

**Definitive Map Review 2008–2011
Parish of West Down**

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 no Modification Order be made in respect of Route 1, claimed bridleway on Aylescott Lane between points A–B–C shown on drawing number EEC/PROW/11/36.

1. Summary

The report examines suggestions arising out of the Definitive Map Review in the parish of West Down.

2. Background

The original survey by the Parish Council in 1950 under s.27 of the National Parks and Access to the Countryside Act of 1949 put forward 18 footpaths and one bridleway. Five footpaths were withdrawn and one footpath was added from discussions with the County Surveyor, agreed at a Parish Council meeting in 1957. They were all recorded at the Draft Map stage, but two footpaths crossing the Ilfracombe railway line were deleted by the County Roads Committee in 1963 & 1964 after objections from the British Transport Commission. The bridleway, recorded on Aylescott Lane, was partly deleted and the remaining section of the lane was amended to a footpath by the Committee in 1964. The Definitive Map and Statement for Barnstaple Rural District, with a relevant date of 1 September 1957, recorded 14 footpaths in West Down parish.

The reviews of the Definitive Map under s.33 of the 1949 Act, started in the 1960s and 1970s but never completed, did not lead to any claims or suggestions for amending any of the recorded footpaths in the parish. The Parish Council reported in 1971 and 1978 that they were all believed to be correct. User evidence forms were collected in 1996 by the then Parish Clerk to support a claim that Aylescott Lane should be recorded as a bridleway, but they were not returned to the County Council until 2010 and are considered in the Appendix to this report.

With no alterations of recorded public rights of way, there are currently 14 footpaths recorded in West Down parish. The following Public Path Order has been made, which will require the making of a Legal Event Modification Order for recording in the publication of a new consolidated Definitive Map and Statement:

- (a) Devon County Council (Footpath No. 16, West Down) Public Path Diversion Order 2009.

3. Review and Consultations

The current Review was started in September 2008 with a public meeting in West Down. At the meeting, reference was made to the claim that had already been put forward previously and kept on file, although then without any supporting evidence. Other issues concerning recorded footpaths were identified, one of which has since been resolved by a diversion, with another included in the consultations but which is not considered in the Appendix to this report as it can also be dealt with by a diversion under delegated powers. Following the meeting, no further claims or suggested alterations have been made in respect of any other routes. The user evidence supporting the claimed bridleway was passed on by the former Parish Clerk in 2010, leading to the claim being included in consultations for the review process, with the further proposed diversion.

General public consultations on the review concerning the one claim and the proposed diversion were carried out in April 2011 and advertised in the local press. Responses to the consultations were as follows:

County Councillor Andrea Davis	-	no comment
North Devon Council	-	no comment
West Down Parish Council	-	no comment
Country Landowners' Association	-	no comment
National Farmers' Union	-	no comment
ACU/TRF	-	claim Route 1 as a Restricted Byway
Byways and Bridleways Trust	-	no comment
Cyclists Touring Club	-	no comment
Open Spaces Society	-	no comment
Ramblers	-	no comment

4. Conclusion

The recommendation is for no Modification Order to be made in respect of Route 1, the claim to record a bridleway on Aylescott Lane, as the evidence submitted and discovered is not sufficient. Details concerning the recommendation are discussed in Appendix I to this report. The procedures required to resolve an alignment issue with the other route will be dealt with by a diversion under delegated powers.

There are no other recommendations to make concerning any further modifications. However, should any valid claim be made in the next six months with sufficient supporting evidence it would seem sensible for it to be determined promptly rather than deferred.

5. Legal Considerations

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

6. Equality Considerations

There are no considerations.

7. Carbon Impact Considerations

There are no implications.

8. Sustainability Considerations

There are no implications.

9. Risk Management Consideration

There are no implications.

10. Reasons for Recommendation/Alternative Options Considered

To progress the parish-by-parish review of the Definitive Map in North Devon.

Ian Harrison

Electoral Division: Combe Martin Rural

Local Government Act 1972: List of Background Papers

Contact for enquiries: Nick Steenman-Clark

Room No: ABG, Lucombe House

Tel No: (01392) 382856

Background Paper	Date	File Ref.
Correspondence File	2008 to date	DMR/WDOWN/Parish File

nc030511pra
sc/cr/west down
03 hq 110511

Background to the Suggested Changes

Basis of Claims

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.

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 that:

- (i) 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, ... ; or
- (ii) 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 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 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.

Common Law presumes that a public right of way subsists if, 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.

1. Route 1, Claimed Bridleway on Aylescott Lane Between points A–B–C shown on drawing number EEC/PROW/11/36.

Recommendation: It is recommended that no Modification Order be made in respect of Route 1, the claim to record Aylescott Lane as a bridleway on the Definitive Map, as the evidence is not sufficient.

1.1 Background and Description of the Route

In 1995, the then Clerk to West Down Parish Council enquired about a route that was not recorded as a bridleway, but used by horseriders. Identifying it as Aylescott Lane, he said the Parish Council believed that it should be recorded as a bridleway on the Definitive Map and requested user evidence forms. The forms were sent to him with maps but were not

returned completed in support of the claim. Some of them were passed on by him to the County Council much later, in 2010, completed but without accompanying maps marked to show the route used.

The claimed bridleway starts from the end of the recorded minor surfaced county road leading to Higher Aylescott east of West Down village, Aylescott Lane (point A). It runs northwards from Higher Aylescott as a wide and hedged unsurfaced lane used for access by farm vehicles to adjoining fields, with the recorded Footpath No. 13 running along it and crossed by the recorded Footpath No. 14, to where it joins the recorded Footpath No. 12 (point B). The lane continues with no recorded public status for more than a kilometre, passing gateways to adjoining fields and farm buildings, ending at a gateway with a field gate opening onto the A3123 road from Blackmoor Gate to Ilfracombe west of Hore Down Gate (point C).

1.2 Historical and Recent Maps, Definitive Map and Statement, Reviews and Consultations

Earlier historical maps at smaller and larger scales show only part of Aylescott Lane on the claimed route, leading from the road east of West Down to or just beyond Higher Aylescott, but not continuing to the north as far as the road west of Hore Down Gate. Those include the Ordnance Survey surveyors' drawings of 1804-5 at 2"/mile and the original 1st edition 1"/mile map on which they were based, originally published in 1809, the later Greenwood's map of 1827 based on the Ordnance Survey map and the larger scale Tithe Map of 1841.

Later maps at larger scale record the whole of the claimed route in more detail, including the Ordnance Survey 25"/mile 1st and 2nd editions of the 1880s and early 1900s, but are not considered significant for investigation of the claim. They show only that the extension of Aylescott Lane has existed on its current line since at least the later 19th century, through to the early 20th century and when the Definitive Map was drawn up, recording it then as a bridleway.

The route was included with those surveyed originally by the Parish Council in 1950 for putting forward as public rights of way. It was numbered 13 and described as being a:

“Cart track bounded by hedge either side from entrance to Higher Aylescott farmyard northwards to field gate at main road Mullacott Cross to Hore Down.”

Its status was originally proposed to be a Road Used as a Public Path (RUPP), but queried and then agreed with the Parish Council in 1957 that it should be recorded as a bridleway.

It was included on the Draft Map and recorded in the Statement as Bridleway No. 13, starting at:

“the end of the Unclassified County road at Higher Aylescott Farm and proceeds northwards along a private accommodation road (not repairable by the inhabitants at large), Aylescott Lane, passing Little Stowford to join County road B.3343 about 300 yards west of Hore Down Gate.”

There was a challenge to recording the route as a bridleway with an objection made on behalf of the landowner at the publication stage of the Draft map, on the basis of lack of evidence. It was investigated and considered by the Roads General Purposes Sub-Committee in 1963, with a report to the County Roads Committee for a proposed deletion of the whole route. That was amended in 1964 to a partial deletion and reclassification to a footpath as a compromise agreed by the landowner and the Rural District Council. It led to the route being amended by deleting the section north of the junction with Footpath No. 12 and reclassifying the remainder to record it as a footpath for publication of the Definitive Map and Statement. The Statement was amended to refer to it as Footpath No. 13, along Aylescott Lane from Higher Aylescott only: “for about $\frac{1}{2}$ a mile to junction with

Footpath No. 12" and deleting the section on the continuation of the lane northwards to the road, which is how it is recorded currently on the Definitive Map.

There were no suggestions in the previous uncompleted reviews that the route should be considered for recording as a bridleway and the claimed addition and upgrading was included in the consultations for the current review on the basis of the evidence collected previously and submitted recently. It received specific responses with comments on behalf of landowners affected, but no further supporting evidence of use on horseback, although a claim was made on behalf of the Trail Riders Fellowship that it should be recorded as a restricted byway from long use on motorcycles.

1.3 User Evidence

Six user evidence forms of those sent to the Parish Clerk in 1995 were completed from later that year to early in 1996 and passed on to the County Council in 2010 in support of the claim. No further evidence of use was submitted in response to the consultations. There is, therefore, use only by those six people to consider, initially.

None of the user evidence forms was accompanied by maps showing the line of the route that had been used, but their descriptions of the route refer to the whole of Aylescott Lane. One of the users indicated that his use of the route on horseback or in a tractor was only between 1950–60 and for blacksmith work, which can be considered as permissive or private use and by invitation for business rather than public use. Another indicated that he had only used it on foot and horseback between 1936–56. Only sufficient use by the public after 1965, when the route was downgraded from bridleway to footpath and partly deleted, would provide evidence to support a claim that it should be recorded as a bridleway again. Similarly, two people said that they had used the route only on foot, which would not add supporting weight to a claim that it should be recorded as a bridleway.

It means that there are only forms for use by two people on horseback after 1965 to consider, one referring to use for 22 years and the other to use only for seven years between 1974–81. Although indicating that they had used the lane as part of a longer route for pleasure going to and from other places, such as Berrynarbor, Mullacott and Fullabrook, it does not provide substantial evidence of use by the public to support recording it as a bridleway. In support of the claim on behalf of the Trail Riders Fellowship, Aylescott Lane was reported to have been used regularly on motorcycles over many years without challenges, but no actual evidence of use was submitted.



1.4 Landowner Evidence

Following the consultations, completed forms were returned by owners of adjoining land, providing information about any actions they may have taken to indicate to users, particularly on horseback, that could be taken as any evidence of their lack of intention to dedicate the route as a bridleway.

1.5 Summary and Conclusions – Dedication under Statute and Common Law

Statute Law – Section 31, Highways Act 1980

The claim for the route to be recorded as a bridleway was not made at any time directly by a formal application, or following soon after some previous action taken by a landowner that had obstructed or prevented access to and use of the route from a specific date. Two of the users said there had been a gate on the route that had been locked occasionally, possibly referring to the field gate onto the road at point C, but without giving a specific date. The claim appears not to have been made in response to any specified recent event acting as a challenge to public use of the route. There is no evidence of any significant earlier actions that could be taken to have called into question use of the route, including by a landowner, for consideration of the user evidence under statute law.

The evidence of the gate being locked at some time is not specific enough to be sufficient for determining any exact date to consider the user evidence under statute law. If it was, there is limited evidence of use by the public on horseback during any possible 20-year periods, which is not considered sufficient and with no need to obtain any further details for clarification. No maps were attached to any of the user evidence forms showing the extent of the claimed route used and it also includes some evidence of use for private access, for business by invitation or otherwise with permission.

It is not necessary to consider any actions of landowners as evidence of lack of intention to dedicate, but there is evidence that the gate has been locked by current and previous landowners. The evidence of use can, therefore, be examined in relation to common law over a longer or shorter period, in conjunction with historical and other documentary evidence, with evidence relating to any actions by landowners.

Common Law

Historical mapping shows that a track existed physically on part of the line of the claimed route on Aylescott Lane from before the middle of the 19th century. It appears to have been considered then as a public road only to Higher Aylescott, continuing for private and agricultural access as a cul de sac to Little Stowford and land beyond but not as part of any longer route to connect with the public road to the north. The continuation of Aylescott Lane to the north beyond Little Stowford connecting with the road is shown to have existed by the date of the 1st edition large scale Ordnance Survey map surveyed in 1886, but no other evidence has been found to support it having been considered as a public road beyond Higher Aylescott. Its continuation is not shown as a public road in earlier and current records of maintainable highways.

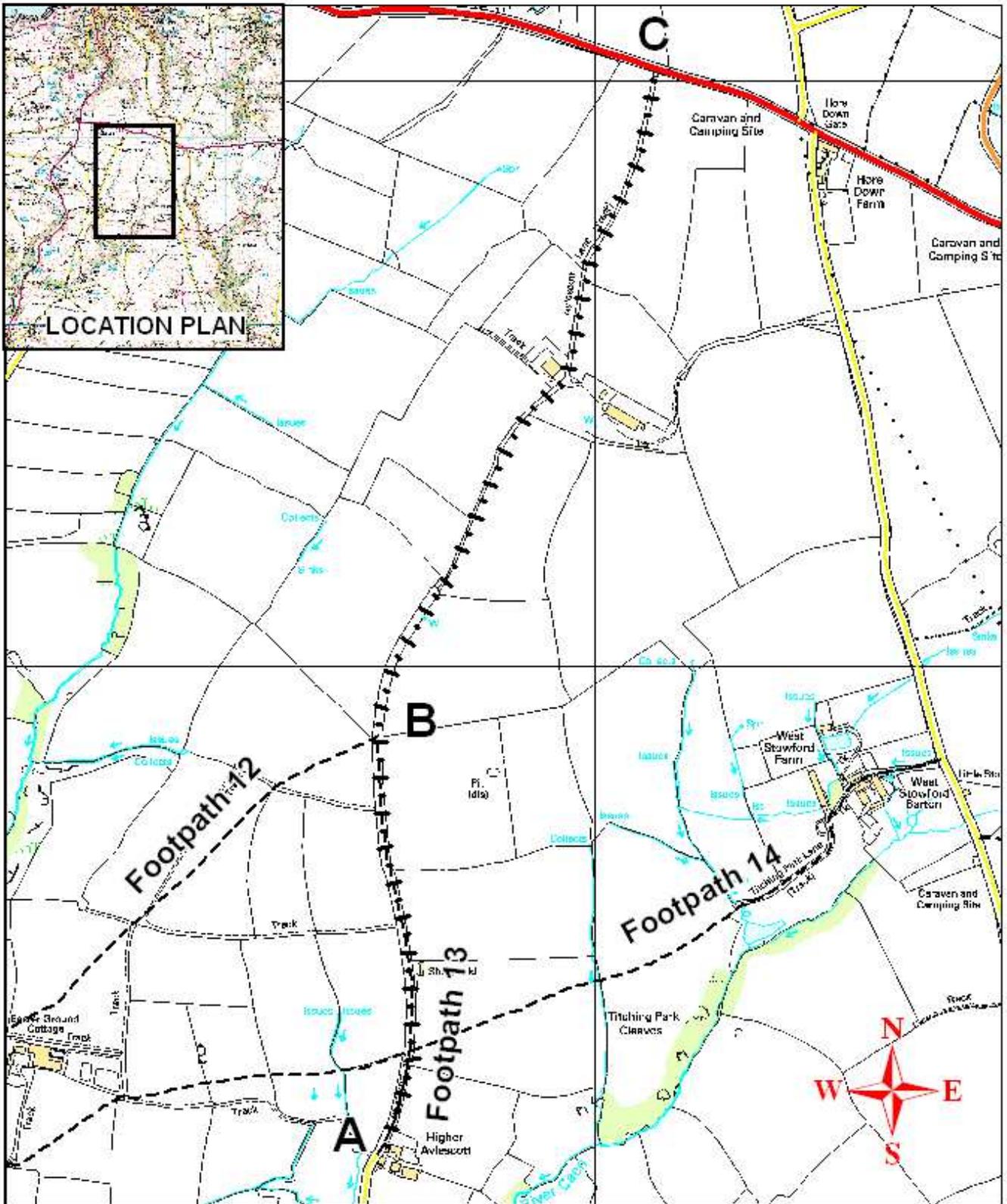
The continuation of Aylescott Lane was put forward in 1950 for recording on the Definitive Map as a road used as a public path. That was revised to bridleway for the Draft Map, but it was partly deleted and amended to footpath in 1965 for the Definitive Map after an objection on behalf of a landowner. For it to be considered for recording now as a bridleway there would have to be sufficient use on horseback after that date over any longer or shorter period than the 20 years relevant for the statutory test. The date of the earliest user evidence submitted for the claimed route is from the 1920s, some of it continuing up to 1995/6.

However, it can only be considered for two people as the public, with other use indicated as having been specifically for private or permissive access, including in vehicles and some only on foot.

Further details of the user evidence submitted has not been obtained, but it has been considered not sufficient in relation to any statutory 20-year period. Only two said that they had used it on horseback after 1965, which is not considered sufficient and there is no evidence, therefore, of any substantial and uninterrupted use of the route up to the present. The use is not sufficient to indicate that the owners were aware of it and had acquiesced. An intention to dedicate cannot, therefore, be inferred even though there is little contrary evidence in relation to the previous and current owners, for a significant period before the claim on behalf of the Parish Council in 1995 to record the route as a bridleway. There is no more recent evidence to suggest that the public have continued using the route as claimed and accepted it as a bridleway. Although reference has been made to use by motorcyclists for a claim that it should be recorded as a byway, no actual evidence of any such use has been submitted.

Considering the user evidence in conjunction with other evidence available and submitted, including historical evidence, dedication at common law with a status of bridleway after its partial amendment to footpath in 1965 for the Definitive Map cannot be inferred. Historical evidence suggests that the continuation of Aylescott Lane on the claimed route provided private agricultural access to land, with no stronger supporting evidence to suggest that it was public, or part of a longer route used by the public beyond its original proposal for recording it as a bridleway for the Draft Map. There is insufficient evidence to suggest that the landowner may have intended to dedicate the claimed route as a bridleway after 1965, that the public accepted the dedication and have continued to use it on that basis. It is in the light of this assessment of the evidence submitted, in conjunction with all other evidence available or discovered, that it is not considered reasonable to allege that a public right of way subsists on the route with the status of a bridleway.

From consideration under statute and common law there does not appear, therefore, to be a sufficient basis for making an Order in respect of the claim for the route to be recorded as a bridleway. Accordingly, the recommendation is that no Order be made to record the claimed route on the Definitive Map and Statement as a bridleway.



map ref ss5244/5344/5243/5343/5242/5342

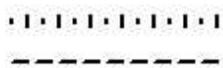
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Devon County Council
Definitive Map Review, West Down parish
Informal Consultations, Route 1:
Claimed bridleway, Aylescott Lane

drawing number EEC/PROW/11/36
 date Mar 11
 scale 1:10 000
 drawn by NSC

Notation

Claimed bridleway A - B - C
Existing footpaths



Chris McCarthy

INTERIM EXECUTIVE DIRECTOR
 ENVIRONMENT, ECONOMY & CULTURE

