

Definitive Map Review 2018-2021
Parish of Wembury (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 upgrading Footpath No. 28, Wembury to a public bridleway as shown on drawing number HIW/PROW/20/27A.

1. Introduction

This report examines a proposal to upgrade the current Footpath No. 28, Wembury to a public bridleway. The proposal was initially put forward at the start of the review of Wembury, although the supporting evidence was submitted at a later date. However, as it was submitted within six months of the review it was considered reasonable for it to be determined promptly, rather than deferred.

2. Background

This is the third report for the Definitive Map Review for Wembury parish. The background to the Review in Wembury was discussed in the first report of 4 July 2019.

3. Proposal

Please refer to the Appendix to this report.

4. Consultations

Informal public consultations were carried out in December 2020 with the following comments returned:

County Councillor John Hart	-	noted
South Hams District Council	-	no response
Wembury Parish Council	-	support the upgrading
British Horse Society	-	no response
Ramblers'	-	no response
Open Spaces Society	-	no response
Trail Riders' Fellowship/ACU	-	no objection at this stage
Country Landowners Association	-	no response
National Farmers' Association	-	no response
Cycling UK	-	no response

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 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 that a Modification Order be made in respect of upgrading Footpath No. 28, Wembury to a public bridleway.

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 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 South Hams District area.

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Electoral Division: Bickleigh & Wembury

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence file	2018 to date	DMR/Wembury

tw280521pra
sc/cr/DMR Parish of Wembury part 3
03 210621

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.

Proposal: Brownhill Lane – Upgrading of Footpath No.28, Wembury to a public bridleway

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement by upgrading Footpath No. 28, Wembury to a public bridleway, between points A – E as shown on drawing number HIW/PROW/20/27A.

1. Background

1.1 Following a public parish meeting to open the Definitive Map Review in Wembury in November 2018, interest was shown by local horse riders in claiming Footpath No.28, Wembury as a public bridleway. Evidence submitted at the time was limited, but local riders wished to have more time to gather information, due to home and work commitments. This was a reasonable request and fell within six months following determination of the two earlier proposals at Bovisand in the parish. As such it was considered reasonable to determine the claim promptly, rather than defer until completion of the Review for the county.

2. Description of the Route

2.1 Footpath No. 28, Wembury starts at the junction with the county road Church Road at point A (GR SX 5260 4933) and proceeds southwards along the defined lane known as Brownhill Lane, which is bordered by residential properties to the county road Mewstone Avenue which bisects Brownhill Lane at point B (GR SX 5266 4917). After crossing Mewstone Avenue the footpath turns eastwards and continues along Brownhill Lane to point C (GR SX 5289 4920). The route then turns southwards and is crossed by Footpath No. 29, Wembury before continuing to point D (GR SX 5294 4900) south east of South Barton Farm. The footpath and Brownhill Lane then proceed east north eastwards to end at point E (GR SX 5309 4907) on the county road at the junction with Warren Avenue and at the southern end of Footpath No. 25, Wembury. The total length of the footpath is approximately 800 metres. The surface is improved and suitable for ordinary vehicles between points A and B and of earth, vegetation with some improved sections for the remainder of the route. Photographs for information included at the end of this report.

3 Documentary Evidence

3.1 Ordnance Survey and other maps

3.1.1 The Ordnance Survey 1st Edition 25" to 1 mile, 1880 – 1890

This map shows the entire length of Brownhill Lane from Church Road across Mewstone Avenue and continuing along Brownhill Lane to Warren Lane as a defined lane with solid lines on both sides. The lane is shown as a through route between points A and E. A pecked line at point A could indicate a change in surface. At point D there is a line across the lane south of point D where a cul-de-sac section of lane leads southwards into a field. Brownhill Lane is not named but has its own compartment number 832 with area of 2.705 acres.

3.1.2 The Ordnance Survey 2nd Edition 1904 - 6 25" to 1 mile

This map also shows Brownhill Lane as a defined lane with the pecked line at point A. The compartment number is now 533 with an area of 2.69 acres.

3.1.3 The Ordnance Survey Post War Maps A Edition 1:2500 1951

This map shows the entire length of Brownhill Lane as a defined lane throughout its length, with some development on the eastern side of the lane between points A and B. The route is named as Brownhill lane in two places between points B and C and between points D and E.

