

Definitive Map Review Parishes of Bradford & Cookbury

Report of the Director of Climate Change, Environment and Transport

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 to modify the Definitive Map and Statement by upgrading Footpath No. 1, Bradford, to a bridleway between points A – B – C – D – E – F – G – H, as shown on drawing number HCW/PROW/20/37 (Proposal 1).

1. Introduction

This report examines a proposal arising from the Definitive Map Review in Bradford and Cookbury.

2. Background

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 4 footpaths and no bridleways in Bradford, which were recorded on the Definitive Map and Statement, and no public rights of way were recorded in Cookbury. The parishes have a relevant date of 1st September 1957.

The review of the Definitive Map, under s.33 of the 1949 Act, which commenced in the late 1960s but was never completed, produced a number of proposals for change to the Definitive Map at that time, which have been picked up in the current Review. The Limited Special Review of RUPP's, carried out in the 1970s, did not affect the parish.

The following order has been made and confirmed in the parish:

Devon County Council (Footpath No. 3, Bradford) Public Path Diversion Order 1999

A Legal Event Modification Order will be made for this change under delegated powers in due course.

The current Review was started in 2019 with informal consultation on a proposal carried out in 2020-21 for modification of the Definitive Map and Statement. The proposal is dealt with in the appendix to this report.

3. Proposals

Please refer to the appendix to this report.

4. Consultations

A full public consultation was carried out between November 2020 and January 2021.

The responses were:

County Councillor Morrish	– no comment
Torrige Devon District Council	– no comment
Bradford & Cookbury Parish Council	– no comment
British Horse Society	– no comment
Byways and 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.

5. 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 our statutory duties.

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact (including Climate Change) and Public Health Considerations

Equality, environmental impact (including climate change) and public health implications have, where appropriate under the provisions of the relevant legislation, been taken into account in the preparation of the report.

9. Strategic Plan

The Council's Plan 2021 – 2025, <https://www.devon.gov.uk/strategic-plan/>, has, where appropriate under the provisions of the relevant legislation, been taken into account in the preparation of the report.

10. Conclusion

It is recommended that no Modification Order be made to modify the Definitive Map and Statement in respect of the proposal, by upgrading Footpath No. 1, Bradford, to bridleway between points A – B – C – D – E – F – G – H, as shown on drawing number HIW/PROW/20/37.

Should any further valid claim with sufficient evidence be made within the next six months it would seem reasonable for it to be determined promptly rather than deferred.

11. Reasons for Recommendations

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

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Director of Climate Change, Environment and Transport

Electoral Division: Holsworthy Rural

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence file: Bradford & Cookbury	2019-2022	CG/DMR/B&C

cg210622pra
sc/cr/DMR Parishes of Bradford & Cookbury
02 220622

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 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.

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.

In relation to claims for byways open to all traffic (BOATs), Section 67 of the Natural Environment and Rural Communities Act 2006 (NERC) extinguishes certain rights of way for mechanically propelled vehicles except for the circumstances set out in sub-sections 2 to 8. The main exceptions are that:

- (a) it is a way whose main use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles;
- (b) it was shown on the List of Streets;
- (c) it was expressly created for mechanically propelled vehicles;
- (d) it was created by the construction of a road intended to be used by such vehicles;
- (e) it was created by virtue of use by such vehicles before 1 December 1930.

Extinguishment of rights for mechanically propelled vehicles also does not apply if, before the relevant date (20th January 2005), an proposal was made under section 53(5) of the Wildlife and Countryside Act 1981, or such an proposal was determined by a surveying authority, for an order to modify the definitive map and statement as to show a BOAT.

The judgement in the case of *R. (on the proposal of Winchester College) v Hampshire County Council (2008)* however, found that for such exceptions to be relevant the proposal must fully comply with the requirements of paragraph 1 of Schedule 14 to Wildlife and Countryside Act 1981. It is appropriate therefore firstly to determine whether or not the claimed vehicular rights subsist and, secondly, whether or not any exceptions apply; if vehicular rights subsist but the exceptions are not engaged then the appropriate status is restricted byway. Such claims may also be considered for a lower status.

Proposal 1: Proposed upgrade of Bradford Footpath No. 1 to bridleway between points A – B – C – D – E – F – G – H, as shown on plan HIW/PROW/20/37.

Recommendation: That no Modification Order be made in respect of the proposal, to modify the Definitive Map and Statement by upgrading Footpath No. 1, Bradford, to a bridleway between points A – B – C – D – E – F – G – H, as shown on drawing no. HIW/PROW/20/37.

1. Background

1.1 When the Review was opened in the parishes of Bradford and Cookbury in October 2019, a proposal was put forward by local horse riders that Bradford Footpath No. 1 should be upgraded to a bridleway based on use by local people.

2. Description of the Route

2.1 The proposed upgrade starts at its junction with the county road, T1711, at the northwest corner of Bradford Manor, point A, and proceeds north eastwards along a track along the northern boundary of Bradford Manor to the entrance of Bradford Manor Farm at point B. It turns and continues south eastwards along the track, past the rear of the churchyard at point C and over a tributary of the River Torridge at point D, where it turns south south eastwards to meet a fence and pedestrian gate at point E. The route continues along the track to a field gate at point F, and then narrows from point G, then onto another field gate shortly before point H, at the county road, T1710, on the east side of Priestacott.

3. Documentary Evidence

3.1 Cary's Map, 1794

3.1.1 These well-made maps were produced using surveyors and a triangulation system, and are considered to be reasonably accurate. Rights of way are generally not shown as the map is too small scale.

