

Schedule 14 Application
Addition of a footpath at Bradiford, Barnstaple

Report of the Head of Highways, Capital Development and Waste

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 for the addition of a footpath between the points A – B – C, as shown on drawing number HCW/PROW/14/34.

1. Summary

This report examines a Schedule 14 application made in 2013 to add a footpath near Bradiford Water running between Windsor Road and Shearford Lane between points A – B – C. The parish-by-parish Review of the Definitive Map in Barnstaple was completed between 2009 and 2011. This application was therefore deferred pending completion of the parish-by-parish review in the rest of the district, in line with County Council policy. However, its contentious circumstances meets one of the exceptions set out in the Council's Rights of Way Improvement Plan and consequently the decision was taken to determine the application out-of-turn.

It is considered that the evidence provided is not sufficient to show that a public right of way subsists or is reasonably alleged to subsist over the claimed route and it is, therefore, recommended that no Order be made to add it to the Definitive Map and Statement.

2. Proposal

Please refer to the appendix to this report.

3. Consultations

General consultations have been carried out with the following results:

County Councillor	– no specific comments on proposal
North Devon Council	– no comment
Barnstaple Town Council	– comments
British Horse Society	– no comment
Byways & Bridleways Trust	– no comment
Country Landowners' Association	– no comment
Devon Green Lanes Group	– no comment
National Farmers' Union	– no comment
Open Spaces Society	– no comment
Ramblers'	– no comment
Trail Riders' Fellowship	– no comment

Specific responses are detailed in the appendix to this report and included in the background papers.

4. Financial Considerations

Financial implications are not a relevant consideration to be taken into account under the provision of the Wildlife and Countryside Act 1981. The Authority's costs associated with Modification Orders, including Schedule 14 appeals, the making of Orders and subsequent determinations, are met from the general public rights of way budget in fulfilling the County Council's statutory duties.

5. Legal Considerations

The implications/consequences of the recommendation(s) have been taken into account in the preparation of the report.

6. Risk Management Considerations

No risks have been identified.

7. Equality, Environmental Impact and Public Health Considerations

Equality, environmental impact or public health implications have, where appropriate under the provisions of the relevant legislation, been taken into account.

8. Conclusion

It is recommended that no Modification Order be made in respect of the schedule 14 application.

9. Reasons for Recommendations

To undertake the County Council's statutory duty under the Wildlife and Countryside Act 1981 to determine the schedule 14 application and to keep the Definitive Map and Statement under continuous review.

David Whitton
Head of Highways, Capital Development and Waste

Electoral Division: Barnstaple North

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence file	2012 to date	BAR/SCH14/WR

cg061014pra
sc/cr/schedule 14 addition of footpath bradiford Barnstaple Windsor road
05 051114

A. Basis of Claim

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 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 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.

The 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 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.
- (ii) a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
- (iii) there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

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(5) enables any person to apply to the surveying authority for an order to modify the Definitive Map. The procedure is set out under WCA 1981 Schedule 14.

1 Schedule 14 application to add a footpath running between Windsor Road to Shearford Lane and Footpath No. 13, Barnstaple via Footpath No. 14, Barnstaple and Mannings Pit in the parish of Barnstaple between points A – B – C, as shown on plan HCW/PROW/14/34.

Recommendation: That no Modification Order be made in respect of the above application.

1.1 Background

- 1.1.1 The application was prompted by the forthcoming loss of access to fields between Windsor Road and Shearford Lane, and the linking access between Barnstaple Footpath Nos 13 and 14, due to the ending of their inclusion in one of Natural England's Countryside Stewardship Schemes (CSS) in the autumn of 2013. Several local residents first applied to Devon County Council for the fields to be registered as a Town and Village Green. This application was turned down by the Authority in 2013 on the basis that it did not meet the requisite legal tests under the Commons Act 2006.
- 1.1.2 In July 2013 a Schedule 14 application was also received from another local resident for the addition of a public footpath across the same fields, linking Windsor Road and Barnstaple Footpath Nos 13 and 14.
- 1.1.3 Although the Definitive Map Review was completed in 2009, and it is County Council policy that subsequent claims will sit on file until the relevant district is completed, due to the contentious nature of the issue in the locality, it was considered that the application met exceptions set out in the ROWIP, and therefore would be taken out of turn.

1.2 Description of the Route

- 1.2.1 The proposal starts at point A at the northeast end of Windsor Road and proceeds across a field to meet Barnstaple Footpath No. 14 which runs between Lynboro Road and Anchor Mills at point B. It continues across several more fields running generally parallel to Bradiford Water to meet Barnstaple Footpath No. 13 at Shearford Lane at point C.

1.3 User Evidence

- 1.3.1 Ten user evidence forms were initially submitted in support of the Schedule 14 application. As a result of the informal consultation a further 64 evidence forms relevant to the application route were received, giving a total of 74.
- 1.3.2 Of these, 15 people had used only part of the route, generally to/from Anchor Mill and 9 had used the route since the start of a Countryside Stewardship Scheme for the area in 2003. Before the 1970s only 5 people had used the route, but since that time there is a steady increase in the number of people using it. None of the users recalled being challenged or turned back from using the application route.
- 1.3.3 Only 12 users recall the fencing running adjacent to Barnstaple Footpath No. 14, inferring that it did not impede their progress along the application route. 11 users used an alternative route from Lynboro Road end of Footpath No. 14.
- 1.3.4 Mr Crocker is the applicant and has used the claimed route since 1984 on a daily basis. He believes the path to be public as all the local people used it and use had not been challenged. He recalls that there was a low temporary fence erected adjacent to Footpath No. 14 to stop cattle getting over Bradiford Water into Anchor Mill which was not fenced, but that the cattle frequently got across. Consequently the landowner, Mr May erected a new fence. When the temporary fencing was in the field there was no indication the way through was prohibited and the public continued to walk from Windsor Road to Shearford Lane either by stepping over the fencing or through a temporary stile near the Lynboro Road access. The only notices he

recalled were those relating to the ending of the Countryside Stewardship Scheme in 2013.

- 1.3.5 Mr Cresswell is the longest user from 1945, though he only used part of the route from just northeast of point B on Footpath No. 14 to point C at Shearford Lane, as he came to/from the Anchor Mill direction. He used the route weekly passing between the fields using the existing gateways.
- 1.3.6 Mr Dimmock has used the route since 1968 on a frequent basis for recreation. He did not see any notices until recently.
- 1.3.7 Mr and Mrs Bray have used the application route since 1970, on almost a daily basis walking their dogs. They recall the fencing adjacent to Footpath No. 14 but not how they negotiated it.
- 1.3.8 Mr Elson has used the application route continuously since 1973. Local people were already using the path when he started using it. He recalls that fencing at Windsor Road was removed by residents. Initially the landowner tried to prevent public access but from the late 1970s stopped doing this. It was about this time when the landowner installed a stile/gate. The landowners have always verbally acknowledged the path since the late 1970s, asking for dogs on leads when stock around.

1.4 Documentary Evidence

- 1.4.1 Ordnance Survey mapping, 1890-1971 All Ordnance Survey maps after the surveyors draft drawings circa 1809 carried a disclaimer, which states that: "*The representation on this map of a road, track or footpath is no evidence of a right of way*". The mapping is only evidence of the physical existence and characteristics of features at the time when surveys were carried out. Maps at scales from 25" to 1 mile through 6" and 2/2.5" down to 1" to 1 mile are included, with the former most accurately reflecting those features existing on the ground and surveyed, being a larger scale.
- 1.4.2 The only mapping which depicts a path similar to the application route is the 6" to 1 mile mapping of 1890.
- 1.4.3 Pilton Tithe Map, 1842. Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, limiting the possibility of errors. Their immediate purpose was to record the official record of boundaries of all tithe areas. Roads were sometimes coloured and the colouring generally indicates carriageways or driftways. Public roads were not titheable and were sometimes coloured, indicating carriageways or driftways. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the route shown. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. No route is shown.
- 1.4.4 Finance Act, 1909-10. This legislation imposed a tax on the incremental value of land, payable each time it changed hands, and so 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 application route runs through hereditaments 114 and 84, with 114 having a deduction for the public footpath of £25.

- 1.4.5 Aerial photography, 1940s onwards. Deduction of traces of use such as characteristic wear patterns left by habitual use and vegetation erosion may provide evidence which can be measurable for establishing the use of a feature as an access or path.
- 1.4.6 On the 1940s RAF photography the original access to the fields can be seen starting between Cross Park Lodge in Bradiford and the pub. A bit of a track is visible in the last field before Head Weir. Little else is visible.
- 1.4.7 On the 1999-2000 photography 3 routes from Windsor Road can be seen, part of the application route and connectors to Footpath No. 14 at the top and bottom of the field. Different, rougher vegetation can be seen up to the alignment of Footpath No. 14, implying there is different management to the land on the other side of the footpath and therefore there is some sort of fencing that enables that. Several routes are visible across the fields including parts of the application route. The main alternative route from the Lynboro Road end of Footpath No. 14 is more visible.
- 1.4.8 The application route is the most visible route on the 2005-6 photography, though the Lynboro alternative is still visible as is the Windsor Road shortcut towards Anchor Mill.
- 1.4.9 Several routes are visible through the fields on the 2006-7 photography including the application route.
- 1.4.10 Definitive Map compilation records, 1950-69. The records relating to the compilation of the original Definitive Map show the legal process in detail, from the guidance followed and the frequent communication between the County, Rural/Urban District and Parish Councils. They demonstrate the awareness of landowners and the public by the objections to inclusions and omissions from the draft, modification, and provisional map stages.
- 1.4.11 During 1971 and 1972 Barnstaple Borough Council recommended that the County Council consider a list of paths when the next revision of the Definitive Map took place. These recommendations were based on requests from members of the public. One of the paths sought was the portion of Hall's Mill Lane linking Footpath Nos. 14 and 13 (Shearford Lane) at their junctions. This was also supported by the Town Council. However at that stage the review was the Limited Special Review of RUPPs and so could not include other requests.
- 1.4.12 Route photographs, 1980s onwards. Site photographs show various features referred to by various parties involved in this application, such as the access points and fencing.
- 1.4.13 Consultation responses, 2014. Barnstaple Town Council responded to the consultation. Members were aware of public usage of the area, though had no specific evidence themselves. It was noted that several linear routes could be seen on google earth aerial photography.

1.5 Rebuttal Evidence

- 1.5.1 Mr D May is the owner of the land crossed by the application route. The land has been in his family since 1950. He has owned and farmed it since 1986. Prior to the Countryside Stewardship Scheme, the only recorded public access across the fields was Barnstaple Footpath No. 14. The Stewardship Scheme gave access to the area in addition to Barnstaple Footpath No. 14 between 2003 and 2013.

- 1.5.2 Stock proof fencing was erected in 1988 adjacent to Barnstaple Footpath No. 14, which he stated in his evidence for a recent Town and Village Green application, indicated to the public that access was not permitted. The fence was apparently climbed over/broken down by trespassers, some of whom he challenged. In 2002 Mr May stopped maintaining the fence and left a gap. Climbing the fence and making holes in the hedges he believes is use by force and not as of right. Vandalism has occurred through the fields and their boundaries. On his Landowner Evidence Form he also refers to the occasional locking of a gate onto Shearford Lane prior to the Stewardship Scheme. Public access has made the area harder to use as agricultural land and as old English meadows, with livestock worried by dogs not on leads.
- 1.5.3 Mr May states that no parties including the County Council were interested in continuing public access to the area after the agreement ended. He also states that no route was raised as part of the Definitive Map Review for the parish, carried out between 2009 and 2011, though acknowledged many of the Village Green application users had used linear routes across the area for dog walking. However he does include a letter between the local branch of the Ramblers' and Pilton West Parish Council, which refers to a potential proposal similar to the application route 'as walked in the old days', but which it was thought was no longer viable by the Parish Council as the area needed more protection from public access.
- 1.5.4 Mr A May is the brother to Mr D May, the landowner. He objects on the basis that public access has only been permitted in the area, besides Barnstaple Footpath No. 14, since 2003 through the CSS. This was access offered in 'good grace and favour' but not appreciated. The application route cuts through hedges and misses existing gateways between the fields which would be a more sensible route.
- 1.5.5 In 1988 a stock proof fence was erected running alongside Barnstaple Footpath No. 14 and he challenged anyone he saw climbing or breaking through the fence. He also challenged anyone he saw breaking the terms of the CSS agreement. Adjacent to the land crossed by the application route is a SSSI and it is felt the route would increase pressure on the designated area. He is also aware that the area has been targeted by professional dog walkers and that there are parking issues in Windsor Road.
- 1.5.6 Mr Adams believes the route is assumed to be a footpath by dog walkers. He used the route by permission to access and service the mill leat, and does not think that it is public. He is aware that the application route is one of several crossing the fields between Windsor Road and Shearford Lane. He states that a fence ran adjacent to Barnstaple Footpath No. 14 was repeatedly damaged, as were the CSS access stiles and other parts of the field boundaries. The police have been called due to anti-social behaviour from trespassers in the fields crossed by the route.
- 1.5.7 Mr Crawford objects to the application as the area is already served by existing footpaths and the proposed route would run through a SSSI.
- 1.5.8 Mr Hill objects as he believes the route would not add a purposeful connection, not already available by using existing public highways. It is private agricultural land and states that access should be reduced so the landowner can use his land to its potential. It is also not an historical route which has been obstructed in the past by stock fencing. He lives at the nearest end of Windsor Road and has concerns regarding parking issues and irresponsible dog owners.

1.6 Discussion

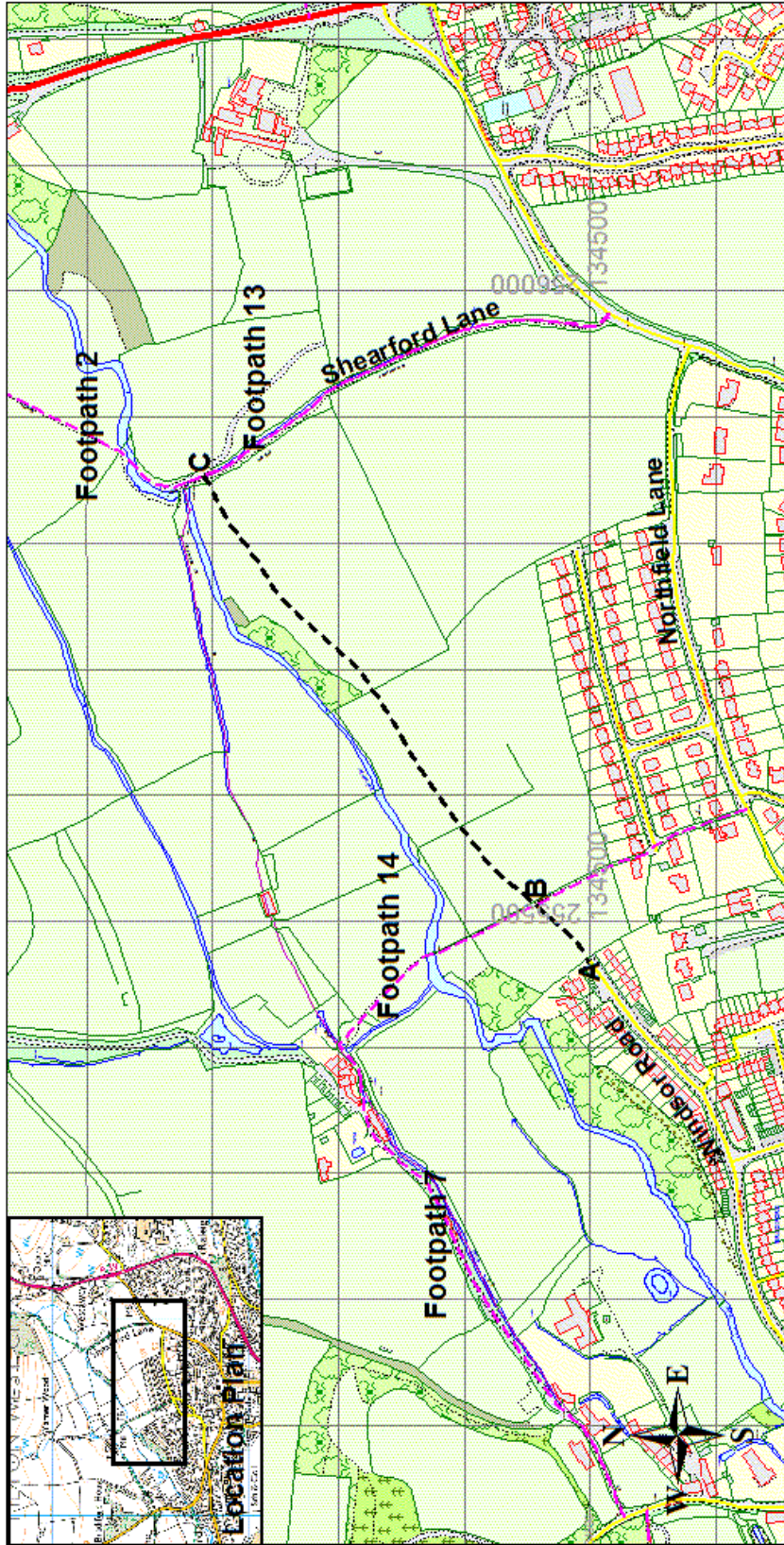
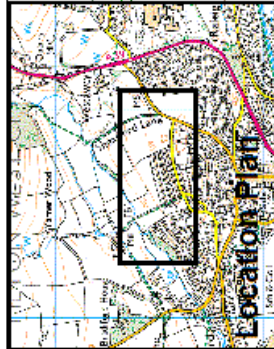
- 1.6.1 The public's use of the application route was called into question by the inclusion of the land crossed by it within Natural England's Countryside Stewardship Scheme in

2003. From this date and until 2013, use was not 'as of right' because access was by permission under the scheme. Consequently the relevant 20 year period to be considered is from 1983 to 2003.

- 1.6.2 The mapping evidence offers little evidence in respect of the application route, though the aerial photography shows its existence over time along with several other routes across the same fields.
- 1.6.3 A proposal was put forward by Barnstaple Borough Council in the early 1970s to link Barnstaple Footpath Nos. 13 and 14. However, because the review at that time was the Limited Special Limited Review dealing only with the reclassification of 'roads used as public paths (RUPPs), other proposals could not be dealt with at that time and had to sit on file. A map of unknown origin however places the route on the opposite side of Bradford Water to the application route. This may be the old route referred to by Mr Beer in Mr May's evidence, though it is not certain.
- 1.6.4 The land affected by the application has been owned by the May family since 1950 and farmed by them until the 1990s, since when they have rented it out. In 1988, Mr May erected fencing adjacent to Barnstaple Footpath No. 14 which is crossed by the application route. This was repeatedly damaged. By 2002, he stopped repairing this fencing and left a gap for walkers, and the land was subsequently subject to permissive access under the CSS. He believes that damage to the fencing boundaries and stiles was due to trespassers forcing their way through. He also recalls locking to the gate onto Shearford Lane at times.
- 1.6.5 The earliest user evidence dates back to the 1940s, with the majority starting in the 1960s and 1970s. None of those who have submitted evidence forms have ever been challenged or turned back on the route. Use was without secrecy or permission. The only person known to have sought permission was Mr Adams, who objects to the application, when he required access to service the mill leat.
- 1.6.6 It is clear that some fencing at point A was removed by residents at Windsor Road in the early 1970s. The subsequent fencing adjacent to Footpath No. 14, at point B, was erected by the landowner in 1988 across the claimed route and this may be considered as an interruption to use during the relevant period. It is acknowledged by all sides to have been broken down periodically allowing access, although no users report climbing over or breaking down that fence.
- 1.6.7 In respect of this application, the user evidence is the most pertinent of all the evidence and upon which the application relies. There is evidence of use by 27 people during the period 1983 to 2003. Such user evidence, whether considered under statute or common law must be 'as of right'. The law uses the principle to give rise to presumed dedication so long as the use was without force, secrecy or permission. If users break or use any other form of force in order to secure passage along the way, this first requirement for use 'as of right' is not satisfied. Though it may not have been users of the application route that broke down any fences, dedication cannot take place if there has been an illegal act in the first instance. Furthermore, the erection of fencing by the landowner is evidence that he did not intend to dedicate the way to the public during the relevant period.


1.7 Conclusion

- 1.7.1 It is, therefore, recommended that no Modification Order be made in relation to the Schedule 14 application for a claimed footpath between Windsor Road and Shearford Lane on the Definitive Map and Statement.



map ref. SS 5513

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Devon County Council									
Definitive Map Review - Parish of Barnstaple									
Schedule 14 application: Windsor Road - Shearford Lane									
Notation									
Claimed footpath	A - B - C (approx 495 metres) - - - -								
Existing footpaths	-----								
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