

Local Members' Interest	
Cllr Mark Deaville	Staffordshire Moorlands – Cheadle and Checkley

Countryside and Rights of Way Panel

Wildlife and Countryside Act 1981

Application for the Upgrade of Part of Public Footpath 27 Checkley Parish to a Restricted Byway and the Remainder of Public Footpath 27 Checkley Parish to a Public Bridleway

Report of the Director for Corporate Services

Recommendation

- 1) That the evidence submitted by the applicant and that discovered by the County Council is sufficient to show that on the balance of probabilities part of Public Footpath 27 Checkley marked A to B on the plan attached at Appendix B, **should** be added as a highway of a different description, namely a Restricted Byway to the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.
- 2) That the evidence submitted by the applicant and that discovered by the County Council is sufficient to show that on the balance of probabilities part of Public Footpath 27 Checkley marked B to D on the plan attached at Appendix B **should not** be added as a highway of a different description, namely a Public Bridleway to the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.
- 3) That an Order **should** be made under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by upgrading part of Public Footpath 27 to that of a Restricted Byway along the route shown between points A to B on the plan and attached at Appendix B.
- 4) That an Order **should not** be made under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by upgrading part of Public Footpath 27 to that of a Public Bridleway along the route shown between points B to D on the plan attached at Appendix B.

PART A

Why is it coming here – what decision is required?

- 5) 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").

- 6)** 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").
- 7)** 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.
- 8)** The purpose of this investigation is to establish what public rights, if any, already exist even though they are not currently recorded on the Definitive Map and Statement of Public Rights of Way.
- 9)** To consider an application attached at Appendix A from Felicity Edmeston on behalf of Staffordshire Moorlands Bridleway Group (SMBG) for an Order to modify the Definitive Map and Statement for the District of Staffordshire Moorlands. The effect of such an Order, should the application be successful, would:
 - (i) Upgrade part of Public Footpath 27 Checkley to a Restricted Byway on the Definitive Map of Public Rights of Way under the provisions of Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981, based on the investigations carried out by the County Council.
 - (ii) The line of the alleged Restricted Byway is shown highlighted and marked A to B on the plan attached at Appendix B
- 10)** 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.

Documentary Evidence Submitted by the Applicant.

- 11)** The applicant has submitted the following in support of the application:
- 12)** A copy of the applicant's statement.
- 13)** A copy of the Checkley Inclosure Award narrative and plan dated 1831.
- 14)** A copy of the Checkley Tithe Award and Map 1841.
- 15)** A copy of the Township of Madeley Holme (Checkley, Creighton & Stramshall Parish map) 1837.
- 16)** A copy of Checkley Parish Minutes 1898.
- 17)** A copy of Checkley Parish survey card and plan dated 9/10/1951.
- 18)** A copy of letter associated with Survey of Rights of way dated 12/8/1954.
- 19)** A copy of a field book associated with the compilation of the First Definitive Map dated 7/9/1954.
- 20)** A copy of Ordnance Survey 25 inch map sheet XXV-8 dated 1881.
- 21)** A copy of Ordnance Survey 25 inch map sheet XXV-4 dated 1881.

- 22) A copy of Ordnance Survey 1 inch map dated 1897.
- 23) A copy of site photographs dated 19/10/2019.
- 24) This evidence can be found at Appendix C.

Evidence Submitted by the Landowners.

- 25) Five landowner evidence forms were received in response to the initial consultation.
- 26) This evidence can be found at Appendix D.

Evidence Submitted by Statutory Consultees.

- 27) An email dated 03/03/2020 was received from a parish councillor on behalf of Checkley Parish Council.
- 28) A transcript of this evidence can be found at Appendix E.

Other Evidence Discovered by the County Council.

- 29) A copy of Ordnance Survey Sheet 124, surveyed circa 1876 to 1879, published 1889.
- 30) A copy of Bartholomew's Map - Sheet 13, Derby and Nottingham, publication date 1924.
- 31) A copy of Ordnance Survey - North Staffordshire (Special Sheet) revised 1916 to 1920, printed 1930.
- 32) This evidence can be found at Appendix F.

Analysis of Documentary Evidence Submitted by the Applicant.

Inclosure Award and Plan (1831)

- 33) The Inclosure Acts were Acts designed to enclose the old commons, manorial waste and smaller holdings in order to increase agricultural productivity. They were often promoted on behalf of the larger landowners to enable them to increase the profitability of their land. The earliest Acts date from the early 1600's and continued until 1876 when Parliament ended the practice.
- 34) Under the Inclosure Acts, the Commissioners were required to set out and appoint public carriage roads and other highways such as private roads, bridleways and footways. The Inclosure Awards acted as legal documents to create new rights of way and in some cases to extinguish old ones.
- 35) The Inclosure Award for Checkley dated 1831 lists the public carriage roads falling within the Inclosure Award. Under the heading "*Public Carriage Roads Thirty feet wide*" there is an entry listed within the left hand margin of the document stating "*Overton Road*". The narrative alongside "*Overton Road*" explains the route to be "*Branching out of the said Hollington road opposite the top of Lodge Dale and extending in a southeastwardly direction over other parts of Hollington Heath to the Gate leading towards Overton.*"

- 36)** The accompanying Inclosure Plan for Checkley shows a section of the Hollington Road on the outskirts of the village of Hollington. The map shows a short spur of road leading off the Hollington Road in a southerly direction. This road is known as the Overton Road.
- 37)** The point at which the Overton Road leaves the Hollington Road is marked A on the attached plan and the Gate leading towards Overton is marked as Point B on the plan attached at Appendix B.
- 38)** The Inclosure Plan shows a line across the end of Overton Road at its southernmost point. Officers consider that this line represents the "Gate leading towards Overton". This is supported by the plan which shows that the route has not been left open as a continuation road like the Hollington Road leading to the hamlet of Hollington heading east on the plan. The line represents a Gate within the jurisdiction of the Inclosure Award for the parish and an Inclosure Award would not refer to a landmark outside its jurisdiction.
- 39)** The point at which the Gate lies is wider than the Overton Road which is specified within the Award to be 30 feet wide. The Gate area therefore appears to be a point in the region of 40 feet wider or possibly more. Officers consider that this would be a cul-de-sac and a turning point for carts.
- 40)** It may be noted from other documentation notably the Ordnance Survey Plan XXXV-4 dated 1881 that there is a well along the Overton Road. Whether it would be a public or private well is unclear although it is suggestive of a point at which the animals pulling the carts could be watered – or from where water could be collected.
- 41)** The Gate may have also been a communal access to the old enclosures which is indicated by the large letters on the Inclosure Plan. This would allow those working the enclosed land to stop their carts at the end of the road and walk through the gates to the fields. The Gate would also prevent any livestock within the old enclosures from leaving the fields.
- 42)** The Inclosure Award does not however provide any assistance with regard to rights and status of the claimed route between points B to D on the plan attached at Appendix B.
- 43)** A copy extract of the Inclosure Award and Plan can be found at Appendix C.
- 44)** 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 such as Quarter Session Orders. This Award and Plan is clear in showing there are public carriage rights along the claimed route.

Tithe Award and Map (1841)

- 45)** The change of the tithe from a payment in kind to the church to a payment in money led to most parishes throughout the country being surveyed by Tithe Commissioners from the 1840's onwards.

- 46) The sole purpose of the tithe documentation was to identify land subject to paying the tithe. The latter was based upon the seven-year average value of the land's productivity.
- 47) A highway crossing land could reduce its productivity and thus its value although this would be true whether the route had a public or private status. The type of highway would also have a bearing on the amount of tithe payable.
- 48) Where a route was shown separate from adjacent landholdings it would be more likely to have higher rights over it although these could be either public or private. The important point from the perspective of the Tithe Commissioner was that the land would be un-tithable and not the status of the way.
- 49) The Checkley Tithe Award Map shows a physical feature that leads off the Hollington Road which is depicted by two continuous parallel lines between fields terminating at the north end of parcel number 1529. This follows the same route as the one marked A to B on the plan attached at Appendix B.
- 50) This physical feature leading off the Hollington Road corresponds with the Inclosure Award and Plan. The Tithe Map's continuous lines are suggestive of a detached route between field boundaries. The parcel number 1150 is described in the Tithe Award as a "lane and waste". At the southernmost point of the lane the physical feature is shown as slightly wider area which corresponds with the Inclosure Award Plan. This point is marked B on the plan at Appendix B.
- 51) At the northern end of land parcel 1529 the route appears to take a south easterly direction along parcel 1529's western boundary. At the field's most southerly point, the route then enters the northern point of parcel 1532 and continues to follow a south easterly path along the eastern boundary of parcel 1532. This parcel of land is recorded as being in the occupation of William Fower and houses a "*barnfield and buildings.*" This point is marked C on the plan attached at Appendix B.
- 52) At the southern end of parcel 1532 marked C on the plan attached at Appendix B the route then appears to continue between two further enclosed fields identified as parcel numbers 1534 and 1509. The route continues in a southerly direction between two further field numbers 1535 and 1508 and at the southern edge of plot 1508 the route appears to join a physical feature depicting a lane running at right angles to it, in an east-west direction. This point is marked D on the plan attached at Appendix B.
- 53) The Tithe Award and Map were completed in 1841 some 10 years after the Inclosure Award and Plan. The Tithe Map illustrates clearly the route between points A to B which is detached from the surrounding fields and which the award describes as a "lane". The Tithe award does not itself specify whether the lane is a private lane or public lane. However in the absence of the Tithe Award specifying it to be private, and the Inclosure Award ten years earlier stating the route to be a public carriage route the supposition must be made that in the absence of a stopping up order the Tithe Map carried public rights.

- 54)** From points B to C however there is no evidence that the route is a bridleway. There is a physical feature on the ground continuing through field 1529 along the boundary of field 1530. The route then crosses open fields as far as William Fower's property and then continues southwards. The route then continues through field 1532 to its southernmost point, with field boundary 1533 lying to its east. There is no suggestion on the plan that this part of the route has any higher rights than that of a footpath or whether this section was a public or private route.
- 55)** At point C of the plan at Appendix B, the route then may have been considered to have higher rights because the physical features on the Tithe Map show the route to be enclosed between field numbers 1534 and 1509 with a wider point at the southern end of field 1509. This wider area is again suggestive of a possible stopping or turning area for carts. The route then continues as an enclosed route between fields 1535 and 1508 to its southernmost point at which it meets a route leading east to west - point D on the plan.
- 56)** The route leading east appears to run to the hamlet of Overton which is situated on the Hollington to Fole Lane. Fole Lane itself appears on contemporaneous maps of the 18th and 19th Centuries and runs in a north-south direction through the hamlet of Overton. The route in the westerly direction appears to be a route leading to Broadgate Hall through fields in the ownership of Broadgate Hall. This westerly route continues past Broadgate Hall and through further fields and properties in the ownership of the Hall and out on to the Hollington Road.
- 57)** There is a suggestion that there may be higher rights than that of a footpath between points C to D due to the physical feature on the plan.
- 58)** Officers have considered the Tithe Map and have determined that Broadgate Hall was in the ownership of John Burton Phillips Esq when the Tithe Map was drafted. Officers also ascertained that the fields through which the claimed route ran (notably parcels 1529, 1530, 1532, 1533, 1534 and 1509) were also in the ownership of John Burton Phillips. This includes the wider section of the enclosed route which may have been for carts to be stationed or to be turned. These parcels in the ownership of John Burton Phillips also appear to be old Inclosures, as suggested in the Inclosure Plan.
- 59)** If a route could be considered to exist for higher rights along this section than for those on foot, the route between point B and the southern end of field 1509 is more suggestive of a private route for carts working the fields owned by John Burton Phillips.
- 60)** The claimed and enclosed route between points C to D includes land in the ownership of John Burton Phillips. The ownership of parcels 1535 and 1508 however were in the ownership of Harvey Mountford. Whilst this physical feature shows the adjoining fields to be enclosed which may be indicative of higher rights than those of a footpath, there is no evidence as to whether this section would carry public or private rights.

- 61)** The applicant has submitted a plan titled Checkley Creighton & Stramshall Parish plan 1837. This Township plan of Madeley Holme was drafted some six years after the Inclosure Award and four years before the Tithe Map.
- 62)** It is unclear as to who drafted the plan or what the purpose of the map was. The Township Plan appears to be similar to the Tithe Map although has a different numbering of the parcels. There is a physical feature detached from the adjoining fields which can be seen leading from the Hollington Road and as far as the southern end of fields numbered 129 and 130 (consistent with point A to point B on the plan attached at Appendix B). This is also the extent of the enclosed section at the north of the claimed route illustrated on the Tithe Map. This physical feature therefore provides further support for the higher rights of being a public carriage road as evidenced in the Inclosure Award and Plan.
- 63)** The accompanying Field Book for this plan could not be located by Stafford Records Office.
- 64)** From point B to point D on the plan attached at Appendix B the physical features on the Township Plan appear to be identical to those on the Tithe Map. From points B to C there is no evidence that the route is a bridleway. There is a physical feature on the ground continuing through field 68 along the boundary of field 69. The route then crosses open fields as far as what appears to be a building and then continues southwards. The route then runs through field 72 with field boundary 71 to its east. There is no suggestion on the plan that this part of the route has any higher rights than that of a footpath or whether this section was a public or private route.
- 65)** At point C of the plan at Appendix B, the claimed route may have been considered to have higher rights because the physical features on the plan show a route to be enclosed between field numbers 73 and 74 with a wider point at the southern end of field 74 suggestive of a possible stopping or turning area for carts. The route then continues as an enclosed route between fields 75 and 76 to its southernmost point at which it meets a route leading east to west (point D on the plan).
- 66)** There is a suggestion that there may be higher rights between point C to D than that of a public footpath along this section of the claimed route due to the physical features on the plan.
- 67)** The plan however does not offer any evidence as to whether these rights were public or private.

Checkley Parish Minutes 1898

- 68)** Until 1894, the parish was generally responsible for the maintenance of public highways. This responsibility was discharged by the Surveyor of Highways who kept records on goods and service provision and the parish records detailed the amount of money spent in this regard.
- 69)** The Parish Minutes of 1898 have been provided in which a list of all of the footpaths and bridleways within the parish are noted. This was drafted some 60 years after the Tithe Map.

- 70)** Entry 27 records a *"Cart road from back of Mr Edward Morley's coming out into No24 near Overton Farm"*. (sic). It is considered that these entries relate to the route numbers adopted for the first Parish Survey (see paragraphs 74 to 87 below) and continue to be used today for the Definitive Map and Statement. It is unclear as to whether the Surveyor of Highways was a member of the Committee and present at the meeting. The Minutes however provide supporting evidence for the claimed route.
- 71)** Officers have tried to establish where Mr Morley's property was situated although cannot find any evidence regarding this. The Minutes do not provide evidence as to status but it may be considered that as the entry is within the Parish Minutes the route may have been considered to be public.
- 72)** Enquiries were made of Stafford Records Office as to whether there was an associated plan to support this evidence although unfortunately no plan could be located.
- 73)** Vestry Minutes no longer note details regarding highways following the Local Government Act 1894 which passed all powers, duties and liabilities of existing highway boards, highways authorities and surveyors to the newly created Rural District Councils.

Parish Survey Card

- 74)** Parish Survey Cards were produced following the passing of The National Parks and Access to the Countryside Act 1949. The Act required all County Councils in England and Wales (as "Surveying Authorities") to survey and map all the rights of way in their area. The Act provided a lengthy process for compiling the Definitive Map and Statement for the area.
- 75)** The Authority was required to consult with District Councils and Parish Councils in the survey process. The District and Parish Councils were obliged to collect and furnish the Surveying Authority with the relevant information. Objections and appeals by landowners were part of the process resulting in the Map and Statement being amended and redrafted. The Definitive Map was completed in the early 1960s.
- 76)** The Parish Survey Card for path 27 in Checkley was dated 10th September 1951 and was a handwritten record card which was completed by a surveyor during the first survey of rights of way in Checkley Parish. It describes path number 27, 27(A) and 27(B) as commencing at Common End (Hollington) and terminating at *"old lane"*.
- 77)** The Survey Card has a record written by the Surveyor which states that the route proceeds *"Down old lane at rear of Houses at Common End to S. down side of old road (unused and grown over) to S by Fowers Barn. Follows old lane which is used by farm tractors to no 24 or fork left and follow FP and join no 24 again"*.
- 78)** The "Path No" box on the Parish Survey card has had the abbreviations 27(A) and 27(B) crossed out in pencil, leaving just the number 27.
- 79)** The "Path Symbol" box on the Parish Survey initially stated *"Believe this should be CR"*. However this line has been scored through and the letters FP have replaced it.

- 80)** The Survey Card also records the grounds for believing the path to be public. An entry has been made in different handwriting to that of the Surveyor and states "*Parish Council survey made in 1898 and recorded in Parish Council Minute Book and on Parish Map*". This further entry does not make it clear as to which decision (i.e. CR or FP) the grounds are supporting. It does however explain that they believe the route to be public based on historical evidence.
- 81)** A copy letter dated four years after the completion of the parish Survey Card and Plan, and dated 12th August 1954 appears to have been written by an intermediary between the County Council and the Parish Council. The letter at Paragraph (c) states that "*.....the "bridle road" from Common End west of Hollington down to Old Lane should also be recorded as a footpath on the account of the existence of stiles*". (sic)
- 82)** The applicant has supplied a copy of a page from a book to accompany queries regarding the recording of certain routes in 1954. The page is dated in the top right hand corner as being 7th September 1954. It is unclear as to whether this is a surveying authority book and whether the comments are those of the Council or the Parish Council.
- 83)** Point 4 however raises the query "*have assessed path 27 to be a F.P. along the whole of its length – is this ok? (shown by PC as CR)*". The notes of response in the book explains that because of stiles being placed at some time and at various locations along its length, the decision maker confirms that the route should be shown as a footpath on the Definitive Map and Statement. This comment supports the conclusions reached in the letter dated 12th August 1954.
- 84)** The plan on which the survey accompanying map is based currently has the abbreviation "F.P." marked along the route. In the preparation of the document, the Surveyor wrote in the abbreviation "BR" at the start of the route. However this was subsequently crossed out and the letters FP replaced the initial markings.
- 85)** With regard to identifying the status of the routes at the time of the Survey, a government circular was issued to those who were surveying the routes. This circular suggested the plans should be marked with an "FP" for Footpath, "BR" for Bridle Road and "CRF" for a Public Carriage or Cart Road used mainly as a footpath or "CRB" as a Public Carriage or Cart Road used mainly as a Bridleway.
- 86)** The surveyor who drafted the Survey Card has written in the path symbol box of the parish card "*believe this should be CR*" (a cart road). It would appear that during the process of recording and checking the rights, four years after the parish Survey Card and Plan were completed, the query regarding the stiles was raised, a decision was made that the route should be recorded as a footpath and the parish Survey Card and Plan were amended accordingly.
- 87)** The parish therefore originally considered the route to carry public cart or carriage rights. This provides some supporting evidence of higher public rights along this claimed route.

Ordnance Survey Maps

- 88)** Ordnance Survey Maps date back to the early 1800s and their purpose is to show physical features on, and the contours of, the ground. In so doing they included all manner of ways from tracks leading only to remote properties, footpaths crossing fields, as well as the main highway.
- 89)** They do not distinguish between public and private rights of way. From 1888 the maps carried a disclaimer that the depiction of a way on a map did not mean it was public being a practice which has continued into modern times.
- 90)** Ordnance Survey Maps Staffordshire XXV-4 and Staffordshire XXV-8 both dated 1881 have been provided by the applicant. Map XXV-4 shows a physical feature off the Hollington Road at the start of the claimed route. Map XXV-8 shows a physical feature extending along the remainder of the claimed route.
- 91)** The physical features on the Map Staffordshire XXV-4 is supportive of a cart or carriageway rights off the Hollington Road in accordance with the Inclosure Award which set out the route some 50 years earlier. The Inclosure Award ensures the rights are public to the "Gate leading towards Overton". Map Staffordshire XXV-8 then shows the route as crossing parcels 1038 and 1073 through open fields. This section of the route shows a physical feature on the ground indicative of a wide track before narrowing between field parcels 1042 and 1071. The route then appears to be separate from the adjoining fields as it continues southwards between fields 1043, 1044, 1045 and 1046. This final section of the route may be indicative of higher rights.
- 92)** The applicant has also provided a 1-inch OS map Sheet 124 for Ashbourne which she has dated as 1897. This shows a physical feature leading off the Hollington Road in a southerly direction before turning almost at a right angle and heading towards Overton.
- 93)** An Ordnance Survey Map recorded as Sheet 124 Ashbourne was discovered. The land was surveyed around 1876 to 1879 and the map published in 1889. The map shows a physical feature on the ground which appears to follow the line of the Tithe Map of 1841 drafted some 35-40 years earlier than the survey of 1889.
- 94)** A copy of an Ordnance Survey detailed as North Staffordshire (Special Sheet) revised 1916 to 1920 was discovered. This shows a physical feature on the ground without any annotated abbreviations alongside it. Neither of these maps specify either the status or whether the rights are private or public.
- 95)** The Ordnance Survey maps therefore are indicative of a route although they do not distinguish between public and private rights of way.

County Maps

- 96)** A copy of Bartholomew's map dated 1924 was located. This does not show the route. Bartholomew's maps became a trademark series and were popular and influential especially for recreation with cyclists and

tourists. They were not however designed for identifying status of rights of way or whether any rights shown were public or private.

Photographs

- 97)** Four photographs recorded as having been taken on 19th October 2019 have been attached as part of the evidence provided by the applicant. The claimed route is approximately 700m in length from the Hollington Road to Public Bridleway 24 Checkley.
- 98)** The first photograph shows a track visible on the ground which appears to consist of compacted stone and dirt. This is bordered by vegetation. The applicant states that the photograph is "*prior to going across fields*" being suggestive of the route from the Hollington Road, and shown as being between points A and B on the plan attached at Appendix B.
- 99)** The applicant has provided a second photograph which she has stated is a track going across the first field with the line of path being visible as a wide depression in the ground, the implication being that the route has higher rights than that of a public footpath.
- 100)** The third photograph provided by the applicant shows what Officers believe to be the start of the route on the Hollington Road, showing a stile and gateway. The current day physical feature suggests that this section of the route had and continues to have higher rights than the current footpath due to its physical features.
- 101)** The fourth photograph shows the section towards the end of the route showing a stile and stone gateposts. It is unclear when the stile and gateposts were erected.
- 102)** Photographs can be helpful in getting a general understanding of the nature of a route although when considering historical evidence they are of limited value. Whilst they can provide an indication of the current physical features on the ground, they cannot assist with identifying whether such routes were public or private.

Natural Environment and Rural Communities Act 2006

- 103)** Consideration was given as to whether the route should be classified as a Byway Open to All Traffic. The route is currently on the Definitive Map and Statement as a public footpath and the application to upgrade the route was submitted in 2019. A Byway Open to All Traffic could therefore only be created if it fell within the limited exceptions. In this case the route does not fall into any of the exceptions and therefore all vehicular rights are extinguished, and the appropriate rights are those of a Restricted Byway.

Comments on Evidence Received From Landowners.

- 104)** Landowner 1 provided an evidence form. The landowner states that they believe the claimed route to be a public footpath with stiles and a wicket gate along the route. The landowner also believes that the route is not currently used. They understand the right of way to be a "gentleman's agreement" for the Heath House Estate. John Burton Phillips of Broadgate Hall was also the owner of Heath House at the time of the Tithe survey.

John Burton Philips would not have required an agreement over his own land from the Tithe Map field numbers 1530 and 1529 southwards, and therefore the only section which he would require an agreement over would be between the fields numbered 1535 and 1508 which were owned by Harvey Mountford. This therefore is suggestive of the southern section of the claimed route having private rights.

- 105)** Landowner 2 provided a covering letter with a landowner evidence form. His covering letter stated that he considered the application to be unnecessary *"as it would only take riders less than 200 yds away from where they would join Hollington Common main road in a much more safe place on an established horse riders bridleway"* (sic). He has stated that his property has been owned by the family since 1939 and farms the land in partnership. He believes the claimed route to be a public footpath although only sees people using the way very infrequently.
- 106)** The landowner also states that there were gates on the route that were never opened which fell into disrepair and were replaced by post and rails to prevent stock from straying. He has explained that there is a gate between his land and a neighbour's land which the neighbour used for the movement of stock and goods between the farms, but the implication is that this arrangement no longer continues. It is not clear from the plan where this gate is.
- 107)** Landowner 3 completed an evidence form in which he states that he understands the route to be a public footpath. The start of the route which comprises of a lane off the Hollington Road appears to have been used by utilities vehicles servicing the houses at Common End. The landowner states that the right of way is used by vehicles including lorries to empty septic tanks, lorries to fill up LPG [Liquified Petroleum Gas] tanks for the local houses and also off road parking for a neighbour's lorry.
- 108)** The landowner has stated that he does see ramblers using the right of way and he states that *"there has never been a horse and rider down the route"*. He claims that the route was used for a horse and dray carrying timber from Great Gate to Fole Lane for the owners of Tean Hall Mills. It is unclear when this may have ended as the landowner now states that there are stiles and gates along the route.
- 109)** Landowner 4 provided a covering letter and completed a landowner evidence form. The covering letter objected to the application and raised five points of concern. He stated that all properties have access on this lane although only his property and his neighbour have this access road. Secondly, the landowner stated that the junction is onto a fast main road. Thirdly he raised the issue of upkeep of the lane.
- 110)** The landowner's next concern was that if the application is successful there would be a big impact on his land which in 2020 was used for silage and grazing animals. His final point was that the ground would be trodden up and that there would be contamination of the crop and soil from the horse manure.

- 111)** The Landowner raises legitimate access, maintenance, safety and hygiene concerns within his email as well as issues regarding the impact on himself as a landowner. However issues relating to safety, suitability, privacy and maintenance of anything other than material relating to the existence or otherwise of a public right of way or the status appertaining have to be disregarded under the law as it currently stands when assessing these applications.
- 112)** The landowner understands the route to be a public footpath. He states that he has seen walkers and dog walkers using the way and is aware of stiles and gates along the route. He also states that the route provides access to his property.
- 113)** Landowner 5 provided a covering letter and a landowner evidence form. The covering letter raised four concerns. These included a concern as to the access of the property along the route. The landowner stated that the route would create a dangerous road junction. They further stated that the footpath would become unfit to walk due to mud and horse manure and they were also concerned as to the farmer's land which would be cut in half, and his crop spoilt and contaminated with mud, stones and horse manure.
- 114)** The landowner has advised that they have seen ramblers walking the route at various times and that there are stiles along the route. The landowner also states that in the past they were a part landowner of the land over which the application route runs, and that the land has been in the family since 1920. The landowner further states that they have lived on the property for 70 years and that the route has always been known as a footpath.
- 115)** This application is based on documentary evidence and if part of the way is historically found to carry carriageway rights, then the Council is bound to show this section of the route as a Restricted Byway despite the more recent evidence and concerns of landowners.

Comments on Evidence Received from Statutory Consultees.

- 116)** A Parish Councillor responded to the initial consultation. They stated that Landowner 4 regularly mows the field [across which the route runs] in the growing season and believes that a bridle path would have a negative economic impact. The Councillor also explained that the main road from which the footpath leads is a busy and dangerous lane. They also stated that there is no room locally to park equine vehicles and that to access the bridleway the horse and riders would have to walk along the Hollington Road.
- 117)** The Councillor raises legitimate safety concerns within her email. However, as in the case of Landowner 6 as already referred to, issues relating to safety, suitability, privacy and maintenance or anything other than material relating to the existence or otherwise of a public right of way or the status appertaining have to be disregarded under the law as it currently stands when assessing these applications.

Legal Test

- 118)** With regard to the status of the route, the burden is on the applicant to show, on the balance of probabilities, that it is more likely than not, that the Definitive Map and Statement are incorrect.
- 119)** The existing classification of the route as a public 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 route as a public footpath on the Definitive Map and Statement prevails.

Summary

- 120)** The application is made under Section 53(2) of the 1981 Act, relying on the occurrence of the event specified in Section 53(3)(ii) of the Act.
- 121)** 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.
- 122)** The claimed route is currently a public route with rights on foot. It is presently on the Definitive Map and Statement as Public Footpath 27 Checkley
- 123)** The Inclosure Award is strong evidence for the claimed upgrade to a Restricted Byway for part of Public Footpath 27. The Inclosure route is stated within the Award to be a Public Carriage Road. There is also an accompanying Plan to the Award which shows the Carriage Road route. Inclosure evidence has been considered to be strong evidence towards the existence of a route by the courts.
- 124)** The Tithe Map shows the existence of the route and describes the initial part of the claimed route as a lane. This lane has the same commencement point as the Inclosure Award and Plan and shows the lane as detached from adjoining fields and also terminating at the same point as the Inclosure Award and Plan. This Plan also supports the evidence for the upgrade to that of a Restricted Byway between points A to B on the plan at Appendix B.
- 125)** The Tithe Map shows the route continuing in a southeasterly direction. This section of route shows no evidence of bridleway rights. Towards the southern end of the claimed route between parcels 1534 and 1509 and continuing southwards the physical features on the map are tentatively suggestive of higher rights. This is due to the land either side of the route being enclosed. This section of route however does not provide evidence as to whether it is a public or private way. Tithe maps are considered to be good supporting evidence as to the public nature of the routes.
- 126)** The Township of Madeley Holme Map shows the route consistent with the Tithe Map and the Inclosure Award and Plan. There is however no accompanying Field Book. The Township Map however once again provides good supporting evidence from a contemporary date to show a higher status than that of a public footpath along a section marked A to B on the plan at Appendix B, of the claimed route.

- 127)** In relation to the remaining section of the claimed route, the physical features on the plan are identical to those of the Tithe Map and any accompanying Field Book could not be located. Officers do not consider that there is any evidence for bridleway rights between parcel numbers 68, 69, 71 and 72. At the southern section of the claimed route between field numbers 73, 74 and 75 and 76 the physical feature on the plan show a detached route which may be suggestive of higher rights. However there is no evidence as to whether these rights are public or private.
- 128)** The Checkley Parish Minutes drafted some 57 years after the Tithe Map and 67 years after the Inclosure Award suggest the cart road leads "*into No 24 near Overton Farm*". This would correspond with the Tithe and Township Map showing the route to end at parcels 1535/1508 and parcels 75/76 respectively. These Minutes therefore provide supporting evidence for the claimed upgrade to the route which has been applied for by the applicant.
- 129)** The Parish Survey Cards produced some 120 years after the Inclosure Award and Plan are suggestive of a cart road and track along the length of the claimed upgrade to the route. However, due to the stiles erected over the years, the Surveyors did not consider there to be any evidence of use higher than public footpath rights. The Survey Cards may show supporting evidence for the claimed upgrade. Officers consider that the Parish Survey Cards and Parish Minutes however are not sufficient evidence based on the required balance of probabilities for an upgrade to the section marked B to D on the plan at Appendix B.
- 130)** The Ordnance Survey Maps dated 1881 and 1897 both show a physical feature along the claimed route although Ordnance Survey Maps do not differentiate between private routes and public routes. Bartholomew's Map does not however show any physical feature along the claimed route.
- 131)** Photographs along the route show evidence of old stone gate posts along the route and evidence of paving at the start of the route. These may be suggestive of higher rights than those of a footpath although can only be considered as weak supporting evidence.

Conclusion.

- 132)** It is the opinion of your Officers that based upon the balance of probabilities and on consideration of the evidence, as set out above, that a public right of way with the status of Restricted Byway and marked A to B on the plan at Appendix B, which is not shown on the map and statement **subsists**.
- 133)** It is the opinion of your Officers that based on the balance of probabilities and on consideration of the evidence, as set out above, that a public right of way with the status of a Bridleway and marked B to D on the plan at Appendix B, which is not shown on the map and statement **does not subsist**.
- 134)** It is the opinion of your Officers that the County Council **should** make a Modification Order to upgrade part of PF27 to a Restricted Byway as

shown marked A to B at Appendix B to the Definitive Map and Statement of Public Rights of Way.

- 135)** It is the opinion of your Officers that the County Council **should not** make a Modification Order to upgrade part of PF27 to a Bridleway as shown marked B to D on the plan at Appendix B.

Recommended Option.

- 136)** To **accept part** of the application based upon the reasons contained within the report and outlined above and to decide to make an Order to upgrade part of the alleged route to the Definitive Map and Statement of Public Rights of Way.

- 137)** The width of the Restricted Byway should be to a minimum width of 30 feet throughout its length.

- 138)** To **reject part** of the application based upon the reasons contained within the report and outlined above and to decide not to make an Order to upgrade part of the alleged route to the Definitive Map and Statement of Public Rights of Way.

Other Options Available.

- 139)** The Panel has the authority to reach a different decision to that recommended by their Officers.

Legal Implications.

- 140)** The legal implications are contained within the report.

Resource and Financial Implications.

- 141)** The costs of determining applications are met from existing provisions.

- 142)** There are however additional resource and financial implications if the decisions of the Registrations 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.

- 143)** 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.

- 144)** 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.

- 145)** 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.

146) 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

147) There are no direct equality implications arising from this report.

J Tradewell

Director for Corporate Services

Background File: 018983

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