

**Definitive Map Review 2008-2009
Parish of Hartland**

Report of the Deputy 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 no modification orders be made arising from the Parish Review of Hartland.

1. Summary

The report examines the Definitive Map Review in the parish of Hartland in the district of North Devon and determines three applications made by the Trail Riders Fellowship (TRF).

2. Background

The original survey, under s. 27 of the National Parks and Access to the Countryside Act, 1949, revealed 34 footpaths and 5 bridleways in Hartland, which were recorded on the Definitive Map and Statement, Bideford Rural District with the relevant date of 22 March 1963.

Various changes have taken place on the rights of way network over the years:

Footpath No. 1 Stopping Up of Highways 28 February 1958
Footpath No. 10 Diversion Order 25 May 1959 (Coast Path)
Footpath No. 66 Creation and Deletion Order 16 September 1970 (Coast Path)
Footpath No. 66 Creation Agreement 1 September 1976 (Coast Path)
Footpath No. 66 Creation Agreement 8 August 1969 (Coast Path)
Footpath No. 67 Creation Agreement 13 October 1970 (Coast Path)
Footpath Nos. 66 & 70 Creation Agreement 20 July 1977 (Coast Path)
Footpath No. 66 Creation Agreement 23 May 1979
Footpath No. 69 Creation Agreement 26 February 1981
Footpath Nos. 70 & 66 Creation Agreement 31 January 1979
Footpath No. 13 Creation Agreement 28 August 1979
Footpath No. 64 Creation Order and Modification Order 25 April 1990
Footpath No. 71 & 72 Creation Order 19 March 1991
Footpath No. 60 Diversion Order 27 September 1990
Footpath No. 25 Diversion Order 1 September 1992
Footpath No. 73 Creation Agreement 23 December 1996
Footpath No. 31 Diversion Order 16 May 1997
Footpath No. 45 Diversion Order 12 December 2006
Footpath Nos. 13, 50 & 65 Diversion Order 13 September 2007

The Limited Special Review of Roads Used as Public Paths (RUPPS), carried out in 1972, did not affect this parish.

The review of the Definitive Map, under s. 33 of the 1949 Act, which commenced in 1974 but was never completed, produced one valid proposal for change which was subsequently added as to the Definitive Map as Footpath No. 64.

3. Review

The current Review began in April 2008 with a public meeting held prior to a parish council meeting. Public consultations were carried out and the review was advertised in the parish and local paper.

The responses were:-

County Councillor Temperely	-	no comment
Torrige Devon District Council	-	no comment
Clovelly Parish Council	-	no comment
British Horse Society	-	no comment
Byways and Bridleways Trust	-	no comment
Country Land & Business Association	-	no comment
Open Spaces Society	-	no comment
Ramblers' Association	-	no comment
Trail Riders' Fellowship	-	submitted 3 sch14 applications
Devon Green Lanes Group	-	supports TRF applications
Landowners	-	oppose applications

4. Conclusion

The Definitive Map review for the parish of Hartland has now been completed. It is recommended that no orders be made. Should any valid claim be made in the next six months it would seem sensible for it to be determined promptly rather than be deferred.

5. Reasons for Recommendation/Alternate Options Considered

To progress the parish by parish review of the Definitive Map in Torrige area.

6. Legal Considerations

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

7. Carbon Impact Considerations

There are no implications.

8. Equality Considerations

There are no implications.

Ian Harrison

Electoral Division: Bideford South & Hartland

Local Government Act 1972

List of Background Papers

Contact for enquiries: Alison Smith

Telephone No: 01392 383370

Background Paper

Date

File Ref.

Correspondence file: Hartland

2008-2009

AS/DMR/HART

as061009pra
sc/dmr hartland
5 hq 301009

Basis of Claims

Common Law presumes that a public right of way exists if 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 Highways Act 1980, Section 32 states that a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan, or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

Wildlife and Countryside Act 1981, Section 53[3] [c] enables the Definitive Map to be modified if the County Council discovers evidence which, when considered with all other relevant evidence available to it, shows -

[i] that 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;

Wildlife and Countryside Act 1981, Section 56[1] – 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.

The three Schedule 14 applications made by TRF

The Trail Riders Fellowship submitted three Schedule 14 applications for Byways Open to All Traffic around Leigh Farm south of Hartland village. The first application was made shortly before enactment of the Natural Environment and Rural Communities Act 2005 (NERC) and was placed on file to be determined as part of this general parish review of the Definitive Map. Two further applications were made in April 2009 during the course of the review. Following the Court of Appeal decision in the case of Winchester College and Hampshire County Council it is clear that applications must be made strictly in compliance with the requirements of Schedule 14 Wildlife and Countryside Act 1981. There is no discretion afforded to determining authorities to waive non compliance with any aspect.

It is clear that in the case of these three applications they are not compliant as no notification was given by the TRF to the owner/occupier of the relevant land. These applications cannot therefore be entertained nor can they be determined. As these claims formed the only proposals for review in the Parish it is felt that it would be helpful to consider the available evidence under the general powers of review which are contained in S.53 Wildlife and Countryside Act and Schedule 15 to that Act to see if public rights of way of any description

can reasonably be said to subsist. It should be noted that there is no right of appeal in these circumstances.

Route 1

1. Description of Route

The route starts on a concrete surface at the county road east of Cuckoo Cottage and Andrews Hill, point A on plan no. ECC/PROW/09/110. There is a sign at the start of the route indicating that the track is private. The route climbs to an elbow bend at point F, turns westwards through the old gates of Leigh Farm, past Leigh Farm Cottage, then turns southwards between the buildings and house of Leigh Farm to point B. It continues generally southwards in a hedged lane with a mud and stone surface, turning westwards at point C. The route continues as a narrow overgrown lane (which turns into a gully and stream in places) to the entrance of Stowford. The track then continues to the county road at point D along a rough stone surface maintained by the owner of Stowford. The total length of the claim is approximately 1,700 metres.

2. Documentary Evidence

1st Edition Ordnance Survey Map

The Ordnance Survey 1st Edition 1 inch to 1 mile map based on the survey of 1803-1807 was published in 1809. The route is marked as a lane in the same way as the other roads across in the parish of Hartland. The name Leigh is written by the farm now known as Newton.

Greenwoods Map (1827) Greenwood follows the Ordnance Survey convention mapping of major roads which were marked with solid bold lines on easterly and southerly boundaries. Secondary public roads appear to be shown as double solid lines. The route is depicted as a secondary road throughout its length. Leigh is shown as Lee. A variation to the claimed route is shown north of Lee, in the form of a fork in the lane, both routes are shown as secondary.

Hartland Tithe Map 1841

Tithe Maps were drawn up under statutory procedures, laid down by the Tithe Commutation Act 1836, by surveyors employed by the local landowner. The Tithe Map for Hartland shows the claimed route in the same way as other routes.

Ordnance Survey Mapping 1st Edition 6" to mile 1880s

The section through Leigh was marked as a minor track. The county road past Cookwood Cottage (now Cuckoo Cottage) has a darkened edge indicating a higher status. The OS map contains the standard disclaimer that depiction of a route is no evidence of a public right of way.

Subsequent Ordnance Survey Maps

These show the route.

Bartholomew's North Devon Map 1920 Shows the route as a lane.

Torrige Rural District Roads Committee minutes 7 November 1944

Minutes from the above meeting record the following:

"As a result of a letter from the County Council dated the 29th June 1944, the surveyor presented his report on accommodation roads and unnecessary highways.

The report was discussed at great length, and the following recommendations were made:-

<u>Description of Road and Parish.</u>	<u>Recommendation of Council</u>
Hartland Square, Hartland	Be not taken over.
Spring bank, Hartland	"
Quay Road, Hartland	Be taken over.
Meddon Chapel Lane, Hartland	'
Leigh Lane, Hartland	Be not taken over.

Two other lanes in Hartland were listed as "Be not taken over".

The recommendation of the parish indicates that prior to 1944 the lane was considered to be privately owned and maintained.

Hartland Parish Council Minute Books from 1939

The Parish Council minute books have been examined for any reference to the parish maintaining Leigh Lane between 1939 and 1945, but none was discovered. However, the minute books did contain detailed records of monies spent and works undertaken on many other roads and rights of way in the parish.

Highways Maintenance Records and Handover Books

In 1888 County Councils were established and became responsible for 'main roads', the District Highways Board continued to be responsible for other roads. In 1894 Urban and Rural District Councils (RDCs) were formed and these took on the responsibility for highway maintenance except on 'main roads'. It was not until the Local Government Act in 1929 that the term 'county road' came into being for those roads which the County Council was responsible.

As a result of these changes the RDCs compiled maps of maintainable roads for handover to the County Council to become 'county roads'. From these maps the County compiled detailed reference books giving each road a number with a map reference, description of route and mileage.

The handover book for the Bideford area does not include Leigh Lane, (but it does show the connecting route to the north of the claimed route past Newton Farm as a county road).

3. Supporting Evidence

There is one user evidence form and a copy of 'Run Records'. During the course of the review three further user evidence forms have been submitted. Details of the usage is as follows:

- Mr Chilcott (deceased) (the local TRF run leader) used the route on a motorcycle from 1990 to 2004 between 3 and 4 times a year. In 2004 the run he was leading was stopped by Mr Heard the landowner. Mr Chilcott then asked for permission to use the route but permission was refused.
- Mr Greasley used the route on a motorcycle from 1998 but he does not say in which other years. However, his name appears on the run records from May 2000 until Nov 2003, showing use once or twice a year. He did not ride on the day the TRF were challenged.
- Mr AW Hockin used the route between 2003 and 2007. The gate was tied shut on occasions. Mr Hockin reports that in 2007 the farmer again stopped the trail riders and told them the route was not public.
- Mr LR Newell used the route on a motorcycle from 2002 to 2006 seven times a year and states he had obtained permission from Mr Heard at Leigh Farm.

- Mr. J. Jenkins used the route in a vehicle six times a year between 1999 and 2006. He said there were gates on the route.

The user evidence forms are available in the backing papers.

There are no user evidence forms from walkers or horse riders.

4. Rebuttal Evidence

The landowner of Leigh is Mr A Heard. The farm has been in his family's ownership for four generations since the 1920s, but they have farmed the land since 1903.

Mr J Heard was born at Leigh and is now 76 years old. He remembers the track to the farm was always gated, and the gates kept shut and the only people who used the route were neighbours coming through and deliveries to the farm. He remembers his father wanted the council to 'take on' the lane in the 1940s but they declined and the family continued to maintain it themselves. He paid for the surface that is there today. He remembers people being told the route was not public 50 to 60 years ago.

Mr A Heard (the son of Mr J Heard) is the current farmer. He has stated that around 15 years ago he erected 'Private' signs at the northern end of the lane at the junction with the county road because suddenly they started to get high volumes of cyclists passing through the land. They then turned all cyclists away. They subsequently discovered that Hamlyn's guide books had accidentally marked the track as a cycle route. The Heard's approached the publisher through a solicitor and the publication was corrected. When they started to get problems with the cyclists the gates were locked, but it proved impractical as it is the only access to the farm for stock and farm machinery.

The landowners have told all motorcyclists they have seen that the route is private. Mr Heard senior can recollect they have allowed their neighbours to pass through the route on foot and horse with permission.

On one occasion in 2004 the TRF were stopped by Mr Heard and told that the land was private. He said that they would have to ask for permission if they wished to use the lane in future. This is corroborated by Mr Chilcott's evidence.

The Heard's landowner evidence form and statement is included in the backing papers.

5. Discussion

From the historical maps it can be seen that a route through Leigh has physically existed since at least 1803. However, none of the maps provide evidence with regard to status.

The route was not shown on the Rural District Council handover maps of maintainable highways and in 1944 the RDC decided that the route "Be not taken over" indicating that the lane was privately owned and maintained. This is corroborated by the landowners who have always had to maintain the route and recollect only neighbours and delivery vehicles using the lane to the farm as far back as the early 20th century.

No record has been found of the parish council maintaining the route as they have other roads and footpaths in the parish.

The above evidence is, therefore, insufficient to show dedication under Common Law.

Turning to the Highways Act 1980, Section 31 (1) and if dedication has been established by public usage of the route, only four user evidence forms have been received indicating very infrequent use since 1989. It is, however, clear that the landowners have taken appropriate steps to indicate their lack of intention to dedicate the route by the stopping of users and erection of 'Private' signs. Accordingly, dedication under Section 31 cannot be inferred.

6. Conclusion

It is evident from the historical records that although the route has existed for over 200 years it has never been regarded by Hartland Parish Council, Torridge RDC or the landowner as a public highway or repaired as such. The user evidence does not provide evidence of a full period of 20 years use prior to the route being called into question by the landowner in 1994 with turning away of cyclists and the erection of private signs. Accordingly, it is recommended that no Modification Order be made.

Route 2

1. Description

The route starts at the junction with Route 1 at point C on plan no. EEC/PROW/09/110 and proceeds eastwards along a narrow hedged lane with a mud and stone surface (used by the farmer to drive cattle) to point E on a rough track in woods (Claim 3). It is approximately 180 metres in length.

2. Documentary Evidence

The documentary evidence for this path is the same as Route 1 - section 2, with the exception that no consideration appears to have been given by the former Rural District Council to its possible adoption in 1944.

3 Supporting Evidence

There is no user evidence.

4. Rebuttal Evidence

The land is owned by the Heard family referred to in Route 1 – section 4. They have always regarded the route to be private and object to the claim. They have never seen anyone using it and do not believe that the TRF has used it.

5. Discussion

From the historical maps it can be seen that a route has physically existed since at least 1803. However, none of the maps provide evidence with regard to status.

The route was not shown on the Rural District Council handover maps of maintainable highways, nor would it appear that it was worthy of consideration when the RDC considered proposals for adoption in 1944.

No record has been found of the parish council maintaining the route as they have other roads and footpaths in the parish.

There is no evidence of use by the public.

6. Conclusion

There is very little available evidence and it is therefore recommended that no order be made.

Route 3

1. Description

The route starts at a junction with Route 1 at point F on plan no. ECC/PROW/09/110 and proceeds generally south eastwards through an overgrown copse and hedge. It then continues along the edge of a field into woodland, and then along an overgrown track to meet the county road at point G. It is approximately 770 metres in length.

2. Documentary Evidence

The documentary evidence for this path is the same as Route1 - section 2, with the exception that no consideration appears to have been given by the former Rural District Council to its possible adoption in 1944.

3 Supporting Evidence

No user evidence has been submitted in support of this claim.

4. Rebuttal Evidence

The land is owned by the Heard family referred to in Route 1 – section 4. They have always regarded the route to be private and object to the claim. They have pointed out that the track has been grubbed out for many years and they farm it as part of the field. They have never seen anyone using the route, nor do they use it themselves. They do not believe the TRF has used it.

5. Discussion

From the historical maps it can be seen that a route has physically existed since at least 1803. However, none of the maps provide evidence with regard to status.

