

Local Members' Interest	
Cllr Worthington	M Staffordshire Moorlands

Countryside and Rights of Way Panel

Wildlife and Countryside Act 1981

Application to Add a Public Footpath from Basford Lane to Existing Public Footpath 33, Cheddleton

Report of the Director for Corporate Services

Recommendation

1. That the evidence submitted by the Applicant at Appendix A is sufficient to show that a Public Footpath subsists on the balance of probabilities along the route marked A to B and shown on the attached plan at Appendix B.
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 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.
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 area by adding an alleged Public Footpath under the provisions of section 53(3) of the Wildlife and Countryside Act 1981.
3. The line of the alleged Public Right of Way is shown on the plan attached at Appendix B and marked A to B.
4. 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

5. In support of the application the Applicant has submitted a copy of a Highway Diversion Order dated 1852 and a copy of a Certificate of Completion (for the same route) dated 1853 – both having passed through the Quarter Sessions.

6. These can be seen at Appendix C.

Evidence Submitted by the Landowners

7. Two landowner response forms were received however both of them appeared to be from adjacent landowners rather than landowners of the route in question.
8. These responses can be found at Appendix D.

Comments Received from Statutory Consultees

9. Responses were received from both Cheddleton Parish Council and Staffordshire Moorlands District Council, however neither contained any evidence to support or refute the application.
10. These can be found at Appendix E.

Comments on Evidence

11. The Application rests on a Quarter Sessions Order dated 1852 and its subsequent Certificate of Completion dated 1853.
12. As such this is an application based purely on historical or documentary evidence.
13. Quarter Sessions Orders carry great evidential weight – and can often be regarded as definitive evidence in their own right - provided they are complete and clear.
14. In this case we have a well preserved and informative document that is replete and cogent along with the associated plan which clearly shows the route that is the subject of the Order.
15. In exposition of this document, we find that two Justices of the Peace – the Reverend John Sneyd and the Reverend Thomas Henry Heathcote were responsible for overseeing the legal processes involved.
16. They are recorded as being “*two of Her Majesty’s Justices of the Peace for the County of Stafford*” - and this confirms their capacity to act in this type of legal matter.
17. The Order goes on to state they were acting within the “hundred of Totmonslow” which was an administrative region of Staffordshire dating from ancient times but still extant.
18. For clarity, Staffordshire was split into five “Hundreds” – the others being Pirehill, Offlow, Cuttleston and Sesidon.
19. The “hundred of Totmonslow” was named after a hamlet east of Draycott in the Moors and covers the Staffordshire Moorlands in the Northeast area of the county – which of course includes Cheddleton.
20. The hundred was split into two regions Totmonslow North and Totmonslow South for administrative purposes and although obsolete by 1894 it was very much in existence at the time of the diversion order in 1852.
21. Clearly the Justices in this case were considering an Order in Totmonslow North – which of course is supported by modern mapping.
22. Both the Township of Basford and the Parish of Cheddleton are referenced in the Order – and it is the Surveyor of Highways that was engaged by the Justices of the Peace.

23. Robert Clemenson is referred to as the *"Surveyor of Highways for the Township of Basford, in the Parish of Cheddleton"* in the Order, which goes on to describe in detail both the existing route and the replacement route.
24. In quotation the route to be diverted is referred to as: *"A certain highway or footway situate in Cheddleton, commencing at a stile near to Basford Bridge in the parish of Cheddleton"*.
25. This reference point can be clearly seen and is marked "A" on the attached plan - the Order continues: *"running through or over land belonging to William Phillips of Leek, Esquire"*.
26. The plot of land belonging to William Phillips is clearly shown on the west side of the attached plan along with the route to be diverted passing through it.
27. The Order continues *"from there into and over a farm called Basford Villa in the parish of Cheddleton, aforesaid belonging to Edwin Heaton of Leek aforesaid Land Agent and in the occupation of Mr William Steeple (Hunt/ Gent?) and the said Edwin Heaton and terminating at a stile or point on the said plan marked "B" and the highway leading from Cheddleton Heath to Leek, Bradnop and Basford in the parish of Cheddleton aforesaid"*.
28. Again, this farm and the reference point "B" are clearly visible on the plan as is the line of the route to be diverted.
29. The Order then goes on to then describe the replacement route *videre licet* *"to substitute and make a highway or footway commencing at the said point marked "A" on the said plan at or near Basford Bridge aforesaid and extending in a northerly direction along a highway leading from Basford to Cheddleton to a point marked "C" on the said plan and near to a gate leading to Basford Villa aforesaid, from there through and across lands part of the said Basford Villa Estate, belonging to the said Edwin Heaton, to a highway leading from Leek to Basford and marked on the plan with the letter "D" and near to a fence dividing the closes of land called the Highfield and Barley Field, part of the said Basford Villa Estate."*
30. Again, the reference points mentioned for the proposed diversion are clearly visible on the plan – although the closes referred to are not annotated by name.
31. Critically the Order then goes on to confirm that the owner of the land of the proposed route - Edwin Heaton, had agreed to the diversion stating, this was *"under his hand by writing consented"*.
32. The process of diverting a public footpath was very similar to the procedures employed today and so the presence of a consenting landlord of course expedites the process significantly.
33. The Order continues with the methodology of the process describing in effect the informal consultation stage whereby, *"the justices of the peace direct the said Surveyor of Highways of the township of Basford in the parish of Cheddleton, aforesaid to affix a notice in proper form in legible character...by the stile at each end of the said highway or footway from whence the same was proposed to be diverted and turned as aforesaid a Notice in one newspaper published and commonly circulated in the county of Stafford for four successive weeks"*
34. Again, this reveals that a consultation was indeed carried out long similar lines to the process undertaken today, although we no longer *"affix a Notice to the door of the church on four successive Sundays"* – as stipulated in the Order.

