

**Definitive Map Review  
Parish of Ilfracombe**

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:**

**Modification Orders be made to modify the Definitive Map and Statement by:**

- (i) adding a public footpath between points B1 – B2 as shown on drawing number HCW/PROW/14/120 (Proposal 8) to resolve an anomaly affecting Footpath No. 40 so that it meets Footpath No. 38;
- (ii) adding a public footpath between points C18 – C19 and C20 – C21 as shown on drawing number HCW/PROW/14/124 (Proposal 12) to resolve an anomaly affecting Footpath No. 65 so that it meets the county roads at both ends;
- (iii) deleting part of Bridleway No. 66, between points D1 – D2 – D3 as shown on drawing HCW/PROW/14/125 (Proposal 13) to resolve an anomaly affecting the bridleway where it has dual status with the county road, Chambercombe Lane;
- (iv) adding a public footpath between points D15 – D16 as shown on drawing HCW/PROW/14/128 (Proposal 16) to resolve an anomaly affecting Footpath No. 88 so that it connects with Footpath No. 58 at the junction of Cairn Road and Kingsley Avenue;
- (v) adding a public footpath between points E7 – E8 as shown on drawing HCW/PROW/14/133 (Proposal 21) to resolve an anomaly affecting Footpath No. 109 so that the Definitive Map reflects the Definitive Statement;
- (vi) adding a public footpath between points E22 – E23 as shown on drawing HCW/PROW/14/134 (Proposal 22) to resolve an anomaly affecting Footpath No. 112 so that the Definitive Map reflects the Definitive Statement; and
- (vii) adding a public footpath between points G19 – G20 as shown on drawing HCW/PROW/14/135 (Proposal 23) to resolve an anomaly affecting the footpath so that it meets the county road, Horne Road.

## **1. Introduction**

This report examines seven proposals arising from the Definitive Map Review in the parish of Ilfracombe. Other proposals will be considered at subsequent meetings.

## **2. Background**

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 87 footpaths and 4 bridleways, which were recorded on the Definitive Map and Statement with a relevant date of 1 September 1957.

The review of the Definitive Map, under s.33 of the 1949 Act, which commenced in the late 1960s but was never completed, produced a number of proposals for change to the Definitive Map at that time. The Limited Special Review of RUPP's, carried out in the 1970s, did not affect the parish.

The following orders and agreements have been made and confirmed:

Devon County Council (Footpath No. 79, Ilfracombe) Quarter Session Extinguishment Order 1966;

Ilfracombe Urban District Council (Footpath No. 124, Ilfracombe) Creation Order 1966;

North Devon District Council (Bridleway No.31, Ilfracombe) Public Path Diversion Order 1982;

Devon County Council (Footpath No. 64, Ilfracombe) Public Path Diversion Order 1982;

Devon County Council (Footpath No. 104, Ilfracombe) Public Path Extinguishment Order 1983;

Devon County Council (Footpath No. 125, Ilfracombe) Creation Order 1983;

Devon County Council (Footpath No. 123, Ilfracombe) Dedication Agreement 1984;

Devon County Council (Footpath No. 13, Ilfracombe) Public Path Diversion Order 1990;

Devon County Council (Footpath Nos. 24 & 34, Ilfracombe & Footpath No. 16, Mortehoe) Public Path Diversion Order 1990;

Devon County Council (Footpath No. 122, Ilfracombe) Definitive Map Modification Order 1990;

Devon County Council (Footpath No. 29, Ilfracombe) Public Path Diversion Order 1991;

Devon County Council (Footpath No. 57, Ilfracombe) Public Path Diversion Order 1992;

Devon County Council (Footpaths Nos. 109 & 113 part, Ilfracombe) Highways Stopping Up Order 1993;

Devon County Council (Footpath No.1, Ilfracombe) Definitive Map Modification Order 1997;

Devon County Council (Bridleway No. 131, Ilfracombe) Creation Agreement 2004;

Devon County Council (Bridleway No. 31, Ilfracombe) Public Path Diversion Order 2006;

Devon County Council (Footpath Nos. 24, 26 & 29, Ilfracombe) Public Path Diversion Order 2006;

Devon County Council (Footpath Nos. 129 & 132, Ilfracombe) Creation Agreement 2014; and

Devon County Council (Footpath Nos. 11, 12, 14 & 14a, Mortehoe & Footpath No. 42, Ilfracombe) Public Path Diversion & Definitive Map Modification Order 2014.

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

The current review began with an opening public meeting held in December 2009 in the parish. Four proposals arose from previous reviews with an additional eight proposals from initial consultations, along with a number of diversions to resolve historical anomalies, which are being dealt with under delegated powers.

### **3. Proposals**

Please refer to the appendix to this report.

### **4. Consultations**

General consultations have been carried out with the following results:

County Councillor Edmunds	– no comment
North Devon Council	– no comment
Ilfracombe Town Council	– no comment
British Horse Society	– no comment
Byways & Bridleways Trust	– no comment
Country Landowners' Association	– no comment
Devon Green Lanes Group	– no comment
National Farmers' Union	– no comment

Open Spaces Society	– no comment
Ramblers'	– no comment
Trail Riders' Fellowship	– no comment

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 have been taken into account.

## **9. Conclusion**

It is recommended that Modification Orders be made in respect of Proposals 8, 12, 13, 16, 21, 22, and 23.

Should any further valid claim with sufficient evidence be made within the next six months it would seem reasonable for it to be determined promptly rather than deferred.

## **10. Reasons for Recommendations**

To undertake the County Council's statutory duty under the Wildlife and Countryside Act 1981 to keep the Definitive Map and Statement under continuous review and to progress the parish by parish review in the North Devon area.

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**Electoral Division: Ilfracombe**

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence Files	Current	DMR/ILFRACOMBE

cg150216pra  
ddm/cr/DMR Parish of Ilfracombe  
04 040316

**A. Basis of Claim**

The Highways Act 1980, Section 31(1) states that where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

Common Law presumes that at some time in the past the landowner dedicated the way to the public either expressly, the evidence of the dedication having since been lost, or by implication, by making no objection to the use of the way by the public.

The Highways Act 1980, Section 32 states that a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan, or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

The Wildlife and Countryside Act 1981, Section 53(3)(c) enables the Definitive Map to be modified if the County Council discovers evidence which, when considered with all other relevant evidence available to it, shows that:

- (i) a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates;
- (ii) a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description;
- (iii) there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

The Wildlife and Countryside Act 1981, Section 56(1) states that the Definitive Map and Statement shall be conclusive evidence as to the particulars contained therein, but without prejudice to any question whether the public had at that date any right of way other than those rights.

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 8: Proposed extension of Footpath No. 40 to meet Footpath No. 38 below Lee Manor at Lee, as shown between points B1 – B2 on plan HCW/PROW/14/120.**

**Recommendation: That a Modification Order be made to extend Footpath No. 40 between points B1 – B2, as shown on plan HCW/PROW/14/120 in respect of Proposal 8.**

**1.1 Background**

1.1.1 The proposal was discovered during the course of the Definitive Map Review as an anomaly in the public highway network which required resolution.

**1.2 Description of the Route**

1.2.1 The route starts at the junction with Footpath No. 40 southeast of the Lee Manor Hotel at point B1 and runs along an earth and stone track to meet Footpath No. 38 east of Lee Manor Hotel, point B2.

**1.3 Documentary Evidence**

1.3.1 Ordnance Survey mapping, 1890-1962. Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way".

1.3.2 The proposal route is shown as part of a continuous track followed by the definitive alignment of Footpath No. 40.

1.3.3 Ilfracombe Parish Survey, 1950. The compilation process set out in the National Parks and Access to the Countryside Act 1949 involved a substantial amount of work and such records are considered a valuable source of information. The rights of way included in the process had to pass through draft, provisional and definitive stages with repeated public consultations.

1.3.4 The parish survey form for Footpath No. 40 describes the path as starting from the junction of paths 38 and 39 (38) at point B2 and follows a well-defined track along a stream to the junction of path 41 (40). The survey map shows path 40 meeting paths 38 and 39 (Footpath No. 38) at point B2.

1.3.5 Definitive Map and Statement, 1957. The Statement describes Footpath No. 40 as starting '*from its junction with Footpath No. 38 east of Manor House and proceeds in a southerly direction through woodlands alongside the Urban District Boundary*'. However the footpath is shown as stopping approximately 45 metres short of Footpath No. 38 on the Definitive Map.

1.3.6 Route Photographs, 2014. Site photographs of the proposal route show that it is open and available.

**1.4 Landowner Evidence**

1.4.1 No information was received from the relevant landowner.

## **1.5 Discussion**

- 1.5.1 The historical highway records demonstrate that a path has physically existed since at least 1890 along the alignment of Footpath No. 38 to meet Footpath No. 40 southwest of Southcliffe between points B1 – B2. This is consistent with the 1950 parish survey undertaken by Ilfracombe Urban District Council which depicted Footpath No. 40 Ilfracombe connecting with Footpath Nos. 38 and 39 (38), demonstrating that the current situation shown on the Definitive Map and Statement is a drafting error.

## **1.6 Conclusion**

- 1.6.1 It is therefore recommended that a Modification Order be made to extend Footpath No. 40 between points B1 and B2 to correct the Definitive Map to be consistent with the Definitive Statement. If there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

## **2 Proposal 12: Proposed extension of Footpath No. 65 at both its north and south ends to meet the county roads, Hillsborough Road and Chambercombe Lane, as shown between C18 – C19 and C20 – C21 on plan HCW/PROW/14/124.**

**Recommendation: That a Modification order be made to extend Footpath No. 65 to meet the county roads, Hillsborough Road between points C18 – C19, and Chambercombe Road and Lane between points C20 – C21, as shown on plan HCW/PROW/14/124 to enable Footpath No. 65 to meet public highways at both ends in respect of Proposal 12.**

## **2.1 Background**

- 2.1.1 The proposal was discovered during the course of the Definitive Map Review as an anomaly in the public highway network which required resolution.

## **2.2 Description of the Route**

- 2.2.1 The route starts at the junction with the county road, Hillsborough Road at point C19 and runs generally southwards along a private road, Foxbeare Road, to meet Footpath No. 65 at point C18. It restarts at the southern end of Footpath No. 65 at point C20, and runs generally south westwards across waste ground along a well-used route signed as a footpath to meet the county roads Chambercombe Road and Chambercombe Lane, and Ilfracombe Bridleway No. 66 at point C21.

## **2.3 Documentary Evidence**

- 2.3.1 Ordnance Survey mapping, 1890-1962. Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way".
- 2.3.2 The northern part of the proposal route is shown since 1890 while the southern part is not shown until the Post War A Edition of 1962, when it is shown as a narrow double dashed route running on a straight alignment south westwards to meet Chambercombe Lane, appearing as an narrower alternative to the existing wider

track (Proposal 11 between points C23 – C24), which will be considered in a further report.

- 2.3.3 Ilfracombe Parish Survey, 1950. The compilation process set out in the National Parks and Access to the Countryside Act 1949 involved a substantial amount of work and such records are considered a valuable source of information. The rights of way included in the process had to pass through draft, provisional and definitive stages with repeated public consultations.
- 2.3.4 The parish survey form for Footpath No. 65 describes the path as the footpath to Sterridge Valley, Berrynarbor, starting at Foxbeare Road, point C18, where there was a direction post 'to Chambercombe'. The path then followed '*well defined limits*' to meet the county roads Chambercombe Lane, (Bridleway No. 66) at point C21 and Chambercombe Road. When checked by the County Surveyor, it was described further as meeting the north end of Bridleway No. 66 at its junction with the district road, Chambercombe Road, consistent with point C21. This alignment described uses the southern part of the proposal route C20 – C21 on the map.
- 2.3.5 The survey map shows path 65 starting at its junction with Foxbeare Road at point C18 and running along the definitive alignment between the gardens of Foxbeare and Chambercombe Park Roads. As it approaches the junction of Chambercombe Road and Lane (Bridleway No. 66), it follows the alignment for Proposal 11 between points C23 – C24 not Proposal 12, C20 – C21. After being completed by the Urban District Council, the County Surveyor has annotated the map to connect Footpath No. 65 with Hillsborough Road at the northern end at point C19, as Foxbeare Road was not considered a public highway and annotated with a letter 'D'. The alternative alignment at the southern end of Footpath No. 65 (Proposal 11, point C24) submitted by the Urban District Council was not corrected but the map is annotated to show where Footpath No. 65 and Bridleway No. 66 meet at point C21.
- 2.3.6 Definitive Map and Statement, 1957. The Statement describes Footpath No. 65 as starting at '*its junction with the Ilfracombe – Combe Martin county road*' and '*proceeds south-eastwards along a private accommodation road...Foxbeare Road, (point C18) for a distance of about 20 yards then turns south-south west*' running south south westwards to '*join the northern end of Bridleway No. 66 at its junction with Chambercombe Road*'. The description is consistent with the path running between points C19 – C21. However the footpath is shown on the Definitive Map as starting at Foxbeare Road and stopping approximately 22 metres short of Bridleway No. 66 and Chambercombe Lane, at point C20.
- 2.3.7 Definitive Map Review records, 1970s. Ilfracombe Town Council made a parish submission as part of the 1978 incomplete Review for a route which they believed had been omitted originally. The proposal to add a spur to the southern end of the Footpath No. 65 on the Definitive Map, now known as Proposal 11 (C23 – C24), which will be considered in a further report. The route had been used as part of the footpath for years. The claim arose because the landowner, Mr Hayward of Chambercombe Manor was filling in the route and obstructing it.
- 2.3.8 List of Streets, 1970s onwards. The proposal route between points C18 – C19 along the northern end of Foxbeare Road is annotated as highway not maintainable at public expense and dated 5 December 1984.
- 2.3.9 National Street Gazetteer, 2015. The proposal route between points C18 – C19 along Foxbeare Road is shown as a Category 17 private road. The section between points C20 – C21 is not shown.



## **2.4 Landowner Evidence**

- 2.4.1 A Landowner evidence form was received from Mr Smith, a trustee of the Chambercombe Manor Trust. The Trust has owned the land crossed by part of the proposal route between points C20 – C21 for over 35 years and they have always known it to exist along that alignment.
- 2.4.2 No responses were received regarding the northern part of the proposal, points C18 – C19.

## **2.5 Discussion**

- 2.5.1 The documentary evidence demonstrates that a path physically existed along the alignment of Footpath No. 65 at the northern end as described in the Definitive Statement since at least the 1890 and at the southern end since at least the 1940s. The Ilfracombe Urban District Council thought Foxbeare Road was a district (public) road but clarification by the County Surveyor proved otherwise. The Parish Survey was subsequently annotated to reflect this, extending Footpath No. 65 at its northern end to meet Hillsborough Road, the A399 Ilfracombe – Combe Martin Road. At the southern end, the District Council had drawn a line which veered south eastwards to join Chambercombe Lane, but the description in the Definitive Statement refers to the route meeting Bridleway No. 66 at the end of Chambercombe Road at point C21, rather than point C24 (Proposal 11) and is supported by highways records and landowner evidence. It appears there was a drafting error when the Definitive Map was compiled as no route was shown meeting Bridleway No. 66 at either the junction with Chambercombe Lane or Chambercombe Road or Hillsborough Road.

## **2.6 Conclusion**

- 2.6.1 It is therefore recommended that a Modification Order be made to extend Footpath No. 65 between points C18 – C19 and C20 – C21 to correct the Definitive Map to reflect the Statement. If there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

## **3 Proposal 13: Proposed deletion of part of Bridleway No. 66 along Chambercombe Lane to remove a section of dual status with the county road, Chambercombe Lane, as shown between points D1 – D2 – D3 on plan HCW/PROW/14/125.**

**Recommendation: That a Modification Order be made to delete part of Bridleway No. 66, between points D1 – D2 – D3, as shown on plan HCW/PROW/14/125 in respect of Proposal 13.**

### **3.1 Background**

- 3.1.1 The proposal was discovered during the course of the Definitive Map Review as an anomaly in the public highway network which required resolution.

### **3.2 Description of the Route**

- 3.2.1 The route starts at point D1 at its junction with Chambercombe Road and proceeds south eastwards along Chambercombe Lane, a metalled road, past Chambercombe Manor at point D2 and continues to the entrance to Comyn at point D3.

### 3.3 Documentary Evidence

- 3.3.1 Handover Roads Records, 1947. These records are considered to be a positive indication of what the highway authority believe the status of roads included to be, and are conclusive evidence of a highway authority's acceptance of maintenance responsibility, a commitment not normally undertaken lightly. The lack of a road's inclusion does not necessarily suggest it could not have been a public highway. However such records were for internal use and did not purport to be a record of rights.
- 3.3.2 The proposal route, known as Chambercombe Lane between points D1 – D2 – D3 is included as a district (public) road. When handed back to the County Council, such roads became county roads.
- 3.3.3 Ifracombe Parish Survey, 1950. The compilation process set out in the National Parks and Access to the Countryside Act 1949 involved a substantial amount of work and such records are considered a valuable source of information. The rights of way included in the process had to pass through a draft, provisional and definitive stages with repeated public consultations. The map had to be prepared in a prescribed form.
- 3.3.4 Ifracombe Urban District Council did not do a particularly thorough survey and so much of the actual urban area was completed by the County Surveyor, Mr Carnegie and his staff. However the Urban District Council did survey the proposal route.
- 3.3.5 Bridleway No. 66 including the proposal route was initially surveyed by the Urban District Council as several routes, numbers 66, 67 and 68, with 66 and 67 making up the proposal route. It was described as a well-made farm road between Chambercombe Road and Comyn.
- 3.3.6 Ifracombe Urban District Council Minute Books, 1881-1974. The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as an Urban District Council had powers only in relation to public highways which they had a responsibility to maintain.
- 3.3.7 The Council Minute Books contain numerous references to Chambercombe Road as a highway maintainable at public expense, which may have included the proposal route, currently known as Chambercombe Lane, as the latter is a continuation of the former with no differentiation.
- 3.3.8 Definitive Map and Statement, 1958 onwards. These records are conclusive evidence of the information they contain and that the public rights of way existed on the relevant date.
- 3.3.9 The Definitive Statement describes Bridleway No.66 as starting at the south-east end of Chambercombe Road, District Road, at point D1 and proceeds south-eastwards along a private accommodation road (not repairable by the inhabitants at large), Chambercombe Lane, past Chambercombe Farm at point D2 to Comyn at point D3 and beyond.
- 3.3.10 List of Streets, 1970s onwards. Chambercombe Lane is shown as a 'district road' (public) between the junction with Crofts Lea Park, Chambercombe Road, Chambercombe Park Road and the entrance gate to Comyn. When the former urban district councils were disbanded in the 1970s, the public roads they were responsible were transferred to the County Council as county roads.

- 3.3.11 Land Registry, 2015. This shows that part of the proposal route has been registered to the Chambercombe Manor Trust for a short distance where it passes Chambercombe Manor itself.
- 3.3.12 National Street Gazetteer, present. The Gazetteer includes the proposal route D1 – D2 – D3, Chambercombe Lane, as a category 9 ‘service road’, R215, as it serves a number of properties.
- 3.3.13 Site Photographs, 2014. The photographs show the proposal open and available.

### **3.4 Landowner Evidence**

- 3.4.1 Landowner evidence forms were received from Chambercombe Manor and Comyn Farm.
- 3.4.2 Mr Challacombe has owned Comyn Farm for the last 41 years and believes the route to be a public footpath/bridleway/highway and is aware of daily public use of the route. There is a gate at point D3 at the entrance to Comyn Farm but this is never locked.
- 3.4.3 Mr Smith, trustee of the Chambercombe Manor Trust states that they have owned land adjacent to the proposal route for up to 36 years and believes the route to have bridleway status. He regularly sees the public on foot and horse. He knows there is a gate at point D3 at the entrance to Comyn Farm but this is never locked. He also states that the bridleway is an adopted council road.

### **3.5 Rebuttal Evidence**

- 3.5.1 No rebuttal evidence has been received.

### **3.6 Discussion**

- 3.6.1 Since the early part of the 19<sup>th</sup> century the proposal route has physically existed as an enclosed lane. Records appear to indicate that the proposal route was a type of road which was open and available to the public since at least that time. In 1947 when the former District Councils handed back their delegated highways responsibilities, Chambercombe Lane was included on the Handover Records as a district road, a public carriageway. Shortly after, Ilfracombe Urban District Council included Bridleway No. 66 as partly running along Chambercombe Lane in their parish survey for the compilation of the Definitive Map. However when the Urban District Council carried out its survey it should have omitted the section of the bridleway which runs along Chambercombe Lane, which is now proposed for deletion under section 53(3)(c)(iii) of the Wildlife and Countryside Act 1980.
- 3.6.2 Under NERC Act 2006 section 67(1) where there are dual status routes, any vehicular rights are thought to be extinguished. However, under section 67(2)(a) of the same Act, vehicular rights are retained if the main use of the highway in the 5 years prior to the commencement date of the Act was with mechanically propelled vehicles. It is clear from the Highways Records that this proposal route has been adopted as a county road. The property owners have relied on the road for access since at least 1947, and its main use is with vehicles. It is currently maintained as a category 9 county road.

### **3.7 Conclusion**

- 3.7.1 It is therefore recommended that a Modification Order be made to delete that part of Bridleway No. 66 between points D1 – D2 – D3 in order to remove the dual status, as the evidence is considered sufficient to show that it was recorded incorrectly on the Definitive Map and Statement. If there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

### **4 Proposal 16: Proposed extension to Footpath No. 88 to meet Footpath No. 58 at Kingsley Avenue, as shown between points D15 – D16 on plan HCW/PROW/14/128.**

**Recommendation: That a Modification Order be made to extend Footpath No. 88 between points D15 – D16, as shown on plan HCW/PROW/14/128 in respect of Proposal 16.**

#### **4.1 Background**

- 4.1.1 The proposal was discovered during the course of the Definitive Map Review as an anomaly in the public highway network which required resolution.

#### **4.2 Description of the Route**

- 4.2.1 The route starts at point D16 at its junction with Footpath No. 88 at Kingsley Avenue and proceeds north westwards along a private road to point D15 at the junction with Cairn Road and Footpath No. 58.

#### **4.3 Documentary Evidence**

- 4.3.1 Ordnance Survey mapping, 1890-1962. Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way".
- 4.3.2 The proposal route is shown open and available.
- 4.3.3 Ifracombe Urban District Council, Highways Expenditure Books, 1928-48. These records are considered to be a positive indication of what the highway authority believe the status of roads included to be, and are conclusive evidence of a highway authority's acceptance of maintenance responsibility, a commitment not normally undertaken lightly. The lack of a road's inclusion does not necessarily suggest it could not have been a public highway. However such records were for internal use and did not purport to be a record of rights.
- 4.3.4 The books contain a reference to maintenance work being carried out on Kingsley Avenue during 1939.
- 4.3.5 Aerial Photography, 1946-2007. The photography shows the open and available physical existence of the proposal route, though it is not evidence of status.
- 4.3.6 Handover Records, circa 1947. These records are considered to be a positive indication of what the highway authority believe the status of roads included to be,

and are conclusive evidence of a highway authority's acceptance of maintenance responsibility, a commitment not normally undertaken lightly. The lack of a road's inclusion does not necessarily suggest it could not have been a public highway. However such records were for internal use and did not purport to be a record of rights.

- 4.3.7 Kingsley Avenue and Cairn Road were not included as public highways handed over from the former Urban District Council to the County Council.
- 4.3.8 Ilfracombe Parish Survey, circa 1950. The compilation process set out in the National Parks and Access to the Countryside Act 1949 involved a substantial amount of work and such records are considered a valuable source of information. The rights of way included in the process had to pass through draft, provisional and definitive stages with repeated public consultations. The map had to be prepared in a prescribed form.
- 4.3.9 Ilfracombe Urban District Council did not do a particularly thorough survey and so much of the actual urban area was completed by the County Surveyor, Mr Carnegie and his staff, including Footpath No. 88. The parish survey map shows the footpath meeting Kingsley Avenue but not continuing to meet Cairn Road and Footpath No. 58. The survey form refers to Footpath No. 88 as '*continuing on the opposite side of [St Brannock's Road] in the same direction to join Cairn Road (Footpath No. 58).*'
- 4.3.10 Definitive Map and Statement, 1958 onwards. These records are conclusive evidence of the information they contain and that the public rights of way existed on the relevant date.
- 4.3.11 The Statement for Footpath No. 88 describes the proposal route as '*continuing on the opposite side of [St Brannock's Road] road in the same direction to join Cairn Road (Footpath No. 58).*' The Map does not show the proposal route between points D15 – D16.
- 4.3.12 Site Photographs, 2014. The photographs show the proposal open and available.

#### **4.4 Landowner and Rebuttal Evidence**

- 4.4.1 No landowner or rebuttal evidence has been received.

#### **4.5 Discussion**

- 4.5.1 The historical highway records demonstrate that Kingsley Avenue was generally considered to be a privately maintainable highway. This is consistent with the 1950 parish survey undertaken by Ilfracombe Urban District Council and the Definitive Statement which refer to Footpath No. 88 joining Cairn Road and Footpath No. 58 via the proposal route.

#### **4.6 Conclusion**

- 4.6.1 It is therefore recommended that a Modification Order be made to extend Footpath No. 88 between points D15 – D16 to correct the Definitive Map to reflect the Statement. If there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

**5 Proposal 21: Proposed extension of Footpath No. 109 at Brimlands to meet the county road, Hillsborough Road, as shown between points E7 – E8 on plan HCW/PROW/14/133.**

**Recommendation: That a Modification Order be made to add a section to Footpath No. 109, between points E7 – E8, as shown on plan HCW/PROW/14/133 in respect of Proposal 21.**

**5.1 Background**

5.1.1 The proposal was discovered during the course of the Definitive Map Review as an anomaly in the public highway network which required resolution.

**5.2 Description of the Route**

5.2.1 The route starts at point E7 at its junction with Ilfracombe Footpath Nos. 109 and 116 by the swimming pool and proceeds south eastwards along a metalled footway and across Hillsborough Road Car Park to meet the county road, Hillsborough Road at point E8.

**5.3 Documentary Evidence**

5.3.1 Quarter Sessions records, 1934. Quarter Session records may provide conclusive evidence of the stopping up or diversion of highways and presentments for non-repair of highways. They are conclusive evidence of those matters the Court actually decide upon, though not in regard to other matters.

5.3.2 In 1934 the Ilfracombe Urban District Council made a legal order in October 1934 to divert the public footpath, now known as Ilfracombe Footpath No. 109, across the public pleasure grounds of Brimlands Field and Hillsborough Park Field to meet Hillsborough Road rather than Hillsborough Park Road. This was confirmed by the Justices of the Peace in January 1935. The diversion route is consistent with the proposal route E7 – E8.

5.3.3 Ilfracombe Parish Survey, circa 1950. The compilation process set out in the National Parks and Access to the Countryside Act 1949 involved a substantial amount of work and such records are considered a valuable source of information. The rights of way included in the process had to pass through draft, provisional and definitive stages with repeated public consultations. The map had to be prepared in a prescribed form.

5.3.4 Ilfracombe Urban District Council did not do a particularly thorough survey and so much of the actual urban area was completed by the County Surveyor, Mr Carnegie and his staff. It appears that the parish survey map was not amended, though no large scale map survives for the urban area but a survey form was completed. This refers to Footpath No. 109 *'continuing east to the southeast corner of Larkstone Sports Ground where the path turns south-east to meet Hillsborough Road, county road A399, opposite its junction with Chambercombe Park Road'*. The section described as proceeding southeast is the proposal route, E7 – E8.

5.3.5 Aerial Photography, 1946-2007. The photographs show the proposal route 10 years after the Quarter Sessions diversion order as physically existing, open and available. There is no car park, just allotments to the west and several fields to the east. Later photography shows a metalled path along the proposal route alignment E7 – E8.

5.3.6 Definitive Map and Statement, 1958 onwards. These records are conclusive evidence of the information they contain and that the public rights of way existed on the relevant date.

5.3.7 The Definitive Statement for Footpath No. 109 describes the proposal route as *'continuing east to the south-east corner of Larkstone Sports Ground (point E7) where the path turns south-east to meet Hillsborough Road, county road A399, opposite its junction with Chambercombe Park Road'* (point E8). The Map does not show the proposal route, but it is annotated regarding it referring to the Definitive Statement.

5.3.8 Site Photographs, 2014. The photographs show the proposal route using the existing metalled path.

#### **5.4 Landowner and Rebuttal Evidence**

5.4.1 The current landowner, North Devon Council, objected to the proposal. They state that the proposal crosses the Hillsborough Road car park which can be very busy and traffic using the same exit as the proposal. It is not currently designed for a pedestrian footpath. The proposal route would cut the car park in two which would be unacceptable on an operational basis. The District Council believes that it would be difficult to manage the health and safety risk and would also incur costs for safety measures. It would also affect the land value. The car park is often used for events which would require temporary closure of the proposal creating management pressure, time and cost to them.

5.4.2 No other rebuttal evidence has been received.

#### **5.5 Discussion**

5.5.1 The documentary evidence demonstrates that Footpath No.109 was legally diverted by Quarter Sessions in 1935, creating the proposal route between points E7 – E8, which pre-dates the Hillsborough Road car park. The Statement clearly describes the 1935 diversion route. It was omitted from the Definitive Map, though the Map was annotated referring to the Statement. Consequently it is now proposed for inclusion under section 53(3)(c)(i) and (iii) of the Wildlife and Countryside Act 1980.

#### **5.6 Conclusion**

5.6.1 It is therefore recommended that a Modification Order be made to extend Footpath No. 109 between points E7 and E8, by adding that section to the Definitive Map to reflect what is described in the Statement. If there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

**6 Proposal 22: Proposed extension of Footpath No. 112 at Rapparee Cove to the beach, as shown between points E22 – E23 on plan HCW/PROW/14/134.**

**Recommendation: That a Modification Order be made to add a section to Footpath No. 109, between points E22 – E23, as shown on plan HCW/PROW/14/134 in respect of Proposal 22.**

**6.1 Background**

6.1.1 The proposal was discovered during the course of the Definitive Map Review as an anomaly in the public highway network which required resolution.

**6.2 Description of the Route**

6.2.1 The route starts at point E22 as a continuation of Ilfracombe Footpath No. 112 at the top of the cliff on the west side of Rapparee Cove and proceeds down steps to and then along a concrete platform to the beach at Rapparee Cove at point E23.

**6.3 Documentary Evidence**

6.3.1 Ilfracombe Parish Survey, circa 1950. The compilation process set out in the National Parks and Access to the Countryside Act 1949 involved a substantial amount of work and such records are considered a valuable source of information. The rights of way included in the process had to pass through draft, provisional and definitive stages with repeated public consultations. The map had to be prepared in a prescribed form.

6.3.2 Ilfracombe Urban District Council did not do a particularly thorough survey and so much of the actual urban area was completed by the County Surveyor, Mr Carnegie and his staff, including Footpath No. 112. The survey form refers to Footpath No. 112 turning '*east down steps to Rapparee Cove*', which is the proposal route.

6.3.3 Aerial Photography, 1946-2007. The photographs show the proposal route physically existing, including the steps and platform.

6.3.4 Definitive Map and Statement, 1958 onwards. These records are conclusive evidence of the information they contain and that the public rights of way existed on the relevant date.

6.3.5 The Definitive Statement for Footpath No. 112 describes it as starting '*at Footpath No: 109 north of the Vicarage and proceeds eastwards to the District Road, Larkstone Lane, continuing from the other side of the Lane in a north-north-easterly direction to the top of cliffs where the path turns eastwards down steps to Rapparee Cove*'. This description includes the proposal route E22 – E23.

6.3.6 Site Photographs, 1890s - 2014. The photographs show the proposal route.

**6.4 Landowner Evidence**

6.4.1 The current landowner, North Devon Council, has no objection to the proposal.

**6.5 Discussion**

6.5.1 The Definitive Map and other records demonstrate that Ilfracombe Footpath No. 112 ends on the beach at Rapparee Cove, rather than at the top of the steps. This is



consistent with the Statement which refers to the footpath running down the steps to the cove.

## **6.6 Conclusion**

- 6.6.1 It is therefore recommended that a Modification Order be made to extend Footpath No. 112 on the Definitive Map between points E22 and E23 as described in the Statement. If there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

## **7 Proposal 23: Proposed resolution of anomaly of Footpath No. 122 which currently does not connect with a public highway at its western end, as shown between points G19 – G20 on plan HCW/PROW/14/135.**

**Recommendation: That a Modification Order be made to extend Footpath No. 122, between points G19 – G20, as shown on plan HCW/PROW/14/135 in respect of Proposal 23.**

### **7.1 Background**

- 7.1.1 The proposal was discovered during the course of the Definitive Map Review as an anomaly in the public highway network which required resolution.

### **7.2 Description of the Route**

- 7.2.1 The proposal route starts at point G19 at its junction with Ilfracombe Footpath No. 122 at the bottom of the steps from Burrow Road and proceeds along Hornebrook Avenue to meet the county road, Horne Road at point G20.

### **7.3 Documentary Evidence**

- 7.3.1 Public Rights of Way Sub-Committee report, 1990. An application was made by Ilfracombe Town Council to add a flight of steps between a county road, Burrow Road and Hornebrook Avenue, a private road. Nine user evidence forms were submitted covering a period of 1920-1990, which demonstrated that Hornebrook Avenue as well as the steps, had been used as a through route by the public. However the resolution and Modification Order only related to the steps. The order was subsequently confirmed. There was no rebuttal evidence and the public's use had not been called into question.
- 7.3.2 Land Registry, 2014. The proposal route along Hornebrook Avenue is not registered.
- 7.3.3 Site Photographs, 1890s - 2014. The photographs show the proposal route open and available, and in use. There are no notices against the public's use of it.

### **7.4 Landowner Evidence**

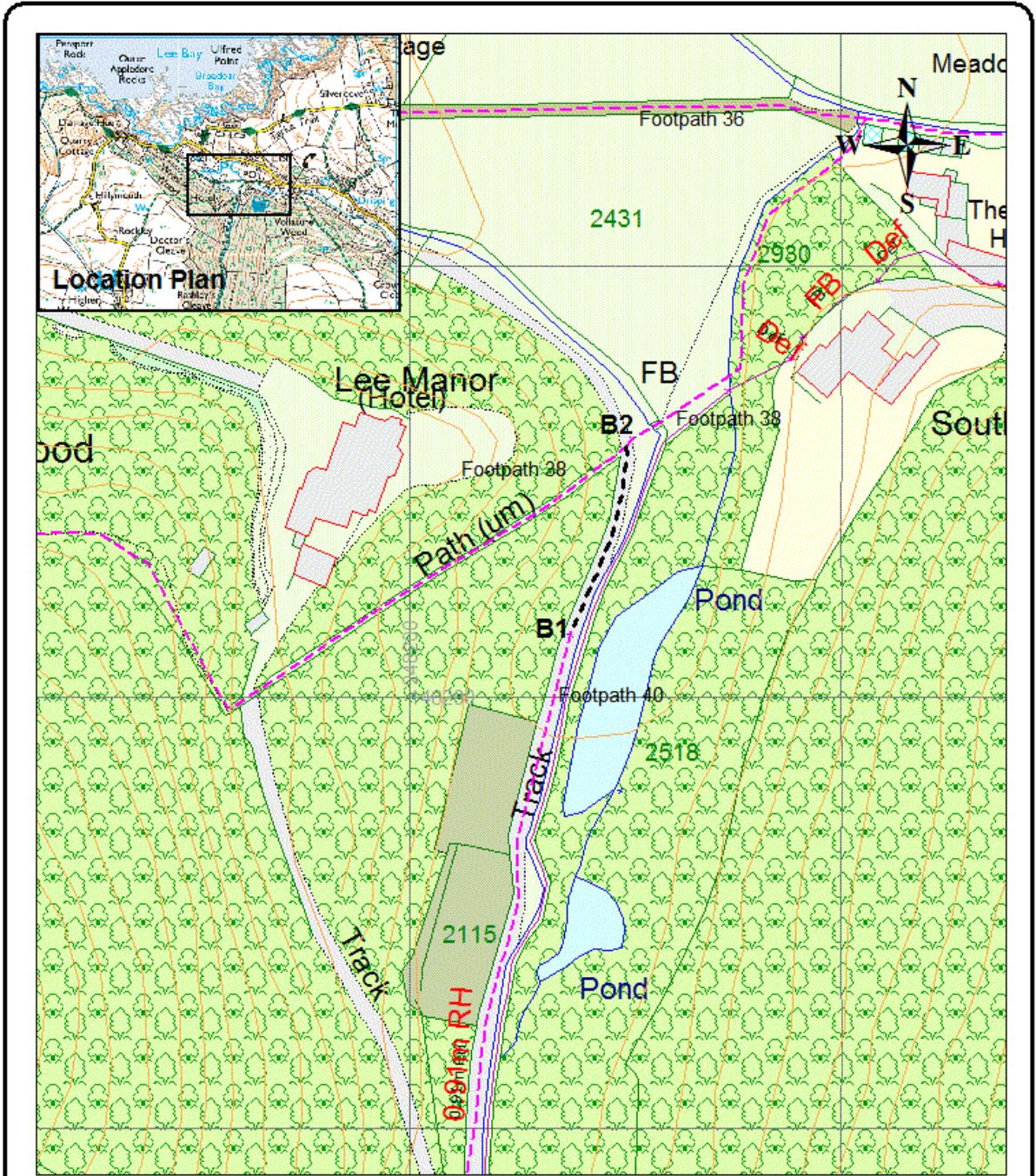
- 7.4.1 Four landowner evidence forms were received, three from residents of Hornebrook Avenue and one from Horne Road covering an ownership period dating back to at least 1965. They believe the proposal route is a public footpath and are aware of the public using it daily without challenge or obstruction. Attempted use of Hornebrook Avenue by the public for parking vehicles is however challenged.

## **7.5 Discussion**

- 7.5.1 The evidence demonstrates that the public have had unrestricted access along the proposal route for many years on a daily basis, mainly on foot including during the relevant period. Though there has been some use with vehicles, this has been challenged by the residents of Hornebrook Avenue. The user evidence details continuous and uninterrupted use on foot without force, secrecy or permission, and therefore is as of right since at least the 1920s.
- 7.5.2 No-one has been challenged, or turned back, and the route has not been obstructed to prevent public access on foot. There have been no notices and no Section 31(6) deposit to demonstrate a lack of intention to dedicate.
- 7.5.3 The evidence of use is considered to be sufficient to for an inference of dedication under common law, and that the claimed route is reasonably alleged to subsist or subsists.


## **7.6 Conclusion**

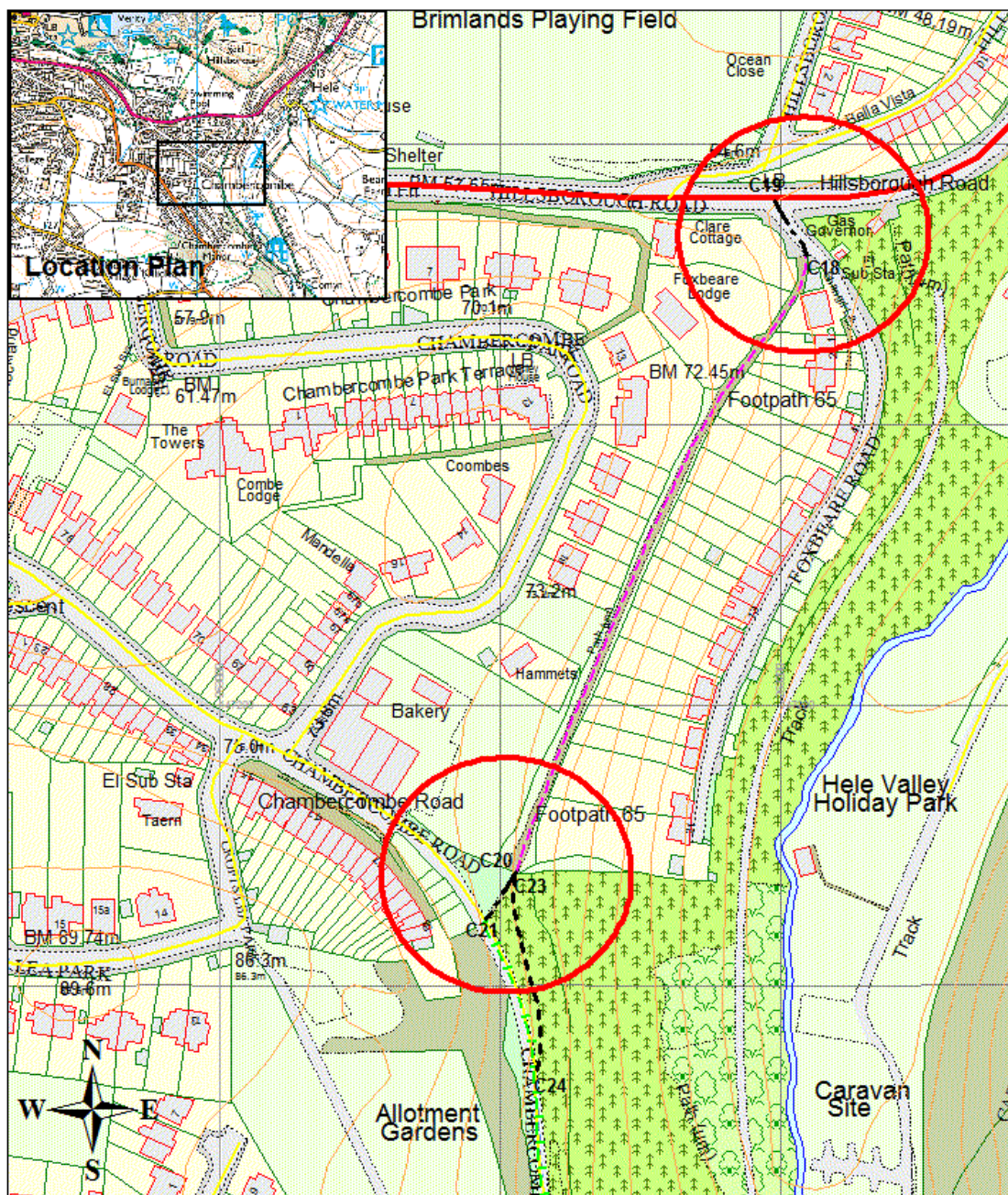
- 7.6.1 It is therefore recommended that a Modification Order be made to extend Footpath No. 122 between points G19 and G20 in the Definitive Map and Statement. If there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.



map ref: SS 4846

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<p align="center"><b>Devon County Council</b>  <b>Definitive Map Review - Ilfracombe</b>  <b>Proposal 8 - Proposed addition to Footpath No. 40,</b>  <b>Ilfracombe at Lee</b></p>	<p>drawing number <u>HCW/PROW/14/120</u>  date <u>July 2014</u>  scale <u>1:1,250</u>  drawn by <u>CLG</u></p>
<p><b>Notation</b>  Footpath No. 40 to be added B1 - B2 (approx 45 m)    - - - -  Existing footpath    - - - -</p>	<p align="right">   <b>David Whitton</b>  Head of Highways, Capital Development &amp; Waste</p>



map ref: SS 5347

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**Devon County Council**  
**Definitive Map Review - Ilfracombe**  
**Proposals 11 & 12 - Proposed extension of Footpath No. 65, Ilfracombe**  
**at Chambercombe Lane & proposed addition between**  
**Footpath No. 65, Ilfracombe & Chambercombe Lane**

drawing number **HCW/PROW/14/124**

date **October 2014**

scale **1:2,000**

drawn by **CLG**

**Notation**

**Proposed extension to Footpath No. 65 C20 - C21 (approx 22 m) - - -**

**Proposed extension to Footpath No. 65 C18 - C19 (approx 23 m) - - -**

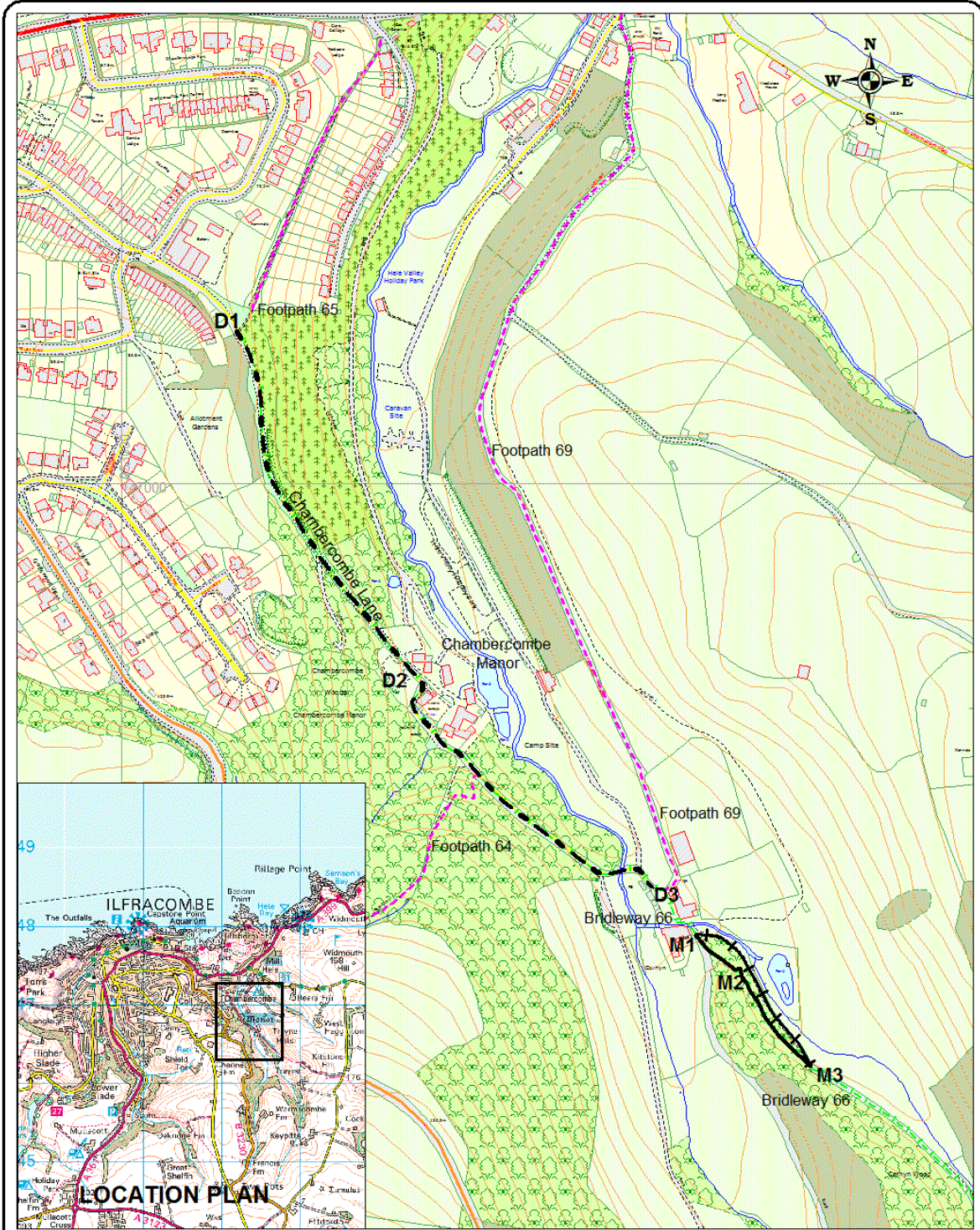
**Proposed addition C23 - C24 (approx 85 m) - - -**

**Existing footpath - - - -**

**David Whitton**


Head of Highways, Capital Development & Waste

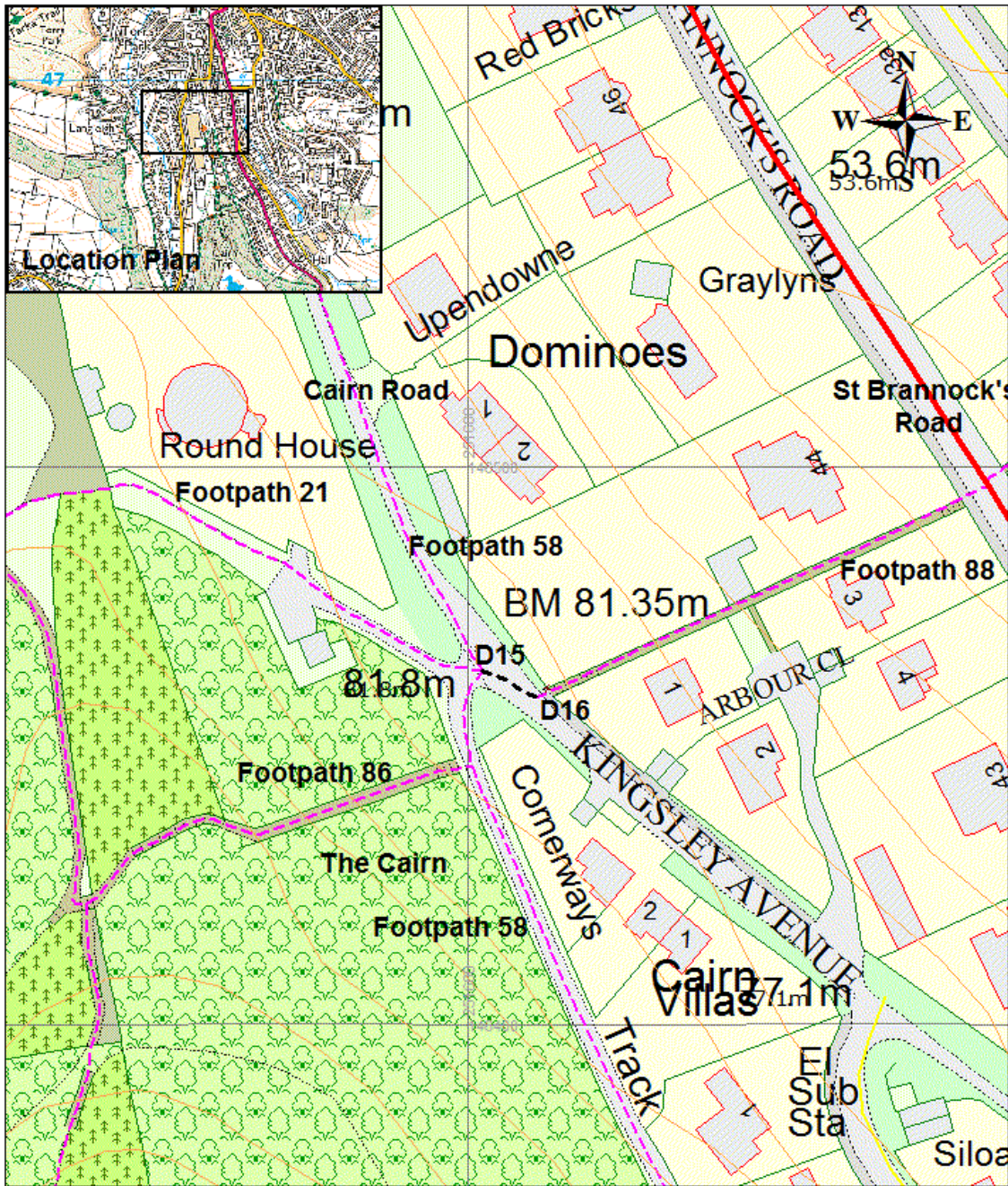




map ref: SS 5347, 5346 & 5446


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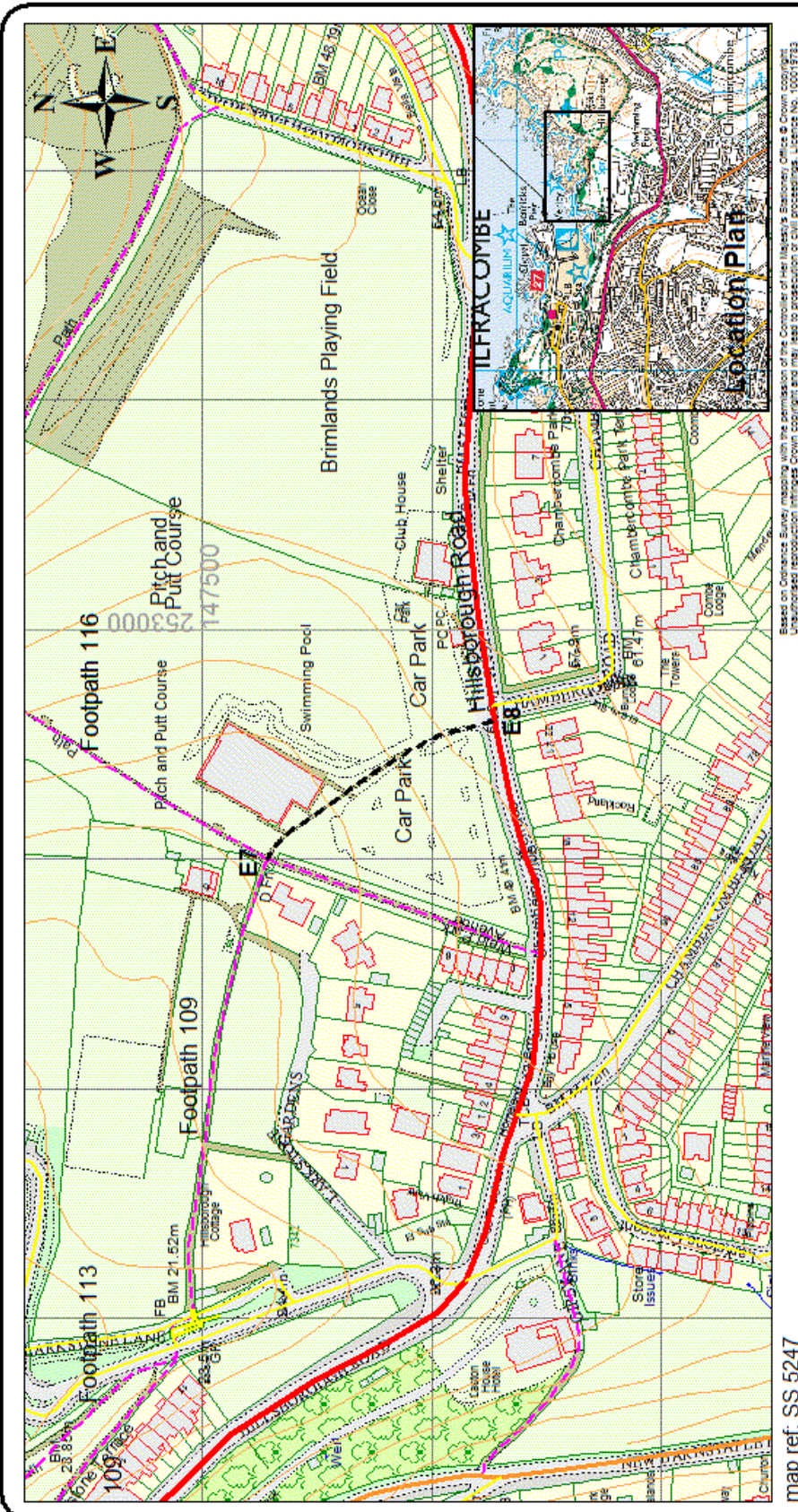
<p><b>Devon County Council</b>  <b>Proposals 13 &amp; 14 - Proposed deletion of part of Bridleway No. 66, Ilfracombe along Chambercombe Lane &amp; proposed diversion of Bridleway No. 66, Ilfracombe at Comyn &amp; west of Oxenpark Lane</b></p>		<p>drawing number <b>HTM/PROW/14/125 (1/3)</b>  date <b>October 2014</b>  scale <b>1 : 3,000 (at A3 only)</b>  drawn by <b>CLG</b></p>
<p><b>Notation</b>  Bridleway No. 66 to be deleted D1 - D2 - D3 (605 m) - - -  Bridleway No. / 66 to be extinguished D4 - D6 (146 m) ———  Bridleway No. 66 to be created D4 - D5 - D6 (149 m) +—— Existing footpaths - - - - -</p>		<p><b>David Whitton</b>  Head of Highways, Capital Development &amp; Waste</p> 



map ref: SS 4846

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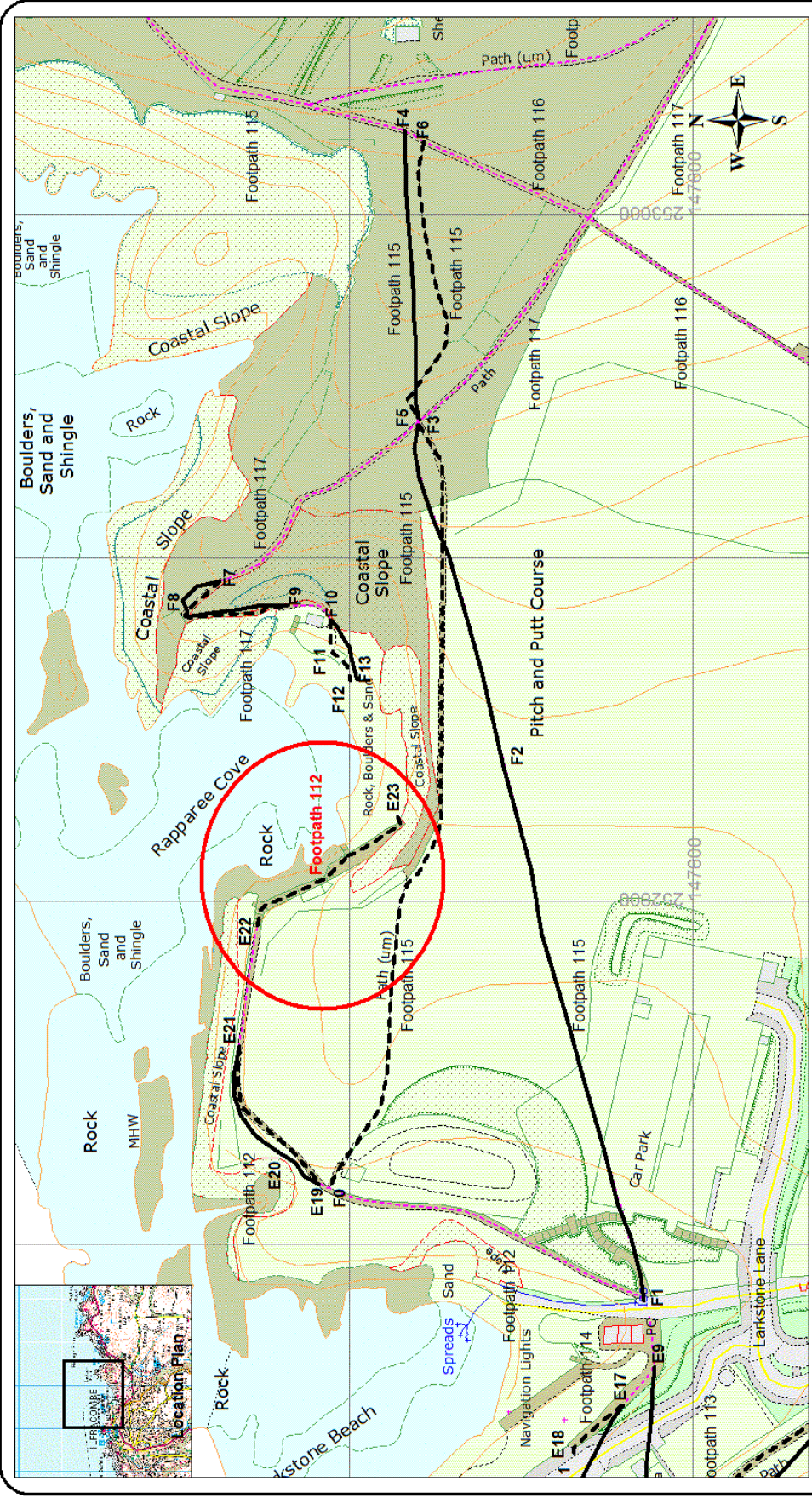
<p align="center"><b>Devon County Council</b>  <b>Definitive Map Review - Ilfracombe - Proposal 16</b>  <b>Proposed extension of Footpath No. 88,</b>  <b>Ilfracombe at Kingsley Avenue</b></p>	<p>drawing number <b>HCW/PROW/14/128</b></p> <p>date <b>July 2014</b></p> <p>scale <b>1:1,000</b></p> <p>drawn by <b>CLG</b></p>
<p><b>Notation</b></p> <p>Footpath 88 to be added D15 - D16 (approx 11 m) - - - -</p> <p>Existing footpath - - - -</p>	<p align="right">   <b>David Whitton</b>          Head of Highways, Capital Development &amp; Waste       </p>



map ref. SS 5247

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<b>Devon County Council</b> <b>Definitive Map Review - Iffracombe</b>		drawing number <b>HCW/PROW/14/133</b>
<b>Proposal 21 - Proposed extension of Footpath No. 109, Iffracombe</b> <b>to resolve an anomaly at Hillsborough car park</b>		date <b>October 2014</b>
<b>Notation</b> Proposed extension to Footpath No. 109 E7 - E8 (approx 117 m) - - - - Existing footpath - - - -		scale <b>1:2,500</b>
		drawn by <b>CLG</b>
		<b>David Whitton</b> Head of Highways, Capital Development & Waste



map ref. SS 5247

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drawing number **HCW/PROW/14/134 (2/3)**  
 date **October 2014**  
 scale **1:1,125 (at A3 only)**  
 drawn by **CLG**

**David Whitton**  
 Head of Highways, Capital Development & Waste

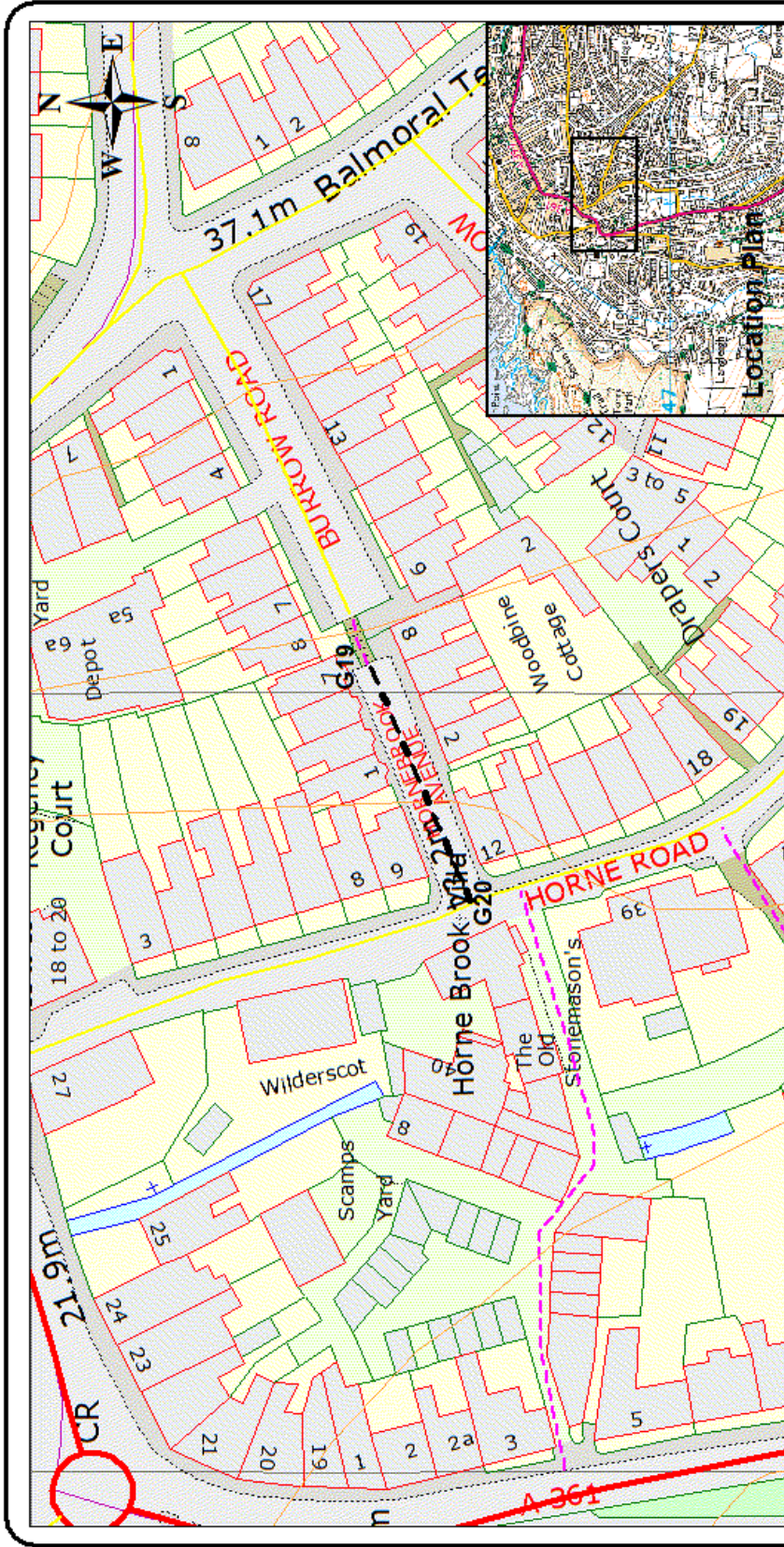
**Devon**  
 County Council

**Devon County Council - Definitive Map Review - Ilfracombe & extension of Footpath No. 112 to Raparee Cove**

Notation	To be extinguished	To be created	Existing footpaths
Footpath No. 112	E19 - E20 - E21 (52 m)	E19 - E21 (50 m)	-----
Footpath No. 115	F1 - F2 - F3 - F4 (265 m)	F5 - F2 - F3 - F6 (232 m)	-----
Footpath No. 117	F7 - F8 - F9 (49 m)	F7 - F9 (45 m)	-----
Footpath No. 117	F10 - F13 (20 m)	F10 - F11 - F12 (20 m)	-----

**Footpath No. 112 to be extended**  
**E22 - E23 (approx 35 m)**





map ref: SS 5147

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**drawing number** HCW/PROW/14/135  
**date** October 2014  
**scale** 1:750  
**drawn by** CLG

**Devon County Council**  
**Definitive Map Review - Ilfracombe**  
**Proposal 23 - Proposed resolution of anomaly between**  
**Footpath No. 122, Ilfracombe & Horne Road**

**Notation**  
 Proposed anomaly to be resolved G19 - G20 (approx 33 m) - - -  
 Existing footpath - - -

**David Whitton**  
 Head of Highways, Capital Development & Waste

