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| **Final Order Decision** |
| Inquiry opened on 6 December 2022 |
| **by Claire Tregembo BA(Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 30 April 2024** |

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| **Order Ref: ROW/3259625** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Staffordshire County Council (Public Footpath from Gallowstree Lane to Keele Road, Newcastle under Lyme Borough) Modification Order 2019.
* Staffordshire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
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| * The Order is dated 19 November 2019.
* The Order proposes to modify the Definitive Map and Statement for the area by adding two footpaths as shown on the Order map and described in the Order Schedule.
* In accordance with paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981, notice has been given of my proposal to confirm the Order with modifications.
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| * One objection and one representation were received in response to the notice.
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| **Summary of Decision: The Order is confirmed subject to the modifications set out below in the Formal Decision.** |
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Procedural Matters

1. The effect of the Order, if confirmed with the modifications I previously proposed, would be to add two public footpaths. I proposed to modify the width of Path 1 from 1.8 metres to 3 metres between Point A and SJ 383465 345413 and to the width of the track shown on historic Ordnance Survey (OS) maps between SK 383465 345413 and Point C. I also proposed to modify a spelling error in the Order title.
2. In my interim decision dated 30 June 2023, I proposed to modify the Order subject to the modifications described in paragraph 1. As the modification proposed would affect land not affected by the Order as submitted, I was required by virtue of paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act to give notice of my proposal to modify the Order and give an opportunity for objections and representations to be made to the proposed modifications.
3. Staffordshire County Council (SCC) used an external consultant to assess the available evidence, produce a report and recommend if an Order should be made. The consultant did not appear at the Inquiry. It is suggested that I should not be relying on the report or evidence of a consultant without ensuring the consultant complied with their duties as an expert.
4. The consultant’s report is an assessment of the user evidence submitted with the application for the Modification Order, OS maps and other historical documents. These documents were produced as part of the document bundle available at the Inquiry, along with additional evidence from the relevant parties. My decision is based on the evidence before me. I am not relying on the consultant’s report or their interpretation of the evidence before them. Any conclusions I make are based on my own assessment of the evidence and not the consultants’ views.
5. The residents of the Hampton Court properties claim they did not receive notice of the Order. SCC has confirmed they were served notice of the making of the Order, along with Newcastle-under-Lyme Borough Council (NULBC) and the applicant. Objection letters were received from the Hampton Court residents and one of them presented the case for the objectors at the Inquiry. A further objection was received in relation to my proposed modification. Therefore, I do not consider any party has been prejudiced if the notices were not received.
6. This decision should be read with my interim decision dated 30 June 2023.

The Main Issues

1. With regards to the modifications proposed in my interim decision dated 30 June 2023, the main issues now requiring consideration are whether the modifications proposed are justified and whether there is any new evidence that has a bearing on the proposed modifications as submitted.

Reasons

1. There are no objections to the proposed modification of the width between Point A and SJ 383465 345413 or the correction of the spelling mistake. The objections and representations concern the width between SJ 383465 345413 and Point B.

*Evidence of use*

1. There is no evidence of use by the public along the historic track prior to the land being owned by NULBC and used as a public park. It is suggested it would be wrong to base the width of the footpath on something that no longer existed once the area became a public park.
2. Most of Thistleberry Park was purchased by NULBC in 1932, but they did not purchase the historic track which Path 1 runs along until 1952. The evidence does not indicate when the park was created. However, the user evidence forms, and witness evidence at the Inquiry show members of the public were using the historic track from 1952 until at least 2007 when work began on the Hampton Court development. Photographs taken around this time show the track enclosed on both sides by hedges and trees.
3. The historic track is shown on various maps and plans between 1842 and 1982. Development plans for Hampton Court also show an enclosed track outside of the site. The site layout plan states the boundary hedge and trees along the western boundary of the track were to be retained. Land Registry Title Deeds for the Hampton Court properties show the track outside of the red line boundary of each plot.
4. Therefore, I consider the documentary and user evidence shows the historic track still existed in 2007 when use of the Order route was called into question and the track is the route used by the public.
5. Evidence given at the Inquiry indicated the full width of the track was available to use, although there was a period when the public had to walk around a vehicle parked on the very northern end of it. Therefore, I consider the public rights need to be recorded over the full width of the historic track.

