

**Schedule 14 Application:
Claimed Footpath between Peter Street and Back Street, Bradninch**

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 to add a public footpath to the Definitive Map and Statement along the line A - B as shown on plan ED/PROW/10/43.

1. Summary

This report relates to a Schedule 14 Application made by Bradninch Town Council to record a public footpath from Peter Street to Back Street adjacent to the Gospel Hall in Bradninch. Back Street is recorded on the Definitive Map and Statement as a Byway Open to all Traffic No.13, Bradninch. The application from Bradninch Town Council is supported by evidence of use from 11 people.

2. Background to Application

The application was made by the Bradninch Town Council when the path was blocked by the late Mr H Milton, an adjacent property owner, in August 2003. Mr H Milton claimed ownership of the lane and a small triangle of land to the rear of Gospel Hall. The obstruction was subsequently removed and determination of the application was put in abeyance.

In September 2009 a planning application was submitted by Mr C Milton, son of Mr H Milton, to develop the rear of No.10 High Street which backs onto the claimed footpath, together with the triangle of land to the rear of the Gospel Hall. Bradninch Town Council objected to the planning application and drew attention to the unresolved footpath claim. The planning application has been temporarily withdrawn pending clarification of land ownership.

3. Consultations

Consultations on the application took place in March 2010, with the following responses:

County Councillor John Berry	-	no comment
Mid Devon District Council	-	advise of a potential renewal of a planning application
Bradninch Town Council	-	support the route
British Horse Society	-	no comment
Byways & Bridleways' Trust	-	no comment
CLA	-	no comment
The Devon Green Lanes	-	no comment
Open Spaces Society	-	no comment
Ramblers' Association	-	no comment
NFU	-	no comment
Trail Riders' Fellowship	-	no evidence to put forward to support the claim

4. Conclusion

The claim is considered in detail in the appendix to this report.

It is recommended that an Order be made to record the route as a public footpath on the Definitive Map and Statement as shown on plan No. ED/PROW/10 /43.

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 Recommendations/Alternate options

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

Chris McCarthy

Electoral Division: Cullompton Rural

Local Government Act 1972: List of Background Papers

Contact for enquiries: Mike Jenkins

Telephone No: 01392 38 3240

Background Paper	Date	File Ref.
Correspondence file: Bradninch	2003 - 2010	ES/DMR/Bradninch

es100510pra
sc/peter st-back st
2 hq 200510

1. Description of the Route

The claimed footpath starts at Peter Street in between No.6. Peter Street and the Gospel Hall. It proceeds in a generally south westerly direction over a surfaced path with 8 long steps. At the rear of the Gospel Hall in Back Street the path continues behind the houses 6, 8 and 10 High Street and joins byway open to all traffic no.13 in Back Street. The path is approximately 2.0 metres wide and 30 metres long.

The claimed route is shown below.



2. Basis of Claim

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 53 (3)(c) enables the Definitive Map and Statement to be modified if the County Council discovers evidence which, when considered with all relevant evidence 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 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 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.

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.

3. Documentary Evidence

Ordnance Survey Mapping

The claimed route is shown on the Ordnance Survey county series 25 inch first edition map of 1880 - 1890 and the second edition 25 inch 1904 -1905.

Later post war mapping from 1970 shows the route with steps as does current mapping.

4. User Evidence

Evidence of use from 11 people has been received, including one statutory declaration, in support of claimed footpath.

The statutory declaration from John Ayres states that he used the route between 1950 and 2003 when he made the declaration. He used the path 25 plus times a year for pleasure from home to the shops and walking the dog. He mentions that the route was always open with no gates or signs until 2003. Then a temporary fence was put up with a danger sign at each end. Mr Ayres added on a separate sheet "The footpath runs for approximately 25 metres between a house and a garden wall which is owned on one side by Mr H Milton and on the other side by the Gospel Hall. The barriers to deny access were erected by Mr Milton as there is allegedly some danger to the public from loose items associated with the roof of his property. I have personally used the path whilst walking my dog and going to the shops etc over many years".

Another local resident, Mrs Johnson, who ran an ironmongers in Fore Street used the route from 1950 to 1965 on foot for pleasure and deliveries. In response the question 'Why do you think the path is public?' she replies "It is part of the history of the town" Mrs Johnson has not been given permission to use the path or prevented from using it.

Mr & Mrs Taylor who formerly lived in Fore Street from 1972 - 1989 and then in the local post office from 1989 - 1996 used the path hundreds of times visiting friends going from home to the shops, post office and the bus. Mrs Taylor says "everyone I knew used it freely". Neither Mr nor Mrs Taylor had been prevented from using the route or given permission. They had not seen any gates, signs or obstructions and said they presumed the land was publicly owned. Mrs Taylor says "this is a short right of way to one side of a chapel down a hill with steps. When I lived in Fore St 1972 - 89 I walked this route for pleasure & a change.

Between 1989 and 1996 I lived in the post office the back entrance was in Back Street so if I wanted to go the shops I walked up Back Street and then up the steps to Peter Street daily”.

Simon Taylor completed his user evidence form in February 2005 and gives details of his use of the route between 1980 and 1995. Between 1980 and 1989 he used the route about 20 times a year and from 1989 to 1995 daily from home to the town centre. He says that the path “has been open to the public as long as I can remember” He has never been challenged or turned back when using the route.

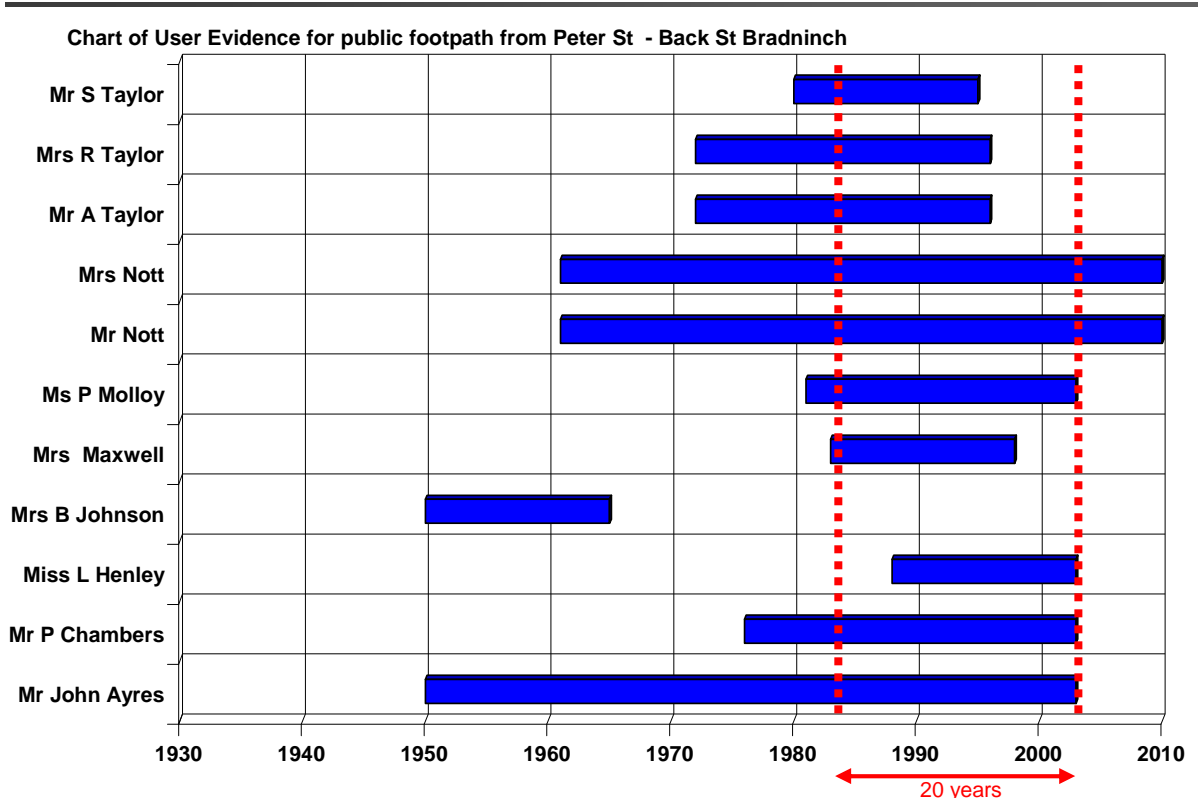
Mr & Mrs Nott completed one user form in June 2003 and a further one in May 2010 clarifying some points. They have used Back Lane and the route since 1960/1 every day on foot and in a vehicle. They think it is public as it has been used “all my lifetime. 62 years +”. In response to the question ‘Have there to your knowledge ever been on the path any other obstructions?’ the Nott’s have written “steps outside the hall, left hand side closed on a whim by Mr H Milton”. They continue by stating “Public land always in my time. Family used from 1910”. The Notts mention that they had not been given permission to use the route but Mr Milton had told them not to use it. They say that Mr Milton always said the “L hand steps was his land”. They have added “We lived in Back Lane from 1959 to 1990. It was used all the time by cars and people walking it. For ourselves we lived in the lane and used it morning, noon & night. At times Mr Milton tried to stop us walking up or down the lane, however he was totally out of order”.

Mr P Chambers says he has used the route once or twice just walking for pleasure for 27 years from 1976 to 2003. He adds that it has been open to public use all this time and was recently blocked by scaffolding hence the application for it to be kept open. He had not been given permission to use the route nor was he ever stopped or turned back. He says the route “has been used by the public for years”.

Miss Henley of Bradninch says she used the claimed route from 1988 to 2003 between 12 - 15 times a year. She states that she was walking from Fore Street to Peter Street or visa versa. She said she used it as it was part of Back Street and because local people used it often. She adds that some orange netting (like builders/roadmen use) used latterly as an obstruction.

Mrs Maxwell said she used the route from 1983 to 1998, roughly 30 times a year going from Peter Street/Beacon Road from Westend Road on foot for pleasure. Mrs Maxwell states on her form that “As far as I am concerned a public path is for public use” she adds “I have never been aware that this path is anything other than a public footpath and I used it frequently with my children”. Mrs Maxwell was never stopped or challenged when using this route.

Ms P Molloy, another local resident from Peter Street said they used the route from 1981 until the barrier was put in place between 30 - 40 times a year going to the post office or to visit friends. She describes the route as “Peter Street between Gospel Hall and number 6 Peter Street” and ends at “Back Lane”. She goes on to say that until some bricks fell out of the wall of 6 Peter St, it was always open and used. She adds “during this period when bricks were out of wall a metal barrier was put up but it was removed after wall was repaired”.



5. Landowner Evidence

The late Mr H Milton, who owned No. 6 Peter Street and No.10 High Street, claimed ownership of the route and the triangle of land to the rear of the Gospel Hall. However, he declined to submit any evidence to prove title and was reluctant to come to terms with recording the public footpath. The claim for the footpath was kept on file until the Autumn of 2009 when a planning application was submitted to Mid Devon District Council by Mr C Milton to develop the rear of No.10 High Street and a part of the claimed path. Mr C Milton is the son of Mr H Milton who passed away in 2008.

Searches carried out with Land Registry have revealed that neither No. 6 Peter Street nor No.10 High Street extend beyond the walls of the properties. The lane has no recorded ownership.

The triangle of land to the rear of the Gospel Hall is also unregistered, but Mr Milton is currently entering into the process of caution of first registration with Land Registry. Mr Milton has been advised that although the County Council has no interest in this triangle of land any works or fencing should not impede or cause danger to pedestrians. Mr Milton has made no objection to the claimed footpath.

6. Discussion

Ordnance Survey mapping confirms that the route of the claimed footpath has existed for over 100 years but the steps would appear to have been added at a later date.

The eleven users indicate frequent use of the path for over the 20 year period before it was called into question in 2003. Initially the closure was for repairs to the adjacent property No. 6 Peter Street, but Mr Milton was reluctant to remove the barriers until a utilities workforce removed them later that year. Bradninch Town Council submitted the Schedule 14

Application in August 2003 and continues to support the recording of the path on the Definitive Map.

