

BATH AND NORTH EAST SOMERSET COUNCIL

REGULATORY (ACCESS) COMMITTEE

10th July 2007

OBSERVATIONS RECEIVED SINCE THE PREPARATION OF THE MAIN AGENDA

ITEM

Objection received against Bath and North East Somerset Council (City of Bath Definitive Map and Statement Modification Order) (No. 2 – Lansdown) 2005; (unrecorded public footpaths AQ327 and AQ341).

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REPRESENTATIONS: Mr Williams has presented his response to the Council's report (see attached). Martin Laker (Council Officer) has read Mr Williams' document and has provided the following comments.

Highway Status of Mount Road and Bella Vista Road, Mount Beacon

My name is Martin Laker and since 2000 I have been responsible for the council's highway adoption records. In view of the additional evidence that has arisen recently about these two roads, I make the following observations about their status, their likelihood to be adopted highways and the widths.

Bella Vista Road

The purpose for constructing Bella Vista Road has not been established but a reasonable explanation would be to improve carriage access to the properties for vehicles coming from the north. Otherwise carriages coming down the hill had a very sharp turn into Mount Road for which both the angle and gradient change would be awkward. Bella Vista Road provided a simple right angle turn and is about 30 feet higher in elevation.

The road was constructed with a verge about four feet wide on either side. This is visible on the 1885 1:500 OS map of Bath. There was clearly enough space to build a foot way on one side only, for which the standard width was six feet, and have no verge on the other, should provision for pedestrians have been considered necessary out the outset.

The old Bath City Council highway adoption maps show Bella Vista Road as a thin adopted strip along the northern verge. It is my belief that this is a convention, rather than a literal fact. As I stated in appendix 6 of the report,

'The old Bath city highway maps had no way of easily showing where a publicly maintainable footpath ran along a privately maintainable carriage way. On such streets

the footway can be coloured in if there is a footway separate from the carriageway, for example the lower part of Mount Road. On other streets, a strip of verge is coloured in - these include Bella Vista Road, Rivers Road, Highbury Villas, Ragland Street, Rock Lane, and the lane between Lynfield Park and Church Road in Weston. In many of these cases the verge is not actually useable as a footway. Having pondered this for a number years, it is my conclusion that this use of the verge is a convention to overcome the problem of showing where a publicly maintainable footpath ran along a privately maintainable carriage way'.

What I think this shows in the case of Bella Vista Road is that a public right on foot was believed to have arisen along the road.

Taking this into account, the narrowness of the verge, and the fact that no paved footway was provided, it is my opinion that any use by foot must have been on the carriageway. Unlike Mount Road, there was no pre-existing public right along this route, so any use can only have used what was there. If a public right does exist (and the evidence for that is not conclusive, given what we now know) then it exists down the carriageway.

I therefore disagree with Mr Williams that the public right exists only in the north verge, but I agree with him that the "fence to fence" presumption isn't applicable here. The fence to fence presumption is based on the concept that people enclose their land up to the edge of the highway. In other words, the highway exists before the fence. In the case of Bella Vista Road, this is demonstrably not true – the road was built before any public rights over it arose. In my view the public will have made use of the carriageway only.

However, it remains the possibility that the Bath highway maps are simply in error in recording a right down Bella Vista Road. Knowing that both streets had been built at the same time, it may just have been assumed that the rights down them were the same.

In my view, the stronger the evidence for Mount Road becomes, the weaker that for Bella Vista Road appears. I don't think the "footpath" in Bella Vista Road has ever been adopted: the best that can be said for it is that a public right was in the past believed to exist. Once the matter of the right of way has been settled, then I think it should be deleted from the adopted highway record.

Mount Road

In Mount Road, the public's right and the private maintenance responsibility are clear, but the compilers of the Bath City Highway maps would have been unaware of the road's complex and unusual history. The additional papers from Walcot Highway Board and Mr Williams's deeds now allow a chronology to be established

1845

July 29th Agreement with Sir Henry Rivers for development of road

1846

May Construction of road has stopped up existing path.
Walcot Highway Board intervenes

July Compromise offered by Highway Board to Mr Davis
September Highway Board now expects to go to trial

1847

March 9th Davis case reaches Court of Queen's Bench. Agreement reached

March 11th Parish vestry assents to agreement reached

August 5-11th Formal procedure for diversion under 1835 Highway Act begins

1848

January 1st Agreement between parties for future maintenance of road

August 29th Conveyance of land by Sir Henry Rivers to Mr Heath

The date of the conveyance shows that at the time of the legal diversion of the path, the land owner (who was the person legally competent to dedicate the new highway) was still Sir Henry Rivers. Thus it would be logically possible for an agreement to be entered into for the whole road, but only half the width of it end up the responsibility of Mr Heath, Sir Henry Rivers giving the other side to someone else. It would be interesting to see the deeds of the other properties in the street.

There are two issues I wish to comment on

1) *The map dated August 5th, 1847.*

Taking this map with the Walcot Highway Board minute book, it is clear that the map was produced for the formal stopping up and diversion of the highway, under the procedures of the 1835 Highway Act. Before a stopping up or diversion could take place, the proposal had to be put to the inhabitants of the parish, and this is why the meeting of 11th August was held. It would then take about three months for the process to be completed at Quarter Sessions, hence the delay before the final agreement signed on 1st January 1848.

With regard to the extent of the colouring, since this is the extent shown in the legal order, it must be the extent of the highway created – whether or not that was intended (though the parish vestry, as highway authority, would surely have checked the plan before they signed it, and not accepted an incorrect plan). The dedication of the whole width of the road to the public as a footpath has a parallel elsewhere on the Rivers estate. A plan from 1845 showing the diversion and widening of Rivers Road also shows it coloured to the full width. This plan is also in the Walcot parish papers at the SRO and is by the same surveyor, William Newton. There is also a letter from him dated 10th July 1846 which confirms the colouring scheme on the map.

2) *The extent of adoption shown on the Adopted Highway Record*

The discovery of all the documentation from the 1840s completely changes how Mount Road should be viewed. A highway in existence before 1835 would be publicly maintainable, but in this case the diversion of it allowed Walcot Highway Board to thrust the maintenance liability on to the frontagers. (Or, to look at it another way, it transferred the liability to repair from the "inhabitants at large" of Walcot parish to some specific inhabitants). It therefore became a highway maintainable by tenure (also known as a *ratione tenurae* road).

This type of road is rare in the south of England, although more common in the north where it often arose out of enclosure schemes. I have forwarded the 1840s papers to the council's independent expert on highway maps, Dr Yolande Hodson, but she has not seen

anything elsewhere which closely parallels this case. I am unclear whether a *ratione tenurae* road should be included on the adopted highway records at all and am therefore seeking further advice. If it is to be included, then it should show the full extent of dedication. While it is desirable that the Adopted Highway Records and the PROW definitive map show the same width, it may not always be possible as they work to different legal frameworks.

Public Rights of Way Comments

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REPRESENTATIONS

Following the submission from Martin Laker regarding the adoption records for Bella Vista Road, Officers have decided that the evidence gathered for Bella Vista Road at this time is insufficient to request the confirmation of the order. This does not prejudice any public rights which are subsequently found to exist along Bella Vista Road.

Concluding paragraph to read:

Officers recommend that Committee approve the submission of the order made for public footpath AQ341 to the Secretary of State with the request that he does not confirm the order at this time.

RECOMMENDATION

As stated in the amended concluding paragraph above.

To the REGULATORY (ACCESS) COMMITTEE for its meeting on 10th July 2007

Representations concerning the Report and Recommendations presented to the Committee by the BANES Public Rights of Way Team relating to Bath and North East Somerset Council (City of Bath Definitive Map and Statement Modification Order) (No. 2 – Lansdown) 2005; (unrecorded public footpaths AQ327 and AQ341)

Section I

1. Introduction:

1 I wish to place on record that throughout the lengthy process concerning the above Orders the Council Officers, in particular Jenny King, have been courteous, considerate, objective and very helpful.

I am particularly grateful for the help because I have no previous experience in this field.

2 This objection is not against the public using the adopted sections of Mount Road and Bella Vista Road, neither is it born out of any desire to prevent the public walking on the privately maintained carriageways in these roads. The public is, and will continue to be, free to do so. Indeed I would be pleased for there to be an agreement between BANES and the residents that formalises this situation. My concern is that the residents continue to have rights to control vehicular use of, and access to, these two roads. These rights will be extinguished if the PROW is extended across the carriageways.

3 This paper meets the request to submit my representation, in writing, 5 working days before the meeting. I hope to attend the Committee meeting. I do not intend to speak but will be happy to answer any questions the Committee might wish to ask.

4 My original objection is contained in Appendix 4 of the BANES Report. In the light of the later evidence some of the points I made at that time are now not relevant. On the face of it, the new evidence appears to provide BANES with an 'open and shut case'.

I hope to show the Committee that this is not so.

5 Since the BANES Report was completed some additional evidence has emerged from the early Deeds to my house, Heathfield, [built on the land marked Mr Heath

on the Plan in Appendix 7 of the BANES Report.] Copies of this data have been sent to Jenny King and appear as Appendix 2 in this document. The original deeds are available for inspection.

2. Request to the Committee

That the opposed parts of the Bath and North East Somerset Council (City of Bath Definitive Map and Statement Modification Order) (No.2 – Lansdown) 2005) be forwarded to the Secretary of State with the request that he makes the Orders with the following modifications:

1. **With reference to Mount Road: That in the southern section the PROW be limited to the 6ft wide paved public footpath on the east side of the road.**
2. **With reference Bella Vista Road: That the PROW be limited to the adopted verge on the northern side of the road.**

3 Re the Report by the BANES PROW Team and its conclusions

3.1 Human Rights Issues

Para 12.2 of the BANES Report to the Committee states:

“The Committee is required to consider the application in accordance with the principle of proportionality. The Committee will need to consider the protection of individual rights and the interests of the community at large.”

It is my view that the principle of proportionality will not be met if the Definitive Map and Statement Modification Orders are forwarded to the Secretary of State in the form proposed by the officers. This conclusion is discussed in Section II.

3.2 Concerning the carriageway and verge in Mount Road and the carriageway and southern verge in Bella Vista Road, it is my view that the BANES Report fails to establish;

- i) that “*a right of way subsists or is reasonably alleged to subsist....*”; {See BANES Report: Para 7.3}; or
- ii) that “*on the balance of probabilities a right of way subsists*”; (See BANES Report: last line of Para 7.3)

and consequently that the Report fails to justify the conclusion reached in Para 15.3 namely that it is “*sufficient to meet the legal tests within section 53(3)(c)(i) of the 1981 Act.*”

These conclusions are summarised in Section III of this representation.

4. List of contents: [in the remainder of this representation].

Section II:	Human Rights Issues
Section III	Reasons for rejecting the BANES' conclusions
Appendix 1	The case that the carriageway in Mount Road was not 'dedicated'.
Appendix 2	Extracts from transcriptions of conveyances relating to the land shown on the Plan, marked 'Mr. Heath'. 1845 and 1848.
Appendix 3	Copy of The Plan .

Section II.

Human Rights Issues

1. The current situation.

Those who live on Mount Road & Bella Vista Road have private vehicular rights over the carriageways. We also have the responsibility for, and cost of, maintaining those carriageways.

In Mount Road we additionally meet the cost of planting the verge on the western side with daffodils and other plants and flowers for the benefit of ourselves and the many members of the public, including young children, who use the road.

The residents do not object to the public walking on the privately maintained carriageways. BANES might be concerned that, at some future date, residents might try to put a stop to this. This worry could overcome if BANES and the current residents entered into an appropriate legal agreement preventing both current and future residents from taking such action. For the community at large this would have the same effect as issuing the PROW Orders. The residents would, however, still retain the rights discussed below.

2. Control of vehicular access, etc..

By virtue of the private vehicular rights we, those who live here, can determine who is allowed to drive and park on these two roads.

These rights may prove very important to future residents. For example, should there be deterioration in social cohesion, or an increase in burglary, mugging, or car jacking, etc., the people who live in these two roads may wish to secure the area against uninvited and unwanted visitors. This security could be achieved by installing electrically controlled gates or retractable bollards at the intersections with St Stephens Road.

This, of course, would not achieve security against people on foot but any miscreant in a vehicle would not be able to easily get into the area. Even if a criminal did gain entry, on some pretext, his exit could be easily blocked by operation of the barrier. The presence of barriers would deter people from attempting crimes of these types in this immediate area.

As the need for parking spaces in Lansdown increases, as it will over the coming years, people who do not live in these roads will be tempted to park here, even though they have no right to do so. This perhaps would not be a problem if the carriageways were wider. However the width is such that large delivery vehicles, Council rubbish lorries, etc., would not be able to get through if cars are parked along the roadside. There is no practical way of removing any such vehicle in a timely manner. The only effective way to avoid obstruction by parked cars is to prevent the vehicles parking here in the first place. Barriers, as described above would offer an ideal solution.

I am told by BANES, however, that if the Public Right of Way is extended across the carriageways in these roads, as the Orders in their current form would do, it will be illegal for us to install gates or bollards, or any kind of barrier, across the carriageways. If we did, we would be breaking the law relating to Public Rights of Way.

3. The Verges .

The verge situation is even more Gogolesque than that relating to the carriageways. At the present time, if someone is trampling the flowers on the verge, or picking the daffodils, we can discourage them with few well chosen words and, if necessary, the threat of calling the police. If the BANES Orders go forward in the present form then the verges will become part of the Public Right of Way. As I understand it, this means that members of the public will have the right, under the law, to trample, etc., on the verges as much as they like. We, who look after the verge, will have no right to stop them and neither will the police.

4. Conclusions

It seems to me that the issue of 'rights' is more important than the minutiae of dates, dedications, documents and deeds, which the current legislation requires to be considered.

With respect to controlling vehicular access and protecting the verge the position is easily summed up:

If there is no Public Right of Way across the carriageways and verges then the residents have rights;
if there is a Public Right of Way across the carriageways and verges then the residents have **no** rights.

The BANES Report states that 'The Committee is required to consider the application in accordance with the principle of proportionality' and that 'The Committee will need to consider the protection of individual rights and the interests of the community at large'

If these Definitive Map and Statement Modification Orders are confirmed in their present form what benefit will accrue to the community at large? None! The public will not gain a new route or get extra rights of access or extra rights of use. What individual rights will be lost? We who live here will lose the option to control vehicular access and to protect the plants on the verges.

A decision that fails to protect the individual rights of the residents [i.e. deprives one group of people of their rights] whilst at the same time offering no extra benefit to the community at large, seems to me not to meet the requirement of proportionality.

I hope the Committee agrees.

Section III

Reasons for rejecting the conclusions in the BANES Report.:{See BANES Report Paras 15.3 &15.5 }

1. Re the proposed PROW Order for Mount Road.

Note: The following applies only to the southern section of Mount Rd; i.e. from the intersection with

Bella Vista Road to the intersection with St Stephens Road. The information contained in the BANES Report re Horatio Davis, Waywardens, Committee meetings, court cases, etc. (BANES Report paras. 8. 6 to 8.11 inclusive) relates to the northern section of Mount Road and consequently has no bearing on this objection.

1.1 The current situation.

A Public Right of Way already exists along the whole length of the southern section of Mount Road. It comprises a raised, pennant-paved footpath, 6 feet wide, on the eastern side of the road. A privately maintained carriageway runs adjacent to footpath and verge runs along the western side of the carriageway. I do not object to this footpath remaining a PROW. I do object to the inclusion in the Order of the carriageway and verge.

1.2 Concerning the Arguments & Conclusions in the BANES Report to the Committee.

The core of the BANES argument for including the whole width and length of the southern section of Mount Road, under the PROW Order, is based upon the conclusion that a 'dedication' for use by the public was made on 1st of January 1848. [see the BANES Report; Appendix 7]. This conclusion I believe to be, at least, unsafe, and is probably entirely wrong.

In summary, my arguments are:

- i) Re the Agreement (Davis & others and the Waywardens: BANES Report; Appendix7) There is insufficient data in the text or on the 'Plan' to conclusively tie this version of the map with the Agreement document. Further, the text in the Agreement makes no mention of any 'dedication'. Interestingly, the Plan is dated nearly 5 months before the date of the Agreement.

I do not know what level of proof is necessary to establish 'fact' in this type of investigation, but, to me, the above seems to raise at least the possibility that the version of the Plan shown in Appendix 7, (discovered by Taunton Record Office), is not the version that Messers Davis, Hayman and Heath were looking at when they signed the Agreement. These matters are discussed in detail in Appendix 1.1

- ii) If, however, it is assumed that the Plan in the BANES Report Appendix 7 is indeed the one that Messers Davis, Hayman and Heath signed up to, then the wording & colouring on the Plan need to be examined. The text of the Agreement also needs to be examined to see what commitment, exactly, Hayman and Heath were entering into.
These matters are discussed in detail in Appendix 1.2
- iii) It is my conclusion that, in the southern section of the road as shown on the Plan, the “New Footway to be Dedicated” is limited to the space between the dotted line and the boundary of the land marked ‘Mr Heath’ and ‘Mr Hayman’. This space contains a raised pennant footpath that was constructed between 1845 & 1848 under the terms of conveyance of the land. The grounds for this conclusion are that Messers Heath and Hayman and the Waywardens all regarded the ‘New Footway.....’ in the southern part of Mount Road to be the footpath identified by the dotted line around the boundary to the land. Consequently the wider section of the road, what is, today, the carriageway and verge, was not part of the dedicated ‘New Footway’. The carriageway and verge cannot therefore be claimed to be a Public Right of Way by virtue of the 1848 dedication. Consequently the BANES case fails and the carriageway and verge should not be included in the Order.
The arguments supporting this conclusion are contained in Appendix 1 3.

2. Re the proposed PROW Order for Bella Vista Road

2.1 The current situation.

There is seems to no documentary evidence re Bella Vista Road. There is no evidence that the road was ever ‘dedicated for public use’. BANES has records ‘*indicating*’ that the northern verge is adopted for use by the public on foot only. To the south of this verge is a carriageway and a further verge. I do not object to the northern verge remaining a PROW. I do object to the inclusion in the Order of the carriageway and southern verge.

2.2 Concerning the Arguments & Conclusions in the BANES Report to the Committee.

- i) BANES offers no real evidence that a Public Right of Ways exists, or ever existed, across the whole width of the road. Para 15, of Appendix 6 of the BANES Report has the conclusion that “*Bella Vista Road has been adopted by the highway authority for use by the public on foot only.*”, and indicates that Paras 6 & 7, Appendix 6 of the Report justify this conclusion. Yet they do not.

In the BANES Report, Appendix 6 Para 6, Mr Laker , who is put forward as an expert, says, in his last sentence, that colouring the verge is “ *a convention to overcome the problem of showing where a publicly maintainable footpath runs along a privately maintainable carriage way.*” He does **not** say “*where a publicly maintainable footpath runs along a privately maintainable carriage way which is also a Public Right of Way*” Given his expertise one would have expected him to say so if that

was the case. Mr Laker's statement does not, in fact, say anything at all about the Public Right of Way status of the carriageway, yet BANES uses this statement as the justification for its 'belief' { see Paras 7 & 10 of the BANES Report } that the adoption record '*indicates*' that a PROW exists across the whole width of the road. This conclusion is not logically valid.

- ii) Re BANES Report, Appendix 6, Para 9: Attorney-General v Beynon [1969/70]: The 'fence to fence' presumption. BANES puts forward this case as one of the justifications for its conclusion that the PROW covers the whole width of the road. A search of the Internet reveals only three entries for this case. The first is at The Planning Inspectorate web site [<http://www.planning-inspectorate.gov.uk/>] and relates to the interpretation of Tithe Maps. The other two references to this case on the Internet were both from BANES. Both were to this Committee, one dated 27th January 2005 and the other the 11th October 2005. It would appear that this legal precedent is not widely used or relied upon.

Further, case law *, including the Beynon case, concerns situations relating to highways where a Public Right of Way over a highway is not in dispute. What is in dispute in these cases is whether the Public Right of Way, that exists over the carriageway section of the highway, extends over the verges adjacent to the highway. In essence, these cases are saying 'Here is a highway over which a PROW is established; how wide is it?' And, 'What width of any verge is part of the highway?' It is in these situations that the 'fence to fence' presumption can be applied. This is not the situation re Bella Vista Road. Here, the existence of a highway has not been established. Indeed that is very matter that is being disputed.

In my view the Beynon case, and its antecedents, are not relevant to the situation re Bella Vista Road.

*M. Orlik M.A. Rights of Way Law Review

- iii) The BANES Report uses the argument that, because the northern verge of Bella Vista Road is *adopted*, and, mysteriously, the carriageway and southern verge are also *adopted*, then a Public Right of Way exists. The word 'highway' encompasses in its meaning 'carriageway', 'footway' and 'footpath', and other types of path,. An adopted highway is a '**highway maintainable at public expense**'. I understand that Section 44(1) of the 1959 Highways Act and Section 41(1) of the 1980 Highways Act impose a duty on the highway Authority to actually maintain such adopted highways. i.e. carry out the necessary maintenance work to ensure the highway is fit for public use. The northern verge of Bella Vista Road is adopted: (BANES Report Para 8.15 & Appendix 6 Para 6.) The carriageway and southern verge are also claimed in the BANES Report to be adopted (Appendix 6 Para. 15). Since these sections of the road are adopted 'for use by the public on foot' (BANES Report Appendix 6 Para 6.) and Appendix 6 Para 15) they

must be classified, minimally, as a footpath. An *adopted* footpath is a '*highway maintainable at the public expense*' and there is a *duty on the Highway Authority to maintain it*. But neither BANES nor the Highway Authority, nor their predecessors, have maintained any part of Bella Vista Road for at least 25 years to my knowledge. They probably have never maintained it.

I am forced to the outrageous conclusion that these august public bodies, from way back right up the present day, have failed to fulfil their statutory duty. The alternative conclusion is that the various sections of the road are not adopted. If this is the case then BANES' argument that 'a PROW exists by virtue of adoption', fails.

- iv) Paras i), ii) & iii), above, demonstrate that the case BANES makes for a Public Right of Way existing across the whole width of Bella Vista Road is sufficiently questionable for it to fail the requirements of Section 53(3)(c)(i) of the Highways Act. (See BANES Report Para 7.3)

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Appendix 1

Re. Mount Road

1. The BANES Report: Appendix 7: The Agreement and Plan::
[The Plan is attached to this document, for ease of reference, as Appendix 3]

BANES advances the Agreement dated 1st Jan 1848 between 'Horatio Davis & others' and 'the Waywardens of Walcot', together with the Plan, as evidence that the southern section of Mount Road was dedicated 'for public use'.

These documents are clearly authentic and the Agreement and the Plan obviously refer to the same subject matter. There is however a lack of clear evidence that conclusively ties this version of the Plan with the Agreement.

Specifically:

- i) The Agreement refers only to an '*annexed Plan*'. It does specify any identifying marks or words on Plan. Eg ."That the Plan bears the words '*....as submitted to Vestry*' " etc.
- ii) The plan does not bear the signatures of any of the signatories to the Agreement.
- iii) The Plan does not have the same date as the Agreement. The only date on the plan is July 5th 1847 and relates to the plan being, at that time, '*....submitted to Vestry and referred to in the minutes....*'
The Agreement is dated 1st Jan `1848!
- iv) The Plan identifies a '*New Footway to be Dedicated to the Public...*' yet the Agreement makes no mention of a 'dedication', its only

provisions are of undertakings to keep walls and footways in 'good and substantial repair'.

2. What did Messres Heath & Hayman and the Waywardens actually agree to? :

Note: All references to letter identifiers etc. relate to the Plan that is in the BANES Report
Appendix 7. The Plan is reproduced, for convenience, as the last page in this document.

The full wording on the Plan, written along what is now Mount Road, says;

“New Footway to be Dedicated to the Public coloured pink “.

The road is coloured pink across its full width from end to end, including the southern section of the road. This seems to indicate, conclusively, that the carriageway & verge in the southern section of road were included in the parts 'to be Dedicated'.

This however might not be the case. It is possible that, in respect of this southern section, the colourist was over enthusiastic, careless or just badly briefed and that in this section of the road, the carriageway should not have been coloured. . Perhaps what should have been coloured pink was just the Footway that is defined by a dotted line around the boundary to land marked 'Mr Heath' and 'Mr Hayman'

This might seem a bit farfetched and, of course, it is not provable. There is, however, sufficient evidence to suggest that the parties to the 1st Jan 1848 Agreement thought that it was only this Footway defined by the dotted line that was being dedicated and not the whole width of the road. This evidence is set out below.

2.1 Mr. Heath

- i) In the Agreement Mr. Heath agreed to keep in good repair the wall and footway between points C & D on the Plan. The footway is shown by a dotted line adjacent to the boundary of the land marked 'Mr. Heath'.
- ii) To Mr Heath 'footway' meant the raised and pennant paved footpath that ran around his boundary wall. This can be said with certainty because that specific footway, its location, size and manner of construction are specified in the early deeds (See Appendix 2) for the land marked 'Mr. Heath' on the Plan
Mr. Heath was also responsible, under the terms of the conveyance of the land, for the creation and maintenance of half of the width of the carriage way, around his property.(See Appendix 2). The Agreement of 1st Jan 1848 with the Waywardens did **not** mention the carriageway.
- iii) If the words 'New footway' on the Plan are interpreted to mean the whole width of the road to the west of Mr. Heath's boundary , then Mr. Heath would have been signing up to 'keep in good repair' the whole width of the road. But the conveyances of the land to him in 1845 and

Aug 1848, only required him to be responsible for repair of half the width of this road. And, in any event, he did not own the land that constituted the other half of the carriageway.

Heath was not a fool. He had a successful business making what later became known as Bath Chairs and even won a Medal at the Great Exhibition of 1851. It seems unlikely that he would have agreed with the Waywardens to take on the burden of maintaining the whole width of the road.

- iv) When, in 1984, I purchased what had been Mr. Heath's property, the searches produced only a responsibility relating to one half the width of the carriageway on the western side; i.e, Mount Road. So there is little possibility that Heath's responsibilities re road maintenance were increased at a later date.
- v) From the above it might reasonably be deduced that the words 'footway' in the Agreement, and 'New Footway' and 'Footway' on the Plan, were regarded by Mr. Heath as applying only to the raised foot path that he was required to build and maintain under the terms of the conveyance of this land to him. .

2.2 Mr Hayman

- i) Mr Hayman's property joined with Mr. Heath's. Part of it bounded what is the southern end of Mount Road and part went on northwards to meet the footway made by Mr. Davis.
- ii) I do not have any documentation relating to Mr Hayman's dealings in respect of the land but there is a strong indication that he had the same interpretation of the word 'Footway' as Mr Heath. The reason being that Mr. Hayman was a solicitor and it was he who had drawn up the 1845 conveyance of land to Mr, Heath. It was he who used the word 'footway' in that document and who described its location and manner of construction. He likewise specified the requirements re building and maintaining 'one half of the carriageway.
- iii) On the Plan, and under high magnification, the dotted line between points C& D can be seen to continue up a point just opposite the letter 'A' on the other side of the road. This presumably is the continuation of the same 'footway' that Mr Heath signed up to. It is the southern part of the 'Footway' from D to E that Mr. Hayman agreed to keep in 'good repair, in the Agreement dated 1 Jan 1848, and as noted on the Plan.
- iv) I do not have documentary evidence that Mr Hayman was responsible for the making and maintaining only half the carriageway in that southern part of the round, but it seems highly probable.
- v) It can be reasonably deduced that Mr. Hayman regarded the words 'footway' in the Agreement, and 'New Footway' and 'Footway' on the Plan, as applying only to the footpath indicated by the dotted line on the Plan. That is, he did not regard it as applying to the whole width of the road.

2.3 The Plan

- i) There is further evidence on the Plan itself to suggest that the carriageway in the southern end of the road was not part of the deal. The first manuscript entry in the lower middle portion of the Plan reads “ *AB shows that portion of the Footway to be used as a Carriage road only to the Coach House and Stable*” This is significant in that it draws specific attention to the dual use of that stretch. No such similar attention is drawn to southern section of the ‘New Footway.....’, even though it has a carriageway on it.
- ii) Note also the position of the letters C and D. These are tight against the dotted line next to Mr Heath’s land. That stretch is described in the text on the Plan as ‘*That portion of the Footway to be*’. I think it clear that this is referring to just the footway, not the footway plus the carriageway. If these letters had been in the middle of the road a different conclusion might be justified.
- iii) The above is strong evidence that the carriageway in the southern section of the road is no part of the ‘New Footway’

2.4 The Waywardens

It is worth examining the Agreement and Plan from the Waywardens’ standpoint.

- i) The Waywardens were charged with ensuring that the public paths, carriageways etc were kept useable and in good order. The Ancient Footway shown on the Plan, was just a path that was used on foot. Given the terrain, any other form of transport would not have been feasible.
- ii) In the Mount Road development that took place in 1845 to 1848 it is reasonable to assume that the Waywardens’ primary concern was to ensure that the public, on foot, be provided with a new footway; one to replace the Ancient Footway shown in blue from points C and E on the Plan. This replacement Footway is shown on the Plan. It is marked by a dotted line from point C, which is where the Ancient Footway is blocked off, via point D to a position opposite point A. From there it continues as a footway ‘*to be used as a Carriage road*’ on to point E, where iron posts are set across the footpath. These posts prevent carriages going beyond that point.
- iii) The Waywardens achieved their objective. The raised pennant-paved path, identified by the dotted line on the Plan, met the requirements perfectly. The Waywardens had neither a brief, nor a need, to also gain public rights to use the carriageway in the southern section of Mount Road. I suggest that it is unlikely that they thought they were getting such rights.

3. What, exactly, was ‘dedicated’?

The above analysis shows, reasonably conclusively, that in the southern section of the road, the words ‘New Footway’ meant, to all those involved, the part of the Plan shown as a dotted line around the boundary of Mr. Heath’s and Mr Hayman’s

land. The location of the markers C, D, E etc, together with the text on the Plan, indicate the same.

I suggest therefore that the words “*“New Footway to be Dedicated to the Public*” do not mean that the footpath, together with the carriageway, were ‘*to be Dedicated*’; they mean that the only footpath was ‘*to be Dedicated*’.

4. Conclusion.

The weight of evidence is that it is the colourist who was in error. Two intelligent landowners, the Waywardens and even the internal consistency of the Plan itself; all indicate that the carriageway in the southern section of the road is not ‘dedicated’. Only one thing suggests that it is; the pink colouring. I suggest that, on the balance of probabilities, the ‘carriageway’ in the southern section of Mount road was not ‘Dedicated to the Public’.

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Appendix 2.

Extracts from transcriptions of conveyances of land from Sir Henry Rivers to Mr. James. Heath.

1. Agreement dated 29th July 1845: To convey land at a later date if certain works are undertaken and completed.

"....with the free use in common with other the tenants of the said Sir Henry Rivers of all ways made or to be made before or near to such said plot piece or parcel of ground.....".

". James Heath.....shall and will at his own proper costs.....raise and make a footway on the West and South and South east sides of the same of the whole length of the said sides [of a plan mentioned earlier in the document] and of the widths shown in the said plan.....according to plans and elevations as shall be approved by the Architect of the said Sir Henry Rivers....."

*"**And also** make and complete and for ever hereafter keep in repair and raised to a proper level one half of the carriage way on the West side of the widths shewn in the plan ."...[Note: The 'West side' is Mount Road]*

