

To: All Members and Officers of the
Countryside and Rights of Way Panel.

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Date: 17 June 2021

Dear Sir/Madam,

Countryside and Rights of Way Panel - Friday 18th June 2021

I have recently forwarded to you a copy of the agenda for the next meeting of the Countryside and Rights of Way Panel.

I am now able to enclose, for consideration at next Friday 18th June 2021 meeting of the Countryside and Rights of Way Panel, the following report that the Chairman has agreed may also be considered as an urgent item.

4. **Wildlife and Countryside Act 1981 - Application to Upgrade Public Bridleway 29 Bradnop and Cawdry to a Restricted Byway (Pages 1 - 40)**

Report of the Director for Corporate Services.

5. **Wildlife and Countryside Act 1981 - Application to Upgrade Public Footpath 30 Bradnop and Cawdry to a Restricted Byway**

Report of the Director for Corporate Services.

Please note that the supplement documents are the same for both items

John Tradewell
Director of Corporate Services

Enc

Responses to Draft Report

Several responses were received to the draft reports, these are outlined below and as they are of relevance to both reports this Addendum has been attached to both.

Responses From:

1) Cllr Gill Heath (Relevant Councillor) – By Email 16/06/21

- **email dated 16/06/21 from Cllr Gill Heath to David Adkins**

“I would like to endorse recommendation 1 and 2 on footpath 30 Bradnop that evidence is NOT Sufficient to show a restricted byway.

Also, I endorse the recommendation On bridleway 29 Bradnop that evidence is NOT sufficient to show that a restricted byway subsists and no orders to upgrade should be made.”

- **email dated 16/06/21 from David Adkins to Cllr Gill Heath (Clarifying First Email)**

“Dear Cllr Heath, Gill, Apologies - the alternative recommendation on PF30 was to upgrade this to a Public Bridleway. Can I just check that this the recommendation you endorse in the first email? Kind regards David”.

- **email dated 17/06/21 from Cllr Gill Heath to David Adkins**

“Yes, that is OK”

2) Susan Barlow (Landowner) – By Telephone: - 24/05/21

Susan Barlow contacted Staffordshire County Council initially by email requesting further clarity of the applications on receipt of the draft report. DA contacted Mrs Barlow by telephone to clarify the same. There were no objections or representations to either.

3) Mrs Knott (Clerk to Bradnop Parish Council) – By Telephone:- 15/06/21

Mrs Knott confirmed that the application had been received and that she was not aware of any objections.

4) Julie Turner – (Rights of Way Officer) - For Applicant - Staffordshire Moorlands Bridleways Group – By Emails: 13/06/21-15/06/21

- **(i) email dated 13/06/21 From Julie Turner to David Adkins**

“Please see attached image from an 1837 Ordnance Survey map which shows the two routes being claimed as restricted byways. These routes clearly follow the lines of Bradnop BW 29 and Footpath 30. Maps of this date marked routes used as carriageways and not minor routes such as bridleways. I consider that this is good evidence for the above two routes to be upgraded to restricted byways as they clearly show the routes described in the Inclosure Award. Can you please ensure that this evidence is provided to the CROW Panel at its meeting on Friday and let me know if you intend to change your recommendation to the Panel that BW 29 remains as a BW and FP 29 is upgraded to BW only”.

- **(ii) email dated 14/06/21 From Julie Turner to David Adkins**

“You should already have the 1837 OS map that I emailed to you last night - this is the earliest OS map I can find to date. Subsequent OS maps all show the route of what is now Bradnop BW 29 and FP 30 in the same location - so it is SMBG's view that these are the correct historical routes referred to in the Inclosure Award. One of our members is looking at whether the National Record Office at Kew has a copy of the Inclosure Award and map and I will let you know if such a document exists asap.”

- **(iii) email dated 14/06/21 From David Adkins to Julie Turner**

“Thank you for sending in the copy of the OS Map for 1837 - and I can confirm I have looked through the details this morning.

The evidential value of OS Maps is somewhat limited (legally speaking) in that they merely show the physical feature of a route rather than its status - as such the evidence still rests heavily on the 1769 Inclosure Award transcript – some 70 years earlier.

I will of course ensure that the Panel have sight of this on the 18th inst. although on its own it does not have enough legal weight for me to change the recommendation.

That said the Panel do not have to accept the recommendation and can still be minded to accept the application when they consider all the evidence before them - it's impossible for us to pre-empt what the Panel decision will be.

Needless to say, I will keep you informed throughout”

- **(iv) email dated 14/06/21 From Julie Turner to David Adkins**

“I accept that the OS map does not show the status of these routes but taken together with the Inclosure Award Transcript - and the fact that all subsequent OS maps show identical routes - this is evidence that the route described in the Inclosure Award is the current routes of Bradnop BW 29 and FP 30. I can forward you other OS maps if you require - these are available online from the National Library of Scotland. The accumulation of evidence in the 1837 OS map and subsequent editions adds weight to the routes being the same as described in the Inclosure Award. The question must be - if the description in the Inclosure Award does not follow the current routes of Bradnop BW 29 and FP 30 - then where would these routes be?

I will walk the routes tomorrow to see what evidence is on the ground and come back to you once I've done this.”

