

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

Countryside and Rights of Way Panel

Wildlife and Countryside Act 1981

Application for an alleged Public Footpath from Wadden Lane to Old A518, Weston

Report of the Director for Corporate Services

Recommendation

1. That the evidence submitted by the applicants and that discovered by the County Council is sufficient to show that a public footpath subsists or is reasonably alleged to subsist.
2. That an Order be made to add the alleged Public Right of Way shown on the map marked A to B at Appendix 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. The purpose of this investigation is to establish what public rights, if any, already exist even though they are not currently recorded on the Definitive Map and statement of Public Rights of Way.
2. To consider an application attached at Appendix A 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 a Public Footpath from Wadden Lane to the old A518 in Weston

(ii) The line of the alleged footpath which is the subject of the application is shown highlighted and marked A – B 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

1. The applicant has submitted a number of documents in support of the application:
 - a) A traced version of a deposited railway plan of 1845; appendix C
 - b) A traced copy of the 1847 Weston Tithe Map; appendix D
 - c) Ordnance survey map (1836) appendix E
 - d) *Various Old Maps - Yates 1775 map, Cary 1806 map, Cary 1832 map, Greenwood 1820 map, Teesdale 1831-2 map, Wright & Charrington Motoring, Cycling and Touring Road Atlas of the early 1900's. These are attached at Appendix F.*

Comments on Evidence

Deposited Railway Plan 1845 (Appendix C)

2. The deposited railway plan and book of reference refer to the existence of a "parish road to Gayton" between the old A518 and Wadden Lane. A copy of the plan and book of reference are attached at appendix C.
3. The alleged route runs in a north-easterly direction from the old A518 across the land towards Wadden Lane at the cross-roads towards Gayton.
4. The evidence is submitted as a detailed tracing of the Deposited Railway plan which has also been viewed by your officers at Stafford Records Office. The Map and plan are marked, Q/Rum/225 (1845) and the reference book marked Q/Rum/22.
5. The plan shows a short section of what would appear to be the alleged route running from Weston Parish from the old A518 in a North Easterly direction towards the Gayton Parish which is numbered 10.
6. The plans and reference books were formal documents that may provide persuasive evidence depending on their quality and details. Major works such as the construction of railways and canals have always been authorised by private acts of parliament.
7. Surveyors compiled details of landowners and landholdings which then formed part of an Act of Parliament. However, it was not the primary

- purpose to record highways of any description and where they are shown they may not be complete.
8. Where there was a proposed railway or canal in the 18th and 19th century, the intended route would be surveyed in order to assess the suitability of the land for construction of a railway or canal. The surveyor then created plans and books of reference which ultimately recorded highways and showed who owned the land which the proposed railway or canal would cross.
 9. Statute required that from 1838 plans of these works and the accompanying book of reference were deposited with the local public authorities. This was true for routes that never came to fruition as well as for those that were constructed.
 10. The Railways Clauses Consolidation Act 1845 was introduced and the requirements for railways were expanded, with public rights of way which cross the route of a railway to be retained unless their closure has been duly authorised. Although it was not the primary purpose of the deposited plans, they can show whether a route was public or not.
 11. Despite the railway plan being published in 1845, it does not necessarily mean that it was drawn up at the same time as the Railways Clauses Consolidation Act. The plan would have taken time to draw up and it is therefore unlikely that the Act would have been taken into consideration at this point.
 12. The Book of Reference which accompanies the plan refers to the route "Parish Road to Gayton". It lists the owner of plot 10 as Richard Wilcox and the Surveyor of Highways. The notation of Surveyor of Highways is highly suggestive that the way was public.
 13. In the case of highways the Book of Reference often, but not always, lists who was responsible for the maintenance of a route, the status and the nature of the rights over it. In the case of public highways the landowner or person responsible for maintenance may be listed as the Surveyor of Highways which would indicate the way was public. The Surveyor of Highways may also be listed as jointly liable with a landowner. This may be where the liability for one party is higher than the other.
 14. The railway plan can be said to show that the Surveyor of Highways did not object to the designation of the route when he had the opportunity to do so at the end of the first survey.
 15. The Weston Surveyor of Highways appeared to be of the opinion that the route was a township road that was publicly maintainable. The word 'parish' might indicate that the route was intended for use by only local or parochial people. However, that status is not easily defined by the use of the word 'road' which in legal terms means highway and so may not determine its status.

