

Phil Norrey
Chief Executive

To: The Chair and Members of the
Public Rights of Way
Committee

County Hall
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(See below)

Your ref :
Our ref :

Date : 1 November 2017
Please ask for : Wendy Simpson, 01392 384383

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PUBLIC RIGHTS OF WAY COMMITTEE

Thursday, 9th November, 2017

A meeting of the Public Rights of Way Committee is to be held on the above date at 2.15 pm in the Committee Suite - County Hall to consider the following matters.

P NORREY
Chief Executive

A G E N D A

PART I - OPEN COMMITTEE

- 1 Apologies for Absence
- 2 Minutes
Minutes of the Committee meeting held on 6 July 2017 (previously circulated).
- 3 Items Requiring Urgent Attention
Items which in the opinion of the Chairman should be considered at the meeting as matters of urgency.
- 4 Devon Countryside Access Forum
Draft minutes of the meeting held on 12 October 2017 (to follow).

DEFINITIVE MAP REVIEWS

- 5 Parish Review: Definitive Map Review - Parish of Buckerell (Part 1) (Pages 1 - 22)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/80) and background papers.

Electoral Divisions(s): Feniton & Honiton

- 6 Parish Review: Definitive Map Review - Parish of Combe Martin, North Devon (Part 4)
(Pages 23 - 42)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/81) and background papers.

Electoral Divisions(s): Combe Martin Rural

- 7 Parish Review: Definitive Map Review - Parish of Culmstock (Pages 43 - 66)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/82) and background papers.

Electoral Divisions(s): Willand & Uffculme

- 8 Parish Review: Definitive Map Review - Parish of East Down (Part 2) (Pages 67 - 92)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/17/83) and background papers.

Electoral Divisions(s): Combe Martin Rural

SCHEDULE 14 APPLICATIONS

- 9 Addition of public footpath through fields from Shadycombe Road to Gould Road, Batson Creek in the Parish of Salcombe (Pages 93 - 108)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/17/84) and background papers.

Electoral Divisions(s): Salcombe

MATTERS FOR INFORMATION

- 10 Public Inquiry, Informal Hearing and Written Representation Decisions; Directions and High Court Appeals (Pages 109 - 112)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/85).

Electoral Divisions(s): Northam

- 11 Public Path Orders (Pages 113 - 124)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/86).

Electoral Divisions(s): Axminster; Bideford West & Hartland; Broadclyst; Fremington Rural; Ilfracombe; Okehampton Rural; Willand & Uffculme; Yelverton Rural

PART II - ITEMS WHICH MAY BE TAKEN IN THE ABSENCE OF THE PRESS AND PUBLIC

Nil

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Membership
Councillors P Sanders (Chair), T Inch (Vice-Chair), J Brook, I Chubb, P Colthorpe, A Dewhurst, R Edgell, M Shaw and C Whitton

Declaration of Interests
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HIW/17/80

Public Rights of Way Committee
9 November 2017

Definitive Map Review Parish of Buckerell (Part 1)

Report of the Chief Officer for Highways, Infrastructure 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 no Modification Orders be made in respect of:

- (a) Proposal 2 for amending the definitive line of Footpath No. 4 in Buckerell parish, but access is made available to use on the route as recorded; and**
- (b) Proposal 3 for the claimed addition of a footpath from the road east of Buckerell village and through the Deer Park Hotel grounds to the road near Weston village.**

1. Summary

This report examines two of three proposals arising out of the Definitive Map Review in the parish of Buckerell in East Devon district. It concerns the investigation of whether a public footpath was recorded on the wrong line of a path, shown on older maps crossing a field in the parish, and a claim to add a footpath based on historical evidence.

2. Introduction

The original survey by Buckerell Parish Meeting in May 1951 under s.27 of the National Parks and Access to the Countryside Act of 1949 produced a map and details of 19 footpaths submitted to the County Council. Comments were added on behalf of Honiton Rural District Council in August 1951. Fourteen of the routes surveyed were said to be private and not public, or not used by the public and not maintained by the Parish Meeting. Some of them were also described as service or accommodation paths and for farm use only, or not used and no longer required, suggesting that those should be withdrawn. The remaining five paths were all said to be used by the public, with four of them continuing on routes proposed for recording in the adjoining parishes of Awliscombe, Gittisham and Feniton. Those five footpaths were recorded for consultations at the Draft Map stage in 1957 and included on the Provisional Map. All of them were recorded on the Definitive Map, considered as having existed from the relevant date of 1 September 1957.

The reviews of the Definitive Map under s.33 of the 1949 Act, which commenced in the 1960s and 1970s but were never completed, produced suggestions on behalf of the Parish Council in 1978 proposing the deletion of Footpaths 4 and 15. No additional supporting evidence was submitted and the proposed deletion of both footpaths was not followed up. The main reason put forward for deleting Footpath No. 15 was the lack of a replacement footbridge over the River Otter for it to cross the parish boundary onto its continuation as Footpath No. 2 in Gittisham. Replacement of the bridge was considered then to be a waste of money as the footpath was said not to be used, but the footbridge is recorded as having been replaced 10 years later.

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A Public Path Order extinguishing part of Footpath No. 15 at its northern end was made in 1983, although confirmation of the Order was withdrawn and a second Extinguishment Order for the same section of the footpath was made in 1989. That Order was confirmed in 1990, but it left the footpath without a connection to a public highway and ending at Orchard's Lane in Buckerell village, which was not then recorded as a public road or a public right of way.

Following a report to the County Council's Amenities and Countryside Committee in December 1988 on a claim by Buckerell Parish Council, a Modification Order was made in 1990 to record Orchard's Lane as a public footpath. It was objected to on the basis that the lane should have been recorded with higher rights and the Order was confirmed by an Inspector in 1991 after a public inquiry, modified to record it as Byway Open to All Traffic (BOAT) No. 20.

In January 1992, one of the objectors submitted formal applications to upgrade both the recorded Footpath No. 15 from Orchard's Lane to the River Otter and its continuation as Footpath No. 2 in Gittisham leading to the A30 as BOATs. There was no supporting documentary evidence with the applications, but the applicant referred to the evidence that had been considered at the public inquiry in 1990 resulting in the upgrade of Orchard's Lane. That evidence was considered to apply more widely to the rest of both routes recorded as footpaths leading to and beyond the River Otter to the A30.

Separate reports on the applications were presented to the then Public Rights of Way Sub-Committee in June 1992. The report for Footpath No. 15 recommended that part of the route should be upgraded to BOAT. That was for a short section of about 45 metres from the end of Orchard's Lane recorded with that status as a result of the public inquiry, but only to connect with the end of Cabbage Lane, a cul-de-sac section of maintainable highway running between properties from the minor public road in the village. The evidence was considered not sufficient for upgrading the rest of Footpath No. 15 as far as the River Otter, or its continuation as Footpath No. 2 in Gittisham to the A30, which was recommended in the separate report.

The minutes of the meeting record a resolution to upgrade only that part of the footpath to BOAT, with no action to be taken for the rest of the footpath, although no Order was made. Accordingly, a Modification Order will need to be made as a result of this review in the parish on the basis of the formal resolution made in 1992 for upgrading that short section of the footpath. Copies of the report and minutes from that Sub-Committee meeting are included in the backing papers for this report. A Public Path Order diverting part of the route of Footpath No. 2 in Gittisham from the footbridge over the River Otter leading to the A30 was made around the same time, which was confirmed in 1994.

After improvements had been proposed for the A30, other claims were also made in 1992 that several routes in Buckerell and Gittisham parishes not recorded on the Definitive Map could be affected by alterations with the construction of the line of a new road in the area as proposed then. It was claimed that the routes should be investigated for recording as public rights of way in advance of the alterations. A report was presented to a meeting of the Public Rights of Way Sub-Committee in September 1992 on the investigation of historical evidence for several routes in both parishes, some of them crossing the existing A30 and the line of the new road as proposed. A copy of that report is also included in the backing papers for this report.

The recommendation in the report noted that the proposed alterations to the A30 in the area of both parishes did not appear to affect any potentially valid claims for additions to the Definitive Map. The conclusions from investigation of the historical evidence for the routes were that for several of them, some crossing the old A30 and the proposed line of the new road, it was not considered to provide the basis for valid proposals or claims. Three of the

routes claimed were considered then to have a prima facie case for further investigation as part of the review for Buckerell and Gittisham parishes. One of them is included in the Appendix to this report as Proposal 3 and others will be considered in subsequent reports for both parishes.

The following additional Orders from diversions to footpaths have been made and will require the making of a Legal Event Modification Order for recording on a revised Definitive Map in due course:

- (a) Highways Act 1980, East Devon District Council, (Footpath No. 15 Buckerell), Public Path Extinguishment Order 1989; and
- (b) Highways Act 1980, Devon County Council (Footpath Nos. 18, Buckerell & 7, Feniton), Public Path Diversion Order 2007;

The current number of recorded public rights of way in the parish is five footpaths and one Byway Open to All Traffic. Some of the informal claims made originally on behalf of the Ramblers in 1992, as repeated in February 2017 and including a route crossing from part of the adjoining parish of Gittisham, are being picked up for further consideration as proposals in the current review process for both parishes.

3. Background

The current Review was started with a public meeting in November 2016. There was further correspondence with the Parish Council, when no further proposals were put forward to add to those from the claims made in 1992.

4. Proposals

Please refer to the Appendix to this report.

5. Consultations

General consultations on the applications were carried out in May 2017 with the following results:

County Councillor Philip Twiss	-	supports Proposal 2, but not the claims for the other proposals;
East Devon District Council	-	no comment;
Buckerell Parish Council	-	support the landowner's views on Proposal 2, but not the claims for the other proposals;
Country Land and Business Association	-	no comment;
National Farmers' Union	-	no comment;
ACU/TRF	-	no comment;
British Horse Society	-	no comment;
Cyclists' Touring Club	-	no comment;
Ramblers	-	no view on Proposal 2 and support the other proposals from their own claims.

Specific responses, including from the owners of the land affected, are detailed in the Appendix to this report and included in the background papers.

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6. 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.

7. Legal Considerations

The implications/consequences of the recommendation have been taken into account in preparing the report.

8. Risk Management Considerations

No risks have been identified.

9. 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.

10. Conclusion

It is recommended that no Modification Orders be made in respect of Proposals 2 and 3 in Buckerell parish, as the evidence is considered insufficient to meet the requirements of the legislation. Details concerning the recommendations are discussed in the Appendix to this report. The remaining proposal for other routes claimed originally in 1992 crossing the parish boundary from Gittisham into adjoining parts of Buckerell, will be included in a further report to complete the review process in the parish.

11. Reasons for Recommendations

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

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Feniton & Honiton

Local Government Act 1972: List of Background Papers

Contact for enquiries: Nick Steenman-Clark

Room No: ABG Lucombe House

Tel No: (01392) 382856

Background Paper	Date	File Ref.
Correspondence File	2008 to date	NSC/DMR/BUCK

ns111017pra
sc/cr/DMR Parish of Buckerell part 1 04 261017

Basis of Claims

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.

The Wildlife and Countryside Act 1981, Section 53 (3)(c) enables the Definitive Map and Statement 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; and
- (iii) that 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 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.

Common Law presumes that a public right of way subsists if, at some time in the past, the landowner dedicated the way to the public. That can be either expressly, with evidence of the dedication having since been lost, or by implication in having not objected to the use of the way by the public, the landowner is presumed to have acquiesced, with the public having accepted that dedication by continuing to use it.

Agenda Item 5

1. **Proposal 2: Proposed amendment of Footpath No. 4, by correction of the recorded line from between points F–G to points F–H. shown on drawing number HIW/PROW/17/022**

Recommendation: It is recommended that no Modification Order be made in respect of Buckerell Proposal 2 for amending the recorded line of Footpath No. 4, but access is made available to use on the definitive route.

1.1 Description

- 1.1.1 The recorded line of the route for Footpath No. 4 starts from the minor road leading into Buckerell village, opposite the entrance to Treaslake Farm near a bridge over a stream (point G). It runs from a hedge in the corner of a field where there is an old overgrown gate, generally northwestwards across the field. Current access onto the footpath, though, is from just over 50 metres further along the road opposite the entrance to Glebe Farm, with a stile alongside a field gate, from where the path is signed (point H).
- 1.1.2 The line of the route used from the stile crosses the field to meet the recorded definitive line at a field gate in a hedge, with a stile alongside it (point F). From there, the route used follows the recorded line turning generally westwards across a field to a stile in the hedge alongside a minor road leading northwards from Buckerell village, opposite a row of houses near Splatthayes and the entrance to Jenirens Farm.

1.2 The Definitive Map process

1.2.1 Parish survey and map

The route was included in the survey of paths on behalf of Buckerell Parish Meeting in May 1951 to put forward for recording as public rights of way on the Definitive Map. It was surveyed as path No. 4 "... leading from the Honiton road by Treaslake to Splatts". The grounds for believing it to be public were noted as "Always used by the public to get from Glebe to Curscombe", which is across the parish boundary in Feniton.

- 1.2.2 The route identified continued on Footpath No. 18 in Buckerell, crossing fields to the parish boundary and onto Footpath No. 7 in Feniton. It originally led to the road near Curscombe Farm but diverted later to a point further away along the road. Those footpaths were also included from the respective Parish surveys at the Draft and Provisional map stages that led to them all being recorded on the Definitive Map.

- 1.2.3 The map used for the Buckerell Parish Meeting's survey shows the line of path No. 4 drawn from the corner of the field, which went on to be as it was recorded on the Definitive Map. It is shown on both maps following the dashed line of a path not labelled 'F.P.' recorded by Ordnance Survey as crossing the field. The line of another path that was labelled 'F.P.' is shown on the map connecting to it on the route now available, used and signed. It suggests that there may have been a discrepancy in the path that was chosen to be recorded as the line of the public footpath from the road.

1.2.4 Definitive Statement

The Definitive Statement describes the route of Footpath No. 4 as starting at the road "30 yards south west of Treaslake" and crossing the fields to end at the road "opposite Splatts". That matches the distance to the start of the footpath as recorded, rather than for the path as used just over 50 metres further along the road.

1.3 Documentary Evidence

1.3.1 Early historical mapping – early 19th century: Ordnance Survey, Surveyors' Drawings 1806-7 and 1st edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827

No lines of paths are shown on any parts of this route crossing the land between the roads from near Treaslake on any of the earlier maps at smaller scales, which do not usually show the lines of footpaths.

1.3.2 Later 19th century historical mapping: Buckerell Tithe Map 1845 & Apportionment 1842; Ordnance Survey 25"/mile late 1880s

Some later maps at larger scales show the route in more detail. The Tithe Map for Buckerell parish dated 1845 does not show the line of any path crossing the fields between the roads from near Treaslake. There is no reference to any path in the Apportionment or in the names of the fields on the route. Tithe Maps do not usually show footpaths and bridleways, so the older records do not help to provide any evidence showing which line of a path on the route may have existed at that time to be recorded later as a public footpath.

1.3.3 The Ordnance Survey 25" to a mile 1st edition map surveyed in 1887 shows the lines of two paths with double-dashed lines from the road crossing the field, with the path on the used route labelled 'F.P.'

The path on the recorded line is not labelled and shown running alongside a hedge, now removed with others to make the five smaller fields on the whole route of the footpath into two large fields. The Revised New Series smaller-scale map for the area from the later 19th century does not show the lines of any paths on the whole route.

1.3.4 Later historical mapping, from early 20th century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2nd edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1st edition map. Copies of the same later maps were used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation. The specific details of the records from that process relating to this route were not consulted as the question is about its line crossing the field and not whether the whole route should have been recorded as a public footpath.

1.3.5 Later Ordnance Survey mapping and Bartholomew's maps

Most smaller scale maps from the earlier 20th century, particularly Ordnance Survey and Bartholomew's map editions, do not show the line of any path on this route. Some later editions between 1937 to 1960, submitted in connection with other claims in the parish, do not show it. Copies from the 1946 and 1960 editions show it only on the route as recorded to the corner of the field, with a dashed line as a path and not marked 'F.P.'

1.3.6 Later Ordnance Survey 'A' edition larger-scale mapping from 1960, around the time that the Definitive Map was being drawn up, does not show the line of any path or track on the route as recorded, but on the line as used and signed now, labelled 'F.P.'

in the second field. The map also shows that the first single field was then larger, with the hedge dividing it into two smaller fields and followed originally by the recorded line having been removed at some time before that date.

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1.3.7 Aerial photography

Earlier aerial photography from 1946–9 shows the fields still divided by hedges then, with worn lines perhaps suggesting use of the footpath route as recorded and no worn line on the route currently used and signed. Later aerial photography between 1999–2000 and 2006–7 shows the two enlarged fields with hedges removed, but does not show the worn lines of any path or track crossing the fields on either route as recorded or as available and used.

1.4 **Definitive Map Reviews and Consultations**

1.4.1 There have been no previous suggestions put forward that this route should be considered for amendment in earlier review processes that were started but not completed. The proposal for the possible amendment of the footpath was included in the consultations on the basis of discrepancies in the documentation for the process of recording it, in relation to the historical mapping and its current availability, signing and use. The responses included views from the landowner affected disagreeing with its amendment as proposed and from Buckerell Parish Council, who supported those views against the proposal.

1.5 **User Evidence**

1.5.1 No supporting evidence of claimed use was considered for this proposal with the route known to have been used on foot as available and signed, but no evidence was submitted for any earlier or more recent use of the line of the route as recorded.

1.6 **Landowner Evidence**

1.6.1 The owner of the land crossed by the whole route of the footpath completed a landowner evidence form in response to the consultations on this proposal. He indicated that he had owned the first field crossed by the lines of the recorded and used routes only since 2010 and the second field crossed by the continuation of the definitive route, as used, since 1985.

1.6.2 He did not dispute the recording of the route as a public footpath, saying that when he bought the first field in 2010 the stile was at point H for the current route being used by walkers. However, he believed that the stile should be at point G for the start of the route as recorded and he wanted it to be moved there for the line of the footpath to remain as shown on the Definitive Map between points F–G. On that basis he was, therefore, objecting to the proposal for an amendment of the line of the route to between points F–H.

1.7 **Discussion**

1.7.1 There has been no formal application or any claim that the line of this recorded footpath route should be amended. It was identified in preparations for the review process as a possible anomaly, with the footpath being accessible, signed and used on a different route from the definitive line of the path as recorded. No record has been found of an official Order for a formal diversion of the footpath, or of any clear indication when the access to it was made available and signed from its current start at point H rather than from its recorded start at point G.

- 1.7.2 The showing of two paths on the ground across the field in the older Ordnance Survey maps used for the process of surveying routes for recording as public rights of way in the parish suggested that it may have been recorded then on the wrong line of an existing path. It was included in the consultations on the basis of a prima facie case for a proposed possible amendment to correct the discrepancy between the recorded and used routes, if the evidence indicated that it had been recorded wrongly.
- 1.7.3 Earlier historical maps, particularly at smaller scales, do not show the line of any path or paths on the route. Some of the later large-scale mapping shows the lines of both paths up to the edition used for the Parish Meeting survey in 1951, one labelled 'F.P.', although that was nearly 50 years old by then and out of date. A later edition from 1960 during the time that the Definitive Map was being drawn up shows only the line of the path as used and signed, but not the other path on the route indicated for the survey and recorded as the definitive line. It also shows that the line of a hedge followed by the path shown on earlier maps had been removed before that date to make a larger field, which aerial photography records as still there in the later 1940s.
- 1.7.4 However, two later small-scale map editions also from around that time show only the path on the recorded line of the definitive route to the corner of the field by the road and no line of a path on the route as used. It means that the historical mapping does not indicate conclusively whether the route of the footpath may have been wrongly recorded on the definitive line, rather than the other path shown in some earlier editions and as now used and signed.
- 1.7.5 The Parish Meeting survey of the path in 1951 described it as leading from the road "... by Treaslake ...", which is nearer to the start of the recorded definitive route as shown on the survey map, although also indicating that it was always used by the public to get "... from Glebe ...", which is opposite the start of the used path. No record has been found of what information was used to put together the Definitive Statement, which describes the footpath starting from the road "... 30 yards south west of Treaslake ...". That distance corresponds more accurately with the start of the definitive route, where there are the remains of an old gate in the hedge, rather than the start of the route as signed and used with a stile next to another gate into the same field just over 50 metres further down the road.
- 1.7.6 No detailed record has been found of how or when the decision was made to put in the stile and a signpost at that location. Parish Council minutes record that the gap in the hedge at the Treaslake end of Footpath No. 4 was reported in September 1988 to be overgrown. The landowner then did not remember any stiles but said that there may have been bars in the hedge, agreeing to have stiles and signs provided. The line of the path was said not to be defined, with the field boundary hedges reported to have been removed and the fields having been ploughed.
- 1.7.7 Stiles ordered were reported not to have been delivered by early 1989, but it suggests that one might have been put in on the current line at some time perhaps soon after then, by agreement with the previous landowner and without considering the need for any formal diversion. The current landowner does not agree with the footpath being used and signed on that route, preferring that the recorded definitive line should be made available for the public to use. He indicated that it would also help with improving access for agricultural vehicles into the field using the existing gateway opposite Glebe Farm.

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1.8 Conclusion

- 1.8.1 The combination of the footpath being signed and made available for public use now on an alternative line of a path, which had been shown on older maps to have existed before and up to the time of the Parish Meeting survey, was taken to suggest that there may have been a mistake in recording it on the Definitive Map. However, further consideration of historical mapping with other evidence from details in the process leading to its being recorded and following consultations do not support that suggestion.
- 1.8.2 There was no further evidence in support from local knowledge as a result of the consultations, but views were expressed by the current landowner and on behalf of the Parish Council against any possible proposed amendment. Accordingly, it suggests that the footpath was not recorded wrongly and the recommendation is, therefore, that no Order be made for Buckerell Proposal 2 to amend the recorded line of Footpath No. 4, but access is made available to use on the definitive route.

2. **Proposal 3: Claimed addition of footpath from minor road east of Buckerell village and through the Deer Park Hotel grounds to minor road near Weston village, points I–J shown on drawing number HIW/PROW/17/023**

Recommendation: It is recommended that no Modification Order be made in respect of Buckerell Proposal 3 for the claimed addition of a footpath.

2.1 Description

- 2.1.1 The route for this claim starts at the minor road leading to Buckerell village from Weston, south west of Glebe Farm (point I), running southeastwards initially through what is now the garden between houses and continuing across fields. It turns generally eastwards to continue through the grounds of the Deer Park Hotel and fields of Deer Park Farm, then further across fields and through a gateway to end at the entrance to Westcroft (point J), on the same minor road near Weston village.

2.2 The Definitive Map process

- 2.2.1 Part of this route as claimed was included in the survey of paths on behalf of Buckerell Parish Meeting in 1951 to put forward for recording as a public right of way. It was with others on the Deer Park estate, leading to Oakfield House and Nod Lodge that were all noted as being private, so were not included at the Draft and Provisional map stages for recording on the Definitive Map.

2.3 Documentary Evidence

- 2.3.1 Early historical documents: late 18th century – Quarter Sessions records and map 1797

The claim by the Ramblers for this route is based mainly on Quarter Sessions documents with a map from near the end of the 18th century. They were in connection with an Order for a diversion proposed in 1797 on parts of the route as claimed now crossing what was then the Deer Park estate. The documents were considered initially for the report to the Public Rights of Way Sub-Committee in 1992 on the possible effects of proposed improvements to the A30 near Honiton on unrecorded routes, although indicating that they would not affect this route.

- 2.3.2 The report considered then that a claim based on those documents appeared to be better founded than others investigated at the same time. However, it advised that the exact route on the map should be checked before making any formal application as what was shown differed in several places from the claim as put forward then. This repeat of the claim informally by the Ramblers is based on copies of the documents and map, with an additional transcript of the Order for the diversion as proposed and a copy of a later Ordnance Survey map showing the whole route as claimed now. That includes parts of the old and proposed new paths through Deer Park shown on the 1797 map with its continuation, for an amendment to the original informal claim and with additional reference to an attached copy of the 1992 report.
- 2.3.3 The Quarter Sessions documents are an Order dated the 18th of September 1797 for a diversion proposed for parts of a footpath, signed and sealed by two Justices of the Peace, with the consent of the landowner also signed and sealed, and a plan of the “New proposed Foot Paths leading thro’ the Barton of Deer Park”. The plan was noted as having been “inrolled” on the 3rd October for the Michaelmas Sessions of 1797.
- 2.3.4 The Order reports that the Justices had viewed part of the footpath in Deer Park at a Special Sessions and found that it “... may be diverted and turned so as to make the same more commodious to the public ...” and “... a course proposed for the new Footpath in lieu thereof ...”. It describes the lengths of the old and new sections of path, referring to the annexed plan and the consent of the landowner, recording that they “... do hereby order that the said Footpath be diverted and turned through the Lands aforesaid”.
- 2.3.5 The plan is dated the 16th of September and is described by its surveyors as relating to the “New proposed Foot Paths”, having measured and surveyed the original paths and “... also measured and laid out on this Plan the Out Line of a proposed New Foot Path in lieu of either of the former”. The written consent of the landowner is signed and sealed, dated the same as the Order, referring to the footpath as “... intended to be diverted and turned ...”, agreeing to the “... making and continuing such new Footpath through my said Lands”.
- 2.3.6 The plan shows fields on the Deer Park estate and parts of adjoining lands with the names of their owners, showing the lines of roads and tracks with paths labelled to indicate the sections of the old routes and the proposed new routes. The sections of road are as existing now, coloured ochre and labelled as from Buckerell, to Awliscombe and to Honiton. Access tracks from the road to and beyond the house at Deer Park are shown in the same way as the roads.
- 2.3.7 The lines of the paths are shown mainly with double-dashed lines and coloured ochre, labelled as “Old Foot Path” on parts of the claimed route and on another connecting route from the road nearby crossing other fields that is not included in this claim. Parts of the path leading to the Deer Park house and on the access track beyond it are labelled as “Old Path claimed”. A path is shown partly continuing into land immediately beyond the Deer Park fields as “To Weston Village &c.”, but with no detail of field boundaries or the route of any further continuation. The routes for the proposed diversion around the house are coloured red and labelled “New Path”, “Proposed New Path” or “Proposed New Foot Path”.

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2.3.8 Other Quarter Sessions records: Sessions Order Books 1792–1802, 1802–12 and 1812–18

As noted on the plan, the Quarter Sessions Order Book including the Michaelmas General Sessions of 1797, held at Exeter Castle on the 3rd October, records that the Order for diverting “a road in Buckerell” was certified as having been “returned to and inrolled in this Court pursuant to the Act of Parliament”. The relevant Act referred to for the process then of diverting or stopping-up highways, which included footpaths, was an earlier equivalent of the Highways Act from 1773 (13 Geo III c.78).

2.3.9 Provisions under the Act for such diversions then were that, from a viewing by two Justices of the route proposed to be diverted and the new route, and with the consent of the landowner in writing, an Order made by them for the diversion to take place was lawful. Further provisions allowed anyone “injured or aggrieved” by such an Order to make a complaint, giving 10 days’ notice in writing of such an Appeal, to the next Sessions or the following one if there was not sufficient time for that notice.

2.3.10 The Court was required to hear and determine such an Appeal, if made and if none was made it could confirm the Order. That would be considered as:

“binding and conclusive to all Persons whomsoever; and the new Highway, Bridleway or Footway, so to be appropriated and set out, shall be, and for ever after continue a Publick Highway, Bridleway or Footway, to all Intents and Purposes whatsoever”.

2.3.11 However, further to that, no “Stoppage of such Footway” could be made until:

“such new Highways, Bridleway or Footway shall be completed and put into good Condition and Repair”, and so Certified by Two Justices of the Peace, upon View thereof; which Certificate shall be returned to the Clerk of the Peace, and by him inrolled amongst the Records of the said Court of Quarter Sessions.”

It would only be: “from and after such Certificate, such old Highways, Bridleway or Footway shall and may be stopped up”, recording as well that the land and soil had been made the property of the landowner.

2.3.12 Following enrolment of this Order, with the plan and the landowner’s consent, no record has been found in the Quarter Sessions Order Books soon after that date or later of any Appeal against it that would need to have been considered at a subsequent Sessions. In addition and significantly, no recorded entries have been found either for any enrolment at a later Sessions of a Certificate by Justices for the completion of putting the new routes for a diversion of the footpath into good condition and repair, or stopping up the old ones, to indicate that as a result the Court had subsequently confirmed the Order for diverting it.

2.3.13 Early 19th century – Ordnance Survey, Surveyors’ Drawings 1806-7 and 1st edition 1”/mile map 1809 and later (Old Series); Greenwood’s map 1827; map of the Deer Park estate, Buckerell 1837

Most parts of this claimed route are not shown crossing the land between the road near Weston and Buckerell villages on any of the earlier maps at smaller scales, which do not usually show the lines of footpaths. Some parts of the sections of the access tracks leading to the house on the Deer Park estate are shown as on the 1797 map.

- 2.3.14 A map of the Deer Park estate from 1837 does not show any paths on the lines of the old or proposed diversion routes from 1797. It shows only the solid lines of tracks and dashed lines on parts of what had been proposed 40 years earlier for the new diverted routes to follow along them. A track across the main field connects to another entrance track to Nod and Oakfield House from the road to Weston village, labelled 'to Honiton', as drives to Deer Park House crossing the lawn and parkland.
- 2.3.15 Later 19th century historical mapping: Buckerell Tithe Map 1845 & Apportionment 1842; Conveyance of land for School 1850; Ordnance Survey 25"/mile late 1880s
Some later maps at larger scales show the claimed route, or parts of it, in more detail. The Tithe Map for Buckerell parish dated 1845 shows the Deer Park access tracks, but does not show the line of any paths crossing the fields between the road near Weston and Buckerell villages. There is no specific reference in the Apportionment to any path in the names and descriptions of the fields on the claimed route.
- 2.3.16 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, with no lines of paths or unenclosed tracks shown crossing fields in other parts of the parish. A conveyance from 1850 of land on the Deer Park estate in Higher Broad Park, identified from the Tithe Map, was made under legislation from 1841 to provide a site for the school. The conveyance indicated that the buildings had already been built before then, but does not include any reference to the land being subject to a public right of way at that time. It refers to including "all Easements" belonging to or connected with the land for the school, which are likely to have been only for private rights of access rather than any wider public rights.
- 2.3.17 The Tithe Map records, with other maps and documents from the earlier 19th century do not, therefore, provide any supporting evidence that the whole of the claimed route may have existed then to have been considered as a public footpath.
- 2.3.18 The Ordnance Survey 25" to a mile 1st edition map surveyed in 1887–8 shows sections of a path with double-dashed lines labelled 'F.P.' following alongside hedges and crossing fields on parts of the route as claimed. From its start on the road at point I, it is shown passing between buildings labelled as a school. Parts of it crossing the Deer Park estate are shown only on parts of the old route for the 1797 diversion and not on the proposed new route, although showing the lines of the access tracks or drives that parts of it were proposed then to follow. The main access track is shown continuing to the house from the road passing the buildings of Deer Park Farm.
- 2.3.19 Other parts of what were considered as the old footpaths in 1797 are not shown, including the connecting route crossing fields from further along the road not in this claim. The lines of other paths and tracks, some labelled 'F.P.', are shown in the grounds near the Deer Park house, including a connection to what is now the main access track to the hotel from the road near Weston village passing Nod Lodge. The continuation on the route as claimed is shown passing what is now the site of the former Oakfield House and crossing fields to the same road at point J. The Revised New Series smaller-scale map for the area from the later 19th century shows only the sections of access tracks on parts of the claimed route, as in earlier editions, but not the lines of any paths connecting them to form a continuous route as claimed.

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2.3.20 Later historical mapping, from early 20th century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later Ordnance Survey 2nd edition 25" to the mile map revised in 1903 shows the claimed route in the same way as in the 1st edition map. The location of a footbridge labelled 'F.B.' is shown on the section of path from the school across the fields leading to Deer Park where it crosses a stream. No copies from those later maps used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation were submitted with this claim. A copy from one of the maps submitted for another claimed route in the area shows part of it and details from others were obtained from National Archives, with copies from other documents in the process.

2.3.21 The maps show the claimed route to have been included in eight defined and numbered hereditaments, or assessment areas of land, for: the School and Mistress' House (106); Glebe Farm (62); Orchard Farm (84); Deerpark Farm (50); Deerpark (38); Rendels Field (49); the garden and ruins of Oakfield House, (36) and; part of Elmfield Farm (55). Copies of the Field Books for those hereditaments with details of the assessments for the farms were not included with the claim, but were also obtained from National Archives.

2.3.22 They do not record any deductions in respect of Public Rights of Way or User affecting the value of the land crossed by any parts of the route as claimed, or by any parts of the other footpath routes shown on the 1797 Diversion Order plan. The only such deductions include those for Glebe Farm and Treaslake Farm, which are for fields crossed by paths that are now recorded as the nearby public footpaths numbered 4 and 13 in Buckerell, or for land elsewhere in the parish not on this claimed route. No deductions for Public Rights of Way or User that could be connected with any parts of the claimed route were recorded for those hereditaments in the overall Valuation Book for the parish.

2.3.23 Details in the Field Books of 'Charges, Easements and Restrictions' affecting the value of the land on some sections of the route show that parts of it had private rights of way or access for the owners or occupiers of adjoining land, with deductions recorded in the Field Books as 'Easements'. The Finance Act records indicate, therefore, that no parts of the route were considered to carry any public right of way at the time. Some parts of it were recorded as only having additional private rights of way or access for users other than the owners or occupiers, including on paths crossing land or on sections of tracks, which were identified with specific reference to their Ordnance Survey parcel numbers.

2.3.24 Parish and Rural District Council records: early to mid-20th century

Buckerell Parish Meeting minutes from March 1905 include a report by the Chairman about the condition of the "footpath leading from Buckerell village to Deer Park". It was agreed that a Committee should be appointed to examine the condition of the footpath, with the path leading to Curscombe, recorded later as what are now Footpaths 4 and 18. The minutes of a meeting the following November report that a precept was drawn on the Overseers to be paid for work done on repairing "footpaths, bridges, gates, stiles &c", as ordered by the Committee appointed in March but not identifying whether any of those repairs had been on this claimed route.

2.3.25 A Parish meeting was held in November 1933 to provide Honiton Rural District Council with details of "footpaths and public rights of way" in the parish. That will have been in connection with earlier procedures for identifying and recording public rights of way under the Rights of Way Act 1932. Several paths in the parish were

discussed and it was agreed that the Chairman would examine the Ordnance Survey map with the Clerk to the Rural District Council.

- 2.3.26 Six paths were listed, four of which are now those recorded as the public footpaths in the parish, with the path numbered “6. Buckerell to Deerpark”, the first section on the start of the route as claimed. No documents in Rural District Council records have been found from that time including those details. Other Parish Meeting minute entries throughout the period refer to repairs needed on other paths now recorded as public footpaths, particularly for the footbridge over the River Otter.
- 2.3.27 In other matters, it was noted in June 1945 that there was a proposal to close Buckerell Church School at the start of the claimed route. In June 1950, a year before the Parish survey to record public rights of way for the Definitive Map, with further discussions about repairs to the River Otter footbridge and a question about whether the stiles and paths were necessary, it was noted that the path to Deer Park was one of two not recognised by the Parish. It was also recorded that if the old school, probably closed already by that date, was not sold by private treaty it would be put up for auction. The Parish survey the following year did not include that first section of the route as claimed leading to Deer Park.
- 2.3.28 Later Ordnance Survey mapping and Bartholomew’s maps
Most smaller scale maps from the earlier 20th century, particularly Ordnance Survey and Bartholomew’s map editions, do not show the line of any path on this route, but only the access tracks leading to the Deer Park house on parts of it. Most later editions up to 1960, submitted in connection with other claims in the parish, do not show it. Copies from the 1937 and 1946 editions show it only on the start of the route as claimed with a dashed line as a path and not marked ‘F.P.’, leading to the grounds of Deer Park house, but with no continuation further towards the road near Weston shown beyond the access tracks or driveways in the grounds and parkland.
- 2.3.29 Later Ordnance Survey ‘A’ edition larger-scale mapping from 1960, around the time that the Definitive Map was being drawn up, does not show the lines of any paths on parts of the claimed route crossing fields. It shows only the lines of the access tracks and drives leading to what was shown then to be the Deer Park Hotel, with other tracks or paths in the grounds, some of which are on or near parts of the route as claimed.
- 2.3.30 The showing of the claimed route on some early and later maps records its physical existence as paths or parts of tracks at those times until more recently. They do not indicate on their own or support the existence of public rights of way, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889 and by other editions, which may be presumed to apply to earlier and other commercial maps as well. Only the Quarter Sessions documents suggest that some parts of it may have had the reputation of being considered as a public footpath in the later 18th century.
- 2.3.31 Aerial photography
Earlier aerial photography from 1946–9 shows what may be the line of a path leading from the road through the fields towards Deer Park house, with the lines of the access tracks to it crossing the grounds and parkland. No line of any path is shown beyond the Deer Park grounds crossing the fields to the road near Weston. Later editions between 1999–2000 and 2007 show some parts of the Deer Park access tracks, but no worn lines of any path or track crossing the fields connecting to them on the rest of the route as claimed.

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2.4 Definitive Map Reviews and Consultations

- 2.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes that were started but not completed. The claimed footpath was included in the consultations in May 2017 on the basis of the claim made earlier that year. The responses included objections on behalf of the affected landowners, with the Parish Council and local County Councillor, with support only from the Ramblers having made the claim.

2.5 User Evidence

- 2.5.1 No supporting evidence of claimed use was submitted with this claim for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

2.6 Landowner and Rebuttal Evidence

- 2.6.1 The owner of Deer Park Farm on the claimed route responded to the consultations and completed a landowner evidence form. He indicated that the claimed route crossed his land, which had been in his ownership for 50 years and he had always believed that it was not public. He had not seen or been aware of the public using the route, had not required people to ask permission when using it, as the route as claimed was impassable and nobody would attempt it.
- 2.6.2 He had not turned back or stopped anyone from using the claimed route, had not obstructed it and had not put up notices to say that it was not public, or made a Section 31 deposit to show lack of intention to dedicate. He reported that there were no gates on the route which may have been locked. In additional information, he said that it cannot have been used for at least 100 years because of growth in the hedgerows on the route as alleged.
- 2.6.3 He had never known anyone using or attempting to use it, as it was impassable because of the hedgerow growth. With the hedge growth and bank similar 50 years ago, he considered that it must have been there in the 18th century at the time of the 1797 diversion order from the basis for the claim. He noted that the path claimed differed in places from the diversion order and considered that there was no evidence to support the claim for the route. With the Ramblers having the burden of proof, he believed that the standard of proof required was 'beyond reasonable doubt' rather than the 'balance of probabilities'. He also referred to copies of an abstract of title from his deeds dated 1924, with documents from the original conveyances showing various footpaths but not the one claimed.
- 2.6.4 The owners of land affected by another of the claims in Buckerell completed an evidence form relating mainly to that claim, but indicated that they also owned the field crossed by the start of this claimed route leading from the road towards the Deer Park Hotel. Most of the detailed information in response to the questions in the form, but submitted separately, was in relation to the other claim. However, they indicated that they owned the field crossed by this claimed route behind where they live and it had never been used by anyone for access, as it was not visible and not marked on an old map.
- 2.6.5 None of the other owners of land or property on the route completed evidence forms, but several responded to the consultations and a solicitor acting on behalf of some of them submitted a letter in response after seeing details of the evidence supporting the claim. He indicated that his clients opposed the claim strongly and they were

determined to resist it as far as was required, with research into the history and circumstances of the route as alleged. They reserved their rights to make any further detailed submissions.

- 2.6.6 Although requiring further research into the evidence, he commented on what had been submitted in support of the claim, with the 1797 Order suggesting the existence of a footpath at that time that may have been diverted, although with doubt as to whether it was implemented. With the possibility of any further Order with a different outcome, he considered that it would need to be considered alongside all other available evidence.
- 2.6.7 In the other evidence from Ordnance Survey maps, he referred to the general acceptance that being shown on them is no indication of its status but only of its existence on the ground. With the claimed route not shown on some of them, or partly and not for its whole length, he considered it significant that if it really did exist in 1797 and thereafter, it would have been shown on map editions from the 19th century and subsequently.
- 2.6.8 He referred as well to the lack of user evidence adduced in support of the claim, indicating that his clients say that there is no evidence of public use of the claimed route and no indication of the route being used. With the path not considered in the Definitive Map process from the early 1950s, he suggested that if it had been thought to exist in those years it would have been claimed.

2.7 Discussion – Statute and Common Law

2.7.1 Statute (Section 31, Highways Act 1980)

There has been no formal application to record this claimed route as a public footpath, with no challenge to its use and no event for calling any use of it by the public into question such as notices, or any obstruction to prevent its use. No user evidence has been submitted for investigating in connection with any previous claim connected with the parish review process and none has come forward as part of the current review process, including after the consultations.

- 2.7.2 If there had been any formal application, challenge or obstruction, it could be used for investigating in accordance with the test for statutory dedication under Section 31 of the Highways Act 1980, taking into account any evidence of use and of the landowner's lack of intention to dedicate. However, with no evidence of use submitted to support the claimed addition or later, there is none during any 20-year period before the date of the Ramblers' letter with the informal claim, if that did provide a date for calling its use into question, to consider whether any statutory presumption of dedication has arisen from use by the public.
- 2.7.3 With no event or date that can be specified for calling use of the route into question, no formal application and no evidence of use submitted, it can only be considered in relation to a test under common law. That involves historical and documentary evidence submitted with the claim, with other evidence from which any earlier use could be inferred and with reference to landowner evidence.

2.7.4 Common Law

Considering the informal claim in relation to common law requires taking into account the historical documentary evidence submitted and other historic maps and evidence discovered, but without being able to consider any evidence of claimed actual use by the public. The earliest historical evidence is from the 1797 Quarter Sessions records submitted by the Ramblers as the main basis of support for its claim. The plan with

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the Order proposing to divert parts of the paths shown as crossing the Deer Park estate at that time shows the lines of what were considered then to be old footpaths and proposed new paths for their diversion, with other sections and another path not affected.

- 2.7.5 On their own, the records could perhaps be considered as strong prima facie evidence in support of the claim that public rights subsist on the routes shown on the plan, or could be reasonable alleged to subsist either on them all or only the sections proposed to be diverted. The documents include the landowner's signed and sealed consent to the proposed diversion of the paths crossing his land. That could be taken as evidence of his acceptance at that time that they had been dedicated as public for the proposed diversion, which was specified as being to make them "more commodious to the public". However, that could only be for the sections crossing his own land, which is identified specifically as outlined in the plan, labelling the adjoining lands with the names of other landowners. Those lands are crossed by other connecting sections of paths, one not included in the claim and the start of its continuation labelled as being to Weston village.
- 2.7.6 Nothing has been submitted or discovered that could be taken to provide the same level of evidence for acceptance by those landowners of any dedication of those sections as public for the rest of the route as claimed, or for the other path not included in the claim. Further, there is no evidence to show that any continuation of the route to Weston village was on the same line as that claimed from being shown on later maps.
- 2.7.7 Much more significantly, though, the documents as submitted do not themselves provide evidence that all parts of the required procedures for the whole process of diverting the footpath as proposed were completed, as specified by the legislation at that time. The requirements of the equivalent of the Highways Act from 1773 included the Order being enrolled at the Quarter Sessions, which would then consider any appeal against it. If there was no appeal, or if one was made and considered at a subsequent Sessions but dismissed, the Order had to be confirmed, with a Justices' Certificate of completion for the new route and stopping up the old one, both of which were required to be enrolled at the Sessions. That was to complete the process legally and make the new diverted route a public footpath, with the surface of the old route then being exchanged with the Surveyors of Highways and becoming the property of the landowner.
- 2.7.8 The documents submitted are only the Order proposing to divert parts of the path, with a plan and the consent of the landowner. From other evidence discovered and considered, particularly the Quarter Sessions Order Books from that period, they were enrolled at the next meeting of the Sessions, as required. However, no record has been found from the records of subsequent meetings either of any appeal needed to be considered, or of the Certificate required for completion of the procedure to fulfil the requirements of the legislation for the diverted path to be considered as public. The Quarter Sessions Order Books record that other proposed diversions of highways – roads, bridleways and footpaths – in other Devon parishes were enrolled in the same way, but they indicate that appeals were considered and Certificates of completion were enrolled in some cases to show that the requirements of the legislation had been fulfilled.
- 2.7.9 There was no further requirement then for any equivalent of today's wider consultations, with the Orders to be advertised by notices on site, in a local newspaper and fixed to the church door. Those were brought in by a later Highways Act in 1815 and taken forward to be included in the 1835 Highways Act. It means that

the main evidence submitted for the claim, although raising an initial possibility of being strong evidence for dedication and landowner's acceptance that parts of the route were public crossing the then Deer Park estate in 1797, its weight is reduced substantially. On its own, therefore, it cannot be taken as sufficient to reach the evidential threshold of being reasonable to allege that the route as claimed, or even any parts of it shown in the Order, should be recorded as a public footpath. However, there is also no additional weight provided to support it when considered in conjunction with other historical map and documentary evidence discovered.

- 2.7.10 Maps from the first half of the 19th century show only parts of the claimed route as paths or tracks crossing the Deer Park estate and connecting to others leading to it, but not the connecting paths beyond it from Buckerell and to Weston. Later map editions show those connecting paths, marked 'F.P.', leading from Buckerell and to Weston only at larger scales, connected by tracks and paths on the Deer Park estate, although without any indication that any of them could have been taken together to form one continuous route, or that it was considered then to be a public right of way.
- 2.7.11 Finance Act records from the early 20th century indicate that no parts of the route as claimed were considered then to carry public rights, with no deductions in the assessment process for any of the land or fields in hereditaments crossed by it. Some parts of it were recorded specifically as having deductions only for private rights of access, particularly for the section between the Deer Park estate and Weston. Most later maps at smaller scales also show only parts of the claimed route as paths or tracks crossing the Deer Park estate and connecting to others leading to it, but not the connecting paths. Only two editions show the start of the route as claimed with a dashed line as a path and not marked 'F.P.', leading to Deer Park, but with no continuation beyond it to the road near Weston. Parish records from the early 20th century include a reference to the condition of a path from Buckerell to Deer Park being considered with another one now recorded as a public footpath, with subsequent payments for repairs but no clear detail to show that it may have been the subject of any maintenance using public money from the precept.
- 2.7.12 It may have been as shown on the later maps and included in the list of paths to be considered with the Rural District Council for recording under the Rights of Way Act 1932. However, the Parish records also indicate that by 1950, probably after the school had been closed, it was one of two paths reported specifically not to be public. Only part of it was included by the Parish Meeting in its survey the following year for recording public rights of way, but it was noted specifically as being private and did not go forward to the Draft and Provisional map stages for recording on the Definitive Map.
- 2.7.13 In the 2017 consultations, the Clerk to the Parish Council reported that one of Buckerell's oldest residents remembered a footpath from between the Old Barn and the village school, now the site of a house and garden, which went through the fields towards the Deer Park Hotel. She said that it used to have kissing gates and had gradually stopped being used after the school was closed. That may again have been on the line of a path shown in some of the maps from around that time. However, its use could have been only in connection with the school, as there is no evidence for any continuation beyond Deer Park at that time to suggest that it may have been used on the whole route as claimed to Weston village and by the wider public. The land for the school was conveyed by the owner of Deer Park House with all easements, which will have included private rights of access and may have continued to provide a link between them on that basis, but not for any wider public rights or beyond it towards Weston.

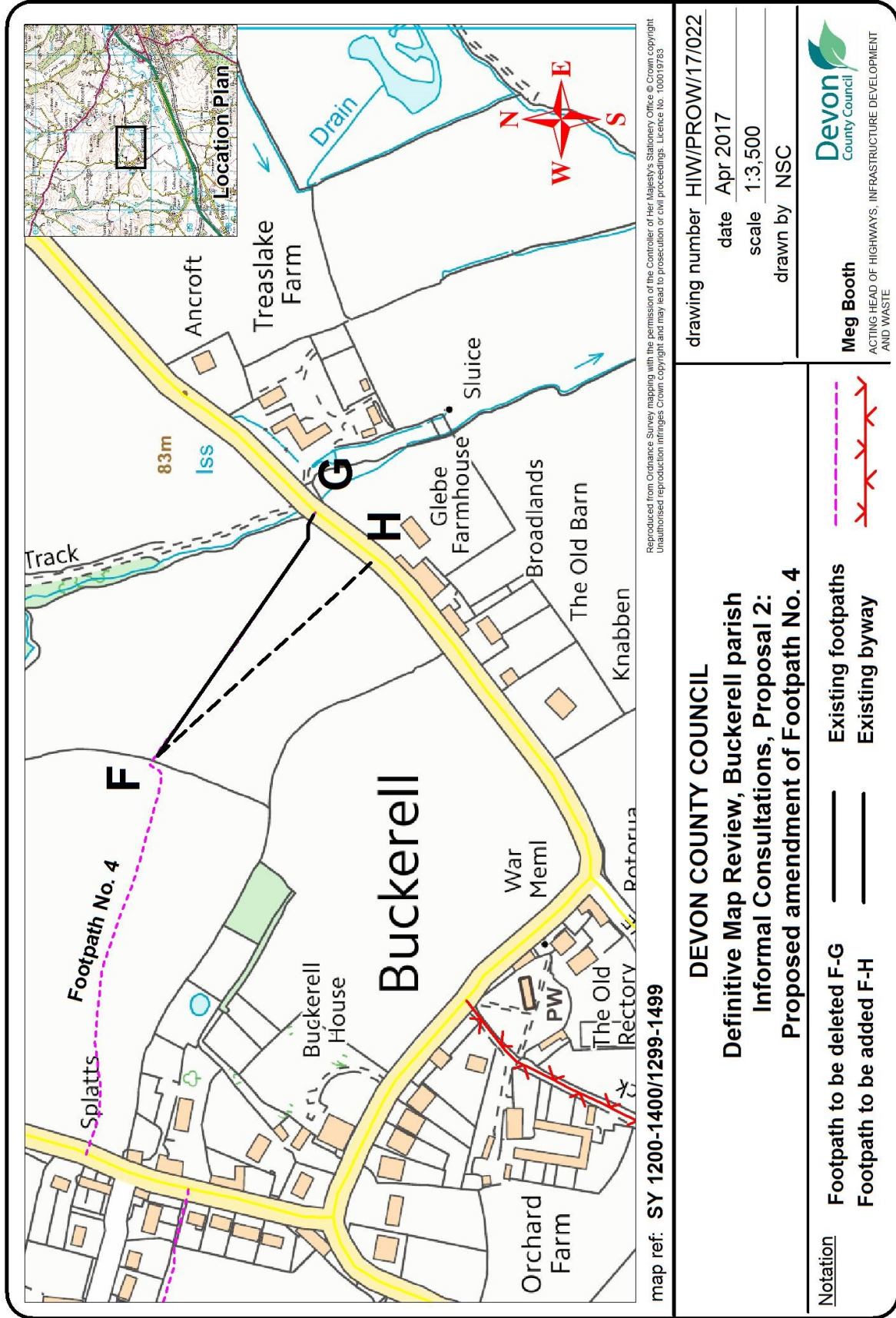
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2.7.14 No other more significant historic maps or references in historical documentary records have been submitted or discovered to add more substantial weight to any suggestion that the route had the reputation of being a public footpath in the past, or more recently. No claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Buckerell Parish Council.

2.7.15 Considering the historical evidence, but without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath, or an inference that it had the reputation of being available and used by the public. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted any such dedication and used it at any time in the past on foot, or have continued to use it on that basis more recently or up to the present.

2.8 Conclusion

2.8.1 From this assessment of the evidence submitted with the claim as made, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support any claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the informal claim made for Buckerell Proposal 3.



map ref: SY 1200-1400/1299-1499

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DEVON COUNTY COUNCIL

**Definitive Map Review, Buckerell parish
Informal Consultations, Proposal 2:
Proposed amendment of Footpath No. 4**

<u>Notation</u>	Footpath to be deleted F-G	Existing footpaths
	Footpath to be added F-H	Existing byway

drawing number HIW/PROW/17/022
 date Apr 2017
 scale 1:3,500
 drawn by NSC

Meg Booth
 ACTING HEAD OF HIGHWAYS, INFRASTRUCTURE DEVELOPMENT
 AND WASTE

HIW/17/81

Public Rights of Way Committee
9 November 2017

Definitive Map Review Parish of Combe Martin North Devon (Part 4)

Report of the Chief Officer for Highways, Infrastructure 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 Modifications Orders be made to modify the Definitive Map and Statement by:

- (a) adding a Restricted Byway between points A-B-C as shown on drawing number HTM/PROW/17/56 (Proposal 17).
- (b) adding a Footpath between points D-E as shown on drawing number HTM/PROW/17/57 (Proposal 18).
- (c) adding a Footpath between points F-G-H as shown on drawing number HTM/PROW/17/58 (Proposal 20).

1. Summary

This report examines a further three proposals from the twenty five that arose from the Definitive Map Review in the parish of Combe Martin in North Devon district.

2. Background

The Background for the Definitive Map Review in the parish of Combe Martin was set out in Committee report HTM/13/14 February 2013.

3. Consultations

The current review began in January 2011 with a special public meeting held in the Town Hall attended by about 50 people.

Public consultations were carried out through October and November 2011 for the twenty five valid proposals that were put forward following the parish meeting. The review and proposals were advertised around the parish, in the North Devon Journal and notices were placed at the ends of each proposal and letters sent to land and property owners.

The responses were as follows:

County Councillor Andrea Davis	-	queried individual routes
North Devon District Council	-	no comment
Combe Martin Parish Council	-	supports proposals
British Horse Society	-	no comment
Byways and Bridleways Trust	-	no comment
Country Land & Business Association	-	no comment
Open Spaces Society	-	no comment
Ramblers' Association	-	no comment
Trail Riders' Fellowship	-	no comment

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Please refer to the appendix to this report.

4. Proposals

There were 25 proposals in the parish. Nine proposals have been the subject of previous reports. A further three proposals (1, 2 and 7) for the addition of footpaths to the Definitive Map and Statement cross land owned by the Parish Council and will be dealt with by means of creation agreements under delegated powers. Two possible diversions will be dealt with using delegated powers and 3 proposals will be dealt with further by agreement with National Trust and as part of the Coastal Access process.

Proposal 17, 18, & 20 are referred to in the Appendix to this report.

The remaining proposals will be the subject of future report(s).

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 preparation 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 Modification Orders be made the add a Restricted Byway in respect of Proposal 17, between points A-B-C as shown on drawing number HIWPROW/17/56 and to add footpaths in respect of Proposals 18 and 20, as shown between points D-E and F-G-H on drawing numbers HIWPROW/17/57 and HIWPROW/17/58.

Details concerning the recommendations are discussed in the Appendix to this report.

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 District area.

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Combe Martin Rural

Local Government Act 1972: List of Background Papers

Contact for enquiries: Alison Smith

Room No: ABG Lucombe House, County Hall, Topsham Road, Exeter.

Tel No: 01392 383370

Background Paper	Date	File Ref.
Correspondence Files	2011- date	AS/DMR/COMBE MARTIN

as111017pra
sc/cr/DMR parish combe martin part 4
03 301017

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Appendix I To HIW/17/81

A. Basis of Claim

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;

The Wildlife and Countryside Act 1981, Section 53 (2) (b) enables the surveying authority to make an order to modify the Definitive Map. The procedure is set out under WCA 1981 Schedule 15;

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;

Common Law presumes that a public right of way subsists if, at some time in the past, the landowner dedicated the way to the public. That can be either expressly, with evidence of the dedication having since been lost, or by implication in having not objected to the use of the way by the public, the landowner is presumed to have acquiesced, with the public having accepted that dedication by continuing to use it.

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.

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 Natural Environment and Rural Communities Act 2006 (NERC Act) extinguished the rights for mechanically propelled vehicles to use public rights of way 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 17: Claimed addition of bridleway between points A-B-C as shown on drawing number HTM/PROW/17/56**

Recommendation: It is recommended that a Modification Order be made to add a Restricted Byway between points A-B-C.

1.1 **Background**

1.1.1 During the course of the current Definitive Map Review, Proposal 17 was put forward by the Parish Council and members of the public as a result of the Definitive Map Review meeting in Combe Martin. This is the fifth part of the Parish Review for Combe Martin, for the background and introduction please see the previous report HTM/13/14.

1.2 **Description of the Route**

The claimed route starts at the end of the minor county road by Umber Lodge, (point A) it is known as both Pigs Lane and Kiln Lane and travels in a southerly direction between the disused Berry's Quarry, Hoyle's Quarry and Lock's & Tracey Down Quarries, turning west at point B and the sharply northwest and steeply up to meet the county road at point C. The track has a hard-stoned surface with a grass and mud layer.

1.3 **Documentary Evidence**

1.3.1 Turnpike Road Rectory Road was improved as a Turnpike Road from Barnstaple to Combe Martin in 1838. Proposal 17 joins with this highway at point C.

1.3.2 Tithe Map and Apportionments 1842

From point C on the Turnpike road, the lane was shown leading down to land-locked fields by the River Umber and terminating there. No bridge or link was shown across the River Umber. On the north side of the river Pigs Lane is shown giving access to land-locked fields on that side of the river. These two lanes were not linked. The fields bounding these lanes are described in the apportionments as orchards, meadows and arable fields, with a small quarry and waste.

1.3.3 Quarrying in Combe Martin

From the Mid-19th century quarrying for limestone was a huge industry in Combe Martin. Lime being an important commodity for Combe Martin's economy, it was used commercially to reduce the acidity of the soils to increase agricultural productivity in the surrounding area.

1.3.4 Berry's Quarry was worked until 1929. Lock's and Tracy Quarry were active from the 1850's. Pigs Lane became known as Kiln Lane as a result of the number of lime kilns in the surrounding area. The lime was burnt using charcoal and low-grade coal brought straight in from Wales.

1.3.5 The bridge and track over the River Umber linked the two parts of the historic lanes and was built to give access from the quarries to Combe Martin and its port.

1.3.6 Ordnance Survey Mapping

1890s 1st Edition OS map 25" to 1 mile: shows the lane annotated as Pigs Lane from Point A to C and the surrounding land showing the extensive quarries workings that bounded the lane. A bridge is shown crossing the Umber and the two tracks are now shown as linked.

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- 1.3.7 1904-1906 2nd Edition OS map 25" to 1 mile Pigs lane is shown in the same way as the previous map.
- 1.3.8 All subsequent OS maps show the claimed route in the same way, with the modern maps showing the route as Kiln Lane.
- 1.3.9 Historic England's Listed Structure
The Tunnel on the south side of Kiln Lane that leads to Berry Quarry is a Grade 2 listed structure. Historic England's listing gives insight into the fact that quarrying of limestone and lime burning were major industries in nineteenth century Combe Martin, the tunnel being an unusual survivor of that industry.
- 1.3.10 Highway Handover Book
The Highway Handover Book records show the short length of Pig Lane as a county road, from A399 to the south side of culvert 141 yards from Public House to Woodbine Cottages (0.08 of a mile). The proposed route continues from the end of this lane.

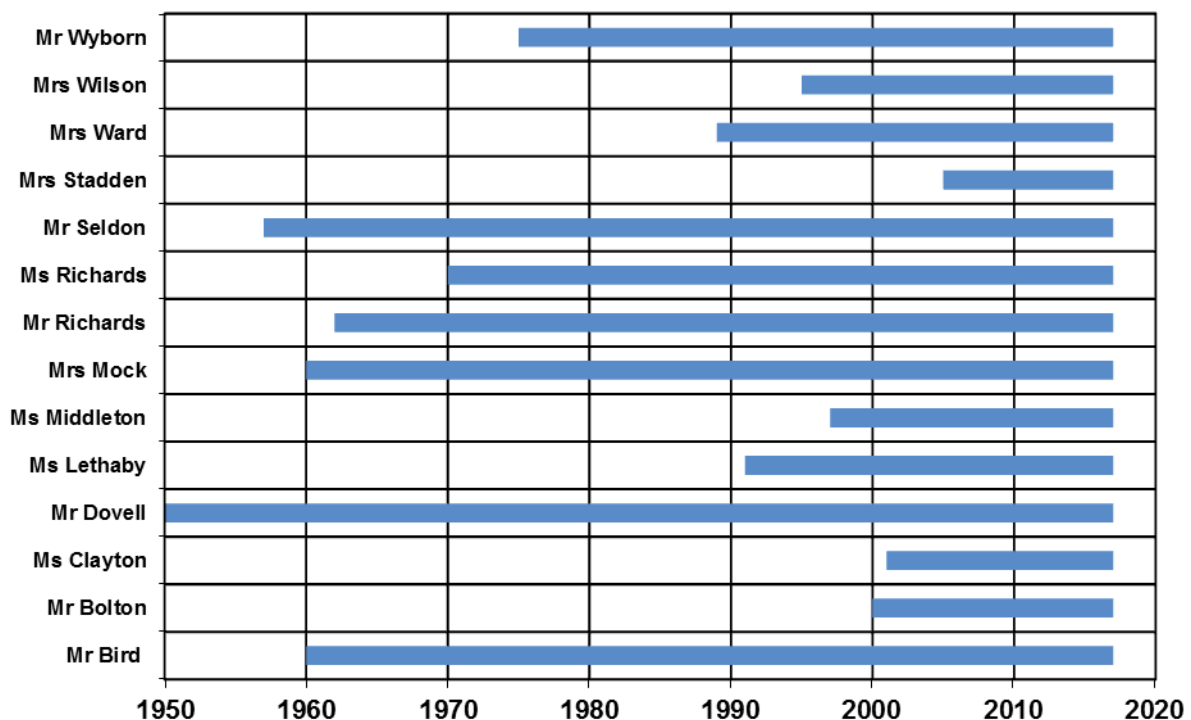
1.4 User Evidence

- 1.4.1 Fourteen user evidence forms have identified Proposal 17, Kiln Lane, as part of recreational routes around this area. Six of the users have ridden a horse and walked along the route, four have ridden, two have just walked it and two people have also used it in a vehicle or on a motor bike.
- 1.4.2 None of the users have asked for or been given permission to use the route, believing it to be a bridleway or byway open to all traffic. No users reported being stopped or turned back and none have seen any signs saying it is not a right of way. The users who have filled in forms are probably a small sample of the public who are, and have been using the route without let or hindrance. The user evidence follows:
- 1.4.3 Mr N Bird has walked the route since the 1960's twice a year.
- 1.4.4 Mr D Bolton believes the route is a byway open to all traffic; he has used it 50 times a year since 2000 and has not been stopped or turned back.
- 1.4.5 Ms V Clayton has ridden the route as part of a circular ride 3 to 4 times a year, since 2001, she has also walked the route and has seen other people using it.
- 1.4.6 Mr E Dovell has used the route on foot and horseback since 1950, he believes it has always been used as a byway, and that many people use it as a bridleway.
- 1.4.7 Ms C Lethaby has ridden the route since 1991 'lots of times' a year. She says the route is used by everyone.
- 1.4.8 Ms L Middleton has ridden the route once or twice a week since 1997; she believes it is a public path because it is in constant use.
- 1.4.9 Mrs B Mock thinks the route is a byway open to all traffic and has used it twice a year since 1960 on foot for pleasure. She says the route has been used for years.
- 1.4.10 Mr H Richards thinks the route is a byway open to all traffic and has been walking and riding the route since the 1960's about 50 times a year. He says the route has been used by generations of his family.

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- 1.4.11 Ms M Richards has ridden and walked the route for pleasure about 50 times a year since 1970. She thinks it a public byway because it has been used by members of her family for 110 years.
- 1.4.12 Mr S Seldon lived opposite the lane from 1957 and 1979 he used the route 100's of times a year, on foot, bicycle, motorbike and in a car. As a small child his mother took him along route. He took his own children there for walks and bike rides between 1986 and 1998 and has continued to use the route.
- 1.4.13 Mrs AJ Stadden has ridden the route 2 to 3 times a week since 2005; she says the lane has been much used over the years.
- 1.4.14 Ms S Ward used the route on horseback 2 to 3 times a week since 1989, she says many other people use the route.
- 1.4.15 Mrs S Wilson has walked and ridden the route since 1995 as says it has always been used.
- 1.4.16 Mr P Wyborn thinks the route is a byway open to all traffic and has used it all his life (born 1970), walking riding horses and later in a vehicle for pleasure and on his way to work, he thinks of it as a public road.
- 1.4.17 Combe Martin Parish Council supports the proposal and gathered the evidence forms.

User Evidence Chart Proposal 17



1.5 Adjoining property holder's evidence

- 1.5.1 During the public consultation prominent notices were displayed at each end of the route and notices and letters also sent to adjoining properties.

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- 1.5.2 No one claimed ownership of the lane and no response has been received from anyone giving the opinion that this route was not a public way. The lane is used for access to some properties; however it is not recorded at the Land Registry.
- 1.5.3 The presumption of *ad medium filum* means that when land abuts a highway (or private right of way), the boundary of that land is presumed to extend to the middle of that right of way (or highway), unless it can be shown otherwise, and it may therefore mean that all the adjoining landowners may own the lane A-C, and have the power to dedicate.

1.6 Rebuttal Evidence

- 1.6.1 There is no rebuttal evidence in respect of this proposal. None of the users have been stopped from using the way. No signs have been erected to say, 'No Public Right of Way', in fact there are no signs at all. The path has not been blocked and is used by the public has been on a weekly basis. Use of the path by the public appears to be accepted by the adjoining landowners and acknowledged by the parish council.

1.7 Discussion

- 1.7.1 Proposal 17 is supported by fourteen user evidence forms, from local people using the route as part of recreational routes on horseback and foot and in a vehicle. The users give direct evidence from 1950 and indirect family evidence for more than 100 years. Two users have also used the route in a vehicle or on a motor bike; six of the users believe Kiln Lane is a byway, because it has always been used as such. Two people have used it with vehicles and the four others have used it on horseback and on foot. This spread of use would have fitted the description of a Byway Open to All Traffic, being a route that is mainly used on foot and horseback, but has been used by vehicles, however the right to use an unrecorded way in a mechanically propelled vehicle was extinguished by the NERC Act, therefore this route could be recorded as a Restricted Byway, which acknowledges the public's historical rights to use the route, but excludes the public from using a motorised vehicle along the way.
- 1.7.2 Proposal 17 is not seeking to change the any rights of the public to use the way, only to have those rights recorded on the Definitive Map.
- 1.7.3 The public's rights have not apparently been challenged in at least seventy years, and the route has been accepted, as demonstrated by use on foot, horse and vehicles since at least 1950.
- 1.7.4 The historical maps show a through route has been available for use since at least the 1890's and probably since the 1850's when the quarries opened and the roads linked.
- 1.7.5 As there has been no calling into question of use made of the route by walkers, riders and drivers, the proposed addition cannot be considered for presumed dedication under Statute. It is therefore considered under Common Law. At Common Law use does not raise a presumption of an intention to dedicate, but merely evidence of such an intention. Thus, the onus of proof lies on a person claiming a way as public to show that the facts, taken as a whole, were such that the rightful inference to be drawn from them was that there was an intention to dedicate the way as public. Each case turns on whether the facts indicated this intention. No minimum period is required to be shown. In some cases, because of the particular circumstances (e.g. heavy use) relatively low periods can be accepted as sufficient.
- 1.7.6 With regard to the meaning of the words 'as of right' the common law adopted the Roman law principle that for long usage to give rise to a presumption of dedication, the

user had to be *nec vi, nec clam, nec precario*: without force, without secrecy and without permission, 'as of right'.

1.7.7 The facts are, when taken as a whole, that frequent use of this route by numerous people on foot and horseback and previously in a vehicle has been without challenge, interruption, force, secrecy or permission and show rightful inference to be drawn from this use: that there was an intention to dedicate the way as public and that the public's continued use is evidence of acceptance of that dedication at Common Law.

1.7.8 The current adjoining property owners have made no comment or objection.

1.8 Conclusion

1.8.1 The evidence when taken as a whole is considered sufficient to show that a restricted byway subsists, or is reasonably alleged to subsist, at Common Law over the proposed route. It is therefore recommended that a Modification Order be made to add a Restricted Byway between points A-B-C as shown on drawing number **HTM/PROW/17/56**, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

2. **Proposal 18 Claimed addition of footpath between points D-E as shown on drawing number HTM/PROW/17/57**

Recommendation: It is recommended that a Modification Order be made to add a footpath between points D to E.

2.1 Background

2.1.1 During the course of the current Definitive Map Review, Proposal 18 was put forward by the Parish Council and members of the public as a result of the Definitive Map Review meeting in Combe Martin.

2.2 Description of the Route

2.2.1 The claimed route, known as Rock Lane, starts at Castle Street, (point D) and travels south westerly towards the River Uंबर, then south-easterly to Wet Lane, point E. From Castle Street the route has a tarmacked surface and changes to a grass and earth surface at the narrow southerly end. Currently there is a low wrought iron double garden type gate, at point D. This was erected in 2009 "to tidy the property up". This gate has never been locked.

2.2 Documentary Evidence

2.2.1 Tithe Map and Apportionments 1842

Rock Lane appears as a narrow lane that leads to the River Uंबर. Wet Lane is also shown as a lane running to the River. There is no link shown between Rock Lane, which is shown ending at the river, and Wet Lane.

2.2.2 Ordnance Survey Mapping

1890s 1st Edition OS map 25" to 1 mile. Shows route of the Proposal 18. The link between Rock Lane and Wet Lane is now clearly shown. A ford and narrow bridge is shown on Wet Lane.

2.2.3 1904-1906 2nd Edition OS map 25" to 1 mile shows Rock Lane in the same way as the previous map.

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2.2.4 All subsequent OS maps show the claimed route in the same way, with the modern maps annotating it as Rock Lane.

2.2.5 Highway Handover Book
Rock Lane does not appear on these.

2.3 User Evidence

2.3.1 Nine evidence forms have identified Proposal 18 as part of the recreational routes around this area. All nine users have walked along the route, for pleasure, on the way to the shops and just going about their daily business.

2.3.2 None of the users have asked for or been given permission to use the route, believing it to be public. No users reported being stopped or turned back and none have seen any signs and none report the gate was ever locked. The users who have filled in forms are probably a small sample of the public who are, and have been, using the route without let or hindrance. The user evidence is as follows:

2.3.3 Mrs Farley has used the route on foot between 1974 and 1994 several times a year for a walk and an alternative walk to church. She was not stopped or turned back.

2.3.4 Mrs Fordrey has used the route on foot and on a bicycle since 1986 from home to the village for pleasure and to go shopping. She says the gate was erected in 2009 but never locked. The gate did not stop her from using the lane, which runs between two lanes, and has been used she says for several centuries.

2.3.5 Mrs Laramy has walked the route since 1990 several times a year. She says there was a gate but it was never locked.

2.3.6 Mrs Mock has walked the Rock Lane 6 times a year for pleasure since the 1950's. She says it has been used by the public for years. She played around the area as child and has walked her children and grandchildren through there. There is a recent gate but it has never been locked.

2.3.7 Mrs Pegler who was born in 1925 has used Rock Lane since she was a child in the 1920's. She has always used it on foot to go for a walk, to look at the stream and to walk the dog. She explains on her form: "A gate was put at the entrance from Castle Street by a private builder, who only put the gate up to keep his property tidier. (He subsequently sold the house and told people it was still a public path and anyone could use it)" People use it to get to the carpark or church.

2.3.8 Mr Read has walked the path since 1987 twice a year for pleasure. He thinks it is public because of the public's knowledge of it. There had previously not been a gate, it was only put in when the properties where renovated. The gate has not been locked.

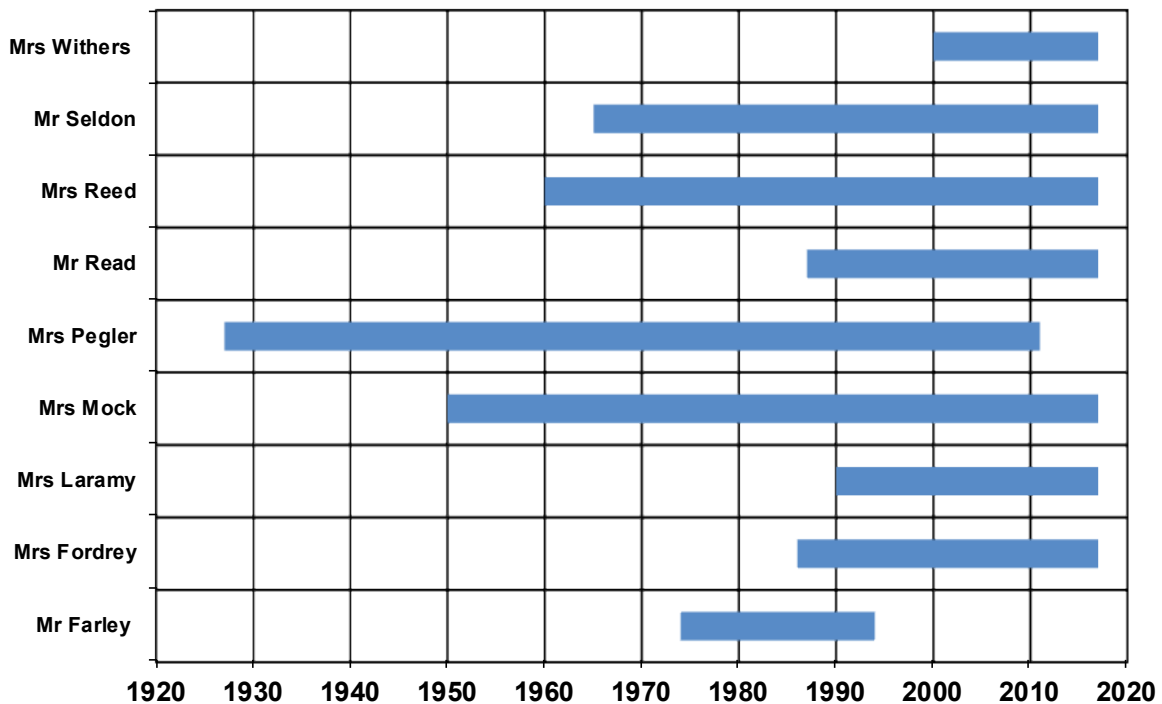
2.3.9 Mrs Read has used Rock Lane since 1960 a minimum of 6 times a year, going between home and the church yard on foot. She thinks its public because it has been used by the public for centuries. The gate was erected in 2009 but never locked. There was no gate prior to that.

2.3.10 Mr Seldon has used Rock Lane since 1965 walking and on his bicycle. He has used it 100's of times a year when he was younger and now 2 to 3 times a year. He says the gate was put up to sell the property in 2009 and an old man, who was 94 years old, told him that people from the cottages used the route to collect water from the river.

2.3.11 Mrs Withers has walked the route from 2000, 10 to 20 times a year for pleasure usually when she's going from Sunnyside to Church Street. She believes it is public because it's used by others and the gate is not locked.

2.3.12 Combe Martin Parish Council supports the proposal and gathered the evidence forms. They wanted the path recording so it is clear when the house is sold in the future, that it is a public path.

User Evidence Chart Rock Lane



2.4 Adjoining property holder's evidence

2.4.1 During the public consultation prominent notices were displayed at each end of the route and notices and letters also sent to all adjoining properties.

2.4.2 No one claimed ownership of the lane and no response has been received from anyone giving the opinion that this route was not a public way. The lane is used for access to some properties; it is not recorded at the Land Registry.

2.4.3 The presumption of *ad medium filum* means that when land abuts a highway (or private right of way), the boundary of that land is presumed to extend to the middle of that right of way (or highway), unless it can be shown otherwise, and it may therefore mean that all the adjoining landowners may own the lane, and have the power to dedicate.

2.5 Rebuttal Evidence

2.5.1 No rebuttal evidence has been submitted in respect of this proposal.

2.5.2 None of the users have been stopped from using the route. No signs have been erected to say 'No Public Right of Way', in fact there are no signs at all. The gate was not erected with the intention of stopping the public from using Rock Lane, rather to tidy up the area outside the house. The gate has never been locked, and the public continued to walk the path on a weekly basis. Use of the path by the public appears to be accepted by the adjoining landowners and acknowledged by the parish council.

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2.6 Discussion

- 2.6.1 Proposal 18 is supported by nine user evidence forms, from local people using the route as part of their usual walking route in Combe Martin. Two of these people, as youngsters, also rode occasionally along Rock Lane on their bicycles. Mrs Pegler gave direct evidence of public use since the 1920's with others using the path from the 1950's onwards. Most of these people believing it have been a public path because of long use.
- 2.6.2 Proposal 18 is not seeking to change the apparently acknowledged rights of the public to ride the path, only to have those rights recorded on the Definitive Map.
- 2.6.3 The public's rights to use the path were not challenged in 2009 when the gate was put up. Rather it would appear this gate was erected to tidy the frontage of a property that was being renovated to be sold. The landowner did not challenge or stop the public's use of Rock Lane as a footpath, one user being told directly by the landowner why the gate was installed. No one has been challenged or turned from the lane.
- 2.6.4 The historical maps show a through route has been available for use since at least the 1890's.
- 2.6.5 As there has been no calling into question of use made of the Rock Lane by walkers, therefore the proposed addition cannot be considered for presumed dedication under Statute. It is considered under Common Law. At Common Law use does not raise a presumption of an intention to dedicate, but merely evidence of such an intention. Thus the onus of proof lies on a person claiming a way as public to show that the facts, taken as a whole, were such that the rightful inference to be drawn from them was that there was an intention to dedicate the way as public. Each case turns on whether the facts indicated this intention. No minimum period is required to be shown. In some cases, because of the particular circumstances (e.g. heavy use) relatively low periods can be accepted as sufficient.
- 2.6.6 With regard to the meaning of the words 'as of right' the common law adopted the Roman law principle that for long usage to give rise to a presumption of dedication, the user had to be *nec vi, nec clam, nec precario*: without force, without secrecy and without permission. This is what 'as of right' means.
- 2.6.7 The facts are when taken as a whole, that frequent use of Rock Lane by numerous people on foot and occasional bicycle use has been without challenge, interruption, force, secrecy or permission and show rightful inference to be drawn from this use: that there was an intention to dedicate the way as public and that the public's continued use is evidence of acceptance of that dedication at Common Law.
- 2.6.8 The current adjoining property owners have made no comment or objection.

2.7 Conclusion

- 2.7.1 The evidence when taken as a whole is considered sufficient to show that a public footpath subsists, or is reasonably alleged to subsist, at Common Law over Rock Lane, the proposed route. It is therefore recommended that a Modification Order be made to add a Public Footpath between points D-E as shown on drawing number **HTM/PROW/17/57**, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

3. **Proposal 20 Claimed addition of footpath between points F-G-H as shown on drawing number HTM/PROW/17/58**

Recommendation: It is recommended that a Modification Order be made to add a public footpath between points F and H.

3.1 **Background**

3.1.2 During the course of the current Definitive Map Review, Proposal 20 was put forward by the Parish Council and members of the public as a result of the Definitive Map Review meeting in Combe Martin. In a file dating from 1979, there was also a written request from Combe Martin Parish Council to record Water Lane as a public right of way, and three evidence forms were adduced with this request.

3.2 **Description of the Route**

3.2.1 The claimed route starts at High Street, (point F) and is known as Water Lane. It travels south westerly to Park Lane point H on the plan, which is recorded on the Definitive Map as Footpath Number 1, Combe Martin.

3.2.2 From High Street the route has a hardened surface and is used by the adjoining residents to access their properties in vehicles. After point G, by Water Terrace, the lane narrows and steepens. This section has a rutted stone, mud and grass surface and an old eroded water channel that stands proud of the surface. When the officer inspected it there were the remains of an old wooden footpath sign in the hedge at the junction with Park Lane. There were no gates on the route.

3.3 **Documentary Evidence**

3.3.1 Tithe Map and Apportionments 1842

Water Lane appears as a lane that leads from the High Street over the River UMBER on a bridge and onto Park Lane. In the apportionments the land surrounding the lane was variously described as Meadows, Houses and Gardens.

3.3.2 Ordnance Survey Mapping

1890s 1st Edition OS map 25" to 1 mile. Shows route of the Proposal 20 Water Lane. River UMBER is shown as bridged.

3.3.3 1904-1906 2nd Edition OS map 25" to 1 mile Water Lane in the same way as the previous map.

3.3.4 All subsequent OS maps show the claimed route in the same way, with the modern maps annotating it as Water Lane.

3.3.5 Highway Handover Book

Water Lane does not appear on this.

3.4 **User Evidence**

3.4.1 Three user evidence forms were collected by Combe Martin Parish Council in 1979, these have been on file and have not been determined. A further eleven user evidence forms having been collected by the parish council to support the current review. Mr Spencer completed an evidence form in 1978 and also another for the current review. All the users identified Proposal 20 as part of the recreational routes around this area. All

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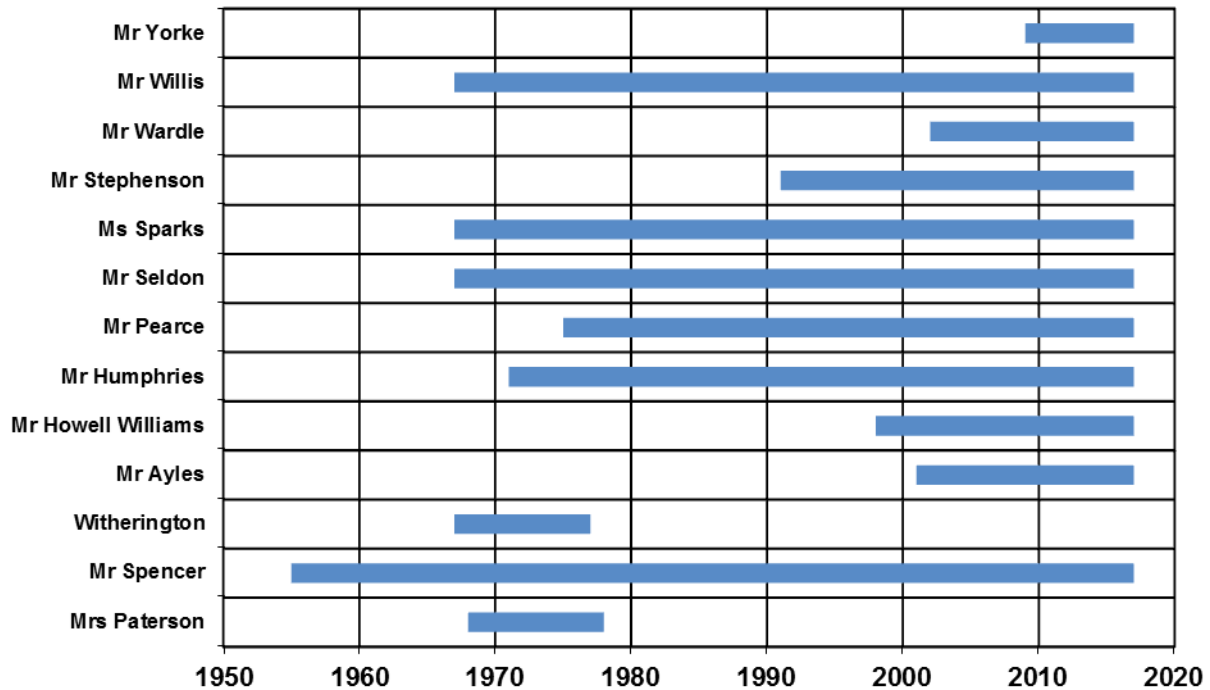
thirteen users have walked along the route for pleasure, dog walking or just going about their daily business.

- 3.4.2 None of the users have asked for or been given permission to use the route, believing it to be public. None of the users reported being stopped or turned back and none have seen any signs and report a gate. The users who have filled in forms are probably a small sample of the public who are, and have been using the route without let or hindrance.
- 3.4.3 Mrs Paterson used Water Lane every summer between 1968 and 1978 two or three times a week. She said the route was sign posted Footpath by the Parish Council from Park Lane. She was never stopped or challenged.
- 3.4.4 Mr P Spencer had used the footpath between 1955 and 1965 and then again from 1970 to 1978 (when he filled in his first evidence form) he brings his evidence up to date with his latest form. He has continued to walk the path fortnightly. On his 1978 form he says, in the early 1970's the Parish Council erected a sign post at each end of Water Lane, indicating it was a Public Footpath and enumerable users walked the path with no challenge. He thinks the path was just missed from the original registration of rights of way.
- 3.4.5 Mrs I Witherington has walked the footpath between 1967 and 1977 at least twice a year. She was never challenged.
- 3.4.6 Mr Ayles has used Water Lane since 2001, 3 or 4 times a week. He believes it's a public footpath, he says it's established and well used.
- 3.4.7 Mr Howell- Williams has walked the route 5 times a year for leisure from 1998.
- 3.4.8 Mr Humphries has used the path on foot at least 20 times a year from the High Street to Park Lane since 1971. He says it has always been a public path, and there have never been any locked gates or notices.
- 3.4.9 Mr Pearce has walked the route 60 to 70 times a year for at least the last 55 years.
- 3.4.10 Mr Seldon believes it is a byway open to all traffic and has used it since 1967 for pleasure and to and from work. He has used it on foot, bicycle and in a vehicle. He says the path has been used for 100's years. He says that by 2011 the top of Water Lane had become badly eroded and the tarmac had washed out so it could not be used by all users. Up to about 1,990 cars, tractors, bikes, walkers and horses all used it until it damaged. Vehicles still used the bottom section and the top section can be used by mountain bikes.
- 3.4.11 Mrs Sparks has walked Water Lane since 1967, a minimum of 12 times a year when she was out for a circular walk. She recalls the only time it was closed, was when repairs and improvements were carried out pre 1995. She also says the landowner on the western side of the steeper section has partially obstructed the route with tree trunks that have not been cleared.
- 3.4.12 Mr Stephenson has used the lane when dog walking since 1991 several times a week.
- 3.4.13 Mr Wardle has used the route since 2002 on foot for pleasure and to get to work. He has not been stopped.
- 3.4.14 Mr Willis has walked Water Lane for more than 60 years and has never been challenged or stopped from doing so.

3.4.15 Mr York has walked the route since 2009 for pleasure; he believes the path is public because it is known locally as a footpath.

3.4.16 Combe Martin Parish Council supports the proposal and gathered both batches of evidence forms in 1979 and during the current review. They erected the sign post in the mid 1970's saying Public Footpath, and the wish it to be recorded on the Definitive Map.

User Evidence Chart Water Lane



3.5 Adjoining property holder's evidence

3.5.1 During the public consultation prominent notices were displayed at each end of the route and notices and letters also sent to all adjoining properties.

3.5.2 No one claimed ownership of the lane and no response has been received from anyone giving the opinion that this route was not a public way. The lane is used for access to some properties; it is not recorded as falling within any property at the Land Registry.

3.5.3 The presumption of *ad medium filum* means that when land abuts a highway (or private right of way), the boundary of that land is presumed to extend to the middle of that right of way (or highway), unless it can be shown otherwise, and it may therefore mean that all the adjoining landowners may own the lane, and have the power to dedicate.

3.6 Rebuttal Evidence

3.6.1 No rebuttal evidence has been submitted in respect of this proposal.

3.6.2 None of the users have been stopped from using the route. The only sign said Public Footpath. Use of the path by the public appears to be accepted by the adjoining landowners and acknowledged by the parish council.

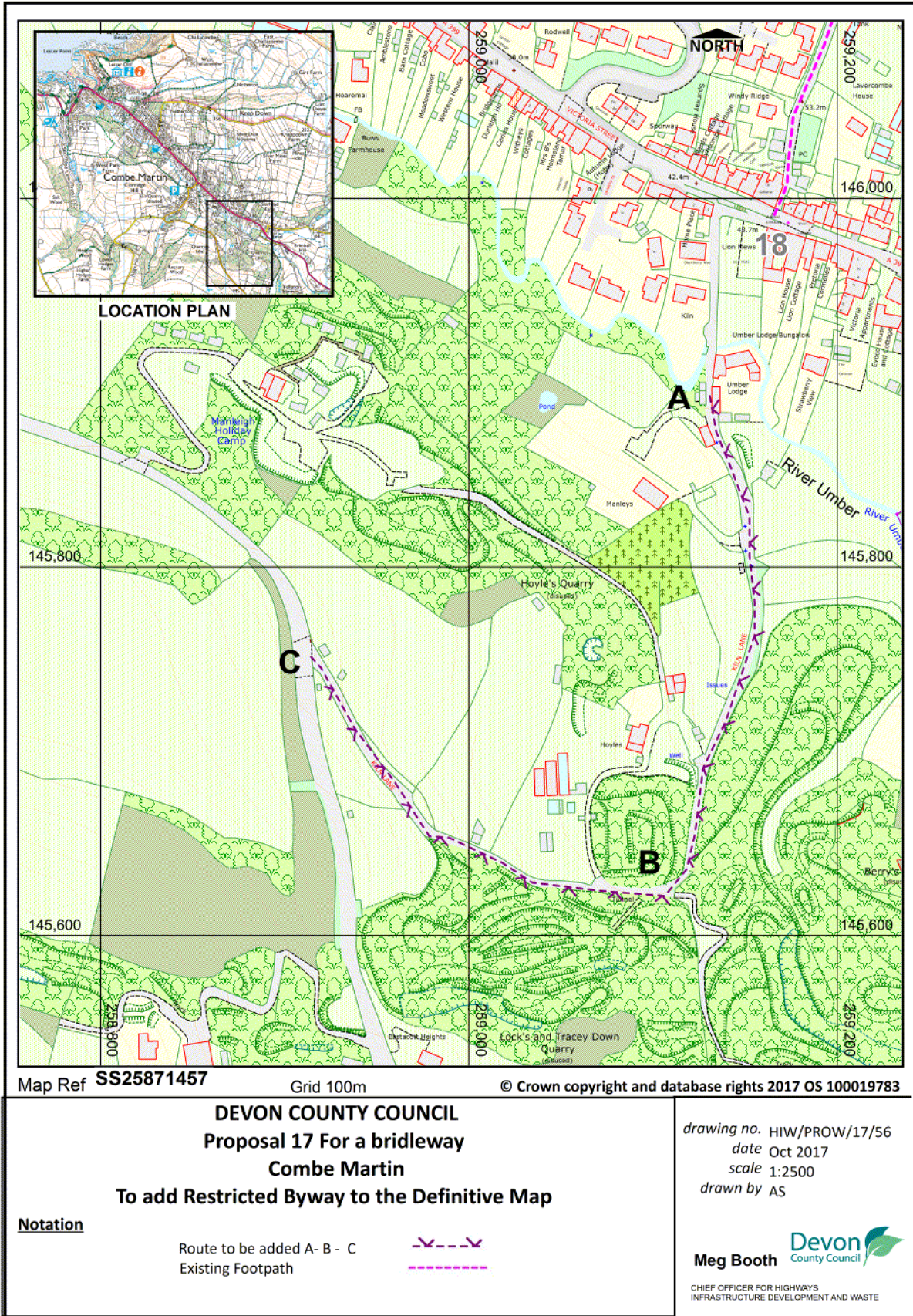
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3.7 Discussion

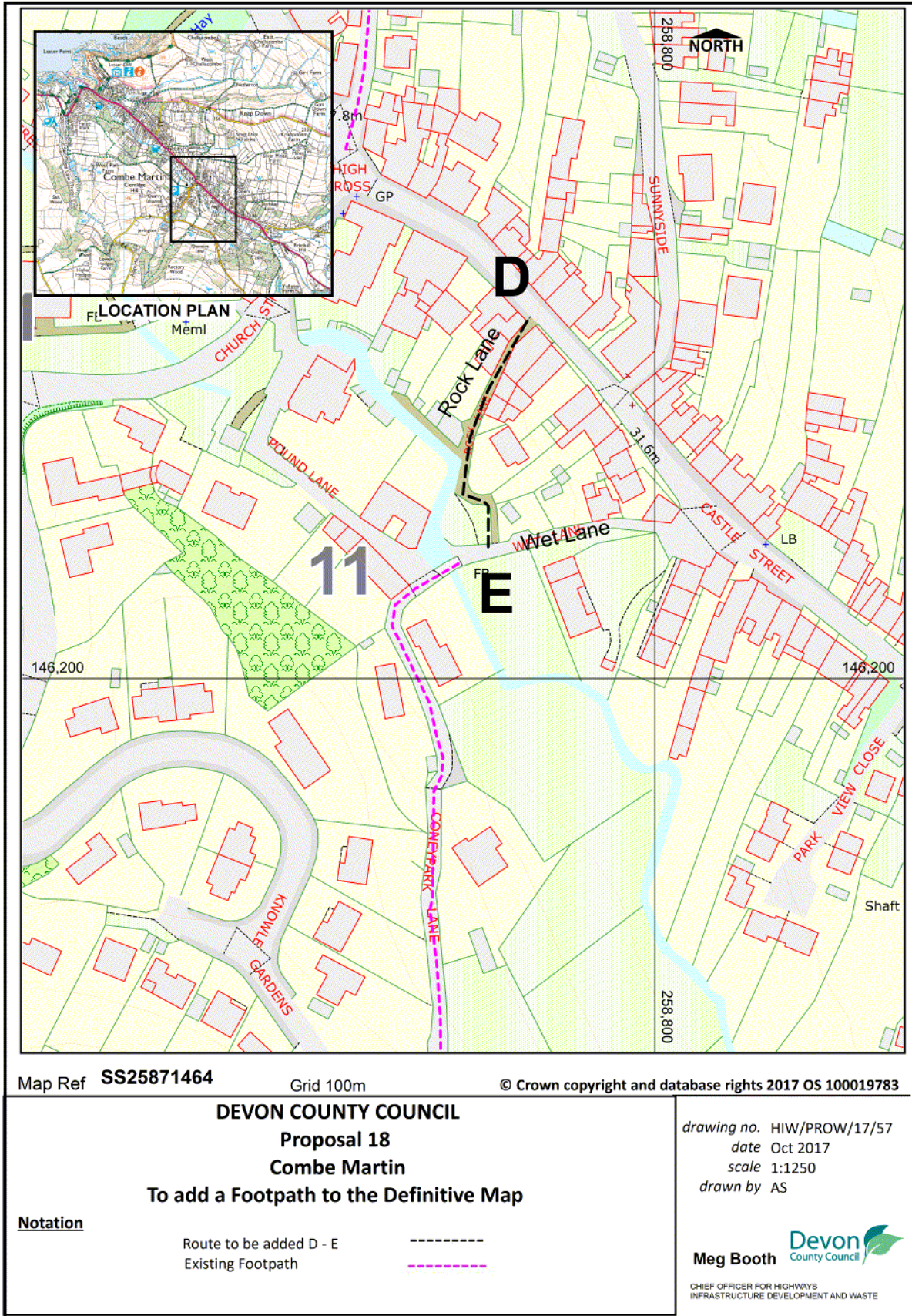
- 3.7.1 Proposal 20, Water Lane, is supported by 13 user evidence forms giving direct evidence of use on foot back to 1955.
- 3.7.2 The Combe Martin Parish Council erected a Public Footpath sign at the junction with Park Lane in the mid 1970's. Mr Seldon had walked the route and used it in a vehicle and on a bicycle before 1995. However, following the erosion, it was not possible to use the steeper it in a vehicle any more. The only time it was shut was while the parish council carried out repairs in 1995. The rest of the other users have walked the route without challenge.
- 3.7.3 Proposal 20 is not seeking to change any rights of the public to use Water Lane, only to have those rights recorded on the Definitive Map.
- 3.7.4 The historical maps show Water Lane as a through route that has been available for use since at least the 1840's when the lane was clearly shown as a lane on the Tithe Map.
- 3.7.5 There has been no calling into question of use by the public over this route, therefore the proposed addition cannot be considered for presumed dedication under Statute. It is considered under Common Law. At Common Law use does not raise a presumption of an intention to dedicate, but merely evidence of such an intention. Thus, the onus of proof lies on a person claiming a way as public to show that the facts, taken as a whole, were such that the rightful inference to be drawn from them was that there was an intention to dedicate the way as public. Each case turns on whether the facts indicated this intention. No minimum period is required to be shown. In some cases, because of the particular circumstances (e.g. heavy use) relatively low periods can be accepted as sufficient.
- 3.7.6 With regard to the meaning of the words 'as of right' the common law adopted the Roman law principle that for long usage to give rise to a presumption of dedication, the user had to be *nec vi, nec clam, nec precario*: without force, without secrecy and without permission. This is what 'as of right' means.
- 3.7.7 The facts are when taken as a whole, are of frequent use of Water Lane by numerous people on foot and occasional bicycle. The use has been without challenge, interruption, force, secrecy or permission and show rightful inference to be drawn from this use: that there was an intention to dedicate the way as public and that the public's continued use is evidence of acceptance of that dedication at Common Law.
- 3.7.8 The current adjoining property owners have made no comment or objection.

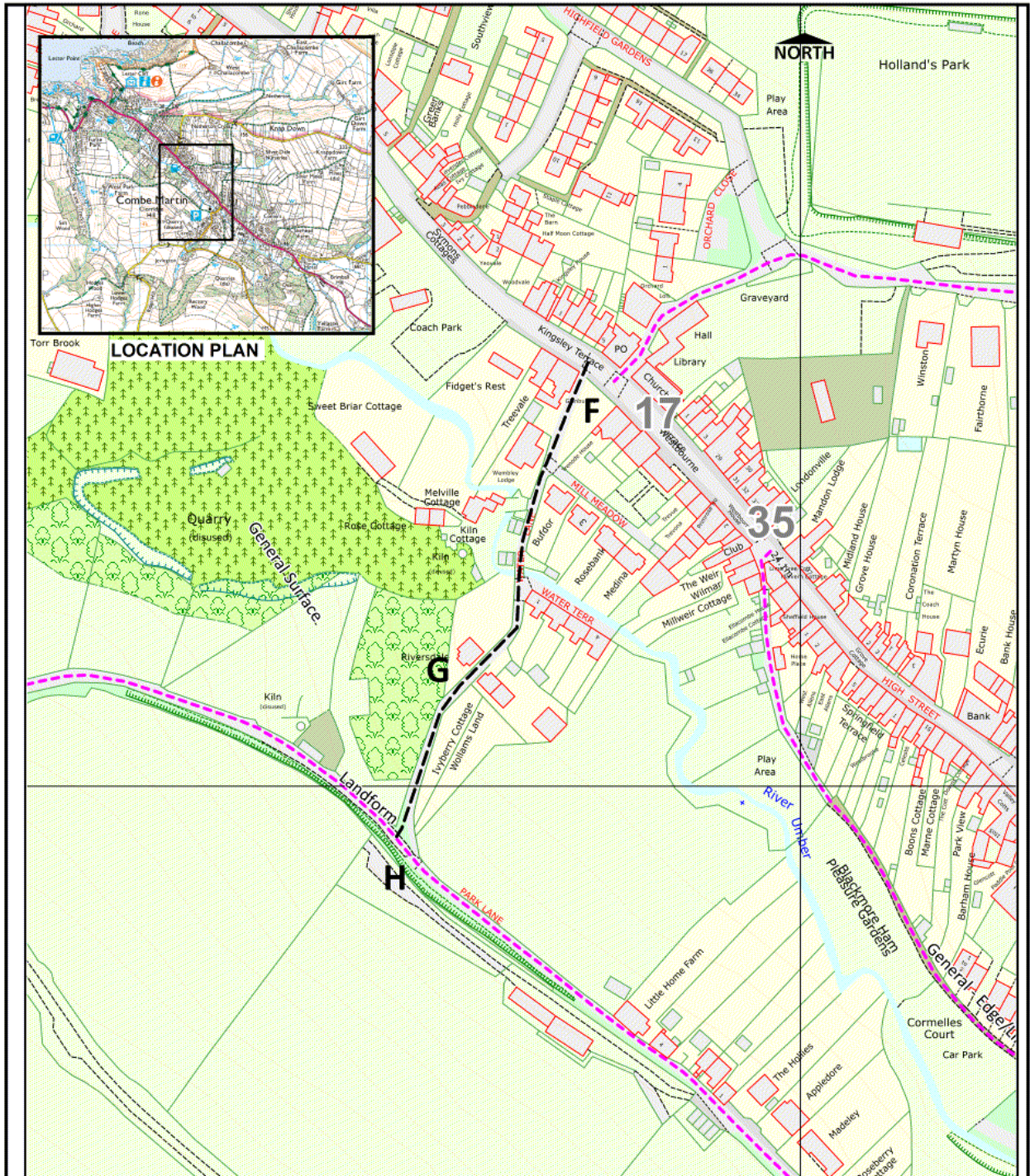
3.8 Conclusion

- 3.8.1 The evidence when taken as a whole is considered sufficient to show that a public footpath subsists, or is reasonably alleged to subsist, at Common Law over Water Lane, the proposed route. It is therefore recommended that a Modification Order be made to add a Public Footpath between points F-G-H as shown on drawing number **HTM/PROW/17/58**, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.



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Map Ref **SS25871464**

Grid 100m

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DEVON COUNTY COUNCIL
Proposal 20
Combe Martin
To add Footpath to the Definitive Map

drawing no. HIW/PROW/17/58
 date Oct 2017
 scale 1:2000
 drawn by AS

Notation

Route to be added F-G-H -----
 Existing Footpath -----

Meg Booth 
 CHIEF OFFICER FOR HIGHWAYS
 INFRASTRUCTURE DEVELOPMENT AND WASTE

HIW/17/82

Public Rights of Way Committee
9 November 2017

Definitive Map Review Parish of Culmstock

Report of the Chief Officer for Highways, Infrastructure Development and Waste

Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.

Recommendation: It is recommended that a Modification Order be made to add a public footpath between points A and B as shown on plan HIW/PROW/17/014 and that no Modification Order be made to add a public footpath between points A and C.

1. Introduction

The Definitive Map Review in Culmstock was undertaken during the period 2005 to 2017. Reports have previously been brought to the Public Rights of Way Committee in 2010 and 2011 with two Definitive Map Modification Orders made as listed below.

In September last year an apparent anomaly with regard to the northern spur of Footpath No. 10, Culmstock was brought to the Council's attention. In accordance with the standard practice of considering additional proposals within the parish that arise within six months of the review been concluded, the anomaly has been investigated now and not deferred until the Definitive Map Review of the county has been completed.

The northern spur of Footpath No. 10, Culmstock, as recorded on the Definitive Map, is shown as a cul-de-sac path as the path does not connect with a county road or other public right of way. The footpath joins the private access lane to Axon Farm which is not recorded as having any public rights of access. A public right of way would usually connect with a public highway, which could either be a county road or other public right of way. Occasionally a public right of way may lead to 'a point of public interest' such as a public well or to a viewpoint. The anomaly was therefore investigated to ascertain whether any change was needed to this spur of Footpath No. 10, Culmstock as currently recorded.

2. Background

The original parish survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 24 footpaths & 1 bridleway, which were recorded on the Definitive Map and Statement with a relevant date of 1 March 1958 for the Tiverton Rural District Council.

The following Orders have been made and confirmed:

Devon County Council (Footpath No. 13, Culmstock) Public Path Diversion Order 1972;

Devon County Council (Footpath No. 40, Culmstock) Public Path Creation Order 1972;

Devon County Council (Footpath No. 1, Culmstock) Public Path Diversion Order 1980;

Devon County Council (Footpath No. 37, Culmstock) Public Path Creation Order 1983;

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Devon County Council (Footpath Nos. 3 & 5, Culmstock) Public Path Diversion Order 2002.

Devon County Council (Footpath No. 9, Culmstock) Public Path Diversion Order 2011

Devon County Council (Bridleway No. 35, Culmstock) Definitive Map Modification Order 2012

Devon County Council (Footpath No. 2, Culmstock (part) & Footpath No. 38, Culmstock & Restricted Byway No. 1, Hemyock) Definitive Map Modification Order 2012

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

The current review commenced in October 2005 and seven proposals for change to the Definitive Map were made. Reports were submitted to committee meetings on March 2010, November 2010 and June 2011 and Modification Orders made as a result of the review.

3. Proposal

After the apparent anomaly was raised, the proposal to be considered was whether an additional length of public footpath should be added to Footpath No. 10, Culmstock to connect the northern spur to a county road or other public right of way, or whether the footpath was correctly recorded as it was.

4. Consultations

Consultations on the proposals were undertaken with the landowner and adjacent/local landowners/occupiers and also with both Culmstock and Burlescombe Parish Councils as the footpath lies close to the border with Burlescombe. Details of the responses are included in the appendix to the report.

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 in the preparation of the report.

9. Conclusion

It is recommended that a Modification Order be made to add a public footpath between points A and B and that no modification order be made to add a public footpath between points A and C as shown on plan HIW/PROW/17/014.

10. Reasons for Recommendation

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.

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Willand & Uffculme

Local Government Act 1972: List of Background Papers

Contact for enquiries: Tania Weeks

Room No: ABG Lucombe House, County Hall, Topsham Road, Exeter

Tel No: (01392) 382833

Background Paper	Date	File Ref.
Correspondence files	2005 - 2017	TW/DMR/Culmstock

tw111017pra
sc/cr/DMR Parish of Culmstock
03 261017

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Appendix I To HIW/17/82

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.

The Wildlife and Countryside Act 1981, Section 53(5) enables any person to apply to the surveying authority for an order to modify the Definitive Map. The procedure is set out under WCA 1981 Schedule 14.

Section 69 of the Natural Environment and Rural Communities Act 2006 (NERC) amended the Highways Act 1980, to clarify that a Schedule 14 application for a Definitive Map Modification Order is, of itself, sufficient to bring a right of way into question for the purposes of Section 31(2) of the Highways Act 1980, from the date that it was made.

Proposal: The proposed correction of an anomaly with regard to the northern spur of Footpath No. 10, Culmstock

Recommendation: It is recommended that a Modification Order be made to add a public footpath between points A and B as shown on plan HIW/PROW/17/014 and that no Modification Order be made to add a public footpath between points A and C.

1 Background

- 1.1 In September 2016, Mr French the owner of Axon Farm contacted the County Council to advise that the lane joined by the north spur of Footpath No. 10 is a private lane not public, although he had seen it shown on maps as a public route. Although this section of lane is coloured yellow on Ordnance Survey maps, it was confirmed that the lane (west of point A on the plan) is not highway maintainable at public expense recorded on the list of streets nor a public right of way shown on the definitive map.
- 1.2 This meant that the northern spur of Footpath No. 10, Culmstock was recorded as a cul-de-sac highway on the definitive map. This anomaly warranted investigation as a public right of way would not usually be a cul-de-sac route, and would connect to a public road or another public right of way, or occasionally lead to 'a point of public interest'. This could be something such as a well that local inhabitants used or possibly a view point.
- 1.3 The parish review in Culmstock had not yet been concluded, as an objected Modification Order was awaiting final determination, and so the anomaly was investigated forthwith rather than waiting for the review across the county to be completed.

2 Description of the Route

- 2.1 Footpath No.10 Culmstock starts on the north side of the county road opposite the entrance to Henborough Farm. From there the footpath goes north westwards across fields to point D, as shown on the plan, south west of Axon Farm. At point D the path divides into two spurs: one spur proceeds westwards across two fields to the county road south of Old Beat at point E; the other spur continues northwards across two fields to join the private lane at point A, south of Gipsy Town.
- 2.2 An initial review of the anomaly indicated that there were three possible scenarios for the anomaly. Firstly, that the purpose of the spur (D to A) of Footpath No. 10 was to provide access to Maiden Down Common. In the 1950s, when the parish path survey was completed and definitive map compiled, the common had public access and was open to walkers. If this was the case, should Footpath No. 10 be extended along the old green lane from point A to the boundary of the registered common land at point B? Maiden Down common (which has been open access land since 2005) would be considered a point of public interest.
- 2.3 A second scenario was that the spur of Footpath No. 10 (D to A) was recorded for the benefit of the inhabitants of Gipsy Town who would use this section of the footpath across the Axon farm land to point A and would then use the track

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opposite point A to access their properties. The section of footpath being necessary as the residents/occupiers would not have any private rights to cross Axon Farm and so relied on the public footpath rights. Would the dwellings at Gipsy Town be considered a sufficient point of public interest?

- 2.4 A third scenario also needed consideration; if there was sufficient evidence of use of the lane by the public, as of right, then this together with any documentary evidence discovered, could indicate that a public footpath may have come into existence along the private drive between point C on the county road and point A.
- 2.5 The investigation into the anomaly was therefore undertaken with the appropriate parties and documentary sources to ascertain whether this spur of Footpath No. 10 was correctly recorded as it was, a cul-de-sac, or whether an addition of footpath was required to link with Maiden Down Common and/or the county road.

3. Documentary Evidence

3.1 Ordnance Survey and Other Maps

3.1.1 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.

3.1.2 Cassini Historical Maps 1809 – 1900 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.

3.1.3 Old Series 1809
On this edition Maiden down is named Melldown and Axon Farm is named as Acton. The map shows a track by way of a narrow doubled lined white track, in the manner of other routes that are now roads in the vicinity, which goes from Old Beat (south of point C) although from further south, then along the current lane's alignment (X - A - B) and then proceeds north eastwards along the southern boundary of the common to the join the now B3391 (Culmstock Road) opposite the lane leading from Pond Farm. The access lanes leading to Axon Farm and northward to Gipsy Town are both shown.

3.1.4 Revised New Series 1899-1900
Some hundred years later and Maiden Down and Axon have their current spellings. The lane from the county road is on its current alignment (C - X – A) and the two lanes leading north to Gipsy Town are now shown and a track is also shown from Gipsy Town northwards across the common. The lane to Axon Farm is shown as before. The short section of lane leading to the common (A to B) appears to be shown but there is no clear track along the southern boundary of the common. A track along the line of the north to south section of Footpath No. 10, Culmstock is recorded (D – A), the southern section as a dashed line and the upper section as parallel solid and dotted lines.

3.1.5 Popular Edition 1919

In this edition the access lane to Gipsy Town and Axon Farm is as before (C – X – A). The first part of the section A to B appears to be shown. The north to south section of Footpath No. 10, Culmstock (D to A) is shown as a pecked line in its entirety, noted as Bridle & Footpaths in the map key.

3.1.6 OS 1st & 2nd Editions 25” to a mile 1880-1990 & 1910

On the first edition the access lane between points C and A and two lanes leading off that lane north to Gipsy Town and the track along the field headland to Axon are shown. The lane is also shown continuing onto the common (A to B) as a double solid lined track leading into a double packed line along the southern boundary of the common. The access lane has its own compartment number, 328 with an area of 0.793. Double pecked lines, some labelled ‘F.P.’, are shown across the common and connecting to the north of Gipsy Town. A double pecked line is shown along the field headland of parcel number 326 (west of Axon Farm) along the line of Footpath No. 10, Culmstock (D to A) together with the spur to Old Beat (D to E), both labelled ‘F.P.’.

3.1.7 The second edition is very similar to the first edition mapping except that a pecked line (possibly denoting a change of surface) is shown across the access lane just east of point A and before the start of the headland track to Axon Farm. A single or double pecked line is now shown through parcel number 326 along the line of Footpath No. 10 together with the spur to Old Beat and again both labelled ‘F.P.’. A double pecked line along the southern boundary of the common is still shown as a continuation of the access lane (section A to B).

3.1.8 OS 1 inch to a mile maps of 1946 & 1967 Sheet 164 Minehead

The 1946 map was published prior to the Definitive Map being compiled. The access lane to Gipsy Town and Axon Farm (C to A) are shown as recorded with the western access lane to Gipsy Town appearing with double solid lines. The north to south section of Footpath No. 10 (D to A) is shown as a dashed line (Footpaths and Bridle Paths). In the 1967 edition public rights of way are recorded and Footpath No. 10 is shown with the north to south section (D to A) and branch westwards to Old Beat (D to E). The section of lane A to B is not shown on these small scale maps.

3.1.9 OS 1:25,000 maps of Great Britain Sheet ST01 1961

The access track is shown as continuing onto the common as a short section of double sided lane (between points A and B). It then continues along the southern boundary of the common as track with a dashed line (unfenced) on one side until it joins a pecked line (labelled FP) running generally east to west across the common that connects to the north side of Gipsy Town. A pecked line labelled FP is shown along the route of Footpath No. 10 as currently recorded although this map was published before the inclusion of public rights of way as recorded on the definitive map.

3.1.10 OS Post War Mapping A Edition 2500 1965

At this date the double fenced access drive to Axon Farm had been constructed with its own parcel number of 7463 and with a solid line across the end of the drive at the junction with the access lane east of point A. The access track continues as a double-sided lane to point B with a pecked line shown across the lane at that point. There are no tracks or paths shown across the common in the vicinity of Gipsy Town. The lane northwards from point A to Gipsy Town is showing as having shrubs present in the lane.

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3.2 Tithe Maps and Apportionments

- 3.2.1 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 tithe able. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not included within an individual apportionment are usually included under the general heading of '*public roads and waste*'.
- 3.2.2 Culmstock Tithe Map & Apportionment 1841 shows the access lane (C to B) as a fairly wide lane leading directly onto the common. The lane is not numbered or coloured and is shown in a similar way to the now county road at point C. There is no drive or access lane shown to Axon Farm, owned and occupied by Dorcas Temple (field number 451 is called entrance field). The two lanes through Gipsy Town, northwards from points X and A are shown but not numbered. The Gipsy Town plots are recorded with a number of different owners and occupiers. Maiden Down Common is apportionment number 1392 and included at the end of the apportionment with the parishes other commons with no owner or occupier listed. It is described as Commons, cultivation as Waste and area 112 acres.

3.3 Finance Act Plans and Field Books 1910

- 3.3.1 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.
- 3.3.2 The allowance given was often on the basis of a figure such as a £1 times 25 yp. The yp refers to years purchase, a method of valuation used to convert a property's income flow (rent) into an appropriate capital sum on the basis that the capital value of a property is directly related to its income producing power. This method of valuation was usually used in Finance Act valuations.
- 3.3.3 The access lane between points C and A appears to be excluded from the adjoining hereditaments. The hereditament for Heathfield number 279, at the west end of the lane has land on both sides of the lane and the colouring for Heathfield breaks across the lane in the section between points C and X. The field book records for Heathfield, owned by Jesse Authers, occupied by Florence Authers; do not include any reference to any right of way.

- 3.3.4 The hereditament for Axon Farm, then 87 acres owned and occupied by Sydney Hurst, makes reference to a church path through two fields. The field numbers are not stated and this could be reference to the two fields crossed by Footpath No. 10 or the two fields to the south east of Axon Farm buildings, as the OS map shows a double pecked line labelled 'F.P.' from Almshayne Ash Cottages to Axon Farm. An allowance of £38 was allowed for the footpath. The field book makes reference to grazing right on Maidendown, Beacon Hill & Culmstock commons but no reference to rights of way or access over the lane.
- 3.3.5 There are various colourings of portions of land at Gipsy Town but only one hereditament number on the map, number 287, which includes land in field numbers 324, 323, 329 & 343 at Gipsy Town and the house and buildings at Old Beat. There is no reference to any rights of way, public or private.
- 3.3.6 Maidendown Common is included in hereditament 840, which included 435 acres of common land at Beacon Hill, Maidendown, Hackpen Hill and Hill Moor. The owner and occupier are listed as Charles Collier, subject to rights of commoners. Under the heading 'Fixed Charges, Easements, Common Rights and Restrictions is recorded 'some footpaths marked on ordnance map, Pasturage & right of cutting bedding for cattle & of cutting turf'. An allowance of £200 was given for the footpaths and £300 for the rights of common; a combined deduction of £700 on a total value of the four commons of £1200.

3.4 Parish Council Minutes

- 3.4.1 In 1899 Culmstock Parish Council prepared a list of footpaths in the parish. This list included the route which corresponds to Footpath No. 10, Culmstock and described as Almshayne to Henborough thence to Axon and Gipsy Town and a branch to J Nortons (at Old Beat). In February 1921 it was reported in the parish minutes that *'no action was to be taken with regard to the complaint respecting the footpath from Maidendown to Almshayne it being thought that with the advent of dry weather the cause of the complaint would disappear'*. The only recorded footpath between these places would be Footpath No. 10 Culmstock which now starts on the county road north of Henborough Farm rather than at Almshayne Farm.
- 3.4.2 In August 1922 the Parish Council received a letter from Mr Collier's solicitors regarding proposed works on Culmstock Beacon and the Parish Council then considered an extract from the Deeds recording the Purchase of the Manor of Culmstock by Mrs Rosalie Collier and Mr James Collier in 1884. The extract said *'The Manor of Culmstock in the County of Devon. The soil of all waste lands within the said Manor and the Minerals and Timber under and upon such waste lands. Together with the right of hunting shooting hawking fowling and sporting over such waste lands as incident to the ownership of the soil thereof but subject to rights of common and way and passage thereon and there over'*. The sale of the Manor of Culmstock in 1884 included as Lot 7 Maiden Down Common of 107 acres.

3.5 Parish Survey under National Parks & Access to the Countryside Act 1949

- 3.5.1 The survey forms for the public rights of way in Culmstock were dated September 1950 and Footpath No 10 was included with both the spurs to Old Beat at point E and north to point A. The footpath was described as 'Almshayne to Henborough thence to Axon and Gipsy Town and a branch to Mr

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Norton's (amended to County road at Old Beat by the County Council). The description implies that it was the section to Old Beat that was the spur and that the main route was the north to south section to point A. The form says the path was in general use and included in the list of public rights of way made by the parish council in 1899 and recorded in the parish council minutes.

- 3.5.2 The Parish Council also submitted a survey form for path number 16 which followed the route of the pecked line labelled 'F.P. on the OS mapping going south east from Axon Farm. The route was marked on the map continuing along the access drive to Axon Farm to point A but with a question mark. Notes on the form confirm that its inclusion was questioned by the County Council.
- 3.5.3 No proposals were made for any public rights of way on or over Maiden Down Common
- 3.5.4 At a meeting between the County Council and the sub-committee of the Parish Council on the 4th December 1957, Footpath No. 10 was described as from Henborough to Gipsy Town and Old Beat. The footpath statement was written as '...the path continues for 100 yards along the southern boundary of the field at which point the path divides, one section continuing westwards to end at the 3rd Class County road at Old Beat, and the other continuing in a north-north-westerly direction to the public road on the southern boundary of Maiden Down at Gipsy Town. Maiden Down is subject to the Law of Property Act, 1925.'
- 3.5.5 Footpath number 16 was listed as combined with Footpath No. 25 for the route from Marlpit to Almshayne Ash Cottages only and with no continuation to Axon Farm.
- 3.5.6 No objections or representations were received to the inclusion of Footpath No. 10 or to the omission of any public rights of way shown along the section of lane between points C and B, on the draft and provisional definitive maps for Tiverton Rural District Council area. The definitive map for the district was published in June 1964.

3.6 County Council Correspondence

- 3.6.1 In the parish file there is some copy correspondence between solicitors Clarke, Willmott & Clarke and the County Council in November 1960. The solicitor's letter of the 9th November refers to a letter from the Clerk at Devon County Council of the 8th November (copy not available) and under the heading 'Land Charges OS numbers 327 and 328 Gipsy Town, Culmstock' (number 328 is the number of the lane on the OS 25" edition in 1904-06 between points C and A and 327 the field south of the lane between points X and A. The field hedge on the east side of this field has since been removed). The letter says "*In the absence of maps we do not feel it can be stated with certainty that the public have acquired rights of access over the road but were not enjoying those rights before 1835. We also do not understand why it is not designated as a public footpath under the 1949 Act, because east of the access to Axon Farm the road is not really passable by vehicles. We would be most obliged by a further reply because our client is most insistent on ascertaining her exact rights with regard to this road*".

- 3.6.2 Mr Godsall, the Clerk to the Council at that time replied *“I regret that no further information regarding the status of the road is available. I would, however, state that as far as can be ascertained the road has never been maintained at public expense. It may be that the road should have been described in the Survey as a “road used as a public path”, but no action can be taken regarding this matter at the present time. I will, however, arrange to investigate the designation when the quinquennial review of public rights of way takes place in a few years time.”*
- 3.6.3 Mr Godsall then sent copies of the solicitor’s letter of the 9th November together with his reply of the 11th, to the County Council Surveyor referring to Footpath No. 10 in the title. In his covering letter to the Surveyor he wrote *I have had considerable correspondence with Messrs Clarke Willmott and Clarke regarding the status of the road OS 328 in the parish of Culmstock. Will you kindly investigate this matter in order that any necessary amendment can be made to the map when the quinquennial review takes place.*
- 3.6.4 The name or address of the client is not stated in the correspondence and the previous ‘considerable’ correspondence was not forwarded to the County Surveyor.

3.7 Devon County Uncompleted Reviews of 1968 and 1977

- 3.7.1 The County Council started reviews of the definitive map in 1968 and 1977. On both occasions the County Council sent a copy of the definitive map to each parish and asked them to hold a public meeting in the parish to discuss the public rights of way and to advise of any changes that needed to be made. No proposals in respect of Footpath No. 10, Culmstock were made under either of these uncompleted reviews. In the 1977 review the addition of footpaths over Maiden Down was requested and the map submitted included part of the route along the southern boundary of the common but did not include this continuing to point B, instead the route followed the path north westwards as marked on the base map used to the north of Gipsy Town.
- 3.7.2 These two general reviews did not proceed further, and when Culmstock Parish Council enquired in 1989 about what could be done to get the proposals moving, they were advised that Schedule 14 applications could be submitted under the Wildlife & Countryside Act 1981. A Schedule 14 application for the addition of footpaths across Maiden Down was subsequently submitted and supported by user evidence. The claims were not successful as it was determined that prior to 1983, public access to the common had been with the permission of the landowner and therefore not ‘as of right’ but ‘by right’; then after the change of ownership and revocation of the public access in 1983, there had been notices and actions to show a lack of intention to dedicate any public rights of way by the new landowner.
- 3.7.3 The section of lane from point A to point B does appear to be included on a map attached to the Schedule 14 application of 1991, although the two routes considered by the County Council in 1991-1994 were limited to a main west/east route and a north/south route, both crossing at a point on the common north west of Gipsy Town. However, some of the maps attached by users to their evidence forms did show use of a route along the southern boundary of the common route to point A. These forms have been included in the paragraph on user evidence.

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3.7.4 The original applicant of the Schedule 14 application was a local resident, Mrs Murdock. Within the evidence submitted in support of the application, Mrs Murdock makes reference to three public footpaths recorded on the Definitive map leading onto Maiden Down Common. These three footpaths would be Footpath No. 13, Culmstock to the Culmstock road on the north eastern edge of the common, Footpath No. 19, Burlescombe to Maidenhead Cross at the western edge of the common and Footpath No. 10, Culmstock on the southern boundary of the common.

3.8 British Newspaper Archive

3.8.1 The newspaper archive had reference to the sale by the church of all rights of soil and other manorial rights in the wastelands situate in the manor of Culmstock including Maiden Down in July 1870. In August 1941 there was an auction of contents, books, dead and farming stock at Axon Farm. There is no specific reference to the proposal route.

3.9 Aerial Photography RAF 1946-1949, 1999-2000, 2006-2007 & 2011

3.9.1 On the 1946-1949 aerial photography there does appear to be a clear track leading from point B eastwards across that part of the common. The section of lane between points A and B is hidden by the larger hedgerow trees. The access lane from point C to point A is clearly visible and with the looks of a stoned/improved surface. The surface of the lane running north at Gipsy Town from point X is also visible but not that of the lane north of point A.

3.9.2 In 1999-2000 photography, there is no clear track on the common from point B or visible lane north of point A. The new tracks formed for racehorse exercise being clearly visible to the north and east of Gipsy Town. The situation remains the same in the later photographs and in 2011 the area of common east of point B is more obscured by vegetation.

3.10 Land Registry

3.10.1 HM Land Registry records show that the sections of access lane between the county road at point C and X and the old lane between points A and B are not registered to any titles, although the land on either side is registered. Between points X and A the land on the north of the lane is registered to Orelia House and between points A and B the land to the north of the lane is registered to The Firs. The section of access lane between points X and A, and all the land south of the lane between points X and B, is registered to Axon Farm. The registration for Maiden down Common stops at point B, which is also the extent of land recorded as Registered Common Land on the commons register. The two sections of lane that run northwards from the access lane through Gipsy Town from points X and A are also shown as unregistered to any titles.

3.10.2 The title in respect of Axon Farm includes rights reserved by a conveyance dated March 1961 between James Trebble (vendor) and Muriel James (purchaser). The clause refers to the land tinted blue (being the access lane between points X and A and the field to the south of this) and the clause gives a 'full and free right of way at all times and for all purposes over the same on payment of a fair proportion of the cost of maintaining and repairing the same road from its junction with the road maintained by the Highway Authority' for the

benefit of the property retained by the vendor on the northern side of the said part of the road.

- 3.10.3 The title for Heathfield, which has land north and south of the access lane between points C and X includes the benefit of rights contained in a conveyance of September 1965. The conveyance states 'with so far as the vendor is able to convey the same a right of way at all times and for all purposes with or without vehicles and animals over and along the private roadway coloured brown on the said plan'. The section coloured brown on the conveyance plan extends from point C to just east of point X.
- 3.10.4 The title for Snows Cottage, the property north of Orelia House, includes a notice entered in pursuance of rule 254 of the Land Registration Rules 1925 that on 16th December 1987 (date the property was sold) that the registered proprietor claims that the land in this title has the benefit of a right of way at all times and for all purposes with or without vehicles over the roadway tinted brown on the filed plan. The lane tinted brown is from point C to point X and then north eastwards along the drive past Orelia House to Snows Cottage.
- 3.10.5 The title for Orelia refers to the land having the benefits of rights granted by a conveyance dated 3 April 1961. The rights are 'Together with a right of way at all times and for all purposes over the roadway coloured brown on the said plan on payment of a fair proportion of the cost of repairing and maintaining the same ...and together with so far as the Vendor can grant the same a right of way at all times and for all purposes over the roadway coloured blue on the said plan'. The conveyance plan shows the blue section as from point C to X and then the section of lane north eastwards from point X. The section coloured brown is the section of lane between points X and A.
- 3.10.6 The title for part of the land of The Firs at Gipsy Town refers to the benefit of rights granted in a conveyance of January 1978. The conveyance is for the purchase of the land west of the lane north eastwards of point X and says 'Together with a right of way at all times and for all purposes over the roadway indicated by the colour brown on the said plan'. The roadway coloured brown is the section of lane north east of point X.

4 User Evidence

- 4.1 The Parish Council was notified of the investigation into the anomaly and some completed user evidence forms were subsequently received. Three forms, Mr B and Mr & Mrs H only referred to use of the currently recorded sections of Footpath No. 10 rather than the sections from C to A or A to B.
- 4.2 Mr D refers to use of the section C to A from 2002 to 2008 on 50-60 times a year then continuing south to point D along Footpath No. 10 or to Axon Farm. Mr & Mrs J used C - A - D - E daily as a circular dog walk from 2000-2015. Mr & Mrs P used C - A - B some 200 times a year between 2002 - 2014 to go onto Maiden Down Common. Mr & Mrs P have used E - D - A - C as a circular walk and C - A onto Maiden Down Common for 12 years from 2005 for 60-80 times a year.

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- 4.3 The P3 (Parish Paths Partnership) Co-ordinator for Culmstock Parish Council, Mr Barrow, also completed a user evidence form which confirmed that he had walked a circular route from D – A – C – E – D once or twice a year since 2010. He had walked the footpath at least once a year as part of his P3 role in completing the annual survey of all public rights of way in the parish.
- 4.4 The user evidence received for the unrecorded sections A to B and A to C records use in total by seven individuals of the section C to A from 2000 to 2017 and by the section A to B by four individuals from 2002 to 2017. This does not include Mr Barrow's use as this would be considered as 'business' use rather than that as a private individual.
- 4.5 The Schedule 14 application for the addition of public footpaths across Maiden Down Common was made in October 1993. User evidence forms were submitted in support of the application and some of these users had annotated the plans attached to their forms to include the section of lane B to A, in addition to the footpaths across the common claimed under the Schedule 14. Other users had not attached plans but their supporting comments indicated or appeared to describe the section of lane from points A – B. Many of these users were older when completing their forms in the 1980s and 1990s and it has not been possible to obtain updated user evidence forms and plans solely in respect of the proposals being considered in this report.
- 4.6 Mrs M Bull was aged 56 in 1986. She describes the route as from Nicholashayne to Gypsy Town and used it monthly between 1954 and 1966 to visit friends. Her map includes the route along the southern boundary of the common to point B.
- 4.7 Mr T Frost's age was not stated but he describes use of Maiden Down common from 1934 to the present (1997). He resided at Maidendown Cottages from 1928 to 1952 and would use the common with his siblings. When he left school he worked for Mr Gill at Heathfield (south of points C to X) and would walk to work across the common each day. He has coloured a route on his plan to point B but no further.
- 4.8 Mr D Frost (believed to be brother of Mr T Frost) describes use of the common from 1930 to 1975. He would use the common with his grandfather to access local farms to help with threshing, including Axon Farm. His map includes the southern route across the common coloured to point B.
- 4.9 Mr P Salter described use of a route from Sand Pitt Hill, Culmstock Road to Old Beat and the A38. His user form is undated but is an older style form (1980s) and refers to use from the 1940s to present. No plan is attached but an accompanying statement describes when he worked for the local baker, Mr Thorne from Culmstock on Saturdays. Mr Salter would be dropped off from the baker's van at the bottom of Sandpits Hill (believed to be on the B3391 at the south eastern corner of the common by the sand pit marked on the early 20th century maps) and he would then walk across the common to Axon Farm with the basket of bread and then be picked up by the van at Old Beat.
- 4.10 Mr B Middleton lived at Burlescombe and was over 80 years old in 1996. He used paths on the common from 1924 to the 1940s with his family or on his own. Often they would walk to visit Mrs Pillar at Snows Cottage, Gypsy Town. On his map he has coloured the route along the southern boundary to point B.

- 4.11 Mrs R Laidlaw in 1992, at age 76, made a statement about the Maiden Down footpaths and then completed a user evidence form in 1996. As a child living in Uffculme she visited the common 1920 to 1936 and their approach was usually on the footpath which diverged from the road leading to Axon – described as an avenue - from the road at Gipsy Town. The routes used on her map include both sections of Footpath No. 10, but not the route along the southern boundary of the common.
- 4.12 Mr F Gill of Exeter completed his user evidence form in 1992 at the age of 87. He is understood to have previously lived at Heathfield and used routes from 1925 to 1939. He had commoner's rights to excavate sand, cut firewood and bracken for bedding. He has not coloured the southern route on his map but has attached a hand drawn sketch map of the area with tracks across the common. This also shows a lane along the southern boundary of the common from the Culmstock road which continues through points B, A and X to the county road at point C. This 'lane' is labelled Footpath.

5 Landowner Evidence

- 5.1 The query regarding the cul-de-sac nature of Footpath No. 10, Culmstock was raised by Mr French of Axon Farm. Some published mapping had shown the access drive to Axon Farm (between points C and A) as coloured yellow indicating it was public highway; when the section between points X and A is privately owned and maintained by Axon Farm. Mr French and adjoining occupiers at Gipsy Lane and Maiden Down were contacted for their comments/evidence on the proposals for the possible addition of sections of public footpath between points C and B.
- 5.2 Mr & Mrs French completed a landowner evidence form which noted that Axon Farm had been in their family's ownership since 1947. They consider the recorded section of Footpath No. 10 between points D and A to be public together with the section from point A to point B at the edge of the common. They have observed people using the route D – A – B weekly to access Maiden Down. They have not required people to ask permission, stopped or turned back or told someone the way was not public when using the route D-A-B but have required people to ask permission, have stopped and told people the way was not public when using their private drive from point C to A. They have erected a 'Private Lane' sign east of point X on the drive.
- 5.3 In additional information supplied they advise that Footpath No. 10 crossed their farm for the purposes of going straight across the drive and up to Gipsy Town or up to Maiden Down Common via point B. Maiden Down Common was a hub to go to Redball to the East, Nicholshayne to the south east and Burlescombe and Westleigh Quarries to the north. With the existence of the section of Footpath No. 10 to point E at Old Beat, there would be no need for another public footpath 150 metres further up the public road (at point C).
- 5.4 Responses were received from some of the owners/occupiers at Gipsy Town. Mr & Mrs Edwards have resided at Orelia House since 1991 and advised that they had always considered the lane from C to A as private. Access to Maiden Down used to be near point C which the landowner has now blocked off. They entered the common at that point and not from C to A. They believe that the lane to point B was used for residents at Gipsy Town to tend their animals on

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the common. People have started using the lane from C to A but only recently as new to the area.

- 5.5 Ms Roppert from The Firs had completed a landowner evidence form and considered the way to be public since 1962, but had not clarified which route. She was aware of the public using the way daily, walking dogs. Under further information she added that the footpath would have gone on to the common and that there was a group who tried to reinstate them (paths on the common) but they were unable to do so.
- 5.6 Mrs Vincent of Heathfield advised that the footpath as recorded is mainly correct (that the section of footpath was for the benefit of Gypsy Town), except the present footpath was originally a cart track that continued straight on from A, keeping to the right of Orelia, Snow Cottage and The Firs, and on towards Burlescombe. This section north from A fell into disuse a long time ago. She considers that C – A was never a public road. That it was never maintained by the Council and there is no public right of way. She adds “when we bought Heathfield in 1979, our solicitor insisted on a signed document from Mr James [Mr French’s father in law] giving right of access to our property as there was no public right of way.” The area A-D-E-C-A-B is used by local people walking their dogs.
- 5.7 Mr M Pipe, the current landowner of Maiden Down Common, sent a response saying ‘There are no footpaths for public access on Maidendown. Obviously A (number 10) is on a private road and points in one direction only.’
- 5.8 Miss Nancy Collier completed a statement in 1996 in support of the Schedule 14 application. She, together with her two siblings, inherited Maiden Down Common on the death of their uncle until it was sold in 1966. Miss Collier advised that she believes that it was never her uncle’s intention to extinguish the public rights of way that already existed on Maiden Down Common.

6 Consultation Responses

- 6.1 Culmstock Parish Council and the P3 Co-ordinator advised that they are aware of the use of section A to C as a circular route by local residents using Footpath No. 10, Culmstock A – D – E and the county road E – A.
- 6.2 Burlescombe Parish Council, whose parish borders the north and north western side of Maiden Down Common were consulted. The Chairman reported that the matter was discussed at length at a Parish Council Meeting. However, as the Chairman has no personal knowledge of the history of Footpath No. 10 and the Parish Council would appear to have no relevant archive records, they are unable to help with the enquiry.
- 6.3 Natural England advised that they had no objection to the proposed addition of C – X – A or A – B, near Footpath No. 10, Culmstock. The section A – B leads onto Maiden Down Site of Special Scientific Interest (SSSI). The SSSI is open access land covered by the Countryside and Rights of Way Act and Natural England do not feel that the proposal is likely to have an adverse effect on the special interest of the SSSI.

- 6.4 Maiden Down Common has been subject to the right of access on foot under Open Access legislation since 2005 as Registered Common Land. The Natural England Open Access contact centre was contacted for additional information regarding the 'race horse gallop' exception, as Maiden Down Common is used for the training of racehorses. Their opinion was that this just applied to the gallops and tracks used by the horses and confirmed that the exemption would apply between dawn and noon daily and at any other time when the land is in use for that purpose. Ultimately it would be the courts to determine if land qualifies as 'excepted land'. The CROW Act allows land managers to put up signs they consider necessary, provided these are not misleading about the accessibility of the land.

7 Discussion

- 7.1 The proposal to be considered is to ascertain whether the cul-de-sac end of Footpath No. 10, Culmstock (points D to A) is correctly recorded as it is, or whether additional sections of public footpath need to be added. Instructions to parish and district councils when the Definitive Map was compiled clearly stated that public rights of way should connect to another public highway, be that another public right of way or a county road. The presumption would therefore be that the footpath was not intended to be a cul-de-sac and was considered to connect to a highway or to a point of interest.
- 7.2 The Definitive Map statement for Footpath No. 10, Culmstock describes the route of the footpath from the split at point D as '*continuing in a north-north-westerly direction to the public road on the southern boundary of Maiden Down at Gipsy Town*'. As the statement refers to 'the public road' it would indicate that it was considered that the footpath did join a public highway and was not a cul-de-sac route. The inclusion of Footpath No. 10 on the Definitive Map for the parish and the statement for the footpath was agreed with a sub-committee of the parish council in December 1957. The statement would have been included in the draft and provisional Definitive Maps for Tiverton Rural District area published in 1958 and 1963 respectively and copies sent Culmstock parish council. As no objections or representations appear to have been received to the statement or inclusion of the path, the statement can be deemed correct.
- 7.3 One consideration was whether this section of Footpath No. 10 was purely as an access for the residents and occupiers of the three properties at Gipsy Town as the residents would not have a right to walk across the fields at Axon Farm with the path being public. The use of Footpath No. 10 would be a shorter route than walking points D to E to C to X. However, as the path statements for Culmstock parish are fairly detailed compared to the statements for some parishes it does seem strange that the statement referred to the public road rather than just saying 'continuing in a north-north-westerly direction to Gipsy Town'. There would also have been no need to mention the Deed of Declaration if the footpath was not intended to link to the common. The fact that the statement also included reference to '*Maiden Down being subject to a Deed of Declaration under the Law of Property Act 1925*' (Mr Collier's Deed of Access was signed in 1930), would indicate that the footpath was used as a route to the common. The inclusion of the footpath on mapping from the late 19th century, some fifty years before the Definitive Map was prepared, would also indicate it was an important parish footpath, rather than as a footpath for the benefit of three dwellings only.

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- 7.4 Although the Deed of Declaration was entered into by the Lord of the Manor and owner of the common, Mr Collier in 1930, giving public access to the common, it seems that local parishioners had been using paths across the common for many years beforehand as supported by some of the user evidence forms collected in support of the Schedule 14 application for routes across the common. The deeds for the sale of the Manor of Culmstock to Mr Collier in 1884 as reported in the Parish Council minutes in 1922 included the words *'Together with the right of hunting, shooting.... as incident to the ownership of the soil but subject to rights of common and way and passage thereon and there over'*. This would imply there were rights of way and passage over the common at that time and not just rights of common.
- 7.5 The proposals considered whether Footpath No. 10 should be extended to point B by the addition of a section of public footpath between points A and B. This would connect the footpath to the land that is designated Registered Common Land and as such is now subject to the rights of open access from 2005. In the 1950s the common was subject to public access under the Deed of Declaration and it is felt that the Parish Council were not aware that the Deed could, or would, be revoked, as no public rights of way were proposed for inclusion on the Definitive Map in the 1950s. As the common had open access for the public at that time, it is considered that the Parish Council did not think it necessary to include any footpaths across the common and concentrated on surveying the cross field footpaths. It may be that this section of Footpath No. 10 therefore exists as a link to the southern area of the common and to the route along the southern boundary of the common to the B3391.
- 7.6 Another proposal was whether there had been sufficient use of the section of access lane between points C and A by the public, as of right, to show that this section of lane should be recorded as a public right of way.
- 7.7 The Tithe, OS and other mapping show that the route between points C and B, including the private access drive and section of lane leading to Maiden Down Common, has been in existence since the OS 1" 1809 and Tithe Map of 1841. On the larger scale maps the section between points A and B continued as a route eastwards along the southern boundary of the common towards the B3391. The north-south section of Footpath No. 10, Culmstock was shown on the 1899 & 1946 OS 1" to a mile and both spurs of the footpath were shown on the 1st and 2nd edition OS 25", OS 1961 1:25,000 and 1965 2,500 Post War Mapping. These were maps printed before the Definitive Map was published.
- 7.8 The Tithe and OS mapping do not provide concise evidence of the status of the lanes and tracks shown on the maps. However, they do show that a route through from points C to B has physically existed since the early 19th century and presumably would have been available for people to use since that time. The inclusion of a route along the alignment of the existing Footpath No. 10, Culmstock would indicate that this was a known footpath and visible as such to the map surveyors from the late 19th century.
- 7.9 The Finance Act plans exclude the section of lane between points C and X with the colouring for Heathfield breaking across the lane. The section from X to A would appear to be excluded from the adjacent hereditaments, although the colouring is very feint between X and A. The break in colouring for Heathfield would indicate that Heathfield did not claim to own the lane. This is consistent with the land registry records, as the title for Heathfield does not include the lane within the title. The exclusion does not necessarily mean that the lane was

considered public but could imply that the adjacent owners/occupiers did not consider that they owned the lane and did not therefore include in their holdings.

- 7.10 The field book record for Axon Farm refers to a church path through two fields but no compartment numbers are listed. The closest church is considered to be the chapel at Henborough to the south. An allowance of £38 is given for public rights of way and this is considered to relate to the section of Footpath No. 10 between points D and A. The record for Maiden Down Common includes 435 acres of common land in the parish including Maiden Down and three other locations. The entry refers to 'some footpaths marked on ordnance map' and commoners rights. The substantial sum of £200 was given for the footpaths and £300 for the rights of common on a total value of £1,200. Although no precise details were included of specific routes on Maiden Down, the OS map used does show routes across the common including a route leading to point B. Therefore part of this allowance is considered to relate to Maiden Down Common, indicating that use by the public of paths on the common was acknowledged by Mr Collier at that time.
- 7.11 The list of footpaths prepared by the Parish Council in 1899 described the now Footpath No. 10 as 'Almshayne to Henborough thence to Axon and Gipsy Town and a branch to J Nortons'. This description does not include reference to Maiden Down Common but does include the section to Old Beat.
- 7.12 The description on the parish footpath survey form of September 1950 described the route of Footpath No. 10 as in the parish council minute book of 1899. The County Council amended 'J Nortons' to Old Beat and a more detailed description of the route was agreed at the meeting with the Parish Council sub-committee and County Council of December 1957. The inclusion of the words 'to the public road on the southern boundary of Maiden Down at Gipsy Town' is considered to be strong evidence that the path was intended to be used as access to the common. The phrase 'public road' could be referring to the section of lane between points A and B, as it was shortly after this date, in 1960, that the correspondence between Clarke Willmott & Clarke and the county council confirmed that the section C to A has never being maintained at public expense. The solicitors had said 'because east of the access to Axon Farm the road is not really passable by vehicles'. This is considered to refer to the lane between points A and B and their comments re suitability for vehicles would be true today. The solicitors had also said they did not understand why it is not designated as a public footpath under the 1949 Act. The County Council Clerk replied that maybe the road should have been described as a 'road used as a public path' but that no action could be taken at that time. He forwarded a copy of the last two letters to the Council Surveyor and asked him to investigate this matter in order that any necessary amendment could be made at the quinquennial review. The quinquennial review did not take place and the Parish Council did not make any proposals in respect of any parts of the lane between points C to B in the uncompleted 1968 and 1977 reviews.
- 7.13 The reference in the statement for Footpath No. 10 of Maiden Down being subject to the Law of Property Act is also considered relevant as the access granted by deed could explain why it was felt unnecessary to propose any paths for inclusion in the survey on Maiden Down Common.

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- 7.14 In the aerial photography of 1946-49 there is a track leading from point B across the common. The access lane from points C to A is also clearly visible but the photograph merely records what is physically there and does not hold any information with regard to rights.
- 7.15 The Land Registry records that all of the properties and land bordering the access lane between points C and B are registered. The title plan for Axon Farm confirms that the section of lane X to A is included in that title. It appears that this section of the lane was transferred to Axon Farm in the sale of land to the south of the lane in 1961. A right of way 'at all times and for all purposes' was included in the conveyance for the benefit of the vendor who retained land on the north side of the lane.
- 7.16 Conveyances giving a right of way 'at all times and for all purposes' are also included for the section C to X for the properties of Heathfield and Orelia. Orelia also includes a right of way along the section X to A. The title for Snows refers to a notice lodged under rule 254, that the proprietor claims the land has the benefit of a right of way from C to X. The inclusion of the rights of way for the properties that need to access the lane for access are indicative that the section of lane was not considered public highway as if it was, the clauses would not have been necessary. The clauses grant a right of way for all purposes and this would include use with vehicles and animals. Therefore, if the lane had been understood to be a public footpath, it was still necessary to grant the additional private rights. This information indicates that the lane between points C to A was not considered a public road in the 1960s.
- 7.17 The sections of lane, C to X and A to B are not registered at Land Registry and no ownership has been identified.
- 7.18 Most user evidence forms were received from past and present local residents rather than from the wider neighbourhood. The forms covered the use of Footpath No. 10, together with either or both of the lane from A to B or A to C. Four forms were discounted as they referred only to use of the recorded section of Footpath or to use of the proposal route for business purposes.
- 7.19 The other forms received record the total period of use for the section C to A as from 2000 to 2017 and for the section A to B from 2002 to 2017. Under Section 31(1) of the Highways Act 1980 there must be a minimum period of twenty years use by the public from the date that the use of the route was called into question to show that presumed dedication has occurred. If the date of calling into question the use of the route from point C to point A was taken as September 2016, when the anomaly was first raised by Mr French, the user evidence received does not cover a sufficient period of use for the section C to A to raise the presumption of dedication of a public footpath.
- 7.20 Although insufficient to support a claim for deemed dedication under Section 31 the user evidence could be used to support a claim for presumed dedication at common law.
- 7.21 The user evidence forms received with the 1990s Schedule 14 application included some that either coloured their attached plan with the path leading to point B or appeared to describe the use of the section from B to A. Four forms had coloured the route to point B and these users are then presumed to have

continued to point A based on the reason for their use. The period of use covered by these users is from 1924 to 1975.

- 7.22 Of the two users whose additional information indicated that they used the section B to A, Mr Salter refers to walking across the common from Sand Pitt Hill on the B3391 westwards to Old Beat via delivering bread at Axon Farm. Mrs Laidlaw refers to accessing the common from 1920 to 1936, on the footpath which diverged from the road leading to Axon. Mr Gill had attached a hand drawn sketch map of the common to his user form with a route including points B to C which was labelled footpath.
- 7.23 Five of these users referred to visiting properties at Gipsy Town or Axon Farm as the reason for their use and they could be said to have had a private right as visitors/employees to use the lane west of point A; but it is considered that use of the lane B to A would be as a member of the public exercising a public right, as there is no evidence that this lane was ever considered private.
- 7.24 The section of lane from X to A is owned by Mr & Mrs French. They have advised that they considered Footpath No. 10 to be a public footpath together with the section from point A to point B. They have observed users weekly walking D – A – B. The stopping of users access on the section X to A shows a lack of intention to dedicate under S31 of Highways Act 1980. A sign such as 'Private Lane' is considered as more of an informing nature rather than a lack of intention, as public rights of way do often run along private drives or lanes which are signed as such. It is shorter to get to point C from point D by using D – E – C than it would be by using D – A – C and this would support the section of Footpath No. 10 from point D to A, leading to the common rather than west to point C.
- 7.25 Mr & Mrs Edwards of Orelia house had always considered C to A to be private. They believed the lane A to B was used by Gipsy Town residents tending their animals on the common. They are aware of some new local residents using the lane from C to A. Ms Roppert from The Firs considered the way to be public since 1962 and was aware of the public using the way daily walking dogs. She added that the footpath would have gone to the common. Mrs Vincent of Heathfield believed that the footpath was for the residents of Gipsy Town. The section C to A was never a public road. The route A- D – E – C – A – B is used by local people walking their dogs.
- 7.26 Mr Pipe, the landowner of Maiden Down Common advised that there are no footpaths for public access on Maidendown. There are no recorded public rights of way on the common but since 2005 the land has been subject to Open Access as registered common land. Use of the common by the public would be subject to the 'racehorse gallop' exception between dawn and noon daily for the parts of the common used for training racehorses.
- 7.27 The landowner evidence in general supports the section of Footpath No. 10 as being for access to the common via points A to B. Landowners also refer to seeing or being aware of use of the section C to A by the public as indicated by the user evidence forms received.
- 7.28 There is not sufficient user and documentary evidence to support implied dedication of a public footpath along the section from C to A at common law. Although public rights can and usually do run over private land there is no evidence to indicate that there was ever intended to be or considered to be a

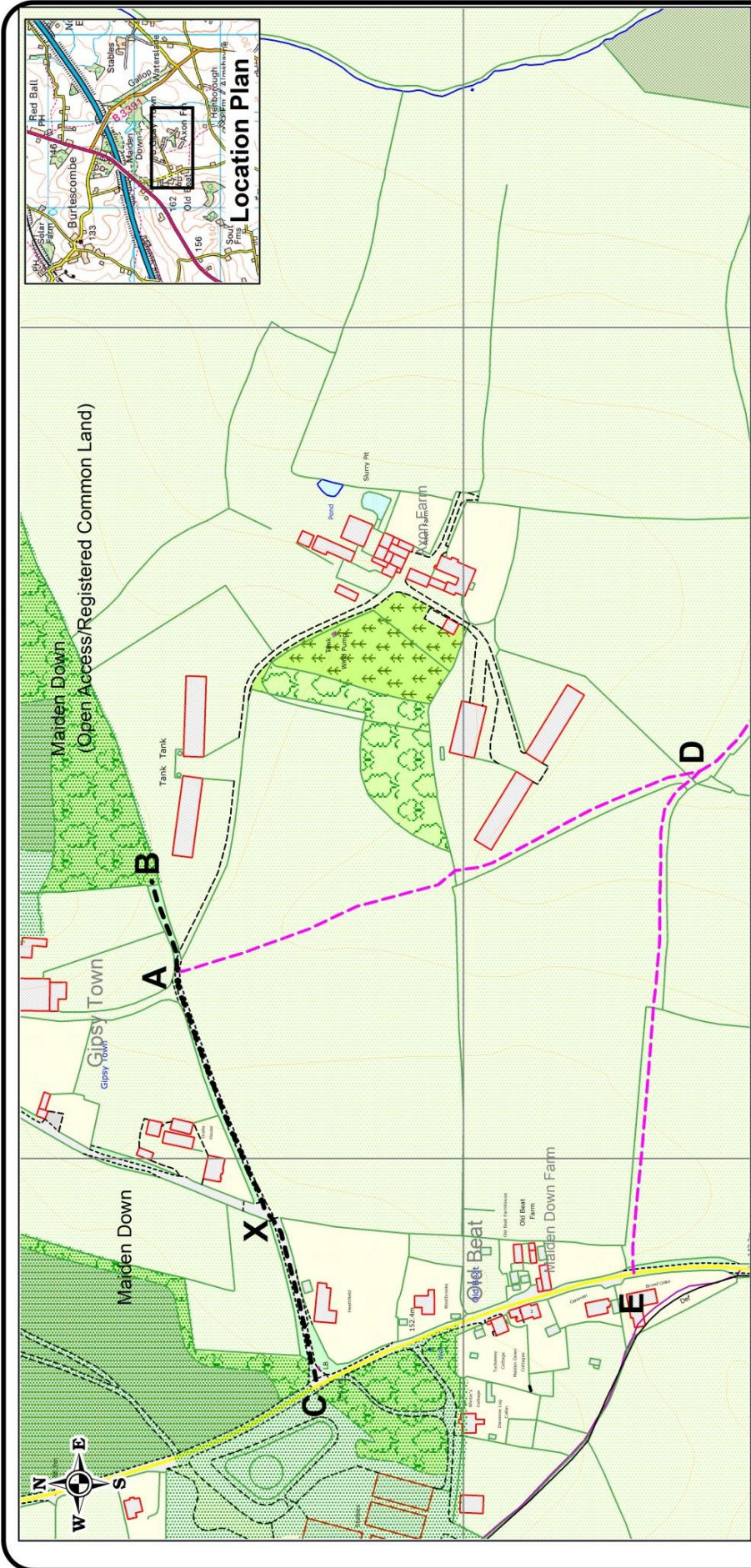
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public footpath along this section of the lane. Local neighbourhood users appear to have been using the lane as part of a regular circular walk using the two sections of Footpath No. 10 and the county road through Old Beat in more recent years, but there is no evidence has been received of use by the more general public as a whole.

- 7.29 The documentary evidence considered is however believed to be sufficient to show that a public right of way can be said to be reasonably alleged to subsist between points A and B by implied dedication at common law. The implied dedication is also supported by the user evidence from the 1990s Schedule 14 application and the more recent evidence of use. Although point B on the common would not be on a county road or other public right of way, at the time the Definitive Map was prepared access to the common was permitted under the Deed of Declaration. The common would be considered as a 'point of public interest' and as a destination for the public footpath.

8 Conclusion

- 8.1 It is therefore recommended that a Modification Order be made to add a public footpath between points A and B as shown on plan HIW/PROW/17/014 and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed and that no Modification Order be made to add a public footpath between points A and C.



Map Ref: ST 08 15 Grid 500m

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DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW CULMSTOCK
DEFINITIVE MAP ANOMALY FOOTPATH NO. 10, CULMSTOCK

drawing number **HIM/PROW/17/014**
 date **April 2017**
 scale **1:7,500 at A4**
 drawn by **TW**

Notation Possible Addition of Public Footpath C - X - A (Approx 265m) or A - B (Approx 57m) -----
 Public Footpath No. 10, Culmstock as recorded on the Definitive Map - - - - -

Meg Booth
 Chief Officer for Highways,
 Infrastructure Development & Waste

Devon
 County Council

HIW/17/83

Public Rights of Way Committee
9 November 2017

Definitive Map Review Parish of East Down – Part 2

Report of the Chief Officer for Highways, Infrastructure Development and Waste

Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement by adding to them a restricted byway between points E – F – G – X – H – I – J between Princes Gate and Shortacombe, and to upgrade part of East Down Footpath No. 20 between points J – K between Shortacombe and Shortacombe Corner as shown on drawing no. HIW/PROW/16/40a.

1. Introduction

This report examines the final proposal arising from the Definitive Map Review in East Down.

2. Background

This is the second report for the Definitive Map Review for East Down parish. The background to the Review in East Down was discussed in the first report of 2 March 2017.

3. Proposals

Please refer to the appendix to this report.

4. Consultations

General consultations have been carried out with the following results:

County Councillor Andrea Davis	– no comment
North Devon Council	– no comment
East Down Parish Council	– support the proposal
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.

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5. Financial Considerations

Financial implications are not a relevant consideration to be taken into account under the provision of the Wildlife and Countryside Act 1981. The Authority's costs associated with Modification Orders, including Schedule 14 appeals, the making of Orders and subsequent determinations, are met from the general public rights of way budget in fulfilling our statutory duties.

6. Legal Considerations

The implications/consequences of the recommendation have been taken into account in the preparation of the report.

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

Equality, environmental impact or public health implications have, where appropriate under the provisions of the relevant legislation have been taken into account.

9. Conclusion

It is recommended that a Modification Order be made to modify the Definitive Map and Statement by adding to them a restricted byway between points E – F – G – X – H – I – J between Princes Gate and Shortacombe, and to upgrade part of East Down Footpath No. 20 between points J – K between Shortacombe and Shortacombe Corner.

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.

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Combe Martin Rural

Local Government Act 1972: List of Background Papers

Contact for enquiries: Caroline Gatrell

Room No: ABG Lucombe House

Tel No: 01392 383240

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

cg031017pra
sc/cr/DMR East Down
04 301017

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 53(5) enables any person to apply to the surveying authority for an order to modify the Definitive Map. The procedure is set out under WCA 1981 Schedule 14.

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.

In relation to claims for byways open to all traffic (BOATs), 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;

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(e) it was created by virtue of use by such vehicles before 1 December 1930.

Extinguishment of rights for mechanically propelled vehicles also does not apply if, before the relevant date (20 January 2005), an application was made under section 53(5) of the Wildlife and Countryside Act 1981, or such an application was determined by a surveying authority, for an order to modify the definitive map and statement as to show a BOAT.

The judgement in the case of *R. (on the application of Winchester College) v Hampshire County Council (2008)* however, found that for such exceptions to be relevant the application must fully comply with the requirements of paragraph 1 of Schedule 14 to Wildlife and Countryside Act 1981. It is appropriate therefore firstly to determine whether or not the claimed vehicular rights subsist and, secondly, whether or not any exceptions apply; if vehicular rights subsist but the exceptions are not engaged then the appropriate status is restricted byway. Such claims may also be considered for a lower status.

B. Definition of *Ratione Tenurae* Roads

Research into Highway Board, Rural District Council and Parish Council minutes has indicated that '*ratione tenurae*' roads were, from the late 19th century types of road expected to be used by the public, but with the adjacent landowners/occupiers of the road/lane being responsible for the maintenance of the roads. Indictment for non-repair could only be brought by and on behalf of, the public.

Section 25(2) of the Local Government Act 1894 enacted that if a person liable to repair a highway '*ratione tenurae*' failed to do so, after being requested by the district council, the council could repair the highway and recover the expenses from the person liable.

Proposal 3: Proposed addition of a bridleway and upgrade of part of East Down Footpath No. 20 to bridleway, as shown between points E – F – G – H – I – J - K on plan HCW/PROW/16/40a.

Recommendation: That a Modification Order be made in respect of Proposal 3, be made to modify the Definitive Map and Statement by adding to them a restricted byway between points E – F – G – X – H – I – J between Princes Gate and Shortacombe, and to upgrade part of East Down Footpath No. 20 between points J – K between Shortacombe and Shortacombe Corner as shown on drawing no. HIW/PROW/16/40a.

1. Background

- 1.1 The proposal route was included in the consultation with the support of the Parish Council, as it appeared to be a missing link between a cul de sac unsurfaced county road near Prince's Gate and Bridge and East Down Footpath No. 20 at Shortacombe, in the parish of East Down. During the course of the investigation, a variance in the alignment of the route was discovered. This report therefore deals with the route as proposed, and these variations, which are also shown on the attached plan.

2. Description of the Route

- 2.1 The proposal route starts at the unsurfaced county road approximately 120 metres east northeast of Princes Gate and Bridge at point E and continues north eastwards along a hedged lane via point F towards the hamlet of Shortacombe at point G. It continues along a defined track between the various properties of Shortacombe, specifically Lower Court Barn, and Shortacombe Lodge, past points H and I to meet East Down Footpath No. 20 by Shortacombe Gate at point J, which it follows northwards to meet the county road at Shortacombe Corner, point K.

3. Documentary Evidence

3.1 Race Ground & Churchill Downs Inclosure Act & Award, East Down, 1811-23

- 3.1.1 Inclosure awards can be evidence of repute of highways at the time they were made. Their significance as evidence depends on the powers given to the relevant Inclosure Commissioners. Awards and maps may provide supporting evidence of other matters, such as the existence of status of a route adjacent to but outside the awarded area. Evaluation of such evidence is considered in the context of the relevant Inclosure Act.
- 3.1.2 An Act for Inclosing Lands in the Parish of East Down received Royal Assent on the 21st May 1811. It recited the 3rd, 4th, 6th, 7th, 8th, 10th, 14th, 18th, 19th, 22nd, and 35th sections of the 1801 Inclosure Consolidation Act.
- 3.1.3 The award of lands was completed in 1823 and deposited with the Clerk of the Peace in 1826.
- 3.1.4 The county road between Ashelford Gate and Princes Gate which connects with the proposal route is set out as a public carriage road (vehicular highway). The proposal route, however, is not included as it was outside the Downs, which was the area being enclosed.

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3.2 East Down Surveyors of Highways Accounts, 1821-56

- 3.2.1 Prior to the formation of District Highway Boards in the early 1860s and the later Rural District Councils from 1894, the responsibility for the maintenance of public highways generally belonged to the parish and was discharged by elected Surveyors of Highways. Relevant Acts of 1766, 1773 and 1835 included the provision for the use of locally available materials and there was a statutory requirement upon parishioners to fulfil a fixed annual labour commitment. The final responsibility for maintenance lay with the local Surveyor of Highways who was obliged to keep a detailed account of public monies expended.
- 3.2.2 In 1829 and 1836 there are references to the repair of the road at '*Kitnole*'. This is the continuation of the proposal route, southwards from Princes Gate and Bridge to Ashelford Gate. '*Kitnole*' is the large field through which the current unsurfaced county road runs between Ashelford Gate and Princes Gate and Bridge. These can be located on Committee Plan 2, HIW/PROW/16/40d.

3.3 East Down Tithe Map and Apportionment, 1840-3

- 3.3.1 Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, limiting the possibility of errors. Their immediate purpose was to record the official record of boundaries of all tithe areas. Public roads were not titheable and were sometimes coloured, indicating carriageways or driftways. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over a route shown. Such information was incidental and therefore is not good evidence of such. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not numbered are usually included under the general heading of '*public roads and waste*'.
- 3.3.2 The East Down tithe map is a first class map, surveyed at a scale of 3 chains to 1" by John Woodmass of Alston, Cumberland, who did a number of tithe surveys in Devon and Cornwall. Being first class, it is a legal and accurate record of all matters shown. Land that was not subject to tithes was generally accepted to be either public, glebe or crown estates. In many cases public roads are coloured sienna as prescribed by Lieutenant Dawson, a military surveyor with the Ordnance Survey, to the Tithe Commissioners. The original document is held at the National Archives, with copies for the parish and diocese held locally.
- 3.3.3 The proposal route between points E – F - G and J – K is included in lot 920, the parish '*roads*'. The tithe map shows a slightly different alignment between points G – I, with it passing closer to Shortacombe House and between buildings, included in lot 400, which is described as the homestead of Shortacombe, owned and occupied by William Tamlyn. Its continuation west of point E, the unsurfaced county road is recorded heading westwards, south eastwards and southwards, passing through lot 351 '*Middle Land*' and lot 376 '*Kitten Knowle*' field, part of Race Down, but from which the road is excluded, and braced to lot 920.

3.4 British Newspaper Archive, 1824 onwards

- 3.4.1 This is a digital database of scans of newspapers across the country. It includes local newspapers such as the Exeter Flying Post and the North Devon Journal, except for the years 1825-6 which have not survived. The newspapers included reports on the proceedings of the Magistrates Petty Sessions, Quarter Sessions and Assizes, along with those of the various district Highway Boards and Vestry's.

- 3.4.2 20.11.1845 – County Magistrates Petty Sessions. The relevant landowners were summoned to the Petty Sessions for the non-maintenance of highway hedges. Most of the landowners agreed to comply, though *'on Mr Tamlyn an order was made with expenses'*. From later reports, this is known to include the proposal route.
- 3.4.3 10.02.1848 – County Magistrates Petty Sessions. An Order was made on Mr Tamlyn again for the non-maintenance of a road which was repairable *'ratione tenure'*, which *'he had promised at a former Special Session to put in repair forthwith, but had not done anything whatever to it'*. From later reports, this is known to include the proposal route.
- 3.4.4 21.11.1855 – County Magistrates Petty Sessions. Mr Passmore of Wigmore, Eastdown, was summoned for the non-maintenance of a road which was repairable *'ratione tenure'*, which passed through his estate. He, however, disputed liability. The matter was adjourned so that the case could be dealt with properly.
- 3.4.5 05.12.1855 – County Magistrates Petty Sessions. The hearing was resumed regarding the non-maintenance of the road through the Wigmore and Shortacombe estates, which was repairable *'ratione tenure'*. *'A map was produced of the locality, shewing the estates and the direction of the road in dispute, constructed from actual survey'*, and Mr Tamlyn gave evidence that when occupying Shortacombe, he had *'set up a gate for the purpose of preventing it [use by the public], but found he had no right to stop the way'*. *'The Bench having heard the evidence concluded that...it had been clearly established...that the road was a public highway'*. What was in dispute was who bore the maintenance liability. There had been no known repairs by the parish, only adjacent landowners and occupiers. The case was adjourned in order that the parties could attempt to reach an agreement.
- 3.4.6 19.12.1855 – County Magistrates Petty Sessions. The hearing was again resumed, though Mr Passmore of Wigmore had already consented *'to put the road in question in repair'*. The hearing was again adjourned.
- 3.4.7 30.01.1856 – County Magistrates Petty Sessions. The hearing was again resumed. It was reported by the Surveyor that Mr Passmore, *'the defendant in the late actions had not repaired the road'*. As the adjournment had lapsed, it was considered that therefore the case must be considered *'de novo'*(anew).
- 3.4.8 02.04.1856 – County Magistrates Petty Sessions. The hearing was again resumed. Mr Passmore now disputed that the road was a public highway, and that there was no authority to call for repairs.
- 3.4.9 *'On a former hearing this bench had decided that the road was a public highway, that subject was now to be opened again as it had been discovered and declared to be opened again as it had been discovered that the road now in use was not the one laid down on the maps on that occasion and declared to be a public highway. The road now in use was a diverted one, laid down by Mr Tamlyn at the time he occupied the estate [Shortacombe], and a far better piece of road than the old one for which it was substituted. But as this diversion was not taken into account at the last hearing, it was considered a sufficient reason for opening the whole question again.'*
- 3.4.10 *'Evidence was taken on the part of the Waywardens to shew from the termini – the road in question passing from one public highway to another – from its use by the public without interruption or leave asked for a great number of years, that it was a public highway'*.

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- 3.4.11 *'The Chairman...had requested him to deliver the decision of the Bench, which was that the road was a Public Highway, for although the road had been diverted [without an Order from Quarter Sessions] the parish had concurred therein, and that the parish ought to repair it.'*
- 3.4.12 11.04.1865 – Ilfracombe District Highway Board. The Surveyor reported that the road through Wigmore and Shortacombe was in good repair. From later reports, this is known to include the proposal route. These places can be located on Committee Plan 2.
- 3.4.13 07.05.1867 – Ilfracombe District Highway Board. *'The road complained of in the parish of Eastdown [had] been repaired but not substantially. William Tamlyn, District Surveyor.'* From later reports, this is known to include the proposal route.
- 3.4.14 26.06.1867 – Ilfracombe District Highway Board. A notice was received calling on *'the Board to repair or caused to be repaired certain highways...one leading through Shortacombe Estate'*. It was resolved *'that the usual notices be given to get the same repaired'*. From later reports, this is known to include the proposal route.
- 3.4.15 Circa 22.08.1867 – Ilfracombe District Highway Board. *'The road in Eastdown referred to in the Surveyor's report, the repair of which devolved on [Mr Moore of Shortacombe] *ratione tenurae*, was partially repaired and the remainder of the work would be done in a few days'*. From later reports, this is known to include the proposal route.
- 3.4.16 Circa 29.08.1867 – Ilfracombe District Highway Board. *'A notice...to have a certain road, passing through Wigmore estate, in the parish of Eastdown, put in proper repair'*. It was resolved *'that the usual notice be given to the owner and occupier of Wigmore estate, to put the road in repair'*. From later reports, this is known to include the proposal route.
- 3.4.17 Circa 31.10.1867 – Ilfracombe District Highway Board. In accordance with his orders, the Surveyor had served *'notices to Messers Dyer and Passmore to repair a certain road leading through Wigmore estate...from Shortacombe Gate [at point J] to Princess Gate [west of point E]; the road [had] not been repaired.'* This is known to include the proposal route.
- 3.4.18 30.12.1867 – Ilfracombe District Highway Board. An application was made for summons against the liable parties to repair the road through the Wigmore estate, but no summons was taken out, as the Board Trustees thought other parties were liable for repair, and no further action should be taken. From earlier reports, this is known to include the proposal route.
- 3.4.19 Circa 26.03.1868 – County Magistrates Petty Sessions. Two connected cases were brought regarding the proposal route. The first case *'alleged that a highway...commencing at Shortacombe gate and passing through Wigmore Estate to a place called Prince's Gate...was out of repair for a distance of a quarter of a mile'* and that the Ilfracombe Highway Board was liable. The second case alleged that *'the owner...and occupier of Wigmore...were chargeable with the repairs'*. Both sets of defendants denied their liabilities. Complicating the matter was the fact that the Eastdown Waywarden was also the occupier of Wigmore Estate. It was estimated that the maximum cost of the road repairs required was considered to be £12-£15 (approximately £548-£685 in 2005). Evidence from several witnesses was given that *'the public were in the habit of using it [the route] at will and pleasure.'* Mr Tamlyn, the former owner of the Shortacombe Estate and now the Highway Board Surveyor was

also called to give evidence. The Bench considered that the road was a public highway, and that the issue in dispute was who should repair it. The hearing was adjourned so that the parties might be able to come to some arrangement. From later reports, this is known to include the proposal route.

- 3.4.20 22.04.1868 – County Magistrates Petty Sessions. The hearing was resumed regarding the *'question of liability to repair a certain highway...commencing at Shortacombe Gate and passing through Wigmore Estate...to Prince's Gate...out of repair for a distance of a quarter of a mile'* (approximately 402 metres). The issue was heard at great length as the parties involved had not been able to reach any agreement.
- 3.4.21 *'It was admitted that the road was a public highway and in a state of non-repair, but it was alleged that the owners of Wigmore and Shortacombe... were liable to repair it and not the Highway Board...a considerable portion of the highways of Eastdown is repaired ratione tenure; in fact, nearly the whole of them, only a few being kept in order by the parish.'*
- 3.4.22 It was submitted *'that the Bench had no alternative but to send the case to the Quarter Sessions'*. They were *'of the opinion that the Board had not acted as they ought to have done in settling the matter under the 34th section'* of the Highways Act 1862.
- 3.4.23 *'The Bench...made an order of indictment against the [Ilfracombe District Highway] Board, and the witnesses were accordingly bound over to appear at the next assizes'*.
- 3.4.24 11.05.1868 – Ilfracombe District Highway Board. The Board debated at length regarding the Indictment and whether it should be defended, or they repair the road. The Board appeared to be split as to what action to take. One member *'considered that the Board was placed in a very humiliating and undignified position. He had...endeavoured to impress on the minds of the Board that they ought to proceed under the 34th section, and if they had attended to his advice he did not hesitate to say that they would not have been in their present dilemma... The question...was whether they should defend the indictment which had been preferred, or repair the road'*.
- 3.4.25 It was reported that the Eastdown Vestry wanted the Indictment to be defended, though a memorial had been received from some of the ratepayers requesting the halting of the Indictment. Various compromises between the landowners and the parish were suggested, but no agreement could be reached and the discussion adjourned.
- 3.4.26 23.05.1868 – Eastdown Vestry. An important vestry meeting was convened for the purpose of ascertaining if a compromise could be reached regarding the repair of the road between Shortacombe and Prince's Gate (just west of point E), including the proposal route.
- 3.4.27 *'Expensive and irritating legal proceedings had been commenced, and an indictment would be preferred at the next assizes...unless some means could be devised for an amicable statement; and it would be unwise to squander a large sum in law if a basis could be found for a satisfactory adjustment of existing difficulties.'*
- 3.3.28 It was *'adopted by a majority of 8 to 4...that all matters be left to the Highway Board, to do as they shall think proper, provided the parties do not enter into a compromise before the next meeting'*.
- 3.4.29 30.05.1868 – Ilfracombe District Highway Board. The Board discussed the recent

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resolution of the Eastdown Vestry regarding the repair of the road (the proposal route), and how to proceed on the matter. It was narrowly resolved *'that the Highway Board [should] defend the indictment, and do not repair the road'*.

- 3.4.30 11.03.1869. The Eastdown Highway case had been postponed to the summer Assizes.
- 3.4.31 12.04.1869 – Ilfracombe District Highway Board. The Highway Board was requested *'to name 2 inhabitants of Eastdown to appear at the next Assizes to be held at Exeter...to defend the indictment against the inhabitants of Eastdown for allowing a certain highway passing through Wigmore Estate...to be out of repair. The case was laid before the...vestry...who declined to act. The Board also declined to give the names required and the matter dropped'*.
- 3.4.32 Circa 13.05.1869 – Ilfracombe District Highway Board. In a discussion relating to a highways depot, it was noted that *'the road on which the depot abutted was up to a certain time repaired ratione tenure'*, and then *'conveyed to the parish, subject to a payment of £5 10s annually out of Shortacombe estate toward the repair'*. The location of the depot is unknown.
- 3.4.33 09.07.1869 – County Magistrates Petty Sessions. Mr Passmore of Wigmore and Mr Tamlyn jnr of Churchill *'were brought up in custody, apprehended upon a warrant charges with refusing to enter into a legal engagement to plead to a bill of indictment preferred against them as representatives of the parish of Eastdown, for non-repair of the road leading through Wigmore Estate.'* They were *'ordered to be bound in recognizances to appear and plead at the Assizes for Devon, on the 26th instant., at the castle of Exeter.'* The *'defendants were 'content' to be so bound, and having signed recognizances, each for £100' (£4,750 in 2005) 'were dismissed.'*
- 3.4.34 Circa 21.10.1869 – Ilfracombe District Highway Board. The minutes of a recent meeting of the Eastdown Vestry were read, when *'the parishoners assembled for the purpose of endeavouring to settle the action against the parish – The Queen v The Parish of Eastdown, in the matter of the road from Shortacombe to Princess Gate.'*
- 3.4.35 Letters were read from the prosecuting barrister *'offering to stop all proceedings, on the parish repairing the road in question'*, and it was resolved *'that £30 [approximately £1,370 in 2005] be collected, and that the disputed road be put into repair, and the balance be handed over to the Board for the future reparation of the same and toward the expenses incurred.'*
- 3.4.36 Circa 28.10.1869. *'The Highway Board agree to take the repair of the road on these conditions, and legal proceedings are now stopped.'*
- 3.4.37 23.06.1881 – County Magistrates Petty Sessions. In a case before the magistrates relating to a damaged gate, it was noted that the Prince's Gate road, including the proposed route, *'was formerly repairable by private persons, but which some years ago was made repairable by the parish.'*
- 3.4.38 09.02.1882 – Ilfracombe District Highway Board. The Board considered the question as to whether the occupier of the Wigmore estate in Eastdown had a right to keep the gates across the roadway, the proposed route, now that it was a parish road. It was resolved that a legal opinion be sought on the matter.
- 3.4.39 Circa 03.11.1898 – Barnstaple Rural District Council. *'Having looked into the question of Mr Chugg's' [of Shortacombe] 'liability for the maintenance of the road at*

Shortacombe...the Clerk showed that under a magistrates' order in 1848 the road was taken over by the highway authority subject to William Tamlyn, the then owner, paying annually to the Surveyor the sum of £5 10s [£321 in 2005], a portion of the expense of repair', though it appears that such payments had been irregular particularly since the Highway Board had been dissolved. However, this 'did not get over the fact that the award was made against the estate, and was in existence.' A Committee was appointed to investigate and report.

- 3.4.40 Circa 01.12.1898 – Barnstaple Rural District Council. *'The Special Committee reported that there could be no doubt that the order in 1840 [1848] by the old Ilfracombe Highway Board that the owner of the estate should pay the sum of £5 10s a year as part of the expenses', and 'that £22 [£1,255 in 2005] was now due from Mr Chugg, the present owner'. The Council accepted the Committee's report and called on Mr Chugg to make the payment, which he refused.*
- 3.4.41 Circa 02.02.1899 – Barnstaple Rural District Council. Mr Chugg refuted his *'liability for the cost of the repair [of the] road adjoining Shortacombe'*. The Council's Clerk was requested to seek out *'the original magistrates order relating to the matter and kept in the parish chest'*.
- 3.4.42 The Parish Clerk replied that *'he was unable to find the order', but 'what had become of it he, of course, did not know, and the only inference was that it had been extracted by somebody'*. The Clerk was to find out *'when the deed in question was last seen'*.
- 3.4.43 09.09.1899 – Ilfracombe District Highway Board. The Board again considered the question as to *'whether the occupier of the Wigmore estate in Eastdown had a right to keep the gates across the roadway known to be the route, now that it was a parish road'*. The committee had met and had difficulty in reaching a decision. It was proposed *'that they take legal advice'* on the matter.
- 3.4.44 Circa 16.02.1899 – Barnstaple Rural District Council. The Clerk reported that the parish rector remembered *'the document mentioned'* and recalled showing it to Mr Chugg in about 1894-5. *'He took it away with him after promising to return it on the following day. Since that time, [he had] repeatedly asked for it, by letter and in person, but it [had] not been returned'*. Mr Chugg denied having the document. After much debate, *'Mr Chugg paid the full amount due in respect of the repair of the road, unconditionally'*.
- 3.4.45 Circa 02.03.1899 – Barnstaple Rural District Council. Mr Chugg of Shortacombe requested that as he had paid the Council £22 (approximately £1,255 in 2005) for the repair of the road, known to include the proposal route, which had been maintained by the Council and the owner of Shortacombe, he *'applied that it should be taken over'*. The matter was referred to the Eastdown Committee.
- 3.4.46 Circa 30.03.1899 – Barnstaple Rural District Council. The Committee recommended *'that the Shortacombe occupation road' known to include the proposal route, 'which for some years had been kept in repair by the Council at the cost of the owners, be taken over on payment of £15 [£855 in 2005] by the present owner, Mr Chugg'*. The report recommending the road be taken over was adopted.
- 3.4.47 Circa 03.08.1899 – Barnstaple Rural District Council. The report adopting *'40 perches of road at Wigmore, Eastdown for £12' [£684 in 2005]* was accepted.
- 3.4.48 06.07.1905. It was reported that a *'public botanical walk was taken from Ilfracombe to Watermouth, Berrynarbor and Berrydown...walked back to Barnstaple, taking a route*

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by Shortacombe, Prince's Gate Bridge, Ashelford Corner...'.

3.5 County Magistrates Petty Sessions, 1881

- 3.5.1 Court records may provide conclusive evidence of the stopping up or diversion of highways. Presentments or indictments for the non-repair of highways may also be found here and may provide strong evidence of status where they are confidently identifiable. It should be borne in mind that such records are conclusive evidence of those matters the Court actually decided, but are not conclusive in relation to other matters.
- 3.5.2 In June 1881, Mr Burnell, the occupier of the Wigmore estate, East Down appeared before the local magistrates regarding the deliberate damage to a gate on the Prince's Gate road, the proposal route, which was noted as a '*public highway repairable by the parish*'.

3.6 Ordnance Survey Name Books, 1883-5

- 3.6.1 These Ordnance Survey records contain information on named routes may be found in the relevant Object Name Books, which provided details of the authorities for named features.
- 3.6.2 Only Shortacombe is referred to in these records, though it is noted that these are not a complete record for the parish of East Down
- 3.6.3 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*'.
- 3.6.4 The proposal route is shown with a variation passing closer to what is now known as Lower Court Barn between points E – F – G – X – H – I – J – K, on the 1st Edition large scale 25" Ordnance Survey mapping of 1889 as an enclosed lane, open and available, part of the local highway network and shown in the same manner as other recorded public highways. It is shown in a similar manner on the 2nd Edition of 1904 and the Post War A Edition of 1961. The current track past Lower Court Barn is not shown.

3.7 East Down Vestry minutes, 19th century

- 3.7.1 Prior to the formation of District Highway Boards in the early 1860s and the later Rural District Councils (1894) the responsibility for the maintenance of public highways generally belonged to the parish and was discharged by elected Surveyors of Highways. Relevant Acts of 1766, 1773 and 1835 included the provision for the use of locally available materials and there was a statutory requirement upon parishioners to fulfil a fixed annual labour commitment. The final responsibility for maintenance lay with the local Surveyor of Highways who was obliged to keep a detailed account of public monies expended. The relevant records relate to matters referred to in section 3.4 above.
- 3.7.2 26.03.1868. The Parish Vestry resolved to object to have anything to do with the repairs to the road between Shortacombe Gate at point J and Prince's Gate, just west of point E, the proposal route, or to take the road after it was repaired.
- 3.7.3 09.05.1868. The Vestry resolved to request the Highway Board to defend the indictment against the Parish, after the motion requesting the Highway Board to take

the necessary steps to repair the road without going to the Assizes was lost. It was the opinion of the meeting that the road in question, the proposal route, belonged to Wigmore and not the parish of Eastdown.

- 3.7.4 23.05.1868. The Vestry convened in order to see if a compromise could be reached regarding the Shortacombe Road, the proposal route, and avoid litigation and the expense of further legal proceedings. It was resolved that the matter be left to the Highway Board to act as they sought fit, provided the parties did not reach a compromise before the next meeting.
- 3.7.5 27.03.1869. A letter was read from the legal representative acting against the Vestry regarding the Princes Gate Road, the proposal route, asking for the names of 2 parishioners who would undertake to appear in answer to the Bench warrant at the summer assizes in Exeter.
- 3.7.6 17.07.1869. Letters were read from the legal representative acting against the Vestry, offering to stop all legal proceedings if the Parish repaired the road in question, the proposal route. It was resolved that £30 (approximately £1,370 in 2005) should be collected for the repair of the road, with the balance being handed over to the Highway Board for its future reparation, and expenses incurred.

3.8 East Down Parish Council Minutes, 1894 onwards

- 3.8.1 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 a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.
- 3.8.2 06.05.1897. The Parish Council decided to '*represent to the District Council that the roads repaired (ratione tenure) in the parish were in a worse state than when this Council made its former complaint, nothing having been done*', and requested a Committee be appointed to view these roads. The list of roads included the '*road by Shortacombe House as far as the Wigmore Estate*', including the proposal route, and from Shortacombe Estate through the Wigmore and Holwell Estates.
- 3.8.3 06.05.1897. It was resolved that a letter should be written to the District Council '*to draw their attention to [the] bad state of the road from Shortacombe to Ashelford at Kittaknowle field*', which included the proposal route.
- 3.8.4 28.07.1899. It was resolved that the Parish Council ask the District Council '*to get the necessary repairs to the said roads*' through the Holwell and Wigmore Estates, which included the proposal route.
- 3.8.5 19.03.1935. It was noted that the '*Kittaknowle field road*', which included the proposal route, was '*reported satisfactory*'.
- 3.8.6 29.10.1935. The Parish Council resolved to send a letter to the Rural District Council asking that the '*sign at Shortacombe be altered to unfit for motor traffic*'. This is considered to refer to the proposal route.
- 3.8.7 04.02.1936. A letter had been received from the Rural District Council notifying the Parish Council that instructions had been given for a sign post to be erected at Shortacombe stating that the road was '*unfit for heavy motor traffic*'. This is considered to refer to the proposal route.

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- 3.8.8 07.11.1944. A letter was received from the Rural District Council regarding accommodation roads and unnecessary highways in the parish. The Parish Council agreed that the roads between Churchill and Ashelford Corner, and the Barton and Gratton should be taken over. However, they did not agree that the roads between Shortacombe – Ashelford Cross which included the proposal route, and Churchill – Oakwell Cross should be given up.
- 3.8.9 03.10.1968. *'A letter was read from the Barnstaple Rural District Council stating that an obstruction of the road between Shortacombe to Ashelford was being dealt with',* which included the proposal route.
- 3.8.10 17.04.1975. *'After discussion about complaints about the Bridge at Princess Gate between Shortacombe and Ashelford'* it was decided that the Parish Council should write to the District Council.
- 3.8.11 18.12.1984. The planning permission to convert a barn at Shortacombe was discussed. The Parish Council *'were concerned about the extra traffic using Shortacombe Lane and surrounding roads'*, though there is no specific reference to the proposal route.

3.9 **Barnstaple Rural District Council Minutes, 1893-1974**

- 3.9.1 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 a District Council had powers only in relation to public highways through the appointed Surveyor historically, which they had a responsibility to maintain. The records for 1898-99 have not survived.
- 3.9.2 There are a number of references to the highways in East Down parish in these records, with a number specifically dealing with the proposal route.
- 3.9.3 26.04.1895. Concern was expressed about the drop adjacent to the road for about 20 metres near Princes Gate. The Surveyor recommended that posts and rails be erected at that location. This section is currently recorded as the unsurfaced county road connecting with the proposal route at point E, just east of Princes Gate Bridge.
- 3.9.4 10.05.1895. The committee appointed had inspected the dangerous piece of road at Princes Gate, which was at times only 8'6" wide, sloping, with an almost perpendicular drop on the lower side. It was resolved that the road should be cut away and levelled at a cost not exceeding £5 (approximately £299.65 in 2005).
- 3.9.5 24.05.1895. It was reported that the lowering of the road had been completed and that the rail would be fixed in a few days.
- 3.9.6 22.02.1935. The Surveyor reported that the road between Ashelford and Shortacombe, which included the proposal route, through 'Kittie Knowle' field, complained of by the East Down Parish Council was a grass track. He had found it slightly rutted and therefore had the ruts filled in with gravel. This section is currently recorded as the unsurfaced county road connecting with the proposal route at point E, just east of Princes Gate Bridge.
- 3.9.7 01.11.1935. It was resolved that a signpost should be erected at Shortacombe indicating that the road was unfit for motor traffic, as requested by the East Down Parish Council. This may refer to the proposal route

3.10 Devon County Council Main Roads Committee, 1894-1973

- 3.10.1 The Minutes may 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 a County Council had powers only in relation to public highways through the appointed Surveyor historically, which they had a responsibility to maintain.
- 3.10.2 Any issues relating to the proposal route referred to the County Council were not dealt with by the Committee.

3.11 Finance Act, 1909-10

- 3.11.1 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 route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.
- 3.11.2 The route between points E – F – G – X – H – I – J – K is excluded from the surrounding hereditaments, with hereditament boundary lines stopping and restarting on either side of the route, between points E – F – G. The Field Book entry for hereditament 14 which is Shortacombe, there is a deduction for public rights of way, but this relates to East Down Footpath Nos. 19 and 20 where they cross fields.

3.12 Bartholomew's maps, 1920s onwards

- 3.12.1 These maps were designed for *tourists and cyclists* with the roads classified for *driving and cycling purposes*. They were used by and influenced by the Cyclists Touring Club founded in 1878 which had the classification of First Class roads, Secondary roads which were in good condition, Indifferent roads that were passable for cyclists and other uncoloured roads that were considered inferior and not to be recommended. Additionally, footpaths and bridleways were marked on the maps as a pecked line symbol. Cyclists were confined to public carriage roads until 1968. The small scale does not permit all existing routes to be shown, omitting some more minor routes. The purpose of these maps was to guide the traveller along the routes most suitable for their mode of transport.
- 3.12.2 Maps dating from 1924 and 1932 show the route between points E – F – G – X – H – I – J – K, and is shown as an Inferior Road and not to be recommended. The majority of those roads shown in the parish then are included in that category.

3.13 Aerial Photography, 1946 onwards

- 3.13.1 The route between points E – F – G – X – H – I – J – K is visible and has similar characteristics to the rest of the parish highway network particularly pre-tarmacadam.

3.14 Definitive Map Parish Survey, 1950s

- 3.14.1 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.

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3.14.2 There is no reference to the proposal route in the Parish Survey, however it appears that the Parish Council may have considered it to be a public highway and did not consider that it should be included. Footpath No. 20 is shown on the Survey map as ending just northeast of Shortacombe Lodge on the proposal route, where it now turns northwards towards Shortacombe Corner, between points J – K.

3.15 Definitive Map and Statement, 1957

3.15.1 The inclusion of a public right of way on the Definitive Map and Statement is conclusive evidence of its existence. However, this does not preclude that other rights which are currently unrecorded may exist.

3.15.2 The Statement for East Down Footpath No. 20 describes it as running from *'Shortacombe Corner southwards along a private accommodation road (not repairable by the inhabitants at large) keeping to the east of Shortacombe...'* between points J – K.

3.16 Devon County Council North Devon & Torridge Highways Sub-Committee, 1970s-90s.

3.16.1 The Minutes may 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 a County Council had powers only in relation to public highways through the appointed Surveyor historically, which they had a responsibility to maintain.

3.16.2 Any issues relating to the proposal were not dealt with by the Committee.

3.17 Shortacombe planning papers, 1994-96

3.17.1 Planning records have to be interpreted carefully, with particular attention paid to the meanings of words within the given context. Usually they will provide suggestive, rather than conclusive, evidence.

3.17.2 Lower Court Barn was developed under planning permission given in 1994 (application nos. 19481 & 19482), with no amendment of the track through Shortacombe which carries the route. The track was altered however, under planning permission given in 1996 (application nos. 21263 & 21264). It includes plans showing the proposed alteration in relation to the pre-existing track from the historic alignment G – X – H to the current alignment G – H, and the extent of the property, which did not include any part of the track or proposal route.

3.18 Shortacombe House sale, 1996

3.18.1 Sales particulars should be treated with special caution, as the art of embellishment in advertising is not a newly acquired skill. Nevertheless, if a public right of way were admitted, a convincing reason for disregarding the entry would need to be provided before it could be entirely discounted.

3.18.2 The route between points E – F – G – X – H – I – J – K was not included in the sale.

3.19 Route Photographs, 2009 and 2014

3.19.1 Site photographs of the route between points E – F – G – H – I – J – K show that it is open and available.

3.20 Land Registry, 2017

3.20.1 Only the property now known as Lower Court Barn includes part of the route as proposed, between points G – H within its land holding. The remainder of the route is excluded.

4. User Evidence

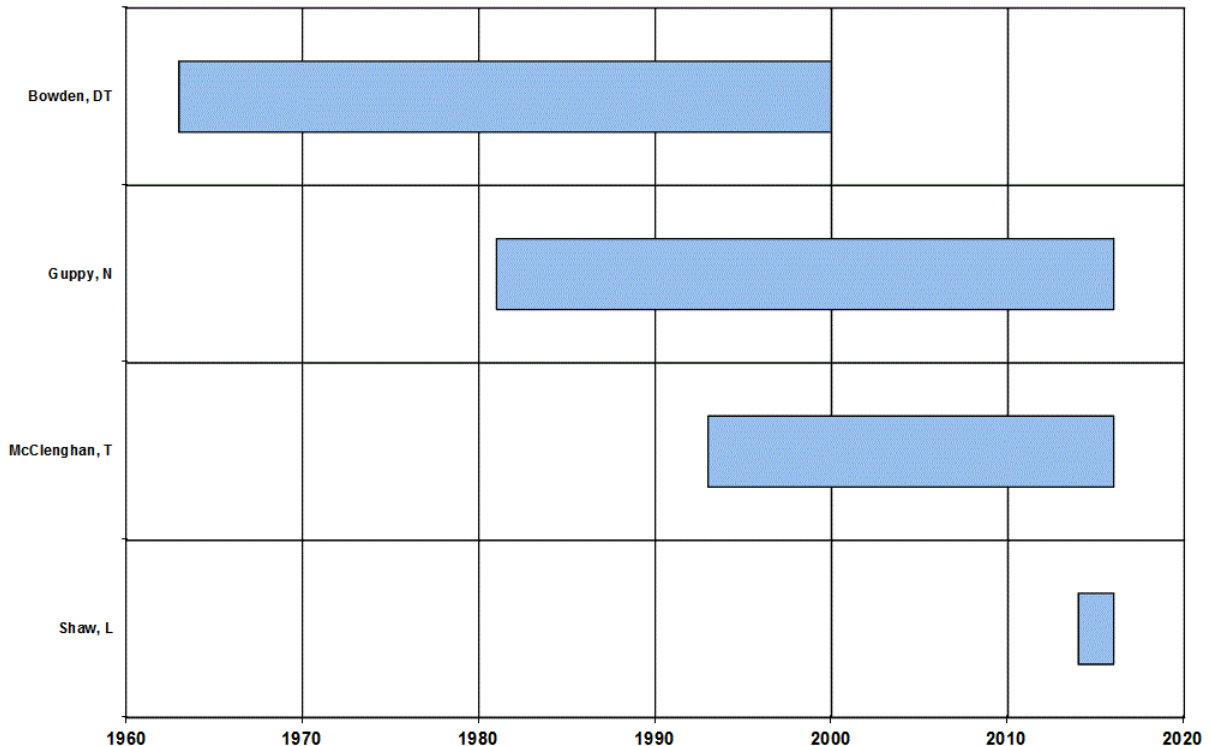
4.1 Four user evidence forms were received in response to the informal consultation detailing use on foot, horse and with vehicles between 1963 and 2016.

4.2 Mr Bowden has used the route on horseback and with vehicles for access to fields without challenge since 1963 on a regular basis, and has not been aware on any notices. He and three previous generations of his family have used the proposal route. He recalls Mr Fry of Wigmore Farm erected a gate near Prince’s Gate about 10 years ago but it is not locked. This gate is located approximately halfway between Princes Gate and Bridge and point E.

4.3 Mrs Guppy has used the route on horseback since 1981 without challenge and has never been told it was not public. It has been ridden by her family for several generations.

4.4 Mr McClenaghan used the route on foot since 1993 as part of a running circuit, and only recalls ‘private’ notices being erected in 2016. He has never been challenged or turned back. He recalls that the route has been used as a bridleway for many years.

4.5 Mrs Shaw has used the route on horseback since 2014 on a fortnightly basis without challenge until October 2016, when she was told it was not public. The route has not been obstructed and only recently has she seen ‘private road’ notices.