3.1.2 The small scale mapping shows a route on a similar alignment to the proposal route between points A – B – C – D – E – F – G – H, between Bradford and Priestacott, and in a similar manner to other roads in the parish. The county roads between Bradford Town and Lana Cross, and Lana Cross and Priestacott, are not shown to exist at that time.

3.2 Ordnance Survey Draft Drawings mapping, 1803

3.2.1 Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps 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'*.

3.2.2 The 1803 2" to 1 mile small scale mapping surveyed by Charles Budgen, shows a route on a similar alignment to the proposal route between points A – B – C – D – E – F – G – H, between Bradford and Priestcot, and in a similar manner to other roads in the parish. The county roads between Bradford Town and Lana Cross, and Lana Cross and Priestacott, are now shown to exist at that time.

3.3 Ordnance Survey mapping, 1809 onwards

3.3.1 Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps 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'*.

3.3.2 The 1809 small scale mapping shows a route on a similar alignment to the proposal route between points A – B – C – D – E – F – G – H and in a similar manner to other routes in the parish.

3.3.3 The 1st Edition 25" mapping of 1885 shows the proposal route as an enclosed double dashed track with verges, in a similar manner to other recorded public highways.

3.3.4 The 2nd Edition 25" mapping of 1906 shows the proposal route in a similar manner to the 1st Edition, though without the verges shown.

3.3.5 The Post War A Edition 25" mapping of 1955 shows the proposal route in a similar manner to the 2nd Edition.

3.4 Greenwood's Map, 1827

3.4.1 These well-made maps were produced using surveyors and a triangulation system, and are considered to be reasonably accurate. The proposal route is shown as a cross road. Rights of way are generally not shown as the map is too small scale.

3.4.2 A route is shown on a similar alignment to the proposal route between points A – B – C – D – E – F – G – H as a *'cross-road'*, in a similar manner to other routes in the parish.

3.5 Chapman and Hall Map, 1833

3.5.1 These well-made maps were produced using surveyors and a triangulation system, and are considered to be reasonably accurate. Rights of way are generally not shown as the map is too small scale.

3.5.2 Chapman and Hall (fl. 1830 - present) was a British publishing house in London, founded in 1830 by Edward Chapman and William Hall, which continues today. The company is best known for its publication of the works

of Charles Dickens (from 1840 until 1844 and again from 1858 until 1870), William Thackeray, Elizabeth Barrett Browning, Eadweard Muybridge and Evelyn Waugh. They continued to publish hitherto unpublished Dickens material well into the 20th century. In cartographic circles they are known as the primary publishers of the Society for the Diffusion of Useful Knowledge Atlas, a massive 200+ map atlas that was popular in England during the mid-19th century.

- 3.5.3 The mapping at a scale of 2.77" to 1 mile, shows a route on a similar alignment to the proposal route between points A – B – C – D – E – F – G – H, between Bradford and Priestacott, and in a similar manner to other roads in the parish. The county roads between Bradford Town and Lana Cross, and Lana Cross and Priestacott, are not shown to exist at that time.

3.6 Bradford Tithe Map and Apportionment, 1840

- 3.6.1 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. 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 a route shown. Such information was incidental and therefore is not good evidence of such. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not numbered are usually included under the general heading of '*public roads and waste*'.
- 3.6.2 The Bradford tithe map is a second class map, surveyed at a scale of 4 chains to 1" by Mr H Baker of Parliament Street, London, who only did the parish of Bradford tithe survey in Devon. Being second class, it is considered only to be a legal and accurate record of tithe matters. Land that was not subject to tithes was generally accepted to be either public, glebe or crown estates. In many cases public roads are coloured sienna as prescribed by Lieutenant Dawson, a military surveyor with the Ordnance Survey, to the Tithe Commissioners. The original document is held at the National Archives, with copies for the parish and diocese held locally.
- 3.6.3 The proposal route between points A – B – C – D – E – F – G is shown as uncoloured and numbered 682 – road and waste owned by the Reverend J Bampfield. The remainder of the route between points G – H is numbered 657a – plantation and pasture, owned by the Reverend J Bampfield. All routes within the parish are shown uncoloured, including the public roads, which record the vicar as the owner.

3.7 Bradford Manor Estate records, 1834-1945

- 3.7.1 Estate records including surveys, were normally compiled by professional surveyors and therefore likely to be reasonably accurate. The documents appears to be working documents, with field and farm boundaries often

depicted in bright colour wash. The purpose of these records was to understand and control property, and therefore any information regarding public rights of way or public highways contained therein were incidental to the survey's main purpose. Public roads and highways that ran through or around the manors were significant features of the landscape.

- 3.7.2 The records show the proposal route in a similar manner to other routes in the parish. The numerous survey plans all respect the proposal route between points A – B – C – D – E – F – G – H and do not include it within the property of Bradford Manor at any time between 1834 and 1945.

3.8 Bradford Vestry Minutes, C19th

- 3.8.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a District Council had powers only in relation to public highways through the appointed Surveyor historically, which they had a responsibility to maintain. The records for 1898-99 have not survived.
- 3.8.2 Only the records dating between 1891-4 have survived. The minutes during this brief period do not mention the proposal route.

