

<b>Local Members' Interest</b>	
Alan White	Lichfield Rural East

**Countryside and Rights of Way Panel – 3 December 2019**

**Wildlife and Countryside Act 1981**

**Application for an Alleged Bridleway from Syerscote Lane to Public Bridleway 33,  
Clifton Campville**

**Report of the Director of Law, Democracy and Transformation**

**Recommendation**

1. That the evidence submitted by the applicant and that discovered by the County Council is sufficient to conclude that a Public Bridleway which is not shown on the Definitive Map and Statement is reasonably alleged to subsist along the route shown on the plan attached at Appendix B to this report and should be added to the Definitive Map and Statement of Public Rights of Way as such.
2. That an Order be made to add the alleged right of way shown marked A-B on the plan attached at Appendix B to this report, to the Definitive Map and Statement of Public Rights of Way for the District of Lichfield as a Public Bridleway.

**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 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 bridleway from Syerscote Lane to Public Bridleway 33 Clifton Campville under the provisions of Section 53(3) of the Wildlife and Countryside Act 1981. The line of the alleged Public Bridleway is shown 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. Mr Reay has submitted in support of his claim a copy of the 1910 Finance Act Field Book entry for the land crossed by the alleged bridleway, a copy of the 1902 Ordnance Survey Map and a tracing of the 1838 Clifton Campville Tithe Award Map. These are attached at Appendices C, D and E respectively.
2. The Field Book entry states that the occupier was “not aware of any specific rights of way if there are any an inspection will doubtless disclose them”.
3. Under the heading of inspection, which was carried out on 29 May 1913, there is a note that there is a public footpath and a public bridle road. The latter is described as “OS 466 is a public Bridle Road continuing through O.S. Plots 497, 496, 511 528”. There are subsequent deductions for public rights of user.
4. An examination of the 1902 map shows that OS Reference 466 is shown as being that section which commences at Syerscote Lane and runs east before turning south until it joins plot 497. The description of the route running through the remaining plots identified is the line of BW33 which continues until it meets the claimed way.
5. The 1838 Clifton Campville Tithe Award Map shows what is now shown as BW33 Clifton Campville as commencing at the end of Plot 475 and continuing along the claimed way to join what is now Syerscote Lane. The route is coloured sepia or brown and shown separate from the adjacent landholdings.
6. Since Mr Reay made the application in 1996 a Mr Bainbridge submitted 16 user evidence forms in November 2013. Several of the users refer to the claimed route being named Pessall Lane. It is also called that in the Parish Survey cards. Officers will refer to the route as Pessall Lane in this report for identification only. A copy of Mr Bainbridge’s letter and the user evidence forms are attached at Appendix F.
7. Three of the users have employment for a landowner associated with their evidence, a Mr R W Leedham, Mr R Leedham and Mrs B Wright.
8. The latter two persons do mention that they also used the route on horse with the pony club. All refer to a gate being erected and locked around 2011 preventing use. They all mention that a gate was in existence for many years previously for stock control purposes although it had never been locked.
9. Dr M Carter has submitted evidence as a member of the Atherstone Hunt. He states that the hunt have used the route from 1815 until 2010 when the gate at the end of the claimed way was locked.
10. Six of the evidence of use given is from usage after the application was lodged in 1996; Mrs Cooper, Ms Holland, Mr Bartram, Ms Bentinck, Mrs Taylor and Mrs Pass usage all commences after that date. Their use is on horseback and all refer to the locked gate. Mr Bartram and Mrs Bentinck both mention the existence of an older gate.
11. Mr P Bennion’s use dates from 1960 until the gate was locked and is usage on foot. He does state that he has seen horseriders using the route, believes it to be a bridleway and refers to the gate at the end of Pessall Lane as having always been there.
12. Mr J Bainbridge has stated that he has used the route on foot from 1976 until the gate was locked. He has also added two copies of Tithe Maps and a copy of the OS Map of 1925 to his evidence. The former are dated 1810 and 1838 respectively

13. Mr D Lodge's use is from 1991 to 2011 and is on foot. He has seen riders using the way.
14. Ms S Inge-Innes-Lillingston has used the route on foot from 1996 to 2011 when the gate was locked. She was also told by a farm worker that the lane was not public and has seen a notice on the gate saying private. She mentions the finance act and the tithe award and has seen riders and cyclists using the way.
15. Mrs J Jewell has used the route on horseback from 1984 to 2011. She has seen other people using the route as well as the hunt. She also states that it is part of the old dray route from Nuneaton to Burton.
16. Mrs F Wolferstan has used the route from 1952 to the gates being locked. Her usage is on foot and riding and has seen others using the path.

### **Evidence submitted by the Landowners**

17. Mr S Bostock has submitted an evidence form stating that he owns the land which the alleged route crosses over. He states that he has had an interest in the land since 2002. A copy of his form is attached at Appendix G.
18. In his evidence Mr Bostock states that he has never considered signs necessary as the gate was always closed and the route was for agricultural purposes only.
19. He has also stopped and spoken to anyone he has seen using the route explaining that there was no public right of way.
20. Mr Bostock states he has also spoken to previous owners and tenants who have all said the lane was for private use only.
21. Finally, he refers to a conversation with a County Council Officer who confirmed that the route was not a public right of way and that he could lock the gate.
22. Mr Bostock instructed solicitors who wrote to SCC on 3<sup>rd</sup> October 2014, a copy of the letter is attached at Appendix L. Officers did respond and a copy of their reply is attached at Appendix M.
23. The solicitor argues that the 1838 Clifton Campville and Haunton Tithe Map shows the route as a private occupation road and not a public right of way. They also refer to several short lengths of road leading into fields on the Tithe map that either no longer exist or are private tracks.
24. The solicitor argues there appears to be an error in the Parish Survey Returns, attached at Appendix K. They contend that there is no evidence that the alleged route has ever been called or referred to as Pessall Lane, or indeed any name at all.
25. The solicitor provides extracts from the Sale Particulars of the Clifton Campville and Haunton estate in 1905. They state this supports the existence of the claimed route as a farm track. The sale particulars hold no evidential value as they are not legal documents and there is no evidence to show they were accurate at the time.
26. The solicitor makes reference to a case *Mildred v Weaver* heard in 1862 which concerned a dispute over a farm track being a public right of way. However, this case is not relevant to the current application in question as the case was concerned with use of a track the application submitted for the route in question is originally based on historical evidence not user evidence.

27. The solicitor makes reference to a second case *Holloway v Egham UDC* 1908, this case also involves a private occupation road being claimed as a public highway through use. This case was found in favour of the land owner due to documentary evidence, namely an Inclosure Award, therefore this case is not applicable in the circumstances and holds no bearing on the application in question.
28. The solicitor refers to the creation of the Deregulation Act which includes changes to s53 of the Countryside and Rights of Way Act and they suggest that the matter be delayed until these provisions are brought into force. As matters stand this section of the Act is still not yet in force and therefore the application must be decided based on the current law.
29. The previous tenant of the land which the route runs through, Mr John Cliffe, has written a letter dated 3<sup>rd</sup> October 2014, a copy attached at Appendix L.
30. Mr Cliffe states that the track has always been a private track used for accessing fields and moving cows between fields. It has never been used as a bridle path and he never gave permission for it to be used by the general public.

### **Comments received from statutory consultees**

31. Lichfield District Council has responded stating they have no comments to make.
32. The Cyclists Touring Club have replied stating that they consider the addition of the route would have no detrimental effect, that it would resolve the fact that BW33 terminates at a footpath and be a useful addition to the network.
33. The Peak and Northern Footpaths Society have said they support the application but have no evidence to submit.
34. Copies of the above responses are attached at Appendix H.

### **Other evidence discovered by the County Council**

35. Officers have found the claimed way shown on the OS Maps of 1830, 1884, 1902, 1924 and 1925 and the larger scale 1 inch to 1-mile maps of 1907 and 1924. The route is shown as running from the end of what is now BW33 to join Syerscote Lane. Copies of the maps are attached at Appendix J.
36. The Parish Survey card for BW33 describes the route as starting from Pessall Lane and running to Clifton Lane. There is no mention of the route commencing from Syerscote Lane. The bridleway was given the number 35 in the survey which was later changed to 33 but the status remained the same.
37. The survey card for FP34 which commences on the map from BW33 describes the route as commencing from Syerscote Lane and then over a stile onto Pessall Lane.
38. The Map accompanying the survey cards shows the two routes as joining at the end of Pessall Lane but neither continues down the lane. Copies of the survey cards and associated maps are attached at Appendix K.
39. Both routes were added to the Draft Definitive Map and Statement and no objections were received. Nor was any objection made to the exclusion of Pessall Lane from the map and statement.

## Comments on Evidence

40. The original application as made by Mr Reay was based solely upon documentary evidence alleging that at some time in the past the claimed way was a public bridleway.
41. The user evidence submitted is supplementary to the original application and was received some years later. However, the County Council has to take into account all the evidence which is discovered or is provided.
42. While there have been challenges to the use of the way as evidenced by the user evidence forms, and the evidence given by Mr Bostock, the actual date of challenge is when the application was made.
43. The relevant legislation states that where is no identifiable event which has brought into question the use of a way, Section 31(7B) of the Highways Act 1980 (as amended by Section 69 of the Natural Environment and Rural Communities Act 2006) provides that the date of an application for a modification order under Section 53 can be used as the date at which the public's use was brought into question.
44. In this instance the application was made in 1999 and that action brought the status of the claimed route into question. There is no evidence of any earlier challenge and so in evaluating the evidence of use any that took place must be confined to that prior to 1999.
45. Of the user evidence forms submitted the usage of 6 individuals, Mrs Cooper, Mrs Holland, Mr Bartram, Mrs Bentinck, Mrs Taylor and Mrs Pass, all date from after the application was lodged. Consequently, their evidence cannot be taken into account.
46. Dr Carter's evidence is as a member of and on behalf of the Atherstone Hunt. There is a presumption in these matters that a hunt has, at the least, implied permission from landowners to use the land as part of their activities. As a result, any person who is using a way whilst participating in hunt activities would be presumed to have an implied permission at the very least. Accordingly, Dr Carter's evidence cannot be taken into account.
47. The evidence of Mr R W Leedham and Mr R Leedham includes the fact that they worked for a landowner. In the case of Mr R W Leedham this was from 1950 to 1959 and for Mr R Leedham from 1967 to 1984. This does mean their evidence is coloured by this relationship. While working for an owner an employee would have express permission to cross the land and use a route to gain access. Consequently, this would mean that their evidence of use is not "as of right" and so not be counted.
48. It would also mean that this might even extend to after their employment had terminated as the owner would have known the person and consequently not challenged them. The permission is also presumed to extend to the members of the immediate family of the employee.
49. In this instance Mr R W Leedham's son also worked for an owner from 1967 and so his use is again rendered suspect as a consequence of having his father working for an owner as well as being an employee. This also has implications for Mr R W Leedham's usage after his son commenced employment.
50. The cumulative effect of working for an owner along with having a relative doing so does mean that the evidence of both individuals cannot be taken as use "as of right" and so should be discounted.

51. Mrs Wright worked for an owner between 1960 and 1965 and her father also worked for a landowner. Again, this does mean Mrs Wright's evidence as to usage is discounted for the same reasons as above.
52. Mrs Wright does state that she did receive instructions from the owner concerning the claimed route that it was a right of way. This could indicate that that owner did believe this to be the case.
53. Of the remaining 6 persons who have given evidence four of the user's usage is on foot only. Mr Bennion, Mr Lodge and Ms Inge-Innes-Lillingston state that they have seen riders but as they personally have not done so their evidence can only go towards proof of a public right on foot. Mr Bainbridge does not mention seeing riders but his usage is also on foot.
54. Mrs Jewell and Mrs Wolferstan have both used the route on horseback and so their evidence does support the contention that the claimed path is a bridleway.
55. Several people mention that there was always a gate at the end of the lane but that it had fallen into disrepair. Mr R Leedham believes it was there for stock control.
56. The current landowner states that the gate has been locked in recent years and adds that previous landowners had followed the same practice. However, none of the users comment on this, only that a gate was there but that it was in a bad state of repair. Certainly, there is no reference to any challenge prior to Mr Bostock's.
57. What is not in dispute is that a gate did exist at the end of Pessall Land and had been there for a number of years.
58. The optimum period of usage for the purposes of the 20-year period as provided for under s31 of the Highways Act 1980 is from 1979 to 1999.
59. Only 3 of the users whose evidence can be taken into account have used the claimed way for over twenty years during that period. Of those persons Mr Bennion and Mr Bainbridge's use is on foot during that period and only Mrs Wolferstan's use is on horseback.
60. Two or more user's evidence of usage which overlaps can be added together to produce a cumulative effect of usage over the 20-year period. In this case there is no other user evidence that can be combined to establish the requisite 20-year period.
61. There has been an instance where the Secretary of State has accepted evidence of use from as few as six persons to substantiate the existence of a way although in that case the evidence was of a high quality. Here the amount of applicable user evidence does not reach that threshold.
62. Consequently, the user evidence does not go towards providing proof of the existence of a public right of way. It could be considered as evidence of reputation.
63. The OS maps do show there has been a track on the line of the claimed way but do not give any indication of its status. The claimed route does connect with what is now the line of BW33 but for the first part of the way is shown as being clearly delineated with solid lines. It then is depicted as continuing with a broken line suggesting that the first section was of a more substantial physical nature.
64. The larger scale 1907 and 1924 maps show this in more detail, and it can be seen from these that the dotted line runs down the middle of the claimed way and then to the south along BW33 until plot no 494 is reached when the dotted line continues to the south. This does support the premise that this first section, with the reference of

Plot 466, was a more significant physical feature. It would also appear from the maps that this section was separate from the adjacent land.

65. The purpose of the OS was to show every physical feature and there is a consistency in that successive editions all show a route along the lines of the claimed path. It should be borne in mind though that while the ordnance survey maps are supportive of the physical existence of the way they provide no evidence as to the rights appertaining or whether these are public or private.
66. Tithe maps and awards were not drawn up with the purpose of showing highways whether public or private. They were concerned with showing what land was subject to the tithe and the amount payable dependent upon its productivity. Highways on the outskirts of the land subject to tithe were often used as a means of orientating the map and consequently being able to identify the location of the various allotments by reference to these. Those within the titheable lands would be shown as a consequence of their effect upon the sums payable. The evidence they contain has to be evaluated in light of this although they can be supportive of public rights.
67. The highways that the tithe maps did show would be more likely to be those with higher rights than footpath or bridleway. The latter would often, where a claim was made or acknowledged to exist, be shown contained within the land over which they crossed. This was a result of the lesser effect these types of route had upon the cultivation of the land and the amount of tithe payable. A reduction in the sum payable would be applicable as the land would not be uncultivated.
68. Pessall Lane is shown as not being included in, or as part of, the taxable land but is not named or marked in any way. It does show the claimed way linking with the beginning of BW33 and that the latter continues until it meets plot no 472. After that point there is no indication of any route nor has an examination of the Tithe Award uncovered any mention of a route crossing the other plots.
69. The fact that Pessall Lane is coloured in the same manner as Syerscote Lane could be taken to mean that it was considered to have similar status, that is a public highway. However, it may just have been considered a private track to reach the various plots of land and the mapmaker used what was a noteworthy physical feature to orientate the map. The reason that is shown separate could be that the track was a way for private vehicles which would have had an adverse impact on the productivity of the land. Consequently, it was shown separate.
70. The tithe map is good supportive evidence that the route existed but not what the status of the route was.
71. There is a similarity between the OS maps and the tithe map. The claimed route shown on the tithe map does appear to be a more substantial physical feature in the same way that the OS maps depict it. If the claimed route is public, it would lend weight to the proposition that the rights might be higher than those appertaining to footpath.
72. While the maps of themselves are not supportive of public rights the courts have considered the depiction of routes on old maps and in *Ridley v Secretary of State for the Environment* [2009] EWHC 171 the judge concluded that while the weight of evidence he could attach to these was small he did find them suggestive of higher rights than footpath.
73. The Planning Inspectorate Consistency Guidelines section 12 para 45 quotes Christine Willmore regarding dealing with old maps: "*What is looked for is a*

*general picture of whether the route seemed important enough to get into these documents fairly regularly. A one-off appearance could be an error ... consistent depiction over a number of years is a positive indication.*" This approach was approved by the Court of Appeal in *Fortune v Wiltshire Council* [2012] EWCA Civ 334.

74. The Parish Survey cards do not include Pessall Lane in their survey as a public right of way simply terminating both PF34 and BW33 where they join it. This leaves a curious anomaly in that a bridleway terminates at a footpath and so equestrians have no public right to continue and must turn back and retrace their steps.
75. The survey card for PF34 mentions that users must cross into Pessall Lane via a stile which would further support the fact that horseriders were not able to physically proceed onto PF34 in any event.
76. The persons who undertook the parish surveys were usually local people who were conversant with the area and would have known what routes were in use and what the usage was. In this instance the description of the routes is reasonably detailed and the reason for inclusion was that the paths were used for over 20 years without dispute. This would seem to suggest that the surveyors were familiar with the area as well as the historical use by the public.
77. If one considers that the above is a reasonable assumption then it does raise the question of why the surveyors felt that BW33 simply terminated at Pessall Lane, a cul-de-sac in effect.
78. While there are instances where cul-de-sacs do exist, there is usually a purpose behind such. In the urban areas these are often quite common and form access to various properties, to parks, squares and so forth. In a rural area they more usually lead to a point of interest such as a viewpoint, a promontory or similar.
79. There is no rule of law that prohibits or rules against a factual conclusion that a public highway has been established over a route that ends in a cul-de-sac. In *Moser v Ambleside Urban District Council* (1925) 23 LGR 533 Lord Atkin said: "I think you can have a highway leading to a place of popular resort even though when you have got to the place of popular resort which you wish to see you have to return on your tracks by the same highway, and you can get no further either by reason of physical obstacles or otherwise."
80. In summary there is usually some purpose as to why a public highway of that nature has arisen; it is to gain access to that point and then return. To simply have a route terminate without such a point in the vicinity is unusual. This would be especially true for a route such as this which is quite a length and continues into the next parish. Riders would have been unlikely to travel this distance simply to retrace their steps.
81. One explanation might be that the surveyors believed that Pessall Lane was already a public highway with bridle rights and so there was no need to include it in their survey. However, there is no evidence in any of the survey documentation to support such a contention and it does not go towards supporting the application.
82. The question of cul-de-sacs was also considered by the courts in *Eyre v New Forest Highway Board* 1892. While the circumstances were slightly different the judge held that, where a short section of uncertain status exists it can be presumed that its status is that of the two highways linked by it.



83. In this case it is clear that PF34 could not be a continuation of the bridleway but the same could not be said of Pessall Lane. That leads into a vehicular highway, Syerscote Lane, but the status of that road and BW33 are different. So, the rule does not hold but it could be that the claimed way is a bridleway which would fit the reasoning of the judge.
84. The intent of the 1910 Finance Act was to allow for the levying of tax on land based upon its value in 1910 and any eventual sale or transfer. It was therefore important to the landowner that any deductions for factors that could affect the value were properly recorded and accounted for.
85. It was usual for a landowner when submitting the form detailing their land to make a claim for public rights of way, or user, so that a deduction could be made. This information was used to compile the field books which were completed before the valuers went out to inspect and assess the property. The penalties for making false claims were quite severe and so any owner or occupier claiming relief had to be certain of his facts.
86. In this instance the owner did not make any claim clearly preferring any that existed should be discovered at inspection. It could be the case that the owner was not prepared to admit to any public rights of user and thus receive any tax deduction. Alternatively, it may have been that the owner, who lived in Coventry, was unfamiliar with the land and so decided to leave it to the inspection to determine what rights, if any, there were.
87. The valuer did note that there were public rights of way and made a note on the field book regarding such. Plot 466 (Pessall Lane) was regarded as having its own separate identity in contrast to the remainder of the route where it crossed the fields, commencing at plot 497 and continuing through the land to plot 528. This latter part, as mentioned above, accounts for part of the length of BW33.
88. While the owner did not claim any relief the valuer at inspection was clearly of the opinion that this route was a public highway and acknowledged it as a bridle road. He granted relief on the parts that crossed the land in question which he would not have done unless satisfied they actually existed. The whole purpose of the legislation was to allow for the raising of taxes and the job of the inspector was to maximise the amount levied and only allow relief where such was proven.
89. As the inspector granted tax relief and found the route to be a public bridle road this would provide good evidence that Pessall Lane is a public bridleway.
90. In *Fortune v Wiltshire Council* [2012] EWCA Civ 334 the Court of Appeal considered the issue of the Finance Act and the Planning Inspectorate guidelines on the subject. They approved the latter but with one important proviso. Such evidence cannot be viewed in isolation but must be considered as part of the overall jigsaw.
91. The fact that OS Plot 466 was regarded by the inspector as a separate entity would seem to bear out the picture of the route being more substantial for that section of Pessall Lane and the first part of BW33 before it crosses the fields. The OS maps and the tithe map bear this out and support Plot 466 as having a distinct physical presence.

### **Comments on Draft Report**

92. Following circulation of the draft report in 2018 comments were received from Mr Bostock, a copy of his response is attached at Appendix N. In his correspondence

Mr Bostock wishes to refer to the claimed way a 466. Officers consider that this designation would be unsatisfactory given that there is a field plot with that numerical identifier. Officers consider it is better to use the name Pessall Lane as a mechanism to identify the claimed way. He acknowledges that the application in the Officers opinion relies upon the 1910 Finance Act documentation. He states there are a series of anomalies associated with this material.

93. He states the field book entry details that the owner Mr Wakefield or his agent writes that he is not aware of any rights of way. Mr Bostock contends there were none. As stated above the Inspector allowed tax relief and so must have had some indication for him to do this upon his visit to the land.
94. Mr Bostock also mentions other routes in the area which are shown on the OS mapping but are not included as public highways. The fact that maps show routes that are not on the definitive map and statement does not have a bearing upon this application; it falls to be considered upon the evidence for and against its existence.
95. He then comments on the sale particulars which he submitted as evidence against the application. The documents do not mention any public right of way. This is not unusual but the absence of such a record does not go towards proving that the right did not exist as well as not supporting the route. In this case Officers did not note anything that could prove or rebut the claim.
96. Mr Bostock then comments on the Tithe map award submitted by the applicant. He claims that in the draft report, reference is made to the Tithe map of 1838, which states 'what is now shown as BW33 Clifton Campville, as commencing at the end of Plot 475 and continuing along the claimed way to join what is now Syerscote Lane'. He then states that the Tithe map of 1810 clearly shows that Plot 475 does not connect with 466, it leads into and terminates in field 472. Officers note that BW33 Clifton Campville is already a public highway which does commence from Plot 475 and 472 and it runs the length of Plot 466 and ending at Plot 460. The alleged route then commences in a north-westerly direction crossing through Plot 467 and terminates at Plot 469, which is Syerscote Lane.
97. Mr Bostock then comments upon the user evidence and his challenge to it. As stated above the user evidence submitted is not supportive of the claim and has been disregarded.
98. Finally, Mr Bostock claims the presence of a marl pit at the end of the bridle path could explain the reason for its cul-de-sac nature, he believes this is where what is now BW33 ended; however, this is not the case. BW33 is a public bridleway which continues beyond the point to which Mr Bostock is referring to and so this evidence is irrelevant to the application.
99. The applicant Mr Martin Reay also submitted comments regarding the alleged route. Copies of his letter are attached at Appendix O.

### **Burden and Standard of Proof**

100. Mr Reay made the application under Section 53(3)(c)(i) which relates to the discovery of evidence and is concerned with two separate events:

Evidence that a right of way which is not shown on the map subsists; OR

Evidence that a right of way which is not shown on the map is reasonably alleged to subsist.

