

Schedule 14 Application
Claimed Public Bridleway: Lydford, West Devon

Report of the Deputy Executive Director of Environment, Economy and Culture

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

Recommendation: It is recommended that a Modification Order be made to upgrade Lydford Footpath Nos. 41, 49 and 10 (part) to a bridleway and add a bridleway across the River Lyd upstream of the footbridge regarding the Schedule 14 application, as shown on drawing ECC/PROW/10/76.

1. Summary

This report relates to a Schedule 14 application, made by Mr P Hackett, on behalf of the South West Riders Group, to record a upgrade Footpath Nos. 41, 49 and 10 (part) in the parish of Lydford.

The matter was to have been determined at the last meeting of this Committee, but the item was deferred to enable additional evidence submitted shortly before the meeting to be considered.

2. Background

The review was completed for the parish in 2008 and was the subject of a previous report in November 2007.

On 17 May 2010, Mr Hackett submitted an application on behalf of the South West Riders Group, under Schedule 14 of the Wildlife and Countryside Act 1981, to modify the Definitive Map and Statement for the Parish of Lydford by upgrading Footpath Nos. 41, 49 and 10 (part) to a bridleway between Lake Cottage and Prescombe Lane. The application was made as a result of horse riders being stopped from using the claimed route. It was accompanied by a certificate of service on the landowners identified and supported by 12 user evidence forms. Further user evidence forms were received to give a total of 14 people claiming use of the route. The matter was due to be presented before the Committee in March 2011, but was deferred because evidence forms were received from a further 10 people and an existing user extending their use along the whole route. A total of 28 user evidence forms support the application.

Claims which are received after a parish review has been completed would normally be deferred in line with County Council policy. However, exceptions can be made for particularly contentious or urgent claims where, for example, access has been denied to a well used route and no nearby alternative route is available. The matter was discussed with Councillor Sanders, the local member, who advised that closure of the route to horse riders was proving very controversial and he had received many representations from local people. It was therefore decided to deal with the claim as a priority.

3. Description of the Route

The route is shown on drawing no. EEC/PROW/10/76 and runs from the junction of the county roads – Lake Lane, Silver Street and Skitt Lane at point A, along a stony lane passing under Lake Viaduct to point B and past Mill Cottage to the River Lyd and the parish boundary. This is currently recorded on the Definitive Map as Lydford Footpath No. 41. It continues and crosses the River Lyd via a footbridge at point C and continues to the junction with Lydford Footpath No 49. This section is currently recorded as part of Lydford Footpath No. 10 on the Definitive Map. It then proceeds along a sunken lane which is currently recorded on the Definitive Map as Lydford Footpath No. 49, known as Gulley Hole or Darky Lane, to meet Lydford Bridleway No. 8 at Prescombe Lane. It is believed that the section A – B – C was part of the Dartmoor ‘Lychway’.

The claimed route is defined by hedgerows between points A – B, undefined between B – C except for the footbridge and by earthen banks between C - D. It has a width varying between 1.5 and 9 metres, and generally has a stony or earthen surface. The claimed route is A – B – C – D and has a total length of 415 metres.

4. Consultations

An informal consultation was carried out during September/October 2010 and included all statutory consultees and landowners with respect to this claim. An additional consultation was carried out during March/April 2011 after the deferment of this report at the meeting of this Committee on 2 March 2011. The responses have been:

County Councillor P Sanders	-	no comment
West Devon Borough Council	-	no comment
Lydford Parish Council	-	do not support the application
British Horse Society	-	support the application
Country Landowners' Association	-	no comment
National Farmers' Union	-	no comment
Open Spaces Society	-	no comment
Ramblers' Association	-	no comment
Trail Riders' Fellowship	-	no comment
Cyclists Touring Club	-	support the application

Other representations were received from members of the public. Support for the application was also received from landscape archaeologists Dr Greeves and Professor Fleming highlighting that before the bridge was built over the Lydford Gorge, that the application route would have been used by traffic approaching from the south and east. Lydford's prominent place in local history as a stannary town and court confers importance to routes approaching it and those using them.

Grounds for objection to the application concentrated on safety issues, particularly relating to the river crossing and mixing of users on the narrow section between points C and D, as well as maintenance and the behaviour of cyclists.

5. Basis of Claim

Common Law presumes that 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:

[i] that 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;

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

[iii] that there is no public right of way over land shown in the map or statement as a highway of any description, or any other particulars contained in the map and statement require modification.

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.

6. Supporting Documentary Evidence

Prescombe Farm Indenture, circa C19th

Indenture plans were normally compiled by professional surveyors and therefore likely to be reasonably accurate. The plan appears to be a working document, with field and farm boundaries depicted in bright colour wash. Its purpose was to understand and control property. Any information regarding public rights of way or public highways contained therein was incidental to the plan's main purpose. The claimed route is shown as an open ended spur (Footpath No. 49) off Prescombe Lane (Bridleway No. 8) heading towards the River Lyd.

Lamerton (Outer Downs) Tithe Map and Apportionment, 1840-2 and Lydford (Old District) Tithe Map and Apportionment, 1846

Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and the colouring generally indicates carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the route shown. They

rarely show public footpaths and bridleways as their effect on the tithe payable was likely to be negligible.

Lydford (Old District) is a first class tithe map. These had the Commissioners' seal attached, showing them to be reliable as a true record of matters relating to the purposes for which the map was designed and legal evidence of all matters which they portray. Only one sixth of all tithe maps were sealed. However, second class maps, which failed in some, often minor, way to meet the stringent test for first class status, are not necessarily inferior from a cartographic point of view. Lamerton is a second class map.

The claimed route between Lake Cottage and the River Lyd was within Lydford (Old District). The route is included in lot 275 identified in the apportionment as 'Road and Waste' with no landowner listed, in the same manner as other currently recorded public highways.

Due to boundary changes, part of the route was included under the parish of Lamerton, within the Outer Downs. The claim passes through lots 1808 and 1809 which are listed as coppice and rough pasture. Though no path is shown on the map, the boundary of lot 1809 follows a similar line to the current boundary of Ingo Brake Plantation, but because of the nature of the land a small path or way may not have been worth recording.

Railway Deposited Plans, C19th

Such plans were deposited with the local authorities concerning public utilities including turnpike roads, canals, and railways, and date from the 1790s. The plans can be used to see how the statuses of routes were regarded at that time.

Three of the four relevant deposited railway plans dating between 1841 and 1862 list the lane between Lake Cottage and the mill/river as an occupation road. Several also show it continuing past the mill to the river and on the opposite bank as an unenclosed track. No continuation is shown for the claimed route, probably because this was on the limit of deviation of the proposed lines of the railway.

DP 156 of 1841 and DP 256 of 1859 depict the route as a road owned by the Surveyors of Highways between Lake Cottage and the River Lyd, though it also shows no continuation on the south side of the river. It was the plan, DP 281 of 1862 that was enacted by Parliament and from which the railway was subsequently built. The section A – B – C is included in lot 36 described as an occupation road owned by the Prince of Wales, JB Ashford, MG Ashford, and WP Paull. The remainder of the route between C and D is not shown.

Lydford Parish Council Minutes, C19th onwards

Entries regarding this route are frequent. Historically the river at this point formed part of the boundary between the three parishes of Lydford, Brentor, and Peter Tavy. Correspondence was regularly sent to the other parishes regarding payments for works. From 1898 onwards until 1956, the Parish Council was concerned about the repair and maintenance of the footbridge by the old mill over the River Lyd. In 1898 it was noted that the path and footbridge were used by many inhabitants of the three parishes, particularly to get to school or church. No reference is made to a ford crossing or use by horses or vehicles.

Brentor Parish Council Minutes, C19th onwards

Entries regarding this route are occasional. Historically the river at this point formed part of the boundary between the three parishes of Lydford, Brentor, and Peter Tavy. Correspondence was regularly sent to the other parishes regarding payments for works. In 1899, the Parish Council wrote to the Lydford Parish Council regarding their contribution to

the maintenance of the footbridge, and again in 1956. No reference is made to a ford crossing or use by horses or vehicles.

Peter Tavy Parish Council Minutes, C19th onwards

Entries regarding this route are frequent. Historically the river at this point formed part of the boundary between the three parishes of Lydford, Brentor, and Peter Tavy. Correspondence was again regularly sent to the other parishes regarding payments for works. From 1899 onwards, the Parish Council was involved in paying for the maintenance of the footbridge on the route until the parish boundary changed and it no longer formed part of their boundary. In 1907 it was noted that the path and footbridge were a convenient way by which Peter Tavy residents went to Lydford village, and particularly the school and church. No reference is made to a ford crossing or use by horses or vehicles.

Tavistock Rural District Council Minutes, C19th onwards

Entries regarding this route are periodic. Assistance with the maintenance of the footbridge was sought by the relevant Parish Councils with the District Council in 1918 which they agreed to carry out. Later in 1956 the parishes sought for the County Council to take on the responsibility for the bridge's maintenance through the District Council and this also occurred.

Ordnance Survey Maps, C19th onwards

The Ordnance Survey mapping does not provide evidence of the status of the route but rather its physical existence over a number of years. The route is indicated on the 1884 (1st Edition, 25") and all subsequent maps. It is generally shown as undefined between the viaduct and the river, though later editions show a habitually used width between the old mill leat and the river, shown as a double dashed track.

Finance Act Records, 1909-10

The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.

The claimed route is excluded between Lake Cottage and just after the viaduct. Between this point and the River Lyd the claimed route is included within hereditament 17, while the remainder is within hereditament 248. In Lydford parish the route is excluded from Lake Cottage to point B, part way between Lydford Viaduct and Mill Cottage. From there to the river the route is included within hereditament 17 which does not mention the route. The remainder of the route is included within hereditament 248 Ingo Brake. A footpath is mentioned under the easements listing to the Blackdown Commons, but no further information is available as the Field Book entries are incomplete.

Bartholomew's Maps, 1920s

Bartholomew's maps were designed for *tourists and cyclists* with the roads classified for *driving and cycling purposes*. They were used by and influenced by the Cyclists Touring Club founded in 1878 which had the classification of First Class roads, Secondary roads which were in good condition and indifferent roads that were passable for cyclists and other vehicles but were considered inferior. Additionally, Footpaths and Bridleways were marked

on the maps as a pecked line symbol. Cyclists were confined to public carriage roads until 1968. The maps dated 1923 and 1927 depict an uncoloured road along a similar alignment to the claimed route. Such roads were considered inferior and not to be recommended.

Aerial Photographs, 1946-49 & 1999-2000

The photographs show the physical existence of this route.

Devon County Council Roads Committee Minutes, C20th onwards

Assistance sought by Lydford Parish Council and the Rural District Council regarding the maintenance of the footbridge is noted on 8 June 1956 and agreed.

Definitive Map Records, C 20th

In response to the Special Limited Review of 1978, Brentor Parish Council requested that a spur be added to the then Brentor Footpath No. 8 (now Lydford Bridleway No. 8) through Ingo Plantation to the footbridge over the river Lyd, but it was not progressed until the recent review in 2004-7 when it was added as Lydford Footpath No. 49.

When the Dartmoor National Park Authority carried out the review for the part of Lydford within the Park in 1993, the Lydford Parish Council suggested that Footpath No. 41 (A – B-C) should be upgraded to bridleway, though it was not taken further.

Land Registry, 2010

Between points A and B the lane is not registered. Land adjacent to the lane is registered but does not include the claimed route. Mill Cottage between points B and C is registered to Mr Lloyd-Hughes and Ms Law. Between points C and D the land is also not registered, but Mr and Mrs Des Claves confirm they own the land.

Publications, circa C19th and C20th

A number of articles were submitted relating claiming local tracks and a walking tour of Dartmoor. The latter item refers to travellers passing along a lane from Beardon and across a ford and past an old mill. However the lane referred to is that along which Lydford Footpath No. 44 is recorded on the Definitive Map. The ford also does not relate to the application route.

Other documentation, circa C20th

A number of items regarding safety were submitted.

A copy of the 2007 PROW Committee report for Lydford parish was also supplied by the applicant with pertinent points highlighted. However, the report was concerned with whether the route now recorded as Lydford Footpath No. 49 should be recorded on the Definitive Map and only relates to the section C – D of this claim.

Dartmoor National Park Authority Correspondence, 2008-09

Letters were sent to the Dartmoor National Park Authority from local residents including the former resident of Mill Cottage for 37 years, who states that she was told by the Duchy of Cornwall that the route was a bridleway and footpath, and was not to be interfered with.

Petition

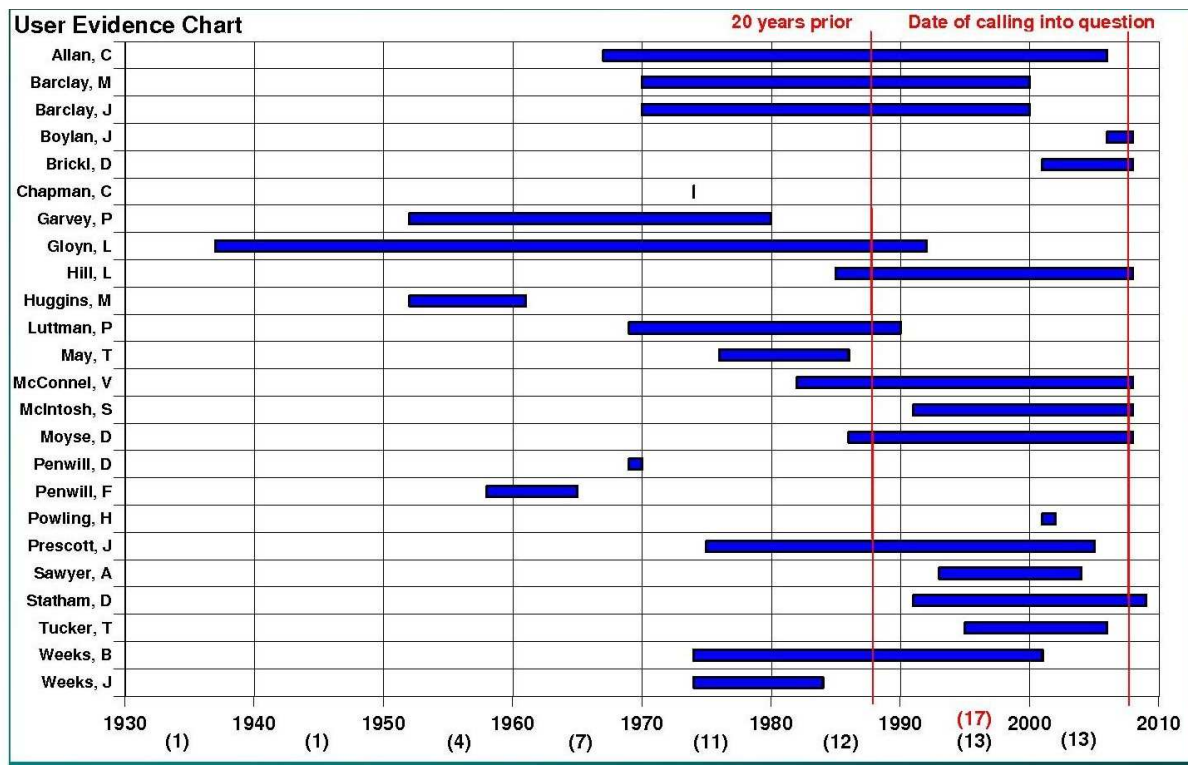
A copy of a petition given to the Lydford Parish Council asking for their support for the application was received with seventy-four names though six withdrew after its submission, giving a total of sixty-eight. It is not clear if any of those who have signed the petition but not completed a user evidence form have actually used the claimed route on horseback, bicycle or vehicle.

7. User Evidence

User evidence forms from twelve people detailing use were received in support of the Schedule 14 application. Additional forms were received, giving a total of twenty three forms to be considered detailing use with horses, and another five with bicycles. Seven other forms were received relating to use on foot. However the route is already recorded on the Definitive Map as a footpath. Several letters were also received detailing use by bicycle since the 1970s.

The earliest known use dates back to 1937 although most detailed use covers the period between 1952 and 2008 on horseback ranging from daily to six times a year generally for pleasure, with occasional use for business and visiting. Five of the users, Mesdames Barclays', Boylan, Garvey, and Luttmann, had a private right along part of the route between A – B – C, while another, Mrs Statham, had permission between C – D.

Most users forded the river just upstream from the bridge while a minority used the footbridge to cross the river. Some of the users believe the route between A – B – C is a byway open to all traffic but this has been determined as private use by landowners and farmers. Part of the route is also believed to be part of the Lych Way and the old road before the Lydford Bridge was built.



Mr Gloyn lived and worked in the Lydford area all his life between 1917 and 2010. He used the route on horseback regularly on his way to and from tending his flocks on the moor and

at various farms between 1937 and 1992. He also recalls Mr Bins from the local riding stables regularly taking ponies along the route. No one was ever stopped or turned back to his knowledge.

Mrs Weeks used the route at least six times a year between 1974 and 2001 on horseback. Her daughters also rode the route with and without her. Which horses they were riding determined whether they could go through the river or had to use the bridge. If a little pressed for time, they would often ride down to the river and return the same way.

Ms Huggins used the route with her pony when living in the village between 1952 and 1961 almost weekly, often riding with Mr Penwill, who also used the route when breaking in young horses and exercising racing ponies. She does not recall any notices.

Mr Prescott used the route with his horse after moving to Brentor in 1972. He used the route regularly on his way to/from watching cricket and at other times after a local resident told him about it. He occasionally took his daughter on her pony along it. During the 1990s he moved away towards Okehampton and on moving back to the area re-started using the route. Since then he has not ridden the route but instead cycled and walked. He does not recall any notices.

Mrs Sawyer used the route on horse regularly between 1993-97 and 1999-2004 frequently without restriction or difficulty. Between 1993 and 1997 she lived at Manor Farm and set up a riding stables. She was never stopped and does not recall any notices.

Users were not stopped or turned back until 2008 which appears to have had the effect of calling the public's right to use the route into question. The qualifying twenty year period for the purposes of presumed dedication under Section 31 of the Highways Act 1980 would therefore be from 1988 to 2008.

8. Landowner Evidence

Mrs Barclay states that she was a tenant of the Duchy of Cornwall Estate between 1970 and 1982 when she purchased Mill Cottage, and lived there until November 2007. She was told by the Estate that the claimed route was a footpath and bridleway, and that she must not interfere with its function as such. Only in recent years was a footpath sign erected at the beginning of the track, but it has always been a bridleway and cart track, used to transport materials including grain and flour. It is also part of the Dartmoor Lychway. During her forty years at Mill Cottage, she saw the public using the claimed bridleway on foot, horseback, and with bicycles. The section A – B – C has been used with vehicles to access Mill Cottage, besides the Water Works and the river for monitoring purposes. She also used the route on horseback.

Mr and Mrs Des Claves have owned Ingo Brake through which Lydford Footpath Nos. 49 and 10 (part) since 1974. They have seen the public using the claimed route on foot daily. Mrs Des Claves believes the route is a bridleway and has seen the public using it as part of a circular route from the village, avoiding the steep hill between the bridge and the church. They have never stopped anyone from using the route or turned anyone back. There have not been any notices or obstructions.

Mrs Brickl has owned land adjacent to the route since 2001 and has access rights to her land. She believes the route is a bridleway and has seen walkers, horse riders and cyclists using it. She has never stopped anyone using the route.

Mr and Mrs Braithwaite-Smith have owned land adjacent to the route since 2006. She believes the route is a footpath and has seen walkers, cyclists and landowners using it very

regularly. Mrs Braithwaite-Smith has concerns that the current river crossing is not suitable for horses as it is.

Mr Alford has been an adjacent tenant to the route for twenty two years. He believes it is a footpath and has seen it used as such. He has never stopped or turned anyone back.

9. Rebuttal Evidence

Mr Friend has been an adjacent landowner/tenant to the route for sixty years. He believes it is a footpath and has used it as such going to school with his siblings and while working. He has never stopped or turned anyone back, and has not seen anyone using it on horseback. It is accepted that horses and carts may have used the route between the village and the mill but not between Prescombe Lane and the mill, as Prescombe had its own milling facility. He believes horse riders started using the route when his family sold Lake Cottage and the field opposite. He also has concerns about risks to users and the narrow width between C and D.

Mr Hughes and Ms Law have owned Mill Cottage since December 2007. They have seen the public using the route on foot, horseback and bicycle. Since March 2008 they have stopped people riding and cycling along the track through their property stating it is only legally a footpath and that they are trespassing. They believe such use jeopardises their family's and the public's safety. They erected unauthorised gates and fencing across the route regarding which enforcement action was taken in September 2009 and November 2010. In response to the informal consultation they commented on some of the evidence as follows:

Definitive Map and Statement: They state that the Definitive Statement for Lydford Footpath No. 41 describes the track to Mill Cottage as a 'private accommodation road' not repairable at public expense and because of the absence of repair there is no public right. This being the case they state therefore the footpath was included on the Definitive Map compiled in the 1950s as an error, and that consequently the public are unable to acquire higher rights.

Duchy of Cornwall Estate: They state that as Mill Cottage was owned by the Duchy of Cornwall and therefore Crown Land, presumed dedication would not be possible and that until this time Footpath No. 41 was part of the Duchy Estate. Only from 1982 could public rights be acquired.

Finance Act: Hereditament 17 for Mill Cottage has no entry for Public Right of Way or User and therefore this is evidence that there was no public right of way across the land.

Handover Maps and Register: The route is not recorded as publicly maintainable highway.

Tithe Map: The track is braced with Mill Cottage and therefore is contained within its ownership.

Ordnance Survey Maps: The entire track to the former mill is braced to the acreage plot indicating that it was part of the property. The river is considered fenced off up to the footbridge. If it was considered a road it would have been excluded and given its own acreage and plot number. The maps are also no evidence of the status of a way shown.

Historic Lychway: The Lychway is a customary way which is not considered to be a public highway open to all people, but only for particular persons.

DNPA Lydford Noticeboard Map: The map in the village car park showed the route as a bridleway and this is why people have been riding on the footpath.

Agricultural Building and Access Way: They state that the altered use of the building and the unauthorised access way has not had the proper consent, and this has created equestrian use of Lydford Footpath No. 41 and the desire to change the route status.

User Evidence: They consider that people have been misguided by the noticeboard in the village and that the application is based on desire rather than evidence. The evidence forms are believed to be inconsistent and conflicting with information gaps, and containing irrelevant evidence in support of an application believed to have been orchestrated. They also believe that permission by landowners is confused by users with use as of right and that the local knowledge about the route is based on this. It is argued that an offence has been committed by use of the route in vehicles along the footpath without permission, besides trespass. There is also a perceived conflict between answers regarding users' belief that the route is a public right of way and whether they know whether it is owned or registered and if so by whom. It is also questioned why the route was not raised during the recent Definitive Map Review for the parish.

Character of the Way and Safety: They consider that the applicants have failed to consider the character of the way and in particular the river, as there is only a footbridge and no constructed ford. Also the applicants have not mentioned negotiating the three stone steps between the cottage and the river. They state that the width and character of the way are not conducive with the proposed upgrade as they consider the way too narrow, on which the deeds of the Duchy of Cornwall have a bearing where it passes the cottage in particular.

They believe that the encouragement of horse riders, cyclists, and vehicles will endanger children walking to school. Part of the claimed route is the access to their property and want to reserve the safe and proper access they bought.

Additional Submission: They believe the additional evidence received is from people who have private rights as they are friends of the previous owner of Mill Cottage. They state that this evidence is full of irrelevancies and inconsistencies and of insufficient quality. They believe that the previous report recommendation that no order be made to upgrade the footpath should remain, as there has been no cogent additional evidence submitted. The full submission is included in the backing papers.

10. Discussion

The inclusion of Lydford Footpath Nos. 41, 49 and 10 on the Definitive Map and Statement is conclusive evidence that the public enjoy a right of foot over the claimed route. However, this does not preclude the possibility that higher rights, such as those of a bridleway, may exist.

Until 1982 Mill Cottage and the section of claimed route B – C was owned by the Duchy of Cornwall Estate which is considered Crown land. There is some uncertainty whether the Duchy also own the section A – B. Legislation only applies to Crown land if the particular legislation provides that it is to apply, as the National Parks and Access to the Countryside Act 1949 sets out in section 101. The Duchy acknowledges the existence of the claimed route as a footpath but has not expressed any view that bridleway rights may exist over it.

The documentary evidence shows that the section of claimed route A – B – C has physically existed for almost 200 years. The section C – D is recorded less often, most likely because of its minor nature. The records of the Lydford, Brentor, and Peter Tavy Parish Councils show how important the route crossing over the River Lyd was, as do those of the Tavistock Rural District Council and the County Council regarding the route's inclusion on the Definitive Map.

Other sources such as the Finance Act records are not particularly helpful as the route is excluded between points A – B and included between B – C – D. The Handover Records relate to publicly maintainable vehicular highways and do not show footpaths, bridleways or byways, while Ordnance Survey mapping carries a disclaimer regarding rights, both private and public. References to the historic Lych Way across Dartmoor to Lydford cannot be considered definitive as there is uncertainty regarding its precise route entering Lydford village. With regard to the DNPA map and planning issues these are issues which cannot be taken into consideration in determining what public rights exist.

User evidence by twenty eight people on horseback and bicycle stems from the 1930s until riders and cyclists were stopped in 2008. No-one was stopped, turned back or told they could not ride along the route until that time. No-one was given or asked for permission. Users also recall the route in use by the local riding stables. Some people have cycled along the route as it is an easier and more pleasant alternative to the steep hill from Lydford Bridge up into the village. Most use has been for pleasure to and from the moor or as part of a circular ride around the village, with some business use and visiting trips. Use of the route as a through route is frequent, given the distribution and size of the local population.

Cyclists however, have no right at common law to ride on a bridleway and use of the route by cyclists cannot be used as evidence to support the application. Notwithstanding that, this evidence does demonstrate that the route is an important local amenity. Four users however had private rights along A – B – C whilst another user had rights along C – D. Additionally three users only used part of the route between A – B – C.

Also, a notice has existed on the gate at Ingo Brake by the River Lyd stating 'Private Property – Footpath Only'. No date is known for this notice, though according to the landowner, it was put there by a previous owner. Another notice was believed to exist at the gateway at point D but this has not been there for a number of years. The current owners since 1974 have been happy for people to use the path freely and didn't replace the gate at point D when it fell into disrepair. As for the notice by the river, they painted over the sign when people became concerned about whether they could use it. The notice is not considered sufficient to demonstrate a lack of dedicate the way as anything more than a footpath.

Any claim for a right of way across land which is, or was at the relevant time, Crown land, cannot rely on the twenty year user provisions in section 31 of the Highways Act 1980. Therefore, the claim must be considered under Common Law rather than Statute.

All known landowners have acquiesced to the use of the route as a bridleway until 2008, when new owners bought Mill Cottage and stopped such use. Adjacent landowners to the section between C and D believe the route is only a footpath, though they have never stopped anyone. One landowner used the route to walk to school and did not see horses using it. They believe that horses started using the route when they sold Lake Cottage and the field opposite.

The owners of Mill Cottage have not submitted any actual rebuttal evidence only opinion, which is not based on the Planning Inspectorate's Consistency Guidelines for assisting the interpretation and weighting of evidence.

Though the Parish Council proposed that Lydford Footpath No. 41 should be upgraded to a bridleway in 1993, they now object to the current application on the grounds of health and safety. However, such grounds cannot be taken into consideration in determining what public rights exist. A number of local residents also object on these grounds, but others support the upgrading.

11. Conclusion

The route is currently recorded on the Definitive Map as a footpath. The historical evidence shows that the route has been and is an important local amenity but offers little in support of the application to upgrade it to a bridleway. However, the user evidence is considered sufficient to support the upgrading of Lydford Footpath Nos. 41, 49 and 10 (part) to bridleway, by presumption of dedication from regular use on horseback as of right under Common Law.

Accordingly it is considered that evidence has been discovered which, when considered with all other relevant evidence available, shows that a highway shown in the map and statement as a highway of a particular description ought to be there as a highway of a different description, and that 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.

It is therefore recommended that an Order be made upgrading the footpath to a bridleway and adding a connecting bridleway across the River Lyd upstream of the footbridge on the Definitive Map.

12. Financial Considerations

There are no implications.

13. Sustainability Considerations

There are no implications.

14. Carbon Impact Considerations

There are no implications.

15. Equality Considerations

There are no considerations.

16. Legal Considerations

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

17. Risk Management Considerations

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

18. Reasons for Recommendation/Alternative Options Considered

To fulfil the County Council's statutory duty to determine the Schedule 14 application.

Ian Harrison

Electoral Division: Yelverton Rural

Local Government Act 1972
List of Background Papers

Contact for enquiries: Caroline Gatrell

Room No: ABG

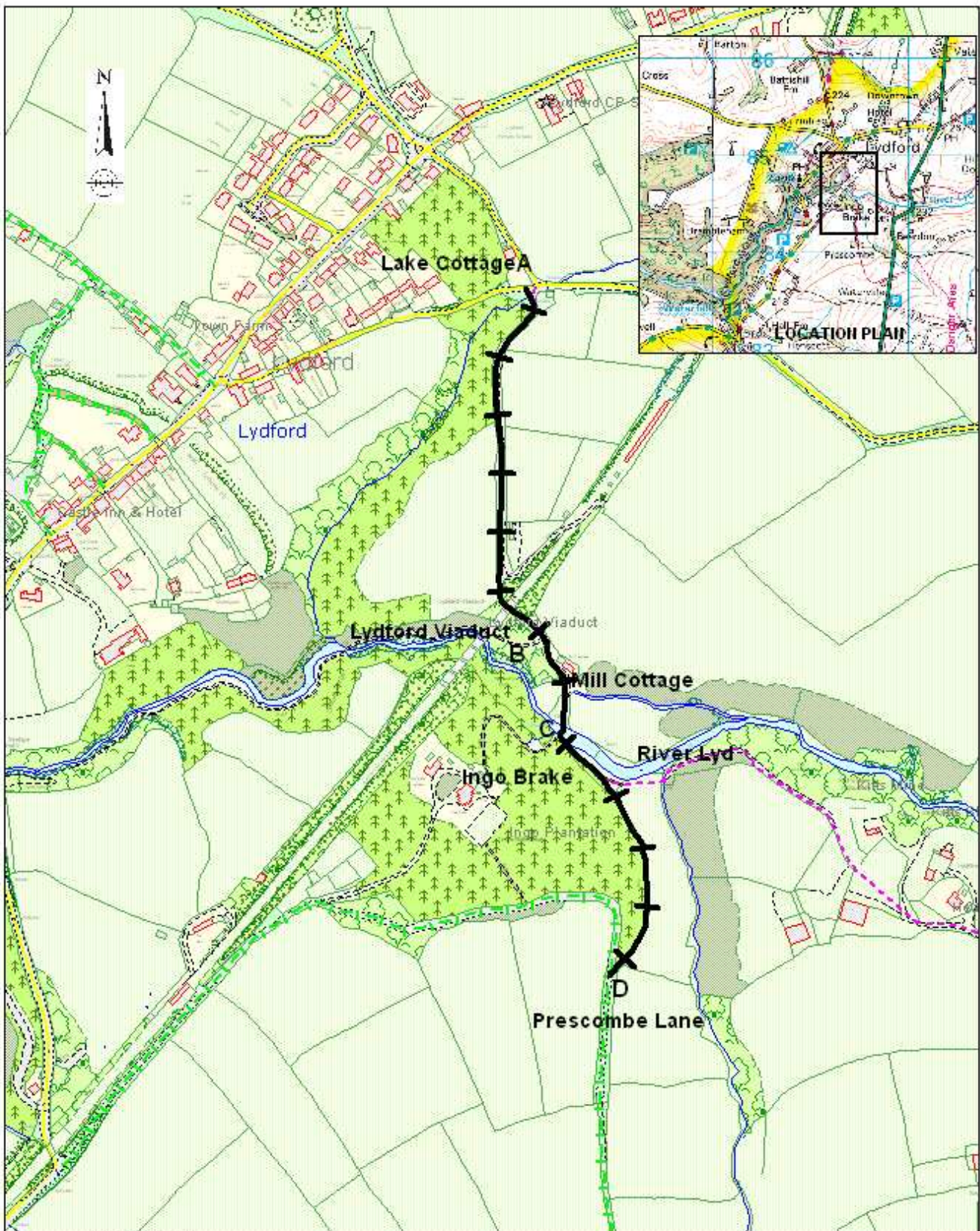
Tel No: 01392 383026

Background Paper
Correspondence file

Date
2009 to date

File Ref.
DMR/LYD

cg030511pra
sc/cr/Lydford west devon
02 hq 160511






map ref **SX 51 84**

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Devon County Council
Schedule 14 application
Upgrade Footpath Nos. 41 & 49 & 10 (part), Lydford
to bridleway

drawing number	EEC/PROW/10/76
date	August 2010
scale	1:5,000
drawn by	CLG

Notation
 Proposed bridleway A - B - C - D (665m) 
 Existing footpath  Existing bridleway 

Chris McCarthy
 EXECUTIVE DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE

