

Local Members' Interest	
Cllr J Pert	Stafford- Eccleshall

Countryside and Rights of Way Panel -

Wildlife and Countryside Act 1981

**Application for upgrading Public Footpath 52 Swynnerton to a Public
Bridleway**

Report of the Director for Corporate Services

Recommendation

1. That the evidence submitted by the applicant and that discovered by the County Council is insufficient to show that, on a balance of probabilities, public bridle rights exist along Public Footpath No 52 Swynnerton.
2. That Public Footpath No 52 Swynnerton which is subject to the claim remains as a footpath as currently shown on the Definitive Map and Statement of Public Rights of Way for the District of Stafford.
3. That no Order be made to upgrade the alleged right of way shown on the plan attached at Appendix B to the Definitive Map and Statement of Public Rights of Way for the District of Stafford.

PART A

Why is it coming here – what decision is required?

1. Staffordshire County Council is the authority responsible for maintaining the Definitive Map and Statement of Public Rights of Way as laid out in section 53 of the Wildlife and Countryside Act 1981 ("the 1981 Act"). Determination of applications made under the Act to modify the Definitive Map and Statement of Public Rights of Way, falls within the terms of reference of the Countryside and Rights of Way Panel of the County Council's Regulatory Committee ("the Panel"). The Panel is acting in a quasi-judicial capacity when determining these matters and must only consider the facts, the evidence, the law and the relevant legal tests. All other issues and concerns must be disregarded.
2. To consider an application attached at Appendix A from Mr Martin Reay for an Order to modify the Definitive Map and Statement for the District of Swynnerton. The effect of such an Order, should the application be successful, would:
 - (i) Upgrade Public Footpath No 52 Swynnerton to Public Bridleway status on the Definitive Map and Statement of Public Rights of Way under the provisions of Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981.

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.
4. The lines of Public Footpath No 52 which are the subject of the application are shown highlighted and marked A – B on the plan attached as Appendix B.

Evidence submitted by the applicant

1. The applicant has submitted in support of his claim evidence of 1910 Finance Act Plans; Swynnerton Tithe Map; 6 inch to 1 mile Ordnance Survey Map of 1876; 2 inch to 1 mile Ordnance Survey Map of the early 1800's; 1 inch to 1 mile Ordnance Survey Map of the 1820's to 1830's, Wright & Charrington Motoring/Cycling Touring Road Atlas of the early 1900's; Johnston & Bacon's Road Atlas of 1961; J & C Walker's County Map of the 1850's; Deposited railway plan of 1846; Teesdale Map-Cross Road of 1832; Greenwood Map- Cross Road of 1820 and the Swynnerton Parish Survey of the 1950's. The application is also supported by user evidence submitted from North Staffordshire Bridleways Association.

User Evidence Submitted

2. The application is supported by user evidence from five members of the public who claim to have used the alleged route as a bridleway over varying periods of time. Copies of their statements are attached at Appendix C.
3. For the application to be successful on the basis of user evidence, it will have to be shown that the public have used the alleged route, as of right and without interruption, for a period of at least 20 years prior to the status of the route being brought into question, or that it can be inferred by the landowner's conduct that he had actually dedicated the route as a public right of way and the right of way had been accepted by the public.
4. In order for the right of the public to have been brought into question, the right must be challenged by some means sufficient to bring it home to the public that their right to use the way is being challenged.
5. In this instance there does not appear to be any challenge to the actual usage of the route by any person nor have there been any physical impediment.
6. Where there 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 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.
7. In the absence of any other major or identifiable challenge to the public's use of the claimed route the date of the application, 17 July 2000, will be used as the challenge date. Accordingly, the requisite 20-year period of use should be calculated retrospectively from this date. The years 1980 to 2000 are the twenty-year period whereby the majority of users provide evidence of use.
8. Five members of the public completed user evidence forms in relation to the claim and all the user evidence forms were completed in 2004.

A summary of the salient points from the user evidence forms has been compiled in a table. This is attached at Appendix D.

