

Definitive Map Review: Honiton
Claimed Footpaths: Loop Road at Stout Farm and Extensions to Fish Lane

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 section of the claimed route between points A - C and B - C - D - E - F be accepted to hold the status of a highway not maintainable at public expense and no modification order be made in its respect. However it also recommended that no determination be made in respect of the rest of the route which currently lacks a valid point of termination. The routes are shown on the attached drawing number EEC/PROW/10/99.

1. Summary

The report concerns a claim that certain interlinked lanes and cross-field routes in countryside to the south of Honiton in East Devon District, which currently have no official status as county roads or public rights of way, should be recorded as public footpaths.

2. Background

Some years ago Honiton Town Council made an application for an order 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 running from the county road south of Stout Bridge to the same road at Stout Farm and extensions to Fish Lane. The routes are as shown by dashed lines on the attached drawing between the points marked A and B and those marked J and K.

The sections A - C and B - C - D - E - F are supported by evidence which puts its highway status beyond dispute, such that it appears this element of the application may usefully be determined in advance of the main review in Honiton, as has been the case with several other uncontentious routes in the area. The remainder of the claim is affected by the fact that its points of termination at J and K lie on a route that has no recorded highway status, and in respect of which a separate claim to byway status has already been rejected on appeal, whereby it appears this element of the present application may need reconsideration.

3. Description of Routes

The routes lie to the south of the built up area of Honiton, on the eastern side of the Gissage Valley, and start at two points (A & B) on the minor county road close to Stout Farm. When originally inspected it was seen that from the road at point B, where there was no gate or sign, the route followed a defined lane some 3 - 4 metres wide with a stone base becoming muddy and waterlogged to point C where a triangular grassed area led into a further defined lane running north to point A.

The section C - A has deep stream beds on each side, and after a few metres falls away under trees to continue as a 1 metre wide level path between a hedgebank on the west with a stream beyond and an unprotected gully on the east with sheer edges. After 15 metres or so

the stream cuts across the path, which then runs between the edge of a field on the west and an ancient tree bank on the east. This bank then widens as the path narrows to a ditch, the route continuing on the flat top of the bank and widening to some 4 metres. The route then again narrows with hedgebanks either side, being overgrown but not impassable, and so continues to the road at point A. From point C a stony track, grassed over and some 4 – 5 metres wide between hedges, runs to point D, then on via E to F being overgrown here with nettles and brambles.

From point D the route to point G lies through a gate and across pasture, initially as a stony track well defined, but then grassed over though the line is still obvious. This track then diverges from the route, which passes through a gate into further pasture where no line is visible, and along the edge of an old quarry. The route is then obstructed by a hedge, and exit from the small field beyond by barbed wire. Beyond this the route enters a 4 - 5 metres wide hollow lane which becomes overgrown and impassable as it ascends through an area once known as Crinkle Crinkle to point G, where a wire fence prevents access to the lane beyond.

From point E the route to point H crosses pasture to a gate, thence along a faintly visible track to a wooded area where a track runs through the trees and across a field from where access to the lane beyond is obstructed by a hedgebank. The route between points G – H – I lies along a metalled lane, defined by hedgebanks at some 3 – 4 metres wide and gated at point I. One part of the claimed route continues along this lane, defined by a wood on the south and hedge on the north, to point J. There is no indication of any other route crossing the claimed one at this point. The section of claim I – K runs through a fir plantation, with no indication of any route on the ground.

The claimed routes thus join existing county roads at points A and B, but are not themselves recorded on the Definitive Map or County Roads Register.

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. Documentary Evidence

Honiton Town Council supplied evidence from Borough Council Minutes of 1882, 1883, 1913, 1914, 1917 and 1931, and a list of maintainable roads of 1902, which establish that the lane between points A - C and B - C - D - E - F was regarded as a road for which that council as highway authority was responsible. Although this road is a cul de sac, it is common enough for public responsibility to be assumed in such cases, albeit more usually where leading to dwellings.

Given that this route served no obvious purpose other than as field access however, it is unsurprising the Borough Council should have queried its need for involvement in maintenance. Thus in 1931, following further complaints as to the state of the road, it is minuted that :“Having regard to the fact that this road has no public utility it was decided that it should be abandoned and that the Council be recommended to apply to the Magistrates for an Order under Section 24 of the Highways and Locomotives (Amendment) Act 1878, declaring that such highway is unnecessary for public use and ought not to be repairable at public expense.”

Such application was duly made and the route was inspected by the Magistrates who agreed it was unnecessary, and no objections being raised the Order was made. No evidence has been discovered that the road was ever stopped up as a highway however, such that the public would retain its previous rights thereover. As such it is a route the Ordnance Survey now mark with green dots under the classification of “other routes with public access”.

Documentary evidence for other parts of the claim is very limited, and it is noted that large scale O.S. maps from the 1880s onwards show no path or track on the claimed lines across the fields south from point D or between points E – H. Nor have separate enquiries shown evidence that the route formerly known as Fish Lane passing through points J and K is a highway of any sort. On the contrary, a claim for this lane to be recorded as a Byway Open to All Traffic was rejected by this Authority in 2005, and an appeal was dismissed by the Secretary of State in 2008.

6. Consultations

The Town Council has been consulted over the status of the road sections A - C and B - C - D - E - F and site meetings were held with the then Local Service Officer, which resulted in the Town Council resolving to ask the County Council to request the Ordnance Survey to depict this section as available for public use. Ordnance Survey was contacted accordingly, and the route appears marked accordingly on its most recent mapping.

No further consultations have so far been undertaken. Should the Town Council wish to make an amended application in respect of the routes commencing at points D and E to H whereby the continuation from H links to a recorded highway, then the usual consultations would be conducted. It is known that such claim would be opposed by the landowners affected.

7. Financial Considerations

There are no implications.

8. Sustainability Considerations

There are no implications.

9. Carbon Impact Considerations

There are no implications.

10. Equality Considerations

There are no implications

11. Legal Considerations

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

12. Risk Management Considerations

There are no implications.

13. Reasons for Recommendation/Alternate Options Considered

It is felt the existing classification of the road section of the claim gives higher public rights than those claimed, such that to record that section as a public footpath would be incorrect. Determination of the rest of the claim, which at present could only be recommended for refusal, is felt to be premature.

Chris McCarthy

Electoral Division: Honiton St Michael's

Local Government Act 1972: List of Background Papers

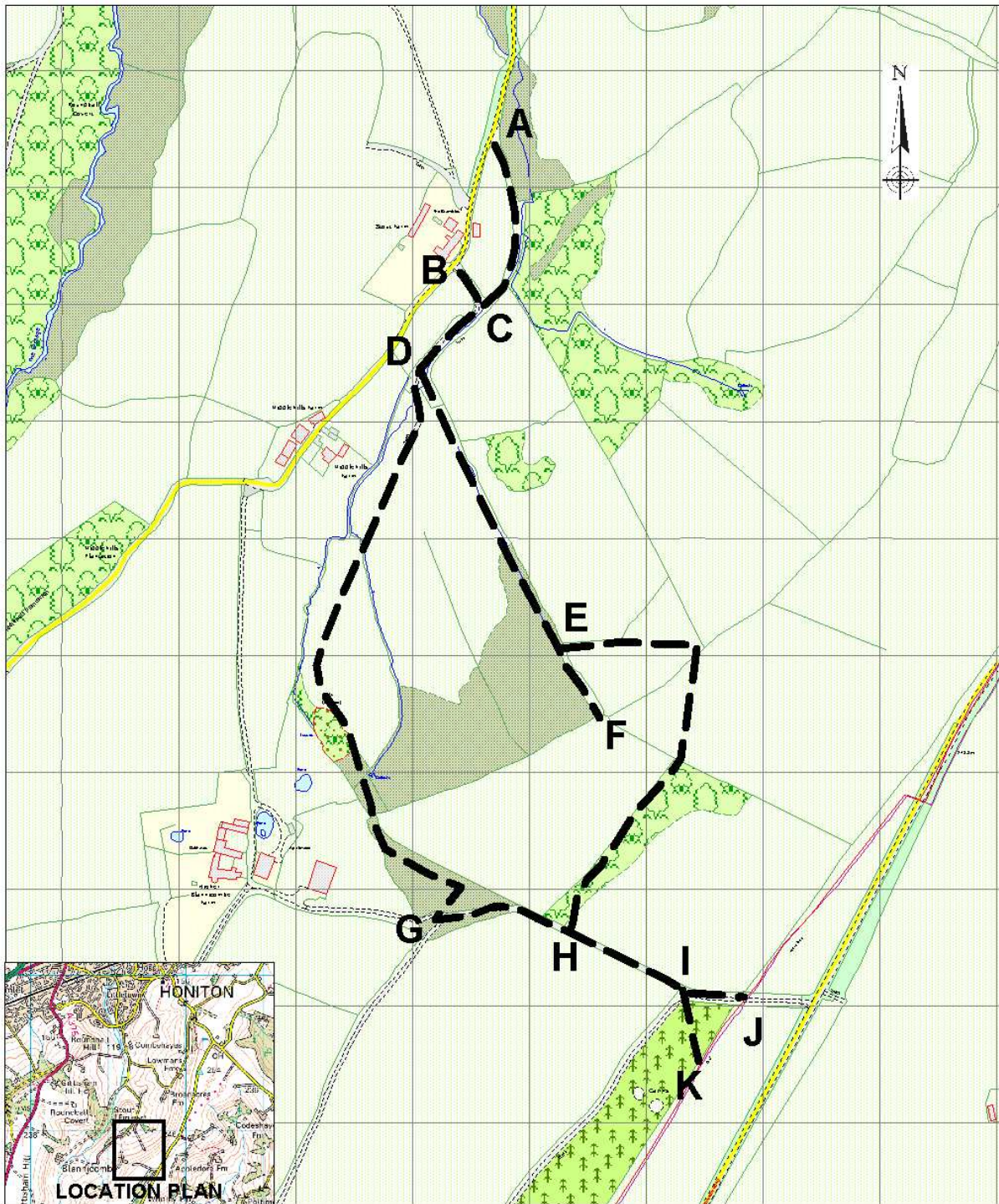
Contact for enquiries: Michael Martyn

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Background Paper	Date	File Ref.
Correspondence File	1997 to date	DMR/HON

mm111010pra
sc/stout farm extensions
3 201001



map ref SY1697 & SY1698

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Claimed Footpaths Stout Farm - Fish Lane, Honiton

drawing number	EEC/PROW/10/99
date	October 2010
scale	1:5000
drawn by	MM

Notation

Claimed Paths A - K — — — — —

Chris McCarthy

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