

**Definitive Map Review 2009 - 2011
Parish of Culmstock (part 3)**

Report of the Deputy Executive Director of Environment Economy and Culture

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

Recommendation: It is recommended that:

- (a) no Modification Order be made to modify the Definitive Map and Statement by adding a public footpath along the route known as Splatt Lane between points A – B and C - D as shown on drawing no. EEC/PROW/11/58;**
- (b) no Modification Order be made to upgrade Footpath No. 12a, Culmstock to a bridleway as shown between points F – E on drawing no. EEC/PROW/11/59.**

1. Summary

The report examines two of the seven suggestions arising from the Definitive Map Review in the Parish of Culmstock in the District of Mid Devon. Two other suggestions have been dealt with in previous reports, two suggestions have been resolved by enforcement/reinstatement action to clear the route and a Public Path Diversion Order respectively. The last suggestion will be dealt with at a future meeting.

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 I	-	no comments or objections
Culmstock Parish Council	-	support suggestions
British Horse Society	-	support the proposals
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 no Modification Order be made in respect of either proposal.

5. Financial Considerations

There are no implications.

6. Sustainability Considerations

There are no implications.

7. Carbon Impact Considerations

There are no implications.

8. Equality Considerations

There are no implications

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 implications.

11. Reasons for Recommendation/Alternate Options Considered

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

Ian Harrison

Electoral Division: Willand & Uffculme

Local Government Act 1972: List of Background Papers

Contact for enquiries: Emily Spurway

Room No: ABG, Lucombe House

Tel No: (01392) 382833

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

es090511pra
sc/cr/culmstock
02 hq 130511

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] 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:

- (i) that a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates;
- (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.

Suggestion 1: Addition of a public footpath along the three pronged route known as Splatt Lane.

The route is shown between points A – B and C - D on drawing number EEC/PROW/11/58.

Recommendation: It is recommended that no Modification Order be made to record a public footpath in respect of this suggestion.

1. Description of Route

The route starts at Hunters Hill on the northern side of Culmstock village at point C and proceeds generally north westerly along a hedged lane past two private houses to point D. It then joins another track at its mid point which runs east to Woodgate Road (point B) and west to the B3391 (point A). The route is currently impassable along most of its length.

2. Documentary Evidence

Ordnance Survey Maps

1809 1st Edition Ordnance Survey Tiverton & Taunton sheet
The route is shown on this map.

1880s 1st Edition OS map 25 inch to 1 mile
The route is shown on this map along its entire length.

1904-06 2nd Edition OS map 25 inch to 1 mile
The route is also shown on this mapping along the east west length and partially defined to the south.

Modern Ordnance Survey Map 128 - Taunton & Blackdown Hills, west sheet
The route is shown in its entirety as a white track on this mapping.

Quarter Sessions Stopping Up Order

The Quarter Sessions operated prior to the setting up of the magistrates court system. They dealt with many applications including the stopping up of highways. Notice was advertised in the Woolmer's Exeter and Plymouth Gazette on 28 March 1829, that on 24 March 1829 several orders were signed by John Clarke, Clerk and Henry Laroche, Esquire, two of his Majesty's Justices of the Peace who met at a Special Sessions for the Highways held at the Fountain Inn, Uffculme.

The claimed route is describes as "also for stopping up a certain unnecessary Public Highway, in the said parish of Culmstock, leading from and out of the said hereinbefore described unnecessary Public Highway, at the three-cross ways near Splatt House, and extending eastwardly towards and unto the said Public Highway, leading from Mill Moor to Woodgate Village aforesaid, at the southern-eastern corner of a Field called Hunger Hill in the said parish, in the occupation of William Fry and Robert Fry, of the length of two hundred and fifty three cloth yards or thereabouts, and the breadth of thirteen feet or thereabouts, which said two unnecessary Public Highways are respectively called Splatt Lane."

Greenwoods Map 1827

This early mapping shows the claimed route as a straighter diagonal route south east to north west with a spur off to the east and the road to Woodgate.

Finance Act & plans of 1910

The purpose of the Finance Act Maps was to ascertain the value of land for the purpose of taxation. These maps were based on the 1904 - 06, 2nd Edition 25" Ordnance Survey maps. Accompanying these maps were Field Books containing the information the surveyors made about the land holdings at that time.

The claimed route is shown on the plan as excluded from any of the surrounding plots or hereditaments and is shown in the same manner as the other surrounding public roads.

Culmstock Parish Council 10 July 1899

A copy of a list of footpaths written in July 1899 mentions Splatt Lane. This list explains "*It is not intended by this list to establish a claim to any footpath nor to relinquish the right to the public use of any footpath that may be omitted therefrom. The paths named are known to have been used as such by the public for years past.*"

"Right of Way - Splatt Lane to Tithe Barn Road" The list was signed by John Steer, Chairman, 6th Nov 1899.

Culmstock Parish survey 1950s

The parish survey sheet and map has this route marked as path no.7. The route is described on the survey form of 12 January 1951, as "Right of Way Splatt Lane to Tithe Barn Road" The route is annotated as CRF, carriage road used as a footpath.

On the subsequent list prepared by the parish council on 4 December 1957, route 7 was noted as "withdrawn by the Parish Council".

Culmstock Parish submissions 1978

In March 1978 Culmstock Parish Council submitted two user evidence forms in support of the route. The current Parish Council supports for the claim.

3. User Evidence

M P Bull, clerk to Culmstock parish council in 1978, completed a form on behalf of users of the route giving evidence of reputation of the path.

He described the path as Splatt Lane from Hunters Lodge & Constitution Hill to Nine Oaks and comments that the users had known the route to be public as it was listed in the Parish footpath survey of July 1899 and that school children used the lane for nature walks plus many parishioners. It appears that the path has always run over the same route and no signs were placed along it.

Mrs E P Symons of Culmstock completed her form 5 January 1978 and describes the route as from Hunters Lodge, Culmstock & Constitution Hill Culmstock to Tithe Barn/Nine Oaks. She says she has regarded the path as public for 70 years and used it from 1904 - 1918 going to school etc to and from Nicholashayne and Culmstock. There were no notices or gates along the route to prevent use.

No further user evidence has been forthcoming during this current review.

4. Other Information

The Fisher Family of Fairlawn Culmstock, completed a Landowner Owner Evidence form in January 2010. They state that they have had land adjacent to the path in their family for 150 years and they regard the route to be a byway. They also say that they have not seen any members of the public use the route or required anyone to ask permission before using it.

5. Rebuttal Evidence

Three other adjoining landowners have completed Landowner Evidence Forms.

Mr F.R Lee owns land to the north of the route by point B and has done for 30 years. He does not believe the route to have any public status. He has not seen anyone use the route and states that it is not possible to walk through and that there is a badger set in the pathway.

Mr P Martin has owned land adjacent to the route for 42 years and does not regard it as public. He has not been aware of anyone trying to use it. However, he has erected notices to prevent dumping of rubbish.

Mr B.C.W. Hunkin has owned land on the western side of the route for 43 years. He doesn't believe the route to be public and has not seen anyone using the route nor has he given anyone permission to use it. He has not erected signs or gates along the route.

6. Discussion

The documentary evidence shows that the claimed route has physically existed since the 1800s. It has continued to exist as a topographical feature to the present day, although sections of it are currently overgrown and impassable.

The Quarter Sessions documentation shows that prior to 1829 the route was a public highway, but in that year it was stopped up by a formal legal order. The order specifies that certain rights were to be preserved but these appear to relate only to those people access fields or property along the route. After the stopping up order of 1829 any subsequent landowner could have re-dedicated the route to the public again, if they had so wished. If at any time after 1829 the route had been used by the public as of right, it might have been possible to infer that the way had been dedicated as a highway again. No evidence has been submitted of an express dedication of the route. However, alternatively, if sufficient time had elapsed after 1829 during which the way could be shown to have used by the public as of right, it might be inferred from all the relevant circumstances that the way could have been dedicated as a highway again, in this case only on foot.

The Ordnance Survey (OS) maps clearly show the claim as minor route. However, the OS maps carry the disclaimer that the representation of tracks, paths or other roads on their maps is no evidence of the existence of a right of way. They provide clear evidence that the lane has remained as a physical feature for about 200 years.

The Tithe Map of 1841 for Culmstock shows the route as an open route in exactly the same way as the other roads around it today that are public routes. The route shown on the Tithe Map is not numbered with an apportionment number, but it would seem reasonable to suggest that it was part of the public road network at that time. However, the nature of public user is impossible to tell.

The list of footpaths and rights of way by Culmstock Parish Council produced in 10 July 1899 provides evidence of reputation of routes in existence in the parish at that time. The list was signed by the Chairman John Steer 6 November 1899.

In the preparation of the drafting of the definitive map and statement all the parishes carried out parish surveys of routes they wished to be considered for inclusion on the map. The claimed route was surveyed as path No. 7, not likely to be disputed and likely to be required in the future. The general description is noted as *C.R.F. and Right of way Splatt Lane to Tithe Barn Road*. The grounds stated on the survey form for believing it to be public was "General Use Parish Minutes 1899". In response to the question *who has repaired path in past* it is typed *Owner* and the remarks *Overgrown*. The form is signed by Mr G Tucker Clerk to Culmstock Parish Council, September 1951. There is no doubt that the surveyed route is the same as the claimed Splatt Lane as the survey map shows the route marked with 7 and CRF (carriage road footpath) but crossed out. On the survey form there is a pencil note marked *CS Query 1) are these lanes Public Accommodation roads as defined in ? information? Sheet*. It is possible that they were not added to the definitive map as they were considered local roads. However it is not known if the County Surveyor was aware of the 1829 Quarter Sessions Stopping Up Order on the highway rights, but in the list of paths agreed by the Culmstock Parish Sub-Committee on 4 December 1957, the parish withdrew the route.

The Parish Council has continued to press for Splatt Lane to be officially recorded as a public right of way as they proposed the route again in March 1978. Two evidence forms were submitted at that time, one being completed by the then Parish Clerk on behalf of users. It explains that the claimed route was used frequently by parishioners and school children on nature walks. (It is unknown if the school sought permission from adjacent landowners to

walk along the route.) The current parish council support the addition of the route as a footpath. The other user evidence form demonstrates use of the lane in the early 1900s, frequently and unhindered, but by only one person.

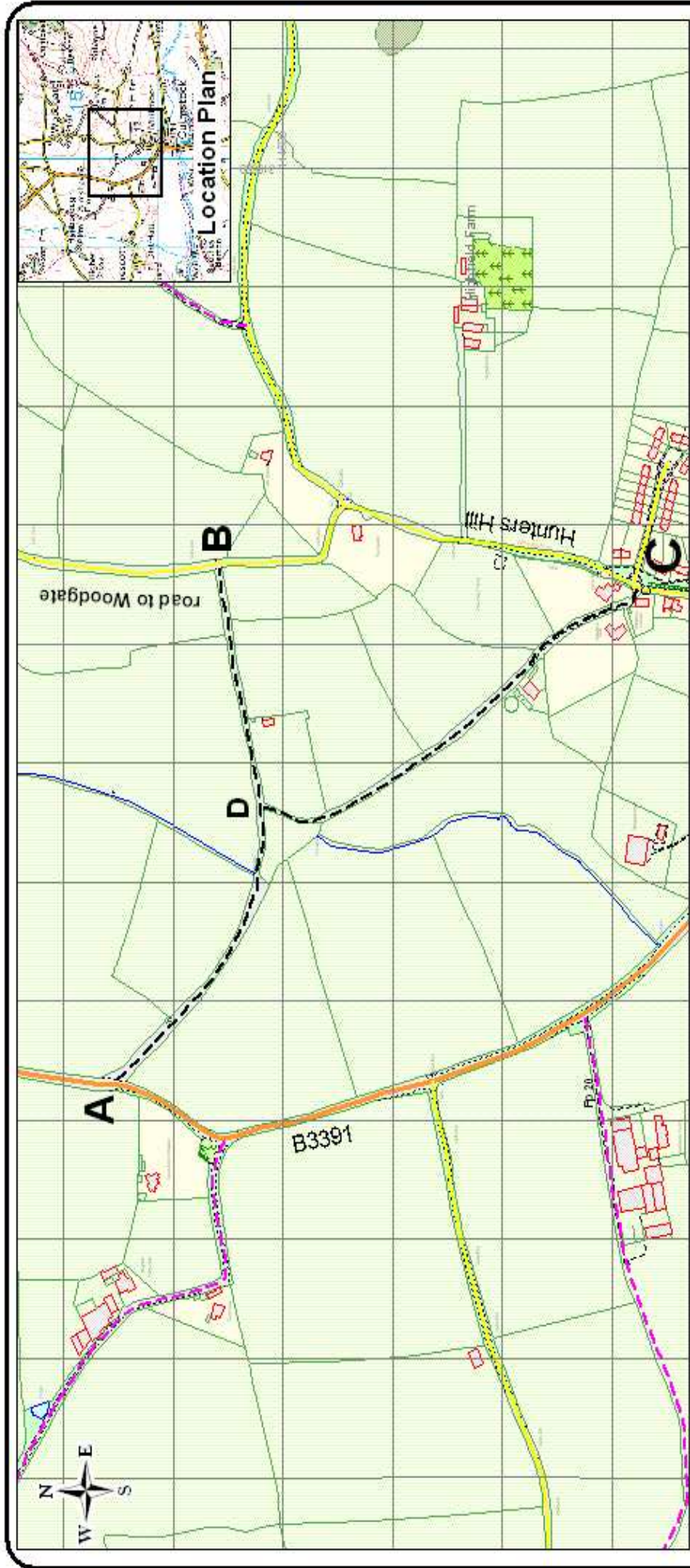
Three of the adjoining landowners state that they do not regard the route as a public right of way. They have been unaware of anyone using the route and it is largely impassable. However none of these have erected any notices stating the route was not a public right of way, only to deter fly tipping and dumping. It is possible that these landowners were unaware that anyone wanted to use the route and thus didn't take any action. However, the Fisher Family state that they have owned land adjacent to the route for 150 years and believe the route to be a public byway.

Apart from the two user evidence forms submitted in 1978 no further evidence of use has been forthcoming. The route has not been called into question and the claim cannot, therefore, be considered under Section 31 (1) for presumed dedication.

The documentary evidence is not considered sufficient to justify the making of an order under Common Law. Indeed, the only substantive evidence shows that the route was stopped up at Quarter Sessions in 1929.

7. Conclusion

In the light of the above it is recommended that no order be made to record the route on the Definitive Map and Statement. Should any further information be received in the next six months it would seem sensible that it be considered straightaway.



map ref: ST 1014, 1417 Grid 100m

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DEVON COUNTY COUNCIL
Definitive Map Review - Culmstock

Route 1 suggested Addition of footpath Splatt Lane Culmstock

Notation Proposed addition A - B - C - D
 Existing public footpaths

A - B approx 490m C - D approx 415m

drawing number EEC/PROW/11/58
 date May 2011
 scale 1:5000 at A4
 drawn by ES

Ian Harsion
 DEPUTY EXECUTIVE DIRECTOR OF ENVIRONMENT,
 ECONOMY & CULTURE

Suggestion 2: Upgrading of part of Footpath No.12a, Culmstock

The route is shown between points E – F on drawing number EEC/PROW/11/59.

Recommendation: It is recommended that no Modification Order be made to upgrade the route to a public bridleway.

1. Description of Route

The route starts at the county road called Uffculme Road, Culmstock at point E and proceeds along a hedged lane in a generally north north westerly direction for approximately 240 metres to the county road called Silver Street at point F. The route is known locally as Jacky Southey Lane.

2. Documentary Evidence

Ordnance Survey Maps

1809 1st Edition Ordnance Survey Tiverton & Taunton sheet
The route is shown on this map along its entire length.

1880s 1st Edition OS map 25 inch to 1 mile
The route is shown on this map along its entire length.

1904-06 2nd Edition OS map 25 inch to 1 mile
The route is also shown on this mapping along the east west length and partially defined.

Modern Ordnance Survey Map 128 - Taunton & Blackdown Hills, west sheet
The route is shown as a white route on this mapping.

Finance Act & plans of 1910

The claimed route is shown on the plan as excluded from any of the surrounding plots or hereditament and is shown in the same manner as the other surrounding public roads.

Culmstock Parish Council 10 July 1899

A copy of a list of footpaths written in July 1899 describes the route as "*Inside Jackey Southey Lane towards Woodhayne*". This list explains "*It is not intended by this list to establish a claim to any footpath nor to relinquish the right to the public use of any footpath that may be omitted therefrom. The paths named are known to have been used as such by the public for years past*".

The list was signed by John Steer, Chairman, 6 Nov 1899.

Culmstock Parish Survey 1950s

The parish survey claimed the route as a footpath and it was recorded on the Definitive Map in December 1957 as Footpath No. 12a, (Jackey Southey Lane).

3. User Evidence

No user evidence has been provided in support of the claim. However there are many hoof prints in the earth along the route.

This suggestion was put forward by the British Horse Society as part of the informal consultation for the general review for the parish of Culmstock. It is supported by the current parish council.

The path has not been called into question as regards use by horse riders. There are no gates or barriers on this path. There is no evidence on site of any notices prohibiting use by horse riders.

4. Landowners' Views

No response has been received from the landowners.

5. Discussion

The route is currently recorded as a public footpath but there is evidence on the ground that it is used by horse riders.

The documentary evidence demonstrates that the route, known locally as Jacky Southey Lane, has always run along the same route as the hedged lane. There are no gates on the route to be locked and there is no evidence on site of any barrier having been erected to prevent horse riders going along the lane. The route has not been called into question and so there is no twenty year period to be examined.

Under Common Law there needs to be an implied dedication by the landowner and an acceptance by the public of unhindered use to establish a public right of way. Although there has been no opposition received to this upgrading, without user evidence it is not possible to say if such use is private, or by permission, or in the belief that the route enjoyed bridleway rights. Accordingly, it is not felt that an order can be recommended to upgrade the route.

6. Conclusion

On the evidence provided it is recommended that no Modification Order be made to upgrade Footpath No.12a to a public bridleway. Should any further information be received in the next six months it would seem sensible that it be considered straightaway.

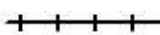



Map ref: ST 0982,1322

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Devon County Council
Definitive Map Review Culmstock
Route 2 suggested upgrading of Footpath No.12a (part)

drawing number	ED/PROW/11/59
date	May 2011
scale	1: 2500 (at A4)
drawn by	ES

<u>Notation</u>	
Suggested upgrading to bridleway (E - F)	 (approx 241m)
Existing footpaths	

Ian Harrison
 Deputy Executive Director
 Environment, Economy & Culture