*Width of the historic track*

1. The consultant’s report recommended the width of Path 1 should be the full width of the historic track. In my interim decision I considered this to be a sensible approach based on the evidence before me. It is suggested this is the wrong approach, and I should be making my decision on the available evidence including my two site visits. It is also suggested that using Ordnance Survey (OS) maps to establish the width would bring significant uncertainty due to varying scales and accuracy. Furthermore, it is suggested that a 3 metre width would give certainty to all parties.
2. My conclusion on the width is based on all the evidence before me which includes historic maps and plans, sales plans, development plans, Land Registry documents, aerial photographs, and user evidence. I have concluded above and in my interim decision that the northern end of Path 1 runs along the historic track shown on maps dating back to 1842. The historic OS maps and other plans consistently show the historic track with the same alignment and position. These maps can therefore be used to identify the historic track boundaries on the ground.
3. A development plan for Hampton Court indicates the track was 6.49 metres wide at one point. Therefore, recording a 3 metre width would require me to ignore evidence which shows the track was wider.
4. It is claimed the gardens of Hampton Court have encroached onto the historic track. The development plans state the hedge along the eastern boundary of Hampton Court (the western boundary of the historic track) was to be retained. However, the Hampton Court properties now have a close-board boundary fence. As outlined in paragraph 13 on my interim decision, the Land Registry documents for the Hampton Court properties show changes in the rear boundaries. Furthermore, a planning application made in 2018 effectively sought ‘to regularise the unauthorised extension of the gardens of 1, 3, and 5 Hampton Court’. Aerial photographs taken between 2007 and 2018 also show changes to the boundaries of these properties.
5. I have not undertaken a detailed site survey sufficient to establish the exact location or width of the historic track and it is not my role to do this. It is also not for me to determine if the Hampton Court properties have encroached on the historic track. It is clear from the evidence the area has changed since 2007 and the original track boundary has been removed. This means it was not possible to easily identify the location of the hedge or measure the width of the historic track during my site visits.

*Grid references*

1. It is questioned if the grid reference for Point C where Paths 1 and 2 meet is correct. It is suggested that Point C was introduced when my modifications were advertised, and the Order map should have been replaced. Reference is also made to the grid references being different to the track boundary.
2. I have not made any modifications to the Order map, and the legislation does not allow me to replace it. Point C has always been in the Order and marked on the Order map. Although the Order map uses a modern OS base map, I consider Path 1 to be correctly shown as running along the centre of the historic track, the boundaries of which appear to be shown on the OS base map. The grid references for points A, B and C are taken from the centre line of Path 1 and I consider this to be the correct approach. Using grid references for the track boundary could lead to a misunderstanding of the footpath location and make it unclear as to which side of the hedge the footpath runs. I have added an additional grid reference to the Order to indicate where the change in width occurs and this is taken from the centre of the historic track. All the grid references in the Order are correct.

*Conclusions*

1. Having assessed the evidence before me, I consider Path 1 runs along the centre of the historic track and the full width has been used by the public on foot, as of right and without interruption or challenge between 1987 and 2007. It is no longer possible to measure the historic track alongside Hampton Court. Therefore, the recorded width should be as shown on historic OS maps. I am satisfied the evidence before me is sufficient to show, on the balance of probabilities, that public footpaths subsist over the Order routes.
2. I understand the concerns from the parties about establishing the location and width of the historic track along which Path 1 runs on site. However, I have not undertaken a detailed survey and it is not a matter for me to determine. If I confirm the Order, SCC will need to ensure the full width of the footpath is available on the line of the historic track. They will need to determine what surveys, works, or other action are necessary to achieve this.

Overall Conclusions

1. Having regard to these and all other matters in the written representations, I conclude that the Order should be confirmed subject to the modifications I previously proposed in my interim decision dated 30 June 2023.

Formal Decision

1. I confirm the Order subject to the following modifications.

In the Order Title

* Replace ‘Gallowtree’ with ‘Gallowstree’

In Part II of the Schedule to the Order

* Under Path 1 delete ‘1.8 metres’ and add ‘3 metres between SJ 383437 345221 and SJ 383465 345413 and the full width of the track as shown on historic Ordnance Survey maps between SJ 383465 345413 and SJ 383482 345613.’

Claire Tregembo

INSPECTOR