101. For the first test to be satisfied it will be necessary to show that on a balance of probabilities the public right of way does subsist.
102. For the second test to be satisfied the question is whether a reasonable person could reasonably allege a public right of way subsists, having considered all the relevant evidence available to the Council. The evidence necessary to establish a right of way which is “reasonably alleged to subsist” over land is less than that which is necessary to establish the right of way “does subsist”.
103. One of the two tests must be satisfied before a Modification Order can be made to add the public right of way. Judgment must be made based upon evaluation of the evidence provided by the applicant alongside all other material and evidence. If either test is satisfied, the Definitive Map and Statement should be modified.

## Summary

104. The user evidence is not sufficient to support an application based upon that material alone. Even if it were to be considered sufficient to reasonably allege that the route is public the user evidence could only support the existence of a public footpath.
105. There is some suggestion from the evidence given that the route enjoyed the reputation of a bridleway and some users have certainly used it as such.
106. The fact that there was a gate on the Lane does not preclude a public right existing and it may well have been there for stock control with users expected to close it after they had passed through.
107. The documentary evidence provided by the OS maps and the Tithe Map do suggest a physical presence but do not support any evidence of public rights.
108. The Finance Act field book is good evidence which is sufficient to support the contention that the claimed way was a public bridleway at the time of the inspection. There is no contrary evidence to dispute the finding of the valuer in 1910.
109. The law states that “once a highway, always a highway” and so if the route was a public bridleway in 1910 it remains so until stopped up by legal process.
110. If one considers the comments of the judges in the *Fortune* case as mentioned above, then there is a constant depiction of a way on the older maps and the entry in the field book attests to public bridle rights. The latter provides the final piece of the jigsaw referred to.

## Conclusion

111. The application falls to be considered under s53(3)(c)(i) as mentioned above, and so the question of whether the application should succeed needs to be evaluated against both elements.

112. When the totality of the evidence is considered it is finely balanced as to whether it would satisfy the first part of the test set out in s53(3)(c)(i) above, that is whether on the balance of probabilities a public bridleway subsists.
113. The evidence provided by the Finance Act field book is good evidence, but it does not have the probative quality of, for example, a court order. It is a singular piece of material with no other documentary evidence to support the existence of a public bridleway and the user evidence is too sparse to do so.
114. When the second part of the section and the lesser test is considered, that of reasonable allegation, that is satisfied. As the courts have indicated, if it is reasonable to consider any conflicting evidence and reasonable to accept the evidence of existence then an order should be made, and the material be tested during that process. Here there is no conflicting evidence to weigh in the balance and so it does clearly satisfy the test.
115. Taking everything into consideration it is apparent that evidence shows that a right of way, with the status of bridleway, which is not shown on the map and statement is reasonably alleged to subsist.

### **Recommended Option**

116. To make an order to add the claimed route as a Public Bridleway to the Definitive Map and Statement of Public Rights of Way for the District of Lichfield.

### **Other options Available**

117. To reject the application as not satisfying the burden of proof as laid in in s53(3)(c)(i).

### **Legal Implications**

118. The legal implications are contained within the report.

### **Resource and Financial Implications**

119. The cost of determining applications is met from existing provisions.
120. 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**

121. 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. 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.

122. 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.
123. Should the Council decide not to make an Order the applicant 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.
124. 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.
125. There are no additional risk implications.

### **Equal Opportunity Implications**

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

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John Tradewell

Director of Democracy, Law and Transformation

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Ext. No:

**Background File:** LJ618G

## INDEX TO APPENDICES

Appendix A	Copy of Application
Appendix B	Map showing line of claimed route
Appendix C	Copy of 1910 Finance Act Field Book Entry
Appendix D	Copy of 1902 Ordnance Survey Map
Appendix E	Copy of 1838 Clifton Campville Tithe Map
Appendix F	Copy of Mr Bainbridge's letter and user evidence forms
Appendix G	Copy of Mr Bostock's landowner evidence form
Appendix H	Copy of responses from consultees
Appendix J	Copy of Ordnance Survey Maps
Appendix K	Copy of Parish Survey Cards and associated Maps
Appendix L	Copy of letter from Mr Bostock's solicitor & a copy of the letter from Mr John Cliffe
Appendix M	Copy of Officers response to Mr Bostock's solicitors
Appendix N	Letter from Mr Bostock dated 25/11/2018
Appendix O	Response from applicant