There was no evidential material submitted in objection nor any evidence discovered which would suggest the Quarter Session Order had been overturned or that it never came into force or to refute it in any way.
39. If the council were satisfied that this section of the bridleway still existed based upon the Quarter Session Order then that must apply to the entirety of the route. Therefore, adding further weight to the existence of bridleway rights along the alleged route and the evidential value of the Quarter Session Order.

### **Comments on report**

40. Following circulation of the report comments were received from the landowner, Mr Tavernor of Birch Hall Farm. He is of the opinion that it is difficult to accurately determine precisely what occurred under the 1801 Order. He goes on to say that the Quarter Session Order is open to interpretation and the maps are not clear. The letter from Dr Fowkes only confirms the length of route that was stopped up but doesn't offer any insight into the alternative route's exact location, only saying that it runs through the Earl's estate, which could be anywhere on the Ingestre Estate. He advises that there is a gatehouse along Trent Drive and people needed to seek permission to pass through. Finally, he states that when the estate was sold the route has always been private. And from the Estate Diversion Plan it is clear that a number of routes were intended to be diverted. There is no mention of the direction of the alternative route or where it terminates, there is no map that clarifies this. Whilst Mr Tavernor's comments were noted, officers opinion remains that the 1801 Order does adequately confirm the line of the alleged route and therefore officer's opinion remains unchanged. A copy of Mr Tavernor's comments and a copy of officer's response is attached at Appendix J.

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

41. In this instance the applicable section of the Wildlife and Countryside Act 1981 is section 53(3)(c)(i). This section relates to the discovery of evidence of two separate events:
  - (a) Evidence that a right of way which is not shown on the map subsists; or
  - (b) Evidence that a right of way which is not shown on the map is reasonably alleged to subsist.
42. Thus, there are two separate tests, one of which must be satisfied before a Modification Order can be made. To answer either question must involve an evaluation of the evidence and a judgement on that evidence.
43. For the first test to be satisfied it will be necessary to show that on a balance of probabilities the right of way does subsist.
44. For the second test to be satisfied 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. The evidence necessary to establish a right of way which is “reasonably alleged to subsist” over land must by definition be less than that which is necessary to establish the right of way “does subsist”.
45. If the conclusion is that either test is satisfied, then the Definitive Map and Statement should be modified.

## Summary

46. Quarter Session Orders can often be relied upon their own to prove the status and public nature of a route. The orders made by the Justices of the Peace were Court Orders, which could only be overturned by another court or by statute.
47. After the 1773 Highways Act these Orders could also widen, divert and extinguish routes. In the case of a diversion, this did not take effect until the new route was laid out and certified by the Justices as being satisfactory.
48. In this case, the diversion Order, the confirmation Order and the landowner consent all provide strong evidence that a public bridleway exists along the alleged route, particularly when compared with the current road layout, which corresponds closely with the network. In addition, there is no evidence of a further legal event having taken place that overrode the Quarter Session Order dated 1801 or that it did not take effect, therefore it can be relied upon to prove the status and public nature of the route.
49. In relation to the Ingestre Estate Diversion Plan it supports the physical existence of the alleged route and considering the date of the plan, it shows the intent for the diversion of a public bridleway, which when reviewed alongside the 1801 Diversion Order, which confirms that the diversion took place, along the lines of the alleged route, adds to the evidential weight of the evidence.

## Conclusion

50. The application is to be considered under s53(3)(c)(i) as mentioned above, and so the question of whether the application should succeed needs to be evaluated against both tests in that section.
51. When the totality of the evidence is considered, the evidence does satisfy the first part of the test set out in s53(3)(c)(i) above, that is whether on the balance of probabilities a public bridleway subsists.

52. The evidence provided by the Quarter Session Order and the Ingestre Estate Diversion Plan is good evidence and there is no contrary evidence to show that the diversion did not take legal effect. This absence of conflicting evidence could be taken to mean that the application has passed the test on the balance of probabilities.
53. When the lesser test is considered, that of reasonable allegation, that is clearly satisfied. As the courts have indicated, if it is reasonable to consider any conflicting evidence and reasonable to accept the evidence of existence then an order should be made and the material be tested during that process. Here there is no conflicting evidence to weigh in the balance and so it does clearly satisfy the test.
54. Taking everything into consideration it is apparent that the evidence shows that a public right of way, with the status of bridleway, which is not shown on the map and statement subsists.

### **Recommended Option**

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

### **Other options Available**

56. To reject the application and refuse to make an Order to add the claimed way to the Definitive Map and Statement.

### **Legal Implications**

57. The legal implications are contained within the report.

### **Resource and Financial Implications**

58. The costs of determining applications are met from existing provisions.
59. 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**

60. 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.
61. 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.

62. 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.
63. 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**

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

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J Tradewell

Director for Corporate Services

**Report Author:** Hannah Titchener

Ext. No: 854190

**Background File:** LE624G (a)

## INDEX TO APPENDICES

Appendix A	Copy of application and associated submitted letters and documents
Appendix B	Plan of claimed route
Appendix C	Original copy of the Quarter Session Order dated 1801 and accompanying map
Appendix D	Transcript of the Quarter Session Order dated 1801
Appendix E	Justice Order Plan 1801 Routes overlayed on the Definitive Map
Appendix F	Ingestre Estate Diversion Plan
Appendix G	Copy of Public Path Order- Creation Order 1994- creation of public bridleway.
Appendix H	Copies of correspondence from statutory consultees
Appendix I	Copy of correspondence from Dr Fowkes- archive consultant and historical researcher
Appendix J	Copy of Mr Tavernor's comments on draft report and officer's response.