3.1.4 OS 1:25,000 maps of Great Britain – Sheet 21/60 SS92 1950

The 1:25,000 'Provisional edition' or 'First Series', was Ordnance Survey's first civilian map series at this medium scale, the forerunner of the modern *Explorer* and *Outdoor Leisure* maps and published in limited colour between 1937-1961. By 1956 it covered 80% of Great Britain, everywhere apart from the Scottish Highlands and Islands. The series is useful for showing rural and urban areas in much greater detail than the standard one-inch to the mile (1:63,360) maps.

3.1.5 Minor roads, lanes and private drives/access lanes are all shown as white uncoloured roads/lanes described as 'Other Roads, Poor, or unmetalled'. The conclusive Definitive Map had not been published when this map was published. Some routes are shown as pecked and dashed lines labelled F.P. and B.R. and some as two narrow solid lines. The map contains the standard OS disclaimer 'The representation of any other roads, tracks or paths is no evidence of the existence of a right of way'.

3.1.6 Sheet SX54 published in 1946 shows Brownhill Lane as a defined uncoloured lane in the similar manner to minor county roads in the vicinity and described as 'Other Roads'. There are no lines across the route which is shown as open and available for the public to use. An OS trigonometrical station is shown at point A. This map does not show any development along the northern section of the lane.

3.2 Wembury Tithe Map 1839 & Apportionment 1840

3.2.1 This map shows the entire length of Brownhill Lane as a defined lane. There is a line across the route at point D which may indicate a gate. On the Wembury tithe map there is no colouring of roads or lanes to distinguish between or indicate whether any roads or lanes were considered to be public or private. Brownhill Lane is not numbered and neighbouring lanes that are county roads today are also not numbered.

3.2.2 From point D the lane continues southwards into apportionment number 665. This field is described as Little Down, arable land, owned by Thomas Lockyer and occupied by Arthur Walters. There is no reference to Brownhill Lane.

3.3 Definitive Map and Statement and Parish Survey under National Parks & Access to the Countryside Act 1949

- 3.3.1 The inclusion of a public right of way on the Definitive Map and Statement is conclusive evidence of its existence. However, this does not preclude that other rights which are currently unrecorded may exist.
- 3.3.2 The original parish survey form was completed in July 1950 for path No. 28 in Wembury. The form noted the designation 'C.R.F.' (carriage road used as footpath) although that is crossed out in pencil (believed to be by Devon County Council) and 'F.P.' written by the description. The path description is headed 'Top of Church Rd to Rear of South Wembury House'. Page two of the form, which was completed by the Divisional Surveyor at Plympton District Council in February 1953, notes the path as a Public Footpath and Accommodation Road with Brownhill lane described as an accommodation road (not repairable by the County Council). The form notes the path was walked in January 1953 by A D Surcombe.
- 3.3.3 The definitive statement description written for Footpath No. 28 states that 'The path is a Footpath. It starts at its junction with Path No. 25 on the South Wembury Road and follows a Private Accommodation Road (not repairable by the inhabitants at large) known as Brownhill Lane, crossing Path No. 29 and continuing until it joins with Church Road (County Road 144) just off West Wembury.' The path was added to and subsequently recorded on the final Definitive Map as Footpath No. 28, Wembury in 1962.
- 3.4 Devon County Council Uncompleted Reviews of 1968 & 1977
- 3.4.1 Wembury Parish Council held a special parish meeting in September 1969 and sent a report to Devon County Council containing a number of changes. This listed additional paths to be included; corrections to be made to the existing descriptions; corrections to be made to the map and lastly paths to be designated as bridleways. The four paths listed to be redesignated as bridleways, included at number 4, Footpath 28. The 1968 Devon County Council review became the Limited Special Review only and no action was taken with regard to the Parish Council's proposals.
- 3.4.2 In November 1978 Wembury Parish Council wrote to the County Council and within that letter commented that 'we have claims submitted for the establishment of Bridleways but after careful consideration feel the person who submitted the claims used the paths with the full knowledge and consent of their friends, the owners and do not think evidence could be produced of free use of the paths put forward by the public at large'.
- 3.4.3 Within the letter the parish council advised that they felt the description given in their 'Wembury Footpath and General Guide' booklet is more precise than the definitive map statements. A copy of the third edition of the booklet, published in 1976, was sent with the parish council's letter. The booklet had earlier editions published in 1966 and 1972. Within this guide pages 22-23 include a description of Footpath No. 28, from Wembury House to Brownhill Lane and Church Road. At the end of the description is a sentence saying 'The path gets very muddy in wet weather due to use by ponies'.

3.5 Aerial Photography

3.5.1 In the 1946 RAF aerial photograph Brownhill Lane is seen as a defined lane throughout its length although with the lane surface obscured by the hedges in some places. Development in the vicinity of the lane (between points A and B) is similar to that as shown on the OS Post War 1:2,500 published in 1951.

3.5.2 By the 1999 photograph the area has been considerably developed and Mewstone Avenue constructed across Brownhill Lane at point B. The remainder of the lane is visible from the hedges bordering the lane between points B and E. The 2015 photograph is similar to that of 1999.

3.6 HM Land Registry

3.6.1 The whole of Brownhill Lane from points A to E is unregistered at HM Land Registry, although the adjoining land is all registered. A look at three of the title registers for the residential properties along the section between Church Road and Melrose Avenue found that the registers did not make any reference to any private rights of way of access along Brownhill Lane for those three properties. However, in consideration of the age of the properties it is likely that the owners and occupiers would have acquired prescriptive private rights of access. The designation of the lane as a public footpath or any other type of public right of way would not interfere with any private rights of access for all types of use, including motorised vehicles.

3.6.2 Property owners in this section and other adjoining landowners along the length of the lane may also have some ownership rights to the centre line of that section on the basis of the latin legal phrase '*ad filum viae*' – to the middle of the way. One resident who commented on the proposal advised that his title at Land Registry granted the right 'for all purposes with or without vehicles to pass along the road or way'.

4. User Evidence

4.1 Fourteen User Evidence Forms (UEFs) have been submitted in support of this proposal. Seven of the users have ridden on horseback or a combination of walked and ridden the route for periods of 17 - 56 years.

4.2 Two of these riders D Thurlow and H Cooke have ridden the route since the mid 1960s. D Thurlow states she has used the lane daily since 1966 when she was taught to ride. She adds "I have lived in the village most of my life and have always used Brownhill Lane as a bridleway. Brownhill Lane starts at Church Road and was bisected when Mewstone Avenue was built making it into two parts of the same lane. As a child I kept horses in the field which is now Barton Brake..... It was common knowledge throughout the residents that this is a bridleway as used historically to get from West Wembury to Thorne Chapel, many traveling on horseback or carriage".

4.3 H Cooke said she used the route on horseback as a teenager between 1967-1976 and more recently from 2018 – current time. She states that she used the route 40 times a year and that it's in constant use.

- 4.4 A MacBean states on her UEF that she has used Brownhill Lane from Mewstone Avenue since 1977, 30-40 times a year for pleasure on foot and horseback. She says on her form that she has never been stopped or turned back from the route and she adds "I have used this lane unchallenged for over 40 years".
- 4.5 Ms Ireland has stated that she has used the route from Mewstone Avenue to Monkswood House (near point E) most weeks since 1985 to date. Ms Ireland adds "The usage of the path by horses dates back to the war times. I believe it is suitable to be given bridleway status. There is reference to the usage of the path by horses in an old footpath guide from the 1970s". An extract is copied on the reverse of her UEF. Ms Ireland states she has never been stopped or turned back from using the route on horseback and the only notices she has seen refer to Devon County Council maintenance works.
- 4.6 L Thurlow completed a UEF in June 2019 and sent an updated one in January 2020. She states that she has used Brownhill Lane from Monkswood House to Mewstone Avenue every day for pleasure on foot and horseback since 1994. Ms Thurlow says she has not been stopped or turned back from using the route and the only notices she has seen were those connected the maintenance of the surface by the county council. She adds "This lane has been used for generations of riders as a bridleway".
- 4.7 S Egglestone and P Cannon have used the route for 19 and 17 years respectively. S Egglestone has used Brownhill Lane on foot and horseback 20 times a year for pleasure and has never been stopped or turned back.
- 4.8 P Cannon says she has used Brownhill Lane weekly since 2002 on horseback going from Wembury Road (near C) to Church Road. She states that she hasn't been stopped from using the route, nor has she seen any signs to deter use by horse riders.
- 4.9 The seven remaining users have used the route between 1 – 8 years. Four users have used the route on foot or horses between 8 - 3 years. They have used Brownhill Lane very frequently for example daily and several times a month. They have used the entire route from Church Road to the county road at its junction with FP 25, Wembury (point A to point E).
- 4.10 The Stapleton family, mother and daughter, have used Brownhill Lane from Mewstone Road to Monkswood House/Wembury House since 2019. They use the route daily on foot, horseback or in a car. They keep their horses at the southern end of Brownhill Lane and if access is required along Brownhill Lane to access their field/stables, they may be considered to have a private right of way over the route.
- 4.11 Ms Thew has been in Wembury since 2019. It is slightly unclear from her form where she keeps her horses. In reply to Q.2. Have you used the above path? She replies, "My horses live on that lane, I drive up it every day, walk it every day with my horses and either ride on it or walk my horses on it, at least 5 times a week".

4.12 A tracking application called Strava (app) is used by runners, cyclists and walkers to log their routes taken and their distance and speed when walking, running or cycling. Using information uploaded by users, Strava publishes 'heat maps' of the routes used by their subscribers. The lighter/brighter colour of routes on the heat map indicating more frequent use by strava users. A copy of the cyclists' heat map for Footpath No. 28, Wembury viewed in May 2021 indicated that the footpath was being used by cyclists using Strava although not as frequently as the neighbouring county roads. Although the identity and number of these cyclists is not known, it would indicate that cyclists are also using the footpath as well as horse riders.

5. Landowner and Rebuttal Evidence

5.1 Nine residents of properties adjoining Brownhill Lane between points A and B have written and emailed with comments and objections to the proposed upgrading from a public footpath to a bridleway. Several of the comments made are similar and are summarised as follows:

5.2 There is a marked difference between the first section of Brownhill Lane (between points A and B) which is a unadopted road bordered by fourteen residential properties with driveways accessing the lane and the remainder of the lane bordered by hedges. The residential section of the lane is used by numerous vehicles including residents, visitors, delivery companies etc some of which exceed the residents' proposed speed limit of 5 mph. The lane is only the width of a single vehicle. This would make an upgrade to a bridleway totally inappropriate and lead to serious incidents.

5.3 The lane is an un-adopted highway and the residents of the lane maintain it by regularly repairing potholes with concrete and gravel, keeping it safe for cars, utility vehicles, horses, pedestrians and children walking to school or the park. Many of the residential entrances are concealed and great care must be taken when leaving the driveway. On some days Brownhill Lane can be very busy with dozens of vehicles using the route. There has been a number of 'near misses' where either horses or vehicles have had to pull up sharply including a delivery van who, after turning in at point A, collided with an earth bank to avoid a group of horses in the lane.

5.4 It would be a criminal offence for the residents to drive their vehicles over a bridleway and to render it illegal for residents etc to traverse this section of the lane would be wrong. The riders' rights appear to out-weigh their own as a landowner bordering a bridleway. There is no mention in the notice of any legal liabilities being passed to the residents of the lane as a result of the proposed upgrade.

5.5 The public notice says that horse use has been openly and freely for many years by horse riders but this does not mean regularly and could be applied to most of the main roads around Wembury. The passage of horses is infrequent to the regular driving of motor vehicles. Giving the rights of a public bridleway will encourage riders to past walkers dangerously faster than walking pace although a rider who had used the lane had said to a householder that that section was only suitable for walking horses.

- 5.6 Several of the residents questioned as to why any change is needed as things seem to work perfectly well as they stand. They would not object to the reclassification of the section after the junction with Mewstone Avenue (point B to point E).
- 5.7 One resident wrote in support of the upgrading of the bridle path/lane. Another advised that they welcome the continued use of the residential section of Brownhill Lane by walkers and horse riders along with motor vehicles but that this part of Brownhill Lane should remain classed as an unadopted road. They understood that this type of highway allows public access and where the highway code, vehicle taxes and insurances are mandatory. The current classification of public footpath should also be deleted from the Definitive Map for this section.
- 5.8 Many of the residents did make comments on use of the lane by horse riders. These included 'I have no objection to horse and rider using the lane, as they have done for many years and have no objection to the other section being upgraded'; 'we have lived in the lane for twenty years and cannot remember a time when horses, pedestrians, cars etc have not freely used the lane without incident, this arrangement could continue without causing any restrictions or concern for any user of the lane'; 'the lane has very little use by horses and recently that occasional number seems to have reduced further'; 'if the residents have accepted the infrequent use of their lane by horses, should there be any need for change' and 'the fact that horses do occasionally traverse the lane does not mean that the change is appropriate'.
- 5.9 An email was also received from Mr Morris (address not advised) who commented that the footpath is regularly used by children walking to school and dog walkers and an out of control horse could cause incidents; the existing footpath is unmade and very muddy and use by horses could make it un-useable as a footpath; horse riders do not clean up after their horses which is a danger to dogs and humans; it is not permitted to ride a horse on a footpath and he had not seen a horse ridden there recently and there are already numerous bridleways in the parish.

6. Discussion

Statute (Section 31 Highways Act 1980)

- 6.1 Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it 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 relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.
- 6.2 As there has been no reported challenge to the horse riders using Brownhill Lane, there is no date or point that the route can be called into question. To that end, the evidence cannot be considered under Section 31(1) of the Highways Act 1980.

Common Law

- 6.3 A claim for a right of way may also be considered under common law. At common law, evidence of dedication by the landowners can be express or implied. 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 at some time and that the public has accepted the dedication.
- 6.4 The mapping evidence shows that Brownhill Lane has existed as a defined hedged lane since at least the end of the 19th century and would appear to have been available as a footpath and bridleway since that date.
- 6.5 The route is already recorded on the Definitive Map and Statement as a public footpath. This has been the case since the local parish surveys for the creation of the Definitive Map in the 1950s. In order to be successful in claiming higher rights than those recorded, it must be demonstrated that there has been acceptance of use of the route as a bridleway by the users and the acquiescence of that use by the landowners to allow the public to use it as such and therefore for higher rights to subsist.
- 6.6 The parish council review correspondence for the Devon County Council uncompleted reviews indicated that the footpath was being used by horses by 1968, when the footpath was requested to be redesignated as a bridleway. The parish Footpath and General Guide of 1976 advised that Footpath No. 28 gets very muddy in winter due to use by ponies. Whilst mud would not affect the section between points A and B which has an improved surface, there is nothing to show that the ponies did not use the whole length of the footpath.
- 6.7 The user evidence clearly demonstrates that Brownhill Lane, in its entirety, has been used in excess of fifty years, since the mid 1960s, by horse riders and also confirms that the frequency of use along Brownhill Lane is high. Some users recorded daily use and others at the very least weekly. Three of the users refer to use from Mewstone Avenue (point B) but the user evidence as a whole shows there has been regular use along the whole length of the footpath without challenge or hindrance. In their correspondence, the adjoining landowners along the section points A to B refer to use by horse riders and acknowledge that horse riders use the lane and have done so for many years.
- 6.8 As there is already a public footpath recorded along Brownhill Lane, the test to prove that the route should be recorded as a different status to a public footpath is that those higher rights already subsist. The user evidence shows that those rights of use on horseback are already being exercised along the route openly and without objection or obstruction. The strava heat map also shows that the footpath is being used to some degree by cyclists, who also have a right to use bridleways, but not footpaths.
- 6.9 Objections and representations have been made by nine households along the section of lane between Church Road – Mewstone Avenue (points A to B). Their comments include the possible danger caused by the mixture of horse riders and residents' vehicles, visiting or delivery lorries and the dangerous situations this

may cause. It is not anticipated that the horse riding traffic will greatly increase due to the lane being recorded as a public bridleway, and the evidence would indicate that horse riders have used the lane for many years previously without incident and would be aware of the presence of motor vehicles on that section. Bridleway status would acknowledge how the general public are already using the lane.

