

**Definitive Map Review 2015 - 2016**

**Parishes of Clyst St Mary and Sowton administered as Bishops Clyst**

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 an Order be made to add a Public Footpath in Sowton Parish between points A-B-C-D-E-B and F-G as shown on plan HCW/PROW/16/12v2.**

**1. Summary**

The report examines the Definitive Map Review for the Parishes of Clyst St Mary and Sowton, which are administered as Bishops Clyst, 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 three footpaths and no bridleways in Clyst St Mary, and six footpaths and no bridleways in Sowton, 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 parishes.

The Limited Special Review of Roads Used as Public Paths (RUPPS), also carried out in the 1970s, did not affect these parishes.

The following orders have been made and confirmed:

County of Devon Stopping up Order Clyst St Mary Part of FP1 Town and Country Planning Act 1964.

East Devon District Council, Diversion Order Clyst St Mary Footpath No 3 (part) 1999.

St Thomas Rural District Council Sowton FP2 (part) Diversion 1965

Ministry of Transport Diversion M5 Side Roads Orders 1972 Sowton FP2 (part)

Devon County Council Sowton FP2 (part) Extinguishment 1979

Devon County Council Sowton FP2 (part) Diversion 1981

Devon County Council Sowton FP2 (part) transferred Exeter City Council 1988

Devon County Council Sowton FP2 (part) Diversion Order 1989

Devon County Council Sowton FP3 (part) Diversion Order 1992

East Devon District Council Sowton FP3 (part) Diversion 1999

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

The current Review began in July 2015 with a public meeting held in the Clyst St Mary School hall, which was attended by members of the public and the parish councillors.

### **3. Consultations**

Public consultations for Sowton and Clyst St Mary Parishes were carried out simultaneously during May and June 2016. The review was advertised around the parishes with notices placed in local notice boards and in the village halls and in the local press.

The responses were as follows:-

County Councillor P Bowden	-	no comment
East Devon District Council	-	no comment
Bishops Clyst Parish Council	-	put forward Pro.1 & supports Pro. 2
British Horse Society	-	no comment
Byways and Bridleways Trust	-	no comment
Country Land & Business Association	-	no comment
Open Spaces Society	-	no comment
Ramblers' Association	-	supports proposals
Trail Riders' Fellowship	-	no comment

### **4. Proposals**

Resulting from the public parish meeting for Bishops Clyst, the Parish Council and members of the public realised that two well used footpaths in Sowton Parish, from Clyst St Mary Bridge across the field to join Footpath No.3 were unrecorded, and therefore they proposed that the routes should be added to the Definitive Map and Statement. Informal consultations were carried out and the adjoining landowners were consulted and notices put on site. The evidence for Proposal 1 is detailed in the Appendix to this report. During the Review, consultations were also carried out for Proposal 2, which was the diversion of Sowton Footpath No. 5 to realign this path to the used route. This diversion will be carried out under delegated powers. No other valid proposals were put forward during the review.

### **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 Sowton parish as shown between points A-B-C-D-E-B and F-G on Plan number HCW/PROW/16/12v2. 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  
Chief Officer for Highways, Infrastructure 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	2015 - date	AS/DMR/Clyst St Mary & Sowton

as290916pra  
sc/cr/DMR Clyst St Mary Sowton administered as Bishops Clyst  
03 111116

## **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-C-D-E-B and F-G as shown on drawing number HCW/PROW/16/12v2**

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 for the parish of Sowton.

## **1. Background**

- 1.1 A public meeting was held in Clyst St Mary School Hall in June 2015 with local people plus the Parish Councillors, and the local County Councillor.
- 1.2 Proposal 1 came forward from the Parish Council and members of the public as the result of the Definitive Map Review meeting. The parish council realised that the much used paths north from Clyst St Mary Bridge in the Parish of Sowton, that they had assumed to be a public footpath were not in fact recorded as such. Informal public consultations were carried out in May and June 2016 with the parish council, the landowners and Environment Agency and Historic England.