3.9 Bradford Parish Council Minutes, 1894 onwards

- 3.9.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a District Council had powers only in relation to public highways through the appointed Surveyor historically, which they had a responsibility to maintain.
- 3.9.2 There are frequent references to the proposal in the late 19th century.
- 3.9.3 4th March 1895. *'It being shown that the path from the Hatherleigh Road through Stadson to Bradford Town [Bradford Footpath Nos. 1 (the proposal route), 2 and 3] was not the only path by which there was a right of way from place to place, Mr Baly proposed and Mr Hutchings seconded 'that the Footpath Committee make further enquiries'.*
- 3.9.4 3rd March 1896. *'The Clerk reported that he had written to Mr Bray about the Lashbrook Stadson path and read the replies, which intimated that the owner of the land on Lashbrook side denied that there was a footpath there and asserted that 'vexatious trespasses' would be stopped...it was moved and...seconded that it be a recommendation from the Council to the next that they consider whether there is a right of way from Stadson to Bradford Manor and from Bradford Manor to Stadson'. This relates to Bradford Footpath Nos. 1 (the proposal route), 2, and 3.*
- 3.9.5 22nd June 1896. *'The Footpath Committee gave a report about the Stadson to Bradford Town path and Mr Hutchings proposed while Mr Baily seconded 'that the Parish Council refer the 2 paths – Middlecott to Lana and Stadson*

to Bradford Town to the District Council and ask them to see that these paths are restored to the use of the parish by being put in order'. This latter route relates to Bradford Footpath Nos. 1 (the proposal route), 2, and 3.

- 3.9.6 3rd February 1955. 'It was proposed by Mr J Heard seconded by Mr J Price to write the Rural Council re the Church Path and whose responsibility it is'. This may or may not refer to the proposal route, which is known as Church Lane.
- 3.9.7 22nd May 1969. 'A complaint by a parishioner that the footpath from the Rectory to the Manor was obstructed by a padlocked gate was discussed and it was agreed that a letter be sent stating this fact to Holsworthy Rural District Council'. This is the proposal route.
- 3.9.8 8th September 1969. 'With regard to the footpath at Bradford Manor, Mr Cox said he had visited the owner of the property and he had agreed to make it possible for people to pass at the padlocked gate in question'.
- 3.9.9 Circa 1976. A survey of public rights of way carried out annually has survived and describes the proposal route, which is currently recorded as Bradford Footpath No. 1 as, being in constant use by locals, being clear and passable in all weathers, with two gates which opened easily.

3.10 Bartholomew's maps, 1903 onwards

- 3.10.1 These 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, Indifferent roads that were passable for cyclists and other uncoloured roads that were considered inferior and not to be recommended. Additionally, footpaths and bridleways were marked on the maps as a pecked line symbol. Cyclists were confined to public carriage roads until 1968. The small scale does not permit all existing routes to be shown, omitting some more minor routes. The purpose of these maps was to guide the traveller along the routes most suitable for their mode of transport.
- 3.10.2 The proposal route between points A – B – C – D – E – F – G – H is shown on the 1903 edition as a '*Secondary road (Good)*', the same rating as the county road running parallel to it. Footpaths and bridleways were shown as singles dashed lines.
- 3.10.3 By the time of the 1924, 1932, and 1944 Editions, the proposal route is no longer shown as a '*Secondary road*', but as an '*Inferior Road*' and not to be recommended. Footpaths and bridleways were shown as singles dashed lines.

3.11 Finance Act, 1909-10

- 3.11.1 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.
- 3.11.2 The proposal route affects hereditament 40 between points A – B – C – D – E and hereditament 19 between points E – F – G – H. It appears that initially hereditament 40 was drawn on the map with breaks in the boundary at points A and E, but these have subsequently been filled in. Consequently, the route is included within these hereditaments. Hereditament 40, Bradford Manor, was owned by Mr AE English and occupied by Mr G Taylor, and has a deduction for Public Right of Way or User of £26. Hereditament 19 (part 1), Glebe, was owned by Mr JNW Bampfield and occupied by Messers Smale, Taylor, and Hutchings. There is no deduction for Public Right of Way or User, but it is noted under the Easements section that there was a right of way for foot passengers along the occupation road, which is the proposal route.

3.12 Handover Roads records, 1929-47

- 3.12.1 These records are considered to be a positive indication of what the highway authority believe the status of roads included to be, and are conclusive evidence of a highway authority's acceptance of maintenance responsibility, a commitment not normally undertaken lightly. Such records were for internal use and did not purport to be a record of rights. The lack of a road's inclusion does not necessarily suggest it could not have been a public highway.
- 3.12.2 The proposal route is not included.

3.13 Aerial Photography, 1946 onwards

- 3.13.1 The aerial photography shows the proposal route A – B – C – D – E – F – G – H open and available to the public. No fence and gate can be seen at point E. Vegetation obstructs the current large gate location near point H, so it cannot be ascertained if a gate existed at that location at that time.

3.14 Definitive Map Parish Survey, 1950s

- 3.14.1 The compilation process set out in the National Parks and Access to the Countryside Act 1949 involved a substantial amount of work and such records are considered a valuable source of information. The rights of way included in the process had to pass through draft, provisional and definitive stages with repeated public consultations.

3.14.2 Footpath No. 1 was surveyed by Messers Hutchings, Bailey, Price, Heard and Perkin, on the 9th October 1950. The proposal route was included in the Parish Survey and in the List of Paths agreed on the 22nd May 1958. It was described as leading *‘from the Rectory to the Church of All Saints and connects with the main road at the Manor entrance, the footpath is of stone surface, but no repairs has been done to it for many years’*.

3.15 Definitive Map and Statement, 1957

3.15.1 The inclusion of a public right of way on the Definitive Map and Statement is conclusive evidence of its existence. However, this does not preclude that other rights which are currently unrecorded may exist.

3.15.2 The Definitive Statement for Bradford Footpath No. 1 is described as running from *‘It starts at the county road by the entrance to the Rectory and proceeds along an old road partly metalled in a north-westerly direction passing to the east of All Saints Church thence curving westerly to join the county road by the entrance to Bradford Manor.*

3.16 List of Streets, 1970s onwards

3.16.1 The proposal route is not included.

3.17 Holsworthy Rural District Council Minutes, 1974 onwards

3.17.1 The Minutes provide information about the management of the route and the Council’s views regarding the public highways in the parish. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.

3.17.2 The records still surviving have some references to highways and public rights of way, but none relate to the proposal route, which is currently recorded as Bradford Footpath No. 1.

3.18 Route Photographs, 2019 onwards

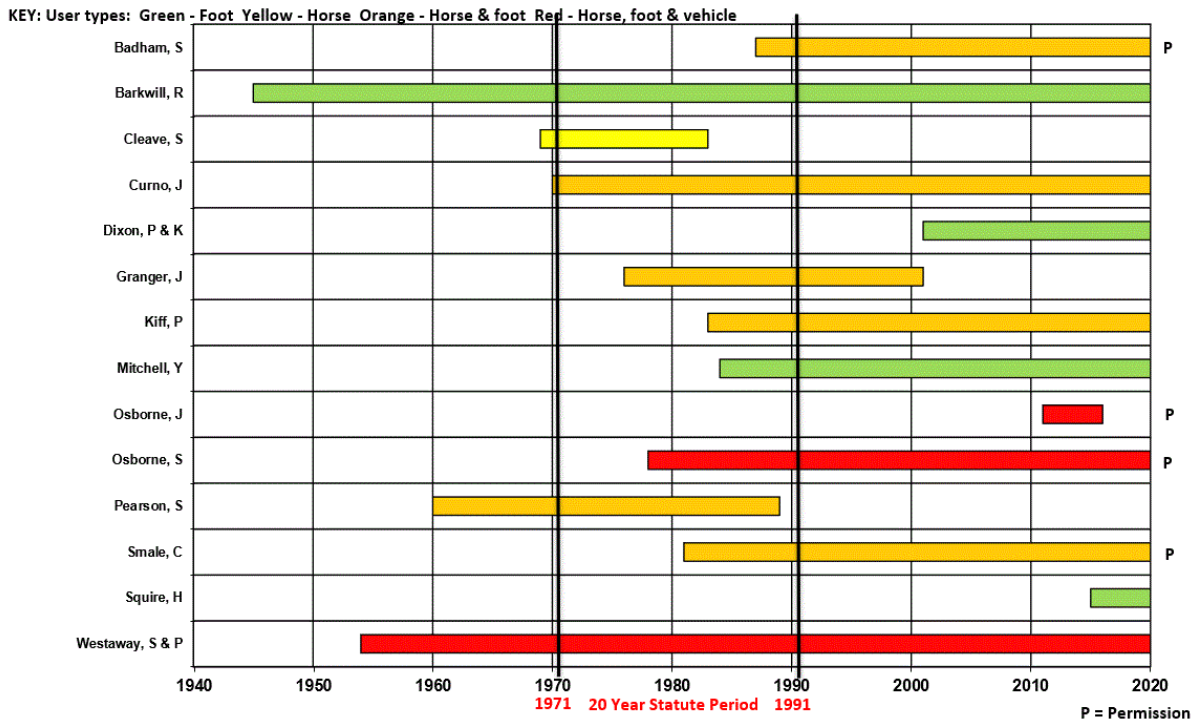
3.18.1 The route photographs show that the proposal route, between points A – B – C – D – E – F – G – H. It is open and available to the public, but currently only on foot due to the fence and gate at point E. The gate at point H is the full width of the route at that point.

3.19 Land Registry, 2019

3.19.1 The proposal route is not registered to any property or owner. The properties of Bradford Manor Cottage and Bradford Manor only have rights of way over part of the route between points A – B – C for varying lengths. The remainder of the route is not subject to such rights.

4. User evidence

4.1 Fourteen user evidence forms have been received in support of the proposal from sixteen people dating from 1945 until 2020 when the forms were submitted, detailing use on foot and horse, and with vehicles.



4.2 Mrs Badham of Holsworthy has used the route, known as Church Lane, since 1987 on foot and with horses. Though signed currently as a footpath she believes it to be an ancient track. She had permission from the previous owner of Bradford Manor, Mr Denby, to use the route. A 'no horses' sign appeared in 2017 but this has since gone. She states that the fence and gate erected at point E in 2019 obstructs a local wheelchair user.

4.3 Mr Barkwill of Bradford has used the proposal route on foot since 1948, but believes it to be a byway. He states that the route was the original main road as the county road between Lana Cross and Priestacott did not exist until more recent times.

4.4 Mrs Cleave of Bradford used the route a lot on horseback between 1969-83. She states that there was only 1 gate on the route at that time and that it was usually open. She did not have permission to use the route, as no-one owns it. The only obstruction has been the recently erected fence and gate at point E.

4.5 Ms Curno of Shebbear has used the proposal route four-five times a year since 1970 on foot and horse, but has not been able to ride the route since the fence and gate were erected at point E, on which was painted 'Footpath only no horses'. She has never had permission to use the route.

