

**Definitive Map Review 2011/13
Parish of Combe Martin - Part One**

Report of the Head of Highways and Traffic Management

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

Recommendation: It is recommended that a Modification Order be made to upgrade Footpath No. 13, Combe Martin to a bridleway as shown on drawing number HTM/PROW/13/6.

1. Summary

The report examines the first of several proposals arising out of the Definitive Map Review in the parish of Combe Martin in North Devon District.

2. Background/Introduction

The original survey, under s. 27 of the National Parks and Access to the Countryside Act 1949, revealed twenty one footpaths and one bridleway in Combe Martin, which were recorded on the Definitive Map and Statement, Barnstaple Rural District with the relevant date of 1 September 1957.

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

The Limited Special Review of Roads Used as Public Paths (RUPP's), also carried out in the 1970s, did not affect this parish.

The following Agreements and Order have been made:

Devon County Council (Part Footpath No. 3, Combe Martin) Extinguishment Order 1977.
Devon County Council (Footpath No. 30, Combe Martin) Creation Order 1977.
Devon County Council (Footpath No. 1, Combe Martin) Diversion Order 1978.
Devon County Council (Footpath No. 5, Combe Martin) Extinguishment Order 1976.
Devon County Council (Footpath No. 32, Combe Martin) Creation Order 1976.
Devon County Council (Footpath No 31, Combe Martin) Highway Stopped-up as unnecessary with reservation of a footpath.
Exmoor National Park, Somerset County Council (Footpath No. 33 Combe Martin) Dedication with National Trust.
Exmoor National Park, Somerset County Council (Footpath No. 34 Combe Martin) Dedication with National Trust.

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

3. Consultations

The current review began in January 2011 with a special public meeting held in the Town Hall attended by about 50 people.

Public consultations were carried out through October and November 2011 for the twenty five proposals that were put forward following the parish meeting. The review and proposals were advertised around the parish, in the North Devon Journal and notices were placed at the ends of each proposal.

The responses were as follows:

County Councillor Andrea Davis	-	queried individual routes
North Devon District Council	-	no comment
Combe Martin Parish Council	-	supports proposals
British Horse Society	-	no comment
Byways and Bridleways Trust	-	no comment
Country Land & Business Association	-	no comment
Open Spaces Society	-	no comment
Ramblers' Association	-	no comment
Trail Riders' Fellowship	-	no comment

Twenty five valid proposals arose as a result of the consultation. Proposals 1, 2, 7 and 19 for the addition of footpaths to the Definitive Map and Statement pass over land owned by the Parish Council and will be dealt with by means of creation agreements under delegated powers. Proposal 8 is considered in this report. The other proposals will be the subject of future reports.

4. Conclusion

It is recommended that a Modification Order be made in respect of Proposal 8 to upgrade Footpath No. 13 to a bridleway as shown on drawing number HTM/PROW/13/6.

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 preparation of the report.

10. Risk Management Considerations

There are no implications.

11. Public Health Impact

Amendments to the Definitive Map will contribute to the County Council's health and well being agenda.

12. Options/Alternatives

The County Council has statutory duty to undertake a review of the Definitive Map and Statement under the Wildlife and Countryside Act 1981 and is undertaking this duty through the parish by parish review across the county.

13. Reasons for Recommendation/Alternate Options Considered

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

Lester Willmington
Head of Highways and Traffic Management

Electoral Division: Combe Martin Rural

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence files	2011 - date	AS/DMR/COMBE MARTIN

as290113pra
sc/cr/dmr combe martin
03 hq 140213

Proposal 8: Upgrading Footpath No 13 from Borough Road via Rosea Bridge Lane, Rocky Lane to Shute Road to a bridleway.

The route is shown between points A – B – C on drawing no. HTM/PROW/13/6.

Recommendation: It is recommended that a Modification Order be made to upgrade Footpath No. 13, Combe Martin to a bridleway.

1. Basis of Claim

The Wildlife and Countryside Act 1981, Section 53 (5) enables any person to apply to the surveying authority for an order to modify the Definitive Map. The procedure is set out under WCA 1981 Schedule 14.

Common Law presumes that at some time in the past the landowner dedicated the way to the public either expressly, the evidence of the dedication having since been lost, or by implication, by making no objection to the use of the way by the public.

The Highways Act 1980, Section 31 (1) states that where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

The 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.

2. Description of Route

The route commences at point A on Borough Road and proceeds generally northwards turning north eastwards along Rosea Bridge Lane (historically know Rowe's Bridge Lane). It then turns generally eastwards along a muddy track to point B continuing along Rocky Lane, a sunken lane with mud and stone surface, to terminate at Shute Lane at point C.

3. Documentary Evidence

Ordinance Survey Mapping

1804 Surveyor drawings at 2" to 1 mile clearly show the route as a defined lane over its entire length. The route appears to be one of the main routes into the village from the north east.

1880s 1st Edition OS map 25" to 1 mile. The western portion of the lane is marked as Rowe's Bridge Lane; the route is clearly shown as a defined lane on this map over its entire length.

1904-1906 2nd Edition OS map 25" to 1 mile. The route is similarly shown as a defined lane on this map over its entire length, and again annotated as Rowe's Bridge Lane.

It is shown on all subsequent OS maps as a defined lane. In the 1950s it is marked as Rowe's Bridge Lane, but on modern maps it is marked as Rosea Bridge Lane.

Tithe Map 1845. The route is clearly shown as a defined lane throughout its length in a similar manner to other lanes in the parish.

Original Definitive Map Survey

In 1955 the County Surveyor wrote to Combe Martin Parish Council as it appeared they had not undertaken a survey of their rights of way. The parish subsequently returned the survey with a brief description of each route and a beautifully annotated map. However, the map had no key and no indication was given if the routes were footpaths, bridleways or road used as public paths. The District Surveyor queried the routes requesting clarification if they were accommodation roads, but no answer was provided.

When the survey was examined by the County Surveyor the description for the Rosea Bridge Lane route was amended and he gave it the lowest status of Public Footpath No. 13. In 1957 the County Surveyor again wrote to the parish enclosing his list of detailed descriptions of paths and saying "unless I hear from you to the contrary I will take it that this list meets with the approval of your Council." No response was forthcoming and the route was recorded as a public footpath.

4. User Evidence

Twenty one user evidence forms have been submitted of which 11 are from horse riders and 10 from walkers.

The earliest recorded use on horseback is from a Mr Dovell, a long time resident of Combe Martin, who started to use the route as a lad in 1946. He has continued to ride it and has never been stopped or challenged.

Other user's record riding the route from the 1960s through to the present day without let or hindrance, some on a weekly basis and others on a monthly basis.

None of the users have asked for or been given permission to use the route, believing it to be a public bridleway. No users reported being stopped or turned back or have seen any signs saying it was not a right of way.

5. Landowner Evidence

During the consultation period letters were sent to all adjoining houses and farms, and notices and maps placed at each end of the route. No responses were received and no one claims ownership of the lane. There is no rebuttal evidence for the proposed upgrading.

6. Discussion

The Wildlife and Countryside Act 1981, S 56 (1) states "The Definitive Map and statement shall be conclusive evidence as to the particulars contained therein to the following extent, namely (a) where the map shows a footpath, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover a right of way on foot, so however that this paragraph **shall be without prejudice to any question whether the public had at that date any right of way other than that right.**"

Rosea Bridge Lane (referred to as Rowe's Lane on the 1880s OS mapping), and the continuation as Rocky Lane have been shown on historic maps as through routes for over 200 years in the same way as other highways in the parish.

