

Definitive Map Review
Parish of Payhembury: 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 by deleting the sections of Footpath No.11 between points V – W and U – N – P and adding public footpaths between points X – V and U – M – T as shown on drawing HIW/PROW/20/45.

1. Introduction

This report examines a proposal arising from the Definitive Map Review in the parish of Payhembury involving the correction of the recorded line of Footpath No. 11.

2. Background

This is the second report for the Definitive Map Review for Payhembury parish. The background to the Review in Payhembury was discussed in the first report of 5 March 2020.

3. Proposals

Please refer to Appendix I to this report.

4. Consultations

Limited consultations have been carried out with the following results:

Mr Carrel Jevons (landowner)	-	support the proposal, comments included in background papers;
Historic England	-	comments included in background papers;
Payhembury Parish Council	-	support the proposal, comments included in background papers;
East Devon District Council	-	no comment.

Specific responses are detailed in Appendix I to this report and included in the background papers.

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) has/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 be made to modify the Definitive Map and Statement by deleting the sections of Footpath No.11 between points V – W and U – N – P and adding public footpaths between points X – V and U – M – T as shown on drawing HIW/PROW/20/45. Details concerning the recommendations are discussed in Appendix I to this report.

Should any further valid claim with sufficient evidence be made within 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 area.

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Whimple & Blackdown

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence file	2000 to date	TCG/DMR/PAYHEMBURY

tg080221pra
sc/cr/DMR Payhembury part 2
02 030321

A. Basis of Claim

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.

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 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.

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. Proposal 2: Proposed correction of the line of Footpath No. 11, Payhembury.

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map by deleting the sections of Footpath No.11 between points V – W and U – N – P and adding public footpaths between points X – V and U – M – T as shown on drawing HIW/PROW/20/45.

1.1 Background

- 1.1.1 A report to this committee in March 2020 recommended the addition of a footpath at Hembury Fort in the parish of Payhembury, resulting from the Definitive Map Review in the parish. The route to be added links the parking area on Witness Moor to the existing Footpath 11 on the top of Hembury Fort, a Scheduled Ancient Monument. Whilst carrying out a GPS survey to ensure the accuracy of the route for the Modification Order plan it became apparent that the line of Footpath No. 11 appeared to have been incorrectly drafted on the Definitive Map.

1.2 Description of the Route

- 1.2.1 The proposed route of Footpath No. 11 starts on the A373 at point X on the plan (HIW/PROW/20/45), signed at this point by a DCC finger post. It passes through field gates, via point V, and proceeds up and around the hillfort in a generally northerly direction to point M (another DCC fingerpost is located at point M). Along this section the route runs along a gravel surface, which was installed within the last decade as a sacrificial layer to protect the archaeology underneath from arboricultural machinery/vehicles. Between points M – T the route is over grass, with a low wooden post with waymarkers at point T.
- 1.2.2 There is no physical evidence of a path between points V – W and U – N – P, as currently shown on the Definitive Map.
- 1.2.3 The loop to the south between points N – P, as already shown on the Definitive map, is unaffected by these proposed changes.
- 1.2.4 The previous report of March 2020 resolved to add the two sections between point M – N and T – P, which pass through gaps in the earthworks to link into the existing, and correctly recorded part of Footpath No. 11.

1.3 Documentary Evidence

1.3.1 Definitive Map Process

- 1.3.1.1 The base mapping used by Payhembury Parish Council to conduct the Definitive Map Survey in 1950 was the Ordnance Survey 6 inch to the mile Second Edition, published in 1906. Hembury Fort, being a multivallate hillfort, has multiple deep ditches and ramparts within a small area which creates a complex area of hachures when mapped. Six inches to the mile

(1:10,560) is not the best scale to accurately show such detail and this is apparent in the Payhembury Parish Survey map on which the upper loop of Footpath 11 appears to traverse obliquely across both the upper rampart and ditch on its circuitous route around the fort. The southern end of Footpath 11 is annotated following a path marked on the map and joining the A373 at a point approximately 50m to the west of where it does so on the ground now.

1.3.1.2 The Statement accompanying the Definitive Map for Footpath 11 is not particularly useful in clarifying the situation. The statement says the path starts at the A373 '*150 yards south east of Hembury Fort Cross*'. The true distance from Hembury Fort Cross to the start of the recorded route of Footpath 11 is 120 yards; the distance to where the signed route now starts is 180 yards, so this does not match the statement either. The rest of the statement – '*and proceeds northwards looping over the remains of Hembury Fort pre-Roman Fort of historical interest*' – provides no assistance in locating the exact course of the route on the ground.