- 4.6 Mr and Mrs Dixon of Bradford have used the route approximately ten times a year on foot since 2001. They recall a stile part way along and the recent kissing gate. They would like it *'to be returned to bridleway'*, so that it is passable for dog walkers and horse riders.
- 4.7 Mr Granger of Bristol used the proposal route between 1976-2001 on foot and horseback several times a year. He recalls an unauthorised stile on the route but no notices or other obstructions. He did not have permission to use the route. He believes that the proposal route, Church Lane, is an ancient road pre-dating the road between Lana Cross and Priestacott.
- 4.8 Mrs Kiff of Bradford has used the proposal route on an almost weekly basis since 1983 on foot and used to also ride it with a horse. She has never had permission to use it and did not recall any notices. Structures have only appeared on the route in recent years.
- 4.9 Mrs Mitchell of Bradford has walked the route since 1984 and also used to have a private vehicular right to Bradford Mill. In recent years she recalls a sign stating *'this is not a bridleway'*. She had permission to use the route during the Foot and Mouth epidemic.
- 4.10 Mrs Osborne of Bradford has used the proposal route since 1978 between weekly and monthly on foot and leading horses. She also has a private right of access with vehicles for farming purposes. Mrs Osborne believes it to be the historic carriage way from the (former) Rectory to the church and Bradford Town, as it was known. She recalls a stile at point E prior to the current gate and fence, and a *'no horses'* sign which was attached for a short time to the finger post footpath. She also had permission to use the route from the former owner, Mr Denby.
- 4.11 Ms Osborne of Bradford has used the route a varying amount since 1982 on foot, horse and privately, with vehicles to access farm land. She recalls a stile at point E prior to the current gate and fence, and a *'no horses'* sign circa 2018. She states that she had permission from Mr Denby, the previous owner of Bradford Manor between 1983-90. Her grandfather used the route with a horse and cart to get to Bradford Mill.
- 4.12 Mrs Pearson of Bradworthy used the proposal route on foot and horse between seven and fifteen times a year during the 1960s, 1970s, and 1980s. She recalls being able to use the route until the current gate was erected, with a notice *'Footpath only, no horses'*. She believes it has never been under private ownership. She states that *'it was a cart track...used afterwards for locals to ride and walk. In the 1960's it was also used to access the cricket pitch.*
- 4.13 Mrs Smale of Bradford has used the route known as Church Lane since 1981 on foot and horse on a monthly basis, when it was *'commonly used by horse riders'*.

- 4.14 She states that she had permission to use the route from the previous owner of Bradford Manor, Mr Denby, after he argued with another horse rider and erected an obstructive fence across the route at point E.
- 4.15 She recalls that when Mr Manners purchased Bradford Manor he initially erected a stile at point E, but changed this to a gate when Mrs Smale asked if she could continue using the route. These structures were apparently not maintained and fell into disuse, until the current gate and fence were erected by him, with a 'no horses' sign painted on it circa 2017.
- 4.16 She recalls that adjacent landowners between points E – F – G – H have never stopped or restricted horse riders' use of the proposal route, which is currently recorded as a public footpath.
- 4.17 Mrs Squire of Bradford has used the proposal route weekly since 2015 on foot but believes it to be bridleway. She recalls the kissing gate at point E, which she regards as an obstruction to horse riders.
- 4.18 Mr and Mrs Westaway of Bradford have used the route about thirty times a year since 1954 without hindrance or permission on foot, horse and with vehicles, the latter to access land, until structures were recently erected. They do not recall any signs.

5. Informal Consultation Responses

- 5.1 A total of six responses were received from member of the public in response to the informal consultation, with four in support, one neutral, and one against the proposal.
- 5.2 Ms Daniel of Stibb Cross supports the proposal to improve the amount of off-road riding and would welcome more such routes.
- 5.3 Mrs Smale of Bradford supports the proposal and submitted a user evidence form.
- 5.4 Mrs Stokes of Thornbury supports the proposal to improve the amount of off-road riding.
- 5.5 Mr Stokes of Thornbury supports the proposal to improve the amount of off-road riding and would use the route if upgraded.
- 5.6 Ms Rowlands of Cookbury objects to the proposal on maintenance and safety grounds.
- 5.7 The Ramblers' North Devon representative was not able to put forward any proposals or evidence for consideration.

5.8 No response has been received from the Bradford and Cookbury Parish Council.

6. Landowner Evidence

6.1 Five of the eight adjacent landowners responded to the informal consultation.

6.2 Mr Bassett of Bradford Manor Farm has owned land adjacent to the proposal route since 2019 and has completed an Evidence Form. He has a right of way along the route between points A – B and has only rarely seen walkers using it. He believes it is not suitable and dangerous to horse riders and cyclists due to its 'narrow' width and the agricultural machinery also using it.

6.3 Mr Cooper of Bradford Mill has lived at the property which uses the proposal route between points A – B as part of its access since 2014. He believes the route is only as footpath as it is signposted as such. He opposes the proposal on safety grounds as he believes it is dangerous. He feels that the section between points B – C is steep and slippery for horses. He has never stopped anyone from using the route.

6.4 Mr and Mrs Kelly of Manor Cottage, Bradford have lived adjacent to the lane since 2011. They believe its width and well stoned surface indicates heavier and higher use than a footpath historically. They have seen their neighbour take their grandchildren on ponies along the lane, and this was also seen by an adjacent landowner who made no comment. They understand from long standing residents that the route has been well used by horses in the past. They support the proposed upgrade, as they believe it would have had similar use to in the past.

6.5 Mr Manners of Bradford Manor stated on his Evidence Form in January 2021 that he was the freehold joint owner of land crossed by the proposal, which he occupied from 1991 and owned since 2011. He has since sold the property, and by October 2021 had left the area.

6.6 He stated that the previous owner owned the property from 1972. He also claimed that the public right of way was *'extended some years ago and altered which allows people...to come right around the back of our home...causing issues...it used to stop south of our home...and go through...the grave yard...to the front church gate'*.

6.7 He regarded the route as only a footpath. He stated that several neighbours have a private right of way over his land and that he had stopped several local residents from using the route on horseback. He stated that he had never been asked for permission and would have refused it if asked.

6.8 He erected 'no horses' signs which were attached to the footpath direction post and the kissing gate and fence, when he saw a local person riding along the lane. These signs were removed and subsequently replaced. A stile and gate was first erected at point E in 2015, which was renewed and

then replaced with a kissing gate. Following on from this, Mr Manners made a Section 31(6) deposit in 2021. Mr Manners submitted several letters from Mr Pennington, a Mr and Mrs Jones, and a copy of Mr and Mrs Piper's objection letter to the informal consultation in support of his proposal rebuttal.

- 6.9 Mr W Pennington has lived in the area since the late 1950s and his wife was Bradford born and bred. They state the proposal route has never been a bridleway and that the route was designed for the rector to walk to the church. Mr Pennington states he made a stile for the previous owner in the early 1980s to stop vehicles destroying the lane.
- 6.10 Mr M Jones has lived in the area for over 30 years. He uses the route with his large dogs as it is a footpath and his dogs would worry horses. He states he has never seen horses using the lane or bridleway signs.
- 6.11 The successors to Mr Manners at Bradford Manor were contacted in February 2022, and have responded through their representative.
- 6.12 Mr and Mrs Ash of Bradford Manor purchased the property in September 2021 and are aware of the public footpath. They have not seen anyone using the route and no-one has asked for permission. Mr and Mrs Ash have not made a Section 31(6) deposit. They consider that the proposal route, currently recorded as a footpath, is dangerous for horses, and believe such use would damage it at cost to the landowners, as well as subjecting them to public injury claims. They feel that a bridleway would not be in keeping with the historical nature of the Bradford Manor Estate, generating increased traffic along the route, which raises traffic safety concerns, and insufficient passing width. Their grandchildren also play on the footpath. Mr and Mrs Ash also have concerns regarding the spread of horse manure.
- 6.13 Mr and Mrs Piper of Church Cottage, Bradford have owned land adjacent to the proposal route since 2020, but have not completed an Evidence Form. They object to the proposed upgrade as they feel the lane would be used by vehicles as well as horse riders, which they feel do not mix, and that it would be detrimental to the local wildlife. They also feel that the County Council or Police do not and will not manage use of the lane, so residents will suffer if there are any issues., and that there is an '*abundance of alternative routes for horse riders...making this proposal...completely unnecessary*'.

7. Rebuttal Evidence

- 7.1 No additional rebuttal evidence has been received except that noted above.

8. Discussion

- 8.1 In considering the evidence it is necessary to consider the evidential facts in the context of the whole of the documents in which they are contained. Section 32 of the Highways Act 1980 indicates how documents should be evaluated as a whole and how the weight should be given to the facts derived from them. Once the evidence sources have been assessed

individually, they are comparatively assessed as required by the balance of probabilities test.

- 8.2 Statute – Section 31 Highways Act 1980. Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public ‘*as of right*’ and without interruption for a full period of 20 years, it 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 relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.
- 8.3 There are a number of events which may be considered to call the public’s right to use the route with a horse. The most recent of these is the Section 31(6) deposit made by the former owner Mr Manners in 2021, though the erection of a kissing gate and fence in 2018 caused a definite recollection of that event amongst members of the public.
- 8.4 However, that gate was replacing a pedestrian gate, believed to have been erected either in 2010 (according to Devon County Council records and supported by users recollections) or 2015 (claimed by the previous landowner, Mr Manners). This apparently replaced an unauthorised stile claimed to have been erected in the early 1980s (claimed by local resident, Mr Pennington), though users recall the stile not appearing until a little while before the late Mr Denby sold Bradford Manor to Mr Manners circa 1991, though apparently he was not the landowner of land crossed by the proposal route until 2011.
- 8.5 Consequently, it is felt that the stile erected by the late Mr Denby prior the sale of the Manor in 1991 is sufficient to call the public’s use of the proposal route, currently recorded as Bradford Footpath No. 1, with horses, into question. Consequently, the relevant 20 year period is considered to be 1971 – 1991. Unfortunately, Mr Denby passed away in 2013, so any evidence relating to his intentions and actions is not direct evidence, only hearsay.
- 8.6 During the relevant 20 year period to be considered under Statute, between 1971 and 1991, there are user evidence forms from 12 members of the public, though only four cover the whole 20 year period. The remainder partially cover part of that period and also several more years. However, of these, two must be discounted as they are from walkers, and the proposal route is already recorded as Bradford Footpath No. 1. Consequently, the number of users to be considered in the relevant period is 10. The level of use ranges from a couple of times a year to weekly, and is what would be expected given the rural nature of the area.
- 8.7 Of these users, only one was solely a horse rider, with six using the route on foot and horse and the remaining three on foot, horse, and vehicle. It appears that the use with vehicle was to check stock, which would have been a private access right, and the use on foot was ‘*by right*’ due to the proposal route’s existing designation as a public footpath. Therefore, the amount of use by members of the public using the route with horses is

reduced. In addition to this, three of the users also claim to have been given permission by the late Mr Denby within the relevant period. One of the users recalls that Mr Denby erected his unauthorised stile and fence a short time before selling Bradford Manor, because he had had an argument with a local horse rider and refused the track to be used.

