

**Definitive Map Review 2007–2010
Parish of Barnstaple – Part 2**

Report of the Executive Director of Environment, Economy and Culture

Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.

Recommendation: It is recommended that a Modification Order be made in respect of Route 10, Prospect Place, to record on the Definitive Map and Statement a footpath between points R–S shown on drawing number EEC/PROW/09/32 and that appropriate action be taken to remove the fence and gate obstructing public use of the route.

1. Summary and Background

This report examines further the evidence for one of 10 routes considered in the Definitive Map Review for Barnstaple in North Devon and reported to the last Committee meeting. An amended recommendation at the meeting to record a public footpath on Route 10 along Prospect Place between Newport Road and Park Lane because of additional evidence received after the original report to the Committee had been prepared was not accepted by Members. The relevant extract of that report is attached in Appendix II. The original recommendation was that no Order should be made as the evidence was considered then not to be sufficient, but an update was presented to members at the meeting with the amended recommendation to make an Order, which is also included in Appendix II.

Additional user evidence has been received since the last meeting and a Schedule 14 application has now been submitted with further user evidence. The formal application is considered now in conjunction with all of the evidence submitted and requires determination for a decision on whether it is sufficient overall to show that the route should be recorded as a public right of way.

2. Review and Consultations

The current Review began in October 2007, with general public consultations undertaken in August 2009 and advertised in the local press in respect of 13 routes. Responses to the consultations were as follows:

County Councillor Haywood	-	responded in support of Routes 3 and 10;
County Councillor Greenslade	-	responded in connection with Route 10;
North Devon Council	-	responded with information about their ownership in connection with several routes;
Barnstaple Town Council	-	responded with information about their ownership in connection with several routes and specifically in support of Routes 3 and later in support of Route 10;
Trail Riders Fellowship		responded with queries about routes not included in the consultations;
Byways and Bridleways Trust	-	no comment;
Country Landowners' Association	-	no comment;
National Farmers' Union	-	no comment;

- Open Spaces Society - no comment;
Ramblers - responded in support of Routes 1, 2, 3 and the proposed diversion of Route 11, with evidence only for Route 2.

3. Conclusion

It is recommended that a Modification Order adding a public footpath should be made in respect of Route 10, Prospect Place, following the submission of additional user evidence and determination of the Schedule 14 application submitted with further user evidence. Details concerning the recommendation are discussed in Appendix I of this report.

4. Reasons for Recommendation/Alternative Options Considered

To progress the parish-by-parish review of the Definitive Map in North Devon.

5. Legal Considerations

The implications/consequences of the recommendation have been taken into account in preparing the report.

6. Carbon Impact Considerations

There are no considerations.

7. Equality Considerations

There are no considerations.

Chris McCarthy

Electoral Division: Barnstaple South and Barnstaple North

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence file	2000 to date	DMR/BARN/Parish file

ns050210pra
sc/part 2 barnstaple
2 hq 110210

Background to the Suggested Changes

Basis of Claims – Statute and Common Law

The Wildlife and Countryside Act 1981, Section 53 (5) enables any person to apply to the surveying authority for an order to modify the Definitive Map. The procedure is set out under Schedule 14 of the Act.

The Wildlife and Countryside Act 1981, Section 56(1) states that the Definitive Map and Statement shall be conclusive evidence as to the particulars contained therein, but without prejudice to any question whether the public had at that date any right of way other than those rights.

The Wildlife and Countryside Act 1981, Section 53 (3)(c) enables the Definitive Map and Statement to be modified if the County Council discovers evidence which, when considered with all other relevant evidence available to it, shows that:

- (i) a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, ... ;

The Highways Act 1980, Section 31 (1) states that 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 actually been 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 during that period to dedicate it.

The Highways Act 1980, Section 32 states that a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan, or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

Common Law presumes that a public right of way subsists if, at some time in the past, the landowner dedicated the way to the public either expressly, the evidence of the dedication having since been lost, or by implication, by making no objection to the use of the way by the public.

1. Route 10, Prospect Place, unrecorded route between points R–S shown on drawing number EEC/PROW/09/32.

Recommendation: It is recommended that a Modification Order adding a footpath to the Definitive Map be made in respect of Route 10, Prospect Place, following the submission of additional user evidence and a Schedule 14 application with further user evidence.

1.1 Background – Previous Report and User Evidence

A report on the review process for Barnstaple was presented at the last meeting of the committee in respect of 10 routes in the town and surrounding area. It included consideration of evidence for Prospect Place as one of several routes that were identified as being not

recorded as public rights of way. The relevant extracts from that report relating to the route are attached in Appendix II of this report, with a description of the route and investigation of the evidence available and considered then. The original recommendation in the report was that no Order should be made to record the route as a public right of way because the evidence, particularly of use by the public, was considered to be insufficient.

Following the initial consultations, three completed user evidence forms had been received and were considered initially in the report to the committee, along with the investigation of historical map evidence. Only one of those forms was for continuous use from 1950 to the present. One specified use only for going to Park School from the 1940s to the 1950s and the other was from a property owner on the route, whose use will have been mainly private rather than public. Those were considered not to provide sufficient evidence of substantial and uninterrupted use of the route by the public up to the present in relation to any statutory 20-year period, or at a level that would be sufficient under common law in conjunction with historical evidence.

After the report had been completed and before the committee meeting, it was reported that a fence with a locked gate had been erected across the route. More user evidence was received just before the meeting and an update was presented to members, also included in Appendix II, with a change to the recommendation that the evidence was considered sufficient to record the route as a public footpath. An additional 17 evidence forms had been submitted and initial examination of all of them showed that two were for use well before the start of the previous 20-year period, with a further two from adjoining property owners.

The remaining overall user evidence from 13 people on foot was interpreted as providing sufficient evidence of use by the public to support a recommendation that an Order should be made to record the route as a public footpath. There was considered to be insufficient evidence that the landowners had taken overt actions during the previous 20 years to make it clear to people using the route that they did not intend to dedicate it as a public right of way. The revised recommendation from the update to the report presented at the meeting was not accepted by members, who resolved that no Order should be made.

1.2 Additional User Evidence and Schedule 14 Application

Further additional user evidence has been received since the last meeting and a formal Schedule 14 application has been submitted recently for adding the route as a public footpath, with more supporting user evidence. In determining the application, all of the user evidence received and submitted is examined now, in conjunction with all other evidence, to determine whether it is sufficient to show that the route should be recorded as a public footpath, as applied for.

An additional 14 user evidence forms have been sent in since the last Committee meeting and a further 16 forms were submitted in support of the formal application, making a total of 47 forms to consider. One was completed for two people, so that the forms represent use by 48 people. Altogether, nine of them relate only to use specified as for going to the school or generally before 1989, the start of the 20-year period ending with the erection of the fence and gate in 2009, taking that as a direct challenge to use of the route which has called its use by the public into question. With the additional evidence there is, therefore, a total of 38 people to consider under the statutory test for the 20 years from 1989–2009.

All of the users reported having used the route on foot, with six specifying that they had also used it on bicycles and one also in a vehicle, but who lived in an adjoining property. Most of them believed the route to be public, as a footpath for use on foot only, with several believing it to be a bridleway for use on bicycles as well. Two believed it to be a restricted byway or byway open to all traffic, but specifying that there was access for vehicles only for part of the

routes from the Newport Road end to adjoining properties. The main basis for believing the route to be public was that it had always been known or used for a long time as such and they had no reason to believe that it was not public or was private. Several said that it had never been closed or restricted, referring to a sign at the Newport Road end saying that it was a footpath to Park Lane and mentioning that there is street lighting on the route.

The earliest claimed use of the route was from 1920 by one person, with six indicating that they had used it since the 1930s, although not all continuing into the relevant 20-year period. Up to 20 people specified using it since or during the 1940s to 1970s, increasing to more than 20 since the 1980s up to the start of the relevant 20-year period. The route has been used by more than 30 people for the period of 20 years from 1989–2009. Where specified, the frequency of use was indicated by most of the users as from between once or twice a week, 50–100 times a year and daily, more than 300 times a year, particularly in relation to use for getting to Park School. Some referred to use as much as four times a day during school terms, up to 1,000 times a year. One did not specify frequency, with others indicating that they had used it ‘many’, ‘numerous’, ‘countless’ and ‘thousands of’ times a year, or ‘often’ and ‘occasionally’ until more recently.

Most of the users indicated that they had used the route for either pleasure, shopping or getting to school and some for work and business. Others specified using it for access to Park Lane and Newport Road for getting to the bus stop or other services and delivering papers or leaflets. One referred to using it for ‘everyday living’ and an adjoining owner on the route said it was for ‘necessity’, but which will have been mainly private use. Some of the users provided additional information about their own or others’ use of the route and with some details relating to the background, in connection with the school and their ownership of adjoining or nearby properties.

Most people indicated that they had used the route to or from Park Lane and Newport Road or elsewhere in Newport. They referred to various streets or other destinations nearby such as the school and Rock Park, or more generally to the shops, Post Office, bus stop and church, or to work and home. Three people said that they had been stopped or turned back when using the route, but only at the time that the fence was put up and not before. Three reported having been told that it was not public, one at the same time, one within the previous year and the other saying that it was a ‘vague assertion over the years’. Two people knew of someone else having been prevented from using it, one referring to when the fence and gate were erected.

Nearly all of the users believed that the owners were aware of the public using the route, mainly because local residents and schoolchildren had always used it regularly, which they will have seen and had never stopped anyone. Only three people indicated that they may have been given permission to use the route – two were the previous owners of an adjoining property and the other referred to walking with an adjoining owner who had not said that it was needed. None reported that they had worked for an owner or were tenants and only two previous owners of adjoining properties reported having any private right to use it. One said that it was written in his deeds and another referred to having gates leading onto the route. One person specified using it to visit adjoining properties for work and collections or deliveries, whose use has not been taken into account as it is considered to be private and not public.

Chart of User Evidence for Prospect Place - 1

Date of calling into question -
 20 years before - 1989

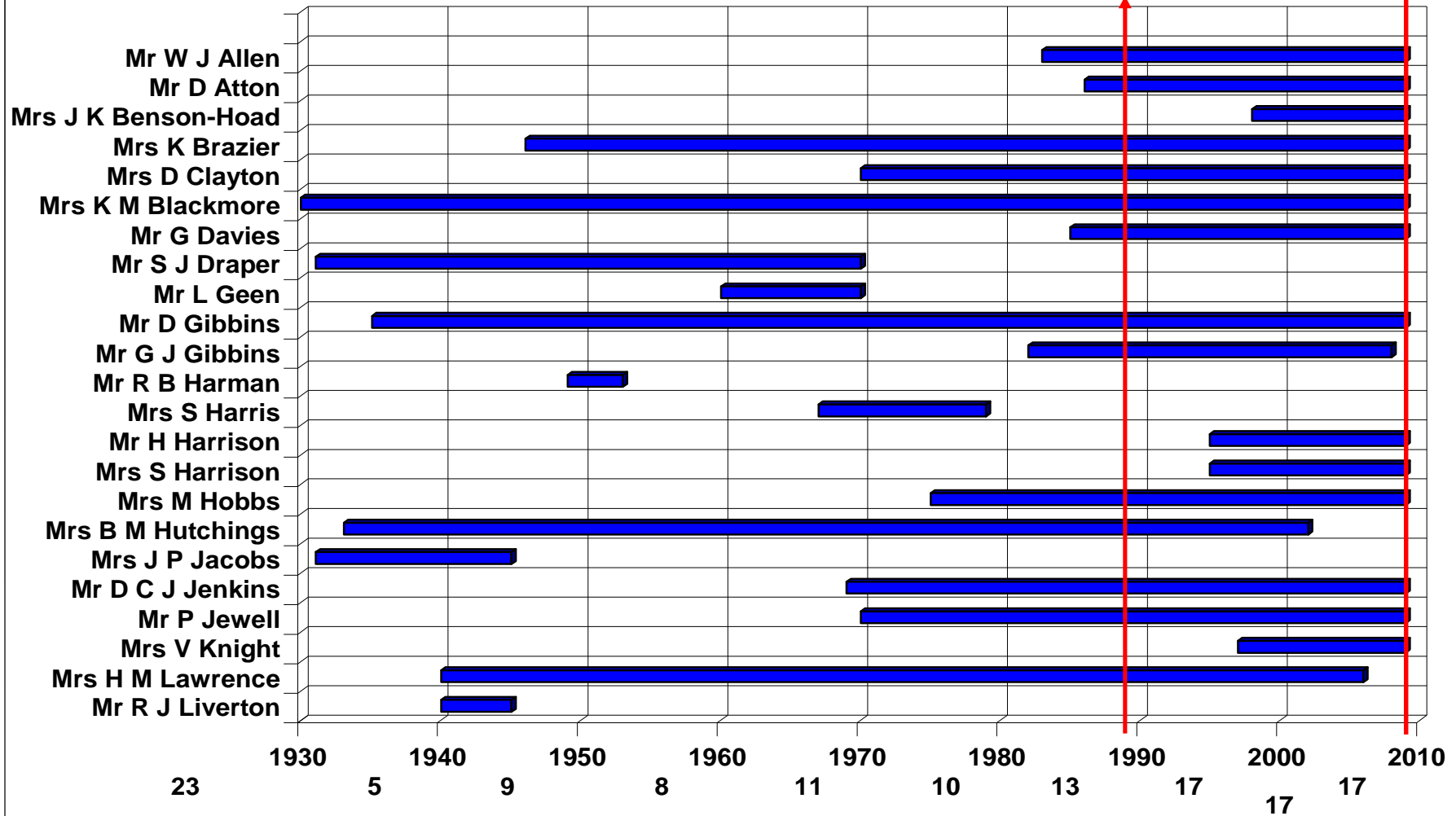
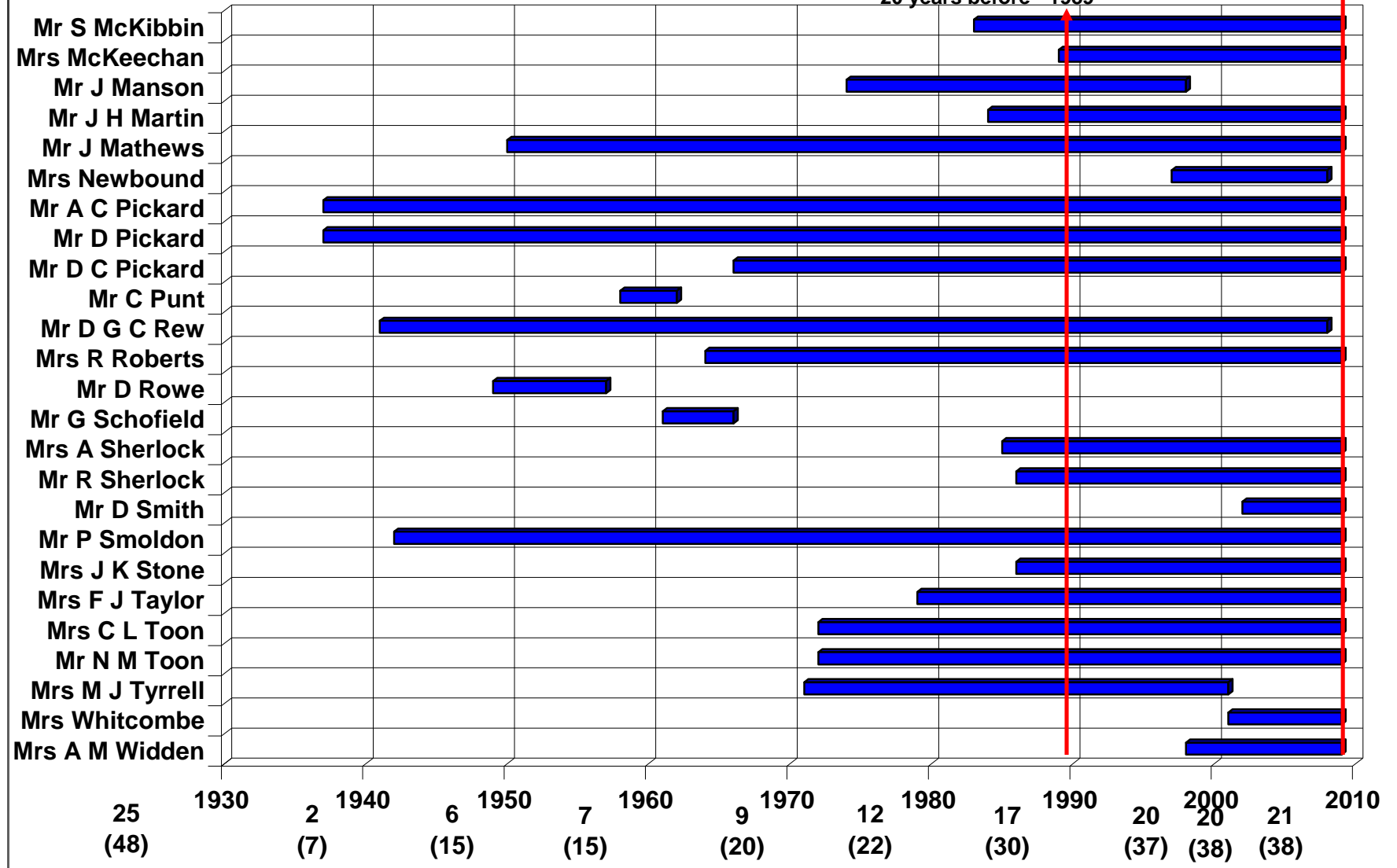


Chart of User Evidence for Prospect Place - 2

Date of calling into question - 2009

20 years before - 1989



25 1930 2 1940 6 1950 7 1960 9 1970 12 1980 17 1990 20 2000 21 2010
 (48) (7) (15) (15) (20) (22) (30) (37) (38) (38)

None of the users said that there were any stiles on the route, with most of them reporting that there was no gate or obstruction until October 2009 and referring to the locked iron bar across it at the Park Lane end that prevented vehicular access, but with a gap allowing use on foot or bicycles. Some users reported that it had been there since before the early 1980s and was removed in August 2009. Most of the users said that there were no signs or notices on the route saying that it was private until the words 'Private Lane' had been painted on an old gate post for the iron bar at Park Lane in September 2009. More than half of them referred to the road sign at the Newport Road end naming it as "Prospect Place - Footpath to Park Lane", that has recently had the reference to it as a footpath covered. Another mentioned only seeing a notice about dog-fouling.

Most users indicated that they did not know who owns the route. Some reported knowing that the section from Newport Road is owned by North Devon Council, or believed that the section from Park Lane is in the ownership of the adjoining Eppleton House properties on Prospect Place. One indicated that it was 'unadopted' and others referred to the deeds of adjoining properties, including Land Registry records, showing that the route was subject to a right for the public as well as the owners and neighbours "to pass and repass with or without vehicles at all times", recorded by a conveyance in 1987.

Some of the users provided additional information with a range of further details relating to their own use of the route, referring also to long use by other members of their families and local people, particularly to get to the school. Some referred to other information about its historical use, which they believed supported their views that it had always been a public right of way and should not be obstructed.

1.3 Landowner and Rebuttal Evidence

From the consultations, North Devon Council provided information about their ownership of land on Prospect Place and indicated that they own the first 70 metres of the route itself from the Newport Road end, but no landowner evidence form was submitted to provide further information. Other owners of adjoining properties at the Park Lane end of the route submitted landowner evidence forms with further details in connection with their ownership and some of them provided additional information relating specifically to their knowledge of the route and its use.

The owner of **Inglenook**, on Park Lane adjoining the route at that end indicated that she had owned the property since 2008, but it had been owned by her parents since 1986. She believed Prospect Place to be a public right of way and had seen people using it, but had never required them to ask permission. She did not indicate whether she had made a Section 31(6) deposit for protection against claims to record it as public and had never turned anyone back or stopped people from using the route, or told them that it was not public. She had never put up notices or signs to state that it was not public, or obstructed it, referring only to the locked bar across it at Park Lane adjoining her property that had space at the side to walk past.

She provided further personal and historical background information in support of her view that the route should be recorded as a public right of way and not obstructed. It included a copy of a statutory declaration from 1986 by the previous owner in connection with private access to the property from Prospect Place. It stated that she had seen the route being used frequently by the public passing between Park Lane and Newport Road and by children going to Park School throughout her ownership of the property since 1970.

The owners of **3 Prospect Place** at the Park Lane end opposite Inglenook also submitted a landowner evidence form. They had owned the property since February 2008 and

considered that it included the section of the route adjoining them and their neighbours. They were not sure about whether they believed it to be public, which they were trying to ascertain. They had seen neighbours using the route often and children twice a day going to and from Park School, with other more limited use by the public. They had not required anyone to ask permission, as they did not know if people were supposed to ask and had not made a Section 31(6) deposit. They reported having twice asked children to find another way to Newport Road and having asked the head teacher of Park School to tell the pupils that the route was private. They had also discussed it with the police and informed others that it was private, where relevant.

They said that they had put up a "Private Lane" notice, but there were old signs saying "Private Property, No Parking" and they were planning to replace another that had been defaced. They referred to a locked gate at the Park Lane end, which they said people could climb over or duck under. In additional information they said that they objected to people using the route because of having to deal with incidences of litter, graffiti and the threat of criminal activity or damage and public safety. They referred to other routes nearby that the public could use which were better lit and surfaced, saying that they had been in contact with the police and Park School to help in dealing with the situation.

A landowner evidence form was submitted on behalf of the Forget Me Not Project, owners of the next door property, **4 Prospect Place**, which provides accommodation for people with learning disabilities. The Treasurer/Secretary reported that they had owned the property for 23 years. She believed that the route was a public right of way and had seen constant use by members of the public. They had never required people using it to ask permission, had not made a Section 31(6) deposit and had never turned anyone back or stopped people from using the route, or told them that it was not public. They had never put up notices or signs to state that it was not public, or obstructed it, referring only to the locked barrier across it at Park Lane.

The residents of **2 Eppleton House, Prospect Place** did not submit an evidence form, but sent a letter with information about the route. They reported their belief that it was private, for access by other residents of the neighbouring properties and for services. They said that there had always been a locked barrier to prevent access by the public, for which the residents had a key and that there had been signs stating that it was private which had been destroyed.

They did not give detailed information relating to any actions taken in connection with its use by the public, but reported similar problems for residents in having to deal with the issues of criminal damage and safety referred to by their neighbours. They also did not see the necessity of recording it as a public right of way when there are other routes available for access to Park Lane.

1.4 Summary and Conclusion – Dedication under Statute and Common Law

Statute Law – Section 31, Highways Act 1980

The investigation into recording the route as a public footpath was reported to the last committee meeting as part of the general review process. It was not in response then to any formal application or particular event at a specific date acting as a significant challenge to its use. The fence and locked gate were erected a month before the meeting and resulted in the submission later of additional user evidence, with further user evidence submitted more recently, including in support of the formal application.

Section 69 of the Natural Environment and Rural Communities Act 2006 has clarified the position on a Schedule 14 application providing an event that can be taken to have called the public's right to use a route into question for the purposes of Section 31 of the Highways Act

1980. However, that is only if there is no other more significant event or action previously that may have led to the application being made. The application for this route to be recorded as a public footpath was submitted in January 2010 in response to such a specific earlier event.

The adjoining owners indicated in September 2009 that they were planning to erect a new gate, which later user evidence indicates was put up early in October 2009 and led to the submission of further evidence and then the application. It does provide an earlier specific event acting as a challenge to use of the route, directly as the result of a significant action taken by an adjoining owner to prevent access to it on foot. There is, therefore, evidence of a previous action by a landowner having called into question use of the route for consideration under statute law. It means that use in the 20 years up to 2009 can be considered for that purpose, with the period for consideration under statute law from October 1989 to October 2009.

Considering evidence of use by the public during that period, there were forms relating to use by 48 people submitted previously and supporting the application. Of those, nine were from people who had only used the claimed route before 1989, before the period in consideration, most of them in connection with going to the school when younger. Eight were from former residents or current owners of properties adjoining the route, whose use will have been mainly private rather than as the wider public. One was from somebody who used it for visiting adjoining properties for deliveries or services connected with their work, which is also private use. There is, therefore, evidence of use by 30 people overall as the wider public to take into account for the 20 year period from 1989 to 2009.

All of those users specified that they had used the whole route between Newport Road and Park Lane, with none indicating that they used only part of it. Most of the users indicated that they had used the route for pleasure, or for access to shops and other services, particularly in the Newport area and elsewhere in Barnstaple, as well as to Rock Park. Most of them reported having used the route for 20 or more years and mainly between once or twice a week, more than 50 times a year to daily, more than 300 times a year, although some did not specify how often.

Examination of the evidence suggests that it is clear in representing use of the route by a significant number of people as the public for the required 20 years to be sufficient for statutory presumption of dedication as a public right of way to support the recording of the route as a public footpath. There is considered to be insufficient evidence of substantial and overt actions taken by the landowners, including the owners of adjoining properties, during the 20-year period to negate it by making it clear to people using the route that they did not intend to dedicate it as public. There was no evidence suggesting that North Devon Council has ever done anything to prevent people using the section of the route in its ownership from the Newport Road end on foot, indicating in a name sign that it was a footpath to Park Lane.

The concerns of the adjoining owners on one side at the Park Lane end appear to be more about having to deal with problems associated with its use by the public, particularly by schoolchildren. They reported challenging some users during their ownership in the previous 18 months, referring particularly to suggesting that children should use an alternative route to the school. They indicated that they had painted "Private Lane" on the existing gatepost, but only in the month before the fence was erected and referred to an older existing sign saying "Private Property". However, it also says "No Parking" and is above nearby garages alongside the route, which indicated that it is aimed at preventing those from being blocked by unauthorised car parking and cannot be interpreted as suggesting that it was to prevent users from continuing past them on foot. The locked barrier at that end was a bar, which was said to have been in place since at least the early 1970s, but also appears to have been aimed at preventing vehicular use and did not prevent pedestrian use with a gap alongside it sufficient to pass on foot.

Common Law

All of the user evidence, as submitted earlier and more recently, can also be examined in relation to common law, in conjunction with historical and other documentary evidence. As indicated in the previous report, historical mapping shows that the route has existed physically on the ground as a lane between Newport Road and Park Lane from at least the early 19th century. Later mapping has recorded it in the same way until the present. Some of the evidence suggests that it may have been considered to be public later and has been available for use since then, but no more significant historical evidence in support of public status has been found.

