

**Definitive Map Review
Parish of Hemyock (part 2)**

Report of the Head of Highways and Traffic Management

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 add a public footpath to the Definitive Map and Statement in respect of Suggestion 2 shown on drawing number HTM/PROW/12/07.

1. Summary

The report examines the second of three proposals arising from the Definitive Map Review in the parish of Hemyock in the district of Mid Devon.

2. Background

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 31 footpaths and 2 bridleways, which were recorded on the Definitive Map and Statement with a relevant date of 1 March 1958.

The following Orders have been made and confirmed:

Footpath No.34 Public Path Diversion Order 1972
Footpath No.37 Public Path Diversion Order 1977
Footpath No.25a Public Path Diversion Order 1991
Footpath No.33 Public Path Diversion Order 1992
Footpath No. 42b Public Path Diversion Order 1996
Footpath No.42 Public Path Diversion Order 1998
Bridleway No.22 Definitive Map modification Order 1996
Footpath No.35 Public Path Diversion Order 2006
Footpath No.19 Public Path Diversion Order 2006
Footpath No.8a Public Path Diversion Order 2010

Legal Event Modification Orders for these changes will be made under delegated powers in due course.

3. Review

A public parish meeting was held in Hemyock Village Hall in November 2005. Three proposals were put forward for modifying the Definitive Map, along with several proposed diversions of existing rights of way. The diversions will be dealt with under delegated powers and the third proposal will be the subject of a future report.

Informal consultations have been carried out with the following results:

County Councillor Ray Radford	-	no comment
Mid Devon District Council	-	no comments or objections
Hemyock Parish Council	-	supports proposal

Culmstock Parish Council	-	supports proposal
British Horse Society	-	supports proposal
Byways and Bridleways Trust	-	no comment
Devon Green Lanes Group	-	support proposal
Country Land and Business Association	-	no comment
National Farmers' Union	-	no comment
Ramblers' Association	-	no comment
Trail Riders' Fellowship	-	no comment
Natural England	-	object

4. Conclusion

It is recommended that no Modification Order for a public footpath be made in respect of the suggestion 2 as shown on drawing no. HMT/PROW/12/07.

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.

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Electoral Division: Willand & Uffculme

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence File	2005 – to date	DMR/HEM

es020212pra
sc/cr/dmr Hemyock pt 2
03 hq 090212

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;

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 2: Addition of a public footpath from the minor county road south of Coombeshead Farm, Culm Davy, Hemyock to the Access Land on Blackdown Common, Culmstock.

The route is shown between points A - B on drawing number HTM/PROW/12/07.

Recommendation: It is recommended that a Modification Order be made to add a public footpath to the definitive map and statement in respect of this suggestion.

1. Description of Route

The route starts at the minor county road south of Coombeshead Farm, Culm Davy, point A, and proceeds west north west along a stone and earth track, defined by hedged banks on both sides, passing Burleyhayes Cottage just west of point A. It continues along the lane and dog-legs north and then north west into woodland. The path follows a track across the top of a raised bank avoiding a wet bog and then continues north west, then north, along a wide track bounded by trees.

From the woodland the path continues in a northerly direction as a wide track between fields (with the Butterfly Conservation Trust land to the east) to the edge of Blackdown Common on the parish boundary with Culmstock at point B which joins the Access Land. There is a pair of

farm gates wedged across the top of the track to prevent the Blackdown ponies and cattle straying off the common.

2. Documentary Evidence

Ordnance Survey Maps

1880s 1st Edition OS map 25 inch to 1 mile

The route is clearly 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.

Modern Ordnance Survey Map 128 - Taunton & Blackdown Hills

The route is shown in its entirety as a white track on this mapping.

Tithe Map 1843 and Apportionment 1841

The route is shown as a wide and defined track, tinted in the same colour as all the other roads in the parish.

RAF Aerial photo 1946 - 1949

This shows the whole of the claimed route.

Hemyock Parish survey 1950s

On the parish survey map this route is not indicated or claimed as a path.

3. User Evidence

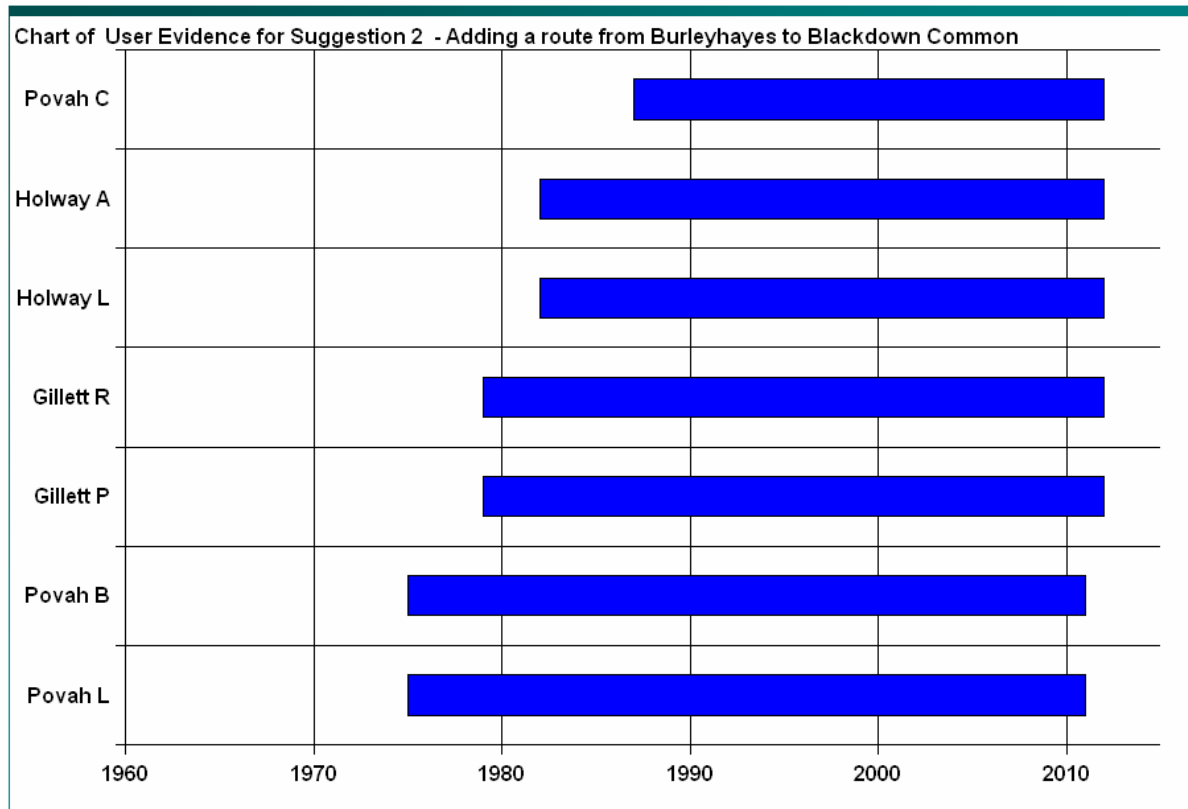
Seven user evidence forms have been submitted in support of this route as a public footpath. There has been no evidence submitted by horse riders. The P3 co-ordinator for Hemyock who submitted the evidence explains that he is aware of three other regular users of this path but they have declined to fill in a User Evidence Form.

Two of the seven walkers have used the route since 1975 to the present between six and twenty times a year as part of a circular walk for pleasure. One of the walkers says that there is a loose barrier on Blackdown Common to stop the animals on the common coming down the track, otherwise they say there are no gates or notices along the route. Neither of these walkers have been stopped or turned back when using the path and both state that the route is visibly well trodden.

Two further User Evidence forms have been submitted by the owners of Burleyhayes Cottage - they have also completed a Landowner Evidence Form in support of the route. They used the route on foot since 1979 to the present about twenty times a year from their home to Blackdown Common for pleasure. They too mention the loose gates on the common to prevent stock escaping.

Two other walkers have used the route on foot since 1982 to the present as a circular walk for pleasure, eight to ten times a year. They have come to use the path through local knowledge and one says "I have walked this path since 1982 as many of the public do on walks, I think it has been a path for many many years". The other walker adds "As a Blackdown Hills walk leader for various clubs and ramblers groups, I have used this path many times since 1990 when I first led walks in the Blackdown Hills. This path is also used by other leaders as well as myself". Neither walker ever obtained permission to walk the path nor have they been challenged or turned back. They have not seen notices on the route and the path has not been blocked or diverted and both observe that the route is well trodden.

The seventh walker has walked the path five to ten times a year since 1987 to the present day. She used it as a circular walk on foot for pleasure and has not seen any notices or been turned back. She mentions the barriers on Blackdown Common but not as an obstruction to her walk, only to prevent stock from coming down the path. She also mentions that the owners were aware of the path being used as it is well trodden.



All the User Evidence is for use on foot.

4. Landowner Evidence

Mr Peter Gillett completed a Landowner Evidence form in August 2011 and at that time had owned Burleyhayes Cottage for 32 years. He has known the route to be a public footpath for 32 years and has seen members of the public using the path. He describes the use as “light pedestrian use. Horse riders try but have to return” Mr Gillett states that he has never required anyone to ask permission to use the path, turned anyone back or put up notices indicating that the way was not public. Mr Gillett acknowledges the location of the gates on Blackdown Common. He also gives additional information with regards to the route as a bridleway suggesting it has been rarely used due to the marsh/bog caused by a spring line in the woods saying “where the route passes through the woodland it crosses a spring line and a substantial and deep marsh covers the track. Horses have been seen to go up to their bellies when riders have tried this route”.

Mr P Saunders from Coombeshead Farm owns the fields on the eastern side of the path up to the Butterfly Conservation Trust land on the edge of Blackdown Common. In a telephone conversation, Mr Saunders said that he was apprehensive and not really in favour of the route becoming a public right of way. Part of it abuts his field boundary and he has concerns that it may be damaged. Mr Saunders is also concerned that should the path become recorded as a

footpath then there would be more walkers using it and that could lead to cars being parked on the narrow road that leads to his farm causing an obstruction for his farm machinery.

Mr Martin Farmer owns fields abutting the south west side of the track from behind Burleyhayes Cottage and the woodland that the route passes through. In response to correspondence, Mr Farmer replied via email and said “thank you for your letter today, regarding the track at Burleyhayes, the wood and boggy land is in my ownership is a SSSI. I think you must contact Natural England about your intentions.”

Natural England has objected to the claim as the section through the woodland is part of the Blackdown Common SSSI. They state that the proposal could have an adverse effect leading to erosion and path widening.

The Butterfly Trust own two parcels of land adjacent to the route. One field directly abuts the track but is separated by a wire fence that is over a metre high, grown through with bracken. John Davis from the Trust was anxious that the route did not cross the butterfly reserve, otherwise he has no objections in principle. He has also sent in a copy of a deed from the previous owner that sets out the access rights across Blackdown Common to the Trust’s reserves.

Mr R Garrett owns the fields above the woodland and to the north west of the path adjacent to Blackdown Common. In his response to the informal consultation Mr Garrett says “We have nothing against Proposal No.1. We do, however, have reservations about No.2, not just because it passes over some of our land but because of the detrimental effect on Burleyhayes Cottage at the entrance of the Bridleway”.

5. Discussion

Blackdown Common is an ancient and historical landscape dominating the head of the parishes of Culmstock and Hemyock. It also provides an important link into the Blackdown Hills.

The Tithe Map of Hemyock dated 1843 shows the entire route as a wide track running as a continuous link up to Blackdown Common. There are no gates or barriers marked at any point across this route. This path is marked on the map in the same tint as other roads that are public highways today. However, it is not possible to say if any differentiation was intended between public and private paths or roads.

The later Ordnance Survey maps of the 1880s and 1904-06 to the present day display 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. However, they provide clear evidence that the lane has remained as a physical feature for well over 100 years and has provided a means of access on and over Blackdown Common to villages and hamlets in neighbouring parishes.

The seven User Evidence forms show that the path has been used for 37 years openly and freely without any challenge from landowners. The use of the path is moderate, varying from 8 – 20 times a year, but the route is well trodden along its entire length suggesting other users who have not completed an evidence form. There has been no attempt to block access along the path by adjacent landowners and no notices have been erected to deter users or to suggest that it was a permissive track.

Two of the users live adjacent to the route at Burleyhayes Cottage, but they are fully in favour of it being recorded as right of way. They have been clear in their evidence that they have seen walkers using the path and not prevented anyone from using it. They also state that horse riders have tried to use the route unsuccessfully.

The boundary bank that the path follows through the woodland is substantial and Mr Saunders main concern is for the integrity of the bank which adjoins his land. This raised bank that the path follows does not in fact immediately adjoin the adjacent fields and is substantial enough for use on foot. The possibility of additional use of the route causing traffic or parking problems along the minor road is unlikely and outside the scope of consideration of the existence of public rights along this path.

