

**Definitive Map Review  
Parish of Lympstone (Part 3)**

Report of the Chief Officer for Highways, Infrastructure 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 between points J-K as shown on drawing number HIW/PROW/20/08 (Proposal 4)**

**1. Introduction**

This report examines an additional proposal that was submitted within the six months of the last committee report when the parish council rights of way representative and flood wardens realised this route, that gives access to the foreshore and a tidal flood prevention gate, was not recorded on the Definitive Map Parish of Lympstone, in East Devon District.

**2. Background**

The background for the Definitive Map Review in the Parish of Lympstone was set out in Committee report HIW/19/17 of 4 March 2019.

**3. Proposal**

Please refer to the appendix to this report.

**4. Consultations**

Public consultations for this additional proposal were carried out during January 2020. The proposal was advertised around the parish with notices placed at each end of the proposal route, in local notice boards and on the village hall notice board.

The responses were as follows:

County Councillor R Scott	- supports Proposal 4
County Councillor J Trail	- supports Proposal 4
East Devon District Council	- no comment
Lympstone Parish Council	- supports Proposal 4
Ramblers' Association	- no comment
Byways and Bridleways Trust	- no comment
British Horse Society	- no comment

**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 has been taken into account in the preparation of the report.

## 7. Risk Management Considerations

No risks have been identified.

## 8. Equality, Environmental Impact (including Climate Change) and Public Health Considerations

Equality, environmental impact (including climate change) and 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 4.

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 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.

Meg Booth  
Chief Officer for Highways, Infrastructure Development and Waste

## Electoral Division: Exmouth

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence files	2017 - date	AS/DMR/LYMPSTONE

as050220pra  
sc/cr/DMR Lympstone part 3  
03 260220

**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.

1. **Proposal 4: Proposed addition of a footpath from Footpath No. 10 in front of 1 & 2 Beaches Houses to the foreshore, as shown between points J – K on drawing number HIW/PROW/20/08.**

**Recommendation: That a Modification Order be made in respect of Proposal 4 to modify the Definitive Map and Statement by adding to them a public footpath between points J - K, as shown on drawing number HIW/PROW/20/08.**

## **1.1 Background**

- 1.1.1 The Background for the Definitive Map Review in the parish of Lympstone was set out in Committee report HIW/19/17 of 4 March 2019.
- 1.1.2 This report examines an additional proposal that was submitted within the six months of the last committee report when the parish council rights of way representative, realised that this small alleyway to the foreshore was not recorded as a public footpath on the Definitive Map Parish of Lympstone, in the same way that Footpaths Nos. 9, 10, 12a, 13 and 14 are defined. The Parish Estuary Volunteer Flood Wardens also wanted to ensure that they will always have access to the foreshore and flood gate, even if the properties on either side change hands.

## **1.2 Description of the Route**

- 1.2.1 Proposal 4 commences at point J on the plan, from existing Footpath No. 10. The path runs along an alleyway in a south westerly direction between old houses in the Quay area of old Lympstone village, through the recent Storm Flood prevention gate Number 5 (known as Flood Gate 5) to the foreshore, at point K. It has a cobbled and concrete surface. The only signs on the route are no dog fouling signs on the flood gate.
- 1.2.2 Lympstone has recently had a tidal defence scheme to protect around 150 properties. This has involved sea wall improvements and flood gates along access points to the foreshore. One of these gates, Gate 5, was installed near point K. Flood gates were also installed on Footpath Numbers 9, 10, 12a, 13 and 14.

## **1.3 Documentary Evidence**

- 1.3.1 Ordnance Survey Mapping  
The small-scale historical maps are not detailed enough to show the route.
- 1.3.2 No other historical documentary evidence has been discovered for this route. However, the houses on each side of this alleyway, are well over a hundred years old. The route provided access to these properties and the foreshore of the Quay area. This foreshore was historically used for boat building and boat maintenance by numerous people, also for drying sails and laundry on tall washing lines. These washing lines are still used today for the same purposes.

## **1.4 User Evidence**

- 1.4.1 User evidence has been gathered from long standing Lympstone residents who have always used the route as a public path. Eight people have completed user evidence forms giving evidence of use since 1955 through to the current day. They state that the route has not been blocked during this time. The individuals who have completed the user evidence forms appear to represent only a small proportion of the public who

walk and have walked this path. The County Council Public Rights of Way Officer has observed other people using the path.

- 1.4.2 The evidence forms are included in full in the backing papers and the evidence is summarised as follows:
- 1.4.3 Mr Acca has frequently walked the route since 1955 as part of his daily life as he grew up in Lympstone. He says the path has always been used by villagers for as long as he can remember and that it has always been a public footpath. He has never been stopped from using it, nor has it been blocked and there have not been any notices.
- 1.4.4 Mr Burton has walked the route since 2001, about 30 times a year, to access the foreshore for pleasure and sometimes to open and close the new flood gate. He has never been stopped or challenged. He notes this is the only access to Flood gate 5.
- 1.4.5 Mrs Carter, lived in Cygnet cottage, Quay Lane between 1989 to 2016 and as one of the adjoining owners, believes the path is a public path, because people always used it without question during her ownership. She started to walk the path in 1989 and has continued to use to the present day, dozens of times a year, for pleasure to access the foreshore. The only time it has been closed was when the flood gate was shut.
- 1.4.6 Ms Dimond has walked the route since 2001 to date, about 12 times a year, for pleasure to get to the foreshore and on occasions to shut or open the flood gate. She says the only times that you cannot get all the way to the shore is when the flood gate is shut. She also states that "The path is regularly used by the Estuary Flood Wardens to close/open the gate as instructed by the Environment Agency, so it is vital it remains a Public Path."
- 1.4.7 Mr Fardell has used the route from 1973 to the present day, when going to the beach, or visiting friends. He says it has always been used by the public, he has never been stopped or blocked and that there have not been any notices.
- 1.4.8 Mr Harrison has walked the route since 1961 many times a year. He has used it when visiting as well as for pleasure and says, "anyone can use it". The only obstruction has been occasional flotsam and jetsam after spring tides.
- 1.4.9 Mrs Hodge has walked the path between 1970 to date, to access the beach and visit friends. She says many people use it and believes that the adjoining property owners are aware the path is being used everyone. The path has never been stopped or blocked except when there is a flood, and there are no notices.
- 1.4.10 Ms Mitchell has constantly used the path to the foreshore on foot from 2011. She says it has always been a public alleyway, it has not been stopped up or blocked.

## **1.5 Land Owners' Evidence**

- 1.5.1 The land crossed by the route is not registered with the District Land Registry. Residents of each house adjoining the route were consulted on the proposal and notices were placed at each end of the path route.

- 1.5.2 Mr Bartram has lived in 2 Beach House since 2008. He has not blocked the route or stopped members of the public from using it. He acknowledges it is used by the public and provides access to the flood gate and foreshore.
- 1.5.3 County Councillors Richard Scott and Jeff Trail have visited the site and spoken to some other residents. They report that the residents acknowledge the public use the path to get to the foreshore and flood gate and the residents do not appear to object.

## **1.6 Discussion**

- 1.6.1 Statute – Section 31 Highways Act 1980. There does not appear to be a specific date on which the public's right to use the proposal route has been called into question. As there is no specific date of calling into question or user evidence, the proposal cannot be considered under statute law. However, the proposal route may still be considered at common law.
- 1.6.2 Common Law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both, from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.
- 1.6.3 Although a reasonable amount of user evidence has been received, the alleyway appears to have been used and accepted by the public at large for a great many years as a public footpath. It has been used in the same way as the identical adjacent alleyways, which are already recorded as Footpath Nos. 9, 10, 11, 12a and 13. These alleyways (including Proposal 4) have historically always given access to the foreshore. The footpaths along this section of shoreline, now also give access to the Environment Agency's Flood prevention Gates. Gate 5 is the only gate that is not accessed via a public footpath. The parish council considered it to be a public right of way in the same way as the other footpaths in the vicinity. There is no evidence that Proposal 4 has ever been blocked, or that the public's use has been challenged in any way. No objections have been raised to recording the proposed footpath.

## **1.7 Conclusion**

- 1.7.1 The evidence is considered sufficient to show that a public footpath subsists, or is reasonably alleged to subsist, over the proposed route. It is therefore recommended that a Modification Order be made to add a footpath between points J – K as shown on drawing number HIW/PROW/20/08 and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.



Map Ref **SX 994 840** Grid 100m Contains Ordnance Survey data. © Crown copyright and database rights 2018. 100019783

**DEVON COUNTY COUNCIL**

**Proposal 4**  
To add a footpath

**Notation**  
Existing Footpaths  
Proposed Footpath J-K approximately 24 m

drawing no. HIW/PROW/20/08  
date Jan 2020  
scale 1:1250 at A4  
drawn by AS

**Meg Booth**  
CHIEF OFFICER FOR  
HIGHWAYS INFRASTRUCTURE  
DEVELOPMENT AND WASTE

