

Local Members' Interest	
Cllr Charlotte Kelly	Leek Rural

Countryside and Rights of Way Panel

Wildlife and Countryside Act 1981

Application for the Addition of a Public Footpath between Public Footpath 50 Rushton Spencer and Dial Lane Link (D1073) (Rushton Parish)

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 reasonably allege that a Public Footpath which is not shown on the Definitive Map and Statement for the District of Staffordshire Moorlands subsists along the route marked B to C on the map at Appendix B.
2. That an Order should be made to add the alleged Right of Way shown on the plan attached at Appendix B and marked B to C on the map at Appendix B.

What decision is required

1. Staffordshire County Council is the authority responsible for maintaining the Definitive Map and Statement of Public Rights of Way as laid out in section 53 of the Wildlife and Countryside Act 1981 ("the 1981 Act").
2. 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").
3. 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.
4. 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.
5. To consider an application attached at Appendix A from Mr A Soper on behalf of the Congleton Group Ramblers Association for an Order to modify the Definitive Map and Statement for the Staffordshire Moorlands District. The effect of such an Order should the application be successful, would be to:

(i) Add a public footpath commencing at Public Footpath 50 Rushton Spencer to Dial Lane Link to the Definitive Map and Statement of Public Rights of Way under the provisions of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981.

(ii) The line of the route which is the subject of the application is shown highlighted and marked B to C on the plan attached at Appendix B.

6. To decide, having regard to and having considered the application and all the available evidence, and after applying the relevant legal tests, whether to accept or reject the application.
7. The application is dated 14th January 2002 and can be found at Appendix A.

Evidence Submitted by the Applicant

8. A sheet titled "Claim for the Restoration of a Footpath Between The Cloud Plantation and the Drummer's Cop" contents page listing submitted evidence.
9. A sheet titled Claim for the Restoration of a Footpath Between The Cloud Plantation and the Drummer's Cop" summarising the applicant's evidence.
10. Details of a "Special LMS Ramble" reported in Congleton Chronicle dated 14th January 1938.
11. Standard Rambling Fares of LMS in 1934 and their Rambling Guide.
12. Map from the "Peace Treaty".
13. Extract taken from the "Peace Treaty".
14. Manchester Guardian article dated 19th April 1937.
15. Manchester Federation Ramblers Association's Handbook dated 1938.
16. Ordnance Survey map (Sheet SJ 96 (33/96). Scale 1:25,000 ("Mr Blackstone's map").
17. Script from withdrawn offer of dedication.
18. Map attached to suggested offer of dedication.
19. Staffordshire Footpath Inspector's Maps for the preparation of the Draft Definitive Map.
20. Ramblers Association Record Card recording the challenge of Rushton Spencer 50.
21. Notice saying "No footpath beyond this point".
22. Photographs showing the excavation of walls at the Drummers Cop end of the claimed footpath.
23. Report in Congleton Chronicle dated November 1938 of application by Lord Egerton to build houses on the Cloud.
24. An account of a protest march in the Macclesfield Mercury February 15th 1936.

25. Article titled "Nature's Joys are Free for All" by Mr A W Shercliffe published 1987.
26. Letter from Mr A.A Smith to Mr P.B Walker concerning preparation of the Draft Map.
27. An Inspection of the Cloud – Spring 2000.
28. A brief outline of Mr Soper's case dated 12th July 2006.
29. Nine Evidence of Use forms (one form of which included two signatories).
30. Six Statements of Use.
31. Evidence Summary matrix.
32. This evidence can be found at Appendix C.

Evidence Discovered by Staffordshire County Council

33. Two copies of Staffordshire County Council online website of claimed route.
34. Ordnance Survey sheet Staffordshire IIINW dated 1888
35. Ordnance Survey sheet Staffordshire IIISW dated 1888.
36. Ordnance Survey sheet Staffordshire III 6 & 2. Revised 1922, Published 1925.
37. Ordnance Survey sheet IIISW, Revised 1922, Published 1926.
38. Ordnance Survey sheet Staffordshire IIINW. Revised 1945, Published ca 1950.
39. Ordnance Survey sheet Staffordshire IIISW. Published 1950.
40. Congleton Borough Council General Purposes Committee minutes dated 2.9.1937.
41. Cheshire Life Magazine article "Our monthly ramble around Rudyard" by A W Hewitt.
42. Documents relating to preparation of Draft Definitive Map and Statement 1954 (Survey of Rights of Way) Rushton.
43. Copy Deed made 25th February 1938 ("Peace Treaty") and plan.
44. Manchester Evening News Article dated Friday 10th July 1953.
45. This evidence can be found at Appendix D.

Evidence Submitted by the Landowners

46. Three completed Landowner Evidence forms were submitted.
47. This evidence can be found at Appendix E.

Evidence Submitted by the Statutory Consultees

48. Rushton Parish Council and Staffordshire Moorlands District Council Responded.
49. This evidence can be found at Appendix F.

Analysis of Documentary Evidence

A statement summarising the evidence for the restoration of a footpath between Cloud Plantation and Drummer's Cop.

