

**Definitive Map Review: Bishopsteignton  
Claimed Bridleway: Track through Melland's Copse**

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 add a public bridleway over a route between Coombes End Road (UCR 1209) and the minor county road (UCR 1207) in the parish of Bishopsteignton, as shown on the attached drawing number ED/PROW/07/23 between points A – B.

**1. Summary**

The report details with the determination of a Claim under Schedule 14 of the Wildlife and Countryside Act 1981 to record a bridleway.

**2. Background**

Members of the public appear to have used the route in question for many years as a link between two public roads. A change of ownership 10 years ago led to such use being denied, a principal concern being fly-tipping. It is only recently that one of the former users collected evidence and supplied it to this authority, the claim seemingly prompted in part by dangers of riding along local roads given the speed of vehicular traffic and limited visibility.

The general review for parishes in Teignbridge District outside Dartmoor National Park was undertaken in the 1990s. The present route was not claimed at that time, but given completion of that review the matter can be considered forthwith.

**3. Description of Route**

The route is a lane or track some 820 metres in length and 3 metres in width, and lies near Wolfsgrove Farm on the western side of the parish close to the Kingsteignton boundary. It commences at its southern end at an overgrown gateway on the corner of the minor county road Coombes Head Road at the point marked A on the drawing, and runs generally north north eastward along a track through woodland called Melland's Copse. There are turnings off to the west towards a barn at Durley, and to the east to Wolfsgrove.

The route continues north eastward through Kiln Copse past a disused lime kiln and quarry, then becomes a lane bordered by hedges which at one point is crossed by a pair of gates placed close together. The route finally passes through a further gate and ends at a junction with a minor county road that runs between Colway Cross and Humber Lane at the point marked B on the drawing. The land traversed was owned in whole or part for many years by the Discombe Family who lived at Wolfsgrove, but since 1997 has been owned by Mr D Starr who lives near Sherborne in Dorset.

#### **4. Basis of Claim**

A highway may be created through dedication by the landowner of a public right of passage across his land, coupled with acceptance of the route by the public. Such dedication may be expressed through some overt action; or presumed, either from documentary evidence recording at some time in the past the status then attributed to the way concerned, or from a period of undisputed use as of right and without interruption by members of the public.

Section 31 of the Highways Act 1980 states that where a way has been enjoyed by the public as of right and without interruption for 20 years, it is to be deemed to have been dedicated unless there is sufficient evidence that there was no intention during that period to dedicate it. The period is calculated retrospectively from the date when the right of the public to use the way is brought into question. At common law a similar period of use terminating at any time may also raise a presumption of dedication.

Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 enables the Definitive Map to be modified if this authority discovers evidence which, when considered with all other relevant evidence available to it, shows that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates. The alternative of "subsists or is reasonably alleged to subsist" has received recent attention from the courts, and is regarded to mean that while for confirmation of an order it is necessary to show on a balance of probability that a right of way exists, the test for making an order is a lesser one.

Where a claim is based on public use and the available evidence is contradictory, it can therefore be sufficient for the purposes of making the order to rely upon the supporting evidence, leaving the task of attempting to reconcile this with opposing evidence to the forum of a public inquiry. The value of this provision will be apparent as it is no part of a rights of way officer's duty to interrogate witnesses, let alone suggest they are fabricating evidence or telling falsehoods.

#### **5. Evidence of Public Use**

Evidence forms have been supplied by or on behalf of thirty-two persons, and detail use of the route over various periods since the 1960s. Overlapping of these periods means there has been equestrian use by at least six persons at any time up to 1997, some persons using it throughout the previous 20 years, others for parts of that period with a few being on foot only. Frequencies of use vary from occasional to weekly and daily.

The believed status in most cases is that of bridleway, though two users regard it as a byway open to all traffic. The mode of use is mostly on horseback or horseback and foot, only three users mentioning vehicular use of which two were on bicycles. No mention is made of any physical obstruction until 1997 other than gates that were either open or when closed were not locked, and even these gates were only noted by a few of the users. No notices of any kind were seen by most people, and the only ones mentioned stated Beware of the Bull.

The majority of users say that in the period up to 1997 they did not obtain permission for their use, nor were they stopped, turned back or told it was not public. Several users express the view that the owners must have been aware of the public use, some mentioning having met them while en route. Mr and Mrs Foster whose use commenced in 1966 said they had permission from Mr Discombe up to 1997, but on enquiry it appears they merely understood the farmer had no objection to their use. Mrs Van Zeller whose use commenced in 1958 also believes use was by courtesy of the owners.

## 6. Documentary Evidence

The route is shown in part on the earliest small scale O.S. mapping, from which it seems likely the southern part originated as access to Durley where there was formerly a farmstead. The origin of the more northerly part of the route is likely to have been as access to the limestone quarry and lime kiln.

The route appears in its entirety on large scale O.S. mapping from the 1880s onwards, where it is shown as gated at each end and at the boundary between Melland's Copse and Kiln Copse. These maps do not provide evidence of a public right of way, but do show the route has physically existed in its present form throughout the periods of evidenced use.

The route was not claimed as a public right of way when the Definitive Map was compiled or during the uncompleted reviews in 1968 and 1978, nor have the statutory methods of showing lack of intention to dedicate provided by s. 31 of the Highways Act 1980 ever been utilised by landowners.

## 7. Consultations

The following have been consulted and invited to supply any view or information they might have relating to the status of the route, the responses being as mentioned:

County Councillor D Cox	– no response
Teignbridge District Council	– no response
Bishopsteignton Parish Council	– no response
Country Land & Business Assoc.	– no response
National Farmers' Union	– no response
Open Spaces Society	– no response
ACU Land Access Bureau	– no response
Byways and Bridleways Trust	– supports bridleway or footpath status
British Driving Society	– no response
Cyclists Touring Club	– no response
British Horse Society	– no response
Ramblers' Association	– see below
Landowner	– see below

Mr R McCallister, Footpaths Officer of Teignmouth and Dawlish Group of the Ramblers' Association Devon Area, states his understanding that several members have used the route, and that the previous owner was willing to allow walkers to use it. He states that his group would welcome efforts to confirm it as a public right of way.

A submission has been supplied on behalf of Mr Starr the present owner, and includes information from members of the Discombe Family and two former employees, Mr Morgan who held shooting rights in the adjoining woods, Mr Starr and his tenant Mr Hayllor, Mr and Mrs Allardyce who acquired the farmhouse at Wolfsgrrove from the Discombes, and Mr Lewis who has knowledge of the route over the past 32 years. The information in this submission confirms that supplied by users to the extent that the route has been obstructed since the time of Mr Starr's acquisition and there has been no intention since that time to dedicate it.

Otherwise the information seems contradictory to what is said by most users, namely that throughout the period when they say they were using it without obstruction or challenge the route was obstructed by a locked gate at its southern end except when access was needed for forestry purpose. It is also stated that another gate was placed part way along the route in the 1950s and padlocked so there was no way the public could get through. Likewise

despite no notices being seen by users to indicate lack of intention to dedicate, there was always a sign at the northern end saying "Private" and signs were placed at the southern end.

## **8. Reasons for Recommendation/Alternative Options Considered**

This is a well supported claim, with sufficient evidence to support a prima facie presumption that the route has been dedicated as a bridleway. The right of the public to use the route was clearly brought into question by the blocking of the route in 1997, and in the previous 20 years many people state they used it without obstruction or challenge.

Given the contradictory nature of the totality of the available evidence, it cannot be concluded that a right of way actually does subsist, and there is a strong suggestion that owners have shown lack of intention to dedicate during the 20 year period. It does not however appear that that they have done so in such a way as to make their views generally apparent to the public, and the allegation that a right of way subsists seems reasonably made.

Edward Chorlton

### **Electoral Division: Teign Estuary**

Local Government Act 1972

List of Background Papers

Contact for enquiries: Mike Jenkins

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Background Paper	Date	File Ref.
Correspondence File	2006	DMR/MM/B't

mm070207pra  
sc/dmr mellands copse  
3 hq 260207