

**Definitive Map Review 2009 - 2010
Parish of Culmstock (part 2)**

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 modify the Definitive Map and Statement to upgrade Footpath No. 35, Culmstock to a public bridleway between points A - B as shown on drawing no. EEC/PROW/10/90.

1. Summary

The report examines the second 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 changes to the Definitive Map.

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 for these changes will be made under delegated powers 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 restarted with a public meeting in Culmstock Village Hall. Seven suggestions have been put forward for consideration, several of which are over Blackdown Common, a SSSI, which are being discussed with Natural England.

Informal consultations have been carried out with the following results:

County Councillor Ray Radford	-	no comment
Mid Devon District Council	-	no comments or objections
Natural England	-	no written response
Culmstock Parish Council	-	support suggestion
British Horse Society	-	support the upgrading
Byways and Bridleways Trust	-	no comment
Devon Green Lanes Group	-	no comment
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 Footpath No. 35, Culmstock to a public bridleway 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 dealt with under delegated powers.

5. Financial Considerations

There are no implications.

6. Sustainability Considerations

The additional cost of maintaining the route as a Bridleway is minimal.

7. Carbon Impact Considerations

The upgrading will have a positive contribution to carbon reduction in providing access for cyclists as well as horse riders.

8. Equality Considerations

The upgrading will establish a legal right for horse riders and cyclists to use the route.

9. Legal Considerations

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

10. Risk Management Considerations

There are no additional implications.

11. Reasons for Recommendation/Alternate Options Considered

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

Chris McCarthy

Electoral Division: Willand & Uffculme

Local Government Act 1972: List of Background Papers

Contact for enquiries: Emily Spurway

Room No: ABG, Lucombe House, County Hall

Tel No: 01392 382833

Background Paper	Date	File Ref.
Correspondence File	1996 to date	DMR/CULM

es111010pra
sc/parish of culmstock
3 201010

A. Basis of Claim

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] [ii] 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:

(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.

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 4: Upgrading of Footpath No. 35, Culmstock to a public bridleway.

The route is shown between points A – B on drawing number EEC/PROW/10/90.

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

2. Background

The 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 review was delayed as a result of local government reorganisation in 1998. The current review recommenced in October 2005 with a public meeting held in the Culmstock Village Hall and this claim was again put forward in April 2009 as part of the review for Culmstock.

3. Description of Route

The route starts at the north east corner of Blackdown Common at its junction with Bridleway No. 34, Culmstock and Bridleway No.1a, Hemyock. It proceeds north west along a wide track over the northern edge of Blackdown Common for approximately 790 metres to join a public bridleway in Somerset on the western edge of Sampford Common.

This bridleway was upgraded from a footpath by Somerset County Council in 2001.

4. Documentary Evidence

Ordnance Survey Maps

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

The route is clearly shown on this map from the southern edge of Broomfield Breach heading north west to Sampford Point on the corner of Sampford Common.

1904-06 2nd Edition OS map 25 inch to 1 mile

The route is also clearly shown on this mapping.

1919 1 inch OS map

A double dotted line is clearly marked on this Ordnance Survey map indicating the route as an unfenced road.

1946 New Popular 1 inch OS map with National Grid

It is possible to see a double pecked or dotted line from the junction of Bridleway No. 34, Culmstock along the line of the claim and Footpath No.35, Culmstock as it runs just south of the county boundary marking.

5. User Evidence

Twenty-four User Evidence forms have been received in support of this suggestion. Eleven forms were submitted via Somerset County Council in 1995. Six forms were submitted by Culmstock Parish Council in November 1995 and a further 7 have been submitted by the British Horse Society in 2009 - 2010. Two riders have completed a second User Evidence form in the past year giving a total number of 22 individual users.

Eleven of the User Evidence forms are from riders who have used the route between twenty and fifty-two years. On closer examination of the forms, two of the riders state that they had been given permission to use the route on horse, one in 1960 and the other in 1970s. However, they also state that they had not been told the land was private and in response to question "Do you believe the owner or occupier was aware the public was using the way? If so why?" one user replied "Yes Open invitation". The other simply replied "Yes". Neither of these users had seen any notices saying the area or route was private.

