

**Definitive Map Review 2012
Parish of Ermington**

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 no Modification Order be made.

1. Summary

This report examines the Definitive Map Review in the Parish of Ermington in the District of South Hams, including a Schedule 14 application made for the addition of a public footpath between Langbrook and Whipples Lane.

2. Background

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 13 footpaths in Ermington, which were recorded on the Definitive Map and Statement with a relevant date of 11 October 1954.

The review of the Definitive Map, under s. 33 of the 1949 Act, which commenced in the 1970s but was never completed, produced no valid proposals for change to the Definitive Map at that time.

The Limited Special Review of RUPPs, carried out in the 1970s, did not affect this Parish.

The following Orders have been made:

Devon County Council (Footpath No. 15, Ermington) Public Path Diversion Order 1988
Devon County Council (Footpath No. 20, Ermington) Definitive Map Modification Order 1993
Devon County Council (Footpath No. 11, Ermington) Public Path Diversion Order 2007

Where necessary, Legal Event Modification Orders will be made for these amendments in due course.

3. Review

The current Review began in June 2012 with a public meeting held in the Reading Rooms Ermington. It picks up a Schedule 14 application made in May 2012 by a parishioner, Mrs Thurston, for the addition of a public footpath between Langbrook and the unsurfaced county road near Whipples Cross. No additional claims or suggestions for modifying the Definitive Map were put forward following the parish meeting. A public consultation on the review was carried out in August 2012.

The responses from councils and user/landowner groups were as follows:

County Councillor William Mumford	-	no comment
South Hams District Council	-	no comment
Ermington Parish Council	-	do not support the application
British Horse Society	-	no comment
Byways and Bridleways Trust	-	no comment
Devon Green Lanes Group	-	no comment
Country Landowners' Association	-	no comment
National Farmers' Union	-	no comment
Open Spaces Society	-	no comment
Ramblers	-	support the application
Trail Riders' Fellowship	-	no comment

4. Conclusion

It is recommended that no Order be made in respect of the application.

Should any further valid claim be made in the next six months it would seem sensible for it to be determined promptly rather than deferred.

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 South Hams district area.

Lester Willmington
Head of Highways and Traffic Management

Electoral Division: Yealmpton

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence File	2012	DMR/Ermington

hc051012pra
sc/cr/DMR ermington
03 hq 061112

Background

A. Basis of Claims

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 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.

The Wildlife and Countryside Act 1981, Section 53[3] [c] enables the Definitive Map and Statement to be modified if the County Council discovers evidence which, when considered with all other relevant evidence available to it, shows:

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

(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or

(iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

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.

Schedule 14 Application for the addition of a public footpath between Langbrook and Whipples Lane

Schedule 14 Application to add a public footpath, running from the county road at Langbrook across fields to the unsurfaced county road southwest of Whipples Cross, as shown between points A – B on drawing number HTM/PROW/12/72.

Recommendation: It is recommended that no Order be made in respect of the application.

1. Background

This application for the addition of the claimed route was made by a local resident, Mrs Zilla Thurston in May 2012, in response to a planning application for the development of a solar farm on the fields belonging to Luson Farm. The application was supported by one user evidence form, from Mrs Thurston, and copies of Ordnance Survey maps. In line with County Council policy the application was dealt with as part of the ongoing parish-by-parish review, which was then due to start in the parish of Ermington.

2. Description of the Route

The route as claimed starts at point A at the county road near Langbrook Cottages and proceeds northeastwards over a stone-faced hedge bank in the northwestern corner of a field and along the northern boundary of the field. It then continues in an east northeasterly direction across a second field to a fence and onto the unsurfaced county road southwest of Whipples Cross at point B. The claimed route is approximately 515 metres in length. Photographs are included in the background papers.

3. Documentary Evidence

Ordnance Survey Maps

The Ordnance Survey mapping does not provide evidence of the status of the route but rather its physical existence over a number of years.

The 6 inch to one mile map, surveyed 1863-85 and published 1891, and subsequent historic OS maps show the claimed route as a track marked F.P, for footpath.

The applicant submitted an extract of an OS map at 1:25,000, published 1981, which also shows the claimed route. Current OS mapping does not show the route.