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5. Landowner/Rebuttal Evidence

- 5.1 Three responses were received in response to the parish informal consultation including objections from 2 landowners at Shortacombe.
- 5.2 Mr Rolfe of Shortacombe Barton has owned land adjacent to the route since 2012. He believes the route is a byway open to all traffic, and sees continuous use by members of the public. He has never challenged anyone using the route.
- 5.3 Mr and Mrs Lancey of Shortacombe Lodge (formerly Nos. 1 and 2 Shortacombe Cottages) have lived there since 2007. During the purchase process they were informed that the proposal route was a private lane (owned by the owners of Lower Court Barn but with all legal right of way claimants helping with the upkeep) with no public access. In the years since, nothing has changed and they take exception to the proposal for change. Over the years they have challenged people and told them it was not a public right of way, including motocross riders who repeatedly use it, and a local riding stable who continue to use it. Mr and Mrs Lancey have concerns for their daughter who is a permanent wheelchair user, when she is using the lane.
- 5.4 Mr and Mrs Hardman of Lower Court Barn have owned the property since 2010. They do not believe the proposal route to be public and are not aware of any permissive use. They have stated that it is privately owned and has never been subject to a public right of way. People seen using the proposal route have been challenged. Mr and Mrs Hardman describe the track as being gated where it meets the '*restricted byway*' at grid reference '*SS 5897 4201*' (Shortacombe Corner), and state that neither of the public footpaths pass through the former gateway pillars (GR SS 5891 4180).
- 5.5 They have submitted copies of documents to support their view that the track between Shortacombe Corner on Dudmoor Lane towards Princes Gate and Bridge, which includes East Down Footpath Nos. 2 and 20, and the proposal route, is private. The evidence they have presented, Mr and Mrs Hardman believe, confirms that the track including the proposal route is private and has been closed to the public for the last 20 years. They state that a lack of a byway application means that the public do not believe there is a public right of way. Mr and Mrs Hardman's rebuttal evidence is as summarised below:
- 5.5.1 Track ownership and statutory declaration. Mr R Kent-Smith, a previous owner, completed a Statutory Declaration in 1978 regarding his ownership of part of the proposal route. This was apparently part of a dispute with Mr Roberts, a previous owner of Lower Court Barn, who had apparently wanted permission to repair the track through Shortacombe. Mr & Mrs Hardman also completed a Section 31(6) deposit in 2016.
- 5.5.2 Evidence from Devon County Council. They refer to East Down Footpath Nos. 2 and 20 as being the only public rights of way affecting the '*track*' and that no formal byway application has been made for it.
- 5.5.3 Conveyancing. When Mr and Mrs Hardman purchased their property in 2010, the searches did not reveal any public rights of way, either through or abutting the property.
- 5.5.4 Landowner track maintenance. Mr and Mrs Hardman state that the track including the proposal route has been closed for a variety of periods ranging from one day a year, to several hours a year, and other periods for various maintenance tasks. No-one has complained about such closures. Neither the Parish Council nor County Council has

carried out any maintenance on the track.

- 5.5.5 Change of track route. The alignment of part of the proposed route was altered as part of the re-development planning application for Shortacombe in 1986 to move it away from running directly past what became Lower Court Barn (from the alignment G – X – H to G – H).
- 5.5.6 Lack of continuous access over the last 20 years. They state that public access to the track has not been possible over the last 20 years, except in relation to the public footpaths.
- 5.5.7 Permitted access to the track. Mr and Mrs Hardman state that any access to the track has been in secret, without permission, and at times, with force. Requests for permissive use of the track including the proposal route have been refused, and several user groups have been notified of its private status. Besides challenging users themselves, they have also seen their neighbours at Shortacombe Lodge challenging users.
- 5.5.8 Private road signage. They state that signs have been erected since 2010, which have been periodically removed or vandalised. The Public Rights of Way Warden agreed to improve the footpath signage.
- 5.5.9 Historic data. Mr and Mrs Hardman have consulted a copy of the East Down Tithe Map and Apportionment. They comment that part of the route was included within lot 400 – Shortacombe Homestead. This is the same as the land now registered as Lower Court Barn. The remainder was included in plot 920 ‘road’, not part of Shortacombe or the ‘byway track’. They consider this shows the origins and use of this form of track is as an ‘*occupation road*’, similar to that joining the byway from Wigmore Farm.

6. Discussion

- 6.1 Statute – Section 31 Highways Act 1980. It is considered that the notices erected in 2016 by Mr and Mrs Hardman of Lower Court Barn, at points G and K, are sufficient to call the public’s use into question. Therefore, the relevant period to be considered is 1996-2016.
- 6.2 User evidence forms were received from four members of the public detailing regular use on horseback and on foot dating back to 1963. They never saw any notices until 2016, nor have they been challenged. There is no evidence that this use has been used in secret, with permission or with force. The only gate they recall on the route at the west end near point E. This is a modern gate known to have been erected by Mr Fry of Wigmore Farm about 10 years ago, for stock control purposes. Since the perceived challenge in 2016, the public have apparently continued to use the route.
- 6.3 Current landowner evidence received from three landowners dates back to 2007. They were told that the route was a private lane except for East Down Footpath No. 20. The owners of Shortacombe Lodge (formerly 1 and 2 Shortacombe Cottages) and Lower Court Barn state they have challenged users of the route. The user evidence demonstrates however, that use has not been secretive, with permission or force. Any reported challenges by previous landowners can only be considered hearsay.
- 6.4 The owners of Lower Court Barn state that ‘*private road*’ signage was erected at points G and K before 2016, though site photographs from 2010 and 2015 demonstrate that there were no such notices in place at those times. Users also do not recall any

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notices before 2016.

- 6.5 Mr and Mrs Hardman also state there have been a number of brief closures of the route for maintenance purposes. Such works were carried out for the benefit of the residents of Shortacombe, not to hinder use of the public right of way or proposal route.
- 6.6 There is limited documentary evidence relating to the statute period, primarily planning, land ownership, and sale records. On the sale of Shortacombe House in 1996, the route was not included.
- 6.7 Planning records show that as part of the redevelopment of Lower Court Barn, the alignment of the route was altered from the alignment G – X – H to its current alignment G – H in 1996. However, the user evidence demonstrates that users transferred their use from the old alignment to the current one.
- 6.8 Land Registry shows that the proposed route is completely excluded from any land holding except Lower Court Barn between points G – H.
- 6.9 It is considered that the actions of landowners did not bring the public's use of the route into question and did not show a lack of intention to dedicate until 2016, though as only 4 user evidence forms were received for the relevant period of 1996-2016, this is considered insufficient to demonstrate presumed dedication under statute.
- 6.10 However, 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.
- 6.11 Common Law. On consideration of the route at common law, the historical mapping shows that a route has physically existed between points E – K since at least 1823.
- 6.12 The continuation of the route between Ashelford Gate and Princes Gate (see Committee plan 2), just west of point E, was formally set out as a public carriage road under an Inclosure Award enacted by Parliament has been recorded as an unclassified county road since the Handover Roads Records of 1947, and appears as a parish road through the East Down Vestry Records and Surveyors of Highways records since at least 1829, which are consistent with what is shown on the 1840s Tithe Map. The current unsurfaced county road set out in the Inclosure Award was included in lot 920 which is the parish roads, along with the major part of the proposed route.
- 6.13 The Inclosure Award provides supporting evidence of other matters over land adjacent to but outside the awarded area. The continuation of the proposed route from just west of point E to Ashelford Gate was formally set out as a public carriage road under an Act of Parliament, it is likely that the public were considered entitled to proceed on from Princes Gate and Bridge towards Wigmore and Shortacombe, the latter of which was described as a village in a report from the British Newspaper Archive. In such a situation, the principle set out in the case of *Eyre v New Forest Highway Board (1892)* would be invoked; that where a short section of uncertain status exists, it can be presumed that its status is that of the highways linked to it.
- 6.14 As reported in the British Newspaper Archive, at Petty Sessions in 1868 it was acknowledged that it was '*undisputed on all hands that the piece of road in question is a highway*' repairable '*ratione tenure*'. In 1869 it was then accepted and handed over

as a parish road by the East Down Vestry and Ilfracombe District Highway Board, and publicly maintainable. This status was also acknowledged and accepted during the court cases relating to the route in 1881, 1882, and 1898. Comparison between these reports and other documentary evidence sources, show the newspaper reports to be accurately detailed accounts.

- 6.15 A barrister in the 1868 case at Petty Sessions reported in the North Devon Journal stated that 'a considerable portion of the highways of Eastdown is repaired *ratione tenuræ*; in fact, nearly the whole of them, only a few being kept in order by the parish'. This statement is supported by the records of the East Down Vestry, British Newspaper Archive, and Barnstaple Rural District Council.
- 6.16 The law presumes that where a liability '*ratione tenuræ*' has been created, that it was for the benefit of the public and that there was an obligation to the public which could be enforced by indictment. The obligation to repair became attached to the occupation and tenure of certain lands. There is a presumption that a road repaired '*ratione tenuræ*' was public as an indictment could only be brought in the name of the public. Those liable for repairs *ratione tenuræ* were exempt from payment of the highway rate, Section 33 of the Highways Act 1835 and later under Section 25(2) of the Local Government Act 1894.
- 6.17 The route was considered a public road by the Parish Council up until at least 1935 and this may be the reason why it was not included in the Definitive Map Parish Survey in 1950.
- 6.18 Any gaps that there may be considered to be in the evidence are bridged by the legal presumption, the maxim, '*once a highway, always a highway*', as set out in the case of *Dawes v Hawkins* (1860). This presumption must prevail unless some legal event causing the highway to cease can actually positively be shown to have occurred. Additionally, it is the norm that the legal maxim '*once a highway always a highway*' would be considered to apply. However, as set out in the case of *Eyre v New Forest Highway Board* (1892), where a landowner has altered the route of a public highway without a quarter sessions order, dedicated it to the public, put it in good order, and it has been acquiesced to and accepted by the public, then such an alteration is acceptable.
- 6.19 Though no evidence source which specifically locates Shortacombe Gate, it is believed to be at point J where a pair of imposing gate pillars are situated, which are of a similar nature to those at Prince's Gate and Ashelford Gate, seen in the route photographs in the backing papers.
- 6.20 Ordnance Survey mapping is not evidence of a right of right, only the existence of features on the ground at the time of the relevant survey.
- 6.21 Direct landowner evidence was received from 3 of the 5 landowners at Shortacombe and dates from 2007. One supports the proposal, while the other 2 object, believing it to be a private lane with no public access, and have challenged people using it.
- 6.22 Mr and Mrs Hardman, the owners of Lower Court Barn submitted evidence in rebuttal of the proposal. Until their property was registered, no part of the proposal route was registered to any specific landowner. They place considerable weight on the absence of a Schedule 14 application. However this is misplaced, as proposals to modify the Definitive Map and Statement can also be made under Schedule 15 of the Wildlife and Countryside Act 1981. Also, the existence of East Down Footpath Nos. 2 and 20 on the Definitive Map does not preclude that other rights may exist but are not currently

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recorded. Any issues relating to the use of those public rights of way are a separate issue to the consideration of this proposal.

- 6.23 *'Private road'* signage has apparently been periodically erected. However, guidance and case law appears to infer that this wording may only be interpreted as applying to mechanically propelled vehicles. Mr and Mrs Hardman also refer to a gate on the proposal route, but none exists, though one did historically at the entrance into Shortacombe hamlet at point J. However, a gate is an authorised limitation on a public highway, and would only be an issue if locked. There is no evidence of a locked gate on the proposal route.
- 6.24 Mr and Mrs Hardman state that private maintenance closed the proposal route on numerous occasions, and that this has been assumed to relate to the section between Shortacombe Corner and Lower Court Barn. However, the track appears to have been closed for extremely short periods of time. It would not have been the purpose of any such maintenance to disrupt the use of the route by the public.
- 6.25 A lack of maintenance by either the Parish or the County Councils is not necessarily rebuttal evidence against the public status of the proposal route, which is currently partially recorded as East Down Footpath No. 20 between points J - K.
- 6.26 Presumed dedication is considered to have taken place many years prior to those events, and consequently the legal maxim *'once a highway, always a highway'* applies. The evidence when considered as a whole also does not support a lack of access for the public to the route. The user evidence demonstrates that any such closures of the proposal route did not affect the public's use of the route, as although limited, the user evidence demonstrates use has continued without any perceived interruptions. It also does not support the viewpoint that use has been with secrecy, permission, or force. A user continuing along the route after being challenged by a landowner is not use by force, as defined by the law.
- 6.27 Alleged modern trespass also has little weight, as the evidence demonstrates that presumed dedication had taken place by at least the early 19th century. Mr and Mrs Hardman's Section 31(6) deposit is the only one which relates to the proposal route. It was made in 2016 and does not apply retrospectively. Land Registry records show that until the property now known as Lower Court Barn at Shortacombe was first registered, the proposal route was not registered at all throughout its entire length.
- 6.28 Mr and Mrs Hardman also refer to the alteration of the alignment of the route between points G – H, under planning permission granted in 1986. The planning permission for the alteration of the track alignment from G – X – H to G – H through Shortacombe was not in fact granted until 1996. There is insufficient user evidence after 1996 to demonstrate presumed dedication of the modern track between points G – H. Although the modern user evidence is limited, public use has continued along the track between points G – H.
- 6.29 However, the same does not apply to the track alteration which occurred between 1843 and 1856. Normally the legal maxim *'once a highway always a highway'* would be considered to apply. Where a landowner has altered the route of a public highway without a quarter sessions order, but there is sufficient evidence it was dedicated to the public, put in good order, and it has been acquiesced to and accepted by the public, then such an alteration is acceptable, as set out in *Eyre v New Forest Highway Board* (1892).

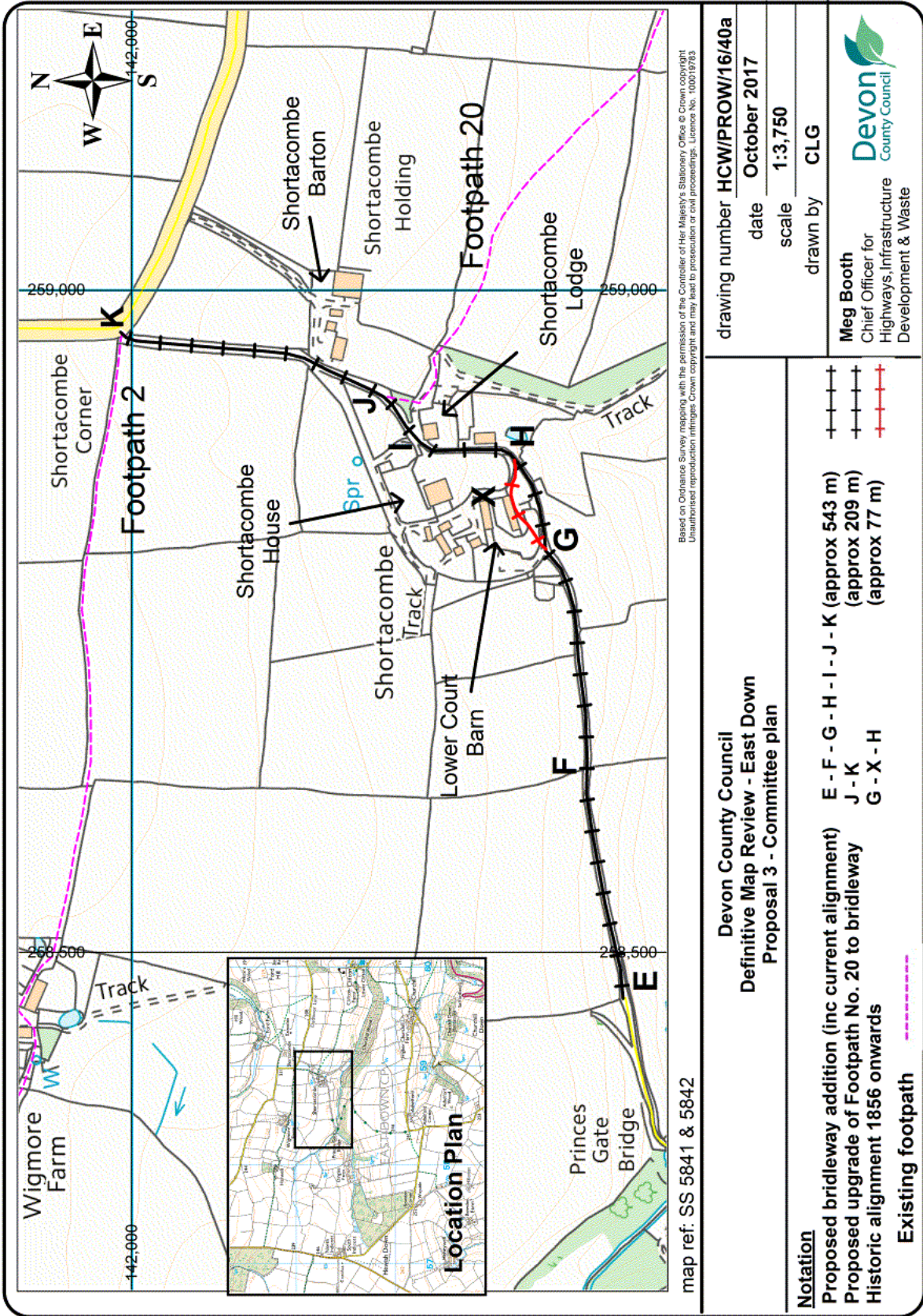
7. Conclusion

- 7.1 On consideration of all the available evidence the documentary evidence demonstrates that the route between Princes Gate and Shortacombe Corner between points E – F – G – X – H – I – J – K has existed since at least 1823. It has been open and available since that time. It appears to have been considered public since that time.
- 7.2 At Common Law, all highways existing prior to the Highways Act of 1835 were automatically repairable *'prima facie'* by the parish unless the responsibility could be proven as lying elsewhere. This liability remained so long as the highway existed or until the liability was taken away or transferred by statute. The newspaper reports of the Ilfracombe Highway Board meetings and Petty Sessions demonstrate that the repair liability for most public highways in East Down was *'ratione tenure'*, by the adjacent occupiers to the highways. This did at one time include the route before it was taken over by the Parish and subsequently, the Highway Board after a court case in 1869.
- 7.3 Whilst there is evidence that the route has latterly been considered to be a private track, included within land holdings and not maintained at public expense, there is no evidence of a legal stopping up order or declaration of non-maintainable highway at public expense of the proposal route. The legal presumption, *'once a highway always a highway'* applies.
- 7.4 The user evidence details use on horse and foot since the 1960s, which does not appear to have been challenged until 2016, by the owners of Shortacombe Lodge and Lower Court Barn. The use has been frequent and regular, *'as of right'*, and considered representative of the public in a predominantly rural area.
- 7.5 There is some suggestion of the proposal route having been used with motor vehicles. Vehicle use must be prior to 1930 to be legal and satisfy any of the exceptions under the Natural Environment and Rural Communities Act 2006. However, the limited vehicle evidence does not satisfy any of the exceptions set out in the legislation. Consequently, any unrecorded rights for mechanically propelled vehicles are extinguished. Consequently, the highest status the route could be considered to be is a restricted byway.
- 7.6 The historical documentary and user evidence when taken as a whole is considered sufficient to show that a public right of way not shown in the Definitive Map and Statement subsists or is reasonably alleged to subsist, and that part of highway of a particular description ought to be shown as a highway of a different description. It demonstrates that the route was considered an all-purpose public highway, and is considered sufficient to demonstrate that vehicular rights exist and consequently can be recorded as a restricted byway. User evidence since the 1960s supports at least public bridleway status.
- 7.7 Regarding the several variations of the alignment of the route, it is considered that the evidence sufficiently demonstrates that the alteration of the alignment of the proposal route between 1842 and 1856 had been dedicated by the landowner and accepted by the public. This was acknowledged by the County Magistrates Petty Sessions. However, it is not considered sufficient to demonstrate the same for the alteration circa 1996.
- 7.8 The evidence is therefore considered to be sufficient under Common Law to demonstrate that a public highway of restricted byway status exists between points E – F – G – X – H – I – J, and that the public highway currently recorded between points J

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– K as East Down Footpath No. 20 should be upgraded to restricted byway.

- 7.9 It is therefore recommended that a Modification Order should be made to add a restricted byway between points E – F – G – X – H – I – J and upgrade East Down Footpath No. 20 between points J – K to restricted byway to the Definitive Map and Statement, as shown on drawing no. HIW/PROW/16/40a. If there are no objections, or if such objections are subsequently withdrawn, that it be confirmed.
- 7.10 Should members approve the recommendation, prior to making the Order, it is proposed that discussions and an informal consultation with interested parties will be carried out to consider the making of a Public Path Diversion order to divert the route to follow the current track alignment between points G – H. If agreeable, such an Order could be made concurrently.



map ref: SS 5841 & 5842

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Devon County Council
 Definitive Map Review - East Down
 Proposal 3 - Committee plan

drawing number **HCW/PROW/16/40a**
 date **October 2017**
 scale **1:3,750**
 drawn by **CLG**

Meg Booth
 Chief Officer for
 Highways, Infrastructure
 Development & Waste



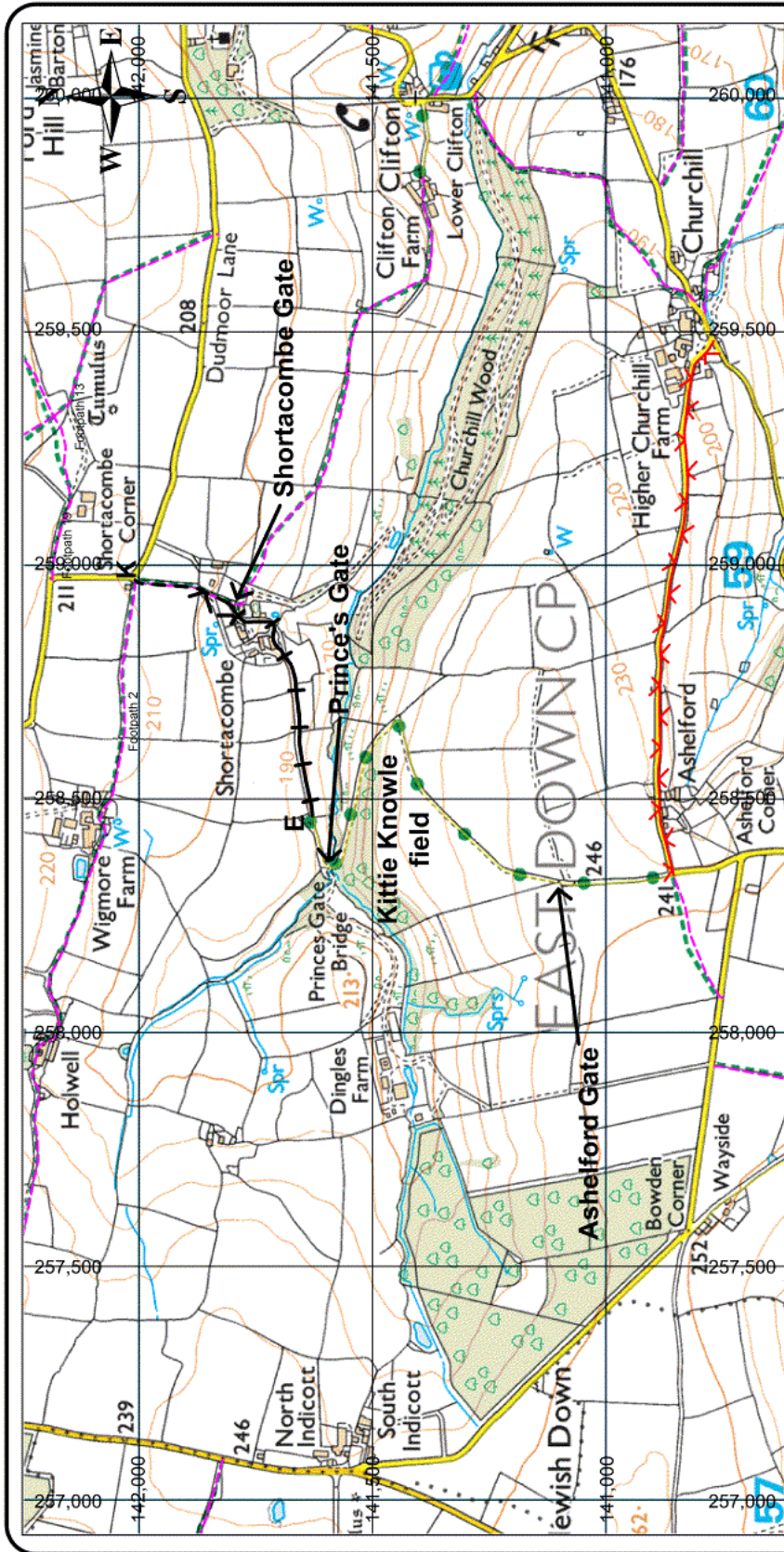
Notation

Proposed bridleway addition (inc current alignment) E - F - G - H - I - J - K (approx 543 m) - - - - -

Proposed upgrade of Footpath No. 20 to bridleway J - K (approx 209 m) - - - - -

Historic alignment 1856 onwards G - X - H (approx 77 m) - - - - -

Existing footpath - - - - -



map ref: SS 5841 & 5842

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Devon County Council Definitive Map Review - East Down Proposal 3 - Proposed addition of a bridleway & upgrade of part of Footpath No. 20 between Princes Gate Bridge and Shortacombe Corner		drawing number HCW/PROW/16/40d date September 2017 scale 1:12,500 drawn by CLG
Notation Proposed route (approx 756 m) + + + + + Existing footpath - - - - - Existing byway - x - x -		Meg Booth Chief Officer for Highways, Infrastructure Development & Waste

HIW/17/84

Public Rights of Way Committee
9 November 2017

Schedule 14 Application

Addition of public footpath through fields from Shadycombe Road to Gould Road, Batson Creek in the parish of Salcombe

Report of the Chief Officer for Highways, Infrastructure Development and Waste

Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a public footpath between points A – D – E – F and B – C as shown on drawing number HIW/PROW/17/55.

1. Summary

This report examines a Schedule 14 Application made in February 2017 for the addition of a public footpath from Shadycombe Road to Gould Road, Batson Creek, in the parish of Salcombe.

The Definitive Map Review for the parish of Salcombe was completed in 2003. The application would normally have been deferred until the Review has been completed for the whole county, in line with the County Council's Statement of Priorities for keeping the Definitive Map and Statement up-to-date. However, the claim has been made in response to the blocking of the route with padlocked gates and notices. There is a risk of the claimed route being lost through development; therefore, the application has been brought forward for investigation in line with current policies.

During the course of examining the User Evidence Forms (UEFs) and accompanying maps, it has become apparent that a number of additional paths have also been used. This report therefore deals with all potential claims on the land, which are described in the appendix.

The evidence provided in relation to the application is discussed in the appendix to this report. It is considered sufficient to show that a public footpath subsists, or is reasonably alleged to subsist, over the route A – D – E – F – B - C. It is therefore recommended that, an Order be made to add a public footpath to the Definitive Map and Statement, as shown between points A – D – E – F and B – C on drawing number HIW/PROW/17/55.

2. Proposal

Please refer to the Appendix to this report.

3. Consultations

General consultations have been carried out with the following results:

County Councillor Rufus Gilbert	-	no comment;
South Hams District Council	-	no comment;
Salcombe Town Council	-	support the footpath;

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Country Land and Business Association	-	no comment;
National Farmers' Union	-	no comment;
TRF	-	no comment;
British Horse Society	-	no comment;
Devon Green Lanes Group	-	no comment;
Ramblers	-	no comment.

4. 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.

5. Legal Considerations

The implications/consequences of the recommendation have been taken into account in preparing the report.

6. Risk Management Considerations

No risks have been identified.

7. 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.

8. Conclusion

It is recommended that an Order be made to modify the Definitive Map and Statement by adding a public footpath between points A – D – E – F and B – C as shown on drawing number HIW/PROW/17/55.

In addition, it is recommended that no Orders be made in respect of the other routes discussed.

9. Reasons for Recommendations

To undertake the County Council's statutory duty under the Wildlife and Countryside Act 1981 to determine the Schedule 14 application and to keep the Definitive Map and Statement under continuous review.

Meg Booth
Chief Officer Highways, Infrastructure Development and Waste

Electoral Division: Salcombe

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Local Government Act 1972: List of Background Papers

Contact for enquiries: Emily Spurway

Room No: ABG Lucombe House

Tel No: (01392) 383000

Background Paper	Date	File Ref.
Correspondence File	2016 to date	ES/DMR/Salcombe

es111017pra
sc/cr/sch 14 Batson Creek in the parish of Salcombe
03 301017

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Appendix I
To HIW/17/84

A. Basis of Claims

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.

The Wildlife and Countryside Act 1981, Section 53 (5) enables any person to apply to the surveying authority for an order to modify the Definitive Map. The procedure is set out under WCA 1981 Schedule 14.

The Wildlife and Countryside Act 1981, Section 53 (3)(c) enables the Definitive Map and Statement 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; and
- (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

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.

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.

Common Law presumes that a public right of way subsists if, 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.

Application made under Schedule 14 of the Wildlife and Countryside Act 1981 for the addition of a public footpath from Shadycombe Road, across fields to Footpath No.2, Salcombe, continuing to Gould Road, Batson Creek Salcombe, in the parish of Salcombe as shown on drawing no. HIW/PROW/17/55.

Recommendation: It is recommended that a Modification Order be made to add a public footpath over the line A – D – E – F and B – C.

1. Background

- 1.1 The Schedule 14 Application seeks the addition of a public footpath from the county road Shadycombe Road, across three fields to join Footpath No. 2 Salcombe on the eastern edge of the fields above Batson Creek. The claimed path then continues from Footpath No.2 down a track to join the public highway, Gould Road, adjacent to the car park at Batson Creek. These fields are locally known as “the Crofts” or “Croft fields”.
- 1.2 Salcombe Town Council submitted an application in March 2017 in response to the padlocking of the gates and the placing of notices at the Shadycombe Road entrance and notices at the junction with Footpath No.2 Salcombe in August 2016.
- 1.3 Whilst checking the Schedule 14 Application it was noted that the applicant, Salcombe Town Council, had omitted to specify to the landowners what type of public right of way was being claimed. To that end, the County Council requested that Salcombe Town Council resubmit Form B, the Notice of Application to the landowners clarifying what they were intending to claim. This was duly done in March 2017 and the Town Council submitted a certificate to this effect to the County Council.
- 1.4 In examining the User Evidence forms, it became apparent that a number of other paths had also appeared to have been used by the public in the fields known as the Crofts. This report will therefore address these routes at the same time.

2 Description of the routes

- 2.1 The routes described below are shown on plan HIW/PROW/17/55.
- 2.2 Existing recorded route
- 2.3 Footpath No 2, Salcombe continues from the end of Croft Road and follows the contour above Gould Road and is part of the South West Coast path.
- 2.4 Claimed route from Shadycombe Lane to Gould Road (A – D – E – F – B – C)
- 2.5 The route starts from the county road Shadycombe Road at point A. It goes through a gate and follows the southern side of the hedge boundary in an easterly direction across the field to a gap at point D. From this point, the path continues in an east south easterly direction, diagonally across another field to a gateway made of stone in the hedge at point E. From this point, the route, as noted following a site visit, continues eastwards, downhill passing on the south side of a tree in the remains of an old hedge to meet Footpath No. 2 Salcombe at point F. From this point, the route continues north on Footpath No. 2 for approximately 5m to point B and then turns south east, downhill along a worn earth and stone track to Gould Road at point C. This is shown on the attached plan.

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2.6 Additional routes

2.7 Circular route from the claimed route (D – h – E – k – j – D).

2.8 Route from Shadycombe Road (g – h – i) north of the claimed path. Point g is an adjacent gateway above point A and this path runs north east through the fields and then arcs southwards to point h. From point h, the route continues on the eastern side of the hedge to point i where it meets Footpath No. 2.

2.9 Another route (A – D – h – B) identified also starts at Shadycombe Road and continues through the gate at A and continues along the line (A – D – h – B)

3. **Documentary Evidence**

3.1 Aerial photography 1999 – 2000

This shows some evidence of tracks through the fields.

3.2 Aerial photography 2005 – 2006 shows there are clear worn paths through the fields along the line claimed in the Schedule 14 Application, A – D – E – F – B and from g – h – E – k – j – D.

3.3 Aerial photography 2006 – 2007 shows clear worn paths through the fields, including the claimed line A – D – E – F – B and from g – h – E – k – j – D – h making a loop.

3.4 Google Street view August 2016 shows new gates, chained and padlocked, on Shadycombe Road at points A and g.

Aerial photo 2006-07





Gates at Shadycombe Road – site photo 28-9-17. Right hand gate currently not locked.

4. User Evidence

- 4.1 Twenty User Evidence Forms (UEFs) have been submitted in support of the Schedule 14 Application from Shadycombe Road, through the fields known as the Crofts to Footpath No. 2 Salcombe and Gould Road at Batson Creek.
- 4.2 All twenty user evidence forms show frequent use of the fields known as the Crofts spanning 66 years. All of the evidence of use is on foot and none of the walkers have been stopped or challenged on the routes until August 2016. In addition, all of the 20 users say that there were no notices or signs along the route and none of the gates were locked until August 2016.
- 4.3 Two user evidence forms indicate that the route walked is the current Footpath No.2, Salcombe, which is also part of the South West Coast path. One other evidence form describes use of a route, g – h – i, to the north of the claimed Schedule 14 Application and they have not walked on any paths in common with the claim. The use of the northern route was frequent, twice a week and unchallenged over a period of 16 years. However, these three evidence forms have not been considered as part of the User Evidence as a whole as they do not relate to any part of the claimed route.
- 4.4 The seventeen relevant User Evidence forms all show long and frequent use of the claimed route and parts of the claimed route over the Croft fields.
- 4.5 Ten user evidence forms submitted relate to use of the whole route claimed, A – D – E – F – B – C. The earliest use dates from 1985 to 2016, 31 years, with varying frequency of twice a year to fifty plus and many times per week.
- 4.6 Eight of the ten walkers, have used the route for between 19 – 31 years and two of the ten have used over a period of 5 and 6 years. All of these walkers consider the route to be a footpath, as it is well established with a clear worn track through use from the top to the bottom of the hill. One walker has included some copies of

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photographs she took of the notices placed on the path, around 26 – 28th August 2016 and of the worn path itself.

- 4.7 The users state that they have used the claimed path for walking from Shadycombe Road to Batson Creek, Gould Road.
- 4.8 All of the walkers say that there were gates at the top of the field at Shadycombe Road, but that they were never locked until August 2016. In addition, all of the users say there were no notices before August 2016. One walker describes the notices as saying “Private Land” and were placed at either end of the path. She also mentions that the top of the gates had been extended with planks and barbed wire to prevent people climbing over them.
- 4.9 Another local walker who has used the claimed path since 1998 enlarges on the actions taken on Shadycombe Road. She states “The gates are now locked with chains & padlocks and have an additional section at the top to deter anyone from climbing them. Any holes between the gateposts & the hedge are blocked off to ensure that no one can squeeze through”.
- 4.10 One walker who has used the path since 1989 said that notices were put up in August/September 2016 saying “Private – No thoroughfare. In addition, signs saying “Public Footpath” with arrows were placed at the bottom of the path pointing to the established footpath (Point F, where the claim meets Footpath No. 2 Salcombe) at the same time. In reply to question 10.c on the evidence form, Do you believe the owner or occupier was aware the public was using the path? She replies “yes” Because notices say “No Public Way” on gates”.
- 4.11 Other user evidence forms show that they have used the claimed route in combination with other paths.
- 4.12 Two of these users (the Bains) have said they have walked a circular route, from Shadycombe to Batson Creek, which is marked on their map in conjunction with the claimed path. Mr & Mrs Bain have walked the paths since 1999; 17 years. In the last 5 years, they have used it approximately 200 times a year, to Batson Creek and the boat park. They describe their walk as starting from Shadycombe, over Croft Fields to Batson Creek. They state that there were no locked gates or notices on the route until August 2016.
- 4.13 Following a site visit to the fields on 28th September 2017, the reporting officer identified that the route marked on Mr & Mrs Bain’s maps appears to be drawn one field to the south too low from what is described on their evidence forms, which is largely consistent with the claimed route. They seem to have mistaken Footpath No. 5 Salcombe for the track through the copse that exits onto Shadycombe road directly opposite the gate at point A. The fields opposite Footpath No. 5 are about 7ft above the road level and therefore would not be accessible. They appear to have mis-transcribed their walking route onto the map. Further, there are no visible or trampled routes to the very south of the fields below points k and j. From their description and map they would appear to have walked the claimed route together with the line between E – k – j – D.

The aerial photo 2006 – 07 would support this.

- 4.14 Mrs Goldsworthy describes the route she has used for 66 years as from Shadycombe Road to the boat yard, in a circle once or twice a week. She says that the gates at Shadycombe Road were unlocked until recently, last autumn, and then barred and

Agenda Item 9

locked and extended in height. She thought that the owner would have been aware of the path being used as it was regularly used by all walkers from Lower & Higher Batson. The route marked on Mrs Goldsworthy's map is A – j – k – E – F.