50. The applicant has provided a summary of the evidence with his own comments in support of his claim. The Council has endeavoured to respond to the points raised in the order that they have been raised within the applicant's summary within this report.
51. The applicant commences with a brief history of the surrounding area including the past natural landscape, in addition to the economic and cultural importance of the area.
52. He cites points of interest within the area of the claimed footpath which include a Primitive Methodist Chapel and a quarry on Cloud Hill.
53. The applicant is of the opinion that worshippers for the Chapel and the workforce for the quarry would have used the claimed route.
54. The Methodist chapel is located on Red Lane and the population centres at the time would have been Congleton and Timbersbrook to the west, Rushton to the East and Biddulph to the South. Any worshippers approaching from the west could have followed several routes and in the absence of any Ordnance Survey maps at the time showing a path it does not appear to have been a well-used route. The worshippers from the East and South would not have needed to use the claimed footpath.
55. The applicant also states that Cloud End was an important quarry in the mid 19th century. He states that "*The claimed path would have been the most advantageous for the workforce as it would have been the most direct route with the lowest gradient for people coming from Biddulph and Rushton areas via the roads leading to Wolf Lowe*".
56. Whilst it is noted that there would be many local people employed within the quarries, for the same reasons as those directed to the worshippers, without any evidence of the route that they took this is based on assumption and speculation. In the absence of any corroborative evidence of use of the route by quarry workers, it is difficult to draw conclusions from these statements without any legal authority.

"Special LMS Ramble" reported in Congleton Chronicle dated 14th January 1938 (Applicant's Appendix 1a)

57. The applicant has provided an article taken from the Congleton Chronicle newspaper advertising a "Ramble on Cloud" excursion run by LMS Railway company and to which the Ramblers Association, led by wardens, took Ramblers on one of three walks on and around The Cloud.
58. In describing the area the author states that three different routes were offered: "(A) *Strenuous:- from Congleton 16 miles over the Cloud and Congleton Edge, Biddulph Moor and Mow Cop. Returning from Mow Cop*". "(C) *Easy:- From Congleton – 11 miles – The Cloud and Congleton Edge. Returning from Congleton*".
59. These routes cover many miles and without any description or map of the routes taken, it is impossible to identify whether the hikes included the line of the claimed route.

60. This document therefore does not demonstrate whether the claimed route had been walked or not and does not shed any light on whether the claimed route existed or not. The article purely provides evidence that the area in and around the Cloud was a popular walking destination.

Standard Rambling Fares of LMS in 1934 and their Rambling Guide (Applicant's Appendix 1b)

61. The applicant has provided an excerpt from the Standard Rambling Fares LMS Railway Guide 1934.
62. He has highlighted Tour No.98 which states "*.....whilst a third would like to spend an hour on the hill named The Cloud, and visit Biddulph Common before descending to Congleton*". The tour is listed as being "About 10 to 12 miles".
63. Without any description or map of the route taken, this document does not demonstrate whether the claimed route had been walked or not and does not shed any light on whether the claimed route existed or not. Whilst this statement indicates The Cloud to be a popular destination, as is indicated within the applicant's summary (paragraphs 5 and 6), there is no evidence that this route was used, there being a number of access points to The Cloud from roads to the east and west of The Cloud.

Report in Congleton Chronicle dated November 1938 of application by Lord Egerton to build houses on the Cloud (Applicant's Appendix 9)

64. The applicant has provided an article taken from the Congleton Chronicle newspaper in November 1938. This piece relates to a formal objection by Lord Egerton (who was the landowner of The Cloud) regarding the zoning of The Cloud for "Town Planning purposes."
65. The article further states that "*Lord Egerton also objects to land at the foot of Cloud being zoned as "Rural". It should he contends, be zoned as "Special Residential" at eight houses to the acre*".
66. The applicant alleges that "*in November 1938 Lord Egerton tried to get Congleton to alter their "Town Plan" in order to allow him to build houses on parts of The Cloud*".
67. It has been suggested that Lord Egerton excluded people from the Cloud because he did not get planning permission for the housing development. Officers consider that this exclusion of people from The Cloud is more likely to have been a response to the provisions of the 1932 Rights of Way Act which came into force on 1st January 1934 in an attempt to protect himself as landowner.
68. This magazine article does not demonstrate whether the claimed route had been walked or not and does not shed any light on whether the claimed route existed or not. The article purely provides evidence that there were issues regarding the closure of The Cloud and public speculation as to the reasons why it had been closed.

The "Peace Treaty" Deed and map dated 25th February 1938 (applicant's Appendix 2(a) and (b))

69. The applicant states that The Cloud was an important regional recreational site at the end of the 19th century and the beginning of the 20th Century and that it used to support a public house and three or more cafes.
70. In approximately 1933, Lord Egerton, a major landowner, prevented access to The Cloud and it is stated by the applicant that Lord Egerton also prevented access to about 100 footpaths on other land in his ownership. The applicant states that tenants were forbidden to provide refreshments to walkers on pain of eviction.
71. When Lord Egerton closed The Cloud the applicant states that there was an immediate outcry and that public meetings were held and a campaign was started to get The Cloud reopened. Following negotiations between various parties the campaign resulted in an agreement referred to by the applicant as "The Peace Treaty".
72. The signatories to this final Agreement were the Right Honourable Maurice Baron Egerton of Tatton, William Thomas Goodwin, the County Council of Chester, the Mayor Aldermen and Burgess of the Borough of Congleton, the County Council of Stafford, the Rural District of Leek and Philip Milner Oliver (Barrister) and Arthur John Moon (Solicitor) Chairman and Honorary Secretary of the Peak District and Northern Counties Footpaths Preservations Society).
73. The third paragraph in the agreement stated that the Highway Authorities and the Peak District and Northern Counties Footpaths Preservation Society would abandon any claims on certain parcels of land *"with the exception of the path coloured brown being the commencement of the public footpath to the Bridestones – not the subject of this agreement"*.
74. The applicant interprets this as implying that *"either there is a second agreement or that the footpath shown was not effected by the agreement"*.
75. The applicant accepts that there is no evidence for a second agreement. He has however stated that the wording in the agreement does not make clear whether it was a commencement of a path that goes solely to the Bridestones (which at the time was a more widely accepted path to the south of The Cloud), or whether it was the commencement of a path which splits into two at the southern end of the part on the agreement map "coloured brown".
76. The section of the route coloured brown is currently known as Rushton PF50 and is part of a public footpath which runs southwards from The Cloud to the Bridestones.
77. This document and its associated map do not provide any evidence as to the claimed route.

Manchester Guardian article dated 19th April 1937 (Applicant's Appendix 3)

78. An article taken from the Manchester Guardian has been provided as evidence for the claimed route. This comprises a map and a short paragraph written below the map.

79. The map shows two routes in Staffordshire leading from The Cloud commencing close to the county boundary and running in a southward direction. One path clearly shows the majority of the claimed path although it must be noted that the route is shown approaching the county boundary from the south east at an angle and not following Rushton PF50 whereas the Peace Treaty shows the section at the northerly end as following part of Rushton PF50.
80. The other path leads from the claimed path to join the middle section of Red Lane just to the south of Cloud Side.
81. Both paths are referred to as "Footpaths already existing".
82. The article states "*a settlement has been reached in the negotiations between the Peak District and Northern Counties Footpaths Preservations Society and the highways authorities on the one side and Lord Egerton on the other regarding public access to the Cloud on the Cheshire and Staffordshire boundary and a formal agreement will shortly be completed The ? shows what has been gained for the public in the negotiations*".
83. The source of this article is unclear. Whilst this is indicative of the claimed route existing, newspaper articles are considered to be of limited value to a claim as they do not carry a great deal of evidential weight.

Manchester Federation Ramblers' Associations' Handbook for 1938 reproducing the previous years Peak and Northern Footpath Society's Annual Report article on the Cloud (Applicant's Appendix 4).

84. The applicant has provided as supporting evidence for his claim an extract from the 1938 Manchester Ramblers Federation Handbook. This extract includes an editorial and a map.
85. In his Summary at paragraph 14, the applicant has stated that "*this map [Manchester Guardian map of 19th April 1937] was then reproduced in the Peak and Northern Footpath Societies' Yearbook for the year ending the 31st December 1937*".
86. The applicant states in his summary that the Peak and Northern Footpath Society "*was a signatory to the Peace Treaty and was obviously aware of its details and thought that the paths still existed*".
87. Although the article describes various paths on or leading from The Cloud there is no mention of the "footpaths already existing".
88. The article therefore does not refer to the claimed route, and the map is a reproduction of that within the Manchester Guardian article of 19th April 1937 and therefore this document cannot be considered as new evidence.

Letter from Mr A.A Smith to Mr P.B Walker dated 3rd November 1953 concerning preparation of the Draft Map. (Applicant's Appendix 12).

89. A letter has been included by the applicant between Mr Smith who the applicant states was one of the main Peak and Northern Footpath negotiators to the Peace Treaty and Mr Walker Joint Honorary Secretary to the North Staffordshire Footpaths Preservations Committee.

90. The applicant makes a number of claims regarding the letter and states that Mr Smith was aware of the claimed path and had recently walked it. The first paragraph of the letter however is generic regarding "*personal visits to the hill this summer*" and a sentence regarding descending "*from the North face past the old quarry to the Cross Roads*". This statement could refer to either the claimed route or the route along PF50 Rushton and directly south leading to the Bridestones. It is therefore not clear whether Mr Smith walked the claimed route.
91. The applicant states within his summary at paragraph 15 that the letter also shows that Mr Smith was "*aware of the restrictions of the 'Agreement' but did not think that they applied to the claimed path*". It is unclear what these restrictions to the agreement were although Mr Smith advised in his letter against amending the agreement to address them.
92. Mr Smith suggested to Mr Walker "*there is a further line of access, i.e from Drummer's Knob, an old cart track now partly obstructed by a plantation, which can however be circumvented, and which provides a secondary approach from Red Lane. These footpaths were included in a map printed in the Manchester Guardian in 1937*".
93. Mr Smith cites the Guardian as evidence of the existence of the route. Mr Smith's statement within his letter will be from his knowledge of working for the Peak and Northern Footpaths Preservation Society. With regard to the map, taking into account that the evidence appears to be taken from the Manchester Guardian this cannot be considered to be fresh evidence.
94. Mr Smith's letter also suggested that the claimed route should be claimed at the Draft map stage. He considered that the Manchester Guardian map would be good evidence to show that the route existed when Surveys for the first definitive map and statement were prepared.
95. This letter is indicative of the claimed route existing. A letter however carries little evidential weight.

"Nature's Joys are Free for All" by Mr A W Shercliffe published 1987 (Applicant's Appendix 11).

96. The applicant has provided an article by Mr Shercliffe which was published in 1987.
97. The article refers to a summit path between Gooseberry Lane to Red Lane and a cross path from near the Catstones direct to Red Lane south of the plantation. This latter path appears to be Rushton PF2. This path is stated to be "*recognised as public rights of way for ever*".
98. The article also refers to "*Two short paths down hill from near the Giant's Foot were to be on sufferance*". The key to the plan however (which can be seen more clearly in the Rambler's Federation Handbook map) shows that these footpaths were sufferance paths.
99. The article therefore does not describe the claimed route and the map attached to the article appears to be identical to that found within the Manchester Guardian of 19th April 1937 and the Peak and Northern

Footpath Societies' Yearbook of 1938. This therefore cannot be considered as new independent evidence.

Ordnance Survey map (Sheet SJ 96 (33/96). Scale 1:25,000 ("Mr Blackson's map"). (Applicant's Appendix 5(a) and (b))

100. The applicant has provided an Ordnance Survey map as evidence for the claimed route. He has stated in his summary at paragraph 18, that this map has been "modified" to include the claimed path. The applicant states that the source of this amendment is the Manchester Guardian article.
101. The line is stated to be slightly off the claimed line. The applicant considers that this deviation at the northerly end of the claimed route, may have been a result of the path being ploughed over near The Cloud around 1935. No photographs however have been included with the evidence. The Peace Treaty map however three years later does not appear to follow the deviation.
102. There is no clear evidence as to whether Mr Blackson walked the route or not. The applicant speculates that Mr Blackson highlighted the route because he intended to walk the claimed path. The Ordnance Survey map has been "modified" to show the claimed route in accordance with the Manchester Guardian article.
103. This evidence is therefore just the republishing of evidence provided from one source and therefore the document cannot be considered as supportive evidence for the claimed route.

An account of a protest march in the Macclesfield Mercury February 15th 1936. (Applicant's Appendix 10)

104. The applicant has provided an article written by Arthur Smith for the Macclesfield Mercury in February 1936. The applicant has referred to this as an article from the Congleton Chronicle of 25th February 1936. He refers to what he has termed a "protest walk". Mr Smith's article describes a walk which appears to commence at the West of the Cloud and then descends from The Cloud in a southerly direction "*to the Bridlestones*".
105. This article does not demonstrate whether the claimed route had been walked or not and does not shed any light on whether the claimed route existed or not.

Staffordshire Footpath Inspector's Maps for the preparation of the Draft Definitive Map (Applicant's Appendix 7a)

106. The applicant has stated in his summary at paragraph 25 that the claimed route is not shown on the draft map or on the "*Staffordshire Footpath Inspector's report or his working map of the area despite it being walked at the time and the subject of interest of the P&NFPS*".
107. It is unclear what the applicant is implying although the Council agrees with the applicant that the path is not shown.
108. This item of evidence does not show the claimed footpath nor evidence that the claimed footpath exists. See also further paragraphs 119 onwards regarding the First Definitive Map and Statement of Rights of Way.

Script from withdrawn offer of dedication and associated map (Applicant's Appendix 6a and 6b)

109. A script of a letter dated March 1995 has been provided as evidence. The letter is headed with the landowner of Bridestones' address and is addressed "*to whom it may concern*". Also included is a plan to accompany the letter.
110. The letter is claimed to be a result of negotiations between the Ramblers Association and one of the Landowners. The applicant in his summary at paragraph 27, has stated that it represents the "*RA's understanding of [Landowner's] position at that stage of the negotiations*" which indicates the possibility that the Ramblers drafted the letter.
111. The letter was not signed and therefore cannot be considered to be pertinent evidence of either the claimed route or use of the claimed route.

Ramblers Association Record Card recording the challenge of Rushton Spencer 50 (Applicant's Appendix 8a)

112. The Ramblers Association have provided a copy of a record card drafted according to the applicant's summary "*in the mid or late 70s.*" to which the landowner challenged the existence of Biddulph 50 (understood to be PF50 Rushton).
113. This route now is on the Definitive Map and Statement for Staffordshire and forms part of a public footpath link to the Bridestones (through the Cheshire boundary) to the south.
114. Whilst it supports a section of use of the claimed route as having been used, it does not support use of the remainder of the claimed route as either being in existence or having been used.

Notice saying "No footpath beyond this point" and photographs showing the excavation of walls etc at the Drummers Cop end of the claimed footpath (Applicant's Appendix 8b and 8c).

115. The applicant has provided photographs challenging the use of the route at the south end of PF50 Rushton.
116. The photographs showing the excavation of the walls at the Drummer's Cop end of the claimed footpath are not evidence of use of the route.
117. None of the photographs show claimed use of the route.

Inspection of The Cloud to Drummer's Cop Footpath

118. A statement was provided by the applicant in which he stated that he inspected the claimed path in the spring of 2000. He described the state of the route, and the condition of the furniture along the route. He also noted changes to the route. He returned to The Cloud in January 2001 and found more changes to the line of the claimed route.

Documentation collated for the First Definitive Map and Statement of Rights of Way

119. Staffordshire County Council has discovered documentation relating to the compilation of first Definitive Map and Statement of Public Rights of Way.

The first Definitive Map and Statement was completed as a result of the National Parks and Access to the Countryside act 1949. All County Councils ("Surveying authorities") in England and Wales had to carry out a survey of their area and produce a map that showed all the public footpaths, bridleways and roads used as public paths

120. The surveys were marked on an Ordnance Survey Map showing the physical depiction of the route, accompanied by a record card detailing when and by whom the survey was carried out, the date, the basis for believing it to be public and a description of the way.
121. The County Council contacted parishes after the initial survey was carried out to clarify queries. The records of this correspondence also went towards the completion of the Survey.
122. Rushton Spencer Parish Council completed its survey of rights of way and included those for which there was evidence. This included PF50 Rushton (which is a section of the currently claimed route) and PF1 Rushton and Rushton PF3. There is no card for the claimed route.
123. A letter dated 22nd September 1954 between Staffordshire County Council and addressed to Rushton Parish Council (although it is noted that the heading has been crossed out) makes reference at paragraph (a) to two paths that required omission from the Survey on account of the footpaths having been included within the agreement of 1938.
124. These were routes *across* The Cloud. One refers to a path *"leading from the county road east of the Cloud to the county boundary near the summit of the Cloud and also a short length of path from the county road to a well to the north of this path"*.
125. A form headed "Survey of Rights of Way" for the Parish of Rushton was also discovered. A query states, *"paths shown originally as 2 and 4 are in the area covered by the 1938 agreement but were not included in it"*. On consideration of the draft map these appear to be marked in blue with a pencil mark pointing to PF 2 and a pencil note in the margin advising *"To be omitted from Rushton Survey"*. The Survey form decision to omit states *"omit 2 (shown green (i.e. private) in 1938 deed and omit 4 by virtue of CC being party to agreement. Assume well is used by local tenants"*. The decision made by the Council was to omit both routes and these two routes no longer exist on the Definitive Map and Statement.
126. All routes therefore across The Cloud were identified during the Rights of Way Survey whether or not they were included within the agreement. There was no parish survey card completed for the claimed route or any reference to it made on the draft map.
127. The Ordnance Survey base map for the Rights of Survey is dated 1926. There are no markings of a pre-existing footpath on this base map.

