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HTM/12/36
Public Rights of Way Committee
21 June 2012

Definitive Map Review 2005–2012: Parish of Honiton – part 1

Report of the Head of Highways and Traffic Management

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

Recommendation: It is recommended that no Modification Orders be made in respect of:

- (a) Route 1, claimed byway, Targets/Claylands Lane – Schedule 14 application to add a Byway Open to All traffic from Littletown Road to near Upland Chase between points A–B shown on drawing number HTM/PROW/12/32;
- (b) Route 2, claimed footpaths from Middlehills Farm to Farway Hill – Schedule 14 application to add footpaths from near Middlehills Farm to Higher Blannicombe, Old Ottery Road and Fish Lane on Farway Hill, points C/D–E–F–G/H shown on drawing number HTM/PROW/12/33; and
- (c) Route 5, claimed byway, Cottishayne Lane – Schedule 14 application to add a Byway Open to All Traffic from Turk’s Head Lane towards River Otter and picnic area on A30, points N–O–P, O–Q shown on drawing number HTM/PROW/12/35.

1. Summary

The report examines three claims from formal applications in connection with the Definitive Map Review in the town of Honiton and its surrounding former Borough area considered as a parish.

2. Background/Introduction

The original survey by the Borough Council in November 1956 under s.27 of the National Parks and Access to the Countryside Act of 1949 put forward 17 footpaths in the Honiton Borough area. Two footpaths were withdrawn by the Borough Council and four combined into two, with one proposed to be withdrawn but recorded and another added later. The remaining 14 paths were recorded at the Draft and Provisional Map stages for consultations with no objections and those were recorded as footpaths on the original Definitive Map and Statement for Barnstaple Rural District, with a relevant date of 1 September 1957.

The reviews of the Definitive Map, under s.33 of the 1949 Act, which commenced in the 1960s and 1970s but were never completed, produced suggestions submitted by Honiton Town Council in 1978 for amending several routes. No supporting evidence was submitted and they were dealt with subsequently by other procedures, including diversions. The Limited Special Review of Roads Used as Public Paths (RUPPs), carried out in the early 1970s, did not affect this parish, as there were no routes recorded in it with that status.

A series of formal Schedule 14 applications to record claimed routes as footpaths and Byways Open to All Traffic have been submitted since 1992, mainly by or on behalf of the Town Council, with or without supporting evidence, along with other informal claims. Several were investigated ahead of the review and have been reported to previous committees since then, with most of them not resulting in routes being recorded, including after a public inquiry

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and some resulting in the addition of footpaths. Other formal applications and claims deferred to be dealt with as part of the review process are considered in the Appendix to this report.

With more footpaths recorded by Modification Orders from those and other procedures, there are currently 19 footpaths recorded in Honiton parish. The following additional Orders from alterations to footpaths, including diversions, have been made and will require the making of a Legal Event Modification Order for recording on a new reviewed Definitive Map:

- (a) The Stopping up of Highways (County of Devon) (No.5) Order 1963, Town and Country Planning Act 1962, Footpath No. 4;
- (b) The Stopping up of Highways (County of Devon) (No.1) Order 1965, Town and Country Planning Act 1962, Footpath No. 7;
- (c) The Diversion of Highways (County of Devon) (No.3) Order 1968, Town and Country Planning Act 1962, Footpath No. 1;
- (d) Honiton Petty Sessional Division Magistrates Court Order 1968, stopping up of classified county road reserving footpath, creation of Footpath No. 2;
- (e) The Borough of Honiton (The Glen) (No.7) Public Path Diversion Order 1973, Highways Act 1959, Footpath No. 8;
- (f) East Devon District Council (Footpath No. 11, Honiton) Diversion Order 1979, Highways Act 1959;
- (e) The County of Devon (Footpath No. 9, Honiton) Public Path Diversion Order 1980, Highways Act 1959 (Countryside Act 1968);
- (f) Public Path Dedication Agreements 1982, Devon County Council and Honiton Town Council, dedication of footpath sections from Chapel Street, Footpath No. 4;
- (g) The Stopping up of Highways (County of Devon) (No. SW2) Order 1995, Town and Country Planning Act 1990, creation of Footpath No. 22;
- (h) The County of Devon (Footpath No. 19, Honiton) Public Path Diversion Order 1995, Highways Act 1980;
- (i) Devon County Council (Footpath No. 17, Honiton) Public Path Diversion Order 1996, Highways Act 1980;
- (j) East Devon District Council (part Footpath No. 11, Honiton) Extinguishment Order 1998, Highways Act 1980;
- (k) Devon County Council (Footpath No. 13, Honiton) Public Path Diversion Order 1998, Highways Act 1980;
- (l) Public Path Creation Agreement 2004, Devon County Council and East Devon District Council, Highways Act 1980 S. 25, footpath along part of Higher Brand Lane, Footpath No. 23.

3. Review and Consultations

The current Review was started in July 2005 with an introductory public meeting in Honiton. At the meeting, reference was made to applications and claims that had been put forward previously and kept on file, with or without any supporting evidence. Following that meeting, further applications and claims were made by the Town Council in respect of other routes, with some additional evidence submitted in support of previous claims. There appeared not to be a prima facie case for some of the claims already put forward, although others were investigated ahead of the review and have been reported to the committee. As there had been some time without progress on the general review, it was considered necessary to start the process again, particularly to clarify the claims received from the Town Council and in the hope of receiving further evidence. A second public meeting was held in November 2011, which included references to the previous claims and further meetings were held with the Town Council for more detailed clarification of their applications and claims.

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General public consultations on the review concerning three claimed footpaths and two claimed Byways Open to All Traffic from formal applications and evidence submitted were carried out in May 2012 and advertised in the local press. Responses to the consultations were as follows:

County Councillor Paul Diviani	-	no comment
County Councillor Sara Randall Johnson	-	no comment
East Devon District Council	-	no comment
Honiton Town Council	-	responded with reference to documentary evidence in support of the claim for Route 1 if continued by the applicants, suggesting a delay for consideration of the application for Route 2 and supporting the claim for Route 5, deferring a response on Routes 3 and 4.
Combe Raleigh Parish Meeting	-	responded in connection with Route 3, that the claimed footpath should not be approved.
Country Land and Business Association	-	no comment
National Farmers' Union	-	no comment
ACU/TRF	-	no comment
British Horse Society	-	no comment
Ramblers	-	responded in connection with Routes 1, 2 and 5 that there is insufficient evidence to support the claims, with no further user or documentary evidence.

4. Conclusion

The recommendation is for no Modification Orders to be made in respect of the Schedule 14 applications for Routes 1, 2 and 5, as the historical evidence submitted and discovered is not considered sufficient. Details concerning the recommendation are discussed in the Appendix to this report. The claims for Routes 3 and 4 made on the basis of user evidence submitted will be investigated for a subsequent report to the Committee. There are no other recommendations to make concerning any further modifications. Claims for missing links in urban surfaced footpaths in the town of Honiton without supporting evidence can be dealt with by other procedures for possible dedication and creation from powers under delegated authority. However, should any valid claim with sufficient evidence be made in the next six months it would seem sensible for it to be determined promptly rather than deferred.

5. Financial Considerations

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

6. Sustainability Considerations

There are no implications.

7. Carbon Impact Considerations

There are no implications.

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8. Equality Considerations

There are no considerations.

9. Legal Considerations

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

10. Risk Management Consideration

There are no implications.

11. Reasons for Recommendation/Alternative Options Considered

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

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Electoral Division: Honiton St Paul's and Honiton St Michael's

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence File	1992 to date	NSC/DMR/HON

ns170512pra
sc/cr/dmr Honiton part 1
04 hq 080612

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Appendix I To HTM/12/36

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, ...

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 Schedule 14 of the Act.

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.

Section 69 of the Natural Environment and Rural Communities Act 2006 amended the Highways Act 1980, to clarify that a Schedule 14 application for a Definitive Map Modification Order is, of itself, sufficient to bring a right of way into question for the purposes of Section 31(2) of the Highways Act 1980.

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.

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1. Route 1, claimed byway, Targets/Claylands Lane – Schedule 14 application to add a Byway Open to All traffic from Littletown Road to near Upland Chase between points A–B shown on drawing number HTM/PROW/12/32

Recommendation: It is recommended that no Modification Order be made in respect of Route 1, the application to record Targets/Claylands Lane as a Byway Open to All Traffic on the Definitive Map, as the evidence is not sufficient.

1.1 Background and Description of the Route

In March 1992, a Schedule 14 application was submitted by the then local representative for the British Horse Society to record an old lane, known as Targets Lane or Claylands Lane and not recorded as a public right of way, as a Byway Open to All Traffic between points A–B on the attached map. It was made in advance of proposed housing development in the southern outskirts of Honiton, with reference to supporting historical map evidence but no evidence of claimed use by the public.

The application was said to be in the interests of access, even though the lane was known to be a cul-de-sac ending in farmland, as well as conservation to preserve trees and hedgerows growing along its remaining length, that would enhance the new housing development. It was acknowledged that there was no supporting evidence of use by the public, as the route had for over a century been adjacent to a shooting range and at one time next to an isolation hospital. Following a site visit in 1993 with the developer, it was agreed to leave the remains of the lane undisturbed by the housing development and leave the claim until the Definitive Map Review process took place in Honiton.

With a series of housing developments having been completed in the area since the application was made, the route of the claimed byway starts from Littletown Road (point A) and follows southwards generally what are now the lines of tarmac footways put in through open green spaces around the housing estate and alongside the Gissage river. The remaining length of the old wooded lane, now overgrown and inaccessible, continues alongside the garden fences of houses on the edge of a green space beside a housing estate access road. The old lane ends at Battishorne Way, a through road built across its line as part of the wider development of the area. Tarmac footways continue beyond that on its former line, through more green space and ending in further open green space beyond the housing development on the southern edge of Honiton (point B).

1.2 Historical and recent maps, aerial photography, Reviews and Consultations

Earlier historical maps at smaller scales show the lane on the claimed route as a cul-de-sac, including the Ordnance Survey surveyors' drawings of 1806-7 at 2"/mile and the original 1st edition 1"/mile map on which they were based, originally published in 1809 and the later Greenwood's map of 1827 based mainly on the Ordnance Survey map. The larger scale Tithe Map of 1843 shows it as a cul-de-sac, leading from Littletown Road and ending in farmland south of Honiton, coloured the same as other roads now recorded as public, but not identified or labelled separately as such and including others now providing private access to farmland.

Later larger scale maps 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. They show the route providing access to Claylands Cottage and Dairy and beyond to land alongside a rifle range showing the locations of targets, explaining its alternative names. RAF aerial photography from 1946-9 shows the route as access to Claylands and the rifle range, with the wooded section alongside providing access to adjoining farmland and ending as access to higher parts of the range and targets there, but with no continuation further. Later editions

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of Ordnance Survey maps from 1958 and 1975 show the lane in the same way leading only to farmland and the rifle range, with no continuation.

All of the mapping shows that the lane has existed on its current line since at least the early 19th century, through to the later 20th century before development of housing estates and roads in the area. Later aerial photography between 1999–2000 and 2007 shows the area after the housing development, with footways on parts of the route of the old lane and the wooded section remaining as it is today.

The claimed route was not included with those surveyed originally by the Borough Council in 1956 for putting forward as public rights of way and it is not recorded on the Definitive Map and Statement. It has not been recorded as a public road in earlier, later and current records of publicly maintainable highways. There were no suggestions in the previous uncompleted reviews that it should be considered for recording as a public right of way. A limited consultation took place with the Town and District Council in December 1992. There was no objection from East Devon District Council, but Honiton Town Council did not consider it appropriate to be recorded as a byway in the middle of a housing estate. They had no objection to it being a footpath on the general line of the old lane, with protection of its banks and vegetation where retained.

The claimed addition was included again in the consultations for the current review on the basis of the application submitted in 1992 and remaining undetermined. It received no specific responses with further supporting evidence, including of any past use, to support recording it as a byway.

1.3 User and landowner evidence

No completed user evidence forms were submitted with the copies of historical maps accompanying the application form. None were sent in following the later consultations and there is, therefore, no evidence of use by the public to consider further.

A completed landowner evidence form was submitted in 1992 on behalf of the developer as owner of land on the claimed route, who did not believe it to be a public right of way as it was partly very overgrown and not possible to use in its present state. They had not turned anyone back or stopped people from using the route, had not put up notices or signs stating that it was not a public right of way, had not put up gates or stiles on the route and had not obstructed it.

1.4 Summary and Conclusions – Dedication under Statute and Common Law

Statute Law – Section 31, Highways Act 1980

The application in 1992 to record the claimed route as a Byway Open to All Traffic was not made in response to any particular event acting as a significant challenge to use of it following soon after any previous action taken by a landowner that had obstructed or prevented access to and use of it from a specific date. The claim appears not to have been made in response to any specified event acting as a challenge to public use of the route, but in response to planning for proposed housing development. 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 any evidence of use under statute law.

However, under section 31(2) of the Highways Act 1980, as amended by Section 69 of the Natural Environment and Rural Communities Act 2006, the Schedule 14 application is sufficient to bring a right of way into question. It would provide the date of an event that can be taken as challenging the public's right to use a route, but only if there are no more significant earlier events or actions having done so at a specific earlier time that may have

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led to or resulted in the application being made. There is no evidence of any previous significant actions in this case to provide an earlier date for consideration of evidence under statute law. It means that the period for considering the application on any evidence of use is the 20 years from March 1972 to the date of the application in March 1992.

No evidence of use was submitted with the application or subsequently, so that there is no support for recording the route by presumption of dedication from use under statute law. The evidence is, therefore, considered insufficient to support the recording of the route as a Byway Open to All Traffic, or with any other status as a public right of way, by presumption of dedication from claimed use. There is, therefore, no need to consider whether there were actions taken by the landowners during that period to provide sufficient evidence of any lack of intention to dedicate the route. The evidence will, therefore, need to be examined in relation to common law, considering the historical map and documentary evidence submitted with the application and discovered, with any evidence relating to actions by landowners, if required.

Common Law

Historical mapping shows that a track existed physically on the line of the claimed route from the early 19th century until the later part of the 20th century. It appears to have been private and agricultural access as a cul de sac to Claylands, the rifle range and farmland beyond but not as part of a longer route to connect with any public road or leading to a point of interest for the public. There is no more significant evidence to suggest that it was ever considered to be a public road, or a public right of way of any kind. It has not been included in the past and current records of maintainable highways.

Considering the historical map evidence supporting the application, in conjunction with other evidence available and discovered, earlier dedication as a carriageway or public road for the route to be recorded with the status of Byway Open to All Traffic cannot be inferred at common law. Historical evidence suggests that the lane on the claimed route provided private access to agricultural land and the rifle range, with no stronger supporting evidence to suggest that it was public, or part of a longer route used by the public. There is insufficient evidence to suggest that it was any form of public road, or that the landowner may have intended to dedicate the claimed route, that the public accepted the dedication and have continued to use it on that basis, with no evidence of any claimed public use submitted. 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 any form of public right of way subsists on the route.

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 application for the route to be recorded as a Byway Open to All Traffic, or as a public right of way with any status. Accordingly, the recommendation is that no Order be made to record the claimed route on the Definitive Map and Statement, as a Byway Open to All Traffic.

2. Route 2, claimed footpaths from Middlehills Farm to Farway Hill – Schedule 14 application to add footpaths from near Middlehills Farm to Higher Blannicombe, Old Ottery Road and Fish Lane on Farway Hill, points C/D–E–F–G/H shown on drawing number HTM/PROW/12/33

Recommendation: It is recommended that no Modification Order be made in respect of Route 2, the application to record footpaths from Middlehills Farm to Farway Hill on the Definitive Map, as the evidence is not sufficient.

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2.1 Background and Description of the Route

In May 1992, a Schedule 14 application was submitted by the then Clerk of Honiton Town Council to record as claimed footpaths linked routes in farmland to the south of the built up area of Honiton leading out to woodlands on Farway Hill, from points C and D to points G and H on the attached map. The application was made with reference to a list of supporting historical map and documentary evidence, but with no accompanying evidence of claimed use by the public. Another application was submitted at the same time for other interlinked routes nearby in the same area, including part of the route between points D–E claimed in this application. That application was made with reference to similar evidence, which has been investigated and was reported to a previous committee, resulting in no Order being made. This application has been kept on file until the Definitive Map Review process is taking place in Honiton.

The claimed routes start from the minor surfaced county road near Middlehills Farm (point C) and a field gate on an unsurfaced track recorded as a highway not maintainable at public expense near Stout Farm (point D). From point C, it runs southwards along a private vehicular access track to the Higher Blannicombe Farm buildings and properties named Applewood and Oakhayes (point E). From point D, it follows a track across a pasture field and through a gate to cross another field, then across a garden to join the access track near the farm buildings at point E. Beyond the buildings, it continues generally southwards along a hedged farm access track giving access to grass fields through gates, continuing alongside and through woodlands to point F at Blannicombe Plantation.

From there, one route runs southwards crossing grass fields to end a point G on a wooded enclosure, claimed as being on the line of an old road to Ottery St. Mary, but not recorded as a highway or public right of way. The other runs eastwards through a gate and along the edge of a grass field, through gates to turn southwards into woodland to a gate at point H. That is on a track in the forestry plantation on Farway Hill, known a Fish Lane and claimed to be another old road, that is also not recorded as a highway or public right of way.

2.2 Historical and recent maps, aerial photography, Reviews and Consultations

Earlier historical maps at smaller scales show part of the claimed route as a track from Middlehills Farm between points C–E–F, through Higher Blannicombe Farm and ending in open land, now Blannicombe Plantation, with no continuation beyond to points G and H. They show the section of road leading to point D continuing to the southeast as a cul-de-sac, but with no track leading off it on part of the claimed route between points D–E. Those include the Ordnance Survey surveyors' drawings of 1806-7 at 2"/mile and the original 1st edition 1"/mile map on which they were based, originally published in 1809 and the later Greenwood's map of 1827 based on the Ordnance Survey map.

The lines of other tracks are shown crossing the open unenclosed land on Farway Hill to the south of point F, which are said to have been the routes of old roads. One is shown passing at point G as the continuation of what is claimed to be the old road to Ottery from Farway, partly recorded now as a bridleway in that parish. The other continues northeastwards from the bridleway along the parish boundary passing point H, claimed to be part of an old road from Honiton to Farway Hill, Fish Lane.

The list of supporting documents with the application includes an extract from an Act of Parliament in 1822, for "making, widening, repairing and maintaining certain Roads leading to and from the Town of Honiton, in the County of Devon". It included a reference to:

"Provision ... for more effectively amending, widening, and maintaining the Road leading from Brook Hill in the Town of Honiton aforesaid, through Love Lane and the

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South Vale of Honiton, to Higher Blannicombe Farm, and that the same should be continued through Blannicombe Farm to Ring-in-the-Mire upon Farway Hill ...”

The route was one of several roads listed that were proposed to be put under the care and management of Trustees authorised to take the Act forward on behalf of the Honiton Turnpike Trust.

It is shown on a Quarter Sessions Deposited Plan dated 1821 of a “Proposed New Line of Road between Honiton, Seaton, Beer & Sidmouth”, including the section between points C–E–F on the claimed route. A continuation is shown on a line southwards generally in the same direction towards point G, but with nothing shown continuing to point H. Under later legislation, the Honiton Turnpike Roads Act of 1855, the 1822 Act was repealed and the southern part of the road as proposed to be continued was abandoned and not included with those routes to be the responsibility of the Honiton Turnpike Trust.

Later larger scale maps show parts of the claimed route in more detail, including the Tithe Map of 1843, Ordnance Survey 25”/mile 1st edition of the 1880s and the 2nd edition of the early 1900s. They show an unenclosed track leading from the road at point C to Higher Blannicombe Farm at point E, but no line of any track from the road at point D. The track is shown continuing through fields to Blannicombe Plantation at point F, with no continuation beyond to point G. The earlier Ordnance Survey 25”/mile 1st edition shows a track turning eastwards from point F on the claimed route as a cul-de-sac ending in the adjoining field with no continuation to point H. It is not shown on the later 2nd edition, but a continuation from that end point to point H is shown.

RAF aerial photography from 1946-9 shows the claimed route as a track leading from point C to the farm at point E and continuing through fields to point F, but no continuation in the fields beyond and no track from D–E. Later editions of Ordnance Survey maps from 1946 and 1957/9 show the lane in the same way leading only to the farm and to land beyond, with no continuation and only a short section of a track leading from point D into fields, with no continuation further to join the track at point E.

All of the mapping shows that parts of the claimed route between C–E–F–G has existed as a track along its current line since at least the early 19th century, when it appears to have been proposed for inclusion in the public road network from the 1820s. However, that was abandoned later, with most of it remaining as a track providing access only to Higher Blannicombe Farm buildings and beyond to fields and woodlands to point F. No continuation is shown leading further to points G and H, or any link from point D. That is supported up to more recently, with later aerial photography between 1999–2000 and 2007 showing it as a farm track, partly hedged, with no obvious or worn continuation and no link to any other route now recorded as a public road.

The claimed route was not included with those surveyed originally by the Borough Council in 1956 for putting forward as public rights of way and it is not recorded on the Definitive Map and Statement. It has not been recorded as a public road in earlier, later and current records of publicly maintainable highways. There were no suggestions in the previous uncompleted reviews that it should be considered for recording as a public right of way. Information was obtained from the affected landowners in June 1992, but there were no wider consultations then or limited consultations only with the Town and District Council.

The claimed addition was included in the consultations for the current review on the basis of the application submitted in 1992 and remaining undetermined. It received no specific responses with further supporting evidence, including of any past use, to support recording it as a footpath.

2.3 User and landowner evidence

No completed user evidence forms were submitted with the list of historical map and documentary sources accompanying the application form. None were sent in following the later consultations and there is, therefore, no evidence of use by the public to consider further.

Completed landowner evidence forms were submitted in 1992 by three owners of land on the claimed route who did not believe it to be a public right of way. They had not turned anyone back or stopped people from using the route, as nobody had been seen using it, apart from one person very recently around the time of the application. They had not put up notices or signs stating that it was not a public right of way, as it was not considered necessary, they had not put up gates or stiles on the route and had not obstructed it.

2.4 Summary and Conclusions – Dedication under Statute and Common Law

Statute Law – Section 31, Highways Act 1980

The application in 1992 to record the claimed routes as a footpaths was not made in response to any particular event acting as a significant challenge to use of the claimed routes following soon after any previous action taken by a landowner that had obstructed or prevented access to and use of them from a specific date. The claim appears not to have been made in response to any specified event acting as a challenge to public use of the routes. There is no evidence of any significant earlier actions that could be taken to have called into question use of the routes, including by a landowner, for consideration of any evidence of use under statute law.

However, under section 31(2) of the Highways Act 1980, as amended by Section 69 of the Natural Environment and Rural Communities Act 2006, the Schedule 14 application is sufficient to bring a right of way into question. It would provide the date of an event that can be taken as challenging the public's right to use a route, but only if there are no more significant earlier events or actions having done so at a specific earlier time that may have led to or resulted in the application being made. There is no evidence of any previous significant actions in this case to provide an earlier date for consideration of evidence under statute law. It means that the period for considering the application on any evidence of use is the 20 years from May 1972 to the date of the application in May 1992.

No evidence of use was submitted with the application or subsequently, so that there is no support for recording the routes by presumption of dedication from use under statute law. The evidence is, therefore, considered insufficient to support the recording of the routes as footpaths, or with any other status as public rights of way, by presumption of dedication from use under statute law. There is, therefore, no need to consider whether there were actions taken by the landowners during that period to provide sufficient evidence of any lack of intention to dedicate the routes. The evidence will, therefore, need to be examined in relation to common law, considering the historical and other documentary evidence submitted with the application and discovered, with any evidence relating to actions by landowners, if required.

Common Law

Historical mapping shows that a track has existed physically on the line of part of the claimed route since at least the early 19th century, with the suggestion that it was part of an older historical packhorse route from Honiton to connect with other old roads crossing the then unenclosed lands on Farway Hill and Gittisham Hill. It was considered in the 1820s for including in the network of proposed new public roads to be maintained by the Honiton Turnpike Trust, but which was abandoned by the middle of the 19th century.

