

**Definitive Map Review 1997-2014
Parish of Georgeham (Part 5)**

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 no Modification Order be made in respect of Proposal 11, as shown on drawing HTM/PROW/13/46, but that other options are considered for creation of a public footpath, through negotiation with the landowners.

1. Summary

This report examines a claim arising from Definitive Map Review in the Parish of Georgeham in the District of North Devon. A total of twenty six proposals have previously been reported to the Committee at several stages during the parish review.

2 Background

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 21 footpaths and 2 bridleways in Georgeham, which were recorded on the Definitive Map and Statement, with a relevant date of 1 September 1957.

The review of the Definitive Map, under s. 33 of the 1949 Act, which commenced in the late 1960s but was never completed, produced a number of proposals for change to the Definitive Map at that time.

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

The following Agreements and Orders have been made:

Footpath No. 32, Georgeham Public Path Creation Agreement and Deed of Dedication;
Devon County Council (Footpath No. 18, Georgeham) Public Path Diversion Order 1978;
Devon County Council (Footpath Nos. 5 & 9, Georgeham) Public Path Extinguishment Order 1979;
Devon County Council (Footpath No. 13, Georgeham) Public Path Diversion Order 1995;
Devon County Council (Footpath Nos. 40, 41, 42, 43, & 44, Georgeham) Definitive Map Modification Order 2001;
Devon County Council (Footpath No. 44, Georgeham) Public Path Diversion Order 2001;
Devon County Council (Byway Open to All Traffic No. 45, Georgeham) Definitive Map Modification Order 2003;
Devon County Council (Byway Open to All Traffic No. 46, Georgeham) Definitive Map Modification Order 2003;
Devon County Council (Bridleway No. 47, Georgeham) Definitive Map Modification Order 2003;
Devon County Council (Bridleway Nos. 48 & 49 & Footpath Nos. 13, 15, 17, & 19, Georgeham) Definitive Map Modification Order 2003;
Devon County Council (Bridleway No. 50 & Footpath No. 10, Georgeham) Definitive Map Modification Order 2003;

Devon County Council (Bridleway No. 6, Georgeham) Public Path Diversion and Definitive Map Modification Order 2013.

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

3 Review

The current Review began in September 1997 with an initial meeting in the parish and a public meeting in June 1998. Sixteen proposals arose as a result of the initial consultations with a further four proposals included, along with several diversions. Full public consultations were carried out in April 1998 and November 2001, on 20 proposals for modifying the Definitive Map and Statement. An additional consultation was carried out in the summer of 2013 for a number of additional Schedule 14 applications besides a previous proposal which is presented in this report to the Committee.

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

County Councillor C Chugg	-	no comment
North Devon Council	-	no comment
Georgeham Parish Council	-	support the proposal
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'	-	comments included in this report
Trail Riders' Fellowship	-	no comment

Following the confirmation of the 2003 Modification Orders, the Trail Riders' Fellowship submitted eight Schedule 14 applications proposing to record a number of routes in the parish as Byways Open to All Traffic. Six of these routes were consulted upon in 2001 and therefore did not require further consultation, and were included in a previous report. A further two Schedule 14 applications proposing to record routes in the parish as Byways Open to All Traffic had not previously been consulted on and were the subject of the November 2013 report. A final proposal which was withdrawn from a previous report due to the receipt of additional evidence is dealt with in this report.

4 Conclusion

It is recommended that no Order be made in respect of the proposal, but that other options are considered for creation of a public footpath, through negotiation with the landowners.

5 Financial Considerations

The implications/consequences of the recommendation have been taken into account in preparing the report. Financial implications are not a relevant consideration to be taken into account under the provision of the Wildlife and Countryside Act 1981. The Authority's costs associated with Modification Orders, including Schedule 14 appeals, the making of Orders and subsequent determinations, are met from the general public rights of way budget in fulfilling our statutory duties.

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. Public Health Impact

There are no implications.

12. Options/Alternatives

The County Council has a 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 district area.

David Whitton
Head of Highways, Capital Development and Waste

Electoral Division: Braunton Rural

Local Government Act 1972: List of Background Papers

Contact for enquiries: Caroline Gatrell

Room No: ABG Lucombe House, County Hall, Exeter

Tel No: 01392 383240

Background Paper	Date	File Ref.
Correspondence file	1997-2013	DMR/Georgeham

cg270114pra
sc/cr/dmr parish of georgeham part 5
03 120214

Background

Basis of Claims

The Wildlife and Countryside Act 1981, Section 53 (2) (b) enables the surveying authority to make an order to modify the Definitive Map. The procedure is set out under WCA 1981 Schedule 15.

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.

Highway Act 1980 Section 31(6) States a landowner may deposit with the county council, a map and statement that indicates what way (if any) over the land he admits to having dedicated as highways, for a period of years. To the effect that *no additional way over the land* delineated on the said map has been dedicated as a highway since the date of the deposit. This is in law sufficient evidence to negate the intention of the owner or his successors in title to dedicate any such additional way as a highway.

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.

Proposal 11: Addition of a public footpath running between Georgeham Bridleway No. 3 and Black Rock, Putsborough.

Addition of a public footpath running between Georgeham Bridleway No. 3 and Black Rock, Putsborough via Vention, as shown between points C – D – E on drawing number HTM/PROW/13/46.

Recommendation: That no Modification Order be made in respect of Proposal 11, but that other options are considered for creation of a public footpath, through negotiation with the landowners.

1. Background

A claim was made for a footpath between Georgeham Bridleway No. 3 and Black Rock by Georgeham Parish Council in 1978 in response to a review of the Definitive Map. However that review was not completed and the claim was held on file until 1990. A report was taken to the Public Rights of Way Sub-Committee with a recommendation to turn down the claim. Following the opening of the current review, the claim was put forward as a proposal for addition to the Definitive Map.

2. Description of the Route

From its junction with Georgeham Bridleway No. 3 where it is signed as a public footpath at point C, the proposal passes over a stile into a field and proceeds generally south westwards to a stile and private road at point D. On the east side of the road facing north is a sign saying 'Vention private road no footpath' and on the west side 'Footpath' indicating the claimed route. Facing south is a sign saying 'Private St Anthony and Penthouse'. After crossing the private road the proposal runs along a narrow path between two boundary fences belonging to the properties of Putscombe and St Anthony, and then down a steep sandy slope to Black Rock onto Putsborough Sand at point E.

3. Documentary Evidence

Ordnance Survey mapping

This proposal is not shown on the 1st edition 25" mapping from 1889 or the 2nd Edition of 1904, though neither is the route now recorded as Georgeham Bridleway No. 3. The area is simply annotated as 'sedge banks'. By the 2nd Edition there is a path depicted running parallel to the bridleway through what is now a National Trust owned field. The claimed route is not shown. By the Post War A Edition mapping of 1959 the Vention area has been developed and there is a path shown across the National Trust field along a slightly varied alignment to the claimed route, from near C to south of point D, though it not the only path marked on the map.

Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way".

Georgeham Tithe map

The proposal is not shown on the tithe map.

Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and the colouring generally indicates carriageways

or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the route shown.

Finance Act records

This route is not shown and the easements listed are located in the vicinity of this proposal.

Definitive Map records

Though these do not relate specifically to the proposal route, they shed useful light on it and how it fits in the local network.

The Parish Survey form for Footpath No. 1, Georgeham notes that the alignment of the path had been altered to run to the north of Heathercombe (the site of a hotel which had since burnt down). Originally therefore, people would have accessed the claimed route at point D from the southeast, rather than using the current line of Footpath No. 1 to point C, and thence to point D.

On the 1978 claim form submitted by the Georgeham Parish Council, they stated that they had been in communication with the landowners involved in the proposal. Lord Dudley, who owned the Vention Estate, would not accept the proposal across his private road and beach, while Earl Ferrers of St Anthony and the National Trust had no objection. The owner of Putscombe had not responded.

In correspondence with Devon County Council in 1978-9, Lord Dudley's agent pointed out the particular characteristics of the law regarding claims to the foreshore. In terms of the proposal crossing the private road, he considered that *'an acceptable solution would be for the path to be routed straight across'* rather than the small dogleg that was being used, with *'prominent signs erected warning the public that the road is private and signposting the way to the beach'*. The agent also mentioned that the *'National Trust weren't particularly happy'* about the proposal crossing the middle of their field, though no correspondence is known to have been received from the organisation.

Aerial photography

The section of the proposal route D – E from the private road down to Black Rock can be seen on the 1940s RAF photography, besides that the main access to Black Rock ran to the south of Heathercombe rather than to the north as seen in later years. What can also be seen is the Second World War improvement and extension of Marine Drive to meet the Vention private road above the property 'Putscombe', crossing the now National Trust field. This section can be seen on the later photography besides that between C – D – E.

Georgeham Parish Council Minutes

The parish have historically shown an interest in public rights of way, which is demonstrated by their response to the incomplete review in the 1970s. Between 1977 and 1979 there are numerous references to this proposal for inclusion on the Definitive Map. At a meeting in March 1978, the Earl of Dudley (Lord) had concerns about how the route could be progressed since it crossed a private road on his property towards Vention. However he considered that *'it would be churlish to refuse'* and the meeting approved the submission of the claim.

Public Rights of Way Sub-Committee Report 1990

A report was taken to the above Committee dealing with the 1970s claim.

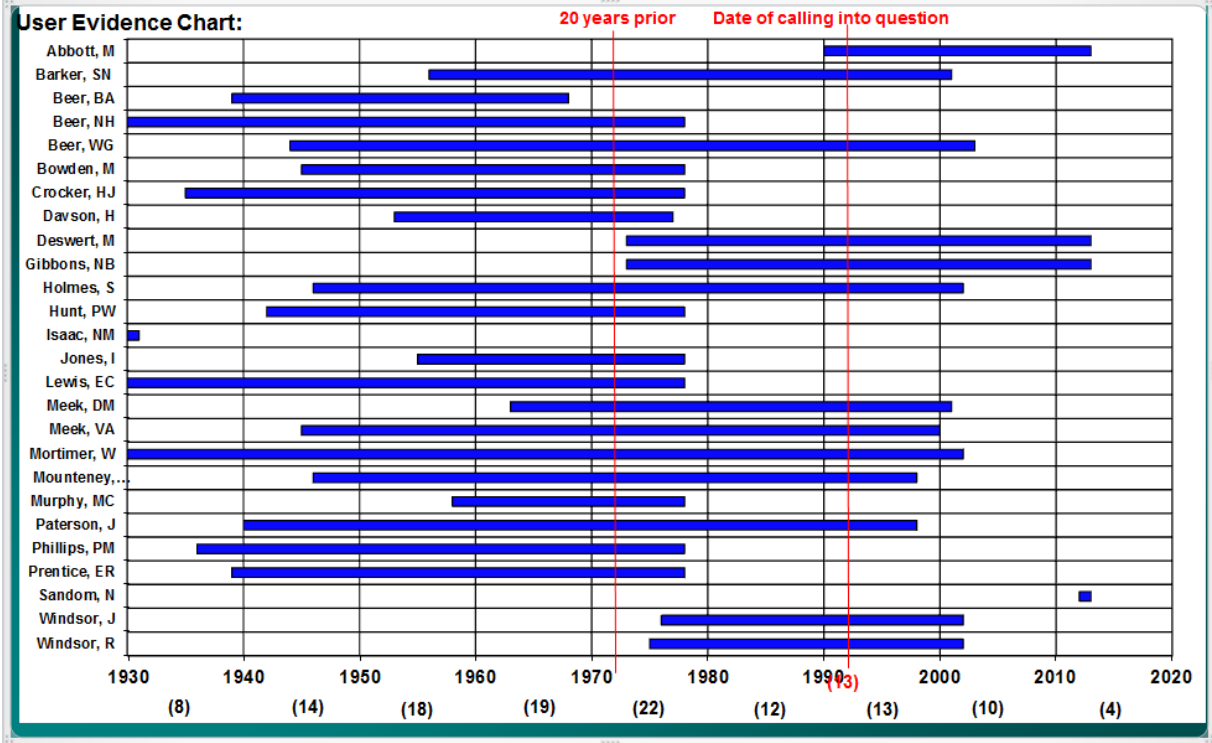
It states that the use of the section over the National Trust land was only ever permissive. However, there is no evidence that they communicated the permissive nature of access to the public, who had used the route for many years before their ownership. Although the

Trust acquired the land in 1964, it had not submitted a deposit under Section 31(6) of the Highways Act 1980 at the time of the previous report.

Though there was reported storm damage to the proposal route towards point E which it is believed meant part of the path had been lost, the user evidence up to that date demonstrates that the public continued to use the same or similar path alignment regardless.

User Evidence

A total of 12 user evidence forms were received in support of this claim when dealt with in 1990, and since then a further 14 forms have been received during the current Review, giving a total of 26.



Local people have been accessing Black Rock from the proposal (D – E) since at least the 1930s using the former alignment of Georgeham Footpath No. 1 to the south of Heathercombe and across the National Trust field to point D until circa. 1950, when Georgeham Footpath No. 1 was recorded along its definitive alignment. From this time until the mid-1970s, users walked both to the south and to the north of Heathercombe, using the whole of the proposal route C – D – E. Users increasingly used the whole proposal route as the former route to the south of Heathercombe became overgrown and impassable.

It is believed that the original route may have come into existence when Heathercombe was a hotel, before it burnt down in 1941, as access to Putsborough Sand. Users also recall the Home Guard accessing Black Rock at point E as a wartime lookout post. Successive generations of families have used the route as a pedestrian route from the village and continue to do so on a regular basis. They also recall the maintenance of the fences between points D – E and who was employed to do so, along with the rope on the steeper section. No one was ever challenged or turned back, or told that the route was not public. None of the users recall any notices stating the proposal was private or permissive. The signs at point D at the private road were erected because of the 1978 claim.

Supporting Evidence

Georgeham Parish Council

The parish support the proposal and have done since 1977 and is aware of the public's use of the route since at least the 1930s.

Ramblers'

The organisation supports the proposal and included an evidence form from one of their members detailing use since the 1930s.

Landowner Evidence

The owners of land crossed by or adjoining the proposal were contacted for their views at the earlier uncompleted reviews and as part of the current review.

The National Trust has submitted 3 Landowner Evidence Forms; in 1998, 2002 and 2013. They acquired the land on 20 November 1964 which has been protected by a deposit under Section 31(6) of the Highways Act 1980 since 18 January 1993. They have believed the proposal route not to be public since 1964, though have been aware of the regular use of the public from that time to the current day. The stiles at points C and D have been in place since at least 1985. In 1998 they had no objections to a variation of the proposal route which utilised an old track way, that they considered a better service road than the proposal and were prepared to agree as an addition. However, in 2001, the land agent had changed and consequently so did their viewpoint regarding the proposal. They have never challenged anyone nor told them it was not public, and have not erected any notices that the way was not public. The Trust considers the proposal route to only be permissive and questions the suitability of the section D – E. However it has recently come to light that they have signed the proposal route as a '*public footpath*' since at least 2011.

Lady Ellis (Countess Ferrers) of St Anthony adjacent to the proposal route has owned the property for over 70 years and has believed the path to be public for 40 years. Her husband is the Earl Ferrers and he registered no objection to the claim dealt with in the 1990 Committee report, having regarded it as a public footpath for some time. She has seen or is aware that people use the path daily. She has never required permission from users nor has she given it, and she has never challenged anyone using the route. No notices have been erected saying it was not a public right of way. She believes the last 50 yards to the beach is a difficult and dangerous descent.

Mr and Mrs Watson have owned Putscombe since 1988 adjacent to the proposal route and believe the path is public. They have seen or are aware that people use the path fairly regularly. They have never required permission from users nor have they given it, and they have never challenged anyone using the route. No notices have been erected saying it was not a public right of way. Their only concern is that the ultimate access to the beach is steep and probably only suitable for fit able people.

Lord Dudley (Earl of Dudley) owned Vention House and the private road which is crossed by the proposal between 1972 and 1998. Correspondence held on file from 1978 with his agent shows his objection to the proposal due to concerns of trespass along the private road. He had also taken Counsel's opinion who stated the belief that it was not possible for public rights to be claimed on the beach and therefore there was no legal basis for the registration of such rights. A plan of the Vention Cottage Estate shows that he also claimed part of the proposal between points D & E. However Devon County Council noted that if using the proposal route, there would be no reason for trespass and it was further away from Vention House. It was considered by Lord Dudley that it would be acceptable if the proposal route went straight across the private road and that warning signs regarding the private road's

status would be erected plus signposting to the beach. Though additional grounds for objection are referred to in the 1990 Committee report which do not appear in the 1978 objection, unfortunately the original correspondence is missing. These additional grounds included storm damage to the path rendering the beach inaccessible and the cost of reinstatement.

The owners of Vention House and land to the east of Putscombe did not respond to the informal consultation. However, they do not claim to own the proposal between points D & E as their predecessor did, Lord Dudley.

4. Discussion

It is believed that the proposal route may have come into existence as access to the beach from the former hotel 'Heathercombe' which burned down in 1941. It was also used by the Home Guard during the Second World War as a lookout point.

The claimed path is first mapped on the 2nd Edition Ordnance Survey mapping of 1904 between points D – E only, as the remainder appears to have been unenclosed rough land. The Post War A Edition of the 1950s shows the development of paths in the area, which has altered again on the current Ordnance Survey mapping.

The aerial photography from the 1940s shows the original path running from the southeast (to the south of the former hotel Heathercombe) to point D and thence to Black Rock (point E). This is supported by the 1950 Parish Survey for Footpath No. 1, Georgeham, which acknowledged an alteration from the south to the north side of Heathercombe. This alteration may have occurred when parts of Putsborough Hamlet manor was sold off to tenants.

This alteration is reflected in the user evidence, though it appears some of the oldest users continued to use the southern route until it became overgrown in the mid/late 1970s, and only then using the definitive alignment of Georgeham Footpath No. 1 to point C and thence to Black Rock on the claimed route C – D – E.

When the path to Black Rock was claimed in 1978, Lord Dudley initially objected to the Parish Council, though it appears that he was willing to accept the claimed route if it was altered so that it went straight across his private road, rather than following a dogleg. It is clear from site photographs that the stile at the private road was moved, so users went straight rather than dogleg. Also signage appeared '*private road*' and '*footpath*' where the path crosses the road at point D which is recalled by users from this time and still exists. Approximately 22 people were walking the route at this time. Though Lord Dudley initially objected to the claim, it appears it was insufficient to call the public's use into question, as works were carried out in the proximity of the claimed route.

It may also be considered that the proposal route was again possibly brought into question in 1990 when it was first considered by the County Council's Public Rights of Way Sub-Committee. The report stated that the path near point E had been lost to storm damage some years before. However, while there may have been storm damage it appears to have had minimal impact on the line of the path and its use by the public. Though it refers to an objection by the National Trust, this contradicts the Trusts position in 1978 and 1998. Though they have owned the field crossed by the proposal between C – D since 1964, they did not make a deposit under Section 31(6) of the Highways Act 1980 until 1993. There is no evidence between 1964 and 1993 that they made the public aware that their use was permissive. In recent years the Trust has signed the path from point C at its junction with Georgeham Bridleway No. 3 as a 'public footpath' by the National Trust. It is currently signed as such.

No one has ever been stopped or turned back. No notices have existed along the proposal route indicating it was ever permissive. The Section 31(6) deposit dated 1993 is considered sufficient to show lack of intention to dedicate public rights since, and so any relevant period would date back to 1973. It is apparent from the user evidence that the public have accessed Black Rock from Footpath No. 1 and Bridleway No. 3, Georgeham for many years. However, the alignment of the path has altered at some time in the past, with users combining the use of both a southern option as well as the current proposal until the mid/late 1970s when the more southerly route to point D became overgrown and impassable. There is no specific date when this transition occurred. Consequently the evidence does not quite meet the 20 year period rules, and due to the alterations in route, also does not quite meet the tests at common law.

There has been some concern about the steepness and nature of the path as it approaches point E. However, it is clear from the user evidence that the public has accepted it in its state with any inconvenience and risk it may pose.

5 Conclusion

It is recommended therefore, that no Modification Order be made to add a footpath between points C – D – E, as shown on drawing number HTM/PROW/13/46, but that other options are considered for creation of a public footpath, through negotiation with the landowners.



map ref SS4544

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Devon County Council
Definitive Map Review - Georgeham
Proposal 11 - Addition of footpath to Black Rock

drawing number HTM/PROW/13/46

date April 2013

scale 1:2,500

drawn by CLG

Notation

- Proposed footpath C - D - E (350 metres) ●●●●●
- Existing footpaths - - - - -
- Existing bridleways - - - - -

David Whitton
 Head of Highways, Capital Development & Waste