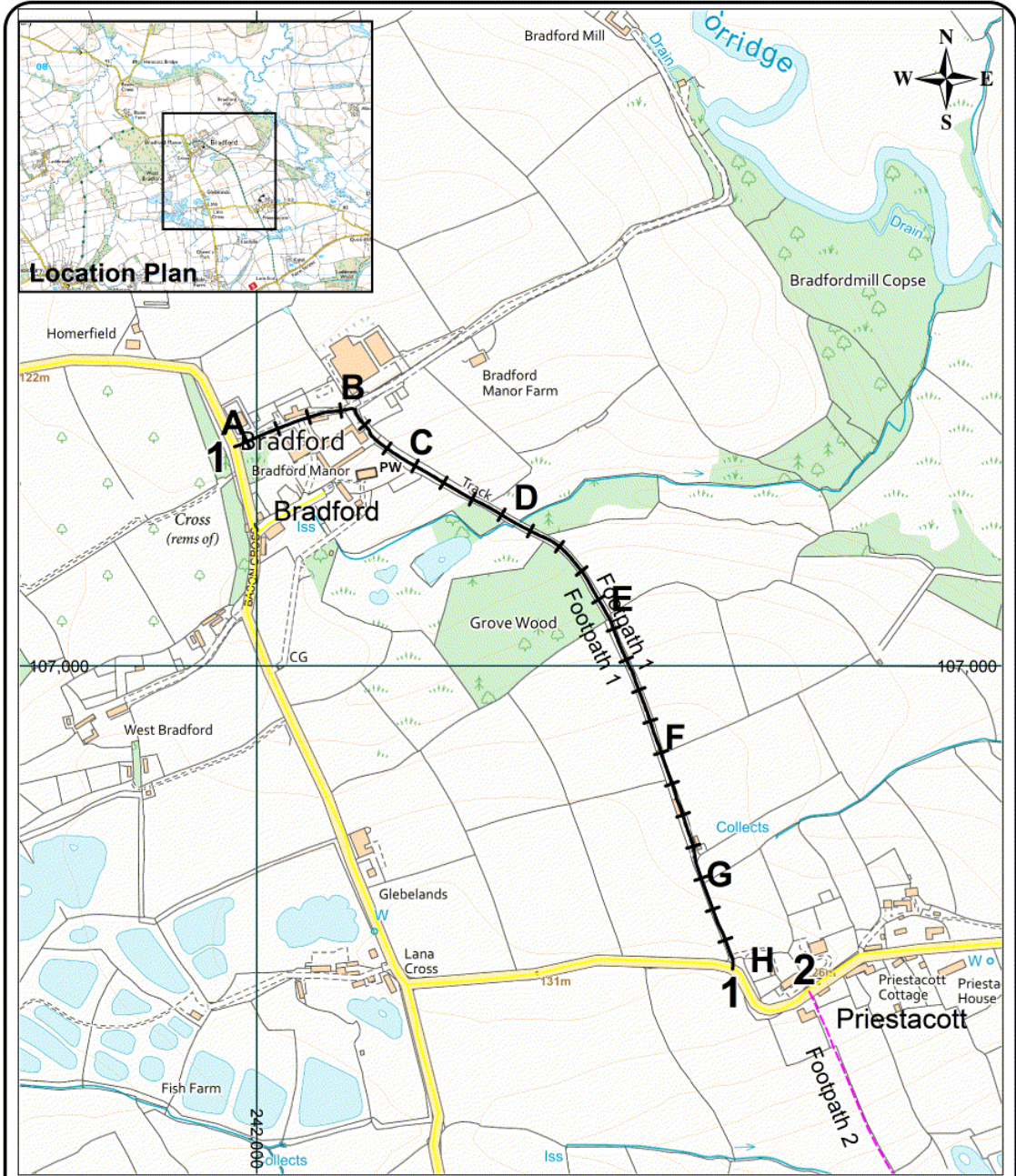
- 8.8 This leaves six users having used the proposal route with horses, though only one was solely a rider with the remaining five splitting their use between walking, riding, and driving. Consequently, the proposal is considered to fail under Statute, as the level of use by horse riders '*as of right*' is considered insufficient to meet the relevant legal tests.
- 8.9 However, the proposal route may also be considered under common law, and may be proven to exist as a public right of way at common law. Evidence of dedication by the landowners can be express, the evidence of dedication having since been lost, or implied, with the dedication being shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.
- 8.10 Common Law. On consideration of the proposal at common law, the historical documentary evidence demonstrates the proposal route's physical existence and availability since at least 1794, when the route was documented on Cary's Map of that date. It is interesting to note that on this map and the Ordnance Draft Drawings of 1803 there is no alternative to the proposal route between Priestacott, Lana Cross, and Bradford hamlet. The proposal route, which is currently recorded as Bradford Footpath No.1, is shown in a similar manner to other recorded public highways in the area at that time. The Bradford Estate records dated between 1834 and 1945, along with the Land Registry do not include the proposal route, which is currently recorded as Bradford Footpath No.1.
- 8.11 It appears that it was bypassed as the main route to and from Bradford hamlet by the time of the Tithe Map in the 1830s. Its historic highway status is acknowledged on the Bartholomew's Maps for Motor Vehicles and Bicycles of the first half of the 20th century, where it was included as a good secondary road, and in the 1950 Parish Survey and Definitive Statement, which refer the proposal route as running along an '*old road*'. Vestry records from 1775 note a survey for making a road below Lane End, which is on a hill. The only route it could be is the county road alternative to the proposal route between Lana Cross and Bradford. This bypassing may be why the route is referred to as an '*occupation road*' in the Finance Act records and there was some confusion as to its depiction on the Finance Act map. However, there is no evidence of any '*diversion*' or '*stopping up*' involving the proposal route, which is currently recorded as Bradford Footpath No. 1.
- 8.12 The Bradford and Cookbury Vestry and Parish Council minutes which have survived only focus on highways whenever there was an issue with them, and there are limited references to the proposal route, along with other highways. It appears that the route only received attention if there were

issues along the route, such as gates being locked, as in 1969. There is no indication as to the location of such incidents or why they occurred.

- 8.13 The user evidence dates from 1945, though detailed equestrian use dates from 1954, between several times a year and weekly, with no evidence of permission at least until 1978. Prior to 1978, there is user evidence from eight members of the public, however one of those users was a walker, so there is relevant evidence from seven users. Of these only one is solely a horse rider, with three on foot and horse, and two on foot, horse, and vehicle. Whilst all seven users rode the proposal route, six of those split their use between different modes of use, part of which for two users was use '*by right*' to access their fields to check stock.
- 8.14 After apparently arguing with a local horse rider, the late Mr Denby, a previous owner of Bradford Manor (previously known as Bradford Farm House), erected an unauthorised fence and stile at point E at the far extent of his right of way along the proposal route. This was shortly before selling the property to Mr Manners in 1991, who changed the stile to a pedestrian gate, which has since been changed to a kissing gate. However, it appears from the Bradford and Cookbury Parish Council minutes that a gate was locked on the route, which is currently recorded as Bradford footpath No. 1, in 1969, though the precise location of the incident cannot be located.
- 8.15 A Section 31(6) deposit was made in 2021 by Mr Manners, the previous owner of Bradford Manor, however this was not completed correctly and consequently has little weight. If it had been correctly completed, it would not apply retrospectively.
- 8.16 Whilst Mr Manners claimed ownership of the northern part of the proposal route between points A – E, it was not registered to Bradford Manor at Land Registry, which reflects the Bradford and Glebe Estate records of the 19th and 20th centuries. Bradford Manor and Bradford Manor Cottage only have a right of way along that part of the proposal route.
- 8.17 Only Mr Manners, the previous occupier/owner of Bradford Manor (Bradford Farm House) between 1991-2021, claimed to have challenged use of the proposal route by horses. Such use has also been seen by the owners of Bradford Manor Cottage, who have been in the area since 2011. No other adjacent landowners have challenged any users on horses.
- 8.18 Several currently adjacent landowners feel the proposal route is not suitable for horse riders, but suitability cannot be taken into account as to what public rights exist along the route. Some feel the proposal is not necessary due to an '*abundance*' of alternative routes in the area, however it is noted that the only off-road route available to horse riders in the locality is Bradford and Cookbury uUCR301 between Bason Farm and Cookbury village.
- 8.19 Consequently, the evidence when considered as a whole does not support upgrading of the proposal route to a bridleway or higher status.

9. Conclusion

- 9.1 On consideration of all the available evidence, on the balance of probabilities, the documentary and user evidence demonstrates that the proposal route, currently recorded as Bradford Footpath No. 1 between points A – B – C – D – E – F – G – H has existed since at least the late 18th century. It has been open and available and appears to have been used by the public since that time, as the original route between Bradford and Priestacott, before being bypassed by the county road via Lana Cross circa 1775.
- 9.2 Though there is some evidence that the proposal route was part of the highway network to Bradford hamlet in the late 18th to early 19th centuries, there is no direct evidence of the status of the route at that time, though estate records have consistently excluded the route.
- 9.3 Detailed user evidence on horseback dates back to 1954, and whilst of the character expected of such a rural area, is a little below that required to progress the proposal further, and insufficient to meet the legal tests. Challenges to this use have been consistent since circa 1978 in the form of stiles/gates erected at point E.
- 9.4 The evidence when taken as a whole is considered insufficient to show that it is reasonable to allege that a public highway of a higher status exists along the proposal route, which is currently recorded as Bradford Footpath No. 1.
- 9.5 It is therefore considered that there is insufficient evidence under both Statute and Common Law to demonstrate that a public highway above that of footpath status exists between points A – B – C – D – E – F – G – H.
- 9.6 It is therefore recommended that no Modification Order should be made to upgrade the proposal route, currently recorded as Footpath No. 1, Bradford, to a bridleway between points A – B – C – D – E – F – G – H on the Definitive Map and Statement, as shown on drawing no. HIW/PROW/20/37. However, if additional new evidence is received within six months of this Committee report, it may be possible to re-evaluate the proposal.



map ref: SS 4106, 4206, 4107 & 4207

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<p>Devon County Council Definitive Map Review - Parishes of Bradford & Cookbury Informal Consultation Proposal 1 - Proposed upgrade of Footpath No. 1 to bridleway</p>	<p>drawing no. HIW/PROW/20/37 date October 2020 scale 1:6,000 drawn by CLG</p>
<p>Notation Proposed bridleway A - B - C - D - E - F - G - H (approx 966m) +---+ Existing footpath - - - - - Existing bridleway - - - - </p>	<p>Meg Booth Chief Officer for Highways, Infrastructure Development & Waste</p> 