

Local Members' Interest	
Cllr Charlotte Kelly	Leek Rural

Countryside and Rights of Way Panel

Wildlife and Countryside Act 1981

Application to Upgrade Public Footpath 140, Waterhouses (part) to a Public Bridleway, to Add a Public Bridleway Between Public Footpath 140, Waterhouses, and Public Footpath 66, Waterhouses, to Upgrade Public Footpath 66, Waterhouses (part) to a Public Bridleway and to Add a Public Bridleway from Steps Cottage to the A523, Waterhouses.

Report of the Director of Finance and Resources

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 sections A to B and C to D on the plan attached at Appendix B **should** be upgraded to a Public Bridleway 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 reasonable allegation sections B to C and D to E on the plan attached at Appendix B **should** be added as 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 upgrade the routes marked A to B and C to D on the map at Appendix B to the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.
4. That an Order **should** be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add the routes marked B to C and D to E on the map at Appendix B to the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.

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 Louise Redfern on behalf of Staffordshire Moorlands Bridleways 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 be to:
 - (i) Upgrade Public Footpath 140, Waterhouses, (part) between points A to B to a Public Bridleway and Public Footpath 66, Waterhouses (part) between points C to D to the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.
 - (ii) Add two sections of Public Bridleway between points B to C and D to E in the Parish of Waterhouses to the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.

The full extent of the route which is the subject of the application is shown highlighted and marked A to E on the plan attached as 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. A copy of Cauldon Tithe Map 1845.
12. A copy of Cauldon Tithe Award index in two parts – plot numbers 74 and 71, 1845.
13. A copy of a Finance Act Plan 1910.
14. A copy of the Parish Survey Card for path number 140 undated.
15. A copy of Waterhouses Parish Survey list dated 1951.
16. A copy of Ordnance Survey 2-inch drawing Ashbourne, sheet OSD348 1836.
17. Two photographs. Bridge 1- “Lane in question” and Bridge 2 – “Bridge on boat” (undated).
18. A copy of the 2nd edition revised Definitive map dated 1989 (in two parts).
19. Four user evidence forms dated between March and May 2020.
20. A copy of a document titled “*Law Report - Use Evidence less than 20 years*”, drafted by Brian Thompson and dated 2 Jan 1982.
21. Document titled “*Former RUPPS in Staffordshire*”, drafted by Brian Smith and dated 18th March 2018.

22. This evidence can be found at Appendix C.

Documentary Evidence Discovered by Staffordshire County Council

23. Plans and sections for the Leek, Caldon Low and Hartington Light Railways dated 1897.
24. Book of Reference to the Plans and sections for the Leek, Caldon Low and Hartington Light Railways dated 1897.
25. Duties on Land Values, Record of Valuation book for the Parish of Cauldon dated 1910 for parcels 75, 91 and 92.
26. A copy of Cauldon Parish Tithe Map and indexes for plots 71 and 74, dated 1845.
27. A copy of Waterfall Parish Tithe Map and indexes for plots 689 and 690, dated 1846.
28. A copy of Ordnance Survey Staffordshire XIV.9 Surveyed 1879 published 1881.
29. A copy of Ordnance Survey Sheet LXXII NE for Stafford. Surveyed 1827 to 1836, Printed 1863.
30. A copy of the Parish Survey Card for Public Footpath 66 (Waterhouses) (approximately between 1951 and 1954).
31. A copy of the Parish Survey Card for Public Footpath 89 (Waterhouses) dated 15.9.1952.
32. A copy of the Town and Country Planning Act 1990 Stopping Up of Highway (West Midlands)(No.6) Order 2024.
33. This evidence can be found at Appendix D.

Evidence Submitted by the Landowners

34. Seven Landowners were identified although none of them returned response forms.

Evidence Submitted by the Statutory Consultees.

35. Staffordshire Moorlands District Council, Waterhouses Parish Council and the local Councillor were all consulted in October 2020. They were invited to submit evidence and/or comments although none have responded.

Evidence Submitted by Interested Parties.

36. The Interested Parties/User groups were consulted in October 2020. The Open Spaces Society stated that they supported the claim although had no evidence to provide.

Analysis of Documentary Evidence

Cauldon Tithe Map (1845).

37. The applicant has submitted a copy of the Cauldon Tithe Map.
38. The change of 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.

