

Local Members' Interest	
Cllr Gill Heath	Staffordshire Moorlands-Leek Rural

Countryside and Rights of Way Panel -

Wildlife and Countryside Act 1981

Application to upgrade Public Footpath 18, Quarnford 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 is insufficient to show that Public Footpath 18 has the status of a Restricted Byway.
2. That an Order should not be made to upgrade Public Footpath 18 as shown on the plan attached at Appendix B and marked A to B to a Restricted Byway to 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"). 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 from Louise Redfern on behalf of the Staffordshire Moorlands Bridleways Group for an Order to modify the Definitive Map and Statement for the District of Staffordshire Moorlands. The effect of such an Order, should the application be successful, would:

(i) Upgrade Public Footpath No 18 Quarnford Parish to a Restricted Byway on the Definitive Map and Statement of Public Rights of Way under the provisions of Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981.

(ii) The line of the Public Footpath which is the subject of this application is shown highlighted and marked A to 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 her claim evidence of a 1929 Handover Map for the parish of Quarnford. A copy is attached at Appendix C.
2. The map shows the line of the alleged route but there is nothing from the map to indicate the status of the route.

Evidence submitted by the Landowners

3. A landowner was identified as owning land affected by the application route and they completed an owner/occupier evidence form. They stated that the land is used for agriculture, in particular for the grazing of cattle and growing hay/silage crops. The yard is also used for a stone reclamation business. They advise that signs were put up by Peak Park twenty years ago stating: "No cyclists- walkers only" and these signs are still in place. They further state that they gave the Peak Park permission for a concessionary path over their land from Gradbach Hill when Gradbach Hill was opened to the public under the right to roam laws. A copy is attached at Appendix D.

Comments received from statutory consultees

4. Staffordshire Moorlands District Council has stated that they have no evidence to present in relation to the application and they do not wish to lodge any objection.
5. Quarnford Parish Council responded stating that they are strongly against the proposal. They advise that the path goes through a yard which the resident uses for stone breaking. They also advise that the condition of the path would require considerable expenditure to upgrade it to a bridleway. A local volunteer ranger who has done a history of the area states that there is a possibility that the route may have been used for transporting coal in the past with packhorses and carts, although this is unlikely due to the inhospitable terrain of the area.

6. The Open Spaces Society have stated that they do not have any evidence for or against the claim, however they do support the claim.
7. The British Horse Society responded stating that they support the application.
8. We also received e-mail correspondence from a member of the public raising objections to the application. They advised that the route is peaty and boggy with long areas of long-standing water, along with the path being narrow and fragile in parts.
9. Whilst it is not our intention to belittle any legitimate concerns raised, the courts have decided that issues relating to safety, security, privacy, suitability, future maintenance, and wildlife concerns cannot be taken into consideration. Only evidence regarding the existence or not of a public right of way can be taken into consideration.
10. Copies of the above correspondence are attached at Appendix E.

Comments on Evidence

11. What is not in dispute is the fact that the route is a public highway, the question relates to the status and nature of the public rights over it.
12. Under the Local Government Act 1929 the responsibility of Rural District Councils for the publicly maintainable highways in their area was transferred to the County Council. This resulted in the first lists and plans showing routes for which the Authority believed it was responsible for the maintenance of.
13. Maps and lists were created showing the routes the Rural District Councils believed they had a maintenance liability for. These became known as the "handover maps" and they were internal documents for use by County Surveyors.
14. No objections to a route's inclusion or exclusion could be made nor to any notes made regarding the way. The term Unclassified County Roads came to be applied to these routes. By 1929 County Councils were already responsible for "main roads". This moniker has no legal status although some have assumed that it meant or indicated that such routes had vehicular rights. The legal definition of a "road" is a highway which is a generic term defined in law as covering routes from a footpath to a major highway.
15. Under S36 of the Highways Act 1980 the County Council has a statutory duty to keep a List of Publicly Maintainable Highways. The information on the list is only concerned with the maintenance of a route and not its status. To accept liability for maintenance is not a burden that local authorities would take on lightly and so the appearance on either document is a good indication that the route is at least a public highway.
16. The handover maps and the present list are only concerned with liability for maintenance, not with the type of public user. The question of the type of user and status of a way is a matter of evidence in each case. In this

case there is no clear evidence from the map as to the status of the alleged route or the nature of any rights over the route. There is no record with the map and therefore no clear indication as to the nature of any rights over the alleged route.

