

Definitive Map Review 2005–12: Parish of Honiton – part 2

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 3, claimed footpath between King Street and High Street, Fountain Yard/Passage, points J–K shown on drawing number HTM/PROW/12/34; and
- (b) Route 4, claimed footpath from Footpath No. 2 near Tracey Lodge along River Otter to Clapper Lane Bridge, points L–M shown on drawing number HTM/PROW/12/35.

1. Summary

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

2. Introduction: Background, Review and Consultations

The first part of a report on the review process in Honiton was presented to the previous committee, which considered claims from three formal applications with decisions not to make Orders. The current review had been started in July 2005 with an introductory public meeting in Honiton and a second public meeting took place in November 2011. Further meetings were held with the Town Council for more detailed clarification of their applications and claims.

General public consultations on the review, concerning five claims from formal applications and evidence submitted, were carried out in May 2012 and advertised in the local press. Responses to the consultations, as referred to in the first part of the report, 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 in support of the claim for Route 1, suggesting a delay for consideration of the application for Route 2, deferring a response on Routes 3 and 4, supporting the claim for Route 5.
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; support the addition of Routes 3 and 4.

3. Conclusion

The recommendation is for no Modification Orders to be made in respect of the claims for Routes 3 and 4, as the user and historical evidence submitted and discovered are considered insufficient. Details concerning the recommendation are discussed in the Appendix to this report. 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 dedication and creation from powers under delegated authority, or possible adoption as maintainable linking footways. However, should any valid claim with sufficient evidence be made in the next six months it would seem sensible for it to be investigated and determined promptly rather than deferred.

4. Financial Considerations

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

5. Sustainability Considerations

There are no implications.

6. Carbon Impact Considerations

There are no implications.

7. Equality Considerations

There are no considerations.

8. Legal Considerations

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

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 East Devon.

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

ns121012pra
sc/cr/dmr Honiton part 2
03 061112

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 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 3, Claimed Footpath between King Street and High Street, Fountain Yard/Passage, Points J–K Shown on Drawing Number HTM/PROW/12/34

Recommendation: It is recommended that no Modification Order be made in respect of Route 3, the claim to record FountainYard/Passage between King Street and High Street as a public footpath on the Definitive Map, as the evidence is insufficient.

1.1 Background to the Claim

In 1992, Honiton Town Council's Environmental and Tourism Sub-Committee discussed possible claims for public rights of way to be recorded through several courts or yards as passages between High Street and King Street in the town, including Fountain Yard. The claims appear to have arisen because of concerns that planned housing and retail developments around that time would result in the loss of public pedestrian access to or

through the yards. In the case of Fountain Yard, it was from the proposed development for the building of the houses in Ridgeleigh Court from planning permission given in 1990.

Claims for some of the routes were made without supporting evidence, particularly of claimed use by the public, or with only a small amount of user evidence for others, which was considered insufficient to meet a threshold for a prima facie case and they were not taken forward for consultations and further investigation. User evidence forms were submitted by the Town Council in 1992 and 1993 in support of some, including Fountain Yard, with a list of historical documentary sources consulted which were believed to support the existence of public rights, but with no copies. Copies of letters from, or on behalf of, property owners on the routes objecting to the claims and received after the Town Council meetings were also forwarded in connection with the claim.

1.2 Description of the Route

The claimed route starts from King Street (point J), running through a passage between two older buildings – a private house, 21 King Street and Meadow View Chapel. It passes newer properties built at the back of the house, one now used for a dog grooming business, ending at the garden wall and fence of the second house, 5 Ridgeleigh Court. The first section is used as access to the properties and a yard, with a garden shed and parking for two cars.

Beyond the wall and fence, the route continues as access to 5 Ridgeleigh Court, passing between adjoining houses and a wall around other properties built in the adjoining Kerlake's Court development. It opens on to the rest of the claimed route, continuing across a yard between the back of the buildings behind the Fountain Antiques Centre on the High Street and those behind the adjoining building, until recently the offices of Every's Solicitors. The route ends at a closed pair of large doors or gates onto the High Street (point K), used for access when the Antiques Centre building was the Fountain Inn, perhaps including for horse-drawn carriages. The Fountain Inn, named after a town fountain or pump in the yard, was a coaching inn dating from the 1780s that was closed in 1975.

1.3 Historical and Recent Maps, Aerial Photography, Reviews and Consultations

It is not possible to see the claimed route on earlier historical maps at smaller scales up to the earlier 19th century, which do not show such a level of detail. The larger scale Tithe Map of 1843 shows it as a yard, open at the King Street end and braced to include it with the Fountain Inn on the High Street and other adjoining buildings. There is no indication of an opening onto the High Street, although there is presumed to have been access by the current gateway or passage underneath the buildings. It is recorded in the Apportionment as "Fountain Inn & Garden", with other buildings around the yard recorded as houses or cottages, with a garden and shops, one described as a smith's shop.

Later larger scale maps, including the Ordnance Survey 25"/mile 1st and 2nd editions of the 1880s and early 1900s, show the claimed route in more detail. The earlier edition surveyed in 1887–8 shows the yard or passage closed at the King Street end, which may indicate the presence of a gate. It passes buildings and other enclosed yards or gardens and is open as far as the inn, marked as P.H. for Public House. There is also a "P" marking the site of the pump or fountain in the yard, which gave the inn its name, although there are more shown at sites near other properties on the High Street. The yard is shown as closed at the northern end, which may indicate the gated passage for the inn through the buildings for access to the yard from the High Street. There is no opening from the adjoining land, now Kerlake's Court, which is shown then as an enclosed garden, with trees and a network of paths, perhaps connected with the chapel. The later map, surveyed in 1903, shows it in the same way but with less detail.

RAF aerial photography from 1946-9 shows the route as an open yard passing between buildings and the enclosed garden area with trees, but without sufficient detail to indicate whether it was then open or gated at the King Street end. The entrances to other yards are shown more clearly as open to the road. Later editions of Ordnance Survey maps from 1959 and 1970 show the yard in the same way passing buildings, leading to the inn and closed at the King Street end, compared to others nearby that are shown more obviously open from the road. There was still then no connection from the adjoining land, which was shown as open in 1959, but developed by 1970 as the offices with a carpark for Honiton Rural District Council.

All of the mapping shows that the yard has existed on its current line since at least the middle of the 19th century, perhaps from earlier in connection with the Fountain Inn from the 18th century and up to the later 20th century before development of the Ridgeleigh Court housing in the early 1990s. Later aerial photography between 1999–2000 and 2007 shows the area after the houses were built and the connection from adjoining land, including private vehicular access, after the further development of Kerslake's Court on the Rural District Council offices site, as it is currently.

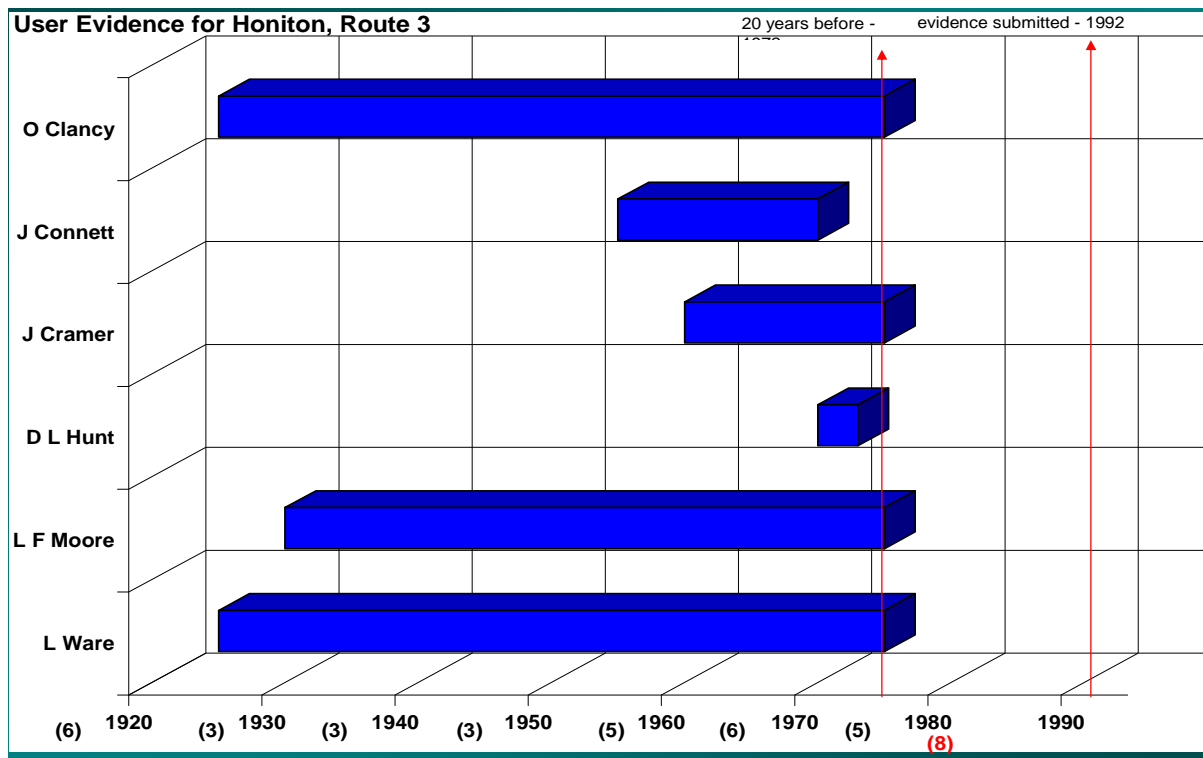
The claimed route was not included with those surveyed originally by the Borough Council in 1956 for putting forward as public rights of way and it is not recorded on the Definitive Map and Statement. It has not been recorded as a public road in earlier, later and current records of publicly maintainable highways. There were no suggestions in the previous uncompleted reviews that it should be considered for recording as a public right of way. The claimed addition was included in the consultations for the current review on the basis of the evidence submitted from 1992 in support of the claim. It received specific responses mainly from the owners of the properties affected on the route, but no further or additional evidence, particularly of any past use, in support of recording it as a public right of way.

1.4 User Evidence

User evidence forms completed by six people in connection with the claim were submitted by Honiton Town Council between December 1992 and July 1993, along with forms for claims relating to other yards in the same area. No more were sent in following the later consultations and they provide, therefore, the only evidence of claimed use by the public to consider for this route.

The forms, completed between September 1992 and June 1993, were of an older type and submitted without maps to show the route used, but descriptions indicate that it was from High Street via Fountain Yard to King Street. Most of them reported that they had used the claimed route on foot only. Only two of them had used the route believing it to be public, with two believing that it was not and two did not know. The main basis for the belief that the claimed route was public was said to be that many other people had used it, or not having been stopped even though it was the property of the brewery. Some said that its use was at the discretion of the proprietors of the Fountain Inn, or with their permission.

The earliest use is reported to have been from the 1920s by three people, with two others indicating use since the 1950s and use by most of them from the 1960s up until the 1970s. None of them indicated having used it after the Fountain Inn closed in 1975, so that there is no evidence of any use since then up until the Town Council made the claim in the early 1990s. By then, the building of the houses had obstructed any claimed use of the yard as a throughway.



The reported frequency of use, where specified, was from six times a year by one person, to 150 times a year by another. Two did not specify how often, with one referring to “many” times a year and another to “very few” times. The main purpose for using the route was given by two people as pleasure, with one referring to use for going to school and another for going to the shops. One did not specify a reason and another could not remember. One referred to using it specifically for visiting a house in the yard, which he said that his father used to rent and will have been by invitation or a private right, or with permission.

Two people referred to going from High Street to King Street, with two not specifying where they were going to or from and the other destinations were given as school and the shops or visiting, which is private and cannot be considered as public use. Nearly all of the users said that they had not been stopped or turned back, or told that they could not use the route. Most of them believed that the owners were aware of the public using the route, mainly because it was commonly used for school and shopping.

One user said that he had been given permission by a landlord or landlady of the inn and another was told by the landlord of the Lamb Inn that it was not public, although that is on another of the yards claimed by the Town Council around the same time. None of the users said that they had worked for an owner, occupier or tenant of land or property on the route, although one specified using it to visit the property on the route rented by his father.

Most of them indicated that they had not seen any signs or notices on the route saying that it was not public, or any obstruction to suggest that they should not use it. However, one remembered seeing a small sign on a wall at the King Street end from the mid-1950s saying “No Thoroughfare” and another referred to a notice saying “Private”. Two people said that there were no gates on the route and others referred to the gates or solid doors at the High Street end. One reported that they were always open and another that they were locked on occasions, with one saying that there were gates at both ends that could be locked. None of the other users referred to any gates at the King Street end.

1.5 Landowner and Rebuttal Evidence

Copies of letters from the owners of properties at each end of the route objecting to the claims and sent to the Town Council in September 1992 were forwarded in connection with the claim. They stated that the passage to Fountain Yard from King Street had never been used as a public right of way, based on knowledge from having lived or worked there since 1968 and also for the seven years before that from a previous owner. One reported that it had already been built on and closed off in accordance with a requirement in planning permission for the development.

Completed landowner evidence forms were submitted in May and June 2012 following the consultations from most of the owners of properties on the claimed route, at the King Street and High Street ends and Ridgeleigh Court. None of them believed the route to be a public right of way, had not seen any members of the public using it and had not given anyone permission to use it. They had not turned anyone back or stopped people from using the route and had not put up notices or signs stating that it was not a public right of way. Some of them referred to the doors at the High Street end that were kept closed and locked at times and more recent gates on the entrance from King Street that were often kept closed and locked, with other obstructions from the housing development.

In additional information, they stated that the route was used solely as private rights of access for their own and other residents' properties, said by some to be recorded in their deeds, with a reference to those existing before the housing development. One resident provided a copy of the planning permission for the development, which included the condition for closure of the access from King Street before the first house was occupied, stated to be in the interest of highway safety.

1.6 Summary and Conclusions – Dedication under Statute and Common Law

Statute Law – Section 31, Highways Act 1980

The user evidence for the claim that the route should be recorded as a public right of way was not provided in support of a formal application. It was submitted in 1992 to support an informal claim made by Honiton Town Council after planning permission was given for housing development in Fountain Yard and the adjoining Kerlake's Court. It did not result from any particular action taken by a landowner preventing access to or use of the route, although the doors opening onto High Street were reported to have been closed and locked occasionally, with a sign saying that it was private at some time as long ago as the 1950s. The specific dates of those actions are not known, so the claim appears to have been made in response to a specific event that could be taken as a challenge to use of the route, although not soon after but some time later, with its obstruction by the building of the houses. There is, therefore, no evidence of any other particular action by or on behalf of a landowner that could be considered significant for calling into question use of the route. However, the submission of the evidence of use in 1992 after the houses had been built could provide a date for consideration of the user evidence under statute law during the previous 20 years, from 1972–1992.

Considering evidence of use by the public during that period, there is use claimed by six people, but none of it is for the whole 20 years, as all of them indicated that they had used the route only up to or before the Fountain Inn closed in 1975. It means that there is only use by five people for only three years at the start of the 20-year period, with no further evidence of any continuing use submitted later. That is not sufficient to give rise to a statutory presumption for dedication of a public right of way, so there is no need to consider the next step of whether there were any actions taken by the landowners during that period to provide evidence of a lack of intention to dedicate the route as public.

However, there is evidence from the landowners and reported by users that the doors opening onto High Street were locked occasionally and the proprietors of the Fountain Inn had told people using the route that it was not public. Accordingly, the claim will need to be considered in relation to common law, taking into account historical maps and other documentary evidence submitted with the claim or discovered, in conjunction with the evidence of use and any evidence relating to actions taken by landowners, if required.

Common Law

Historical mapping shows that the passage or yard has existed physically on the line of the claimed route from King Street running between buildings and through doors at the Fountain Inn onto High Street from at least the early 19th century until the building of the Ridgeleigh Court houses by 1992. It appears to have provided private and business access from both ends to adjoining properties, including the Fountain Inn and there is no more significant evidence to suggest that it was ever considered to be a public right of way of any kind or a public road. It has not been included in the past and current records of maintainable highways.

The claim was made with reference to historical documents which were believed to support the view that the route was considered in the past to be public, including a recorded deduction for public right of way or user under assessment for the 1910 Finance Act. That is not significant evidence on its own, without other substantial supporting evidence for public status. It could have related to public access to the inn rather than for passing and repassing between High Street and King Street, as similar deductions are indicated for other High Street properties, including those recorded then as inns, shops and also affecting houses.

Considering the historical evidence supporting the claim, in conjunction with other evidence available and discovered, earlier dedication as a footpath cannot be inferred at common law. Historical evidence suggests that the passage and yard on the claimed route provided private access to properties, including the Fountain Inn, with no stronger supporting evidence to suggest that it was public. There is insufficient evidence to suggest that it was any form of public right of way, 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. The evidence of use from the 1920s to 1975 when the Fountain Inn closed submitted in support of the claim is not substantial. It is insufficient to show use by the public on the basis of having accepted any earlier dedication, with some of it relating to use specifically for private access, or by permission from the proprietor of the inn and some evidence of users being told that it was not public.

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 claimed 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 claim for the route to be recorded as a footpath, as claimed. Accordingly, the recommendation is that no Order be made to record the claimed route on the Definitive Map and Statement as a footpath.

2. Route 4, Claimed Footpath from Footpath No. 2 near Tracey Lodge along River Otter to Clapper Lane Bridge, Points L–M Shown on Drawing Number HTM/PROW/12/35.

Recommendation: It is recommended that no Modification Order be made in respect of Route 4, the claim to add a footpath from Footpath No. 2 near Tracey Lodge along the River Otter to Clapper Lane Bridge on the Definitive Map, as the evidence is not sufficient.

2.1 Background to the Claim

In 1988, the then Clerk to Honiton Town Council wrote to the County Council asking for advice about land along the River Otter north of the town where residents were said to have walked for many years. The landowner had erected signs saying that it was private and had prevented its use by the public. The route was clarified as being from Clapper Lane along the river northeastwards to Langford Bridge, but no evidence was submitted to support any subsequent claim or formal application to record it as a public footpath.

Two user evidence forms were submitted in May 2000 relating to a route along that stretch of the River Otter further back to the west, between Tracey Lodge and Clapper Lane. The forms appear to have been sent in because of actions taken by the landowners, who had not been stopping use of the path, but were said to have locked a gate and put up barriers making it difficult to use. No more forms were sent in at that time and no subsequent claim or application was made, so that there was considered to be insufficient evidence for further investigation.

An additional 10 user evidence forms were submitted between September and November 2004, some forwarded by Honiton Town Council, after an article about the route as a riverside walk written by a Town Councillor appeared in its newsletter. Some of the users referred to it being closed with notices during the Foot and Mouth disease outbreak in 2001 and more recent obstacles by new fencing and a ditch dug that were obstructing its use. There appeared also to have been concerns then about whether it would still be available to use following the death of a landowner if the land was sold rather than inherited by his son, who is now the current owner. There was further correspondence about the route and the forms were held on file for investigation under the review process, then due to be started.

A further 16 evidence forms were submitted after the claimed route was included with the others put forward in the informal consultations in May 2012. At the same time fences were also repaired on the route to obstruct it, with new signs put up saying "Private – no public right of way" and warning notices saying "Bull – keep out", including at the start of the section beyond the end of the claimed route.

2.2 Description of the Route

The claimed route runs from the recorded Footpath No. 2 in Honiton, which continues from Footpaths No. 4 and No. 2 in the adjoining parish of Awliscombe. The recorded footpaths run from near Tracey Lodge on the A373 road to Cullompton northwest of Honiton, initially on a track along the north bank of the River Otter. It is on the former line of the old turnpike road, part of which was stopped up leading to Stoneyford Bridge for the building of a new section of road and bridge into Honiton. The recorded footpath turns northwards back across the parish boundary into Awliscombe parish and continues northeastwards through fields towards Woodhayne Farm and into Combe Raleigh parish.

The claimed route starts from a kissing gate on the recorded footpath (point L) and continues generally eastwards through a grass field following the north bank of the River Otter alongside a fence towards an electricity pylon. From near the pylon it runs through a field gate, probably one reported previously to have been locked, continuing across another grass field alongside the fence on the river bank. In the southeast corner of the field, it runs through a fence where part of the wire mesh had been trodden down below barbed wire for access to cross a widened ditch running into the river. It continues along the edge of the river bank with several tracks worn through rougher grass and wooded land on the edge of a grass field, partly through gravel along the edge of the river bank.

The worn track runs from the wooded land into a grass field through a wooden fence, under a single bar, with the end of an electrified fence attached. It passes a sluice and a weir, with another track worn around the straining post at the end of a wire fence near the weir, continuing across fields along the river bank. It turns to cross a stream running into the river and runs across a grass field alongside Clapper Lane to a metal bar fence and field gates locked with barbed wire onto the road near Clapper Lane Bridge (point M). The wire mesh on the fence was trodden down, allowing access only over it or between its bars. It has since been repaired and reinforced to prevent access, along with the gate and fence across the road to prevent any continued access further along the river bank northeastwards towards Langford Bridge.

2.3 Historical and Recent Maps, Aerial Photography, Reviews and Consultations

Historical maps at smaller scales from the earlier 19th century do not show any of the claimed route along the river bank, although they do not all record such a level of detail to indicate footpaths at those small scales. The larger scale Tithe Maps for Honiton from 1843 and for Combe Raleigh from 1841 do not show the line of a path crossing the land on the route. The fields are recorded in the respective Apportionments as "Pasture", with nothing in their descriptions to indicate the presence of any footpath. Tithe Maps do not usually record the routes of footpaths, which was not their main intended purpose.

Later larger scale maps, including the Ordnance Survey 25"/mile 1st and 2nd editions of the 1880s and early 1900s, do not show the line of any footpath on the claimed route. They show the line of the old road to Stoneyford Road, now part of the recorded footpaths leading to the claimed route and the dashed lines of the recorded footpath marked "F.P." continuing towards Woodhayne Farm. The site of the weir and sluice on the river are shown at the start of the mill race leading to the mills on the line of the old turnpike road. The site of a footbridge across the river halfway along the route is shown by the letters "F.B.", but with no indication that it was intended to connect any paths along either side of the river or crossing it.

RAF aerial photography from 1946-9 shows some indication of worn narrow tracks along parts of the river bank on the claimed route. Those may have been used for agricultural access to the land, including with vehicles, as they are connected with others leading into adjoining fields and do not necessarily indicate that there was then a continuous worn path along the river bank. Later Ordnance Survey maps from 1958-60 and 1968-70 do not show the line of any path on the line of the claimed route, although there are also none shown on the routes of the recorded public footpaths. Later aerial photography from between 1999-2000 and 2006-7 shows worn tracks along parts of the river bank, probably also from continuing vehicular access to adjoining land, but not indicating the presence of any continuous worn path more recently.

Overall, none of the historical and more recent mapping shows anything to suggest that there may have been the line of a track or path along the north bank of the river, or any parts of it, to support a claim that it may have considered as public right of way in the past. The claimed route was not included with those surveyed originally by Honiton 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 evidence submitted between 2000 and 2004 in support of the claim that it should be recorded it as a public right of way. It received specific responses mainly from the landowners affected on the route, with further additional evidence of use in support of recording it as a public footpath.

2.4 User Evidence

In total, 28 user evidence forms were submitted between 2000 and 2012, one of which was completed on behalf of two people, so that there is evidence of use by 29 people to consider for this route. The two earliest forms from 2000 were of an older type and one was submitted without a map to show the route used, but most of the forms from 2004 were submitted with maps. Most of those from 2012 were not, so that about half of the forms did not have accompanying maps, but descriptions indicate that the route claimed to have been used was mainly from Tracey Lodge to Clapper Lane. Two people indicated that they had also used an alternative route from the weir on the river northeastwards crossing two fields to a gate further north on Clapper Lane, but are considered insufficient to include it in the claim.

