

**Definitive Map Review
Parish of Bittadon (Part 2)**

Report of the Chief Officer for Highways, Infrastructure Development and Waste

Please note that the following recommendations are subject to consideration and determination by the Committee before taking effect.

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a footpath between points AA – AB as shown on drawing number HIW/PROW/17/53 (Proposal 4).

1. Introduction

This report examines an anomaly which has come to light during the current Review in the parish of Bittadon.

2. Background

The background to the current Review was set out in a previous report to the Committee at its meeting of 6 July 2017.

3. Proposals

Please refer to the Appendix to this report.

4. Consultations

General consultations have been carried out with the following results:

County Councillor Andrea Davis	– no comment
North Devon Council	– no comment
Bittadon Parish Meeting	– no comment
British Horse Society	– no comment
Byways & Bridleways Trust	– no comment
Country Landowners' Association	– no comment
Devon Green Lanes Group	– no comment
National Farmers' Union	– no comment
Open Spaces Society	– no comment
Ramblers'	– no comment
Trail Riders' Fellowship	– no comment

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

5. Financial Considerations

Financial implications are not a relevant consideration to be taken into account under the provisions 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 and Public Health Considerations

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

9. Conclusion

It is recommended that a Modification Order be made to add a footpath in respect of Proposal 4, between points AA – AB as shown on drawing number HIW/PROW/17/53. There are no further proposals for modifying the Definitive Map for the parish of Bittadon.

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.

10. Reasons for Recommendations

To undertake the County Council's statutory duty under the Wildlife and Countryside Act 1981 to keep the Definitive Map and Statement under continuous review and to progress the parish by parish review in the North Devon area.

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Combe Martin Rural

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence Files	Current	DMR/BITTADON

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 application was made under section 53(5) of the Wildlife and Countryside Act 1981, or such an application 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 application of Winchester College) v Hampshire County Council (2008)* however, found that for such exceptions to be relevant the application 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.

B. Definition of Ratione tenurae Roads

Research into Highway Board, Rural District Council and Parish Council minutes has indicated that '*ratione tenurae*' roads were, from the late 19th century types of road expected to be used by the public, but with the adjacent landowners/occupiers of the road/lane being responsible for the maintenance of the roads.

Section 25(2) of the Local Government Act 1894 enacted that if a person liable to repair a highway '*ratione tenurae*' failed to do so, after being requested by the district council, the council could repair the highway and recover the expenses from the person liable.

1 Proposal 4: Proposed extension of Bittadon Footpath No. 4, by the addition of a footpath as shown between points AA – AB on plan EEC/PROW/17/53.

Recommendation: That a Modification Order be made to add a footpath between points AA – AB.

1.1 Background

1.1.1 The proposal was discovered during the course of the Definitive Map Review as an anomaly in the public highway network which required resolution.

1.2 Description of the Route

1.2.1 The route starts at Footpath No. 3 on the south side of St Peter's Church, Bittadon at point AA and proceeds along a concrete track to the junction with the county road and Bittadon Footpath No. 1 at point AB, on the west side of the church.

1.3 Documentary Evidence

1.3.1 Ordnance Survey mapping, 1809-1962. 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".

1.3.2 The proposal route between points AA – AB is shown on the 1st Edition large scale 25" Ordnance Survey mapping of 1889 as open and available, a seamless continuation of the county road from the main road, the B3230.

1.3.3 Bittadon Tithe Map and Apportionment, 1839-40. 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*'.

1.3.4 The Bittadon tithe map was surveyed by Charles Cooper of Alverdiscott, Bideford, matters. The original document is held at the National Archives, with copies for the parish and diocese held locally.

1.3.5 The proposal route, along with Bittadon Footpath No. 1 and most of Footpath No. 3, is included within lot 165, a road included within Bittadon Barton. The county road with which they connect is included within lot 160, also part of Bittadon Barton.

1.3.6 Finance Act, 1909-10. 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.

- 1.3.7 The proposal route appears to be excluded between points AA and AB, with the red boundary line of hereditament 1 stopping on either side of it.
- 1.3.8 The Field Book entry for hereditament 1 in Bittadon parish refers to an easement for a footpath between farms. It also refers to a public footpath over Ordnance Survey number 153 at Narracott. There is no deduction for either right of way, nor what is now recorded as Marwood Footpath No. 19 or Bittadon Footpath Nos. 1 and 3.
- 1.3.9 Bittadon, Marwood & West Down Freehold Estate Sale, 1918. Sales documents were compiled when a public auction took place. They were drawn up by the landowner or their agent. The public roads will have been excluded from such sales. It is also likely that if a lot has an easement or public right of way over it, it is likely to be detailed in the particulars. Sales particulars should be treated with some caution. The art of embellishment in advertising is not a newly acquired skill.
- 1.3.10 The proposal route, between points AA – AB, is surrounded by lot 2 of the sale but is not included within the sale.
- 1.3.11 Definitive Map Parish Surveys, 1950s. 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.
- 1.3.12 The path 3 is described as running from Bittadon Church to East Stowford Barton at point AA. This was amended by the County Surveyor so as to start from the county road at Bittadon, point AB, and include the proposal route.
- 1.3.13 Definitive Map and Statement, 1957. The Statement describes Bittadon Footpath No. 3 including the proposal route as starting at point AB '*at the Unclassified County Road at Bittadon proceeding north-eastwards along a Private Accommodation Road (not repairable by the inhabitants at large)*'.
- 1.3.14 Bittadon Barton sale, 1993. Sales particulars should be treated with special caution, as the art of embellishment in advertising is not a newly acquired skill. Nevertheless, if a public right of way were admitted, a convincing reason for disregarding the entry would need to be provided before it could be entirely discounted.
- 1.3.15 The proposal route was not included in the sale.
- 1.3.16 Route Photographs, 2009 and 2014. Site photographs of the proposal route show that it is open and available.
- 1.3.17 Land Registry, 2016. The proposal route between points AA and AB is registered to Bittadon Barton.

1.4 Landowner Evidence

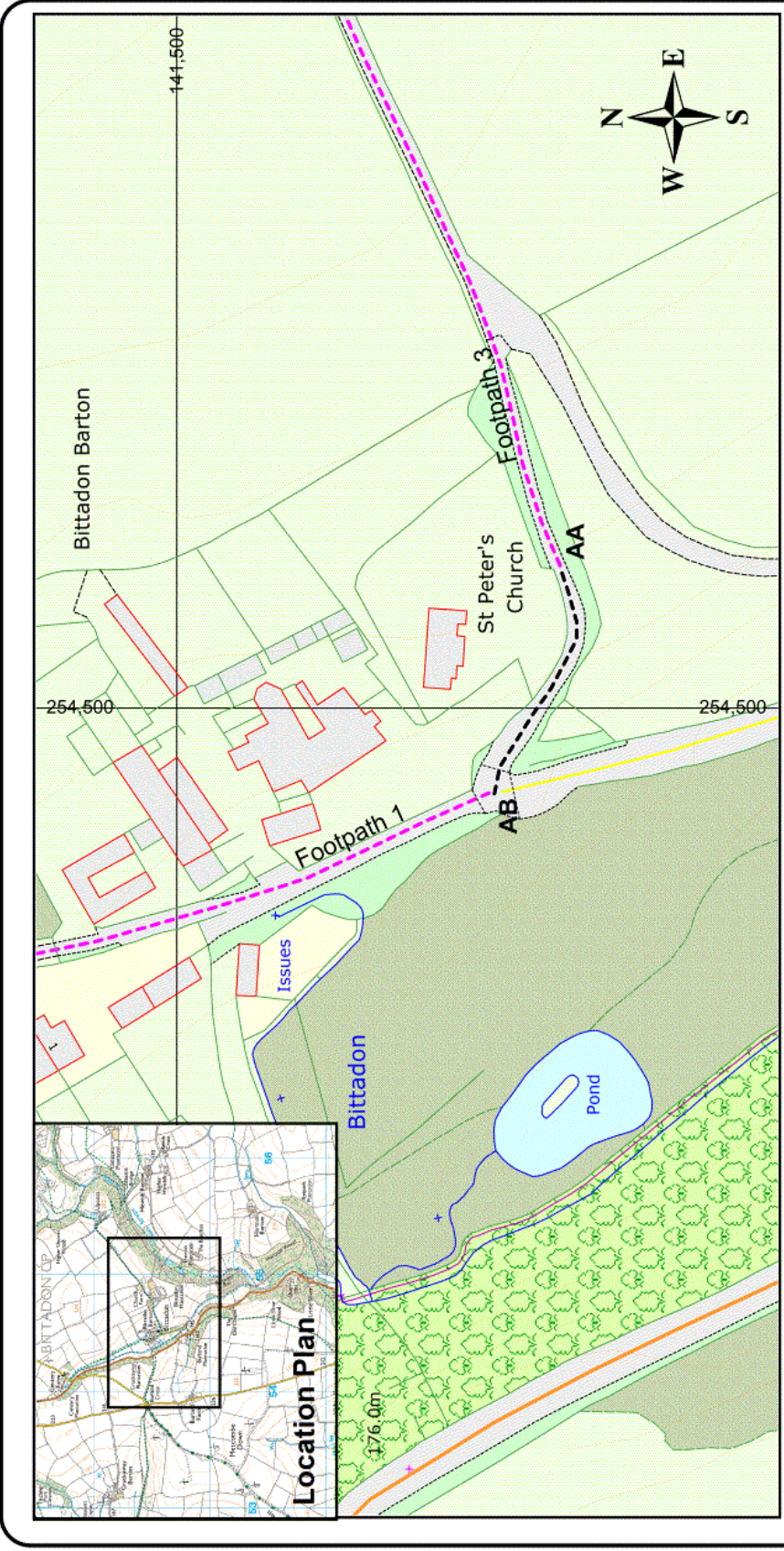
- 1.4.1 No response was received from the landowners at Bittadon Barton.

1.5 Discussion

- 1.5.1 The historical highway records demonstrate that a path has physically existed since at least 1899 along the alignment of Footpath No. 3 to meet Footpath No. 1 and the county road on the west side of St Peter's Church, Bittadon, between points AA – AB.

1.6 Conclusion

- 1.6.1 It is therefore recommended that a Modification Order be made to extend Footpath No. 3 to meet the county road by St Peter's Church by adding a footpath between points AA – AB, as shown on drawing number HIW/PROW/17/53, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.



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drawing number	HIW/PROW/17/53
date	January 2018
scale	1:3,500
drawn by	CLG
Meg Booth Chief Officer for Highways, Infrastructure Development & Waste	

Devon County Council Definitive Map Review - Bittadon Proposal 4 - Proposed extension of Footpath No. 3 to connect with the county road adjacent to St. Peter's Church	-----
Notation Proposed extension of Footpath No. 3 AA - AB (approx 54 m)	-----
Existing footpath	-----