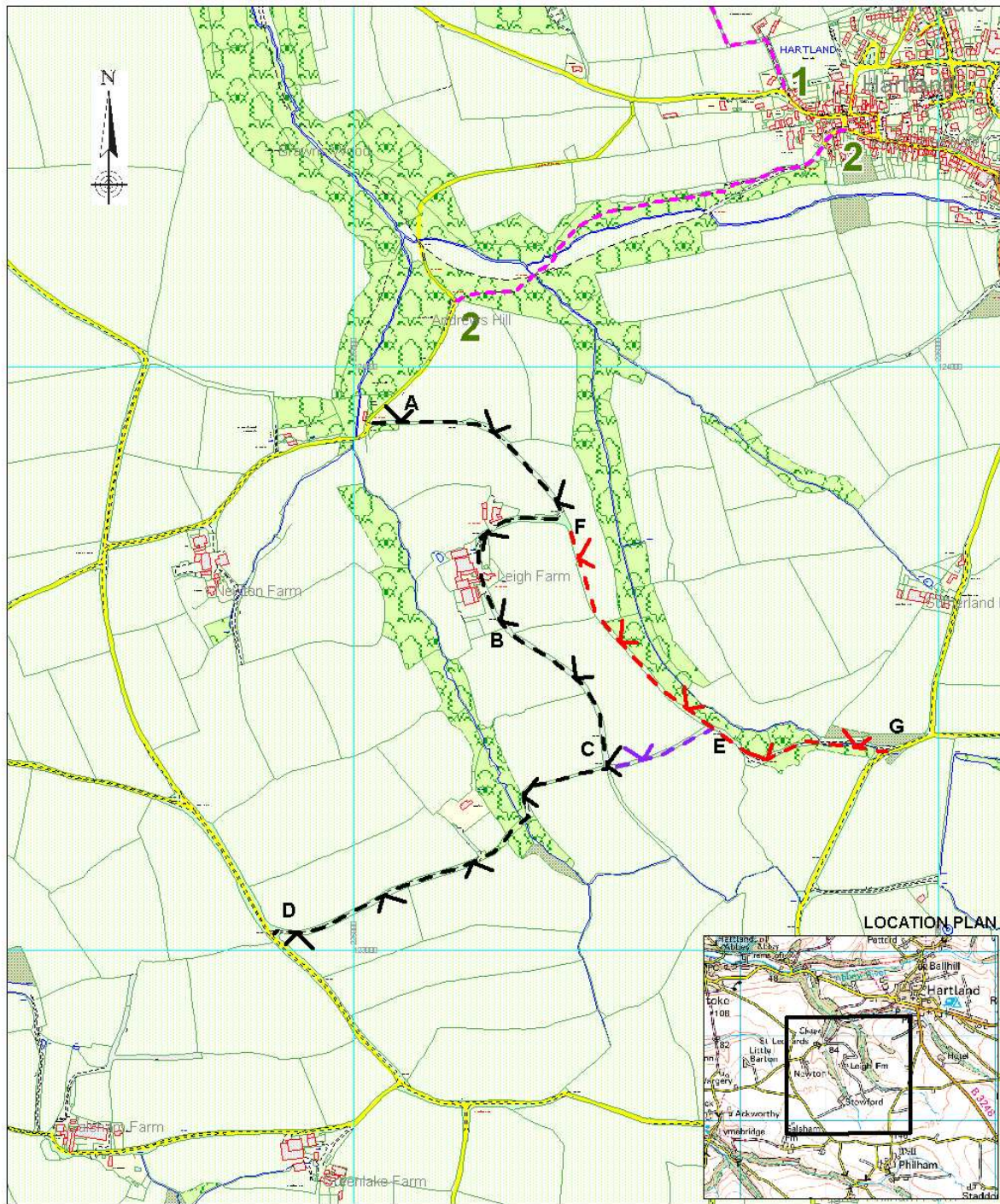
The route was not shown on the Rural District Council handover maps of maintainable highways, nor would it appear that it was worthy of consideration when the RDC considered proposals for adoption in 1944.

No record has been found of the parish council maintaining the route as they have other roads and footpaths in the parish.

There is no evidence of use by the public.

6. Conclusion

There is very little available evidence and it is therefore recommended that no order be made.



map ref SS2317

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**Claims 1, 2 & 3 - Byways Open to all Traffic
 Stowford through Leigh to
 Cuckoo Cottage, Hartland.**

drawing number EEC/PROW/09/110

date Sept 09

scale 1:10,000

drawn by AS/DMR/HART

Notation

Claimed route

Route 1
A - B - C - D



Route 2
C - E



Route 3
F - E - G



Edward Chorlton

DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE