

Phil Norrey
Chief Executive

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

County Hall
Topsham Road
Exeter
Devon
EX2 4QD

(See below)

Your ref :
Our ref :

Date : 27 June 2018
Please ask for : Wendy Simpson, 01392 384383

Email: wendy.simpson@devon.gov.uk

PUBLIC RIGHTS OF WAY COMMITTEE

Thursday, 5th July, 2018

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

AGENDA

PART I - OPEN COMMITTEE

- 1 Apologies
- 2 Minutes
Minutes of the Committee meeting held on 15 March 2018 (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 (Pages 1 - 12)
Draft minutes of the meeting held on 26 April 2018, attached.

DEFINITIVE MAP REVIEWS

- 5 Definitive Map Review 2017/18 - Parish of Eggesford (Pages 13 - 16)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/18/42), attached.

Electoral Divisions(s): Creedy, Tav & Mid Exe

- 6 Definitive Map Review 2017/18 - Parish of Feniton (Pages 17 - 20)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/43), attached.

Electoral Divisions(s): Feniton & Honiton

- 7 Definitive Map Review 2018 - Parish of Shaugh Prior (Pages 21 - 24)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/18/44), attached.

Electoral Divisions(s): Bickleigh & Wembury

- 8 Definitive Map Review - Parish of Combe Martin North Devon - Part 6 (Pages 25 - 38)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/18/45), attached.

Electoral Divisions(s): Combe Martin Rural

SCHEDULE 14 APPLICATIONS

- 9 Addition of a public footpath from the County road opposite Broadmoor Farm to the County road south of Watergate Bridge in the Parish of Chittlehampton (Pages 39 - 50)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/18/46), attached, and background papers.

Electoral Divisions(s): Chulmleigh & Landkey

MATTERS FOR INFORMATION

- 10 Public Inquiry, Informal Hearing and Written Representation Decisions; Directions and High Court Appeals (Pages 51 - 52)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/18/47), attached.

Electoral Divisions(s): Combe Martin Rural

- 11 Modification Orders (Pages 53 - 54)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/18/48), attached.

Electoral Divisions(s): Bideford West & Hartland

- 12 Public Path Orders (Pages 55 - 60)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/49), attached.

Electoral Divisions(s): Bideford West & Hartland; Chulmleigh & Landkey; Okehampton Rural

- 13 Future Meetings
15 November 2018 and 7 March 2019.

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

Nil

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Members are also reminded of the need to dispose of such reports carefully and are therefore invited to return them to the Democratic Services Officer at the conclusion of the meeting for disposal.*

Membership

Councillors P Sanders (Chair), T Inch (Vice-Chair), J Brook, I Chubb, P Colthorpe, A Dewhirst, L Hellyer, M Shaw and C Whitton

Declaration of Interests

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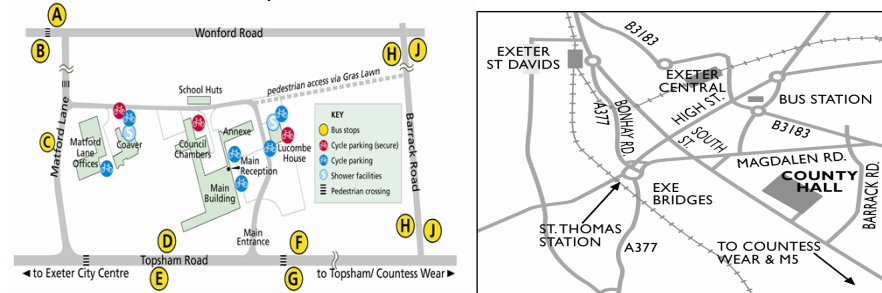
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**Minutes of the Fiftieth meeting
of the Devon Countryside Access Forum
The Kenn Centre, Exeter Road, Kennford, Exeter, Devon EX6 7UE**

Thursday, 26 April 2018

Attendance

Forum members

Andrew Baker

Simon Clist

Chris Cole (Vice-Chair)

John Daw

Jo Hooper

Councillor Tony Inch

Chris Ingram

Linda Lee

Charlie Lloyd

Sue Pudduck

Councillor Philip Sanders

Mark Simpson

Sarah Slade (Chair)

Maggie Watson

Devon County Council Officers and others present

Helen Clayton, Senior Officer, Public Rights of Way, DCC

Paul Davis, Highways Asset Manager, DCC

Ros Mills, Public Rights of Way Manager, DCC

Hilary Winter, Forum Officer, DCC

1. Welcome and introductions

Andrew Baker (landowner) and Dr Charlie Lloyd (access user) were welcomed as new members.

2. Apologies

Apologies had been received from Sean Comber, Gordon Guest and Sophie Pritchard (new member representing young people).

3. Election of Chair and Vice Chair

Simon Clist proposed Sarah Slade as Chair and Chris Cole as Vice Chair, seconded by Mark Simpson.

Sarah Slade thanked members for their support and enthusiasm and agreed to take on a further year as Chair.

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4. To approve minutes of the forty-ninth meeting held on 25 January 2018.

Minutes of the previous meeting, held on 25 January, were approved and signed.

5. Matters arising

5.1 Explore Devon website (4.3 25.01.18)

Chris Ingram had looked at the Explore Devon website. The DCC horse riding leaflet, a link from the site, was excellent but updates on routes and maps and inclusion of multi-use/shared use codes of conduct would be helpful. Links from the Public Rights of Way website to such information should be more explicit.

It was suggested an additional button for 'easy access' on the front page of Explore Devon would be useful.

The site provided an opportunity for the Forestry Commission to have a section highlighting their opportunities. Ros Mills, DCC, agreed to investigate.
Action: Ros Mills

The lack of horse box parking and turning was noted as a constraint.

Feedback would be provided to officers dealing with the Explore Devon website, following retirement of a member of staff.
Action: Forum Officer

5.2 Correspondence log (5. 25.01.18)

A letter had been sent to DCC requesting that consideration is given to design of a safe road crossing on the A361 near West Down once the Buttercombe Barton to Spreacombe Bridge section of the Tarka Trail, recently given planning permission, is nearing the construction phase. The letter had been copied to the Parish Council and the member of the public who had contacted the Forum. No formal feedback from DCC had been received but Ros Mills, DCC, confirmed it was being discussed.

5.3 Dawlish Suitable Alternative Natural Green Space (SANGS) (7.1 25.01.18) and Dawlish Warren

Further to a question in the letter from the Senior Ranger about Dawlish SANGS and disability use, it had been confirmed that the main objective was accessibility to the site as a whole and easy to use gates. There was no legal requirement to make everything accessible to everyone all of the time. The duty is to make reasonable adjustment.

Following the Forum sub-group's earlier visit to Dawlish Warren, Gordon Guest had re-visited the site and adjustments had been made to the three

kissing gates to provide a longer drive in section and mobility scooter users could easily access and open and close the gates. This improvement in access to the nature reserve was much appreciated, particularly in view of the small budget for improvements. It was agreed a letter of thanks should be sent to the Ranger.

Action: Forum Officer

6. Public questions

No public questions had been received.

7. Correspondence log

Attention was drawn to item 6, South Devon AONB Management Plan review. It was noted that all five AONBs would be reviewing their Plans shortly. The AONBs had previously found the DCAF position statement useful and it was agreed this should be refreshed in the autumn.

8. Reports from meetings attended by DCAF members

8.1 Understanding the Health and Well-being Value of the Pebblebed Heaths

Gordon Guest, Sue Pudduck and Sarah Slade had attended the workshop and found it very interesting. The workshop focussed on work by the University of Exeter and Clinton Devon Estates to understand the health and well-being benefits of the Pebblebed Heaths. Members of the public travelled long distances and stayed long periods of time, undertaking a variety of activities. Sarah had introduced the work of the DCAF and Gordon gave a useful presentation on making changes to improve accessibility, such as removing bunds from car parks. The Heaths are an important conservation site but increasingly important to health and well-being.

8.2 Local Nature Partnership Conference

Maggie Watson reported on the Local Nature Partnership Conference, attended by a range of people. The informative conference was broader than nature, focussing also on health and well-being and demographic change. A natural capital approach is likely to be taken in future which recognised the intrinsic value of nature as a capital asset. Ros Mills, DCC, confirmed that the country parks were seeking to value their assets in any funding bids. A member raised the importance of food production alongside conservation.

The Chair thanked Maggie for attending the Conference and for her written report.

9. Minutes of the Public Rights of Way Committee held on 15 March 2018

Cllr Sanders, Chairman of the Public Rights of Way Committee, referred to item 55b), the revenue budget. There was a relatively small reduction in the revenue budget but

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its value was down in absolute terms and the base budget is being constantly eroded at a time when the Public Rights of Way team is taking on additional responsibilities.

