

Local Members' Interest	
Cllr Mike Worthington	Staffordshire Moorlands- Churnet Valley

Countryside and Rights of Way Panel -

Wildlife and Countryside Act 1981

Application for an alleged Public Footpath between Deep Haye and Crownpoint, Cheddleton

Report of the Director for Corporate Services

Recommendation

1. That the evidence submitted by the applicants and that discovered by the County Council is insufficient to show that a Public Footpath which is not shown on the Definitive Map and Statement for the District of Staffordshire Moorlands subsists along the route shown marked A to B and C to D on the plan attached at Appendix B and should not be added to the Definitive Map and Statement of Public Rights of Way as such.
2. That an Order should not be made to add the alleged right of way shown on the plan attached at Appendix B and marked A to B and C to D to the Definitive Map and Statement of Public Rights of Way for the District of 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 Cheddleton Parish Council for an Order to modify the Definitive Map and Statement for the District of Staffordshire Moorlands. The line of the alleged Public Footpath as claimed by Cheddleton Parish Council is shown on the plan attached at Appendix B, marked A to B and C to D.

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. Originally Cheddleton Historical & Archaeological Society made representations to Staffordshire County Council for the inclusion of the alleged route onto the Definitive Map and Statement of Public Rights of Way in 1987. This was supported with user evidence forms from 19 members of the public. Copies attached at Appendix C.
2. On the 18 April 1989 the Council wrote to Cheddleton Historical and Archaeological Society advising that since they submitted their evidence, the Council had started to operate the provisions of the Wildlife and Countryside Act 1981 relating to public rights of way and therefore asking them to submit a formal application under Section 53 of the Wildlife and Countryside Act 1981 to request the County Council to make a modification order to include the path on the Definitive Map. A copy is attached at Appendix D. A further 11 user evidence forms were submitted by Cheddleton Historical and Archaeological Society in 1989. 3 members of the public who had submitted user evidence forms in 1987 submitted further forms. Copies are attached at Appendix E.
3. A formal Modification Order application, under the provisions of the Wildlife and Countryside Act 1981 was submitted on 22 June 1990 by Cheddleton Parish Council. The application is supported by statements from 20 members of the public. All those who provided statements had also done so previously in 1987 and or in 1989. Some people who had previously provided statements in 1987 or 1989 did not do so as part of the formal application. Copies of the statements enclosed with the application are attached at Appendix F. Further statements were obtained from some of the users who had provided statements in 1990 in 1998. Copies of these statements are attached at Appendix G.
4. 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.
5. 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.
6. 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 impediments. There is nothing to suggest from the evidence submitted with the application or the evidence provided before this that there has been a challenge to members of the public using the alleged route.

- 7.** 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 Act 2006) provides that the date of an application for a modification order under Section 53 can be used as the date at which the public's use was brought into question.
- 8.** In the absence of any other major or identifiable challenge to the public's use of the claimed route the date of the application, 22 June 1990, will be used as the challenge date. Accordingly, the requisite 20 year period of use should be calculated retrospectively from this date. Therefore, the years 1970 to 1990 are the relevant 20 year period.
- 9.** A summary of the salient points from the user evidence forms from each different year have been compiled into separate tables. These are attached at Appendix H.
- 10.** An examination of the forms submitted with the application in 1990 show that of the 20 submitted none of the users have over 20 years usage that covers the relevant twenty year period, from 1970 to 1990. 2 of the users have used the route for 15 years within the relevant timescale and when their use is added together this makes the relevant twenty year period. Another 2 users' evidence of use can be added together to make another user.
- 11.** None of the users claim they were an owner, tenant or related to anyone owning or tenancing the land crossed by the alleged route.
- 12.** 9 of the 20 users claim to have used the alleged route, marked A to B on the map but not the part of the route marked C to D on the map.
- 13.** 3 of the 20 users claim to have used the entirety of the alleged route, including from points A to B and points C to D.
- 14.** User 27 states that they used the route between 1975 to the date of completing the user evidence form in 1990, therefore the evidence falls short of the requisite 20 year period by 5 years. They advise that there are two stiles at the southern end of the route and mid part of the route. They also advise that there is a gate by Old Park, towards the southern end of the route. They do not advise that the gate was locked or prevented access to using the route. When questioned in 1998 they advised remembering waymarking the route when they were the footpath committee chairman on Cheddleton Parish Council but they do not say when. They purport to only using the middle to southern part of the route, marked A to B.
- 15.** User 24 alleges to have used the whole of the alleged route from points A to B but not points C to D. They claim to have known of the route for 4 years and to have used the route twice in 2 years, therefore not meeting the requisite 20 year period.
- 16.** User 8 claims to have used the route for many years, although they do not stipulate how many. They advise that there is a stile at Crown Point Farm. When questioned in 1998 they stated that the previous owner

used to allow people along the route in the 1930s, although he does not make clear exactly which part of the route this applies to.

- 17.** User 31 claims to have used the northern part of the route, including the part marked C to D. They claim to have used the route from 1984- 1987, once or twice a year. This does not meet the requisite 20 year period. They advise that there are stiles at Crown Point Farm and Deep Hayes.
- 18.** User 10 claims to have used the alleged route between points A to B but not points C to D. They claim to have used the route between 1950-1970 and although this is a twenty year period, it falls just outside the relevant twenty year period.
- 19.** User 20 and User 21 both recall using the route as part of a sponsored walk. User 21 advises that a large number of people used the route on the day of the sponsored walk, but they have only marked the middle part of the route down to Old Park. User 20 also refers to using the route on fishing trips. They have used the route from 1965- 85, which is a twenty year period but does not cover the relevant twenty year period. User 21 claims to have only used the alleged route in 1973.
- 20.** User 11 claims to have used the alleged route from 1938- 1988, which exceeds twenty years but does not cover the relevant twenty year period. User 11 advises that they were given permission to use the route by the previous owner of Old Park Farm, in approximately 1978. They allege to have used the route from points A to B on the map but not from points C to D. They advised that there is a stile at Crown Point Farm and there was one at Deep Hayes, which has been destroyed.
- 21.** User 22 alleges to have used the route from points A to B but not C to D. They state to have used the route in the previous 10 years, which would be from 1980- 1990, which does not meet the requisite 20 year period. They state that there is a stile at Crown Point and a farm gate at Old Park Farm. They do not state whether the gate is locked but there is no indication that it prevents members of the public accessing the route.
- 22.** User 32 claims to have used the whole of the alleged route, from points A to B and points C to D. They claim to have used the route from 1980 to 1990, therefore not meeting the requisite 20 year period.
- 23.** User 9 claims to have used the alleged route from 1928 to 1987, which is in excess of twenty years but does not cover the relevant twenty year period.
- 24.** User 23 claims to have used the alleged route from points A to B but not from points C to D. They allege to have used the route in 1971 as part of a sponsored walk.
- 25.** User 17 alleges to have used the alleged route from points A to B and points C to D and advises that there is a stile at Crown Point. They claim to have used the route from 1920 to 1960, which exceeds twenty years use but does not fall within the relevant twenty year period.
- 26.** User 5 claims to have used the alleged route between points A and B but not points C and D. They advise that they have used the route for several years but does not specify how many.

27. User 33 advises that the path seems to have fallen out of general use since the opening of the country park. They state that they have used the route on and off for the last 40 years.
28. User 29 states that they have used the route from points A to B but not points C to D. They claim to have used the route from 1918 to 1970, which exceeds twenty years but does not fall within the relevant twenty year period.
29. User 2 claims to have used the alleged route from points A to B but not points C to D. They claim to have used the route from 1932 to 1974, which exceeds twenty years but does not fall within the relevant twenty year period. User 2 completed a user evidence form in 1987, in which they advised that there was a stile at Deep Hayes and Crown Point Farm and a gate at Little Park Farm. They confirmed that access of the route was always available.
30. User 30 claims to have used the whole of the alleged route, including from points A to B and points C to D. They claim to have used the route between 1978- 1990. This falls within the relevant timescale but falls short of the requisite twenty year period.
31. The table shows that the frequency of use is sporadic with 4 users claiming to have used the alleged route once or twice a year and the remaining users being best termed as occasional.

Evidence submitted by the Landowners

32. When the application was submitted, the applicant revealed four landowners for the whole of the land over which the application route runs.
33. Landowner 2 completed an owner/occupier evidence form on 1 August 1998. They advised that they are a tenant of Staffordshire County Council. They advised that they have never given anyone permission to use the path, but they have also never taken steps to prevent access. Landowner 2 occupies land along the northern part of the alleged route and a field towards the middle and lower part of the route. A copy of the correspondence is attached at Appendix I.
34. Landowner 3 completed an owner/occupier evidence form and letter on 22 August 1998, copies of this can be found at Appendix J. Landowner 3 is a tenant for life under the Settled Land Act. They state that no action has been taken to prevent members of the people accessing the route, but they have also never given anyone permission to use the route. Landowner 3 occupies land that covers the middle and southern part of the route.
35. Landowner 4 completed an owner/occupier evidence form, a copy of which can be found at Appendix K. They stated that they have never given anyone permission to use the route but equally they have never taken steps to prevent members of the public accessing the route. Landowner 4 owns land at the very southern part of the route at Crown Point.