16. Railway Deposited plans recorded the details of the land crossed by the intended construction and therefore as a result only parts of the affected land were shown. This may explain why only part of the alleged way is shown.
17. The fact that numerous plots are named and that each plot has been ascribed both a landowner and surveyor gives greater legal probity to the claim.
18. Although the evidence is limited, the details within it are clear the line of the route can be referenced against the landholdings and field boundaries and there is reference to a "Parish Road to Gayton" recorded in the record book.
19. Not only are there numerous landowners mentioned along the alleged route, but it is also ratified by the presence of the Surveyor of Highways being recorded in the notes.

Weston Tithe Map 1844 (Appendix D)

20. The Weston Tithe map shows the length of the claimed route as being untithed and is coloured sienna the same as other roads in the area. A copy of the tracing is attached at appendix D.
21. The tracing of the Weston Tithe Map shows the alleged route coloured, as are other highways on the map. The alleged route is shown as separate from the tithable land holdings and has no plot number assigned to it.
22. The Tithe Map clearly shows the route coloured and separated from the numbered landholdings.
23. Tithe maps are regarded as good supporting evidence and although there is no transcript associated with plan in relation to this route, it is clear and the route is shown to be commensurate with (and linked to) other routes.
24. If the route was unnumbered, then it is good supporting evidence that it was indeed part of the adjoining highway.
25. The lane is coloured sienna on the Tithe Map, as are all other roads in the area. This could suggest that the alleged route is of a higher status than a footpath, as it is shown by two solid lines and entirely separate from the adjoining landholdings, in a similar way to other highways.
26. It should be noted, however, that Tithe Awards and Maps were mainly concerned with identifying tithable lands and not highways or their status, and on their own cannot be used as conclusive evidence of the status of a route.
27. If a lane or track was excluded from the taxable land holdings, it must have been considered to be a public road at that time and as such was vested in the justices of the parish. In this case, the entire length of the

alleged route was shown separate from the adjoining taxable land holdings. The alleged route has no plot number apportioned to it which would suggest that the land was not in production. This would support the contention that the entire length of the alleged route was a public highway at the time of this survey. Whilst the status of such rights are not conclusive from this evidence, it is suggestive that a public right of way of some description existed over the alleged route.

28. In this case, the route in question appears to lead "to Gayton" in the North. This annotation of a way leading towards a named settlement or place is also suggestive of public rights.

Ordnance Survey Map (1836) Appendix E

29. The Ordnance Survey Map dated 1836, shows a through route similar to that subject to the claim. A copy of the map can be found at appendix E.
30. Ordnance Survey Maps provide evidence of the physical existence of the features they show at the time of the survey, they are generally unable to provide evidence of status. From the early 1880's onwards the maps included a disclaimer to the effect that the depiction of any path, track or way was not evidence of the existence of any public rights of way.
31. The application route appears to be shown along the claimed route on the Ordnance Survey Map, 1 inch to 1 mile 1836.
32. In this case, the early Ordnance Survey map dated 1836 demonstrates the existence of a route.

Teesdale, Greenwoods, Yates, Cary, Wright & Charrington Motoring, Cycling and Touring Road Atlas, and Smith Map (Appendix F)

33. The remaining maps appear to show a through route in a similar location to that of the alleged route in question towards cross-roads leading towards Gayton. These maps can be found at appendix F.
34. Early commercial maps can sometimes be of value in defining the historic origins of a route, and may be attributed some value especially if a number of such maps consistently show a route. They are however generally considered to be evidence of the physical existence of a route rather than its status.
35. Greenwood's map of Staffordshire (1820) pre-dated the proposed building of the railway and it appears to show the alleged route.
36. The Teesdale Map of Staffordshire (1831-1832) also pre-dates the deposited railway plan and also appears to show the route.

37. The Cary Maps dated 1820 and 1832, again pre-date the tithe map and deposited railway plan and appear to show the alleged route along the line of the claimed path.
38. The Wright & Charrington Motoring, Cycling and Touring Road Atlas of the early 1900's, would also appear to show the claimed route in question.
39. The Yates map dated 1775, again pre-dates the Deposited Railway map and the Tithe Map and depicts a route along the line of the claimed route.
40. These maps may be considered to be of limited value in this case.

