

Definitive Map Review Parish of Cornwood Part 2

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 in respect of Footpath No. 26, Cornwood by deleting from it part of the footpath between points A – B and adding the footpath between points A – C – B, as shown on drawing number HIW/PROW/20/10 and as described in the Definitive Statement.

1. Introduction

This report examines a Definitive Map anomaly between the Definitive Map and Statement for Footpath No.26, Cornwood arising from the Definitive Map Review in the parish of Cornwood.

2. Background

The background for the Definitive Map Review in the parish of Cornwood was set out in the Committee report HCW/16/48 of 6 July 2016.

3. Proposal

Please refer to the appendix to this report.

4. Consultations

General consultations have been carried out with the following results:

County Councillor J Hart	-	no objection
South Hams District Council	-	no comment
Cornwood Parish Council	-	no comment
Byways and Bridleways Trust	-	no comment
Country Land & Business Association	-	no comment
NFU	-	no comment
Ramblers' Association	-	no comment
Devon Green Lanes Group	-	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(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 (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 is made to correct a mapping anomaly currently reflected on the Definitive Map and reconcile the Map with the Definitive Statement for Footpath No.26, Cornwood. It is therefore recommended that an Order be made to modify the Definitive Map by deleting from it part of Footpath No. 26, Cornwood between points A – B and adding the footpath between points A – C – B, as shown on drawing number HIW/PROW/20/10

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 South Hams area.

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Local Government Act 1972: List of Background Papers

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Background Paper	Date:	File Ref.
Correspondence file	October 2019 - date	ES/DMR/CORNWOOD

es030220pra
sc/cr/DMR Parish of Cornwood Part 2
04 250220

A. Basis of Claim

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.
- (ii) a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
- (iii) there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

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.

1. **Footpath No.26, Cornwood: Variation of particulars of the Definitive Map to regularise the map with the Definitive Statement as shown on plan No. HIW/PROW/.**

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map in respect of Footpath No. 26, Cornwood by deleting from it part of the footpath between points A – B and adding the footpath between points A – C – B, as shown on drawing number HIW/PROW/20/10 and as described in the Definitive Statement.

1.1 Background

- 1.1.1 During routine inspection of the rights of way network in Cornwood, it was discovered that the line of part of Footpath No. 26 Cornwood, as shown on the Definitive Map, through Broomage Wood, was at odds with the Definitive Statement for the path. Further, that the line habitually walked by the public is that described in the Definitive Statement. It was therefore proposed that the Map be modified to reconcile it with the Statement for this section of the path.

1.2 Description of the Route

- 1.2.1 The Definitive Statement for the section of footpath under consideration states: *'It passes over a stone stile, through wood, Ord. Nos. 80 and 103, through a pole fence gateway.....'*

1.3 Documentary Evidence

- 1.3.1 1st Edition 25' – 1 mile Ordnance Survey mapping 1880 – 90 shows that field number Ord. No.80 is the parcel of woodland to the north of the line as shown on the Definitive Map. A pecked line is shown along the southern boundary of this parcel, then crossing over the boundary into Ord No. 103, indicating that a path physically existed on the line described in the Definitive Statement. No path is shown on the line as currently recorded on the Definitive Map, to the south of the Ord No. 80 boundary.
- 1.3.2 2nd Edition OS 1904 - 6 mapping shows the same as the 1st Edition map.
- 1.3.3 Survey for the Definitive Map 1950
The map submitted by Cornwood Parish Council showing rights of way for inclusion on the Definitive Map is not very precise with regards to the line marked for Footpath No. 26 at Broomage Wood, with the pen line obscuring the parcel boundary in question. However, the line for Footpath No. 26 in general appears to follow the pecked line marked FP on the OS base mapping.
- 1.3.4 There is no surviving record of the description of Footpath No. 26 that should have been submitted by the Parish Council with the map referred to above. The only surviving description is that written by the Divisional Surveyor for Devon County Council, Mr G A Stedman, who walked the path on 15th February 1954. The description does not provide any clarification, only describing the path as *'through wood'*.

1.4 Landowner Evidence

- 1.4.1 Mr K Bateman of Bateman of Hosegood Chartered Surveyors is the land agent acting on behalf of the landowner Mr M Rendle. They fully support the regularising of the mapping anomaly.

1.5 Rebuttal Evidence

- 1.5.1 None.

1.6 Discussion

- 1.6.1 The Definitive Map and the accompanying Definitive Statement are conclusive evidence of the legal status and line of a public right of way. Where a discrepancy is discovered, it is necessary to reconcile the difference by way of varying the particulars contained on the map or within the statement. Neither the Map nor Statement takes precedence in law, so the correct position must be determined by consideration of all the available evidence.
- 1.6.2 The Definitive Statement for Footpath No. 26 clearly details the line of the path going through Ordnance Survey field number 80 first and 103 second. The Ordnance Survey mapping of 1904 - 06 shows a path through Broomage Woods along the southern edge of field number 80, and then crossing into field number 103 further east. This is evidence that a path physically existed on the line reflected by Definitive Statement. There is no path indicated as existing at that time on the line shown on the Definitive Map.
- 1.6.3 The path habitually walked by the public is also along the southern boundary of the woodland of OS plot 80, continuing to the south eastern corner of the parcel and then into OS plot 103. There is no physical evidence of a path on the line shown on the Definitive Map to the south of the boundary of Ord No. 80.
- 1.6.4 Varying of the particulars on the Definitive Map, will resolve the conflict between the Map and the Statement and reflect the line walked by the public.

1.7 Conclusion

- 1.7.1 It is therefore recommended that a Modification Order be made to modify the Definitive Map in respect of Footpath No. 26, Cornwood by deleting from it part of the footpath between points A – B and adding the footpath between points A – C – B, as shown on drawing number HIW/PROW/20/10 and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

