

Definitive Map Review: Sidmouth
Claimed footpath: Holmdale – Mill Street

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 record a public footpath between Holmdale and Mill Street in the town of Sidmouth, along the route shown on the attached drawing number EEC/PROW/10/12 between points A – B.

1. Summary

The report details investigation into a claim that a route in the town of Sidmouth in East Devon District, and having no official highway status, should be recorded as a public footpath.

2. Background

Members of the public appear to have used the route for many years as a short cut between two public roads. A locked gate was placed at one end in September 2009 on the authority of the landowner, which led local residents to supply evidence of past use with a view to the route being recorded as a public right of way.

The parish by parish review in East Devon District is at an early stage in Sidmouth. In view of the inconvenience reportedly being caused to users by denial of the short cut offered by this route, it is felt desirable to consider the claim forthwith.

3. Description of Route

The route lies in the New Town area of the town of Sidmouth, near the ford across the River Sid beside which stood the Town Mills and an iron foundry; and traverses an area that seems to have originated as vehicular access for those premises, and still serves that purpose in respect of the Old Mill House, a builder's yard and block of garages. Around a century ago neighbouring land was developed for housing, the road being called Holmdale and forming a cul-de-sac.

The route runs from the end of this cul-de-sac, at the point marked A on the plan, north-westwards turning north-eastwards along a pathway beside a garden, then generally north-eastwards across the entrance to the builders yard and through the garage forecourt, then eastwards along a drive beside the Old Mill House to Mill Street, formerly called Mill Lane, at the point marked B.

The route is gated at the Holmdale end, this gate having been erected in September 2009 and locked, but is otherwise unobstructed. A notice-board with black wording on a white background was placed on the gate and states "Private Property. No public right of way" and a similar notice was placed at the same time on a wall at the Mill Street end. A notice-board with white wording on a blue background is attached to a wall a short way up the drive from

Mill Street, and states "Private. No parking. No Through Way", and has been in place for several years.

The land traversed by the route is owned by Mr. & Mrs. Denny of the Old Mill House, who have been the owners since 1994, prior to which the land had been owned since 1965 by a member of Mr. Denny's family. Private rights of way are enjoyed over all or part of the route by the owners of the builder's yard, and owners and occupiers of the garages and an adjoining garden.

Holmdale and Mill Street are public roads, but the route in question has no recorded highway status.

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 sixty-seven persons, and detail use of the route over various periods since the 1930s, though most are from the 1970s, 80s and 90s. Almost all of these persons were using the route up to the time the gate at point A was locked, and almost all on foot though two mention using vehicles over part of the route. As to status, almost all believe the route is a footpath, only the vehicular users mentioning byway, and most give as a reason for thinking it public the fact that so many people have used it over many years. Frequencies of use vary from several each year to daily.

Forty-seven of these persons used the route over the whole of the twenty years prior to erection of the locked gate. No mention is made of any deliberate obstruction until placing of that gate, nor in most cases of any notices until last September, or permission being obtained or anyone being stopped, turned back or told the route was not public.

Chart of User Evidence for Holmdale to Mill Street, Sidmouth

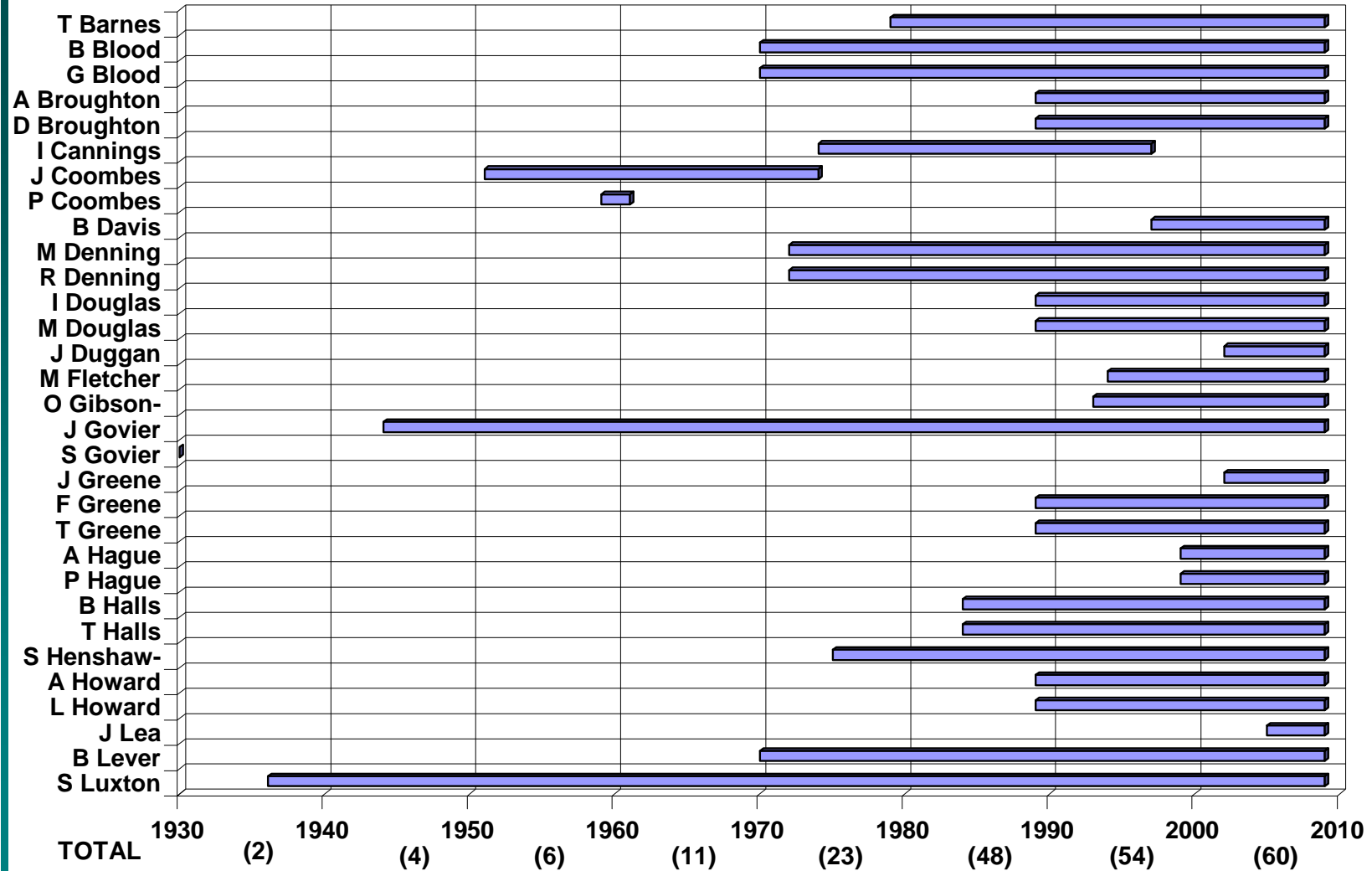
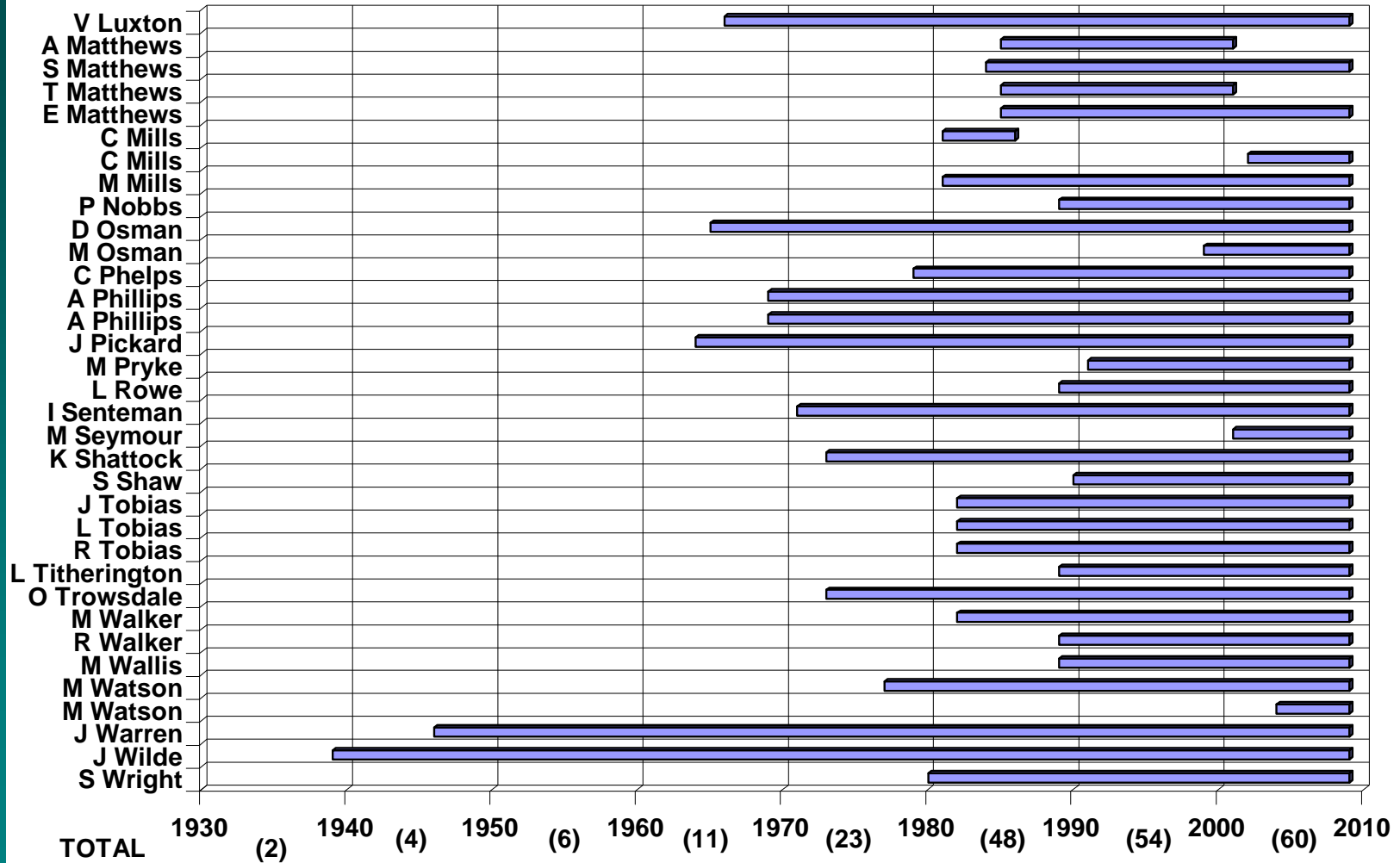


Chart of User Evidence for Holmdale to Mill Street, Sidmouth



Several users mention seeing the older notice displayed near the Mill Street end of the route, some saying it had been there for many years, others that it was erected in 1998 or shortly after. This notice was regarded by them as intended to deter parking, not aimed at pedestrians. None of the users seem clear as to ownership of the route, and where ownership is attributed it is mostly to someone who merely owns an adjoining garden and garages. Users for the most part live in the vicinity, and have used the route as a shorter alternative to nearby roads, its utility being most valued in respect of access between properties towards the end of Holmdale and Mill Street.

6. Documentary Evidence

O.S. Maps show that the present layout of buildings and open areas has existed in more or less the same form since the 1930s, and though the area by the garages was formerly narrower there is no evidence that the route taken by walkers would have to have been significantly different at any time since the 1970s.

The route was not put forward as a public right of way at the time of compilation of the Definitive Map in the 1950s, or at the reviews initiated in the late 1960s and late 1970s. No landowner has utilised the statutory method of showing lack of intention to dedicate by statement and declarations under s. 31(6) of the Highways Act 1980, or by a statement under s. 31(5) that notices inconsistent with dedication have been torn down or defaced.

7. Consultations

The following have been consulted and invited to give information relating to the status of the route, it being assumed in the absence of a response that no such information is held:

County Councillor S Hughes	– see below
East Devon District Council	– no response
Sidmouth Town Council	– no response
Country Land & Business Assoc.	– no response
National Farmers' Union	– no response
Open Spaces Society	– no response
ACU Land Access Bureau	– no response
Byways and Bridleways Trust	– no response
British Driving Society	– no response
Cyclists Touring Club	– no response
British Horse Society	– no response
Ramblers' Association	– no response
Landowners	– see below

Councillor Hughes states that to his knowledge the route has been used by the public (including himself) for more than 25 years, and several local people have said they have used it for at least 30-40 years.

Mr. and Mrs. Denny do not believe the route to be public, but rather a private right of access. They state that signs stating the way was not public have been erected on behalf of their family since the mid 1960s, which were defaced or destroyed and replaced. They have supplied a photograph showing the existing older sign in place in 2001, and say it was there for several years before that.

Mr. Myhill of Holmdale has since 1994 owned some of the garages and a garden adjoining the route, having previously rented a garage since 1965. He enjoys a private right of way over the route, and has carried out various maintenance duties for the owners since 1965 including erection of the gate and notices last year. He states that a notice in the present wording was put up by him in that capacity some time between 1965 and 1970, which was vandalised as were later signs, but all were immediately replaced, the present one having been there since about 1990. He further says that he has on behalf of the owners on many occasions over the last 40 years told people who he thought were trespassing that there was no public right of way over the land.

8. Reasons for Recommendation/Alternative Options Considered

The right of the public to use the route was clearly brought into question by the erection of the locked gate in 2009, but there are differences of understanding and information about the purpose of the older notices and challenges to users; whereby however deliberate may have been the actions of the owners and their agent, it seems none of the persons supplying evidence of use have realised there was lack of intention to dedicate other than in respect of vehicular use.

While it is not possible to say that a right of way subsists, it does therefore seem a right of way is reasonably alleged to subsist.

9. Legal Considerations

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

10. Carbon Impact Considerations

There are no implications.

11. Equality Considerations

There are no implications.

Chris McCarthy

Electoral Division: Sidmouth Sidford

Local Government Act 1972: List of Background Papers

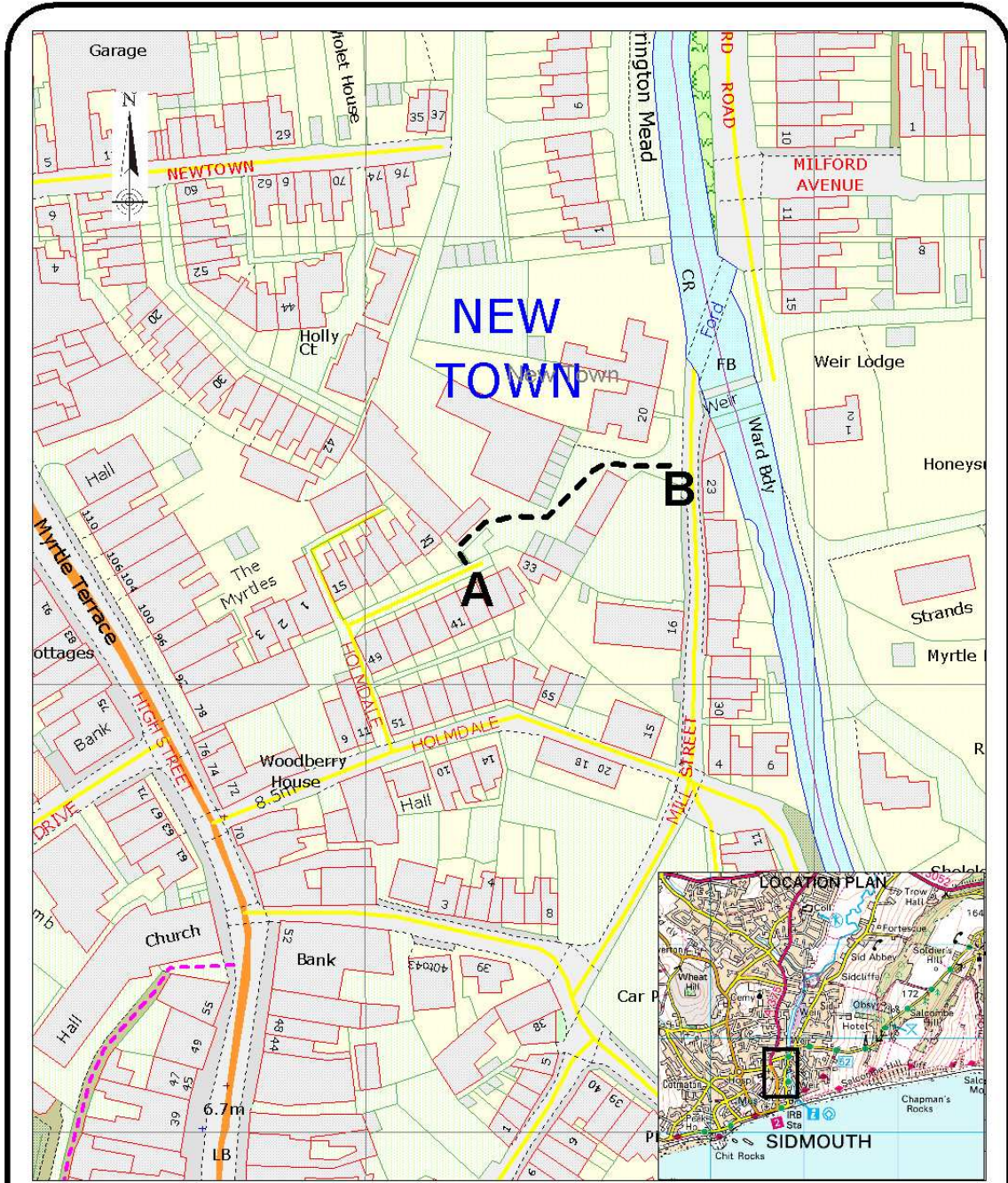
Contact for enquiries: Mike Jenkins

Room No: ABG, Lucombe House

Tel No: 01392 383240

Background Paper	Date	File Ref.
Correspondence file	2009 - to date.	DMR/HM/SID

mj080210pra
sc/dmr holmdale mill
2 hq 110210



map ref S? ?????

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Claimed Footpath Holmdale to Mill Street, Sidmouth

Notation

Claimed Footpath A - B (60 metres) - - - -

drawing number	EEC/PROW/10/12
date	February 2010
scale	1:1250
drawn by	MM

Chris McCarthy

EXECUTIVE DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE