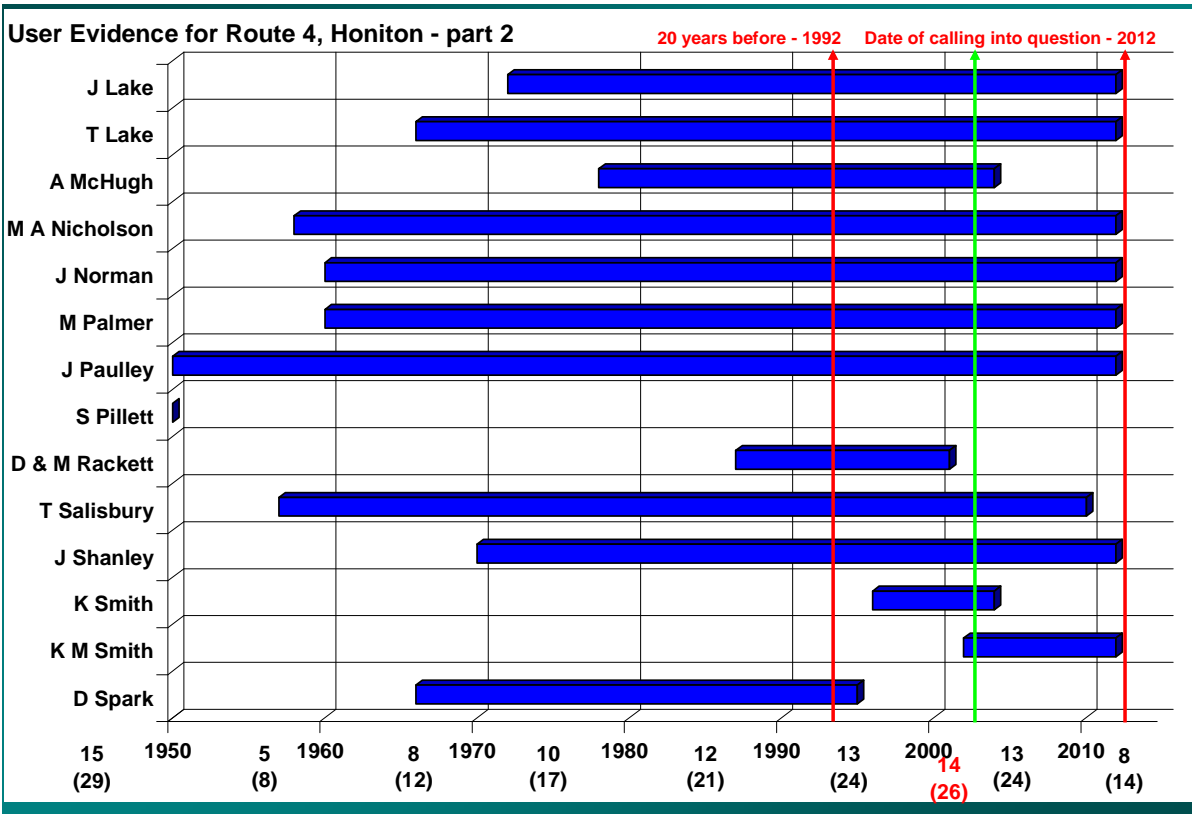
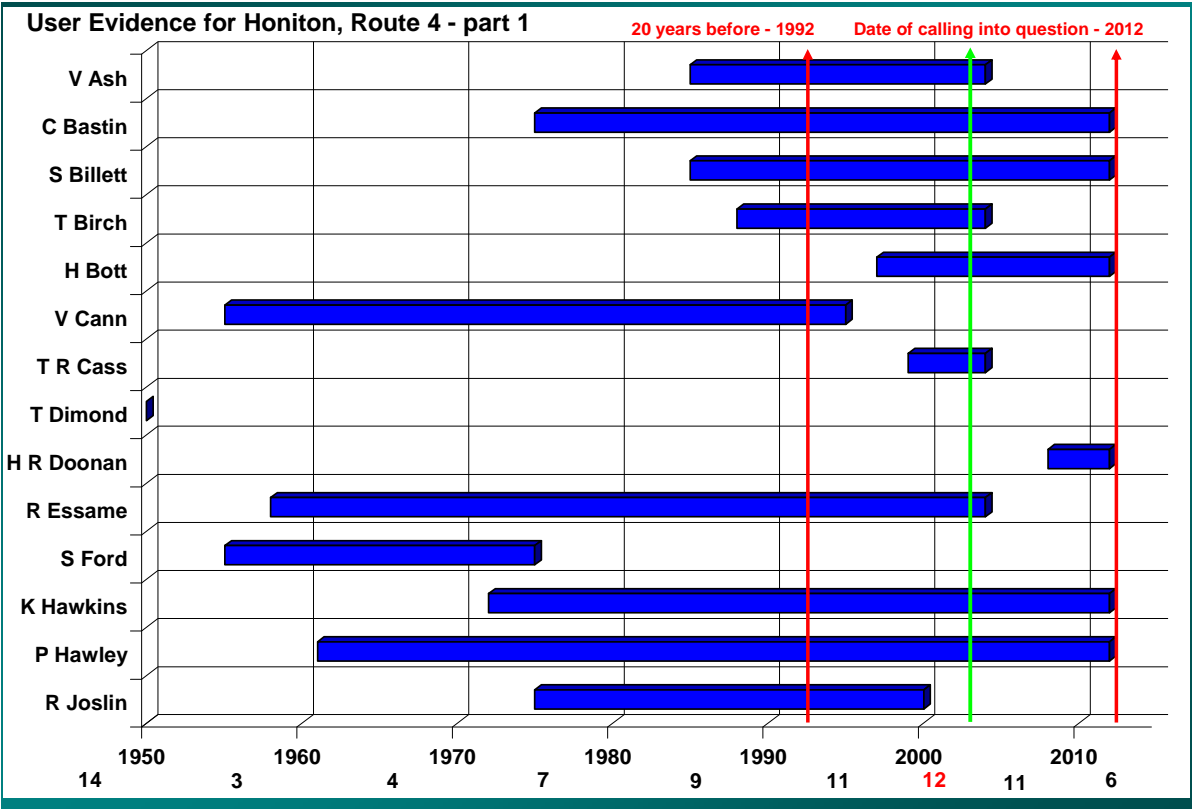
All of the users reported that they had used the claimed route on foot only, believing it to be public. The main basis for their belief was that the public, or residents of Honiton, had always used it or had used it for a long time, said to have been from since between the 1950s and 1980s or when younger, or with “historic” or “ancient” usage for a hundred years. Some reported that it was well worn or defined, easy to follow and well used, having met others using it or told about it by other residents. Others mentioned that they had not been stopped from using it, had never known it closed and with no “private” notices, or that it was used by a school and for access to the “town” or “public” swimming pool above the weir on the river.

The earliest use is reported to have been from the 1950s by eight people and by more than ten from the 1960s and 1970s, with over 20 people saying that they had used it during or since the 30 years since the 1980s. The reported frequency of use, where specified, was evenly distributed with one or two people reporting that they had used it from once a year up to between once or twice a month. Some said that they had used it up to once or twice a week, with others saying that they had used it more frequently up to over 300 times a year, or “practically every day”. Several were not specific, with individuals referring to “many” or “countless” times a year, “all year” and “spasmodically”, or “regular” use and one did not say how often.

The main purpose for using the route was given as pleasure, with others referring to use for walking dogs and one for meeting people. Several people referred to having also used it to go for picnics or swimming in the river above the weir, or knowing others including relatives who had done so as well. It was said to have had a diving board and lifeguards as the only place to swim in Honiton before a pool was built in the town and was used by a local swimming club.

Most people referred to using the whole claimed route between Tracey Lodge and Clapper Lane along the river. Several reported that they were going to or from other destinations in those areas or as part of a circular walk, including between Honiton and Combe Raleigh, or further to or from Awliscombe to the west and Langford Bridge and Greenway Lane to the east as part of a longer historical route. Some indicated that they had used only part of the route to just past the weir on the river, or “around the field” and one specified the alternative access onto Clapper Lane near Keeper’s Cottage.

Nearly all of the users said that they had not been stopped or turned back, apart from one who reported having been stopped by barbed wire and notices. Two indicated that they had been told more recently that the route was not public. Most of them believed that the owners were aware of the public using the route, mainly because they could see from the farm and along the river that it was well used by a large number of people and had been for many years. Two users reported having seen and spoken to the previous farmer who was said not to mind people walking in the fields and had asked for dogs to be kept under control.



Most of the users said that they had not been given permission to use the route, with three indicating that they had been given permission by previous landowners in the 1960s and 1980s. Two of them reported that they were asked for their dogs not to disturb cattle or pheasants. Others considered that they did not need to ask permission and one reported having spoken to an owner who did not say that the route could not be used. None of the users said that they had worked for an owner, occupier or tenant of land or property on the route. Nearly all of them reported that they did not have a private right to use it, although one said that they did but probably mistaking it to mean a public right.

Most of the users said that they had seen signs or notices on the route saying that it was not public. Some of those were reported to have been more recently at the Clapper Lane end stating "Private" and "Beware of Bull", with others referring to signs around 1990 and 2004 that may have been elsewhere and were reported not to have stopped people using the route. Those who completed forms in 2004 referred to signs put up during the Foot and Mouth Disease outbreak of 2001 to keep people out, with one saying that the owner then was asked when it would be opened again.

Some users said that there had been stiles on the route and most referred to there being gates which some reported were not locked. Others indicated that gates had been locked at various times, particularly near to the electricity pylon and at the Clapper Lane end to make entry and exit only possible by climbing over a gate or fence. Some referred to other obstructions on the route, particularly barbed wire, electric fences and the widening of ditches or the depositing of material from digging out the river bed and manure, which was interpreted as being obstacles that made it difficult to use.

In accompanying information, some users provided further details about the claimed route relating to it for dog walking, as a riverside walk and access to the river, particularly for swimming. It was also reported to have been used in the past by a Honiton school for cross-country runs, swimming and picnics. Two people who did not complete user evidence forms provided information in letters relating to the route, including from a farmer at Langford Bridge who believed that the claimed route should be included in a continuation of public access for a riverside walk along the whole length of the River Otter.

2.5 Landowner and Rebuttal Evidence

Completed landowner evidence forms were submitted in June 2012 following the consultations, from the two main owners of land on the claimed route and from the tenants of one owner. Neither of the owners believed the route to be a public right of way, but had seen members of the public using it. One owner said that a permissive path had been allowed from the Tracey Lodge end up to 2001, but not since then and the other said that use to or from the Clapper Lane end was "irregular trespass". Neither of them had ever required people to ask permission before using the route and one specified never having given anyone permission to use it apart from allowing private access, including for the utilities to the river, drainage and electricity pylons.

Both of the owners indicated that they had deposited a map and statement under Section 31 of the Highways Act 1980, which will have provided evidence of their lack of intention to dedicate it as a public right of way. They both reported having turned people back or stopped anyone from using the route, with one saying that they had done so many times and were constantly asking people to stay on the existing footpath and not to trespass on their land. The other said that they had done so irregularly during the time of the family's ownership every time people were seen on their land. Both stated that they had put up notices or signs stating that it was not a public right of way over the previous 50 years and on several specified dates during that time.

The signs were reported to have said “private property”, with another put up in 1992 on the electricity pylon at the start of the route that was specified as under Section 31 of the Highways Act, to indicate that there was no intention to dedicate it as a public right of way. Notices put up by the Clapper Lane bridge were said to have been defaced and removed. Both reported that there were gates on the route which were kept locked and moved or topped with barbed wire, but needed as access to fields daily for checking stock and with stock proof fences maintained.

Both owners submitted additional information, with further details for the background of what they had provided in the evidence forms and relating to a range of other issues that they considered led to problems with public access. Those included the potential dangers from access to the weir on the river, uncontrolled dogs, poaching and the effects of vandalism and dumping of litter causing injuries to cattle.

The tenants said that they grazed cattle in fields beside the river and also cut hay or silage from the land, reporting that there were problems with people walking anywhere they chose away from the recorded public footpath. Those included wire fences being cut, gates left open, uncontrolled dogs and the dangers for stock from litter, similar to the issues raised by the owners.

2.6 Summary and Conclusions – Dedication under Statute and Common Law

Statute Law – Section 31, Highways Act 1980

The user evidence for the claim that the route should be recorded as a public right of way was not provided in support of a formal application, but was submitted between 2000 and 2012 in support of an informal claim. Some of the evidence forms were passed on by Honiton Town Council, but the claim was not made directly by the Council or on its behalf. It may have resulted from particular actions taken by a landowner preventing access to or use of the claimed route, but comments from the earliest user evidence forms in 2000 referred to the owners putting up barriers and a locked gate making the claimed route difficult to use, but not stopping its use.

The specific dates of those actions are not known, so the evidence in support of a claim appears to have been submitted in response to events that could be taken as a challenge to use of the route by the public. However, it did not result in the submission of any further evidence at that time or soon after, so appears not to have been considered significant then to call into question use of the route. Additional evidence was submitted in 2004, several years after access to the route had been closed off during the Foot and Mouth Disease outbreak, around the time that there were concerns about access to the land following the death of a landowner and when notices were reported to have been put up on the route.

Although there are several instances of reported actions by the landowners around that time, the details are also not considered specific enough to be taken as providing a significant challenge then to call into question use of the route. Actions that are more significant were taken at the time of the consultations in May 2012, including with the landowners, when further notices were put up with locked gates and the repair of fences. Those resulted in a more substantial number of user evidence forms relating to the route being submitted, along with the evidence from the landowners. That can be taken to provide a more significant and recent date for calling its use into question to consider the user evidence under statute law during the previous 20 years, between May 1992 and May 2012.

Considering evidence of use by the public during that period, there is use claimed by 26 people, with others not specifying the years that they used it or having only used it before 1992. It could provide sufficient use as of right by the public without force, secrecy or permission to give rise to a statutory presumption of dedication for a public right of way to

have been acquired on the route. The only evidence of people saying that they had used it with permission from the owners is reported to have been from before the 20-year period. Its closure in 2001 during the Foot and Mouth Disease outbreak is not considered to be an interruption to the claimed use for it to be considered as not continuous for the whole period. However, the evidence of use needs to be considered against the evidence of any actions taken by the landowners during that period to show that they did not intend to dedicate the route as public.

There is evidence from the landowners and reported by users that notices were put up and people using the route had been told regularly that it was not public during that period, as well as gates being kept locked and repairs to damaged fences that had allowed access to use of the complete route as claimed. More significantly, there was a deposit by one of the landowners of a map and statement under Section 31(6) of the Highways Act 1980 in 2003 and followed up with a statutory declaration, which is very specific in being sufficient evidence of a lack of intention to dedicate any public rights of way on the land. That is during the 20-year period and is sufficient to rebut any initial presumption of dedication raised by the user evidence, along with other evidence of statutory notices. It means that the evidence is, therefore, not sufficient for recording the route as a public footpath on the basis of statutory dedication from use.

It can be considered in relation to common law, taking into account historical maps and other documentary evidence submitted with the claim or discovered, in conjunction with the evidence of use and any evidence relating to actions taken by landowners, if required.

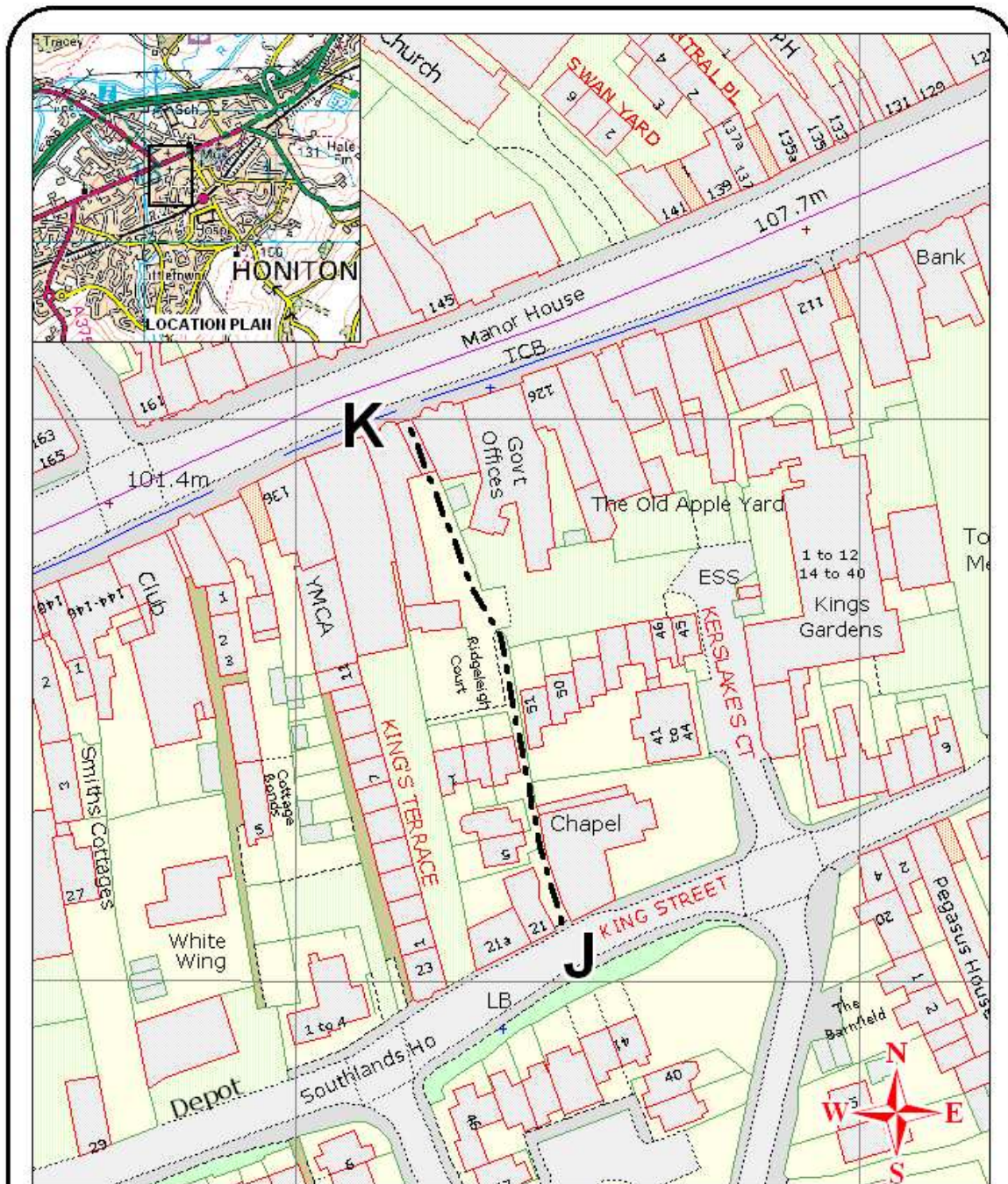
Common Law

Historical mapping does not show that any footpath has existed physically on the line of the claimed route at any time since at least before the middle of the 19th century and there is no more significant evidence to suggest that it was ever considered to be a public right of way. It was not put forward for recording as a public footpath in the process for drawing up the Definitive Map in the 1950s. One of the landowners provided a copy of a local newspaper article from 1956 reporting specifically that Honiton Urban District Council had not included it in their survey at that time. That was following extensive enquiries by the Town Clerk after a statement at a previous meeting of the Council that it was a public right of way, but nothing could be found then to substantiate the claim.

Considering the historical map evidence in connection with the claim, as available and discovered, earlier dedication as a footpath cannot be inferred at common law. There is insufficient evidence to suggest that it was ever considered to be any form of public right of way, or that any earlier landowner may have intended to dedicate the claimed route, that the public accepted the dedication and have continued to use it on that basis. The evidence submitted of use from the 1950s until more recently in support of the claim is insufficient, as there is evidence from some users to show that they had used it specifically with permission from a landowner. That is supported by evidence from the landowner, who referred to the public having used it previously on a permissive basis, but only until 2001. There is also evidence from both landowners that people using the claimed route had been turned back or were told that it was not public, along with posting of notices, locking of gates and the repair of fences opened for access, as evidence of their lack of intention to dedicate during that period and before.

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 claimed 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 claim for the route to be recorded as a footpath, as claimed. Accordingly, the

recommendation is that no Order be made to record the claimed route on the Definitive Map and Statement as a footpath.



map ref ST 1600

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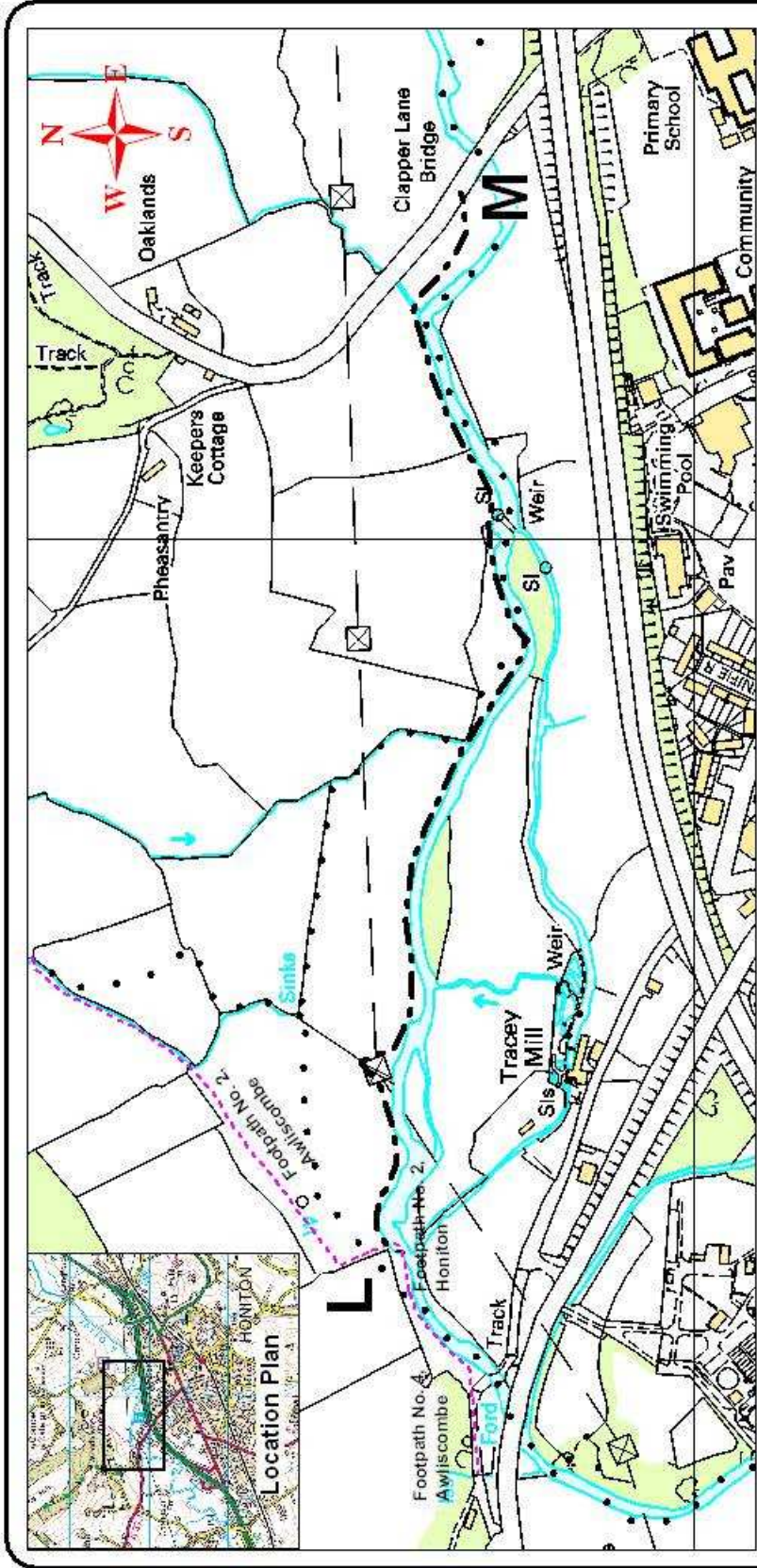
Definitive Map Review, Honiton parish
 Informal Consultations, Route 3:
 Claimed footpath, Fountain Yard

drawing number	HTM/PROW/12/34
date	Apr 2012
scale	1:3500
drawn by	NSC

Notation

Claimed footpath J - K - - - - -

Devon County Council 
Lester Willmington
 HEAD OF HIGHWAYS & TRAFFIC MANAGEMENT



map ref: ST 1501/1601/ SY 1500/1600

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drawing number HTM/PROW/12/35
 date Apr 2012
 scale 1:5000
 drawn by NSC

DEVON COUNTY COUNCIL
Definitive Map Review, Honiton parish
Informal Consultations, Route 4:
Claimed footpath, from Footpath No. 2 near Tracey Lodge to Clapper Lane Bridge

Notation
 Claimed footpath, L - M Recorded footpaths