

## Countryside and Rights of Way Panel

### Wildlife and Countryside Act 1981

#### Application for the addition of an Alleged Public Right of Way from Ivetsey Road to Bellhurst Lane, Wheaton Aston

#### Report of the Director for Corporate Services

### Recommendation

1. That the evidence submitted by the Applicant in the Application at Appendix A is **sufficient** to show that a Public Bridleway subsists on the balance of probabilities along the route marked “A to B” on the plan attached at Appendix B to this report, and should therefore be added to the Definitive Map and Statement of Public Rights of Way as such.
2. That an Order **should** be made to add the alleged right of way shown on the plan attached at Appendix B and marked “A to B” to the Definitive Map and Statement of Public Rights of Way for the District of South Staffordshire.

### 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 made on the 12<sup>th</sup> October 2006 by Mrs Susan Carol Bonner for an Order to modify the Definitive Map and Statement for the area by adding a public right of way between Ivetsey Road and Bellhurst Lane, Wheaton Aston, under the provisions of Section 53(3) of the Wildlife and Countryside Act 1981. The line of the alleged public right of way as claimed by the Applicant is shown on the plan attached at Appendix B.
3. The Applicant has not indicated on the Form 1 whether the Application is for a Public Footpath, Public Bridleway or Byway Open to All Traffic.
4. The Applicant has indicated on the Form 2 that the status claimed is to be that of bridleway.
5. Officers will determine which status is supported by the evidence.

6. To decide, having regard to and having considered the Application and all the available evidence, and after applying the relevant legal tests, whether to accept or reject the Application.
7. It should be at once noted that the Applicant – Mrs S C Bonner - died during the application process and that this fact is respectfully acknowledged by your officers, as is the kind co-operation of her legal representative with the Parish Council.
8. In light of this occurrence permission was sought from her legal representative by Lapley, Stretton and Wheaton Aston Parish Council to take over the Application – which was duly granted by the representative and accepted by the County Council.
9. From the date of this communication in 2019 the Parish Council have been the Applicant - although their submitted evidence was given prior this time in their role as a statutory consultee.

### **Evidence Submitted by the Applicant**

10. The Applicant has submitted both historical and user evidence.
11. In support of the Application the Applicant has submitted 19 x user evidence forms which can be found with two later submitted user evidence forms at Appendix C.
12. The salient points of the user evidence forms are given in a matrix which can be found at Appendix D.
13. The Applicant has also submitted 6 x further documents.
14. The 6 x documents are i) Letter from the Parish Council, ii) Record Office details (1839), iii) Copies from old village maps (1882), iv) maps from Veronika Blakemore (1920), v) Photographs of blockages, vi) Map of roads of Wheaton Aston (1836).
15. These can be found at Appendix E.

### **Evidence Submitted By the Landowners**

16. The Applicant identified several potential landowners including the “occupiers” of Seven Oaks - the adjacent property.
17. None of these identified potential landowners returned a landowner response form – and as will be seen the land, it transpired, was not registered at the Land Registry.
18. A previous landowner, Major A M Yates, did return a fully completed landowner response form with a detailed plan and photographs.
19. This can be found at Appendix F.

### **Evidence and Comments Received From Statutory Consultees**

20. Lapley, Stretton and Wheatley Aston Parish Council, although subsequently the Applicant, submitted their evidence prior to this time and as such it is retained within this section.
21. Debra Bate, Clerk to the Parish Council submitted a detailed letter and 6 x pieces of evidence being: (i) OS Map showing location of the road, (ii) OS Map SJ8411-1962, (iii) Map of Roads in the township of Wheaton Aston (1856), (iv) Email from

Mirtha Tonking – Lichfield Diocese, (v) Letter from Staffordshire County Council, (vi) Title Plans from HM Land Registry of Seven Oaks & Land to the South of Grey House Farm.

22. All of this evidence, from the Parish Council can be found at Appendix G.

### **Evidence Discovered By the County Council**

23. A detailed letter from the Director of Law and Governance clarified the status of the lane in 2009.

24. This can be found at Appendix H.

### **Comments on Evidence**

25. As the application is based on mixed evidence – being both *user* and *historical* evidence the probity and legal weight of each will have to be considered against the most appropriate test.

26. 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.

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

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

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

30. For the Application to be successful, it will have to be shown that the public have used the alleged route, “as of right” and without interruption, for a continuous period of at least 20 years prior to the status of the route having been brought into question.

31. For the route to be brought into question there needs to be a challenge to its use that is significant enough to bring it to the attention of the public that their use is being challenged.

32. Although the Application was made in 2006 when the route appears to have become overgrown and obstructed this is not the date of challenge.

33. There was an earlier date of challenge which was brought about in 2004 by the installation of a piece of sheep wire or netting across both ends of the route.

34. Although temporary and only noted by a minority of users it cannot be ignored and therefore will constitute the date of challenge for this claim.

35. As the route appears to have been used without hinderance up to and including 2004 the ensuing overgrowth and other obstructions likely encroached the route gradually between 2004 and 2006.

36. The 20-year relevant period will therefore be calculated backwards from 2004 to 1984.

37. The wire is significant in that according to one user, required a “concerted effort” to remove it.
38. The phrase “concerted effort” suggests that “force” of some kind must have been used, meaning this obstacle would certainly have brought the route into question.
39. The wire is described in one user evidence form as “sheep wire” suggesting it was either a string of wire, or barbed wire – or more probably a piece of sheep netting – often referred to less correctly as “wire”.
40. Again, it is important to reiterate that this was positioned at either end of the route.
41. If 2004 is taken to be the date of challenge, then 8 users testified to using it during the relevant 20-year period between 1984-2004.
42. This is approximately 38% of the total 21 user evidence forms received – in excess of a third.
43. One user had accessed the route much earlier between 1938-1941 and although this is before the start of the relevant period it suggests that the public had accessed the route for a considerable period of time.
44. The relevant users were using the route largely for “pleasure” purposes which is perhaps unsurprising given that this is a relatively remote and rural area, with no obvious amenities or destinations in the immediate vicinity.
45. Although “reason for use” is not material to the claim, its nature in this case does support the evidence – this was a route used primarily for recreation either by foot or horse.
46. Turning to the frequency of use it can be seen from the evidence available that most of the relevant users were accessing the route “seasonally”, however the range appeared from once a week to weekends and then down to only once or twice per month.
47. Seasonal use - for pleasure - could indicate that the route was used primarily in the summer months as part of a recreational walk - although of course it is noted that a pleasure walk can be taken at any time of year.
48. Turning to the means by which the route was used we can see a predilection for use on foot - however that said there was also a significant amount of use on horseback.
49. All 8 of the relevant users stated that they used the route on foot, while 4 of these, 50%, also said they had used the route on horseback.
50. This is significant and indicates horses and their riders were clearly using the route both regularly and in sufficient numbers.
51. There is repeated reference throughout the evidence to “horses and carts” being used along the way.
52. There was also some minor reference to motor vehicles on the route although it was of such a limited nature that nothing significant could be gleaned from it - the reference to a tractor and a “motor” of some undefined description is therefore incidental.
53. Indeed, to counter this as a significant occurrence, the user evidence statement of J Powell stated that the lane is “*good for walking my dogs as there is (sic) **no driven vehicles***”.

54. Had the use of motor vehicles been more consistently noted throughout the Application then it might have been possible to build a case for a probable BOAT status.
55. However, without consistent references to motor vehicles along the route – and with the route not being on the Council’s list of streets a claim in this respect is problematic.
56. Indeed, as the Form 1 of the Application did not identify which status was being claimed and the Form 2 indicated “bridleway” there is some conjecture as to which status had originally been intended.
57. This is not uncommon in applications, and it may be purposefully left open in order that the highest possible status might be claimed.
58. Upon scrutiny of the evidence however it became clear that there was enough horse or equine use to support a bridleway claim as outlined in points 49-51 above.
59. The user evidence of Susan Saunders summed this up adequately by stating “*it is just a useful little lane for walking the dog, riding the horse*”.
60. Interestingly not one of the relevant 20-year period users – or even the non-relevant period users -testified to there being a gate or stile at any point along the route.
61. This clearly means the lane was never obstructed during the relevant 20-year period by a stile or gate – the most usual means by which a landowner can challenge access.
62. That said there appears to have been a significant amount of obstruction on the route from February 2006 – which appears to have triggered the Application later in that year.
63. The nature of this obstruction is interesting as it appears to have come from one source - identified in the evidence as the owners of the neighbouring property – Seven Oaks - and to have consisted of debris and detritus – branches and garden waste.
64. The most significant of these obstructions being a “tonnage” of earth and a “deep ditch” at the Ivetsy Road end of the route, although again neither seem to have completely prevented access.
65. It should be reiterated that the date of the 20-year relevant period in this case runs retrospectively back from 2004 - the date of the earlier challenge – to 1984- and not from 2006 the date of later obstruction and claim.
66. Turning to the width of the route we have a stated range of between 4 and 14 feet and although it is accepted that this varied somewhat along the route, there appears to be a predilection for 7 to 8 feet.
67. Nothing turns on this however as the evidence is weighted towards a bridleway status which could include as its maximum width the entire width of the lane between the bounds.
68. As the lane is clearly demarcated on the user evidence plans there is little doubt as to the route in question.

69. The plans are all consistent and the route itself matches that which can be seen on other documents including the Tithe Map of 1839/40.
70. It is indeed a simple and straight route that leaves no room for ambiguity.
71. Furthermore, as the route is effectively a conduit between Ivetsey Road and Bellhurst Lane the users have been able to easily annotate where any obstructions occurred.
72. These may be seen in the user evidence forms and again reflect a certain consistency throughout.
73. It is described as both an “unadopted road” and a “green lane” within the evidence and it is interesting to see the public had this perception of the route.
74. These perceptions although of no material value to the claim do give some indication of its physical appearance on the ground.
75. The Applicant in her user evidence form includes a statement elucidating the situation which led to the claim.
76. Within this statement reference is made to the owners of the property known as “Seven Oaks” being responsible for challenging its use in 2006.
77. In quotation “*This was a nice quiet country lane until Seven Oaks sold, from the first week everyone was prevented from using the lane by the large amount of soil right in the centre of the lane, on asking why I couldn’t get through I was told it was private and I had no right. Since then week after week more obstacles have appeared*”. (sic).
78. There is also the suggestion that the owner of Seven Oaks “*was going to put concrete blocks at each end of the lane*”.
79. Cynthia Blakemore who supplied a user evidence form also submitted additional commentary stating in quotation that “*it is a great pity to close this lane as there are few places to walk that are free from traffic. It has been used for a good many years. People used to take their horses and carts along this lane from Bellhurst Lane, it was a short cut in the olden days to get to the village.*”
80. Again, these points are somewhat vague and therefore not of substantial value to the claim, but they do suggest that the route was probably used in the numbers it was to avoid the busier roads which it connects.
81. Mr Martin Smith who supplied a user evidence form also added that his sister believed the land has had “*rights of roaming for 2/3 centuries*” and indicated that the last time he had used it was in October 2006 and although he states it was “*fairly well blocked*”, he goes on to say that he “*had plenty of room and was not encroaching private property*”.
82. C Blakemore also signed an additional note within the user evidence form relating in quotation “*I have used “Green Lane” since I was a child (1963). It was used by locals for walks, dog walking and horse riding...I have used the lane on numerous occasions whilst training young horses as it was a small circular route to get them used to road work*”.
83. Clearly the use of the claimed route for training horses adds to the weight of its use as a bridleway, as does the reference to this being done on numerous occasions.

84. Again, the user states that the lane had been recently blocked by the new residents of Seven Oaks. The nature of the blockage is described as “*piles of spare soil and garden rubbish*” and this is stated as being at both ends of the lane.
85. C Blakemore goes on to say that “*the lane is officially owned by no one*”; and “*all local residents have used it at sometime in the past 40 years to my knowledge.*” (sic)
86. Again, this alludes to its use over a significant period of time and by a significant number of people, although some of the information is anecdotal and does not tip the balance as such.
87. It is however contextually relevant - while the use of horses on the lane is taken as additional supporting evidence to a bridleway status.
88. Davina Arthur provides a somewhat detailed appraisal of the route within her user evidence form. Stating that she believed it had not been in such frequent use as it perhaps was in the 17<sup>th</sup>, 18<sup>th</sup>, and 19<sup>th</sup> centuries.
89. Reference is made to a new property being built at nearby Bellhurst Lane and that rubble had been deposited at that end of the route.
90. It is also stated that wire and trees were removed in 2004 from each end of the path, “*by concerted effort*”, and that these were not replaced by the owner of the adjacent property.
91. The fact that the land was not registered does not necessarily mean that no one owned it.
92. Landowners may hold deeds to land without registering it at the Land Registry – until of course it changes hands.
93. With the land not being registered at the Land Registry and no landowners coming forward, then the question as to whether there was an attempted claim on the land remains open.
94. Veronica Blakemore supplied additional commentary to her user evidence form stating that it had been used for many years by lots of people for lots of reasons.
95. She added that the route had been used “*a lot*” to train young horses “*on roads*” and even described the wider route that was taken and why the lane was useful in this respect.
96. Further reference is made to the long-term use of the lane and its use as a route for driving sheep suggesting it was indeed used for a variety of different purposes.
97. Lastly W Wesley stated in their user evidence form that they were a lifelong villager and had been on the Parish Council for 17 years – chairing it for 10 years.
98. They referred to the claimed route as “*an ancient right of way*” and a “*green road*”.
99. Again, these terms do not convey any legal status, although the evidence provided by a long-term Chair of any Parish Council cannot be dismissed.
100. Taken together the user evidence clearly points to a probable bridleway status.

101. The user evidence forms show that the route was used for a continual period of 20 years without secrecy, force or permission and no signage was erected upon the route.
102. During this period the route was clearly used “as of right” as no challenges by any adjacent landowner were made, no signage was erected, and no obstacles were encountered.
103. The user evidence forms therefore provide strong evidence that a right of way - with the status of a bridleway - subsists along the route.
104. Turning to the landowner response forms we find that none of the adjacent landowners returned a completed form.
105. Notwithstanding a *former* adjacent landowner did supply a completed form.
106. This landowner – Major Yates – indicated on the plan that his former land had been at seven Oaks including the field adjacent to the lane in question.
107. This land had been held between 1984 and 2006 – covering the entire relevant 20-year period from 1984-2004.
108. Within the response form it was indicated that “a fence” had been erected at each end of the track.
109. No date was given for the fence although given the references in the user evidence forms it can only be the “sheep wire” referred to in 2004.
110. The former adjacent landowner goes on to confirm that no permissions were ever given on the route, no statutory declarations were ever made in respect of it and that he did not consider the route to be public.
111. The respondent did however state that he had seen both horses and people on foot using the route – adding further probity to the evidence that a bridleway subsists.
112. The respondent also states that he had “*stopped or turned back*” one user along the route – Mrs Wendy Arthur - who also supplied a user evidence form – however the quantifying statement does not suggest that this was a challenge to use as such.
113. The statement only relates that Major Yates informed Mrs Arthur that she was damaging the hedges in the lane by continually “*driving*” through them. This does not necessarily imply she was challenge in her use of the route and introduces a degree of ambiguity to this point.
114. Major Yates goes on to suggest that Ordnance Survey Maps do not show the route as a right of way or bridleway – although these are also produced by the users as evidence and neither party can rely on these – again OS maps only show the physical features on the ground.
115. Legal advice was taken by Major Yates as to whether he could take over the track as part of his garden – his solicitor advising after searches that “*it did not belong to anyone*” (sic).
116. The solicitor advised Major Yates to fence off the track at either end which he did with sheep wire in 2004 – bringing the use of the route by the public into question.

117. The altercations between Major Yates and Mrs Arthur in 2004 appear to have been significant - and photographs were attached showing overgrowth along the route.
118. The rest of the commentary does not add anything material to the claim – either for it or against it.
119. Taken together the details provided by Major Yates appear to support those supplied in the user evidence forms.
120. There was no challenge to use prior to the altercation with Mrs Arthur in 2004 – which had itself been brought about by the installation of the sheep wire fence – the point of challenge.
121. Turning to the other pieces of evidence submitted for the claim and taking each on its own merit we are able to identify further good supporting evidence.
122. Firstly, the Tithe Map of 1839/40 being the Record Office Details clearly shows the lane distinctly marked and separate to the numbered holdings.
123. Tithe maps are regarded as good supporting evidence and although we do not have the associated transcript the plan itself is clear and the lane is shown to be commensurate with -and linked - to other roads.
124. Clearly if the route was unnumbered, it is good supporting evidence that it was indeed part of the adjoining highway.
125. The Map of Roads dated 1836 and taken from Staffordshire Record Office, clearly shows the lane between points “R” and “Y” – although the character for the letter “R” on the plan resembles a lower case “r”.
126. It appears in the accompanying text as “Birchenshaw Lane” and is accurately described for the avoidance of doubt as lying between Bellhurst Lane and Ivetsey Road.
127. This Map of Roads was completed for the benefit of the Surveyors of Highways and its detail and content suggest this is also very good supporting evidence.
128. The maps supplied by Veronica Blakemore from the 1920’s and the maps from the 1880s also clearly show the route although these appear to be *details* from the relevant Ordnance Survey maps.
129. OS maps are only really a record of the physical feature on the ground and have no bearing on the status of a route.
130. Several photographs given in evidence show blockages along the route and a mixture of branches, earth, and overgrowth.
131. These however appear to be dated 2006 – and so are contemporary with the Application rather than being a snapshot of the relevant 20-year period.
132. As such the photographs merely testify to the fact that the route was obstructed in 2006 and add no weight to the claim itself.
133. The Applicant also supplies a letter from the Parish Council to Staffordshire County Council relating to the application in 2006.
134. The letters elucidates that a group of local residents had met with a Council Officer to discuss the alleged route.

135. The letter stated that the route had been used by the public as a right of way over a long period of time without hinderance” although conceded that it was not listed on the Definitive Map.
136. The letter adds little to the claim save it highlighting the ongoing support of the Parish Council.
137. The Parish Council supported the Application stating that the Council “*very strongly supports this application for the addition of this public highway from Ivetsey Road to Bellhurst Lane, Wheaton Aston to the Definitive Map of public rights of way.*”
138. The Parish Council went on to say that they believed “*there is strong local evidence to show that this has been a public highway and that it should be formally designated and opened up again for public use*”.
139. Turning to the six pieces of evidence submitted by Debra Bate – Clerk to the Parish Council we find the following:
140. Firstly the 1938 OS map depicts the physical feature on the ground, although clear it is merely confirmatory of the routes existence rather than adding any weight to the claim.
141. Secondly the route is shown on a larger scale OS map for 1962 and named as Grass Road – this is the same route shown on the 1856 Map of Roads as Birchenshaw Lane.
142. Although this is another OS map and has little bearing on the claim it is interesting to see the route identified with a specific road name – not of course that this means it was indeed a road.
143. The route appears to be referred to as “Birchenshaw Lane” in common parlance and taken together with the OS maps provide only a minor degree of supporting evidence.
144. Thirdly the Map of Roads supplied by the Parish Clerk is a copy of the one supplied by the Applicant - which as stated is relatively good supporting evidence.
145. Any details recorded in connection with the Surveyors of Highways has to be regarded with a degree of credibility.
146. Fourthly, the email communication from the Diocese of Lichfield merely confirms that the land was not owned by the church, although does go on to suggest some other research avenues - already covered by the Parish Clerk.
147. Fifthly the letter from the County Council is something of an anomaly and states that the route is a publicly maintained highway. This appears to have been inaccurate and was later countered by further correspondence from the Council.
148. Nothing turns on this however as the evidence is already weighted favourably towards a bridleway.
149. Sixthly, the Land Registry title plans to Seven Oaks and the land to the south of Greyhouse Farm are supplied and confirm that the alleged route is not recorded as part of either property.
150. The land on both sides of the alleged route is now in the ownership of one landowner – the property owner of Seven Oaks aforesaid.

151. The lack of inclusion in the title plans is not necessarily pertinent to the claim but when taken together with the Tithe Map it could suggest that the route was originally part of the public highway – it adds a further inkling of weight.

### **Comments on All available Material**

152. There is no significant evidence that we are aware of that would support any higher rights than those applied for – in this case being a bridleway.

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

154. The evidence is presented in a detailed and cogent way which quite clearly supports the claim.

155. When all the evidence is taken together there is more to say that a public way subsists on the balance of probability than there is to say that a public way does *not* subsist.

156. In summation the totality of the evidence both user and historical appears to be consistent - and supportive of the other.

157. The probity of the main evidence is good, and this is confirmed by the probity of the supporting evidence.

158. The historical evidence supports the existence of a way, while the user evidence indicates that this way was, in all probability, a bridleway.

### **Burden and Standard of Proof**

159. There is a two-stage test, one of which must be satisfied before a Modification Order can be made. All the evidence must be evaluated and weighed, and a conclusion reached whether on the balance of probabilities that the route subsists or that the route can be reasonably alleged to subsist.

160. 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 that a right of way does subsist.

161. 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 a right of way does subsist.

162. If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

### **Summary**

163. The Application is made under Section 53(2) of the 1981 Act relying on the occurrence of the event specified in 53(3)(i) of the said Act.

164. If the test is considered in the first part of the section, that is whether the way subsists on the balance of probabilities, the courts have indicated that this can be satisfied by considering whether it is more probable, or more likely, than not.

165. As Lord Denning in the case of Miller said, "*if the evidence is such that the tribunal can say we think it is more probable than not the burden is discharged, but if the probabilities are equal, it is not.*"

166. In this instance your officers consider that the evidence is **sufficient** to satisfy the test set out when considered on the **balance of probabilities**. The evidence being both *historical* and *user* and each supporting the other.
167. With regard to the second part of the relevant section (the lesser test) whether the route can be reasonably alleged to subsist, your officers consider that, having viewed all the relevant available evidence, that the lesser test is inevitably exceeded.

### **Conclusion**

168. 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 addition of a bridleway.
169. When the totality of the evidence is considered, it is **sufficient** to tip the balance to satisfy the test set out in S53(3)(C)(i) above - that is on the balance of probabilities.
170. It is the opinion of your officers that the County Council should make a Modification Order to **add** the right of way which is the subject of this application with the status of a **public bridleway**, to the Definitive Map and Statement of Public Rights of way for the District of South Staffordshire.
171. It is recommended that the minimum width should be the standard minimum width of **3 metres** for a bridleway throughout its length.
172. It is further recommended that the maximum width shall be said "*to meet the bounds*" throughout the historical line of Birchenshaw Lane, as depicted on the Plan at Appendix B.

### **Recommended Option**

173. To accept the Application and to make an Order to add the route to the Definitive Map and Statement of Public Rights of Way.

### **Other Options Available**

174. To decide not to accept the Application and *not* to make an Order to add the route to the Definitive Map and Statement of Public Rights of Way.
175. To reject the recommended status of public bridleway in favour of a public footpath.

### **Legal Implications**

176. The legal implications are contained within the report.

### **Resource and Financial Implications**

177. The costs of determining applications are met from existing provisions.
178. 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**

179. In the event of the Council making an Order any person may object to that Order and if such objections are not withdrawn the matter is referred to the

Secretary of State for Environment under Schedule 14 of the 1981 Act. The Secretary of State would appoint an Inspector to consider the matter afresh, including any representations or previously unconsidered evidence.

180. 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.
181. 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.
182. If the Panel makes its decision based upon the facts, the applicable law and applies the relevant legal test the risk of a challenge to any decision being successful, or being made, are lessened. There are no additional risk implications.

### **Equal Opportunity Implications**

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

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J Tradewell

Director for Corporate Services

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**Background File** – LR615G

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