

Local Members' Interest	
Cllr M Worthington & Cllr P Atkins OBE	Staffordshire Moorlands- Farley East Staffordshire- Ramshorn

Countryside and Rights of Way Panel -

Wildlife and Countryside Act 1981

Application for the addition of an alleged Public Footpath from Tenement Farm to Edgewells Farm, Ramshorn and Farley

Report of the Director for Corporate Services

Recommendation

1. That the evidence submitted by the applicant and that discovered by the County Council is sufficient to show, that the alleged public footpath from Tenement Farm to Edgewells Farm, Ramshorn and Farley is reasonably alleged to subsist.
2. That an Order be made to add the alleged right of way shown on the plan attached at Appendix B and marked A to B to the Definitive Map and Statement of Public Rights of Way for the Districts of East Staffordshire and Staffordshire Moorlands as a Public Footpath.

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 Districts of East Staffordshire and Staffordshire Moorlands. The effect of such an Order, should the application be successful, would:
 - (i) add an alleged Public footpath from Tenement Farm to Edgewells Farm, Ramshorn and Farley 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.
 - (ii) The lines of the alleged Public Footpath which are the subject of the application are shown highlighted and marked A – B 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. The applicant has submitted in support of his claim evidence of a 3rd edition Ordnance Survey sheet dated 1922, 1910 Finance Act plans and field books and Farley and Ramshorn parish surveys.
2. The 1910 Finance Act plans and field books are not dated but they are documents concerned with mapping lands throughout the parishes of Farley and Ramshorn for the purposes of taxation. The Finance Act Plan shows two single dotted lines running parallel to each other running along the line of the alleged route. The route starts in the north running through plot 312, it then continues in a south easterly direction through plot 582, continuing south through plots 598, 581 and 597, where it terminates in the south and appears to connect to a main carriageway. Alongside the route is the depiction "FP". A copy of the Finance Act material is attached at Appendix C.
3. The field books show that plots 597, 581, 598 and 582 are all in the same ownership and are owned by Howard Winterbotham- Official Solicitor- Royal Courts of Justice. It is unclear as to who owns plot 312, as the field book states that it is the same owner as plot 302, but details of this plot have not been provided.
4. The field book for plot 312 under the heading "Restrictions- states £25" and under the heading for "Public Rights of Way or User- states £25". There is nothing in the field book that specifically highlights what this deduction was made for or the nature of the rights recorded.
5. Under the section, "Charges, Easements and Restrictions affecting market value of Fee Simple", for plot 582, it states, "a public footpath crosses middle of farm through the homestead through OS no's 155, 154, 152, 169, 168 and another crosses detached land through OS no's 10, 19, 4 & 5 but neither are much used". Under the section "Restrictions", it states: "Footpaths- £20" and under the section "Public Rights of Way or User- £20".
6. The field book for plot 598, under the section, "Charges, Easements, and Restrictions affecting market value of Fee Simple", refers to a public footpath from Banks Farm and another public footpath coming out through no's 599 and 582 respectively, another public footpath over Leek Road land and another public footpath across Plumpton Banks. It is recorded that none are much used. Under the section, "Restrictions", it states- "Footpaths- £40" and under "Public Rights of Way or User- £40".
7. For plot 581, the field book records under the section, "Charges, Easements, and Restrictions affecting market value of Fee Simple", "there is a public footpath across middle of farm through OS no's 40, 20, 29 & 27 and another crossing OS no's 9 & 1 but neither are much used". Under "Restrictions", it states "£30" and under "Public Rights of Way or User", it also states "£30".
8. The remaining plot the alleged route runs through is plot 597. The field book records, under the section, "Charges, Easements, and Restrictions affecting market value of Fee Simple", that "there is a cart road to Sallymoor Farm and through OS no's 12 & 43 and public footpaths through OS no's 89, 65, 61 & 43, also through OS 13". Under "Restrictions", it states, "Rights of Way- £40" and under "Public Rights of Way or User- £40".
9. The Ordnance Survey map dated 1922 shows two dotted lines running parallel to each other along the line of the alleged route. The route has the depiction "FP" alongside it. It does not differentiate whether the route is public or private. A copy is attached at Appendix D.

10. The Parish Survey Card for Ramshorn FP13 was completed as part of the National Parks and Access to the Countryside Act 1949- Survey of Rights of Way. The path symbol for the route is "FP". The route is described as starting at the end of Green Lane and the path ending at the parish boundary with Cotton. The route is described as having long use, of over 20 years. The map accompanying the parish survey card shows Ramshorn 13 running along the same line as the alleged route.
11. The Parish Survey Card for Farley FP38 shows the path symbol for the route as "FP". It is recorded that the path starts at FP19 Ribden and the path finishes at the parish boundary with Ramshorn. It also states that FP38 is a continuation of Ramshorn FP13. The map shows FP38 running along the same line as the very northern part of the alleged route, up to the parish boundary of Ramshorn and Farley. FP38, Farley connects to FP13 Ramshorn to the south and the remaining and majority of the alleged route is depicted as FP13. Copies of both parish survey cards are attached at Appendix E.

Other evidence discovered by the County Council

12. Officers have conducted further research. On review of the Parish Survey Cards for FP13 Ramshorn and FP38 Farley documentation was found relating to the objection of both routes to the Definitive Map.
13. In relation to FP13 Ramshorn, the objection map shows FP13 marked as being objected to. The map also shows that the most northern part of the route is marked as FP38 Farley. The Schedule of Objections for FP13 states: "This is merely a path originally used by tenant of Ribden Farm for access to Edgewells House and main road. The public has not been allowed to enter the woodland OS no's 16 and 18 which lie across the path shown on plan". This corresponds with the 1910 Finance Act material which shows the alleged route running through OS fields 16 and 18. The name of the objector is recorded as J.P.Stephenson- Farley Estate Office.
14. Officers can conclude from the evidence that Ramshorn FP13 was included on the parish survey so Farley FP38 was also included to connect the network. Both paths were objected to and the objections were sustained. Therefore, neither route appeared on the Definitive Map from then on. A copy of the correspondence is attached at Appendix F.

Evidence submitted by the Landowners

15. Several landowners were identified on submission of the application. One of the landowners, a Mr P Shaw of Ribden Farm submitted a landowner questionnaire. In this Mr Shaw comments that he does not consider the route to be public and has never given anyone permission to use the route. A letter was also received from E. Heaton & Sons as agents for the Shaws advising that they object to the inclusion of the alleged footpath onto the Definitive Map. They state that the alleged route has never been recognised or used as a public right of way for the last 50 years. Copies of both pieces of correspondence are attached at Appendix G.
16. A letter was also received from E. Heaton & Sons dated 26 August 2003, advising that they act on behalf of Mrs U.R De Stoop, who currently resides in Belgium. They advise that Mr Rowlinson of Edgewells Farm and Mr Gould of Unwin Farm are tenants of the Estate. They further advise that a Mr J P Stephenson of Farley Estate Office was engaged by the various parish councils to assist in the preparation of the map showing public rights of way under the Rights of Way Act 1932 and it was

agreed at the time that there was no connecting path in the parish of Farley between the Ramshorn/Farley parish boundary and any other public road or right of way.

17. E. Heaton & Sons also completed an owner/occupier evidence form on behalf of Mrs U.R. De Stoop. They advise that an objection was made to the proposed inclusion of the path onto the Definitive Map, prepared under the National Parks & Access to the Countryside Act 1949 and this objection was sustained. They further comment that prior to the Second World War this was merely a path originally used by tenants of Ribden Farm for access to Edgewells House and the main Leek Road. The public has never been allowed to enter the woodland which lies across the alleged path.
18. E. Heaton & Sons have also provided a copy of a letter from Staffordshire County Council dated 9 March 1962, referring to the objection that was lodged by Mr Stephenson in November 1954 on behalf of the Ramshorn Estate in relation to FP13. The letter confirms that the Council agree to the deletion of this right of way from the Definitive Map for the parish of Ramshorn. They also confirm that there has been no counter objection to this determination. Copies of the correspondence received from E. Heaton & Sons is attached at Appendix H.
19. Mr P Gould of Unwin Farm completed an owner/occupier evidence form in September 2003. He advises that he has been a tenant there for 50 years and the route is continually blocked by barbed wire fencing and ditches. A copy is attached at Appendix I.
20. Mr B Rowlinson of Edgewells Farm also completed an owner/occupier evidence form in September 2003. He advises that he has had an interest in the land all his life as a tenant and he has never seen anyone use the alleged route. A copy is attached at Appendix J.

Comments received from statutory consultees

21. East Staffordshire Borough Council have no objection to the proposed creation of this alleged footpath. However, they do ask that the Council consider the letter of objection they received from the Shaws, in determining this application. A copy is attached at Appendix K.
22. Staffordshire Moorlands District Council have no objections to the proposal and will support the application. A copy is attached at Appendix L.

Comments on Evidence

23. The 1910 Finance Act was concerned with mapping lands throughout the United Kingdom for the purposes of taxation. This took place between 1910 and 1920. The Finance Act material provided is not dated and therefore it is unclear as to when it was specifically carried out.
24. The Finance Act material consists of three documents, the Field Book, the Valuation Book and the Increment Value Duty Plan. The Plan was based upon a large-scale Ordnance Survey Map. The plans are annotated and show the land divided into different plot numbers. These plot numbers correspond with entries in the field books.
25. From the plan provided it shows a route depicted as two dotted lines running parallel to each other, running along the same line as the alleged route. It has the annotation "FP" running alongside the route. The route runs through several plots, starting in plot 312 in the north, then continuing in a southerly direction through plots 582, 598, 581

and then terminating in plot 597 to the south. Each field book entry has been provided for each plot.

26. The landowner could claim tax relief for public rights of way and these deductions would be shown in the Field Books. The deduction entry can provide evidence of the existence of a way. Where the OS Surveyors recorded that a track or path physically existed across an individual OS plot, this when viewed in conjunction with the entry, provides strong evidence of the existence of a way.
27. Where a deduction was made this would appear under public rights of user and in the entry under restrictions. In most cases the nature of the rights would be recorded, i.e., footpath.
28. In this case we have a copy of the field book entry for each plot of land that the route runs through.
29. Starting with plot 312 where the alleged route starts in the north, under the sections "Restrictions" and "Public Rights of Way or User", there is a deduction of £25. Nowhere in the entry does it specify exactly what the deduction is for or the nature of any right of way. Therefore, when reviewing this on its own it cannot be confirmed with certainty that the deduction made is in relation to the alleged route being a public right of way.
30. In relation to plot 582, the field book does refer to two public footpaths crossing the land. It is likely that the public footpath that is referred to as crossing "detached land through OS no's 10, 19, 4 & 5" is the alleged route, as when reviewed alongside the map the alleged route runs through OS no's 4, 5, 10 & 19. Under the section "Restrictions" it specifically refers to footpaths and under "Public Rights of Way or User" there is a £20 deduction. This is good evidence that at least this part of the route is a public footpath, as the nature of the rights have been specifically recorded in the field book.
31. The field book entry for plot 598 refers to three public footpaths. From the description given it is not clear as to which of the routes listed if any is the alleged route, however the map clearly shows the alleged route with the annotation "FP" running alongside it, continuing through plot 598 and therefore it is likely that one of the routes referred to in the field book is the alleged route, particularly as the route continues through other plots of land, which more clearly describe the alleged route as a public footpath.
32. Also, under the section "Restrictions" it specifically refers to footpaths and under "Public Rights of Way or User" there is a £40 deduction. Similarly, this entry does provide evidence of the existence of a public right of way along the line of the alleged route.
33. Regarding, plot 581, the field book entry refers to two public footpaths. It is likely that the alleged footpath is the second footpath described as this crosses OS no's 9 & 1, which when reviewed alongside the map, the alleged route is depicted as continuing through OS no 9. Under the section "Restrictions" it specifically refers to footpaths and under "Public Rights of Way or User" there is a deduction of £30. Again, providing supporting evidence of the alleged route existing as a public right of way, specifically a public footpath.
34. The field book entry for plot 597 refers to public footpaths and in particular a public footpath going through OS no 13. When reviewed alongside the map it can be seen that the alleged route runs through OS no 13 and therefore it can be assumed that this is the alleged route. Under the section "Restrictions", it states "Rights of Way", although it does not specify the nature of the rights of way and under "Public Rights of

Way or User” there is a deduction of £40. It does provide supporting evidence that the alleged route exists as a public footpath.

35. When the field book entries are reviewed in conjunction with each other they all provide supporting evidence that the alleged route is a public footpath, specifically where the route runs through plots 582, 598, 581 and 597 as all the entries support that each section of the alleged route that falls into each separate plot has the status of a public footpath.
36. When plot 312 is considered in line with the other plots and field book entries it is likely that as the alleged route connects and continues through the remaining plots the whole of the alleged route, starting in the north through plot 312 is a public footpath, as it is highly unlikely that a small section of the route would not have the same status of the remainder of the route it is part of. Therefore, it can be argued that although, information is lacking in the field book entry for plot 312, this part of the alleged route also exists as a public footpath.
37. Claims for deductions were investigated by the valuers to ensure that these were valid. The legislation set out that it was an offence to make a false claim under the Act and was punishable by a fine and up to 6 months imprisonment. Given this consideration it would have been most unlikely that a landowner would have made a claim unless it was well founded and therefore it can be assumed that the entries in the field books relating to the alleged route are accurate.
38. The purpose of Ordnance Survey Maps is to show physical features, and the contours of, the ground. They do not distinguish between public and private rights of way. They are evidence only of the physical existence of a way on the ground at the date of the survey.
39. The 1922 Ordnance Survey Map clearly shows a way running along the same line as the alleged route with the annotation FP alongside it. It is not uncommon for annotations to be found next to minor routes but again they do not indicate whether the way was public or private. Such an annotation might indicate that the route was only capable of having that type of traffic but would only be supporting evidence, not conclusive. Therefore, the 1922 Ordnance Survey Map supports the physical existence of the route as a footpath, but it does not provide any supporting evidence as to whether the route is public or private and therefore is limited in its evidential value.
40. The evidence of the Parish Survey Cards do show the existence of two routes along the same line as the alleged route and the status of these routes were public footpaths. The two routes following the same line as the alleged route being Ramshorn 13 and Farley 38. Farley 38 is the very northern part of the alleged route, up to the parish boundary of Ramshorn and Farley and then the remaining and majority of the alleged route is marked as Ramshorn 13.
41. The Parish Survey Cards were undertaken as part of the National Parks and Access to the Countryside Act 1949- Survey of Rights of Way. The first Definitive Map and Statement came into being as a result of The National Parks and Access to the Countryside Act 1949. The Act imposed a duty on Parish and District Councils to provide information on the public rights of way in their area to the County Council, through the Parish Survey Record Cards. The surveys were marked on an Ordnance Survey Map, showing the physical depiction of the route, accompanied by a record card detailing when and by whom the survey was carried out, the date, the basis for believing it to be public and a description of the way.
42. The information from the survey provided the basis for a Draft Definitive Map and Statement which was placed on public deposit and open to objections and

representations. These objections and representations were determined at public hearings.

43. As can be seen from further investigation and information provided by the agents of several of the owner/occupiers an objection was made in relation to the alleged route being included on the Definitive Map and Statement. The objection was made by J.P Stephenson of the Farley Estate Office in November 1954, stating that the public did not have access to this route and this objection was upheld, and subsequently the route, made up of Farley 38 and Ramshorn 13 was deleted from the Definitive Map.
44. Therefore, it can be summarised that Farley 38 was included on the parish survey, to connect to Ramshorn 13, to connect the network as a whole. Both paths were objected to and the objections were sustained. Therefore, neither route has appeared on the Definitive Map from then on.
45. On review of the parish survey card for Ramshorn 13 it is clear that the route was added to the Definitive Map and Statement on the basis that this route had been long used, specifically stating for over 20 years. This suggests that the public were using the route as a footpath and had been doing so for over 20 years. As Farley 38 is a continuation of Ramshorn 13 it can be assumed that the same applies. Therefore, the intention is clear as to why the route was added, as there appears to be evidence of long usage of the route at the time the parish survey was carried out.
46. It is also clear that the objector was of the opinion that the route was not accessible or used by the public at the time of the survey, despite the parish survey card stating that the route had been long used.
47. What is not clear is what evidence, such as any historical evidence was considered when the decision was made to remove the right of way from the Definitive Map. The main evidence provided by the applicant to support his claim that the route exists as a public right of way, with the status of footpath is the 1910 Finance Act material. It is unlikely that this would have been considered at the time of the objection in 1954, as the basis of the original inclusion of the route onto the map and the objection, appears to have been based on evidence of use. Also Finance Act documents are kept at Kew, in London and it is highly unlikely that an officer part of the inquiry would have made a trip to London to view the documents.
48. However, there was no counter objection to the determination that the route be deleted from the Map. This could be for the reason that the route at that time was not extensively used by the public or as the objector stated the public did not have access to it. Also, at that time there existed the mistaken principle that users had to believe they had a right to use to use the path “as of right”, which Sunningwell overturned. However, this does not show that a right of way does not exist, the route may have fallen into disuse, but the maxim is: “once a highway, always a highway”.
49. Section 53(3)(c) commences by stating: - “the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows...”. This part of the section has been considered by the Court of Appeal who held that it had a precise meaning, in the case of R v Secretary of State for the Environment, ex parte Simms v Burrows [1990] 3 All ER 490. The Court stated that it concerns changes in the original status of highways, or even their existence, resulting from recent research or discovery of evidence, which should all be taken into account in order to produce the most reliable Map and Statement that could be achieved.
50. The use of the word “discovery” suggests the finding of some information which was previously unknown, and which may result in a previously mistaken decision being corrected. In the Court of Appeal Lord Purchas commented that the purpose of Section 53 is to ensure that the map is “*capable of revision of all kinds in order to*

ascertain the true state of affairs on the ground". Accordingly, the Surveying Authority should investigate all available evidence to address the correct status of the route.

51. The court went on to say "*The duty under s53 of the 1981 Act is a continuous one to keep the map and statement up to date and, where evidence becomes available which would indicate that there was an error in the definitive map or any subsequent revision thereof, the surveying authority are under a duty to revise the map and statement accordingly. The duty under s53 of the 1981 Act is a continuous one to keep the map and statement up to date, and where evidence becomes available which would indicate that there was an error in the definitive map or any subsequent revision thereof, the surveying authority are under a duty to revise the map and statement accordingly*".
52. As a consequence of the case, the Department of the Environment issued guidance in various circulars. The summation of this guidance is that where it is alleged that the Definitive Map is in error then the authority must investigate the matter considering and taking into account all relevant evidence.
53. The case of Roxlena also confirmed that where evidence has been discovered but not previously considered, this evidence can be considered, as a local authority has a duty to continuously review the Definitive Map and "the surveying authority is not debarred from considering evidence not previously considered, though submitted with an application never determined".
54. Whilst it is clear that a decision was made to remove the route from the Definitive Map following a successful objection, it would appear that this decision was based on the way in which the route was used and who had access to it at the time of the survey. It is not evident that evidence, such as the 1910 Finance Act material that has been provided by the applicant was considered on review of the objection and therefore as stated by the courts further evidence can be considered when determining whether a route should be added to the Definitive Map, even if it has previously been removed from the map, if the evidence provided is sufficient to show the existence of a public right of way and this evidence is supportive that the route should not have been deleted from the map.
55. If the application had been submitted based on user evidence, then the 1954 objection of the inclusion of the route on the Definitive Map could be seen as a challenge to use but the application is based on historical evidence and therefore the issue of use cannot be taken into consideration.
56. In this case the Finance Act material, when reviewed alongside the original parish survey cards do support the contention of a public right of way along the alleged route, with the status of footpath and it is likely that this material was not considered at the time of the review of the map in 1954. Overall, despite the fact that the route was removed from the Definitive Map and Statement in the 1950's, the evidence provided by the applicant does suggest that a public right of way does exist along the alleged route.

Burden and Standard of Proof

57. In this instance the applicable section of the Wildlife and Countryside Act 1981 is section 53(3)(c)(i). This section 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.

58. Thus, there are two separate tests, one of which must be satisfied before a Modification Order can be made. To answer either question must involve an evaluation of the evidence and a judgement on that evidence.
59. For the first test to be satisfied it will be necessary to show that on a balance of probabilities the right of way does subsist.
60. For the second test to be satisfied the question is whether a reasonable person could reasonably allege a 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 must by definition be less than that which is necessary to establish the right of way “does subsist”.
61. If the conclusion is that either test is satisfied, then the Definitive Map and Statement should be modified.

Summary

62. Finance Act evidence has been referred to in the Courts and at public inquires as being the determining factor in deciding whether a claimed way has public rights. It cannot, where it allows a deduction, be regarded as being neutral. However, as the Court of Appeal in *Fortune v Wiltshire Council* [2012] EWCA Civ 334 stated such evidence must be considered as one part of the overall picture.
63. As the survey was carried out under statute by a public body, and misrepresentation carried severe criminal penalties, evidence of a public right of way is given considerable weight. However, the recording of rights of way was not the primary purpose of the survey.
64. What is clear from the Finance Act material is that the alleged route is clearly identifiable, both from the map and the field books. The evidence is strong that at the time of the survey the alleged route physically existed along the line of the alleged route and when reviewed alongside the field book entries, they support that the alleged route was classed as a public footpath and deductions were made in line with this.
65. The 1922 Ordnance Survey Map shows the physical existence of the route and the fact that it has the depiction “FP” running alongside it, is supportive evidence of the route existing as a footpath. However, this evidence on its own does not show whether the route is public or private.
66. The Parish Survey Cards also show that the alleged route physically existed, with the status of public footpath. The fact that the alleged route was removed from the Definitive Map and Statement following a successful objection is concerning. However, it appears that the objection was made based on usage and that the route was not accessible to the public. It would appear that the councillors on the inquiry preferred the evidence of the landowner. One can assume that the inquiry would only have been concerned to look at the evidence before them.
67. In light of the fact that the courts have confirmed that evidence can be considered following the deletion of a route from the Definitive Map if it has not previously been considered, it is not conclusive that although the route was successfully removed from the Definitive Map, the way does not exist as a public footpath. The maxim is: “once a highway, always a highway”.

68. When all of the evidence is reviewed in totality, there is strong evidence that the alleged route physically exists as a public footpath, despite the deletion of the route from the Definitive Map in 1954.

Conclusion

69. The application is 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 tests in that section.
70. The evidence provided by the Finance Act field books and plan is good evidence, particularly when reviewed alongside the ordnance survey map and original parish survey cards. However, Finance Act material on its own with an Ordnance Survey Map is not strong enough evidence to satisfy the test on the balance of probabilities.
71. When the lesser test is considered, that of reasonable allegation, the evidence is supportive that at the time the survey was carried out when the 1910 Finance Act material was produced, the path existed as a public footpath. It would appear that the way may have fallen into disuse in the intervening years, but the maxim is: "Once a highway, always a highway" and therefore it can be said that it has passed the test of reasonable allegation.
72. Taking everything into consideration it is apparent that the evidence shows that a public right of way, with the status of footpath, which is not shown on the map and statement can be reasonably alleged to subsist.

Recommended Option

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

Other options Available

74. To decide to reject the application to modify the Definitive Map and Statement for the Districts of East Staffordshire and Staffordshire Moorlands.

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 14 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 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

Director for Corporate Services

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Background File: LK639G

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