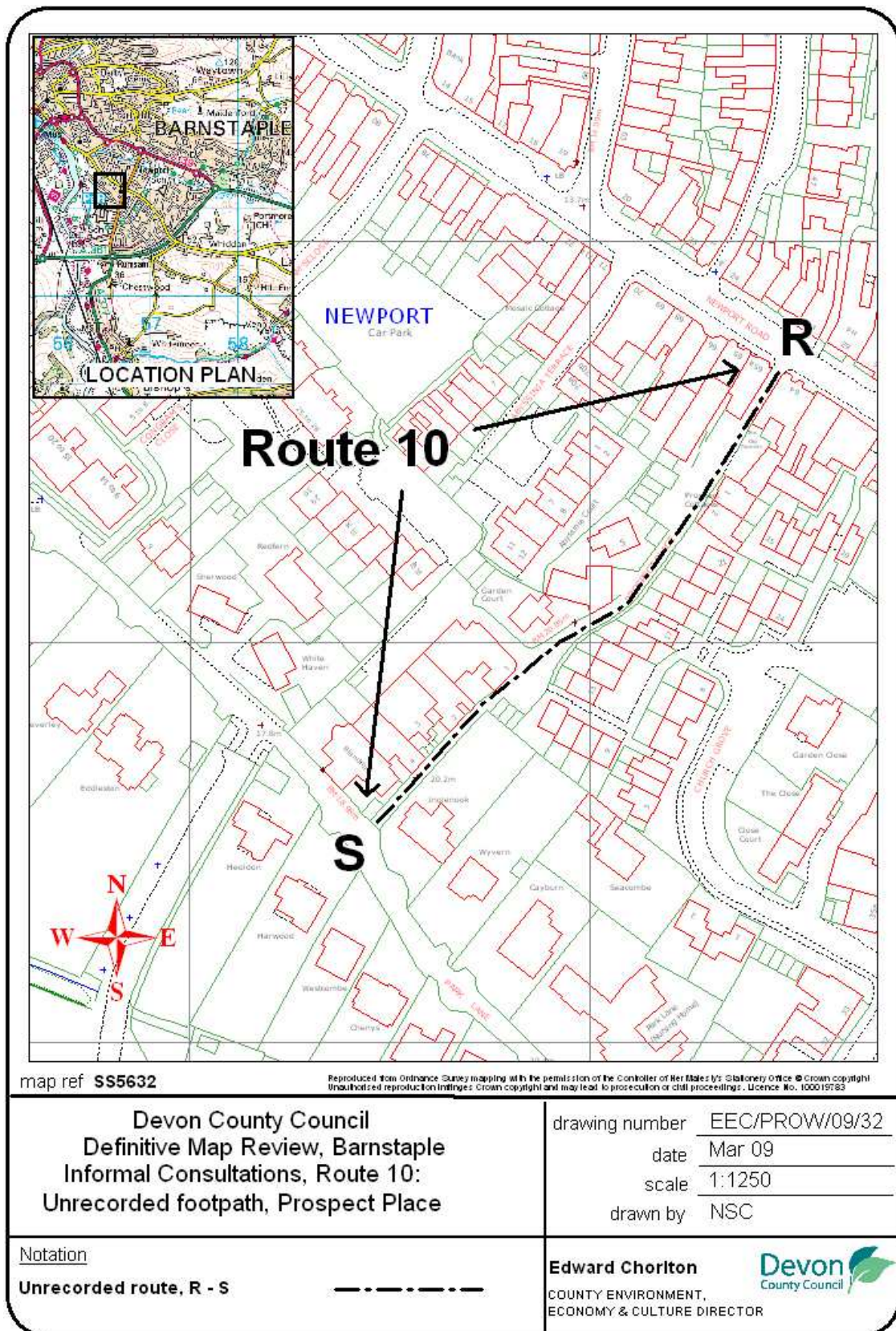
The earliest specified date of the user evidence submitted is from the 1920s and 1930s by up to six people and up to 20 people have used it in each decade between the 1940s and 1980s. That increased to more than 30 people through the 1990s to a level up to 2009 that has been considered sufficient in relation to the statutory 20-year period. There is evidence, therefore, of continuous and uninterrupted use of the route up to 2009. The frequency of use varied, where specified, but half of the users indicated using it from once or twice a week to daily, or more than once a day. It suggests that use by the public was sufficiently high throughout the period for the owners to have been aware of it and to take actions to prevent it if they wished to do so and show that they did not acquiesce. No such actions were reported by users in their evidence forms until the recent events, particularly leading up to the erection of the fence and gate, with no substantial evidence of earlier actions taken to deter or prevent use.

In particular, the name sign at the Newport Road end shows that North Devon Council accepted its use as a route on foot through to Park Lane. The main use of the route from that end is for vehicular access to all of the properties up to near Park Lane and there is no evidence that North Devon Council had taken any actions to prevent additional use on foot. The sign at the garages near the Park Lane end is relatively recent and was intended to prevent their obstruction by parked vehicles rather than more widely to deter use on foot and the barrier was to prevent vehicular access from Park Lane, but not pedestrians. There has been street lighting along the whole route since at least the early 1970s, including on the section not used by vehicles, which will not have been put in if the route was considered to be private with no public use. The Statutory Declaration from an adjoining owner is significant evidence of earlier acceptance that the public were using the route from 1970, well before the 20-year period. It suggests that landowners had accepted its use by the public and there is no evidence of earlier or later significant actions aimed to deter or prevent the public from continuing to use it on foot, until recently.

Considering the user evidence in conjunction with all other evidence available and submitted, including historical and landowner evidence, dedication at common law with a status of footpath can be inferred. Historical evidence suggests that the route provided access between Newport Road and Park Lane and was considered to be available for public use from before the middle of the 19th century until recently, but with no stronger and more conclusive supporting evidence. It may have been used by vehicles historically, but no evidence has been found in support of higher status to include public vehicular rights beyond its current private use for access in vehicles from the Newport Road end. There is sufficient evidence to infer earlier dedication and that landowners have acquiesced to its use as a public right of way with the public accepting the dedication and continuing to use it on that basis, on foot, until its recent obstruction.

In the light of this assessment of the evidence submitted, in conjunction with the historical evidence and all other evidence available, it is considered reasonable to allege that a public right of way subsists on the route with the status of a footpath. From consideration under both statute and common law there appears, therefore, to be a sufficient basis for making an

Order in respect of the route to record it as a public right of way. Accordingly, the recommendation is that an Order be made adding the route to the Definitive Map and Statement as a footpath.



Barnstaple Definitive Map Review, Committee Report extracts for Route 10 – Prospect Place, Barnstaple

2. Routes 2, 4, 5, 6, 7, 8, 9 and 10, unrecorded routes between points C–D shown on drawing number EEC/PROW/09/28; G–H and J–K shown on drawing number EEC/PROW/09/30; L–M, L–N, N–O and P–Q shown on drawing number EEC/PROW/09/31; and R–S shown on drawing number EEC/PROW/09/32.

Recommendation: It is recommended that no Modification Orders be made in respect of Routes 2, 4, 5, 6, 7, 8, 9 and 10 for adding them as public rights of way to the Definitive Map. Route 2 should be added to the list of maintainable highways as an adjoining footway and consideration be given to recording the other routes as public footpaths by Creation Agreements, or Creation Orders where landowners cannot be identified, under delegated powers.

2.1 Background and Description of the Routes

Several routes in various parts of Barnstaple had been identified since the late 1960s, mainly by the Town Council, as not being recorded as public rights of way. Details of suggestions that their public status should be considered for recording put forward from earlier review processes which were not completed were kept on file. Some of those appear to have been made in response to the perceived threat that they may have been lost then through proposed building as part of planned developments in the town. No user evidence was submitted in support of the suggestions, which were not all put forward as stronger claims then or later and no other more formal applications were made in respect of any of the routes.

More unrecorded routes were identified as part of preparations for the current review or from queries and have been included with some of those suggested previously. Others had either been resolved subsequently under planning procedures and were no longer relevant for the current review process, or were considered not to have a prima facie case for further investigation.

...

Route 10 – Newport

This is a narrow lane, Prospect Place, which runs between buildings from Newport Road (point R) and is named with a sign identifying it as a footpath to Park Lane. It has a cobbled and tarmac surface providing vehicular access to several adjoining properties and garages, with street lighting. It continues as a much narrower lane with a rougher surface running between properties to end on the road at Park Lane (point S). Until recently there was a wooden fence post with a metal bar gate locked to prevent vehicular access from the Park Lane end, but leaving a gap that allowed access on foot.

2.2 The Definitive Map and Statement, Historical and Recent Maps and Aerial Photography

None of the routes were included with those surveyed originally by the Borough Council in the 1950s for putting forward as public rights of way and they are not recorded on the Definitive Map and Statement. Most of them are not shown on the County Council's earlier

and current record of maintainable highways, but Route 2 is shown on earlier records from before 1974 for Barnstaple Borough as included within the area of liability for maintenance of the road.

Early maps do not show the routes, particularly at smaller scales, although they do not all record footpaths or bridleways at such a small scale and particularly in built-up areas. Those include the Ordnance Survey surveyors' drawings of 1804–5 and the original 1st edition 1" to the mile map on which they were based, published in 1809, with the later Greenwood's map of 1827 based on them, as well as later small scale Ordnance Survey and Bartholomew's editions.

Later maps at larger scales show some of the routes in more detail. Tithe Maps from the 1840s for their respective areas of Pilton, Barnstaple and the Borough of Newport, then in the parish of Bishops Tawton, do not show all of them. ... Route 10 is shown as a lane open to the roads at each end, enclosed and with adjoining properties. Routes 4 and 10 are shown coloured in the same way as all roads. However, they were not labelled as public and included those which are now recorded as public as well as others which were more likely to have been private access to properties or adjoining land and some not now existing.

Ordnance Survey 25" to a mile 1st and 2nd map editions of the later 1880s and early 1900s show the areas built up and developed later, including with the railway lines. ... Route 10 is shown in the same way as on the Tithe Map, open to Newport Road and leading the properties but with a line across the Park Lane end suggesting that it was closed off then, perhaps with a gate.

The maps used for the Finance Act 1910 records show ... Route 10 ... excluded from adjoining land and properties between the two roads, which are shown in the same way suggesting that it may have then been considered to be public.

Aerial photography from 1946–9 shows Route ... 10 ... as being open and available for use by the public at that time ...

Various later Ordnance Survey mapping editions from between 1957, 1964, 1971 and 1987 show Route 10 ... in 1957 and 1964 in the same way as in previous editions as an enclosed lane, named as Prospect Place and closed off at Park Lane suggesting that there was still a gate at that end up to that date.

More recent aerial photography from 1999–2007 [shows] Route 10 ... having remained as an open surfaced lane connecting the two roads.

2.3 Definitive Map Reviews and Consultations

There were suggestions in the previous uncompleted reviews only for Routes 2, 4 and 5 to be considered for recording as public rights of way, with the others identified as unrecorded routes in the current review process. They were all included in the consultations on the basis of the previous suggestions, or from identification as unrecorded routes that appeared to be used currently by the public and queries about status. There were no specific responses, apart from the Ramblers' Association in support of Route 2 with a minimal amount of supporting user evidence and from adjoining landowners on Routes 4, 5 and 10.

2.4 User Evidence

There was no user evidence submitted in support of the earlier suggestions for any of the unrecorded routes and only a few evidence forms have been received in the current review, for Routes 2 and 10. ... Only two user evidence forms were submitted for Route 10, one

relating to use only between 1949–57 and the other from 1950 to the present. Both of them reported use mainly when younger for going to and from the Park Grammar School, which has had an entrance in Park Lane since the 1950s, with only one indicating later use. No user evidence was submitted for any of the other unrecorded routes in the current review, or as a result of the consultations.

2.5 Landowner Evidence

From the consultations, landowner evidence was submitted only by two owners of properties adjoining Routes 4 and 5 and by some of the owners on Route 10. ...

Landowner evidence forms were submitted by several owners of properties on and near Route 10, some of them with additional information relating to other aspects of their knowledge of and attitudes to its use. Some of the owners of adjoining properties at the Park Lane end indicated that part of the route was included in their ownership. They were aware of it being used, mainly by children going to and from the school and referred to their concerns from experiences of criminal activity, vandalism, graffiti and litter resulting from its use. They had not stopped anyone from using it, but referred to notices put up to say that it was private, reporting that there had been a locked barrier. That had been removed and they were planning to put up another gate to prevent any use, to keep it as a private lane. The owner on the other side of the route provided information relating to its use by the public, which she believed should continue and not be prevented by any barrier. North Devon Council indicated that it owned a section of the route from the Newport Road end, but did not provide any further evidence relating to its ownership or status.

No landowner evidence was submitted for the other routes, some of which were believed to be owned by Barnstaple Town Council and North Devon Council, particularly in the Rock Park area.

2.6 Summary and Conclusions

The suggestions that these routes should be recorded as public rights of way were not made by formal applications, or as the result of any actions taken by landowners to obstruct or prevent access to and use of them from any specific date. They have been identified previously and more recently as not recorded as public, but not in response to any specific or significant event that may have called their use into question. There were no reports from anyone using them about obstruction preventing their use or seeing any signs or notices saying that they should not use them.

There is, therefore, no evidence of any significant actions by a landowner having called into question use of the routes at any specific time for consideration of user evidence under statute law. Ownership of most of the routes appears not to be registered, except part of Route 10 and for some there may be no owner to challenge their use and to show that they did not intend to dedicate them as public rights of way. There is no user evidence for most of the routes, so that they can only be considered in relation to common law, in conjunction with historical and other documentary evidence with evidence of use, where available.

There is support from older historical maps and more recent mapping only to show that some of the routes, or parts of them, have existed since at least the middle of the 19th century, particularly Routes 4 and 10. ... Some of the evidence suggests that the earlier routes may have been considered to be public and have been available for use since then, but no more significant historical evidence in support of public status has been found.

There is no direct evidence of use for most of the routes continuing to the present, apart from a minimal amount for Route 2 and Route 10, from which use can be assessed as to whether

it is sufficient to suggest that the owners were aware of it and to indicate that they may have acquiesced. An intention to dedicate cannot, therefore, be inferred from the earlier period and more recently that the routes may have been accepted as public and used on that basis. There is only anecdotal and reported evidence of their reputation for previous and continuing use by the public, but no more substantial and actual evidence of use has been submitted.

Considering the user evidence in conjunction with all of the other evidence, including historical and landowner evidence, dedication at common law with a status of footpath cannot be inferred for any of the routes. There is insufficient evidence to suggest that the landowners intended to dedicate the routes as public rights of way and that the public accepted the dedication and have used them on that basis. It is in the light of this assessment of the evidence submitted, in conjunction with the historical evidence and all other evidence available that it is not considered reasonable to allege that a public right of way subsists on any of the routes.

From consideration under common law there is, therefore, no sufficient basis for making Orders in respect of any of the routes to record them as public rights of way. Accordingly, the recommendation is that no Modification Orders should be made adding the routes to the Definitive Map. ...

**Public Rights of Way Committee
9th November 2009**

Barnstaple Definitive Map Review – update on Route 10 for committee report
(presented as an oral report to the committee)

Since the report was written, a fence and a locked gate have been built across Prospect Place by the owners of adjoining properties which is now obstructing it and preventing its use. That can be taken as a direct challenge to use of the route and has called its use by the public into question. As a result, more evidence of use has now been submitted. The 20 year period for the statutory test is from 1989–2009 and evidence forms have been received from 17 people. Two of them are from well before the 20 year period and two are from adjoining property owners whose use is considered to be private, so there is use by 13 people on foot. The evidence is considered sufficient on initial investigation at face value to meet the required test of public rights being reasonably alleged to subsist on the route, so that it should be recorded as a public right of way. So the recommendation is now that a Modification Order be made to record the route as a public footpath.