

Brixham Town Council

Report No:	23-2019		
Report Type:	Public		
Title:	Rear Access Lane		
To:	Town Hall Committee	Date:	14.06.19
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Purpose of Report

To ensure Brixham Town Council and its hirers have unrestricted 24-hour access to the Town Hall building and car park.

Background

Leading to the Town Hall car park and Royal Mail there are two access lanes. One is owned by Brixham Town Council and one is owned by the owners of a neighbouring property. The owners of the neighbouring property currently use it as a holiday destination.

Due to local residents parking in the lane owned by the Town Council, and Officers having problems enforcing the area, bollards were installed. This therefore means that access to the Town Hall car park is by driving on the neighbouring lane.

The bollards can be removed which offers two additional parking spaces for odd occasions, especially when larger vehicles require parking on site.

Access Problems

Brixham Town Council and its hirers have been experiencing problems accessing the Town Hall car park out of working hours due to the neighbouring access lane being blocked.

At weekends and evenings, the neighbour parks his vehicle on his lane and therefore blocks access to both the Royal Mail and the Town Council car park. Tenants have reported that the neighbour refuses to move their vehicle to allow access to the Town Hall car park.

As a short-term measure, we have been ensuring that hirers such as the Pannier Market have keys to the bollards to remove them if the access lane is blocked as well as refusing a request by the Theatre to access the parking spaces.

Right of Easement

We have been advised that the Royal Mail have a right of easement over the lane enabling them to access their premises. We are of the understanding that they require 24/7 access.

The Land Registry document does not state that the Town Council has a right of easement. However, research into the acquirement of an easement has found that "Prescription - This occurs if a non-owner has used a piece of land openly but without permission in a certain way for at least 20 years. In this case, they will be granted an easement which allows them to continue using the land in this way."

Further research into acquirement of easements found the following from the GOV.UK webpage.

1. How prescriptive easements may be acquired

Prescription is the acquisition of a right through long use or enjoyment; the law presumes that the right was lawfully granted. There are 3 methods of acquiring an easement by prescription:

- at common law
- by lost modern grant
- under the Prescription Act 1832

Whichever method is relied on, the user must be for at least 20 years.

If Brixham Town Council and the buildings previous occupiers (Torbay Council) can confirm that access to the building has been gained by crossing the neighbouring access lane for at least 20 years this may be a solution to our restricted access problems with the proprietor of the lane. The Town Clerk can report that she is aware that access to the Town Hall car park has been by driving onto the neighbouring lane for at least 11 years.

Option 1

If the Town Council decided to apply for Right of Easement, Land Registry have recommended we obtain legal advice prior to submitting an application due to the complications involved.

A straightforward application with no objections would see a notice issued to the lane owner. If objections to the application were received this would be reviewed by a senior case worker and a final decision would then be made. If the owner, then failed to adhere to the right of easement notice we would need to go to a solicitor for them to act upon this.

The disadvantage of this option is that if the Landowner continues to park in the lane after the right of easement is granted, the Town Council would have to instruct a Solicitor to issue an injunction.

