

Local Members' Interest		
Cllr J Francis	Stafford- Valley	Stafford Trent

## Countryside and Rights of Way Panel -

### Wildlife and Countryside Act 1981

#### Application for the addition of a Public Bridleway from Hanyards Lane to Ingestre and to upgrade Public Footpath 0.1630(b) to a Public Bridleway

#### 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 from Hanyards Lane to Ingestre subsists.
2. That an Order be made to add the alleged right of way shown on the plan attached at Appendix B and marked E to F 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 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 Hanyards Lane to Ingestre and upgrade Public Footpath 0.1630(b) to a Public Bridleway 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 E – F 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, Ingestre Estate Plans and documentation relating to an objection made by the Ramblers Association regarding the National Parks and Countryside Act 1949.
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, which is the route subject to this report. 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 and being directly in front of Ingestre Hall. 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 documentation regarding the objection made by the Ramblers Association regarding an omission as part of the National Parks and Countryside Act 1949 refers to Hanyards Lane at Upper Hanyards. It states, "route proceeds SW, possibly as a bridle road".

## **Evidence submitted by the Landowners**

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

## **Comments received from statutory consultees**

11. Stafford Borough Council have responded to the application stating that they have no comments to make regarding the application.
12. Ingestre with Tixall Parish Council responded stating that three members of their Parish Council have direct interests in the alleged Public Bridleway and therefore they do not wish to comment.
13. Copies of the above correspondence are attached at Appendix F.

## **Comments on Evidence**

14. The authenticity and content of the 1801 Order as well as the veracity of the attached copies has been verified by your officers.
15. 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.
16. 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. 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.

22. 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. Dr Fowkes confirms that: “the residue of the bridleway from Littleworth to Hanyards is not affected by the Order and presumably continued as a bridleway serving Hanyards but of no use as a through route”. A copy of the letter from Dr Fowkes is attached at Appendix G. This strongly supports that the alleged route that is subject to this report was not stopped up and continued to act as a public bridleway for members of the public to use.
23. 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.
24. No Orders or other documentation have been discovered to suggest that the bridleway from Hanyards Lane and including Hanyards Lane to the Stafford Road have ever been the subject of an Order extinguishing any public highway rights.
25. 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 along the line of the alleged route.
26. The remaining conclusion one can draw from the Order is the relative accuracy of the map when it is compared with the 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.
27. The documentation relating to the objection from the Ramblers Association regarding an omission to the National Parks and Countryside Act 1949 does not add any weight to the case, other than there was a belief that this route may have had bridle rights over it.

### **Comments on report**

28. Following circulation of the report comments were received from International Design Group Ltd, acting for Ingestre Golf Club as golf course architects and Project Managers for the reconfiguration of the golf club necessitated by the proposed route of HS2 through the golf course. They have raised concerns that if the application is accepted, it will breach safety guidance, as the bridleway will be too close to holes along the golf course, and this could result in injury due to stray golf balls. A response was sent advising that although their comments were noted, the courts have confirmed that issues relating to safety, suitability, privacy, maintenance or anything other than material relating to the existence of a public right of way have to be disregarded under the law as it currently stands. Therefore, officer’s recommendation remains unchanged. A copy of International Design Group Ltd.’s correspondence and officer’s response is attached at Appendix H.
29. Comments were also received from the applicant, Mr Reay stating that part of the alleged route, highlighted in yellow by Ingestre Parish Boundary, connecting to FP 0.1630b was stopped up under the 1801 Order. On review of all the evidence, as already stated in the report, it is officer’s opinion that there was no conclusive evidence that this part of the route was ever stopped up and that is why it has remained part of the application and the recommendation is to also upgrade this section of the route to bridleway status.
30. Mr Reay also noted that there was a slight error with Appendix B in relation to where the points were marked on the map, highlighting the alleged route subject to this report.

This has been amended and to make clear the application route for this application does include Hanyards Lane and the evidence of the Quarter Session Order does not show that Hanyards Lane was stopped up by the Order and therefore on the balance of probabilities it is likely that it remained a public bridleway and should therefore be added to the Definitive Map and Statement as a Public Bridleway, along with the rest of the alleged route. Copies of Mr Reay's comments and officers response is attached at Appendix I.

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

31. 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
32. 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.
33. 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.
34. 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".
35. If a conclusion is that either test is satisfied, then the Definitive Map and Statement should be modified.
36. In relation to upgrading the section of the alleged route that is Public Footpath 0.1630(b), 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**

37. 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.
38. 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.
39. The Quarter Session Order shows that the only route that was stopped up was the route in front of Ingestre Hall but the rest of the route from Dog Kennel to the road to Stafford, which is the subject of this report was never stopped up or diverted, therefore the evidence from the Quarter Session Order supports the existence of the route as a public bridleway.

## **Conclusion**

40. 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.
41. 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.
42. The evidence provided by the Quarter Session Order is good evidence and there is no contrary evidence to show that the alleged route was stopped up and that legal rights were extinguished over it. This absence of conflicting evidence could be taken to mean that the application has passed the test on the balance of probabilities.
43. 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.
44. 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.
45. As it can be said that the application has passed the test on the balance of probabilities, it can be said that Public Footpath 0.1630(b) Tixall should be upgraded to a public bridleway, therefore showing that the whole of the alleged route as a public right of way, with the status of bridleway.

## **Recommended Option**

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

## **Other options Available**

47. To decide to reject the application to add a Public Bridleway from Hanyards Lane to Ingestre and upgrade Public Footpath 0.1630(b) Tixall to a Public Bridleway.

## **Legal Implications**

48. The legal implications are contained within the report.

## **Resource and Financial Implications**

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

51. 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.
52. 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.
53. 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.
54. 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**

55. 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 (c)

## INDEX TO APPENDICES

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Appendix C	Copy of Quarter Session Order and accompanying map dated 1801
Appendix D	Transcript of text from Quarter Session Order dated 1801
Appendix E	Copy of Justice Order Plan 1801 routes overlaid on the Definitive Map of Public Rights of Way
Appendix F	Copy of correspondence from statutory consultees
Appendix G	Copy of letter from Dr Fowkes- consultant archivist and historical researcher
Appendix H	Copy of correspondence from International Design Ltd and copy of officer's response
Appendix I	Copy of correspondence from applicant regarding report and copy of officer's response.