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

- 2.1 Proposal 1 is in two parts. Part I commences at Clyst St Mary Bridge, at point A on the plan. The route runs in a generally northerly direction over a ramshackle stile, along the top of the flood bank to point B, looping eastwards towards C, then south-eastwards to point D near a weir. From point D the route follows the edge of a leat westwards to point E, where it crosses Footpath No. 3 and continues westwards back to point B. The second part of Proposal 1 starts at point F on Footpath No. 3 (just north of a small footbridge) and it then runs in a southerly direction along the top of flood bank and back onto Clyst St Mary Bridge at point G. The capping stones of this ancient bridge at point A and G are worn smooth with use and there are old worn stone steps down to the field level at these points.

## **3. Documentary Evidence**

- 3.1 Ordnance Survey Mapping  
1880s 1<sup>st</sup> Edition OS map 25" to 1 mile show the area as fields. No paths are marked. On current later editions path unmarked is shown on the top of the flood banks.
- 3.2 Historical Structure  
The structure of Clyst St Mary Bridge and Causeway is a scheduled Ancient Monument, under the 1979 Ancient Monuments Act, being first scheduled in 1928. It is the oldest surviving bridge in Devon, mentioned in a record of 1238. The raised causeway is 600 ft. long, with the five arches; the two western most arches probably date from 1310. The bridge is a rare, largely unaltered, example of a medieval multi span bridge of national importance. It is one of less than 200 remaining such bridges in the whole country. Devon County Council would take this into account with regard to any works on or adjacent to the bridge.
- 3.3 There is no other historical documentary evidence for this route.

## **4. User Evidence**

- 4.1 The parish council know it to be a very well used path that is used by many people each day. Eight users have completed user evidence forms giving evidence of use since 1946 through to the 2016 and the use is continuing. (Included in the backing papers in full). The walkers have used both sections of the path from A-B-C-D-E-B and F-G and their evidence is summarised as follows:
- 4.2 Mrs Chandler has used the routes as a circular walk between 2007 and 2015 most days throughout the year. She has not been stopped or turned back and has seen no notices.
- 4.3 Mr Gapper has walked both parts of the path as a circular walk from his home since 2010; there are stiles and an unlocked field gate. He has not been challenged by the landowners and has not seen any notices.
- 4.4 Mr Gladstone has used the route on an almost daily basis on foot between 2006 and 2016 to date. He accesses it from the bridge and uses both parts of the path. He has not been stopped or seen any notices.
- 4.5 Mr Green has walked both sections of the route since 1990 to 2016, about 100 times a year. The route has not been obstructed and he has not seen any notices to say it was not a right of way.

- 4.6 Mrs Houghton has used sections of the path since 2006 to 2016, walking the dog every day, and sometimes more than once a day. She was advised it was a footpath when she first moved to the area in 2006. Occasionally she has seen the owner but has not been turned away or stopped.
- 4.7 Mr Scanes has been using both parts of the claimed paths for the last 25 years, on an almost daily basis on foot for dog walking. He has not been stopped or seen any signs and comments it is a very popular route with walkers and dog walkers.
- 4.8 Mrs Vinning has used the paths every day on a circular walk for pleasure and dog walking since 2006. She has not been stopped or challenged in any way.
- 4.9 Mrs Whittaker, a long standing resident of Clyst St Mary, has walked the routes since 1946 to 2016 countless times. She says the public have had access over the land for the last 70 years to her knowledge. She gives a little history of each section of the path. She says the steps at point G on to the old bridge have existed as long as she can remember. The level of the flood bank was raised after dredging near point A about 15 years ago and a fence and stile at this point became necessary to stop the stock escaping onto the bridge. There was a barbed wire fence for a while at point B. The loop to point D was well used and throughout her childhood the weir was a popular picnic site for people from the village. During the 1940s and 50s the river above the weir was a swimming pool with steps and diving boards, which was very popular. The route between B and E was mainly used when the path was blocked by the barbed wire point at B although it shows evidence of continued use to the present time.

## **5. Land Owners Evidence**

- 5.1 Discussions with both sets of landowners have been undertaken resulting in Landowner Evidence forms and a letter being received and included in full in the backing papers for this report.
- 5.2 The Broom family of Court Farm, Clyst St George, have farmed the majority of the land under a tenancy for 30 years or more before buying the land in 2015. They do not believe it is a public right of way, but say that the Footpath number 3 is signed. In answer to the question: Have you seen, or been aware of members of the public using the way? They say "The public use the path, walk all over the field and use as dog exercising/toilet, dogs usually running free." Have you required people to ask permission? "We live away from the land so it is hard to know what is going on." They have stopped people when they have been herding their cattle. They have not told people it was not public. They erected signs during the Foot and Mouth outbreak. In answer to have there been any stiles or gates? They say "There was a barb wire fence but this was cut by the public point B and E, so we have put post and rail in to keep cattle in."

The Brooms enclosed a letter with additional points.

- They say that, the drop down onto the route from the Clyst St Mary Bridge at Point A and G helps keep their cattle in the field.
- Point B is the boundary between their land and Mr Mortimer's land and because of the TB restrictions the cattle are not allowed to mix.
- If this footpath gets the go ahead it must be secure and tamperproof, to keep the cattle in the right place.
- When the Clyst is in flood it is not safe for the public to walk on the bank of the swollen river or when the field is flooded.

- The Brooms would like restrictions on people using the footpaths for their own safety and for the cattle's safety. They say "We are very concerned that this field is mainly used as a dog walk, the dogs are let free to foul on the field. Signs and dog bins need to be available and enforced so the public use the footpaths responsibly".

5.2 Mr Mortimer, of The Barton, Sowton Village, has owned the section of the land to the north of B-E-D, since 1997. He does not believe the way is public. He has seen occasional walkers using the route; he has not put up signs or notices or turned people away, or required them to ask permission. He says he has in the past maintained a boundary barbed wire fence (at point B) to stop stock mixing.

## 6. Discussion

- 6.1 The routes appears to have been used for many years; Mrs Whittaker has given evidence of using the claimed paths since 1946. Evidence from the rest of the users spans 26 years from 1990 to 2016 giving an evidenced period of use of 70 years. Most of the users are walking the route very frequently and many on a daily basis, excepting the occasions when the River Clyst has been in flood. None of the users have been stopped from using the footpaths, either physically or by signs saying 'No Public Right of Way'. The capstones on the bridge and steps below the bridge at points A and G are well worn and that concurs with the evidence of considerable and constant use.
- 6.2 Both landowners say they erected a barbed wire fence at point B within the last 10 years because of the TB regulations to keep the two herds of cattle apart. But this was broken down, and they replaced it with a post and rail fence. The fence was put so it could be climbed by walkers and not broken. This was for the purpose of preventing the stock from mixing, and apparently not to prevent use of the path.
- 6.3 Neither landowners have erected notices to say they were not public paths, nor have they turned people off the paths. The Brooms have spoken to people when they have been moving cattle to ensure the safety of both animals and the walkers. Both landowners say the dogs do run all over the field, and the officer has observed this, however walkers stick to the claimed paths along the flood banks.
- 6.4 Both The Brooms and Mr Mortimer have issues with free running dogs and ask that more 'dog bins' and signs are made available to deal with this issue, if the paths are put on the map. (East Devon District Council currently advises they have no funds to erect new bins and service them, but say the Parish Precept could be used for this purpose).
- 6.5 The public's rights to walk the paths do not appear to have been challenged (either physically by locked gates or barriers or by notices on the route) and the routes has been accepted and walked by the public as of right.
- 6.6 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.
- 6.7 As the public use of the route has not been called into question, 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

