

**Definitive Map Review 2009 - 2010
Parish of Thurlestone**

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 no Modification Order be made in respect of suggestion 6.

1. Summary

The report examines a suggestion arising from the Definitive Map Review in the Parish of Thurlestone in the District of South Hams.

2. Review

The current Review began in April 2009 with a public meeting held in the parish hall. Several suggestions put forward by Thurlestone Parish Council since the Definitive Map was published in 1958 have been picked up for consideration under this Review. A full public consultation was carried out in July and was advertised in the parish notice boards, and in the Kingsbridge Gazette. A previous report taken to the Public Rights of Way Committee in November 2009 examined four suggestions for modifying the Definitive Map. This report examines the remaining suggestion.

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

The responses were:

County Councillor Sir Simon Day	-	no objections
South Hams District Council	-	no comment
Thurlestone Parish Council	-	supports suggestion
British Horse Society	-	no comment
Byways and Bridleways Trust	-	no comment
Devon Green Lanes Group	-	no comment
Country Landowners' Association	-	no comment
National Farmers' Union	-	no comment
Open Spaces Society	-	no comment
Ramblers' Association	-	no comment
Trail Riders' Fellowship	-	no comment

3. Conclusion

It is recommended that no Modification Order be made in respect of suggestion 6.

Should any new evidence be submitted or a valid claim made in the next 6 months, it would seem sensible for it to be determined promptly rather than deferred.

4. Reason for Recommendation/Alternative Options Considered

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

5. Legal Considerations

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

6. Carbon Impact Considerations

There are no considerations.

7. Equality Considerations

There are no considerations.

Chris McCarthy

Electoral Division: Thurlestone, Salcombe & Allington

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence file	1977 to date	DMR/Thurlestone

hc250110pra
sc/parish of thurlestone
2 hq 110210

Background

A. Basis of Claims

The 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] 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:

- (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.
- (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or
- (iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

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. Suggestion 6 – Addition of a public footpath from Footpath No. 7, adjacent to the property known as Pilchard Cellars, to join Footpath No. 6.

Addition of a public footpath from Footpath No. 7, Thurlestone, in Bantham, to Footpath No. 6, Thurlestone between points M-X-N, as shown in drawing number EEC/PROW/09/81a.

Recommendation: It is recommended that no Modification Order be made.

1.1 Background

The addition of this route to the Definitive Map was requested by Thurlestone Parish Council in August 1997. The Parish Council considered that it had existed throughout the 20th Century but that its omission from the Definitive Map had only recently come to light when a

planning application was received for an adjoining property. There was subsequently some discussion between the South Devon Coast & Countryside Service and landowners concerning potential use of the route as part of the Avon Estuary Walk. The matter remained unresolved pending the Definitive Map Review.

1.2 Description of the Route

The route starts at Footpath No. 7, Thurlestone, on the slip road leading down to Bantham Quay, at point M as shown on drawing number EEC/PROW/09/81a. It proceeds generally eastwards in front of the property known as Pilchard Cellars and continues generally east northeastwards along a green lane then turns southeastwards at point X up a steep slope, into which steps have been cut, to join Footpath No. 6, Thurlestone at point N.

1.3 Supporting Evidence

User Evidence

Only one user evidence form has been received in respect of this route, covering a period of three years from 2006 to 2009. The user, Mr Williams, has used the route on foot only, between the beach and Higher Aunemouth Farm campsite or as part of the Avon Estuary Walk. He comments that the path is open, well maintained and has no publicised access restrictions, and that there is frequent use by numerous people.

Landowner Evidence

Mr Aylett of Michelmores Hughes has provided information in response to the consultation on behalf of Evans Estates (1956) Ltd, which owns much of Bantham. Mr Aylett states that employees of the Estate Company have carried out work on the route between points M-X, to keep it tidy for the benefit of the community, but confirms that the Company does not actually own the land. Searches of the District Land Registry have revealed that nobody has a registered title to this land. Evans Estates believe that members of the public have used the route for many years. An unlocked gate was erected towards the western end of the route by the Estate's agents a number of years ago but it is understood by Mr Aylett that the purpose of the gate was to prevent unauthorised access by vehicles and that there was no intention to prevent pedestrian access.

Between points X-N the route crosses land owned by members of the Hebard family since 1933. Information has been provided by Mr Peter Hebard. Mr Hebard believes that the section M-X was excluded from earlier conveyances of the surrounding land as it was considered a public thoroughfare, possibly providing access to a midden or communal tip near point X. Mr Hebard's grandmother was in correspondence with the Coast & Countryside Service regarding use of the route as part of the Avon Estuary Walk in 1997. However there were issues regarding liability and the matter was not progressed. The Hebard's still have queries with regards to the exact routing of the path over their land and to their rights, obligations, liabilities and responsibilities should the path be recorded on the Definitive Map.

A completed Landowner Evidence Form has also been received from Mr Gates in respect of a property adjoining the route between M-X. Mr Gates has seen, or been aware of, members of the public using the way, on a daily basis, for 50 years.

The owners of Pilchard Cellars responded to the previous consultation in 1997, to the effect that they would have no objection to the footpath provided it did not run over the area where they parked their cars.

1.4 Rebuttal Evidence

No rebuttal evidence has been received.

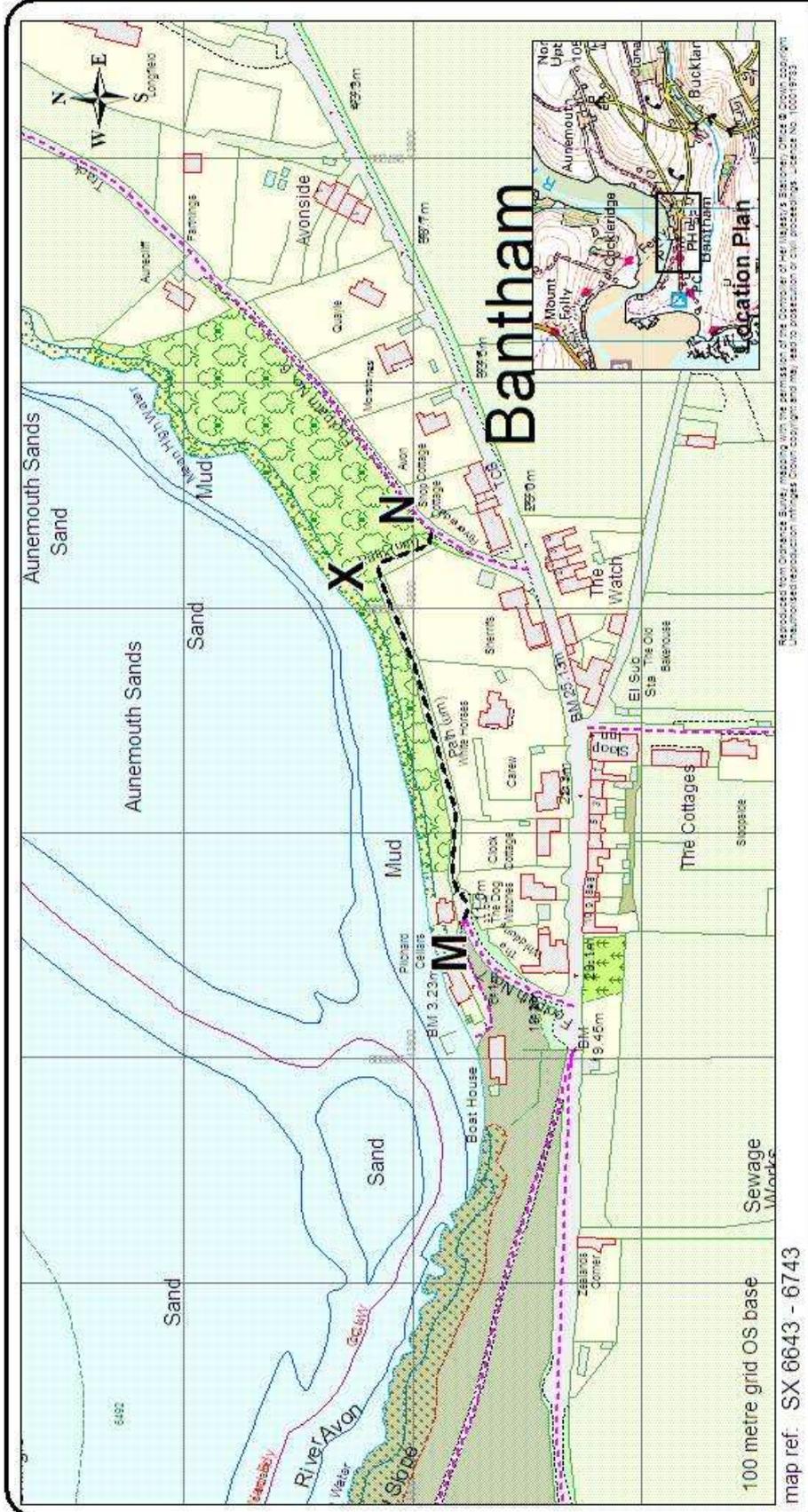
1.5 Discussion

There has been no strong opposition to the addition of the route to the Definitive Map as a public footpath. However, there is insufficient evidence of use by the public to meet the relevant tests for presumed dedication, under either Statute or Common Law.

Mr Hebard has indicated that his family might be willing to formally dedicate a footpath over their land if agreement can be reached over their preferred alignment of the route. However, as no landowners can be identified for the rest of the route, such dedication could only be achieved by means of a creation order and it would need to be shown to be of sufficient public benefit.

1.6 Conclusion

It is recommended therefore, that no Modification Order be made in respect of this suggestion. However, the alternative option of a creation order could be considered if agreement with landowners and public benefit can be achieved.



drawing number EEC/PROV/09/81a
 date Jan 2010
 scale 1:2500
 drawn by HFB

THURLESTONE DEFINITIVE MAP REVIEW
SUGGESTION 6: ADDITION OF A PUBLIC FOOTPATH
FROM FOOTPATH NO. 7 TO FOOTPATH NO. 6, THURLESTONE

Notation
 Existing footpath - - - - -
 Suggestion 6: Footpath addition To be added - - - - - M - X - N (195m approx)



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