

**Definitive Map Review 2007/08
Parish of South Huish**

Report of the Director for Environment, Economy and Culture

Please note that the following recommendations are subject to consideration and determination by the Committee before taking effect.

Recommendation: It is recommended that Modification Orders be made to modify the Definitive Map and Statement by:

- (a) adding a public footpath (Route 2) between points C – D as shown on drawing number ED/PROW/08/19;**
- (b) adding a public footpath (Route 3) between points E – F as shown on drawing number ED/PROW/08/19.**

1. Summary

The report examines suggestions arising out of the Definitive Map Review in the Parish of South Huish in the District of South Hams.

2. Background

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed fifteen footpaths in South Huish 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 one proposal for upgrading existing footpath to bridleway. This route has been included as one of the suggestions under the current review.

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

In 1985, the South Hams Parishes Order transferred Footpath Nos. 18, 19, 20, 21 and 57 from Malborough to South Huish Parish.

The following Orders have been made:

South Hams District Council (Footpath No. 2, South Huish) Public Path Diversion Order 1980

Devon County Council (Footpath No. 2, South Huish) Public Path Diversion Order 1995

3. Review

The current Review began in November 2007 with a public meeting held in the parish hall. The review was advertised in the Kingsbridge Gazette and on village notice boards. Several suggestions put forward by the parish since the original Definitive Map was published have been picked up for consideration under the review. This report examines two suggestions. The remaining four suggestions will be the subject of a further report.

Various public path diversion orders are required in the parish which will be dealt with separately under delegated powers.

General consultations have been carried out respect to the suggestions and the responses have been:

County Councillor Sir Simon Day	-	no comment
South Hams District Council	-	comments on routes 2 and 4
South Huish Parish Council	-	no comment
British Horse Society	-	support route 4
Byways and Bridleways Trust	-	no comment
Devon Green Lanes Group	-	comment on route 1
Country Landowners' Association	-	no comment
National Farmers' Union	-	no comment
Open Spaces Society	-	no comment
Ramblers' Association	-	replied without comment or objection
Trail Riders' Fellowship	-	no comment

4. Conclusion

It is recommended that Modification Orders be made in respect of Routes 2 and 3 as discussed in Appendix I to this report. A report on the remaining routes will be brought to the next Committee.

5. Reason for Recommendation/Alternative Options Considered

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

6. Legal Considerations

The implications/consequences of the recommendation have been taken into account in preparing the report.

Edward Chorlton

Electoral Division: Thurlestone, Salcombe & Allington

Local Government Act 1972

List of Background Papers

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Background Paper	Date	File Ref.
Correspondence file	1968 to date	DMR/South Huish

hb120508pra
sc/dmr huish prow
3 hq 300508

Background

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. Route 2 – Claimed addition of a public footpath from Weymouth Park to Footpath No. 11, South Huish.

Addition of a public footpath leading from the county road Weymouth Park to Footpath No. 11, South Huish as shown on drawing number ED/PROW/08/19.

Recommendation: It is recommended that a Modification Order be made to add this route to the Definitive Map and Statement as a Public Footpath.

1.1 Background

The status of this route was queried in 2003 by the Parish Council, who had been maintaining it as a public footpath. On discovering that it was not recorded on the definitive map the Parish Council collected seven user evidence forms in respect of the route. The eastern part of the route is recorded on the County Council's highway records as highway maintainable at public expense.

1.2 Description of the Route

The route starts at the end of the cul-de-sac road Weymouth Park at point C as shown on drawing number ED/PROW/08/19. It proceeds southwards then westwards along a surfaced

pathway adjoining the eastern and southern boundaries of No. 39, Weymouth Park. It continues westwards along an access road to meet Footpath No. 11, South Huish at point D between the properties Woolmancliffe and Lantern Lodge Hotel.

1.3 Ordnance Survey Maps

Ordnance Survey Maps show that the area was relatively undeveloped in the early 1900s. By 1952 the properties now known as Woolmancliffe and Westward had been built, along with their access road over which the western part of the claimed route runs. By 1971 OS mapping shows the claimed route in its entirety, leading from the newly developed Weymouth Park.

These maps do not provide evidence of status, merely evidence of the physical existence of the route over time.

1.4 Devon County Council Highway Records

That part of the route which adjoins the boundary of No. 39, Weymouth Park is recorded as highway maintainable at public expense on the county highway records and considered to be a linking footway. The local highway engineer has recently placed a bollard at the western end of the section, where it meets the access road, to prevent people from attempting to drive along the narrow pathway. This replaces an earlier bollard in the same location.

1.5 Parish Council Minutes

Parish Council minutes available cover a period from 1980s onwards. Between 1996 and 2005 there are several references to the maintenance of the claimed route, in particular to keeping the hedges pared back.

South Huish is a P3 (Parish Paths Partnership) parish, which means that local people are involved in the maintenance of public rights of way. In 2003 the P3 co-ordinator raised the anomaly of this route not being recorded on the Definitive Map of public rights of way.

1.6 User Evidence

Seven user evidence forms have been received in respect of this route covering a period from 1963 to 2003 (when forms were completed) and with a frequency ranging from 20 or 30 times a year to daily. Users comment that it is used by many people and in constant pedestrian use. No users report being prevented from using the route or seeing any notices indicating that it was not public.

Use of the route has been observed on the ground.

1.7 Landowner Evidence

No landowner has been identified for the eastern section of the route. The western section, which provides access to Woolmancliffe and Westward, is owned by South Hams District Council. They and all adjoining landowners were consulted for their views.

South Hams District Council has no objection to the suggestion.

One adjoining landowner has responded to the consultation and comments that the route is used daily by the public as a footpath and that they believe it to be a public footpath.

1.8 Rebuttal Evidence

No rebuttal evidence has been received.

A notice placed by South Hams District Council at the western end which reads “No Parking. Access to Woolmancliffe and Westward only” appears to be intended to deter vehicular use only, not to prevent use by the public on foot.

1.9 Discussion

When Weymouth Park was developed the intention appears to have been to record a public highway for use by pedestrians leading from the end of the cul-de-sac to the cliff. The County Council appear to have considered it sufficient to end the path on the access road leading to Woolmancliffe and Westward, which had already been established by this time.

Although limited user evidence has been supplied it is clear that this is only a small percentage of the actual use of the route. The Parish Council have clearly considered the route to be an important link in the parish and have ensured that it is kept open and clear of overhanging vegetation. The area has a high proportion of holiday and second homes and therefore users and residents may not be present all year round. This may explain the low response to the consultation which was carried out in the early part of the year. Users and the adjacent landowner who responded believe that there are public rights on foot, having witnessed such use. It would not be possible to use the section of linking footway as a through-route unless users walked along the access road to Woolmancliffe and Westward.

No action has been taken to prevent public use of the route on foot.

1.10 Conclusion

From the available evidence it seems reasonable to allege that a public right of way subsists. Although part of the route is recorded on the highway records as highway maintainable at public expense these records are not conclusive evidence of status. As the route is used for the purposes of a public footpath and is physically suitable for use on foot only it is appropriate to also record the route on the Definitive Map of public rights of way. It is recommended therefore that an Order is made to record a public footpath on the Definitive Map and Statement, along line C – D, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

2. Route 3 – Claimed addition of a public footpath from the main road at Outer Hope to Footpath No. 11, South Huish

Addition of a public footpath leading from the county road at Outer Hope near the Blue Bay holiday apartments to Footpath No. 11, South Huish as shown on drawing number ED/PROW/08/19.

Recommendation: It is recommended that a Modification Order be made to add this route to the Definitive Map and Statement as a Public Footpath.

2.1 Background

The status of this route was raised in 2003 by the Parish Council, who had been maintaining part of it as a public footpath. On discovering that it was not recorded on the definitive map the Parish Council collected seven user evidence forms in respect of the route.

2.2 Description of the Route

The route starts at the main road from Galmpton to Outer Hope at Point E as shown on drawing number ED/PROW/08/19. It proceeds in a generally northwesterly then west southwesterly direction along an unadopted road to the property Fulmars then continues as a narrow pathway between property boundaries to meet Footpath No. 11, South Huish adjacent to Drake House at Point F.

2.3 Ordnance Survey Maps

Ordnance Survey Maps show that the area was relatively undeveloped in the early 1900s. By 1952 the area has been developed and the route is shown as currently available. It is labelled FP.

These maps do not provide evidence of status, merely evidence of the physical existence of the route over time.

2.4 User Evidence

Seven user evidence forms have been completed in respect of use of the route on foot, in whole or in part. Use covers a period from 1963 to the present with a frequency ranging from 12 times a year to 150 times a year.

Three users refer only to use of part of the route, the section west of Fulmars. This may be due to the assumption that the easternmost section was a road. Two of those three were also completed by residents of Clevedon, one of the properties served by the access road and their use may therefore be considered private.

Another user lives at Greenbanks at the far eastern end of the route and uses it for vehicular access to the rear of his property. He does not however have a private right to use the route as a whole and his use on foot for most of the route would therefore class as public. He believes the eastern end to have the status of byway open to all traffic as it is used by vehicles. He comments that there used to be a wooden post to prevent vehicles driving beyond Fulmars but that this has since been removed.

Several users comment that the route is well used by the public. Another, that he and others trimmed the hedge overhanging the western section with the agreement of the parish council.

No users report having been prevented from using the route or being told that it was not public.

Use of the route by pedestrians has been observed on the ground.

2.5 Landowner Evidence

The route is not registered with the District Land Registry. Adjoining landowners were therefore contacted for their views.

Seven adjoining landowners have responded to the consultation. All have been aware of and observed members of the public using the route on foot. Two have provided information clarifying that the route was created as an accommodation road in the early 1900s and provides the only vehicular access to Tarqua, Ashleigh, Clevedon and Longstone. These properties have an express right of access along the route and a duty to maintain it recorded on their deeds. Several other properties now use the route as an access road.

2.6 Rebuttal Evidence

No rebuttal evidence has been received. Two landowners have commented that they have no objection to the route being recorded as a public footpath, provided that it does not interfere with their private use or increase their maintenance liability. Although maintenance is not a factor that can be taken into consideration when determining the status of the route, if it is recorded as a public footpath the County Council as the highway authority would be responsible for maintaining the surface of the path, insofar as it is used by the public as a footpath. Furthermore, recording the route as a public footpath would not affect any private access rights already over it.

2.7 Discussion

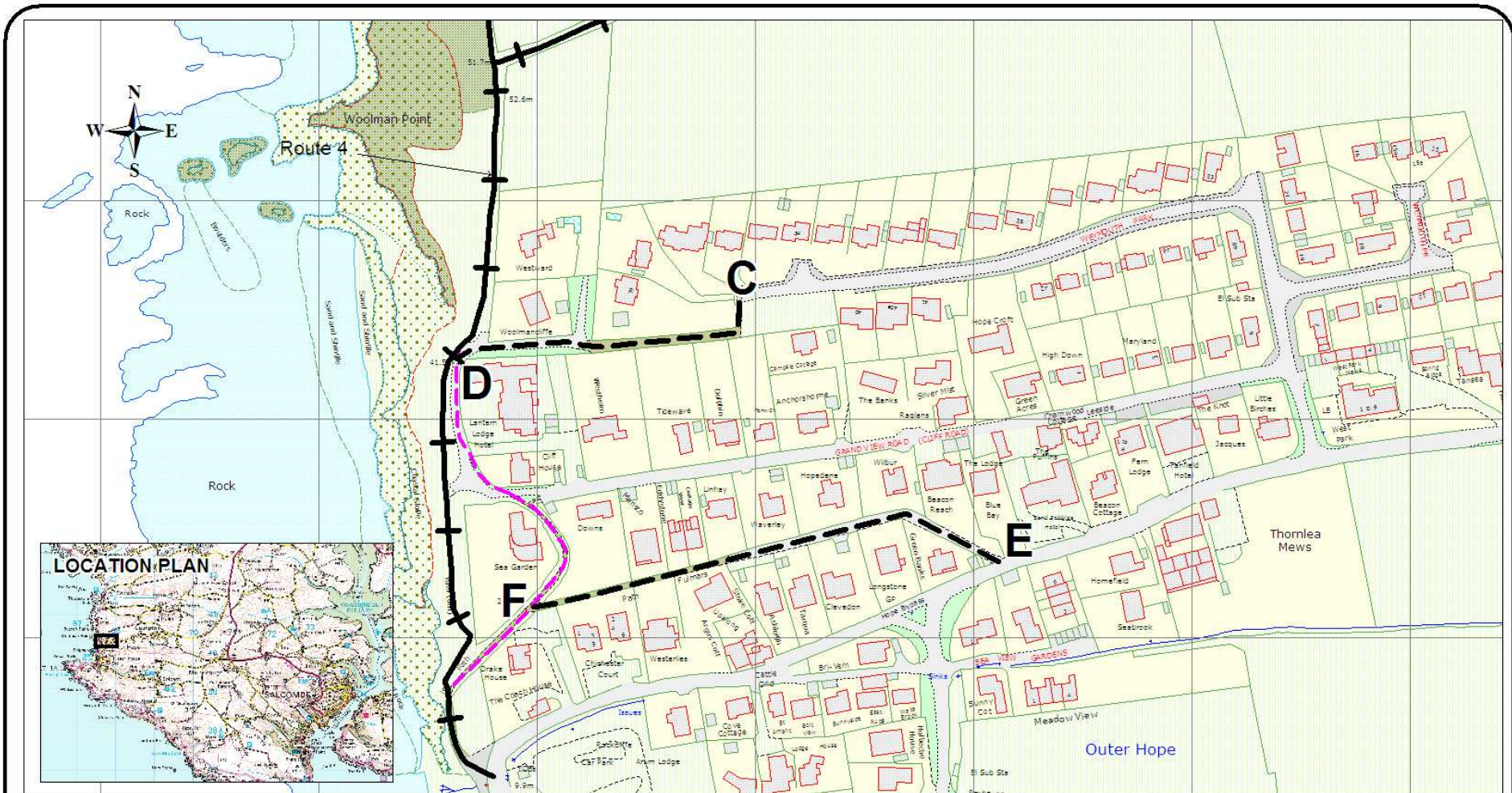
A through-route, albeit of a width suitable only for pedestrians at the western end, has been open and available since the early 1900s when the first properties along it were developed.

There do not appear to have been any attempts to prevent the public from using the route on foot. A wooden post was erected at some time in the past to prevent vehicles proceeding westwards beyond the property Fulmars but this would not have prevented access for pedestrians.

Although limited user evidence has been supplied it is clear that this is only a small percentage of the actual use of the route. The pathway at the western end is well worn and has been kept clear from overhanging vegetation by local residents with the agreement of the Parish Council. The area has a high proportion of holiday and second homes and therefore users and residents may not be present all year round. This may explain the low response to the consultation which was carried out in the early part of the year. Users and the adjacent landowner who responded believe that there are public rights on foot, having witnessed such use. There has been no rebuttal evidence.

2.8 Conclusion

From the available evidence it seems reasonable to allege that a public right of way subsists and it is recommended therefore that an Order is made to record a public footpath on the Definitive Map and Statement, along line E – F, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.



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**SOUTH HISH
DEFINITIVE MAP REVIEW - ROUTES 2 & 3**

- 2: ADDITION OF A FOOTPATH FROM WEYMOUTH PARK TO FOOTPATH NO. 11**
- 3: ADDITION OF A FOOTPATH FROM MAIN ROAD AT OUTER HOPE TO FOOTPATH NO. 11**

drawing number ED/PROW/08/19
 date Feb 2008
 scale 1:2500
 drawn by HFB

Notation

Existing footpath - - - - -
 Route 2: Claimed footpath C - D - - - - - • 145 metres approx
 Route 3: Claimed footpath E - F - - - - - • 225 metres approx

Devon
 County Council 
Edward Chorlton
 DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE

