

Definitive Map Review: Honiton
Claimed Footpath: Church Street, Honiton

Report of the Deputy 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 over Church Street between High Street and Silver Street in Honiton, along the route shown on the attached drawing number EEC/PROW/11/56 between points A – B.

1. Summary

This report concerns a claim made by Honiton Town Council that a route in the town of Honiton in East Devon District, having no current recorded highway status, should be recorded as a public footpath.

2. Background

Members of the public are known to have used the route for many years, if not quite from time immemorial, as a short cut across the angle between two recorded county roads. No obstruction or challenge is known to have been made to such use.

A number of claims have been made by the Town Council in the course of the current review, most of which will be considered in a general report to be made shortly. Several of these claims have appeared non-contentious however, whereby it has seemed convenient to deal with them in advance, and the present claim appears in this category.

3. Description of Route

The route lies in the centre of the town close to St. Paul's Church, and starts on the northern side of High Street at the point marked A on the drawing. It then runs for 15 metres north north-westward, flanked by the church grounds and No. 99 High Street at a width of 4 – 5 metres. This section serves as private vehicular access to No. 101 High Street and the Town Museum, the surface being of tarmac and cross-hatched in yellow to discourage parking.

The route continues for 18 metres east north-eastward, flanked by the rear of Nos. 99 - 93 High Street and part of the Museum, at a width of 3 – 4 metres. It finally runs for 22 metres northward to end at Silver Street at the point marked B on the drawing, flanked by part of the Museum and properties that adjoin Silver Street at a width of 2 – 4 metres. The surface of these sections is likewise of tarmac.

No. 101 High Street was formerly part of Allhallows Grammar School, founded in 1614 and named from the ancient Allhallows Chapel now occupied by part of the Museum. The route has probably existed for centuries on much its present alignment, though a diversion is believed to have occurred at the southern end at the time St. Paul's Church was built circa 1838.

Ownership of the route is unknown, but presumed to attach to neighbouring properties. None of these owners is known to object to public pedestrian use.

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.

5. Evidence of Public Use

The Town Council states that the route is and has been for very many years in everyday use by the public on foot. This is clearly an authoritative and accurate statement, and describes a situation that has existed for well in excess of 20 years without obstruction or challenge.

The Council also mentions that street lighting exists en route, and that a public payphone was formerly sited near the High Street end. These factors are further indicative of the route being regarded as open to the public.

6. Documentary Evidence

The Town Council has supplied copies of an agreement made in 1825 by the Commissioners of Honiton Paving Trust for drains to be laid under the route, wherein the route is described as a "Public passage to Silver Street". The Council also supplied a map, believed to date from circa 1840, on which the route is marked "Public Footpath". The Council states that the route was surfaced and swept by Honiton Borough Council, which was the highway authority prior to 1974.

The route was not put forward as a public right of way at the time of compilation of the Definitive Map in the 1950s, which the Town Council suggests may be due to its having a street name and thus being mistakenly regarded as an ordinary public road, despite no evidence of use as a public vehicular thoroughfare. No claims were made for its recording as a public right of way during reviews initiated in the late 1960s and late 1970s.

7. Consultations

These have been undertaken with County Councillor P Diviani and East Devon District Council. Councillor Diviani states that he fully supports the Town Council in recording this route as a public footpath.

8. Reasons for Recommendation/Alternative Options Considered

The evidence of public use combined with documentary evidence and support of the Town Council make it reasonable to conclude that a public pedestrian right of way subsists over this route.

9. Legal Considerations

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

10. Carbon Impact Considerations

There are no implications.

11. Equality Considerations

There are no implications.

Ian Harrison

Electoral Division: Honiton St Paul's

Local Government Act 1972: List of Background Papers

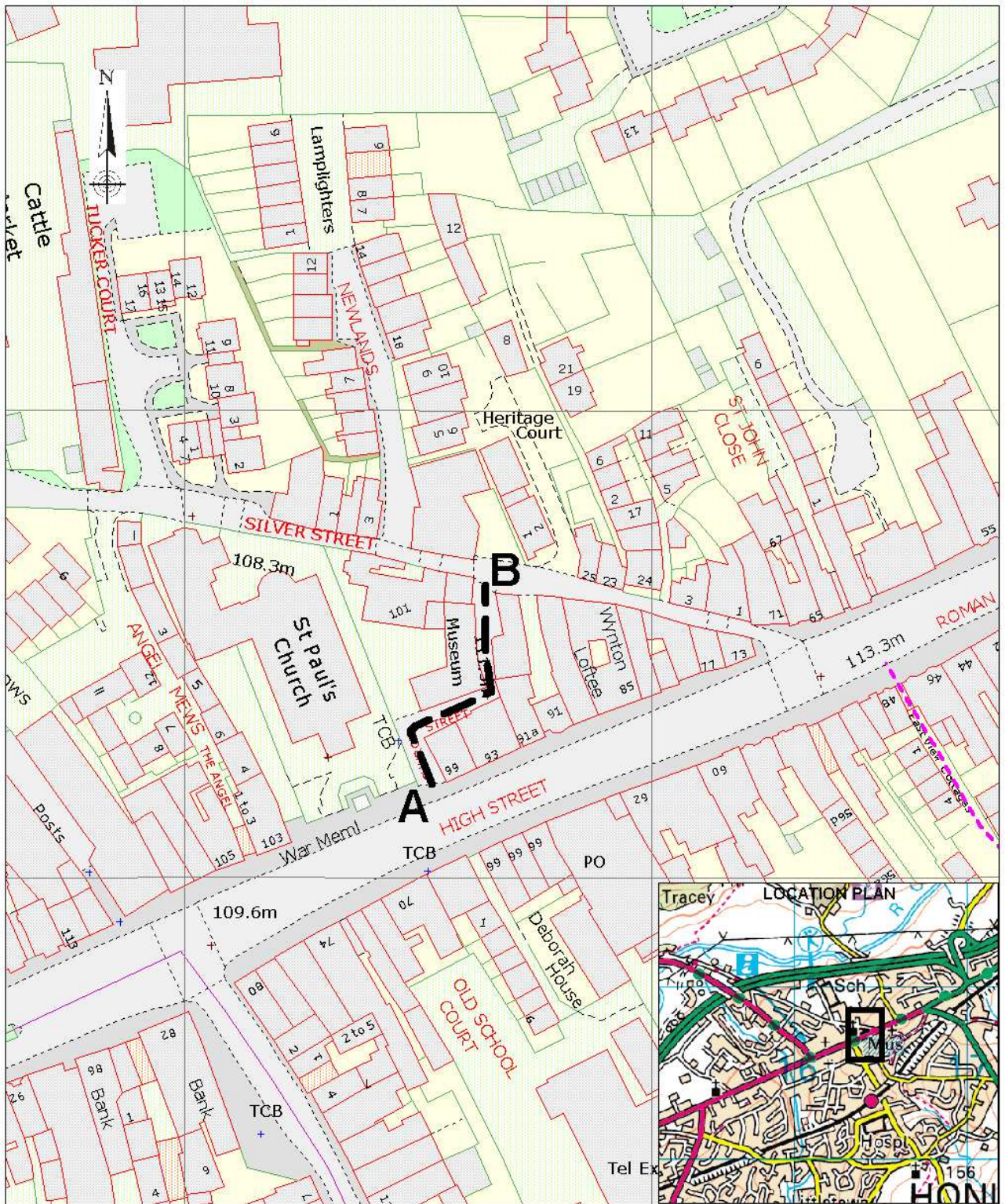
Contact for enquiries: Michael Martyn

Room No: AGB, Lucombe House

Tel No: (01392) 382981

Background Paper	Date	File Ref.
Correspondence File	2006 – 11	DMR/MM/HON

mm030511pra
sc/cr/Honiton – Church Street
03 hq 170511



map ref **ST1600**

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. 1000119783

CLAIMED FOOTPATH
CHURCH STREET, HONITON

drawing number	EEC/PROW/11/56
date	April 2011
scale	1:1250
drawn by	MM

Notation

Claimed footpath A - B (55 metres) **---**

Ian Harrison

DEPUTY EXECUTIVE DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE

