

Local Members' Interest			
Cllr	Paul	Newcastle	under
Northcott		Lyme District Council	

Countryside and Rights of Way Panel

Wildlife and Countryside Act 1981

Application for Upgrade PF20 Betley Parish to a Bridleway

Report of the Director for Corporate Services

Recommendation

1. That the evidence submitted with the application for an upgrade to a Public Bridleway of the current PF20 Betley at Appendix A and that discovered by the County Council is **not** sufficient to show that the footpath currently on the Definitive Map and Statement subsists as a bridleway along the route marked A to B on the plan attached at Appendix B.
2. The relevant section to be satisfied for an upgrade of the footpath to a bridleway is that of section 53(3)(c)(ii) and the required test to be satisfied is the balance of probabilities.
3. That the evidence submitted by the Applicant and that discovered by the County Council is **not** sufficient to show that on the balance of probabilities PF20 should be shown as a highway of a different description, namely a bridleway to the Definitive Map and Statement of Public Rights of Way.
4. That an Order should not be made under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to upgrade the route shown from A to B on the plan attached at Appendix B to the Definitive Map and Statement of Public Rights of Way for the District of Newcastle-under-Lyme.

PART A

Why is it coming here – What decision is required?

1. Staffordshire County Council is the authority responsible for maintaining the Definitive Map and Statement of Public Rights of Way as laid out in section 53 of the Wildlife and Countryside Act 1981 ("the 1981 Act"). Determination of applications made under the Act to modify the Definitive Map and Statement of Public Rights of Way, falls within the terms of reference of the Countryside and Rights of Way Panel of the County Council's Regulatory Committee ("the Panel"). The Panel is acting in a quasi-judicial capacity when determining these matters and must only consider the facts, the evidence, the law and the relevant legal tests. All other issues and concerns must be disregarded.

2. To consider an application attached at Appendix A from Mrs Wenslie Naylor on behalf of the North Staffordshire Bridleways Association for an Order to modify the Definitive Map and Statement for Newcastle-under-Lyme. The effect of such an Order, should the application be successful would:
 - (i) Upgrade PF20 Betley Parish from Common Lane, Betley to the County Boundary of Cheshire (Chorlton Bridleway 5) to a bridleway on the Definitive Map and Statement of Public Rights of Way under the provision of Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981.
 - (ii) The line of the alleged bridleway which is the subject of the application is shown highlighted and marked A to B 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 test, whether to accept or reject the application to upgrade the route.

User Evidence Submitted

1. In support of the application the Applicant has submitted 13 User evidence forms completed by members of the public who claim to have used the route over varying periods of time.
2. Copies of their statements are attached at Appendix C.

Other Evidence discovered by the County Council

3. Cheshire County Council were contacted and provided evidence of their route (Bridleway 5 Chorlton) which leads to the county boundary.
4. Staffordshire County Council's PF20 connects to Bridleway 5 at the boundary and continues along Common Lane to Betley. Notes made by Cheshire County Council during a survey dated 1953 were discovered.
5. A present-day screenshot taken from Cheshire East County Website is included to show the current line of Bridleway 5, Chorlton.
6. A tracing of the Tithe Map of Betley dated 1842 was provided by the Ramblers Association although no accompanying field book was provided.
7. A copy of the relevant part of the Tithe Map of Betley was located to verify the Ramblers Association documentation.
8. A plan of the Finance Map for Betley has been provided (on what is stated to be an Ordnance Survey map) by the Ramblers Association although no accompanying field book was provided. Document reference IR 132/6/6 (at Kew) was cited.
9. Ordnance Survey maps for Staffordshire were considered. These include Staffordshire sheet X12 revised 1876 published ca 1887 and Staffordshire X.12 25 ins to mile published 1899. Ordnance Survey map of Betley published 1902 was also considered.

10. Ordnance Survey maps for Cheshire were considered. These included Cheshire Sheet LXIII surveyed 1876 and published in 1881, and Cheshire LXIII-NW revised 1908 published 1912.
11. Ordnance Survey sheet numbers SJ74NW was surveyed pre 1930 and published in 1954 and Ordnance Survey plan SJ74NW-A was surveyed in 1960 to 1967 and published in 1968.
12. Staffordshire County Council's Surveying department was contacted to establish whether the route was a maintained route. A memorandum dated 18th September 1992 from the County Surveyor advises that the handing over schedules do not show the route as ever having been publicly maintained.
13. A County Palatine of Chester 1794 plan attributed to James Stuart and Peter Perry Burdett was discovered.
14. A County Palatine of Chester plan dated 1819 attributed to Greenwood (C) was considered.
15. A plan of Staffordshire County dated 1820 attributed to Greenwood was considered.
16. Bartholomew's map of the Betley area dated 1902 was also considered.
17. A plan by William Swire dated 1830 was discovered.
18. Ordnance Survey Sheet 123 Stoke on Trent, surveyed between 1872 and 1879 and published in 1889 was considered, as was OS Sheet 123 revised in 1895 and published 1902.
19. With the exception of the Tithe Map and Finance Map (which can be found in Appendix E), copies of these documents are attached at Appendix F

Evidence Submitted by the Landowners.

20. The Landowner at Yew Tree Farm completed a Landowner Response Form. He considered the route to be public and stated, "FP but horses do use it occasionally".
21. Five landowners at the time raised objections to the upgrade, one of whom raised a petition against it. The petition objected under four headings which included the route's current status as a footpath which they had no wish to change, concerns regarding maintenance, concerns relating to health and safety issues and claims relating to the frequency of usage presented in the user evidence forms being disputed.
22. Copies of the landowner evidence can be found at Appendix D.

Evidence Received from Statutory Consultees.

23. The Peak and Northern Footpaths Society had no objection to the footpath being upgraded to a bridleway but did object to the bridleway being a Byway Open to all Traffic.
24. The Ramblers Association at the time of the application advised that they did not have any evidence to offer. However, in December 1998 the Association did provide a copy of the 1910 Finance Act plan and in December 1999 the Association forwarded a copy of a Tithe map tracing.

25. Newcastle under Lyme Borough Council did not have any comment to make although a Councillor for the Borough did object to the upgrade.
26. Betley and Balterley Parish Council also objected to the upgrade on the grounds of safety and their concerns that the route would attract anti-social behaviour.
27. Copies of this evidence can be found at Appendix E.

Comments on User Evidence

28. Members will be aware that s31 Highways Act 1980 states that there must be evidence of use for a 20-year period prior to the use of the route being challenged. 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 that right of way had been accepted by the public.
29. 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.
30. In this instance there does not appear to be any challenge to the actual usage of the route by any person nor have there been any obstructions put in place to prohibit or curtail this use.
31. No user has stated that they have ever been turned back or told to seek permission. Nor have any users mentioned any signage intended to discourage or prevent use or any challenge to users.
32. Where there is no identifiable event which has brought into question the use of a way, Section 31(7B) of the Highways Act 1980 (as amended by Section 69 of the Natural Environment and Rural Communities Act 2006) provides that the date of an application for a modification order under Section 53 can be used as the date at which the public's use was brought into question.
33. In the absence of any other major or identifiable challenge to the public's use of the claimed route the date of the application, 1st August 1992, was taken to be the date of challenge. Accordingly, the requisite 20-year period of use should be calculated retrospectively from this date as set out in s31 of the Highways Act 1980. It does however need to be noted that the route may well have continued and continues to be used by some of the users to date.
34. On consideration of the evidence, it appears that only User 10 used the route on horseback for the full 20-year period between 1972 and 1992 and claims to have used the route monthly.
35. In total, ten users were identified as having used the route within the 20-year period. Four users started using the route in the 1970s, five in the 1980s and one in the 1990s.

- 36.** Of the four users who started using the route in the 1970s, User 1 advised that she used the route occasionally over a period of 8 years, User 6 advised that she used the route several times/year over a period of 19 years. User 7 advised that she used the route 2/3 times a year over a period of 15 years. User 10 advised that she had used the route monthly over the relevant 20-year period.
- 37.** Of the five users who commenced use of the route as a bridleway in the 1980's, User 2 used the route approximately 8 times a year over the course of the previous 5 years, User 3 advised that they used the route "6 to 8" (inferred as being times per year), over the previous 6 years. User 4 claims to have used the route every week over the previous 5 years and User 5 claimed to use the route twice weekly on average over the previous 4 years. User 8 claimed to have used the route 3/4 times a year over the previous 10 years.
- 38.** User 12 started to use the route in 1991 and claims to have used it two/three times a year.
- 39.** User 11 used the route on horseback for a period of 6 years once or twice a year although this was for 18 years prior to the relevant 20-year period.
- 40.** Two users did not provide dates. User 13 did not appear to use the route, he simply had knowledge of it (although it is unclear whether he considered the status to be a bridleway or footpath). The other user, User 9 completed a form but corresponded later with the Council advising that he did not think that the route was a bridleway. User 9 claimed to have used it many times.
- 41.** Only one user could claim that they used the route on a regular basis between 1972 and 1992 and it is deemed that there is not sufficient user evidence to claim the upgrade by continuous public use. The claim thus fails the statutory test.
- 42.** Consideration of the evidence was given to the Common Law test. At Common Law, two necessary preconditions to the creation of a highway are required. This includes a dedication by the landowner of a public right of way across their land and acceptance by the public of that right of way.
- 43.** Dedication can be shown where the route has been used, *as of right* without secrecy, force or permission and where there has been no challenge from the landowner. Critically there needs to be the capacity to dedicate -meaning that only the actions of the actual landowner rather than the occupier or tenant are of relevance.
- 44.** The claimed route does not have to be used for a defined length of time. However, it must have been used for long enough to justify an inference that the freehold owner intended to dedicate the way as a highway. It is therefore possible although unusual that dedication at common law can be presumed on the basis of less than 20 years use.
- 45.** The burden of proof at Common law is upon the claimant to show that the landowners intended to dedicate the route. In this case it was considered

that there was not sufficient evidence to claim that the route was dedicated as a bridleway.

Comments on Landowner Evidence

- 46.** The current footpath has a short stretch leading from Betley and along Common Lane which is maintainable at public expense. The majority of the route however is a private non-maintainable road with multiple houses along its length. Correspondence received from landowners along the route are predominantly concerned with the maintenance of the route and health and safety issues.
- 47.** Landowner 1 was concerned about the costs of repair to the route and health and safety issues regarding the width of the route, they were also concerned about the lack of lighting and any arising insurance costs should there be a collision between a vehicle and horse. The Officer responded informing the landowner that should the route be recognised as a bridleway the Council would be required to maintain to the standard appropriate to bridleway use. With regard to the lighting and potential for accidents, the landowner was advised that the Officer could not take such matters into account when considering the evidence as to whether the route should be upgraded.
- 48.** Landowner 2 advised that they have been resident in the lane for 25 years at the time of the application and question the frequency of use by the users and also the necessity for an upgrade. They queried the veracity of some of the user statements and notify the Officer that the route has never been recognised as a bridleway. The Officer responded to advise that the users would be interviewed to verify their statements. However these interviews do not appear to have take place.
- 49.** Landowner 2 sent a further letter following consideration of the User evidence and raised the issue of User 9 whose evidence they question. There is no record of a response to this letter on file.
- 50.** Landowner 3 objected to the application to upgrade the route based on concerns raised regarding the suitability for the route for horses. The Officer responded and explained that it could only take into account whether the route subsists or not and could not take concerns regarding safety into account when considering the evidence.
- 51.** Landowner 4 requested to see the evidence that the Council had received. This was provided and the Officer corresponding advised that the task was to establish whether or not the route subsists and that incidental matters such as safety could not be taken into account with regard to the existence (or not) of the claimed status.
- 52.** Landowner 5 wrote a letter dated 8th November 1992 to the Council. This letter accompanied a Petition. Within their letter the landowners highlight four main areas of objection which include the route's past history, its unsuitability, its maintenance and the evidence by the applicant.
- 53.** With regard to the first area of objection which is the route's past history, the landowners advised that they had lived along the lane for 28 years and

consider that it has always been a footpath - they highlight the discrepancies in User 9's evidence. Within the accompanying petition the landowners reiterate that Common Lane and its extension through Yew Tree Farm to the County boundary had always been a footpath. They refer to an Ordnance Survey plan SJ7448-SJ7548 revised 1960 1:25,000 scale plan. They also refer to an Ordnance Survey second series 1:50,000 scale plan which was published 1979. The landowners also refer to Staffordshire County Council Community Programme footpath survey of 1985-1986 and Staffordshire County Council's Definitive Map. No copies of this evidence were provided.

- 54.** In response to this first issue the Council responded in a letter dated 11th November 1992 to state that their evidence corroborates the current Definitive map and Statement. It is however pointed out by the Officer that the footpath continues as a bridleway over the Cheshire County boundary.
- 55.** The second area of objection from the landowners in their letter is that Common Lane is unsuitable. They advise that the lane is an unmade single track country lane without proper passing places. They further remarked that the route is only 9 ft wide outside the landowners' bungalow with varying gradients high banks with hedges and two blind bends. They further point out that there are many service and utility vehicles that use the lane which would make it unsafe for horse riders. The Petition states that extra use by horses and mountain bikes would make Common Lane dangerous.
- 56.** In the Officer's response to these concerns dated 11th November 1992 the Officer advises that they can only consider whether the rights being claimed do or do not exist.
- 57.** The third area of objection raised within Landowner 5's letter relates to the maintenance of Common Lane. They highlight the fact that the landowners are responsible for the maintenance of the lane with the ever-increasing traffic although are aware that the Council does have some responsibility. The Petition claims that damage would be caused to the road surface.
- 58.** The Officer responded by advising that the Council currently must maintain the lane to the appropriate standards required for a footpath. If the route is upgraded to a bridleway, the maintenance by the Council would be up to the standard required for a bridleway.
- 59.** The fourth area of objection within the letter from the landowner concerns the evidence by the users. Landowner 5 has highlighted what they consider to be inaccuracies in the users' evidence and the amount of use the users claim. Within the petition the landowner has broken down evidence of use extracted from the Users forms and the landowner disputes the amount of usage which has been claimed.
- 60.** The petition advises that the claims made in the North Staffs Bridleways Association's evidence as to the former use is wildly exaggerated.
- 61.** The landowners have drafted two pages to accompany the petition in which they comment on the evidence provided by the Users. The comments fall

into three main areas of concern – the number of accumulated/combined journeys, the landowners' queries that the map references don't match the route, and thirdly the fact that many of the forms don't have corroborative signature.

62. The petition objecting to the upgrade has 27 signatories from 14 houses most of which are from along Common Lane. Landowner 5's main points of contention are that the combined journeys which the users claim would be in the region of 1030 journeys. The landowners have highlighted the fact that they had lived in the same house along the route which they estimate to be 15 yards back from the road for 28 years and claim that "if anything comes down the road we can't help but notice". They consider that horses have used Common Lane no more than 12 times over the previous 28 years.
63. In response to the accompanying letter from the landowners, the Officer responded that the users would be interviewed in order to verify their evidence, although this does not appear to have been done at the time.

Comments on Evidence Received from Statutory Consultees

64. The Ramblers Association representative provided a traced copy of the Tithe map of 1842. This shows evidence of a physical feature continuing from the end of a route at Betley Common and proceeding to the County boundary. This crosses field number 549. The Tithe map for this plot shows it to be pasture known as Adams meadow owned by Richard Edensor Esq, with the occupier being Samuel Harrison. It is unclear from the Tithe map whether the route shown on the plan suggests a footpath, bridleway or even carriageway, although the markings on the plan do suggest higher rights than a footpath.
65. On consideration of field number 549 it appears that a Tithe was payable to the Perpetual Curate but there were no other tithes payable regarding the plot of land. The fact however that it currently has the status of a footpath suggests that public rights have been established along this route.
66. On their own Tithe maps and awards are not evidence of the public nature of a particular route but may add to the supporting evidence.
67. The representative of the Rambler's Association also sent a copy of the Finance Act plan from 1910. This indicated that the length of Common Lane up to Green Valley Farm was separate from the taxable land holdings. The route is untaxed land which suggests public rights but as already mentioned with the Tithe map the public rights are not in dispute as it is already a public footpath. Unfortunately, however there is no copy of the field book to assist with establishing its status as a bridleway or footpath.

Comments on Evidence Discovered by Staffordshire County Council

68. It is considered that there is insufficient user evidence to claim the current footpath should be reclassified as a bridleway under either Statute or Common Law.

- 69.** Whilst the landowners have objected to the upgrade based on legitimate concerns and questions as to the safety, suitability and maintenance of the route, any reasons other than material relating to the existence or otherwise of a public right of way or its status have to be disregarded under the law as it currently stands.
- 70.** Inquiries were made as to the current status of the route as to whether it was maintainable at public expense. The route was not shown to be adopted and was therefore recorded as a private lane with public rights running along it. This remains the case today.
- 71.** Searches were made for records, documents, or plans which could help establish whether any higher rights should be afforded to the current footpath along Common Lane. The Officer noted that since 1954 all maps and records show the route as being a footpath (an issue that was raised by Landowner 5 and their letter to the council and accompanying petition). This is most likely a result of the National Parks and Access to the Countryside Act 1949 (NPAC Act 1949).
- 72.** The NPAC Act ensured that all County Councils ("surveying authorities") in England and Wales had to carry out a survey of their area and produce a map that showed all the public footpaths, bridleways and roads used as Public Paths which were or could reasonably be alleged to be public rights of way. This resulted in the Definitive Map and Statement.
- 73.** The Act imposed a duty on Parish and District Councils to provide information on the public rights of way in their area to the County Council. The Surveys were marked on an Ordnance Survey Map, showing the physical depiction of the route, accompanied by a record card detailing when and by whom the survey was carried out, the date, the basis for believing it to be public and a description of the way.
- 74.** The Parish Survey record cards varied in their quality and the information provided. Some gave detailed descriptions of their routes including any gates, stiles or other noteworthy features while some merely gave a start and finish point. Similarly, some gave details of the basis for their inclusion while others left it blank.
- 75.** Staffordshire concluded the process covering most of the County by 1965 and the Definitive map and Statement had a Relevant Date of 1954 i.e. the Map and Statement showed the position as it had existed in 1954. There was sufficient evidence to record the route as a public footpath which is now known as PF20 Betley.
- 76.** Whilst there is evidence to show that the route should remain a footpath there is also a limited amount of older evidence pre 1949 to suggest that there may be higher rights. Officer's note that the line of PF20 Betley runs into BR5 Chorlton where the Staffordshire and Cheshire boundaries meet. Correspondence with Cheshire County Council in 1992 showed that following the NPAC Act survey there was sufficient evidence to show that the line in Cheshire had sufficient evidence to record the route as a bridleway.

- 77.** The Tithe map of 1842 again shows a similar physical feature on the plan suggesting there are higher rights than those of a footpath.
- 78.** Ordnance Survey sheet 123 Stoke on Trent Surveyed from 1872 to 1879 (30 to 37 years after the Tithe map) and published in 1889 shows physical markings along the current footpath route, and this can also be seen on Sheet 123 Stoke on Trent Geological survey revised 1895 resurveyed and published 1902. These markings suggest higher rights than that of a footpath.
- 79.** Cheshire Street LXIII surveyed 1876 (34 years after the Tithe map) and published 1881 show markings suggesting a track up through Cheshire to the County boundary and Staffordshire X12 revised in 1876 and published 1887 also suggests a physical feature on the plan that suggests the route has higher rights than a footpath.
- 80.** Ordnance Survey Cheshire LXIII -NW revised 1908 and published in 1912 shows the path across the county boundary and into Staffordshire. The route is not marked as a footpath or bridleway (although all of the other apparent routes are distinguished as one or the other). It is possible that the draftsmen left it unmarked as they were unsure of its status or whether they considered it was not necessary as it continued from the bridleway which is currently Bridleway 5 Chortlon. Staffordshire X.12 published in 1899 again does not show the route marked either as a footpath or bridleway.
- 81.** OS sheet number SJ74NW and surveyed in 1930 and published 1954 depicts the route and the markings as per the Ordnance Survey plans of the Cheshire plan of 1908. However, following the County Council's Definitive Map review OS sheet number SJ74NW surveyed 1960-7 and published in 1968 shows the route has been depicted as a footpath. Furthermore, it also shows that a section of route within Cheshire up to the County boundary was also marked as a footpath at this point in time.
- 82.** It may be inferred from the evidence that there was a bridleway from the County boundary and along Common Lane from the early 1800's through to the mid 1950's at which point the Definitive map and Statement review considered the evidence.
- 83.** Plans of map draftsmen such as Swire (1830) and James Stuart and Peter Parry Burdett (1794) were considered although the maps appear to be too small a scale to show a bridleway. Bartholomew's map of 1902 also does not show the route (it is to be noted that BW 5 Chorlton is not shown on his map either).
- 84.** Greenwood's map of 1819 which is a slightly larger scale of the Southeast County Palatine of Chester does suggest that on the Cheshire border there was a physical feature on the plan suggesting something higher than a footpath up to the Staffordshire County boundary.
- 85.** A copy of a plan for Staffordshire County was obtained which is attributable to Greenwood dated 1820 to establish whether there is any indication of continuation of the route depicted within the plan for the County Palatine of Chester. The Officer notes that Common Lane appears to be marked

although there is no indication of any bridleway continuing to the county boundary with Cheshire.

Burden and Standard of Proof

- 86.** With regard to the status of the routes, the burden is on the applicants to show, on the balance of probabilities, that it is more likely than not, that the Definitive Map and Statement are incorrect. The existing classification of the routes, as footpath, must remain unless and until the Panel is of the view that the Definitive Map and Statement are wrong. If the evidence is evenly balanced, then the existing classification of the routes as footpath on the Definitive Map and Statement prevails.

Summary

- 87.** 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.
- 88.** 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.
- 89.** It is considered that the user evidence is insufficient to establish the claimed upgrade by either Statute or Common Law
- 90.** Consideration has also been given to the evidence provided by the landowners and although there are concerns regarding maintenance and safety of the route, these are not pertinent to the evidence for the claimed upgrade.

Summary of Historical Evidence

- 91.** There is limited evidence with regard to the claimed upgrade. Older plans drafted by noteworthy map makers do not tend to record bridleways as they had insufficient status and furthermore the scale was too large to show such routes.
- 92.** Evidence was found evidence within the Tithe Map of 1842 to suggest that there could be higher rights than that of a footpath. There is no further evidence from around this time to support this.
- 93.** The Finance Act plan of 1910 shows that the route is untaxed land which suggests there may be public rights although this is not in dispute as it is already a footpath. The plan does not however give any idea of the status of the route.
- 94.** Ordnance Survey maps surveyed in the 1870's up until the early 1900's show various physical markings on different plans which suggest higher rights than a footpath and these continue on plans up until the mid 1950s. Although there are a number of plans to consider regarding the claimed upgrade, they all originate from one source.
- 95.** Following the National Parks and Access to the Countryside Act 1949 (NPAC Act 1949) and the subsequent surveys required under the Act to create the Definitive Map and Statement it appears that Staffordshire County Council was of the opinion that there was insufficient evidence for

a bridleway and Cheshire County Council was of the opinion that there was sufficient evidence for a bridleway.

96. Since 1954 all maps have shown the route to be a footpath.

Conclusion

97. Based on the balance of probabilities, and in light of the evidence it is considered that a public right of way, with the status of bridleway, which is not shown on the Definitive map and statement does not subsist.
98. The County Council should therefore not make a Modification Order to upgrade the routes to bridleway status on the Definitive Map and Statement of Public Rights of Way.

Recommended Option

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

Other options Available

100. To decide to accept the application to upgrade the current footpath to that of bridleway.

Legal Implications

101. The legal implications are contained within the report.

Resource and Financial Implications

102. The costs of determining applications are met from existing provisions.
103. 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

104. 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.
105. 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.
106. 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.

107. 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

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

J Tradewell

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Background File: LB607G

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