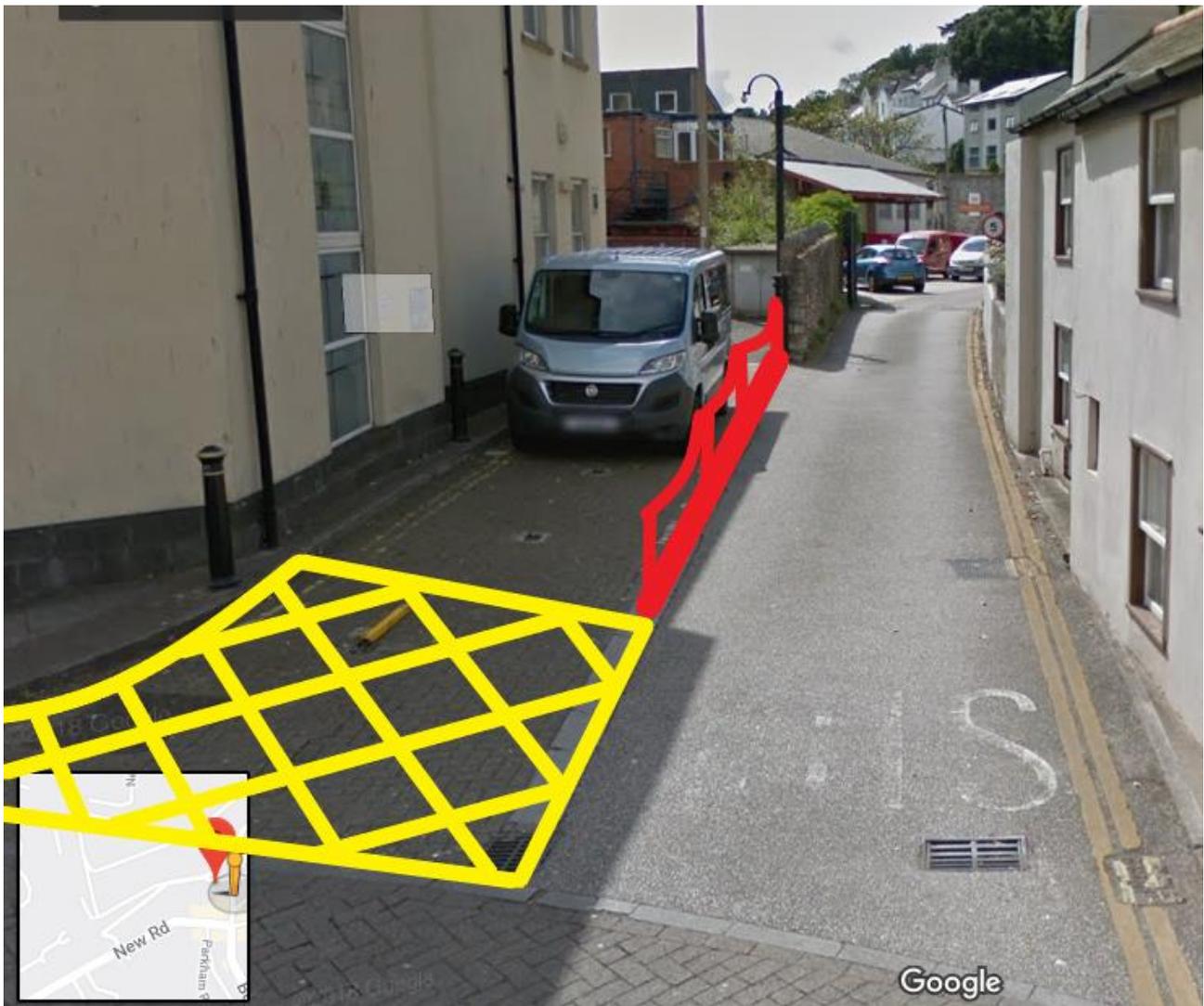
Cost of application to Land Registry is £40.

Cost of Solicitors fees: Unknown.

Option 2

An alternative to investigating the right of easement for Brixham Town Council would be to relocate the bollards central to the two lanes and highlighted in red in the photo below, as well as painting a box junction in the area shown in yellow in the photo below. This would result in the lane becoming an access only lane wide enough for a large transit type van. We would be unable to install bollards for the full length of the lane as this would restrict Royal Mail's larger delivery vehicles from turning into the neighbouring access lane.

The disadvantage of this option is that it will restrict large vehicle access such as bin lorries. It may also hinder production companies visiting the theatre if they have large vehicles to carry their equipment and scenery.



Recommendations

To pursue Option One above by:

- Investigating if Torbay Council can provide a declaration advising they had uninterrupted access over the adjoining lane when they occupied the building.
- Obtain quotes from the Council Solicitors for the application and what it would cost if we require an injunction.