

**Definitive Map Review 2005 - 2007
Parish of Frithelstock**

Report of the Director of 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 a Modification Order be made to modify the Definitive Map and Statement by adding a restricted byway between points A-B-C (Proposal 1), as shown on drawing number ED/PROW/07/21.

1. Summary

The report deals with the Definitive Map review for the parish of Frithelstock and the determination of a claim under Schedule 14 of the Wildlife and Countryside Act 1981 to record of a byway open to all traffic.

2. Background

The original survey, under s. 27 of the National Parks and Access to the Countryside Act, 1949, revealed nine public footpaths and three public bridleways which were recorded on the Definitive Map and Statement, Torrington Rural District with the relevant date of 30 August 1963.

The following Order has been made and will require the making of a Legal Event Modification Order for recording on a new reviewed Definitive Map at some stage:

Public Path Diversion Order 1996, Devon County Council (Frithelstock FP No. 6) under the Highways Act 1980.

The reviews of the Definitive Map, under s. 33 of the 1949 Act, which commenced in the 1970s but were never completed, produced no proposals for change to the map in the parish of Frithelstock at that time.

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

3. Review

The current Review began in November 2005 with a public meeting held in the Village Hall, Frithelstock.

General consultations on 2 proposals were carried out and advertised in the parish and in the North Devon Journal. This report examines a claim for a byway open to all traffic (Proposal 1) in Appendix I. A second proposal to divert part of the existing Footpath No. 5 has received no objections and will be progressed under delegated powers.

The responses were:

County Councillor Barton - no comment

Torrige District Council	-	no comment
Frithelstock Parish Council	-	not support Proposal 1, supports Proposal 2
British Horse Society	-	support the proposals
Byways and Bridleways Trust	-	support the proposals
Country Land & Business Association	-	no comment
Open Spaces Society	-	no comment
Ramblers' Association	-	support Proposals 1 & 2
Trail Riders' Fellowship	-	BOAT application for Proposal 1

4. Conclusion

It is recommended that an Order be made to add a restricted byway over the lane from the county road south of Horwood Barton to the county road east of East Ash.

Should any further valid claim be made in the next six months it would seem sensible for it to be determined promptly rather than deferred.

5. Reasons for Recommendation/Alternative Options Considered

To progress the parish by parish review of the Definitive Map in Torrige.

Edward Chorlton

Electoral Division: Bideford East

Local Government Act 1972

List of Background Papers

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Background Paper	Date	File Ref.
Correspondence file: Frithelstock	2005 -2007	AS/DMR/FRITH

as060207pra
sc/dmr frithelstock
2 hq 210207

Background to the Proposals

Basis of Claims

Common Law presumes that a public right of way exists if 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.

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 -

[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;

Wildlife and Countryside Act 1981, Section 56[1] – 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.

Proposal 1. Schedule 14 Application to add a byway open to all traffic (BOAT) along the lane from the county road south of Horwood Barton to the county road east of East Ash

The Trail Riders Fellowship (TRF) has applied for the addition of a BOAT along an old lane, between points A-B-C shown on drawing number ED/PROW/07/21.

Recommendation: It is recommended that a Modification Order be made to add the route as a restricted byway to the Definitive Map and Statement as shown on drawing no. ED/PROW/07/21.

1. Background

The Natural Environment and Rural Communities Act of 2006 has brought into force provisions that prevent the recording of routes as byways open to all traffic if the application was made after 20 January 2005. The application in question was submitted on 4 February 2006. Such applications can now only be considered for the status of restricted byway unless

certain exceptions are met. A restricted byway can be used by the public on foot, horseback, bicycles and in horse-drawn vehicles, but not by motorised vehicles.

2. Description of the Route

The route forms the extension of a cul-de-sac county road just south of Horwood Barton at Point A. It proceeds in a generally south-westerly direction to point B along a stone and earth lane defined by hedges that are at least 6 metres apart with a usable track width of at least 3 metres. At the point B the route enters a narrower section of hedged lane, old in nature, with well made hedge banks topped with mature trees. The banks are between approximately 3.5 to 5 metres apart. There are no gates across the route. The total length is approximately 400 metres.

3. Documentary Evidence

Early mapping

Surveyors Drawings 2" to mile 1804 - 1807

This map shows the route as a defined hedged lane, in the same way as the other roads in the area.

1st Edition Ordnance Survey - Mudge's Map of 1809

The Ordnance Survey 1st Edition 1 inch to 1 mile map based on the 1804-05 survey was published in 1809. The entire length of the lane is clearly marked as a hedged lane, in the same way as the other county roads to the north around Horwood Barton.

Quarter Session Court Records - Midsummer 1817 & Michaelmas 1818

The route was the subject of a hearing at the midsummer Quarter Session Court in 1817 held at Exton Court. The Parish of Frithelstock was charged with allowing 'a parish road in their maintenance to become founderous and of danger to all the Kings subjects'. Witnesses who used the road were called and gave evidence of their use of the route back to 1757.

At a subsequent hearing on Michaelmas in 1818 the Judge found the Parish guilty and fined them £20. A quote from the judgement explains "that before the Turnpike roads were made, it was the best and most frequented road". The fine levied on the Parish confirms that the road was not stopped up by the Turnpike Trust and continued to be used by the public even though the Turnpike road was in a better condition.

Greenwoods Map 1825

Greenwood follows the Ordnance Survey convention mapping of major roads which were marked with solid bold lines on easterly and southerly boundaries. Secondary public roads appear to be shown as double solid lines. The route is depicted as a secondary public road throughout its entire length, linking with other public highways at points A and C.

Frithelstock Tithe Map 1838

Tithe Maps were drawn up, under statutory procedures laid down by the Tithe Commutation Act 1836, by surveyors employed by local landowners. They would have been subject to local publicity, which would likely to have limited the possibility of errors being made. The roads were sometimes coloured and the colouring generally indicates carriageways or driftways. Public Roads were not titheable. The Tithe Map for Frithelstock clearly shows the claimed lane in the same way as other roads that are highways today.

Ordnance Survey Mapping 1st Edition 6" to mile 1880s

The route is clearly shown on this map with continuous solid lines.

Subsequent Ordnance Survey Maps

These show the route as a defined and hedged lane.

4. Supporting Evidence

The TRF has supported the application with two series of 'run records' showing the use of the lane on 24 May 1986 by 5 members, and its use again in 14 April 1996 by two members on a longer ride. The Byways and Bridleways Trust supports the route as a restricted byway as it shown on the 1809 OS map, showing it has existed for at least two hundred years and was part of the road network as a through route. Local users have come forward and expressed their view that the route has been used and should be recorded.

5. Landowners' Views

The Landowners whose fields adjoin the route have written expressing their views.

Mr Beer of Horwood Barton objects to the proposal. He claims that "there has never been a through route as suggested whereby this was the road which ran prior to the now main road through the village." He writes it is not on the 1st edition 1" Ordnance Survey map. He concludes "the general public (including the TRF) do not have legal rights to access the above route including access through the main farm yard."

Mr Hicks' advisor of Mr Hunkin of East Ash Farm, has written drawing attention to the provisions in the NERC Act which have effectively extinguished mechanical vehicular rights on unrecorded routes. He is also objecting to the principle of recording the route with any public status on the grounds that "there has never been a through route as suggested whereby this was the road which ran prior to the now main road through the village." He goes on to say, "In practice the lane is an occupation road giving access to agricultural land for stock and wheeled vehicles by our client and Mr Steven Beer of Horwood Barton and no-one else. There have over the years been numerous gates and other obstructions placed to this access so stock had been able to be moved between fields easily. These obstructions could well be in place for a week or more at any one time." Both letters appear in full in the backing papers.

6. Discussion

The Quarter Session judgement of 1818 provides very strong evidence that the route has enjoyed public status since at least 1757. No evidence has been discovered to suggest that it has been formally stopped up in the intervening period.

The gates referred to by Mr Hicks were not present when the route was inspected in 2006. However, gates did previously exist on the route and were referred to by the Judge when the matter was considered by the Quarter Session in 1818. He commented that they were there to prevent stock straying onto adjacent ground and to ease movement between fields, rather than to stop traffic along the route.

Between 1804 and 1807 the environs of Frithelstock were surveyed for by Captain Mudge's surveyor for the Ordnance Survey. That survey and all later editions of the OS maps have depicted the claimed route as a through unbarred hedged lane. The road through Stone had been made a Turnpike at the date of the survey.

The TRF has supplied records of their use of the route on motor bikes and local users have expressed their support for the route to be recorded. However, the predominant use of the route by the public would seem to have been on foot and horseback, such that the exception provided by the NERC Act which would allow it to be recorded as a byway open to all traffic

has not been met. In such circumstances the route should be recorded as a restricted byway.

7. Conclusion

It is evident from historical records that the route has existed and been enjoyed by the public for over 250 years. Accordingly, it is recommended that a Modification Order be made to record it as a restricted byway on the Definitive Map and Statement.