- 9.** An examination of the forms shows that none of the users claim they were an owner, tenant or related to anyone owning or tenancing the land crossed by the alleged route.
- 10.** Mrs Barbara Cliffe claims to have used the alleged route since 1992 and claims to use the alleged route several times a week on foot, horseback and cycling. She has advised that she has never been stopped or turned back when using the route. She further states that there are gates that are locked at each end of the route but there is an access gap, which she infers is enough room to get a horse through.
- 11.** Mrs Amanda Westwell claims to have used the route since 2000 and claims to use the alleged route several times a week on foot, horseback and cycling. She also advises that she has never been stopped or turned back when using the route and there are gates at each end of the route, which are locked, but there is an access gap, which she infers is enough room to get a horse through.
- 12.** Miss Joanne Woakes claims to have used the alleged route from 1991 to 1996 on horseback and then from 2001 to the present day (when the user evidence form was completed in May 2004) on horseback. The period of usage from 2001 onwards cannot be taken into consideration as this does not fall into the requisite 20 year period of use. Miss Woakes has confirmed that she never been stopped or turned back when using the route and there are locked gates at either end of the route, which have an access gap, which she infers is enough room for a horse to get through.
- 13.** Miss Debra Turner claims to have used the alleged route since 2000 to the present day (when the user evidence form was completed in June 2004) on foot, horseback and cycling. She confirms that she has never been stopped or turned back when using the route and there are locked gates at either end of the route, which have an access gap, which she infers is enough room for a horse to get through.
- 14.** Mrs Norma- Jean Ryder claims to have used the alleged route since 1991 on foot, horseback and cycling. She advises that she has never been stopped or turned back when using the route. She further advises that she has never been charged money for specifically using the path, however, she has used the path as part of organised events by the NSBA and North Staffs Hunt.
- 15.** None of the users have shown that individually they have used the alleged route for the relevant 20 year period. The evidence of Miss Debra Turner and Mrs Amanda Westwell cannot be taken into consideration as their usage falls outside the relevant 20 year period. When combining the years of use from Mrs Norma- Jean Ryder, Miss Joanne Woakes and Mrs Barbara Cliffe this does meet the requisite twenty year period.
- 16.** The table shows that the frequency of use is several times a week for each of the users.

Documentary Evidence Submitted by the applicant

- 17.** Mr Reay claims that the 1910 Finance Act Plans show the route as separate from taxable landholdings apart from the mid-section alongside field numbers 454 and 350, which appears to fall within plot number 228. Mr Reay believes this is an error and that the entire length should be separate from the taxable landholdings. A copy of the Finance Act Plans and Mr Reay's accompanying notes are attached at Appendix E.
- 18.** The 1901 OS Map accompanying the Finance Act documentation shows on sheet 23- 3 the northern/top part of Common Lane, connecting with Dog Lane. It shows Common Lane/FP 52 running adjacent to Plots 228, 229, 360, 140 and 344 and separate from the taxable landholdings. There is nothing to indicate the status of the route. Sheet 23-7 shows the bottom and mid-sections of the route, where the route connects with Upper Hatton. It shows FP 52 running adjacent to Plots 228 & 229, shown as separate from the taxable landholdings. In the Field book under Upper Hatton Farm- Eccleshall- under "Charges, Easements and Restrictions affecting market value of Fee Simple" it states "FP- £10". Under "Restrictions" it states "FP- £10". In the top left-hand corner, it states 229- under "Public Rights of Way or user" it states £10. Under Reference No 360 under Restrictions and Public Rights Of Way or User it states £10. It does not give any description as to what the restriction relates to.
- 19.** Mr Reay claims that the Swynnerton Tithe Map shows the route as an untaxed road along its entire length. The tracing shows the route running from Hatton in the south up to what is assumed to be Dog Lane. There is nothing on the tracing to indicate the status of Public Footpath 52. On the tracing the route is coloured orange and goes through several different plots of land. It is an unnumbered route along the line of Public Footpath 52. A copy tracing of the Tithe Map and Mr Reay's accompanying notes are attached as Appendix F.
- 20.** The 6 inch to 1 mile Ordnance Survey of 1876, the 1 inch to 1 mile Ordnance Survey Map of the 1820s to 1830s and the 2 inch to 1 mile Ordnance Survey Map of the early 1800's all show Public Footpath 52 as a physical feature on the ground. There is nothing to indicate the status of the route. Copies of these maps are attached as Appendix G, Appendix H and Appendix I respectively to this report.
- 21.** The J&C Walker's County Map of the 1850's, the Wright & Charrington Motoring, Cycling and Touring Road Atlas of the early 1900's, the Johnson and Bacon's Atlas of 1961 and the Deposited Railway Plan of 1846 all show the physical route of Public Footpath 52. No evidence has been submitted as to the route's status. Copies of these maps are attached at Appendix J, Appendix K, Appendix L respectively to this report.
- 22.** The Swynnerton Parish Survey Map shows the physical route of Public Footpath 52 but does not identify the status of the route. A copy of the map is attached at Appendix M.
- 23.** The Greenwood Map of Staffordshire of 1820 shows the area around Hatton and Shelton Heath. The main Stone to Nantwich Road (the current A51, Stone Road) is depicted as a turnpike road from which a cross road is shown running in a northerly direction past Hatton towards Shelton Heath. The southern part of this route is most likely to be the current D2087, Hatton Lane. The remainder of the route appears to be Public Footpath 52. Copies attached at Appendix N.

- 24.** The Teesdale's Map of Staffordshire of 1831- 1832 shows a network of routes around Hatton and Shelton Heath. The main Stone to Nantwich Road (the current A51, Stone Road) is shown coloured orange and described as a turnpike road. A cross road is shown running in a northerly direction from the turnpike road which joins another cross road near Shelton Heath. Part of the route to the south of Hatton is most probably the current D2087 Hatton Lane, the rest is most probably Public Footpath 52. Copies attached at Appendix O.

Evidence submitted by the Landowners

- 25.** The application was served on the Trustees of Sywnnerton Settled Estate and Lord Stafford of the Estate Office. In response to the application a letter and user evidence form was received from the representatives of Lord Stafford's Estate, Russell Poole Chartered Surveyor dated 25th October 2000. Copies attached at Appendix P.
- 26.** The user evidence form states that they consider the route to be a public footpath. The owner has had an interest in the land for several centuries and the agent has had an interest in the land for 12 years. They confirm that permission has been given to use the route as a public footpath. Gates were erected to prevent vehicular rights at both ends of Common Lane, which was done in 1993. Horse riders have been informed that it is not a bridleway. An appeal & inquiry was held in the 1970's, which confirmed the route's status as a footpath. The Local Authority had incorrectly erected bridleway signs and these were removed to leave footpath signs only.
- 27.** The letter further confirms that Lord Stafford has granted permission for the route to be used strictly on a one- off basis for charity riding events for members of the public. The gates that have been erected at both ends of Common Lane have left sufficient access for footpath users. The agricultural tenant of the property known as Hatton Farm, directly adjacent to the route has horses and occasionally uses the route for his own purpose.

Comments received from statutory consultees

- 28.** Swynnerton Parish Council have advised that they would have no objections to the footpath being upgraded to a bridleway. They have not submitted any evidence which supports or refutes the application.
- 29.** North Staffordshire Bridleways Association have advised that the Association has always believed that when the route was downgraded from a RUPP it should have received higher status than a Footpath. The Chairman, Mrs Beeley has ridden the route on a number of occasions over a period of 8-9 years and she has met other horse riders along the way. She has never encountered any difficulties or been challenged for using the route. The claim has the Association's full support. They provided the user evidence forms in support of the claim.

