

Unclassified County Road (UCR) 175, Bere Ferrers

Joint report of the County Solicitor and Executive Director of 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:

- (a) the highway between points A - B (Route A) on drawing no. ED/PROW/08/05 be added to the List of Streets as an unclassified county road; and**
- (b) the depiction of the highway shown on the List of Streets as a public highway between points A - C - D (Route B) on drawing no. ED/PROW/08/05 be confirmed as correct.**

1. Summary

This report concerns an anomaly regarding two sections of highway in the parish of Bere Ferrers shown between points A - B and A - C - D on plan ED/PROW/08/05 attached to this report.

2. Background

It was discovered during consideration of the diversion of Footpath No. 55, Bere Ferrers, that the highway records had been altered by the deletion of the section of road A - B. No explanation was given for the change and the effect was to make Footpath No. 55 a cul-de-sac footpath.

Highway records compiled in 1947 in readiness for the County Council taking back responsibility for the maintenance of rural roads from the former Rural District Council show UCR 175 terminating at South Hooe at point B. However, sometime after this the records were altered to show UCR 175 ending at the entrance to North Hooe at point D.

3. Description of the Highways

Route A to South Hooe

The section of road in question starts near its junction with Footpath No. 55, Bere Ferrers at point A and proceeds generally south westwards along a narrow metalled lane to the entrance of South Hooe Farm at point B. The total length is approximately 495 metres. There is currently a 'Private Road' at point B.

Route B to North Hooe

This section of road starts at point A and proceeds generally west north-westwards to North Hooe Farm at point C, then north-westwards the road starts near its junction with Footpath No. 55, Bere Ferrers, and continuance of UCR 175 eastwards at point B and proceeds as a narrow metalled lane to North Hooe Farm (point C). It has a continuation to a former ferry crossing at point D. The surface is a narrow metalled lane. The total length is approximately 360 metres.

4. Matters for Consideration

The purpose of this report is to evaluate the evidence for the recording of the routes to North and South Hooe as highways to determine which, if any, is correct.

5. Consultations

A consultation was carried out with the landowners at North Hooe and South Hooe in March 2008. The sole response received was from the owners of South Hooe Bungalow, though subsequent correspondence has been received with the owner of North Hooe Farm.

6. Documentary Evidence

6.1 Bere Ferrers Surveyors of Highways Account Books, 1791-1846

These accounts provide information about the management of the public highways in the parish. A public body such as the vestry had powers only in relation to public highways which they had a responsibility to maintain through their Surveyor of Highways. These records are particularly thorough as they list the specific parish highways which received maintenance. There are gaps in the records which cannot be accounted for, but for such records to survive and be so detailed is a rare occurrence. It should also be noted that the spellings of places vary depending on the records' author.

Throughout the accounts a pattern emerges whereby heavily used routes received frequent attention, whereas peripheral routes receive only periodic attention. During May and June 1832 the parish road to South Hooe or Hole as it is listed (Route A) received attention from two to six labourers for periods of between one and six days. The specific works carried out are not listed.

In June 1840 Hooe Passage Road was repaired between points C and D and in February 1846 its drains were cleaned. This road is believed to be the section of lane between North Hooe and a former ferry across the River Tamar. The sole reference for North Hooe Road between points A and C appear in August 1840 when a work team was used. On this occasion the landowner at North Hooe, George Borley, acted as the roads contractor.

Between June 1841 and March 1846 the South Hooe Road (Route A) received regular and detailed attention on nine occasions, including the cleaning and repairing of drains, raising and breaking stones, removing rock, and road surface repairs.

6.2 Bere Ferrers Tithe Map and Apportionment, circa 1842

None of the roads are coloured in the parish and both the route to South Hooe (Route A) and North Hooe (Route B) are open ended at their junction at point A. Route B is also open ended at the river bank at point D.

Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and the colouring generally indicates carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the route shown.

6.3 Bere Ferrers Parish Council records, 1897 onwards

In the early parish minutes there are just two references to North Hooe and South Hooe. The Council only refer to highways and rights of way if there was an issue that required action by

them. In 1897 the Council was asked to consider a list of roads which the Tavistock Rural District Council thought ought to be discontinued as parish roads, which included the North Hooe road (Route B). The Parish Council stated that this road led to North Hooe Farm (point C) and to the ferry on the banks of the River Tamar (point D).

In 1944, the Clerk was instructed to draw the attention of Mr Stenlake, who worked for the Rural District Council, to the very bad state of the road leading to South Hooe (Route A).

During the 1970s there are several references to Footpath 55 and to it joining the road by the entrance to South Hooe Farm (point B). The spur of the same footpath which runs north from South Hooe Mine is referred to as joining the road opposite the entrance to North Hooe (point A).

The Rural District Council took over the responsibility for public highways from the records that there is a history of obstruction on the footpath at South Hooe Cottage and consequently the public would appear to have used the road to South Hooe (Route A).

The Parish Council has also produced a leaflet detailing their public rights of way. No mention is made to Footpath No. 55 being a cul-de-sac path.

6.4 Tavistock Rural District Council records, 1906 onwards

The Rural District Council took over responsibility for the maintenance of public highways from the parish in 1888. The reports made to the District Council regarding the highways for which they were responsible do not survive. Though this Council was created in 1888, its Minute Books only survive from 1906 onwards. The public highways within the Bere Ferrers parish and their need for improved maintenance were the subject of discussion during the early 1950s. No specific mention is made of the roads to South Hooe or North Hooe.

6.5 Finance Act, 1909-10

This shows the route to South Hooe (Route A) included within hereditament 260, with the route to North Hooe (Route B) shown partly excluded, but its entry is incomplete on the map finishing at the sheet edge of CXI 14, between points A and C. There are no references to highways of any description, though there is the ability to detail any road expenditure or public right of way or user.

The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.

6.6 Bartholomew's Maps, 1920s

Bartholomew's maps were designed for *tourists and cyclists* with the roads classified for *driving and cycling purposes*. They were used by and influenced by the Cyclists Touring Club founded in 1878 which had the classification of First Class roads, Secondary roads which were in good condition, Indifferent roads that were passable for cyclists and other uncoloured roads that were considered inferior and not to be recommended. Additionally, Footpaths and Bridleways were marked on the maps as a pecked line symbol. Cyclists were confined to public carriage roads until 1968. The small scale does not permit all existing routes to be shown, omitting some more minor routes. The purpose of these maps was to

guide the traveller along the routes most suitable for their mode of transport, not to encourage trespass.

Maps dating from 1923 and 1927 show the route to North Hooe (Route B) but not that to South Hooe (Route A), though South Hooe itself is shown. The route to North Hooe is depicted as an Inferior Road and not to be recommended, which is the lowest category the maps show. Its inclusion may have been due to the former ferry crossing at point D.

6.7 County Council Roads records, 1948 onwards

When the highway records for the Tavistock Rural District Council were handed over to the County Council in 1948, Route A to South Hooe was depicted as part of UCR 175. The route was also listed in the Mileage Register of Unclassified County Roads for the Tavistock Rural District.

In the late 1960s or early 1970s the records were altered to delete Route A to South Hooe (A – B) and add Route B to North Hooe (A – C - D). The description of the route in the Mileage Register was also altered, but the length of the route was not changed - the length of the section A – B is 0.31 miles, but the length A – C - D is just 0.29 miles.

The County Council's current highway records are called the List of Streets and were derived from the earlier 1948 records. These do not show Route A as coloured, but Route B is coloured, but only between A – C. No legal stopping up order has been discovered to justify the amendment to the records. The road to North Hooe has been maintained since the 1970s between points A - C.

6.8 Definitive Map and Original Submission, circa 1950

The parish survey form for path 56, which was later recorded on the Definitive Map as Footpath No. 55, states that the path *"continues north of South Hooe Mine until stile is reached, leading into highway South Hooe Farm – Bere Alston."* The path was not noted to be a cul-de-sac on the survey form by either the Parish Council or the Divisional Surveyor.

Path 58 which did not make it onto the Definitive Map and was claimed to exist between North Hooe Farm and Footpath No. 59, east of North Hooe Mine, was noted to be a cul-de-sac miner's path by the Divisional Surveyor.

The Definitive Statement for Footpath No. 56 reads:

"The path is a Footpath. It starts midway along Footpath No: 54 and proceeds westwards close to the dividing hedge of fruit gardens (shown on O.S. Sheet as woodland). The path divides at a point midway along its route, one branch continuing north-westwards for approximately 70 yards to join the Unclassified County road opposite the entrance to North Hooe, the other branch continues south-westwards passing to the north of South Hooe Mine **to join the southern end of the Unclassified County road by the entrance to South Hooe Farm**" (our emphasis).

6.9 Definitive Map Review records, 1970s onwards

In 1978 the Parish Council put forward Route A as a proposal to be included on the Definitive Map review as it had been regarded as an unclassified county road at the time of the original survey, but was not shown on the current roads maintenance records.

In 1993 the Parish Council wrote to the County Council regarding Footpath No. 55 asking that a letter be written to the owners of Mine Cottage Bungalow known now as South Hooe

Bungalow, explaining that the “road is a public highway unclassified,” open for use by the public in vehicles and on foot.

6.10 Land Registry, 2008

The relevant registrations show the road to South Hooe (Route A) included within the holding of South Hooe Farm, while the North Hooe road (Route B) between points A - C is excluded.

6.11 Aerial Photography, 1940s to present

These photographs show the physical existence and availability of both routes' .

6.12 User Evidence

In March 2008, walkers met a landowner who discouraged use of Footpath No. 55 and the road from South Hooe (Route A) on the grounds of intrusion.

7. Rebuttal Evidence

Dr Barnes of South Hooe Bungalow states that the road to South Hooe is private and that to North Hooe is public, based on his interpretation of a limited section of the evidence. He states that he has evidence of living memory dating from the 1960s of the private repair of the South Hooe road, though none has been provided.

He believes that the “complex and illegal” actions of the alterations of status for the North and South Hooe roads would not have gone un-noticed and would have been challenged. From his research he states that only 2.18 miles of private roads were taken over by the Tavistock Rural District Council (TRDC) between 1956 and 1960, and only those which acted as connecting through routes. He also adds that all roads that were stopped up are thoroughly documented in the TRDC minutes, but that neither the South nor North Hooe Roads are mentioned.

He states that the person compiling the roads books must have muddled the two roads, and that the error existed until the owner of North Hooe complained and found the road misplaced. Dr Barnes does also present the possibility that the road to South Hooe may have been repaired by the County Council and acknowledges that it would be beneficial to those at South Hooe if the road was reinstated as a public highway.

7.1 Mount Edgcumbe Estate Sale, 1926

Dr Barnes states this shows the road to South Hooe to be private and that to North Hooe, public.

At the time of its sale in 1926, South Hooe was owned by the Mount Edgcumbe Estate. Though only an excerpt was provided, the full document has been consulted. The sale catalogue states nothing specifically regarding public highways near or through the property, which is common with such documents as is the disclaimer it also carries. Route A between points A – B is included as a ‘road’ numbered 281a and 496 in Lot 236 – South Hooe Farm. The road to the farm is subject to a right of way retained by the vendor to access other property retained by him. North Hooe Farm was also in the sale though the road between points A – C is not included, though the continuation between points C – D is. The sale plan also shows the road to North Hooe between points A – C coloured in the same manner as that continuing northeast from point A and without a parcel number on the base mapping, and different to that to South Hooe between points A – B.

7.2 Land Registry

Dr Barnes states that the lane to South Hooe (Route A) is included in the registration plan of South Hooe Farm, while the lane to North Hooe is not (Route B).

7.3 North Hooe Deed, 1921

Dr Barnes states that this shows that the road to North Hooe was not private.

The deed does not include the lane to North Hooe, but does include its continuation from the farm to the river bank where there used to be a ferry crossing.

8. Discussion

The Rural District Council included Route A on their handover roads records of 1 April 1947 to the County Council. The subsequent alteration of the records does not appear to have any legal basis as no Quarter Sessions records or Magistrates' Court stopping up order can be traced. The cessation of maintenance of the highway by Devon County Council has no significance in terms of its status, on the basis that "*once a highway always a highway*" it remains a highway irrespective of actual maintenance unless and until it is formally stopped up.

The earliest records found relate to the routes in question dating back to the Surveyors' of Highways Accounts from 1832. Though the spelling of the roads differs from those used today, it is clear that South Hole is actually South Hooe. The Surveyor of Highways was responsible for the maintenance of all parish roads and was appointed by Vestry which ran parish affairs at that time. It would only be able to maintain those routes for which it had a duty and power to do. From then onwards the records are very detailed regarding the maintenance carried out on parish roads and the South Hooe road (A – B) is frequently mentioned. In comparison, the Hooe Passage (C – D) and North Hooe (A – C) roads are rarely mentioned and maintained.

The Parish Council which followed on from the Vestry with regards to parish affairs had responsibility for the parish roads. Though the routes receive little direct attention in the main Council minutes, the references are nevertheless of importance. The road to North Hooe (Route B) was proposed for discontinuance by the Rural District Council in 1897, but the parish wished it to be retained. It is not known what the TRDC decided as their surviving minutes only date from 1906. Meanwhile, the sole reference for South Hooe, Route A, comes in 1944 when the matter of its maintenance is referred to Mr Stenlake, an employee of the Rural District Council.

Records of the Tavistock Rural District Council do not give specific mention to either of these roads. It was usual for the Surveyors' reports to be taken as read and only specific issues requiring action would be minuted. They had delegated powers from the County Council between 1929 and 1948.

The handover records that the Rural District gave to the County Council in 1948 showed the route to South Hooe included as an unclassified county road and that to North Hooe was not shown. However, after the handover the maps were subsequently altered deleting the South Hooe route between points A – B and adding the North Hooe route between points A – C – D. The description of UCR 175 in the Mileage Register that accompanied the handover maps was also altered to reflect the map change with a note added indicating the route terminated at a gateway. The mileage record was not altered but the difference was only 0.02 miles. A further complication is that the current List of Streets shows the North Hooe route terminating

at point C which corresponds to limit of the maintenance which the County Council has undertaken since the 1970s.

At the western end of the road to South Hooe is the junction with Footpath No. 55. The Definitive Map and Statement is conclusive evidence that a right of way exists and therefore could be considered as good evidence of other highways to which it refers. The footpath was described as connecting with the "*unclassified county road*" by the entrance to South Hooe Farm at point A. At the same time claimed path 58 which did not make it onto the Definitive Map was noted by the Divisional Surveyor as a cul de sac miner's path, its only connection with a public highway being with Footpath No. 59. Path 58 included what was formerly known as Hoe Passage Road between points C – D.

Other documentary sources such as the Tithe Map of 1842 and modern aerial photography show both routes open ended which supports the proposition that they were available to the public. The Finance Act records are incomplete as the map entry for North Hooe is unfinished. Neither hereditament for South Hooe or North Hooe make any reference to highways.

The Bartholomew's maps were designed to aid travellers along the most appropriate roads for their journey and only what the map makers considered were the most important roads were shown. The property at South Hooe is shown, but the route leading to it is not shown. However, the route to North Hooe between points A – C is shown. A possible explanation for this is the existence of the former ferry crossing from North Hooe (point D), but it is not known when the ferry stopped operating.

The limited recent user evidence supports the records from earlier reviews when the Parish Council notes difficulty for users of the footpath on reaching South Hooe at point B and returning via the "*unclassified public highway*".

Rebuttal evidence was only received from Dr Barnes from South Hooe Bungalow, who states that there is evidence of living memory regarding the South Hooe road's private maintenance. His conclusions regarding the Roads Records in conjunction with his own research is limited to a selection of the evidence available and which has been referred to in this report. Dr Barnes believes that the changes to the records would have been challenged had they been incorrect, but such changes would not necessarily have been the subject of consultation.

His statement about the taking over of roads by the RDC is confined to a short period and does not reflect the larger picture of highway management of the RDC. Roads could also be taken over where they served other purposes and benefits to the area. Though the RDC would certainly minute their decisions regarding the stopping up of roads and discontinuance of public highway status, any formal decisions would also be available from the Quarter Sessions records. Neither of the roads to South and North Hooe appear in the Session records.

With regards to the 1926 Mount Edgcumbe Estate Sale, all such sale catalogues come with a disclaimer about the accuracy of the information they contain and this catalogue is no exception. It is not uncommon for public highways to cross or be included within such holdings. The 1921 North Hooe deed does not include the road to North Hooe. However, such documents are concerned with private land holdings, not public highways and would not necessarily mention them.

9. Conclusion

The road to South Hooe was included on the handover maps given to the County Council by the Tavistock Rural District Council in 1947 and included in the Mileage Registers associated with the maps. However, after the handover the entry was altered in the late 1960s or early 1970s. No Magistrates Order can be found indicating that the route was formally stopped up.

The alteration of the records appears to relate to maintenance practices rather than the route's legal status and the rights of the public to pass along it. The documentary evidence demonstrates that both roads to South Hooe (A – B) and North Hooe including Hoe Passage (A – C – D) are publicly maintainable highways.

Some rebuttal evidence has been provided. However, it is not considered that the submission in conjunction with all other available evidence discovered demonstrates that the road to South Hooe should not be included on the List of Streets.

It is, therefore, recommended that the road to South Hooe between points A – B and the road at North Hooe between points C – D be added to the List of Streets, while the section between points A – C remains on the List of Streets.

Edward Chorlton
Roger Gash

Electoral Division: Yelverton Rural

Local Government Act 1972

List of Background Papers

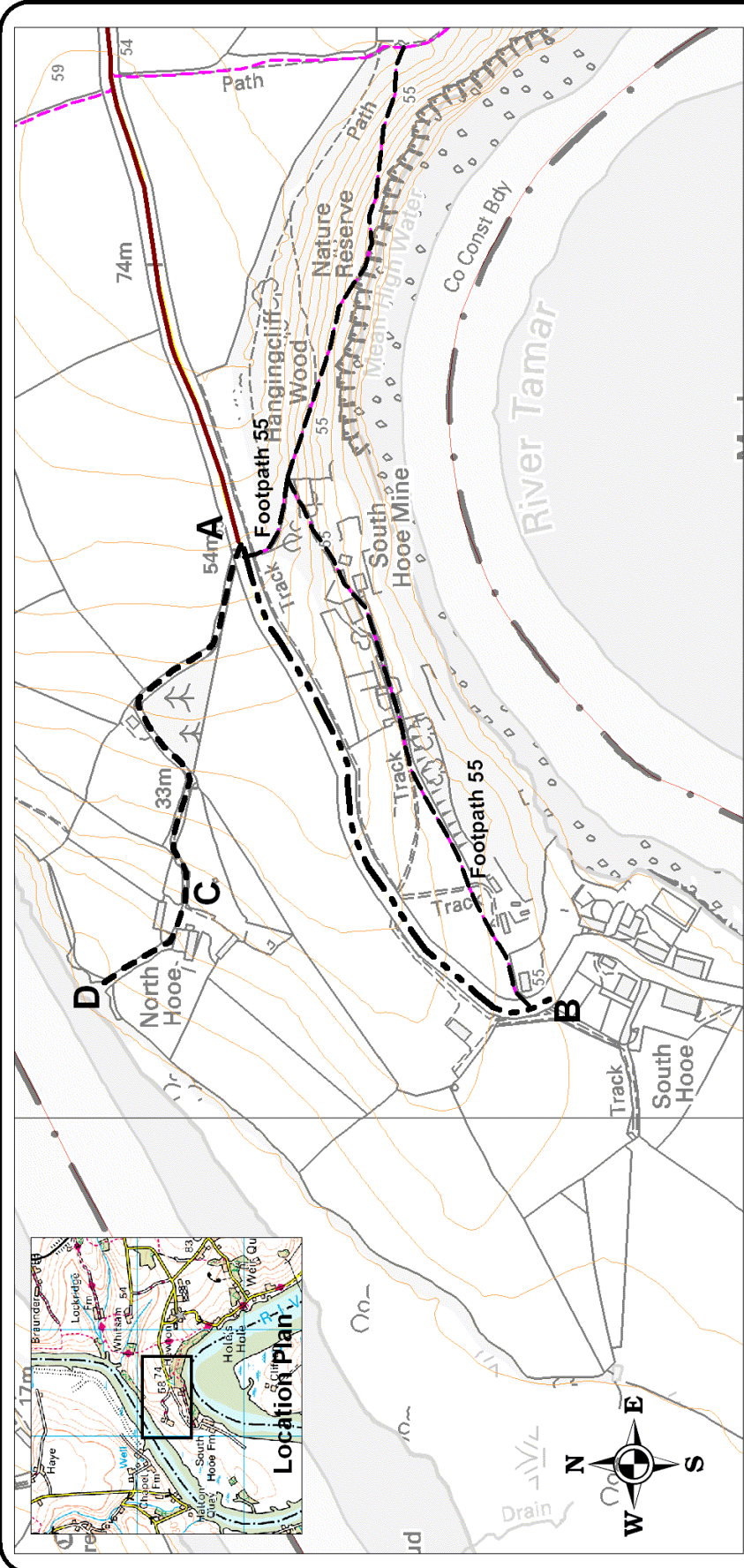
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Background Paper Correspondence File	Date Current	File Ref. DMR/BF/UCR175
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map ref: **SX 4265**

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drawing number **ED/PROW/08/05**
 date **January 2008**
 scale **1:5,000**
 drawn by **CLG**

Parish of Bere Ferrers Investigation of UCR 175 anomaly

- Notation**
- HMPE
 - Footpath No. 55
 - Existing footpaths
 - Route A
 - Route B
 - UCR 175
 - A - B (500 metres)
 - A - C - D (460 metres)