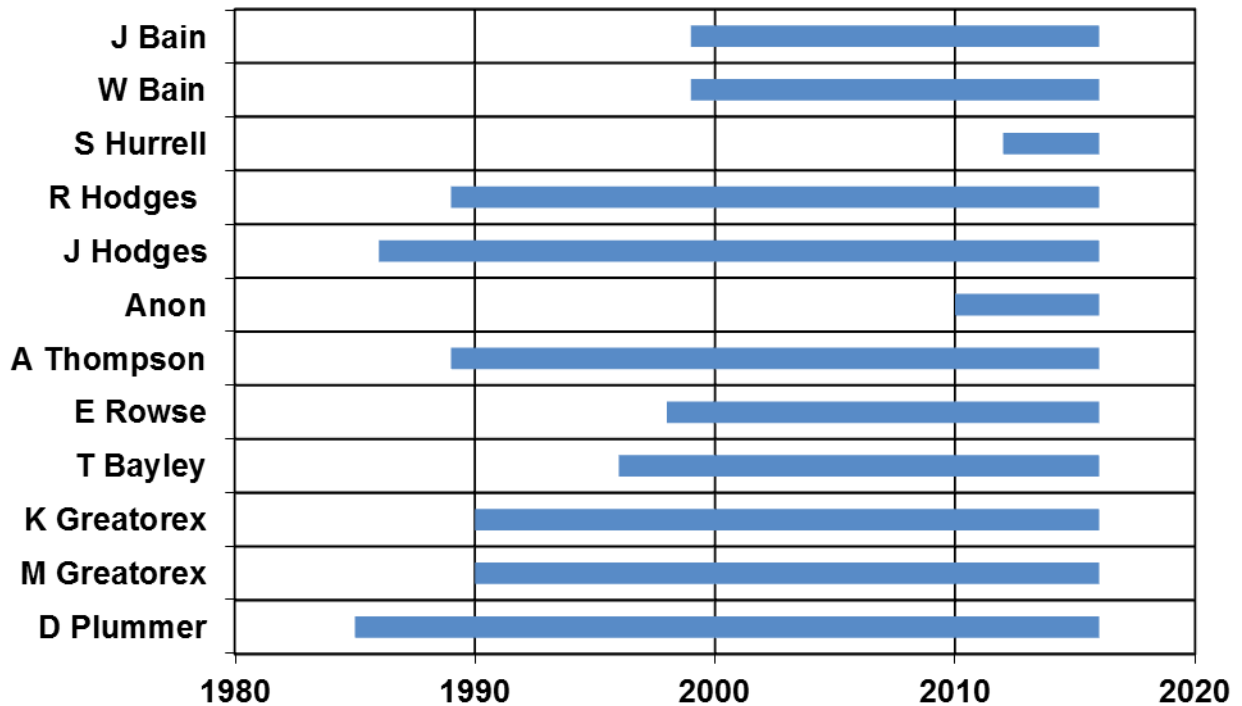
- 4.15 Mr Pearce has used the route from Shadycombe Road to Footpath No. 2 Salcombe since 1975. He marks his route on his plan following the line A – j – k – E – F. He said that he has used it 5 times a year, but since 2011, 2 or 3 times per week in the summer. He states the path has always been open and well-trodden and that the gates were never locked, until recently.
- 4.16 Ms Roberts evidence demonstrates that she has also used the claimed route A – D and E – F – B – C in conjunction with other connecting paths, g – h – E and A – D – j – k – E since 1990 regularly to autumn 2016. Ms Roberts says in the last five years, she has used the routes “200 times a year”. Ms Roberts says there are several paths running across the site, which she called Croft Hills. In the additional information section, Ms Roberts adds; “It has been used by walkers for years and that must be obvious to the owners. Usually the grass and weeds are left to grow and they can easily reach four foot high but there are clear pathways running across the fields. Please do not allow anything to spoil this beautiful area that has been enjoyed by so many for so long”.
- 4.17 Another walker used the line A – D – E to access their field above Croft Road. In addition, she says that they have walked through the fields to the north of the claimed route, g – h – E, making a loop to enjoy the views. She indicates that she has walked these paths from 1994 – November 2016, and used it more frequently, once a week since 2001. On her accompanying plan, this walker says, “The route marked in red [the claimed route] is the traditional route to the boat park and one which we took occasionally”.
- 4.18 Mrs Newman describes the route as a footpath from Shadycombe Road to Batson Creek edge footpath. She has used it for 30 years from 1986 – 2016, weekly or more as a circular walk for pleasure. She says the route was used regularly by many people as it links to the path by the cemetery and to Batson. She adds that it was always open, no gate or private sign until August 2016. In addition to her plan, Mrs Newman adds; “The path by Mayfield was disused for a long time due to broken steps (or removed steps) so everyone walked through the plantation instead, then across the road, down through the fields & joined the path along Batson Creek”. The route marked on her map is from A – D across the field to h and seemingly through the field north of the claimed line to point B.
- 4.19 All of the user evidence states that the routes have been open and freely used for well over 30 years. None of the walkers have asked to use the route or been given permission by the landowner. They all say that the tracks were obviously well trodden and easy to see. They all considered that the landowners could plainly see that people were walking to Batson Creek through the fields as it was in constant use multiple times per day.
- 4.20 In response to question 10.b. on the User Evidence form “Were you ever told by an owner or tenant of the land crossed by the route, or anyone in their employment that it was not public?” All of the 17 user evidence forms said “No”.

None of the walkers had seen any notices on the gates or in the fields, nor had the gates been locked prior to August 2016.

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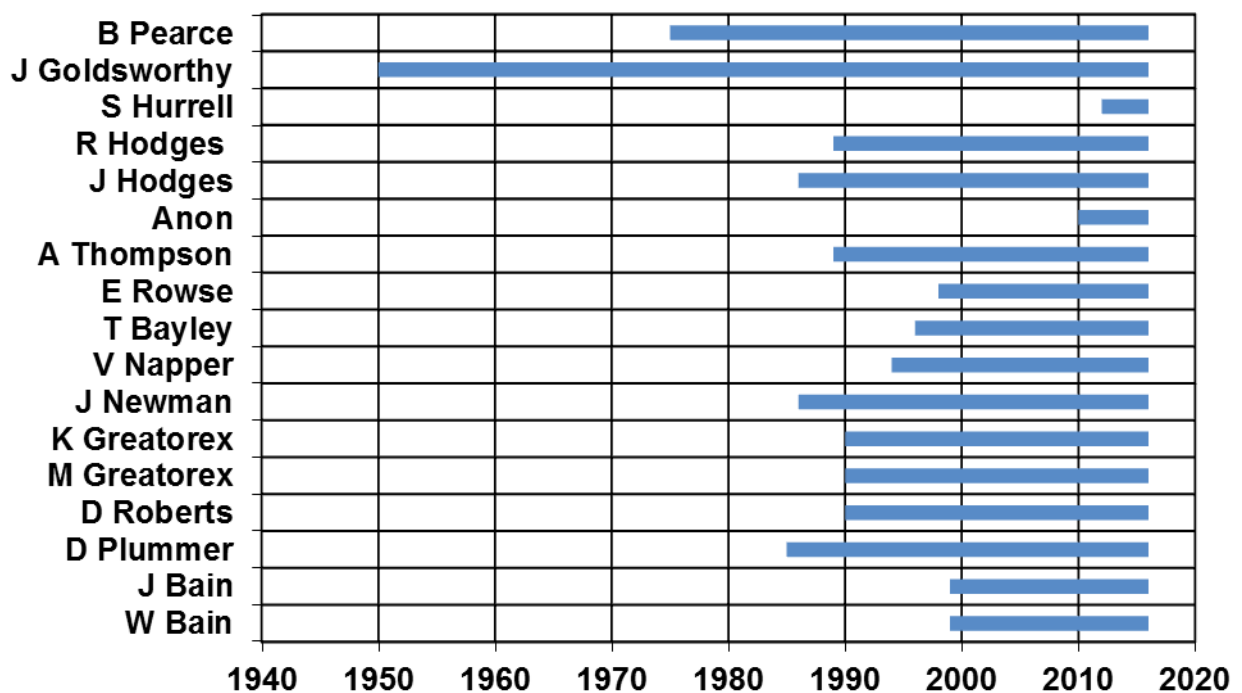
4.21 Chart summarising 12 User Evidence Forms in respect of the claimed route between points A – D – E – F – B – C.

Chart of User Evidence - Schedule 14 Application - Shadycombe Road, Salcombe



4.22 Chart summarising 17 User Evidence Forms for claimed route in whole and in part with other paths through fields.

Chart of User Evidence - Shadycombe Road, Salcombe



5. Landowner Evidence

- 5.1 Framptons, Chartered Town Planning Consultants have submitted landowner evidence on behalf of their Clients Mr. J. Smith and Mr C. Smith. Messrs Smith have owned the fields for the past 15 years. They do not believe the route to be a public right of way and object to the Town Council's application.
- 5.2 Their rebuttal evidence includes a Landowner Evidence Form (Form F) a plan showing the extent of their landownership and relevant gates, three photographs showing locked gates and signage, plus a covering letter. Their full response is included in the background papers to this report and is summarised below.
- 5.3 The landowners submit that the public has not gained "as of right" a public footpath from Shadycombe Road to Gould Road, Batson Creek". They continue: "The function of a gate is two-fold, firstly in providing a means of enclosure to a field for the purpose of containing livestock, and secondly to announce to the 'wider world' that entry onto the land is restricted. The existence of a gate is a clear demarcation as to the extent of the public highway. (Shadycombe Road and Gould Road) and that as of right the public do not have access beyond this boundary".
- 5.4 They also suggest that the existence of the gates is a sufficient pronouncement of the limit of access for the public, to the highway boundary, and that a gate is similar to a notice in that it is informing the public that access through the gate is not available to the public.
- 5.5 On the Landowner Evidence submitted on behalf of Messrs Smith, in response to Question 6 "Have you, or has anyone on your behalf, ever turned back or stopped anyone from using the way" *If yes, please give details and appropriate dates.* They answered "Yes" and "Messrs Smith have advised members of the public that were using 'the way' that the land is private and directed them to the definitive footpath" No dates of these actions have been provided.
- 5.6 Question 7 on the forms asks; "Have you, or someone on your behalf, ever told anyone using the way that is was not public? *If yes, please give details and appropriate dates.* Answered "Yes" and "Messrs Smith have informed members of the public using 'the way' that no public right of way existed and turned them back from continuing journey across the land". No dates have been included.
- 5.7 In reply to question 8. Have you ever erected notices or signs stating that the way was not public?
a. "yes - 28th August 2016"
b. State whether those notices were defaced or destroyed:
"Defaced in early September 2016"
- 5.8 The landowners question why this claim was not put forward by Salcombe Town Council as part of the Definitive Map review undertaken between 1999 – 2003.

They submit that "The underlying purpose of the Review was to establish on a comprehensive basis, any claims 'as of right' for public rights of way within the parish of Salcombe. It is illuminating that no member of the public – despite the focus of the review – made a claim that a route between Shadycombe Road and Gould Road had been established".

- 5.9 They continue: "It is submitted that the absence of any claim made in response to the consultation exercise undertaken during 1999 – 2003 provides evidential support to its position of the landowners that the public has not acquired 'as of right', a right of

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way on foot across this land. A 20 year period of uninterrupted use has not been established in the period since the undertaking of the review”.

- 5.10 In summing up their opposition to the claimed path they state; “It is submitted that the specific actions of the previous landowner to erect gates on Shadycombe Road and Gould Road established a boundary for members of the public in precluding access to this parcel of land. During the period of ownership by Messrs Smith, where persons have been observed crossing the land, they have been informed that no rights of access subsist. No intention had been made by the owners for a presumed dedication of a right of way within common law or as now claimed by statute law”.

6. Discussion

6.1 Statute (Section 31, Highways Act 1980)

- 6.1.1 Section 31 (1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public ‘as of right’ and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.
- 6.1.2 The Landowner Evidence states that new gates were erected at the entrance to the fields on Shadycombe Road on 28th August 2016. These gates had wooden planks fixed to the top to prevent people climbing over. At some point, barbed wire has been added over and above the planks. In addition, notices saying ‘Private Property’ were placed in the fields off Shadycombe Road, set back from the gateway. Both gates were padlocked. The action of erecting the gates and the extra work to prevent people from climbing over them, plus padlocking the gates, effectively called the route into question and prompted the Schedule 14 Application. The relevant period for consideration of user evidence and whether a presumption of dedication under statute has arisen is therefore August 1996 to August 2016.
- 6.1.3 Salcombe Town Council have based their application on public use, supported by 20 User Evidence forms from local walkers. The Schedule 14 Application was made as the route is not legally recorded and the Town Council and local walkers are concerned that the route may be lost due to permanent closure and potential development.
- 6.1.4 The user evidence submitted shows regular and uninterrupted use of the fields known as the Crofts, well in excess of 20 years. On closer examination of the evidence, three forms were discounted, as they do not include any part of the claimed route.
- 6.1.5 The user evidence forms show continual use of the claimed route, A – D – E – F – B – C, from 1985. Seven walkers have used this line for in excess of 20 years and three have used the route between 6 – 18 years. Their use is consistent, frequent and uninterrupted prior to August 2016.
- 6.1.6 Other user evidence forms show use of parts of the claimed route in conjunction with other routes through the fields. Two of these, Mrs Goldsworthy and Mr Pearce, have some of the longest use, from 1950 and 1975, of part of the claimed route. Starting from the gate from Shadycombe Road, at point A they then show that they walked diagonally through the fields using points via points j – k, to rejoin the claimed route at point E and continue to F – C – B. This is evidence of use of part of the claimed route for over sixty years, on foot for pleasure. Neither have been stopped, turned back or had obtained permission to use the paths.

- 6.1.7 Similarly, Mrs Newman and Ms Roberts have used parts of the claimed route for 30 and 26 years respectively, weekly or more from Shadycombe Road to Batson Creek edge path. Their use is longstanding and very frequent. Both walkers are consistent in the fact that there have been no locked gates or notices along the route during that period until August 2016.
- 6.1.8 The combination of the user evidence from 1950 to 2016 demonstrates that walkers have walked over the claimed route for a considerable period of time 'as of right', that is without force, permission or secrecy. The amount of use of the claimed route A – D – E – F – B – C is considered to be adequate to satisfy the requirements of section 31 of the Highways Act 1980 in that the route has been enjoyed by the public as of right, without interruption for a full period of twenty years, and thereby raises a presumption of dedication.
- 6.1.9 Although the evidence forms submitted also demonstrate use of other paths in conjunction with the claimed route from Shadycombe Road to Batson Creek, as circular routes, or to enjoy the views, such use is insufficient to raise a presumption of dedication in respect of any other route.
- 6.1.10 To counter a presumption of dedication of the claimed route at Statute, there must be sufficient evidence that the landowner had no intention to dedicate during the relevant period, i.e. August 1996 to August 2016.
- 6.1.11 In rebuttal, the landowners, Messrs Smith, say that when they met members of the public using the routes through the fields, the walkers were advised that the land was private and redirected to the coast path, thereby demonstrating a lack of intention to dedicate the way to the public. No dates for these actions have been provided and it is not clear whether this was a one-off visit in August 2016 or at other times. However, it is submitted that this was likely to have occurred in August 2016 as they indicate on their landowner evidence form that they have seen members of the public using the way during August 2016. In any event, any such challenge is likely to have been very limited. To be effective, a challenge must clearly and overtly communicate to users of the way that it was not public. None of the users who have completed forms report being stopped from using the route or being told that the claimed route was not public, either in person or by notices on the route, at any time until August 2016.
- 6.1.12 There is no evidence that signs have ever been erected on the route stating that the way was not public before August 2016. In their rebuttal evidence, the landowners state that they erected signs in August 2016 and that these were defaced in September 2016. It is accepted that the action of erecting these signs, together with the locking and barring of gates at Shadycombe Road, had the effect of calling the public's use of the way into question. The relevant period of use is twenty years retrospectively from the date of this action. Therefore, these notices cannot be considered evidence of lack of intention to dedicate during that time. Further, the wording 'Private Property' would not be considered sufficient to make it obvious to the public that there was no public right of way as most public rights of way cross private land.
- 6.1.13 Messrs Smith have owned the fields for 15 years, since 2001, and the action of erecting notices and locking of gates erected in August 2016 appear to be the first overt action to challenge the public's use and access to the routes across the fields.

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- 6.1.14 The landowners contend that the erection of gates on Shadycombe Road and Gould Road by the previous landowner established a boundary for members of the public in precluding access to this parcel of land. They state that the function of a gate is two-fold, firstly in providing means of enclosure to a field for the purpose of containing livestock, and secondly to announce to the 'wider world' that entry onto the land is restricted. Further, that the existence of gates is a sufficient pronouncement of the limit of access for the public, that a gate is similar to a notice in that it is informing the public that access through the gate is not available to the public. On their landowner evidence form, they acknowledge that the gates were not locked, nor had they taken any action to obstruct the way prior to August 2016.
- 6.1.15 Case law has established that for an action to be sufficient to show no intention to dedicate a way to the public, a landowner must clearly communicate that lack of intention to users of the way. Methods used include notices stating 'no public right of way' or a locked gate. An unlocked gate, the usual purpose of which is for stock control, and without any notice stating that the way is not public, is not considered sufficient evidence that the landowner had no intention to dedicate a way to the public.
- 6.1.16 Included in their rebuttal evidence, the landowners submit that this path was not included in the parish review for Salcombe carried out in 1999 – 2003. They suggest that as no evidence of public use or a claim put forward following the consultation exercise, this is evidence to support the position of the landowners at that time, that the public had not acquired a right of way over these fields "as of right".
- 6.1.17 This is an interesting comment. It would appear that during the review of Salcombe Parish in 1999, the path was already used as of right and had been for many years before this date. This fact is supported by the information contained in the user evidence forms submitted with the schedule 14 application. As the use of the route through the fields had not been challenged, the public continued to use it openly and freely without permission. The evidence forms also indicate that the gates that were in place were not locked nor were there any signs to state that there was not a public right of way across the fields. Several other paths have also been claimed in the parish since the Definitive Map Review was carried out in Salcombe, either because use has been challenged in the subsequent years and/or it has been brought to light that such routes were omitted during the Review. This is not unusual in parishes where the Review has been carried out.
- 6.1.18 The Definitive Map and Statement are conclusive evidence of those rights recorded within them, however it is not exclusive to those rights that are yet to be recorded.

6.2 Common Law

- 6.2.1 In addition to the presumption of dedication which arises under Statute, Common Law presumes that a public right of way subsists if, 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.
- 6.2.2 Equally, a shorter period of time combined with high frequency use can be considered as implied dedication, by the landowner at some time in the past, under common law if such use was so open and notorious that a landowner could have been aware of it. Given the intense use of the claimed path since at least 1985, it is considered, on the balance of probabilities, that common law dedication of the route

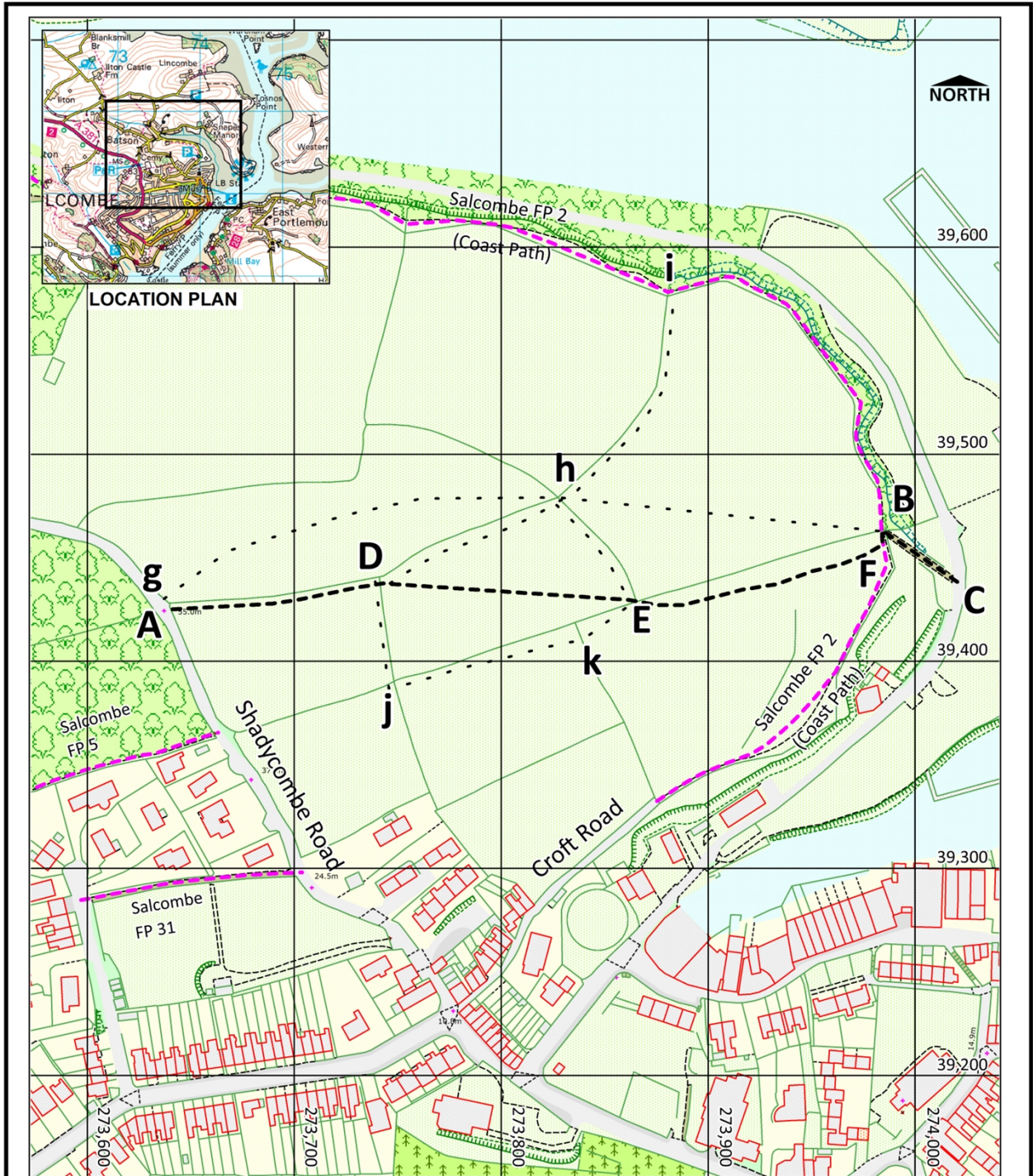
has taken place. The fact that the gates were not locked prior to August 2016 suggests acquiescence and acknowledgement by the landowner that the public were using them to access the fields.

- 6.2.3 Aerial photography consistently supports the notoriety and reputation of the claimed path and other paths within Croft fields that are much worn. Photographs submitted with user evidence forms show that paths are well trodden, worn down to earth and are clearly visible. This was still obvious and can be seen in the photographs taken on the 28th September 2017.
- 6.2.4 Also noted on the site visit, was the fact that the path is still being used, as evident by well trampled grass and two walkers and their dog using the claimed route. The notices at the Shadycombe Road and Batson Creek end, on Footpath No. 2, have all gone.

7. Conclusion

- 7.1 In considering and evaluating the user evidence forms submitted in relation to the claimed and additional routes, used in combination with each other, it is considered on the balance of probabilities that a right of way which is not shown on the Definitive Map and Statement subsist or is reasonably alleged to subsist on the basis of statutory dedication and at common law.
- 7.2 It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a public footpath between points A – D – E – F and B – C as shown on plan No. HIW/PROW/17/55, and if there are no objections to the Order, or if such objections are subsequently withdrawn that it be confirmed, but that no orders be made in respect of other routes discussed.

Agenda Item 9



Map Ref **SX 736 394**

Grid 100m

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DEVON COUNTY COUNCIL
SCHEDULE 14 APPLICATION - COMMITTEE PLAN
SHADYCOMBE ROAD TO GOULD ROAD - SALCOMBE

Notation

- Existing public footpaths - - - - -
- Proposed addition A - D - E - F - B - C (approx 400 metres) - - - - -
- Other used paths

drawing no. HIW/PROW/17/55
 date Oct 2017
 scale 1:2,500 at A4
 drawn by ES

Meg Booth
 CHIEF OFFICER FOR HIGHWAYS
 INFRASTRUCTURE DEVELOPMENT AND WASTE

HIW/17/85

Public Rights of Way Committee
9 November 2017

Public Inquiry, Informal Hearing and Written Representation Decisions; Directions and High Court Appeals

Report of the Chief Officer for Highways, Infrastructure Development and Waste

Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.

Recommendation: It is recommended that the report be noted.

1. Summary

Since the last Committee the following decisions and directions have been received from the Secretary of State. Plans are attached in the appendix to this report.

Modification Orders

Order/Schedule 14 Application	Decision/Direction
(i) Schedule 14 Application to add a footpath connecting with Northam Footpath No 26 at either end of Kipling Tors, Westward Ho! The Applicant had asked the Secretary of State to direct the County Council to determine the application, which is their right, under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981, if the application has not been determined within twelve months of certifying to the authority that notice of the application has been served on all owners and occupiers.	The Council is directed to determine the application within 3 years of the decision date of 6 September 2017. In making her decision, the Planning Inspector appointed by the Secretary of State considered that the Council should be given time to complete the Parish Review process, which has a target date of 1 January 2020.
(ii) Devon County Council (Footpath Nos. 16, 17, 18, 19 and 20, Combe Raleigh and No.5, Awliscombe) Definitive Map Modification Order 2016.	Interim Decision 26 October 2017: The Order is proposed for confirmation in connection with Combe Raleigh Footpath No. 20, which is proposed to be confirmed as a restricted byway. The decision is subject to modifications which require re-advertisement in due course.

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Divisions: Northam; and Whimple & Blackdown

Agenda Item 10

Local Government Act 1972: List of Background Papers

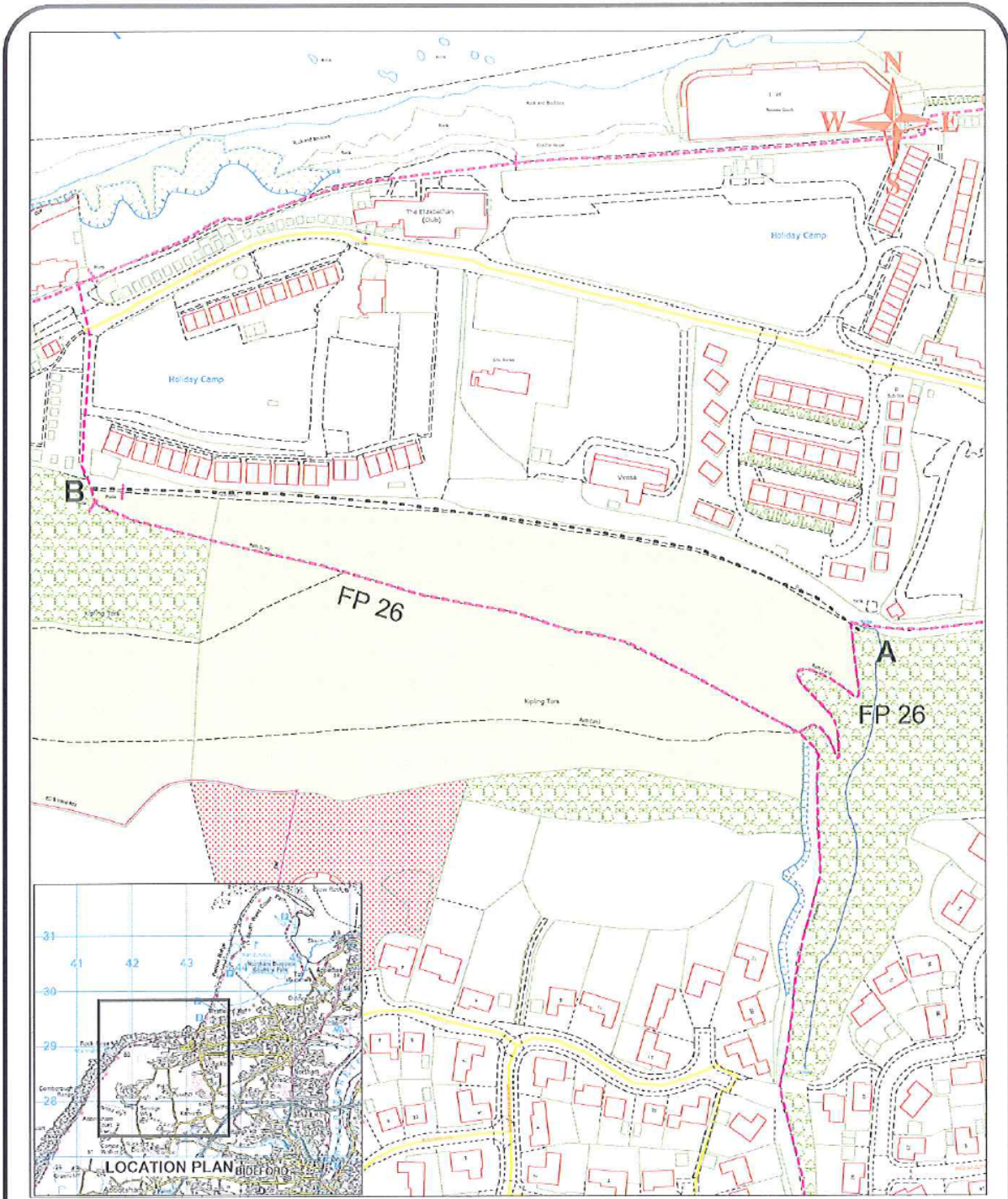
Contact for enquiries: Helen Clayton

Room No: ABG Lucombe House, Exeter

Tel No: 01392 383000

Background Paper	Date	File Ref.
None		

hc021017pro
sc/cr/public inquiry informal hearing high court appeals
03 311017



map ref

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DEVON COUNTY COUNCIL
Schedule 14 Application
Claimed Footpath below Kipling Tors
between FP 26 Westward Ho!

drawing number	HCW/PROW/16/16
date	April 2016
scale	Not to Scale
drawn by	AS

Notation

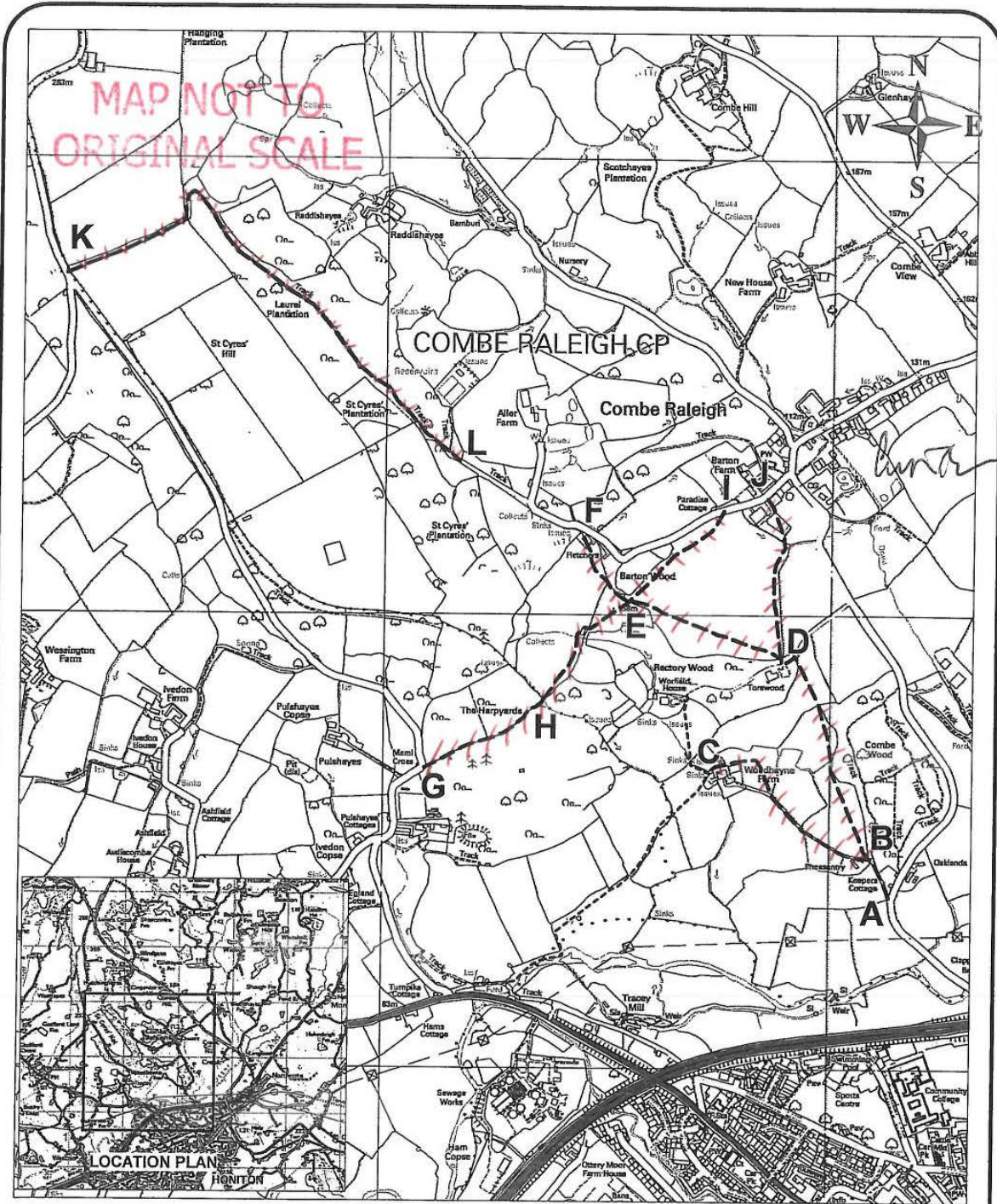
Claimed footpath A-B	-----
Existing footpaths	-----

David Whitton

HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE





Agenda Item 10



map ref ST1401-03/1501-03/1601-03 Reproduced from Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown copyright
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DEVON COUNTY COUNCIL
 (Footpath Nos. ~~16, 17, 18, 19~~ and 20,
 Combe Raleigh and No. 5, Awliscombe)
 Definitive Map Modification Order 2016

drawing number HCW/PROW/16/19
 date Apr 2016
 scale 1:12,500
 drawn by NSC

Notation ~~Revised by NS~~
Footpaths to be added 
 (Combe Raleigh: No. 16 A-B-C; No. 17 B-D-E-F;
 No. 18 H-E-I; No. 19 D-J; No. 20 K-L
 Awliscombe: No. 5 G-H)
Existing footpaths 

David Whitton
 HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE



HIW/17/86

Public Rights of Way Committee
9 November 2017

Public Path Orders

Report of the Chief Officer for Highways, Infrastructure Development and Waste

Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.

Recommendation: It is recommended that the report be noted.

1. Summary

Since the last Committee the following Public Path Orders have been made and confirmed under delegated powers. Plans are attached in the appendix to this report.

(a) Diversions Orders

- (i) Footpath No. 61, Hartland Public Path Diversion & Definitive Map and Statement Modification Order 2017
- (ii) Footpath No. 14, Clayhidon Public Path Diversion & Definitive Map and Statement Modification Order 2016
- (iii) Footpath No. 55, Bere Ferrers Public Path Diversion & Definitive Map and Statement Modification Order 2017
- (iv) Footpath No. 53, Horwood, Lovacott & Newton Tracey Public Path Diversion & Definitive Map and Statement Modification Order 2017
- (v) Bridleway No. 66, Uplyme Public Path Diversion & Definitive Map and Statement Modification Order 2016
- (vi) Footpath No. 2, Milton Abbot Public Path Diversion & Definitive Map and Statement Modification Order 2017

(b) Extinguishment Orders

- (i) Footpath No. 63, Broadclyst (Part) Public Path Extinguishment Order 2017
- (ii) Footpath Nos. 42, 43, 46 & 50, Ilfracombe Public Path Extinguishment & Definitive Map and Statement Modification Order 2016

(c) Creation Orders/Agreements

- (i) Footpath Nos. 63, Broadclyst & No. 1, Clyst Honiton Public Path Creation Order 2017
- (ii) Footpath Nos. 42, 43, 46 & 50, Ilfracombe Public Path Creation & Definitive Map and Statement Modification Order 2016

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Divisions: Bideford West & Hartland; Willand & Uffculme; Yelverton Rural; Fremington Rural; Axminster; Okehampton Rural; Broadclyst; and Ilfracombe

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Local Government Act 1972: List of Background Papers

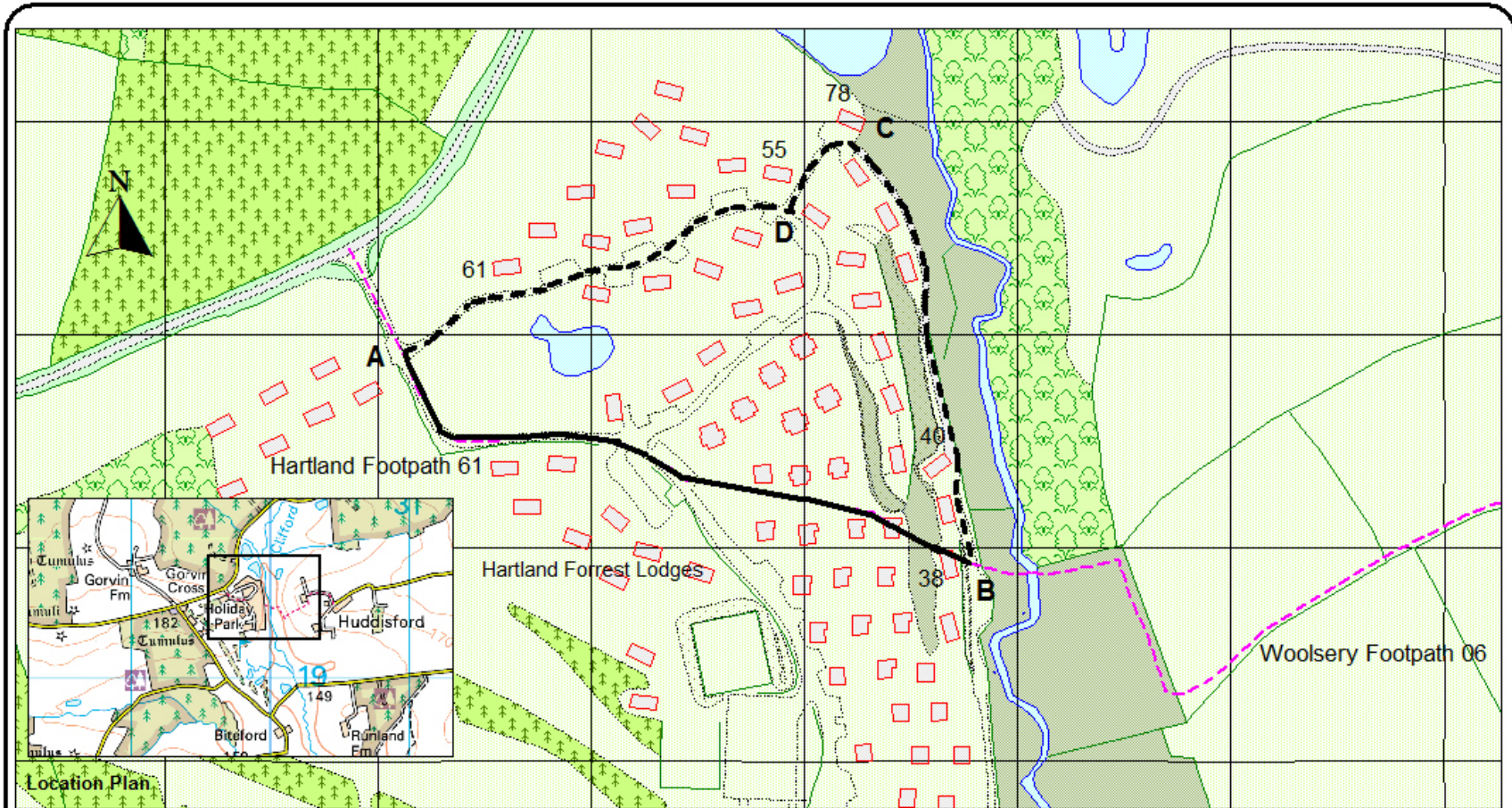
Contact for enquiries: Helen Clayton

Room No: ABG Lucombe House, Exeter

Tel No: 01392 383000

Background Paper	Date	File Ref.
None		

hc181017pra
sc/cr/Public Path Orders
02 311011



map ref: SS 2919

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DEVON COUNTY COUNCIL
FOOTPATH NO. 61, Hartland
PUBLIC PATH DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2017

drawing number	HIW/PROW/16/86
date	November 2016
scale	1:2500 (at A4 only)
drawn by	MC

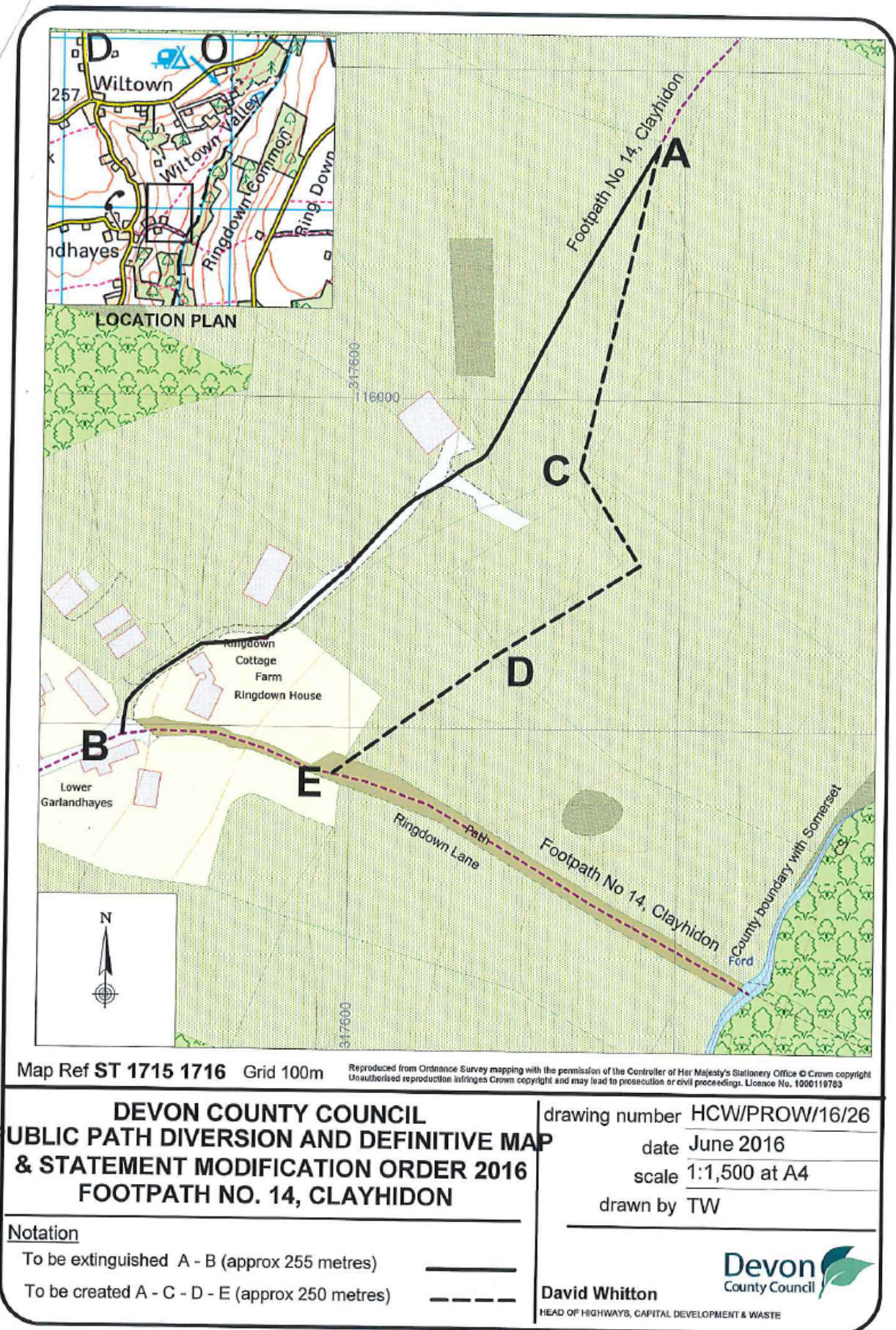
Notation Footpath No. 61

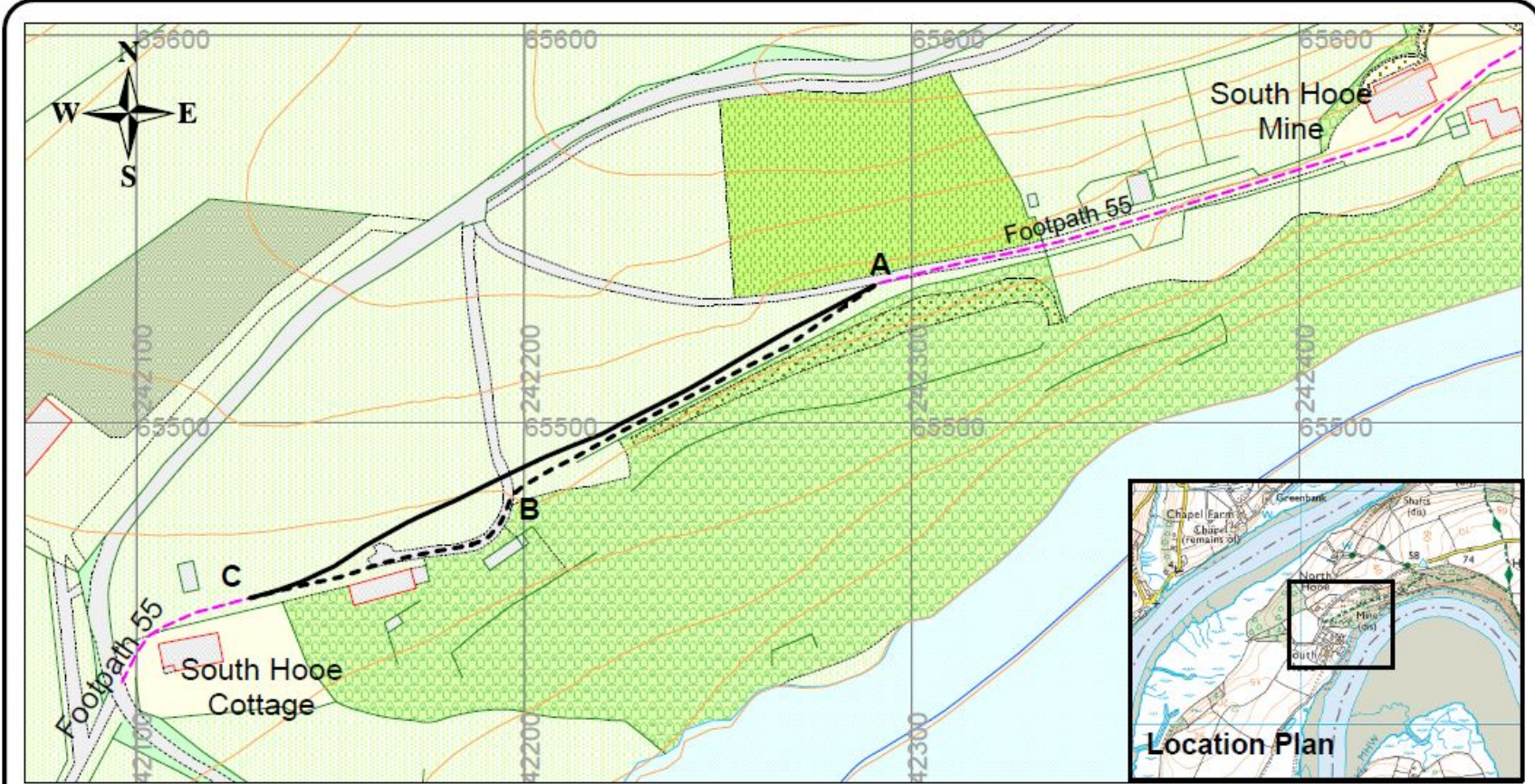
To be extinguished	A - B (300 metres)	
To be created	A - D - C - B (455 metres)	
Existing public footpath		

David Whitton
 Chief Officer, Highways,
 Infrastructure and Waste



Agenda Item 11





map ref: SX 4265

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**Devon County Council
 (Footpath No. 55, Bere Ferrers) Public Path Diversion &
 Definitive Map & Statement Modification Order 2017**

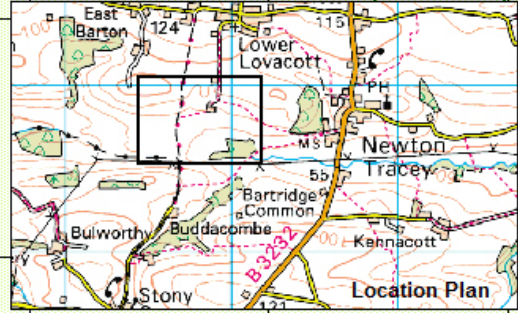
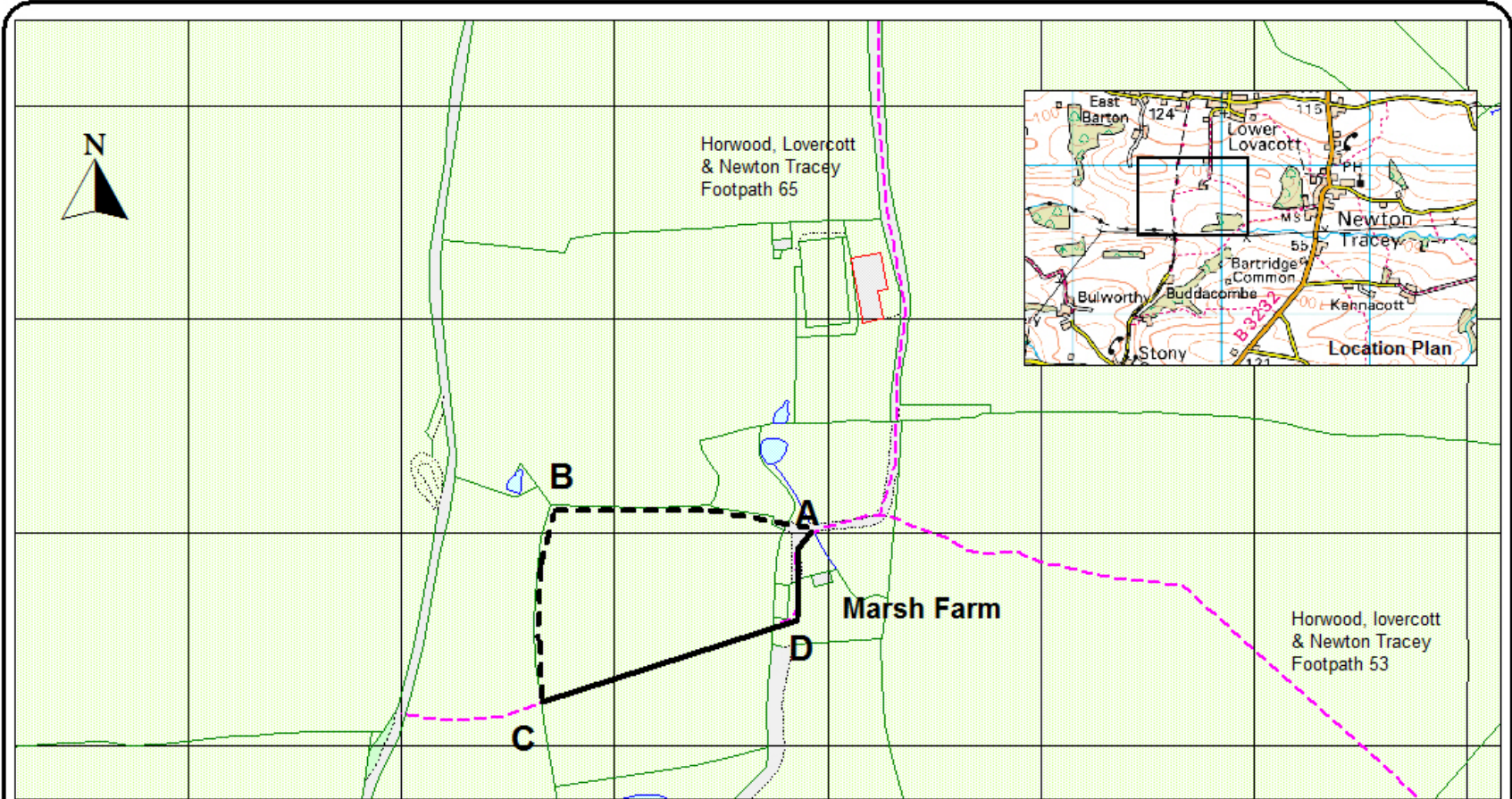
drawing number	HCW/PROW/16/11
date	March 2016
scale	1:1,500
drawn by	CLG

Notation

Footpath No. 55 to be extinguished	A - C (180 metres)		Existing footpath	
Footpath No. 55 to be created	A - B - C (185 metres)			

David Whitton
 CHIEF OFFICER
 HIGHWAYS, INFRASTRUCTURE
 DEVELOPMENT & WASTE





map ref: SS 5126

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DEVON COUNTY COUNCIL
FOOTPATH NO. 53, Horwood, Lovacott & Newton Tracey
PUBLIC PATH DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2017

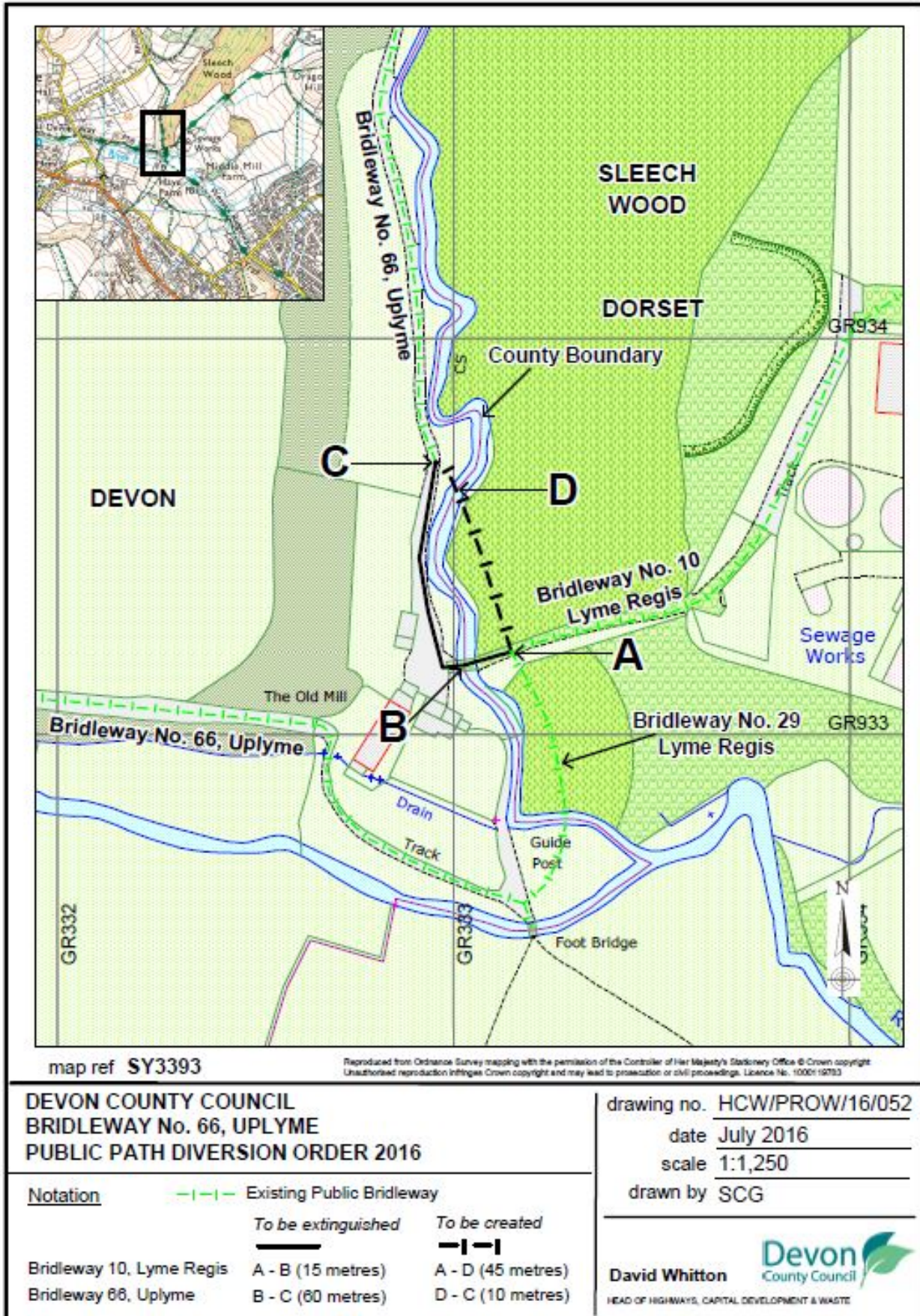
drawing number	HIW/PROW/16/84
date	November 2016
scale	1:2500 (at A4 only)
drawn by	MC

Notation

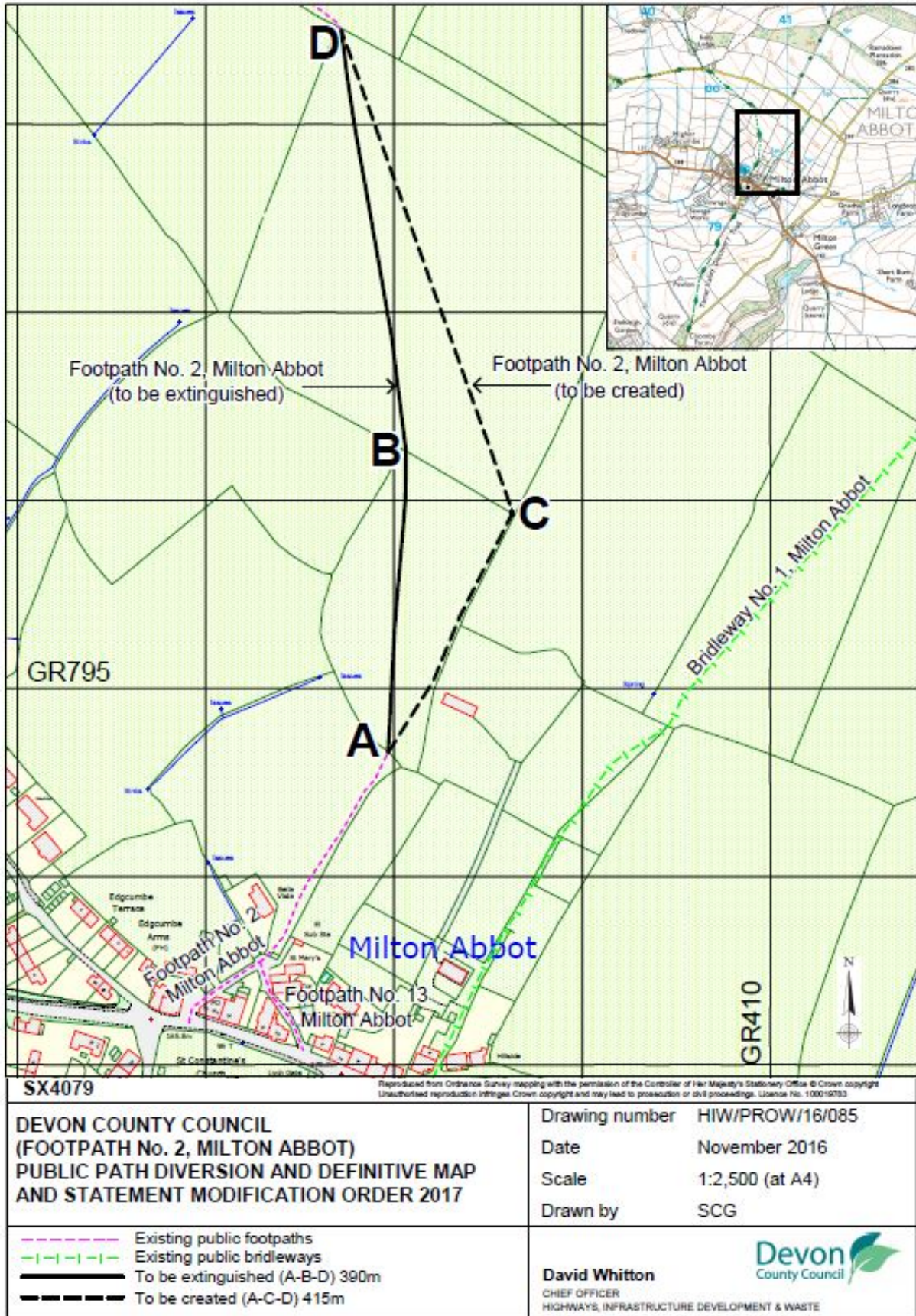
Footpath No 53 to be extinguished	A - D - C (210 metres)	
Footpath No 53 to be created	A - B - C (195 metres)	
Existing public footpaths		

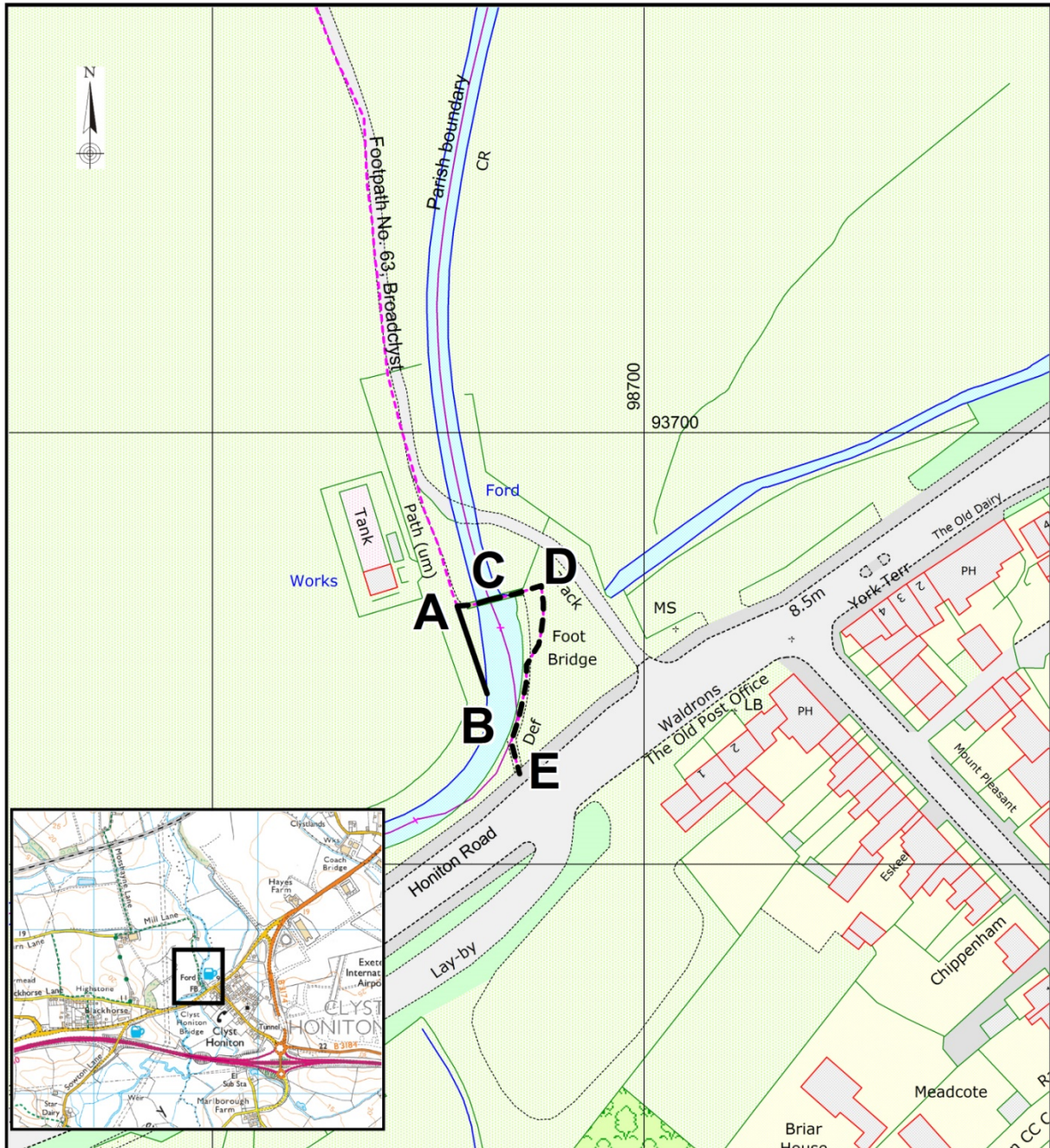
David Whitton
 Chief Officer,
 Highways, Infrastructure
 Development and Waste





Agenda Item 11





SX9893

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**DEVON COUNTY COUNCIL
 (FOOTPATH NO. 63, BROADCLYST(PART))
 PUBLIC PATH EXTINGUISHMENT ORDER 2017; AND
 (FOOTPATHS NO. 63, BROADCLYST & NO. 1, CLYST HONITON)
 PUBLIC PATH CREATION ORDER 2017**

Drawing number HCW/PROW/17/017
 Date Mar 2017
 Scale 1:1250 (at A4)
 Drawn by HFC

Notation

Existing public footpath

To be extinguished

To be created

Footpath 63, Broadclyst
 Footpath 1, Clyst Honiton

A-B (21m approx)

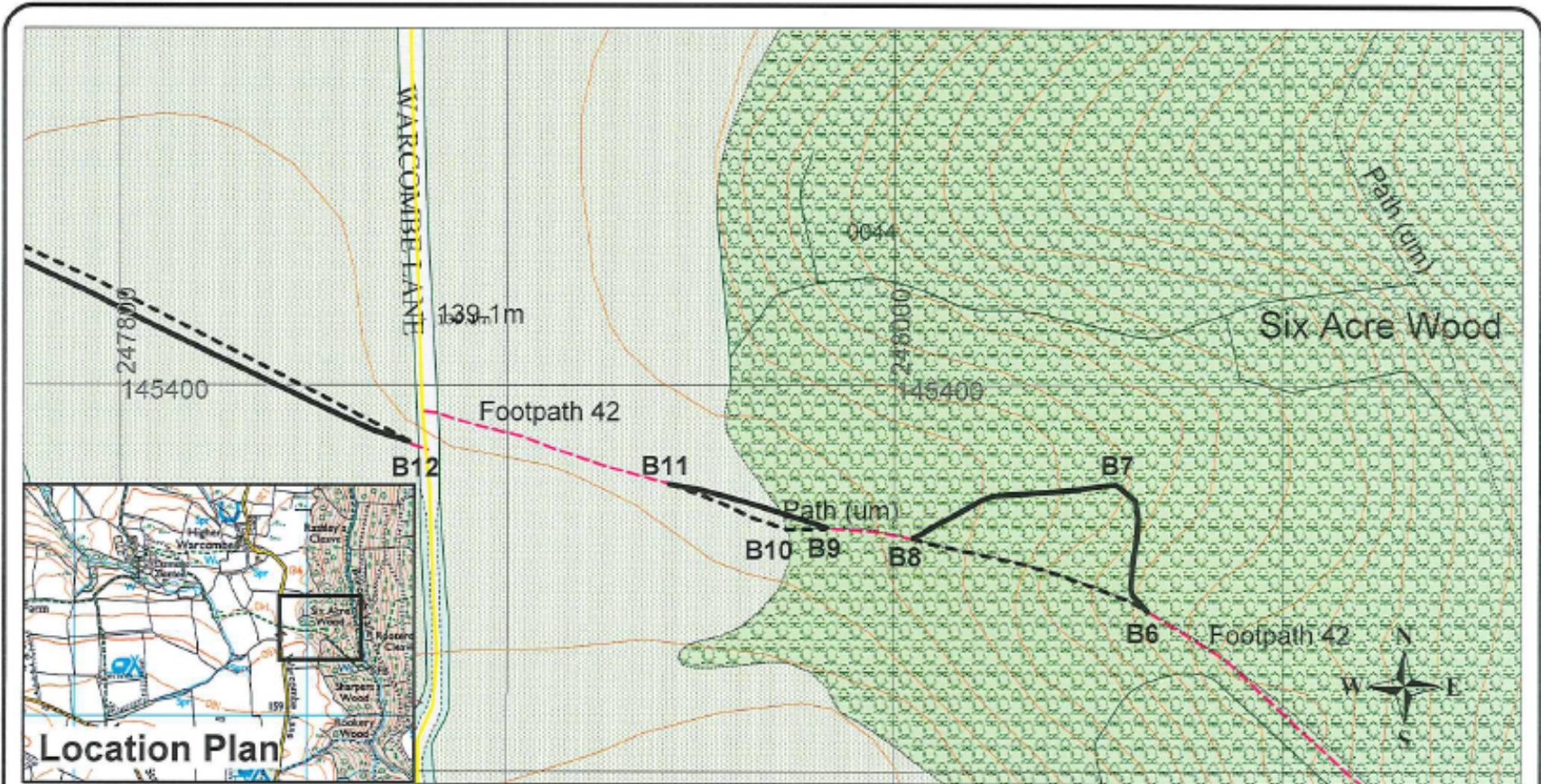
A-C (8m approx)

C-D-E (58m approx)

David Whitton

CHIEF OFFICER FOR HIGHWAYS, INFRASTRUCTURE
 DEVELOPMENT & WASTE





map ref: SS 4945

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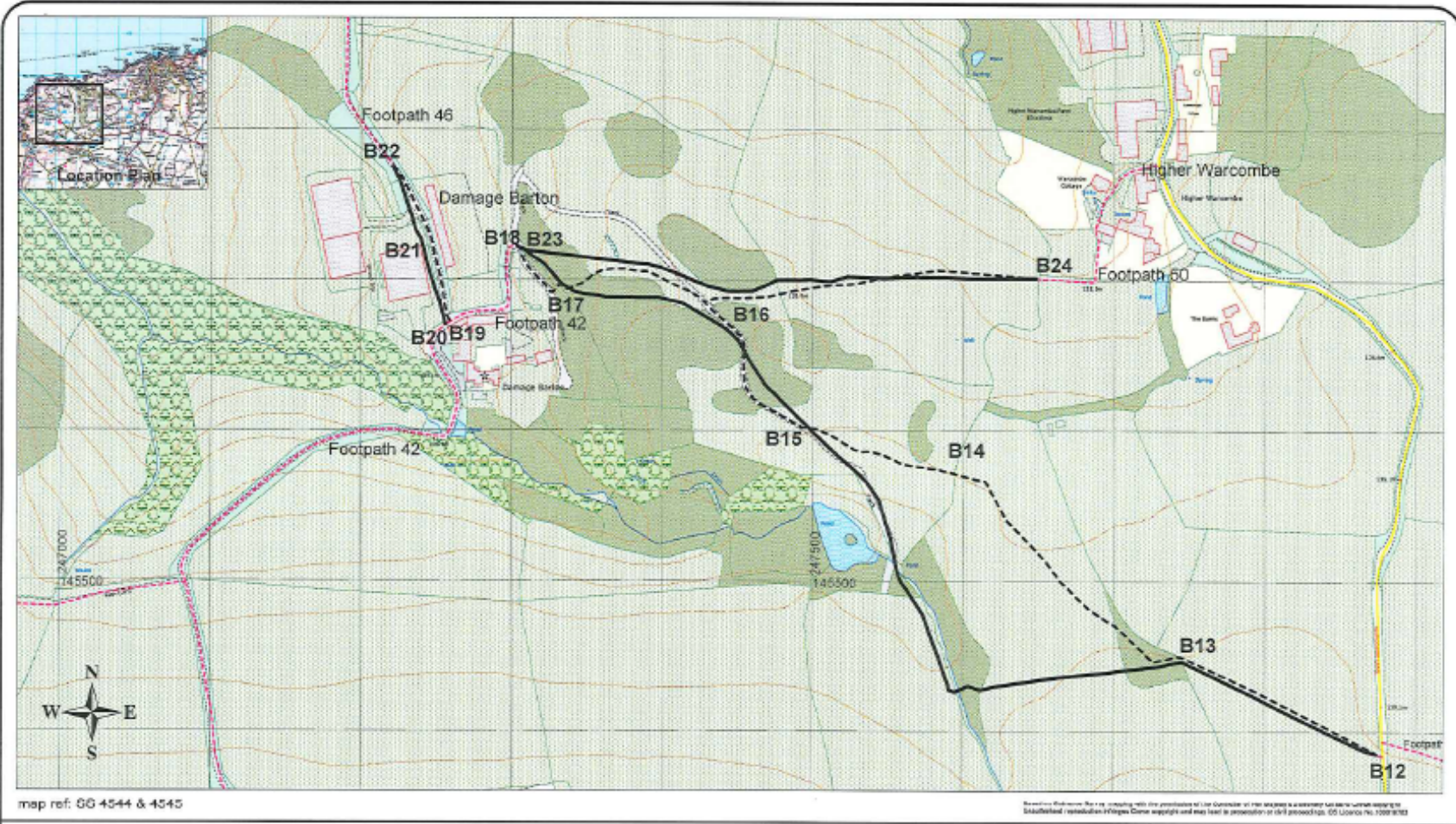
Devon County Council
(Footpath Nos. 42, 43, 46 & 50, Ilfracombe) Public Path Extinguishment & Creation
& Definitive Map & Statement Modification Orders 2016

drawing number HCW/PROW/16/50 (1/3)
 date July 2016
 scale 1:1,500
 drawn by CLG

Notation		To be extinguished		To be created	
Footpath No. 42	B6 - B7 - B8	(92 metres)		B6 - B8	(64 metres)
Footpath No. 42	B9 - B11	(43 metres)		B9 - B10 - B11	(43 metres)
Existing footpaths					

David Whitton
 Head of Highways, Capital Development & Waste





map ref: SG 4544 & 4545

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Devon County Council
 (Footpath Nos. 42, 43, 46 & 50, Ilfracombe) Public Path Extinguishment & Creation
 & Definitive Map & Statement Modification Orders 2016

drawing number **HCW/PROW/16/50 (2/3)**
 date **July 2016**
 scale **1:2,500 (at A3 only)**
 drawn by **CLG**

Notation To be extinguished

Footpath No. 42 B12 - B18 (746 metres)
 Footpath No. 46 B20 - B21 - B22 (111 metres)
 Footpath No. 50 B23 - B24 (345 metres)

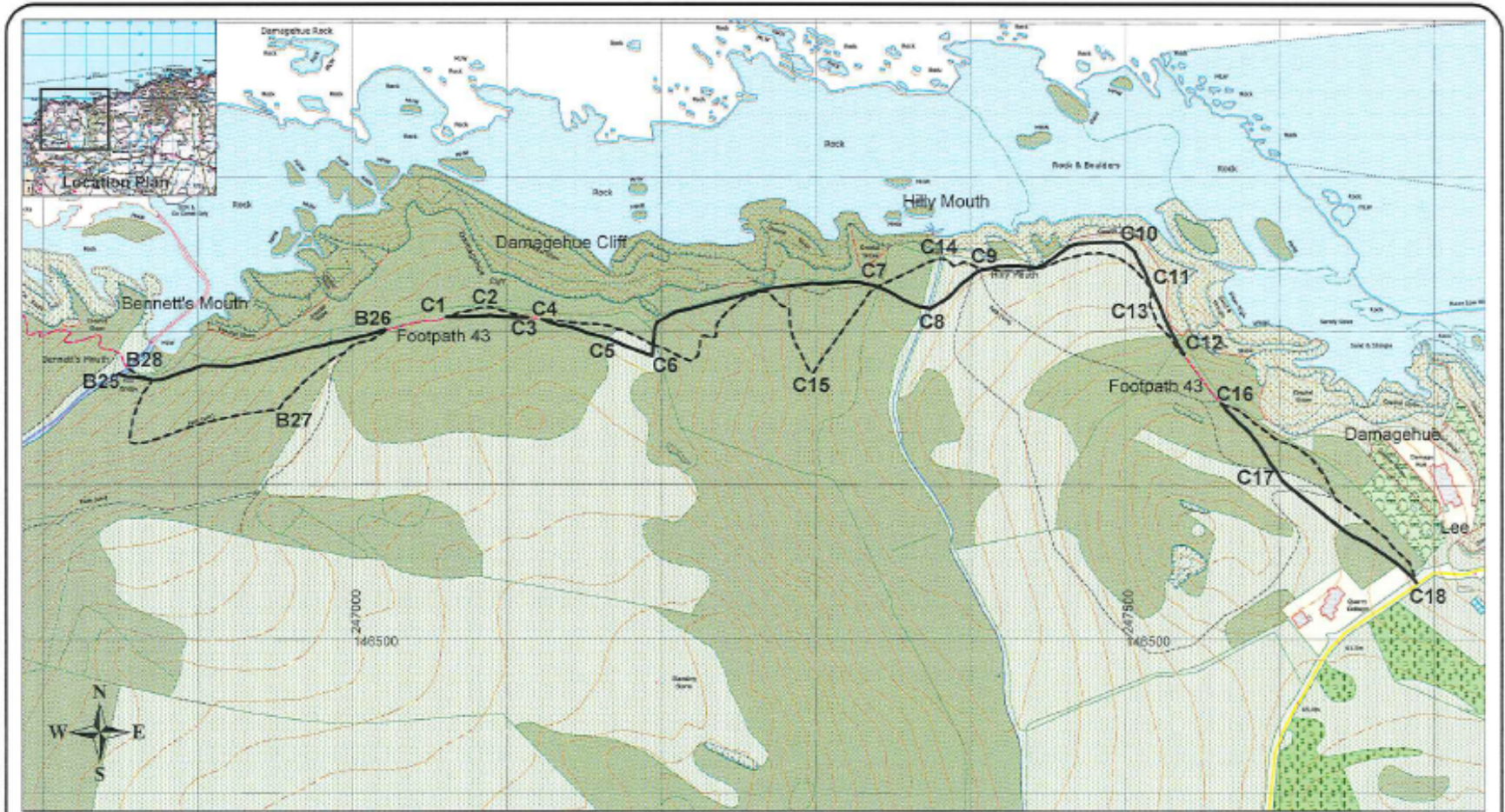
To be created

— B12 - B13 - B14 - B15 - B16 - B17 - B18 (727 metres)
 — B19 - B21 (111 metres)
 — B16 - B24 (223 metres)

Existing footpaths

David Whitton
 Head of Highways, Capital Development & Waste





map ref: SS 4616 & 1716

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Devon County Council
 (Footpath Nos. 42, 43, 46 & 50, Ilfracombe) Public Path Extinguishment & Creation
 & Definitive Map and Statement Modification Orders 2016

drawing number **HCW/PROW/16/50 (3/3)**
 date **July 2016**
 scale **1:2,500 (at A3 only)**
 drawn by **CLG**

Notation	To be extinguished	To be created	Existing footpaths
Footpath No. 43	B25 - B26 (746 metres)	B28 - B27 - B26 (727 metres)	-----
Footpath No. 43	C4 - C5 - C6 - C7 - C8 - C9 - C10 - C11 - C12 (504 metres)	C4 - C6 - C15 - C7 - C14 - C9 - C11 - 13 - C12 (483 metres)	-----
Footpath No. 43	C16 - C17 - C18 (174 metres)	C16 - C18 (177 metres)	-----

David Whitton
 Head of Highways, Capital Development & Waste

