

<b>Local Members' Interest</b>	
Cllr. Gill Heath	Staffordshire Moorlands

Countryside and Rights of Way Panel -

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Wildlife and Countryside Act 1981

Application for Upgrading Public Footpath 60 Waterhouses Parish to a  
Restricted Byway

Report of the Director for Corporate Services

Recommendation

1. That the evidence submitted by the Applicant and that discovered by the County Council is not sufficient to show, on the balance of probabilities, that Public Footpath 60 Waterhouses should be added as a route of a different description, namely a Restricted Byway, to the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.
2. That an Order should not be made to upgrade the alleged right of way shown on the plan attached marked A to B at Appendix B to the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.

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 for an Order to modify the Definitive Map and Statement for the District of Staffordshire Moorlands. The effect of such an Order, should the application be successful, would:
  - (i) Upgrade Public Footpath 60 Waterhouses to Restricted Byway status on the Definitive Map and Statement of Public Rights of Way under the provisions of Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981.
  - (ii) The line of the route which is the subject of the application is shown highlighted on the plan attached marked A to B at 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 application submitted to upgrade Public Footpath 60 Waterhouses Parish to a restricted byway can be found at Appendix A.
2. In support of the application the Applicant has submitted a number of pieces of documentary evidence.  
All the documents can be found at Appendices C to N.

#### Evidence Submitted

3. Although not submitted with the original application, the Applicant has since submitted user evidence in support of the application. The evidence of use takes the form of 8 user statements, the final 3 being received on the 27<sup>th</sup> March 2023. These statements have been made by members of the public who claim to have used the route over varying periods of time. Copies of their statements together with a user matrix are attached at Appendix O.

#### Evidence submitted by the Landowners

4. When the application was submitted the Applicant identified three owners or occupiers of the affected land.
5. The landowners identified by the Applicant have been consulted however they have not submitted any evidence in respect of the application.

#### Comments received from statutory consultees

6. **Waterhouses Parish Clerk, Chris Hinton advised that "the Parish Council of Waterhouses has no objections to the above application".**

#### Comments on User Evidence

7. 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.
8. 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.
9. In this instance there does not appear to have been any challenge to the actual use of the route by any person nor have there been any physical impediments.
10. Where there is no identifiable event which has brought into question the use of the 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 of the Wildlife and Countryside Act 1981 can be used as **the date at which the public's use was brought into question.**
11. **In the absence of any other major or identifiable challenge to the public's** use of the claimed route the date of the application, 4 July 2018, will be used as the challenge date. Accordingly, the requisite 20-year period of use should be calculated retrospectively from this date. The years 1998 to 2018 are therefore the 20-year relevant period.
12. An examination of the forms will show that of the eight submitted user evidence forms, three users have over 20-year usage that covers the 20 year period from 1998-2018.
13. Of the remaining 5 users, one of the users covers a 16-year period, one an 8 year period, one user has not confirmed any dates during which they used the route and finally users G and H are minors and therefore would have been unlikely to have used the route independently, but accompanying a parent or guardian, only the latter being a quantifiable **user "as of right".**
14. Whilst some of this use was during the 20-year period, it does not cover the entirety.
15. Six of the eight submitted user evidence forms state that at the time of completion of the form use of the route on horseback and that use described within the statement continues.

16. None of the eight users have testified to the existence of any stiles and gates along the route.
17. User A claims to have known the route for 36 years, however has not indicated on their user evidence form the dates of use. They have stated that they used the route on foot once or twice a week and on horseback two to three times a week.
18. User B has indicated that they have used the route for pleasure for a 30-year period, on foot once a year, on horseback every few months and bicycle once a year and that this use continues.
19. User C continually used the route for 27 years on foot and horseback on a weekly basis for leisure purposes until relocation from the area.
20. User D has known and used the route on horseback 2 or 3 times a month for a period of 2 years **stating that "it's a safe off road track that provides a good surface away from speeding traffic"**.
21. User E has used and known the route for 16 years for exercise and pleasure purposes on foot daily and weekly on horseback and that this use continues.
22. User F claims to have used the route for pleasure purposes for 26 years, covering the entirety of the relevant 20-year period and that this use has been as often as 2 or 3 times a week and this use continues.
23. **User F adds that the route "cuts out a particularly treacherous section of Ellastone Road on the brow of the hill where Alton Towers traffic is fast and blind".** (*sic*)
24. User F has indicated that there used to be a RUPP sign along the route **which "fell into disrepair"**.
25. The user evidence forms G and H have been signed by minors and the form completed by an adult. Whilst these are signed statements of use, it could be argued that whilst they suggest in their forms, that they were not accompanied using the route, their usage commenced at the ages of 3 and 4 respectively, and therefore it could be contended that they must have been accompanied along the route at this young age. Users at this age **would have no concept of use "as of right" and therefore this evidence must be discounted for the reasons stated above.**
26. The width of the route does vary amongst the users, but the minimum would appear to be 2 meters.
27. No user has stated that they have ever been turned back or told to seek permission.
28. Every user has suggested that they have used this route for pleasure and leisure purposes as a safer route with less vehicular traffic.

## Historical Evidence Submitted by the Applicant

29. In totality, the Applicant submitted in support of the application the following forms of evidence:
30. The copy of the Definitive Map submitted in support of the application at Appendix C indicates the Applicants claimed route.
31. A further copy of an undated Definitive Map at Appendix D shows the route in question with higher status than that of a footpath.
32. A map from the National Library of Scotland at Appendix E has been submitted in support of the application. The map shows the route depicted as Dukes Lane and runs along the same line as the alleged route.
33. The Staffordshire County Council response to the e-petition-bridlepath at Appendix F has been provided in support of the application.
34. Photographs of the route in question are attached at Appendix G. Whilst the photographs show the physical features of the route on the ground at the time they were taken, this evidence does not provide any indication of the status of the claimed route or the nature of any rights over it and therefore carry no legal probity to the claim itself.
35. Parish Survey Cards at Appendix H have been provided as evidence in relation to Footpath 60 Waterhouses.
36. The 1951 Parish map and card shows a route running along the line of the alleged route with the Parish card recording Public Footpath 60 and 60a **Waterhouses as "R.P"** – the acronym used for a **"Road used as a public path"**. The Parish Survey map accompanying the record card shows the **acronym "CRF" along the route.**
37. In support of the references made on the Parish Survey Cards the Applicant has supplied The National Parks and Access to the Countryside Memorandum, at appendix H(a) of the report. This memorandum introduced the concept of the Definitive Map and Statement of Public Rights of Way.
38. The Parish Survey Map 1954 at appendix H(c) is submitted in support of the Parish Survey Card, this map shows the full length of Public Footpath 60 Waterhouses, which is considered further within the report; and the British Horse Society Paper on RUPPS can be found attached to the report at appendix H(c).
39. A copy of the Cauldon Parish Tithe Map can be found at Appendix I. Tithe Maps and Awards were prepared under the Tithe Commutation Act 1836, which commuted the payment of a tax (tithe) in kind, to a monetary payment.

40. The Planning Inspectorate appeal decision, attached at appendix J, in support of the claim; evidentially adds little legal probity to the application.
41. The Finance Act Map 1910 evidence in support of the application is at Appendix K. The 1910 Map appears to show an uncoloured and unnumbered route running along the line of the claimed route.
42. The Ordnance Survey Map dated 1897 is appended to the report at Appendix L.
43. The letter from the County Clerk and Chief Executive of the Department of the Environment dated 2 November 1979 can be found at Appendix M.
44. The 1929 Handover Map shows a way running along the same line as the claimed route. The route is marked as a black solid line. There is a key provided with the map and this evidence is attached at Appendix N.

#### Comments on Evidence

45. 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.
46. It is clear from the available user evidence that there have been no interruptions to their use and that for three of the users that has been for the relevant 20-year period. There does not appear to have been any challenge to use of the route and therefore the date of the challenge is taken from the date of the application in 2018.
47. None of the users used force or sought permission to use the route and that use has not been in secrecy prior to the challenge.
48. The statutory test refers to the use over 20 years and in the evidence submitted there are only three users who have used the route on horseback, foot or bicycle over that period of time.
49. Neither the legislation or the applicable case law sets out a minimum level of user that is expected or required to support a claim that a route exists the case law does suggest that the amount of usage should be 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"**.
50. Although the legislation does not specify a minimum level of user it is generally taken that anything below six would be evidentially weak and anything over six would be evidentially strong. In this case we have three users who have used the route for the duration of the relevant 20 year period.

51. For a presumption of dedication under s 31 of the Highways Act 1980 to be raised against the 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.
52. 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.
53. The frequency of use on horseback could be said to be relatively infrequent in that five of the users have claimed to use the route weekly and the remaining 3 users claim to use the route monthly or every few months. Bicycle use has been recorded by user C as weekly and user A once a year. Therefore, it could be argued that this level of usage on either horseback or bicycle **would not have been enough to bring it to a landowner's attention** if they were present.
54. Each user however does pertain to having seen others using the route on horseback when using the route and also seen vehicles along the route. **User G indicated that they saw the "farmer on tractor and post van" using the route.**
55. It is noted that there has been a complete lack of obstruction of any kind and at any point along the route during their testified usage. **Not only does this eliminate the possibility that "force" has been used to access the route – it also removes the question of "challenge" by any physical means.**
56. The lack of challenge also extends to any verbal incidents as none of the users ever reported being questioned or turned back by any landowner while accessing the claimed route.
57. A challenge can also come in the form of signage and again none of the users who supplied witness statements noted any kind of signage along the route preventing use.
58. As the route is an existing public footpath it is unlikely that any prohibitive signage would have been employed or displayed.
59. In similar manner no permissions had ever been granted to any of the users – again reinforcing the fact **that this use was "as of right" - one user even stating that "no permission was necessary".**
60. The remaining part of the Section 31 test considers whether the landowner has undertaken any action to rebut the statutory presumption of dedication. Often this is evidenced by way of notices or obstructions to prevent people accessing or using the path. In this case there is no evidence that any obstructions have been erected that have prevented access to use of the route.

61. In this case there does not appear to be any evidence that a landowner has taken any steps to show an intention not to dedicate the route to the public.
62. In considering whether a public highway of whatever description exists the evidence also needs to be considered not only under statute, but common law.
63. 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..."**.
64. The number of years the route has been used is insufficient in that the number of users who have testified to use of the route as a restricted byway is low and is unlikely to have been enough to bring it home to a landowner that restricted byway status was being asserted across their land.
65. When the evidence of use from the users is considered, one could say that in this instance, the user evidence is not sufficient to pass either the statutory law or common law tests, on the balance of probabilities.

#### Documentary Evidence

66. Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 sets out the legislation through which a route may be added to the Definitive Map & Statement based solely on documentary or historical evidence, or both.
67. The legislation accepts that the route may no longer be visible on the ground and that there may be no physical features to suggest the route was ever there. In this case the line of the route is still visible on the ground in the form of Public Footpath 60 Waterhouses. However, the physical appearance is in no way indicative of the status of the route.
68. Public footpath 60 Waterhouses Parish runs in a north-westerly direction off Dukes Lane to the South of the aforementioned footpath, towards the juncture with PF57 and PF147 Waterhouses Parish. Public Footpath 60 Waterhouses meets with Tatlers Lane at its northerly section.
69. Th Applicant indicated that the name of the lane adjoining the existing public footpath 60 Waterhouses is Tatlow Lane; however this may be that this is a local reference for the lane. Your officers have received confirmation from the Highways department regarding the name of the lane to the northern section of Public Footpath 60 Waterhouses, and this was recorded into the system in 2009 as "HMPE Tatlers Lane, Windy Harbour for a distance of approx. 300m from its junction with Ellastone Road".



## Cauldon Tithe Map

70. With regard to the Tithe Map and award for Cauldon Parish, Tithe Maps and Awards were prepared under the Tithe Commutation Act 1836, which commuted the payment of a tax (tithe) in kind, to a monetary payment.
71. The 1836 Tithe Map shows a route running along the line of the claimed route. The route appears to be depicted as two lines running parallel to each other and is numbered 48 towards the northern end of the route.
72. The award book with the Tithe Map notes for plot 48, describes the use **of the route as "road"**.
73. However, this type of map does not distinguish between public and private routes and therefore this does not conclusively show that the route is a restricted byway.
74. Routes, whether public or private, were not always subject to tithe charges. This was because a route was regarded as unproductive land from which no tithable income arose, and it was therefore generally tithe free. The charge of tithe on a route may indicate either that the foliage growing upon it was extensive enough to be valued and used for animal grazing, or that its use as a way of passage postdates the tithe commutation.
75. Where a route was shown separate from adjacent landholdings it would be more likely to have higher rights over it than footpath or bridleway, although these could be either public or private.
76. It should be noted that Tithe Awards and Maps were mainly concerned with identifying tithable lands and not highways or their status; and on their own cannot be used as conclusive evidence of the status of a route.
77. In the case of *Maltbridge Island Management Company v Secretary of State for the Environment and Hertfordshire County Council* [1998] EWHC Admin 820 (31 July 1998) Mr Justice Sullivan considered the status **of Tithe Maps and stated: "The Tithe Map and apportionment evidence is undoubtedly relevant as to both the existence, and physical extent, of a way at the relevant time. Because both public and private roads were tithable, the mere fact that a road is shown on, or mentioned in a Tithe Map or Apportionment, is no indication as to whether it is public or private"**.
78. The Tithe Award does support the existence of a route recording the route **numbered 48 as a "road"**, the owner is recorded as John Bill and the Occupier Elizabeth Collier. Route 48 on the Tithe Award/Map appears to follow the same line as the route subject to the application. However, it does not state that the road was public or private or the status of the way.
79. Officers have identified the Cauldon Tithe Map and Award within the Staffordshire County Records and have established that route numbered

41 on the Tithe Map and Award is named Dukes Road, the owner recorded **as Duke of Devonshire and the Occupier "In Hand"**.

80. The route numbered 41 on the Tithe Map and Award appear to follow the same line as the existing Dukes Lane which leaves Stoney Lane in the South in a north easterly direction towards the A523.
81. It is not clear from the Tithe Map and Award if the numbered section of the route 48 refers to the entirety of the claimed route, or if this only refers to the top section as there is a section of the route where plots 47 and 50 end. There is a line drawn across the **"road numbered 48"** which could indicate that this was where ownership ended or changed.
82. The remainder of the section of the route is unnumbered.
83. The definition of a road can include footpaths as well as vehicular routes. The higher status of the route therefore cannot be inferred with any certainty from this evidence.

#### Parish Survey Cards

84. Turning to the Parish Survey Cards, the references made in the parish **survey cards to the "road" and "road used as a public path (RUPP)"** should be noted, whilst also considering that these are isolated annotations in documents, not repeated elsewhere in the evidence.
85. The second map provided shows public footpath 60 as a RUPP.
86. The contention that a reclassified RUPP would support evidence of actual bridle rights is on its own insufficient. In order to consider an upgrade all the available evidence must be taken together to determine, the correct status of the way.
87. There is no presumption that bridle rights or restricted byway rights apply to such ways. The fact that those ways were originally classified as RUPPs may be some evidence of higher rights, but the weight to be attached to that evidence will vary from case to case depending on the evidence available.
88. The symbol used to describe the path is RP and the accompanying entry **record suggests that the path commences at "County Road, N. of Limestone View Farm" and finishes at "End of County Road on parish boundary"**.
89. The Map accompanying the Parish Survey Cards records the route as CRF 60 and 60A.
90. It is apparent from the Parish Survey Map at appendix H(b) that public footpath 63, and public footpath 64 and public footpath 60 (the claimed route in question) have all been referred to as public footpath 60 in the original Parish Survey Card and map. Whilst it is noted that public footpaths 63 and 64 are not subject to this claim; it does appear to have

relevance as it would seem from the original parish survey card that these 3 routes were all classed as one route, as public footpath 60 on the Parish Survey Map at the time of the survey.

91. It can be seen clearly at Appendix H(b) that public footpath 60 leaves path 59 and therefore it is plausible that the statement on the Parish Survey Card, **"path 60 leaves path 59 and crosses Dukes Lane by two stone Gaps"** makes reference to that section of the route.
92. Research suggests that public footpaths 63 and 64 came into effect as a result of splitting up public footpath 60.
93. The Parish Survey Map indicates that public footpaths 63 and 64 do cross the existing Dukes Lane, which runs in a north-easterly direction towards the A523.
94. The 1949 National Parks and Access to the Countryside Act introduced the concept of the Definitive Map and Statement of Public Rights of Way. Those documents were intended to be conclusive legal evidence of the existence of what might be termed minor public highways. There were only three types of public highway recognised in common law and this still prevails. These are footpath, bridleway and cartway (carriageway).
95. The government issued guidelines to authorities when drawing up the **Definitive Map and Statement. The idiom "CRF and CRB" were two of the symbols suggested for use on the Parish Survey Cards to aid description. In Part 3(m) it stated that "highways which the public were entitled to use with vehicles, but which, in practice are mainly used by them as footpaths or bridleways, should be marked on the map as CRF or CRB".** The F and the B denoting footpath or bridleway. A number of routes in the County that were classified as RUPPS did have these descriptors entered onto the Parish Survey Cards. Even with the use of the symbols the types of rights appertaining were not easily identifiable; the notation **could just as well be a descriptive term for the path's appearance** rather than a reference to any rights enjoyed. Whilst these terms were useful descriptions, neither had any legal standing nor were suitable for inclusion on the Definitive Map and Statement.
96. The expression RUPP was intended to include a public carriage or cart road, unmetalled lane and mainly used as a footpath or bridleway. This unsatisfactory classification was addressed in the 1968 Countryside Act **which stated that all RUPP's should be reclassified as footpaths, bridleway or new category Byway Open to All Traffic.**
97. **The decision in the Hood case was that RUPP's could not be reclassified** as having public rights lower than bridleway unless there was evidence to the contrary. The authority was bound by the presumption under section 32(4)b of the 1968 Act that the public has a right of way on horseback. As the court concluded in the absence of new evidence to the

effect that the public had no right of bridleway over the path, an authority is bound to classify the path as a **"bridleway" rather than a "footpath"**.

98. The County Council undertook its review of RUPPs as required by the Countryside Act 1968 in 1969. Consequently, it had completed its reclassification of these routes prior to the decision in *R v Secretary of State for the Environment ex parte Hood* [1975] 1 QB 891.
99. A number of objections were received to the new Definitive Map and Statement including reclassifications. A series of hearings were held and where the objection related to the reclassification of a RUPP the guidelines laid down as a result of the Hood decision were followed.
100. **Subsequently the reclassified RUPP's which were the subject of these objections were shown on the Definitive Map of Public Rights of Way as bridleways. All other RUPP's which had been reclassified as footpaths and not objected to were shown and designated as such on the Definitive Map and Statement at the completion of the First and Special Review in 1969.**
101. It was not open to the County Council to refer routes which were not objected to, **and which were RUPP's which had been reclassified to footpaths**, to an Inquiry.
102. However, the contention that a reclassified RUPP would support evidence of actual bridle rights is on its own insufficient and in this particular case, the application is for a restricted byway status.
103. The correct approach to the issue of RUPPs reclassified as footpaths is outlined in *Trevelyan v Secretary of State for the Environment* [2002] 2 PLR 49 where Latham J stated that the relevant question is posed by Section 53 (3) (c): is there evidence, which when considered with all other evidence, shows the correct classification of a way. This would involve a **"careful evaluation" of all of the available evidence to determine, on the balance of probabilities, the correct status of the way.** He went on to say **"it seems to me that there is no room for any assumptions or presumptions. The Act specifically refers to evidence... the fact of the inclusion of the right of way on the Definitive Map is obviously some evidence of its existence. But the weight to be given to that evidence will depend on an assessment of the extent to which there is material to show its inclusion was the result of inquiry, consultation, or the mere ipse dixit of the person drawing up the relevant part of the map..."**.
104. In this case the evidence appeared to be significant to determine a physical feature; however, the documents alone do not provide conclusive evidence of status and the application is not for the inclusion of the route but to upgrade to a restricted byway status, and therefore the test under which to apply is that of the balance of probabilities.

## Finance Act Map 1910

105. Turning to the Finance Act Map, the 1910 Finance Act was concerned with mapping lands throughout the UK for the purposes of taxation. This Finance Act material consists of 3 documents, the Field Book, the Valuation Book and the Increment Value Duty Plan. In this case only the map has been provided.
106. The Finance Act 1910 involved a national survey of land by the Inland Revenue so that an incremental value duty could be levied when ownership was transferred. Land was valued for each owner/occupier and this land was given a hereditament number.
107. The Finance Act assessments were not prepared for the express purpose of recording public rights of way.
108. A landowner could claim tax relief for public rights of way and these deductions would be shown in the field books. The deduction entry, while not describing the route of a right of way, can provide evidence of its existence across the landholding. Where the ordnance survey surveyors recorded that a track or path physically existed across an individual ordnance survey plot, this when viewed in conjunction with the entry, provides evidence of the existence of a way. In this case, the map shows the existence of a route along the line of the alleged route, supporting the physical existence of the route.
109. Where a deduction was made this would appear under public rights of user and in the entry under restrictions. However, in this case we do not have the field book.
110. The map shows the claimed route uncoloured and unnumbered, separate from the adjoining landholdings. As the route is shown separate from the adjacent land, this could be suggestive that the route is a public highway; however there have been instances where private routes over which multiple parties have private access rights have been excluded from valuation as well.
111. In the case of **'Fortune v Wiltshire CC [2012] Lewison J gave careful consideration to the interpretation of routes excluded from adjacent hereditaments. In essence he concluded that the Finance Act records are not definitive; they are "simply one part of the jigsaw puzzle" to be considered along with other relevant material particular to each case.**

## County Clerk Letter 2/11/79

112. The letter from the County Clerk and Chief Executive of the Department of the Environment dated 2 November 1979 can be found at Appendix M. Whilst this letter relates to the Special Review, unfortunately it does not accurately clarify the position in relation to the process undertaken by Staffordshire County Council.

113. The Department of the Environment addressed the issues raised in this letter and the response, as described above, the correct approach for the upgrading of the Definitive Map and Statement requires sufficient evidence in accordance with Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981.

#### Planning Inspectorate Decision

114. With regard to the Planning Inspectorate appeal decision submitted in support of the claim; evidentially this adds little legal probity to the application. Your officers advocate that each and every application has to be dealt with on a case-by-case basis dependent on what the evidence shows in each case and therefore there is very little that can be gleaned from this evidence.

#### Ordnance Survey Map 1897

115. The Ordnance Survey Map dated 1897 shows the physical existence of the route, but it does not identify the nature of any rights over the alleged route.

116. The Ordnance Survey is accompanied with a map key; and the alleged route in **question is recorded as "third class road"**.

117. The evidential value of the Ordnance Survey Maps has been considered by the Courts to be limited solely to being evidence of whether there was a visible feature on the ground. The maps support the physical existence of the alleged route but do not provide any evidence as to whether the rights over it are public or private or the nature of any such rights.

118. Ordnance Survey Maps carry very little legal probity and evidence is limited and supportive at best.

#### Handover Map

119. **Turning to the "Handover map" for the areas which comprises a page** from a Field Book and its accompanying plans. The copy from the Field Book shows **a page headed "Mileage of Public Highways Rural District Roads (not main roads)". This entry states, "Stoney Lane to Wallbank Grange" the road is described as an "Unclassified Road" and the total mileage of the length of the route being 1.5 miles.**

120. The Handover Field Book and map are a result of the 1929 Local Government Act in which responsibility of the Rural District Council for the publicly maintainable highways in the area was transferred to the County Council. This resulted in the first lists and plans showing routes for which the Authority believed it was responsible for the maintenance.

121. They were internal documents for use by County Surveyors. These documents were not subject to a consultation process and were principally for internal administrative use only.

122. The term Unclassified County Road came to be applied to these routes. **By 1929 County Councils were already responsible for "main roads"**. The moniker road however has no legal status although some have assumed that it meant or indicated that such routes had vehicular rights. A footpath can also be defined as a road.
123. The Field Book and maps were only concerned with liability for maintenance, not with the type of public user. Thus, they do not prove any particular rights or status as both roads and footpaths were, in the past, publicly maintainable.
124. This document supports the routes physical existence as a public right of way, as it shows liability for the route, but it does not attest to the nature of the public rights and therefore it does not provide any conclusive evidence to support that the alleged route is a restricted byway.
125. Whilst considered to be supporting evidence of higher rights over the claimed route, these documents did not go through a scrutiny process and therefore their evidential weight needs to be considered in the context of all other evidence.

#### Burden and Standard of Proof

126. The application is made under Section 53(2) of the 1981 Act, relying on the occurrence of the event specified in 53(3)(c)(ii) of the Act.
127. The Panel need to be satisfied that, on the balance of probabilities, the evidence that has been discovered shows that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
128. With regard to the status of the route, the burden is on the Applicant to show, on the balance of probabilities, that it is more likely than not, that the Definitive Map and Statement are incorrect.
129. The existing classification of the route, as Public Footpath 60 Waterhouses, must remain unless and until the Panel is of the view that the Definitive Map and Statement are wrong.
130. If the evidence is evenly balanced, then the existing classification of the route as Public Footpath 60 Waterhouses on the Definitive Map and Statement prevails.

#### Summary

131. 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.
132. 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.

133. 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, there was no **specific challenge to the public's right to use the way and that the 20 years of usage are from 1998 to 2018.**
134. In this instance your officers consider that the use for restricted byway status is insufficient to satisfy the test set out in s31 when considered on the balance of probabilities.
135. In considering the evidence of use by the public in this case the claimed use as a restricted byway is insufficient to draw attention to the landowner that a public right of way of a different status was being asserted over the land.
136. If it is decided that the statutory test fails or is inapplicable, consideration should be given to the issue of a 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.
137. 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. Evidence of the use of a way by the public as of right may support an inference of dedication and may also be evidence of the acceptance of a dedication by the public.
138. The amount of evidence from members of the public using the route as a restricted byway is lacking and therefore it is not sufficient to show that there was a presumption of dedication for use as a restricted byway.
139. The user evidence is insufficient to say that on the balance of probabilities a right of way, with the status of a restricted byway exists along the claimed route.
140. When considering the historical documentation, the main evidence relied upon are the; Handover Field Book and map of 1929, the Finance Act Map 1910, Parish Survey Cards, the Tithe Map and Award and the Ordnance Survey Map of 1897.
141. The purpose of the Handover Maps was to show ways which were publicly maintainable highways in 1929 and while **the field book is titled "Rural District Roads", the definition of a road can include footpaths as well as vehicular routes.**



142. The Finance Act Map is an Ordnance Survey Map and it was used to draw on plot numbers, in a similar way to the tithe map. The map shows the physical existence of the route. The fact that the route is shown as being separate from adjacent landholdings could be suggestive of higher rights over the route; however, this could also be due to two or three landowners having passage over the land and could be either public or private.
143. The Parish Survey cards and maps are suggestive of higher rights, including vehicular rights, however there are no further annotations on the card and without any further details on the card, the evidential weight to be applied to these documents are supportive at best.
144. The Ordnance Survey Map provides evidence of a physical existence and in this case a description of the contours on the ground; on their own they are limited in value as they do not record the status of the route. **The route is identified on the ordnance map as a "third class road".**
145. Due to the early dates of the Ordnance Survey Maps they would only show major carriageways and would not show footpaths. Even though the route is shown to physically exist, the route could be a public or private way and higher status of the route in question cannot be inferred with any certainty from this evidence.
146. Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 provides for applications for the upgrading of public rights of way. An application to change the status of the way must be accompanied by sufficient evidence to support the application.
147. The burden of proof remains with the Applicant to show on the balance of probabilities that it is more likely than not that the definitive map is incorrect. If the evidence is evenly balanced, then the existing classification of the route on the definitive map and statement prevails.
148. The application is based on the balance of probabilities, the higher test, requiring a greater level of probity to succeed.
149. When taken together the application rests on the interpretation of the details in the evidence and this is open to conjecture as to the status of the route and introduces an element of doubt in connection with the status.
150. As such, the evidence we have is not weighted enough to prove the claim on the balance of probabilities as there is no conclusive evidence that the way has restricted byway status.
151. The application is made under Section 53(2) of the 1981 Act, relying on the occurrence of the event specified in 53(3)(c)(ii) of the Act.
152. The Panel need to be satisfied that, on the balance of probabilities, the evidence that has been discovered shows that a highway shown in the map and statement as a highway of a particular description ought to be shown as a highway of a different description.

153. For the test to be satisfied it will be necessary to show that on a balance of probabilities the additional rights do subsist.
154. If the conclusion is that the balance of probabilities test is satisfied, then the Definitive Map and Statement should be modified.

#### Conclusion

155. The question is not whether public footpath 60 Waterhouses is a public highway but rather what the nature of the public rights are over the route.
156. It is open to the Panel when considering applications to come to a decision on the matter other than that which is the subject of the application. In this instance the claim is for the upgrade of a public footpath to a restricted byway.
157. Taking everything into consideration and upon review of the evidence in totality, **it is your officer's opinion that the evidence does not show that** a public right of way with the status of Restricted Byway subsists.
158. It is the opinion of your officers that the County Council should not make a Modification Order to upgrade the route to restricted byway status on the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.

#### Recommended Option

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

#### Other options Available

160. To decide to accept the application to upgrade public footpath 60 Waterhouses to a bridleway or restricted byway on the Definitive Map and Statement.

#### Legal Implications

161. The legal implications are contained within the report.

#### Resource and Financial Implications

162. The costs of determining applications are met from existing provisions.
163. 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

164. 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.
165. **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.
166. Should the Council decide not to make an Order the applicant may appeal that decision under Schedule 14 of the 1981 Act to the Secretary of State who will follow a similar process to that outlined above. After consideration by an Inspector the County Council could be directed to make an Order.
167. 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

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

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J Tradewell

Director for Corporate Services

Report Author: Laura James

Background File: 017177DW

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