

**Definitive Map Review
Parish of Bradworthy**

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 no Modification Order be made in respect of the Schedule 14 Application submitted by the Trail Riders Fellowship to upgrade Bridleway No. 14, Bradworthy to a byway open to all traffic.

1. Summary

The report deals with the Definitive Map Review in the parish of Bradworthy in Torridge and a Schedule 14 application made by the Trail Riders Fellowship (TRF) to upgrade Bridleway No. 14 to a byway open to all traffic.

2. Background

The original survey, under s. 27 of the National Parks and Access to the Countryside Act, 1949, revealed 12 footpaths and 1 road used as a public path (RUPP) in the parish of Bradworthy, which were recorded on the Definitive Map and Statement, Bideford Rural District, with a relevant date of 1 July 1958.

The Limited Special Review of RUPPs carried out in 1972 resulted in the redesignation of the RUPP to a public bridleway. This route is the subject of the Schedule 14 application referred to below.

The following order has been made within the parish:

Footpath No. 10, Bradworthy Public Path Diversion Order 1999.

3. Review

The current Review began in September 2009 with a public meeting held prior to a parish council meeting. Public consultations were carried out and the review was advertised in the parish and local paper.

The responses were:

County Councillor Barry Parsons	-	no comment
Torridge Devon District Council	-	no comment
Bradworthy Parish Council	-	no comment
British Horse Society	-	no comment
Byways and Bridleways' Trust	-	no comment
Country Land & Business Association	-	no comment
Open Spaces Society	-	no comment
Ramblers' Association	-	no comment
Trail Riders' Fellowship	-	Schedule 14 application

Devon Green Lanes Group

- no comment

The only proposal that requires determination in Bradworthy parish is the Schedule 14 application which seeks to upgrade Bridleway No. 14 to a byway open to all traffic. This is considered in the appendix to this report.

4. Conclusion

The Definitive Map review for the parish of Bradworthy has now been completed.

It is recommended that no order be made in respect of the Trail Rider Fellowship application. Should any valid claim be made in the next six months it would seem sensible for it to be determined promptly rather than be deferred.

5. Financial Considerations

There are no implications.

6. Sustainability Considerations

There are no implications.

7. Carbon Impact Considerations

There are no implications.

8. Equality Considerations

There are no implications

9. Legal Considerations

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

10. Risk Management Considerations

There are no implications.

11. Reasons for Recommendation/Alternate Options Considered

To progress the parish by parish review of the Definitive Map in the Torridge area.

Chris McCarthy

Electoral Division: Bideford South & Hartland

Local Government Act 1972

List of Background Papers

Contact for enquiries: Alison Smith

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Background Paper

Date

File Ref.

Correspondence file: Bradworthy

2008 -2009

AS/DMR/BRA

mj130510pra
sc/map review bradworthy
2 200510

Schedule 14 Application to upgrade Bridleway No. 14, Bradworthy to a byway open to all traffic.

Recommendation: That no order be made.

1. Basis of Claim

Common Law presumes that a public right of way exists 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.

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.

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

[ii] that a highway shown on the map and statement as a highway of a particular description ought to be there shown as a highway of a different description;

Wildlife and Countryside Act 1981, Section 56[1] – 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.

2. Application

The Trail Riders Fellowship submitted the application shortly before enactment of the Natural Environment and Rural Communities Act 2005 (NERC). It was placed on file to be determined as part of the general parish review of the Definitive Map. The application is incomplete as they failed to serve notice on the landowners as required by the Schedule.

3. Description of Route

The route starts near the old Bradworthy Mill at point A on plan no. ECC/PROW/10/40 and proceeds generally southwards for approximately 500 metres along a rough track to join the county road opposite Little Ford at point B. The route is signed as a 'Public Bridleway'.

4. Background

During the Limited Special Review carried out by the County Council in the early 1970s Bradworthy Parish Council requested that RUPP No. 14 be re-designated as a bridleway.

Consultations were carried out with Holsworthy Rural District Council who supported the redesignation and the proposal was subsequently approved by the County Council's Roads Committee in 1972. The Draft Revision Map and Statement was advertised in the London Gazette, local press and displayed on Bradworthy Parish Notice Board as required by the regulations. No objections were raised and the route was duly confirmed as Bridleway No 14.

5. Documentary Evidence

Bradworthy Tithe Map 1841

Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 by surveyors employed by the local landowner. The Tithe Map for Bradworthy shows the claimed route as a hedged lane from the north passing through two fields, then as an unfenced track through a further 2 fields. No routes on this tithe map were coloured to distinguish between public or private status.

Ordnance Survey Mapping

The first depiction of the route on Ordnance Survey mapping is on the OS 1880s 1st Edition 6" to mile map. The map contains the standard disclaimer that depiction of a route is no evidence of a public right of way.

The route is also shown on later OS mapping.

6. User Evidence

No user evidence has been submitted in support of the claim.

7. Discussion

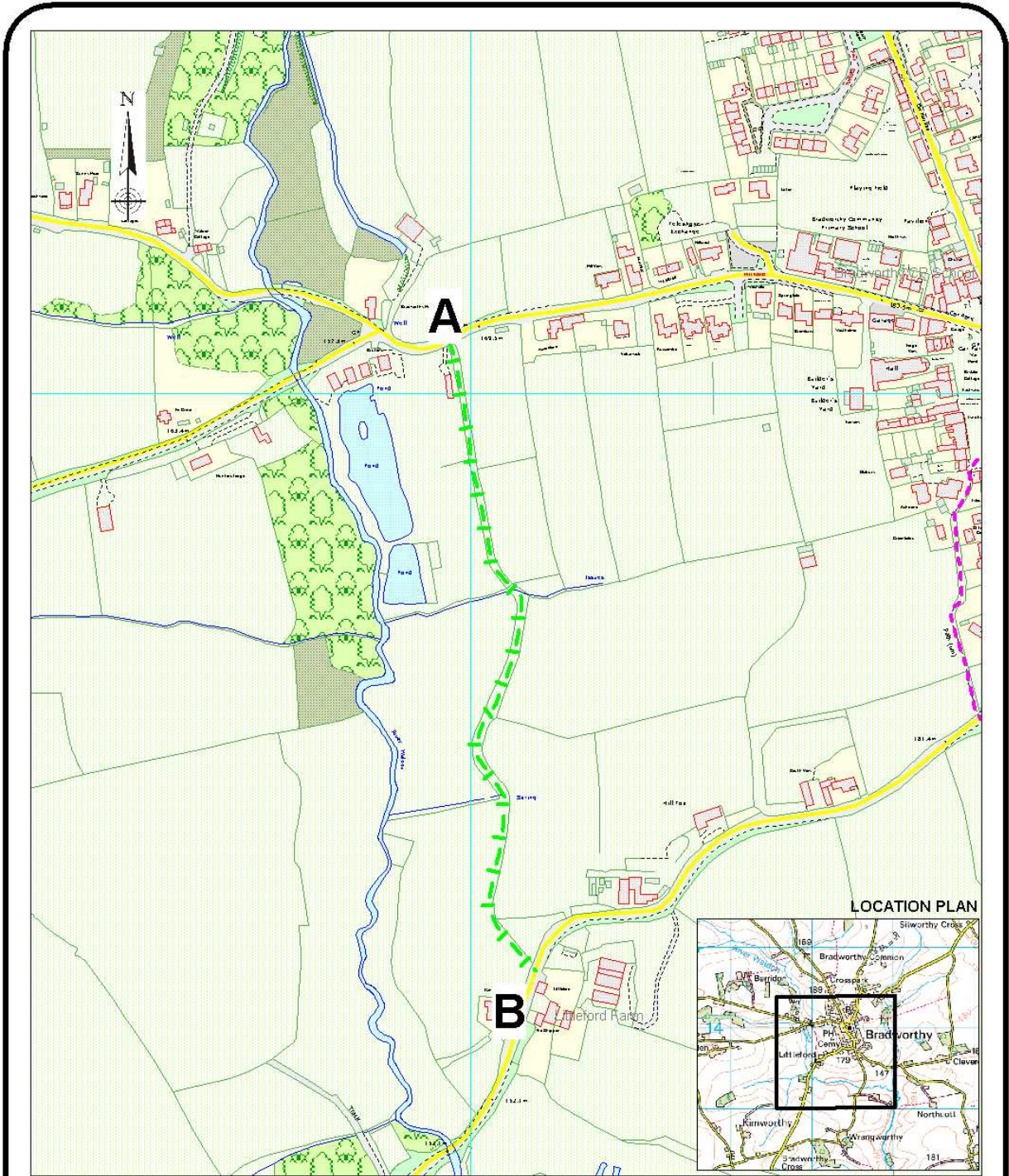
With no user evidence having been submitted the only supporting evidence for the claim is the historic mapping – Tithe Map and Ordnance Survey mapping.

Although the route is shown on the Tithe and Ordnance Survey maps, the documents merely confirm the physical existence of the route and do not provide evidence of sufficient weight to suggest that the current status of bridleway is incorrect.

There is also nothing to suggest that the redesignation of the route to bridleway status in the 1970s Limited Special Review was flawed. All the procedures were correctly followed and no objections made.

8. Conclusions

There is insufficient evidence to justify the making of an order to upgrade Bridleway No. 14, Bradworthy to a byway open to all traffic.



map ref **SS2317**

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**Schedule 14 Application
Upgrading of Bridleway No. 14, Bradworthy
to a Byway Open to All Traffic**

drawing number **EEC/PROW/10/40**

date **April 2010**

scale **1:10,000**

drawn by **AS/DMR/BRA**

Notation

Bridleway No. 14 (A - B) **— | — |**

Chris McCarthy

EXECUTIVE DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE