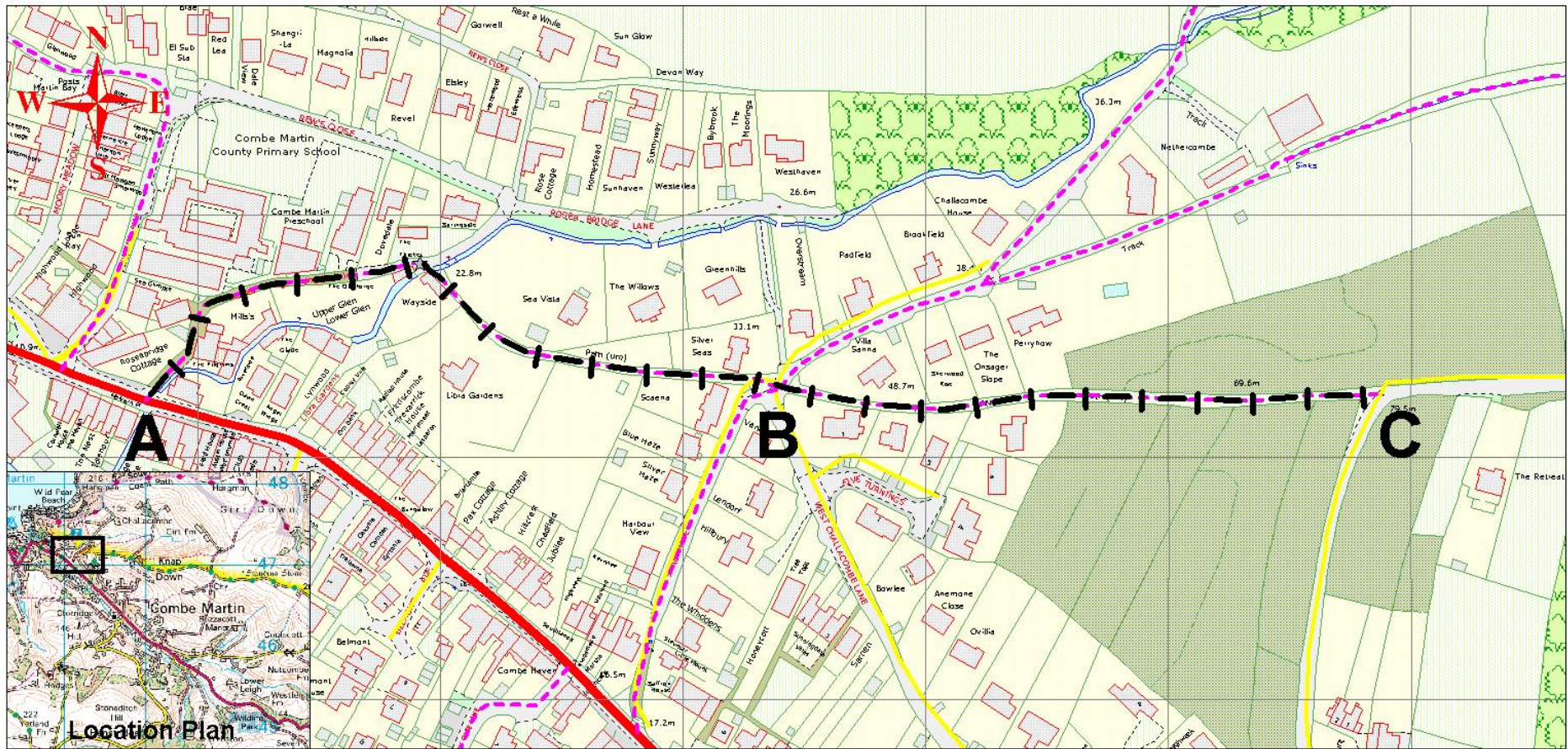
Use of the route on horseback has been without challenge, interruption, force, secrecy or permission and the route does not appear to have any registered owners.

As there has been no calling into question of use by horse riders, the proposed upgrading has to be considered under Common Law which 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 historic mapping evidence, coupled with the user evidence from eleven local horse riders and the lack of any rebuttal evidence would appear to demonstrate that the Common Law test is satisfied and an order should be made to upgrade the footpath.

7. Conclusion

It is concluded that on the balance of probabilities there is sufficient evidence to justify a modification order being made to upgrade Footpath No. 13 to a public bridleway.



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DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - COMBE MARTIN
PROPOSAL 8: UPGRADING FOOTPATH NO.13 TO BRIDLEWAY

drawing number	HTM/PROW/13/6
date	January 2013
scale	1:2500
drawn by	AS

Notation

Footpath No. 13 A - B - C (540 metres) **—|—|—**

Devon
 County Council 

LESTER WILLMINGTON
 HEAD OF HIGHWAYS AND TRAFFIC MANAGEMENT