35. Further, the Order states that a plan should be delivered (to the Justices) describing the *"old and proposed new highway, by metes, bounds and admeasurements"* thereof and the plan was to be verified by a *"competent surveyor"*.
36. The metes refer to the measurement of the straight sections between various points and the bounds refer to the natural landmarks or features in the landscape along which the metes run. The admeasurements relate to both the overall measurements as supplied in this case by a detailed table and the portions of ownership – which we have.
37. The amount of detail provide by the annex to the Order is significant in regard to the measurements and quite clearly sets out the fact that the proposed route would be 95 yards greater - or longer - than the existing route.
38. This of course meant that the public network was to increase by 95 yards – and was calculated very clearly in a table in two distinct sections.
39. The first detailing the length of the routes (existing and proposed) from Cheddleton to Leek and Bradnop being 1,092 yards (existing) and 1202 yards (proposed). This first section gave a total of 110 yards in favour of the diversion.
40. The second part showed that the route from Basford Bridge to Leek and Bradnop was 1,523.5 yards (existing) and 1,538.5 yards (proposed). This calculated to 15 yards in favour of the existing route.
41. As such when the 110 yards in favour of the diversion is taken together with the 15 yards in favour of the existing route the ultimate total is 95 yards net in favour of the diverted route.
42. These calculations demonstrate that the Surveyor had executed his duties very fully and that the exact line of both proposed and existing route had been very carefully ascertained.
43. Lastly, we learn form the Order that *"the proposed new highway or footway will be more commodious and nearer to the public by reason of the said old highway or footway being in some parts thereof extremely rugged and dangerous on account of the declivity through a certain wood"*.
44. The *"declivity"* – or downward slope through the wood together with the *"extremely rugged and dangerous"* surface are certainly enough to justify the route as being *"more commodious"* for the user – a term we frequently use today.
45. This was further supported by the fact that the existing route also *"passed over a certain brook course... and through a farm space where many dogs and other dangerous animals are kept."*
46. These later points would perhaps not be as readily taken as supportive evidence today as landowners are required to contain dangerous animals - which can of course be classed as a deterrent to use and thereof a viable obstruction.
47. The same applies to crossing the brook, unless it too presented an insurmountable danger.
48. That said these points were taken as supporting reasons for the diversion and their contemporary knowledge most probably superseded our own.
49. The Order concludes *"the new highway or footway will be one hundred and ten yards nearer for the public travelling from Cheddleton to Leek and Bradnop"*.

50. Turning to the Certificate of Completion dated 1853 we find that the Justices of the Peace, Thomas Heathcote and John Sneyd certifying that they have *"viewed and surveyed a certain new highway or footway"* and they go on to describe its alignment on the plan.
51. They state that the plan shows the *"new highway or footway"* and that it had been *"inrolled by the Clerk of the Peace for the County of Stafford amongst the records of the said Court of Quarter Sessions"*.
52. More specifically it is described as *"commencing at a point marked A on the plan at or near Basford Bridge in the parish of Cheddleton....and extending in a northerly direction along a highway leading from Basford to Cheddleton....to a point marked C on the said plan and near to a gate leading to Basford Villa....from thence through and across lands part of the said Basford Villa Estate ...belonging to Mr Edwin Heaton to a highway leading from Leek to Basford...and marked on the said plan with the letter D and near to a fence dividing the closes of land called the Highfield and Barley Field part of the said Basford Villa Estate"*.
53. The Certificate of Completion then goes on to clarify the position further by stating that the route in question *"was at the last General Quarter Sessions of the Peace for the said county ordered to be set out and appropriated as a public highway or footway and that the said highway or footway so set out and appropriated as aforesaid is now completed and put into good condition and repair and likely to continue"*.
54. The Completion Certificate is then signed by Thomas Heathcote and John Sneyd the same two of the Justices of the Peace for the County of Stafford and as such ratifies the Order of the previous year.
55. To have both the Order and the Completion Certificate – and for both to be clear and with a corresponding plan is about as good as it gets when it comes to the probity and weight of a legal Order.
56. Turning to the two landowner response forms received during the initial consultation process, neither adds anything *material* to the matter in hand – both appear to be from *adjacent* landowners, and both are insufficient to turn the recommendation.
57. Turning to the statutory consultees, Staffordshire Moorlands District Council responded to say that they *"supported the proposal provided that the route was cleared of vegetation and obstructions and is clearly waymarked prior to the footpath being made available for use by the public."*
58. Although evidentially *unweighted* the comments clearly show that the application was supported by the District Council.
59. Cheddleton Parish Council responded to say that they had *"no comment"* to make on the application and so again there was nothing to note of any evidential weight.
60. For clarity the Applicant also sent a letter of contextual information with the application highlighting that the southern part of the footpath (shown on the Order plan) is already an existing Public Footpath being PF33, Cheddleton, and that it was merely the northern part of the route – highlighted red on the plan - that was being claimed.
61. The Applicant goes on to clarify that the 1852 Order appears to stop up the northern part of the existing Public Footpath 33, Cheddleton but concedes that

public rights on foot must have been re-established for this section of path as it had become a definitive public footpath by the time the first Definitive Map was produced.

- 62. The Applicant highlights that a hundred years had passed from the date of the Order to the date of the first Definitive Map – *ample time* for rights to be re-established through usage.
- 63. These details are contextual and explain the vicinities of the network – they can be found at Appendix A as part of the application.

Burden and Standard of Proof

- 64. 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 position 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 – or non-classification - of the route on the Definitive Map and Statement prevails.
- 65. The Application is made under Section 53 (2) of the 1981 Act, relying on the occurrence of the event specified in 53 (c) (i) of the Act. Therefore, the Panel need to be satisfied that on the balance of probabilities, the evidence that has been discovered shows that a highway which is not shown on the map and statement ought to be there shown as a public right of way. Or, that a reasonable person with all the evidence before them could reasonably allege that the route subsists.
- 66. If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

Summary

- 67. In this case we have exceptionally good evidence that the alleged route subsists.
- 68. The 1852 Highways Diversion Order is a legal order and as such carries the greatest possible probity in an application of this type.
- 69. Furthermore the 1852 order is exceptional for its clarity and completeness.
- 70. The plan clearly depicts the route in question and there can be no doubt that the route on the plan and the alleged route are the same.
- 71. This is further ratified by the fact that we have the corresponding Certificate of Completion dated 1853 – which greatly enhances the probity of the Order.
- 72. Although the application is essentially based on one piece of evidence that evidence is of sufficient weight to prove the claim on the balance of probabilities.

Conclusion

- 73. In light of the evidence, as set out above, it is your Officers' opinion that the evidence does show that a public right of way subsists and with the status of a Public Footpath.
- 74. It is the opinion of your Officers therefore that the County Council **should** make a Modification Order to add the route which is the subject of this application as a public footpath to the Definitive Map and Statement of Public Rights of Way.

Recommended Option

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

Other Options Available

76. To decide to reject the application to add the route to the Definitive Map and Statement of Public Rights of Way.

Legal Implications

77. The legal implications are contained within the report.

Resource and Financial Implications

78. The costs of determining applications are met from existing provisions.
79. 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

80. 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, Food and Rural Affairs under Section 14 of the Wildlife and Countryside Act 1981. The Secretary of State would appoint an Inspector to consider the matter afresh, including any representations or previously unconsidered evidence.
81. 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.
82. 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.
83. 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.
84. There are no additional risk implications.

Equal Opportunity Implications

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

J Tradewell

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