

**Definitive Map Review: East Devon District
Parish of Monkton: 1996 - 2005**

Report of the County Environment Director

Recommendation: It is recommended that the Map and Statement for this parish be accepted as correct, and no order be made to which the application dealt with as Claim 1 relates.

1. Summary

This report concerns the recent review in Monkton, and various claims then made.

2. Background

A survey of public rights of way in this parish under s.27 of the National Parks and Access to the Countryside Act 1949 was carried out in 1950. Two footpaths were thereby revealed and ultimately recorded on that part of the Definitive Map relating to Honiton Rural District. The countywide quinquennial reviews under s.33 of the 1949 Act, which commenced in 1968 and 1977, produced no request for any alterations of which we have record, and on the latter occasion the Parish Council stated the paths were correctly shown.

A boundary change in 1989 transferred part of the parish to Cotleigh, and with it one of the footpaths. No public path orders have been made.

3. Review

The current review commenced in 1996, with a survey of existing rights of way in the parish and explanation and discussion at a Parish Council Meeting open and advertised to the public and user groups. The Council stated that it had the one path in the parish, and no points to raise. One claim was subsequently made by a local representative of the Ramblers' Association, as shown on the accompanying drawing number ED/PROW/05/80 and considered in Appendix I.

Owing to staff changes general consultations were not carried out for some time, and were therefore preceded by further discussion with the Parish Council and contact with landowners. The consultation process took the usual form of publishing maps on which the claim was marked, which maps were also displayed locally, and the matter was advertised in the parish and local press. Responses were as follows, it being taken in the absence of a response that no information was held about the claimed route and no other proposals were to be made:

County Councillor Nicholson	- no response
East Devon District Council	- no information or comment
Monkton Parish Council	- see Appendix I
Country Land & Business Assoc.	- no response
National Farmers' Union	- no response
Open Spaces Society	- no response
Trail Riders' Fellowship	- no response
British Driving Society	- no response
Byways and Bridleways Trust	- no response

Cyclists Touring Club	- no response
British Horse Society	- no response
Ramblers' Association	- see Appendix I

No case is known in this parish where a currently unrecorded route has been determined by a court or tribunal, on examination of all available evidence, to be a public right of way, or whereby a recorded route has been determined by such process to have a different public status. Consequently there seems no justification for a legal event modification order. Nor are any cases of express dedication and acceptance known which might provide unequivocal evidence of the creation of highway rights in respect of any unrecorded routes.

4. Basis of Claims

A public right of way may be created, and an existing way upgraded in status, through dedication by a landowner of a public right of passage across his land, coupled with acceptance by the public. Dedication may be express, as where stated in writing by the landowner, though this is rarely found in practice; it may also be presumed from a period of use by the public as of right, without interruption and without the landowner having shown a lack of intention to dedicate. Public acceptance in these cases is implicit from use. Under s.31 Highways Act 1980, 20 years such use immediately preceding a calling into question of the public right is sufficient.

Dedication and acceptance may together be presumed from contemporary evidence as to the reputed status of the route at various times in the past. Such evidence may take the form of maps, plans, local histories and other documents, and is commonly called historical evidence though it can be of quite recent date. Section 32 of the Highways Act 1980 requires any such documents, if tendered in evidence, to be taken into consideration by any tribunal (which includes a Council Committee) before determining whether a way has or has not been dedicated as a highway. The weight to be given to such evidence is stated to be such as is considered justified by the circumstances, which include antiquity of the tendered document, the status of the person by whom and the purpose for which it was made and compiled, and the custody in which it has been kept and from which it is produced.

The formal application in Monkton is based on evidence of this sort, so it should be borne in mind that such evidence usually amounts to an expression of opinion, individual or collective: And while consistency and clarity of opinion as to public status expressed over time can be a good basis for presumption of dedication, it is unlikely that the existence of a highway can be presumed from any single item of such evidence. This is especially so where that evidence represents the opinion of only one or two persons, and is contrary to other opinions expressed at the same or different times.

It should also be noted that the official and public exercise conducted through the 1950s and 1960s, to identify public rights of way for recording on the Definitive Map, is itself a relevant piece of evidence. If a right of way is being claimed today, it usually follows that it will not have been recorded at that time; but it does not follow that this omission was due to error or concealment, and it is possible that the route was not then regarded as a public right of way. The views of current owners and occupiers are also no less weighty as evidence than those expressed by such persons in earlier times.

5. Reason for Recommendation/Alternative Options Considered

There is insufficient evidence to show that a public footpath exists or is reasonably alleged to exist over the route discussed as Claim 1 in Appendix I.