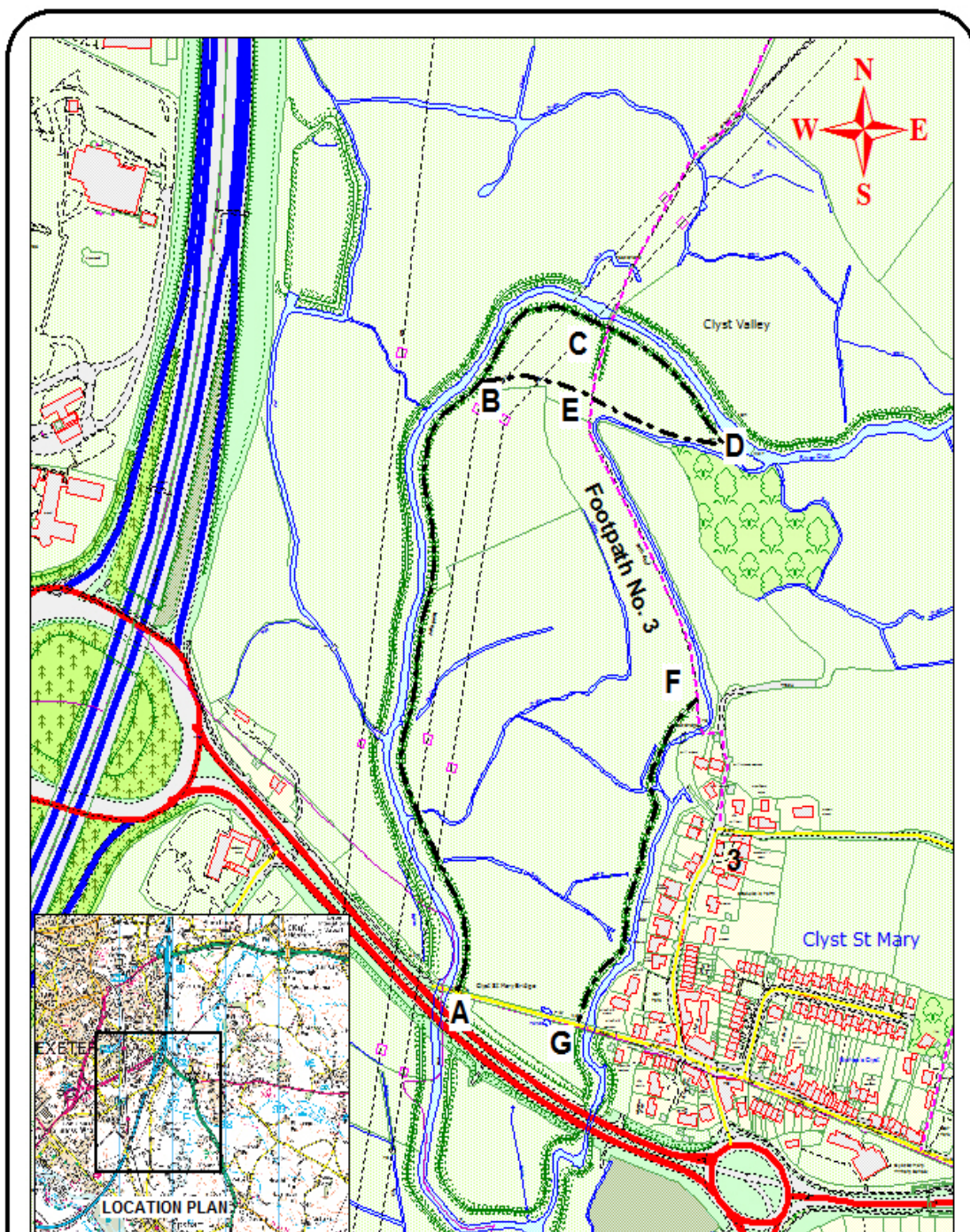
of proof lies on a person claiming a way as public to show that the facts, taken as a whole, were such that the rightful inference to be drawn from them was that there was an intention to dedicate the way as public. Each case turns on whether the facts indicated this intention. No minimum period is required to be shown. In some cases, because of the particular circumstances (e.g. heavy use) relatively low periods can be accepted as sufficient.

- 6.8 The facts, when taken as a whole, are that daily use of this route by numerous people, 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 at some time in the past, and the public's continued use is evidence of acceptance of that dedication at Common Law.

## **7. Conclusion**

- 7.1 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 in the parish of Sowton between points A-B-C-D-E-B and F-G as shown on plan HCW/PROW/16/12v2 and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.





map ref SY 967148

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**DEVON COUNTY COUNCIL**  
Definitive Map Review  
Clyst St Mary & Sowton  
Proposal 1 claimed footpath

drawing number **HCW/PROW/16/12 v2**  
date **September 2016**  
scale **1:5,000**  
drawn by **AS**

Notation

Claimed footpath (Proposal 1) A-B-C-D-E & F-G    - - - - -  
Existing footpath No 3    - - - - -

**David Whittton**

HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE

