

<b>Local Members' Interest</b>	
CLlr Gill Heath	Staffordshire Moorlands – Leek Rural

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

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

### **Application to Upgrade Public Footpath 10 Waterhouses Parish to a Restricted Byway**

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

#### **Recommendation**

1. That the evidence submitted by the applicant and that discovered by the County Council at Appendix A is **sufficient** to show that a right of way with the status of a Restricted Byway and marked A to B on the plan attached at Appendix B of this report subsists.
2. That an Order **should** be made to upgrade the right of way shown marked A to B on the plan attached at Appendix B to a Restricted Byway on the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.

#### **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").
2. 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.
3. To consider an application attached at Appendix A from Mr Brian Smith dated 5<sup>th</sup> February 2019.
4. The application is for a Definitive Map Modification Order to modify the Definitive Map and Statement for the District of Staffordshire Moorlands.

5. The effect of such an Order, should the application be successful, would be to upgrade the full extent of Public Footpath 10, Waterhouses to a Restricted Byway.
6. The line of the alleged Restricted Byway which is the subject of the application is shown highlighted and marked A to B on the plan attached at Appendix B.
7. 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.

### **Application Details- Documentary Evidence Submitted by the Applicant.**

The applicant has provided in support of the application:

1. A Quarter Session Order dated 1<sup>st</sup> May 1823. This document refers to the stopping up and diverting of part of a highway known as Roods Lane. The accompanying map appears to show the northern section of the alleged restricted byway marked C – D.
2. A copy of the Order and map can be found at Appendix C .
3. The applicant has also provided a selection of Tithe Maps as follows:-
4. Mayfield: Calton Township Tithe Map dated 1848 shows the alleged restricted byway, following the same line as it does today. The full extent of the route is shown and is unnumbered. It passes alongside various numbered parcels of land and does not appear to cut across any of these plots. The route is shown coloured brown and at both ends joins to routes depicted in the same way (coloured brown).
5. A copy of the Mayfield Calton township Tithe can be found at Appendix D.
6. Blore: Calton Township Tithe Map dated 1848 shows the alleged restricted byway following the same line as it does today. The route is shown unnumbered, and the surrounding area does not show any plot numbers. The route is shown coloured brown and joins to routes depicted in the same way (coloured brown)
7. A copy of the Blore Calton township Tithe can be found at Appendix E.
8. Waterfall: Calton Township Tithe Map dated 1848 shows the alleged restricted byway, following the same line as it does today. The route is unnumbered and passes alongside various numbered parcels of land, it does not appear to cut across any of these plots. The route is shown coloured brown and at both ends joins to routes depicted in the same way (coloured brown).
9. A copy of the Calton Township Tithe can be found at Appendix F.
10. The applicant has also provided a Staffordshire County Council Survey of Rights of Way statement with accompanying draft map dated 27<sup>th</sup> November 1954.

- 11.** The survey refers to the alleged route as "Path no 10" with the "Type of Path" noted as an R.P – *road used as a public path*. On the accompanying draft map, the alleged route is depicted following the same line as it does today and is numbered 10. It is also annotated with CRB – carriage road used as a bridleway.
- 12.** A copy of the Staffordshire County Council Survey of rights of way statement and map can be found at Appendix G.
- 13.** The applicant also provided a copy of an email dated 20<sup>th</sup> April 2017 from the National Library of Scotland - with accompanying Staffordshire XIV.6 Map dated 1881.
- 14.** The email states that "*The Ordnance Survey painted roads in burnt sienna (brown) shade so Donkey Lane would be considered a road by the OS in 1880*".(sic) The email is annotated to and reads "*Donkey Lane is the local name given to FP10 Waterhouses Parish, it's correct name is Roods Lane*".
- 15.** The accompanying map shows a route annotated with the number 20 and it appears to follow the same line as the alleged restricted byway.
- 16.** A copy of the email and map can be found at Appendix H
- 17.** The applicant also provided a Staffordshire County Council Survey of Rights of Way dated 7<sup>th</sup> April 1952.
- 18.** The survey card completed by FH Cotton, refers to Footpath 10 Waterhouses Parish. It stated that FP10 is a "*seldom used metal road now grassed over not used at all for vehicular traffic*". It states that the grounds for believing the path to be public were that it has "been used by the public over a great number of years". A copy of the survey card can be found at Appendix I.
- 19.** The applicant also provided a freedom of information request letter and subsequent email response. Letter dated 31<sup>st</sup> March 2017 from Julie Turner to SCC Information Governance Unit. This requested further information on a possible cycle route that would run the length of FP10 Waterhouses. A response was received dated 17<sup>th</sup> August 2017 stating that the cycle route had not yet been considered. A copy of the FOI request and response can be found at Appendix J.
- 20.** The applicant also provided an Extract and Key from an O.S. map for Dovedale and Tissington, of the 1:25000 Pathfinder series. The extract shows FP10 highlighted in yellow by the applicant.
- 21.** The route is shown as a dashed line, the corresponding key (also highlighted by the applicant) states routes shown as a dashed lines are RUPPs – Road Used as a Public Path. A copy of the extract and key can be found at Appendix K
- 22.** Subsequent evidence was provided by the applicant after the application had been accepted.
- 23.** This included a selection of Bartholomew Maps dated 1902, 1924 and 1941 – where all maps show the alleged route.

24. A Greenwood Map dated 1828 showing the alleged route
25. An extract from the 1910 Finance Act Map showing the alleged route
26. A copy of this additional evidence can be found at Appendix L

### **Analysis of Documentary Evidence**

#### Quarter Session Order

27. Quarter Session Orders are Court Orders, the Justices of the Peace held Highway Sessions 3 times a year and parishes which had failed to maintain routes could be indicted.
28. The Orders indicate the public nature of a way and its status and can only be overturned by another Order or Act of Parliament.
29. Post 1773 these Orders could also widen, divert & extinguish routes. A diversion only took effect when the new route was had been laid out and certified by the Justices. If the diverted route was not laid out and approved the old route may still exist.
30. In some instances there may be no certificate of completion and other evidence may be needed to support the route's existence. As we know a route already exists a certificate of completion is not needed in this instance to indicate the public status of the route.
31. The Quarter Session Order that has been provided by the applicant clearly states that part of the route known as Roods Lane was to be stopped up and diverted.
32. It is marked on the accompanying map as C to D and referred to in the Order.
33. It states Rev. Bernard Port agreed to the part of the route being stopped up and diverted through his lands.
34. The width of the route is stated as being 12ft, (today this would convert to 3.65metres). However once the part of the route marked C to D was diverted the width would be recorded as 11ft (3.35metres)

#### Tithe Maps

35. Tithe maps and their accompanying apportionments were produced solely for the purpose of identifying tithable land, and were not concerned with recording or establishing public rights of way. They do however provide some of the earliest accurate large-scale mapping available to us and can provide good evidence of the physical existence of a route. If a route was excluded from adjoining land it may be supporting evidence that a route *has* public status, however, this is not conclusive and there may be other reasons for the land being excluded, and so on its own it is not sufficient to draw any such conclusion.
36. The applicant has provided three Tithe maps, Mayfield: Calton Tithe map dated 1848, Blore: Calton Tithe Map dated 1848 and Waterfall: Calton Tithe map also dated 1848.

37. All three maps show the route following the same line, and show it as having the same distinctive curve at the northern end of the route. All three of the maps show the route coloured brown. At the time this route was recorded the brown colouring *may* have indicated it was used as a highway – however again this is not conclusive.
38. As always with Tithe maps, there are no features depicted on the map to discern the nature of the rights over the route. However, on inspection of the Mayfield: Calton Township Tithe map index it refers to plot 24 as “between roads”, however there is no other evidence pointing to the status of the route and it is not mentioned in any other entries for the surrounding plot numbers.

### Ordnance Survey Map

39. Ordnance Survey Maps provide excellent evidence of the physical existence of the features they show at the time of the survey, but they do not indicate the status of a route.
40. From the 1880’s onwards the maps included a disclaimer to the effect that the depiction of any path, track or way is not evidence of the existence of any public rights of way.
41. In *Moser v Ambleside Urban District Council* (1925) 89 JP 118 at 119, Pollock MR stated: “If the proper rule applicable to ordnance maps is to be applied, it seems to me that those maps are not indicative of the rights of the parties, they are only indicative of what are the physical qualities of the area which they delineate.....”.
42. The Applicant has provided an extract from an Ordnance Survey map for the area of Dovedale and Tissington and is dated 1978. They have also provided the key which accompanies the map. The physical existence of the route is not in question as we know the route is a footpath (FP10 Waterhouses) and we can clearly see the route marked on the map as a dashed green line. The key states that a this indicates the route is a Road Used as a Public Path (a RUPP).
43. As we know RUPP’s were created when the National Parks and Countryside Act 1949 came into force. All routes were to be recorded as either a Footpath, a Bridleway or a RUPP – a Road Used as a Public Path.
44. Section 27(6) of the 1949 Act defined a RUPP as “*a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used*”.
45. Section 32(4) of the 1949 Act said that once the Definitive Map and Statement had been prepared, what was shown on it was conclusive evidence as follows:
  - (a) where the map shows a footpath, the map shall be conclusive evidence that there was at the relevant date specified in the statement a footpath as shown on the map

- (b) where the map shows a bridleway, or a road used as a public footpath, the map shall be conclusive evidence that there was at the said date a right of way on foot and a right of way on horseback or leading a horse, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than the rights aforesaid'
- 46.** The Applicant also provided a Map from the National Library of Scotland, Staffordshire XIV.6 dated 1881.
- 47.** This map, which is a type of O.S. map, shows the alleged restricted byway coloured brown, and is annotated with the number 20.
- 48.** As there was no book of reference provided, your Officers contacted the National Library of Scotland to request a copy of any index or reference book they may have. A reply was received stating that no book of reference/index is stored there.
- 49.** Both of the O.S. maps are good evidence that a route does exist here, however this is not in question, as a public footpath already runs along this line . The O.S. maps do not provide us with the information we require to strengthen the argument that the route has higher rights than a footpath.

#### Staffordshire County Council Survey of Rights of Way Statement

- 50.** The first Definitive Map and Statement came into being as a result of the National Parks and Access to the Countryside Act 1949. All County Councils in England and Wales carried out a survey of their area and produced a map that showed all the public footpaths, bridleways and Roads Used as Public Paths which were, or could reasonably be alleged to be, public rights of way.
- 51.** The Applicant has provided a copy of a Staffordshire County Council survey of rights of way statement with accompanying draft map dated 27<sup>th</sup> November 1954. The survey refers to the alleged route as "Path no 10" with the "Type of Path" noted as an R.P – road used as a public path. On the accompanying draft map, the alleged route is depicted following the same path as it does today and is numbered 10. It is also annotated with CRB – carriage road used as a bridleway.
- 52.** The applicant also provided a copy of the Staffordshire County Council Survey of Rights of way statement notes dated 7<sup>th</sup> April 1952, this also refers to Footpath 10 as a RUPP.
- 53.** The surveyor notes "*seldom used metal road now grassed over not used at all for vehicular traffic*".(sic) It is also noted that the route had "*been used by the public for a number of years*". It does not state that this route was used for anything other than a public footpath. There is no reference to the route being used as a bridleway and it clearly states that it is not used by vehicular traffic.

FOI Request regarding a possible cycle track

54. The applicant has submitted a copy of a Freedom of Information request regarding a proposed cycle track in which the applicant stated the proposed cycle route would run along part of FP10 Waterhouses with the majority of the route running along Farwell Lane.
55. A response was received from the Information Governance Unit IGU stating that the proposed cycle route formed part of a countywide draft cycle route network. The routes were only suggested and no decisions had been made.
56. Your Officers made enquiries with the Council's Rights of Way team to see if the proposed cycle track was to go ahead. The ROW Team had no further knowledge of the proposed route. Having reviewed this evidence it is clear that, this has no bearing on the status of the route. If a cycle route is added, it would not affect the current footpaths status or subsequent decisions that are made regarding the status of the route.

**Additional Evidence Submitted by the Applicant**

Extract of 1910 Finance Act Plan

57. The Finance Act 1910 was created with the purpose of mapping lands throughout the United Kingdom for the purpose of taxation. The Finance Act material consists of three documents, the Field Book, the Valuation Book and the Increment Value Duty Plan.
58. The Finance Act plan was based on large-scale Ordnance Survey plans. The 1910 Act required all land to be valued, but routes shown on the base plans which correspond to known public highways, usually vehicular, are not normally shown as included in the hereditaments, i.e. they will be shown uncoloured and unnumbered.
59. In this instance the applicant has only provided an extract of the plan. No copy of the Field Book or Valuation Book was provided. However, the extract clearly shows all but the northern tip of the alleged route which is shown marked white/uncoloured and unnumbered.
60. The fact that the alleged route is marked as a white/uncoloured unnumbered route shows that the route was unvalued. This means that it was not part of the surrounding land holdings.
61. This suggests that as the alleged route was not recorded as being owned by the local authority or government department, that it could have belonged to a highway authority.
62. This extract, though not complete, offers good supporting evidence which could suggest that the alleged route possibly had higher rights than a footpath or a bridleway.

Bartholomew Maps dated 1902, 1924 and 1941

63. The Bartholomew Maps provided by the applicant show the alleged route clearly on all three versions.
64. These maps were created with the public in mind and detailed public footpaths and cycle routes.
65. The 1902 Map shows the alleged route marked white with red dots running along the length. On inspection of the corresponding key we can see that the route is marked down as "indifferent (Passable)".
66. The 1924 map depicts the alleged route much in the same way as the 1902 map, white with red spots. The corresponding key confirms that the route is "indifferent" however it does note that the route is "Passable for cyclists".
67. The 1941 map depicts the alleged route as the previous maps however when looking at the corresponding key the route is now marked as "a good secondary road".
68. This could indicate that the route was known to have higher rights than a footpath or bridleway.

Greenwood Map dated 1828

69. The applicant provided an extract from a Greenwood Map dated 1828. The alleged route is depicted as not following the exact same path as on later maps. However, on inspection you can clearly see the same markers indicating that this is the same as the claimed route.
70. No key was provided so it is not clear what the rights over the route were. However, when looking at the map as a whole you can clearly see that the alleged route is depicted in the same way as the other routes.
71. Ordinarily maps created at this time did not tend to depict anything other than routes that the public could use.
72. As the alleged route is shown in the same way as all surrounding routes it is possible that the alleged route had the same rights. This could indicate that the route has higher rights than that of a footpath or bridleway.

**Evidence Submitted by the Landowners**

73. The relevant Landowners were contacted when the application was received, however no responses were received.

**Comments Received from Statutory Consultees**

74. Staffordshire Moorlands Bridleway Group stated that they fully support the application, however they did not provide any further evidence in this regard to support the claim.

**Legal Tests**

75. With regard to the status of the routes, the burden is on the applicants to show, on the balance of probabilities, that it is more likely than not, that the Definitive Map and Statement are incorrect.

- 76.** The existing classification of the routes, as a Public 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 routes as Public Footpath on the Definitive Map and Statement prevails.

## **Summary**

- 77.** The application is made under Section 53(2) of the 1981 Act, relying on the occurrence of the event specified in 53(3)(c) (ii) of the Act.
- 78.** The Panel need to be satisfied that, on the balance of probabilities, the evidence that has been discovered shows that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
- 79.** The evidence provided by the applicant certainly proves that a right of way exists. However, we must remember that the existence of a route is not in question. We know that Public Footpath 10 Waterhouses exists.
- 80.** The tithe maps show the existence of a route, however it is not possible to discern the rights over this route as tithe maps did not give the status of the route.
- 81.** The Quarter Sessions order (stopping up order) is excellent evidence that the route exists and is referred to as a highway. However we must remember that any route with any rights over it could be referred to as a highway.
- 82.** The O.S. maps do show the physical existence of the route, however they do not provide supporting evidence as to the status of the route.
- 83.** The Finance Act Plan extract is also excellent evidence that the route exists and that it is possible the route has higher rights than that of footpath or bridleway. The route is depicted in the same way as all other surrounding routes.
- 84.** It is coloured white and was not part of any surrounding land holdings. There is no evidence to suggest that the route was owned by the Local Authority or Government. This suggests that the route was owned by the Highway Authority.
- 85.** The Bartholomew Maps prove the existence of the route and the corresponding key provides some good evidence as to the status of the route at that time, however these alone are not conclusive proof of the status of the route.
- 86.** The Greenwood Map much like the tithe maps show the physical existence of the route however it does not provide any clarification on the status of the route.

## **Conclusion**

- 87.** In light of the evidence, as set out above, it is your Officers opinion that the evidence **does** show on the balance of probabilities that a public right of way, with the status of restricted byway, which is not shown on the Definitive map and statement subsists.
- 88.** It is the opinion of your Officers that the County Council should make a Modification Order to upgrade Public Footpath 10 Waterhouses to a restricted byway on the Definitive Map and Statement of Public Rights of Way.

## **Recommended Option**

- 89.** To **accept** the application based upon the reasons contained in the report and outlined above and to decide to make an Order to upgrade the alleged route to a Restricted Byway and add it the Definitive Map and Statement of Public Rights of Way with a recommended width of 3 metres.

## **Other options Available**

- 90.** The Panel has the authority/discretion to reach a different decision and therefore can reject the application to make an Order to upgrade the route or could suggest the lower status of Bridleway is applied to the alleged route and amend the Definitive Map and Statement of Public Rights of Way as such.

## **Legal Implications**

- 91.** The legal implications are contained within the report.

## **Resource and Financial Implications**

- 92.** The costs of determining applications are met from existing provisions.
- 93.** 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**

- 94.** 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.
- 95.** 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.

- 96.** 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.
- 97.** 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**

- 98.** There are no direct equality implications arising from this report.

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J Tradewell

Director for Corporate Services

**Report Author: Rebecca Buckley**

Ext. No: 276165

**Background File:**017595DW

## INDEX TO APPENDICES

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Appendix G	A Staffordshire County Council survey of rights of way statement with accompanying draft map dated 27 <sup>th</sup> November 1954
Appendix H	A copy of an email dated 20 <sup>th</sup> April 2017 and Map from the National Library of Scotland with accompanying Staffordshire XIV.6 Map dated 1881
Appendix I	Staffordshire County Council Survey of Rights of Way dated 7 <sup>th</sup> April 1952
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Appendix L	Additional Evidence Supplied by the applicant: Extract from 1910 Finance Act Map, Greenwoods map dated 1828, Bartholow Maps and Keys Dated 1902, 1924, 1941
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