- 36.** Staffordshire County Council (Landowner 1) was also identified as a landowner affected by the application route. Correspondence was received from the County Planning and Development Officer at Staffordshire County Council on 29 August 1990. It was advised that this would be a useful footpath to augment the present network. They further stated that the Spur to the Old Dam (marked C to D) could not have been a public path as access to the reservoir was not available to the general public and the path was a service track for measurement instruments via the adjacent field. The path is part of a waymarked route within the County Park and there would seem to be no case for this Spur to be incorporated as a public path in view of the necessity to close areas in Country Parks in terms of high fire danger. The map provided with the correspondence shows the northern part of the route as marked as being in the ownership of the council.
- 37.** A further memo was received from Staffordshire County Council on 28 January 1999. The information provided was from a former ranger for Deep Hayes Country Park. They advised that during the period 1972 to 1980 the Stoke on Trent Youth & Community Sailing Club was based at this location. They stated that access was denied at all times without the consent of the Commodore, who arranged for appropriate persons to gain access in their presence. As far as the spur footpath (marked C to D) is concerned, this gave access to borehole sites which existed since 1950, until the reservoir ceased to function in 1980. No user claim can be made relating to this period.
- 38.** Prior to the submission of a formal application information was received from the Planning Department at Staffordshire County Council dated 8 January 1988. They advise that the path shown from Deep Hayes to the boundary of Park Farm to be acceptable as this trail formed part of the boundary between the reservoir and the Wall Grange Works and served the sailing hut, now demolished, which may have been on an earlier site of farm buildings. The short spur (marked C to D) is in the line of a gated new path. The spur was known to provide access to the reservoir and its use was not encouraged by the Water Authority other than to the licensed fishing club or the sailing club. Notices to the effect that the land was private were displayed at Wall Grange entrance to the dam. A stile existed at the dam end of the spur, now replaced by a kissing gate, this was for the use of the Water Board Officers who needed access to the field. A further memo was received from the Council on 28 April 1988 stating that the evidence is not acceptable for the County Council to accept a claim for a public right of way in respect of the routes concerned.
- 39.** An e-mail was received from the County Farms Administrator dated 15 March 2006 confirming that the long standing Agricultural Holdings Act Tenancies of Landowner 2 and Landowner 3 are still running on the original tenancy agreements. All copies of correspondence from Staffordshire County Council are attached at Appendix L.

Comments received from statutory consultees

- 40.** Leek and District Footpath and Preservation and Ramblers Group responded to the application, advising that some members of the group remembered walking the path approximately 40 years ago.
- 41.** Staffordshire Moorlands District Council responded on 14 August 1990 with a letter advising that there is a lack of clear evidence of this path on the ground. They go on to say the track marks are clear to follow between WX and YZ. The path is not obvious where it leaves the track at A. At B and C there are no stiles and low field walls. There is some evidence of recent re-building at Point B. The Council is of the opinion that a path on this path would fulfil a valuable amenity function in linking the Deep Hayes Country Park with nearby countryside and also the residential area at Cheddleton. The ground conditions being for the most part of solid tracks would need little attention. Costs might, therefore, be minor ones comprising mainly of signposting and creation or replacement of stiles at points A, B and C. In summation, they advise the path proposed would be welcomed because of its beneficial contribution to local amenity and the relatively low costs of maintenance providing there is sufficient documentary evidence of its existence. Copies of all letters can be found at Appendix M.

Comments on Evidence

- 42.** Section 31 of the Highways Act 1980 sets out the test that must be satisfied under statute for a way to become a public highway through usage by the public.
- 43.** It is clear from the available user evidence that the route has been used by members of the public. Either the entirety of the route or parts of the route have been used by walkers for a number of years, dating back as early as 1918 and up to 1990. However, out of the 20 users not one was able to show that they have used the entirety of the route uninterrupted for the relevant twenty year period.
- 44.** 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, although all of the users do come from the local 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. There is no evidence that use of the route has been done in secrecy.
- 45.** The statutory test refers to use of over twenty years and in the evidence submitted none of the users have used the path over that period of time. The remaining evidence suggests use continues throughout that time but is for lesser periods or do not fall into the period of use.
- 46.** Neither the legislation nor the applicable case law set 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".

- 47.** The frequency of use is relatively sporadic given that 4 users have claimed to use the route once or twice a year and the remaining users have either not specified how often they used the route or it could be best termed that the use was occasional.
- 48.** In relation to the part of the alleged route marked C to D on the map at Appendix B, the evidence relating to the way being used for twenty years as of right and without interruption is weak. Out of the 20 people who completed user evidence forms when the application was submitted in 1990 only 3 users claim to have used this part of the route. However, none of those 3 were able to show that they had used the route for the relevant twenty year period. This level of use is unlikely to have been enough to bring it to a landowner's attention if they were present.
- 49.** In addition, there is evidence that this part of the route was a private right of way. The County Council have advised that this was a route used to access the reservoir and was not encouraged by the Water Authority. It appears that this was a route solely to provide access for those needing to use the reservoir and members of the fishing and sailing club and not for the general public. They further state that "private land" signs were in situ. None of the users have mentioned seeing "private" signs in this location, however use for this part of the route is small and it is likely that the signs were only in place when the reservoir was in use prior to 1980. The erection of notices would indicate that this was classified as a private right of way and the landowner had taken action to rebut the statutory presumption of dedication.
- 50.** Although, the council make reference to a stile being in situ at the dam end of the spur, this is likely to provide access for people who had permission to use the reservoir rather than being a measure put in place to facilitate use by the wider public.
- 51.** On review of the conveyancing documents it appears that there was an agreement in place between Staffordshire Brickworks and Staffordshire Water Board since 1960, which allowed access to the reservoir for both parties. Prior to Staffordshire County Council having a tenancy agreement in place with Landowner 3, Staffordshire Water Board had a tenancy agreement with a previous tenant for the land in question, which appeared to prevent the creation of new footpaths. The documents are supportive that until at least 1980 there were private rights along this part of the route. However, public rights of way may exist independently of other rights or co-exist with private rights of way.
- 52.** In considering whether a public highway of whatever description exists the evidence needs to be considered not only under statute but the common law. The burden of proof is reversed, in that it is for the user to prove the owner dedicated the route and the use does not have to be for twenty years. The former can be inferred from the use but as the judge in *Nicholson v Secretary of State* (1996) said "...the more notorious it is the more readily will dedication be inferred...".
- 53.** In the evidence before the Panel one could not say that the use was such that it would have been so obvious that the owner must, if he was

present, have acquiesced and so there was inferred dedication, in relation to the route marked C to D on the map attached at Appendix B.

- 54.** In relation to the alleged route marked A to B on the map only 9 users could show that they had used the entirety of the route, although none could show this for the relevant twenty year period. The remaining evidence suggests use continues throughout that time but is for lesser periods or do not fall into the period of use. The frequency of use is sporadic in that most of the users only claim to use the route a few times a year or occasionally. This level of usage is likely to have been insufficient to draw to the attention of a landowner that a public right of way was being asserted over his land.
- 55.** 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.
- 56.** If the use was such that it would go unnoticed by a reasonable landowner, that is it was used by so few and so sporadic that it would not be apparent the way was being used, then it could be the case that no presumption of dedication would arise.
- 57.** Once a presumption of dedication is raised then the burden lies with the owner to demonstrate by his actions that there was no intention to dedicate. Here there is no evidence of any acts by a landowner to rebut the presumption of dedication in the 1980 Act in relation to the part of the route marked A to B.
- 58.** 8 of the 20 users make reference to stiles along the route marked A to B. Out of the 8 users, 7 state that there is a stile at Crown Point Farm, which is at the southern end of the route and 2 users advise that there is a stile at Deep Hayes, with 1 user advising that there was a stile at Deep Hayes but this has been destroyed. When viewed objectively the primary purpose of a stile is not to keep the public out but it is used by members of the public to access one part of a route to another. It is generally accepted that people use stiles to access rights of way. Therefore, the presence of stiles along the route cannot be considered as a measure used by any of the landowners to rebut a presumption of dedication or to prevent access.
- 59.** 2 users claim that there is a gate at Old Park Farm but there is no indication that the gate was locked and prevented access for the general public to use the route. Another user alleges that there is a gate at Old Park but again there is no indication that the gate is locked and prevents access. Therefore, the presence of gates along this part of the route cannot be taken to prevent access to the general public.
- 60.** However, it might be the case that the inaction of the landowner is not toleration or acquiescence of the use, as it is unlikely that a landowner would have been aware of it. When the evidence of use is considered as a whole it would be insufficient to alert a reasonable landowner to its existence thus prompting action to rebut dedication.

61. When considering under common law 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 path.
62. In the evidence before the Panel one could not say that the use was such that it would have been so obvious that the owner must, if he was present, have acquiesced and so there was inferred dedication.
63. There is some indication that permission had been granted to members of the public giving them permission to use the route. User 11 alleges that the previous owner of Old Park Farm, gave permission to use the route, marked A to B on the map attached at Appendix B and this was in approximately 1978. Also, several users refer to using the alleged route as part of a sponsored walk, which would imply that permission was given for members of the public to use the alleged route. However, it is unclear as to when the sponsored walk took place.
64. The question of implied permission has recently been the subject of a decision in the House of Lords, *R v City of Sunderland ex parte Beresford* [2003] UKHL 60.
65. Lord Scott stated in his judgement that whilst permission may be temporary it may also provide evidence of an intention to dedicate. Where the right of the public to use a route is intended to be permanent then that would constitute dedication and a public right of way. This could also be applicable to express permission.
66. Effectively the judgement means that where a landowner throws open a way to the public it may indicate that the use is to be temporary only but equally it could convey the impression that it is permanent and that could suffice to create a public right immediately.
67. In order for there to be a right of way under s31 of the Highways Act 1980 there must be no permission or licence associated with use. Belief that the route is public is irrelevant. An objective test, the usage and not the user's belief is the test.

Burden and Standard of Proof

68. An application for a modification order based upon evidence of use can be made under either s53(3)(b) or (c). Officers consider that the application is more properly considered under s53(3)(c)(i) and that this should be considered the relevant section for determination purposes.
69. There is a two stage test, one of which must be satisfied before a Modification Order can be made. All the evidence must be evaluated and weighed and a conclusion reached whether on the balance of probabilities either:
 - (a) The alleged right subsists or;
 - (b) Is reasonably alleged to subsist
70. Thus there are two separate tests. For the first test to be satisfied, it will be necessary to show that on the balance of probabilities the right of way does exist.

- 71.** For the second test to be satisfied, the question is whether a reasonable person could reasonably allege a right of way exists 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 be less than that which is necessary to establish the right of way "does subsist".
- 72.** If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

Summary

- 73.** The application is made under Section 53(2) of the 1981 Act, relying on the user evidence specified in 53(3)(c)(i) of the Act.
- 74.** 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.
- 75.** 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.
- 76.** 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. In this case the view was taken that there was no specific challenge to use of the alleged route and therefore the date of the application is taken as the date of challenge and therefore the years of usage are from 1970 to 1990.
- 77.** 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, for both section A to B and C to D.
- 78.** In relation to the section marked A to B on the map, a significant number of people have provided evidence that they have used the route, however none of the users can show that they have used the route for the full relevant twenty year period and none of the users provided evidence that they used the route on a regular basis. In regard to the section marked C to D there are fewer numbers of people who have used this section of the route and none can show that they have used the route for the relevant twenty year period.
- 79.** With regard to the second part of the relevant section, whether the route can be said to be reasonably alleged to exist, your officers also consider that there is insufficient evidence to satisfy this test in relation to both section A to B and C to D. The user evidence is insufficient to show that both sections of route have been used as of right and without interruption for the relevant twenty year period and there is no evidence that the landowner dedicated the route to the public.

- 80.** When all the evidence is considered together it is not supportive of footpath status at either section A to B or section C to D marked on the map.

Conclusion

- 81.** In light of the evidence, as set out above, it is your officer's opinion that the evidence does not show that a public right of way, with the status of footpath, marked as sections A to B and C to D, which is not shown on the map and statement subsists.
- 82.** It is the opinion of your officers that the County Council ought not to make a Modification Order to add the public footpath which is the subject of this application to the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.

Recommended Option

- 83.** To reject the application based upon the reasons contained in the report and outlined above.

Other options Available

- 84.** To decide to accept the application and make an Order to add the route to the Definitive Map and Statement of Public Rights of Way.

Legal Implications

- 85.** The legal implications are contained within the report.

Resource and Financial Implications

- 86.** The costs of determining applications are met from existing provisions.
- 87.** 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

- 88.** 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.
- 89.** 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.

- 90.** 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.
- 91.** 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

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

J Tradewell

Director for Corporate Services

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Background File: LA647G

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