

Definitive Map Review 1996-2010 Parish of Culmstock (Part 1)

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 is made to modify the Definitive Map and Statement by upgrading Footpath No.1, Culmstock (part) to a public bridleway between points A - B as shown on drawing no. EEC/PROW/10/09.

1. Summary

The report examines the first of seven suggestions arising from the Definitive Map Review in the parish of Culmstock in the district of Mid Devon.

2. Background

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 24 footpaths & 1 bridleway which were recorded on the Definitive Map and Statement with a relevant date of 1 March 1958.

The general review of the Definitive Map, under s. 33 of the 1949 Act, which commenced in 1977 but was never completed, produced several proposals from Culmstock Parish Council for change to the Definitive Map at that time.

The following Orders have been made and confirmed:

Devon County Council (Footpath No. 13, Culmstock) Public Path Diversion Order 1972.
Devon County Council (Footpath No.40, Culmstock) Public Path Creation Order 1972.
Devon County Council (Footpath No. 1, Culmstock) Public Path Diversion Order 1980.
Devon County Council (Footpath No. 37, Culmstock) Public Path Creation Order 1983.
Devon County Council (Footpath Nos. 3 & 5, Culmstock) Public Path Diversion Order 2003.

Legal Event Modification Orders will be made where necessary in due course.

3. Review

The initial Review began in June 1996 with a public meeting held in the parish. Several suggestions were put forward but it was largely concerned with the right of access across Maiden Down. No further claims were pursued at that stage. In October 2005 the Parish Review was re-initiated with a public parish meeting in the Culmstock Village Hall. Eight suggestions were put forward for consideration under this Review, one of which, a Schedule 14 Application for Pitt Farm Culmstock to Whitehall Road Hemyock, was considered in report EEC/09/245/HQ to the last meeting of this Committee. Informal public consultations were carried out in December 2009 - January 2010.

The responses were:

County Councillor Ray Radford	-	no comment
Mid Devon District Council	-	no comments or objections
English Nature	-	no comment on this proposal
Culmstock Parish Council	-	no comment
British Horse Society	-	support the upgrading
Byways and Bridleways Trust	-	no comment
Devon Green Lanes Group	-	support the upgrading
Country Landowners' Association	-	no comment
National Farmers' Union	-	no comment
Ramblers' Association	-	no comment
Trail Riders' Fellowship	-	no comment

4. Conclusion

It is recommended that a Modification Order be made in respect of upgrading the northern section Footpath No.1 Culmstock (part) as discussed in the appendix to this report. It is also noted that several Public Path Diversion Orders are required in the parish and these will be progressed under delegated powers.

5. Reason for Recommendation/Alternative Options Considered

To progress the parish-by-parish review of the Definitive Map in Mid Devon.

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 considerations.

8. Equality Considerations

There are no considerations.

Chris McCarthy

Electoral Division: Willand & Uffculme

Local Government Act 1972: List of Background Papers

Contact for enquiries: Mike Jenkins

Room No: ABG Lucombe House

Tel No: 01392 383240

Background Paper	Date	File Ref.
Correspondence file	1996 - to date	DMR.CUL

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 1 (Route 3): Upgrading of part of Footpath No. 1, Culmstock to a public bridleway from west of Pitt Farm northwards to Scott's Shute.

The route is shown between points A – B on drawing number EEC/PROW/10/09.

Recommendation: It is recommended that a Modification Order be made in respect of this suggestion.

1.1 Background

The initial parish review for Culmstock was opened in June 1996 with a public meeting held in the parish. Several topics were raised and access over Maiden Down dominated the process for several years. The parish review was deferred due to local government organisation in 1998. The current parish review was recommenced in October 2005 with a public meeting held in the Culmstock village hall.

