

**Definitive Map Review 2015–17
Parish of Awliscombe, East Devon**

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

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 in respect of Proposal 1 for the application to record a claimed Byway Open to All Traffic on Ivedon Lane in Awliscombe parish.

1. Summary

This report examines one proposal arising out of the Definitive Map Review in the parish of Awliscombe in East Devon district. It concerns the investigation of a Schedule 14 application made in 2005 to add a claimed Byway Open to All Traffic (BOAT) on Ivedon Lane in the parish.

2. Introduction

The original survey by Awliscombe Parish Council in 1950 under s.27 of the National Parks and Access to the Countryside Act of 1949 produced a map and details of two footpaths and one bridleway submitted to the County Council. Comments were added on behalf of Honiton Rural District Council in 1951. All three routes were noted as continuing into the adjoining parishes of Buckerell, Combe Raleigh and Dunkeswell and were recorded for consultations at the Draft Map stage in 1957. They were all included on the Provisional Map and recorded on the Definitive Map, considered as having existed from the relevant date of 1 September 1957.

The reviews of the Definitive Map under s.33 of the 1949 Act, which commenced in the 1960s and 1970s but were never completed, produced no valid proposals by the Parish Council with supporting evidence.

The following additional Orders from diversions and alterations to the footpaths and bridleway have been made and will require the making of a Legal Event Modification Order for recording on a revised Definitive Map in due course:

- (a) Highways Act 1959, Magistrates' Court, Petty Sessional Division of Honiton, s.108 Stopping-up Order 1968 (part of A373, with reservation of Footpath No. 4, Awliscombe);
- (b) East Devon Parishes Order 1989, (transferring part of Bridleway No. 19, Dunkeswell to Awliscombe);
- (c) Highways Act 1980, Devon County Council (Bridleway No. 19, Awliscombe), Public Path Diversion Order 1995; and
- (d) Highways Act 1980, Devon County Council (Footpath No. 2, Awliscombe), Public Path Diversion Order 1996 (also creating Footpath No. 2, Honiton);

The current number of recorded public rights of way in the parish is three footpaths and two bridleways. Investigation of a formal application submitted on behalf of the Trail Riders' Fellowship (TRF) in 2005 to record a route claimed as a BOAT, one of over 200 claims made by them in the whole county, was deferred to be considered as the proposal in the current review process. The applications were made by the TRF between 2005 and 2006 ahead of the Natural Environment and Rural Communities Act 2006 coming into effect that prevented routes being recorded as BOATs, except in particular circumstances where evidence is sufficient and meets the specific requirements of limited exceptions.

3. Background

The current Review was started with a public meeting in May 2015, with references to the changes to recorded public rights of way and claims affecting the parish, including the application for the claimed BOAT. No proposals for any further changes or claims were put forward by the Parish Council after the meeting, or in response to later consultations. Earlier consultations in 2014 for the review process in the adjoining parish of Combe Raleigh had included an application by the Ramblers made in 2008 to record a footpath for a claimed route continuing across the parish boundary into Awliscombe.

The claims in Combe Raleigh were rejected, but following successful appeals to the Secretary of State the County Council was directed to make Orders recording some of the claimed routes as public footpaths, including the route continuing into Awliscombe parish. A Modification Order made to add all of those footpaths in Combe Raleigh with the continuation into Awliscombe received objections; therefore, it has been submitted to the Planning Inspectorate for determination that may lead to a local public inquiry.

4. Proposals

Please refer to the Appendix to this report.

5. Consultations

General consultations on the application were carried out in April 2016 with the following results:

County Councillor Paul Diviani	-	no comment;
East Devon District Council/AONB	-	no comment;
Awliscombe Parish Council	-	no comment;
Country Land and Business Association	-	no comment;
National Farmers' Union	-	no comment;
ACU/TRF	-	no comment;
British Horse Society	-	no comment;
Cyclists' Touring Club	-	no comment;
Ramblers	-	no comment.

Specific responses, particularly from the owners of the land affected on and adjoining the claimed route, are detailed in the Appendix to this report and included in the background papers.

6. 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.

7. Legal Considerations

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

8. Risk Management Considerations

No risks have been identified.

9. Equality, Environmental Impact and Public Health Considerations

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

10. Conclusion

It is recommended that no Modification Order be made in respect of the application for a claimed BOAT in Proposal 1, as the evidence is considered insufficient to meet the requirements of the legislation. Details concerning the recommendation are discussed in the Appendix to this report.

There are no recommendations to make concerning any other modifications in Awliscombe parish. However, 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 keep the Definitive Map and Statement under continuous review and to progress the parish-by-parish review in the East Devon district area.

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Electoral Division: Honiton St Paul's

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence File	2015 to date	NSC/DMR/AWL

ns190117pra
sc/cr/DMR Parish of Awliscombe
03 200217

A. Basis of Claims

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;

The Wildlife and Countryside Act 1981, Section 53 (3)(c) enables the Definitive Map and Statement 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;

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 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; and

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.

Common Law presumes that a public right of way subsists if, at some time in the past, the landowner dedicated the way to the public. That can be either expressly, with evidence of the dedication having since been lost, or by implication in having not objected to the use of the way by the public, the landowner is presumed to have acquiesced, with the public having accepted that dedication by continuing to use it.

Proposal 1: Schedule 14 application – claimed addition of Byway Open to All Traffic, Ivedon Lane, points A–B, shown on drawing number HTM/PROW/15/36

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 1 for the claimed addition of a BOAT.

1.1 Description

- 1.1.1 The claimed route for this application starts from the end of a minor surfaced cul-de-sac road leading to Ivedon House and Ivedon Farm from the A373 Honiton to Cullompton road east of Awliscombe village to the north-west of Honiton (point A). It continues generally north-eastwards from the end of the surfaced road as a wide unsurfaced and hedged track used as access to adjoining fields and woodlands north of Ivedon Farm below St. Cyres' Hill. It turns generally eastwards to run between the southern boundary of the woods and a drain alongside fields, continuing through the edge of the wood to end on a minor road leading from the A373 through the woodlands on St. Cyres' Hill towards Limers Cross on the Honiton to Dunkeswell road (point B).

1.2 The Definitive Map process

- 1.2.1 This claimed route was not included in the survey of paths on behalf of Awliscombe Parish Council in 1950 to put forward for recording as a public right of way. It was not included at the Draft and Provisional map stages for recording on the Definitive Map.

1.3 Documentary Evidence

- 1.3.1 Early historical mapping – early 19th century: Ordnance Survey, Surveyors' Drawings 1806-7 and 1st edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827

Early historical maps at smaller scales, from the Ordnance Survey drawings for the 1st edition map, show the claimed route included with a network of tracks leading from the Honiton to Cullompton road to and beyond "Ivydown" onto the road on "Combe Rawleigh Hill". They are shown in the same way as some of those which are recorded now as public roads, but also including others that are not recorded now as public or are no longer existing. It is shown on the 1st edition map in the same way and also on Greenwood's later map, believed to have been mainly copied from earlier Ordnance Survey map editions.

- 1.3.2 Later 19th century historical mapping: Awliscombe Tithe Map & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

Some later maps at larger scales show the claimed route in more detail. The Tithe Map for Awliscombe parish dated 1840 shows the enclosed section of track, now recorded as maintainable highway, leading from the road passing the buildings of Ashfield House and Ivedon House. It continues on the claimed route, shown in the same way, passing the buildings of Ivedon Farm, recorded then in the Apportionment as Elwills Farm. Beyond the farm buildings, it is shown continuing on the claimed route as an unenclosed track with verges inside the enclosed boundaries. It runs past the woodland, recorded then in the Apportionment as a Plantation and shown with an access into the woods, ending on the St. Cyres' Hill road opposite another Plantation. A line across that end of the route indicates the presence of a barrier leading onto the road there, which may have been a gate.

1.3.3 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, although the lines of paths or unenclosed tracks are shown crossing some fields in other parts of the parish. The Tithe Map records provide only supporting evidence that the whole route as claimed existed then on the ground, connected with other tracks now recorded as public roads, but is not evidence on its own that the route was considered then to be a public road.

1.3.4 The Ordnance Survey 25" to a mile 1st edition map surveyed in 1887 shows the track on the claimed route continuing from the section of road in the same way as on the Tithe Map between the roads, passing the buildings of Ashfield House, Ivedon House and Ivedon Farm. It indicates that there was still a gate at its end in the woods on the side of the road on St. Cyres' Hill. The Revised New Series smaller-scale map for the area from the later 19th century shows the sections of the roads and tracks in the same way as on earlier editions. The claimed route is shown uncoloured, which the key indicates as an 'unmetalled' or unsurfaced road, continuing from the coloured section of road to Ivedon House indicated as 'metalled' or surfaced. However, the colouring or its absence cannot be taken to indicate on its own what may have been considered then to be public roads or private access tracks, which are not all consistent with what are now recorded as publicly maintainable roads.

1.3.5 Later historical mapping, from early 20th century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2nd edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1st edition map. Copies of extracts from the same later maps used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation were submitted with the application. The maps show the claimed route to have been excluded from the colouring of defined hereditaments, or assessment areas of land, for Ivedon Farm and other adjoining land and woods, in the same way as the section of track leading to it and others now recorded as public roads.

1.3.6 It could suggest that the route may have been considered to have some form of public status to be included in the public road network at the time. However, there could have been other reasons for its exclusion including uncertainties about ownership or shared use for access, with other routes excluded that are for private access to buildings and land and not recorded now as public.

1.3.7 Later Ordnance Survey mapping, Bartholomew's and Bacon's maps

Smaller scale maps from the earlier 20th century, particularly Ordnance Survey with extracts from Bartholomew and Bacon map editions submitted with the application, show the claimed route in the same way as in earlier editions. Although showing the claimed route as uncoloured and connected to other routes some of which are recorded now as public roads, the maps were subject to the general disclaimer that they were not evidence of a right of way.

1.3.8 Later Ordnance Survey 'A' edition larger-scale mapping from 1959, around the time that the Definitive Map was being drawn up, shows the track on the claimed route continuing from the section of road in the same way as on earlier editions between the roads, passing the buildings of Awliscombe House, Ivedon House and Ivedon Farm. The section of unenclosed track beyond Ivedon Farm, with verges inside the enclosed boundaries passing the woodland, is labelled as a 'Track'.

- 1.3.9 The showing of the claimed route on some early and later maps records its physical existence as a path or track at those times until more recently. They do not indicate on their own or support the existence of public rights of way, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889 and by other editions, which may be presumed to apply to earlier and other commercial maps as well.

1.3.10 Highways records

Older and more recent highways records show that the section of minor public road leading from the Honiton to Dunkeswell road has always been recorded as a cul-de-sac to Ivedon House and Ivedon Farm. No part of the continuing track on the route as claimed has been recorded as part of the public road network and it is not shown on the current List of Streets as publicly maintainable highway. The claim does not have any effect on the existence of private rights for access in vehicles to the buildings of Ivedon Farm, nor to adjoining fields and woodland from the track on the continuation of the route.

1.3.11 Aerial photography

Earlier and later aerial photography between 1946–9 and 2007 shows only the line of the mainly enclosed and surfaced section of the road leading to the route as claimed, with other roads in the area. The continuation of the track on the claimed route is shown to be unsurfaced although becoming more heavily wooded with the growth of trees, particularly where it passes the woods leading onto the road on St. Cyres' Hill.

1.4 **Definitive Map Reviews and Consultations**

- 1.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes that were started but not completed. The claimed footpath was included in the consultations in April 2016 on the basis of the application submitted in 2005.

1.5 **User Evidence**

- 1.5.1 No supporting evidence of claimed use was submitted with this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law. Following the consultations, one completed user evidence form was submitted by a local resident indicating use of the claimed route on foot since 2014.
- 1.5.2 He believed that the route was a bridleway, reporting that it was used by other walkers and horse riders, but no forms were received from any other users. As the only evidence of any use by the public and for just two years only on foot, it is not sufficient evidence to be taken into account to consider in support of the claim for public status as a byway, or even as a footpath.

1.6 **Landowner and Rebuttal Evidence**

- 1.6.1 The owners of properties and land on and adjoining the claimed route completed landowner evidence forms. All of them indicated that the route crossed or adjoined their land or property and none believed it to be public. One landowner referred to having seen, or been aware of, the occasional walker, neighbour or horse rider using the route. None of them had required people to ask permission when using it, but one indicated that a local horse rider had previously been allowed to use it. They

reported that some walkers had turned back after being stopped and told that it was overgrown and wet, with other users in vehicles or on motorcycles also said to have been stopped and turned back.

- 1.6.2 None of the landowners had obstructed the claimed route permanently, but they indicated that the lane had been blocked occasionally when it was being grazed by stock, using gates and farm vehicles and also sometimes with parked vehicles. They had not put up notices to say that it was not public, with none having made a Section 31 deposit to show lack of intention to dedicate. None reported that there were any permanent gates on the route which may have been locked.
- 1.6.3 In additional information, some of the owners provided further details, particularly to reinforce their knowledge that the claimed route had never been used by the public, during their ownership and to express their views against it being recorded as a byway.

1.7 Discussion – Statute and Common Law

1.7.1 Statute (Section 31, Highways Act 1980)

The application for the route to be added was not made in response to any specific event acting as a significant challenge to its use, particularly in vehicles. It was not submitted as the result of any specific action taken by a landowner to obstruct or prevent access to the route from a particular date, but was made in advance of the effects of new legislation. There is, therefore, no evidence of any significant actions by a landowner having called into question use of the route at a specific time for consideration under statute law.

- 1.7.2 Schedule 14 applications provide the date of an event that can be taken to have called the public's right to use a route into question, particularly if there are no significant previous events or actions that may have led to the application being made, or any others even earlier. As there has been no such event or action in this case, the period for consideration under statute is the 20 years from November 1985 to the date of the application in November 2005.
- 1.7.3 No evidence of use by the public during that period was submitted with the application to support addition of the claimed route as a Byway Open to All Traffic. The evidence of use on foot by only one person submitted later is considered to be less than minimal and, therefore, insufficient to support recording the claimed route as a BOAT, or even as a footpath, by a statutory presumption of dedication from use by the public. There is, therefore, no need to consider whether there were actions taken by the landowners during the 20 year period to provide evidence of any lack of intention to dedicate the route as public, although no such evidence has been submitted.

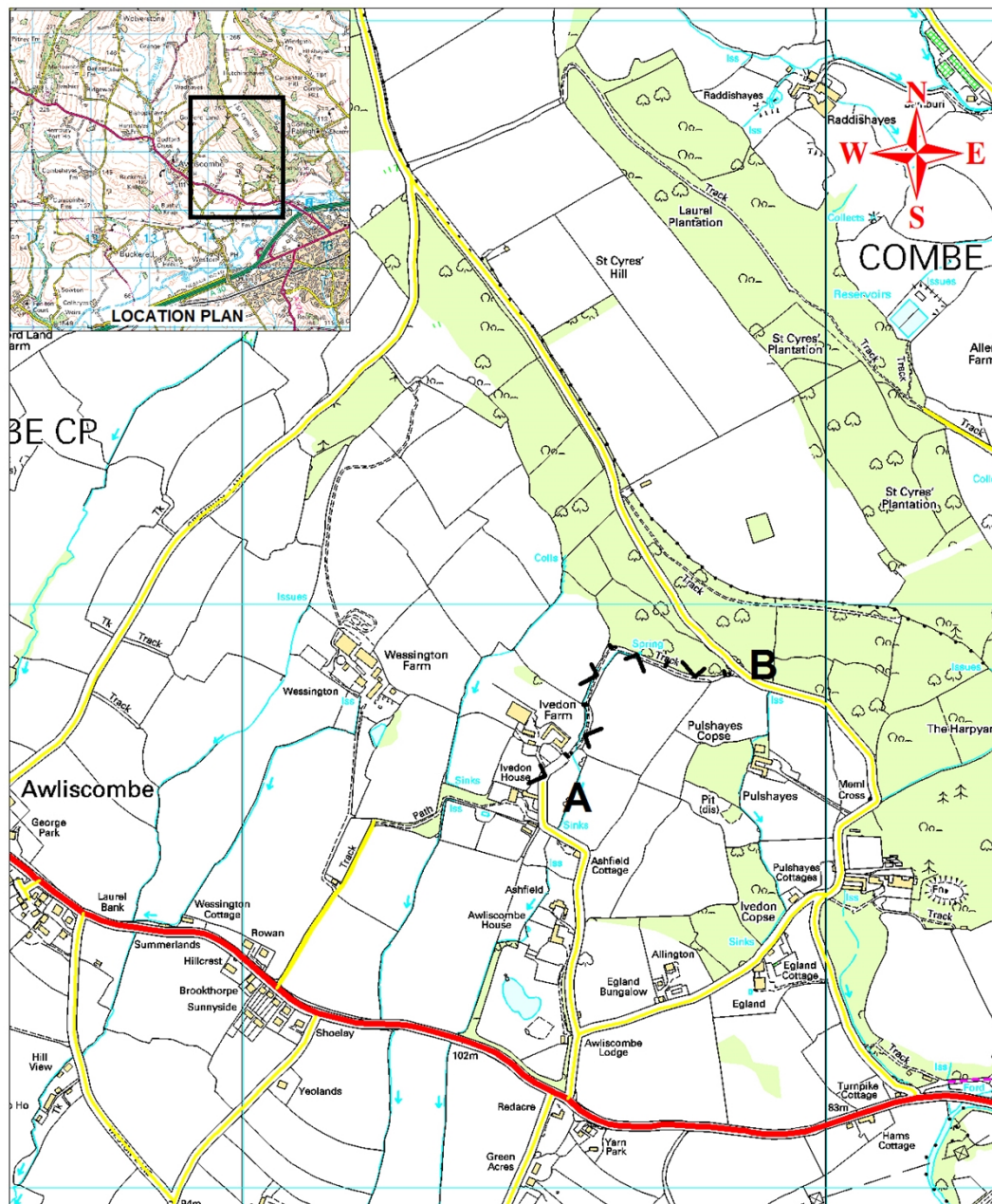
1.7.4 Common Law

Considering the application in relation to common law requires taking into account the historical and other documentary evidence submitted and discovered, but without being able to consider any significant evidence of claimed use. Historical mapping shows that Ivedon Lane has existed physically on the route since at least the first half of the 19th century. Later Ordnance Survey and other mapping with aerial photography show that the route has continued to exist on its current line more recently up to the present, providing access to properties and adjoining land.

- 1.7.5 The Tithe Map on its own is not significant in showing the route in the same way as others now recorded as public roads, which also included others that have never been recorded as public and are now private tracks for access only to land or properties. Although exclusion of the route on later Finance Act maps could suggest that it might have been considered then as included in the public road network, it may have been for other reasons relating to shared ownership. Other routes shown excluded are not now recorded as public roads. Other mapping suggests that it has been regarded since the 19th century as a private access track and not as part of the public road network. Its surface has remained mainly unimproved for any vehicular use, apart from for private access in vehicles to the Ivedon Farm buildings from the end of the recorded minor public road leading to it.
- 1.7.6 No other more significant historical maps or references in historical documentary material have been submitted or discovered to indicate more specifically that the route may have had the reputation of being a public road in the past or more recently. In particular, there is no indication of any public expenditure on it or responsibility for the maintenance of its surface.
- 1.7.7 Considering the historical mapping evidence, in relation to the evidence of all use, dedication at common law for the status of Byway Open to All Traffic cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to Ivedon Lane being considered as a public highway, or having the reputation of being available for use by the public in vehicles beyond the end of the section recorded as a minor public road. There is no evidence to suggest that the landowner intended to dedicate the route as a public highway, or that the public accepted any dedication as a highway or as a public right of way of any status and have used it on that basis. Its main use has been for private access in vehicles to adjoining properties, farm buildings and land. The references by the landowners to any other use, on foot or horseback, is not considered sufficient for recording any public rights.

1.8 Conclusion

- 1.8.1 From this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, it is insufficient to support the claim that the route on Ivedon Lane should be recorded as a Byway Open to All Traffic. From consideration under statute and common law there is, therefore, insufficient basis for making an Order in respect of the application. Accordingly, the recommendation is that no Order be made to add a Byway Open to All Traffic, or a Restricted Byway, on the claimed route and with no need to consider whether exceptions under the Natural Environment and Rural Communities Act 2006 apply.



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DEVON COUNTY COUNCIL
Definitive Map Review, Awliscombe parish
Informal Consultations, Proposal 1:
Claimed Byway Open to All Traffic,
Ivedon Lane

drawing number HTM/PROW/15/36
 date Jul 2015
 scale 1: 10, 000
 drawn by NSC

Notation

Claimed Byway A-B (500 metres) ~ ^ . v ^ .

David Whitton

HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE