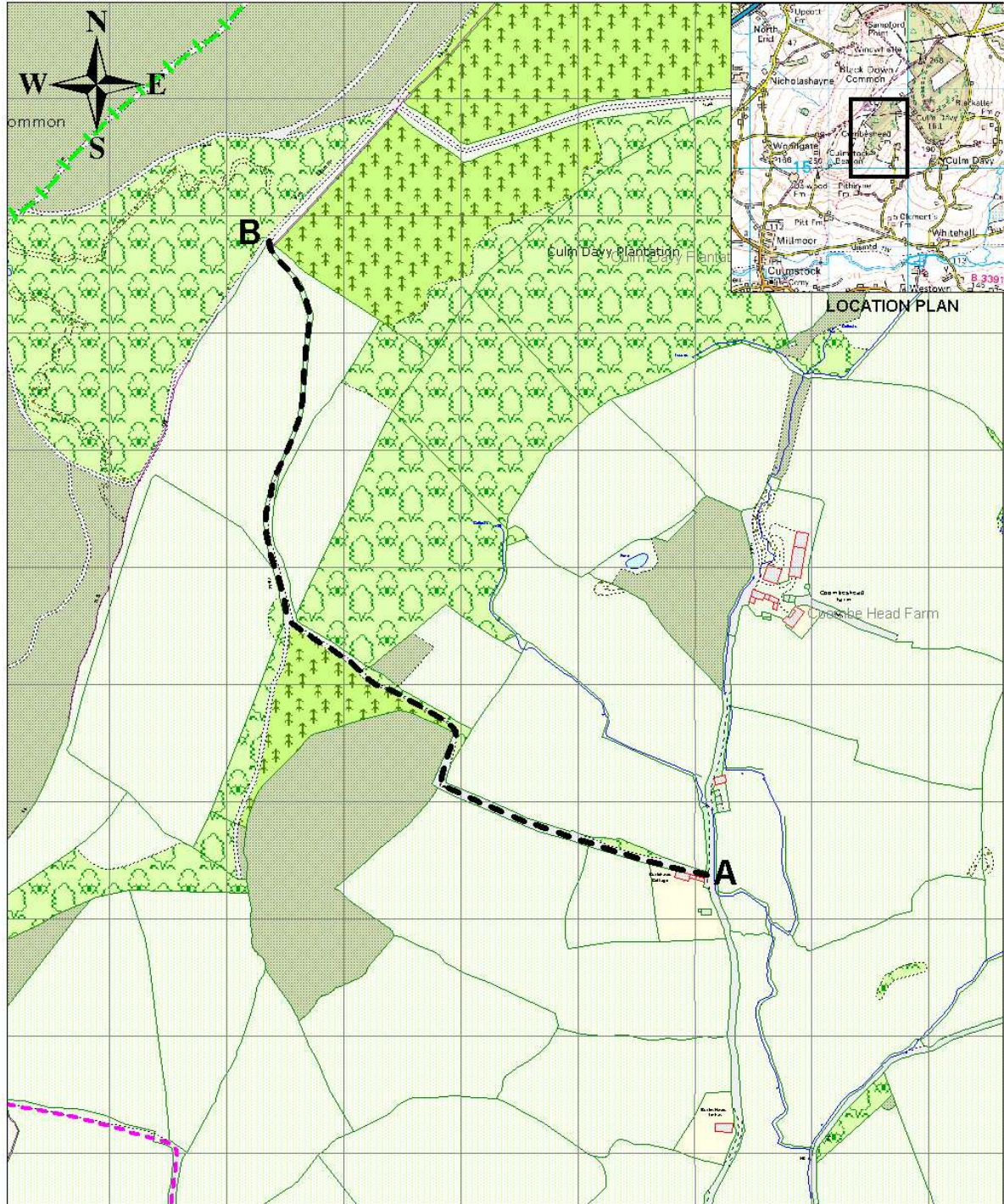
The objection from Natural England is not relevant and they have withdrawn similar objections for other routes in the area when orders have been published.

The woodland is included as part of the Blackdown SSSI that extends over the whole of the Common which is registered as open access land for walkers. It is depicted as such on the OS map for Taunton – Blackdown Hills.

6. Conclusion

The route has been freely available for use by the public on foot for over 37 years and there have been no challenges to call the route into question.

Due to a lack of a calling into question it not possible to consider the evidence under section 31 of the Highways Act 1980 and the 20 year period required for presumed dedication does not apply. However, use of the route has been such that it would appear rights have been acquired under Common Law and it is therefore recommended that a Modification Order be made to record a public footpath on Definitive Map and Statement along the line A – B as shown on plan no. HTM/PROW/12/07.



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DEFINITIVE MAP REVIEW - HEMYOCK

Notation

Suggestion 2 - Claimed Footpath A - B (800m) - - - -

drawing number HTM/PROW/12/07
 date February 2012
 scale 1:5000
 drawn by ES

Lester Willmington
 Head of Highways & Traffic Management