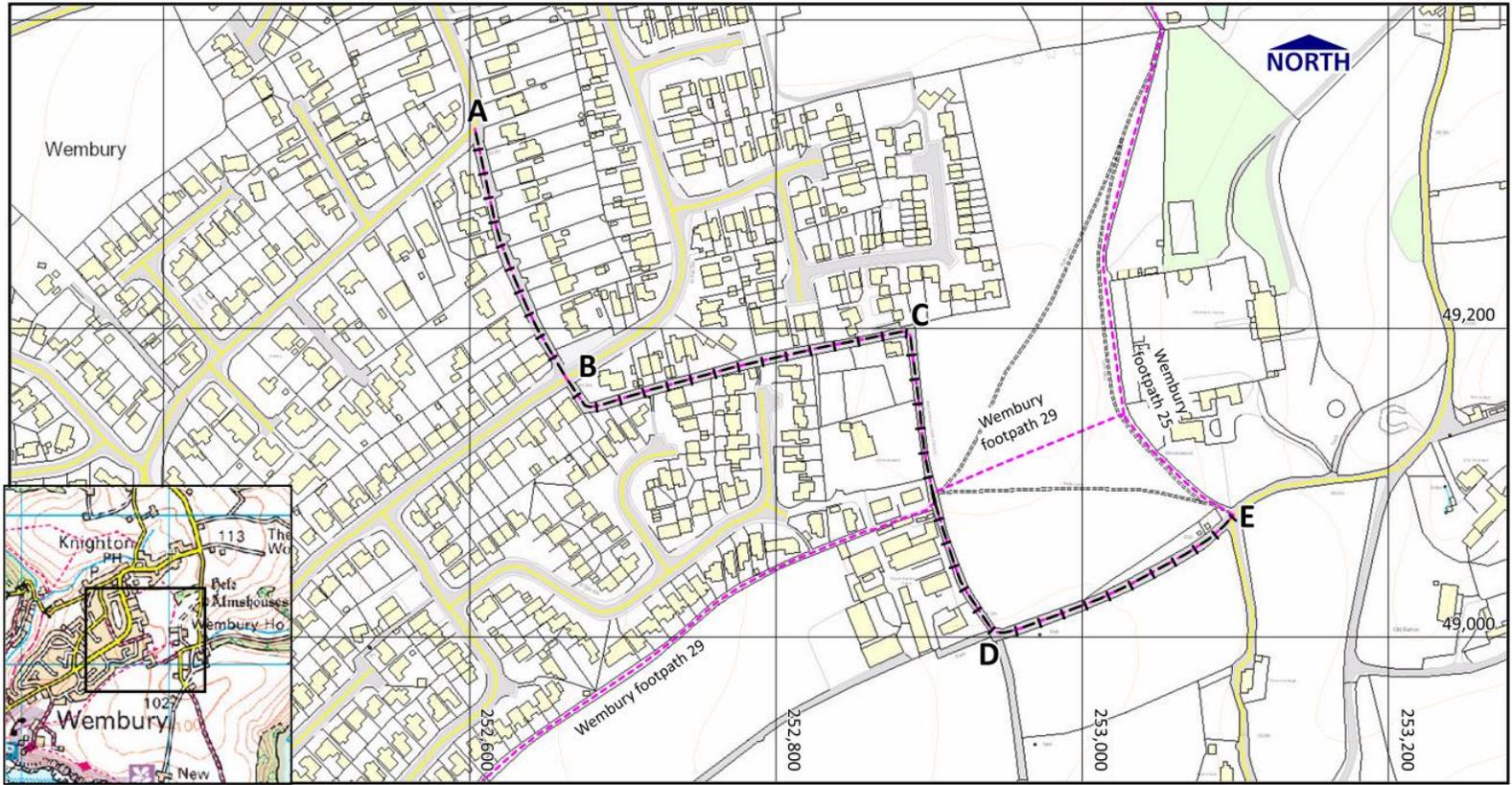
- 6.10 Other comments have been made about the suitability of the lane for horses as it is very narrow and is too narrow for horses and vehicles to pass and that horses could also cause a danger to the school children who use the lane. Representations about safety and suitability, although understandable, are not factors that can be taken into consideration under current legislation when establishing whether public rights way subsist.
- 6.11 A further concern made was that the residents would not be lawfully permitted to drive to their properties if the footpath became a bridleway. It should be noted, however, that the law (section 34 of the Road Traffic Act 1988), which makes it an offence to drive a mechanically propelled vehicle on a bridleway applies also to a footpath. Therefore, the change of status to bridleway would make it no less lawful to drive over it. However, it is unlikely that the residents could be considered unlawful users of the footpath, or bridleway if it is so recorded. Whilst it would be unlawful for a member of the public to drive a motorised vehicle on a public footpath or bridleway, the residents may be deemed to have a private right in all types of vehicles for all purposes to access their houses. This private right would also extend to visitors, delivery vehicles, utilities and refuse lorries who also use that section of the lane in connection with the properties along the road. Although the three Land Registry titles looked at, did not refer to any private rights for access to those properties along the lane, due to the age of the houses it is considered likely that private rights may be deemed to have been acquired through long usage.
- 6.12 The National Environment & Rural Communities Act of 2006 changed the designation of the public right of way known as a RUPP (Road used as a Public Path) which the public could have used with motorised vehicles to a Restricted Byway, which the public cannot use with motorised vehicles. To protect the access rights for those property owners who used a RUPP to access their property, the NERC legislation included the clause that it was not an offence for a person with an interest in land, or a visitor to any land, to drive a mechanically propelled vehicle on the road if the road was in use for obtaining access to the land by the driving of mechanically propelled vehicles by a person with an interest in the land or by visitors to the land. Although the NERC legislation applied to public rights of way redesignated as a Restricted Byway from a RUPP, it is considered to give some authority for the presumption of private vehicular rights over a public right of way.
- 6.13 A further presumption of private rights over the route could be inferred from the description of the footpath in the definitive statement as following ‘...a private accommodation road (not repairable by the inhabitants at large)...’. This was a term used by the County Council, at the time the definitive map and statement was prepared, to describe roadways/lanes that were considered as being used

for vehicular access to property and land, but which were not considered public vehicular ways and were maintained by the adjacent landowners.

- 6.14 It is not unusual to find that private rights of access are not recorded on the registered title at Land Registry, when access to a property is required along a green lane or an unadopted highway or other route with no recorded status or if recorded only as a public right of way upon which it would be unlawful to drive a motorised vehicle. To protect the access rights of the landowners it has been noted, on other registered titles in connection with different routes, that Land Registry will register a 'Notice entered in pursuance of rule 254 of the Land Registration Rules 1925 on (*date*) that the registered proprietor claims that the land has the benefit of a right of way on foot and with or without vehicles over the road (*description of access route needed for property*)'. As this would be a matter of private rights of access as opposed to those of the public, it would be for the landowners to contact their own legal advisers in this regard.
- 6.15 It was proposed that the section of Brownhill Lane between points A and B should remain as an unadopted road that is maintained by the local residents. It is known that is a privately owned road, although the owner is unknown and there is no intention to change or takeover ownership of the lane if the public footpath is upgraded to a bridleway. The public's rights to use the lane are as a public right of way only and their nature of use is limited by the designation of the public right of way.
- 6.16 A public footpath is already recorded along Brownhill Lane and it is not considered that the addition of bridleway rights will interfere with the private rights of access for the residents, along the section from Church Road to Mewstone Avenue (points A to B) or along any of the whole lane itself. Private and public rights of way co-exist along many routes. There would be no physical change made to Brownhill Lane and ownership of the lane would not change. Upgrading the footpath to a public bridleway would be formally recognising those rights that are already considered to have been acquired and to subsist along the route.

7. Conclusion

- 7.1 In the absence of a calling into question of the use of Footpath No. 28, Wembury by horse riders, the existence of higher rights cannot be considered under section 31 of the Highways Act 1980. At common law however, the available evidence is considered to show that higher rights than that of a footpath are deemed to have been dedicated at some time in the past and can be alleged to subsist on the balance of probabilities. Use of the lane by horse riders shows acceptance of the dedication of the bridleway.
- 7.2 It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement for the upgrading of Footpath No. 28, Wembury to a Bridleway as shown on drawing number HIW/PROW/20/27A.



Map ref. SX 5249 5349

200 metre grid

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**Definitive Map Review
Informal Consultation
PROPOSED Upgrading of Footpath No.28,
Wembury to BRIDLEWAY**

Notation

- - - - - A - B - C - D - E
- - - - - Proposed upgrading
Approximately 800m
- Existing Footpaths

drawing no. HIW/PROW/20/27A
date Nov 2020/May 2021
scale 1:3,500 at A4
drawn by BM/ES/TW



Meg Booth

CHIEF OFFICER HIGHWAYS,
INFRASTRUCTURE DEVELOPMENT
AND WASTE



Point A Church Road (county road) looking southwards into Brownhill Lane
Google Street View 2019



Continuing southwards along Brownhill Lane between points A and B with entrances to residential properties along the lane visible.



At point B and junction with Mewstone Avenue looking northwards towards point A.



At point B and junction with Mewstone Avenue heading southwards then eastwards along Brownhill Lane towards point C. Google Street view 2019



At Point E looking westwards at the junction with Warren Lane and southern end of FP No. 25, Wembury