39. The sole purpose of the tithe documentation was to identify the land subject to paying the tithe. The latter was based upon the seven-year average value of the land's productivity.
40. A highway crossing the 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.
41. Where a route was shown separate from adjacent landholdings it would be more likely to have higher rights than those of a footpath or a bridleway although these rights could be either public or private. From the perspective of the Tithe Commissioner, the purpose was merely to identify land that was un-tithable and therefore they were not concerned regarding the status of the way.
42. The Cauldon Tithe Map in Appendix C shows a physical feature suggesting an enclosed route between points A to B on the plan at Appendix B.
43. This route on the Tithe Map is separated from adjoining parcel numbers 59 and 60, 70 and 72 and 73 and 75. The enclosed route is provided with numbers 71 and 74. At the entrance to field parcel number 79 the route appears to enter open fields.
44. The accompanying Tithe Award index lists private owners for plot numbers 71 and 74. Both parcel numbers are identified as being a "Road".
45. The claimed route (commencing at point A on the plan attached at Appendix B) leads off an enclosed road on the tithe award map which is identified as plot number 41. Plot 41 is called "Dukes Road" and is stated to be in the ownership of the Duke of Devonshire.
46. The Tithe Map presented by the applicant as evidence at Appendix C shows markings one third of the way between points B and C on the map at Appendix B, which are indicative of a footpath or a bridleway which end just past a building. On closer examination the building is marked as a barn (plot 86 is identified as Barn Meadow and Barn and plot 85 is identified as Barn Field). There is no indication as to the status of the rights or whether they are public or private. The substantial "road" between points A and B therefore appears to continue with some rights as shown by the pecked markings at least as far as a barn. This may be suggestive of cart rights at least as far as the barn.
47. The pecked line markings however cannot be seen on Stafford Record Office's online copy of the Tithe map for Cauldon (they appear to be two different documents for example the dwelling on plot 73 can be seen in the applicant's copy but not the online copy). The Record's office has explained that the online copy would have been a Diocesan copy compared with the applicant's copy which is likely to have been the Parish copy which the parishioners would have had access to.
48. Although the Cauldon Tithe online plan does not show the physical existence of the route beyond the enclosed section, it may simply have

been because its existence would have had no effect on the tithable value of the land, especially as it appears to cross or at least run alongside a plot known as Broomyslaw meadow (plot number 73).

49. The applicant's copy of Tithe Map does not show the section between point C and D. The Tithe Map extract discovered by the Council does not show markings extending to the area between points C and D.
50. This may be because any rights end at the barn or it may be that the route is not shown on the plan simply for the reason that its existence would have had no effect on the tithable value of the land, such as where the land was barren.
51. A point to note is that on consideration of the Tithe Map discovered by the Council, there appears to be a physical feature north of the River Hamps halfway between point C and point D, which is suggestive of the commencement of an enclosed route on the north side of the River Hamps.
52. The route leading off from the far side of the River Hamps is in a direct line from the route between points A and B and the continuation of the markings on the plan beyond the field barn.
53. The enclosed route separated from the adjacent landholdings north of the River Hamps is suggestive of higher rights than a public footpath.

Waterfall Tithe Map (1846).

54. The Waterfall Tithe Award and Map which can be found at Appendix D, shows a small part of section C to D and also section D to E of the claimed route. The map shows an enclosed route along the claimed way marked in sienna.
55. The claimed route leads from the main Turnpike Road (marked 660) on the plan and continues as far as the River Hamps. The enclosed route is numbered 689 and 690. Both parcel numbers 689 and 690 are said to be owned by the Surveyor of Highways and both plot numbers are said to be a "*Bridle Road*".
56. South of the River Hamps the plan is marked as being "*from Black Bank*" suggesting it was a known public route. It does not however give any indication of the status or the direction of the route or what rights continued into the neighbouring parish of Cauldon.

Finance Act Map and Book of Valuation

57. The applicant has submitted a copy of the Finance Act Plan for the area.
58. The Finance Act 1910 required all land to be valued. It imposed a tax on the incremental value of land which required the plotting and recording of every piece of land in the United Kingdom. Admitting the existence of a public right of way allowed the landowner to claim tax relief in respect of the land crossed by the right of way.
59. It was an offence to knowingly make a false statement for the purpose of obtaining a reduction. Ordinarily, if routes were not included within the

taxable landholdings this would indicate the valuer considered them to be public rights of way, but this is not conclusive as to status.

60. Routes shown on the Finance Act Plans which correspond to known public highways, usually vehicular, are not normally shown as included in the parcels i.e. they are shown as uncoloured and unnumbered. Footpaths and Bridleways were usually dealt with by deductions in Field Books.
61. The Finance Act Plan in Appendix C shows a section of claimed route leading off Dukes Road at point A on the plan at Appendix B. The Plan shows the claimed route between points A and B as a physical feature separated from the adjoining parcels which are edged in pink.
62. It is not entirely clear from the Plan whether the route is coloured pink or whether it is the quality of the Plan suggesting the route is coloured. This detached section of route crosses parcels numbered 91 and 75 and divides parcels 92 and 393.
63. The County Council has discovered the accompanying Valuation Book showing the claimed route starting at point A and leading off Dukes Road through parcel number 91.
64. The accompanying Valuation Book shows John Hargreaves to be the owner of the land and Herbert Robinson to be the occupier. There is no deduction from the land value despite the apparent public rights of way across the land.
65. The claimed route continues through parcel number 75. The Valuation Book shows the parcel to be owned by Samuel Green and occupied by Robert Plant. A deduction of £20 has been taken off the value of the land due to the public right of way across the land.
66. Parcel number 92 is identified as being owned by John Sutton and Herbert Robinson is stated to be the occupier. The valuation book shows a deduction of £5.
67. There is no key to illustrate whether the £5 and £20 were deducted for a bridleway or for a footpath, or whether the differences in the deduction were purely down to the dimensions of the different sized parcels and therefore the amount of the land lost to potential cultivation.
68. Whilst the deduction is therefore good evidence for the public rights it may simply be reflecting the evidence of the current public footpath along the route.
69. The claimed route however is detached from the surrounding parcels on the Finance Act plan, and this is suggestive of higher rights than that of both a public footpath and a bridleway.
70. Between points B to C on the plan attached at Appendix B, the physical feature shown as separated from adjoining parcels appears to end at the field boundary of parcel 92. There is no physical evidence on the plan of any continuing footpath or bridleway at this point.

Book of Reference to the Plans and Sections for the Leek, Caldon Low and Hartington Light Railways (1897).

71. The County Council has discovered the Railway Plan and Book of Reference for the Leek, Caldon Low and Hartington Light Railways.
72. Major works such as the construction of canals and railways had normally been authorised by private Acts of Parliament.
73. The reason for this was that in the 18th and 19th Centuries there were no powers to acquire land compulsorily. Consequently, where there was a canal or railway planned the intended route was surveyed. From the surveys, plans and books of reference were compiled which showed who owned the land crossed by the proposed canal or railway. This then formed part of an Act of Parliament.
74. The Parliamentary Documents Deposit Act 1837 required that the plans of these works and the accompanying book of reference were deposited with the local public authorities. This was true for routes that never came to fruition as well as for those that were constructed.
75. In compiling the plans for the route of the railway, or canal, the surveyors drew up a map showing the intended line of the construction with the limits of deviation from that line.
76. It was not the primary purpose of deposited plans to record highways of any description, but their inclusion came about as a consequence of the need to survey the land.
77. The plan allotted parcel numbers to each strip of land affected by the passing of the canal or railway. The Book of Reference listed who owned the land crossed and the type of land, e.g. agricultural, or highway.
78. The plan only recorded the details of the land crossed by the intended construction. As a result, only parts of the affected land were shown. In the case of routes affected this may only show a short section and not the entirety of a way.
79. Railway Plan 1 shown at Appendix D shows the route of the proposed line highlighted by a dark red line running across the claimed route, just north of Broomyshaw Farm.
80. The Railway Plan shows the claimed route between points A and B at Appendix B being indicated as detached from the surrounding fields. This separation from surrounding parcels is suggestive of higher rights than a footpath or bridleway. There is no indication from the plan as to whether these rights are private or public rights.
81. Railway Plan 2 also shows part of the claimed route from Point A. Broomyshaw Farm is shown as parcel number 58 which borders a road identified as number 55. Parcel 55 is stated to be "*Dukes Road*" in the accompanying Book of Reference.
82. The claimed route is listed on the plan identified at number 51 and shows an enclosed route detached from the surrounding fields.
83. The corresponding Book of Reference identifies parcel 51 as being a "Road". Whilst the term "Road" can refer to footpaths and bridleways the

nature of the route being detached from adjoining fields is suggestive of higher rights, such as cart or carriageway rights.

84. Furthermore, if the route had been limited to a footpath or bridleway it is likely that the route would have been described in those terms within the Book of Reference. There is however, only a very short section of the claimed route shown on the plan which completely traverses one field and partially crosses a second field.
85. The Book of Reference identifies parcel 51 as being in the ownership of Caldon Parish Council. This section of the route therefore is indicative of carrying public rights.
86. Railway Plan 1 shows the complete claimed route. The plan shows a pecked line between points B on the plan attached at Appendix B extending to the River Hamps. Directly across the River Hamps there is a physical feature on the north side of the river indicative of an enclosed route leading to the A523.
87. The Book of Reference states that a section of claimed route from point A on the plan was owned by Caldon Parish Council. It is therefore likely that the route is public as far as point B on the plan where the enclosed route ends. From point B, there does not appear to be any inhabitation or even apparent footpaths or bridleways leading off the claimed route.
88. The section between points B to C appears to be a direct route which passes the site of the barn. This route continues to a location between points C to D where the route meets the River Hamps. To the north of the River Hamps the claimed route is enclosed as far as the A523. The A523 was shown to be a turnpike road on the tithe maps some 50 years before the Railway Plan and continues to be an arterial road.
89. It is less likely therefore that a public “road” from approximately point B which appears to directly link to another enclosed public “Bridle Road” (as per the Tithe Map some 50 years earlier) on the far side of the river would carry only footpath rights between these two sections of enclosed route or carry private rights between point B and the River Hamps.

Ordnance Survey Maps

90. An Ordnance Survey sheet OSD348 dated 1836 has been provided by the applicant.
91. The County Council has discovered a copy of the Ordnance Survey Sheet Staffordshire XIV.9, Surveyed 1879 published 1881.
92. The County Council has also found a copy of Ordnance Survey Sheet LXXII NE for Stafford surveyed 1827 to 1836, Printed 1863.
93. 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.
94. Ordnance Survey Maps are considered to be useful in showing the physical features of a highway and identifying a route but cannot be

considered to be evidence in themselves as to the status of a particular route.

95. The maps also do not distinguish between public and private rights of way. From 1888 the maps carried a disclaimer that the representation of a road, track or footpath on a map did not mean it was public right of way, being a practice which has continued into modern times.
96. The applicant's Ordnance Survey Map dated 1836 shows the route depicted in part by two continuous parallel lines and along one section of the route by a single line.
97. The continuous parallel lines leading off Dukes Road suggest it is enclosed between point A and point B on the plan attached at Appendix B. This plan is near contemporary to the tithe maps for Cauldon and Waterfall. There is no indication of what rights the route carried or whether these rights would be private or public.
98. Between points B to C there appears to be a single broken line which may be indicative of a footpath or possibly a bridleway.
99. At approximately the site of the barn (as depicted within the Cauldon Tithe Map) as far as the River Hamps (the river being located between points C and D) there appears to be a physical feature (two continuous parallel lines) which is suggestive of an enclosed way. On consideration of the later OS maps, one of the lines which creates the impression of an enclosed route however appears to be a line indicating either the bottom of a bank or the full extent of the highway verge.
100. From the River Hamps to the A523 there is a further feature which is suggestive of an enclosed route. Whether this carried footpath or bridleway rights or whether it was a public or private route cannot be ascertained from the map.
101. The Ordnance Survey Map published in 1863 (approximately 18 years after publication of the tithe maps) are indicative of a route with possibly higher rights than that of a footpath. The continuous parallel lines leading off Dukes Road suggest it is enclosed between point A and point B on the plan attached at Appendix B.
102. Between points B to C and the River Hamps (the river being located between points C and D) there appears to be a line indicating either the bottom of a bank or the full extent of the highway verge.
103. The lack of contours shown along the claimed section of route (when compared to either side of the route), may be indicative of a level footpath or bridleway although the width of the un-contoured section is suggestive of a track carrying possible higher rights. There is no indication from the map as to whether any rights along the route would be public or private.
104. The Ordnance Survey Map does show an area known as Black Heath although whether this is related to the Tithe Map of Waterfall showing the continuation of the section of route from the A523 to the river Hamps and onwards to "*Black Bank*" is unclear.

105. The Ordnance Survey map dated 1881 shows continuous parallel lines leading off Dukes Road and along the claimed route.
106. The physical markings are suggestive of an enclosed route between point A to B on the plan attached at Appendix B.
107. Between points B and C there appears to be double pecked lines as far as the barn. From the barn onwards the double pecked lines continue as far as point C where it briefly become a single broken line before reverting to double pecked lines as far as the River Hamps. These physical markings may be suggestive of a track with possibly a footpath running alongside. There is no evidence from the map as to whether the route carried public or private rights.
108. Ordnance Survey Maps are evidence only of the physical existence of a way on the ground at the date of the survey. They do not have any evidential weight but may be supportive of an application by showing that there was a physical feature on the ground.

Parish Survey Card and Statement (1951).

109. The applicant has submitted the Parish Survey Card for PF140, Waterhouses together with the relevant page from the accompanying Statement which accompanied the Draft Map.
110. The Parish Survey Cards were produced following the passing of The National Parks and Access to the Countryside Act 1949.
111. The Act required all County Councils in England and Wales (as Surveying Authorities) to survey and map all rights of way in their area. The Act provided a lengthy process for compiling the Definitive Map and Statement for the area.
112. The Authority was required to consult with District Councils and Parish Councils in the survey process, with the District and Parish Councils being obliged to collect and furnish the Surveying Authority with the relevant information.
113. Objections and appeals by landowners were part of the process resulting in the Map and Statement being amended and redrafted.
114. The Parish Survey card for Waterhouses 140 provides a handwritten record which was completed by a surveyor during the first survey of rights of way in Waterhouses Parish.
115. It describes the path starting at *"PF69 near Newhouse Farm"* and finishing at *"Dukes Lane, near Caldon junction"*. The route was listed as being a Road Used as a Public Path (RUPP). The accompanying statement also shows the route as "RP".
116. A Road Used as a Public Path (RUPP) used terminology used within the National Parks and Countryside Act of 1949 (paragraph 27(6)). A RUPP is defined as *"a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used"*. A footpath was defined as *"a highway over which the public have a right of way on foot only, other than such a highway at the side of a public*

road". A bridleway was defined as "a highway over which the public have the following, but no other, rights of way, that is to say a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway".

- 117.** Even with these classifications the types of rights relating to various ways were not easily identifiable for the Surveyors drafting the first Definitive Map and Statement; the definitions could just as well be a descriptive term for the path's appearance rather than a reference to any rights actually enjoyed.
- 118.** This unsatisfactory classification was addressed in the Countryside Act 1968 which stated all Roads Used as Public Paths (RUPPs) should be reclassified as footpath, bridleway, or a new category Byway Open to All Traffic.
- 119.** The County Council prepared its First (General) and Special Review of the Definitive Map in 1969. The ramification of which was that the reclassification of RUPPs was completed on the 30 September 1969 and the proposals were advertised in 1971 inviting the submission of recommendations and objections. It appears that as part of this review the decision was made to reclassify the alleged route to a footpath and at that time there was no objection to this reclassification.
- 120.** A decision was made in the case of Hood that RUPPs could not be reclassified as having public rights lower than bridleway unless there was evidence to the contrary. The authority was bound by the presumption under s32(4)(b) of the 1949 Act that the public has a right of way on horseback, or leading a horse, over such a path.
- 121.** However, the contention that a reclassified RUPP would support evidence of actual bridleway rights is on its own insufficient. Therefore, although a way was previously shown as a RUPP on the Definitive Map and Statement, it does not mean that the route should be automatically upgraded to a bridleway.
- 122.** The current claimed route is shown along its length as a public footpath. The Parish Card and statement are supporting evidence which corroborates other evidence already considered and the likelihood that the section between points A and B did carry at least bridleway rights. It also suggests that these bridleway public rights continued to PF69 being a location a third of the way between points B and C "near" New House Farm.
- 123.** The Parish Survey Card for path number 66 was discovered. This describes the path as starting at "*F.P.58 about 125 yards. N.E. of Honeyholes*" and finishing at the "*End of the County Road at Steps Cottage*". The route is marked "*F.P*" denoting a public footpath.
- 124.** This card covers a brief section of the claimed route situated between part of points C and D on the plan attached at Appendix B. This brief stretch along the claimed route however is only a short section of the entire length of Footpath 66.

- 125. This survey card therefore suggests that in 1952 this section of route was not considered to have any higher rights than those of a footpath.
- 126. The Parish Survey card for path number 89 was also discovered. This describes the path starting at the "*Main Road – Leek to Ashbourne at Crow Trees Farm Waterhouses*".
- 127. The path ended at "*Path 69 near New House Farm*" (although the reverse of the card states "*at*" New House Farm).
- 128. New House Farm appears to have been built where the barn was previously located. The route is marked "*FP*" denoting a public footpath. This card covers a brief section of the claimed route situated between part of points B and C on the plan attached at Appendix B. This brief stretch along the claimed route however is only a short section of the entire length of Footpath 89.
- 129. This survey card therefore suggests that the local historical knowledge in 1952 when the card was completed, did not consider that the route between New House Farm and point C had higher rights than those of a footpath.
- 130. A document titled "*Former RUPPS in Staffordshire*" drafted by Brian Smith has been provided. This provided background to the original definition of RUPPS under the 1949 Act. The document also explains the lack of clarity of public rights which were carried by a route classified as a RUPP and the subsequent legislation passed to correct the situation.
- 131. It concludes that former RUPPs which have been downgraded to footpaths still have bridleway rights which have not been extinguished, but that new evidence which had previously not been considered may be sufficient for an upgrade back to bridleway.
- 132. Whilst a reclassified RUPP is indicative of bridleway rights, it does not automatically support evidence of actual bridle rights. The evidence already considered for this particular claim however suggests that there were at least bridleway rights from Point A to a point somewhere between points B and C on the plan attached at Appendix B.

Highway Maintainable at Public Expense

- 133. The section of claimed route between Steps Cottage and the A523 (a length of claimed route between points D to E on the plan at Appendix B), is currently on Staffordshire County Council's s36 Highways Act 1980 list of Highways Maintainable at Public Expense.
- 134. The route is an unclassified road leading as far as Steps cottage and numbered the D1145. The lane is overlaid with a hard surface and with a central grass verge which is annually inspected. It does not carry speed limit signs or other street furniture.
- 135. As a result of this section being maintainable at public expense, the route does not appear under The National Parks and Access to the Countryside Act 1949 to have been a route that required being added to the Definitive Map and Statement. There is therefore no parish survey card for this section of the route.

136. Many routes that are maintainable at public expense however are added to the Definitive Map and Statement. The test is now, following the case of *Masters v Secretary of State for the Environment, Transport & Regions* and *Somerset County Council* 2000 4 All ER 458, whether the claimed route is **also** of the right concept or character to be added.
137. The *Masters* case deliberated the meaning of the statutory definition of a Byway open to all Traffic (BOAT). Whilst this particular legal status (i.e. a BOAT) is of no direct concern in this current application, the interpretation of the Wildlife and Countryside Act 1981 and the Act's predecessors resulted in a decision in which the test for a carriageway to be recorded on the Definitive Map and Statement as either a BOAT, bridleway or footpath relates to its concept or character.
138. Roch LJ held *"The intention of Parliament in passing the Acts of 1949, 1968 and 1981 is in my judgment clear. That purpose is that county councils should record in definitive maps and statements ways, including what Lord Diplock called full ways or cartways" for the benefit of ramblers and horse riders so that such ways are not lost and ramblers and horse riders have a simple means of ascertaining the existence and location of such ways so that they may have access to the countryside. Parliament intended that "full highways or cartways" which might not be listed as highways maintainable at the public expense under the Highways Act 1980, should be included in the definitive map and statement so that rights of way over such highways should not be lost. Parliament's purpose was to record such ways not to delete them....."*

Copies of the Definitive Map from 1989

139. The revised Definitive Map dated 1989 was considered showing the claimed route along PF140, part of PF89 and part of PF66. Whilst this provided evidence of public rights on foot from Dukes Road to the River Hamps (prior to a diversion of part of PF140 and part of PF89), it did not provide any additional evidence regarding the status of the rights.

Photographs Along Route

140. Two photographs along the route were studied. These were stated to be "Bridge 1 Lane in Question" and "Bridge 2 Bridge on Boat".
141. There are two bridges along the claimed route. One bridge spans the route of the Leek, Cauldon Low and Hartington railway between points A to B and the second bridge spans the River Hamps.
142. It is unclear as to which bridge has been photographed. It is a fact that the route currently carries public footpath rights. The photographs do not provide any further evidence as to the status of the rights although do show the width on the bridge to be capable of supporting bridleway rights.

The Stopping Up of Highway (West Midlands)(No.6) Order 2024

143. A Stopping Up Order has been discovered and considered. This length of highway equates to points B to C on the plan attached at Appendix B to the report.

- 144.** A Stopping Up Order is the removal of a public right of way either temporarily to allow development to take place or permanently because the public highway is no longer necessary. Stopping Up Orders under the Town and Country Planning Act 1990 Section 247 authorises the stopping up or diversion of a highway where it is necessary to do so in order to enable development to be carried out.
- 145.** The Order covers the section of claimed route between points C and D on the plan attached to the Stopping up Order at Appendix D. It describes the highway to be stopped up as a length of 450 metres of footpath in Winkhill. The plan which is attached to the Stopping up Order shows part of PF140 and part of PF89 being stopped up and diverted. The Order came into effect on 17th April 2024.
- 146.** The developer provided a new highway as an alternative to the sections of PF140 and PF89 which were stopped up. The Order however only effectively stops footpath rights along this section of highway. It does not stop up any potential rights for a claimed bridleway, Restricted Byway or Byway Open to All Traffic.
- 147.** As a consequence of the section of route between points B and C on the plan at Appendix B, having been stopped up and diverted, the claimed bridleway will be considered to be a new application across this section of route and therefore the legal test to be satisfied can be that of reasonable allegation or the balance of probabilities.

User Evidence

- 148.** The evidence of use includes four user statements made by members of the public who claim to have used the route over varying periods of time. Copies of their statements are attached at Appendix C.
- 149.** User 1 used the route weekly for pleasure on horseback for the past 25 years between 1995 to the date of application. User 2 used the route from 1978 to 1999 weekly on horseback. User 3 used the route from 2007 to the date of application approximately 3 times per week on horseback and on foot, and User 4 used the route between 2007 to date of application weekly on horseback. Both Users 3 and 4 have used the route for 13 years being of the same household.
- 150.** User 1 states that there are gates along the route to keep animals secure but were never locked. Her plan shows the gates to be around New House Farm and at a point between C and D on the plan attached at Appendix B. User 2 noted that when she was using the route there were gates. On her plan she has shown these to be around New House Farm and also at the same point as User 1 being located between points C and D. She has stated that they were always there, never locked and were for stock control.
- 151.** User 3 has indicated on her plan three gates along the route which are consistent with User 1 and User 2. Her form also indicates that the gates were never locked. User 4 states that there are gates along the claimed route. Her plan has been marked with lines indicative of gates. Some of these lines are consistent with the other user evidence forms, depicting

gates at New House Farm and near to the River Hamps but she has put two additional markers on her plan. These additional gates may have been placed in anticipation of the Stopping Up Order being made, which ultimately diverted the footpath away from the Stopped Up route.

- 152.** The width of the route is reasonably consistent between users. User 1 stated the route to be 10-15 feet wide, user 2 stating it to be “12 *plus*” feet wide. User 3 stating the width to be 10 feet, user 4 stating the width to be from “*open fields then 10 feet wide track*” (sic).

Claim Under Statute

- 153.** For the application to be successful, 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.
- 154.** S31 (1) states “*where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention to dedicate it*”.

“*As of right and without interruption for a full period of twenty years*”:

- 155.** To establish a right of way under statute there must be evidence of use for a 20-year period as of right prior to the use of the route being called into question. No challenge to the route had been recorded and therefore the date of submission of the claim has been used to calculate the 20-year period. The relevant twenty-year period for this application has been calculated retrospectively from 2020 to 2000.
- 156.** It is clear from the available user evidence that there have been no interruptions to their use. Two of the users used the route over a twenty-year period although only User 1 used the route within the statutory timescale. The users have not used force or sought permission to use the route and that usage has not been in secrecy.
- 157.** The path used by the users is on the same line and there has been no indication that they have deviated from that line. It must be noted that Users 3 and 4 do comprise a particular section of society living on a farm in close proximity to the route. The users do however state in their user forms that they are not tenants or landowners over which the claimed route runs.
- 158.** Neither the legislation nor the applicable case law set out a minimum level of user that is expected or required to support a claim that a route exists. The case law does suggest that the amount of usage should be such that it is enough to bring home to a reasonable landowner that the public are using a way and that use is as if it was a public highway i.e. “as of right”.
- 159.** The user evidence is sparse. The evidence consists of only four users although these users have used the route at least once a week, which

should have lent itself to alerting the owner that the land is being used by some members of the public.

- 160. Case law accepts that there may be less users in a rural setting. Four users however (only one of which met the statutory 20-year period) may still be considered insufficient to bring that use home to a landowner.
- 161. The land that the path crosses is not of a character that would prevent the dedication of a way.

Rebuttal of deemed dedication:

- 162. The remaining part of the s31 test considers whether the landowner has undertaken any action to rebut the statutory presumption of dedication. Often this is evidenced by way of notices or obstructions to prevent people accessing or using the path. In this case there is nothing to suggest any potential owner had taken any steps to prevent or discourage usage.

Claim Under Common Law

- 163. Under Common Law similarities exist with the statutory test. The use must also be as of right, without challenge, be enjoyed by the public and be of the right character.
- 164. Contrary to statutory claim however, the burden of proof is on the claimant to prove that it can be inferred from the landowner's conduct that he had actually dedicated the route. Use does not have to be for twenty years and the landowner must have capacity to dedicate.
- 165. Whilst the term of years of use does not have to span that set out in statute it must still be sufficient to raise the awareness of an owner that the land is being used as a public bridleway. Even when the evidence of the users is taken into account the number of users is sparse although their frequency of use assists with their claim.
- 166. The comments noted above in the statutory test are as relevant in respect of the common law test. The four users have used the route on a regular basis although whether this shows that the landowner intended to dedicate the route may be seen as insufficient.

Law Report – User Evidence Less Than 20 Years

- 167. The applicant has included a document compiled by Brian Thompson which makes reference to various cases that support user time periods of less than 20 years user. Whilst the cases cited do support different and, in many cases, shorter periods of user, it is not clear in each case how many users were witnesses or their frequency of use. This makes it ineffective as evidence.
- 168. Furthermore, each case cited would be assessed on its merits and individual circumstances. Mr Thompson also makes reference to the statutory test and the requirement for supporting documentary evidence.
- 169. This application has two 20-year users over different time periods and two other users with usage of less than 20 years. The evidence shows

that the route has been used on a regular basis by a few riders. This evidence however is not sufficient to claim a bridleway on user evidence.

Legal Tests

Section A to B and Section C to D

- 170.** 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. The existing classification of the route, as a public footpath must remain unless the evidence shows 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.

Section B to C and Section D to E

- 171.** 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:
- (a) a right of way which is not shown in the map and statement subsists,
 - OR;
 - (b) a right of way which is not shown in the map and statement is reasonably alleged to subsist.
- 172.** 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 the right of way does exist.
- 173.** 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.
- 174.** 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”.
- 175.** If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

Summary

Section A to B

- 176.** The evidence in support of this section of route includes the Cauldon Tithe Map which states that the route was separated from the adjoining parcels and identified as a “road”.
- 177.** The Leek, Caldon Low and Hartington Light Railway Plan and Book of Reference shows the route to be excluded from adjoining parcels and describes this section of route as a “road”.
- 178.** The Finance Act Plan and Valuation Book shows the route to be separated from adjoining fields and confirms a deduction of £20 for a public right of

way that crosses parcel 75. Parcel 92 shows a deduction of £5 for a public right of way which crosses the land.

179. The Parish Survey Card (PF140 Waterhouses) and relevant page from the accompanying statement are indicative that the Parish Council believed the route to carry bridleway rights when collating the evidence for the First Definitive Map and Statement under the National Parks and Access to the Countryside Act 1949. This is evidenced by the “RP” path symbol written on the survey card. The Ordnance Survey Maps show markings which are indicative of a path with higher rights than a footpath along the claimed route and the user evidence forms also support the claim for higher rights along this section of route.
180. 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.

Section B to C

181. The evidence in support of this section shows the Cauldon Tithe Map presented by the applicant which shows double pecked lines leading across field number 79 and past the barn on the claimed route.
182. This is suggestive that the rights enjoyed along the enclosed road continued at least as far as the barn which is situated a third of the way between points B and C on the plan attached at Appendix B.
183. The Leek, Caldon Low and Hartington Light Railway Plan 1 shows double pecked lines continuing through open fields between points B and C of the route.
184. The Ordnance Survey Maps show markings which may be indicative of a path with higher rights than a footpath along the claimed route.
185. The Stopping Up Order has caused the removal of the footpath rights along this section of route and therefore the correct legal test for the claim for bridleway rights is the two-stage test used for additions to the route.
186. The Panel need to be satisfied that the evidence that has been discovered shows that a public right of way not shown on the Definitive Map and Statement of Public Rights of Way subsists or is reasonably alleged to subsist.

Section C to D

187. The evidence in support of this section of route includes the Waterfall Tithe Map and index which shows part of the section from the River Hamps to Steps Cottage.
188. The enclosed section of route is identified as a Bridle Road The Tithe Map also shows a description on the south side of the River Hamps stating the route to be “*from Black Bank*”.
189. The Leek, Caldon Low and Hartington Light Railway Plan also shows the route to be excluded from adjoining parcels north of the River Hamps as far as Steps Cottage.

190. South of the River Hamps the route is shown with double pecked lines leading along the claimed route.
191. The Parish Survey Card (PF66 Waterhouses) indicate that the Parish Council believed the route to only carry footpath rights when collating the evidence for the First Definitive Map and Statement. This is evidenced by the "FP" symbol on the survey card. The card however only includes a short section of the claimed route
192. The Ordnance Survey Maps show markings which are indicative of a path which may indicate higher rights than a footpath along the claimed route and the user evidence forms also support the claim for higher rights along this section of route.
193. 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.

Section D to E

194. The Waterfall Tithe Map shows this section of route from Steps Cottage to the A523 to be separated from the adjoining parcels and stated in the accompanying register to be a Bridle Road.
195. The Leek, Caldon Low and Hartington Light Railway plan shows the route to be excluded from adjoining parcels from Steps Cottage to the A523.
196. This route is currently a Highway Maintainable at Public Expense and therefore was not considered to be of the character to be added to the First Definitive Map and Statement under the National Parks and Access to the Countryside Act 1949. There are therefore no parish survey cards for this section of route.
197. The Ordnance Survey Maps show markings which are indicative of a path with higher rights than a footpath from Steps Cottage to the main A523. The user evidence forms also support the claim for higher rights along this section of route.
198. The Panel need to be satisfied that the evidence that has been discovered shows that a public right of way not shown on the Definitive Map and Statement of Public Rights of Way subsists or is reasonably alleged to subsist.
199. This application succeeds on totality of evidence when all the sections are taken together.

Conclusion

Section A to B

200. It is the opinion of your Officers that based upon the balance of probabilities and in light of the evidence, as set out above, that the route subject to this application, with the status of public footpath, should be upgraded to the status of public bridleway.

201. That the County Council should make a Modification Order to upgrade Section A to B Public Footpath 140 Waterhouses (part) to a public bridleway on the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.

Section B to C

202. In light of the evidence, as set out above, it is the opinion of your Officers that the evidence shows that a public right of way, with the status of public bridleway, which is not shown on the map and statement subsists or is reasonably alleged to subsist.
203. That the County Council should make a Modification Order to add Section B to C as a public bridleway to the Definitive Map and Statement of Public Rights of Way for District of Staffordshire Moorlands.

Section C to D

204. It is the opinion of your Officers that based upon the balance of probabilities and in light of the evidence, as set out above, that the route subject to this application, with the status of public footpath, should be upgraded to the status of public bridleway.
205. That the County Council should make a Modification Order to upgrade Section C to D Public Footpath 66 Walterhouses (part) to public bridleway status on the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.

Section D to E

206. In light of the evidence, as set out above, it is the opinion of your Officers that the evidence shows that a public right of way, with the status of public bridleway, which is not shown on the map and statement subsists or is reasonably alleged to subsist.
207. That the County Council should make a Modification order to add Section D to E as a public bridleway to the Definitive Map and Statement of Public Rights of Way for District of Staffordshire Moorlands.

Recommended Option

208. To **accept** the application based upon the reasons contained in the report and outlined above and to decide to make an Order to add sections of the alleged route and to upgrade sections of the alleged route to the Definitive Map and Statement of Public Rights of Way.

Other Options Available

209. The Panel has the authority to reach a different decision to that recommended by their officers.

Legal Implications

210. The legal implications are contained within the report.

Resource and Financial Implications

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

- 212.** 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

- 213.** 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.
- 214.** 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.
- 215.** 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.
- 216.** 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

- 217.** There are no direct equality implications arising from this report.

Peter Shakespear

Director of Finance and Resources

Background File: 020627

INDEX TO APPENDICES

Appendix A	Copy of application
Appendix B	Application Plan
Appendix C	Application supporting evidence
Appendix D	Evidence discovered by Staffordshire County Council

APPENDIX A

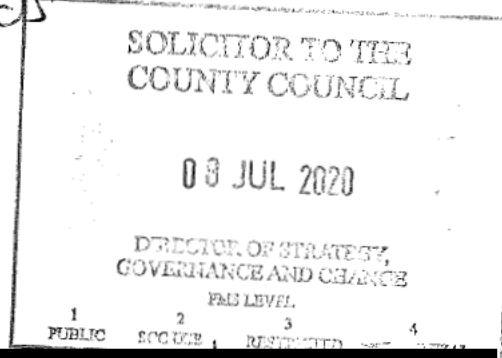
APPLICATION FOR MODIFICATION ORDER

WILDLIFE AND COUNTRYSIDE ACT 1981

Definitive Map and Statement – Staffordshire County Council

District of Staffordshire MoorlandsParish of WaterhousesTo: Staffordshire County Council
Staffordshire Legal Services Unit,
1 Staffordshire Place
Stafford. ST16 2DHI/We Louise Redfern

of



hereby apply for an order under Section 53(2) of the Wildlife and Countryside Act 1981
modifying the Definitive Map and Statement of Public rights of Way for the area by:

* deleting the (footpath) (bridleway) (~~restricted byway~~) (byway open to all traffic)

from to

* adding the (~~footpath~~) (bridleway) (~~restricted byway~~) (~~byway open to all traffic~~)

from SK 0753650316 to SK 0760650511
River St Steps cottage to A523

* (upgrading) (~~downgrading~~) to a (~~footpath~~) (~~bridleway~~) (~~restricted byway~~) (~~byway open to all traffic~~) the (~~footpath~~) (~~bridleway~~) (~~restricted byway~~) (~~byway open to all traffic~~)

from SK 0670049756 to SK 0753650316
Dukes Lane to river

* (varying) (adding to) the particulars relating to the (~~footpath~~) (~~bridleway~~) (~~restricted byway~~) (~~byway open to all traffic~~) from to
by providing that

and shown on the map accompanying this application.

* delete as appropriate

P.T.O.

I/We attach copies of the following documentary evidence (including statements of witnesses) in support of this application.

List of Documents

CAULDON TITHE MAP

CAULDON TITHE MAP AWARD

WATERHOUSES PARISH SURVEY 1951 LIST

WATERHOUSES PARISH SURVEY 1951 SURVEY CARD

2ND EDITION REVISED DEFINITIVE MAP 1989 PAGE 1

2ND EDITION REVISED DEFINITIVE MAP 1989 PAGE 2

PHOTOGRAPHS BRIDGE 1 LANE IN QUESTION

PHOTOGRAPHS BRIDGE 2 BRIDGE ON BOAT

LAW REPORT USER EVIDENCE

FORMER RUPPS IN STAFFORDSHIRE

FINANCE ACT MAP DATED 1910

ORDNANCE SURVEY 2 INCH DRAWING ASHBOURNE SHEET OSD 348

4x USER EVIDENCE FORMS

Date: 6th July

2020

Signed:

on behalf of Staffordshire Bridleways Group

Please note that this form will be open to members of the public including affected owners or occupiers of the land crossed by the way.