Description of the Route

This route starts at the county road approximately 210 metres west of the Pitt Farm and continues north, uphill along a wide hedged metalled lane passing a radio mast and former water works in the fields to the east. There is a metal gate at the top section of the route with the words "please close" written in white paint on the posts. The gate is open with no means of securing it shut. There were no other notices to be seen. From the gate, the route continues in a north north westerly direction along the bottom contours of Blackdown Common passing the junction with Footpath 1a, Culmstock and another old reservoir to the west. The route continues north north west along a defined stone and earth track between hedge banks passing a junction with Footpath No.6, Culmstock on the western side. The route joins a minor county road adjacent to the property Scott's Shute that leads to the county road to Blackdown Gate and Purchas Farm, Culmstock.

1.2 Documentary Evidence

Parish of Culmstock Tithe Map and Apportionment (1841)

Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 by surveyors employed by local landowners. They would have been subject to local publicity, which is likely to have limited the possibility of errors being made.

The Culmstock Tithe Map received by the Tithe Commissioners on 31 December 1841 shows the lane as a wide hedged feature with no gates leading up to the boundary of Blackdown Common. The number 847 is written in the road and at the entrance to the lane. In the accompanying Tithe Apportionment Book this number is entered under the holding for Pitt as *Waste & Road*. In the adjacent property holding to the west, called Dalwood, another smaller road heading up to Blackdown Common is marked 839. In the apportionment this is entered for Dalwood as *Roads*.

This Tithe Map is plain with no colour washing on any roads, wastes or paths.

Ordnance Survey and Greenwoods Maps

1809 1st Edition OS map 1 inch to a mile

The Ordnance Survey 1st Edition 1 inch to 1 mile is based on the 1804 - 05 survey and was published in 1809. The route is clearly shown on the map.

Greenwoods Map of 1827

The route is also shown on this map.

1880s 1st Edition OS map 25 inch to 1 mile

The route is clearly shown on this map as a wide and well defined lane. A small line across the top of the lane just north west of the old clay pit is likely to have been a gate or barrier of some kind. The track continues as a marked track to Scott's Shute following the lower route to Blackdown Cottage. The pecked lines at the southern end denote a likely change in the surface of the lane from the adjacent road.

1905 2nd Edition OS map 25 inch to 1 mile

The route is also clearly shown on this mapping.

Culmstock Parish Council Submission for the Definitive Map

On the list of paths agreed by the Sub-Committee of the Parish Council on 4 December 1957, Footpath No.1 is described as; *From All Saints Church to the Beacon*.

Starts from the UC county road by the north- east corner of All Saints Church and proceeds in a north-easterly direction on the south side of the river Culm to a point south of Blackwater Cottage where the path turns northwards, crossing the river by a footbridge and then over the railway and another bridge by Blackwater Cottage to join the 3rd Class County road

*C.244. The path recommences on the opposite side of the road and continues northwards across two fields to the end of the U.C. county road at Pitt Farm. **The path restarts 200 yards north-west of the farm and continues northwards along a green lane to Culmstock Beacon on Blackdown Common and then on to join the U.C. County road just north of Scott's Shute.***

The accompanying parish maps from the 1950s show the route quite clearly and is marked *CRF*, with a query in pencil? *Uncl C.Rd*, perhaps suggesting that the route might be an unclassified county road. The map also shows the line of the path going north-westwards to Scott's Shute.

The above text was adopted as the current Definitive Map Statement.

1.3 User Evidence

Eleven user evidence forms have been received in respect of this suggestion.

Seven of the users describe the route as a bridleway, one a restricted byway, two describe it as a byway open to all traffic and one has described it as a solid based stone road. The earliest reported use is from 1936 although most use covers a period from the 1950s to the present. Frequency of use varies between two times a year, twice a week and everyday.

The gentleman who used the path from 1936 - 1991, lived at Purchase Farm at that time and said the road was used by many local people. He considered the way to be public "for hundreds of years" and used it with a tractor and landrover at least 25 times a year going to Hemyock milk factory always along the same route. He mentions that he used the route for business purposes. However, he states that he did not have permission nor was he working for the owner or occupier of the land. He is very clear that there were never any notices indicating that the route was private.

Another user describes the route as a lane from Purchas Farm and has known it to be public all her life. She used it between 1950 and 1980 numerous times a year for pleasure on foot and horseback from Culmstock Village to the Beacon. She states that she had not seen notices nor been stopped or turned back whilst using the route. She also said it is a well known and much travelled route for local people.

Two further users have used this lane on horse back from 1960 - 1994 & 1997 respectively as a horse riding route around the Culmstock area. They both mention a gate at the top of the lane that was tied up but not locked and there were no private notices. Neither person has ever been stopped or challenged whilst riding along the route.

Another user who completed her user form in October 1996 has used the route from 1967 - October 1996 frequently on horseback between 1967 - 1974 and slightly less frequently, five times a year, between 1974 - 1996. She always used the same route and was never stopped. She mentions in her user form that when she first used the route there was no gate.

One local horse rider and walker, who completed her user form in October 2009, said she has used the route since 1979, on horseback 3- 4 times a year going to the Beacon. She describes the route as a bridleway and has always used it without being stopped or challenged.

One further user states she has used the path once or twice a week from 1980 - 1997 mainly on horseback and also frequently on foot. She mentions an unlocked gate but has never been stopped or turned back whilst using the route.

Another horse rider says she has used the route from 1990 - 96 about 10 times a year riding a circular route for pleasure. She mentions the unlocked gate at the end of the tarmac lane at the foot of the Beacon and says she hasn't seen any private notices. In reply to the question "Do you believe the owner or occupier was aware the public was using this route?" she

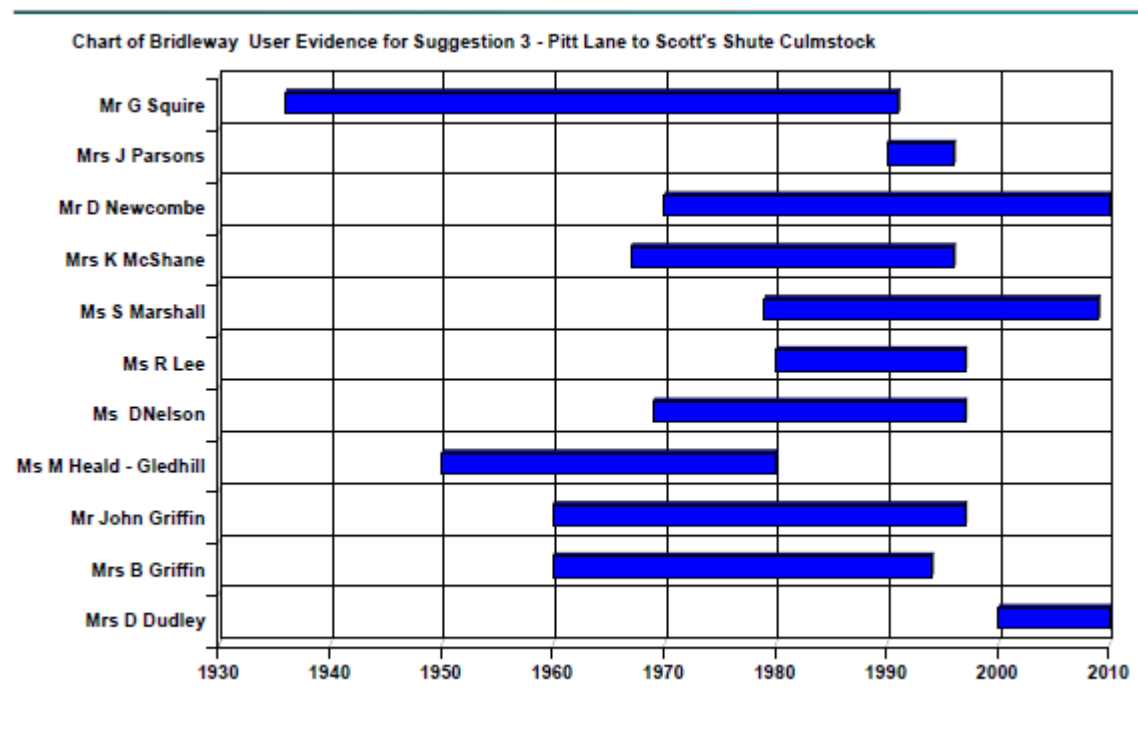
replies “Yes, regular use left many track -Purchase Fm occupants and those of the cottages along the way often saw us”.

The two most recent user evidence forms give evidence of use on horseback, foot and vehicle from the mid 1970s and 2000 - 2010 respectively. One user states “We live on the lane at Scott’s Shute, it is regularly used by many on foot and horseback and bicycle” and she uses it everyday riding around the block for pleasure. She describes the route as a restricted byway. She mentions the unlocked gate by the water works and says that no one she knows has been prevented from using the route.

Another evidence form is from Mr Newcombe, a former Chairman of Culmstock Parish Council, who describes the route as a byway open to all traffic. He states that he has used the route regularly, approximately 20 times a year for work and pleasure on foot, vehicle and on a horse. He goes on to mention that he knows the route to have had unrestricted public access for 30 years plus and the gate at the top of the lane was never locked and seldom closed. In his response to question 12 on the User Evidence form he states “The field gate mentioned was in the past probably erected by Bob Garrett to prevent stock straying from the Beacon in search of food, there having been incidents of damage being caused. Its positioning at the time to my knowledge was never challenged because it provided a useful public service”. He also mentions the notice painted on the gate posts “Please Close”. It appears that the only time that the lane was closed was when South West Water carried out pipe works.

Mr. Newcombe, who used the route for business purposes test driving repaired vehicles, has stated that it was with the knowledge of both adjacent landowners. He also adds, on his supplementary statement, that the lane “forms a natural boundary between 2 blocks of independently owned land both of which have access gates along its length”. He also adds that he has witnessed other cars using part of the lane, although it is too narrow for normal cars from the top of the lane to Scott’s Shute and witnessed use by walkers and horse riders over the full length.

The user evidence is summarised below:



1.5 Other Supporting Information

Correspondence has also been received from the Devon Green Lanes Group supporting the suggestion. The Devon British Horse Society submitted the application and thus supports the claim.

In a covering letter from Mr Newcombe, he refers to the lane as Weather Lane. He suggests that land to the east is owned by Mr Garrett of Pitt Farm and to the west by Messers Lee. The Culmstock Parish Council owns the southern section of Blackdown Common and has granted the public unhindered rights except in exceptional circumstances to walk or ride for recreational purpose.

The Devon Green Lanes Group at their recent meeting on 28 January 2010 agreed to support the proposal. As part of their initial research for this route, the Devon Green Lanes Group (DGLG) has provided evidence from early Ordnance Survey mapping. This includes the Ordnance Survey Map 1805 scale 1 inch to 1 mile. As the Secretary of the DGLG, Mrs Rudge, explains; "Routes 1, 2 and 3 are shown as through route on this map thereby supporting at least bridleway status" Mrs Rudge adds; "These maps were surveyed and produced by the Army Ordnance under the direction of Lt Col. Mudge of the Royal Artillery".

The Devon Green Lanes Group also refer to Greenwoods Map of 1825 - 1826 at a scale 2 inches to 1 mile. They have produced a copy from the large format book held in the West Country Studies Library in Exeter, showing the route marked with the number 3. The Devon Green Lanes add that Greenwoods were cartographers producing maps for those who wished to travel and the lanes and roads depicted on their maps would be usable by the public as through routes. The letter from The Devon Green Lanes Group is included in the backing papers.

1.6 Rebuttal Evidence

On his Landowner Evidence Form and accompanying statement Mr Garrett says that in the 1950s a right of way was negotiated with his predecessors to gain access to the reservoirs at the top of the lane. Mr Garrett states "it remains private land with no other vehicle access other than a footpath". Mr Garrett says he has seen people using the route as a footpath. He states on his landowner evidence that he has never turned anyone back or away from the route nor erected notices or obstructed the route. He confirms that there is a gate on the lane and to his knowledge it is not locked.

1.7 Discussion

Mapping evidence indicates that a route has existed as a clearly defined lane and track since at least 1809. From its depiction on 1st and 2nd Edition Ordnance Survey maps there is no doubt as to the line of the route.

During the original drafting of the of the Definitive Map and Statement in the 1950s, the parish map that was used as the working draft appears to query whether the route was a carriage road used as a footpath (CRF) or perhaps an unclassified county road. In the Definitive Map Statement the section of route from the county road near Pitt Farm is described as "a green lane". Although this is has no legal significance it is good evidence that the route was a prominent route in the landscape.

The user evidence suggests that this route has been long considered a road and used as such to take milk to the former processing factory in Hemyock. The route has been used openly and freely by horse riders since the 1950s up to the present day. The metal gate at the top of the lane has never been locked and appears to have been installed to prevent stock wandering down off the Common rather than preventing people riding along the route. Indeed, the white paint on the gate posts says "please close". The gate is currently open as there is now stock fencing at the bottom of the common. User evidence shows that there

have never been any notices preventing use of the lane by horse riders and no horse riders have ever been stopped, challenged or told that they could not use it. This demonstrates that there has been no overt act to prevent or deter horse riders from using the route and consequently there has been no calling into question of the route.

The use of the track by South West Water vehicles to service the reservoirs appears to have been negotiated by the former landowner as a private right. This may also apply to the company who services the radio mast also at the top of the hill, but there is no information to explain the details. Private vehicular rights and public rights on foot or horseback or bicycle, co-exist throughout the country and are not unusual. Mr Garrett from Pitt Farm who owns neighbouring land, states he has not seen horse riders using the route, only walkers.