Ermington Tithe Map 1841

The tithe map does not show the claimed route.

Aerial Photography

The route is not visible on an aerial photograph taken by the RAF in 1946. Similarly, more recent aerial photography does not show the route. Only a worn track is shown to the north of the line of the claimed route.

Other Documentary Evidence

The applicant submitted additional documentary evidence in support of the application including a plan of sale for Clickland, based on 1951 edition 1:2,500 OS mapping, and a South West Water plan produced in 2004 and based on OS mapping. As copies of OS maps these plans do not provide evidence of status.

Also submitted was an extract of an archaeological and cultural heritage assessment produced for Lightsource Renewable Energy Ltd in support of their planning application. This report references Ordnance Survey maps, as above, and does not provide evidence of status.

No other documentary evidence relating to the claimed route has been submitted, or discovered during the course of investigation. The historic minute books of Ermington Parish Council have not been discovered in the archives and therefore cannot provide any evidence either way.

4. User Evidence

Only one user evidence form has been received in respect of the claimed route. Mrs Thurston states that she has used the route since 1989 on a variable basis, for pleasure. She states that there is corrugated iron instead of gates and that the route is obstructed by corrugated iron, thorn, stinging nettles and brambles. She states that she has never been stopped from using the route or told that it was not public.

One other local resident, Mrs Livermore, has written in support of the application but has not submitted any evidence of her own use.

5. Landowner and Rebuttal Evidence

The fields crossed by the claimed footpath are owned by Mr Toms of Luson Farm. Mr Toms has completed a Landowner Evidence Form and written a letter in response to the application. On his form Mr Toms states that the land has been owned by his family for six generations and that to his knowledge, and that of his father, there has never been any public right of way or use over the route. He adds that there was no need to give anyone permission to use the route, or tell anyone that it was not public, as there has never been any use by the public. Mr Toms believes that the purpose of the application is to obstruct the planning application. He states that the proposed entrance onto the unsurfaced county road at point B is through a disused gateway, which has been overgrown and unused for 30 years. He has pointed out where branches have been recently cut to make a gap in the hedge at this point.

In his letter Mr Toms also states health and safety reasons against the claim. These are not reasons which can be taken into account when considering whether or not a public right of way already exists.

Mr Toms' daughter-in-law Catherine Toms also wrote. She questions the weight of Ordnance Survey mapping as evidence of public status and also refers to RAF aerial photographs as evidence the claimed path did not exist in the 1940s. Mrs Toms considers it more likely that the claimed route was an old farm track, stating that thousands of such tracks are shown on historic OS maps. She also objects on the basis of health and safety and lack of need for the path, which cannot be taken into account in such cases.

A letter has also been submitted from Andrew Fulcher, who shoots at Luson Farm. He states that he has been shooting there since 1977 and that he has never encountered a single member of the public on the land.

Copies of correspondence are available in full in the backing papers to this report.

6. Discussion

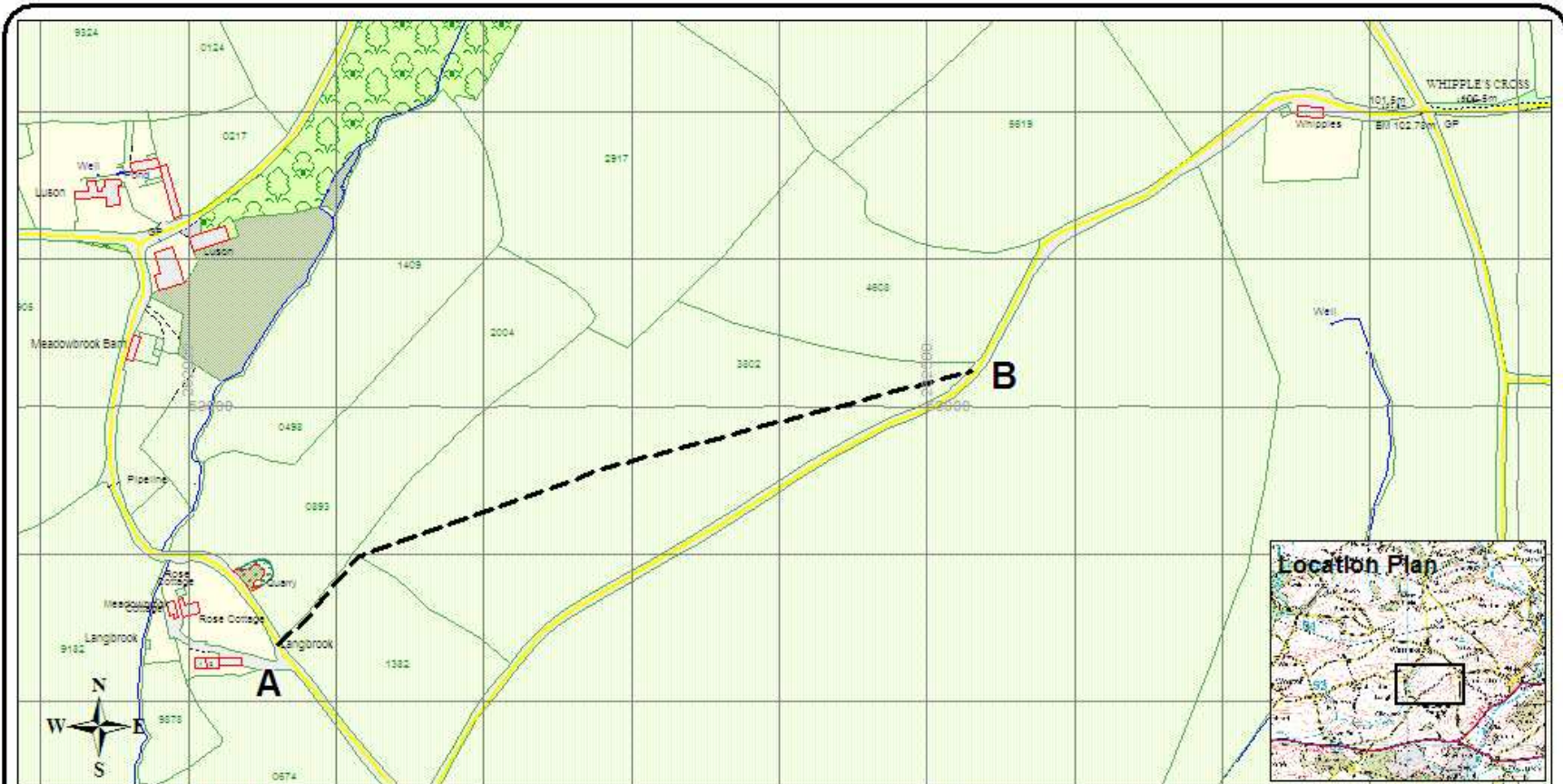
For the purposes of considering the claim on the basis of presumed dedication under Statute Law, the application date may be taken as the date on which the public's right to use the route was called into question. The relevant twenty year period is therefore 1992 to 2012. Only one evidence form was submitted with the application. No further evidence of use was submitted during the consultation period. The Ramblers and one other resident wrote in support of adding the route to the Definitive Map, but they did not provide evidence of actual use. The physical character of the entrance/exit points suggests that the route has not been in regular or frequent use. Evidence of use by one person is not sufficient to raise a presumption of dedication under the Highways Act 1980.

It is also necessary to examine the claim in relation to Common Law, in conjunction with historical and other documentary evidence.

A footpath shown on an OS map would indicate that a route physically existed, but it was the practise of the surveyors to show paths on the ground, irrespective of whether they were public or private. They 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. Therefore, they can really only show that a path physically existed. In the absence of any other historical documentary evidence, Ordnance Survey maps, either originals or base mapping for other documents, do not infer of dedication of a public right of way at Common Law.

7. Conclusion

It is therefore recommended that no Order be made in respect of the Schedule 14 Application.



map ref: **SX 6252 - 6253**

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**DEVON COUNTY COUNCIL - DEFINITIVE MAP REVIEW: ERMINGTON PARISH
INFORMAL CONSULTATION
Schedule 14 application for the addition of a public footpath**

drawing number HTM/PROW/12/72
 date August 2012
 scale 1:4000
 drawn by HFC

Notation

Claimed footpath A - B **-----** (approx 515 metres)

Lester Willmington
 Head of Highways
 and Traffic Management

