

<b>Local Members' Interest</b>	
Cllr Alan White	Lichfield Rural East

## **Countryside and Rights of Way Panel**

### **Wildlife and Countryside Act 1981**

#### **Application for an Alleged Public Footpath from A51 to B5404 in the Parishes of Swinfen and Packington, and Wiggington and Hopwas**

#### **Report of the Director for Corporate Services**

#### **Recommendation**

1. That the evidence submitted by the Applicant at Appendix A and that discovered by the County Council is sufficient to show that a Public Footpath which is not shown on the Definitive Map and Statement can be reasonably alleged to subsist along the route marked A to B on the plan attached at Appendix B
2. That an Order **should** be made to add the route marked A to B on the plan at Appendix B to the Definitive Map and Statement of Public Rights of Way for the Parish of Swinfen and Packington, and Wiggington and Hopwas in the District of Lichfield.

#### **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 Mr Martin Reay to modify the Definitive Map and Statement for the District of Lichfield. The effect, should the application be successful, would add an alleged footpath from the A51 to the B5404 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. This route is shown on the plan at Appendix B and marked A to B.

3. To decide, having regard to and having considered the Application and all the available evidence, and after applying the relevant legal tests, whether to accept or reject the application.

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

4. In support of his Application, Mr Reay has submitted a traced map of an Inclosure Award map Q/RDC2 (Part 1) 1771.
5. The Applicant has stated on his Application list of documents that an OS map of 1834 has been provided.
6. The Applicant has submitted in support of the Application a map produced by Teesdale and dated 1832.
7. The Applicant has submitted a Greenwood map dated 1820.
8. The Applicant has submitted a copy of the Definitive Map and has marked with red pencil the claimed route.
9. These documents can be found at Appendix C.

### **User Evidence Submitted**

10. The evidence of use takes the form of four user evidence forms.
11. These documents can be found at Appendix D.

### **Evidence submitted by the Landowners**

12. Five Landowners were identified by the Applicant.
13. Landowner 1 has provided a completed Landowner Response Form together with accompanying documentation comprising of photographs of challenges that have been erected. They have also included Solicitors letters relating to land issues between home-owners private rights of way along the lane off the B5404. This form is dated 15<sup>th</sup> November 2022.
14. The Landowner has provided the first page, a plan and page 6 of an Abstract of Title from 1956. The Abstract recites an Indenture dated 29<sup>th</sup> September 1911 between the Hopwas Estate Company Limited and Thomas Salt Smith. The abstract further cites a legal Conveyance of Title between Thomas Salt Smith and Florence Ashwood dated 15<sup>th</sup> March 1933 together with a plan. This Landowner evidence form is attached at Appendix E.
15. Landowner 2, has also forwarded a completed Landowner Response Form dated 2nd June 2021. This form is also attached at Appendix E.
16. Landowner 3 completed a Landowner Response Form at the time. This form was returned to the Council from the National Farmers Union (NFU). The NFU provided a covering letter dated 25<sup>th</sup> January 1999 in which the

NFU stated that they wished to object against the claimed footpath. The letter advises that evidence would be submitted in due course but there is no further evidence on file. The NFU letter and Landowner evidence form can also be found at Appendix E.

17. Landowner 4 did not complete a Landowner Response Form but did provide a letter dated 4<sup>th</sup> June 2021 and addressed to John Tradewell. A copy of this letter can also be found at Appendix E.
18. Landowner 5, being the owner of the Croft was contacted by letter dated 19<sup>th</sup> August 2022 although no response has been received.

### **Evidence Received from Statutory Consultees**

19. Consultation letters to the Statutory Consultees were sent out when the Application was initially submitted in 1998. Wigginton and Hopwas Parish Council responded by letter dated 6<sup>th</sup> January 1999.
20. Lichfield District Council responded by letter dated 5<sup>th</sup> January 1999.
21. Due to the length of time since the initial Consultation a further Consultation was carried out in 2021.
22. Wigginton and Hopwas Parish Council responded to this Consultation with emails dated 30<sup>th</sup> April 2021 and 4<sup>th</sup> May 2021. The Parish Clerk has forwarded an email of a conversation that they had had with one of the Parish Councillors.
23. Packington Lane is a boundary between the Wigginton and Hopwas Parish Council and Swinfen and Packington Parish Council. The Swinfen and Packington Parish Clerk did not respond to the Consultation in 2021.
24. A representative of the Byways and Bridleways trust emailed on 21<sup>st</sup> May 2021 to advise your officers that they supported the Application.
25. Copies of letters and emails from the Statutory Consultees can be found at Appendix F.

### **Evidence discovered by the County Council**

26. Your officers have inspected the Inclosure Award and plan.
27. Your officers have acquired copies of the Teesdale and Greenwood maps.
28. Evidence within your officer's possession include a copy of Ordnance Survey map dated 1890.
29. Your officers have an Ordnance Survey Provisional edition map dated 1921.
30. Your officers also have an Ordnance Survey map which is dated 1924.
31. Your officers have obtained a copy of HM Land Registry Title number SF378678.
32. Copies of the plans may be found at Appendix G.

## Comments on Evidence

### Comments on Applicant's Evidence

33. The Applicant has submitted in support of his claim a traced map of an Inclosure Award map Q/RDC2 (Part 1) 1771. With regard to the plan orientation, this shows a way leaving from the (now) A51, south westerly along the western edge of field 75 along a lane known as Packington Lane. At the southern end of allotment 75 the track turns at right angles and continues in a south easterly direction along the southern boundary of fields 75 and 26 ending on the B5404 (Plantation Lane).

34. The Applicant has based the Application on the Inclosure Award transcript wording and his traced plan. The transcript states:

*"Also that another private wagon and drift road and public foot road from the said last mentioned messuages tenements or cottages of lord weymoths over the allotments no 75, 22, 26 and 21."*

*"To the road leading from Fazeley to Lichfield for the use of the owners and occupiers of the said allotments and of the said tenements or cottages. For the time being shall forever hereafter be and remain of the breadth of 15ft in every part thereof and confirmed and used as a private wagon or drift road and public foot road" (sic).*

35. The Applicant's foremost evidence is based on the Inclosure Award and its enabling Inclosure Act. The enabling Act created rights of way by Statute, with the Act having to be passed by Parliament. The Inclosure Act made provision for Commissioners to draw up an Inclosure Award, which included provision for Commissioners to draw up Highways and Rights of Way.

36. The Inclosure Acts passed before 1801 (as with the present case) generally gave wide powers to establish new highways. Unless the enabling Act made a contrary provision, a highway which is set out in an award would automatically become subject to public rights without the need for any further procedure.

37. The procedure following the passing of the local Inclosure Act empowered an Inclosure Commissioner(s) to survey and divide up the land, allotting it to named individuals, including the setting out of highways. After all the procedures were followed and completed the Commissioner(s) would issue the final Award and accompanying Award Map.

38. An Inclosure Award has been determined by the Courts to be conclusive evidence in respect of public highways in the absence of later Legal events stopping up or diverting routes such as Quarter Session Orders.

39. For further comment on the Act and Award, see paragraph 70 below.
40. The Applicant has provided a map drafted by Teesdale dated 1832. Officers have viewed this map which does show a physical feature suggesting a lane off the A51, and then taking a right-angled turn and continuing along a further physical feature suggesting a track/footpath which continues to the B5404. The track/footpath and lane provide supporting evidence to the text and plan of the Inclosure Award, although it cannot distinguish as to whether they are public rights or private rights.
41. The Applicant has provided a map which was drafted by Ordnance Survey in 1820 but this is not clear enough to provide any reliable evidence of either existence or status. Officers did however attend the Staffordshire Records Office and considered the map and noted that there appears to be a physical feature suggesting a lane off the A51 which takes a right-angled turn, and proceeds along a further feature suggesting a track or footpath ending at the B5404. Once again it is not possible to distinguish as to whether these ways have public rights or private rights.

