

**Definitive Map Review  
Parish of Clayhidon**

Report of the Head of Highways, Capital Development and Waste

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

**Recommendation:** It is recommended that Modification Orders be made to amend the Definitive Map to be consistent with the Definitive Map Statement for Footpath No. 28, Clayhidon and Footpath No. 31, Clayhidon as shown on drawing number HTM/PROW/13/67.

**1. Summary**

The report examines two anomalies arising from the Definitive Map Review in the Parish of Clayhidon in the District of Mid Devon. The anomalies exist between the Definitive Map and the Definitive Statement for Footpath No. 28 and Footpath No. 31 Clayhidon, where the paths are described in full in the Definitive Statement but only shown in part on the Definitive Map. Consistency must exist between the two.

The footpaths are shown on drawing number HTM/PROW/13/67.

**2. Background**

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

The following Orders have been made and confirmed:

Footpath No.34 Public Path Diversion Order 1989  
Footpath No.11 Public Path Diversion Order 1998  
Footpath No.28 Public Path Diversion Order 2001  
Footpath No.29 Public Path Diversion Order 2004  
Footpath No.8 Public Path Diversion Order 2006  
Footpath No.20 Public Path Diversion Order 2007  
Footpath No.33 Public Path Diversion Order 2007

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

**3. Review**

A public parish meeting was held in Clayhidon Village Hall 5 June 2013. These proposals have been put forward for modifying the Definitive Map and it is anticipated that more will follow.

Informal consultations have been carried out with the following results:

|                            |   |              |
|----------------------------|---|--------------|
| Councillor Ray Radford     | - |              |
| Clayhidon Parish Council   | - | support      |
| Mid Devon District Council | - | no response  |
| Landowners                 |   |              |
| Mr R Kallaway              | - | no objection |

#### **4. Conclusion**

It is recommended that Modification Orders to reconcile the Definitive Map with the Definitive Statement to provide a consistent record of Footpath No.28, Clayhidon and Footpath No.31, Clayhidon be made as shown on drawing no. HTM/PROW/13/67.

#### **5. Financial Considerations**

There are no implications other than normal costs which will be met out of the general rights of way budget.

#### **6. Sustainability Considerations**

There are no implications.

#### **7. Carbon Impact Considerations**

There are no implications.

#### **8. Equality Considerations**

Where any structures may be required on rights of way, the policy of gap, gate, kissing gate, stile will be followed to improve the accessibility of the network

#### **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. Public Health Impact**

Amendments to the Definitive Map will contribute to the County Councils Health and Wellbeing agenda.

#### **12. Reasons for Recommendation/Alternate Options Considered**

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

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Head of Highways, Capital Development and Waste

**Electoral Division: Willand & Uffculme**

Local Government Act 1972: List of Background Papers

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| Background Paper    | Date | File Ref.     |
|---------------------|------|---------------|
| Correspondence file | 2013 | DMR/Clayhidon |

es280513pra  
sc/cr/DMR clyahidon  
04 060613

**A. Basis of Claim**

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

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

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

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

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

The Wildlife and Countryside Act 1981, Section 56[1] states that the Definitive Map and Statement shall be conclusive evidence as to the particulars contained therein but without prejudice to any question whether the public had, at that date, any right of way other than those rights.

**Footpath No.28, Clayhidon: Addition of a section of Footpath No.28, Clayhidon from Shackles Cross, south over Bolham Hill to Footpath No.29, Clayhidon to the Definitive Map to ensure the map and Definitive Statement are consistent**

The route is shown between points A – B on drawing number HTM/PROW/13/ 67.

**Recommendation: It is recommended that a Modification Order be made to add the omitted section of Footpath No.28, Clayhidon, A - B to the Definitive Map as a public footpath.**

**1. Background**

In the original parish submissions for the Definitive Map in 1950 Footpath No.28 was described as “Shackles Cross to Troakes” “Open grassy lane for a short distance leading to a gate, the lane continues until crossed by moveable bars, cross the lane to Battens Farm, through a gate into a field leading down to Dencehayes Cottage, following same lane on, until a gate into a grass field, through a gate into another grass field which leads down to Troakes Farm”.

The Definitive Statement in respect of Footpath No.28 describes the path as “starting at the 3<sup>rd</sup> Class County road at Shackles Cross and follows a grassy lane in a southerly direction,

leading to Dence's Cottage, and continuing across fields and Footpath No: 30 to join Footpath No: 33 at Troake's Farm"

The section of the route covered by this report is the omission from the county road south to its junction with Footpath No.29, Clayhidon. The continuation to Dence's Cottage (note the spelling of Dencehayes Cottage seems interchangeable with the spelling Dence's Cottage) has been diverted in part by a Public Path Diversion Order in 2001.

## **2. Description of Route**

The route of Footpath No.28, Clayhidon starts as described in the Definitive Statement at the county road at Shackles Cross point A, as shown on drawing number HTM/PROW/13/67 and follows a lane bordered by trees in a southerly direction, leading to Dence's Cottage, and continuing across the fields and Footpath No.30 to join No.33 at Troake's Farm.

The section to be added to the Definitive Map to reflect the Statement is the section between A – B. Today the lane exists as a double hedged route from Shackles Cross to point B where it pass through a gate and turns through 90 degrees east and then follows the western hedge line south through a now large open field to rejoin the remains of the lane at point C. From here the path continues in a southerly direction in the old lane to cross Footpath No.29, Clayhidon just north west of Denshayes Cottage.

The line of Footpath No.28, Clayhidon from the county road at Shackles Cross to its junction with Footpath No.29 is approximately 560 metres.

## **3. Documentary Evidence**

### **3.1 Ordnance Survey Maps**

1880s 1<sup>st</sup> Edition and 1904-06 2nd Edition OS map 25 inch to 1 mile.

Both of these maps records the whole length of the lane to Footpath No.29, Clayhidon

### **3.2 Hemyock Parish survey 1950s**

The parish survey form dated 21/9/50 and carried out by two people describes Footpath No. 28 as "Shackles Cross to Troakes open grassy lane for a short distance leading to a gate, the lane continues until crossed by moveable bars, cross the lane leading to "Battens Farm", through a gate, into a field leading down to "Dencehayes Cottage", following same lane on, until gate into a grass field, through a gate into another grass field which leads to Troakes Farm"

In the list of public rights of way from Clayhidon Parish Council on 16 December 1957 Footpath No.28 is described as "28. From Shackles Cross to Troake's Farm. Starts at the 3<sup>rd</sup> Class County road at Shackles Cross and follows a grassy lane in a southerly direction, leading to Dence's Cottage and continuing across the fields and Footpath No. 30 to join Footpath No. 33 at Troake's Farm"

On the same list of Footpaths the description for Footpath No. 29, Clayhidon confirms that Footpath 28 is a long route, running north to south into the valley as Footpath No. 29 is described as crossing Footpath No. 28. The Definitive Statement for Footpath No. 29. Clayhidon states "The path is a Footpath. It starts at the loop in the Unclassified County road north-east of Lockyer's Farm and continues in a westerly direction and crossing Footpath No: 28 north-west of Dence's Cottage, thence continuing to Ridgewood Farm....."

### **3.3 Earlier Uncompleted review of Definitive Map**

In April 1978 the Parish Clerk submitted a letter and parish submission to the County Secretary Mr A.E.Bennett Esq relating to the limited review carried out at that time. In the letter and submission the clerk referred to Footpath No.28 starting at Shackles Cross and going in a southerly direction to cross Footpath No.29.

#### **4. Rebuttal Evidence**

No rebuttal evidence has been received.

#### **5. Landowner Evidence**

Mr Kallaway from Crosses Farm, Clayhidon has submitted a letter confirming the line of the route of the lane since some of the hedged have been removed and indicates the sites of two old gates. Mr Kallaway appears to have no objection to the route and there have been no other representations against this mapping correction.

#### **6. Discussion**

There is no provision in statute for deciding whether, in the case of conflict, the Map or Statement takes precedence. In R (Norfolk CC) v Secretary of State for the Environment, Food and Rural Affairs (2005) it was said that in the event of a discrepancy between the Map and Statement, the matter was to be determined by reference to the evidence presented, with neither the Map nor Statement having precedence with regard to the weight to be attached to the information on each.

The Definitive Statement clearly describes Footpath No. 28 starting on the county road at Shackles Cross and following the grassy lane south. Although a section of the lane is missing in the middle there is no opposition to its current use by walkers and the line is clarified by Mr Kallaway. The Definitive Statement for Footpath No. 29, Clayhidon reinforces the line and existence of the section of Footpath No. 28 from Shackles Cross south.

#### **7. Conclusion**

In light of the above, it is recommended that a Modification Order be made to add the section of Footpath No. 28, Clayhidon from the county road at Shackles Cross to its junction with Footpath No. 29, Clayhidon along the line A – B shown on plan no. HTM/PROW/13/67 to the Definitive Map.

**Footpath No.31, Clayhidon: Addition of a section of Footpath No.31 from the southern end of the minor county road, Ridgewood Lane to Footpath No. 29, Clayhidon. The Footpath continues as described in the Definitive Statement and recorded on the Definitive Map.**

**Recommendation: It is recommended that a Modification Order be made to add the omitted section of Footpath No.31, Clayhidon, C - D to the Definitive Map as a public footpath.**

#### **1. Background**

In the original parish submissions for the Definitive Map in 1950 Footpath No. 31 was described as "Ridgewood to Lemons Hill via Kilbridge" it continues "A wheel track going

down the centre of "Ridgewood Park", through a gate at the bottom leading down to "Kilbridge" lane very dilapidated condition, then the bridge followed by an iron gate leading into more of the old neglected lane...."

The Definitive Statement in respect of Footpath No.31 describes the path as;  
"The path is a footpath. It starts at the southern end of the Unclassified County road, Ridgewood Lane, crosses Footpath No. 29 and proceeds in a south westerly direction along Kilbridge Lane, a private accommodation road (not repairable by the inhabitants at large), to the Clayhidon/Hemyock boundary, where it continues as Footpath No:40".

This section of the route under discussion is the omission from the Definitive Map from the minor county road, Ridgewood Lane south to its crossover with Footpath No. 29, Clayhidon.

## **2. Description of Route**

The route of Footpath No. 31, Clayhidon starts as described in the Definitive Statement at the southern end of the minor county road, Ridgewood Lane. It continues along a track to the west of Ridgewood Farm and Higher Ridgewood to cross Footpath No. 29, Clayhidon south west of these properties and continues south into Kilbridge Lane. This section is shown on drawing number HTM/PROW/13/ 67 and is approximately 85 metres in length.

## **3. Documentary Evidence**

### **3.1 Ordnance Survey Maps**

1880s 1<sup>st</sup> Edition and 1904-06 2nd Edition OS map 25 inch to 1 mile.  
Both of these maps record the section of Footpath No.31 as described above.

### **3.2 Hemyock Parish survey 1950s**

The parish survey form dated 21/9/50 and carried out by two people describes Footpath No.31, "Ridgewood to Lemons Hill via Kilbridge" it continues  
"A wheel track going down the centre of "Ridgewood Park", through a gate at the bottom leading down to "Kilbridge" lane very dilapidated condition, then the bridge followed by an iron gate leading into more of the old neglected lane which is very wet then the path is crossed with two strains or barb wire at the top of the lane there is a gate, entering a rough field, then a gate leading into "Lemons Hill" road".

In the list of public rights of way from Clayhidon Parish Council on 16<sup>th</sup> December 1957 Footpath No. 31 is described as "31. From Ridgewood to Lemons Hill, via Kilbridge Lane. Starts from the southern end of the Unclassified County road, Ridgewood Lane, crosses Footpath No. 29 and proceeds in a southerly direction along Kilbridge Lane, a private accommodation road (not repairable) to the Clayhidon/Hemyock Parish boundary, where the path continues as Footpath No."

The Definitive Statement as above supports the documentation in respect of Footpath No. 31.

## **4. Rebuttal Evidence**

No rebuttal evidence has been received from the adjacent properties for or against the correction.

## **5. Discussion**

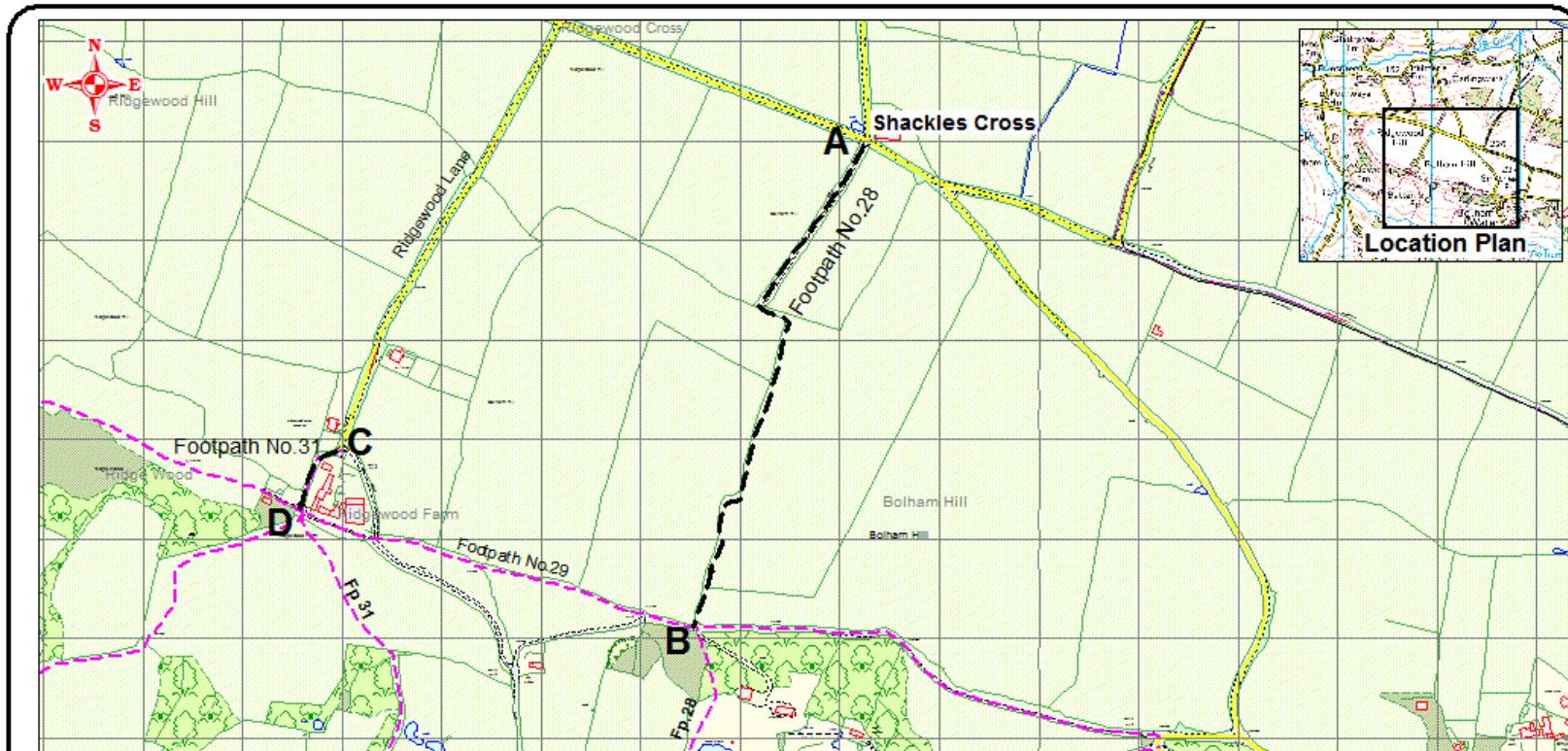
There is no provision in statute for deciding whether, in the case of conflict, the Map or Statement takes precedence. In *R (Norfolk CC) v Secretary of State for the Environment, Food and Rural Affairs* (2005) it was said that in the event of a discrepancy between the Map and Statement, the matter was to be determined by reference to the evidence presented, with neither the Map nor Statement having precedence with regard to the weight to be attached to the information on each.

The Definitive Statement clearly describes Footpath No. 31, starting at the southern end of the minor county road, Ridgewood Lane and crossing Footpath No. 29, Clayhidon. There has not been any dispute to the line of the path by adjacent householders or its use by walkers.

## **7. Conclusion**

In light of the above, it is recommended that a Modification Order be made to add the section of Footpath No. 31, Clayhidon from the southern end of the minor county road, Ridgewood Lane to its junction with Footpath No. 29, Clayhidon along the line C – D shown on plan no. HTM/PROW/13/67 to the Definitive Map.





map ref: ST 1613 Grid 100m

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**DEVON COUNTY COUNCIL**  
**Definitive Map Review - Clayhidon**  
**Definitive Map anomalies Footpath Nos. 28 & 31, Clayhidon**

drawing number **HTM/PROW/13/67**  
 date **May 2013**  
 scale **1:6000 at A4**  
 drawn by **ES**

|                 |  |                            |
|-----------------|--|----------------------------|
| <u>Notation</u> | Anomalies to add <b>A - B</b> (approx 560 m) | <b>C - D</b> (approx 85 m) |
|                 | Existing public footpaths                    |                            |

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