

<b>Local Members' Interest</b>	
John Francis	Stafford – Stafford Trent Valley

**Countryside and Rights of Way Panel**

**Wildlife and Countryside Act 1981**

**Application for the addition of three alleged footpaths at Hixon airfield, Stafford.**

**Report of the Director for Corporate Services**

**Recommendation**

1. That the evidence submitted by the applicants and that discovered by the County Council is sufficient to show that three alleged public footpaths, two of which are along the disused runways and a third which bisects both runways at Hixon airfield, Stafford are reasonably alleged to subsist along the routes marked A to B (Airfield Route 1) C to D (Airfield Route 2) and E to F (Airfield Route 3) on the plan attached at Appendix B.
2. That an Order be made to add the alleged public footpaths along each of the two disused runways of Hixon airfield at Hixon, together with a third alleged public footpath which crosses both runways to the Definitive Map and Statement of Public Rights of Way for the Borough 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 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 a joint application (Appendix A) from the Parish Councillors of the Parishes of Stowe-by-Chartley Parish Council and Hixon Parish Council, for a Modification Order to amend the Definitive Map and Statement of Public Rights of Way. The Order would:
  - a. add an alleged footpath along one of the disused runways commencing at the southern end of Stowe by Chartley FP 34 leading easterly along the parish boundary dividing Stowe and Hixon parishes and finishing at the southerly point of Stowe by Chartley FP 32a to the Definitive Map of Public Rights of Way under the provisions of Section 53(3)(c)(i) of the Wildlife and Countryside

Act 1981. The line of the alleged footpath is shown marked A-B (Airfield Route 1) on the plan attached as Appendix B to this report; AND

- b. add an alleged footpath along a second disused runway commencing parallel to the most south westerly point of Hixon FP23 and continuing in a north easterly direction crossing the parish boundary and finishing at a point where it meets Stowe-by-Chartley PF32a to the Definitive Map of Public Rights of Way under the provisions of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981. The line of the alleged footpath is shown marked C to D (Airfield Route 2) on the plan attached as Appendix B to this report; AND
- c. add an alleged footpath crossing the above alleged footpaths continuing in a straight line westerly off Stowe-by-Chartley FP37 for approximately 200 metres before turning at a right angle and heading in a southerly direction crossing the parish boundary and joining the most northerly point of Hixon FP23 to the Definitive Map of Public Rights of Way under the provisions of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981. The line of the alleged footpath is shown marked E to F (Airfield Route 3) on the plan attached as Appendix B to this report

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 applicants**

4. The application is supported by user evidence forms from thirty two members of the public who claim to have used the alleged footpaths over varying periods of time.
5. In addition to their application, the applicants have also included a covering letter, and explanatory notes together with “problem area” map which illustrates the alleged obstructions across Airfield Route 1 and Airfield Route 2 at the time of the application. The applicants have also included a map dating from what the applicants believe to be the 1830’s (prior to the construction of the airfield) and a map dated 1972/1982 showing re-alignment of footpaths. Finally, there is a letter from one of the previous owners/occupiers of the land, Mr R E Tonge. All supporting evidence is attached as Appendix C to this report.

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

6. The applicants identified the owner as Jonathan Lloyd Farms of Hixon in Stafford. Although a landowner form was sent out to Jonathan Lloyd Farms, this was not returned.
7. A further landowner was identified as Mr J Greaves of Amerton House, Stowe Lane, Stowe by Chartley. Mr Greave’s daughter engaged in dialogue and attended the Council offices in order to view the applicant’s evidence. Mr Greaves also instructed a firm called Barbers Rural, land and property specialists. Barbers Rural have returned a landowner form on behalf of Mr Greaves. Certificates of Service of Notice of application on the landowners can be found at Appendix D

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

8. The British Driving Society informed Officers that they believed there was a road across former Hixon airfield and attached a plan. However their plan does not seem to correspond with any of the claimed routes.
9. Copies of the above correspondence are attached at Appendix G.

## Comments on all evidence

10. It should be noted that the three claimed paths in the application are for routes that cross the Parish boundaries of Hixon and Stowe-by-Chartley.
11. For the application to be successful, 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.
12. 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.
13. In this instance there are many and ongoing challenges to the claimed routes with various physical impediments having been placed and in certain cases removed. Users claim that these challenges have arisen at various times since 2007.
14. From evidence provided by the user forms, the earliest major or identifiable challenge to the public's use of the claimed route Airfield 1, by means of a "coffee mountain" was in 2007. The date 1<sup>st</sup> January 2007 will therefore be used as the challenge date. Accordingly, the requisite 20 year period of use should be calculated retrospectively from this date. The years 1<sup>st</sup> January 1986 to 31<sup>st</sup> December 2006 are the 20 year period required for user calculation. The majority of users provide evidence of use covering this time period, with nearly all still using the routes albeit by diversions where necessary to avoid challenges.
15. With regard to the claimed route Airfield 2, it appears that the date of challenge was in 2010 when aircraft and parts of aircraft blocked the claimed path at the Southern end of the route. The date 1<sup>st</sup> January 2010 will therefore be used as the challenge date. The 20 year period for this route should therefore be between 1<sup>st</sup> January 1989 to 31<sup>st</sup> December 2009.
16. For the claimed route Airfield 3, again it appears that the date of challenge was in 2011 when a gate was locked at its southern end. Thus, the period of 1<sup>st</sup> January 1990 to 31<sup>st</sup> December 2010 should be the requisite period of use.
17. As Airfield Route 1 is the most difficult to prove due to it having the earliest challenge, and therefore fewer users who fall into the requisite years of user, paragraphs 19 to 25 are based on the user evidence provided between 1986 and 2006.
18. Of the persons who submitted evidence of user, 17 of the 32, Mrs V Cooper, Mrs Poole, Mrs Aberley, Mrs McOwan, Mrs Tonks, Mr Tonks, Mrs Standen, Mr Hawkins, Mrs Hawkins, Mr Lyons, Mrs Lyons, Mrs Jones, Mr Tomkins, Ms Travis, Mr Tilston, Mrs Price and Mrs Grimes stated that they had used the entirety of the three claimed airfield routes in full and without interruption for a full period of 20 years immediately prior to the use of any of the three claimed airfield routes being called into question.
19. Those that did not claim the entirety of each of the three routes, but used the parts of the three routes for a full period of 20 years before the routes were called into question comprised 7 users. These include Mr Cooper and Mrs H Cooper who used the entirety of claimed route Airfield route 3 and used the majority of Airfield who used Route 1 and the majority of Airfield route 2. Mrs Coote used part of each of the three claimed routes and Dr Price used the entirety of Airfield Route 1 and Airfield Route 3

and the majority of Airfield route 2. Mr Charnah and Mrs Charnah used the entirety of Airfield route 2 and the entirety of Airfield route 3 and part of Airfield Route 1. Mrs Monro used the length of Airfield route 3 and part of Airfield route 1 and part of Airfield route 2.

- 20.** The usage of Mr Lameris of the entirety of the three claimed routes dates from 1989, a period which falls short of the requisite 20 years use. A user who wished to remain confidential used the entirety of the three claimed routes from 1995 and Mrs Squires used the entirety of all three claimed routes from 1996. Mr Standen claimed use from 1990 for the entirety of Airfield route 1 and part of Airfield route 2 and part of Airfield route 3, again falling short of the requisite 20 years user's evidence of usage and not being the entirety of the three claimed routes.
- 21.** Miss Price claims to have used the entirety of two of the claimed routes weekly (Airfield route 1 and Airfield route 3 and the majority of Airfield route 2 from 1987). However, there are problems with Miss Price's evidence being that she was born in 1987.
- 22.** Dr Lameris' user form advises that she used all three claimed routes from 1989 when she lived in Stowe to the date of her application. However, at the date of application she lived in Norfolk and only used the route sporadically when she returned home. It is unclear when she left home. Dr Lameris was born in 1982.
- 23.** Miss McOwan advised us that she used the entirety of the three claimed routes from 1973 (when she was aged 10). She left Stowe in 1981 to attend college.
- 24.** Mr N K Jones claimed the entirety of all 3 routes but did not advise as to his years of usage of the claimed paths.
- 25.** Regarding frequency of use, a user who wished to remain confidential claims to have used the paths daily as did Mrs Jones and Mrs Grimes. Mrs Hawkins, Mr Hawkins and Mrs Standen claimed to use the routes around 3 times a week. Mr Tomkins claimed to use the routes twice a week and Miss McOwan advised that she used the routes several times a week. Fourteen of the users advised that they used the route "weekly" (Mrs V Cooper, Mrs Poole, Mr Lameris, Dr Lameris, Mrs McOwan, Mrs Tonks, Mr Tonks, Mrs Chanah, Mrs Travis, Mrs Coote and Dr T Price, Mrs Price, Miss Price and Mrs Aberley who uses it 50+ times a year). Mr Standon advised that he used the routes fortnightly. Mr Cooper and Mrs H Cooper advised that they used the claimed routes monthly. Mr Chanah advised that he used the routes weekly in season and Mrs Lyons, Mr Lyons, and Mr Tilston all advised that they used the paths seasonally. Mrs Monro said that she used the routes occasionally. Mrs Squires advised that she used the paths about 7 times a year and Mr Jones advised that he used 3-4 times but it is not clear what timescale he is using.
- 26.** It may be noted that of the 17 users that used the entirety of the 3 routes for the full period of 20 years prior to challenge, 15 claimed to have used the routes at least weekly, if not more. Only Mr and Mrs Lyons claimed to use it seasonally.
- 27.** In relation to frequency of use, once again the evidence of Dr Lameris and Miss McOwan needs to be treated with caution as their applications had moved away from Stowe and Hixon at the time of the application. Mr Jones also has also declared use 3 to 4 times and it is unclear as to his timescale.
- 28.** With regard to the nature of the use all of the users advised that they used the routes on foot. Mr Lameris used the routes on foot but also for recreation such as kite flying and teaching his children to ride bikes. Mr Chanah and Mrs Coote also uses the