1.3.1.3 The survey form that preceded the definitive statement does not provide any assistance in pinpointing the exact route either, merely describing the path as '*giving access to the open space and old Earthworks – early British and Roman.*'

1.3.2 Ordnance Survey Drawings 1806-7

The Ordnance Survey Drawings surveyed in 1806-7 show a track leading up to Hembury hillfort from the Honiton/Cullompton road. The scale makes it difficult to establish the precise location of the route but it is roughly comparable with both the proposed route and the recorded line of Footpath No. 11. However, it clearly shows that at this time a route up to the hillfort physically existed.

1.3.3 Ordnance Survey 6 Inch to the Mile 1888; Ordnance Survey 25 Inch to the Mile 1889

Neither of these maps show any paths marked on the hillfort.

1.3.4 Ordnance Survey 6 Inch to the Mile 1906; Ordnance Survey 25 Inch to the Mile 1904

The 25 inch to the mile map, published in 1904, shows a double-pecked line marked 'F.P.' leading from the A373 up to the west gate of the fort where it enters the northern enclosure. This path is consistent with the recorded line of Footpath 11, except for the very northern part. There is no path marked on the southern half of the fort that would correspond with the existing Footpath 11 where it loops south between points N-P. The 6 inch-to-the-mile edition published in 1906 shows the area in a very similar way, the only obvious difference being that the pecked line path leading up from the A373 is not marked FP.

1.3.5 Ordnance Survey A Series 1:10,560 1963

This map shows two dashed line paths on the hillfort marked with 'FP'. A path is shown that corresponds with the existing track running up from the

A373, which is the proposed route and which Footpath 11 runs on the ground today. A path is shown running northwards from the A373 and going straight up and over the fort, with a junction with the first path in the central earthworks.

1.3.6 Aerial photo 1930

This aerial photo, taken from south of the hillfort, clearly shows a path leading from the A373 at point X up to the top of the fort at point M as it exists on the ground today. A small triangular section of woodland is shown at the bottom of the south-west corner of the fort, though there is no sign of a path through it that would correspond with the route of Footpath 11 shown of the Definitive Map.

1.3.7 Aerial photography 1946-49

Aerial photography from 1946-49 shows the hillfort mostly clear of tree cover. The small triangular section of woodland is shown at the south-west of the fort adjacent to the A373; on the Definitive Map Footpath 11 is shown passing through this area but there is no visible path on this aerial photography. However, a path is visible running roughly along the route of the track which exists today – the proposed route – and which has been signed in recent decades as Footpath 11. On top of the fort there are several worn paths visible, corresponding roughly with the recorded line of Footpath 11 where it loops south between N – P, as well as the proposed route between points M – T.

1.3.8 Aerial photography 1999-2000

Tree cover is much more extensive on the hillfort by this date, though the track leading up from the A373 to point M is largely visible and follows the same route that it does on the ground today. The southern loop between points N – P is also largely visible as a worn path, though the very southern section does not correlate exactly with the Definitive Map line as it appears to be located further north. The northern section of Footpath 11 running west-east between points N – P is not visible in this aerial photography, though tree cover partially obscures this area. Similarly, the proposed route to the north of this section between points M – T is not visible as a worn path in the way that other paths on the upper enclosure are.

1.3.9 Aerial photography 2006-7

This shows much the same as the 1999-2000 photos, though there is more tree cover and so some sections are partially obscured.

1.3.10 Aerial photography 2010

Tree cover has extensively covered the southern half of the hillfort by 2010, making it difficult to see what is on the ground. Small sections on the track between points X – V – U are visible but it is impossible to make out any of the southern loop between points N – P.

1.3.11 Aerial photography 2015-17

This photography post-dates scrub and tree clearance on the top of the fort. The track between points X – V – U – M is mostly visible, as is a worn path

around the southern half of the top of the fort, roughly corresponding with the line of Footpath 11 but slightly further in from the edge of the top rampart. It is not possible to make out a continuous worn path on the route where the footpath is currently signed running east-west between points M – T, the only visible part being at the very eastern end.

1.4 User Evidence

1.4.1 Although no user evidence has been submitted directly relating to this proposal, the user evidence forms submitted in 2012 and considered in the first report to Committee in March 2020 are of some use here. One user highlighted the line of Footpath 11 from the A373 northwards on the map accompanying their user evidence form rather than the actual track that the route follows on the ground. The route that they marked would be very unlikely to be used as it passes through dense vegetation/mature woodland and emerges on the A373 on a very steep bank at a hazardous point on the road. It appears that they simply marked on the route of Footpath 11 as it was shown on their map.

1.4.2 Multiple user evidence forms recorded use of the proposed route between points U – M – T, along with several others that appear to be vaguely representative of this route but not completely consistent. Again, this may be due to the scale of the maps used affecting the accuracy of the annotations by users. Only two users had marked the Definitive Map line of Footpath 11 east to west between point N – P.

1.5 Landowner Evidence

1.5.1 No evidence has been supplied by the current landowner in connection with this proposal, though they do support it. There is no evidence that previous landowners have questioned the recorded route of Footpath no.11, or the discrepancy between the Definitive Map and the route signed by DCC on the ground.

1.5.2 Hembury Fort is a Scheduled Ancient Monument and since 2014 has been the subject of a ten-year Higher-Level Stewardship agreement (in receipt of £129,958), under the supervision of Historic England and during which time the public have permissive access to the site. Historic England have reiterated the comments that they made during consultation on the first proposal (which they did not support): while generally supportive of public access they have concerns about erosion of paths damaging the monument. These are not relevant considerations and in any case this proposal will partially address these concerns by moving the recorded line away from the central earthworks that are particularly sensitive.

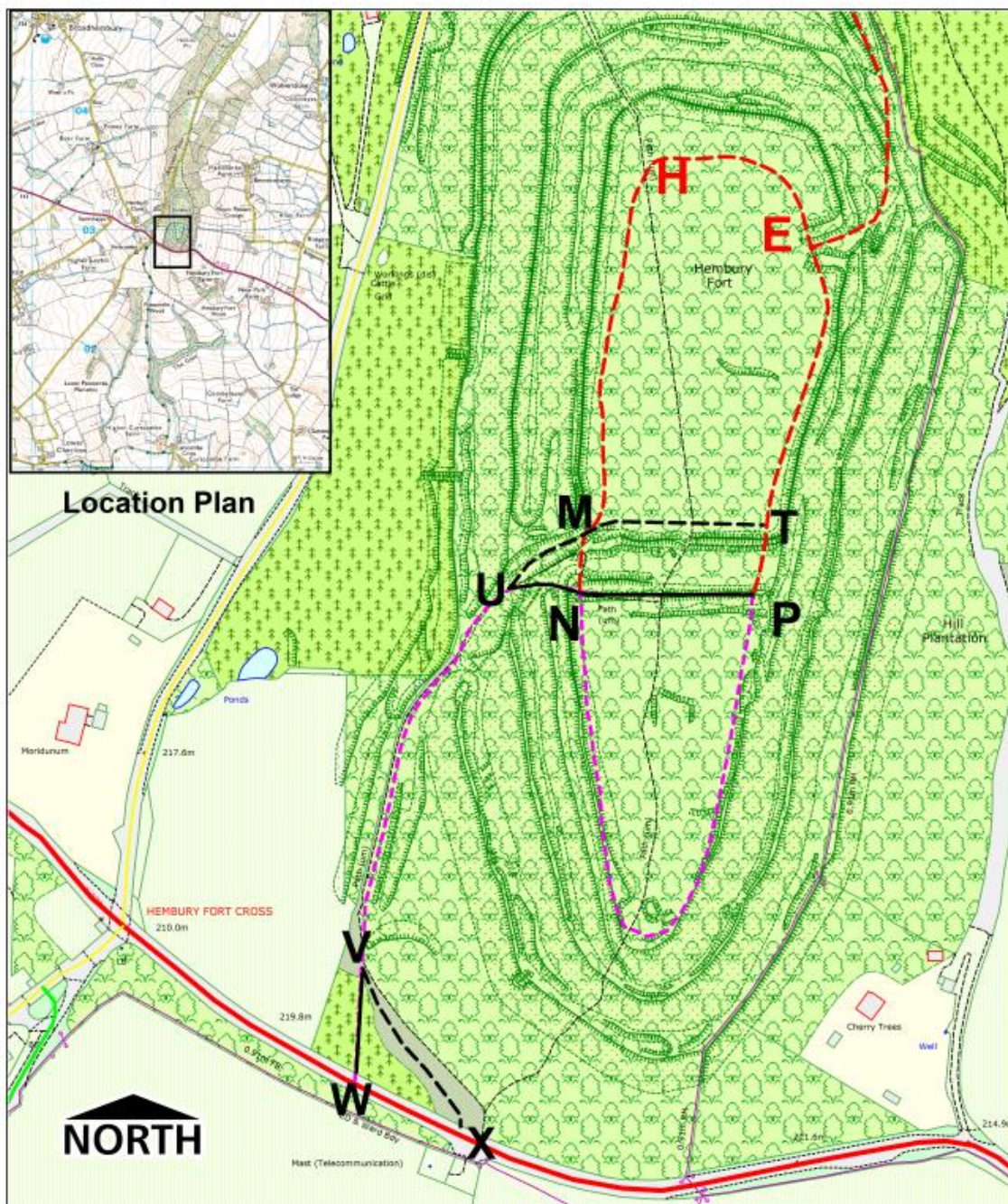
1.6 Rebuttal Evidence

1.6.1 No positive evidence to rebut the proposed modification has been discovered.

1.7 Discussion

- 1.7.1 Representing the complex topography of Hembury Fort on a map is not easy, particularly at a smaller scale. The plan HIW/PROW/20/45 at 1:2,500 manages to show the earthworks in reasonable detail. However, the Definitive Map process was undertaken using six-inch-to-the-mile mapping (1:10,560) and this does not show much topographical detail at all. The mapping used in the survey was also out-of-date at the time, being published more than 40 years earlier in 1906. Both of these issues have created some discrepancy over the exact route of the footpath, though these have been very minor and ultimately not of enough concern to anyone to warrant correction previously. Payhembury Parish Council clearly requested Footpath No.11 be recorded because the public had accessed the hillfort on this route, which they have always been able to since, albeit on a slightly different route to the one originally recorded on the Definitive Map.
- 1.7.2 Historical mapping shows a mixed picture. The Surveyors Drawings of 1806-7 show a track leading from the current A373 up to the top of the fort, roughly corresponding with this section of Footpath 11. It is then not until 1904 that a footpath appears again - on the Second Edition 25 inch-to-the-mile map in 1904, followed by the 6 inch edition in 1906. However, these depictions are only consistent with a route leading from the A373 up to the top of the fort, not with the loop around the southern half of the top of the fort. There is therefore no depiction of the entirety of Footpath 11 in the historic mapping record prior to the Definitive Map.
- 1.7.3 The aerial photography from 1946-9 is very useful in that it shows the fort during a period roughly contemporary with the Definitive Map survey. The photos show a track that appears to be on the same line as the gravelled track today, with a triangular patch of woodland to the southwest. The aerial photo from 1930 shows a very similar picture. The line recorded on the Definitive Map would have to pass through the patch of woodland but there is no sign of it on either of these photos. Indeed, these early aerial photos both strongly suggest that at the time of the Definitive map survey the likely route was along the route that it is signed on the ground today (the proposed route). Subsequent modern aerial photography during this century does not suggest any path existing along the recorded line at the southern end of Footpath 11. There is no trace of a path on the ground today between points W – V, either recent or historic. Therefore, it seems likely that the use of old base mapping during the Definitive Map process led to a simple error in representing the intended line of the footpath.
- 1.7.4 There is no sign of the recorded route of Footpath 11 between points U – N – P in the historic mapping record, or in either historic or modern aerial photography. The section between points U – N is extremely steep and it seems improbable that Payhembury Parish Council intended this to be the route of the path, especially considering the existence of the logical route between points U – M in the historic mapping and contemporary photographic record.

- 1.7.5 There is no doubt that footpath 11 was recorded on the Definitive Map due to the existence of public footpath rights leading from the A373 up onto the hillfort. Aerial photography suggests that at the time the map was drafted the route followed the same path as it does on the ground today. There is no path visible whatsoever at this time along the sections proposed for deletion, nor is there any evidence for them in contemporary or subsequent mapping. It is therefore logical to conclude that these sections did not exist on the ground at the time the Definitive Map was drawn up and that the line shown was an error.
- 1.7.6 To summarise, the existence of public footpath rights on Footpath 11 are not in any doubt; the intended route as described on the survey form and subsequent statement is very clear as to the general intentions of the route but lacking in any specific detail. The map used by Payhembury Parish Council to mark the line of the footpath during the Definitive Map survey was more than forty years out-of-date. The line was drawn on the pecked line path shown on the map, which is perfectly understandable. However, aerial photography and later mapping strongly suggest that the line drawn was incorrect at the time and was not an accurate representation of the route as it existed on the ground at the time and has done since. The available evidence suggests that the proposed route is what should have been recorded on the Definitive Map when it was first created and that the originally recorded line was incorrect due to the simple fact of the mapping being out of date.
- 1.8 Conclusion
- 1.8.1 It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement by deleting the sections of Footpath No.11 between points V – W and U – N – P and adding public footpaths between points X – V and U – M – T as shown on drawing HIW/PROW/20/45 and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.



Grid Ref: ST 1112 0289 / ST 1116 0282

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DEVON COUNTY COUNCIL
Definitive Map Review, Payhembury parish
Informal Consultations, Proposal 2:
Correction of alignment of Footpath 11,
Hembury Fort

Drawing number HIW/PROW/20/45
Date Dec 2020
Scale 1:2,500
Drawn by TCG

Notation Path to be added ——— Path to be deleted ———
Route recommended March 2020 ——— Existing footpath ———

Meg Booth

HEAD OF HIGHWAYS, INFRASTRUCTURE DEVELOPMENT AND WASTE





Point X, looking towards point V



Fingerpost at point M