

**Definitive Map Review 2006-2007
Parish of West Alvington**

Report of the Director for Environment, Economy and Culture

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 to modify the Definitive Map and Statement to add a public footpath as claimed between points A B as shown on drawing number ED/PROW/07/15.

1. Summary

The report deals with the Definitive Map Review for the Parish of West Alvington and the determination of a claim under Schedule 14 of the Wildlife and Countryside Act 1981 to record of a footpath.

2. Background

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed sixteen footpaths in West Alvington which were recorded on the Definitive Map and Statement with a relevant date of 1 December 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 valid proposals for any addition, upgrading or deletion.

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

Byway Open to All Traffic No. 17, West Alvington Definitive Map Modification Order 1995 has been confirmed.

3. Review

An application under schedule 14 of the Wildlife and Countryside Act 1981 section 53(5) was submitted on 28 October 1995 to add a footpath leading from Footpath No. 14, West Alvington to Footpath No. 15, West Alvington around the estuary at Tacket Wood. Consultations were carried out at that time but determination of the application was deferred pending the start of the Parish Review.

The current Review began in March 2006 with a public meeting held in the parish hall. The review was advertised in the Kingsbridge Gazette and on village notice boards. No additional claims or suggestions for modifying the Definitive Map were put forward following the parish meeting. No further supporting evidence was received in respect of the claimed path at Tacket Wood.

A number of public path orders are also being dealt with in the parish separately under delegated powers.

4. Conclusion

It is recommended that no order be made in respect of this claim. There are no other recommendations to make concerning any further modifications. However, should a valid claim be made in the next six months it would seem sensible for it to be determined promptly rather than deferred.

5. Reason for Recommendation/Alternative Options Considered

To progress the parish by parish review of the Definitive Map in the South Hams.

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Electoral Division: Thurlestone, Salcombe & Allington

Local Government Act 1972

List of Background Papers

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Background Paper	Date	File Ref.
Correspondence file	1995-present	DMR/West Alvington

hb060207pra
sc/parish of west alvington
3 hq 260207

Background to the Proposal

A. Basis of Claims

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 Wildlife and Countryside Act 1981, Section 53[3] [c] [i] 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 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. Claimed footpath at Tacket Wood, West Alvington.

Addition of a public footpath from Footpath No. 14, West Alvington to Footpath No. 15, West Alvington as shown on drawing number ED/PROW/07/15.

Recommendation: It is recommended that no Modification Order be made to add this route to the Definitive Map and Statement as a Public Footpath.

1.1 Background

An application under schedule 14 of the Wildlife and Countryside Act 1981 section 53(5) was submitted on 28 October 1995 by Mr Hill of Tacket Wood Grange to add a footpath leading from Footpath No. 14, West Alvington around the foreshore to the north of the properties Riverbank and Tacket Wood Bungalow to join a spur of Footpath No. 15, West Alvington adjacent to Tacket Wood Grange. The application was accompanied by a petition signed by forty-five residents confirming that they had used the path. Signatories on the petition were sent User Evidence Forms to complete in respect of the claimed route and ten returned their completed forms.

The application was triggered by the development of an area of land, now the property known as Riverbank, adjoining Tacket Wood Bungalow. Local residents were concerned that

the developers had deposited rubble onto the foreshore, raising the level of the land and obstructing the claimed footpath.

Although the claimed path was in danger of being lost through development, evidence in support of the application was not strong. It was considered appropriate that the application should be held on file pending the Parish Review and the possibility that more evidence may become available.

1.2 Description of the Route

The path as claimed starts from Footpath No. 14, West Alvington, opposite the property Waterside, and proceeds eastwards down a grassy slope onto mud and shingle then continues in a generally east northeastward direction following the edge of the creek and estuary around the northern boundaries of the properties Riverbank and Tacket Wood Bungalow. The path then veers southeastwards, still following the edge of the estuary, to join a spur of Footpath No. 15, West Alvington to the north of Tacket Wood Grange. Much of the path is below the mean high water mark and therefore covered at high tides. Part of the path claimed in 1995 is now obstructed by the retaining wall adjoining Riverbank.

1.3 Historical Maps

Ordnance Survey Maps show the existing public footpaths at Tacket Wood. They do not however show the claimed route around the edge of the estuary. These maps also show that the position of the high water mark and the extent of adjoining land at Tacket Wood have varied in the past.

1.4 Definitive Map and Statement

In 1950 the Parish Council did not record the claimed route on the original Definitive Map.

The Parish Council did record Footpath Nos. 14 and 15, together with a southerly continuation of Footpath No. 15 which was subsequently omitted from the Definitive Map following objections to that part of the route.

The Definitive Statement of Footpath No. 14, West Alvington reads:

“The path is a Footpath. It starts at Ticketwood Bridge and proceeds south eastwards along the bank of the estuary for a short distance to join with Path No.15 at Ticketwood.”

The Definitive Statement of Footpath No. 15, West Alvington reads:

“Starts at the eastern end of Footpath No.14 north-west of Ticketwood and follows the road in a south-easterly direction for a distance of 220 yards (approx), to the foreshore, with spur giving access to the foreshore immediately north of "Mandalay."

1.5 User Evidence

Ten user evidence forms were received from the original forty-five petition signatories who indicated that they had used the path. Most include a copy of the same map of the claimed path.

Three state that they used the path to access their boat moorings and one user believed that they had a private right to the foreshore and moorings.

Three of the user evidence forms appear to refer to use of Footpath Nos. 14 and 15 rather than the claimed route or are not sufficiently clear as to which path is referred to.

One other signatory responded that she had misunderstood the petition, believing that it referred to the whole of the route from Tacketwood Bridge. She stated that she had not used the claimed route and that if it had been used as a public footpath it could only be feasible at low water.

1.6 Rebuttal Evidence

In response to the claim, solicitors acting for the developers strongly denied any right of way over their clients' property. One user commented that the landowner had obstructed the path several years before the application was made by erecting a fence and allowing bushes to grow up. She adds that fishermen and locals pulled down part of the fence. Following development of Riverside, part of the claimed path is now obstructed by the property's retaining wall, although it is still possible to walk around it on the foreshore.

When consulted on the application, West Alvington Parish Council responded that no record/evidence could be found of a path ever existing on the proposed line.

1.7 Discussion

There is no right of way for the public over the foreshore unless such a right has been dedicated, either expressly or by permission. The foreshore in this area is owned by the Duchy of Cornwall, which is not bound by statute law, so presumed dedication can only be claimed at common law. In practice, it is virtually impossible to acquire a right of way over the foreshore by presumed dedication because of the difficulty of establishing the line of the path to be claimed.

In this instance, users submitted copies of the same map showing the claimed path but it is not clear that they all used the same route. Indeed three appear to refer only to the existing public footpaths at Tacket Wood. In addition, one user commented that the path followed the same route according to the tides, indicating that the route varied.

Much of the reported use has been to access private moorings along the foreshore and would not therefore give rise to a public right of way, the use being ancillary to the right of navigation over the foreshore.

The applicant commented that he had been told by South Hams District Council to remove a chain across the road entrance to the beach as there was a public right of way along the shore. The description of where he had placed the chain is consistent with the spur of Footpath No. 15 and not on the line of the claimed route.

The evidence in support of the application was not considered strong when the application was originally made and no further evidence has been submitted subsequently. All but one of the original users can no longer be contacted and it is not therefore possible to clarify the route used.

1.8 Conclusion

It is therefore recommended that no order be made to add the claimed route to the Definitive Map and Statement.