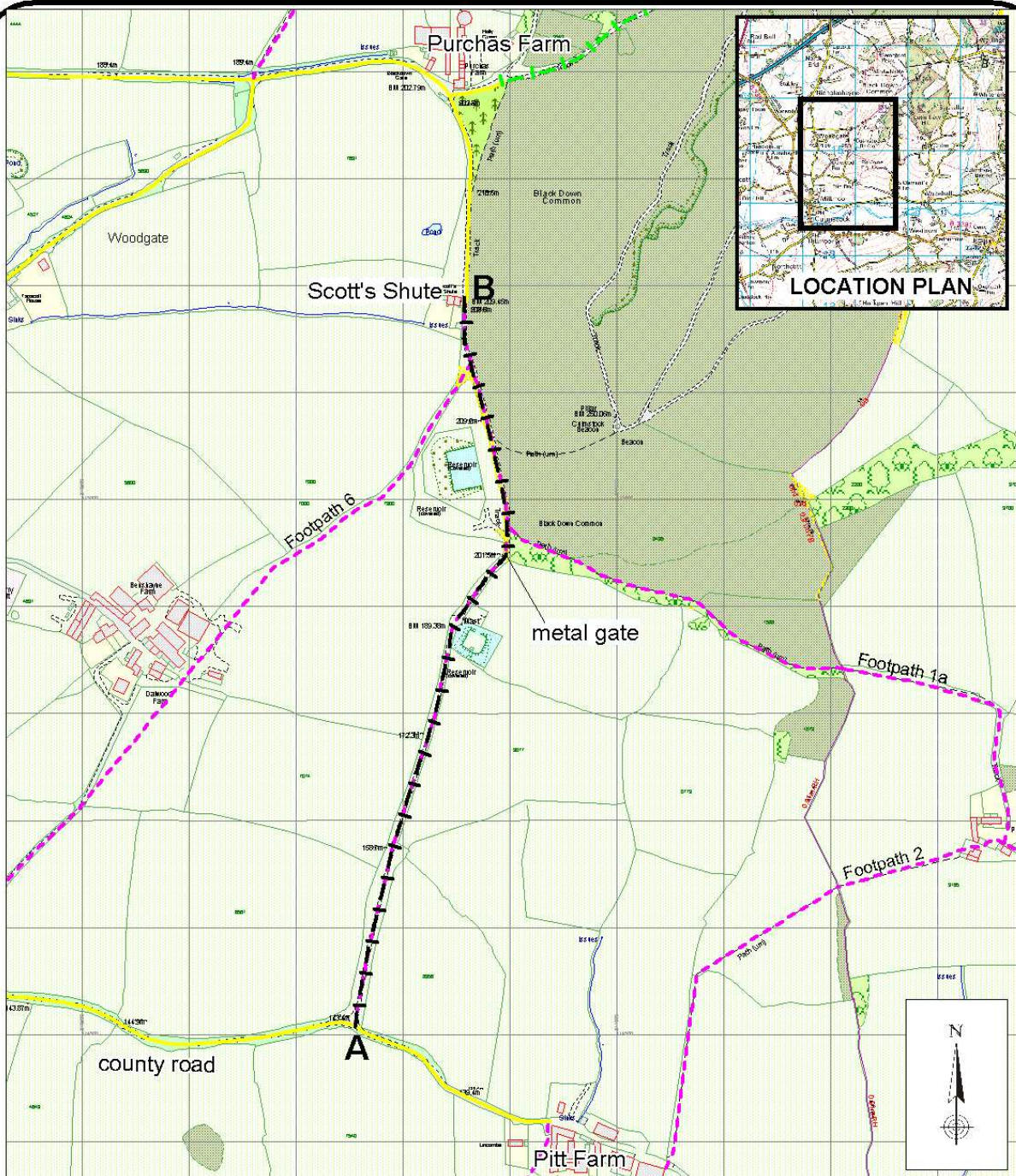
Landownership of sections of the route is slightly unclear. In June 2009, Mr Garrett of Pitt Farm made a Section 31(6) deposit under the Highways Act 1980, in which he indicates his property boundary and includes the lane up to the metal gate. The purpose of such deposits is to make clear that a landowner has no intention to dedicate additional public rights other than those that already exist. Mr Garrett's deposit shows the currently recorded public rights of way across his land. However, as his deposit was only submitted in 2009 and the evidence in support of the upgrading of the route to a bridleway pre-dates the deposit, it is of no relevance.

It is clear that this route has been documented for over 200 years and during its time has been used extensively by a variety of means. The public have used the route consistently over the past fifty years on horseback and very likely for much longer. There has been no overt action to prevent horse riders from using the route as part of a recreational ride and use has been positively encouraged by Culmstock Parish Council.

1.6 Conclusion

On the evidence provided it is considered reasonable to allege that public bridleway rights can be reasonably alleged to subsist over the section of Footpath No.1 Culmstock between point A - B as shown in the plan ED/PROW/10/09.

It is therefore recommended that a Modification Order is made to upgrade the path to a public bridleway.



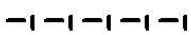

Map ref: ST 1075, 1519

Reproduced from Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown copyright
 Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Licence No. 100019783

DEFINITIVE MAP REVIEW
PROPOSED UPGRADING OF FOOTPATH NO. 1, CULMSTOCK (PART)

drawing number ED/PROW/10/09
 date Feb 2010
 scale 1: 5000 (at A4)
 drawn by ES

Notation

Footpath to be upgraded to bridleway (A - B) 
 Existing footpaths 

Chris McCarthy
 Executive Director
 Environment, Economy & Culture

