RUPP's (Background)

The Ministry of Town and Country Planning ("the Ministry") issued Circular 81 in March 1950 and referred to a pamphlet issued by the Commons, Open Spaces and Preservation Society entitled "Survey of Rights of Way". The pamphlet and the methods for conducting a survey that were described within it were approved by the Ministry as being suitable for that purpose. The Ministry subsequently circulated copies of that pamphlet to County Councils for distribution to parish councils carrying out surveys under the 1949 Act.

The idiom "CRF was one of the symbols suggested for use. 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 CRF or CRB".

Whilst these terms were useful as descriptions neither had any legal standing nor were suitable for inclusion on the Definitive Map and Statement. The 1949 National Parks and Access to the Countryside Act ("the 1949 Act") laid down only three types of route that could be shown on any subsequent map and statement, i.e. Footpath, Bridleway or Road Used as a Public Path ("RUPP"). The expression RUPP was intended to include a public carriage or cart road or green, unmetalled lane mainly used as a footpath or bridleway.

This description would include those routes which were annotated on the surveys as CRF and as a result each route was recorded on the Map and Statement as a RUPP.

There was no challenge to the inclusion of the routes as RUPPs at any stage in the Definitive Map process following the parish survey.

The 1949 Act provided for five yearly reviews of the definitive map to take account of any changes to the rights of way network. Before the first general review could be undertaken in Staffordshire the Countryside Act 1968 ("the 1968 Act") required a "Special Review" to reclassify all RUPPs to either footpaths, bridleways or, a new category, byways open to all traffic.

The County Council prepared its First (General) and Special Review of the Definitive Map in 1969. The review had a relevant date of 30 September 1969 and was duly advertised in the London Gazette and local newspapers and placed on public deposit between August and December 1971. There were proposals in the review for the reclassification of RUPPs 28 and 29 Ipstones Parish to public footpath status.

There were no objections to the reclassification and the First Revised Definitive Map was completed in February 1988 with a relevant date of 30 September 1969. No application to question the validity of the revised Map was made to the High Court within the period allowed.

The County Council published a Second Revised Definitive Map under the provisions of the Wildlife and Countryside Act 1981 and this Map came into force on 27 February 1990 with a relevant date of 30 September 1989. The Second Revised Definitive Map showed no change in the status of the ways from the previous Definitive Map. No application to question the validity of the Second Revised Definitive Map was made to the High Court.

However, when considering the inclusion of routes onto the first definitive map and statement produced after the 1950 survey it is important to bear in mind the rationale behind the legislation.

In R v Secretary of State for the Environment Ex p Hood [1975] ("the Hood case")

QB Lord Denning summarised this as: "The object of the statute is this: it is to have all our ancient highways mapped out, put on record and made conclusive, so that people can know what their rights are. Our old highways came into existence before 1835. They were created in the days when people went on foot or on horseback or in carts. They went to the fields to work, or to the village, or to the church. They grew up time out of mind. The law of England was: Once a highway, always a highway. But nowadays, with the bicycle, the motor car and the bus, many of them have fallen into disuse. They have become overgrown and no longer passable. But yet it is important that they should be preserved and known, so that those who love the countryside can enjoy it, and take their walks and rides there. That was the object of the National Parks and Access to the Countryside Act 1949 and the Countryside Act 1968".

The intent was to record not only what rights could currently be exercised but what rights were considered to exist. The 1949 Act required that inclusion be based upon whether in the opinion of the council a "right of way subsisted or is reasonably alleged to subsist…" It was then to be tested by the process, as Lord Denning summarised; "First, a draft map; next a provisional map; and finally a definitive map. There were opportunities both for landowners and the public to make their representations as and when each map passed through each stage".

The description on the survey cards ought to support the belief that there might be higher rights in existence but does not provide any evidence of this. The entry as RUPP on the First Definitive Map and Statement would appear to be based mainly on a description of the way rather than a reflection of any rights considered to exist.

The fact the routes were classed as RUPP's is not conclusive evidence that they are bridleways. Throughout the Definitive Map's history since being created under the 1949 Act the legislation has contained provisions to amend or correct the map and statement if new evidence was discovered. Prior to the 1981 Act this could only be

done where there was a review of the map and statement taking place. For example under the 1949 Act this would be every five years and at that stage amendments could be made and s33(2)(e) allowed for the status of a highway to be changed. Since the 1981 Act came into force the map and statement are subject to continuous review.

The reliance on the routes being conclusively bridleways, as suggested by the applicant, arises from the Hood case. As explained above this determined where a reclassification exercise was being undertaken as provided for under the 1968 Act then a RUPP could only be reclassified as a footpath if there was evidence which showed it was not a bridleway, if no evidence existed then it should be reclassified as a bridleway.

However, Staffordshire County Council had undertaken their reclassification exercise in 1969 which was before the Hood case had been decided. There was no provision under the 1968 Act for that review to be abandoned and so the County Council completed the process.

The County Council was not the only Authority who had commenced this process and in an attempt to guide the surveying authorities the Department of the Environment and the Welsh Office issued Circular 123/1977. This stated that it was recognised that anomalies would arise and that legislation would be considered if they could not be satisfactorily dealt with under existing procedures. This proved to be the case and the amending legislation was the 1981 Act.

Circular 123/1977 gave guidance on the procedures to be adopted when reclassifying roads used as public paths. The Circular provided that "In the absence of new evidence, or evidence not previously considered by the surveying authority… a RUPP could not be reclassified at a special review as a footpath because of the conclusive presumptions contained in section 32(4)(b) of the 1949 Act that there

are bridleway rights over a RUPP.

The County Council continued with the first (General) and Special Review and a number of objections were received to the new Definitive Map. 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. It was not open to the County Council to refer routes which were not objected to, and which were RUPPs, which had been reclassified to footpaths, to an Inquiry. Nor was it open to an Inspector to consider such where the objections were withdrawn prior to the hearing. Accordingly, the County Council concluded the Review after all objections had been determined.

In the interim, before the process of determining the objections was completed, the 1981 Act came into force and superseded the Countryside 1968 Act. As a consequence, when the First (General) and Special Review was completed the County Council was unable to commence another review under the auspices of the 1968 Act to address the issue of the reclassified RUPPs. This power had been removed by the 1981 Act which laid down a new process to be followed, the procedures provided by Section 53.

The applicant, by making reference to the fact that the way was once classified as a RUPP, is in effect contending that there is a presumption that bridleway rights still appertain as a consequence. However, the fact that the route was reclassified means that the presumption is no longer in effect as this only arises under specific circumstances set out by statute as referred to in the Hood case. That presumption arose under s34(4)(b) of the Countryside act 1968, a section that was repealed in full by virtue of the coming into force of the Wildlife and Countryside Act 1981. A saving for RUPP's that had not been reclassified was enshrined in s54 of the latter Act.

The contention that a reclassified RUPP would support evidence of actual bridle rights without other evidence is insufficient. The correct approach to the issue of RUPPs reclassified as footpaths is outlined in the case of Trevelyan where Latham J stated that the relevant question is set out in Section 53(3)(c): is there evidence, which when considered with all other evidence, shows the correct classification of a way. This entails an evaluation of all the available evidence in order to determine the correct status of a way. As the judge stated "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 …"

Accordingly one cannot start from the premise that there is a presumption that bridle rights automatically apply to reclassified ways. The fact that originally they were classified as RUPPs may indeed be some evidence of bridle rights, but the weight to be attached to that evidence will depend upon each case's circumstances and not as a general rule. The character of the way does not lead to a presumption that a particular type of public right is attached to it.

As the council cannot undertake another RUPP reclassification the correct approach to determining whether a route has bridleway rights is to consider the matter under the provisions of s53 of the 1981 Act and consider all of the available evidence.