

**Definitive Map Review: Honiton**  
**Claimed Footpaths: Combehayes, Gardeners and Magpie Lanes**

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 along part of Gardeners Lane and the whole of Magpie Lane near the town of Honiton, as shown on the attached drawing number EEC/PROW/10/44 between points C – E – F.

**1. Summary**

The report details investigation into claims that three interlinked routes on the southern edge of the town of Honiton in East Devon District, and having no official highway status, should be recorded as public footpaths.

**2. Background**

Some years ago Honiton Town Council made three applications for orders under s. 53(2) of the Wildlife and Countryside Act 1981, to modify the Definitive Map and Statement for the town by adding footpaths along routes described as Combehayes, Gardeners and Magpie Lanes. The applications were accompanied by maps which confirm that the routes are as shown on the attached drawing, Combehayes Lane running between the points marked A – B, Gardeners Lane between C – E – B – D, and Magpie Lane between E – F.

Although made the subject of separate applications, the routes are linked; and it would be difficult to consider the status of Combehayes or Magpies Lane without reference to Gardeners Lane, which connects them with one another and with existing county roads. It also appears there is adequate evidence for part of Gardeners Lane and the whole of Magpie Lane being public and their recording would be relatively uncontentious, such that this element might usefully be determined in advance of the main review in Honiton, as has been the case with two other routes there.

**3. Description of Routes**

The routes lie just to the south of the built up area of the town of Honiton, on the eastern side of the Gissage Valley below Honiton Golf Course. The route called Combehayes Lane begins (point A) as a tarmac drive, and runs generally north-eastward through the yard of Combehayes Farm, along a track through a field to a stream, and across a second field to join the route called Gardeners Lane (point B). When inspected there were two gates along the route, and a notice at the start reading "Private drive. No stopping or turning."

Gardeners Lane begins (point C) as a defined lane with a stone base, and so continues south-eastward to just south of its junction with Magpie Lane (point E). A padlocked and wired gate crosses the route here, beyond which removal of the western hedge has reduced the lane to a barely discernable track along a field edge. This track leads into the former yard of Gardeners; a barn and linhay remain, but the house was burnt down c. 1953. A short

stretch of hedged lane then carries the route southward from the farmyard to a gate (B). Old maps indicate that this lane continued southward; but the western hedgerow was apparently removed in the early 19<sup>th</sup> Century, no lane being shown on the Tithe Map of 1842, and ever since the line has merely run along the edge of three fields. A slight flattening of the ground here reveals the former lane surface, but there are no signs of recent use and hedges prevent passage between the fields and onto the road at D.

Magpie Lane leads off Gardeners Lane at point E, and runs eastward as a defined lane. It is somewhat overgrown, but with a pathway worn by pedestrians through the vegetation. The last 100 metres of this lane leading to the road (at F) have been much eroded, but are described by one walker as usable if pedestrians are prepared to brush aside the vegetation. An alternative path runs off through an area of trees, and there is a stile where this path joins the road just south of point F which was erected by the Town Council in 1989.

The claimed routes join existing county roads at points A (Honiton Bottom Road), C (Higher Brand Lane), D and F (Stoney Lane), but are themselves not recorded on the Definitive Map or County Roads Register. Gardeners Lane is also joined midway between points C and E by Footpath No. 10, Honiton, as shown on the drawing running south from St. Michael's Church.

#### **4. Basis of Claims**

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**

In the case of Combehayes Lane (A – B) evidence has been supplied from four persons, one covering the period 1929 – 39, two 1951 – 60 and one 1974 – 91. Frequency of use is limited to from once to five times a year.

In the case of Gardeners Lane (C – D) evidence was supplied or has since been received from ten persons, covering various periods between 1920 and 1994, at frequencies varying between one and twenty times a year though in only two cases was use more than once a month. One user Mr Tratt says use was for farming purposes, his family having owned adjoining land since 1958, which suggests more a private right of way. No more than four

relevant users were involved over any 20 year period, and several users only walked the northern part of the route in conjunction with Magpie Lane.

In the case of Magpie Lane (E – F) evidence was supplied from nine persons covering various periods between 1927 and 1992, frequencies being mostly between one and four times a year with only one person using it more than once a month. One was Mr Tratt, an adjoining landowner, but it is to be noted he regarded the lane as owned by Honiton Borough Council as did one of the other walkers. No more than four of the other users were involved over any 20 year period.

## **6. Documentary Evidence**

In the case of Combehayes Lane reference is made in the application to several early estate maps, including of the Courtenay Estate in 1780, and the Tithe Map of 1842, which depict only the western part of the route. None of these maps was compiled for the express purpose of depicting public status, and such colouring or other marking as is used for the route is not explained as implying such status. The route appears on old O.S. maps as a combination of farm lane, track and pathway, but such depiction is no evidence of a public right of way. The western end of the lane was once mistakenly shown on unofficial mapping coloured to appear as part of the county road network, but has never so appeared on the official roads register.

In the case of Gardeners Lane reference is likewise made to old maps, which again appear to contain no evidence of public status. Of more relevance however is reference to the northern part appearing in a list of routes which the Honiton Borough Surveyor was seeking tenders to repair in 1902 – 05 and 1927, and for which that official entered into ditching contracts in the 1930s; also that the Borough Council's Highways Committee Minutes for 1914 refer to work by a contractor in what was called Magpie Lane, but clearly includes the northern part of what is now claimed as part of Gardeners Lane. Equally relevant is the fact that Footpath No. 10, Honiton is described in the Definitive Statement as terminating at its southern end on a district road.

In the case of Magpie Lane reference is likewise made to old maps, which again appear to contain no evidence of public status. The route is however included, with the northern part of what is claimed as part of Gardeners Lane, in the repair and ditching contracts and Highway Committee Minutes mentioned above.

None of the routes was 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. The Combe Estate 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, but the period of protection thereby obtained did not commence until some years after the claims were made. No other landowner has utilised this method.

## **7. Consultations**

The following have been consulted:

County Councillor Mrs. S. Randall Johnson	– no response
East Devon District Council	– no objection to Magpie Lane being recorded
Honiton Town Council	– see below
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

Subsequent to the formal claims, the Honiton Town Clerk wrote to say that the 1902 borough roads contract seemed to support Gardeners and Magpie Lanes being byways open to all traffic. He also stated it seemed the western end of Combehayes Lane was a county road, but it appeared this was only because of the mistaken depiction mentioned above.

Notice of the applications was served on landowners, including Mr Marker of the Combe Estate and the owners of Combehayes Farm, who were consulted. Mrs G Loud of Combehayes stated she did not believe the route described as Combehayes Lane to be public, and confirmed the limited evidence of public use by saying the only time she saw anyone using the route was around 1960, and she turned them back and told them it was not a public footpath. She mentions her husband also once told a walker it was not public, and that a former occupant of Combehayes Farm told her husband the sole purpose of the route, meaning the whole length over the fields, was for the baker to go to the cottage at Gardeners before it was burnt down.

Mrs Loud also stated seeing one person on Gardeners Lane, though it appeared on enquiry that she was referring to the southern part of the route which runs along the edge of the farm fields, not the northern section which does not lie within the farmland. The agent for the Combe Estate, whose land adjoined but did not include the southern part of Gardeners Lane and most of Magpie Lane, did not believe either route to be public.

## **8. Reasons for Recommendation/Alternative Options Considered**

In no case does user or documentary evidence alone appear sufficient to raise a presumption of dedication, and documentary evidence is for the most part inconclusive as to status and does not clearly support a claim for any public vehicular rights of way. It is noted that no evidence has been supplied of public use other than on foot.

Some documentary evidence does however show that for many years what the former Honiton Borough Council termed Magpie Lane, which included the northern part of what the Town Council now calls Gardeners Lane, was regarded as a route for which the Borough Council had a maintenance responsibility. Such evidence, combined with the user evidence, suggests it is reasonable to allege that this route is a public footpath.

Should further user evidence be supplied in relation to the southern part of Gardeners Lane and to Combehayes Lane, it might be possible later in the review to reach a similar conclusion in their respect.

## **9. Legal Considerations**

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

## **10. Financial Considerations**

There are no implications.

**11. Sustainability Considerations**

There are no implications.

**12. Carbon Impact Considerations**

There are no implications.

**13. Equality Considerations**

There are no implications

**14. Risk Management Considerations**

There are no implications.

Chris McCarthy

**Electoral Division: Honiton St Michael's**

Local Government Act 1972

List of Background Papers

Contact for enquiries: Michael Martyn

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Background Paper

Date

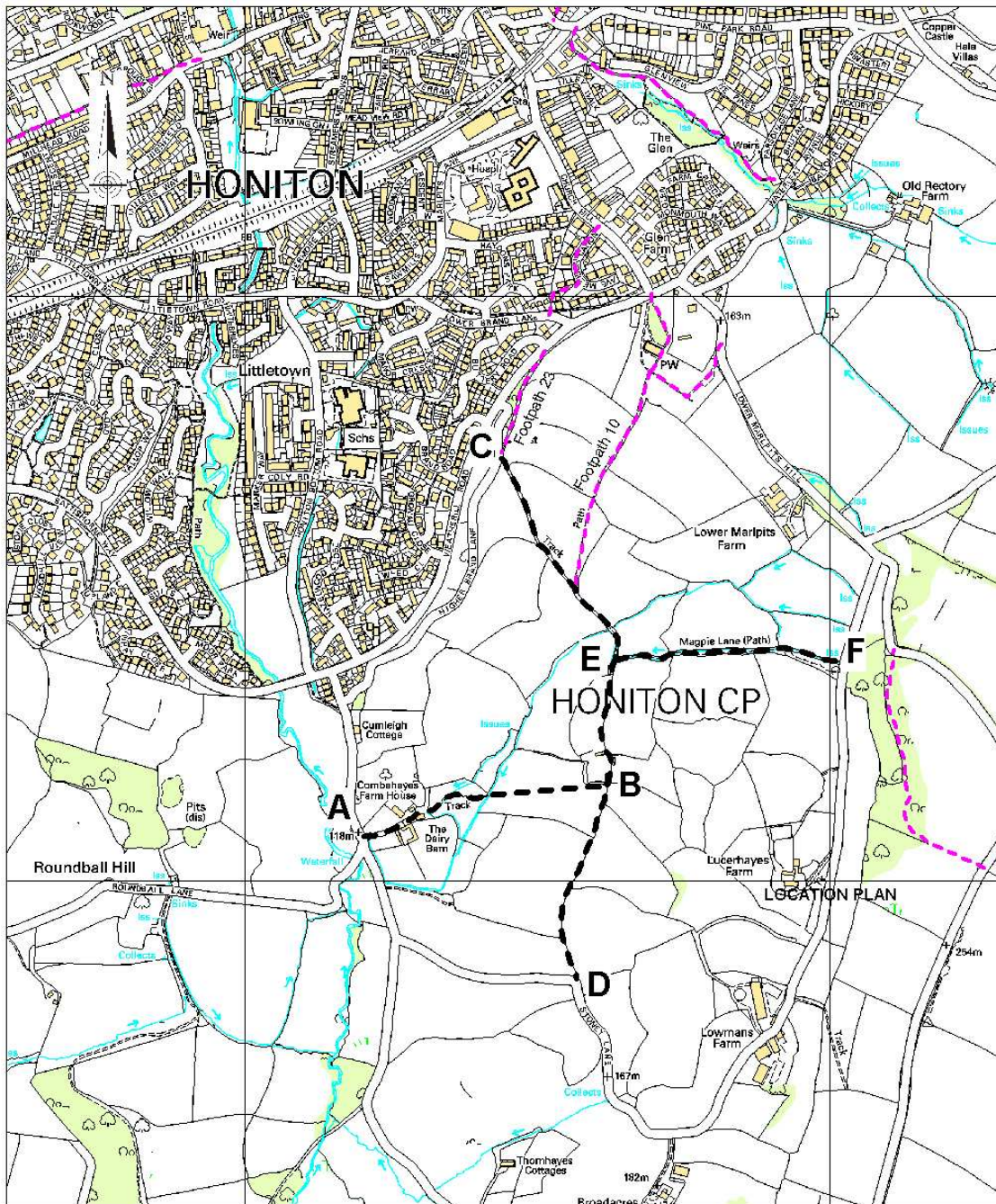
File Ref.

Correspondence file: DMR Honiton

1992 to date

DMR/HON

mm130510pra  
sc/claimed footpaths  
2 hq 200510



map ref SY 1699

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**DEFINITIVE MAP REVIEW**  
**CLAIMED FOOTPATHS - HONITON**  
**COMBEHAYES, GARDENERS AND MAGPIE LANES**

Notation

Combehayes Lane (C - E - B - D)	990 m	-----
Gardeners Lane (A - B)	440 m	-----
Magpie Lane (E - F)	400 m	-----
Existing Footpaths		-----

drawing number	EEC/PROW/10/44
date	May 2010
scale	1:10,000
drawn by	MM

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