### **Comments on User's Evidence**

42. With respect to the User evidence, Members will be aware that there must be evidence of use for a 20 year period prior to the use of the route being challenged.
43. Your officers have examined all the User evidence and the relevant twenty-year period for this application has been calculated retrospectively from 1969 to 1949. This date has been used as it was immediately prior to the first challenge along the route which was made in 1970 when Landowner 2 put up a sign advising of No Through Road for the length of claimed route between Packington Lane and the B5404.
44. With regard to user evidence between the complete claimed route, User 1 stated that they exercised their claimed right on foot, User 2 used the route by car and sometimes on foot and User 3 stated that they exercised their claimed right on horseback. User 4 stated that their relatives had used the route by car.
45. User 1 has known the complete way for "72 years from childhood". They have provided a map illustrating the stretch of route from the B5404 to the right-angled bend but have not marked the lane leading to the A51 (Packington Lane) on their plan. The accompanying narrative does however explain that they have used the whole length of the route claimed. They have used the claimed right for approximately 25 years from 1949 to approximately 1974 on foot, although not in Winter.
46. User 1 appears to have implied that relatives commencing with their maternal grandmother, mother and eldest daughter are all aware of and use the claimed footpath. The User is aware of the challenge consisting

of a notice off the A51 turning into Packington lane advising of "No Through Road". They have not provided a date for when this was erected although they have written "Not when I went but now", the implication being that it has been erected since they used the path.

47. The same User is aware of a further challenge on the route leading from the A51 just after the left-angled bend and has stated in their narrative that it was "gated by homeowner along route" and has identified the position of the gate on a plan. They have not however provided a date as to when this occurred. Interestingly this user has also suggested that they used two different routes leading directly off the B5404 (around Hopwas House Farm) according to their plan. This User had no implied right to use the footpath and therefore their evidence can be assessed and evaluated in relation to a claim under the Highways Act 1980 or at Common Law.
48. User 2 are homeowners along the claimed route. They have stated that the family has owned and lived in property along the lane since 1966 and that their family has used the claimed route to drive, walk and ride over during this time. The owner's recollection is that their father's van would pick up the current homeowner at the farmyard off the B5404 and drive along the track to Little Packington House on Packington Lane during the 1970's, and that a milkman also used the track in the 1970s and 1980s. Furthermore, these homeowners also used to drive along the lane and cleared the lane around years 2002/2003. However, around this time challenges were made to prevent vehicle access which included the positioning of a skip along the track by a neighbour (which remained in situ until 2021), and a ditch having been dug by the owner/occupier of Hopwas House Farm (although subsequently a different access was provided for User 2). Whilst the homeowners have specified that they continue to walk the lane, the evidence of vehicle use is not relevant to the claim for the public footpath.
49. Evidence of User 2 who live along the lane does not carry any evidential weight because they are likely to have an express right of access, in their Landowner Deeds, an implied right of access or a Licence and therefore no requirement for the express permission from the owner. Their evidence therefore does not carry any weight.
50. User 3 has known the route for 59 years and recalls using the path for a couple of years on horseback between 1962 to 1963/4. They stated that at this time the horses and ponies from a local riding school would regularly be taken on Sunday night along the length of the claimed route. They used the track once a week for a maximum of a couple of years with no challenges at the time. However, they have claimed that they attempted to take the route approximately 15 years ago, but the route was too overgrown to use.



51. This User's evidence however can be discounted as they have not used the route for the requisite number of years, and they also used the route on horseback which cannot be used to show any potential footpath rights.
52. User 4 is a homeowner living along the claimed route. They have provided information in their evidence form, explaining that their aunt and uncle who used to live along the claimed route, used the track leading to the B5404 in their cars as a short cut to Plantation Lane between 1955 and approximately 1990. This evidence is only anecdotal, which would not support the claim. It also refers to vehicle use which is not pertinent to the claim.
53. Only one non-resident user could claim that they used the complete route on a regular basis between 1949 to 1969 and it is therefore impossible to show any continuous public use by prescription.

### **Comments on Landowner Evidence**

54. Landowner 1 has provided a Landowner evidence form and accompanying documentation to include photographs. They have explained that they hold Freehold Title Absolute and that they have occupied the land since 1986 and owned it since 1997. This documentation details disputes between neighbours' and challenges to potential users. This application is based on historical documentary evidence so although the Landowner can attest to his intent to prevent usage, the claim is for a highway that is alleged to exist in 1770 and usage therefore is not fundamental requirement to the claim.
55. With regard to public usage, the Landowner has prevented any potential user to claim use by Prescription establishing various challenges to use. The Landowner has included photographs in their evidence form showing challenge to any potential user right of way. These challenges include signs having been erected "decades ago" advising of Private Lane, "facing West onto Packington Lane and facing North onto Packington Lane". Furthermore, the landowner stated that they have not seen people using the claimed route.
56. The Landowner has also stated that gates have been placed as obstructions to the highway and has included plans where gates are located. The Landowner is also aware that a skip along the track off the B5404 has caused "total obstruction" for "extended periods". They have also challenged walkers who they advised "follow the line of the Parish boundary on an O/S map. When referred to boundary symbols and rights of way invariably leave by the way that they arrived".
57. Landowner 1 has therefore demonstrated the challenges that they have raised in relation to Users of the claimed route. From the examination of the evidence, your Officers are satisfied that there is not sufficient evidence to claim use either by Statute or Common Law Prescription.

58. The Landowner has also submitted a Deposit under s31(6) of the Highways Act 1980 on 17<sup>th</sup> September 2021. A valid Deposit under section 31(6) stops time running forward for the acquisition of public rights usage and constitutes an effective challenge for any future claims unless it can be shown that the public had already been using the route for at least 20 years before the date of statement or declaration or alternatively, a claim is based on documentary evidence.
59. This Landowner Deposit however only has bearing on user evidence from the date it was submitted. With this particular claim there is not sufficient evidence for retrospective user-based evidence.
60. The Landowner has also provided documentary evidence. They explained in a continuation note to their evidence form that they have "numerous conveyances some showing private granted rights of way conveyed but none make any reference to public rights whatsoever". The Landowner also states that "There are no public rights to any footway allegedly claimed. For my part they have been purchased by my "predecessors in title" and conveyed to myself upon payment as successor in title.....". (Page 6).
61. The Landowner's documentary evidence on page 18 shows an Abstract of Title dated 1956. An Abstract is a brief chronological overview of all of the historical legal documentation associated with a property including Titles and Transfers. The Abstract recites (on page 19) an Indenture [Conveyance] dated 29<sup>th</sup> September 1911 between The Hopwas Estate Company Limited (Vendor) and Thomas Salt Smith (Purchaser).
62. The Indenture reserves (on page 19) "*unto the Vendors thr succors and assigns owners for the time being of all or any pt of the sd Hopwas Farm and all persons going to or fm any pt throf a perpetual rt of carriage, bridle and footway in cmn with the Pchsr his hrs and assigns at all times and for all ppses over and along the occon lane leadg fm the sd Packington Farm and on pt of the easterly side throf to the sd highway leadg fm Lichfield to Tamworth (and wch sd last mentd occon road was shown on the sd plan and thron cold pink)(sic)*". The plan to which this relates is understood to be that on page 21 of the Landowner's evidence.
63. Thus, the evidence provided within this Indenture states that the road off the B5404 is an Occupational Road for the use of the tenements and cottages of Packington Lane. The Public right of way is not referred to within the documentation.
64. For further comment on the Indenture of 1911 and Conveyance of 1933, see paragraph 78 below.
65. Landowner 2 are homeowners along the claimed route. They advise that they have lived along the claimed route since 1964 and have stated that their drive was used "occasionally by local residents and others from the



surrounding area". The homeowners created a challenge to the right of way in 1970 when they erected a road sign stating "Private Malt Cottage, The Croft No Through Road". They have attached a plan showing the position of the sign, a photo of which can be seen in Landowner 1's evidence form. Landowner 2 has therefore also demonstrated challenges although as already referred to in paragraph 52, your Officers are satisfied that there is insufficient evidence to claim a route through Use either under the Highways Act 1980 or by Prescription. These Landowner's did not provide any historical documentary evidence.

66. Landowner 3 who completed and signed their form in early 1999 stated that they had never seen anyone using the path and so did not feel that putting up any signs would be necessary. With the exception of the user evidence form, no documentary evidence was produced.
67. Landowner 4's evidence is limited to those that claim a path through user rights. They are clear that their land does not have a footpath running between their farm buildings and that there is no evidence of users except those who use with the Landowner's permission. Furthermore, they state that the hedges make the claimed route impossible to walk down. No further documentary evidence was produced.

#### **Comments on Statutory Consultees Evidence**

68. The member of the Parish Council's evidence produced in 2021 is considered to be anecdotal having been passed through the Parish Clerk. Their evidence therefore has little legal probity. In 1999 the Parish Council had no objection to the application although no evidence was produced.
69. In 1999, Lichfield District Council stated that they did not support the application although no further evidence was supplied.
70. In 2021 a representative of the Byways and Bridleways trust informed your officers that they supported the application, although no evidence was produced.

#### **Comments on Staffordshire County Council's Evidence**

71. Your officers have further considered the Inclosure Award, which it is clear relates to an Act of Parliament allowing for the Award to be drafted and acted upon. The Award was "Made and passed in the tenth year of the Reign of his present majesty King George third and in the year of our lord one thousand seven hundred and seventy intituled an act for dividing and inclosing the open arable..." (sic) unfortunately the full title of the Award has been damaged and cannot be read.
72. Your officers have sought context with regard to the paragraph that the Applicant has taken from the Inclosure Award. The preceding paragraph

to the relevant paragraph provided by the Applicant has written in the margin "Hopwas Roads". The paragraph commences

*"And as to for and concerning the publick and private roads and highways in and by the said recited act of parliament directed to be ascertained set out and appointed we the said commissioners parties hereto do hereby ascertain and set out and appoint the same in manner following (thatistosay.....)"*

*Also another private wagon and drift road and public foot road from the said last mentioned messuages tenements or cottages of lord weymoths over the allotments no 75, 22, 26 and 21 to the road leading from xx Fazeley to Lichfield for the use of the owners and occupiers of the said allotments and of the said tenements or cottages. For the time being shall forever hereafter be and remain of the breadth of 15ft in every part thereof and confirmed and used as a private wagon or drift road and publick foot road"*

73. Your officers have located the accompanying plan to the Award and the route appears to be present on the Award plan. There does not appear to be any ambiguity between the statement and the plan.
74. The Inclosure Award therefore appears to have been properly set up with the Commissioners being given the required authority by law to draft the Inclosure Award.
75. Your officers have considered the Teesdale, Greenwood and OS maps and cannot conclude anything further regarding the physical existence of the claimed routes or whether they carried public or private rights other than that already mentioned in paragraphs 39 and 40 above.
76. With regard to the Ordnance Survey plan (1890), Packington Lane leads off the A51 at a junction which proceeds in a southerly direction with regard to the map orientation. The lane then turns at a right angle (at the point at which Packington Farm is illustrated on later plans) and heads eastwards along a track/footpath up to a short stretch of what may be interpreted to be a lane from Hopwas Farm leading on to the B5404. Packington Lane proceeding along the section off the A51 has a broken line along its length which may mark the Parish boundary and/or a footpath. This stretch also has the abbreviations which are not perfectly clear but your officer reads as 4ft FW which appears to support the claim of a footpath, although it is also possible that "FW" is an abbreviation for fence, or face of wall. The Ordnance Survey maps do show a physical feature that is on the same line as the claimed route although there is no indication of what this feature is or its status. The physical feature supports the information that has been discovered in the Inclosure award.
77. The Provisional Ordnance Survey map of 1921 again confirms that at the "southerly" end of Packington Lane off the A51 just after the right-angled bend, there is a short stretch of lane followed by a short length of track

before reverting to lane again just prior to the junction with the B5404. Again, as with the map of 1890, there is a dotted line possibly delineating the parish boundary along this part of the claimed route. On consideration of the Ordnance Survey map of 1924 there appears to be no change to the plan provided in 1921. This is therefore again supporting evidence of the continuing existence of a physical feature mentioned in the Inclosure Award. It should be noted that Ordnance Survey plans do not distinguish between public rights and private rights.

- 78.** Landowner 1's evidence refers to the Abstract of Title dated 1956 which cites the Indenture dated 29<sup>th</sup> September 1911 between The Hopwas Estate Company Limited (Vendor) and Thomas Salt Smith (Purchaser). The evidence provided within this Indenture appears to be incorporating certain information from the earlier Inclosure Award and states that the road off the B5404 is an Occupational Road for the use of the tenements and cottages of Packington Lane. The public footpath from the Inclosure Award is not referred to. It could be read as only being "public" to the local cottages and tenements and thus there is no reason to specifically make reference to it within the Indenture or alternatively, as it is public, it does not need to be in Title Deeds passing Private rights and responsibilities.
- 79.** Your officer has considered HM Land Registry documentation to Title number SF378678 which incorporates the information taken from the Abstract of Title. It appears from the HMLR documentation that in a conveyance dated 15<sup>th</sup> March 1933 between (1) Thomas Salt Smith (Vendor) and (2) Florence Marie Weston Ashwood and Herbert Ashwood (Purchasers), the stretch of route between Packington Farm and the B5404 was identified as an "occupation Road". The Private rights are thus referred to but there is no reference to the public footpath or the tenements and cottages.
- 80.** For a highway to exist there must be a right of passage for the public at large and not for just a section of the public (Poole v Huskinson) 1843.
- 81.** Title Deeds are documents which prove the ownership of a property and the history of its ownership. The Deeds comprise of a series of documents which may include mortgages, leases, licences and easements. These Deeds on the whole encompass private rights.
- 82.** The Inclosure Award refers to the enabling Act as specifically requiring both public rights and private rights to be separately documented. The drafting of the Award has in accordance with the Act specifically itemised both the public and the private rights as being separate and distinct entities. The Public rights are therefore separately recorded and shown to exist from the commencement of the Award.
- 83.** One of the characteristics of Property Law is that several interests can exist in the same piece of land at the same time. This is especially so

where there is a public right of way. Consequently, a public right of way can exist over privately owned land.

84. It is your officer's opinion that the Award interpretation is for the claimed footpath specified for use by the public at large.

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

85. With regard to the addition of the claimed footpath section 53(3)(c)(i) of the Act applies.

86. Section 53(3)(c)(i) relates to the discovery of evidence of two separate events:

(a) Evidence that a right of way which is not shown on the map subsists; OR

(b) Evidence that a right of way which is not shown on the map is reasonably alleged to subsist.

87. For the first test to be satisfied it will be necessary to show that on a *balance of probabilities* the claimed footpath does subsist.

88. For the second test to be satisfied the question is *whether a reasonable person could reasonably allege* that the claimed footpath subsists, 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 is less than that which is necessary to establish the right of way "does subsist".

89. One of the two tests must be satisfied before a Modification Order can be made to add the claimed route. Judgment must be made based upon evaluation of the evidence provided by the Applicant. If either test is satisfied, the Definitive Map and Statement should be modified.

### **Summary**

90. The application is made under under Section 53(2) of the 1981 Act, relying on the occurrence of the event specified in 53(3)(c)(i) of the Act.

91. The Applicant produced an Inclosure Award as documentary evidence that the route existed. This was the document that carried the most evidential weight. The Award was created under an Act of Parliament and therefore statute. Your Officers believed there could possibly be an ambiguity in the wording of the award as to whether the rights were those afforded to the "public" living along the cottages and tenements of the route, or whether they were public rights and open to the public at large. Your Officers interpret the wording as being a footpath open to the general public.

92. Landowner 1's documentary evidence provided an Abstract of Title which provided details of a 1911 Indenture. This showed that Packington Lane was considered to be an occupation road. The Council subsequently found evidence from HMLR as to the stretch of the claimed route between Packington Farm and the B5404 which shows the remaining stretch as an occupation road. This evidence appears to date back to the Inclosure Award but does not provide any further evidence other than incorporating the private wagon and drift road rights. It is not clear whether the rights are public or private.
93. In the course of the initial investigation, user evidence emerged although on analysis, this was insufficient evidence to accept the claimed route based on the Highways Act legislation or Common Law Prescription. The majority of the Landowners evidence is also based on defeating User claims.
94. Statutory Consultees did not provide any substantive evidence.

### **Conclusion**

95. In light of the evidence, as set out above, it is your Officers opinion that the evidence shows that a public right of way, with the status of footpath, which is not shown on the map and statement is **reasonably alleged** to subsist.
96. It is the opinion of your officers that the County Council should make a Modification Order to upgrade the routes to footpath status on the Definitive Map and Statement of Public Rights of Way
97. It is further recommended that the minimum width should be 1.5 metre throughout its length.

### **Recommended Option**

98. To accept the application based upon the reasons contained in the report and outlined above.

### **Other options Available**

99. To decide to reject the application to add the claimed right of way to the Definitive Map and Statement of Public Rights of Way as a public footpath.

### **Legal Implications**

100. The legal implications are contained within the report.

### **Resource and Financial Implications**

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

102. 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**

103. 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.
104. 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.
105. 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.
106. 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**

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

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J Tradewell

Director for Corporate Services

**Report Author: Stephanie Clarkson**

Ext. No: 276292

**Background File: LH629G**



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