- **(v) email dated 14/06/21 From David Adkins to Julie Turner**

“I think you raise a very valid point in the last email as to where any alternative routes would run – and again this is something I will highlight to the Panel. This additional evidence may have some bearing on their ultimate decision”.

- **(vi) email dated 17/06/21 from Julie Turner to David Adkins**

“I have just spotted an error in both your reports.

In your report for FP30 Paragraphs 58 and 59 state

"However, the acronyms CRF and CRB used in the Parish Survey Cards could not be used on the Definitive Map and as a result the majority of them were recorded as Roads Used as Public Paths or RUPPs.

This was not the case with the route in question and it was eventually recorded as a Public Footpath. This was not uncommon and despite the apparent limitation of status it did not prejudice the existence of any higher rights where these could subsequently be shown to exist.”

Similarly, your report for BW29 Paragraph 50 states

"However, the acronyms CRF and CRB could not be used on the Definitive Map and as a result the majority of them were recorded as Roads Used as Public Paths or RUPPs. This route was never accorded the status of a RUPP"

In fact, both of these public rights of way are former RUPP's. I attach a list prepared by Michael Murphy which lists all former RUPP's which includes these 2 routes.

Also, I have a copy of your Council's Wildlife and Countryside Act 1981 Survey of Rights of Way - Statement accompanying Definitive Map - Routes over which public rights of way exist on 30 September 1989 - District of Staffordshire Moorlands which lists both routes as Footpaths and having the comment "Clarification of status" against both of them which shows that these were originally RUPP's. Can I suggest that you liaise with the Rights of Way Team to check the First Definitive Map - Shona Frost has been my contact when I have wanted to view this document. It appears that what was originally FP 29 was upgraded to BW at some point.

Please note that the colouring shown on Michael Murphy's list is mine and indicates applications made by SMBG at that date.

Can you please confirm that you will amend your reports accordingly once you have checked the situation?"

email attachment -

List of Ruppss prepared by Michael Murphy – reclassification at Special review. EXCEL.xlsx.

33	Bradnop & Cawdry	29	Footpath	Leek Rural District	Clarification of status
34	Bradnop & Cawdry	30	Footpath	Leek Rural District	Clarification of status

• **(vii) email dated 15/06/21 from David Adkins to Julie Turner**

"Many thanks for the below details relating to RUPP's - and yes I can confirm both routes were recorded as RUPPs on the First Definitive Map. I will add in a detailed supplement on RUPP's and in addition highlight this point verbally to the CROW Panel on Friday. Some Parish Survey Cards included the acronym RP with the CRF crossed through indicating the route was now a RUPP – although these Parish Survey Cards had not been changed to show this. I will add this as a separate supplement to the OS Map of 1837 you sent me earlier. Needless to say let me now if you have any other comments and I will be happy to add them to the report and of course highlight them to the Panel. Again, I have to be impartial so I can guarantee that all the evidence you give me will be put very fully before the Panel."

• **(viii) email dated 15/06/21 From Julie Turner to David Adkins**

"I attach photographs of this route that I have taken this afternoon. The photographs commence at the eastern end of the route adjoining Apesford Road and finish close

to where FP 30 joins BW 29. These images show that the width of the whole length of the route is approximately 30 feet. I encountered 2 tractors using this route and it is certainly wide enough for this type of vehicle and would easily take a horse and carriage. The mainly grassed section of the route has a stone base and is constructed in a manner used for old roads.

All the gates are field gates with bridle latches - there are no bridleway width gates.

From the evidence on the ground this supports the inclosure award evidence that this was a "former publick Horse, Carriage AND Drift Road" (my capitals) i.e. the route was used for all three purposes. Indeed your report states "Inclosure Award evidence is significant evidence and although in this case the accompanying Plan has not survived there is sufficient detail to contend that the route of the present PF30 is contemporary with the "public horse carriage and drift road" heretofore mentioned and as a consequence had higher rights prior to its designation as a footpath so I do not understand why you are seeking that this route be upgraded to bridleway only.

Your report then goes on to state "There are no measurements, widths or bounds to indicate it was anything more than a footpath or a bridleway." The evidence on the ground is that the route is approximately 30 feet wide along its whole width - much wider than that required for a footpath or bridleway. You will be aware from other Inclosure Awards that public carriage roads were often set out at 30 feet wide. There is no reason for the old walls on each side of the route to be this wide for a bridleway. The walls have been in place for centuries and not recently widened. Staffordshire Moorlands Bridleways Group therefore considers that on the balance of probabilities - based on the wording of the Inclosure Award and the evidence on the ground that there is sufficient evidence that this route was a former public carriage road (plus public horse and drift road) that a Restricted Byway does subsist along the route of Bradnop FP 30.

The Parish Record card for this route was marked CRF. Your report correctly states that "The Commons, Open Spaces and Footpaths Preservation Society produced the informative pamphlet entitled "Survey of Rights of Way" which very effectively explained these acronyms. The definition of CRF was stated as "a public carriage or cart road or green unmetalled lane mainly used as a footpath or bridleway". This was further clarified as being "highways which the public are entitled to use with vehicles, but which, in practice, are mainly used by them as footpaths or bridleways." As a public carriage or cart road is included within this explanation then this adds weight to the route being of such a status, and therefore now being a restricted byway.

I would be grateful if you would put this additional evidence and my comments to the CROW Panel on Friday."









“Sorry - I did not attach some of the photographs of this route. These final three are taken at the north eastern end of this FP - where it adjoins Bradnop BW 29. At the junction of FP 30 and BW 29 there is a cattle grid with a wooden bridle gate.

The other two photos are taken close to Egg Well.

The whole route is approximately 30 feet wide, part tarmacked and part a wide stone track.”



- **(ix) email dated 16/06/21 from Julie Turner to David Adkins**

"I attach a photograph showing the junction of BW 29 and FP 30 taken this afternoon. BW 29 is in the foreground. Both the unclassified road Ashenhurst Lane

and BW 29 are tarmaced and in good repair and there is nothing on the ground to indicate a change of status. The route is approximately 30 feet wide. I drove along BW 29 and part of FP 30 as far as Egg Well and there were 3 other cars using this route at the same time - presumably to get to the properties adjoining the route.

The Inclosure Award description for this BW 29 (and other routes) is

A "Publick Horse Carriage and Drift Road Number 182 called Ashenhurst Road leading out of the before mentioned Turnpike Road between an ancient inclosure belonging to the said Lawrence Stanley called Jailors Meadow on the South East and the allotment Number 181 hereinafter allotted to the said Thomas Mills on the North West from whence the said Road leads into and along the ancient Lane called Pinfold Lane to the allotment Number 180 hereinafter allotted to the said James Finney and by the East side of the allotment to the South corner thereof where the said Lane branches out into two Roads, one branch whereof lying between the last mentioned allotment Number 180 and an ancient inclosure belonging to the said Elizabeth Higginbotham called the Fair Hayes from whence the said branch leads to a place in the Parish of Leek aforesaid called Middle Cliff and the other branch said allotment number 180 between ancient inclosures to Ashenhurst aforesaid."

Selecting the relevant wording for Ashenhurst Road and the route of BW 29 from this reads

A "Publick Horse Carriage and Drift Roadcalled Ashenhurst Road leading out of the before mentioned Turnpike Road from whence the said Road leads into and along the ancient Lane called Pinfold Lanewhere the said Lane branches out into two Roads the other branchbetween ancient inclosures to Ashenhurst aforesaid."

The route goes from Ashenhurst Road and then to Ashenhurst. The copy of the 1837 2" to 1 mile scale OS Map that I emailed to you a few days ago is the oldest OS map that I can find. It is a large scale map and clearly shows the route of Ashenhurst Road and BW 29 in the same location as they are today. Subsequent OS maps available online at the National Library of Scotland all show no change to the route of BW 29 from 1837 to the present day. Although there is a gap of 68 years from the Inclosure Award dated 1769 to the 1837 OS map it is unlikely that this route would alter. The County maps of an earlier date that have been submitted as part of Staffordshire Moorlands Bridleways Group evidence is the best evidence available at those dates. There is no evidence on the ground to suggest that this route has been altered since the Inclosure Award, and I would ask the question - where would an alternative route go? The Ashenhurst Road to Ashenhurst route is a direct route and there is nothing in the evidence provided that indicates that the line of the route has been changed over the years.

I attach a copy of Yates map of 1798 (enlarged) - produced only 29 years after the Inclosure Award. This shows the route of BW 29 as being in the same location as it is today.

Your reports states "The use of the term's 'carriage' and 'drift road' within the Transcript could suggest that the route had a higher status than that of a footpath or

a bridleway. Clearly if a horse and carriage were using the route then the status would more likely than not, be higher than a bridleway, and this is further strengthened by the use of the term “road” within the Transcript.”

The width of approximately 30 feet along the full length of BW 29 supports the inclosure award evidence that this was a “former public Horse, Carriage AND Drift Road” (my capitals) i.e. the route was used for all three purposes, and that therefore BW 29 should be upgraded to a Restricted Byway. I

Your report states “The route is referred to as a “road” in its own right as well as leading out of a “turnpike road”. Clearly this would suggest that route 182 probably had higher rights than that of a bridleway although not conclusively so. The difficulty arises in identifying where exactly this route ran and if it is the same route as is the subject of the claim”. Staffordshire Moorlands Bridleways Group consider that a “road” leading out of a “turnpike road” would have public carriage rights.

Your report states “Taking the Ashenhurst branch to be the claimed route it is curious as to why, if it did have higher rights, it is not continued further on the Plan. Nothing below this point is shown. Of course, this may be due merely to the quality of the Plan in this particular section, or it could suggest that from this point on – that is the point of the “branch” - the route was of a lesser status, namely that of a bridleway or footpath.” Ashenhurst is the site of the former Ashenhurst Hall, which was a private landed estate owning a number of farms and other properties in the locality. It would have been a destination in its own right and therefore BW 29 and FP 30 would have been public carriage roads to it

The Parish Record card for this route was marked CRF. Your report correctly states that “The Commons, Open Spaces and Footpaths Preservation Society produced the informative pamphlet entitled “Survey of Rights of Way” which very effectively explained these acronyms. The definition of CRF was stated as “a public carriage or cart road or green unmetalled lane mainly used as a footpath or bridleway”. This was further clarified as being “highways which the public are entitled to use with vehicles, but which, in practice, are mainly used by them as footpaths or bridleways.” As a public carriage or cart road is included within this explanation then this adds weight to the route being of such a status, and therefore now being a restricted byway.

I would refer you to a recent Appeal to the Secretary of State - Appeal Ref: FPS/P2745/14A/7 dated 23 March 2021. This successful appeal was for the addition of a bridleway to the Definitive Map. Staffordshire Moorlands Bridleways Group consider that the Inspector’s comments are relevant in our application to upgrade BW 29 to a restricted byway. These are:

“ In my judgement, for the purposes of the Appeal there is sufficient available evidence of the historical existence of a long-standing dedicated physical route to support the proposition that a public right of way on the ground along the line of the Application Route can reasonable be alleged to have arisen for the use of the public.

My reasons are as follows:

a) With three exceptions, the balance of the historical mapping evidence on successive maps since at least 1765 until the most recent edition of the OS maps, together with other documentary evidence, is strongly suggestive of the fact that there has been a through route dedicated for the use of the public along the Application Route;

b) Further, although it is not conclusive evidence in itself, I consider the fact that the Application Route is a lane identified within the local community by name is also a matter of some significance.

c) The fact that the County Council acknowledges that the mapping evidence has consistently depicted the existence of the Application Route, and that there is no dispute that it exists as a way on the ground, is also of some significance. I would be grateful if you would put this additional evidence and my comments to the CROW Panel on Friday.

In conclusion, Staffordshire Moorlands Bridleways Group consider that the evidence submitted is sufficient to prove on the balance of possibility that BW 29 should be upgraded to a restricted byway as:

1. The Inclosure Award refers to the route being a “publick horse, carriage and drift road”. It is incorrect to ignore the word “carriage” and state that the route is a “publick horse road” i.e. a bridleway only.

2. The route is clearly described in the Inclosure Award and is a direct route from the Turnpike Road (now the A523), along Ashenhurst Road to Ashenhurst. Old County maps show the route, the oldest OS map available shows the route in exactly the same position as the route of BW 29, and there is no change to the route in all other historical OS maps and the current edition

3. The route is approximately 30 feet wide. This is the width of many carriage roads set out in other Inclosure Awards. The route would not be this wide if were to be used by ridden horses only rather than horse drawn carriages. The evidence on the ground is that this route has remained unaltered for centuries.

4. Taking all the historical evidence together with evidence on the ground, this builds a sound case for the route to be upgraded to a restricted byway on the balance of probability.

Can you please ensure that Staffordshire Moorlands Bridleways Group case together with this additional evidence be put toward the CROW Panel so that they are fully aware of the facts in coming to a decision.



- **(x) email dated 16/06/21 From David Adkins to Julie Turner**

“Many thanks for sending in the details...I have just had a very quick look through these and will look at them in more depth later on today. I will of course add these as further supplements to the report and again verbally present these - in full - to the Panel on Friday. The details you have provided in the last emails are among the most detailed and replete I've seen in respect of any draft report and I will take the Panel through each of them as requested. As such I will ensure the case built by yourself and the Staffordshire Moorlands Bridleways Group receives the full consideration of the Panel. It is also clear that a significant amount of work has gone into the response/s and this is noted and appreciated”.

- **(xi) email dated 17/06/21 From Julie Turner to David Adkins**

One final piece of information from me - this is an Information Sheet on RUPP's produced by the British Horse Society which sets out their interpretation of the legal position.

One of our researchers is working on some additional information at this moment so I will send this through to you as soon as I receive it.

Table of Additional Attachments - to the addendum

Attachment A	OS Map dated 1837 – submitted by Julie Turner
Attachment B	OS Map dated 1837 notes – submitted by Julie Turner
Attachment C	Yates Map 1798 – submitted by Julie Turner
Attachment D	RUPPs BHS Sheet – submitted by Julie Turner
Attachment E	RUPPs Explanation – submitted by David Adkins



Language English **Date** 1837**Medium** Pen and ink on paper**Dimensions** 330 × 320 mm (12.99 × 12.59 in)**Collection** [British Library](#)   **Accession number** Maps OSD 347**Credit line** British Library**Notes** Scale 2 inches : 1 mile (1:31680).

Please note that the British Library provides these digital files "as-is"; materials will not be rephotographed under this programme. If resupply of files is required, the requestor will be required to purchase them at the standard rate.

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RUPPs – the historical context

The classification of “Road Used as a Public Path” or RUPP was a creation of the National Parks and Access to the Countryside Act 1949. This was the legislation that first introduced a requirement to produce a legal record of Public Rights of Way, the Definitive Map and Statement (DMS). In particular, section 27 of the NPACA49 defined the categories of right of way to be shown on a DMS as follows:

“footpath” means a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road;

“bridleway” means a highway over which the public have the following but no other rights of way, that is say a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway;

“public path” means a highway being either a footpath or a bridleway;

“road used as a public path” means a highway other than a public path, used by the public mainly for the purposes for which footpaths and bridleways are so used.

Although on the face of it, this definition implies that RUPPs carry vehicular rights, section 32(4)(b) provided that depiction as a RUPP was conclusive evidence only of a right of way on foot and on horseback or leading a horse, without prejudice as to whether any higher rights also existed.