Documents Reviewed by the Council

Estate Map (Chartley Estate Plan 1904) (Appendix G)

41. Estate Maps and plans can be of value because they can give an insight into the landowners views and understanding of the existence and status of a route. For instances, it is unlikely that a landowner would depict something in a manor that may be indicative of public status if he did not accept that the public had a right to use it. Such documents must however be treated with some caution because they were produced for private purposes and never intended for public scrutiny or use.
42. The Chartley Castle Estate plan dated 1904 does not indicate that there is any public right of way along the alleged route. Appendix G

Finance Act 1910 (Appendix H)

43. The 1910 Finance Act sought to levy a tax based upon any increase in the value of a piece of land between the date of its assessment 1909/10 and its sale. As part of the assessment process deductions could be claimed in respect of anything which might have an effect on the value of the land, including public rights of way. In addition to this any land belonging to a rating authority was excluded from the valuation process. The exclusion of a route from valuation may therefore be considered evidence of public highway status of some sort, however there have been instances where private routes over which multiple parties have private access rights, have been excluded from valuation as well.
44. Whilst the legislation never fully took effect, a substantial amount of work was undertaken in completing the assessment and valuation process and many of the records still survive, thus providing a valuable source of evidence.
45. The extract of the 1910 finance act index map and accompanying field book does not show the alleged route in existence. The field book would appear to make reference to a public right of way, however this is not

consistent and in connection with the route being claimed in this application.

Ordnance Survey Maps 1887- 1971 (Appendix I)

46. The Council reviewed further ordnance survey maps in connection with the route in question. The 25 inch County Series 1st edition Ordnance Survey Map 1882, the 25 inch County Series 2nd Edition dated 1901 and the 25 inch County Series 3rd edition Ordnance Survey Map dated 1924 do not depict the alleged route in question.
47. The 6-inch Ordnance Survey Map 1st Edition dated 1887, and the 6 inch Ordnance Survey Map 3rd edition dated 1925 do not depict the alleged route in question.
48. The 25inch National Grid Ordnance Survey Map dated 1971 does not depict the alleged route in question either.
49. It would appear that the alleged route was a visible and observable feature in the landscape between 1836 and 1845, but disappeared at some point between 1845 and 1887.
50. It should be noted that with Ordnance Survey Maps these maps actually carry a disclaimer as to their indication of the status of a way, which states "the representation on this map of a road, track or footpath is no evidence of the existence of a right of way". They may show the physical existence of a route, or other physical features on the ground, but are not, in themselves, evidence as to the status of a way. That is they provide no evidence of either private or public rights over a particular way nor of the type of user i.e. pedestrian or vehicular that may be attached.
51. Whilst the Ordnance Survey maps do not provide direct evidence of the status of a track they do provide evidence of the existence of observable features at the time of the survey.

Aerial Photograph (Appendix J)

52. An aerial photograph of the land dated 1945 can be seen at appendix J, and there is no physical evidence of the alleged route at this date.

Comments on the evidence

53. The alleged route is the subject of a claim made by the Applicant to add this route to the definitive map and statement.
54. With regard to the evidence submitted it would appear to indicate that a route of some description existed along the alleged path from the 1700's until the mid-1800's.

55. The Yates Map dated 1775, Cary Maps 1806 and 1832, the Greenwood Map dated 1820 and the Teesdale Map dated 1831-2 and the Wright and Charrington Map all show the alleged route.
56. It should be noted however that the above-mentioned maps are evidence only that the route was a physical feature on the ground at the dates of those maps, the maps are not themselves evidence of the status of the route.
57. The ordnance survey maps differ in that the route appears in the early 1836 Ordnance Map; however, it is then not depicted again, in Ordnance Survey Maps dated 1887 onwards. This would appear to support the contention that whilst in existence in the early 1800's, the route for whatever reason fell into disuse during the mid-1800s.
58. Whilst Ordnance Survey maps may show the physical existence of a route, they are not in themselves evidence of the status of the routes which are shown.
59. The proposed Stafford and Uttoxeter Deposited Railway Plan dated 1845 shows the alleged route and is evidence that there was a route on the ground at the time of the survey. The route is depicted in the Book of Reference overseen jointly by the Surveyor of Highways and Richard Wilcox, which is good evidence to suggest that the alleged route was public.
60. Deposited Railways plans are good evidence of a public route, although are not conclusive. However, the status of a route would have had a considerable impact on the cost of the line, and it would therefore be against their interests to show a private route as a public one.
61. Occupation Roads often carried public rights of way, and in these circumstances, the Surveyor of Highways could sometimes be listed jointly the owners. In this case, the route named and referenced to a "Parish Road to Gayton" and the Surveyor of highways is jointly listed as owner with Richard Wilcox. This would suggest that it was still a public route at the time the plans and book of reference were deposited in 1845.
62. Whilst only part of the route is indicated on the Deposited Railway plan, it is shown in the same line as the claimed route in question and is therefore suggestive of a public right of way.
63. The Weston Tithe map shows the whole route in question coloured sienna and unnumbered, although no inference can be drawn as to the status of the route, this does add probity to the claim and would again indicate the physical existence of the entirety of the route at the time of the survey.

Evidence submitted by the Landowners

64. In 2000, two landowners were approached as a result of the application. Both completed landowner questionnaires which are attached at Appendix K.
65. Landowner A did not consider the right to be public and had held an interest in the land for 18 years at the point of completing the questionnaire. The landowner avers that the land has not been used as a public footpath during their occupation.
66. Landowner B did not consider the right to be public and had an interest in the land for 7 years at the point of completing the questionnaire.
67. Landowner A states that part of the alleged route was procured by the Ministry of Defence (MOD) as a lookout post for Hixon Airfield during World War II. Landowner A stated that the MOD erected signs stating their position of the land as 'MOD Property, Keep Out'.
68. The Defence Estates responded to the Applicant to confirm that they do not own the land/property which is the subject of the application. A copy of the letter can be seen at appendix L.
69. Upon circulation of the original report the Landowner B responded providing further information regarding the application, a copy of the email can be found at appendix M.
70. As members will be aware, whilst the additional comments made by the landowner are noted the comments in relation to wildlife and conservation of the area and those regarding safety must be disregarded under the law as it currently stands.
71. The landowner has stated that "nobody has walked the claimed footpath in the 40 years since we purchased the farm in 1982. There is no access through the boundary hedge from Wadden Lane into our land". This has no bearing in relation to the application as this claim is based on historical and not user evidence. The fact that there is no evidence on the ground is immaterial to the claim.
72. Officers appreciate and thank the landowner for the additional comments, and this information is noted, however, from a legal perspective none of the points raised are of material relevance to the claim – and so nothing turns on these.

Comments received from statutory consultees

73. Stafford Borough Council and Weston with Gayton with Fradswell Parish Council were both approached for comments on the application.
74. Weston with Gayton with Fradswell Parish Council advised that they had made enquiries regarding the tenure of the land, but had failed to identify the owner of the land in question. They submitted no further comments in relation to the application.

75. The Byways and Bridleways trust responded to the initial consultation and their response is attached at appendix N. They are in support of the application and are of the opinion that the status of the route is higher than that of a footpath.

Legal tests

76. 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:
- (a) the alleged right subsists on the balance of probabilities or;
 - (b) is reasonably alleged to subsist.
77. 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.
78. 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".
79. If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

Summary

80. In this instance the applicable section of the Wildlife and Countryside Act 1981 is section 53(3)(c)(i).
81. The Railway Plans, despite not being implemented, makes reference to the highway, although this is only the section leading off the A518, the section of the route shown on the plan is depicted the same as the claimed route and that of the Tithe Map. The owner of the route is listed as the Surveyor of Highways which is suggestive that the route is public right of way.
82. In 1845 the existence of the public highway is supported by the Deposited Railway plan and award.
83. On their own Tithe maps and awards are not evidence as to the public or private nature of a particular route but may add to the supporting evidence. Their purpose was to show what land was tithable as stated in *Merstham Manor Ltd v Coulsdon and Purley Urban District Council* [1937] 2 KB 77.
84. Such evidence is not on its own conclusive proof and therefore must be considered alongside all other evidence as stated in *Maltbridge Island*

Management Co. v Secretary of State for the Environment [1998] EGCS 134.

85. The Deposited Railway plan and tithe map evidence is further supported by the Teesdale Map dated 1831-2, Cary Maps dated 1806 and 1832, Yates Map dated 1775, Wright and Charrington Map and Greenwood map dated 1820 together with the Ordnance Survey Map dated 1836, all of these documents show the alleged route as a through road leading from the old A518 leading in a northerly direction, with a dog-leg to the West to the cross-roads towards Gayton. It is apparent from these documents that a highway of some description was in existence at the time these maps were created.
86. County Officers have not discovered any evidence to suggest that this route was extinguished or stopped up.
87. The evidence is supportive of a public right of way, there is no evidence to suggest any higher rights exist along the route than those which are subject to the claim, a public footpath.
88. The documentary evidence presented in this case shows the existence of a right of way across the land on the alignment of the alleged route. This way is shown by the early maps and the Ordnance Survey map dated 1836, the annotation referred to in the Deposited Railway Plan dated 1845 and the reference made to the Surveyor of Highways and the Tithe document dated 1844.
89. At some point between 1845 and 1887 the way appears to have fallen into disuse and is not shown as a visible feature by Ordnance Survey for the majority of the nineteenth century. However, the absence of the route from post 1887 mapping does not demonstrate that a right of way could not have come into existence at an earlier date.
90. Consequently, it is officers' opinion that the second test would succeed as the evidence adduced is such that it is reasonable to allege that a public right of way subsists over the claimed route.
91. With regard to the question of "reasonably alleged to subsist" as laid down in the Section 53(c)(i), this has been discussed in the case of R-v-Secretary of State, ex parte Bagshaw and Norton [1995] JPEL 1019. In that case Owen J. stated that the "the wording of the section indicates, as I consider, that the evidence necessary to establish that a right of way is reasonably alleged to subsist must be less than that which is necessary to establish that a right does subsist.
92. Owen J's approach was considered and approved by the Court of appeal in R-v-Secretary of State for Wales ex parte Emery [1998] 4 All ER 637. The court emphasised that where there is conflicting evidence in an application, the surveying authority should apply the Bagshaw test. The Planning Inspectorate have adopted this approach and included it in their Consistency Guidelines when determining an appeal against an Authority's refusal to add a route.

Conclusion

93. Whilst it is a matter for the Panel to consider all of the relevant evidence available, your officers conclude, in light of the evidence as set out above, that sufficient evidence has been submitted to show that a public right of way, shown as A-B on the map attached at Appendix B, with the status of public footpath, which is not shown on the Definitive Map and Statement is reasonably alleged to subsist.
94. Your officers conclude therefore that the County Council should make a Modification Order to add the claimed route to the Definitive Map and Statement of Public Rights of Way for the District of Stafford.

Recommended Option

95. To accept the application based upon the reasons contained in the report and outlined above and to decide to make an Order to add the alleged route to the Definitive Map and Statement of Public Rights of Way for the District of Stafford.
96. That the width of the route shall be to the standard minimum width of a cross-field footpath being 1 meter.

Other options Available

97. The Panel has the authority to reach a different decision and therefore can reject the application to not make an Order to add the alleged route to the Definitive Map and Statement of Public Rights of Way for the District of Stafford.

Legal Implications

98. The legal implications are contained within the report.

Resource and Financial Implications

99. The costs of determining applications are met from existing provisions.
100. 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

101. 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 15 of the 1981 Act. The Secretary of State would appoint an Inspector to consider the matter afresh, including any representations or previously unconsidered evidence.

102. 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.
103. 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.
104. 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

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

J Tradewell

Director for Corporate Services

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INDEX TO APPENDICES

Appendix A	S53 Application Form 1
Appendix B	Plan of claimed route
Appendix C	Deposited Railway Plan and Record Book
Appendix D	Weston Tithe Map
Appendix E	Ordnance survey map (1836)
Appendix F	Various Old Maps Yates 1775 map, Cary 1806 & 1832 map, Greenwood 1820 map, Teesdale 1831-2 map, Wright & Charrington Motoring, Cycling and Touring Road Atlas of the early 1900's
Appendix G	Estate Map (Chartley Estate Plan 1904)
Appendix H	Finance Act Map 1901
Appendix I	Ordnance Survey Maps 1887- 1971
Appendix J	Arial photograph of the land dated 1945
Appendix K	Landowner Evidence Forms
Appendix L	Defence Estates Response
Appendix M	Landowner Email April 2023
Appendix N	Byways and Bridleways trust Response to Consultation