The other nine users have all used the claimed route for between 23 - 52 years, at least once a week and several have used it for or five times a week. One horse rider said he had used the route on foot and horseback everyday, sometimes twice a day over Sampford Moor from Sampford Point to Culmstock Beacon. On the bottom of his form he adds "I have always used the Moor and hope to continue using this right". None of these riders have been stopped or turned back, nor have they mentioned private notices. One local rider who has used the route since 1969 said she used the route at least weekly when she lived in Culmstock on foot and horse. She states that she was never stopped or challenged about her use and adds "I loved riding up there when young & I also rode with my two children most weekends when living at Culmstock".

Another rider from the parish of Wellington Without says she has ridden many routes, including this one marked E on her map, over Blackdown Common since 1958 to the present day. She has ridden the route for pleasure on horseback and has never been challenged, turned back or told it was not for horse riding. She says the owners of the land must have been aware that the public were using the path.

Another two riders have used the route for fifteen and eighteen years respectively. One of them says she used the route from 1974 - 1994 in the Summer months when she worked at a local riding centre. She enclosed a plan of the routes she has used over Blackdown Common which shows this route with the letter E, describing it as "Sampford Point to bridleway 34 (in corner by muddy gate next to woods)." She says that it was part of a circular route and its use was "common knowledge". She also says that she didn't have permission

to use the route and she was never turned back or stopped from using it. This rider adds "Have often seen other riders on the Common riding along these routes. Wild ponies were on the Common, sometimes with a stallion".

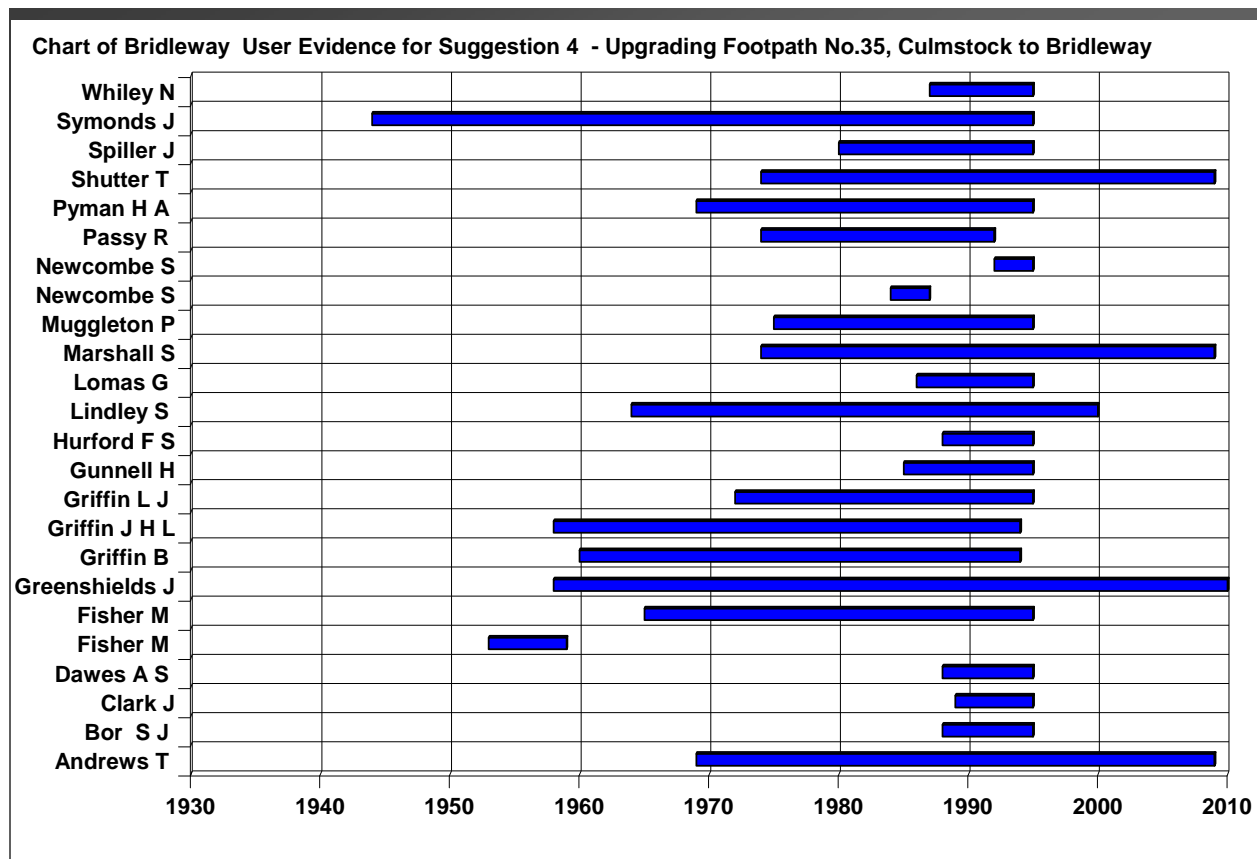
The other rider who used the route for fifteen years describes it as the bridleway across Sampford Common. She rode the route from 1980 onwards six or more times a year for pleasure and was never stopped or challenged. She mentions two gates in disrepair, but does not give their location.

The remaining nine users have used the route between 5 -10 years with a frequency of use ranging from almost every day to 3 - 5 times a week. One of the users said he had walked and ridden over the area since 1975 as a child four times a week for pleasure. He mentions the two broken gates, but no locations were given and he has never seen any notices or been challenged about his use. He adds at the end of his form "I have always believed access was available & have walked & ridden up there most of my life & hope to continue to do so". Another user has used this path as a bridleway since 1995 using it almost 200 times a year as a round trip on horseback. In answer to the question "Have you ever been stopped or turned back when using the way or do you know of anyone else having been" she has written "Myself, No, but I believe one lady claims a small part of this path is not a bridle path & has objected to horse riders - that is why I'm completing this form".

One user has used the route as part of a circuit from Sampford Point to Culmstock Beacon and the surrounding moorland and woodlands for nine years. She used it every day, sometimes four times a day for pleasure and work as she owns a livery yard at Higher Woodford in Somerset. She has not had permission to use the route and has not been prevented from using it. She says there have been no signs to suggest it was private or not a public right of way.

None of the riders have suggested they have used the route in connection with hunting.

The user evidence is summarised below:



6. Other Information

Culmstock Parish submissions 1978

In March 1978 Culmstock Parish Council sent a letter to Mid Devon District Council giving details of various proposals for changes to be made under the general review of the Definitive Map. The letter included the upgrading of Footpath No. 35, Culmstock to a bridleway. Further correspondence in May 1978 shows that Mid Devon District Council forwarded the request to Devon County Council and a further letter was sent to the County Council in June 1978 with maps of the of the various proposals, including that for Footpath No. 35.

Culmstock Parish Council still maintains its support for the upgrading.

Blackdown Common is an SSSI and following informal consultation with Natural England, no written response has been submitted.

7. Rebuttal Evidence

Mr D Bartlett who owns the land over which Footpath No. 35 crosses has been consulted but has not raised any objection to the route being upgraded to a bridleway.

8. Discussion

Mapping evidence indicates that a route has existed for over 200 years.

Footpath No. 35, Culmstock is a wide stone and earth track which may have served as an early link from the Wellington Road over the ridge and dry ground to the hamlet of Nicholshayne.

