

## **Definitive Map Review Parish of Sparkwell**

Report of the Acting 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 the proposal to amend Bridleway No. 24, Sparkwell, and it be noted that the Definitive Map Review has been completed in the parish of Sparkwell and no modifications are required to be made.

### **1. Introduction**

The report examines the Definitive Map Review in the parish of Sparkwell in South Hams District.

### **2. Background**

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed twenty-one footpaths and four bridleways, which were recorded on the Definitive Map and Statement with a relevant date of 11 October 1954.

The review of the Definitive Map, under s. 33 of the 1949 Act, which commenced in the 1970s, but was never completed, produced no proposals for change to the map in the parish.

The Limited Special Review of Roads Used as Public Paths (RUPPS), also carried out in the 1970s, did not affect this parish.

The following agreements and Orders have been made and confirmed:

South Hams District Council Public Path Diversion Order 1975, Footpath No.12 Sparkwell  
South Hams District Council Public Path Diversion Order 1982, Footpath No.12 Sparkwell  
South Hams District Council Public Path Diversion Order 1982, Footpath No.12 Sparkwell  
Devon County Council, Definitive Map Modification Order 1997 Bridleway No.35 Sparkwell  
Devon County Council Public Path Diversion Order 1993 Footpath Nos. 9 & 10 Sparkwell  
Devon County Council Public Path Creation Agreement 2009 Bridleway No.36, Sparkwell  
South Hams District Council Town & Country Planning Act Diversion Order 2010 Footpath No.12, Sparkwell at Lee Mill  
South Hams District Council Town & Country Planning Act Diversion Order 2010, Footpath Nos. 11 & 13 Sparkwell  
Devon County Council Footpath No.23, Sparkwell Public Path Diversion & Definitive Map modification Order 2013  
Devon County Council Public Path Creation Agreements 2014 Bridleways 37, 39 & 40 Sparkwell  
Devon County Council Town & Country Planning Act S.257 Stopping up Order 2013 Bridleway Nos.29, 30 & 31 Sparkwell

Devon County Council Town & Country Planning Act S.257 Stopping Up Order 2014 Sparkwell Bridleway Nos.29,30 & 31  
Devon County Council Town & Country Planning Act S.257 Stopping Up and Public Path Diversion Order 2014 Footpath Nos. 17,18,21 & 22 Sparkwell and Bridleway No.35  
Devon County Council Public Path Diversion & Definitive Map Modification Order 2014, Footpath No.4, Sparkwell  
Devon County Council & Town & Country Planning Act S.257 Bridleway Nos. 57, Shaugh Prior and 39, Sparkwell Public Path Diversion Order 2016  
Devon County Council Bridleway No.41, Sparkwell and No.72, Shaugh Prior Public Path Creation Agreement 2017

Legal Event Modification Orders will be made for these changes, where necessary, under delegated powers in due course.

The current Review began in October 2016 with a public meeting held in the Sparkwell Village Hall, and was well attended by members of the public, the parish clerk and parish councillors, County Councillor John Hart and representatives from Wolf Minerals UK Ltd.

### **3. Proposals**

One suggestion has been noted where there is an irregularity between the Definitive Map and Statement for the southern end of Bridleway No.24, Sparkwell. The details are discussed in Appendix 1.

### **4. Consultations**

A public consultation was carried out in May 2017.

The responses were as follows:

County Councillor J Hart	-	no comment
South Hams District Council	-	no comment
Sparkwell Parish Council	-	no objection
British Horse Society	-	no comment
Byways and Bridleways Trust	-	no comment
Country Land & Business Association	-	no comment
NFU	-	no comment
Open Spaces Society	-	no comment
Ramblers' Association	-	no proposals
Trail Riders' Fellowship	-	no comment

### **5. 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.

### **6. Legal Considerations**

The implications/consequences of the recommendation(s) 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, been taken into account in the preparation of the report.

## **9. Conclusion**

It is recommended that no Modification Order be made in respect of the suggestion for modifying the Definitive Map in the parish of Sparkwell and that members note that the Definitive Map Review has been completed in this parish.

Should any further valid claim with sufficient evidence be made in the next six months, it would seem reasonable for it to be determined promptly rather than be 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 South Hams District area.

Meg Booth  
Acting Chief Officer Highways, Infrastructure Development and Waste

## **Electoral Divisions: Bickleigh and Wembury**

### Local Government Act 1972: List of Background Papers

Contact for enquiries: Emily Spurway

Room No: ABG Lucombe House, County Hall, Topsham Road, Exeter

Tel No: 01392 383000

Background Paper	Date	File Ref.
Correspondence files	2016 - date	ES/DMR/Sparkwell

es080617pra  
sc/cr/DRM Parish of Sparkwell  
04 260617

## Background

### A. Basis of Claims

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.