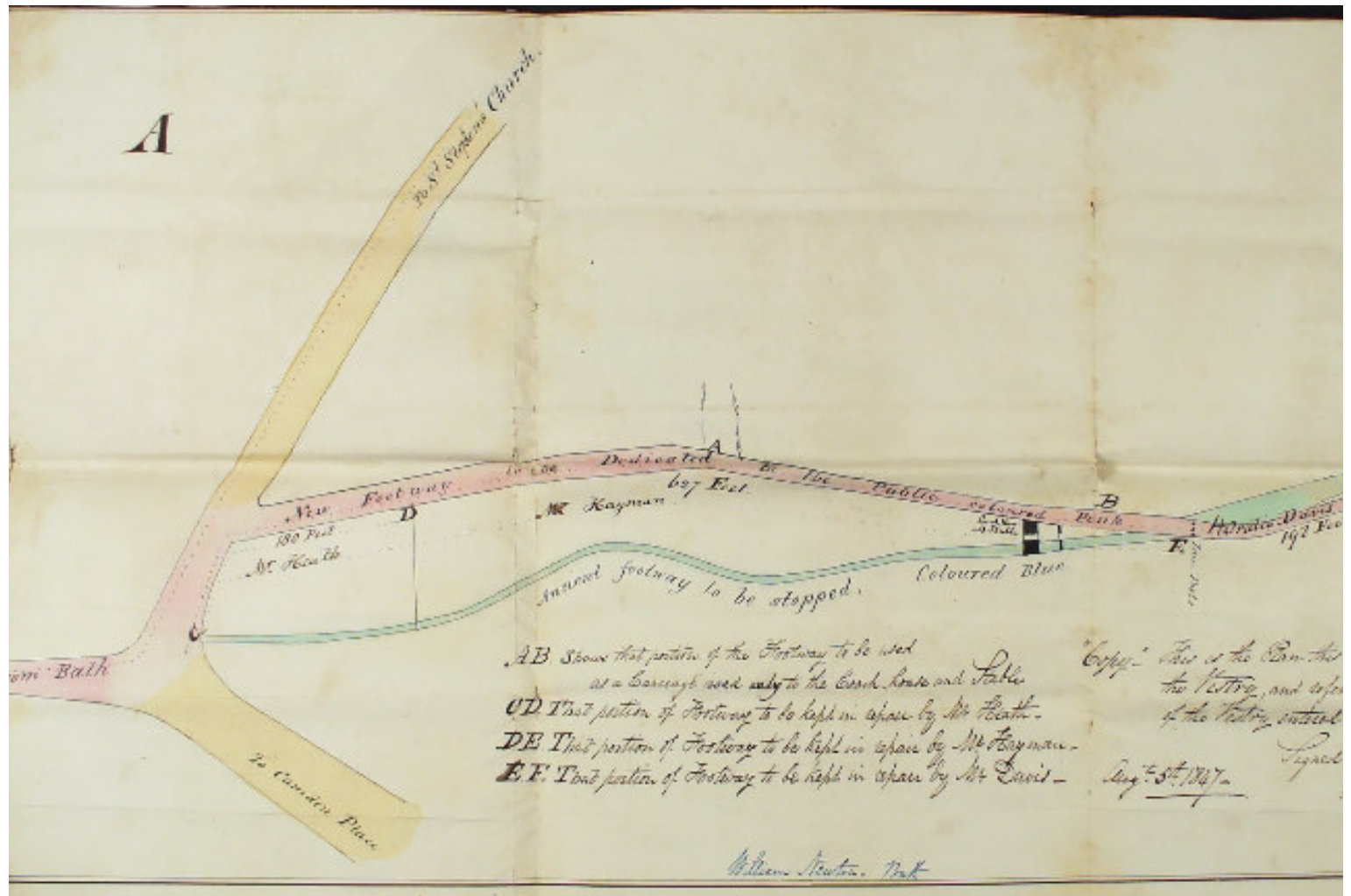
2. Conveyance of land from Sir Henry Rivers to Mr. James Heath. .28th August 1848.

And also shall and will at his own costs and charges make and maintain and keep a footway of six feet wide before the whole length of the said west and south sides of the plot piece or parcel of Land hereby released as shewn in the said plan by a blue colour and shall edge and pave the said footway with six inch or other edging or paving of good faced pennant which footway shall be raised six inches above the

level of the carriage road adjoining thereto and that part on the west side shall be paved with good jointed pennant or flag paving and shall and will on or before the said twenty first day of December now next at his..... own proper costs and charges sink and make to a proper level one half of a Carriage road.....before the whole length of the west and south sides such level to be ascertained by the Architect or Surveyor for the time being of the said Sir Henry River his heirs or assigns and shall and will at his and their own costs and charges from time to time and forever hereafter keep in repair the whole of the said footways and half of the said Carriage Road

o-o-o-O-O-O-o-o-o

A



AB Shows that portion of the Footway to be used
 as a Carriage road only to the Coach House and Stable
 CD That portion of Footway to be kept in repair by Mr Heath.
 DE That portion of Footway to be kept in repair by Mr Kayman.
 EE That portion of Footway to be kept in repair by Mr Davis -

"Copy" This is the Plan of the
 the Vestry, and is for
 of the Vestry, intended
 Signed
 Aug: 5th 1767.

William Weston. 1767