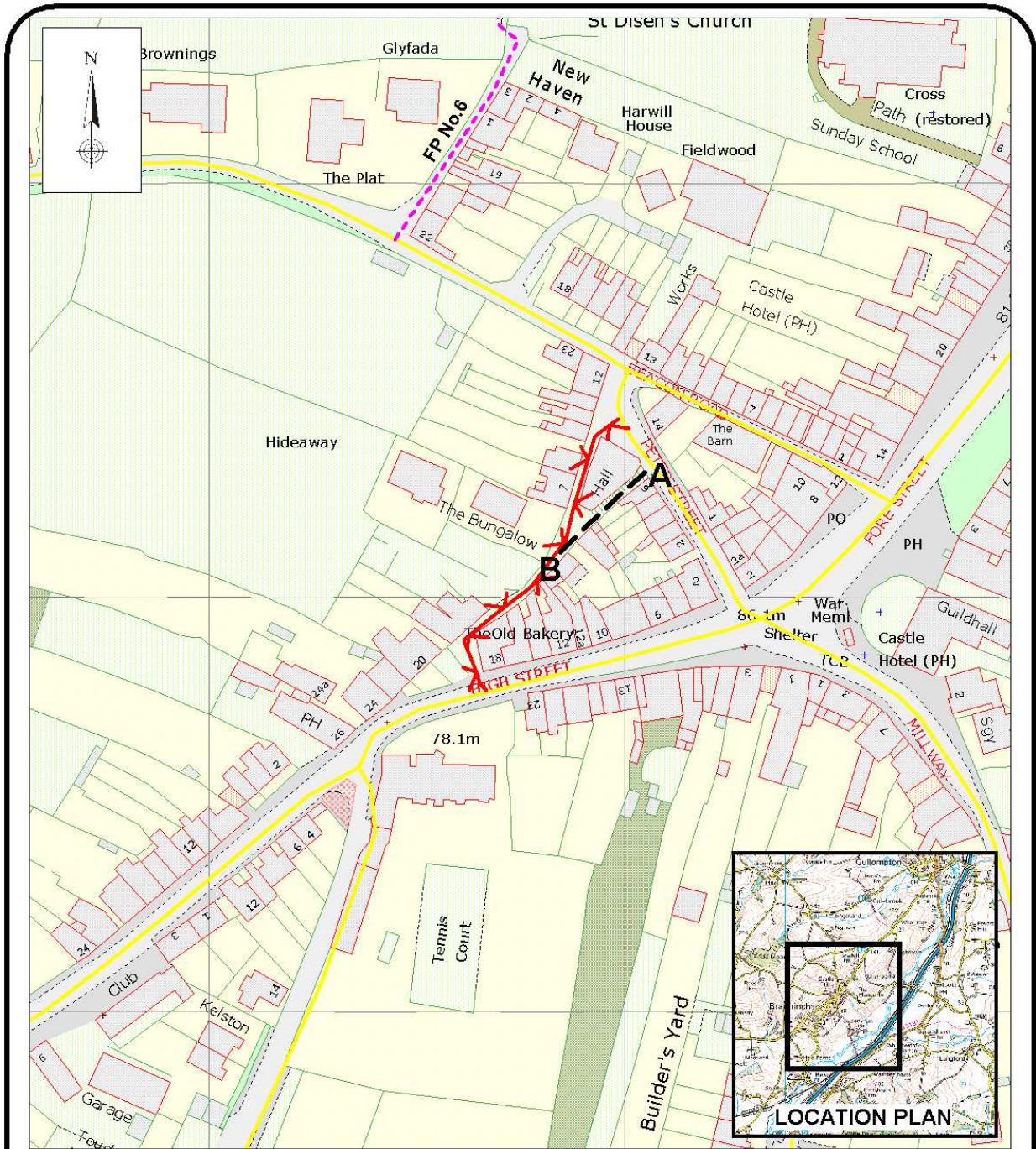
The planning application made by Mr C Milton to develop land to the rear of No.10. High Street will not obstruct the claimed route. Due to ownership issues the planning application has been withdrawn until title can be proved on the piece of land at the rear of the Gospel Hall. This land does not affect the claimed public footpath.

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.

There is strong and cogent evidence to show that public rights have been acquired over the claimed route.

7. Conclusion

It is reasonable to allege that public rights subsist over the claimed route and it is recommended that an Order be made to add the route shown on plan ED/PROW/10/43 as a footpath to the Definitive Map and Statement.





Map ref: ST 99 04

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**DEVON COUNTY COUNCIL
 DEFINITIVE MAP REVIEW - BRADNINCH
 CLAIMED FOOTPATH**

drawing number ED/PROW/10/43
 date May 2010
 scale 1: 1250 (at A4)
 drawn by ES

Notation

Claimed Footpath A - B  (approx 30m)
 Byway Open to All Traffic No.13, Bradninch 

Chris McCarthy
 Executive Director
 Environment, Economy & Culture

