

**Definitive Map Review: Haccombe with Combe
Claimed Bridleway Track at Upper Gulmswell, Combeinteignhead**

Report of the Executive 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 the county road (C47) and the minor county road (UCR 1378) in the village of Combeinteignhead and parish of Haccombe with Combe, as shown on the attached drawing number ED/PROW/08/89 between points A – B.

1. Summary

The report details investigation of a claim that a route in the parish of Haccombe with Combe in Teignbridge District, and having no current official highway status, should be recorded as a public 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. Following a recent change of ownership of the route, gates were placed at each end with notices stating “private, no entry”. This led certain local residents to collect evidence of past use and supply the same to us, with a view to the route being recorded as a public right of way.

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 170 metres in length and 4 metres in width, and lies on the south eastern edge of the village of Combeinteignhead in the valley from which the village takes its name in part. That name has incidentally nothing to do with the nearby Teign Estuary, but derives in other part from the Saxon administrative area called the Ten Hides in which the valley lies, hence combe-in-ten-hides.

The route commences at its north eastern end at a junction with the main village road to Stokeinteignhead by Town End Cottage, at the point marked A on the drawing, and runs south westward through a gate and stream before ascending the hillside past properties called Upper Gulmswell and Lavender Cottage. The route then turns north westwards, passes through a second gate and ends at a cross road of tracks at the point marked B on the drawing.

The other three arms of this cross road are recorded as minor county roads, one running north to join the village road by Gulmswell and the others west and south to join a road called Ridge Road that runs along the ridge between this valley and the adjoining one of

Hacombe. The route itself has no recorded highway status. The land traversed was owned for many years by the Boyds of Gulmswell Farm, then purchased a year ago by the owner of Lavender Cottage who has since sold part to the owner of Upper Gulmswell.

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.

5. Evidence of Public Use

Evidence forms have been supplied from forty persons, and detail use of the route over various periods since 1955. Thirty-two of these persons were using the route up to the time it was recently gated, and thirty-two used the route wholly or in part on horseback with ten doing so throughout the twenty years prior to erection of the gates, one being a landowner for much of the time so not a member of the public. Other users were only on foot or in a vehicle, two of whom used it for field access. Frequencies of use vary from occasional to several times weekly.

The believed status in sixteen cases is that of bridleway, other users specifying either restricted byway or byway open to all traffic. The latter attribution may derive from the incidence of what appears to be more private vehicular use, as mentioned by the Boyds and referred to in the consultation section below. No mention is made of any physical obstruction until this year, and only one user mentions any earlier gate and then says it was never closed. The only notices seen were those erected recently. No users say they obtained permission for use, nor were they stopped, turned back or told the route was not public until this year.

6. Documentary Evidence

The route is shown in part on the earliest small scale O. S. mapping of 1809 and Greenwood's Map of 1827, from which it seems to have originated as one of a number of cul de sac lanes giving access to fields. It appears in its entirety on large scale O.S. mapping from the 1880s to 1950s whereon it is shown gated at the north eastern end. These maps do not provide evidence of a public right of way, but do show the route has physically existed in much 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 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 comments being as mentioned:

County Councillor D Cox	– no comment
Teignbridge District Council	– no comment
Hacombe with Combe PC	– see below
Country Land & Business Assoc.	– no comment
National Farmers' Union	– no comment
Open Spaces Society	– no comment
ACU Land Access Bureau	– no comment
Byways and Bridleways Trust	– no comment
British Driving Society	– no comment
Cyclists Touring Club	– no comment
British Horse Society	– no comment
Ramblers' Association	– no comment
Landowners	– see below

Mrs. S. Hughes, Clerk to Hacombe with Combe Parish Council, states her Council believes the route has been used for many years (in excess of 20) by pedestrians, horses and vehicles requiring access to adjacent fields, is concerned that over recent months access has been restricted and supports parishioners in their endeavours to have it recorded as a bridleway.

Mrs B Boyd states that her husband purchased the lane as part of Gulmswell Farm in 1955, and on his death it passed to her children before being sold on this year; and that during this period of 53 years the lane has always been open for use by the public and as access to pathways and fields above. She regards it as a byway open to all traffic, but it seems from what she says that any vehicular use was purely for field access. Her son Mr R Boyd confirms this information, stating that throughout the time of the family's ownership they regarded the lane as having full public access. He also refers to its use by farm machinery, owing to the nearby public lane past Gulmswell Farm being too steep and narrow therefore.

Mrs G King of Lavender Cottage, where she has lived for 6 years, states that she bought the lane a year ago and has been aware of its use by the public, including by motorbikes and 4 wheel drive vehicles, and erected the gates partly because of erosion and noise nuisance. She regards the route as private, and states that when users have been challenged during the past six years they have usually stated they had the owner's permission. She states that the Boyds agreed in 2005 to publicise the fact that locals had permission to use the lane, but nothing was done.

Mrs J Tweedie of Upper Gulmswell, where she has lived for 11 years, states that she bought part of the lane in August this year, and believes it to be private with use by local landowners for access to land and horse riders by permission. She refers to recent use by motorbikes, 4 wheel drive vehicles and joy riders having been challenged on many occasions, and to the consequent placing of signs prior to 2005; also to the gates that have been erected having served the intended purpose of dissuading motorcyclists.

8. Reasons for Recommendation/Alternative Options Considered

This appears to be a well-supported claim, with sufficient evidence to raise a presumption that the route has been dedicated as a bridleway. Use by vehicles over time seems to have been for the most part by farmers for field access with more recent vehicular use by the general public being challenged, whereby any higher highway status seems not established.

The right of the public to use the route was brought into question by the actions of the present landowners; but while these owners believe the previous owners had no intention to dedicate either, this view seems contradicted by those owners themselves, and no user seems to have been aware of any notices or other actions indicating such lack of intention.

Edward Chorlton

Electoral Division: Teign Estuary

Local Government Act 1972

List of Background Papers

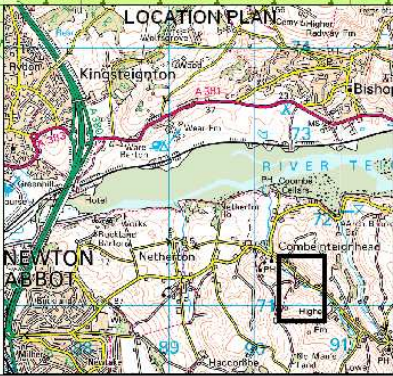
Contact for enquiries: Mike Jenkins

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Background Paper	Date	File Ref.
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sc/dmr/claimed bridleway combeinteignhead
2 hq 291008



map ref SX 9070

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**CLAIMED BRIDLEWAY
 COMBEINTEIGNHEAD
 HACCOMBE WITH COMBE**

drawing number EEC/PROW/08/89
 date October 2008
 scale 1:2500
 drawn by MM

Notation

Claimed Bridleway A - B (175 metres)

Edward Chorlton
 DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE