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Since then, it has been considered as providing private and agricultural access only to farm buildings and properties, farmland and woodlands beyond as a cul-de-sac, but not as part of a longer route to connect with any public road or point of interest for the public. There is no more significant evidence to suggest that it was ever considered more recently to be a public road or public right of way of any kind and used as such. No evidence of any claimed use by the public was submitted in support of the application.

The routes are said to connect with what are claimed to be old roads at points G and H, but which have not been recorded on past and current records of publicly maintainable highways. A separate application to record the connecting track through point H, Fish Lane, as a Byway Open to All Traffic was rejected recently following an appeal to the Secretary of State. Another application to record footpaths nearby that were also claimed to connect with Fish Lane, including part of the claimed route between points D–E, was also turned down more recently from a report to this committee.

Considering the historical map evidence supporting the application in conjunction with other evidence available and discovered, dedication at common law as a footpath or with any higher status cannot be inferred. Historical evidence suggests that the lane on the claimed route has provided private agricultural access to properties and land, with no stronger supporting evidence to suggest that it was public, or part of a longer route used by the public. There is insufficient evidence to suggest that it has been recorded as any form of public road or that the landowner may have intended to dedicate the claimed route, 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 footpath, or with any higher status.

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 routes to be recorded as footpaths. Accordingly, the recommendation is that no Order be made to record the claimed routes on the Definitive Map and Statement as footpaths.

3. Route 5, claimed byway, Cottishayne Lane – Schedule 14 application to add a Byway Open to All Traffic from Turk’s Head Lane towards River Otter and picnic area on A30, points N–O–P, O–Q shown on drawing number HTM/PROW/12/35.

Recommendation: It is recommended that no Modification Order be made in respect of Route 5, the application to record Cottishayne Lane as a Byway Open to All Traffic on the Definitive Map, as the evidence is not sufficient.

3.1 Background and Description of the Route

In September 2006, a Schedule 14 application was submitted by the then Clerk of Honiton Town Council to record the remains of an old lane, said to be known as Cottishayne Lane and its alternative route diverted with the construction of the A30 Honiton bypass, as a Byway Open to All Traffic between points N–O–P and O–Q on the attached map. It was made with reference to supporting historical map and documentary evidence, but no evidence of claimed use by the public.

The application was submitted on the basis that the lane was an old public road, even though it was a cul-de-sac leading only to farmland adjoining the River Otter, which had not been formally stopped up when the bypass was planned and built. It was made for both the old and diverted route, to avoid rejection on a technicality as a cul-de-sac, in anticipation that the old route could be stopped up formally if successful. The Town Council believed that the

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route would be of considerable value by linking to a proposed permissive path along the River Otter, although acknowledging that it is not possible to consider desirability in claims of this type.

The start of the claimed byway is from an old minor unsurfaced county road, Turk's Head Lane (point N), which runs parallel to the A30 bypass and was partly diverted with its construction to continue alongside on the east of the bypass slip road to end on the road leading into Honiton. The start of the old claimed route is open but fenced across and cut off by the bypass and its fencing. The remaining length of the old lane on the other side the bypass is also fenced off, but is now overgrown and inaccessible, with its continuation open and used as an access track beyond point O, with gates providing access to fields alongside the River Otter (point B). The diverted route of the access track starts from the old lane at point O, turning to run parallel to the bypass alongside a parking and wooded picnic area, ending at a field gate on the road leading into Honiton at point Q.

3.2 Historical and recent maps, aerial photography, Reviews and Consultations

Early maps at smaller scales show the lane on the claimed route leading from Turk's Head Lane as a cul-de-sac to end in land near the River Otter, with no continuation further. The earliest copy from a map supplied with the application from a survey of lands in 1780 shows some of the fields at the end of the route, with a link on the route indicated as being "To Honiton". Other later maps include the Ordnance Survey surveyors' drawings of 1806-7 at 2"/mile and the original 1st edition 1"/mile map on which they were based, originally published in 1809 and the later Greenwood's map of 1827 based mainly on the Ordnance Survey map. They show the whole route, with a farm on the opposite side of the river named "Coddishayne", now called Cottarson, which was probably the origin of the name given to the claimed route as Cottishayne Lane.

Later larger scale maps show the original part of the claimed route in more detail, including the Tithe Map of 1843 and Ordnance Survey 25"/mile 1st and 2nd editions of the 1880s and early 1900s. The Tithe Map shows it as a cul-de-sac, with no continuation, coloured the same as other roads now recorded as public, including Turk's Head Lane, but not identified or labelled separately as such and including others now providing private access to farmland. The larger scale Ordnance Survey maps also show it as an enclosed hedged and wooded cul-de-sac leading from Turk's Head Lane, which was named after an inn at its end on the old Exeter-Honiton road, since used for a café and hotel on its former site or nearby. The claimed route is shown as a cul-de-sac, with an extension into lands within a loop in the River Otter, but no continuation further. The farm on the other side of the river is shown with its current name of Cottarson.

Copies of documents with the application include an extract from the Honiton Borough Council Schedule of Roads maintained in the Western Division in 1902. It has a reference to a "branch to Cottishayne Fields" on the continuation of Ottery Moor Lane to the Turk's Head on the Exeter Road. Reference is also made in a letter with the application to exclusion of the route from hereditaments in Finance Act 1910 mapping as indication that it was considered then to be a public road.

RAF aerial photography from 1946-9 shows the claimed route clearly as an enclosed hedged and wooded lane ending in fields beside the river, with no continuation. The later edition of Ordnance Survey mapping from 1959, just before the Honiton bypass was built, shows it in the same way as earlier maps leading off Turk's Head Lane, which is named. There is no continuation beyond its enclosed end, which suggests the presence of a gate. Ordnance Survey mapping from 1969 shows the A30 Honiton bypass having been built by then, with Turk's Head Lane diverted alongside the slip road leading to the road into Honiton. The start of the claimed route is shown cut off by the bypass, continuing beyond it as an enclosed cul-

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de-sac with no continuation and no alternative access track connecting to it, before the parking and picnic area had been built.

The Ministry of Transport Side Roads Order made for the Honiton bypass in 1963 as part of the London–Penzance Trunk Road shows that part of Turk's Head Lane was stopped up as a highway for its construction, with the creation of an alternative section of highway on its current line, along with other minor roads crossing its line. There is no reference to stopping up the claimed route as a public highway or the creation of an alternative route, showing that it was not considered then to be a public road needing to be stopped up.

Under such Orders, it was also possible to stop up formally any private access tracks affected by the construction of new roads and create alternative routes, but that does not seem to have done at the time that the Honiton bypass was built. The alternative access track between points O–Q leading onto the original lane on the claimed route appears to have been put in around the time that the parking and picnic area on the bypass slip road was built, with agreements between the different owners on its use and access to the adjoining farmland.

All of the mapping shows that the original lane existed as a cul-de-sac from at least the early 19th century, through to the second half of the 20th century when the Honiton bypass was built. That cut off access to it from the public road network, with no formal stopping up considered necessary, but with a formal diversion of part of Turk's Head Lane as a public highway. Later aerial photography between 1999–2000 and 2007 shows the area after the construction of the parking and picnic area with the alternative private access track on the claimed route remaining as it is today.

The claimed route was not included with those surveyed originally by the Borough Council in 1956 for putting forward as public rights of way and it is not recorded on the Definitive Map and Statement. There were no suggestions in the previous uncompleted reviews that it should be considered for recording as a public right of way. The claimed addition was included in the consultations for the current review on the basis of the application submitted in 2006 and remaining undetermined. It received no specific responses apart from landowners affected and with no additional supporting evidence, including of any past use, to support recording it as a byway.

3.3 User and landowner evidence

No completed user evidence forms were submitted with the copies of historical maps accompanying the application form. None were sent in following the later consultations and there is, therefore, no evidence of use by the public to consider further.

Landowner evidence forms were submitted by or on behalf of some owners of land on the claimed route, who did not believe it to be a public right of way as it has been cut off since the bypass was built and not possible to use, with the alternative track being for private access only. They had not turned anyone back or stopped people from using the route, had not put up notices or signs stating that it was not a public right of way, with gates on the route for access that were locked.

3.4 Summary and Conclusions – Dedication under Statute and Common Law

Statute Law – Section 31, Highways Act 1980

The application in 2006 to record the claimed route as a Byway Open to All Traffic was not made in response to any particular event acting as a significant challenge to use of it following soon after any previous action taken by a landowner that had obstructed or prevented access to and use of it from a specific date. The claim appears not to have been

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made in response to any specified event acting as a challenge to public use of the route, but solely on the basis of historical evidence and the desirability of a link to proposed permissive access along the River Otter. 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 any evidence of use under statute law.

However, under section 31(2) of the Highways Act 1980, as amended by Section 69 of the Natural Environment and Rural Communities Act 2006, the Schedule 14 application is sufficient to bring a right of way into question. It would provide the date of an event that can be taken as challenging the public's right to use a route, but only if there are no more significant earlier events or actions having done so at a specific earlier time that may have led to or resulted in the application being made. There is no evidence of any previous significant actions in this case to provide an earlier date for consideration of evidence under statute law. It means that the period for considering the application on any evidence of use is the 20 years from March 1986 to the date of the application in March 2006.

No evidence of use was submitted with the application or subsequently, so that there is no support for recording the route by presumption of dedication from use under statute law. The evidence is, therefore, considered insufficient to support the recording of the route as a Byway Open to All Traffic, or with any other status as a public right of way, by presumption of dedication from claimed use. There is, therefore, no need to consider whether there were actions taken by the landowners during that period to provide sufficient evidence of any lack of intention to dedicate the route. The evidence will, therefore, need to be examined in relation to common law, considering the historical map and documentary evidence submitted with the application and discovered, with any evidence relating to actions by landowners.

Common Law

Historical mapping shows that a track existed physically on the original line of the claimed route from at least the early 19th century until after the middle of the 20th century, when it was cut off by the construction of the Honiton bypass. It appears to have been private and agricultural access as a cul-de-sac to farmland alongside the River Otter, but not as part of a longer route to connect with any public road or leading to a point of interest for the public.

The only evidence that it may have been considered as being included with the public highway network is from the early 20th century from its inclusion in the maintenance of other roads nearby. However, that is indicated as being only a "branch" to fields as a cul-de-sac and not continuing to link with any other publicly maintained road. Its exclusion from Finance Act 1910 mapping is not sufficient evidence on its own of public status, without other more significant evidence and particularly as a cul-de-sac for access only to farmland. It has not been included in later and current records of maintainable highways.

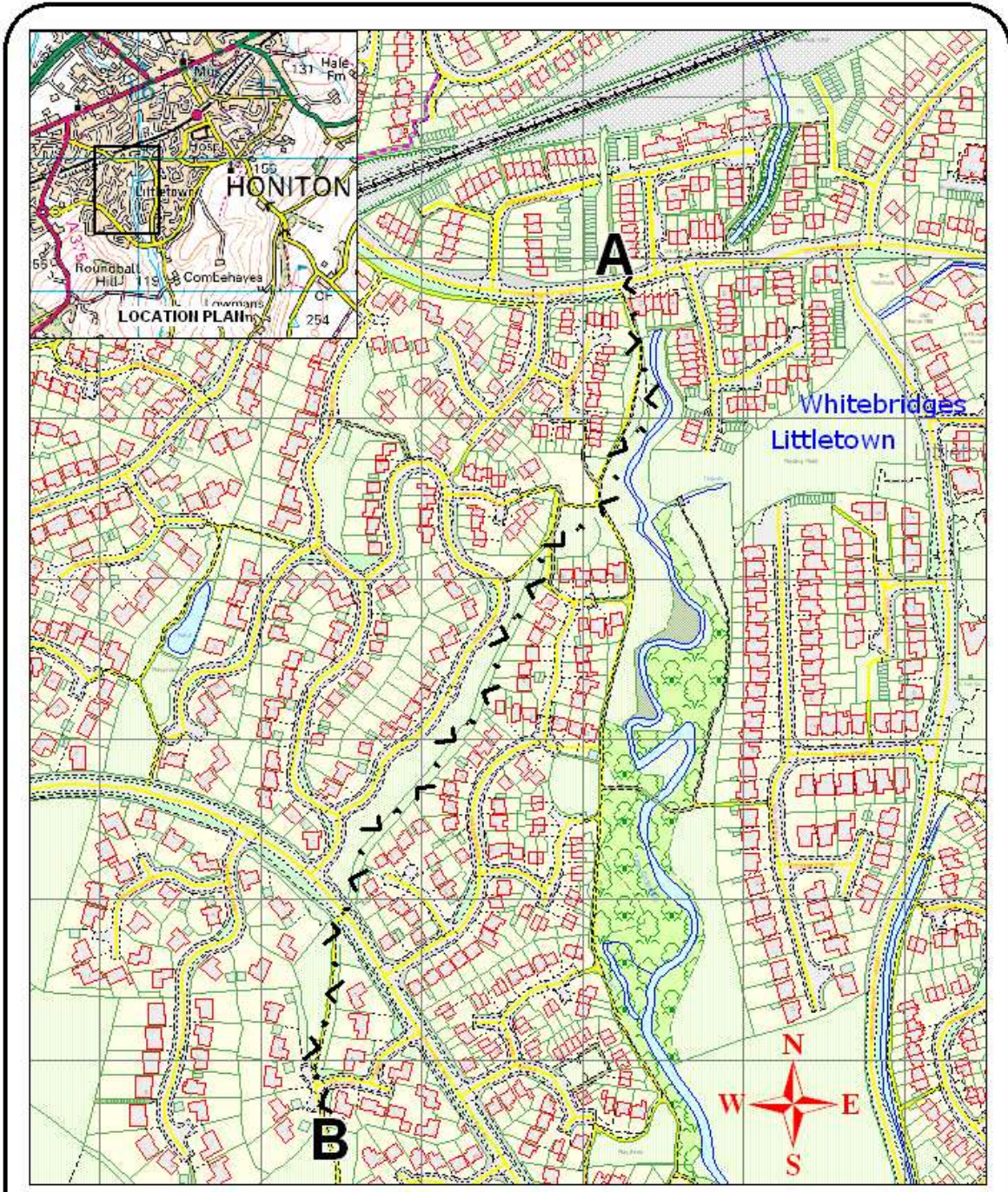
It was not included with the routes stopped up for the construction of the Honiton bypass, as was done with other recorded public roads including Turk's Head Lane. It was also not stopped up as private access at the time, although an alternative track for private access linking onto it was put in later, which has also been included with the claim. There is no indication that it was intended to provide an alternative created route for a stopped up public road.

Considering the historical map evidence supporting the application, in conjunction with other evidence available and discovered, earlier dedication as a carriageway or public road for any part of the claimed route to be recorded with the status of Byway Open to All Traffic cannot be inferred at common law. Historical evidence suggests that the original lane on the claimed route provided private access to agricultural land, with no stronger supporting evidence to suggest that it was public, or part of a longer route used by the public. There is insufficient evidence to suggest that it was any form of public road, or that the landowner

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may have intended to dedicate the claimed route, that the public accepted the dedication and have continued to use it on that basis, with no evidence of any claimed public use submitted. 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 any form of public right of way subsists on the route.

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 application for the route to be recorded as a Byway Open to All Traffic, or as a public right of way with any status. Accordingly, the recommendation is that no Order be made to record the claimed route on the Definitive Map and Statement, as a Byway Open to All Traffic.



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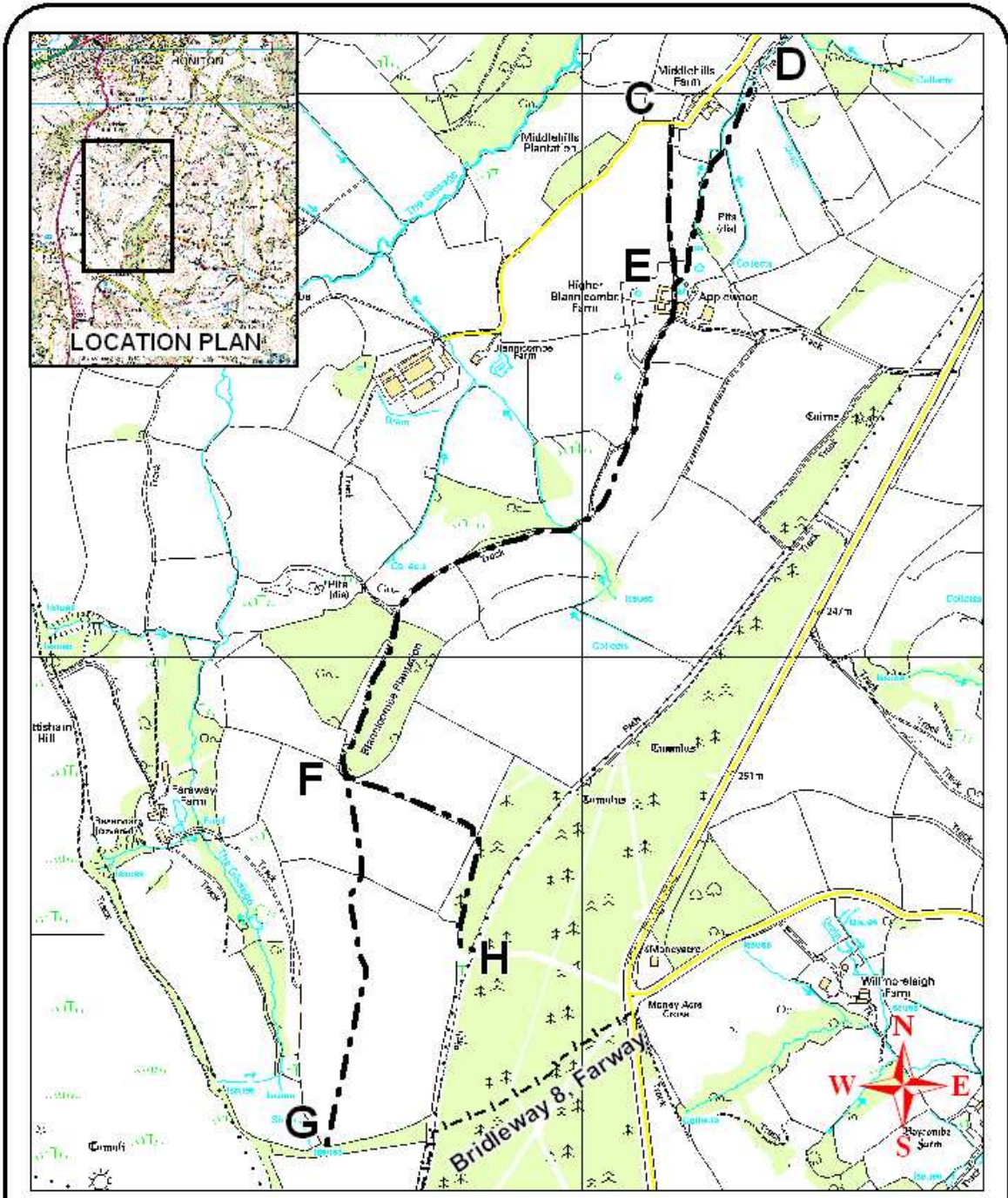
Definitive Map Review, Honiton parish
 Informal Consultations, Route 1:
 Claimed Byway, Targets/Claylands Lane

drawing number	HTM/PROW/12/32
date	Apr 2012
scale	1:3500
drawn by	NSC

Notation

Claimed Byway A - B 

Devon County Council 
Lester Willmington
 HEAD OF HIGHWAYS & TRAFFIC MANAGEMENT



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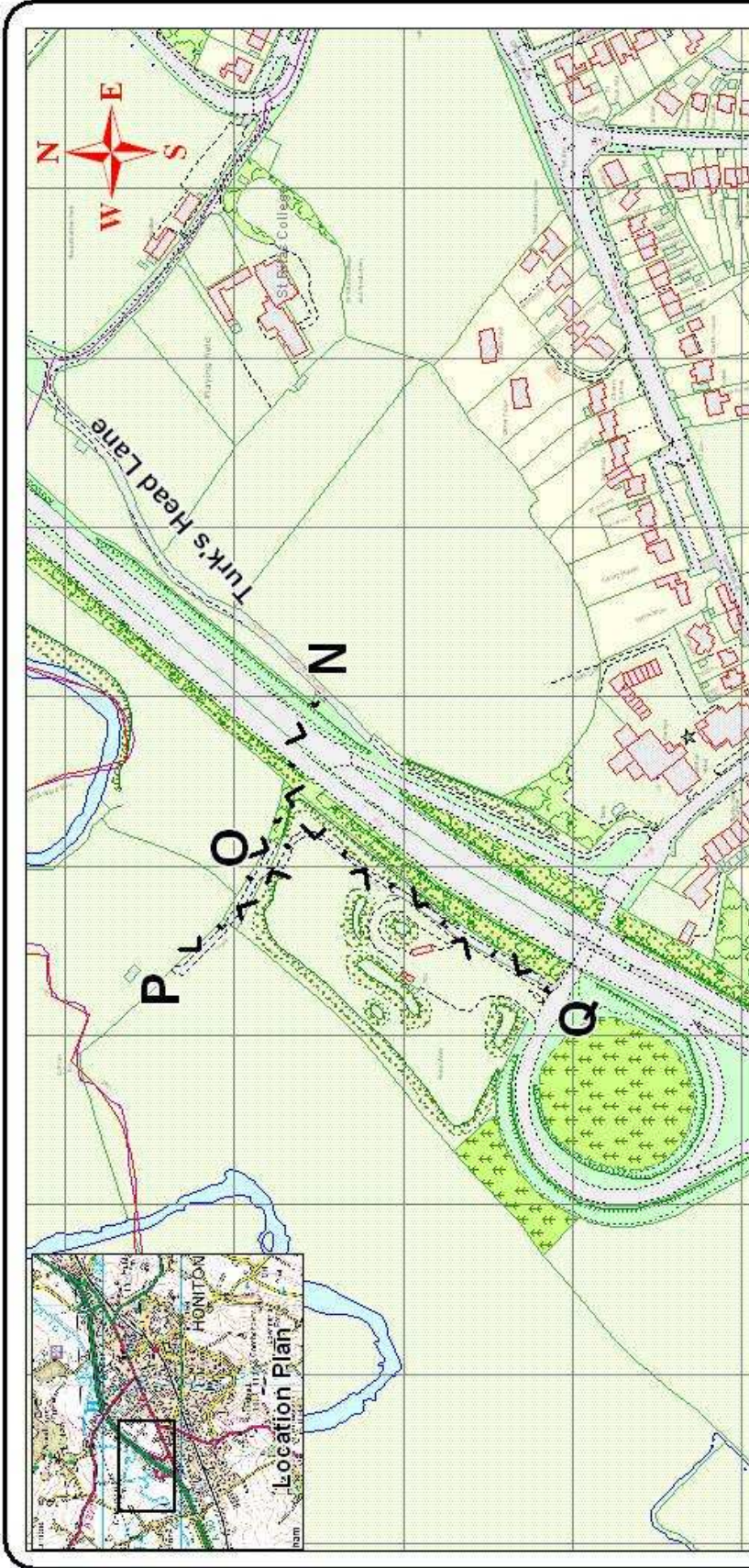
Devon County Council
 Definitive Map Review, Honiton parish
 Informal Consultations, Route 2:
 Claimed footpaths, Middlehills Farm to Farway Hill

Notation
 Claimed footpaths C/D - E - F - G/H - - - - -
 Existing bridleway - · - · - · - · - ·

drawing number	HTM/PROW/12/33
date	Apr 12
scale	1:10 000
drawn by	NSC

Lester Willmington
 HEAD OF HIGHWAYS & TRAFFIC MANAGEMENT

Devon
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map ref: ST 1400/1500

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drawing number HTM/PROW/12/36
 date Apr 2012
 scale 1:3500
 drawn by NSC

DEVON COUNTY COUNCIL
Definitive Map Review, Honiton parish
Informal Consultations, Route 5:
Claimed Byway from Turks Head Lane to picnic site, A30

Notation

Claimed Byway, N - O - P, O - Q , ^ , v , ^ , v

