Local Members' Interest	
Cllr Pardesi	Stafford – Stafford Central

Countryside and Rights of Way Panel

Wildlife and Countryside Act 1981

Application for a Public Right of Way between Corporation Street and Gaol Square, Stafford

Report of the Director for Corporate Services

Recommendation

1. That the evidence submitted by the Applicant and that discovered by the County Council at Appendix "A" is **sufficient** to show that a public footpath subsists on the balance of probabilities, along the route marked "A" to "B" on the plan attached at Appendix "B" to this report and should therefore be added to the Definitive Map and Statement of Public Rights of Way as such.

2. That an Order **should** 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 Borough of Stafford.

PART A

Why is it coming here – What decision is required?

3. 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").

4. The Panel is acting in a quasi-judicial capacity when determining these matters, only considering the facts, evidence, law and the relevant legal tests. All other issues and concerns must be disregarded.

5. To consider an application made by Mr Martin Reay in 1997 for an Order to modify the Definitive Map and Statement by adding a Public Footpath between Corporation Street and Gaol Square in the Borough of Stafford under the provisions of Section 53(3) of the Wildlife and Countryside Act 1981.

6. 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

7. The Applicant submitted 47 user evidence forms in support of his application.

8. Copies of these evidence forms can be seen at Appendix C.

9. The salient points from the user evidence forms have been complied into two separate matrices with Relevant Users in Matrix 1 and Non-Relevant Users in Matrix 2.

10. These can be seen at Appendix D.

Evidence Submitted by Landowners

11. The Applicant identified two landowners at the time of application being Staffordshire Health Authority (St George's Hospital) and Earl Place Ltd of Solihull.

12. The Staffordshire Health Authority was formerly a Trust – as referred to in the evidence - and due to development on the site Pritchard Property subsequently held an interest.

13. Copies of the Landowner response forms, and associated correspondence can be found at appendix E.

Evidence and Comments Received from Statutory Consultees

14. The Ramblers Association submitted a detailed response, and this can be found at Appendix F.

Evidence Discovered by the County Council

15. Staffordshire County Council identified a significant number of additional landowners during its assessment of the evidence due to ongoing residential development in the vicinity of the route.

16. The properties pertaining to these additional landowners and occupiers can for completeness be found at Appendix G.

Evidence Received Following Circulation of the Draft Report

17. Following the circulation of the draft report significant responses were received which necessitated a significant re-assessment and re-evaluation of the evidence.

18. Capsticks LLP (Cornerstone Barristers) acting for the Midland Partnership NHS Foundation Trust sent in a detailed objection – and an exposition of this can be seen from point 67 of this report.

Comments on Evidence

19. Section 31 of the Highways Act 1980 sets out the test that must be satisfied for a way to become a public highway through usage by the public.

20. In 1932 the Rights of Way Act introduced the statutory presumption of dedication by the landowner of a public right of way which could be proven by evidence of 20-years usage as of right and without interruption.

21. The presumption could be rebutted by the landowner providing that he had shown he had no such intention to dedicate the route. However, the onus was on the landowner to do so.

22. It should be stated at once, however that this application, as is explained more fully in the report will not be determined by the statutory tests, but under that of common law.

23. For clarity, the land that the path crosses is, in addition, not of a character that would prevent the dedication of the way. This is important as it can of course be fatal to any claim.

24. 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 continuous period of at least 20 years prior to the status of the route having been brought into question.

25. If there is no bringing into question and therefore no challenge, then the date of application – or of any significant year prior to this – can be taken as the relevant date to calculate the 20-year relevant period.

26. As the Application is based on a large number of user evidence forms it will be the probity and legal weight of each that will be considered against the appropriate test.

27. Given the high numbers of users involved the salient points have been broken down into two matrices of relevant and non-relevant users.

28. In this case the relevant period has been taken to be from 1977 to 1997 as this is where most of the user evidence falls.

29. Turning to the user evidence forms we find that 16 out of the 47 users who testified to using the route, did so throughout the relevant 20-year period.

30. Although this only equates to approximately 34% of all user evidence forms submitted, it still represents a significant number – over a third – which of course adds probity to the claim.

31. Taking the relevant user evidence as distinct from the user evidence *aggregate,* we find a significant amount of consistency.

32. The overall range of use that covers the relevant period runs from 1947 at its earliest point (User 1) and ends in 1997 (multiple users) – the date of the application.

33. Users I, 2 and 3 in the Relevant User Martrix were all accessing the route prior to the 1970's, beginning in 1947, 1954 and 1968 respectively.

34. Users 4 to 9 (inclusive) and 15 all began using the route in the early 1970's whereas Users 10 to 14 (inclusive) and User 16 were using it from the mid to late 1970's.

35. The frequency of which the relevant users were accessing the route also carries with it significant probity.

36. Users 5, 6, 7, 10 and 12 were accessing the route four times per week, User 3 five times per week and Users 4, 11, 13 and 15 were all using it on a "daily" basis.

37. The lowest frequency of use within the relevant *users* were Users 1, 2 and 8 who reported that they only accessed it once or twice per week.

38. Although lower than the other frequencies this is still significant and again enough to bring it to the attention of any relevant landowner.

39. The relevant users are also consistent in the way they were using the route.

40. Where responses were given 8 of the users were accessing it on foot, while 6 were using it by both foot and bicycle.

41. This predilection for foot use excludes the possibility of any higher rights existing on the route and no case has been made out for these.

42. This consistency is also seen in the actual line of the route where all 16 relevant users testified to it being along the same line – this response being to the question "*has it always been the same route*".

43. Clearly it would appear that the same route has been used consistently on foot throughout the relevant 20-year period.

44. Turning to the question of any obstructions along the route, none of the relevant users testified to encountering any locked gates or notices.

45. This is significant as the absence of any notices or locked gates demonstrates that the route had never been obstructed to defeat the claim.

46. Whether User 2 and User 3 had noted unlocked gates or stiles is somewhat irrelevant in this respect as an unlocked gate does not constitute an obstruction and a stile could even be suggestive of an access bring permitted.

47. Similarly, only one of the relevant users testified to a "permission" ever being given. This is incidental and has to be balanced with the remaining 15 relevant users who did **not** note any permission.

48. Indeed, this isolated permission was granted by the Chairman of the Health Authority but limited to the time when Mellor House was being constructed.

49. This atypical set of circumstances could have necessitated a permission due to construction work – although of course this point is mere conjecture.

50. In the additional notes on the user evidence forms there are two references to a permission and one reference to a challenge, the second permission is recorded as "not official" although of course it is difficult to separate out official and non-official permissions.

51. Significantly only one of the users had ever been stopped – or challenged – using the route, and this is clarified by the user stating that the Managers of St Georges asked them not to use the route for "a period of time".

52. Again, this appears to be an isolated case and somewhat out of context as the timeframe when it happened is debatable. This clearly reduces the probity and in turn bearing on the matter.

53. Regarding the width of the route there appears to be a predilection for between 3 and 6 metres when the measurements given in feet are re-calculated in metric.

54. Although not as critical to the claim this does demonstrate consistency as the users were all clearly testifying to using the same thing.

55. Turning to the aggregate user evidence we find that of the 47 forms received 16 as stated, testified to use during the relevant 20-year period.

56. Just over a third of the aggregate users were therefore *relevant users.* The remainder not testifying to use of up to the necessary 20-year period.

57. It was not possible in this case to derive further users by *combined usage* as all of the non-relevant users had only used the route in the 1980's and 1990's - far later than the 1977 date required.

58. That's said the non-relevant users still bear testimony to use of the route, and often for significant periods of time - 10, 15 and 17 years have been noted.

59. As the route passed across land that was subject to Crown Immunity during the relevant period a claim through statue would not be possible.

60. This application will therefore have to succeed - or fail - on the **common law** test.

61. The common law test is based on somewhat similar criteria to the statutory test although the use does not necessarily have to be for 20-years or more.

62. The test needs to demonstrate that that the landowner firstly intended to dedicate the route and secondly that he had the *capacity to do so.*

63. It is a test that applies to the Crown, the Forestry Commission, the Duchies of Lancaster and Cornwall and government departments - unless expressly excluded by statute.

64. Under the common law test it may be necessary to show higher levels of use in urban areas during shorter periods of time. This enhances the overall probity of the claim.

65. Given that there were a moderate number of users in this particular case it is necessary to have a more substantial timeframe.

66. As such the relevant 20-year period will be retained in this case to satisfy the common law test.

67. The conduct of the landowner is held to be evidence of dedication, and by accepting usage - when it was obvious that use was occurring - is fundamental to the probity of the claim – as in the case of Nicholson v Secretary of State for Environment (1996).

68. The critical point in the common law test is that there must be a *capacity to dedicate*, and only the owner of the freehold title can, by his actions, dedicate a right of way.

69. A tenant of the land can dedicate a way – provided he has the agreement of the landowner, although in many cases it can be problematic to demonstrate this agreement is in place.

70. The application will need therefore to show that there was a capacity to dedicate, and that dedication had occurred, and on this the matter will rest.

Submission From Capsticks LLP (Cornerstone Barristers) on Behalf of Midlands Partnership NHS Foundation Trust

71. Turning to the evidence submitted by Capsticks LLP we find a lengthy twenty-page report. This report is split into 58 key points, which are worthy of note.

72. In their opening statement at point 2 it is stated that the "effluxion of time" since the application was made in 1997 means that it would be place the Trust at an unfair disadvantage.

73. However, although the application is indeed over 20 years old there is no set timeframe for when these applications should be determined, and so it is held that this point would not put the Trust (or any objecting body) at any material disadvantage.

74. That said, at point 3(a)1, of their statement it is averred that the Trust land benefitted from Crown Immunity during the relevant period – and as such the public use was *by right* rather than *as of right*.

75. This is a significant point and dismantles any possible claim under statute, although it does not, as stated, offer a defence against the common law test.

76. Again, at point 3(b) of their submission they state that the user evidence is inconsistent.

77. Although noted, it is maintained that the evidence is not inconsistent and conversely a high degree of consistency exists between the forms. This is even carried through to the non-relevant user forms which also support their relevant counterparts.

78. It is also maintained that the evidence in support of the application is not problematic as Cornerstone hold at point 3(d).

79. For clarity it is not subject to a set time frame, it is not inconsistent or problematic and there is nothing that sets any party at any material disadvantage.

80. The Factual Background given at point 4 is helpful as it stipulates that the Trust is indeed the freehold owner of the land in question. This is significant as it means that they would have had the capacity to dedicate under the common law test.

81. Again, in the Factual Background reference is made to the disparity between the application date and the date of consultation, although as stated above this is not a material problem to the claim – nor is it unusual.

82. The report goes into some detail setting out the relevant legislation from point 8 and the Council concur with the comments made at point 11 – the only matter relevant to the ensuing tribunal of fact is whether the route exists legally or not.

83. The Council further concur with point 15 in that the question has to be was the route used *as of right* or *by right.* The question is indeed an objective one.

84. To support the contention of *as of right* the use of the route needs to be without force, secrecy or permission and the Oxfordshire County Council case [1999] is quoted in this respect.

85. Again, the relevant legislation is supplied that supports this and at point 17 much is made of the owner's intention to dedicate a way, and that this must be objectively ascertained.

86. At point 18 it outlines a medium of challenge – in this case a barrier being erected across the path – or a notice forbidding the public to use the path.

87. No barrier was erected across the route in question.

88. At point 19 the reference to a common law dedication as a "legal fiction" is disputed somewhat by the Council. A common law dedication is of course sufficient to allow a route to be entered onto the Definitive Map and Statement – the legal record.

89. It is probably more correct to state that the common law test has a somewhat *wider net* although that this in no way detracts from its legal weight or relevance.

90. At point 25 the reference to case law is noted although its relevance to the matter in hand is questionable. There are distinct differences between the cases highlighted and it does nothing to dismantle the present case – at least at a common law level.

91. Of direct relevance to the matter in hand are the paragraphs relating to Sovereign Immunity from point 26 at page 9.

92. Here it is stated that "*Sovereign Immunity is the presumption at common law, that an Act of Parliament does not bind the Crown unless the contrary is explicitly stated."*

93. This point is clear and with the matter in hand nothing has been found that has any bearing on the case.

94. From point 30 of the report Cornerstone hold that it is not possible to conduct a fair procedure, given the lapse of time from when the application was made.

95. This paragraph is heavily disputed by the Council, as it is held that there is no material effect on either parties' evidence. I

96. It is not unusual for applications to be determined after a protracted time frame and signed statements from any party remain as such – signed statements. Their intrinsic probity is not diminished.

97. As regards declining the present application in favour of a more recent one, little would be gained - the Council must investigate very fully the extant application, failure to do so could leave existing evidence unaccounted for and unconsidered.

98. This is potentially important as critical evidence taken at the time of the application could be discounted, and it would be unfair to all parties if something of probity was not considered.

99. The purpose of this report is for any new evidence to be considered alongside the original existing evidence; the opportunity exists to present this as is demonstrated by the Cornerstone submission.

100. From page 10 of the report much is made about "equality of arms" and it is held that all parties to the application must have an equal chance to make their case.

101. The Council maintain that all parties have had over 25 -years to submit any further evidence and conversely this timeframe has given sufficient opportunity for any party to respond.

102. Cornerstone go on to state at point 33 that any inspector seised of an inquiry would also exercise the same duty.

103. Again, mere mention of a public inquiry reaffirms the fact that there are several stages in this process and at any one of them an objection may be made.

104. These tiers within the process do allow for an "equality of arms" to be demonstrated and somewhat effectively in fact.

105. There is indeed a set legal process that allows for new evidence to be submitted to counter any claim – as demonstrated very well by the Cornerstone report.

106. This also applies to the "effluxion of time" at point 34 as it could be held that there has been ample time for more submissions to arise.

107. In addition, the fact that some individuals may no longer be alive is somewhat irrelevant - a signed statement is a signed statement - and as these consist of clear points of fact there would be little material gain in pursuing them further by the questioning of any witnesses.

108. Cornerstone also contend that the rights of the relevant landowners under section 31 have been removed given the passage of time.

109. This however is not fair conjecture as a system does exist to allow landowners to apply for *priority status* with any application – this means that the relevant landowner (in the present matter) could have applied for priority status at any time.

110. Priority status if granted, allows the Council to consider the application in advance of others on the list and full details of this process were provided to the landowner during the initial consultation.

111. Notwithstanding it can only be reaffirmed that no landowner rights have been removed due to the passage of time, it is the 20 years *prior* to the application being made that are critical here, not the 20 years *since* it was made.

112. For clarity at point 34(c) the landowners were indeed able to gather and submit evidence contemporaneously as a detailed landowner response form was sent to them in 1999 (the date of application) as is standard practice with every application.

113. The landowner response form allows any landowner to submit any relevant evidence he is possessed off at the time – including details of any prohibitive signage, challenges or obstacles.

114. Just as the burden is on the applicant to prove the claim, the burden is on the landowner to counter it – additional evidence could have been submitted by either party at any time following the initial consultation in 1999 – the recent *report* consultation provides a further opportunity to do this – as demonstrated by the Cornerstone submission.

115. Although noted the reference to Article 1 of the First Protocol of the European Convention of Human Rights would seem misplaced, none the least because the determination of the application was – and still is – in the public interest.

116. Again, as Cornerstone rightly state at point 36 there is no provision within the Wildlife & Countryside Act 1981 in relation to time scales during which applications must be determined – notwithstanding "as soon as reasonably practicable".

117. The application for priority status would need to have come from the landowner direct - as stipulated in the initial consultation in 1999. For clarity the landowner is required to set out the case for priority status in writing which is then considered by the Council.

118. In the present matter no such request for priority status was received and this is inevitably why no such application was progressed by the Council, irrespective of the fact that this could have been instigated at any point from the initial consultation in 1999.

119. Again, there would be no merit in the Council inviting another (replacement) application, the evidence submitted at the time, albeit over 20-years ago, is still signed evidence and nearer to the event (the 20-year relevant period) than any new submission would be.

120. The Council contend that it would not be unlawful to determine the application due to the highlighted passage of time. More it would be neglectful of law not to determine it.

121. Points 40 to 43 of the Cornerstone Report highlight the matter of Crown Immunity and although referred to in the first draft report it is accepted that this could have been made with greater clarity.

122. The Council concur with Cornerstone in that this application cannot succeed by statutory means, the period of Crown Immunity between 1978 and 1994 cuts a wedge through the relevant 20-year period rendering it insufficient in legal context.

123. The relevant period runs from 1977-1997 and so clearly only 4 years at best are legally "claimable" under statute during this time. As such this application must succeed or fail on the common law test.

124. With regard to point 48 of the Cornerstone Report that the use of the route was not without permission – an essential element of a successful claim – it is accepted that one of the users worked for the landowner – and this may remove altogether *his* attested evidence. However, this itself is not fatal to the claim.

125. The matter of an "*implied permission*" is highlighted at point 47 of the Cornerstone Report in that the land in question had a dedicated public function and that as such those using it for that dedicated public function were there *by right* – and not *as of right*.

126. The question is raised therefore as to whether the witnesses who used the route during the relevant 20-year period did so for the *reasons* of *that* dedicated public function – that is the services provided by the landowner/ hospital.

127. Or put another way were the users accessing it – as stipulated by Cornerstone – for the purpose of receiving care, visiting patients, or any related uses?

128. This question can be answered somewhat conclusively from the user evidence forms at point 4(c) where it asks "for what purpose" were they using the route.

129. Here we find a variety of responses from the relevant users including: "home to town", x (3 users) "shopping", (x 5 users), "work" (1 x user), visiting and pleasure (1 x user).

130. Clearly none of the relevant users testified to using the route for any of the purposes for which there was a dedicated public function, which means they were not of course there *by right* – they were there *as of right*.

131. Furthermore, the user evidence forms also ask the question at point 7(a) as to whether the user has ever worked for the landowner. Nearly all of the relevant users testified "no" to this point demonstrating they were not employees and therefore not there by licence.

132. For clarity at point 48 of the Cornerstone Report the relevant use was indeed "as of right" and not "by right" or "by licence" as contended – the relevant users were not using the route for the dedicated purpose of the land or as an employee.

133. The points made by Cornerstone relating to a lack of consistency in the width of the route are rarely fatal to any claim – the primary purpose of the application is to determine whether a route legally exists or not – the width in this respect has limited relevance.

134. Although Cornerstone contend that there is a variety of widths given in the evidence forms, there does however appear to be a predilection for *certain* widths, as outlined in the earlier part of this report.

135. Notwithstanding only a minimum width would be recommended should any decision to make an Order be made – and this would be to the minimum width of 1 metre. Any variance in the width of the alleged route would not, in its own right, be detrimental to the claim.

136. Cornerstone contend that the alleged route was stopped up at least as far back as 1994 and they quite rightly go on to say this is evidence of a non-intention to dedicate.

137. From the relevant user evidence however, we can find no reference to any such *stopping up* or obstruction anywhere along the route and although the plan submitted by Cornerstone is noted it is not sufficient to counter the weight of the evidence.

138. Some reference is made to "further evidential problems" at point 53.

139. In regard to these Cornerstone contend at point a) that the user evidence is fatal to the claim as one user testified that "the managers of St Georges asked the public not to use the route for a period of time".

140. Clearly this would count as a verbal challenge and if taken at face value could indeed be fatal to the claim, however there are two important things to note here. Firstly, the comment was merely hearsay – the complete sentence in the user evidence starting- "*But I did hear that…."*

141. Secondly the challenge was not made to that particular user, or indeed any named user. It was merely anecdotal and lacks probity as the same user also stated he had never been stopped or turned back along the route.

142. Not only this there is no mention of *which* "period of time" the "managers" (whoever they were) were referring to – it could have been outside of the relevant period. As such the comments noted by Cornerstone at 53(a) are not fatal to the claim.

143. Cornerstone then note at 53(b) that Pritchard and Associates committed to dedicating a public footpath within the development plan and highlight that no comparison of it is given with the alleged route.

144. Although a valid point – in that it would have indeed been useful at that time to make a comparison of the two – the offer of a dedicated route would not have removed the subject of the claim.

145. If the offered route had been identical to the alleged route, then it is possible that an Agreement could have been made with the Council to dedicate the route. This option however was not pursued, and as such the S53 application invariably stands.

146. Turning to the conclusion of the Cornerstone Report there is reiterated the contention that the Council cannot determine the application fairly, although from the preceding exposition it can be shown that this is not the case.

147. They go on to dispute whether there is any positive evidence at all for the application – which again has also been countered in the preceding exposition.

148. The point about Crown Immunity is noted – although it is reiterated by the Council that this application will succeed or fail on the Common Law test and not by means of statute.

149. It is also possible to show from the user evidence forms themselves that the users did not *work* at the hospital – and so were not using the route by licence. They explicitly state that they were not employed by the landowner.

150. From the evidence forms we can also see that any implied permission is also not applicable as the reasons people were accessing the alleged route are given in those forms.

151. Twice in fact if one includes the response “pleasure” – a stated option, along with any free response given with it. They were therefore using the route, “as of right”.

152. Cornerstones penultimate paragraph at point 57 suggests that some of the evidence is even supportive of a non-dedication. Six points are given, although each of them can be satisfactorily countered ie.

153. The user statement indicating that “mangers” told the “public” not to cross the land for a certain “period of time” – can be discounted as it was firstly hearsay and anecdotal, secondly it didn’t refer to named managers or public and thirdly it did not specify a timeframe of which this use was not to occur.

154. Another user’s reference to a permission that was “not official” is unclear – however without further exposition as to who, where and when it is somewhat valueless from either the landowners or applicants’ perspective.

155. The reference to a route being blocked by a gate near the town centre is mitigated by the fact that the gate was not locked and its relevance so insignificant that it does not present a problem in the evidence. As an obstruction it was not notorious.

156. The 1994 Sale Plan that is held to show the route was *stopped up* is somewhat curious, whatever this means exactly on the plan is not easily ascertained, and it was not carried through to the ground. It is important to remember that the alleged route (indeed any route) was not determined in 1994.

157. The Trust Land was indeed used for a public purpose for most of the relevant 20-year period, however we can see clearly from the user evidence forms that the exact reasons people were accessing the route were not those linked to its public purpose. As such their use was categorically “as of right” and not “by right”.

158. Lastly the period of Crown Immunity that is near contemporaneous with the relevant 20-year period does not exclude a claim under the common law test –

and it is on this, not the statutory provisions, that the application will be succeed or fail.

159. Again, in the closing statement at point 58 of their report, Cornerstone envisage the matter being referred to a public inquiry and state that a case for the route would be difficult to make out on the balance of probabilities.

Landowner Responses Received in Response to Initial Application

160. A letter was received from The Foundation NHS Trust, Stafford in 1998 from the Director of Facilities and Estates stating, "*the Foundation are generally supportive of a public footpath between Corporation Street and the main town centre."*

161. This is mirrored in other later correspondence, in 2005 South Staffordshire Healthcare NHS Trust stating that "*the Trust is fully supportive of the alleged route".*

162. Pritchard & Associates Ltd (developers) also stated in 2005 that they would give "*a firm commitment that a public footpath route will be dedicated across the development from Corporation Street to Gaol Square".*

163. This commitment to a route through the development site is consistent from both the developer and the NHS Trust – the two landowners concerned, however the intimation of a possible diversion (which the new development would accommodate), would as the applicant highlights in 2005, require the S53 application to be determined *first.*

164. Clearly the landowners by correspondence appear to have agreed to the incorporation of a route through the site linking Corporation Street to Gaol Square.

165. However, as the S53 application had not yet been determined it remained necessary to progress this first, with any potential route subject to possible diversion post determination.

166. The legal existence – or not – of the route in question needs to be ascertained.

Summation of User Evidence

167. As has been outlined in the above points, all 16 relevant users show a degree of consistency in their evidence.

168. All have used the same route throughout the 20-year relevant period, and this has been *as of right.*

169. The *as of right* status can be determined as use has clearly been *nec vi, nec clam, nec precario* – without force, secrecy, or permission.

170. This use has been without interruption and challenge and there have been no physical obstructions or barriers to use.

171. The use has been exclusively by foot or cycle and no case for any higher rights appears plausible and none has been made out.

172. From the extent, volume and frequency of use combined with the preceding points above it can be demonstrated that the landowner did indeed show an intention to dedicate and that the public had accepted this.

Comments on All Available Material

173. There is no evidence that we are aware of which would support any higher rights than those applied for.

174. The evidence appears to be presented in a clear and cogent way which supports the validity of the claim.

175. The material when taken together appears to be consistent.

Burden and Standard of Proof

176. In this case, given the existence of Sovereign Immunity throughout much of the relevant 20-year period the application must succeed or fail on the Common Law test.

Summary

177. It is evident from the user evidence that the 20-year period has been satisfied.

178. It is evident from the relevant user evidence forms that the alleged route was used either on foot or cycle concluding that this has no higher rights than a footpath.

179. The route was used as of right, *nec vi, nec clam, nec precario*, without secrecy force or permission.

180. If it is decided that the statutory test fails or is inapplicable, consideration should be given to the issue of common law dedication; that is, whether the available evidence shows that the owner of the land over which a way passes has dedicated it to the public.

181. An implication of dedication may be shown at Common Law if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication.

182. In this case the statutory test is indeed **not** applicable given the Trusts former status of Sovereign Immunity and as such the application must succeed or fail under common law.

183. As with the statutory test the use must have been *as of right* and without challenge and enjoyed by the public at large – all of which is satisfied in this application.

184. Although to succeed at Common Law a 20-year period is not essential, the fact that we already have a proven 20-year timeframe adds significant probity to the claim.

185. There was in addition no interruption to this use and no challenge to this use, quantified by no prohibitive signage and no verbal challenge.

186. Everything, everywhere points to dedication by the landowner and acceptance of this dedication by the public.

Conclusion

187. In light of the evidence, as set out above, it is your officer's opinion that a public footpath can be shown to **subsist** on the balance of probabilities at Common Law level.

188. It is recommended that the County Council should therefore make a Modification Order to **add** the route to the Definitive Map and Statement for the Borough of Stafford.

189. It is further recommended that the minimum width of the path should be **1.8 metres** throughout its length.

Recommended Option

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

Other options available

191. To decide to reject the application and not to make an Order to add the route to the Definitive Map and Statement.

Legal Implications

192. The legal implications are contained within the report.

Resource and Financial Implications

193. The costs of determining applications are met from existing provisions**.**

194. 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

195. 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.

196. 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.

197. 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.

198. Should the Council decide not to make an Order the applicants may appeal that decision under Schedule 14 of the 1981 Act to the Secretary of State who wil

follow a similar process to that outlined above. After consideration by an Inspector the County Council could be directed to make an Order.

199. 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.

200. There are no additional risk implications.

Equal Opportunity Implications

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

J Tradewell

Director for Corporate Services

Report Author: David Adkins

Ext. No: 276187

Background File: LG648G

INDEX TO APPENDICES

Appendix A	Application
Appendix B	Plan
Appendix C	User Evidence Forms (47)
Appendix D(i)	Matrix of Relevant Users (14)
Appendix D (ii)	Matrix of Non-Relevant Users (33)
Appendix E	Landowner Responses