

**Definitive Map Review 2014 - 2016  
Parish of Broadclyst**

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

**Recommendation: It is recommended an Order be made to add a Public Footpath from Point A to B as shown on plan HCW/PROW/15/007.**

**1. Summary**

The report examines the Definitive Map Review in the parish of Broadclyst in East Devon District.

**2. Background/Introduction**

The original survey, under s. 27 of the National Parks and Access to the Countryside Act 1949, revealed twenty four footpaths and no bridleways in Broadclyst, which were recorded on the Definitive Map and Statement, St Thomas Rural District with the relevant date of 1 June 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 (RUPPS), also carried out in the 1970s, did not affect this parish.

The following orders have been made and confirmed:

St Thomas Rural District Council Footpath No.6 Extinguishment Order 1959.  
St Thomas Rural District Council Footpath No.13 Extinguishment Order 1968  
Ministry of Transport Footpath No.6 Stopping Up Order 1967  
Ministry of Transport Footpath No.20 Diversion Side Road Orders for M5 motorway 1972.  
Ministry of Transport Footpath No.21 Diversion & Stopping Up Side Road Orders M5 1972  
East Devon District Council Footpath No. 4 Diversion Order 1979  
East Devon District Council Footpath No. 18 Diversion Order 1984  
East Devon District Council Footpath No. 20 Diversion Order 1987  
Devon County Council Footpath No. 30 Modification Order 1998  
Devon County Council Footpath No. 12 Diversion Order 1992  
Devon County Council Footpath No. 62 Extinguishment Order 1993  
East Devon District Council Footpath No. 22 Diversion Order 1994  
Devon County Council Footpath No. 61 Diversion Order 1994  
Devon County Council Footpath No. 28 Diversion Order 1998  
Devon County Council Footpath No. 8 Diversion Order 1996  
East Devon District Council Footpath No. 12 Diversion Order 1999  
Devon County Council Footpath No. 31 Creation Order 1999  
Devon County Council Footpath No. 14 Diversion Order 2001  
Devon County Council Footpath No. 1A Diversion and Modification Order 2011

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

The current Review began in July 2014 with a special public meeting held in the Village Hall Broadclyst, well attended by about 25 members of the public and the parish councillors.

### **3. Consultations**

Two public consultations for Broadclyst Parish were carried out between February and March and the second round between April and May 2015. The review was advertised around the parish and in the local press and notices placed in local notice boards and in the Village Hall.

The responses were as follows:-

County Councillor P Bowden	-	no comment
East Devon District Council	-	no comment
Broadclyst Parish Council	-	Put forward Proposal 1
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 proposals
Trail Riders' Fellowship	-	no comment

### **4. Proposals**

As a result of the first informal consultation, Broadclyst Parish Council realised that there was a much used but unrecorded footpath known locally as Bluebell Lane, between Back Lane, New Buildings and Holly Close, and proposed that it should be added to the Definitive Map and Statement. As a result of this, a second round of informal consultations was carried out. The adjoining landowners and the National Trust as the previous landowner were consulted and notices put on site. The evidence for Proposal 1 is detailed in the Appendix to this report.

### **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 an Order be made to add a public footpath to the Definitive Map and Statement for Broadclyst parish, as shown between points A – B on Plan number HCW/PROW/15/007. Should any other valid claim with sufficient evidence be made in the next six months, it would seem reasonable for it to be determined promptly rather than be deferred.

## **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 East Devon District area.

David Whitton  
Head of Highways, Capital Development and Waste

### **Electoral Division: Broadclyst & Whimble**

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence files	2014 - date	AS/DMR/BROADCLYST

as150216pra  
ddm/cr/DMR Parish of Broadclyst  
04 040316

**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 1: To add a Footpath between points A-B as shown on drawing number HCW/PROW/15/007**

Recommendation: It is recommended that a Modification Order be made in respect of Proposal 1 to add a Footpath to the Definitive Map and Statement.

**1. Background**

- 1.1 A public meeting was held in Broadclyst Village Hall with about 25 local people plus the Parish Councillors, the local County Councillor and two National Trust representatives.
- 1.2 Proposal 1 came forward from the parish council as a result of the Definitive Map Review meeting and the public consultation in the parish. The parish council realised that a much used path that they had assumed to be a public footpath was not in fact recorded as such.

## **2. Description of the Route**

- 2.1 Proposal 1 commences at point A on the plan, at the county road, Back Lane, New Buildings, where it is signed with an old metal road sign that states “Pedestrians only”. The route runs in a generally easterly direction along a tarmacked path between fences and hedges to point B on the county road, Holly Close, opposite the sports pavilion and car park.

## **3. Documentary Evidence**

- 3.1 There is no historical documentary evidence for this route.
- 3.2 Ordnance Survey Mapping  
1880s 1<sup>st</sup> Edition OS map 25” to 1 mile show the area as undeveloped fields.
- 3.3 Current OS mapping show the fields have been developed into sports pitches, sports pavilion, car parking. The house and the claimed path are clearly defined.

## **4. Broadclyst Parish Council Evidence**

- 4.1 The parish council have reported some of the recent history of the route. The National Trust sold the land in the area of Holly Close for development of a house, sports pitch and playpark in the 1990’s. The residential roads were laid out and subsequently adopted as county roads. It would appear that section A to B was tarmacked by the developer for the benefit of the wider community but not adopted.
- 4.2 The parish council have written saying it is a very well used path, known locally as Bluebell Lane, and that it is used as the most direct route between homes and the bus stop on the main road and therefore needs to be well maintained. By summer 2014, the vegetation had grown out to such an extent that the path was difficult to use and the overgrowth made the path very dark and it needed clearing and cutting back.
- 4.3 Prior to carrying out work on the path in 2014 the parish council carried out a Land Registry search and wrote to all the adjacent property owners to try and establish ownership. The route of the path is unregistered and the adjoining owners did not claim to own it. The National Trust had verbally confirmed to the parish council that it does not own the path either. The parish council therefore instructed their contractor to cut back the lane at a cost of £100 from their budget.

## **5. Land Registry**

- 5.1 The land crossed by the proposed route between A – B is unregistered. Before it was developed the whole area was owned by the National Trust, so the Trust was consulted as possible historical landowners, as have the householders who properties are on either side of the path.

## **6. User Evidence**

- 6.1 The route is used frequently by members of the public walking through from the extensive housing estates into Broadclyst village for shops and other facilities, the bus stop and playing fields, as well as going for a walk for pleasure. This public use has been observed on each officer site visit, and the parish clerk who lives locally has also reported daily use by many members of the public.

- 6.2 Eleven user evidence forms have been submitted in support of Proposal 1 as a footpath. All users have used the route on foot, regularly over the time they have been in the village; some refer to it as “Bluebell Lane”. No one has reported that they have been stopped from using the path. The evidence forms show use up to 2015 as this is when they completed the forms during the Review, but undoubtedly those users and others have continued to use it to the current time.
- 6.3 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 appear to be a very small sample of the public who are using the route on a daily basis, and who have been walking the route without let or hindrance. The reputation of the path as a public footpath is therefore greater than this sample of user evidence. Some examples of use follow:
- 6.4 Mr M Arthers has used the path at various times since the 1960s, several times a year going between Back Lane and the playing fields. He says it has always been public and that he has not been stopped from using it at any time.
- 6.5 Mr S Schlich, has walked the path since 1993 to 2015 about 40 times a year. He says there has always been the notice saying “Pedestrians only”.
- 6.6 Mrs J Tennant has walked “Bluebell Lane” since 1999 to 2015 between 200 to 300 times a year. She says it’s tarmacked and signposted and is a quick and direct route to the bus stop and Post Office.
- 6.7 Mr P Mallon has walked the route about 200 times a year on foot for pleasure between 1999 and 2015; he used it when going to the bus stop, the Post Office and his home.
- 6.8 Mrs E Rhodes used the route over 100 times a year going between home and the shops; she started using in 2000 and used it to 2015. She has walked it, and also used it on her bicycle to go shopping.
- 6.9 Mrs Hurren has walked the path about once a week since 2002 to the playing fields.
- 6.10 Mr Jones has walked the path for the last 17 years when doing a circular walk around the village about 9 times a year. He saw the sign that said ‘Pedestrians only’.
- 6.11 Four other user evidence forms, detail regular but more recent use on foot. Usually the users started to walk the proposal route when they moved into Broadclyst. These people state they were walking to the shops, bus stop and walking the dog. Most comment that they saw it was signed ‘Pedestrians only’.
- 6.12 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 ‘Pedestrians only’.

## **7. Rebuttal Evidence**

- 7.1 There is no rebuttal evidence for this proposed footpath. During the consultation period letters were sent to all adjoining householders, and notices and maps placed at each end of the route. No one has made any comment or objection to the proposed footpath and no one claimed ownership.

7.2 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 A-B, and have the power to dedicate.

## 8. Discussion

8.1 The route appears to have physically existed since the 1990s when the area was developed for housing and the path laid out. It is walked by many people every day as though it is a public path; the path has been accepted by the parish council, who have spent public money on its maintenance. 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 was erected says 'Pedestrians only' which would imply that public use on foot has been accepted by any landowner. The path has not been blocked and no objections have been received from any adjoining landowners. There is no rebuttal evidence for this proposed footpath.

8.2 The terms of Local Government Act 1972 s137 (4) and schedule 12B empower a local council to incur expenditure on anything which in its opinion is in the interests of its area, or any part of it, for all or some of its inhabitants. Some small improvements to footpaths or bridleways could come within this definition. The provision is authority only for spending the money. It appears to be these powers that the parish council was exercising in carrying out maintenance to the path. Prior to improving the path the parish council consulted with the adjoining householders and the National Trust about the proposal to cut back the vegetation and, having received no objections, they went ahead and cleared the path.

8.3 Proposal 1 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.

8.4 The 'Pedestrians only' sign has been on site for many years, no one seems to recollect when it was erected, or who by. The public's footpath rights have not been challenged and the route has been accepted and walked by the public as of right.

8.5 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 is therefore 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.

8.6 With regard to the meaning of the words 'as of right', the common law adopted the Roman law principles that for long usage to give rise to a presumption of dedication, the use had to be '*nec vi, nec clam, nec precario*': without force, without secrecy and without permission.

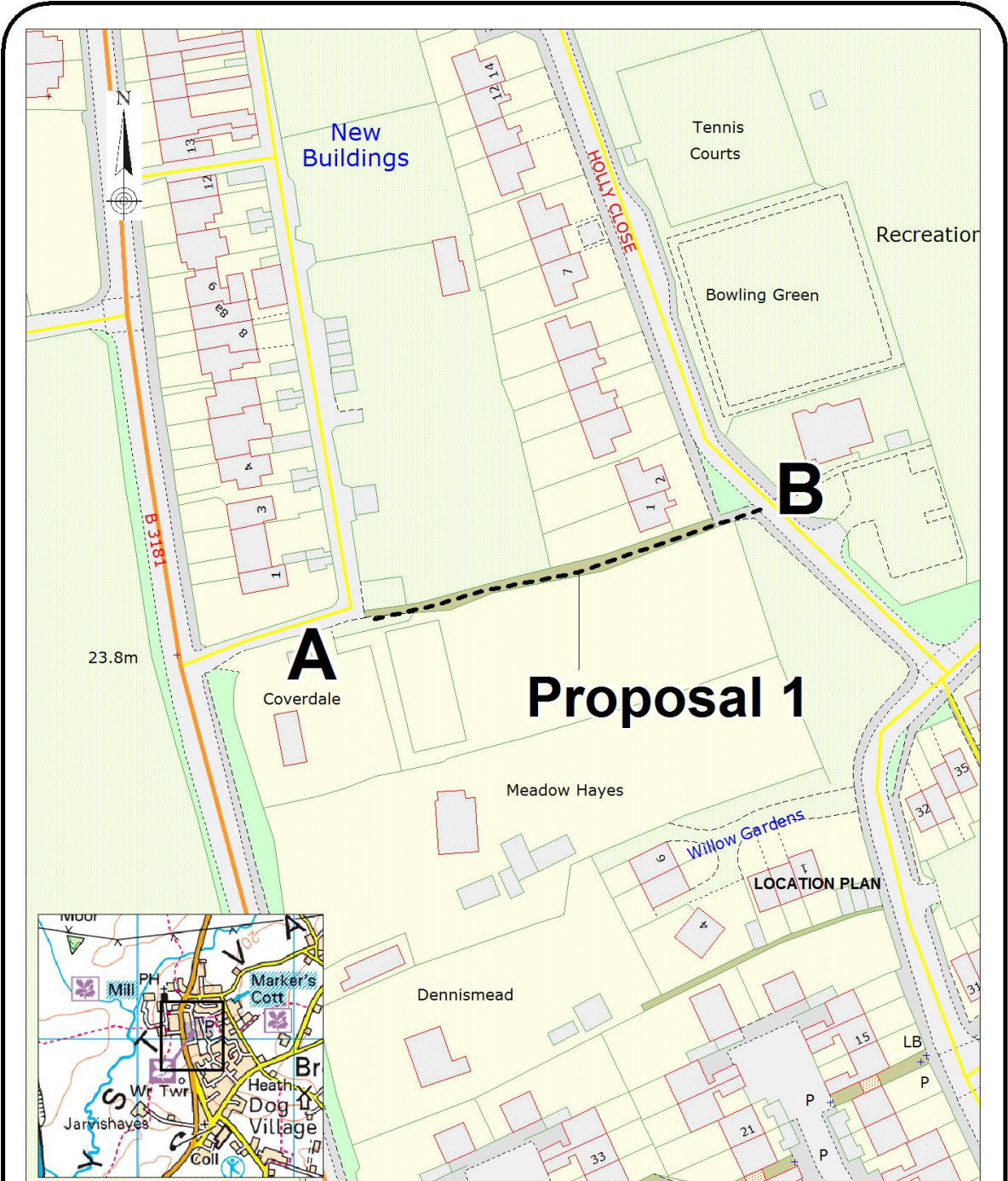
8.7 The facts, when taken as a whole, are that daily use of this route by numerous people, (heavy use), on foot has been without challenge, interruption, force, secrecy or permission and show that rightful inference can be drawn from this use: it may therefore be inferred that a landowner(s) intended to dedicate the way as public, and

the public's continued use is evidence of acceptance of that dedication at Common Law.

## **9. Conclusion**

- 9.1 Therefore the evidence 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 as shown on drawing number HCW/PROW/15/007, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.





map ref **SX 9897**

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**DEVON COUNTY COUNCIL**  
**Broadclyst**  
**Proposal 1**  
**To Add a Footpath to the Definitive Map**

drawing number **HCW/PROW/15/007**  
 date **November 2015**  
 scale **1:1250**  
 drawn by **AS**

Notation  
 Proposal 1      A - B      - - - -

**David Whitton**  
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 AND WASTE