The confusion caused by this definition led to provisions within the Countryside Act 1968 (Part III, Schedule 3) for a Special Review for the reclassification of RUPPs as either Byways Open to All Traffic (BOATs), bridleways or footpaths. Paragraph 10 of Schedule 3 set out criteria for the reclassification including the existence or otherwise of vehicular rights, the suitability of the route for vehicular use and whether the extinguishment of vehicular rights would cause undue hardship.

On the basis of this a number of authorities, notably Staffordshire, undertook a major reclassification of their RUPPs and downgraded many to either bridleway or footpath. A challenge to this arose and led to the judgement of the Court of Appeal in *R v Secretary of State for the Environment Ex parte Hood* [1975] QB 891 (C.A.). The upshot of the Hood case was that nothing in the 1968 Act overruled the effect of s32(4)(b) NPACA49 – that depiction as a RUPP was conclusive evidence of the existence of at least bridleway rights.

However, due to a limited period for challenging the result of a special review, those RUPPs already reclassified as footpath have generally remained recorded as such. The impact of the judgement was acknowledged by Government. Circular 123/77 set out guidance on how highway authorities should approach future RUPP reclassification (under the Countryside Act 1968) and advised in paragraph 6:

"There will, however, be cases where some former RUPPs will be shown as footpaths on definitive maps, resulting from the Special Review. This could be the case where the Special Review was completed prior to the Hood decision ... In such a case it appears to be open to the county council at their next general review to have regard to the Court's decision and consider the use of their powers under Part 1 of Schedule 3 to the 1968 Act to restore the footpath to its former status of RUPP - though they appear to have no power to reclassify it

a second time. In the meantime the Secretaries of State consider it desirable that county councils should, on the definitive map resulting from the Special Review, put some suitable note against such footpaths in order that the general public may be aware of the position".

In paragraph 7 it advised:

"The Secretaries of State recognise that certain anomalies are inherent in the position as described above. If experience shows that a significant number of these cannot be dealt with satisfactorily under local authorities' other powers in consultation with the various interests concerned the Secretaries of State will be willing in due course to consider the possibility of amending legislation".

No specific legislation was introduced to address this issue and instead the general "continuous review" provisions of the Wildlife & Countryside Act 1981 came into force. A question mark remained as to the effect of completed special review reclassifications on higher rights but subsequent case law – Riley (1990) and Kind (2005) – has established that the effect of the reclassification under special review was not to extinguish any higher rights that might have existed over the routes.

The impact of the closure of the DMS in 2026, however, will be to extinguish such higher rights and thus it is imperative that the true status of these routes is established before then.

It is clear from the above that it is open to a person to make an application for a Definitive Map Modification Order (DMMO) (a Schedule 14 application) to upgrade a RUPP previously reclassified as a footpath to either a bridleway, restricted byway or – subject to the provisions of the Natural Environment & Rural Communities Act 2006 – as a byway open to all traffic.

For any such application to be successful, it must be supported by evidence, at least one item of which must be new, in the sense that it has not been previously considered by the Council during the reclassification process (or any subsequent formal examination of the status of the route).

Ultimately, the test to be applied is "on the balance of probabilities". It is the position of the BHS that given the conclusive effect of s32(4)(b) NPACA49 - that RUPPs were at least of bridleway status - that the evidential threshold is relatively low; in the absence of evidence that only footpath rights existed over a route, then only limited (new) evidence of higher status will be sufficient to demonstrate "on the balance of probabilities" their existence and thus enable the making and confirmation of a DMMO.

The RUPP Reclassification Process in Staffordshire

According to data supplied by Staffordshire County Council, there were originally 596 RUPPS recorded on the first Staffordshire Definitive Map. 305 of these - 51% - were reclassified as footpaths but the position varies significantly depending on which part of the county is being considered. The Special Review was carried out on an area-by-area basis and started in what is now the Staffordshire Moorlands. The review was completed here before the Hood judgement was available whereas in other areas much more limited progress had been made. A summary by area is given below:

Area	Total No's of RUPPs	Total Footpath	% of Total
Staffordshire Moorlands	180	154	86%
Newcastle-under-Lyme	51	33	65%
Stafford	88	22	25%
Cannock Chase	39	13	33%
East Staffs	92	45	49%
Lichfield	52	7	13%
South Staffs	93	31	33%
Tamworth	1	0	0%
Total	596	305	51%

On the face of it, and in the context set out earlier in the paper, these figures would appear to suggest that a large number of routes were incorrectly reclassified.

Will Steel

2026 Project Manager

British Horse Society

3 May 2020

References

Legislation & Guidance:

- [National Parks and Access to the Countryside Act 1949](#)
- [Countryside Act 1968](#)
- Circular 123/1977 – see BBR05 at <https://www.ramblers.org.uk/advice/rights-of-way-law-in-england-and-wales/the-blue-book/the-blue-book-extra.aspx>
- [Wildlife & Countryside Act 1981](#)

Case Law:

- R. v. S. of S. for Environment, ex parte Hood [1975] QB 891 (C.A.)
- R. v. S. of S. for Environment, ex parte Riley [1989] JPEL 921 as reported in Byways & Bridleways <https://www.dropbox.com/s/34mkjv35c1dezbk/B%26B1989.pdf?dl=0>
- R v SoS Environment Food & Rural Affairs oao Kind [2005] EWHC 1324 (Admin) <http://www.bailii.org/ew/cases/EWHC/Admin/2005/1324.html>

Articles:

- Upgrading of Reclassified RUPPs - George Laurence - s8.2 Rights of Way Law Review
- Wrongly Reclassified RUPPs – Alan Kind – s8.2 Rights of Way Law Review
- The History of RUPPs – Ann Holt – s1.1 Rights of Way Law Review

RUPP's (Background)

The Ministry of Town and Country Planning ("the Ministry") issued Circular 81 in March 1950 and referred to a pamphlet issued by the Commons, Open Spaces and Preservation Society entitled "Survey of Rights of Way". The pamphlet and the methods for conducting a survey that were described within it were approved by the Ministry as being suitable for that purpose. The Ministry subsequently circulated copies of that pamphlet to County Councils for distribution to parish councils carrying out surveys under the 1949 Act.

The idiom "CRF was one of the symbols suggested for use. In Part 3(m) it stated that "highways which the public were entitled to use with vehicles but which, in practice are mainly used by them as footpaths or bridleways, should be marked on the map CRF or CRB".

Whilst these terms were useful as descriptions neither had any legal standing nor were suitable for inclusion on the Definitive Map and Statement. The 1949 National Parks and Access to the Countryside Act ("the 1949 Act") laid down only three types of route that could be shown on any subsequent map and statement, i.e. Footpath, Bridleway or Road Used as a Public Path ("RUPP"). The expression RUPP was intended to include a public carriage or cart road or green, unmetalled lane mainly used as a footpath or bridleway.

This description would include those routes which were annotated on the surveys as CRF and as a result each route was recorded on the Map and Statement as a RUPP.

There was no challenge to the inclusion of the routes as RUPPs at any stage in the Definitive Map process following the parish survey.

The 1949 Act provided for five yearly reviews of the definitive map to take account of any changes to the rights of way network. Before the first general review could be undertaken in Staffordshire the Countryside Act 1968 ("the 1968 Act") required a "Special Review" to reclassify all RUPPs to either footpaths, bridleways or, a new category, byways open to all traffic.

The County Council prepared its First (General) and Special Review of the Definitive Map in 1969. The review had a relevant date of 30 September 1969 and was duly advertised in the London Gazette and local newspapers and placed on public deposit between August and December 1971. There were proposals in the review for the reclassification of RUPPs 28 and 29 Ipstones Parish to public footpath status.

There were no objections to the reclassification and the First Revised Definitive Map was completed in February 1988 with a relevant date of 30 September 1969. No application to question the validity of the revised Map was made to the High Court within the period allowed.

The County Council published a Second Revised Definitive Map under the provisions of the Wildlife and Countryside Act 1981 and this Map came into force on 27 February 1990 with a relevant date of 30 September 1989. The Second Revised Definitive Map showed no change in the status of the ways from the previous Definitive Map. No application to question the validity of the Second Revised Definitive Map was made to the High Court.

However, when considering the inclusion of routes onto the first definitive map and statement produced after the 1950 survey it is important to bear in mind the rationale behind the legislation.

In R v Secretary of State for the Environment Ex p Hood [1975] ("the Hood case")

QB Lord Denning summarised this as: "The object of the statute is this: it is to have all our ancient highways mapped out, put on record and made conclusive, so that people can know what their rights are. Our old highways came into existence before 1835. They were created in the days when people went on foot or on horseback or in carts. They went to the fields to work, or to the village, or to the church. They grew up time out of mind. The law of England was: Once a highway, always a highway. But nowadays, with the bicycle, the motor car and the bus, many of them have fallen into disuse. They have become overgrown and no longer passable. But yet it is important that they should be preserved and known, so that those who love the countryside can enjoy it, and take their walks and rides there. That was the object of the National Parks and Access to the Countryside Act 1949 and the Countryside Act 1968".

The intent was to record not only what rights could currently be exercised but what rights were considered to exist. The 1949 Act required that inclusion be based upon whether in the opinion of the council a "right of way subsisted or is reasonably alleged to subsist..." It was then to be tested by the process, as Lord Denning summarised; "First, a draft map; next a provisional map; and finally a definitive map. There were opportunities both for landowners and the public to make their representations as and when each map passed through each stage".

The description on the survey cards ought to support the belief that there might be higher rights in existence but does not provide any evidence of this. The entry as RUPP on the First Definitive Map and Statement would appear to be based mainly on a description of the way rather than a reflection of any rights considered to exist.

The fact the routes were classed as RUPP's is not conclusive evidence that they are bridleways. Throughout the Definitive Map's history since being created under the 1949 Act the legislation has contained provisions to amend or correct the map and statement if new evidence was discovered. Prior to the 1981 Act this could only be

done where there was a review of the map and statement taking place. For example under the 1949 Act this would be every five years and at that stage amendments could be made and s33(2)(e) allowed for the status of a highway to be changed. Since the 1981 Act came into force the map and statement are subject to continuous review.

The reliance on the routes being conclusively bridleways, as suggested by the applicant, arises from the Hood case. As explained above this determined where a reclassification exercise was being undertaken as provided for under the 1968 Act then a RUPP could only be reclassified as a footpath if there was evidence which showed it was not a bridleway, if no evidence existed then it should be reclassified as a bridleway.

However, Staffordshire County Council had undertaken their reclassification exercise in 1969 which was before the Hood case had been decided. There was no provision under the 1968 Act for that review to be abandoned and so the County Council completed the process.

The County Council was not the only Authority who had commenced this process and in an attempt to guide the surveying authorities the Department of the Environment and the Welsh Office issued Circular 123/1977. This stated that it was recognised that anomalies would arise and that legislation would be considered if they could not be satisfactorily dealt with under existing procedures. This proved to be the case and the amending legislation was the 1981 Act.

Circular 123/1977 gave guidance on the procedures to be adopted when reclassifying roads used as public paths. The Circular provided that "In the absence of new evidence, or evidence not previously considered by the surveying authority... a RUPP could not be reclassified at a special review as a footpath because of the conclusive presumptions contained in section 32(4)(b) of the 1949 Act that there

are bridleway rights over a RUPP.

The County Council continued with the first (General) and Special Review and a number of objections were received to the new Definitive Map. A series of hearings were held and where the objection related to the reclassification of a RUPP the guidelines laid down as a result of the Hood decision were followed. It was not open to the County Council to refer routes which were not objected to, and which were RUPPs, which had been reclassified to footpaths, to an Inquiry. Nor was it open to an Inspector to consider such where the objections were withdrawn prior to the hearing. Accordingly, the County Council concluded the Review after all objections had been determined.

In the interim, before the process of determining the objections was completed, the 1981 Act came into force and superseded the Countryside 1968 Act. As a consequence, when the First (General) and Special Review was completed the County Council was unable to commence another review under the auspices of the 1968 Act to address the issue of the reclassified RUPPs. This power had been removed by the 1981 Act which laid down a new process to be followed, the procedures provided by Section 53.

The applicant, by making reference to the fact that the way was once classified as a RUPP, is in effect contending that there is a presumption that bridleway rights still appertain as a consequence. However, the fact that the route was reclassified means that the presumption is no longer in effect as this only arises under specific circumstances set out by statute as referred to in the Hood case. That presumption arose under s34(4)(b) of the Countryside act 1968, a section that was repealed in full by virtue of the coming into force of the Wildlife and Countryside Act 1981. A saving for RUPP's that had not been reclassified was enshrined in s54 of the latter Act.

The contention that a reclassified RUPP would support evidence of actual bridle rights without other evidence is insufficient. The correct approach to the issue of RUPPs reclassified as footpaths is outlined in the case of Trevelyan where Latham J stated that the relevant question is set out in Section 53(3)(c): is there evidence, which when considered with all other evidence, shows the correct classification of a way. This entails an evaluation of all the available evidence in order to determine the correct status of a way. As the judge stated “it seems to me that there is no room for any assumptions or presumptions. The Act specifically refers to evidence ... the fact of the inclusion of the right of way on the Definitive Map is obviously some evidence of its existence. But the weight to be given to that evidence will depend on an assessment of the extent to which there is material to show its inclusion was the result of inquiry, consultation, or the mere ipse dixit of the person drawing up the relevant part of the map ...”

Accordingly one cannot start from the premise that there is a presumption that bridle rights automatically apply to reclassified ways. The fact that originally they were classified as RUPPs may indeed be some evidence of bridle rights, but the weight to be attached to that evidence will depend upon each case’s circumstances and not as a general rule. The character of the way does not lead to a presumption that a particular type of public right is attached to it.

As the council cannot undertake another RUPP reclassification the correct approach to determining whether a route has bridleway rights is to consider the matter under the provisions of s53 of the 1981 Act and consider all of the available evidence.

Email Submissions From Julie Turner – continued – dated 17/06/21

Hopefully this is my last email to you before tomorrow's CROW Panel meeting. This has been compiled by one of our researchers and I have just copied it over to you.

"As you know, because your draft reports for Bradnop 29 and Bradnop 30 were never received by Brian Smith, SMBG has only had a matter of days to investigate and comment on the conclusions reached in the draft reports for application LW602G and application LW604G. So, apologies if this communication appears belated. However, further information has come to light additionally to that we recently provided you with and asked to be put before the Countryside and Rights of Way Panel on Friday:

History Of The Recording of Bradnop 29 and 30

As you know and as we have already pointed out, Bradnop 29 and Bradnop 30 were claimed as Roads Used As Public Paths when the Parish Survey was conducted to create the first definitive map. A copy of the survey card details are attached for reference. Based on the current definitive statement, see second attachment, it states that the commencement point of Bradnop 30 is at Bradnop Footpath 29. But Bradnop 29 is a definitive bridleway and not a footpath.

This is all suggestive of the definitive map having been modified at least twice previously, initially from a RUPP to a footpath and then from a footpath to a bridleway. However, your report does not provide any information regarding if, how, why and when this may have happened. It also does not explain what evidence was found to support any previous modifications that appear to have been made. Can you please provide this information to us and include it within the material to be presented to the Countryside and Rights of Way Panel on Friday?

Ownership of Bradnop BW 29

Sections 10 to 13 of the draft report refer to two landowners of Bradnop BW 29. In fact there is only one current landowner recorded by Land Registry as the proprietor of Bradnop BW 29; shown as B to C on Appendix B of the draft report. Attached is a copy Land Registration boundary plan confirming this assertion. So, there seems to be some inconsistency as Land Registry shows the whole of Bradnop 29 to be registered in the ownership of single proprietor, shown within the boundary marked around land plot reference number 23302624. It is possible that some land may have changed ownership since the statements in Appendices G(i) and G(ii) were made. However, we feel it is most unlikely that Mrs Susan Barlow is or ever has been the freehold owner of Bradnop 29 as asserted in section 7 of Appendix G(i). By contrast the second and more likely asserted landowner confirms, in his evidence statement, that he believes and regard Bradnop 29 to be a public carriageway. Has Staffordshire County Council conducted any verification

*with Land Registry to confirm who actually owns the subsoil of Bradnop 29?
If, as we suspect, Mrs Barlow is not the owner of Bradnop 29 then the
ownership assertion made in section 7 of her statement is false and her
statements about the route should be disregarded.*

*Please can you ensure that this communication and attachments are presented
to the Countryside and Rights of Way Panel Members, together with the other
communications and materials we have sent you, in good time for Panel
Members to consider as part of the decision to be made for application
LW602G?"*

Our researcher has also attached a Google map image of the start of BW 29 at the end where it meets Ashenhurst Lane. The sign close to the BW fingerpost says ["Strictly No Parking Beyond This Point"](#). Unfortunately I cannot read the read of the sign from this image and must have missed it when I was driving along the route. BW 29 goes past Egg Well where there is a sign telling the history of this well so I suspect that people have been driving at least to this point on the BW to view this.



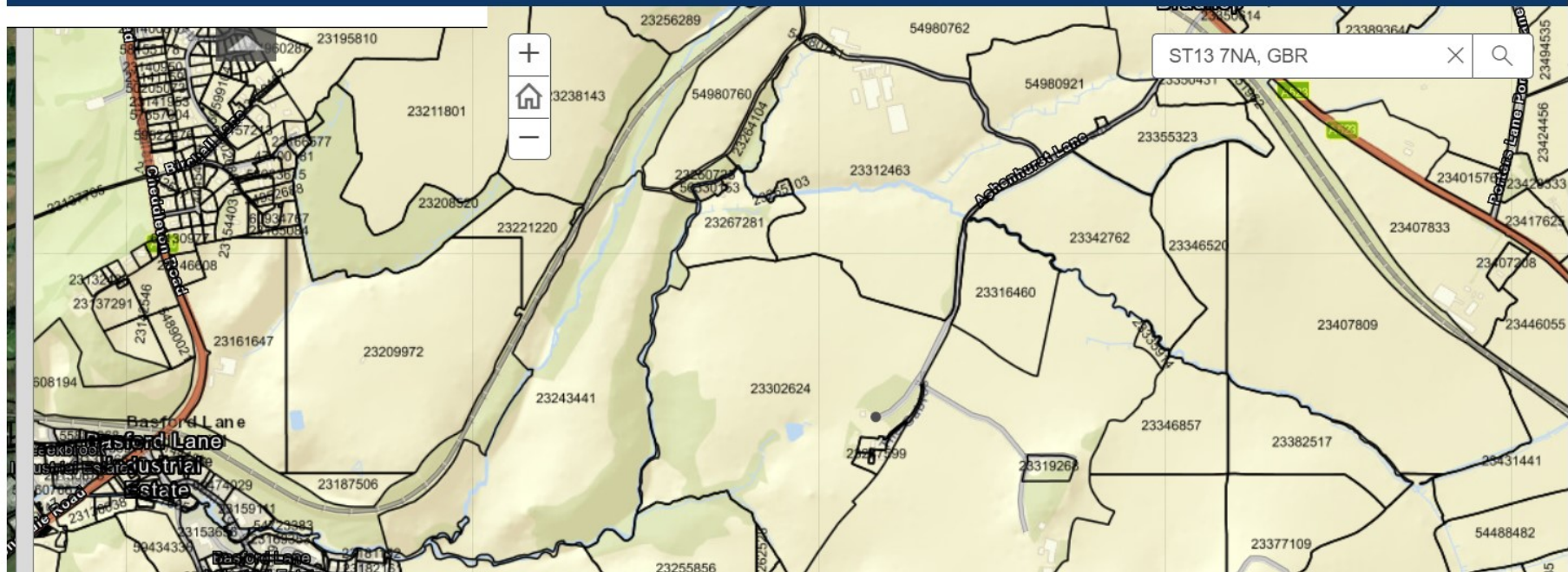
The **Map Search** facility provides customers with the ability to view boundaries overlaid on Street maps and Aerial Photography, order copies of Title Registers and Title Plans for properties and land without a postal address and where the Title Number is not known. Use the map below to zoom to street level to view the freehold boundaries with inspire ID numbers, make a note of the number and you can then use this number in the order form below.

Tip: drag the slider over and back to change between aerial photography and streetview.

Land Registry UK Street and Aerial Photography

Rectangle Land Registry UK

Land Registry UK, freehold boundaries, Inspire polygons



29. Road used as public path, south east of Middle Cliff, to end of Footpath 13 on drive about 100 yards north east of Ashenhurst Hall (description of route).

Map reference: 8SW

30. Road used as public path, from junction of Footpath 8 and road used as public path 29, north east of Ashenhurst Hall, to county road, south west of Hillside. Map references: 8SW & 8SE

