

Local Members' Interest	
Cllr J Francis	Stafford- Stafford Trent Valley

Countryside and Rights of Way Panel -

Wildlife and Countryside Act 1981

Application for the addition of an alleged Public Footpath from Public Footpath 6 Beacon Farm to Lowerhouse Farm in Hopton & Coton

Report of the Director for Corporate Services

Recommendation

1. That the evidence submitted by the applicant and that discovered by the County Council is sufficient to conclude that a Public Footpath which is not shown on the Definitive Map and Statement subsists along the route shown marked A to B on the plan attached at Appendix B and should be added to the Definitive Map and Statement of Public Rights of Way.
2. The evidence submitted by the applicant and that discovered by the County Council is insufficient to conclude that a Public Footpath which is not shown on the Definitive Map and Statement subsists along the route shown marked C to D attached at Appendix B and should not be added to the Definitive Map and Statement of Public Rights of Way.
3. That an Order should be made to add the alleged route shown on the plan attached at Appendix B marked A to B to the Definitive Map and Statement of Public Rights of Way for the District of Stafford as a Public Footpath.
4. That an Order should not be made to add the alleged route shown on the plan attached at Appendix B marked C to D to the Definitive Map and Statement of Public Rights of Way for the District of Stafford 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. The purpose of this

investigation is to establish what public rights, if any, already exist even though they are not currently recorded on the Definitive Map and Statement of Public Rights of Way.

2. To consider an application attached at Appendix A from Mr Martin Reay for an Order to modify the Definitive Map and Statement for the Borough of Stafford. The effect of such an Order, should the application be successful, would:
 - (i) add an alleged Public Footpath from Public Footpath 6 Beacon Farm to Lowerhouse Farm, Hopton & Coton to the Definitive Map of Public Rights of Way under the provisions of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981.
 - (ii) The lines of the alleged Public Footpath which are the subject of the application are shown highlighted and marked A – B and C-D on the plan attached 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.

Application Details- Documentary Evidence submitted by the applicant

1. The application was supported by documentary evidence, that being a Rights of Way Act 1932 (Part of Ingestre Estate) document (a copy is attached at Appendix C) and a Stopping Up Order (1624) dated 1959 (a copy is attached at Appendix D).

Other evidence discovered by the County Council

2. Officers have conducted further research, including obtaining a copy of a Parish Survey Card for a route that follows the same lines as the alleged route. A copy is attached at Appendix E. The route is depicted as Public Footpath 13 Hopton & Coton.
3. On the Parish Survey Card the Path Number is 13 and the Path Symbol is FP. The path starts at: "south end of Wilmorehill Lane" and the path finishes at: "No 6 path south of Beacon Farm". The "Grounds for believing path to be public: stile at commencement of FP thereafter field gate until in neighbourhood of Beacon Farm where path is obstructed by site of 16 MU RAF. OS map- 1881. Used for min 20 years up to time of MU".
4. The map accompanying the parish survey card shows a route marked along the line of the alleged route, which is marked as FP13 and has the annotation "FP" depicted alongside the route. The southern section of the route that connects to Public Footpath 6 (and is marked C-D at Appendix B) is marked on the map and it states "closed 16 NA.U". 16 MU is what the RAF base was called in the 1930s. The route is shown on the draft/1st Definitive map but it is not shown at all on the 1st 1969 review. There is nothing on the objection maps or in the Schedule relating to this path.

Analysis of Documentary Evidence

- 5.** The Rights of Way Act 1932 Register for the Ingestre Estate is a document that outlines all the routes within a specific area, in this case Ingestre that were considered to be public rights of way. Accompanying this document was a map showing the routes that were considered to be public as stated in the document and this was deposited under the Rights of Way Act 1932. If a route is recorded on a Rights of Way Act 1932 Register this should be considered as good evidence of the existence of the route as a public right of way as the 1932 Act amended the law relating to public rights of way and set out the character of a way that was considered to be a public highway. The document will need to be reviewed in full to ascertain whether it refers to the actual nature of the rights over the route or whether it is just referred to as a public route.
- 6.** In this case, the map showing the Ingestre Estate shows a route running along the same line as the alleged route with the annotation FP next to it. The route is numbered 15.
- 7.** The Rights of Way Act 1932 Register refers to route 15 as: "from road also S.W of Beacon farm, past old quarries to Lower House Farm, Hopton-Ingestre Estate". This description matches up with the route on the map and the alleged route. There is nothing in the description that specifically states that this route was classed as a footpath but when the register is viewed in conjunction with the map, the annotation of FP depicted alongside the route is supportive evidence that the route was considered to be a footpath. There is nothing from the document to indicate how long the route had been used for, who was responsible for its maintenance or the date of the survey. The document supports the existence of the route as a public right of way with the status of a footpath.
- 8.** The fact that the route is included on a register as part of the Rights of Way Act, 1932 is again evidence of the route's existence as a public right of way. The Act is an Act of Parliament and therefore there would have been a greater need to ensure that any information pertaining to the Act was accurate. Also, it is unlikely that a route would have been included if it was not considered widely to be public. Overall, this document is fairly evidentially strong in showing the routes existence as a public right of way with the status of footpath but it still needs to be considered alongside other evidence.
- 9.** The Order dated 1959, No.1624 is a Stopping Up Order. Stopping Up Orders are legal documents that deal with the extinguishment of highways. In some cases where a route is being extinguished, a new route may be created, or the extinguished route may be diverted onto another line. If all of the correct procedures and provisions have been followed as set out in law then a Stopping Up Order is evidentially conclusive regarding the existence of a public right of way, particularly in the absence of any other contrary evidence such as a further legal order, due to the fact that it is a legal document.
- 10.** The Order is titled: "Stopping Up Order- Statutory Instruments- 1959 No.1624- Rights of Way- The Stopping Up of Highways (County of

Stafford) (No 13) Order, 1959". The Order is dated 15 September 1959. The Order is made pursuant to the Requisitioned Land and War Works Act, 1948. The Order states: "The Minister of Transport and Civil Aviation is satisfied that in the public interest it is necessary or expedient to authorise the permanent stopping up of the highways referred to in Article 1 of this Order (as respects which highways the Secretary of State for Air has certified in accordance with the provisions of subsection (1) of section 3 of the Requisitioned Land and War Works Act, 1948(a), that in the circumstances existing on the thirty-first day of December, 1940, an Order could have been made under Regulation 16 of the Defence (General) Regulations, 1939, as in force at that time stopping up or diverting the said highways and that the exercise of the right to use the said highways has been continuously prevented since that time but without the making of such an Order)...".

- 11.** Three footpaths are mentioned in the Order as being stopped up. The route relating to the alleged route is referred to as route 3 in Part 1 of the Schedule of the Order: "that length of the footpath leading to Hopton which extends from its junction with the length of footpath described in paragraph 2 of this Part of this Schedule in a northerly direction for a distance of approximately 100 yards".
- 12.** On review of the map accompanying the Order, the route numbered 3 forms the southern section of the alleged route, marked C-D. Therefore, the document shows that the southern section of the alleged route (points C-D) was legally stopped up and extinguished, as a result of the Second World War, presumably for war purposes, as the southern section of the route bordered RAF land. It would appear that use of the southern section of the route had been continuously prevented since that time, meaning that section of the route no longer exists as a public right of way. The difficulty with this document is it only deals with the southern section of the route, it does not refer to the remainder of the route (points A-B). As the entirety of the route is not referred to as being extinguished, it is assumed that the remainder of the route (points A-B) continued to exist, although the route would no longer connect to another public highway to the south and therefore essentially would become a cul-de-sac route.
- 13.** In relation to the powers the government had during the Second World War to stop up highways the Emergency Powers (Defence) Act 1939 was created and this operated throughout the whole of the Second World War, until 24 February 1946. The Act provided for the making of Defence (General) Regulations, including the temporary stopping up or diversion of highways.
- 14.** After the war, the Requisitioned Land and War Works Act of 1945 provided for Orders to be made for the permanent stopping up or diversion of highways which had been temporarily stopped up or diverted under the 1939 Regulations. The Requisitioned Land and War Works Act of 1948 extended the scope of this power to encompass highways which had in practice been temporarily closed or diverted but which for no formal order had been made under the Regulations. The Order has been made in line

with the Defence (General) Regulations, 1939 and the Requisitioned Land and War Works Act, 1948 and therefore even though the route may originally have been intended only to be temporarily closed, the powers set down in the aforementioned pieces of legislation allowed for the legal extinguishment of the route.

- 15.** The requirement for action to be taken under the 1939 Act to close a route provides evidence of the existence of public rights prior to that closure. Therefore, it could be argued that this Order deals authoritatively with the previous status of the right of way in question, thereby it existed as a public footpath.
- 16.** The 1951 SoROW working copy map shows a route along the line of the alleged route with the annotation FP depicted alongside it. A section at the southern end of the route (points C-D) is marked in pencil as being closed and has the annotation "16 MU" written alongside it. This corresponds with the 1959 Stopping Up Order and the Parish Survey Card. The route is numbered 13.
- 17.** The statement accompanying the draft map dated July 1954 states in relation to the alleged route: "13- FP- Path commences at: Wilmorehill Lane, N. of Lowerhouse Farm. Path finishes at- FP6, about 350 yards S.W of Beacon Farm. Documents creating or modifying the right of way and other relevant information: Shown on map deposited under Rights of Way Act, 1932. Part temporarily closed under Defence Regulations".
- 18.** Alongside the statement accompanying the draft map is a letter written by the then County Planning and Development Officer, which relates to the final stages of preparing the draft Definitive Map and Statement before placing on deposit for public inspection. A number of anomalies were identified with the draft map, including with the alleged route.
- 19.** It would appear that path 13 (the alleged route) did not originally connect to a public highway as the letter states: "the path shown on your survey leading northwards from a point near Beacon Farm to the village of Hopton near Lowerhouse Farm should be continued to Wilmorehill Lane as all public footpaths should give access to a public highway".
- 20.** The letter also states: "Two paths shown on your survey as being obstructed by 16 M.U. should be included in the survey as the closure of these paths was affected under the Defence Regulations and was, therefore, of a temporary nature. The two paths concerned are the southern portion of the path referred to in (c) above...". The "path referred to in (c)" is the alleged route.
- 21.** Therefore, when the draft map and statement were being prepared it was originally considered that the closure of the southern section of the alleged route (points C-D) was only of a temporary nature and therefore it should be added in its entirety to connect with Public Footpath 6 just south of Beacon Farm. However, the subsequent Stopping up Order dated 1959 did extinguish the southern section of the alleged route, having legal effect that meant that although the stopping up may originally have been of a temporary nature it was determined public use of the route had been

continuously prevented and therefore it was necessary to permanently stop up that section of the path.

- 22.** Therefore, the evidence provided shows the physical existence of the route as a public footpath. The Stopping Up Order is good evidence of the route's existence as a public right of way. However, what is also clear from the Stopping Up Order is that the southern section of the alleged route (points C-D) was legally extinguished. Although, there is no evidence that the remainder of the route (points A-B) ceased to legally exist the route was not added onto the Definitive Map and Statement of Public Rights of Way, possibly because this would have resulted in the route being a cul-de-sac, as the route no longer connected to a public highway to the south.
- 23.** There is a prima facie assumption that a public right of way should connect from one public highway to another public highway. In this case the original route (the alleged route) as depicted on the Rights of Way 1932 Register map shows the route connecting to a public highway Wilmore Hill Lane to the north and a public highway depicted as Public Footpath 13 to the south. At the time the first draft Definitive Map was prepared the alleged route was depicted as still connecting to Wilmore Hill Lane to the north but connecting to what was then Public Footpath 6 to the south. However, it is clear from the Stopping Up Order dated 1959 that the southern section of the route (points C-D) was legally stopped up, therefore meaning that the southern section of the route no longer existed and therefore the remainder of the route (points A-B) no longer connected to a public highway, rendering the route a cul-de-sac. Although, there is evidence of the routes existence as a public footpath it is not clear as to why the section of the route that was not subject to the Stopping Up Order of 1959 was not added to the first Definitive Map and Statement of Public Rights of Way. It is also unclear as to why only part of the route was included in the Stopping Up Order and not the entirety of the route.
- 24.** The maxim is "Once a highway, always a highway". A public right of way can only cease to exist if it physically no longer exists, i.e., the physical erosion of a route or the route has legally been extinguished by means of a legal act. The fact that the route is referred to in the 1959 Stopping Up Order is strong evidence of the understanding that the route existed as a public footpath. As the entirety of the route was not extinguished there is an argument that the remainder of the route (points A-B) still exists as a public footpath, in the absence of any further legal events. However, the route would now be a cul-de-sac as it no longer connects to a public highway to the south.
- 25.** There are several cases that address the issue of cul-de-sac routes, including the case of *Eyre v New Forest Highway Board* (1832). Wills J in this case stated: "It is perfectly true that it is a necessary element in the legal definition of a highway that it must lead from one definitive place to some other definitive place...Therefore there must be a definite terminus". However, the case did conclude that in certain circumstances cul-de-sacs can be highways.

- 26.** Atkin LJ in the case of *Moser v Ambleside* said: "I think you can have a highway leading to a place of popular resort even though when you have got to the place of popular resort which you wish to see you have to return on your tracks by the same highway, and you can get no further either by reason of physical obstacles or otherwise". Slesser J went on to say: "it seems to me that there may be a number of cases in which the public have a need to go to a particular point and there may well have been a dedication to them for their use for the purpose of reaching that point, although the return journey might be precisely the same route from the terminus ad quem to which the right of access is granted". Lord Wright in the case of *Williams-Ellis v Cobb* (1934) concluded that the case of *Moser v Ambleside* Urban District Council was an "authority for the proposition that a right of way may be proved, even though it does not lead to a public place". He also stated: "it is no longer the law (if it ever was) that a highway must end in another public highway. Thus a public right of way may lead only to a point of natural beauty; to a church, or to the sea, or to a river".
- 27.** Furthermore, it was held in the case of *Roberts v Webster* (1967) "that there was no rule of law that a cul-de-sac in a country district could never be a highway, and if there was some attraction at the end which might cause the public to wish to use it that could be sufficient to justify the conclusion that a public highway had been created". In his judgement, Widgery J stated: "The authorities clearly show that there is no rule of law which compels a conclusion that a country cul-de-sac can never be a highway. The principle stated in the authorities is not a rule of law but one of common sense based on the fact that the public do not claim to use a path as of right unless there is some point in their doing so, and to walk down a country cul-de-sac merely for the privilege of walking back again is a pointless activity. However, if there is some kind of attraction at the far end which might cause the public to wish to use the road, it is clear that that may be sufficient to justify the conclusion that a public highway was created".
- 28.** The case law supports the contention that a cul-de-sac can be a public highway and that a public right of way does not need to connect to another public highway. However, the case law indicates that even a route that does not connect to another public highway still needs to be a route that provides public access to a place that the public have a reason to go to, even where that is merely for example to visit a place of natural beauty. Therefore it could be argued that a route still needs to have a public purpose.
- 29.** In this case it could be argued that the remainder of the route subject to this application does not provide a specific purpose for members of the public as there is no evidence that where the route would terminate as a result of the Stopping Up Order leads to a specific point of interest for members of the public to go to.

Evidence submitted by the Landowners

- 30.** With the identity of all affected landowners provided by the applicant, a letter of consultation, inviting the identified landowners to confirm they were the owner, or occupier of the land over which the alleged route runs and also requesting that they complete a Landowner/Occupier Evidence form and/or submit comments in regard to the application was sent to each of the persons certified by the applicant to be an owner and/or occupier of the land.
- 31.** RAF Stafford who owns land adjacent to the claimed route provided a copy of a Stopping Up Order (Order 1624), which refers to the stopping up of a section of the proposed footpath near to Beacon Farm. This corresponds with the Stopping Up Order provided by the applicant and the section of route marked C-D at Appendix B. A copy of their correspondence is attached at Appendix F.
- 32.** No other landowner identified responded to the application.

Comments received from statutory consultees

- 33.** Consultations with the local councils, the prescribed organisations and other bodies were carried out. Responses to the consultation are attached at Appendix G and were received from: the Peak and Northern Footpaths Society, the Ramblers Association, Hopton & Coton Parish Council and Stafford Borough Council.
- 34.** Stafford Borough Council stated that they had no comments to make on the application.
- 35.** Hopton & Coton Parish Council responded to the application in September 1999 stating that the application had been placed before the Parish Council and the members were unanimous in their decision that the application be rejected. They advised that in view of the number of footpaths in the Parish it was considered to reinstate this route was unnecessary and an alternative route had been provided in 1959 when it was formally closed.
- 36.** Further correspondence was received from Hopton & Coton Parish Council also in September 1999 reiterating the Council rejected the application on the grounds that there were sufficient footpaths in the area and a further footpath was unnecessary. They advised that Footpath No 6 runs parallel to the alleged route. They confirmed that no mention was made in the Parish Minutes of 1959 of any consultation, but that Stopping Up Order 1624 was a retrospective instrument for actions taken in 1940, during the war. The Parish Council confirmed that the Order of 1959 closed a section of the alleged footpath.
- 37.** The Ramblers Association suggested that a link between FP6 and the southern end of the claimed path would also be needed if the claimed path was to become viable. The path would then assist to make a useful round walk between Beaconside and Hopton. The Ramblers Association fully support the application.
- 38.** The Peak & Northern Footpaths Society responded stating that they had no comments to make on the proposals.

- 39.** Whilst it is not our intention to belittle any legitimate concerns raised, the courts have decided that issues relating to safety, security, privacy, suitability, future maintenance and wildlife concerns cannot be taken into consideration. Only evidence regarding the existence or not of a public right of way can be taken into consideration.

Legal tests

- 40.** In this instance the applicable section of the Wildlife and Countryside Act 1981 is section 53(3)(c)(i). This section relates to the discovery of evidence of two separate events:
- (a) Evidence that a right of way which is not on the map subsists or;
 - (b) Evidence that a right of way which is not shown on the map is reasonably alleged to subsist.
- 41.** 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.
- 42.** 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".
- 43.** If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

Summary

- 44.** The Stopping Up Order dated 1959 shows that a section of the alleged route, marked C-D was permanently legally stopped up as a result of a temporary stopping up of this section of route as a result of the Second World War. The Stopping Up Order shows the existence of the route as a public footpath. This is a legal document and therefore provides conclusive evidence, particularly in light of the fact that no evidence has been put forward to suggest that this Order was invalid and in the absence of no further legal acts regarding the route.
- 45.** Unfortunately, the Order only deals with a small section of the alleged route, marked C-D and makes no reference to the remainder of the route. As the Order does not refer to the entirety of the route being legally stopped up, it must be taken that the remainder of the route, marked A-B, continued to exist as a public footpath, and therefore still exists as a public footpath. There is no explanation within the documentation provided as to why only part of the alleged route was stopped up.
- 46.** The Stopping Up Order is supported by the Rights of Way 1932 register and map, which shows the physical existence of the route as a public footpath.

47. As the Stopping Up Order legally shows that a section of the alleged route was legally stopped up (C-D) this section of route no longer legally exists, however, there is no evidence to suggest the remainder of the route (A-B) does not legally exist. Therefore, if the route marked A-B is found to legally exist, the route is a cul-de-sac, in that it does not connect to a public highway to the south.
48. Case law supports that a cul-de-sac route can exist as a public highway and right of way, although the case law points to the route should still lead to a definitive place or point that the public would have a purpose to go to, although the route does not need to specifically lead to a public place.
49. In this case there is nothing clear from the evidence that the route would specifically lead to a place that the public would have a purpose to frequent. However, in light of the case law and the historical documents there is evidence of the routes existence marked from A-B as a public footpath but not for the section of route marked C-D.

Conclusion

50. In light of the evidence, as set out above, it shows that a public right of way, with the status of a public footpath, which is not shown on the Definitive Map and Statement does exist on the balance of probabilities from the point marked A-B on the plan attached at Appendix B but not from the points marked C-D.
51. The evidence provided by the Stopping Up Order dated 1959 is good evidence and there is no conflicting evidence to show any other legal events have occurred regarding the entirety of the alleged route. Accordingly, the effect of the Stopping Up Order means the test of balance of probabilities has been satisfied. The Stopping Up Order can only be superseded by another Order or legislative provision. The rule of law "Once a highway, always a highway" applies here.
52. When the lesser test is considered, that of reasonable allegation, that is satisfied. Here there is no conflicting evidence to weigh in the balance and so it does clearly satisfy the test.
53. Taking everything into consideration it is apparent that the evidence shows that a public right of way, with the status of footpath, which is not shown on the map and statement subsists from points A-B but not points C-D on the map attached at Appendix B.

Recommended Option

54. To accept the application based upon the reasons contained in the report and outlined above and to decide to make an Order to add the alleged route to the Definitive Map and Statement of Public Rights of Way from points A-B on the map attached at Appendix B but to decide not to make an Order to add the alleged route to the Definitive Map and Statement of Public Rights of Way from points C-D on the map attached at Appendix B.

55. That the route to be added at points A-B should be 1.5 metres in width.

Other options Available

56. The Panel may decide to reach a different decision and therefore can accept or reject the application in its entirety to make or not make an Order to add the alleged route to the Definitive Map and Statement of Public Rights of Way.

Legal Implications

57. The legal implications are contained within the report.

Resource and Financial Implications

58. The costs of determining applications are met from existing provisions.

59. 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

60. 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.

61. 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.

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

63. 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

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

J Tradewell

Director for Corporate Services

Report Author: Hannah Titchener

Ext. No:

Background File: LG604G

INDEX TO APPENDICES

Appendix A	Copy of application and associated submitted letters and documents
Appendix B	Plan of claimed route
Appendix C	Copy of 1932 Rights of Way Act register and map (part of Ingestre Estate plan)
Appendix D	Copy of Stopping up Order dated 1959
Appendix E	Copy of Parish Survey Card
Appendix F	Copy of correspondence from RAF Stafford
Appendix G	Copy of correspondence from statutory consultees