Comments on Evidence

Documentary Evidence

- 30.** In relation to the 1910 Finance Act documentation the landowner could claim tax relief for public rights of way and these deductions would be shown in the Field Book. The Field Book confirms that two deductions were made for Public Rights of Way, one a £10 deduction for a footpath going through plot 229 and again under Restrictions and Public Rights of way or User there is a £10 deduction for a route going through plot 336. There is no description as to what the restriction relates to. For plot 229 it simply states "FP" but it can be assumed that this refers to a footpath. When reviewed in conjunction with the Ordnance Survey Plan, the map shows two dotted lines with the depiction FP running through plots 229 and 360. Therefore it can be assumed that the entries in the Field Book do not relate to FP 52/Common Lane. There is no evidence from the Field Book entries that there were any deductions made for Bridleways.
- 31.** The Finance Act Maps show the northern and southern sections of Public Footpath 52 as separate from the adjacent taxable landholdings, whereas the mid-section appears to form part of plot number 228. As contended by Mr Reay it is your officer's opinion that it is more likely than not that an error has been made on the map. The mid-section appears to be incorrectly shown as forming part of plot number 228 when both the northern and southern sections are clearly shown as separate from the adjacent taxable landholdings.
- 32.** The fact that most of Public Footpath 52/Common Lane is shown on the Plan as being separate from the adjacent land, might suggest that the route was a public highway. The separation could mean that the adjacent owners believed that the route was a public highway and thus need not to be shown within their property as it would have been exempt from taxation. This would have been unlikely to occur where the route in question only had the status of footpath or bridleway. The latter would have more likely to have been dealt with by means of a deduction for user in the field book. It could also be said that the route is shown excluded as there is no owner and that it was a private right of way. This situation might arise where the way came into being to serve several properties and they all had a liability to maintain and repair but was not in any single ownership. The absence of a claim for a right of way does not provide evidence of its non-existence, the owner may have decided not to make a claim.
- 33.** However, on review there is no evidence from the Finance Act material that the route in question had bridleway status.
- 34.** In relation to the Swynnerton Tithe Map commissioners would often use highways to orientate the map and locate the plots shown. Where a route was shown separate from adjacent landholdings it would be more likely to have higher rights over it than footpath or bridleway, although these could be either public or private.
- 35.** In the case of *Maltbridge Island Management Company v Secretary of State for the Environment and Hertfordshire County Council* [1998] EWHC Admin 820 (31 July 1998) Mr Justice Sullivan considered the status of Tithe Maps and stated: "The Tithe Map and apportionment evidence is undoubtedly relevant as to both the existence, and physical extent, of a way at the relevant time. Because both public and private roads were not titheable, the mere fact that a road is shown on, or mentioned in a Tithe Map or Apportionment, is no indication as to whether it is public or private".

- 36.** The colouring of a road on a Tithe Map is not in itself good evidence of public status and in the absence of a key or other explanation, the colouring holds little evidential value. The Tithe Map of Swynnerton shows an unnumbered route coloured orange along the line of Public Footpath 52. Most of the other routes depicted on this section of the Tithe Map are also coloured orange and unnumbered, but no explanation is given as to their status. It is not conclusive from this evidence that Public Footpath 52 has bridleway status. Bridleways that are not shown separate to land holdings are usually included with Finance Act and Tithe Map evidence.
- 37.** The Ordnance Survey Maps of 1876, the early 1800's and 1820's/1830's show evidence of the physical existence of a route, which is the purpose of Ordnance Survey Maps. None of the maps confirm or refute whether Public Footpath 52 has bridleway status.
- 38.** However, in the case of *Fortune v Wilson* it confirmed that "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 has been approved by the courts.
- 39.** The Greenwood Map of Staffordshire of 1820 and the Teesdale Map of Staffordshire of 1832 are both very similar in detail and show Public Footpath 52 as a physical feature on the ground. The route is depicted as a cross road in the maps, but no indication is given as to its status as either a public or private way.
- 40.** The J&C Walker's Map of Staffordshire of the 1850's, the Wright and Charrington's Motoring, Cycling and Touring Map of the early 1900's, the Johnston and Bacon's Road Atlas of 1961 and the Deposited Railway Plan of 1846 all show Public Footpath 52 as a physical feature on the ground, however, due to the dates of these maps, they carry little evidential value in relation to ancient highway status.
- 41.** The primary purpose or the motivation for the mapmaker may have been monetary in that they could sell copies to interested parties. There was a great deal of plagiarism in that earlier maps would be copied and therefore often errors were reproduced.
- 42.** In relation to the Deposited Railway Plan without the Book of Reference there is no clear evidence to ascertain who the owner of the route is or what the status of the route was.
- 43.** The Swynnerton Parish Survey Map shows the physical existence of Public Footpath 52. There are no records with the map and therefore there is no way to identify the status of the route.
- 44.** The draft Definitive Map and Statement of Public Rights of Way of 1954 records Public Footpath 52 as a RUPP, which was subsequently downgraded to a public footpath in or around 1969. Following a public inquiry in 1981 the Secretary of State agreed with the Inspector's conclusion that Common Lane was owned by Lord Stafford's Estate and that the old maps did not show the existence of public vehicular rights. The downgrading from RUPP to public footpath was upheld. In the absence of evidence to the contrary, it is to be assumed that the proper procedures were followed during the public inquiry and that the route was correctly reclassified from a RUPP to that of public footpath and accurately reflected the public rights that existed at the time.

