

## Relevant Legislative Basis for the Investigation

The Highways Act 1980, Section 36(1) states that all highways maintainable at public expense that were recorded for the purposes of the previous Highways Act 1959 continue to be so maintainable, subject to any Order of a Magistrates' Court under Section 47. Section 36(6) requires a highway authority to make and keep corrected and up to date a list of streets within its area which are highways maintainable at public expense.

The Highways Act 1980, Section 32 states that a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan, or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

The Highways Act 1980, Section 47 states that where a highway authority are of opinion that a highway maintainable at the public expense by them is unnecessary for public use and therefore ought not to be maintained at the public expense, they may ... apply to a magistrates' court for an order declaring that the highway shall cease to be so maintained.

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.

Common Law presumes that at some time in the past the landowner dedicated a path or 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.

### 1. Route 4: Investigation of Highway Status – Hollick

Consideration of evidence for the status of the road at Hollick, in connection with the County Council's official legal record of highways maintainable at public expense.

**Recommendation: that the section of road at Hollick be shown on the County Council's official legal record of highways maintainable at public expense, to confirm its public status as an unclassified county road.**

#### 1.1 Historical Maps and other Documentary Evidence

##### 1.1.1 Ordnance Survey Surveyors' drawings 1804-5, 1<sup>st</sup> edition 1" to the mile map 1809 and later and Greenwood's Map 1827

The Surveyors' drawings of 1804–5 at 2" to the mile were the basis for the Ordnance Survey's original 1<sup>st</sup> edition 1" to the mile map. They show the route drawn with double solid lines running east to west past the buildings at Hollick and continuing to connect the two roads running north to south on either side from Tawstock into Torrridge. The Ordnance Survey's 1<sup>st</sup> edition map, based on the 1804-5 survey, was first published in 1809 and later

with some limited revisions. It shows the route more clearly in the same way as in the Surveyors' drawings.

Greenwood's map was published in 1827 and probably based substantially on the earlier 1<sup>st</sup> edition 1" Ordnance Survey map. It shows the whole route with double solid lines in the same way as in the Ordnance Survey map, connecting routes now recorded as public roads shown in the same way.

### **1.1.2 Parish Highways Surveyors' records 1810–40**

Records of the Highway Surveyors for the Parish of Tawstock in the first half of the 19<sup>th</sup> century show that payments were made for labour, vehicles and materials in repairs to the route as well as the connecting roads. The Surveyors' Account Books for the south of the parish record payment details for 'Statute Labour', with horses and carts to obtain stone and using it for repairs to the roads at Hollick.

They were used for filling wheel ruts and 'pits', as well as dealing with poor drainage, mainly referring throughout that period to Hollick Road, or specified as the roads to the east and west of Hollick. However, there are separate references specifically to 'Hollick Lane', which appears to distinguish it from either of those roads and can be taken to relate to the route in dispute. A payment of 1s 9d is recorded from the 24<sup>th</sup> and 25<sup>th</sup> September 1819 to John Clarke for getting stone from a nearby quarry and 1s for taking it and spreading it in 'Hollock Lane'. Other payments around those dates refer to repairs specifically to 'Hollick Wester Road' and 'Hollick Easter Road'. There is a later record of 1s 8d paid to Jonathan Chope and Jonathan Bramble from the 11<sup>th</sup> June 1822 for work in Hollick Lane, separately from other work referring to Hollick Road or just at Hollick around that time.

### **1.1.3 Tithe Map 1844 and Apportionment 1842**

The Tithe Map for Tawstock, dated 1844, shows roads in the parish mainly with double solid lines, coloured with a brown wash and numbered 2734. They are recorded in the Tithe Apportionment, dated 1842, as "Parish Roads" and were not titheable. Other tracks are shown uncoloured, with solid and dashed lines and not numbered, which are more likely to have been private access to farmland rather than public. Some tracks are shown with dashed lines, coloured and with separate numbers, particularly on the Tawstock Court estate and crossing Tawstock Park as "Private Roads (Part of Court)", owned and occupied by Sir Bouchier Palk Wrey Baronet.

The route at Hollick is shown coloured and not numbered separately, mostly with double solid lines, except for a section with dashed lines on the south side at the farm buildings perhaps indicating the extent of the width of its surface from an unsurfaced verge. It is shown as open at both ends in connecting the two roads and not closed off by solid or dashed lines that might have suggested some kind of barrier or gate. The two roads are shown in the same way and labelled at the parish boundary as "From Yarnscombe", indicating their connection as part of the wider public road network.

The Tithe Apportionment records details of the farm buildings at Higher and Lower Hollick. They do not include any reference to the route which might have indicated that it was a track used specifically as a private road for access only to the farm.

### **1.1.4 Ordnance Survey 1<sup>st</sup> and 2<sup>nd</sup> edition 25" to the mile maps 1885 and 1903**

The route is recorded in more detail on the Ordnance Survey 1<sup>st</sup> and 2<sup>nd</sup> edition 25" to the mile maps surveyed in 1885 and 1903 in the same way as the connecting roads, with double solid lines indicating that it was enclosed. In the 1<sup>st</sup> edition map, one of the lines is drawn

bold in the same way as for the connecting roads, both now recorded as public, suggesting that it had the same surface and was considered then to be of the same status. It has separate Ordnance Survey parcel numbers and acreages in the same way, with both ends shown closed by dashed lines indicating the extent of separate land parcels, but not suggesting gates or physical barriers to access from the roads at each end. It is wider at the Hollick end, with a dashed line on the 1<sup>st</sup> edition map indicating the edge of a made surface and suggesting an unmade verge on the south side.

### **1.1.5 Finance Act 1910 Records**

The Inland Revenue Valuation (or “Domesday”) Book from the survey under the Finance Act of 1910 to ascertain the value of land for the purpose of taxation does not record a deduction for Public Rights of Way or User, that might have been in connection with the route. The maps drawn up for the process show the route included in the coloured hereditament or assessment area, numbered as part of 50. The colouring is broken for the connecting roads to exclude them from the hereditaments, indicating that they were considered then to be public. The route is not excluded to indicate that it may also have been considered then to be a public road, although that may not have been possible technically by the method of colouring the hereditament boundaries.

The official Field Book for hereditament 50 records Hollick as then part of Sir Bouchier Wrey’s estate, with William Youatt as the Freehold Tenant for life. It does not indicate any deduction for Public Right of Way or User that may have been in connection with the route, although there might not have been any if it was considered to be a public road. There is no reference in the details of the land and farm buildings that the route was considered to be a public road, or was included as a private access and there is no recorded deduction for any easement or private right of way that might have been connected with it.

### **1.1.6 Other Estate Records**

Hollick was part of the estate of Sir Bouchier Wrey of Tawstock Park in the Manor of Tawstock. Leases of Higher Hollick from 1833, 1854 and 1879 in the Bouchier Wrey estate papers do not include any requirement to maintain any access road or track to the farm, other than to keep the premises and appurtenances in repair. Those were specified as relating to buildings, hedges, ditches, fences, posts, rails, pales, gates, bars and stiles.

The Wrey estate in Tawstock was broken up in 1919 when 2,500 acres of land and properties were sold as farms, smallholdings, houses and cottages for a total of £67,000. Many were bought by sitting tenants, some of whose descendants are occupying the properties today, which is the case with Hollick Farm, sold as Lot 7 with 102 acres and bought by Mr W C Youatt for £2,600.

### **1.1.7 Later Ordnance Survey and Bartholomew’s Mapping and Aerial Photography**

In some later editions of Ordnance Survey and Bartholomew’s maps at smaller scales from the earlier 20<sup>th</sup> century, the route is shown by double solid lines as an uncoloured track in the same way as some roads are indicated in the key. Where indicated on the Bartholomew’s maps of 1932 and 1944, they are said to be “Serviceable Roads”, “Other Roads”, or “Other Roads or Tracks” and “Inferior and not to be recommended”. The two roads it connects are shown on the Bartholomew’s maps with red coloured dots as “Motoring Roads” and categorised as “Indifferent”.

The Ordnance Survey 1” to the mile New Popular edition in 1946 shows the whole route uncoloured with double solid lines connecting the two roads, which are shown in the same way. Those are described in the key as “Minor roads in towns, Drives and Unmetalled

Roads". Earlier aerial photography from 1946–9 shows the route as a narrow and mainly hedged lane connecting the two roads and wider at the Hollick end. It is open at both junctions and appears to be surfaced in the same way as the roads. Later Ordnance Survey mapping from 1956/61 shows the route at those dates in the same way as in the earlier editions, with double solid lines and no indication of any barrier at the junctions with both roads.

The Ordnance Survey 1" to the mile 1976 edition shows the route uncoloured with solid lines, indicated in the key as an untarred metalled road then, connecting the two roads shown coloured yellow as then tarred metalled roads. More recent aerial photography from 1999/2000–2007 shows the route more recently and currently remaining open in connecting the two roads and surfaced in the same way.

The showing of the route on earlier, later and current mapping records its physical existence from that time and up to the present, but does not indicate or provide evidence, on its own, that it is a public road, which would require other more significant evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way" and may be presumed to apply to earlier and other commercial maps as well. There is support from the older historical maps and more recent mapping only to show that the route has existed since at least the first half of the 19<sup>th</sup> century, although they are consistent in showing it having always provided a connection between two roads now recorded as public highways. The Tithe Map suggests that it may have been considered then to be part of the public road network, in accordance with earlier evidence of its maintenance by the Parish Surveyors of Highways.

## **1.2 The Definitive Map, Reviews and Consultations**

### **1.2.1 Definitive Map**

In the process leading to the drawing up of the Definitive Map, the Parish Council did not include the route in its survey of paths in 1950 put forward for recording as public rights of way. It was shown on the maps used for the survey coloured brown and labelled 'UCR', as an unclassified county road with other roads, indicating that the Parish Council believed it at that date to be a public road and not needing to be included with those considered for recording as public rights of way.

### **1.2.2 Reviews and Consultations**

The Parish Council did not put forward any evidence for the route to be considered for recording as a public right of way in earlier Definitive Map Review processes that were not completed. Following the public meeting in 1995 to open the Review in the parish, the Parish Council held a series of further meetings to consider local views and collect evidence, which did not lead to any claim that it should be recorded as a public right of way. It was the same after the repeated public meeting in 2004, with no claim made then or evidence submitted in support of any suggestion that it should be recorded as public. That was probably because the Parish Council maintained its belief that the route was already recorded as a public road.

It was only later that a local resident's use of the route, on foot and on horseback, appears to have been questioned, leading to the issue being raised with the Parish Council and the County Council. Although a notice was put up later to say that the road was private, it did not lead to any suggestion that it needed to be claimed as a public right of way or the submission of user evidence to support any such claim under the Definitive Map Review process.

### 1.3 County Council Maintainable Highways Records

Earlier County Council records of highways maintainable at public expense date initially from the 'Highways Handover' process in 1929, when maintenance of public roads was transferred from Rural District Councils to County Councils. In Devon, responsibility for the maintenance of minor roads was returned to the Rural Districts until it was taken back by the County Council in 1948. The records of maintainable highways including the minor roads date mainly from around that period, shown on maps and with Mileage Registers of unclassified roads. Those contain records of amendments from 1949 to the early 1970s in respect of additions after roads were adopted under formal agreements or taken off when they were officially and legally stopped up, or declared non-maintainable. Later versions of the updated maps were compiled in the 1960s and 1970s using more recent editions of Ordnance Survey map sheets.

The County Council's later and current central record of maintainable highways, or 'list of streets', is in the form of maps showing highways maintainable at public expense. It was probably based initially on earlier existing records and is updated in accordance with official changes, to provide information in response to formal Land Charges searches and other enquiries about highway status. Other records relating to highway maintenance in North Devon are kept by the Area Highway Office, previously the Local Services Office, in Barnstaple. Those include inspection registers, with the administrative records of processes for planning and arranging programmes of inspections and resulting works needed on the ground.