Congleton Borough Council General Purposes Committee meeting dated 2.9.1937

128. Officers have discovered a copy of hand-written minutes taken from Congleton BC General Purposes Committee.

129. The minutes state *"The town clerk submitted the draft agreement for the dedication of footpaths on the Cloud and it was resolved that the Town Clerk make further enquiries as to the access to the footpaths to the Cloud Plantation from the southerly end of Red Lane"*.
130. The minutes dated 4.10.1937 within the same document states that *"The Town Clerk reported that he had returned to CCC the draft agreement.....with a suggestion that the plan referred to in the draft Agreement should indicate access to the footpath to The Cloud plantation from the southerly end of Red Lane."*
131. These minutes appear to relate to the claimed footpath. The extent of the inquiry however is not known.
132. This evidence therefore supports the existence of the claimed route.

Cheshire Life Magazine article "Our monthly ramble around Rudyard"
A W Hewitt.

133. An article in the Cheshire Life magazine has been discovered entitled "Our monthly Ramble: Around Rudyard" by A W Hewitt. This describes a route from the Cloud Summit, skirting the eastern edge and keeping high until *".....close to a small dwelling. Over a low wall to the left of this the path continues due south through a small plantation named Drummer's Knob....."*.
134. There is not a map included with the description, but the article could possibly be describing the claimed route.
135. Whilst this is indicative of the claimed route existing, magazine articles are considered to be of limited value to a claim as they do not carry a great deal of evidential weight.

Manchester Evening News dated Friday 10th July 1953

136. Officers have discovered an article taken from the Manchester Evening News newspaper dated 10th July 1953. This piece describes a walk which is believed to have been provided by Arthur Smith because his house name is mentioned in the caption "Afoot with Perigarth". (See letter A A Smith to P B Walker).
137. This article accompanied User 11's evidence. The applicant has provided a point-by-point account of the route he believes that Arthur Smith has described and that which was followed by User 11 (see further below).
138. The text appears to describe a route leading from The Cloud, although it is difficult from the article to establish the line of the route in relation to that of the claimed route at the northerly end. The user also appears to have followed a slightly different route at the north end to that which has been claimed. The detailed description which the user has provided from the *"two stoops on the site of an old gateway"* and leading in a south easterly direction to Drummers Knob do however appear to correspond with the magazine article.
139. The map accompanying the article is small scale. Although it shows the location of Drummer's Knob, the line of the claimed route is not shown.

140. Whilst this is indicative of the claimed route existing, magazine articles are considered to be of limited value to a claim and do not carry a great deal of evidential weight. Furthermore, the article was written by Mr Smith and therefore is not a new or independent source of evidence.

Ordnance Survey plans published in 1888, 1925 and 1950.

141. Officers have considered Ordnance Survey plans. Ordnance Survey Maps date back to the early 1800's and their purpose is to show physical features on, and the contours of, the ground.
142. 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; a practice continued into modern times along with a proviso advising individuals to consult the local definitive map for public rights of way.
143. 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.
144. The maps do not show any evidence for the claimed route either before the "Peace Treaty" was signed or once it had been agreed. Although these maps do not support the claim, the absence of any feature on the map however does not mean that it does not exist.

Brief outline of the case for a path between The Cloud and Drummer's Cop

145. A further statement was provided by the applicant dated 12th July 2006. This is expressed to include key points and additional evidence.
146. The applicant claims that when the "Peace Treaty" agreement was signed a recognised Public Right of Way existed from The Cloud to near the Drummer's Cop. The applicant claims that his user evidence supports this contention. The Council considers that the documentary evidence alone is not sufficient for an Order to be made on either the test of reasonable allegation or the balance of probabilities. The user evidence (considered below) only supports the test of reasonable allegation when combined with the very limited documentary evidence.
147. The applicant recognises that the agreement was intended to settle all the footpath disputes on the Cloud and were limited by the existing footpath law. He states that they could not stop up a recognised public footpath or stop an old one being restored if there was new evidence or a change in the law.
148. The Council agrees with the conclusion that the agreement could not have legally extinguished any pre-existing public rights of way. The Council however has not however found any evidence that the agreement stopped up a line along the claimed route.
149. The applicant makes reference to the Congleton Borough Council General Purposes Committee meeting. Whilst at the meeting of 4th October 1937 the Town Clerk reported that he had returned the draft agreement with a suggestion that the plan referred to in the draft agreement should indicate the access to the Cloud Plantation from the southerly end of Red Lane it

does not appear that it was acted upon. The minutes have been considered above.

150. The applicant has state that it can be "*safely concluded*" that at the time the agreement was signed all signatories recognised that the path was a Public Footpath. The County Council however has not found documentary evidence to support this assertion.
151. The applicant has made further comments regarding the Manchester Guardian Article of April 1937, the Peak and Northern Footpath Preservation Society and the Ramblers Federation Yearbook which he appears to consider to be independently show that the footpath existed. Council officers however note that the Manchester Guardian is the source of the information and therefore its repetition in the Peak and Northern Preservation Society and the Ramblers Association does not make it independent information.
152. Mr Arthur Smith's letter and Mr Shercliffe's article have been considered also as has the evidence of the witnesses.

Analysis of User evidence

Claim under Statute

153. The applicant has provided nine use evidence statements, comprising ten users (one form included the names of a married couple), made by members of the public who claim to have used the route over varying periods of time. A further six statements of use were included as evidence.
154. All of the user evidence forms and statements with the exception of User 15 and User 16 provided maps.
155. 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.
156. 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*".
157. S31(2) states "*the period of 20 years.....is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice.....or otherwise*".
158. User 10 states that a "*Gateway across the common has been physically blocked since 1970*". It is unclear as to where this gate is, but the event is considered to be an identifiable event which has brought into question the use of the way.
159. Therefore, the relevant twenty-year period for this claimed footpath has been calculated retrospectively from 1950 to 1970.
160. Four users have been identified as using the route during this time period. They include User 4, User 5, User 6 and User 7. User 4 used the route for

16 years, User 5 and User 6 used the route for 1 year, and User 7 used the route for 11 years. None of the users used the route for the full 20-year period.

161. The claim therefore fails under Section 31 of the Highways Act 1931.

Claim under Common Law

Inferred Dedication

- 162.** Under Common Law similarities exist with the statutory test. The use of the claimed route must also be “as of right”. In order to realise this test, the use must not have been with force, the use must not have been in secret, and it must not have been used with permission.
- 163.** Contrary to the statutory claim however, the burden of proof is on the claimant to prove that it can be inferred from the landowner’s conduct that they had dedicated the route. Use does not have to be for twenty years, and the landowner must have capacity to dedicate.
- 164.** Whilst the term of years of use does not have to span that set out in statute, it must still be sufficient to raise awareness to an owner that the land is being used as a public footpath.
- 165.** Of the nine user evidence forms (which included a joint form completed by User 5 and User 6), User 1 used the route until 1937 “various” times a year. He was born in 1910. The user has described the route as leading through a coppice onto rough heather and moorland. On his plan he has also provided information as to gates along the route. Although he used the claimed route it appears that he lived on a farm on Dial Lane at the time. (User 12 has stated that he was very friendly with User 1’s family and that User 1 used to live at Spring Bank Farm). It is therefore possible that he was given permissive use by neighbouring landowners of farms.
- 166.** User 2 did not provide information regarding the time periods during which he used the route or the frequency. He has however in his statement stated that he used the route “*about six times in his early and mid twenties*” with a colleague.
- 167.** The applicant has provided notes on the evidence of this user. The applicant states that the user used the route between 1935 and 1940. The applicant also has tried to clarify the line of the route. However the user has not marked the line of the plan of the route that he took.
- 168.** User 3 stated that he walked the route between 1946 and 1948, a couple of times a year. He walked with his brother and friends as “*the route was the “done thing” for the young*”. He states that others used the route “*every Easter and several times in Summer*”. He describes the route as heather at one end and a cart track at the other. He has marked the line of the route on his map but has not provided any details as to the furniture along the route.
- 169.** The evidence provided by User 4 claims use of the route between 1942 and approximately 1966. He claims to have used the route weekly. He has provided details as to a stile and gate along the route.

170. User 5 and User 6 have provided one user evidence form. They are a married couple, and the form is signed by both individuals. They claim to have used the route between 1938 and 1950 "*frequently (Most weekends)*" They state that there was a stile by the plantation gate by Drummers Cop although they have not marked it on their plan.
171. User 7 stated in his user evidence form that he walked the route between 1947 and 1960. Which he used "*a lot during school holiday*". The user also provided a statement in which he describes using the route from Drummers Cop to Cloud End. He stated that there were stiles and gates on the route although he only marked one set of gates at the start of the route on his accompanying map.
172. In his statement he advises that he ran a Youth Club at Rudyard and that he recalls a Staffordshire County Youth Organiser taking a combined part of twenty members of Rudyard and Leek Youth Clubs up to the Cloud for a midnight hike around 1960 but he does not state whether the Drummers Cop route was used or one of the other access points.
173. Evidence has been received from User 8. He has advised that he used the route between 1953 and 1964 although he has not stated how frequently he used it. He has marked on his form that there were gates and stiles along the route. He has marked the line of the route on his map although he has not stated where the stiles and gates are located. His address showed him to be a neighbouring farmer and so it is possible that he used the route by implied licence.
174. User 9 has provided evidence. She claims to have used the way between 1968 and 1991. She has stated that she could only use part of the way, not being able to go "*through wood*". She has also provided a statement in which she said that she used the claimed route two or three times a year and that "*I knew all the owners I never asked their permission or was stopped by them*".
175. She states that there were locked gates which blocked the route between a couple of the landowner's fields and has marked her map the line of the route and the various gates which she encountered. She has stated that she knew all of the owners and lived at Long Edge Farm which is a farm to the south of Drummers Knob. She may therefore have been using the route by implied licence.
176. User 10 has been a footpath inspector for the RA. He has stated that in 1975 and 1993 he used the way to determine the evidence on the ground and has used the route from "*1994-95 in pursuit of legal claim approximately once per year since*" [form signed in 2001].
177. The user has provided plenty of information regarding the line of the path and changes to the furniture along the route including the removal of a wall. He has provided details of a challenge to the route stating a gateway across the common has been physically blocked since 1970. Only User 9 was still using the route in 1970 and it is possible that she was aware of this challenge because she noted a blockage between two different landowner's fields. It is not however possible to establish where this point

is on a plan. The User has noted that although he has not been stopped or turned back, only the landowner at Bridestones Farm "*acknowledged a possible R.O.W*" whereas the adjoining landowners were hostile.

178. The User states that a landowner "*sort (sic) to legalise a through route from the top of Cloud Wood to the Bridestones away from his farmyard*". This however is a different route to that claimed. In his further information he also appears to discuss the route from PF50 Rushton directly southwards along what is now Congleton PF82. It appears that in his research for Congleton PF82, he "*found from user evidence collected as footpath inspector for RA etc that the area was remembered as a common and a path exited at Drummers Cob after following the top of the ridge*". His accompanying map has been marked with various gates and other issues.
179. User 11 has not provided a user evidence form. He has however provided a statement. He claimed that he walked the route once, 50 years previously. In his statement advised that he followed the route given in the Manchester Evening News. He did not follow the whole of the claimed route but made a detour at the northern end. He has also provided a small scale in depth map of the route, showing the various stiles and gates along the route as well as remarkably in-depth details of the route in his accompanying letter.
180. User 12 has provided a statement and map. He states that during his childhood he was very close to User 1's family who lived at Spring Bank Farm, Dial Lane. He states that he "*occasionally*" used the footpath between about 1938 to 1942. His map showed the claimed route although he has not shown the location of any gates or stiles. It is possible that because this user was a friend of a fellow landowner he used the route under permission.
181. User 13 has provided a statement. He states that "*My father used to take me walking every weekend on the Cloud.....One of our walks involved going from the Cloud Plantation to the piece of land known as Drummer's Cop. We did it about every six weeks.*" He has provided a map with the claimed route although he has not marked any stiles or gates on it.
182. User 14 has provided a statement. He used the route once when he accompanied User 10. He has described the route starting at the northern end and has attached a map with the line of the claimed route. He has not however marked the location of the stiles and gates on his map.
183. A statement has been provided by both User 15 and User 16. Neither have stated that they used the claimed route. User 15 stated that his father moved to the Bridestones in about 1944 and moved out in about 1956 when he was about twenty. He recalls a vague memory of people walking more or less along the route that has been described as the Drummer's Cop path but does not know the exact route they used.
184. User 16 stated that his grandfather purchased the Bridestones estate in 1968 or 1969 and he lived there until he died in 1983. The user stated that he didn't live there himself but regularly visited his grandfather. His

grandfather encouraged people to use the footpath to the Bridestones monument and built stiles for them to use. The user however could not comment on the paths mentioned as he could not recall people using it.

As of Right.

185. User 15 and User 16 did not use the claimed route.
186. User 10 and User 14's evidence cannot be included as evidence as their use of the route commenced after the challenge in 1970.
187. Twelve users therefore appear to qualify for "as of right". It is uncertain as to whether four further users may have had an implied permission to use the route. User 1 lived at Spring Bank Farm on Dial Lane (in accordance with User 12's statement) and User 12 was *"very close to [User 1's] family.....I used to play with their sons.....and help their father"*. They were neighbouring farmers children.
188. User 8 was a farmer who lived at Wolf Lowe Farm. User 9 appears to have had family connections to the land over which the claimed route runs and stated that she did not use the whole route.
189. Of the remaining eight users, User 2 started using the route in 1935 and the first challenge to the route noted by User 10 was in 1970. The users therefore covered a total time span of 35 years.
190. Frequency of use varied between User 11 who used it once in the early 1950's, User 2 who used it *"infrequently"* over a 5-year period between 1935 and 1940 and User 3 who used it *"a couple of times"* [a year] between 1946 and 1948.
191. User 13 used the route *"about every six weeks"* between 1950 and 1960. User 4 used it weekly from 1942 until *"about 1966"*. User 5 and User 6 used it *"frequently – most weekends"* between 1938 and 1950,
192. User 7 used the claimed route *"a lot during school holidays"*. He used the route between 1947 and 1960.
193. Some users state that they had memories of seeing others using the route. User 3 states that *"The older boys used to climb to the summit and then walk along the ridge over the chapel and come out on a track which exited Drummer's Knob"*. User 15 stated that he had *"a vague memory of people walking more or less along the route that has been described as the Drummers Cop path but do not know exactly the route that used."*
194. Other users refer to clubs and societies using the route. User 2 stated that the Manchester Walking Club used to use the route and User 7 has stated that he saw or may have possibly been with *"Staffs Youth Service from Leek and Rudyard Youth Clubs"*. User 10 states that he was a footpath inspector for the Ramblers Association when he used the route.
195. Two users state that there was a World War 2 American Camp within the area of The Cloud although it is not clear where the Camp was located. User 12 stated that he used the route *"mainly.....to visit the American Camp.....The path was not then heavily used"* and User 15 also stated that *"The Americans used to train in the woods near Drummer's Cop"*. This

evidence suggests that the Camp could have had an effect on the route not being used as of right.

196. The user evidence satisfies the claim under Common Law. Eight used the route as of right, over a prolonged time period and so it may be deemed to have come to the attention of the landowner at the time that users were using the claimed route. The evidence therefore supports the application.
197. There may therefore be a contention that the landowner inferred by his conduct (or rather lack of intention to prevent trespass until 1970) that there was evidence of an intention to dedicate.

Evidence from Landowners

198. Three landowner evidence forms were completed although they were from two landowners. Landowner 1 completed two landowner evidence forms the first in March 2002 and the second one in February 2007. The form completed in 2007 appears to have been completed by another member of the family on his behalf.
199. In his form dated 2002 the landowner states that he has had an interest in the land since 1984. He has not erected any signs or notices nor has he given anyone permission to use the route. He has not seen anyone using the path nor does he believe the path has ever been used.
200. Landowner 2 has provided a landowner evidence form. He has had an interest in the land "*since infancy to present day*". He was born in 1949 and the form is signed in June 2007. He stated that there were signs which had been vandalised on or near another right of way over his land but they do not appear to have been along the claimed route.
201. He claims that he has not seen anyone using the right of way as there is "no way to use", and he has not given anyone permission to use the path. He has never turned back any walkers as he is not aware of anyone ever having walked across his field.

Consultation responses

202. Staffordshire Moorlands District Council responded to the Initial Consultation and stated that they had no objection to the claimed route although had no evidence to add.
203. Rushton Parish Council responded to the Initial Consultation stating that they could not find any evidence for the footpath and that they had viewed the Deeds to Wood Common Farm which did not show the alleged footpath between Drummers Cop and the Cloud Plantation. They state that they had a footpath map dated 1899 which did not show the route.
204. The Parish Council also state that their 1949 National Parks footpath map does not show the alleged path.
205. The Parish Council was opposed to the path being added to the Definitive Map and Statement.

Report Consultation Responses

- 206.

Legal Tests

- 207.** There are two separate tests, 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 either:
- (a) that a right of way which is not shown in the map and statement subsists, or;
 - (b) that a right of way which is not shown in the map and statement is reasonably alleged to subsist.
- 208.** 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.
- 209.** For the second test to be satisfied, the question is whether a reasonable person could reasonably allege a right of way exists having considered all the relevant evidence available to the Council. The evidence necessary to establish a right of way which is "reasonably alleged to subsist" over land is less than that which is necessary to establish the right of way "does subsist".
- 210.** If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

Summary

- 211.** The application is made under Section 53(2) of the 1981 Act, relying on the occurrence of the event specified in 53(3)(c)(i) of the Act.
- 212.** 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.
- 213.** The documentary evidence is insufficient to establish a public right of way on the claimed route.
- 214.** There are only three sources of documentary evidence for the claimed route's existence. Of this evidence only one map exists. This map accompanied the Manchester Gurdian article dated 19th April 1937. The source of this evidence for the map and article is not clear. It is good evidence, albeit very weak.
- 215.** The second piece of documentary evidence is the article in the Cheshire Life by A W Hewitt. No plan is attached. The evidence however is very weak.
- 216.** The third source of evidence is the PNFPS. Arthur Smith was a main PNFPS negotiator for the peace treaty (as stated in the applicant's summary para 15). He was the author of the Macclesfield Mercury article of 15th February 1936 and also wrote the letter from A A Smith to the North Staffordshire Footpaths Preservations Committee. He also wrote the article for the Manchester Evening News of 10th July 1953 and appears to have been involved in the Peace Treaty negotiations.

217. W Shercliffe who was author of *Nature's Joys are Free for All* was also a member of PNFPS. (see applicant's "Additional evidence" paragraph 15 dated 12th July 2006). His article reproduces a map from the Manchester Guardian article.
218. The Congleton Borough Council General Purposes Committee Minutes of 1937 evidence can be traced back to links with the PNFPS who they thanked "*for their efforts in assisting in bringing the matter to a satisfactory conclusion*" (see applicant's "Additional evidence" paragraph 9 dated 12th July 2006).
219. Some of the evidence is reproduced from other sources and therefore not original. This includes the Peak and Northern Footpath Societies' Yearbook for the year ending the 31st December 1937 which had taken its plan from the Manchester Guardian, in addition to Mr Blackstone's map.
220. Other documentation provided by the applicant does not show evidence to support the claimed route. This includes the Special LMS Ramble, the Rambling Fares, the Peace Treaty, the unsigned letter from the landowner of Bridestones and the Staffordshire Footpaths inspector's Maps (associated with the drafting of the first Definitive Map and Statement of Rights of Way survey of 1954). It also includes the Ramblers Association report card, photographs along the claimed route and the report of an application by Lord Eggerton to build houses on the Cloud.
221. Some of the evidence discovered by Staffordshire County Council supports the claimed route including the article "Our Monthly Ramble" by A Hewitt in the Cheshire Life publication and also the Manchester Evening News article dated 10th July 1953.
222. Other evidence discovered by the County Council does not provide any evidence of the claimed route. The Ordnance Survey maps do not show the claimed path and neither does the documentation compiled for the First Definitive Map and Statement.
223. The documentary evidence alone is not sufficient to support the claim.
224. In relation to the User evidence, again the evidence is weak. Only 8 users can categorically be claimed to have used the route as of right between the years 1935 and 1960. All of the users provided maps (with the exception of User 15 and User 16) some of which were more conclusive of use than others. User 2 did not show the line of the route.

Conclusion

225. 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 footpath, under the lesser test of reasonable allegation, which is not shown on the map and statement subsists between points B-C on the plan attached at Appendix B.
226. It is the opinion of your officers that the County Council should make a Modification Order to add the route subject to this application to the Definitive Map and Statement of Public Rights of Way.

Recommended Option

227. To accept the application based upon the reasons contained in the report and outlined above and to decide to **make** an Order to add the alleged route to the Definitive Map and Statement of Public Rights of Way based on the test of reasonable allegation.
228. The width of the route will be a minimum of 1 metre.

Other options Available

229. The Panel has the authority to reach a different decision and therefore can reject the application to make an Order to add the alleged route to the Definitive Map and Statement of Public Rights of Way.

Legal Implications

230. The legal implications are contained within the report.

Resource and Financial Implications

231. The costs of determining applications are met from existing provisions.
232. 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

233. 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.
234. 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.
235. 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.
236. 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

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

P Shakespear

Director for Finance and Resources.

Background File: LL620G

INDEX TO APPENDICES

Appendix A	Copy of application and map
Appendix B	Plan of claimed route
Appendix C	Copy of applicant's documentary evidence and User Evidence Forms
Appendix D	Copy documentary evidence discovered by Staffordshire County Council
Appendix E	Copy Landowner Evidence Forms
Appendix F	Copy evidence from Statutory Consultees