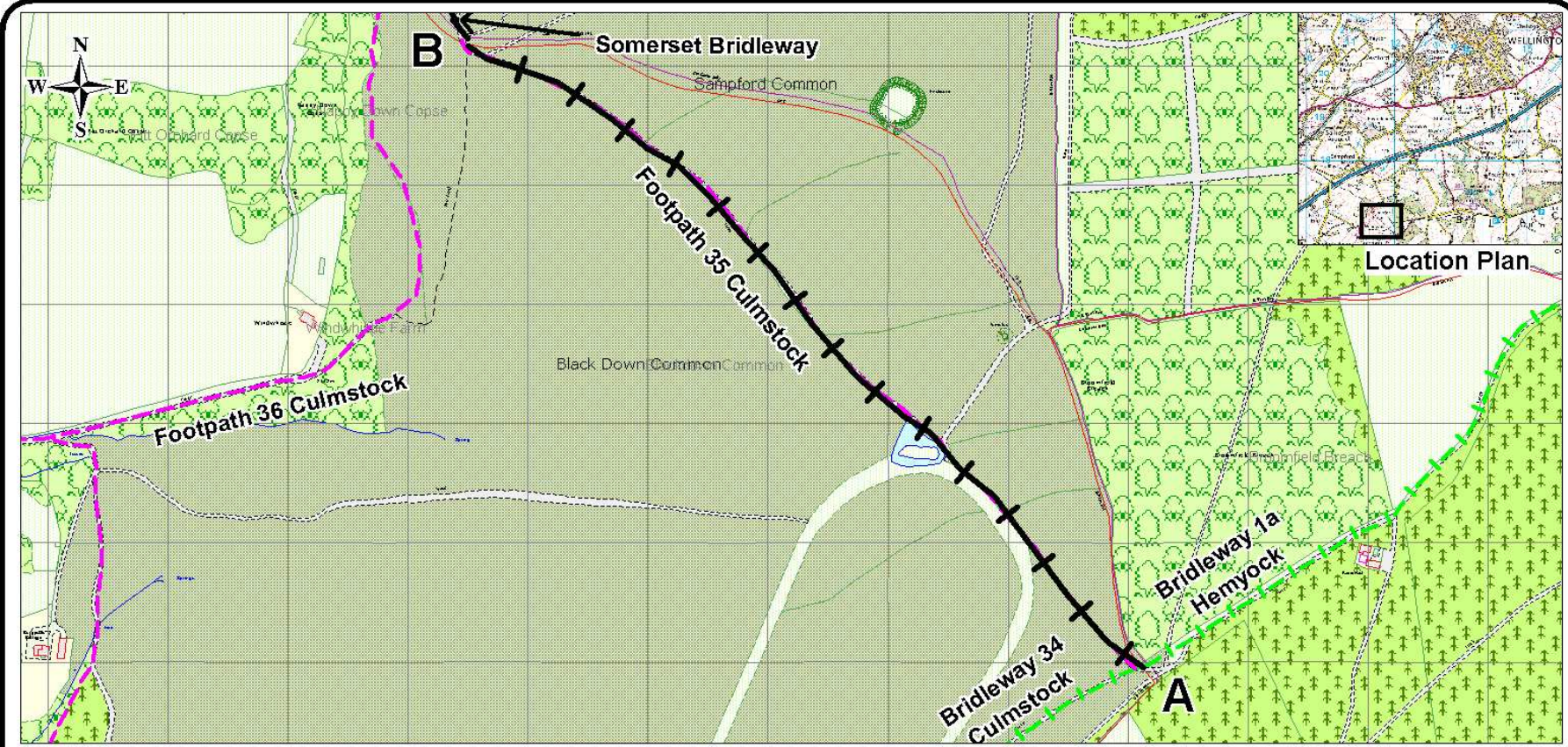
The user evidence suggests that this route has been long considered as a public bridleway. It has been used openly, freely and very frequently by horse riders from a wide area since the 1940s up to the present day. There are two gates mentioned in the user evidence but all who saw them have said they were broken and formed no barrier to use of the route on horseback. There have been no notices to deter use by horseriders and no evidence has been provided to indicate that the landowner took any steps to indicate that the route was for use by walkers only.

Half of Sampford Common and most of Blackdown Common is owned by David Bartlett, Upcottdairy Farm, Sampford Arundel, Wellington. The Common is grazed by a herd of bullocks and wild ponies which are owned by Mr Bartlett. The Common is also registered as Access Land for walkers and registered as a SSSI.

The continuation of the route in Somerset was upgraded from a footpath to a bridleway in 2001.

9. Conclusion

On the evidence provided, it is considered the footpath ought to be recorded on the Definitive Map and Statement as a bridleway. It is therefore recommended that a Modification Order be made and published to upgrade Footpath No.35, Culmstock to a public bridleway between points A - B as shown on plan EEC/PROW/10/90.




map ref: ST 1216 Grid 100m

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

DEVON COUNTY COUNCIL
Definitive Map Review - Culmstock
Route 4 suggested Upgrading of Footpath No.35, Culmstock

drawing number EEC/PROW/10/90
 date Oct 2010
 scale 1:5000 at A4
 drawn by ES

Notation

Proposed upgrading A  B (approx 790 m)

Chris McCarthy

EXECUTIVE DIRECTOR OF ENVIRONMENT,
 ECONOMY & CULTURE