The route is shown on the earlier maintainable highways maps coloured blue, in the same way that other unclassified roads were recorded, numbered 269 to include it with the minor road on the east. The minor road on the west is also coloured blue and numbered 268. The Mileage Register for the North Devon area includes the details of both those numbered roads, recording 269 as:

"From UC 268 at Bustley Bridge] south to Torrington RD Bdy south of Hollick 0.41 [miles]. Also spur from Hollick W to UC 268 0.22".

The description and the distance match the route exactly, showing that the intention was to record it as a publicly maintainable unclassified road at an early stage in the process.

There is no indication in the Register of any amendment to show that it was considered to have been removed officially as the result of any formal stopping up, or declaration that it was no longer maintainable at public expense. Those could only have been done in line with provisions in the relevant legislation, including during that time the Highways Act 1959. The route was included in the roads coloured blue on the later maps from the 1960s and 1970s, indicating that it continued throughout that period to be considered as a publicly maintainable unclassified county road.

The route is shown not coloured on the later maps for the current list of streets, which is believed to have been compiled around the time of local government reorganisation in 1974. The minor roads it connects are shown coloured blue and a note was added, with the words "No", "No" and "No" written along it. It may have been intended to emphasise that the road was considered to be not maintainable, but there is no note of any authority or legal process as a reason for it not being included, or a reference to a file for any record or correspondence relating to such a process, in line with the established current practice.

Earlier and current highways maintenance records include the route, which is on the safety inspection records dating back to 1977 and up to 1994 as part of what is described as the "Hollick loop" and included in the current records updated in 2003. On that basis,

maintenance work is reported to have been undertaken on several occasions since then, including surface dressing in 1980 and 1991, as well as more recently in 2004 when contractors were told by the owners that they should not be doing any work on it. The route has an official classification for their highways inspection system as an unclassified road, with a road and section number from a survey in 1985 suggesting that information from that time supported its being recorded as public. It links two other public roads and is recorded as a 'Service Road' having a maintenance category of 9, with the lowest being 12.

On the basis of the information provided by the Area Highways Office, the route has been coloured in on the map to include it in the current records as a maintainable public road, but with a note added that its status is disputed and a reference to the relevant file for details. The consideration of evidence for this report is intended to resolve that dispute and determine whether the recording of the route as public and maintainable should be agreed and confirmed.

## **1.4 Consultations – Landowner and Parish Council Evidence from Correspondence**

### **1.4.1 Landowner Correspondence**

Correspondence from the landowners involved dates from a query in June 2005 about the route's status. It led to the deposit of a statement under section 31(6) of the Highways Act 1980 by Mr Miller of Hollick that no ways over the land had been dedicated as public highways, with a map showing the boundary of Hollick and including the route. Its inclusion was queried due to the earlier highways records showing it as a publicly maintainable road, but not the recent records and with no record of any official process to remove it. The issue of the discrepancy between those records was passed to the Local Services Office in connection with their local records and knowledge of the route and the Land Charges Section, through the County Solicitor's office, concerning the current records.

The query was followed up by Mr Miller's neighbour, Mr Dymond of Higher Hollick, who said that his grandfather had bought Hollick Farm in 1920 from the Wrey Estate, which was inherited by his mother. He had bought parts of it from her in 1968 and 1985 and said that the route belongs to Hollick, which Mr Miller had bought in 2003 with a private right of access for Higher Hollick. Mr Dymond and Mr Miller were informed about the situation with the anomaly in the records, with an invitation to provide observations or relevant comments for further consideration of the matter.

**Mr Miller** responded with references to the result of his solicitor's search when he purchased Hollick in 2003 that the route was not publicly maintainable, which he reported had been the same for searches by the Dymond's solicitor in 1968 and 1985. Neither of them had been notified since then of any change in the route's status, but council workers intending to do maintenance work had been told that they should not do so because of a mistake.

He insisted that the road is not a publicly maintainable highway and has never been, it had not been used by the public and was blocked periodically for use by the Dymond's farm vehicles and stock with no complaints. He reported that a horserider had used it, despite having been told that it was private and with no right of way, referring to his Section 31(6) deposit and signs put up on the route to that effect, saying that they had not been needed previously as it had not been used by the public.

**Mr Dymond** responded with further details relating to his family's ownership of Hollick since 1920, for which he had a copy of the conveyance and the route was included in the sale. He reiterated that previous searches showed that to be the case up to 2003 when he sold Hollick to Mr Miller with a private right of way for Higher Hollick. He agreed that it had not been

necessary to put up notices on the route to say that it was private, as until recently it had only been used by a neighbouring farmer with permission and regularly by tradesmen.

He said that a 'persistent lady' had been trying to make it a 'regularly used highway' and his son had challenged contractors on the last two occasions. He believed that there was nothing in his parents' deeds or papers of any contact or communication with the local services officer about why the County Council should suddenly take charge of the route without permission to cause the anomaly. During the Foot and Mouth outbreak in 2001, there was no complaint when the route was closed for eight months and it is frequently closed by the use of heavy farm machinery.

Highways Officers have maintained their view that it had always been considered as a highway and available for the public to use freely, which was similar to the situation at farms in other locations with a connection to the road network. In this case, it is a fully metalled road in good condition connecting two public roads. It was probably not provided or maintained to its current high standard on a private basis, as well as having been inspected and maintained with surface dressing by the County Council a number of times.

Mr Miller responded further on behalf of Mr Dymond, with a copy of the conveyance from the purchase of Hollick Farm in 1920, with a plan that appears to have been taken from those with the catalogue for the combined sale of the whole estate in 1919. He referred to the plan showing the land conveyed coloured in that included most of the route, but excluding part of a short section on the eastern end and the roads it connects. He believed that it supports his view that it was mostly unadopted and private to distinguish it from the adopted public roads. Although connecting them, he did not believe that it served any purpose for the public, as it was not a short cut and with no need to cross from one road to the other.

Requesting details of the legal basis for adoption of the route and copies of the appropriate documents, Mr Miller stated that they would not have purchased Hollick if they had known it was on an adopted road with more than a limited number of users and making it less remote. He said that he is prepared to claim significant damages against the County Council if the route is confirmed to be a public road so that the information given for the search in 2003 about its status is shown to have been wrong.

#### **1.4.2 Parish Council Correspondence**

The Clerk of Tawstock Parish Council responded to a request from the Local Services Office for the views of Parish Councillors on the route's status to report that it had been raised at a Council meeting. Six rural Councillors at the meeting had lived in the parish for all or most of their lives and asserted unanimously that they have always regarded the road as being public. They have all used it from time to time throughout their lives, which covered a period of 50 years for most of them and more than that in one case.

#### **1.5 User Evidence**

No user evidence was submitted for any claimed public use of the route, in the earlier review processes that were started but not completed or the more recent reviews started in 1995 and continuing between 2004–6. No claim was submitted in respect of the route and no user evidence was received after the main review consultations. The only references to public use of the route have been from the above comments from the Parish Council and the references by the landowners to the use by a local resident, also referred to above, which they challenged and appears to have initiated the query about the route's status.

## 1.6 Discussion – Summary of Evidence

Historical and more recent maps show that the whole route has existed as a continuous track on its present line for more than 200 years, connecting the roads to the west and east of Hollick. They do not provide sufficient evidence on their own that it was considered to be a public road from that time, but suggest that it is more likely in continuing as a link between two routes shown in the same way that are now accepted and recorded as public roads. That is particularly the case in respect of the Ordnance Survey's 1<sup>st</sup> edition 25" to the mile mapping surveyed in 1885, which shows the route shaded or drawn with one bold line in the same way as those two roads. That was used to indicate metalled public roads for wheeled traffic kept in good repair by highway authorities, including county, district and parish surveyors.

Other evidence is more significant in suggesting that it was considered to be part of the public highway network before then, to be recorded in that way later. In particular, the Tawstock Parish Highways Surveyors' records of their work in maintaining and repairing public roads in the earlier 19<sup>th</sup> century indicate that public money was spent for repairs to it in 1819 and 1822. It was included with other maintenance and repair work on the western and eastern roads at Hollick, but distinguished from them and identified separately as 'Hollick Lane'. It provides support for the route having continued to be considered as public and included in what was recorded as the Parish Road network on the Tithe Map in 1844.

The Finance Act records do not add any clear positive evidence that it continued to be considered as a public road into the early 20<sup>th</sup> century, but equally they do not have any specific reference to it being recorded as a private road for access only to Hollick or the subject of any private right of way or easement. The indenture document for the conveyance of Hollick in 1920 does not refer to the route in the schedule as a private road, even though it is shown mostly not excluded from colouring in on the map. The only private right of way referred to is specified on another route elsewhere in favour of access to land for the owners of adjoining farms.

Bartholomew's maps indicate that the route continued to provide a road link between the western and eastern roads up to the 1940s. That led up to the time when the most significant evidence is its recording on the County Council's maintainable highway records from around 1948 onwards as part of the unclassified county road network, in the same way as those two roads. The Definitive Map Survey process from 1950 shows that the Parish Council also considered it to be an unclassified public road at that date. It continued to be shown on the highway records when they were updated and transferred to new maps in the 1960s and 1970s. No evidence has been found to indicate that it may have been stopped up or declared not maintainable at any time and specifically during that period by an official Order under the relevant sections of the Highways Act through the Magistrates' Court.

It is only in the County Council's 'list of streets' as its central record of maintainable public highways from the mid-1970s that the route is not shown as a maintainable highway, although the maps must have been compiled from the earlier records and maps showing it as maintainable. No evidence has been found to indicate why it was shown as not maintainable from that time to suggest that there had been any formal decision to remove it as the result of the required legal process. Any such decision may only have been made informally and unofficially, without reference to any legal process, but with no record or indication of a reason why it might have been considered from then not to be a publicly maintainable road. The local maintenance records show that it continued to be inspected and was maintained as a public road from the later 1970s and 1980s up to the present. The landowners report having challenged the workers undertaking that maintenance on more than one occasion, but there is no record of the issue being taken up further with the Local



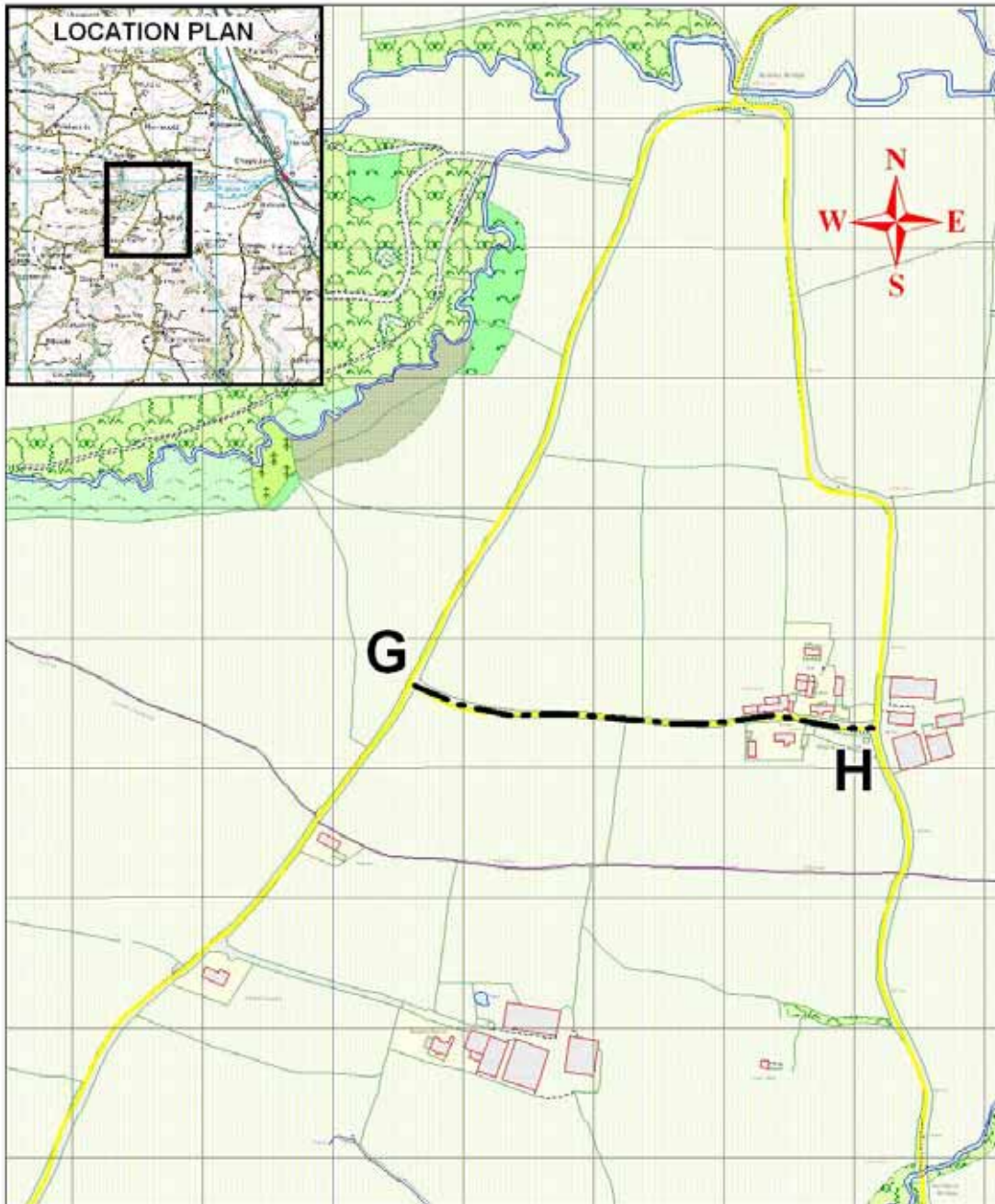
Services Officers at those times in respect of any stronger claim that the route should not be maintained as a public road.

Land Registry records for Hollick show that when it was purchased in 2003, its boundary did not include any part of the route adjoining the property. The whole route was recorded as including a private right of way along it for animals and vehicles, supported by a statutory declaration made by Mr R Y Dymond. It suggests that Mr Miller does not appear to own the route or even part of it adjoining the property to its centre and cannot, technically, declare in his Section 31(6) deposit that it is not a highway of any type. The route appears, therefore, not to have been sold on from the original Hollick Farm estate, as purchased in 1920. Its inclusion in the details for that sale does not add weight to any consideration that it was not then a public road, taking into account earlier evidence in support of its public status and none found to suggest that it may previously have been stopped up or declared not maintainable formally by any legal process.

There is no indication whether the searches in 1968 and 1985 for the purchase by Mr Dymond of land from his mother were undertaken with reference to the County Council's official records of maintainable highways available at those dates in order to clarify its status. If so, they would not have revealed its earlier recorded status as a publicly maintainable minor unclassified county road, if the relevant records consulted as part of a search process had previously been amended unofficially. It is clear that the search in 2003 made with reference to the official records indicated that the route was not recorded then as publicly maintainable, but was based on their having been compiled on the basis of a previous unofficial amendment.

## **1.7 Conclusion**

No direct evidence of use by the public has been submitted, but the Parish Council has provided information relating to local use and the landowners reported having challenged recent use. That is less significant in relation to the historical evidence, which supports the route having been available for the public to use for at least 200 years. Consideration of all the evidence supports the route's reputation as a public road for it to have been recorded on the County Council's earlier records as a publicly maintainable highway. Its absence from later records to show it as not public has no legal basis, with its removal appearing to have been unofficial and not from any formal statutory process. It should, therefore, continue to be recorded as a public road, leading to the recommendation for its inclusion on the records of maintainable highways to be confirmed.





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**Devon County Council**  
**Definitive Map Review - Tawstock parish**  
**Investigation of maintainable highway status - Hollick**

drawing number EEC/PROW/08/101  
 date Nov 08  
 scale 1:4500  
 drawn by NSC

Notation

Section of UCR investigated G - H   
 Recorded maintainable highways 

**Edward Chorlton**  
 COUNTY ENVIRONMENT,  
 ECONOMY & CULTURE DIRECTOR

