

**Definitive Map Review  
Parish of Clayhidon (part 3)**

Report of the Head of Highways, Capital Development and Waste

***Please note that the following recommendations are subject to consideration and determination by the Committee before taking effect.***

**Recommendation: It is recommended that:**

- (a) a Modification Order be made to modify the Definitive Map by adding a public bridleway along Routy Lane between the points A – B as shown on drawing number HCW/PROW/14/88a (Proposal 6).**
- (b) no Modification Order be made to modify the Definitive Map and Statement by upgrading Footpath No. 31 Clayhidon & Footpath No. 40, Hemyock to a Public Bridleway between the points A – B – C – D – E – F as shown on drawing number HCW/PROW/15/46 (Proposal 3).**

**1. Introduction**

This third report for Clayhidon parish examines the final two proposals arising from the Definitive Map Review in the parish of Clayhidon. Proposals 1 and 4 were considered at the committee in June 2015 and proposals 2 and 5 at committee in November 2015. Proposals 3 and 6 are considered in this report.

**2. Background**

The background to the review in Clayhidon parish is as discussed in the first report of 24 June 2015.

**3. Proposals**

Please refer to the appendix to this report.

**4. Consultations**

A Definitive Map Review opening meeting was held in Clayhidon in May 2013 and two Definitive Map Modification Orders to correct anomalies on Footpaths No. 28 & 31, Clayhidon were reported to Committee in June 2013, published in 2013 and confirmed in March 2014. A consultation map of six proposals was published in July 2014 with the following results.

County Councillor R Radford	-	no response to proposals
Mid Devon District Council	-	no response to proposals
Clayhidon Parish Council	-	response to all proposals
British Horse Society	-	response to some proposals
Country Landowners' Association	-	no response to proposals
National Farmers' Union	-	no response to proposals
Ramblers' Association	-	no objections to all proposals
Trail Riders' Fellowship	-	no response to proposals
Devon Green Lanes Group	-	no response to proposals

Specific responses are detailed in the appendix 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) 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.

## **9. Conclusion**

It is recommended that a Modification Order be made to modify the Definitive Map by adding a public bridleway along Routy Lane between the points A – B as shown on drawing number HCW/PROW/14/88a (Proposal 6) and that no Modification Order be made to modify the Definitive Map and Statement by upgrading Footpath No. 31 Clayhidon & Footpath No. 40, Hemyock to a Public Bridleway between the points A – B – C – D – E – F as shown on drawing number HCW/PROW/15/46 (Proposal 3).

## **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 Mid Devon District area.

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Head of Highways, Capital Development and Waste

**Electoral Division: Willand & Uffculme**

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
DMR/Correspondence File	1999 to date	DMR/Clayhidon

tw170216pra  
ddm/CR/DMR Parish of Clayhidon  
03 040316

**A. Basis of Claims**

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.

Section 67 of the Natural Environment and Rural Communities Act 2006 (NERC) extinguishes certain rights of way for mechanically propelled vehicles except for the circumstances set out in sub-sections 2 to 8. The main exceptions are that:

- (a) it is a way whose main use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles;
- (b) it was shown on the List of Streets;
- (c) it was expressly created for mechanically propelled vehicles;
- (d) it was created by the construction of a road intended to be used by such vehicles;
- (e) it was created by virtue of use by such vehicles before 1 December 1930.

**1. Proposal 6: Proposed addition of a public bridleway along Routy Lane between points A – B as shown on drawing number HCW/PROW/14/88a.**

**Recommendation:** It is recommended that a Modification Order be made to add a public bridleway along Routy Lane between points A – B as shown on drawing number HCW/PROW/14/88a.

**1.1 Background**

1.1.1 Routy Lane was included as part of a recommended riding route in the Blackdown Hills published by the Blackdown Hills Area of Outstanding Natural Beauty in 2008 at which time it was noted that the lane had no recorded status (refer to paragraph 1.3.20). It was therefore agreed that the status would be reviewed when the Definitive Map Review opened in Clayhidon and Routy Lane was included as a consultation proposal.

**1.2 Description of the Route**

1.2.1 The route starts at point A on the county road just north of Newcot Cross and the southern end of Footpath No. 46, Clayhidon and proceeds generally south south eastwards along a defined and wide hedged lane. At the eastern end the route joins the county road at point B about half way between Burrow's Farm and Whitedown Cross.

1.2.2 The surface of the lane is earth and grass with a ditch flowing along part of the lane and some trees and shrubs growing from the surface. The width of the lane is as wide as a two lane carriageway for much of the length at some 10 metres plus with the total length of the route being approximately 680 metres. Vegetation growth has restricted the useable width but there is sufficient for a walker or horse rider to pass through. The tree trunks referred to by the landowner Mr Meade (see paragraph 1.5.3) are still in place but there is room at the side for a walker or horse rider to pass by. Photographs of the route are included in the backing papers.

**1.3 Documentary Evidence**

**1.3.1 Ordnance Survey and Other Maps**

The Ordnance Survey and other mapping do not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.

**1.3.2 Cassini Historic Maps 1809 – 1919 Sheet 181 Minehead & Brendon Hills**

These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919. The 1919 edition does refer to Bridle & Footpaths in the map key and these are shown by a pecked line in that edition.

1.3.3 On the Old Series of 1809 the road layout in the vicinity of Routy Lane is a little different to today and Routy Lane is not shown. In the edition of 1899-1900 the route is shown as an uncoloured defined lane which would appear to correspond to an unmetalled road. The county roads which Routy Lane joins are both coloured as Metalled Roads – Second Class. In 1919, the lane is still shown as a defined lane representing Minor Roads.

**1.3.4 OS 1st Edition 25" to a mile 1880-1890 & 2<sup>nd</sup> Edition 1904-06**

Both editions show Routy Lane as a defined hedged lane with hedgerow trees (shown on the 1<sup>st</sup> edition). On both editions the lane has its own compartment number 1307 and a stated area of 2.02 acres. On the first edition there is a solid line across the west end of the lane at point A, which could represent a gate and a pecked line across the east end of the lane at

point B, representing a change in surface between the lane and the current county road. On the second edition of 1904-06 there is a pecked line across both ends of the lane at point A and at point B. This is understood to represent a change in surface between the lane and county road. The second edition shows the presence of Newcott Cottages, just west across the road from point A and the later site of New Gorwell Farm.

#### 1.3.5 OS 1 inch to a mile Maps of 1946, 1960 & 1967 Sheet 176 Exeter

On the 1946 edition the lane is shown as a double lined lane corresponding to Minor Roads in Towns, Drives and Unmetalled Roads. Although prior to the Definitive Map being compiled, a dashed line on this edition represents Footpaths & Bridlepaths and the route of Footpath No. 46, Clayhidon, running north of and parallel to Routy Lane is shown on the map. On the 1960 and 1967 editions Routy Lane is not shown although Footpath No. 46, Clayhidon is shown as a Footpath and Track on the 1960 edition and as a Public Footpath on the 1967 edition, which included public rights of way recorded on the definitive map.

#### 1.3.6 OS Post War Mapping 1:2:500 scale 1964

The route is shown as a defined lane called Routy Lane and with its own compartment number 3437 and area of 2.02 acres. There are pecked lines across both ends of the lane, considered to represent a change in surface between that of the lane and the county roads. Newcott Cottages is now New Gorwell Farm, with the original cottages extended and farm buildings constructed south of the cottages.

#### 1.3.7 Tithe Maps and Apportionments

Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring can indicate carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown.

#### 1.3.8 Clayhidon Tithe Map & Apportionment 1840

The roads on the Clayhidon Tithe Map are not coloured. Routy Lane is shown as a defined lane similar to the adjacent lanes that are county roads today. The lane is shown open at both ends where it joins the current county roads. The lane is not individually numbered. Land adjoining the lane falls under the holdings of Newcot owned by Walker, occupied by John Butter (apportionment numbers 1772, 1774-1780 on the south and part north side of the lane) and Burrows owned by John Quick, occupied by James Brown (apportionment numbers 1781-1782 on the north side, east end of the lane).

#### 1.3.9 Finance Act Plans and Field Books 1910

The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.

#### 1.3.10 The majority of Routy Lane is within land forming part of hereditament number 116 Newcott Farm as all the fields on the south side of the lane and the three fields on the north side are within this holding. The field at the north east end of the lane falls under hereditament number 118. Where the lane lies between land in different holdings the lane is excluded from either hereditament and where the boundary for the Newcott land passes from the

southern side to the northern side of the lane the Newcott boundary colouring is broken across the lane, as it also is where the Newcott boundary colouring crosses two county roads to the south and south east of Routy Lane. This would indicate that the lane was excluded from those hereditaments.

1.3.11 Hereditament 116 Newcott Farm included 313 acres of land in Clayhidon and Hemyock parishes. The farm was occupied by S P Hawkins on a ten year tenancy at £150 a year. Notes on page two of the field book refer to a Church path under the heading 'Charges, Easements and Restrictions affecting market value of Fee Simple' with a valuation of £1-10 x 22 £35 and the £35 is carried forward to page 4 under Public Rights of Way or User. No compartment numbers are given for the 'church path' to identify which fields/land this path crossed.

1.3.12 Parish Survey under National Parks and Access to the Countryside Act 1949

The parish survey map for the vicinity of Routy Lane shows the addition of Footpath No. 47, Clayhidon (located north of Routy Lane on a parallel line) running eastwards from Newcott Farm to Burrow's Farm and Footpath No. 46, Clayhidon (runs north of point A) from Burcombe Road to Newcott but there is no annotation or colouring on Routy Lane itself. It appears from the map and the survey form for Footpath No. 46, Clayhidon that this footpath was initially proposed by the parish council to run from Burcombe Road south of Fields Farm across Newcott Moor to Newcott Farm only, as the description on the parish submission refers to the path ending at Newcott Barton. The survey forms for these two footpaths were signed by the parish clerk in October 1950.

1.3.13 Descriptions of the path routes are listed on seven sheets headed 'List of Public Rights of Way in the Parish of Clayhidon agreed with the Clerk to the Parish Council on 16<sup>th</sup> December 1957'. On here the description for Footpath No. 46 includes the additional section from Newcott described as '...to Newcott Farm, where it follows along a private accommodation road (not repairable) to join the 3<sup>rd</sup> Class County road by Newcott Cottages and junction with Routy Lane' but there is no additional information or description on the status of Routy Lane referred to in the document. This is the description of the definitive statement for this footpath.

1.3.14 Devon County Uncompleted Reviews of 1968 & 1977

In June 1971 when the Limited Special Review (re-designation of Roads used as Public Paths) was ongoing in the County (arising out of the general 1968 review), the Parish Clerk advised the County Council; that at a meeting on 26<sup>th</sup> May 1971, the Clayhidon Parish Council resolved that the bridlepath No. 5 from Clayhidon Church to the Wellington road through the land of Glebe Farm be re-designated a footpath. No other variations are proposed in this parish.

1.3.15 Following a public meeting held on the 6<sup>th</sup> April 1978 for the general county wide review of the Definitive Map started in 1977, the clerk for Clayhidon Parish Council wrote to advise that it had been proposed, seconded and adopted by the meeting that the map supplied by the County Council be accepted as a true record of the Footpaths and Bridleways in the parish without any alteration being made (apart from clerical errors noticed in respect of Footpaths No. 23 and No. 28).

1.3.16 Clayhidon Parish Council Minutes

The Parish Council minutes are available from inception of the Council in 1894 and retained by the current clerk. In January 1936 it was proposed and seconded that a committee make a map of the footpaths and rights of way in the parish. A meeting of seven councillors and the clerk was held on the 23<sup>rd</sup> January 1936 but there were no further details of whether maps were prepared in later minutes.

- 1.3.17 In August 1958 the Draft Map and Statement with reference to PROW was again considered and the clerk stated that since it had been deposited for inspection, no objection had been received. In August 1963 the clerk confirmed that footpath Map and Statements had been open for inspection at his house 18<sup>th</sup> June to 16<sup>th</sup> July, no one asked to inspect and now returned to Devon County Council.
- 1.3.18 On 28<sup>th</sup> February 1963 the clerk reported he had had a letter and a visit from Ordnance Survey who were surveying the south of the parish. The clerk was instructed to find out the present state of Routy Lane and also inform the OS that the Council do not approve of the name of this lane being removed from the Ordnance map.
- 1.3.19 From the meeting on 29<sup>th</sup> May 1963 under the heading Routy Lane. The Clerk reported that Routy Lane was a private accommodation road, not maintained by the highway authority and not a public right of way. It is at present overgrown with trees and bushes. He understands that the Tiverton Rural District Council have written to OS to keep the name on the map for identification purposes.
- 1.3.20 Aerial Photography  
On the 1946-1949 aerial photography the surface of the lane can be clearly seen along the majority of the route between the two hedges, which although having some large hedgerow trees within them, appear to be trimmed as per the local field hedges. The large width of the lane can be clearly seen, particularly in the eastern half of Routy Lane. In the later photographs of 1999-2000 and 2006-2007 the hedgerow trees have grown substantially with their canopies covering the lane apart from one small section about a third of the way along from point A, where the two hedges each side and line in between can just be seen on the 2006-2007 photograph. In the Bing photograph, believed to date from around 2011 the lane continues to look like a very wide hedgerow.
- 1.3.21 Land Registry  
Routy Lane is not registered. Two fields to the north of the lane are also unregistered and understood to be owned by Mr G Meade at Newcott Barton. The two fields to the south of the lane are registered and owned by Mr R Shere of New Gorwell Farm and the third field on the north side is registered and owned by Mr & Mrs Arcscott of Uptonery.
- 1.3.22 Blackdown Hills AONB Riding Routes  
In 1997 a recommended riding route of 12 miles around Clayhidon/Hemyock was published as ride 2 as part of a series of rides 'Horse riding in the Blackdown Hills'. This ride included the use of Routy Lane within the route and Routy Lane was described in the route guide as 'an unmarked track'.
- 1.3.23 Following the sale of Exeter Airport by Devon County Council, a grant was made to Project Phoenix in conjunction with Devon County Council and the Blackdown Hills AONB which developed circular riding routes around the Blackdown Hills. Ride C5 was a 20 mile route described as the Dunkswell and Sheldon Circular passing through the parishes of Hemyock, Luppitt, Broadhembury and Ashill. This route, published and launched with the other rides in August 2008 at Honiton Show, also included Routy Lane within the recommended route and described the lane as 'single track through copse (Routy Lane)'.

## **1.4 User Evidence**

- 1.4.1 Six user evidence forms have been received from members of the public who have used Routy Lane as a public right of way and these have been considered and are detailed below.
- 1.4.2 Mrs Dymond of Hemyock has used Routy Lane on horseback for fun from 1974 to 2015 (when user evidence form completed) at least 50 times a year. She considers the route to



be a bridleway and to be public as it is well used by other riders and from common knowledge. In response to the question about any obstructions encountered, Mrs Dymond refers to string for cow control at eastern end and under any additional information refers to log at western end but you could get round it; think log was to stop vehicles. She had never had permission to use the route or ever been stopped, told it was not public, or seen any notices or had a private right to use the route. She comments 'we had lots of fun cantering and jumping fallen logs'.

- 1.4.3 Mrs Elliott of Hemyock had used the route 3 or 4 times a year on horseback for pleasure from 1998 to 2003 and considered the way to be a bridleway and to be public as other riders and walkers used it. Under obstructions she refers to a log at western end, then string. Mrs Elliott had never had permission to use the route or ever been stopped, told it was not public, or seen any notices or had a private right to use the route. She believed the owner or occupier was aware the public was using the path with so many hoof/foot prints, must have known. Under additional information she commented 'There was a narrow track through but it was free of big branches'.
- 1.4.4 Mrs Gray of Clayhidon had used the lane on foot from 1997 to 2015 and on horseback from 2006 to 2012 twenty times a year for pleasure purposes. She considered the lane to be a bridleway as it is an old path, locally used with no restriction. Mrs Gray refers to the trees across each end to prevent vehicle use and had never had permission to use the route or ever been stopped, told it was not public, or seen any notices or had a private right to use the route. Under additional information she advised that in about 2004 they cleared the path with a landrover and two local ladies were concerned until they assured her it was just for horses to use. Mrs Gray also refers to the string for cattle at the eastern end.
- 1.4.5 Mrs Parsons from Hemyock had used the route 6 times a year on horseback for pleasure from 1993 to 2015 (when user evidence form completed) and considered the way to be a bridleway and public due to local hearsay. Under obstructions she refers to string across eastern end for cattle movement and believes the owner was aware the public was using the path due to footprints. She had never had permission to use the route or ever been stopped, told it was not public, or seen any notices or had a private right to use the route. Under any additional information Mrs Parsons commented 'Track overgrown with wet patches. Fallen branches across sometimes but low enough to jump/walk over/under. Log across western end, presumably to stop vehicle access but with gap alongside for horses/walkers'.
- 1.4.6 Mrs Pepperell of Hemyock had used Routy Lane on horseback for pleasure from 1978 to 2002 up to once a week in her youth during the summer months and considered the way to be bridleway and public as all the locals believed it to be a bridleway. Under obstructions she mentioned tree trunks at either end. Mrs Pepperell had never had permission to use the route or ever been stopped or told it was not public, or seen any notices or had a private right to use the route. Under additional information she had commented 'As my friend lived at New Gorwell Farm I used this bridleway often in my youth. I now have young members of my family who use it and it would be a shame if it became unavailable.'
- 1.4.7 Mrs Upton of Hemyock had used the lane on horseback for pleasure from 1977 to 2015 (when user form completed) about 30 times a year as a teenager to once a fortnight as an adult. Her parents told her the route was a bridleway and she grew up at Fields Farm one mile from Routy Lane. She had seen the notice last year re bridleway proposal and under obstructions referred to string on eastern end for cattle control, tree trunk at western end could jump or go around; currently partly obstructed by fallen tree and very overgrown. Mrs Upton did not consider that she needed permission to use the route and had never been stopped or told it was not public, or seen any notices or had a private right to use the route. Under additional information she had commented 'I rode the bridleway with my local friends

often as a child/teenager and now I ride it regularly on my daughter's pony kept at Fields Farm. My daughter also rides the bridlepath.'

## **1.5 Landowner Evidence**

- 1.5.1 The three adjoining occupiers, on both sides of the lane were contacted and informed of the proposal.
- 1.5.2 Mr Meade of Newcott Barton owns and farms the two western fields on the north side of Routy Lane. Mr Meade completed a land owner evidence form and also submitted a covering letter. In his evidence form, Mr Meade confirmed the way adjoined his land, owned for 56 years (in 2014) and in response to the question 'Do you believe this way to be public?' advised '*Not really public. The lane has been used by walkers and nobody has challenged them in the past. For 56 years this has remained an unspoilt walk and should remain so.*' In response to the question 'Have you seen, or being aware of, members of the public using this way?' Mr Meade replied '*For years, possible 56 years, walkers have enjoyed this pleasant walk but not very often*' and as regards asking permission '*Nobody has ever requested permission as the lane is there to enjoy a pleasant rural walk.*'
- 1.5.3 In answer to the question 'Have you ever turned back or stopped someone?' Mr Meade advised '*On one occasion two 4x4 vehicles started trying to go down the lane approx. 5 years ago. My wife and neighbour's wife confronted them. Since then two large tree trunks were placed each end to stop vehicles destroying the habitat.*' Mr Meade had not erected signs or notices stating the way was not public. With regard to the question about obstructing the way Mr Meade referred to the tree trunks placed at each end of the lane to stop vehicles but commented '*This however did not obstruct walkers or occasional horse riders. Vehicles should never be allowed down this lane*'; and under further information Mr Meade added '*This lane has remained unspoilt natural habitat for all the 56 years I have lived here and should remain a haven for wildlife and fauna.*'
- 1.5.4 In his supporting letter Mr Meade advised that the land south of Routy Lane originally belonged to his farm (Newcourt Barton) until the fields were sold to New Gorwell Farm sometime in 1940-1950 and at that time Routy lane was used for access to adjoining fields on either side. Since then the lane has been left to natural regrowth of various trees, shrubs and wildflowers and it is very important this habitat is not destroyed. Should the lane become a bridleway he would not object entirely but has some reservations about the harm horses may do to the surface in wet weather. His greatest objection is that vehicles are never allowed access either end. He suggests that any type of clearance of vegetation should be limited to a simple track to avoid trampling the many flowers. Mr Meade ends his letter with his final thought that we should all enjoy such pleasant surroundings and try and preserve them for future generations.
- 1.5.5 No response was received from Mr Shere of New Gorwell Farm, the owner of the land on the south side of the lane or from Mr & Mrs Arscott the owner of the field on the eastern side on the north of the lane. Mr Meade indicated on his landowner evidence form that he had completed a section 31(6) declaration but one could not be traced for the land adjoining Routy Lane.

## **1.6 Rebuttal Evidence**

No rebuttal evidence has been received.

## **1.7 Consultation Responses and other Correspondence**

- 1.7.1 Clayhidon Parish Council made the following comment having discussed the proposal. Creation of a bridleway along length of Routy Lane near Newcot Cross. This would upgrade

as usually passable along the length and would not conflict with traffic or walkers. Practicable in the area without a lot of resources needed.

- 1.7.2 Mr Mumford, the local Ramblers Footpath Representative, responded that the suggestion is acceptable from a walker's point of view.
- 1.7.3 Mr J Burridge, a local resident from Clayhidon wrote objecting to a number of proposals for change in the parish including this proposal. His objection is based on the additional cost of the upgrades during a period of financial austerity although he advises that he is not familiar with the routes. He writes that Devon County Council needs to concentrate on its statutory duty to maintain the network it already has rather than upgrade its network and burden itself with future maintenance liabilities that evidence shows it cannot afford to maintain.
- 1.7.4 The local British Horse Society representative forwarded some user evidence forms from local riders who had used or were still using Routy Lane.

## **1.8 Discussion – Statute and Common Law**

### **1.8.1 Statute (Section 31 Highways Act 1980)**

A claim for a public right of way can arise under statute through use by the public under section 31 of the Highways Act 1980, if twenty years use can be shown after the public's use of the route is called into question. A public right of way can also be upgraded if there is sufficient evidence of use to support presumed dedication of the higher status since the right of way was first recorded.

- 1.8.2 The evidence forms received refer to use of the route by members of the public 'as of right' (without force, permission or secrecy) from 1974 to 2015 which is in excess of the twenty years required under section 31 claims. However, none of the users refer to their use of the route being called into question during their use which is a requirement to enable a valid claim to be considered under section 31 of the Highways Act 1980 (the occasional cord/rope across the eastern end of the lane for cattle control and tree trunks to stop vehicles mentioned by some users are not considered sufficient). The proposal will not therefore be considered under statute.

### **1.8.3 Common Law**

A claim for a right of way may also exist at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication of a public right of way 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, usually at some time in the past and that the public has accepted the dedication.

- 1.8.4 The historic mapping records the existence of the lane since the mid-19<sup>th</sup> century as the lane was shown on the Tithe Map of 1840 but not on the first edition 1 inch OS maps of 1809, although this could be due to the small scale. The lane continues to be shown on the small scale maps of 1899, 1919 and 1946 but is not shown on the later 1" OS maps of 1960 and 1967. The lane is shown on the Post War 1964 and current large scale mapping. Although these maps show the lane was in existence and presumably available to the public, the maps do not provide any details of status.
- 1.8.5 In the Clayhidon Tithe Map the roads are not coloured and Routy Lane appears in a similar manner to the adjoining and neighbouring lanes that are county roads today and would appear to have been available to wheeled traffic as well as walkers and horse riders. In the Finance Act 1910 plan the lane appears to be excluded from the adjoining hereditaments as the colouring breaks where a hereditament colouring crosses Routy Lane. This could be because the lane was considered to be public and public roads were excluded from

hereditaments or it could be because the two different landowners on either side only considered the boundary of their land to extend to their field hedge and did not include the lane.

- 1.8.6 No map or list of rights of way referred to at the parish meeting in 1932 appears to remain. The lane was not included in the list of paths surveyed by members of the parish council in 1950. Routy Lane is referred to in the path statement description for Footpath No. 46, Clayhidon but no mention is given of its status. Clayhidon Parish Council like other parishes in Mid Devon appear to have only proposed paths for inclusion in their survey that crossed fields and enclosed land and did not include any of the lanes in the parish that were not county roads. The list of paths to be included for the parish was agreed with the parish clerk in 1957 and did not include Routy Lane. The draft and provisional Definitive Maps were held by the parish clerk for public consultation in August 1958 and August 1963 and it would appear that no objections or representations to the omission of Routy Lane were made.
- 1.8.7 At a Parish Council meeting in 1963, it was reported that Ordnance Survey were surveying the south of the parish of Clayhidon and proposed removing the name from the map. The clerk reported that the lane was overgrown, that it was a private accommodation road and not a public right of way and that the Tiverton Rural District Council had written about keeping the name on the map. The parish councillors seemed happy with this response and that the lane was not a public right of way; but the fact that they wished the name Routy Lane continue to be recorded on OS maps could indicate that there was some public interest in the lane. The parish held public meetings with regard to the County Council reviews of 1968 and 1977 and the omission of Routy Lane from the definitive map was not raised. The lack of references to the lane by or in the parish could indicate that the lane was not used by the public but could also mean that if it was it being used there was no problems in doing so and so nothing needed to be reported. Public rights of way can run over private accommodation roads and the current Parish Council support the lane becoming a bridleway.
- 1.8.8 On the aerial photography of 1946, the surface of the lane can be clearly seen but it appears in subsequent years the hedges were left untrimmed and the hedgerow trees' canopy extended across the lane, with vegetation also growing in the surface of the lane. This apparent lack of maintenance would correspond with Mr Meade advising that the fields south of Routy Lane were sold to New Gorwell Farm in 1940-1950 and the lane no longer used to access the adjoin fields.
- 1.8.9 Routy Lane was initially included as part of a Blackdown Hills recommended riding route in 1997 and again in one of the rides in Project Phoenix launched in 2008. Although no records are available of the numbers of riders using these routes or of the frequency of such use, it seems reasonable to presume that the riding routes are followed and therefore Routy Lane would have been used by riders, who may not have been local users. There is no evidence that any of the adjoining landowners objected to the inclusion of Routy Lane in the riding routes.
- 1.8.10 The user evidence forms received do confirm that the lane has been used by horse riders from the 1970s to the present day (2015). The five horse riders and one walker/rider all advise that their use was without permission and is considered to have been 'as of right'; without force, secrecy or permission. Some users have mentioned obstructions of overgrowth and the rope across the east end of the lane, although the latter is understood to be in place when cattle are being moved along the road to prevent the livestock entering the lane. The tree logs across the ends of the lane, which Mr Meade confirmed were placed there by him to prevent vehicle access to the lane, were also mentioned by the users but there is a sufficient gap at the side for horses and walkers to pass through. The lane is

useable by walkers and riders and although the user evidence received is limited, it is a rural route and one which appears to have been available to the public for many years.

- 1.8.11 The three adjoining landowners were contacted and no response was received from two of them. Mr Meade of Newcott Barton advised that that the lane had been used by walkers, who had been unchallenged since his ownership of the adjoining fields in 1958. The tree trunks at each end were placed by him to stop vehicles using the lane but did not stop walkers or occasional horse rider. He is concerned about damage to the surface that horses may do in wet weather but his main objection would be to any use by vehicles.
- 1.8.12 The Parish Council support the proposal and advise it would be practical in the area without a lot of resources needed. A local resident has commented on the costs of implementing the proposed change and suggested that such expense would be unjustified in the current period of financial austerity. However, questions of expense are not valid considerations when determining the status or existence of public rights of way under the provisions of the Wildlife and Countryside Act 1981, which is based solely on the available evidence. Any money spent on the route would be taken from the specific public rights of way budget for the county and would not be funding diverted from the local roads.
- 1.8.13 The documentary and user evidence received are considered sufficient to support Routy Lane being recorded as a public bridleway, as having been dedicated by an unknown landowner at some time in the past and there is no rebuttal evidence for the proposal. There is user evidence to support use of the route on horseback as of right and the adjoining landowner acknowledges use by walkers for over fifty years.

## 1.9 Conclusion

- 1.9.1 Overall the documentary evidence is considered sufficient to show that a public bridleway subsists or can be reasonably alleged to subsist at common law, with dedication implied to have occurred at some time prior to the mid-19<sup>th</sup> century. Such subsistence is also supported by the user evidence which shows acceptance of the dedication by the public.
- 1.9.2 It is therefore recommended that a Modification Order be made to add a bridleway to the Definitive Map along Routy Lane between the points A – B as shown on drawing number HCW/PROW/15/88a and if no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

## 2. Proposal 3: Proposed upgrading of Footpath No. 31, Clayhidon and Footpath No. 40, Hemyock to a bridleway

**Recommendation: It is recommended that no Modification Order be made to upgrade Footpath No. 31, Clayhidon and No. 40, Hemyock to a Public Bridleway between points A - B - C - D - E as shown on drawing number HCW/PROW/14/46 (Proposal 3).**

### 2.1 Background

- 2.1.1 In the course of researching evidence for Hemyock parish Definitive Map Review, a local user group representative discovered Clayhidon Surveyors of the Highways accounts, which recorded regular repairs being undertaken to Kilbridge Lane (the centre portion of Footpath No. 31, Clayhidon) for the period 1854 to 1888. One of the entries referred to filling ruts, indicating that the lane was used by vehicular traffic. Also on the carbon copy of the sheets headed 'Lists of Public Rights of Way in the Parish of Clayhidon agreed with the Clerk to the Parish Council on 16th December 1957', there are some pencil annotations indicating that there was a question over whether Footpath No. 40, Hemyock was a bridleway and under

the description of Footpath No. 34, Clayhidon (running east from the southern end of Kilbridge Lane - point D on the plan) whether Footpath No. 31 and Footpath No. 40 should be bridleways.

- 2.1.2 This evidence was considered sufficient for the possible upgrading of Footpath No. 31, Clayhidon and Footpath No. 40, Hemyock to a higher status to be considered as a proposal in the Definitive Map Review in Clayhidon.

## **2.2 Description of the Route**

- 2.2.1 Footpath No. 31, Clayhidon starts at point A at the southern end of the county road known as Ridgewood Lane, north of Ridgewood Farm and proceeds southwards on the west side of the farm buildings on an access track and enters a pasture field. The footpath continues south eastwards downhill across the field to the northern end of Kilbridge Lane at point B. The route follows the hedged and defined Kilbridge Lane southwards, passing over the river Bolham on the substantial stone built Kilbridge Bridge at point C. Shortly after crossing the river the route leaves the hedged lane and continues southwards along field headlands to the junction with the western end of Footpath No. 34, Clayhidon and the parish boundary at point D. From here the path continues as Footpath No. 40, Hemyock and bears south westwards then westwards and follows a track through a copse/wood north of Lemon's Hill, before entering a pasture field and continuing westwards across the field to the county road, south east of Fivebridges Farm at point E.

- 2.2.2 The surface of the path varies from an hardened surface at the north end, then earth and grass across the pasture fields at either end of the route, earth/vegetation and the remains of the old stoned surface along Kilbridge lane and some improved surface and earth/vegetation between points D and E. The total length of the route is approximately 1445 metres. Photographs of the route are included in the backing papers.

## **2.3 Documentary Evidence**

### **2.3.1 Ordnance Survey and Other Maps**

The Ordnance Survey and other mapping do not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.

### **2.3.2 Cassini Historic Maps 1809 – 1919 Sheet 181 Minehead & Brendon Hills and 192 Exeter & Sidmouth**

These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919. The key of the 1919 edition does refer to Bridle & Footpaths in the key shown by a pecked line.

- 2.3.3 On the 1809 edition the road layout north of Ridgewood Farm is somewhat different although the section of lane to the west side of Ridgewood Farm buildings and the northern end of Footpath No. 31, Clayhidon is shown. South of Ridgewood a lane is shown going eastwards and then generally south westwards to Battens which is located adjacent to the north bank of the River Bolham on this map. There is no track or lane shown in the current location of Kilbridge Lane going southwards from Ridgewood. Lemon's Hill appears to be shown with the access lane as it is today but is not named.

- 2.3.4 On both the 1899-1900 and 1919 editions Battens Farm has moved location to its current position south east of Ridgewood and east of Kilbridge Lane and a holding in the location of Bolham Farm, west of Kilbridge Lane is shown. Kilbridge Lane does appear on the map as a third class road, with the northern section across the field south of Ridgewood shown as a

double pecked line indicating its unfenced/hedged status. South of the parish boundary, a lane/track with one line pecked is shown going south westwards to join the access lane to Lemon's Hill. There is no path or track going westwards from the parish boundary on the line of Footpath No. 40, Hemyock.

2.3.5 OS 1st Edition 25" to a mile 1880-1890 & 2<sup>nd</sup> Edition 1904-06

At the north end of the route both editions show a double pecked line running south east from point A and the junction with the three other footpaths to the north end of Kilbridge Lane. On the first edition the north eastern pecked line is in bold, but not on the second edition. On both editions the track has its own compartment number 733 and size of 1.102 acres within the field it crosses (the compartment 733 would appear to include the north section of Kilbridge Lane on that map sheet and southern end of Ridgewood Lane), indicating that the track was clearly defined on the ground. The field either side of the track has two separate compartment numbers. A narrow double pecked line across the field east of Footpath No. 31 is labelled 'F.P' on both editions but there is no annotation to the track on the line of Footpath No. 31.

2.3.6 Kilbridge Lane is shown as a defined lane, with solid lines on either side, named and with compartment number 921 and size 0.914. The lane extends to the parish boundary. After crossing the parish boundary a double pecked (1<sup>st</sup> edition) and single pecked line (2<sup>nd</sup> edition) is shown along the route of Footpath No. 40, Hemyock east of the pond and along the south east and southern headland of compartment 1318. A double pecked line (on both editions) continues westwards along the southern boundary of 1314 and then 1313 to the county road and point E. This pecked line is labelled 'F.P' in compartment 1314 on the first edition. The bridge in Kilbridge Lane is named Kill Bridge and Kilbridge Bridge respectively on the two editions. There is no sign of any buildings in compartment 914, south west of Bolham Farm, which is where Battens Farm was located on the 1809 OS 1" map.

2.3.7 OS 1 inch to a mile Maps of 1946, 1960 & 1965 Sheet 176 Exeter (also on Sheet 164 Minehead)

On the 1946 edition a double pecked (unfenced track/lane) line is shown south west of Ridgewood connecting with double solid lines of Ridgewood Lane to the parish boundary. From the parish boundary a track, one side pecked is shown going south westwards to Lemon's Hill but there is no track/path on the line of Footpath No. 40, Hemyock.

2.3.8 On the 1960 edition there is no track/lane/path shown on the map on the line of Footpath No. 31, Clayhidon or Footpath No. 40, Hemyock apart from the double pecked line/track shown between Far Longham and Lemon's Hill, which the recorded footpath follows south westwards for a short distance south of the parish boundary. Dashed lines representing Footpaths and Tracks along the line of the currently recorded Footpaths No. 29 & 32, Clayhidon are shown.

2.3.9 The 1946 and 1960 maps were prior to the Definitive Map being compiled but on the 1966 edition public rights of way were shown as recorded on the Definitive Map and separately differentiated as Footpath, Bridleway or Road used as public path. Footpaths No. 31 and No. 40 are shown by a line of dots representing a footpath along the definitive map route but there is no lane or track shown on the underlying map on the route of the footpath apart from the short section south of the Clayhidon/Hemyock parish boundary.

2.3.10 OS Post War Mapping 1:2:500 scale 1965

The field crossed by the northern section of the footpath between Ridgewood and Kilbridge Lane has been given one compartment number which also includes previously separate but adjoining fields. There is no annotation on the map for any track or path across the field on the line of Footpath No. 31, although there are double pecked lines labelled 'Track' on the lines of Footpaths No. 29 (east of Ridgewood) and 32, Clayhidon and labelled 'Path' on the

line of Footpath No. 29 west of Ridgewood. Kilbridge Lane is shown as a defined lane through to the parish boundary, named on the map as is Kilbridge Bridge.

2.3.11 From the parish boundary a double pecked line is shown along the route of Footpath No. 40, Hemyock to the county road. The only section annotated with 'Track' is the section in the copse south of the parish boundary which is also an alternative access to Far Longham (east of the south end of Kilbridge Lane) from Lemon's Hill access lane. The pond just south of the parish boundary and Lemon's Hill Cottages, that were west of the pond, are no longer shown.

#### 2.3.12 Tithe Maps and Apportionments

Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring can indicate carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown.

#### 2.3.13 Clayhidon Tithe Map & Apportionment 1840

The roads on the Clayhidon Tithe Map are not coloured. The map covers the area crossed by Footpath No. 31, Clayhidon starting from Ridgewood Farm to the parish boundary. Ridgewood Lane is shown as an uncoloured defined lane through to the parish boundary in the present day location. Ridgewood Farm is listed as being a holding of 147 acres, owned by John Blackmore and occupied by John Lane. The footpath crosses field number 1175 named Park and occupation described as pasture. Although there is a pecked line along the northern headland of the field and a double pecked line heading south west from Ridgewood indicating tracks, there is no pecked line on the route of Footpath No. 31, towards the north end of Kilbridge Lane. The map does show a gate from Ridgewood Farm into the field 1175.

2.3.14 The area of the map that would have shown the junction of the north end of Kilbridge Lane is damaged. The lane is unnumbered with the land either side listed in the apportionment under Ridgewood, Battens and Longham on the Clayhidon side. Kilbridge Lane is not named and there is nothing on the map to indicate the presence of the bridge. Field number 1193, part of Longham (owned by Robert Farrant occupied by John Butter) is named Kill Bridge Mead, described as watermead indicating the name was in existence at that time.

#### 2.3.15 Hemyock Tithe Map & Apportionment 1841

This tithe map covers the land crossed by Footpath No. 40, Hemyock all under the holding of Lemons Hill, 212 acres owned by William Farrant and occupied by John Troake. The Hemyock Tithe Map has coloured roads and the first part of the footpath follows a coloured track south westwards from the parish boundary. The route of the footpath then turns westwards whilst the track continues south westwards into field 2105 (Horse Cleave, pasture) to join up with the entrance drive to Lemon's Hill and then turn west to the county road. The route of the footpath crosses field number 2104 Hither Moor, pasture and 2100 Middle Moor, moor before crossing 2098 (Rabbit Copse, wood) and 2097 (Little Bealey, arable) to the county road. Numbers 2097, 2098 and 2099 are now all one field. Once the footpath leaves the coloured track, there is no sign of any pecked line or track on the map to the county road.

#### 2.3.16 Clayhidon Surveyors Accounts Books 1836-1888 (DHC ref 74B/AH/64 6)

The surveyors of the highways were appointed by the parish vestry meeting and the accounts books for the south side of the parish include references to work been undertaken on Kilbridge Lane by named individuals in from 1854 to 1888. The work involved cleaning drains, repairing roads, scouring ditches, breaking and spreading stones and cracking stones and filling ruts. Other lanes in the parish upon which similar work was undertaken include Middleton, Hole, Holly and Dence's Lane.



2.3.17 Parish Highway Minute Book 1889-1895 (DHC ref 1061A/PS157)

The minutes of the bi-monthly meetings include references to Kilbridge in 1890-1891. In April 1890 the minutes refer to Kilbridge wall down in, to be repaired to the satisfaction of Mr Turk. In August 1890 Killbridge to be inspected by Messrs James & Turk, who reported at the next meeting in October that the matter be better kept to spring. In October 1891 Killbridge reported as completed.

2.3.18 Finance Act Plans and Field Books 1910

The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.

2.3.19 The land crossed by Footpath No. 31, Clayhidon and Footpath No. 40, Hemyock was either within or adjoining four hereditaments. Ridgewood Farm was number 100 and included the field between points A and B and land adjoining the lane from north of Kilbridge Bridge to the parish boundary. Ridgewood was a holding of 129 acres, owned by Mr M William from Wellington and occupied by Mr James on a ten year lease at £105 per annum from March 1906. Page two of the field book refers to 'R of Way £2 x 20 £40' but not state any compartment/field numbers. The £40 is carried forward to an allowance for 'Public Rights of Way or User' on page four. The currently recorded Footpaths Nos. 29, 31 and 32, Clayhidon all pass over land included in the hereditament. On the base mapping used for the Finance Act plans (OS 25" 2<sup>nd</sup> edition 1904-06) the only track labelled 'F.P.' is on the line of the current vehicular entrance to Batten's Farm, which is not a recorded public footpath.

2.3.20 Kilbridge Lane lies mainly within hereditament number 96, Battens Farm 97 acres, owned by Messrs Greenslade and Hammet of Taunton and occupied by Mr A Craggs on a yearly tenancy from 1908 at rent of £75 per annum with manorial rent of 11/- also payable. The hereditament colouring is across the end of Kilbridge Lane at the north end but is broken across the lane at the south end. Page two of the field book refers to 'Right of Way thro 891, 899, 902 and 909' and 'R of Way £2 x 22 say £45'. The compartment numbers stated do not refer to Kilbridge Lane (number 921) but to the two fields and the lane now crossed by Footpath No. 29 and field 909 with a track labelled 'F.P.' giving access to Dence's Cottage (now Denshayes) east of Batten's Farm, now Footpath No. 28, Clayhidon. The £45 allowance is carried forward to page four under 'Public Rights of Way or User'.

2.3.21 One field adjoining Kilbridge Lane, north of the bridge and east of the lane was in hereditament number 111, Bolham, a holding of 23 acres, owned by Mr Beaton of Wellington and occupied by Mr Lawrence at a rent of £49 per annum. Page two of the field book refers to 'R of way thro 1051, 1053' and 'R of Way £1 x 25 = £25'. Fields 1051 and 1053 are to the east of Far Longham (Longham Dairy on the 2<sup>nd</sup> edition map) and are crossed by the currently recorded Footpath No. 34, Clayhidon.

2.3.22 The land to the east side of Kilbridge Lane, south of the bridge and all the land in Hemyock parish crossed by Footpath No. 40 falls within hereditament number 183 Lemon's Hill Farm, a holding of 239 acres which also included Far Longham (Longham Dairy). The farm was owned by Mr Palmer as trustee of Mr Hayman and occupied by Mr Warren on a 7 year tenancy at a rent of £147 per annum. Page two of the field book refers to 'R of Way thro

1313, 1314, 1318, 949, 1046, 1416, 1472, 1473' and 'R of Way £3 x 20 = £60'. Fields number 1313, 1314 and 1318 are the three compartments crossed by Footpath No. 40, Hemyock from the parish boundary to the county road. The other field numbers refer to the fields crossed by Footpath Nos. 33 and 34, Clayhidon at Far Longham and fields south east of Lemon's Hill Farm through which no public right of way is currently recorded. The allowance of £60 is carried forward to page four of the field book under 'Public Rights of Way or User'.

#### 2.3.23 Parish Survey under National Parks and Access to the Countryside Act 1949

The parish survey for Footpath No. 31, Clayhidon was carried out by Mr L Ayres and Mr J Sanders on 21<sup>st</sup> September 1950. The path was not likely to be disputed and was required in the future. The route was described on the survey form 'Ridgewood to Lemons Hill via Kilbridge. A wheel track going down the centre of 'Ridgewood Park', through a gate at the bottom leading down to 'Kilbridge' lane very dilapidated condition, then the bridge, followed by an iron gate leading into more of old neglected lane which is very wet then the path is crossed with two strands of barb wire, at the top of the lane there is a gate, entering a rough field then a gate leading into the 'Lemons Hill' road'. Under remarks on the second page of the form under remarks is noted 'Footbridge maintained by Parish Council' with the form signed by the clerk on 27<sup>th</sup> October 1950. On the front of the form there are pencil annotations of XXXVI NE (map sheet), BR with a tick and 'Continued in Hemyock'. The pencil annotations are understood to have been made at the County Council offices.

2.3.24 On the parish survey map a green line (used for both footpaths and bridleways) is shown along the line of the currently recorded footpath from Ridgewood Farm to the parish boundary and numbered 31. Within the original survey files is a list of the rights of way in Clayhidon headed 'List of Public Rights of Way in the Parish of Clayhidon agreed with the Clerk to the Parish Council on 16<sup>th</sup> December 1957'. The entry for Footpath No. 31 reads 'From Ridgewood to Lemons Hill, via Kilbridge Lane. Starts from the southern end of the Unclassified County road, Ridgewood Lane, crosses Footpath No. 29 and proceeds in a southerly direction along Kilbridge Lane, a private accommodation road (not repairable), to the Clayhidon/Hemyock Parish Boundary, where the path continues as Footpath No.' on the line below is typed B.R. and 47NE. The number 40 for the Hemyock path has been added in pen and there is a pencil annotation next to Footpath No. 40 reads ?B.R. The previously typed B.R. underneath the description is crossed out and replaced with the letters FP.

2.3.25 On the typed sheet of the 'List of Public Rights of Way' under the entry for Footpath No. 34, Clayhidon (running westwards from The Smithy via Longham Dairy (Far Longham) to Kilbridge Lane); the description for the footpath concludes ' .. and on to Longham Dairy to the Clayhidon/Hemyock Parish Boundary, across which it continues as Footpath No. at the southern end of Kilbridge Lane'. '(FP 31)' has been added in pen after Kilbridge Lane with the 'FP' then crossed out and 'B.R.' added in pencil. The number '40b' has been added in pen to the end of the section 'continues as Footpath No.' and the text of 'Footpath No. 40b' has been circled in pencil with '?B.R.' added next to it together with pencil text saying 'omitted on yellow form in case this should read "Bridleway No 40b"'.

2.3.26 The Definitive Map Statement for Footpath No. 31, Clayhidon from Ridgewood to Lemons Hill via Kilbridge Lane dated the 1<sup>st</sup> March 1958 read 'The path is a Footpath. It starts at the southern end of the unclassified county road, Ridgewood Lane, crosses Footpath No. 29 and proceeds in a southerly direction along Kilbridge Lane, a private accommodation road (not repairable by the inhabitants at large), to the Clayhidon/Hemyock Parish boundary, where the path continues as Footpath No. 40.' Following the Definitive Map Modification Order confirmed in 2014, the statement has been amended.

2.3.27 The parish survey for Footpath No. 40, Hemyock initially called 40b on the parish survey form, was undertaken by Mr E Goff. The path was required in future and the route was

described 'b) From its junction with the Five Bridges to Newcott Cottages road approx. 400 yards S.E. of Washamway Cottage, thence in a N.E. direction across (a) to the Hemyock/Clayhidon parish boundary W of Longham dairy'. Path 40a, running from Lemon's Hill Farm in a south easterly direction to the parish boundary was deemed not considered necessary. Under remarks the clerk has written 'Should be retained' and the survey form was dated 30<sup>th</sup> September 1950. On the submission map, a blue line is shown along the currently recorded line of Footpath No. 40, Hemyock with the number 40b adjacent.

2.3.28 With the parish survey file there are also three lists of rights of way in the parish of Hemyock. One set appears to be a carbon copy as it is in blue ink, is dated 19<sup>th</sup> July 1956 and headed 'List of Public Rights of Way in the Parish of Hemyock'. The sheets have ticks and annotations in pencil and would appear to be an earlier copy than the other two lists. Under number 40 is typed the word 'Omit' but with 'add 40b' added in pencil next to the number 40 and again at the bottom of the list. The other two lists appear to be an original and a carbon copy of the same list, they are undated and headed 'Parish of Hemyock. List of Paths'. Under number 40 (with the b? next to the number crossed out) the path is described as 'From Wasamway to Longham. Starts from the Five Bridges to Newcot Cottages road approximately 400 yards south-east of Wasamway Cottage and thence curving in a north-easterly direction over Lemon's Hill to the Hemyock/Clayhidon Parish boundary where the path divides and continues as Nos 31 and 34. F.P. 47NE'.

2.3.29 The Definitive Map Statement for Footpath No. 40, Hemyock dated 1<sup>st</sup> March 1958 reads 'The path is a footpath. It starts at the Five Bridges to Newcot Cottages Road approximately 400 yards south east of Washamway Cottage and thence curving in a north-easterly direction over Lemon's Hill to the Hemyock/Clayhidon Parish boundary where the path divides and continues as Nos. 31 and 34.'

2.3.30 The Definitive Map Statement for Footpath No. 32, Clayhidon (which runs from Ridgewood Farm to the county road near Five Bridges) dated 1<sup>st</sup> March 1958 reads 'The path is a footpath. It starts at the junction of Footpath No. 29 and Bridleway No. 31 at Ridgewood and continues across fields in a south-westerly direction to Bolham Farm, .....'. It is not known from where the reference to Bridleway No. 31 has come from as on the parish survey form for Footpath No. 32 the description of the route reads 'Starts at the back of Ridgewood Farm buildings down over the Park by the side of the cover, gate at the bottom...'. On the sheets headed 'List of Public Rights of Way in the Parish of Clayhidon agreed with the Clerk on 16<sup>th</sup> December 1957', the path description reads 'From Ridgewood to Five Bridges. Starts at the junction of Footpath No. 29 and 31 at Ridgewood and continues across fields in a south westerly direction to Bolham Farm..'. There are no pencil annotations next to the entry on either the original or carbon copy of the list in the files.

2.3.31 Both Footpaths No. 31 and 40 are understood to have been shown as footpaths on both the draft and provisional definitive maps for the parishes of Clayhidon and Hemyock for the Tiverton Rural District Council. These were published on 15<sup>th</sup> April 1958 and 18<sup>th</sup> June 1963 respectively and with no objections received were recorded as Footpath No. 31, Clayhidon and Footpath No. 40, Hemyock on the final Definitive Map for the District Council published on 9<sup>th</sup> June 1964.

#### 2.3.32 Devon County Uncompleted Reviews of 1968 & 1977

Following commencement of the County Council review of 1968, the Parish Clerk advised the County Council; that at a meeting on 26<sup>th</sup> May 1971, the Clayhidon Parish Council resolved that the bridlepath No. 5 from Clayhidon Church to the Wellington road through the land of Glebe Farm be re-designated a footpath. No other variations are proposed in this parish.

- 2.3.33 In a letter dated the 6<sup>th</sup> May 1971 the clerk to Hemyock Parish Council advised 'At a Public Meeting held in the village, everyone was in full agreement with footpaths and bridleways as set out on the map you supplied'.
- 2.3.34 Following a public meeting held on the 6<sup>th</sup> April 1978 for the general review of the Definitive Map, the clerk for Clayhidon Parish Council wrote to advise that it had been proposed, seconded and adopted by the meeting that the map supplied by the County Council be accepted as a true record of the Footpaths and Bridleways in the parish without any alteration being made (apart from clerical errors noticed in respect of number 23 and Footpath 28).
- 2.3.35 In May 1978 the clerk to Hemyock Parish Council forwarded a 'List of Public Footpaths the Parish Council of Hemyock wish to be included in the new Definitive Map. No. 40 Lemon's Hill. Washamway to Langham. Path divides at Hemyock/Clayhidon boundary'. The references to path numbers 1a and 9b had 'Bridleway' written after the number whereas the others just had the path number followed by the route description.
- 2.3.36 The Clayhidon Vestry Minutes and Clayhidon Parish Council Minutes  
Clayhidon Vestry Minutes for the period 1775 to 1854 are held at the Devon Heritage Centre and there are no references to Kilbridge Lane. The entry in 1842 refers to the appointment of surveyors of highways for the north and south side of the parish.
- 2.3.37 The Parish Council minutes are available from inception of the Council in 1894 and retained by the current clerk. There are several references over the years to rights of way in the parish including Kilbridge Lane and Footpath No. 31, Clayhidon. In March 1937 there is a reference to a new oak footbridge at Kilbridge but it is considered likely that this refers to the footbridge over the River Bolham east of Kilbridge Lane on Footpath No. 33, Clayhidon north east of Far Longham. From August 1937 to April 1938 there are some references to the condition of Kilbridge Lane, which was referred to the surveyor at Tiverton Rural District Council. Repairs were to cost £10 to be deferred for one year. In March 1953 the path from Kilbridge Lane to Lemon's Hill was reported as obstructed and in October 1963 the clerk was to write to the Divisional Surveyor asking for repairs to the stone bridge at Kilbridge as in a bad state. Following an inspection by the surveyor, his foreman and Mr Kellaway an estimate of £24 was obtained and sent to the Divisional Surveyor. The repairs were completed by October 1964.
- 2.3.38 There are other references in 1965 in which the owner of Ridgewood Farm was to be advised that a gate was required between the sidling and the track down through the wood (believed to be at point B) to the bridge and that the lower part of the lane down to the bridge should be cleared. The lane was also mentioned in 1966, 1967 and 1973 with regard to the lane being clear but none of the entries make any reference to the status of the route or question the currently recorded status.
- 2.3.39 Blackdown Hills AONB Valleyheads Way  
Footpaths No. 31, Clayhidon & No. 40, Hemyock are part of the Blackdown Hills Valleyheads Way, a 12 mile walk from Hemyock village in the west to Staple Hill, part of the Neroche public forest, in the east. In the route description the section along the two footpaths from point E to point A is described as follows 'Cross another minor road and follows contour below hill and down wooded old lane, reaching large pond in trees below Lemon's Hill Farm. Drop down to Kilbridge Bridge over Bolham River and climb rough, tree-lined track up Ridgewood Hill, emerging into field. Veer up and left, to reach crossroads where four footpaths and a lane meet at Ridgewood Farm'. The route was researched and published in 2014.

#### 2.3.40 Aerial Photography

On the 1946-1949 photograph a track can just be seen across the field between points A and B. The surface of Kilbridge Lane can be clearly seen in two places in the north and south of the lane where there appears to be no hedges either side and at some places throughout the lane where the hedges either side are trimmed. Some larger hedgerow trees are visible on both sides of the lane. No track appears visible on the section of Footpath No. 40 west of the parish boundary but a track can be seen across the field at the western end of the footpath going to point E. Battens Farm's access is by the lane to the east

2.3.41 In the 1999-2000 photography there does not appear to be a track across the field between points A and B. Kilbridge Lane is obscured by the large hedgerow trees which have grown up on either side along the lane to Kilbridge Bridge. The lane south of the bridge has had one side hedge removed (west side one section and east side the other section) although there are large hedgerow trees in the hedgerow remaining. After crossing the parish boundary the route of the footpath west of point D is obscured by trees. There is a visible track in the field east of point E although part of this would appear to be used by agricultural vehicles accessing the edge of the field. The new access to Batten's Farm to the north east of and south east from Ridgewood Farm can be seen.

2.3.42 On the 2006-2007 photography a track on the line of the footpath can be seen across the field below Ridgewood Farm between points A and B. Kilbridge Lane is obscured by the hedgerow trees as before. The field east of point E has recently been cultivated and no track is visible.

#### 2.3.43 Land Registry

The land crossed by the route of Footpath No. 31, Clayhidon & No. 40, Hemyock is partly registered. The northern section across the field between points A and B is registered under the title for Ridgewood Farm. The title and plan make no reference to any private or public rights of way across the land. Kilbridge Lane is unregistered. The land on the west side of the lane to Kilbridge Bridge and the two northernmost fields on the east side are registered to Battens Farm. The title register refers to a conveyance dated 12 October 1966 which refers to a right of way at all times and for all purposes over and along the lane on the adjoining property and across field no 891 to gain access to and egress from the property but there is no reference to any rights in relation to Kilbridge Lane.

2.3.44 The remaining southern end of Kilbridge Lane, including the part where the hedge one side of the lane has been removed, to the parish boundary is unregistered but owned by Mr Kallaway of Crosses Farm. In Hemyock parish Footpath No. 40 crosses land registered to Far Longham, part unregistered and land registered to Bolham House Farm. The registers for Far Longham and Lemon's Hill Farm both refer to the right of way to Far Longham from the county road south of point E, north eastwards across the land belonging to Lemon's Hill to Far Longham, east of point D. Footpath No. 40, Hemyock uses part of this access track but there is no reference to any other public or private rights on the route.

## 2.4 User Evidence

2.4.1 No written or verbal user evidence has been received of any use of the footpath on horseback. Along Kilbridge Lane between points B and C there is a kissing gate and a 2 in 1 gate (field gate with self-closing pedestrian gate within the field gate) and these would prevent use by horses. It is understood that the gates were installed about ten years ago as part of the works that were required to make route 'easy to use' for the Public Service Agreement and after a community clearance day for the lane organised by the local P3 coordinator.

## 2.5 Landowner Evidence

- 2.5.1 All of the landowners/occupiers and adjoining occupiers were contacted and informed of the proposal. Replies were received from three whose land was crossed by the route of the footpaths and one whose land adjoined either side of Kilbridge Lane. No response was received from Mr Brooke, the landowner of the field east of point E.
- 2.5.2 Mr & Mrs Legge own Ridgewood Farm and the first section of Footpath No. 31, Clayhidon from point A to Point B. They forwarded a completed land owner form and letter with documents to support their opinion/request that the footpath should not be upgraded to a bridleway. They have lived at Ridgewood Farm since August 1996 and have never had any horses ride the footpath. They consider it would be extremely dangerous to allow it and they are completely against the suggestion. In support of their comments against upgrading they have referred to the various documents. The Tithe map does not show any track leading to Kilbridge Lane; the Surveyor's Accounts do not refer to any work being undertaken on their field or on Footpath No. 40, land; the parish survey for Footpath No. 31, was undertaken by Mr Sanders who lived at Ridgewood and remarked that 'Footbridge maintained by Parish Council'.
- 2.5.3 Professor Turner has owned Battens Farm since January 1997 and forwarded a completed land owner evidence form with plan of his landholding and a letter with additional information. He confirms that he does not own the lane, just the land either side. Prof Turner comments that Kilbridge Lane is a disused section of the old accommodation access route to Battens Farm. It has been designated as a public footpath by the Council but remains an extremely neglected path. He is aware of very occasional walkers but no horse traffic, completely impossible. There are gates, not locked as shown on his plan.
- 2.5.4 In his letter, Professor Turner provides some historical information and advises that Battens Farm was built in the late sixteenth/early seventeenth century and the orientation of the house is that the original main door and hallway face Kilbridge Lane. The early deeds refer to the address as Battens Farm, Kilbridge Lane and he suggests that Kilbridge Lane was initially the access to the property from both the north and the south. In 1997 access to Battens Farm was via the track going north east to join the county road at Bolham Hill and since his purchase the new entrance drive to Ridgewood Lane, north west from the farm, has been constructed at considerable expense. Professor Turner advises that being lower than the adjacent farmland, Kilbridge Lane can become a stream and sometime a raging torrent which creates a rough surface. He considers that any repairs done would be soon washed away. A number of trees now grow in the pathway and the lane has become a wildlife haven.
- 2.5.5 Mr R Kallaway responded on behalf of Messrs C Kallaway & Son who own and farm the land between points C and D and two fields adjoining the east side of Kilbridge Lane, north of the bridge. Mr Kallaway has owned the land for 30 years and confirms that the footpath passes through his field number 8707. He has been aware of recreational walkers, mainly during the summer up to six times a month. In a supporting letter Mr Kallaway advises that he would not be in favour of upgrading the footpath because the surface of the lane is constantly being eroded and the proposed bridleway would go through a wet field and a field that is grazed with livestock from April to December. He also refers to the comments made by the parish council against the upgrading and states that the general view is that public money is needed to repair the highway through Bolham Water to an acceptable state before any money is spent on creating extra bridleways.
- 2.5.6 Mr & Mrs Caton own the land crossed by the footpath in Hemyock parish proceeding south west from point D. They have owned Far Longham since September 2011. No land owner

form was received but Mr Caton has telephoned the office to discuss the proposal. They do not support the upgrading and were surprised that this could happen.

- 2.5.7 No response was received from Mr Brooke who owns/farms the field crossed by the west end of Footpath No. 40, Hemyock.

## **2.6 Rebuttal Evidence**

- 2.6.1 Mrs Gilchrist-Fisher owned Lemon's Hill Farm from 1986 until she sold the property in summer 2014. Mrs Gilchrist-Fisher advised in a telephone call that she had never seen any horses using the footpath. She used to have a stallion and he would neigh if he saw any other horses. Kilbridge Lane is steep, full of stones and totally unsafe for horses at present.

- 2.6.2 Mrs B Hayes wrote in connection with her mother, Mrs Pinder, who was living on Ridgewood Lane (north of point A) a few years ago until her recent passing. Mrs Pinder was a keen horse rider, a founder member of the Blackdown Hills Riding Club and had lived and ridden in the Clayhidon and Churchstanton area since 1954. Mrs Pinder was recently contacted by a lady asking if her mother had ever ridden the footpath to Kilbridge Lane. Mrs Hayes confirmed that her mother replied that she had never ridden that way as it was only a footpath and not a bridleway and that she never seen anyone use the footpath for anything other than walking.

## **2.7 Consultation Responses and other Correspondence**

- 2.7.1 Clayhidon Parish Council discussed the proposal and had concerns that the change and necessary works would make to the character of the old section of the lane with its wild flowers and habitat. They also had concerns that due to the narrowness of the lane it would be unsafe for use both by horses and walkers as the footpath is now part of the 'Valleyheads Way', walking route and possibly the detriment of any stock in the fields from horse riders with loose dogs. Residents are not in favour as users would pass by or very close to a dwelling. In places the surface is very damp ground and would be difficult to maintain as any water would erode surface, again a drain on resources. Members state this is not suitable for change.
- 2.7.2 Mr Mumford, the local Ramblers Footpath Representative, responded that the suggestion is acceptable from a walker's point of view.
- 2.7.3 Mr G Langford, a previous P3 coordinator and past Chairman of the parish council commented that Kilbridge Lane was a footpath that had a fair degree of attention to make it useable on foot some 10 years ago. There was no oral or written evidence available that in living memory, it had been other than a footpath – despite stories of historical usage over 100 years ago. Since then land usage has changed and managing a bridleway across a stock field is much more fraught.
- 2.7.4 Mr John Burrige from Clayhidon wrote objecting to several of the proposals for change in the parish. His objection is based on the additional cost of the upgrades during a period of financial austerity. His knowledge of the route of Footpath No. 31 would lead him to believe that there is likely to be a significant cost in upgrading or replacing gates to make them suitable for bridleway use.
- 2.7.5 Alex Hill of Clayhidon wrote to express their opposition to the proposal that Footpath No. 31 should be upgraded to a bridleway. The reasons are that Kilbridge Lane is narrow and steep and would not be safe to be used by horses and pedestrians and the path is now part of the 'Valleyheads Way' walk. The surface is deeply eroded by running water and the banks are rich with wild flowers. To make the path suitable for horses would require radical and

expensive changes and major drainage work, at substantial cost in the current economic climate. Horse riders are often accompanied by loose dogs not under effective control and it is not appropriate for bridleways to be established across open farmland with livestock.

2.7.6 Mr Frankton of Clayhidon wrote to object to the proposed upgrading. The footpaths are approximately a tenth of the Valleyheads Way and a good proportion of their route is soft ground which if subjected to horse traffic would cut up extensively making it difficult for walkers.

2.7.7 Mrs Williams, a neighbouring farmer, wrote to object to the upgrading to a bridlepath. Kilbridge Lane is not suitable in its current state and would cost a huge amount of money to reinstate, when the council struggle to keep the roads good. There are livestock grazing parts of the route and with inquisitive cattle and horses, accidents would happen. Gates could also be left open allowing stock to end up with neighbours' livestock or get out onto the public highway.

2.7.8 No response was received from Hemyock Parish Council.

## **2.8 Discussion – Statute and Common Law**

### **2.8.1 Statute (Section 31 Highways Act 1980)**

A claim for a public right of way can arise under statute through use by the public under section 31 of the Highways Act 1980, if twenty years use can be shown after the public's use of the route is called into question. A public right of way can also be upgraded if there is sufficient evidence of use to support presumed dedication of the higher status since the right of way was first recorded. In the absence of any user evidence, there is no evidence to support a claim for upgrading of the footpaths by section 31 of the Highways Act 1980.

### **2.8.2 Common Law**

A claim for a right of way may also exist at 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. A public right of way can also be upgraded if there is evidence to show that the way has been incorrectly recorded at the time the path was added to the definitive map or if there is sufficient evidence of use to support the inference of dedication of the higher status since the right of way was first recorded.

2.8.3 On the Cassini maps (based on the OS 1" maps) Kilbridge Lane is not shown on the 1809 map and Battens Farm is located south west of Ridgewood with an access track that appears to go via the present location of Battens. By the time of the Tithe Map, some forty years later, Kilbridge Lane is shown in its present location as a defined lane from south east of Ridgewood to the parish boundary with Hemyock. Batten's Farm is located south east of Ridgewood Farm but there is no defined lane going westwards from the buildings to meet Kilbridge Lane and the access shown to the farm is from the north. None of the land crossed by the route refers to a footpath or bridleway in the apportionment. Kilbridge Lane would therefore appear to have come into existence or become a sufficient feature to record in the first part of the 19<sup>th</sup> century.

2.8.4 On the 1<sup>st</sup> and 2<sup>nd</sup> edition OS 25" maps of the late 19<sup>th</sup> and early 20<sup>th</sup> century the lane and bridge are both named although as Kill Bridge on the 1<sup>st</sup> edition. The track shown across Ridgewood Park between points A and B has been given its own compartment number and acreage indicating the track was a prominent feature in the field that could be measured accurately and the compartment is braced to the northern part of Kilbridge Lane. The track is not annotated. There is a track shown from Batten's Farm to Kilbridge Lane although the



main entrance to the farm would appear to be going north, then north eastwards. The track across Ridgewood Park is also shown on the 1946 OS 1" map but both the track and Kilbridge Lane are not shown on the later editions of 1960 and 1966 although the lane is shown on the Post war 1:2,500 1964.

- 2.8.5 On the Hemyock side the Cassini maps of 1899 and 1919 and OS 1" of 1946, 1960 and 1967 show a track continuing to Lemon's Hill but nothing westwards to the county road on the line of Footpath No. 40. A path/track on the line of Footpath No. 40 is shown on the 25" 1st and 2<sup>nd</sup> editions and this is labelled 'F.P.' on the 1<sup>st</sup> edition. The OS Instructions to Field Examiners issued in 1905 state on page 19 paragraph 96 Footpaths that '*Except in gardens, or where the omission is not likely to mislead, the initials F.P. should be inserted to footpaths, with the object of avoiding the chance of their being mistaken on the plans for roads traversable by horses or wheeled traffic*'. This would indicate that this section of the route would not have been passable by horses, although the initials are not shown on the 2<sup>nd</sup> edition. On the Post War map of 1964 the section of track crossed by the footpath south west of the parish boundary is labelled 'Track' and the section across the field, east of point E is labelled 'path'.
- 2.8.6 The mapping evidence confirms the existence of the lane and that it would have been available to use. The annotation on the OS 1<sup>st</sup> Edition 25" would indicate that Footpath No. 40 was not suitable for horses in the late 19<sup>th</sup> century although the annotation was missing from the 2<sup>nd</sup> Edition published in 1904-1906.
- 2.8.7 Kilbridge Lane appears to be a reasonable condition in the aerial photography of 1946-49 with trimmed side hedges and the surface visible. By 1999 the hedgerow trees have grown over the lane and one side of the lane at the southern end has been removed.
- 2.8.8 The Parish Highway Minute Book and Clayhidon Surveyors Account Books record parish public money being spent on maintaining Kilbridge Lane in the 1800s and this would not usually be done unless the route was considered to be public. The use of stone for the surface and maintaining the ditches would indicate that the lane was maintained to a surface that was suitable for horses and to a better standard than would be required for a footpath. One of the entries refers to wheel ruts which indicates the lane was used by vehicles but it is not known if these were vehicles of the general public or just the neighbouring landowners who used the lane to access their land including perhaps as the regular access to Batten's farm as suggested by the current owner Professor Turner. If travelling south Kilbridge Lane would have been convenient for the occupiers at Ridgewood and Batten's and also for the occupiers at Lemon's Hill and Far Longham for travelling northwards. Kilbridge Bridge is a substantial stone bridge and is considered unlikely to have been built in that style for use on foot only and constructed as it is could have been used by horses being ridden or with carts.
- 2.8.9 The maintenance work was undertaken when the parish vestry meeting was responsible for appointing their own Surveyors of the Highways who undertook repairs within the parish. Following the local Government Act of 1888, responsibility for maintaining the parish highways had passed to the district council by the end of the century. The parish council continued to take an interest in public footpaths and maintain footpath bridges as noted in the parish council minutes from 1895 onwards; although in the 1930's the condition of Kilbridge Lane and in 1963 that of Kilbridge Bridge were referred to the surveyor at Tiverton District Council, presumably due to the expense involved. This confirms that the lane and bridge were considered to be in public use at that time but there is no reference to the type of use by the public and whether the lane and bridge were used as a bridleway by the public.
- 2.8.10 In the Finance Act records the northern section of Footpath No. 31 was included within the hereditament for Ridgewood under which £40 was allowed for Public Rights of Way. The holding includes the land crossed by Footpaths No. 29, 31 & 32 but no compartment

numbers of the land crossed by the rights of way were included. All three footpaths cross Ridgewood Park field. Kilbridge Lane lies mainly within the hereditament for Batten's Farm. The colouring is broken across the lane at the south end indicating the lane is excluded from the holding (possibly because it is considered public) as county roads usually are but the colouring continues across the lane at the north end indicating that the lane is part of the hereditament. Four compartment numbers crossed by rights of way (now Footpath Nos 28 and 29) are listed and given an allowance of £45 but do not include, and there is no other reference to, Kilbridge Lane. Part of the land adjoining Kilbridge Lane and all the land on the Hemyock side fell with the hereditament for Lemon's Hill. The field book listed eight fields crossed by rights of way including the three fields crossed by Footpath No. 40 from the parish boundary to the county road at point E and an allowance of £60 was granted in total.

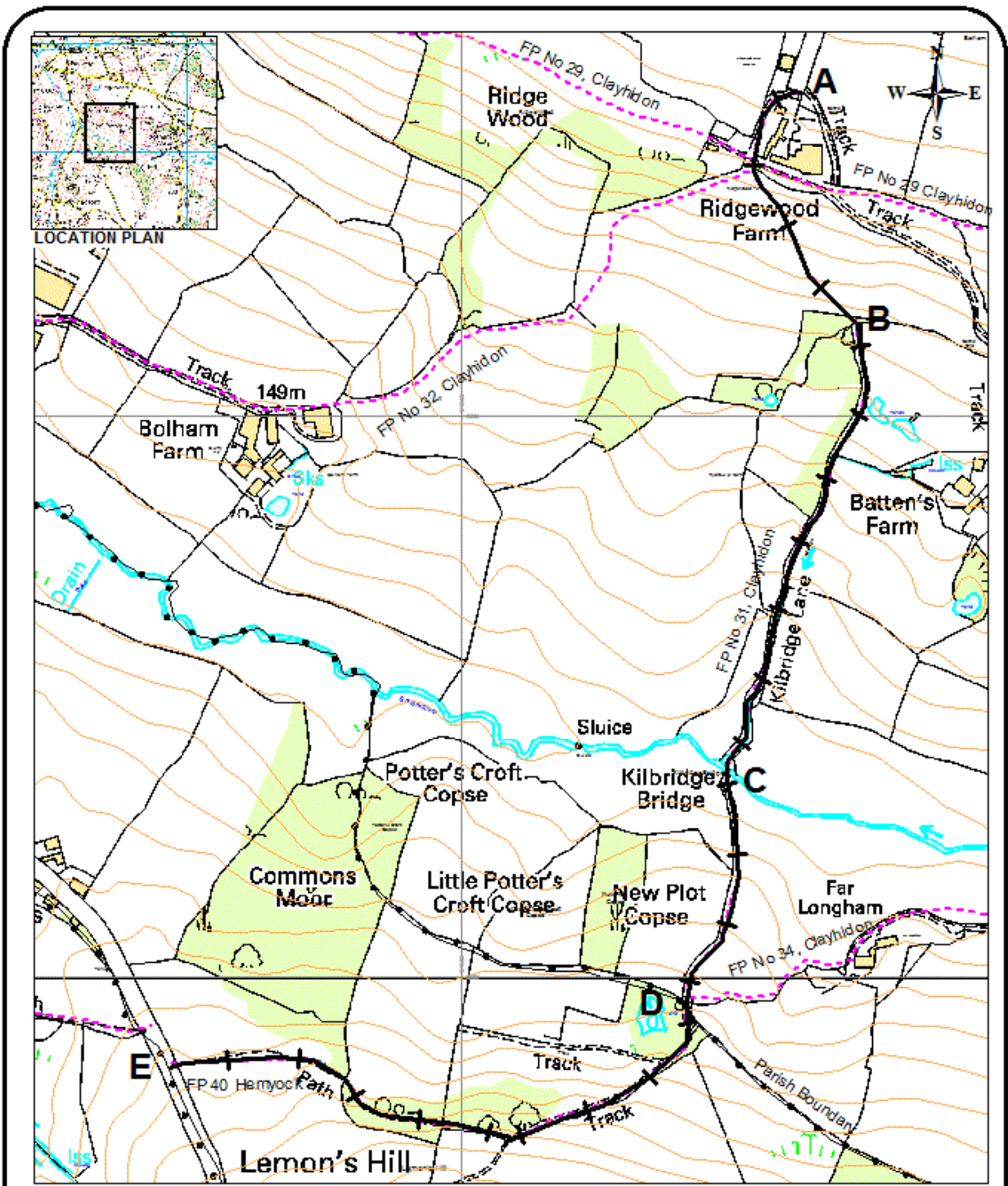
- 2.8.11 The field book entries do not say whether the Right of Way for which the allowances was given was a footpath or bridleway but the amounts allowed for the three hereditaments are considered to be more consistent with footpath status. Proposal 5 of the Definitive Map Review in Clayhidon concerned reviewing the status of Bridleway No. 38, Clayhidon. The allowances given in the field book for the two hereditaments crossed by the bridleway were £65 (four compartments listed as crossed by right of way) and £100 (no compartments listed but notes refer to several rights of way across the land).
- 2.8.12 The parish surveys for the two footpaths were carried out by members of the parish council and local residents. The description for Footpath No. 31, Clayhidon, completed in September 1950, describes the route along 'the wheel track going down the centre of Ridgewood Park', mentions gates and two strands of barb wire on the route with the remarks 'Footbridge maintained by Parish Council'. The route as described would appear useable by horses at that time as no stiles mentioned but Kilbridge Bridge is described as a 'footbridge' rather than just bridge or bridleway bridge. The wheel track is considered to be a description of the track on the ground and not necessarily a description of the public rights across the field.
- 2.8.13 The survey form for Hemyock did not include any references to gates or stiles along the route. On both parish survey maps the same colour was used for both footpaths and bridleways. From the pencil annotations on the survey form and list of the agreed Public Rights of Way in Clayhidon it would appear that there was some question over whether the route in Clayhidon should be a bridleway. It is not known what action was taken in this regard but in both parishes the status of a footpath was accepted by the County Council and the route appeared on the draft and provisional Definitive Maps as a footpath with no representations subsequently made to its inclusion or status. In the statement for Footpath No. 31, Kilbridge Lane was described as a private accommodation road.
- 2.8.14 In the uncompleted County Council reviews of 1968 and 1977, both parishes held parish public meetings as requested and no changes were proposed to Footpath No. 31 or Footpath No. 40.
- 2.8.15 No user evidence has been received for use of the footpaths on horseback, and landowners and other respondents have advised that they have never known the footpath to be used by horses or seen any horse riders on the footpath. Since the kissing and 2-in-1 gates were installed some ten years ago the route could not be used by horses. Some landowners and other respondents have commented that the expense of upgrading the footpath would be unjustified in the current period of financial austerity and also of the damage caused to the lane's habitat in making the lane suitable and safe for horses to use. However, questions of suitability, expense and environmental concerns are not valid considerations when determining evidence of status under the provisions of the Wildlife and Countryside Act 1981.

- 2.8.16 The landowners, Clayhidon Parish Council and other respondents do not support the upgrading although most of the objections raised are not valid considerations.
- 2.8.17 The only documentary evidence that is considered to support the upgrading of the footpaths to a bridleway is the Parish Surveyor Accounts of the late 1880s. The works undertaken would seem to be for a route that would be of a higher status than a footpath although the lane was probably also used by adjoining landowners for farming and access purposes. This evidence alone, with no supporting documentary evidence (such as the OS Name Books from 1902 not available for Clayhidon) is considered insufficient to show that a public bridleway has been dedicated at common law and there is also no user evidence on horseback (or with bicycles) to support such dedication and acceptance by the public.

## **2.9 Conclusion**

- 2.9.1 The available evidence when taken as a whole is considered insufficient on the balance of probabilities to support the upgrading of Footpath No. 31, Clayhidon and Footpath No. 40, Hemyock to a public bridleway under statute or at common law.
- 2.9.2 It is therefore recommended that no Modification Order be made to upgrade Footpath No. 31, Clayhidon and Footpath No. 40, Hemyock to a Public Bridleway between points A – B – C – D - E as shown on drawing number HCW/PROW/15/46 (Proposal 3).





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**Devon County Council**  
**Definitive Map Review - Clayhidon**  
**Proposal 3 - Upgrade Footpath No 31**  
**Clayhidon & No 40 Hemyock to a Bridleway**

drawing number **HCW/PROW/15/46**  
 date **Aug 2015**  
 scale **1: 5,000 (at A4)**  
 drawn by **TW**

**Notation**  
 Upgrade to a Bridleway A - B - C - D - E (Approx 1445m) **—————**  
 Existing public footpaths **- - - - -**

**David Whitton**  
 HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT  
 & WASTE MANAGEMENT