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 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.

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 and Statement to be modified if the County Council discovers evidence which, when considered with all other relevant evidence available to it, shows:

(i) that 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) that 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; or

(iii) that 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 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.

## **1. Suggestion 1: Bridleway No. 24, Sparkwell – Anomaly between the Definitive Map and the Definitive Statement**

To clarify the extent of the southern point of Bridleway No.24, Sparkwell in relation to its junction with the county road (highway maintainable at public expense) near Loughtor Corn Mill (Loughtor Mill) as described in the Definitive Statement and as shown between points A – B on drawing HIW/PROW/17/31.

The continuation over section B – C is in the administrative area of Plymouth City and outside of Devon County Council's highway obligation.

**Recommendation: That no Modification Order be made to amend the Definitive Map in respect of Bridleway No. 24.**

### **1.1 Background**

- 1.1.1** During the course of the current Definitive Map review, existing public rights of way in the parish were checked and the line of Bridleway No. 24 appeared to stop short of the county road at Loughtor Corn Mill. The Definitive Map shows the bridleway apparently stopping approximately 130 metres north of the county road, just south of The Lodge by Binnicliff Wood at point A. Bridleway No.24 was formerly in the administrative parish of Plympton St Mary and is now in the administrative district of the South Hams.

### **1.2 Description of the route**

- 1.2.1** This path is a bridleway starting from Loughtor Mill Green Road opposite Loughtor Mill and continues in a northerly direction along a lane, known as Park Lane to join the minor county road known as Tweenway Road in the parish of Sparkwell.

### **1.3 Documentary Evidence**

- 1.3.1** Definitive Map Statement: - Bridleway No.24, Sparkwell - relevant date 11 October 1954

The Definitive Statement for this route states:

Original Designation: Parish of Plympton St Mary

Current Designation: Parish of Sparkwell

From: Loughtor Mill Green Road

To: Tweenaway Road

Description: This path is a Bridleway. It starts at Loughtor Mill Green Road (Unclassified County Road) opposite Corn Mills, and proceeds north along a Private Accommodation Road (not repairable by the inhabitants at large) until it joins Tweenway Road (Unclassified County Road)

### **1.3.2 Highway records**

Plympton District Highways Handover maps up to 1947.

The 6inch map sheet 118 S.E. shows the route A - B - C as coloured blue from the word "Lodge" to the county road, coloured yellow, at Loughtor Corn Mills.

The mileage Road Book that accompanies the handover maps also shows sheet 188.SE road 20 as "From Cl.III 36 to Lodge Binnicliiff Wood, 0.10" in the remarks section it records it as a "Cul – de – Sac".

This indicates that the route A – B – C was considered to be a highway maintainable at public expense by Plympton Rural District Council.

### **1.3.3 Devon County Council Land Charges Map.**

The Land Charges department at County Hall hold the public records of Devon's highways maintainable at public expense. These records indicate that the section A – B is coloured blue, indicating a highway maintainable at public expense. There is no indication that this section of public highway has been stopped up.

## **2. Rebuttal Evidence**

No rebuttal evidence has been received.

## **3. Discussion**

There is no provision in statute for deciding whether, in the case of conflict, the map or statement takes precedence. Where there appears to an irregularity between the map and statement, the Definitive Map Statement can provide clear written evidence of the line of the right of way in relation to other described features.

Whilst assessing the documentary evidence for this suggestion, it became apparent that there was a gap between the south end of Bridleway No.24, Sparkwell and the county road at Loughtor (Corn) Mill. Initially it was considered that the Definitive Map had been drawn in error and did not reflect the bridleway continuing south to join the county road at Loughtor Mill.

However, the Definitive Statement for Bridleway No.24, Sparkwell is precise in detailing the junction of the bridleway and the unclassified county road, Loughtor Mill Green Road which is clearly described as opposite to the Corn Mills, located on the county road to Plympton.

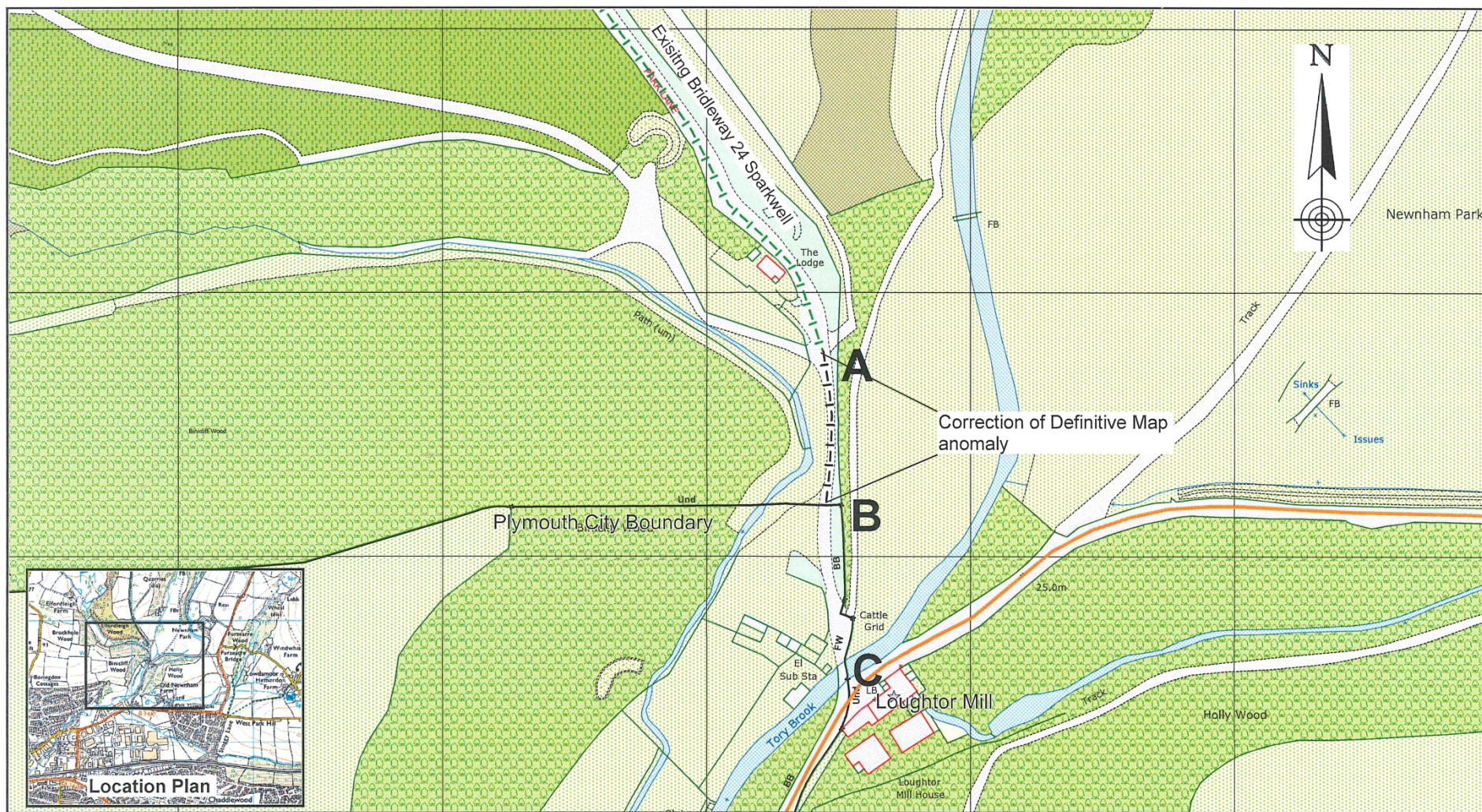
On examination of handover maps for Devon, in particular Plympton Rural District Council, the section A – B – C on the plan HIW/PROW/17/31 corresponds to the section of public road called Loughtor Mill Green Road. This is reflected in the Mileage Book recording the additional mileage of the road and that it was a cul –de – sac. These records indicate that the route A – B – C was recorded on successive highway maintenance records and is considered to be a county road. The section A – B in Sparkwell has been omitted in error from the County Council's digitised Land Charges records.

## **4. Conclusion**

It is concluded that the southern end of Bridleway No. 24, Sparkwell joins an unclassified county road. It is recommended therefore, that no Modification Order be made to amend the Definitive Map in relation to this suggestion.

In addition the County Council's digitised Land Charges records will be amended to reflect the section A- B as a highway maintainable at public expense and Plymouth City Council will be advised of the same findings for the section C – B.





SX 55,57 100m grid

Reproduced from Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Licence No. 100019783

# **DEVON COUNTY COUNCIL** **Definitive Map Review - Informal consultation** **Sparkwell**

Drawing number HIW/PROW/17/31  
 Date May 2017  
 Scale 1: 2000 (at A4)  
 Drawn by ES

Notation

Correction of Definitive Map anomaly omission	- - - - -	approx 60metres
Existing Bridleway No.24 Sparkwell	- - - - -	

**Meg Booth**  
 Acting Chief Officer: Highways, Infrastructure Development & Waste

**Devon**  
 County Council