No recommendation is made at present concerning other routes, but any prima facie claim made in the next six months can be investigated and made the subject of a supplementary report. Claims arising further in the future can be considered on an individual basis after the conclusion of the current parish by parish review in the District.

Edward Chorlton

Electoral Division: Honiton St. Paul's

Local Government Act 1972

List of Background Papers

Contact for enquiries: Richard Butler

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Background Paper	Date	File Ref.
Correspondence File	1996-2005	DMR/MM/MONK

mm170505pra
sc/dmr parish of monkton
2 hq 250505

Claim 1: Footpath between Old Parsonage Lane (in Offwell) via Spilcombe Copse and Whitehorn to Cleverhayes Lane

Route: The route is shown on the drawing between points A – B – C, and has a total length of about 1,400 metres. It begins at the corner of a minor road near Old Parsonage within the parish of Offwell (point A), and runs northwards down a track to the parish boundary (point B). The track here enters Spilcombe Copse, and divides into several tracks that traverse the plantation; but the claimed route diverges at the start of the wood, and takes a line that lies off these tracks. This line is northward then northwestward then north eastward through the woodland, passing around the head of a valley and over a tunnel through which runs the Exeter – London (Waterloo) railway line.

The route emerges from the wood south of Whitehorn Farm, continues north eastward through a field to a stream, and curves northward up the hillside through a second field to the east of the farmstead then along the edge of a third field and less steeply across a fourth, there being gateways at the several field boundaries. It then passes through a field boundary into a track, which it follows to Cleverhayes Lane (point C). The roads at each end are county roads, but the route has no recorded highway status and is not known locally to have been used by the public.

Application: This claims a footpath along a route whose terminal points are given by grid references that equate to points A and C, the whole route being also depicted on a map. Notice of the application is stated to have been served on Mr & Mrs R J Retter of Whitehorn, and Mr & Mrs S Retter of Higher Whitehorn.

Supporting Evidence: The applicant refers to three 19th Century railway surveys, and the route being included in the Definitive Map surveys in both parishes in 1950. No copies of these documents were supplied.

Evaluation of Evidence: The 1809 O.S. 1 inch scale map and Greenwood's Map 1827 show a network of lanes and tracks in the immediate vicinity of Whitehorn. Part of one lane includes the track that forms the northern end of the claimed route, but the lane then diverges from that route and takes a different line to Whitehorn. No lane or track is shown along any other part of the claimed route. These maps make no distinction between public and private routes, so no deduction of highway status can be made over what is depicted.

Monkton's Tithe Map 1843 shows the same lane mentioned above, but it here continues only a short way southward as a cul de sac access to fields and there is no continuation to Whitehorn. A track or path is shown running south from Whitehorn merging with the claimed route, and continuing on that line to a point within Spilcombe Plantation (then known as Newbury's Moor Plantation). This track and the aforesaid lane are coloured, but there is no indication on the map that such colour suggests public status, and it is seen to be used on several cul de sac tracks leading to single farmsteads and fields.

The Dorchester and Exeter South Coast Extension Railway Survey of 1851 was of a line much the same as that later built, and so crossed the claimed route at the head of the valley. As usual in such surveys, the intended line is flanked by two others marking limits of deviation; and the surveyors gave numbers to each parcel of land within those limits, with details of the nature and ownership of the land in accompanying schedules.

The parcels relevant to the claim are those numbered 22 and 23, being part of the woodland and the first field to the north; and the map shows a track running through these areas, on much the same line as was shown on the Tithe Map. The first parcel is described as a pasture field, footpath, occupation road and watercourse, and the second as a pasture field and occupation road. The track

thus appears to have been regarded by whoever supplied the information purely as a means of private access.

The Devon and Dorset Railway Survey of 1853 was likewise of a line much as built. In this case the parcel of land crossed by the line is numbered 23, and is described as coarse pasture, plantation, occupation road, furze brake and stream, all in private ownership and occupation. The track is depicted as before, but this time is given its own number 22 with the description occupation road and footpath and a joint ownership of Lord Ashburton and the surveyors of the highways of the parish of Monkton. This implies that the track was regarded by whoever supplied the information as a private road for which the parish assumed some responsibility as a highway.

The London and South Western Railway Western Extension Survey of 1855 was of the line as eventually built. The track is depicted as before, and though not given a specific number it is mentioned in the descriptions of four parcels of land as an occupation road, or footpath and road. In each case ownership of the parcel is held jointly by Lord Ashburton and the Monkton surveyors of highways. The implication is as above, but it should be noted that several other routes in the parish are similarly described and the surveyors have then been crossed out, indicating that the landowner concerned had disputed such assumption of responsibility by the parish.

O.S. large-scale maps of the 1880s and 1900s show a track or path on a line that closely corresponds to the claimed route from its southern end to the northern edge of the wood. This feature then diverges from the claimed route through the first field and runs along the western edge of the second field to the entrance of the farmyard at Whitehorn, and is thus clearly the same route as depicted on earlier maps. A track is shown to run generally northward from Whitehorn to Cleverhayes Lane, but only through the third field does it correspond to the line as claimed, and it meets the lane some 200 metres west of point C. No track or path is shown on the line claimed through the fourth field.

At two points south of Whitehorn this depicted route has the letters F.P. against it. O.S. policy was that, with certain exceptions such as paths in gardens, all clearly marked and permanent footpaths (i.e. gravelled, paved, or with gates or stiles), whether public or private, should be shown. Its policy was also not to concern itself with rights of way, and the maps therefore bear the standard disclaimer as to depiction of a footpath being evidence of a right of way. No deduction of highway status can thus be made for the route as claimed or as depicted.

Rights of Way Act 1932 survey: From information contained on the survey forms mentioned below, it appears that when Monkton Parish Meeting and Offwell Parish Council were asked by the District Council circa 1934 to state what public rights of way then existed in their parishes, no mention was made of the routes concerned. This suggests that insofar as the claimed route is co-incident with those surveyed it was not regarded as a public right of way.

Definitive Map: One of the survey forms supplied by Monkton Parish Meeting in 1951 describes a route from "Cleverhayes Lane to Whitehorn Farm and on to the boundary". This is numbered 7, and the accompanying survey map has that number marked on it near Whitehorn though the route itself is not marked by a coloured line. The path is described as never used as a public path within living memory.

One of the survey forms supplied by Offwell Parish Council in 1950 describes a route from the "road south of Spilcombe Copse to Whitehorn Farm in Monkton Parish". It is numbered 2, and the accompanying survey map has that number marked against the track A – B. The track is coloured purple, and that colouring extends across the boundary into the copse but on a diverged line from the route now claimed. The path is described as almost impassable owing to brambles, and under "Grounds for believing path to be public" is written "None".

These routes thus appear to be examples of a common practice whereby, during this exercise,

parishes surveyed paths other than just those they thought were public; and included routes marked as physically existing on the old base maps with which they were supplied, despite knowing them to be private or customary for use only by local residents. Such routes were not of course placed on the Draft Map, and it was thus open to any individual to object to that omission. No such objection was made in this case, and the evidence is rather therefore that the route was not regarded at the time as a public right of way by Monkton Parish Meeting or Offwell Parish Council or anyone else.

Definitive Map Reviews: There is no record of any claim being made in respect of the route during the reviews of the Definitive Map that were commenced in both parishes in 1968 and 1977. This suggests that it was not regarded as a public right of way then either.

Landowner evidence: Spilcombe Copse has been owned for 4 years by Mr O Davey of Perrie Hale Forest Nursery, Honiton. His father Mr N Davey has been involved in managing the land since 1977 and is related to the previous owner Mr J Udale who acquired it in 1961. The Daveys do not believe the route to be public, and have not been aware of the public using it. Mr N Davey states that Mr Udale never mentioned there being public access here, and he confirms that no notification of the claim was sent to Mr Udale.

Mr R Retter of Lower Whitehorn and Mr S Retter of Whitehorn own the fields concerned, which have been in their family for 70 years. They say they have never considered there to be a public right of way across the land, nor have they seen any use by the public.

Monkton and Offwell Parish Councils have been consulted on the claim. The former states that its view remains unchanged from the time of the original meeting, and as far as its members are concerned there is no public right of way through Spilcombe Copse. The latter parish was previously consulted in the course of its general review, and stated at that time that it had no evidence of any omissions on the Definitive Map; this view is unchanged. When taken with the views expressed by landowners mentioned above, this suggests that the route is not regarded locally as a public right of way today.

Conclusion: There is some evidence that part of the claimed route may in the 1850s have been regarded as a highway, but this is contradicted by other documentary evidence of the time. Furthermore the route to which such status was attributed seemingly diverged from that now claimed and took a different line north of Whitehorn, and there is no direct evidence that the remainder of the route was then regarded as public even where it did physically exist.

More recent evidence is consistent in suggesting that those parts of the route that have been in physical existence were private ones, and that there has never been any track or path on certain parts of the claimed route. The evidence overall seems insufficient evidence to justify recording the route as a public right of way.