

Brough Hill Fair Community Association

Chairman: Billy Welch. Secretary: Bill Lloyd [REDACTED]
[REDACTED]

A66 Dualling. Brough Hill Fair Additional submission by Mr Welch and Mr Lloyd
(Interested Party 20031989)

Evidence for Rights of an Easement by Prescription

Preamble and Summary:

The Applicant, National Highways, has provided a copy of the 1947 conveyance, which states with reference to the site of Brough Hill Fair, as follows:

“The property or some part thereof is sold subject to the ancient right of holding Brough Hill Fair annually and to all liberties and customs as heretofore enjoyed in connection therewith.”

The Applicant has stated that these rights are undefined, and that there is no evidence of a Prescriptive Right.

Gypsy and Traveller Representatives Billy Welch and Bill Lloyd submit that the Prescriptive Right to hold the Fair is based on the doctrine of Lost Modern Grant. The purpose of this submission is to providing evidence showing that the fair has been held for a continuous period of at least 100 years without force, without secrecy and without permission, thereby satisfying the criteria for a presumption of a Lost Modern Grant. We have defined the rights in more detail by setting out the activities which have regularly taken place since 1955.

The evidence for these activities comes from witness statements and photographs. Since the fair is open to all and not just Gypsies and travellers, in order to gather this evidence Mr Welch and Mr Lloyd have formed an unincorporated association, (The Brough Hill Fair Community Association) and asked for statements from people who have regularly attended the Fair over the last 70 years. These statements are attached, together with a statement from local historian, Councillor Andy Connell. (17 statements in all.) The signatories have all agreed to appear in person if required.

We submit that the public interest can best be served by transferring to any replacement site the rights to the traditional activities of the Fair, as described by this evidence, We ask that rights should be transferred in such a way that the Prescriptive Right by Lost Modern Grant cannot be extinguished by the change in the location or the change in ownership, and that the rights should therefore be specified and transferred by a Deed.

Legal background:

For convenience, an outline of the criteria for establishing a Prescriptive Easement by the Doctrine of Lost Modern Grant is set out here:

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Brough Hill Fair Community Association

Chairman: Billy Welch. Secretary: Bill Lloyd [REDACTED]
[REDACTED]

Prescriptive Rights – Definition

Date and Location:

1. The 1330 Charter provides for *“One fair there lasting for four days that is to say for two days before the feast of St. Matthew the Apostle, on the feast day itself and for one day following so long as the market and the fair do no harm to neighbouring markets and neighbouring fairs”* and *“together with all the liberties and free customs pertaining to such a market and fair so long as there is no harm to neighbouring markets and fairs aforesaid.”*
2. The location of the Fair has moved twice. The current location has been used for the last 76 years, since 1947, without force, without secrecy and without permission, (see witness statements) thereby establishing a Prescriptive Right on the basis of the doctrine of Lost Moden Grant.
3. Although the 1330 Charter specified the date as St Matthews Day, Mr Welch’s confirms that in his lifetime the Fair has always been held on the last Thursday in September, closest to Michaelmas, i.e. St Michael’s day, 29th September. They would arrive in September and leave on the following Monday or Tuesday, in October.
4. Contemporary accounts describe the Fair as the largest horse fair in England. In addition to the written statements, photographic evidence confirms that thousands of people attended the Fair. This is significant because the proposed replacement site will not accommodate the numbers which have attended in the past.

Without force, without secrecy and without permission.

5. Mr Welch and a further 15 Witness Statements confirm that no rent or fee has ever been paid for the use of the field. They confirm that the gate to the field is always unlocked on the Thursday morning and locked again when the last vehicle has left. He confirms he has never asked the landowner’s permission for the gate to be unlocked, and has never asked for their permission or enter any agreement to occupy the field for the duration of the Fair.

Activities.

6. The Fair has traditionally been a livestock fair, trading horses and ponies, cattle, sheep, poultry, and dogs. There is evidence for trade in vehicles, both horsedrawn and motorised, harness, fodder including hay and corn, and all associated equestrian services and equipment such as saddles and bridles, rugs, hardware, farriery, and veterinary items.
7. The Fair has always been the location for trade in footwear and headwear, clothing and linen, bedding and blankets, water containers, cooking appliances, fire irons.
8. Photographic evidence shows sheep pens, fairground rides including Ferris wheel and roundabouts, sideshows, street music, food and drink, and alcohol.
9. Lighting of campfires was normal beside every tent or wagon.
10. Sanitary facilities were traditionally provided by the landowner. A trench was dug and a latrine tent was constructed in army style.

Billy Welch, William Lloyd