

**Definitive Map Review: Sidmouth
Claimed Footpath: Chapel Street, Sidbury – Footpath No. 59**

Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.

Report of the Executive Director of Environment, Economy and Culture

Recommendation: It is recommended that a modification order be made to record a public footpath between Chapel Street and Footpath No. 59 in the village of Sidbury, along the route shown on the attached drawing number EEC/PROW/11/12 between points A – B.

1. Summary

The report examines a claim made by local residents that a route in the village of Sidbury within the administrative boundary of the town of Sidmouth in East Devon District and having no current recorded 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 access between a public road and public footpath. Barriers were placed across the route and a footbridge removed in May 2010, which prevented its further use and 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 remains at an early stage in Sidmouth, but in view of the inconvenience reportedly caused to users by loss of the access offered by this route it is felt desirable to consider the claim forthwith.

3. Description of Route

The route lies towards the southern edge of the village of Sidbury, and crosses land forming part of the curtilage of No. 1 Chapel Street. The garden of the cottage occupies sloping ground between the main road (A375) on the west and a mill leat on the east, and was formerly less extensive whereby the route lay over adjoining land that then formed the northern part of an orchard. A footpath ran along the far side of the leat, to which the cottage had access by means of a footbridge.

At some time over sixty years ago a small area was enclosed from the northern end of the orchard, with access from the road over a strip of land that now forms the western part of the claimed route. This piece of land extended to the leat, but had no footbridge access to the footpath beyond and there seems no suggestion that any part of it was at that stage subject to public access.

In more recent times the garden was extended southward to take in this small area, a flight of steps was cut along its southern side, and a footbridge was placed across the leat to join the footpath, which footpath was at around that time recorded as Footpath No. 59, Sidmouth. The through route thus created between road and footpath was apparently for use by the

public, in particular for access to the village cricket ground that lies to the east of the public footpath and to which access was formerly given from that footpath by a stile.

The claimed route as it exists today starts at a gap in the roadside hedge, which gap is blocked by a wire fence. A narrow pathway then runs eastwards, further obstructed by tree branches just beyond the fence, and leads to a flight of steps with broken handrails. A further wire fence crosses the route at the base of this flight, and the mill leat beyond has a concrete block on its eastern bank that served as an abutment for the footbridge. No notices were apparent on recent inspection.

No. 1 Chapel Street has been in its present ownership for 18 months. Chapel Street is a county road and the path beside the mill leat is public footpath, 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

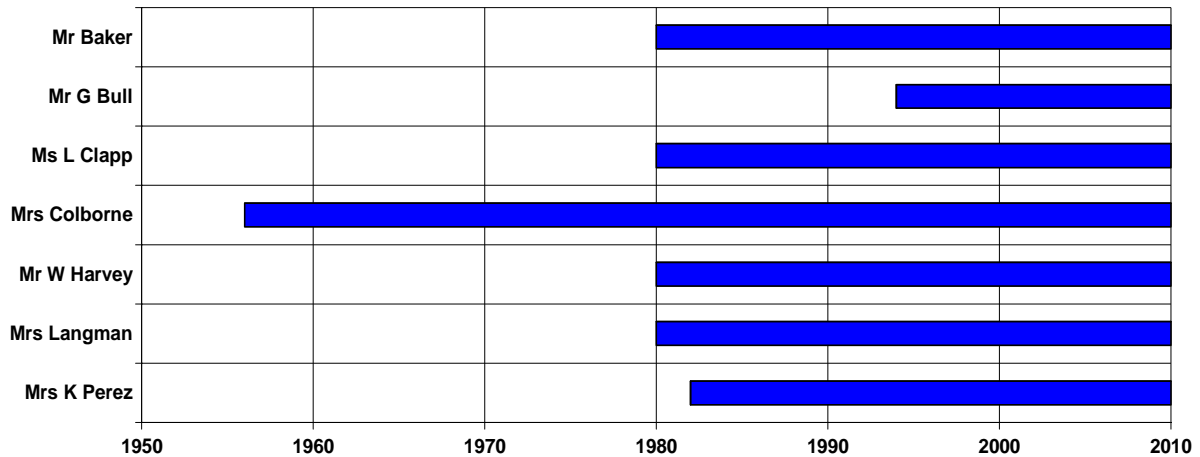
Evidence forms have been supplied by seven persons, and detail use of the route over various periods since the 1950s, though in most cases from the 1980s. All persons seem to have been using the route on foot up to the time it was obstructed, all believe it to be a footpath and most give as reason for thinking so the fact that people have used it over many years. Frequencies of use vary from several each year to twice weekly.

Six of these persons used the route over the twenty years prior to its obstruction, and the other for seventeen years. Four users mention that the path was gated at the road, but that the gate was never locked. One user mentions seeing a notice which they believe indicated that the route led to the cricket ground. One user mentions having permission from the cricket club to use the route when playing cricket, which appears to refer to use in conjunction with the public footpath and stile into the cricket ground. No user mentions being stopped, turned back or told the route was not public.

None of the users seems clear as to ownership of the route. Most live in an estate called Furzehill that lies on the other side of the main road, and have used the route for purposes of recreation, access to village facilities adjoining the existing footpath, and avoiding walking along the main road with the attendant hazards.

Chart of User Evidence

Claimed Footpath: Chapel Lane - Footpath No.



6. Documentary Evidence

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 R Giles – no response
- East Devon District Council – no response
- Sidmouth 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
- Landowner – see below

The landowner does not believe the route to be public, but part of a private garden. She states that a sign saying “Private, please use the public footpath” and having an arrow pointing along the road was placed at the west end, but subsequently removed by persons unknown. A few twigs were also placed there, and fencing with steel bars was erected in October 2010. She presumed the footbridge over the leat was a private one, and removed it

as it was unsafe. She considered the route itself slippery and dangerous, and is surprised anyone should wish to use it in preference to the recorded public footpath.

The Town Council has considered the matter and resolved that there has been established usage of the path by many villagers, so it should be a public right of way.

8. Financial Considerations

There are no implications.

9. Sustainability Considerations

There are no implications.

10. Carbon Impact Considerations

There are no implications.

11. Equality Considerations

There are no implications

12. Legal Considerations

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

13. Risk Management Considerations

There are no implications.

14. Reasons for Recommendation/Alternate Options Considered

Evidence of use so far supplied seems just sufficient, when combined with the views of the Town Council, to make it reasonable to allege the existence of a public right of way, though more evidence would seem necessary to show that on a balance of probability a right of way exists.

Chris McCarthy

Electoral Division: Ottery St. Mary Rural

Local Government Act 1972

List of Background Papers

Contact for enquiries: Michael Martyn

Telephone No: 01392 382981

Background Paper

Date

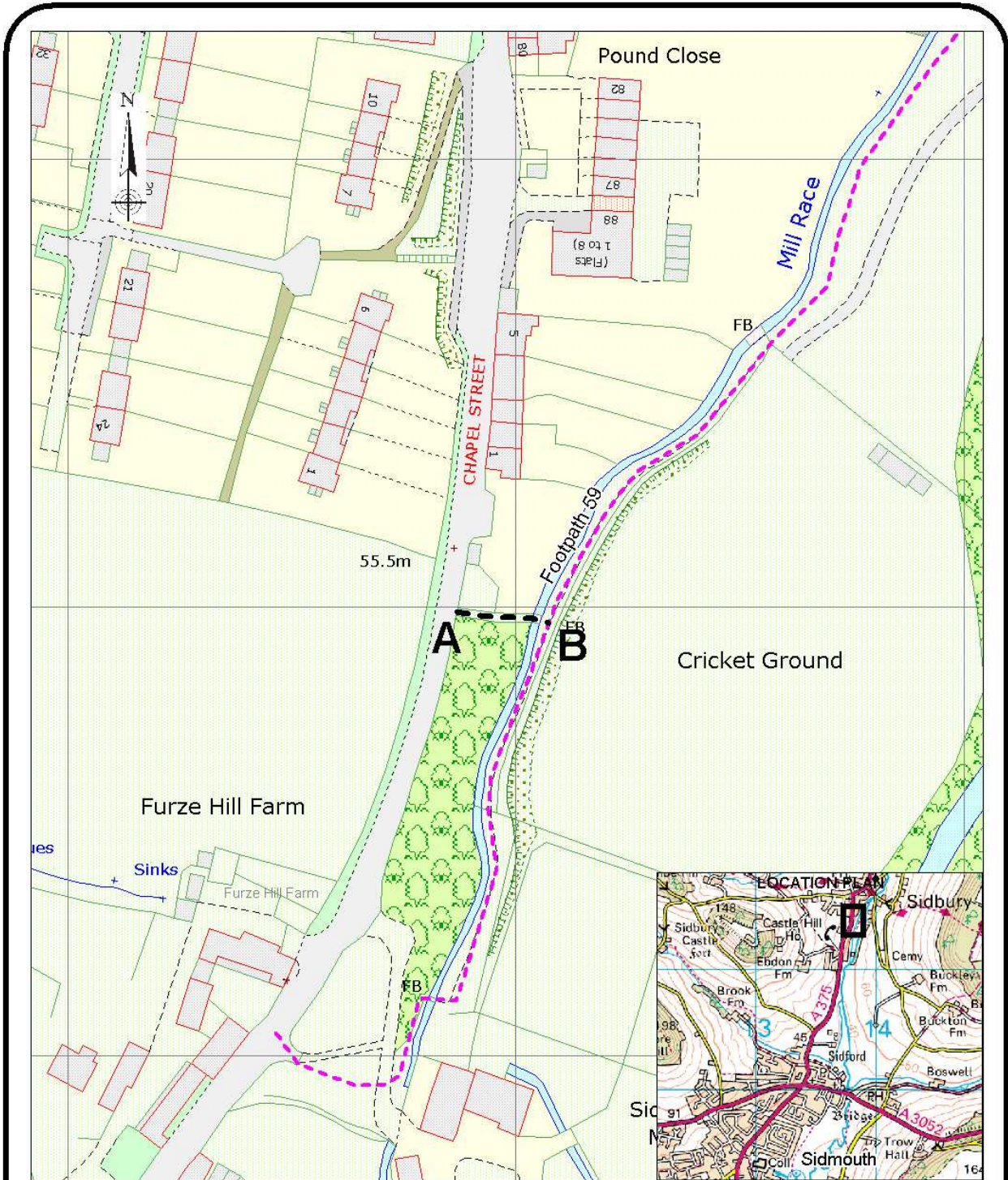
File Ref.

Correspondence file: Sidmouth

2010-2011

DMR/MM/SID

mm270111pra
sc/cr/chapel street sidbury DMR Sidmouth
03 hq 160211



map ref SY 1391

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Claimed Footpath - Sidbury
Chapel Street to Footpath No. 59, Sidmouth

drawing number	EEC/PROW/11/12
date	January 2011
scale	1:1250
drawn by	MM

Notation

Claimed footpath (A - B) 20 metres - - - - -

Chris McCarthy

EXECUTIVE DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE

