

**Definitive Map Review  
Parish of Combe Martin- Part 3**

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 a Modification Order be made to modify the Definitive Map and Statement by adding a Footpath in Combe Martin between points A-B-C as shown on drawing number HMT/PROW/15/54 (Proposal 19).**

**1. Introduction**

This report examines Proposal 19 arising from the Definitive Map Review in the parish of Combe Martin.

**2. Background**

The Background for the Definitive Map Review in the parish of Combe Martin was set out in Committee report HTM/13/14 February 2013.

**3. Proposal**

Please refer to the appendix to this report.

**4. 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 valid 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

Seven proposals have been the subject of previous reports. Three proposals (1, 2 and 7) 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 19 is considered in this report as it is not wholly owned by the Parish Council. The other proposals will be the subject of future reports.

## **5. Financial Considerations**

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. Legal Considerations**

The implications/consequences of the recommendation(s) have been taken into account in the preparation of the report.

## **7. Risk Management Considerations**

No risks have been identified.

## **8. Equality, Environmental Impact and Public Health Considerations**

Equality, environmental impact or public health implications have, where appropriate under the provisions of the relevant legislation, been taken into account in the preparation of the report.

## **9. Conclusion**

It is recommended that a modification order be made in respect of Proposal 19, to add a public footpath between points A – B – C as shown on drawing number HTM/PROW/15/54.

## **10. Reasons for Recommendations**

To undertake the County Council's statutory duty under the Wildlife and Countryside Act 1981 to keep the Definitive Map and Statement under continuous review and to progress the parish by parish review in the North Devon District area.

David Whitton  
Head of Highways, Capital Development and Waste

## **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

as231015prw  
sc/cr/DMR parish combe martin part 3  
03 171115

**A. Basis of Claim**

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.

The Wildlife and Countryside Act 1981, Section 53(3)(c) enables the Definitive Map 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.

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.

**Proposal 19: To add a Footpath between points A-B-C as shown on drawing number HMT/PROW/15/54**

**Recommendation:** It is recommended that a Modification Order be made in respect of Proposal 19 to add a Footpath to the Definitive Map.

**1. Background**

- 1.1. Proposal 19 was put forward by the Parish Council and members of the public as a result of the Definitive Map Review meeting in Combe Martin. This is the third part of the Parish Review for Combe Martin, for the background and introduction please see the previous report HTM/13/14.

**2. Description of the Route**

- 2.1 Proposal 19 commences at point A on the plan, at Bowling Green Lane. The route runs in a generally north westerly direction from the corner of Bowling Green Lane to the High Street, Combe Martin following a path at the edge of Cormelles Court Car park and Blackmore Ham Pleasure Gardens to point B then along a 'back lane' on to High Street at point C. This section appears to be known as Mill Weir Lane or Blackmore Hams Lane. The route has an old tarmac surface that is worn in places. It is bounded by a

stone wall on the one side in the car park and gardens section, and stone walls and property walls in the lane section.



Point A looking North West



Point C looking South.

### 3. Documentary Evidence

- 3.1 It is understood that from around the 12th century water from the River Umber was used to power two corn mills in Combe Martin. The higher mill sited near the former police house and Pack o' Cards [pub] was fed from a pond at Cormelles Court, with a leat running along the lane by the Liberal club, the claimed route of Proposal 19. The name of the cottage Millweir Cottage alluding to this historic feature. The higher mill that this leat fed closed around 1850. (Taken from Combe Martin & the Umber Valley Historic Environment Action Plan Sept. 2013.)
- 3.2 Ordnance Survey Mapping  
1880s 1<sup>st</sup> Edition OS map 25" to 1 mile. Two fields are shown between points A and B, with the lane starting at point B, following the former mill leat to High Street at point C.
- 3.3 1904-1906 2<sup>nd</sup> Edition OS map 25" to 1 mile. Two fields are shown with a defined lane between point B and C as above.
- 3.4 1976 25" to 1 mile show that the Car Park, Blackmore Ham Pleasure Gardens have been developed and the lane is shown as an unenclosed lane running alongside and as a defined lane between B and C in the same way as the other maps.
- 3.5 All subsequent OS maps show the claimed route in the same way.
- 3.6 Combe Martin Parish Council Minutes  
The Combe Martin Parish Council Minutes record the development that took place on the original two fields between points A and B on the claimed route, and give an insight into the section of lane between point B and C. From these it can be seen that:
  - 3.7 In 1965 North Devon District Council bought Deacons Ham and Deacons Orchard to build the Cormelles Court Flats.
  - 3.8 In 1971 Combe Martin Parish Council bought the remaining area for Cormelles car park.
  - 3.9 In 1972 Combe Martin Parish Council bought Blackmore Ham field from Mr Fredrick Huxtable.
  - 3.10 In November 1973 the Parish Council discussed "the access road to Blackmore Ham with a view to getting this roadway made up to a reasonable standard, it was agreed to

ask the owners whose property effronted [sic] the road to contribute towards the cost.” Letters were sent to all the adjoining house holders but copies of the discussion between the parish council and the adjoining residents do not appear to have survived.

- 3.11 By 1974 Combe Martin Parish Council had finalised the plans for the layout of the Pleasure Gardens. They appear to have laid out paths and tarmacked the claimed footpath from Bowling Green Lane, through the side of the car park and Blackmore Ham pleasure gardens and filled in pot holes in the lane then known as Blackmore Hams Lane or Mill Weir lane.
- 3.12 In August 1974 a Mr Morrish wrote to the Parish Council to say that the opening of Blackmore Ham had caused him some concern re the condition of the access road. The sub-committee arranged to meet him and discuss. It followed that the Parish Council wrote apologising for not informing him of the change of use of Blackmore Ham involving greater use of the access road and pointing out that the Parish Council has no statutory obligation to do so.
- 3.13 As part of this work between 1974 and 1976, the Parish Council ordered and erected a wooden sign that said “Footpath to: - Blackmore Ham Pleasure Gardens Car Park and Church”, and surfaced the route. This sign was still on site in 2011, and remained in situ until it was removed by the Parish Council in June 2014 because their minute’s record it had worn out.



Original Parish Council sign at point A

- 3.14 As a frontager the Parish Council have subsequently filled in the worst potholes along Blackmore Ham Lane or Mill Weir Lane, in response to concerns raised.
- 3.15 The minutes of November 1976 note that the “adjoining occupiers and tenants affronting [sic] this lane: asked for certain items to be dealt with, e.g.to raise all stop cocks –not to restrict cycling on the path, etc. It was proposed to commence the work right away.”
- 3.16 This route was not recorded on the Definitive Map. The Parish Councils acquisition of the land and the signing of the lane as a Footpath was done in 1974, postdating the original definitive map by 20 years.
- 3.17 In 2011 the Parish Council wrote to the adjoining householders to find a satisfactory solution to the ongoing maintenance issues in Mill Weir Lane B – C. They suggested forming a resident’s association of which the parish council would be a member, to agree the sharing of maintenance costs. Nothing came of this suggestion and no association was formed.

#### 4. Land Registry

- 4.1 The land crossed by A – B is owned by the Parish Council. The land over which the lane between B - C runs is not registered with the District Land Registry. The Parish Council do not own the lane neither do the adjoining property owners. They all appear to share access over it.

## 5. User Evidence

- 5.1 The route is intensively used by members of the public walking through. This use has been observed on many occasions.
- 5.2 Ten user evidence forms have identified Proposal 19 as part of recreational routes around this area. All users have used the route on foot, one on horseback. Two users are residents whose properties back on to the claimed route, and they have used the B – C section as vehicular access to the back of their properties.
- 5.3 Most of the users were going to and from the High Street, the shops, library and generally going about their daily business. Many people have walked this path on an almost daily basis since the Parish Council opened it up in the 1974.
- 5.4 The reputation of this path is that of a public footpath and this is acknowledged by the adjoining property owners and the Parish Council. The users who have filled in forms are a very small sample of the public who are, and have been walking the route on a daily basis without let or hindrance since 1974. The reputation of path as a public footpath is therefore greater than the sample of user evidence. A sample of user evidence follows:
- 5.5 Mr Hammett says he has used the path every day since 1978 to go about his daily business at the post office, health centre, community centre, car park and church on foot. He saw the notice erected that said Footpath. He has no private access over the path, his property end on the side of the footpath, and he comments that the footpath was in use by the public when he bought his property in 1978.
- 5.6 Mr Humphries walked the path every day for the last 30 years to go shopping to get to the library and see friends.
- 5.7 Mr Purse has given evidence of use of the claimed footpath even though he lives at a cottage that is at point C. He says he has used it on foot to get to the pleasure gardens about 100 times a year since the mid 1970's.
- 5.8 Mrs Sparks has used the path since it was made at least 12 times a year on a walk from home and back. (She moved to the area in 1967.)
- 5.9 Mr P Spencer had used the route fortnightly since it was opened on foot for pleasure walks and on business. He said it had been signed as a footpath by Combe Martin Parish Council many years ago.
- 5.10 Mrs Westwell has walked the path since moving to an adjoining property in 1985. She has walked the path right through as a member of the public and says there always was a sign to direct the public that it was a footpath. In 1985 when purchasing her property she says north Devon District Council gave her permission to park in her private court yard off the lane. She says she believes the parish council are to keep it in good repair as it's used by 100's of people a day.
- 5.11 None of the users have asked for or been given permission to use the route, believing it to be at least a footpath. No users reported being stopped or turned back and all have seen the signs saying that it is a Footpath.

## **6. Landowner evidence**

- 6.1 The Parish Council own the section A – B. The section of lane between points B – C is not recorded with the District Land Registry. Neither the Parish Council nor the abutting house holders claim ownership. The last owner of the manor of Combe Martin appears to have been Mr Watson. Some property owners appear to have private access to the rear of their properties using the lane, others do not.
- 6.2 The presumption of *ad medium filum* means that when land abuts a highway (or private right of way), the boundary of that land is presumed to extend to the middle of that right of way (or highway), unless it can be shown otherwise, and it may therefore mean that all the adjoining landowners may own the lane B – C, and have the power to dedicate.

## **7. Adjoining property holder's evidence.**

- 7.1 During the consultation period letters were sent to all adjoining houses, and notices and maps placed at each end of the route. No one claimed ownership of the lane.
- 7.2 Mr & Mrs Langmead have lived at East Allens prior to 1972, before the Parish Council bought Blackmore Ham Gardens and Deacons Ham. They access their garage from the lane between points C – B. They say that when they moved to Combe Martin; Blackmore Ham was accessed from Mill Weir Lane and Deacons Ham from Bowling Green road. The plots were originally divided by a hedge and in separate ownership. They say that when the Parish Council bought Blackmore Ham they approached the residents of Mill Weir Lane for permission to use the lane. Conditions were apparently agreed including the right to stop-up the lane if the Parish Council failed to meet these conditions. At the time Mr & Mrs Langmead were concerned that it adversely affected their lives or that of their young children as they were back then. The Parish Council went on to open the leisure gardens and tarmacked the lane, put up street lighting and a sign on the High Street end. Prior to this it was never a public footpath. They go on to say "No legal variants were made to any deeds as far as I am aware and the Parish Council has declared it has no right of way over Mill Weir Lane and so the public cannot have been granted any rights by the Parish Council and no public right can exist other than that agreed at the time between the then residents and the parish council."
- 7.3 Mr & Mrs Mullins have lived at West Allens since 2001. They access their garage from the Mill Weir lane between points C – B. Mr Mullins has done comprehensive research into the lane in the Parish Council minute books and records to uncover its history. He has written extensively to the County Council and all the letters are included in full in the backing papers to this report.
- 7.4 In 2011 Mr & Mrs Mullins and the other residents were approached by the Parish Council to discuss forming a residents association with the Parish Council being a member to share the maintenance of the lane. This association was never formed. Recently Mr Mullins has become very concerned about the deteriorating state of the tarmac surface and the pot holes on Mill Weir Lane (B – C) and he is very concerned about his and the other frontage's liability if someone falls on a pothole in the lane.
- 7.5 Mr Mullins maintains that because the Parish Council opened the lane to walkers in 1974 and tarmacked it then, they should be doing the same now. He has been in contact with the Parish Council to try and get them to formally take on the lane and its liability and pay for the maintenance. He says the residents may close the lane to walkers if the Parish Council do not do this, as he sees this as a way to reduce his liability.
- 7.8 In July 2015 Mr Mullins sent to Combe Martin Parish Council a petition, which stated that the undersigned requested that Combe Martin Parish Council was to keep the surface of

the lane B – C in good order for the benefit of the whole community and that the Parish Council must enter into a formal agreement and meet the costs of any agreement, that the Parish Council would assume responsibility for the lane or the residents may block the lane returning it to a private access for which the residents will make their own arrangement as to maintenance. This petition was signed by most of the adjoining property owners and gave the Parish Council 2 weeks to respond. There would not appear to have been any response.

## **8. Rebuttal Evidence**

- 8.1 There is no rebuttal evidence for this proposed footpath. None of the users have been stopped from using the footpath. No signs have been erected to say 'No Public Right of Way' in fact the sign that the parish council erected in 1974 said FOOTPATH to Blackmore Ham Pleasure Gardens, Car Park and Church. The path has not been blocked and it is walked by many people every day. Use of the path by the public is accepted by the Parish Council and adjoining landowners.

## **9. Discussion**

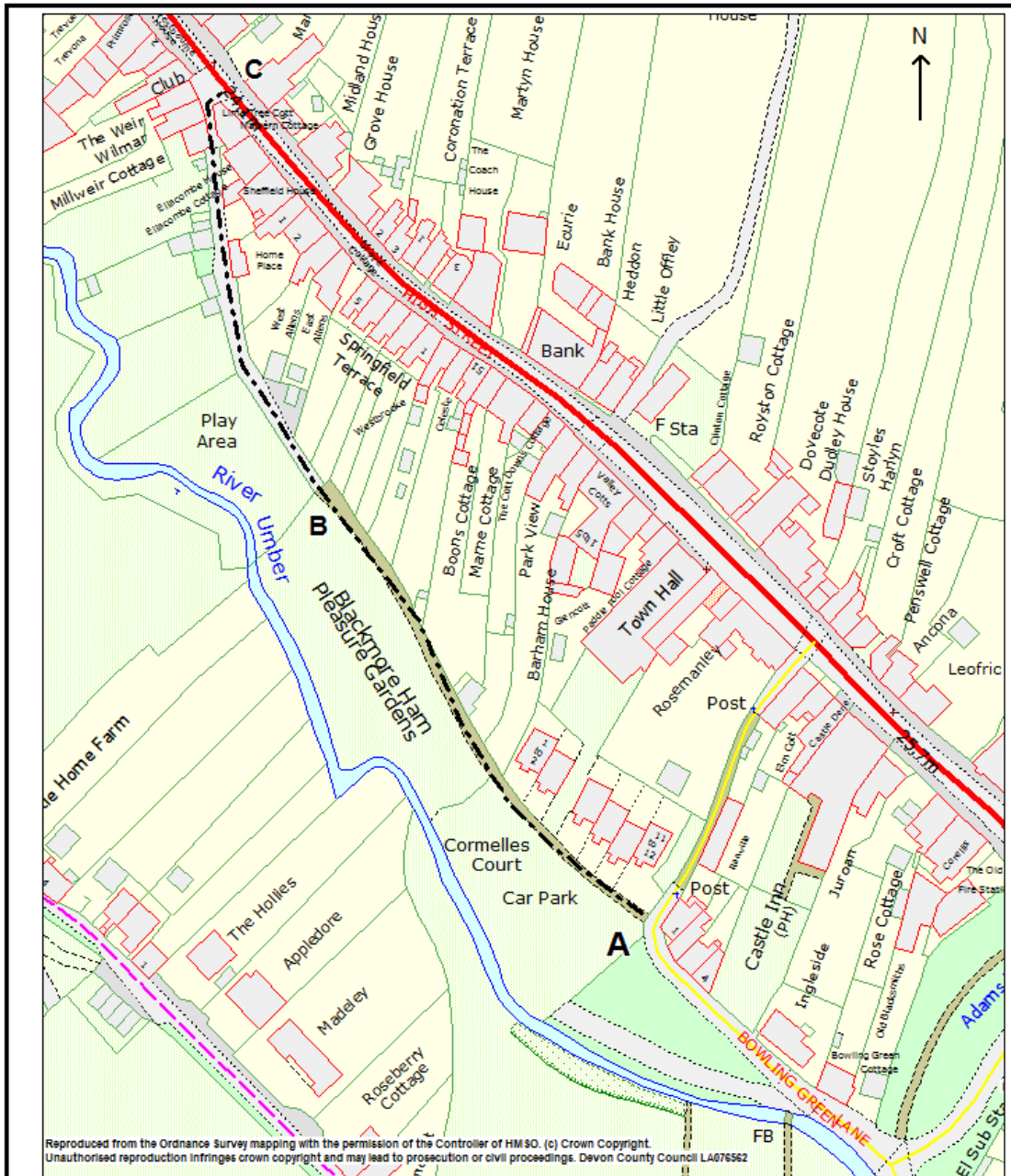
- 9.1 Combe Martin Parish Council minutes record the fact that discussions were undertaken with the adjoining frontiers of Mill Wear Lane (points B and C) when the Parish Council became adjoining landowners (of A – B) in 1972. No records of the actual detail of these discussions appear to have survived. The Parish Council minutes show that the Parish Council tarmacked areas of the path, and erected the Footpath sign. There was no resulting objection from the landowner in 1972, nor any records of objections from adjacent house holders. The letters from householders asked if their private rights would be the affected by the scheme and they sought assurance that their families would not be adversely affected.
- 9.2 Mr Mullins has raised the question; "did the Parish Council have the right to encourage public access along Weir Mill Lane in the early 1970's?".
- 9.3 The terms of Local Government Act 1972 s 137(4) and schedule 12B empowers a local council to incur expenditure on anything which in its opinion is in the interests of its area, or any part of it, or all or some of its inhabitants. Some small improvements to footpath or bridleways could come within this definition. The provision is authority only for spending the money. It appears to be these powers the Parish Council was exercising. Prior to improving the path the Parish Council consulted with the original adjoining householders about the proposals for the footpath and the householders did not object.
- 9.4 Proposal 19 is not seeking to change the acknowledged rights of the public to walk the path, only to have those rights recorded on the Definitive Map.
- 9.5 The Footpath sign has been on site since 1974. The public's footpath rights have not challenged in forty years and the route has been accepted and walked by the public.
- 9.6 As there has been no calling into question of use made of the route by walkers, the proposed addition cannot be considered for presumed dedication under Statute. It therefore is considered under Common Law. At Common Law use does not raise a presumption of an intention to dedicate, but merely evidence of such an intention. Thus the onus of proof lies on a person claiming a way as public to show that the facts, taken as a whole, were such that the rightful inference to be drawn from them was that there was an intention to dedicate the way as public. Each case turns on whether the facts indicated this intention. No minimum period is required to be shown. In some cases, because of the particular circumstances (e.g. heavy use) relatively low periods can be accepted as sufficient.



- 9.7 With regard to the meaning of the words 'as of right' the common law adopted the Roman law principle that for long usage to give rise to a presumption of dedication, the user had to be *nec vi, nec clam, nec precario*: without force, without secrecy and without permission. This is what 'as of right' means.
- 9.8 The facts are when taken as a whole, that daily use of this route by numerous people on foot has been without challenge, interruption, force, secrecy or permission and show rightful inference to be drawn from this use: that there was an intention to dedicate the way as public and that the public's continued use is evidence of acceptance of that dedication at Common Law.
- 9.9 The current adjoining property owners are concerned about its current state of the surface and their maintenance costs and their liabilities over the lane. Decisions on recording public rights of way are made on the basis of evidence. Therefore although locally contentious, the maintenance issue is not one that carries any weight in law when recording a public right of way.

## **10. Conclusion**

- 10.1 The evidence when taken as a whole is considered sufficient to show that a public footpath subsists, or is reasonably alleged to subsist, at Common Law over the proposed route. It is therefore recommended that a Modification Order be made to add a Public Footpath between points A – B – C as shown on drawing number HMT/PROW/15/54, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.



**DEVON COUNTY COUNCIL**


**Combe Martin  
Proposal 19  
Addition of Footpath to  
Definitive Map**

Plan No. HTM/PROW/15/54

date October 2015

drawn by AS

Notation

Proposed Footpath A - B - C 



David Whiston  
Highways and Traffic Management