routes sometimes on a bicycle and Mr Tilston has also uses the routes on foot and also in a car. Many claim to have seen other vehicles on the routes. These were mainly agricultural vehicles but did include police cars in training, go-kart racing and a light aircraft.

- 29.** Various challenges have been an issue with nearly every user including coffee mounds, pig pens, pig manure, fencing, aircraft parts, and locked gates.
- 30.** The coffee mounds across Airfield Route 1 were mentioned explicitly in the user evidence forms of 8 users, namely Mrs V Cooper, Mrs Poole, Mr Lameris, Mrs Standon, Mr Standon, Mr Tilson, Dr Price and Mrs Squires. Others have made reference to “rubbish tipped” (Mrs Price), “minor hindrances” (Mr Lyons, Mrs Lyons) and various piles of rubbish Mr Tonks and Mrs Tonks. Mr Tilston advised that the coffee mountain was placed on Airfield Route 1 in 2007 but was removed in 2011. His plan shows the location of the coffee mountain. Mr Lameris refers to the removal of the coffee mountain in 2011 and also includes a plan. Mrs Standen advises that the coffee mountain was placed “about 5 years ago and removed in the previous 12 months” and also includes a plan. Mrs H Cooper Mrs Poole, Mr Standon, Mrs Squires and Dr Price all make reference to the coffee mountain but have not illustrated it on their user evidence plans.
- 31.** Pig pens have also been claimed to have been put across Airfield Route 1 and were explicitly mentioned in the user evidence forms of Mrs V Cooper, Mrs Poole, Mr Lameris, Dr Lameris (“Livestock”), Miss McOwan, Mr Standen, Mr Chanah, Mrs Charnah, Mrs Standen, Mrs H Cooper, Mr Cooper, Mr Tilston, Dr Price, Mrs Price, Mrs Grimes, Mrs Squires and the confidential user. Mrs H Cooper, Mr Lameris and Mr Tilston advised that the pigs arrived 2010. Plans explicitly showing the pigs location are provided by Mr Lameris, Mrs Standen, Mr Cooper, Mr Tilston, Mrs Grimes and Mrs Standen. (In Mrs Standen’s evidence form she does not refer to the pigs but puts them on her plan.) Mr Charnah’s and Mrs Charnah’s plans have indicated an obstruction not explicitly described as pigs.
- 32.** Some of the users did not advise that pigs had blocked their routes but that fencing (which appears to surround the pigs) had blocked the routes. Some users have not therefore referred to pigs but the fencing around them. The users who have referred to both fencing in the area of the pigs and provided a plan of this fencing include Mrs Aberley, Mr Hawkins, Mrs Hawkins, Mrs Jones, Mr Tomkins, Mrs Travis and Mr Tonks. Those that have referred to fencing but without a plan include Miss Price and Mr Jones.
- 33.** Pig manure has also been claimed to have been dumped across Airfield Route 1. Those that refer to the manure heap include Mrs Poole, Mr Standen, Mrs Hawkins and Dr Price although they have not included a plan. Those that refer to the manure heap and have provided a plan include Mrs Standen, Mrs Jones, Mr Jones and Mrs Travis. There is a slight discrepancy in the plans as to where the waste was placed. Mrs Standen however advised in the user form that it had been removed in the last 12 months.
- 34.** Challenges relating to Airfield Route 2 have been raised by various users who have claimed fencing has blocked their route. Users who referred to this fencing and also included a plan on their user evidence forms include Mrs Aberley, Mr Lameris (who advised that this area had been fenced off approximately 2011), Mr Hawkins, Mrs Hawkins, Mrs Jones, Mr Jones, Mr Tomkins, Mrs Travis, Mr Tilston, and Mrs Grimes.

Mr Cooper did not refer to obstructions but put a fence marker on the route on his attached plan.

35. Fencing has been referred to by Mrs Tonks, Mr Tonks, Mr Charnah, Mrs Charnah the confidential user, Dr Price (“Barriers”), Mrs Price (“Barriers”) and Miss Price (“Barriers”) and Mrs Squires but they do not provide a plan and so the exact position of the fencing/barriers cannot be located.
36. Mr Lyons and Mrs Lyons have not put their “hindrances” on a plan nor has Mrs Price put the location of where “rubbish” is tipped on her plan. Mr Tonks and Mrs Tonks have not put the location of their “obstructions”.
37. There are further references to aircrafts enclosures which also appear to obstruct Airfield Route 2. Mr Lameris made reference in his user evidence form to aircraft and parts and advised that this obstruction had been placed in 2011. He has also included a plan as to where this obstruction is located. Mr Tilston has included a plan with the location of the aircraft. Mr Charnah refers to the disused aircraft and parts. The confidential user refers to the fact that her route is blocked by planes and Miss Squires also refers to aircraft in the form of an obstruction. The latter three users however have not provided the details on their plans.
38. Finally, two users – namely Miss Squires and the confidential user also referred to scrap vehicles on the land but they have not put these obstructions on their plans.
39. Intermittent vehicle auctions (as raised by Mr Lameris), Go-Karting (Miss McOwan and Mrs McOwan) and Police training (Miss S McOwan) have also been recorded as obstructions on site. Mrs McOwan has described the location of the Go Karting as being at the opposite end of Airfield Route 2 to that of the aircraft parts.
40. With regard to the claimed route Airfield Route 3 there does not appear to have been any direct impediment to use (with the possible exception of a locked gate (as below)).
41. Of the 32 users, the existence of styles and gates on any of the routes has been denied by 17 users. Two users have not responded to the question as to whether they had noted styles and gates. Mrs McOwan, Mrs Jones, Mrs Tonks, Mrs Grimes, and the confidential user all answered yes to styles and gates but did not show them on plans. Miss McOwan, Mr Tonks, Mrs Munro, Mr Charnah, Mr Jones and Mrs Squires all replied “yes” to both styles and gates. They also provided plans to the style and/or gates locations. Mr Lameris believed that there were never any styles but there were gates - one to public footpath 34 to the industrial estate which has been recently locked and a gate across Airfield Route 2 has been recently locked. Mr Lameris has provided a plan. Mrs Charnah has advised that she has not seen styles but that she has seen gates (but has not provided a plan on which these are shown). From studying the plans of those that have provided a note of where the incumbrances appear, it seems that the styles and gates are (with the exception of Mr Lameris’ evidence) associated with footpaths which are currently on the Definitive Map and Statement around the periphery of the site containing the claimed footpaths, but still preventing access from the claimed routes.
42. In relation to deterrent notices, of the 32 users, 14 users have not seen any notices around the site and one user was not sure whether she had seen notices or not. Mrs Price said that she had seen notices only when track races were on. 12 users had advised that they had seen notices but unfortunately none of them had displayed them on their plans. Mr Lameris informed us that notices had been placed on fencing in August 2011 and provided the location on his plan. Miss McOwan, Mrs McOwan and

Mr Hawkins had also all seen signs and provided their locations on their accompanying plans. Mr Tilston confirmed that the signs were erected in August 2011, although he did not illustrate their location on his plan. It should be noted that many of the user forms were signed around October 2011.

43. Evidence provided in the users forms also advise that all of the users have regularly seen others when using the claimed rights of way. These others are invariably on foot although a few users such as Mrs Standen, Mr Hawkins, Mr Charnah and Mrs Cooper have all seen horse riders when walking on the claimed routes. Many users have also seen others using the claimed paths on bicycles. Whilst it is difficult to quantify and average out numbers of others who have been sighted, many of the users suggest that the number of other users that they see out when walking depends on the season, time of day and weather. A consolidated user evidence spreadsheet can be found at Appendix F
44. With regard to the documentary evidence supplied including the explanatory notes and map provided by the applicants, the notes have been submitted outlining the history of the land up to approximately 2007/2008. The notes explain restrictions to access from 2008 to date [2011] and local concerns for the claimed route and the action taken by the Parish Council and local residents to protect what they consider to be rights of way created by usage. The attached map shows obstructions across their claimed routes.
45. The map dated 1830's has limited notation on it and is at a very large scale. There does possibly appear to be part of a route in the region of the airfield, but it does not appear to correspond with any of the claimed paths.
46. The map dated 1972/1982 is a 1:2500 scale plan of proposed alterations to public footpaths in the vicinity of Hixon Airfield which was produced by Staffordshire County Council endorsed with the name J L Shelbourn County Surveyor. It shows the footpaths proposed to be extinguished, footpaths proposed to be created and footpaths to remain unaltered. This plan has been reduced from a very large document to a side of A4.
47. The returned landowner form from Mr Greaves advised that the land had been in his family ownership since 1916 and was commandeered by the Government in the 1940's due to the Second World War. He informed us that he is a joint owner of the freehold, although has not provided details of the other party. He has seen people on foot and on horseback using the way and has asked those on horseback not to use the way. He does not consider the way to be public and advises that it has been difficult monitoring the amount of illegal use. Unfortunately the landowner evidence form does not include a plan and is rather generic and therefore it is difficult to ascertain which claimed path or path the landowner is referring to when he advises that he has seen people on foot and on horseback. The landowner evidence form is attached at Appendix E.
48. The final piece of documentary evidence is a letter from the landowner Mr Roland Tonge dated 3<sup>rd</sup> February 2012. His letter has advised to whom it may concern, that for over 40 years he jointly owned and subsequently occupied a substantial part of the estate and that neither he or his business partners objected to local people walking on and using the runways for general exercise purposes for themselves or their dogs or horses. However, his letter is not clear as to whether he owned or occupied the land immediately adjoining "the estate" or if he owned or occupied the area in question. Unfortunately, he has not provided a plan of the land that he owned and/or

subsequently owned/occupied or the dates of this. He has also not listed the dates that he owned/occupied with other business partners. This letter can be found at Appendix C.

49. Mr Tonge did provide permission to use the Airfield routes to 3 of the users – namely Mr and Mrs Tonks and also Mrs Grimes. Unfortunately it was not specified in any of the user forms which route/routes the landowner had provided permission for or the dates as to when the permission was provided (although Mrs Grimes did state that it was “when he owned the land”).
50. The fact that permission was granted can be construed as the owner/occupier providing express permission which could defeat the claim to a right of way. If the route is provided by permission, it will not even after 20 years use amount to a dedicated right of way. The permission may be withdrawn in accordance with the terms of the licence. However, the limited number of people to whom this permission was granted suggests that this would not defeat the claim. Furthermore, if the landowner was only allowing the use of the path by licence he should at the time have made the public aware that they did not use the routes by right.
51. There is difficulty establishing the exact landowners and/or occupiers of the three routes, and the discrepancy to which they have permitted users to use the routes in question.

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

52. With regard to the addition of the three claimed footpaths, both sections 53(3)(b) and section 53(3)(c)(i) of the Act apply.
53. It is important to note that under s53(3)(b) the legal test is the usual civil law test on the balance of probabilities whilst s53(3)(c)(i) can be based on the fact that the route can be reasonably alleged to subsist which is a lesser legal test. For this application, Officers have evaluated the evidence against the test under s53(3)(c)(i).
54. Section 53(3)(c)(i) relates to the discovery of evidence of two separate events:
  - (a) Evidence that a right of way which is not shown on the map subsists; OR
  - (b) Evidence that a right of way which is not shown on the map is reasonably alleged to subsist.
55. For the first test to be satisfied it will be necessary to show that on a *balance of probabilities* all of the three claimed footpaths do subsist.
56. For the second test to be satisfied the question is *whether a reasonable person could reasonably allege* that the three claimed footpaths subsist, 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”.
57. One of the two tests must be satisfied before a Modification Order can be made to add the claimed routes. Judgment must be made based upon evaluation of the evidence provided by the applicant. If either test is satisfied, the Definitive Map and Statement should be modified.

### **Summary**



58. Seventeen of the thirty-two people who provided user evidence could show they had used the entirety of each of the three claimed routes, as of right and without interruption, for a period of at least 20 years prior to any of the routes being brought into question.
59. Seven users used the majority of each of the claimed routes, again before any of the routes were brought into question. Three further users used the entirety of each of the three claimed routes but did not fall into the 20 year period for Airfield Route 1 although one did fall into the 20 year period for Airfield Route 2 and Airfield Route 3). One user used the majority of the three routes but did not fall into the 20 year period for Airfield Route 1, but did fall into the period for Airfield Route 2 and Airfield Route 3. Four users evidence is less compelling due to the users ages and having moved away and one user did not provide any timescales for use. The user evidence is therefore sufficient to substantiate the existence of the three routes.
60. The claimed use was sufficient to draw to the attention of the landowner that a public right of way was being asserted over the land. There is some question as to the precise ownership of each of the three routes prior to 2007. It appears to have been held either by joint landowners one of whom allowed dedication of the three routes (Mr Tonge) and one of who it later transpired did not appear so happy that his co-owner was allowing this (Mr Greaves). Unfortunately, it is not clear as to the extent of each of their interests (i.e. landowner or occupier) or the physical extent of the land over which they had these rights due to a lack of plans up until 2007. The landowner who occupied the land from 2007 commenced with a challenge to Airfield route 1 in 2007 and the subsequent Airfield route 2 and 3 challenges in 2011.
61. In or around 2010/2011 it appears that challenges were made across Airfield Route 1 and Airfield Route 2. This is possibly due to a new landowner taking possession. The user evidence forms are mainly dated September/ October 2011, when it can be considered that the users were no longer able to use the paths. Gates were erected and locked and fencing was also erected. The 20 year user periods have therefore been calculated as being prior to the date of the challenge.
62. While the Secretary of State in determining appeals on Section 53 matters has accepted as few as six users where the evidence has been of a high quality in its accuracy, credibility and consistency which is the case here. In this matter there are 17 such users.
63. The available historical evidence is not sufficient proof of the historical existence of any public rights on the airfield. Without other supporting evidence that which we have received is inconclusive on its own.
64. The user evidence is sufficient to support the contention that rights of way exist along the entire length of each of the three claimed routes. Airfield Route 1, Airfield Route 2 and Airfield Route 3 appear to have been established as footpaths by users following the airfield ceasing to operate and being returned to agricultural use which occurred in or around 1962.
65. Finally, section 31(1) of the Highways Act 1981 states that Dedication of a way as a highway is presumed after public use for 20 years.

*Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been*

*dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*

## **Conclusion**

66. With regard to the question of whether Airfield Route 1, Airfield Route 2 and Airfield Route 3 should be added, the test is the reasonable allegation test. In summation does the evidence suggest that a reasonable person could reasonably allege that the routes can be claimed to exist based on the user evidence provided.
67. There is sufficient user evidence of use to support such a contention. The historical evidence does not provide conclusive evidence for the existence of any public rights.

## **Recommended Option**

68. To accept the application for the three claimed footpaths namely Airfield Route 1, Airfield Route 2 and Airfield Route 3 based upon the reasons contained in the report and outlined above.

## **Other options Available**

69. To reject the application and not to make an order to add the three claimed routes to the Definitive Map and Statement of Public Rights of Way.

## **Legal Implications**

70. The legal implications are contained within the report.

## **Resource and Financial Implications**

71. The cost of determining applications is met from existing provisions.
72. 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**

73. 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.
74. 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.
75. Should the Council decide not to make an Order the applicants 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.

76. 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.
77. There are no additional risk implications.

**Equal Opportunity Implications**

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

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John Tradewell

Director for Corporate Services

**Report Author:** Stephanie Clarkson

Ext. No: 276292 **Background File:** 008109

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