- 45.** The contention that a reclassified RUPP would support evidence of actual bridle rights is on its own insufficient. The correct approach to the issue of RUPPs reclassified as footpaths is outlined in *Trevelyan v Secretary of State for the Environment* where Latham J stated that the relevant question is posed by Section 53 (3) (c): is there evidence, which when considered with all other evidence, shows the correct classification of a way. This would involve a "careful evaluation" of all of the available evidence to determine, on the balance of probabilities, the correct status of the way. There is no presumption that bridle rights apply to such ways. The fact that those ways were originally classified as RUPPs may be some evidence of bridle rights, but the weight to be attached to that evidence will vary from case to case depending on such evidence as is available as to how and why a way was shown on the map in the first place.

User evidence

- 46.** In 1932 the Rights of Way Act introduced the statutory presumption of dedication by the landowner of a Public Right of Way which could be proven by evidence of 20-year usage as of right and without interruption. This presumption could be rebutted by the landowner proving that he had no such intention. However, the onus was on the landowner to do so. The statutory presumption is now contained in s.31 of the Highways Act 1980. Therefore s.31 of the Highways Act sets out the test that must be satisfied under statute for a way to become a public highway through usage by the public.
- 47.** All the users have confirmed that there are locked gates at either end of the route but state that there is an access gap at the side of the gate, which they intimate gives enough access for users on horseback, although this is not explicitly stated in any of the user evidence forms. The evidence submitted on behalf of Lord Stafford's Estate suggests that the access gap is solely for walkers in line with the status of the route as a Public Footpath. Therefore, it is not clear from the evidence whether the locked gates were put in place to interrupt just for people using vehicles or whether it was intended to stop horse riders as well.
- 48.** It is clear from the available user evidence that all the users have used the same route and there is no indication that they have wandered off from the route, apart from one user who confirmed that they have used a different track to make a different route back through the woods. The evidence forms do not support any contention that the users are drawn from a particular section of society or that use is limited to members of a particular area. While it is usual for the evidence to come from people who live in a locality there is nothing to suggest that this is a prerequisite for use in this instance.
- 49.** All the users have confirmed that they have used the route as a bridleway, which is consistent with the status of the way being claimed.
- 50.** The statutory test refers to use of over 20 years and in the evidence submitted there is no individual user who has used the route for twenty years or more. However, 3 of the 5 users have used the route during the twenty-year period, i.e. between 1980 and 2000. One of the users has used the route during this period for 9 years, another user 8 years and another user 5 years. If the years of use are added

together for these 3 users, then it equates to over twenty years of usage of the route. The remaining evidence does not fall into the relevant period of use.

- 51.** Neither the legislation nor the applicable case law sets out a minimum level of user that is expected or required to support a claim that a route exists. The case law does suggest that the amount of usage should be such that it is enough to bring home to a reasonable landowner that the public are using a way and that use is as if it was a public highway, i.e. "as of right".
- 52.** The frequency of use could be said to be regular given that all users have confirmed that they use the route several times a week. However, the fact that there is only evidence from 5 members of the public suggests that the route is not widely used by horse riders and therefore it may not be enough to bring it to a landowner's attention if they were present.
- 53.** All the users have confirmed that they have never paid to use the way. All but one user has confirmed that they have never been given permission to use the way. One user has advised that they were given permission to use the way as part of organised events. None of the users have used force to use the route. Therefore, on balance it can be argued that usage has not been in secrecy.
- 54.** The remaining part of the s31 test considers whether the landowner has undertaken any action to rebut the statutory presumption of dedication. Often this is evidenced by way of notices or obstructions to prevent people accessing or using the path. For a presumption of dedication under s31 of the Highways Act 1980 ("the 1980 Act") to be raised against a landowner the Court in *R v Redcar and Cleveland* [2010] 2 All ER 613 said that it must be brought home to a landowner that a right is being asserted across his land. This is true even where the owner is absent or cannot be identified. It is how the matter would appear to a reasonable landowner who was present.
- 55.** All 5 users have stated that at one time there were bridleway signs in place, but they were taken down and replaced with footpath signs. None of the users specify exactly when the sign was changed but this corresponds with the information provided by the representatives of Lord Stafford's Estate, who advised that bridleway signs were incorrectly placed along the route and following an investigation they were removed and replaced with footpath signs by the Local Authority. This would indicate that there was an intention not to dedicate the route for use by horse riders.
- 56.** It is clear from the evidence that there is a landowner who has the capacity to dedicate, therefore this can be not only be considered under statute but also common law. Under the common law test the person claiming a public highway exists has to prove that there has been an intention to dedicate by a landowner.
- 57.** Whilst the term of years of use does not have to span that set out in statute it must still be sufficient to raise the awareness of an owner that the land is being used as a public route. There is simply not enough evidence of use to support the claim that the path is a bridleway. For an area which is clearly easily accessible by the public, the paucity of user evidence submitted does not suggest that the claimed route enjoys the reputation amongst the public as being a

bridleway. This is true even if one considers that a rural path would attract less usage than one in an urban location.

Burden and Standard of Proof

- 58.** An application for a modification order based upon evidence of use and historical evidence can be made under either s53 (3) (b) or s53 (3) (c) (ii) of the 1981 Act.
- 59.** Therefore the Panel need to be satisfied that, on the balance of probabilities, the evidence that has been discovered shows that a highway shown on the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
- 60.** If the evidence is evenly balanced then the existing classification of the route as a public footpath on the Definitive Map and Statement prevails.

Summary

- 61.** The application is made under Section 53(2) of the 1981 Act, relying on the user evidence specified in 53(3)(c)(ii) of the Act.
- 62.** The relevant statutory provision, in relation to the dedication of a public right of way, is found in Section 31 of the Highways Act 1980.
- 63.** This requires consideration of whether there has been use of a way by the public, as of right and without interruption, for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.
- 64.** Before a presumption of dedication can be raised under statute, Section 31 of the 1980 Act requires that a way must be shown to have been actually used by the public, as of right and without interruption, and for this use to have continued for a full period of twenty years.
- 65.** The amount of user evidence is lacking and therefore it is not sufficient to show that there was a presumption of dedication for horse riders to use this route as a bridleway
- 66.** In this instance your officers consider that the use is insufficient to satisfy the test set out in s31 when considered on the balance of probabilities.
- 67.** None of the documentary evidence provided supports the contention that the route has bridleway status. If the claimed way was not included upon the definitive map and statement already the situation might be different; the evidence would support an application to include the route.
- 68.** This application is not for an inclusion but to upgrade and when all the user and documentary evidence is reviewed in conjunction with each other there is insufficient evidence to support any status other than that already recorded and therefore the relevant legal test has not been satisfied.

Conclusion

69. The question is not whether PF52 is a public highway but rather what the nature of the public rights are over the route.
70. The evidence to overturn the current designation on the map must satisfy the civil legal test, that of the balance of probabilities.
71. In light of the evidence, as set out above, it is the opinion of your officers that based upon the balance of probabilities the route which is the subject of the application is more likely than not a public footpath.
72. It is the opinion of your officers that the County Council should not make a Modification Order to upgrade the route to bridleway status on the Definitive Map and Statement of Public Rights of Way

Recommended Option

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

Other options Available

74. To decide to accept the application to upgrade Public Footpath 52 Swynnerton to Public Bridleway status.

Legal Implications

75. The legal implications are contained within the report.

Resource and Financial Implications

76. The costs of determining applications are met from existing provisions.
77. 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

78. In the event of the Council making an Order any person may object to that order and if such objections are not withdrawn the matter is referred to the Secretary of State for Environment under Schedule 15 of the 1981 Act. The Secretary of State would appoint an Inspector to consider the matter afresh, including any representations or previously unconsidered evidence.
79. The Secretary of State may uphold the Council's decision and confirm the Order; however there is always a risk that an Inspector may decide that the County Council should not have made the Order and decide not to confirm it. If the Secretary of State upholds the Council's decision and confirms the Order it may still be challenged by way of Judicial Review in the High Court.
80. Should the Council decide not to make an Order the applicants may appeal that decision under Schedule 14 of the 1981 Act to the Secretary of State who will follow a similar process to that outlined

above. After consideration by an Inspector the County Council could be directed to make an Order.

- 81.** If the Panel makes its decision based upon the facts, the applicable law and applies the relevant legal tests the risk of a challenge to any decision being successful, or being made, are lessened. There are no additional risk implications.

Equal Opportunity Implications

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

J Tradewell

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Background File: LK621G

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