- 17.** As already stated if a route is recorded on this type of map or list then this is strong evidence of the route being a public right of way, however the issue of whether the route is public is not in dispute as it is already recorded on the Definitive Map as a public right of way but without any record as to the status of the route being included in the documentation then the evidence does not support the route having the status of a Restricted Byway.
- 18.** Officers obtained a copy of the Parish Survey Card for Public Footpath 18, Quarnford. A copy of which is attached at Appendix F. Under "path symbol" it states "FP", although it does appear that the acronym "CRF" has also been written but appears to have been crossed out. It states, "regular public use for at least 40 years without dispute". The description of the route refers to a footpath and there is nothing to indicate that the route has been used by vehicles.
- 19.** The definition given by the Commons, Open Spaces and Footpaths Preservation Society for the acronym "CRF" was "highways which the public are entitled to use with vehicles but which, in practice, are mainly used by them as footpaths or bridleways" or as stated elsewhere "a public carriage or cart road or green unmetalled lane mainly used as footpath or bridleway". This acronym could suggest that the route was capable of being used by vehicles but in light of the fact that it appears that the acronym has been crossed out and it also states "FP" and the description only refers to a footpath the parish survey card overall does not support the contention that the route was used in any other way than as a footpath.
- 20.** No other evidence has come to light that the route has higher rights over it than those rights that are already recorded on the Definitive Map and Statement of Public Rights of Way.

Comments on Report

- 21.** Following circulation of the report comments were received from the applicant, Staffordshire Moorlands Bridleways Group objecting to the recommendation and they also submitted further evidence, including an Alstonefield Enclosure Award dated 1839, documentation regarding the 1929 Handover Map and Schedule and an Ordnance Survey Map dated 1953.
- 22.** The Alstonefield Inclosure Award shows the eastern section of Quarnford PF18 and it is depicted on the map as a route called Stone Pit Road. The section of route is depicted as a carriageway and falls under the section of the Award: "Carriage and Drift Roads". The preamble to the Award has not been provided but it is assumed that the Inclosure Commissioners had the powers to create routes as the Award is clearly referring to the setting out and creation of new routes. The text refers to the owners and occupiers being responsible for maintenance of the route and the route to be used for people

using the adjoining lands, which would indicate that the route was considered to be private rather than for the public at large.

- 23.** The Inclosure Award does support the existence of the way as a Carriage and Drift Road, which is supportive of the route having rights over it higher than a footpath. However, the Inclosure Award does not show the entirety of the route, it only shows the eastern end of the route. The route depicted on the Award map does not connect to another highway to the north, it appears to stop in the middle of a field, at a "Stone pit" as described in the Award. The wording of the Award includes: "for the use of all persons whose Lands adjoin the same or who may require or think proper or have occasion to use the same". The applicant states that this wording is evidence that any member of the public had the right to use the route. Officers contend that the wording is suggestive of permission rather than a wider acceptance that the public at large could use the route. The text also states: "shall be made and for ever hereafter supported and kept in repair by and at the expense of the several owners and occupiers for the time being of the lands and hereditaments within the said Township of Quarnford by a General Rate or Assessment according to the value thereof respectively". The applicant states that this evidence shows that the maintenance of the route was by members of the public and that this was paid by way of a General Rate. However, officers contend that regarding the "General Rate or Assessment", this would be a levy placed on each landowner depending on how much land they owned, so this is likely to refer to the fact that each landowner may have had a different amount of money to pay towards the maintenance of the route.
- 24.** In this case the Award shows the physical existence of part of the alleged route, depicted as a Carriage Road. However, from the Award it would appear that the route was considered private rather than a route for the wider public, although from later evidence it would appear that over time the route has become an extended route and a public right of way with the status of a footpath. The Inclosure Award supports the contention that private vehicular rights exist up to the point and along the stretch of the route depicted in the Inclosure Award but not for the entirety of the existing route, which is depicted on the current Definitive Map and Statement as having public rights with the status of a footpath. Therefore, officers do not consider the Inclosure Award to be strong enough to warrant the entirety of the route being upgraded to a Restricted Byway.
- 25.** The applicant states regarding the 1929 Handover Map and Schedule documentation that it lists two types of road and that this is good evidence that Quarnford 18 was in one of these categories. They also state that Quarnford PF18 is the only route from the Handover Map to be listed with footpath status. All the other routes that are marked on the Handover Map are currently classed as Highways Maintainable at Public Expense and have C, D or G classifications, meaning they are recorded as "ordinary" public roads today except PF18 Quarnford.
- 26.** There is no evidence as to why FP18 is the only route that is currently shown as a footpath in comparison to the other routes marked in a similar way to FP18 on the Handover Map. Fundamentally the purpose of Handover

Maps is to show whether a route is a publicly maintainable highway, its main purpose is not dealing with the nature of the rights over a specific route. Handover evidence on its own is not evidentially strong, as it is not a record of public rights.

- 27.** The Ordnance Survey map shows sections of the route. There is a key with the map. From the key it would appear that the sections of the route shown subject to this claim were classified as "Minor roads in towns, Drives and unmetalled roads (Unfenced roads shown by pecked lines)". The purpose of Ordnance Survey maps is to show physical features on the ground, they do not distinguish between public and private rights of way. Evidentially this type of evidence is weak, but the map is suggestive for the sections of the route that are shown that the route was classed as a minor road, which would support the contention of the route having rights over it higher than a footpath and being a Restricted Byway, although as already stated this could be public or private.
- 28.** The applicant is of the opinion that on the balance of probabilities, the route has a higher public status than footpath. Overall, when the evidence is reviewed in totality, officers' opinion is that the evidence is not strong enough on the balance of probabilities to show that the alleged route has the status of Restricted Byway and therefore officers' recommendation that an Order should not be made to upgrade the route to a Restricted Byway remains. A copy of the applicant's correspondence and further evidence and officers' response is attached at Appendix G.
- 29.** Following circulation of officer's response to the further evidence the applicant sent in a further letter with comments and further OS maps dated 1895, 1907, 1909 and 1941. Copies of the applicant's letter and OS maps are attached at Appendix H. The further OS maps do support the physical existence of the alleged route. The key with the maps supports the routes existence as an unmetalled road, unfenced road, or a minor road. Whilst the applicants' comments are noted regarding the evidence, officers' opinion remains unchanged.

Burden and Standard of Proof

- 30.** With regard to the status of the route, 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

- 31.** It would be difficult for the County Council to argue that a route shown on the List of Publicly Maintainable Highways, or the handover maps, were not public as these show an acceptance of liability. However, it has

already been determined that the route is public, therefore the question is whether its status is higher than a footpath. There is nothing from the map to attest to the nature of the public rights over the alleged route.

32. Therefore, there is nothing from the map to indicate the status of the alleged route and whilst it supports that the route is a public highway, this has already been established and this fact is not in dispute. What is not clear is the status of the route and the map on its own does not support the contention that the route's status is greater than a footpath and should therefore be upgraded to a Restricted Byway. Furthermore, the parish survey card is supportive of the routes status as a public footpath.

Conclusion

33. The question is not whether PF18 is a public highway but rather what is the nature of the public rights over the route.
34. The evidence to overturn the current designation on the map must satisfy the civil legal test, that of the balance of probabilities.
35. In light of the evidence, as set out above, it is the opinion of your officers that based upon the balance of probabilities the route which is the subject of the application is more likely than not a public footpath.
36. It is the opinion of your officers that the County Council should not make a Modification Order to upgrade the route to a Restricted Byway on the Definitive Map and Statement of Public Rights of Way.

Recommended Option

37. To reject the application based upon the reasons contained in the report and outlined above.

Other options Available

38. To decide to accept the application to upgrade Public Footpath 18 Quarnford Parish to a Restricted Byway.

Legal Implications

39. The legal implications are contained within the report.

Resource and Financial Implications

40. The costs of determining applications are met from existing provisions.
41. 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

- 42.** 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.
- 43.** 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.
- 44.** 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.
- 45.** 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

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

J Tradewell

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INDEX TO APPENDICES

Appendix A	Copy of application and associated submitted letters and documents
Appendix B	Plan of claimed route
Appendix C	1929 Handover Map for the parish of Quarnford
Appendix D	Landowner questionnaire dated December 2018.
Appendix E	Copies of statutory consultee responses.
Appendix F	Copy of Parish Survey Card for Public Footpath 18, Quarnford
Appendix G	Copy of applicant's response and further evidence to draft report and copy of officers response
Appendix H	Copy of applicant's further letter and comments regarding evidence, including further OS maps