Reference was also made to item 56. A post would be advertised to replace Nick Steenman-Clark who is retiring. The Forum was pleased to note the post would remain.

10. Public Rights of Way update

Ros Mills, Public Rights of Way Manager, and Helen Clayton, Senior Officer in Public Rights of Way provided an update.

a) Budget

Following the scenario planning discussion at the last meeting, only £800 had been lost from the PRow revenue budget which was an outcome better than expected. The Senior Management Team was aware of the health and well-being benefits of the PRow network. The PRow team had received additional capital money of £80,000.

Cabinet had agreed a sum of £2m to assist with drainage on the highway and the PRow team was putting forward capital projects where public rights of way connect to roads or where there is water run-off.

The PRow team had identified some significant capital projects which were ready to proceed should finance become available.

b) DCAF position statements

These were welcomed by the PRow team.

c) DCAF Annual Report

Sarah Slade was thanked for her excellent report.

d) Staffing

The advertisement for a replacement Definitive Map Review officer would be out shortly.

e) Parish Paths Partnership (P3)

Survey forms were being completed plus grant awards for the coming year. P3 parishes were putting in project bids.

f) List of Streets

Further conversations had taken place with Land Charges, DCC. Some technical issues had been resolved and there would be no problem transferring the Definitive Map onto the List of Streets. A disclaimer would be needed to indicate that the record of List of Streets was not the Definitive Map itself.

g) Deregulation Act

Public Rights of Way changes in the Deregulation Act 2015 were not in force. It was noted that this was part of a Defra work plan. A limited consultation

through the Adept Rights of Way Managers' Group had taken place on the cost recovery section, with regions feeding in useful information on what charges would be appropriate and time scales for the process.

- h) Pegasus Trail
Following the DCAF sub-group visit and recommendations, dusting had taken place to improve the surface for horse-riders and dog walkers.
- i) Public Rights of Way Committee
The next Committee would be on 5 July.
- j) Public Inquiries
An Inquiry would be held on 11 October at Ugborough for a Definitive Map Modification Order to add a bridleway. DCC is making the case for confirmation.
- k) British Standards Institute. BS 5709 Gaps, Gates and Stiles
The revised standard had recently been published. The PRoW team would be assessing the implications and a report would come to the next Forum meeting. The standard would not be applied retrospectively but would impact on public path orders. PRoW staff would need to justify decisions when it was not possible to meet the standard. The gate width had increased by 10cm which had implications when replacing stiles with gates.

11. Presentation by Paul Davis, Asset Manager, Highways, Infrastructure Development and Waste, DCC. 'Devon County Council's role in maintaining the highway'.

Paul Davis introduced himself as the Highways Asset Manager with responsibility for budgets, policy and performance.

Devon has the largest road network in the country with an estimated asset value (gross replacement cost) of £12 billion. The asset included 'A', 'B' and 'C' roads; unclassified roads; footways; bridges and retaining walls; public rights of way; cycle/multi-use trails; and street lights, illuminated signs and bollards.

Mr Davis provided graphs on the condition of the highway which indicated, on a traffic light system, that the 'A' and 'B' roads have shown a relatively good and stable state condition over the past 10 years with a low percentage of roads requiring urgent planned maintenance. Analysis of the 'C' road network indicates a trend over the past 4 years in the gradual deterioration of this part of the network and along with the unclassified road network is an area DCC is targeting in 18/19. For the unclassified road network, DCC is beginning to see a more regular deterioration in condition which is reflective of the under investment of this part of the network over the past 5 years, the effects of climate change and the change in usage and driving habits on this more vulnerable part of the Devon road network. This is demonstrated by the increase in roads requiring early investigation due to condition. With the exceptional weather that impacted the County during January through to March, DCC anticipates a worsening situation in terms of road condition across the network and particularly on the minor road network.

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Roads were divided into 12 categories; 1- 5 on the major road network and categories 6 -12 on the minor road network. The lowest minor category roads, generally unsuitable for vehicles, are unsurfaced or unmetalled roads and are maintained by the public rights of way team. Mr Davis explained Devon's policy on the level of maintenance applied to the various road categories and demonstrated as an example the policy maintenance matrix for lower and higher category roads. He showed an excerpt from the matrix where it indicated that carriageway reconstruction is not normally undertaken on a category 9 road (a service road serving a single or a few properties) or below. Conversely surface dressing was applicable on all categories of road. DCC had a defined list of possible maintenance treatments for each category within its policy document AM.01 General Maintenance Treatment Standards.

Funding for highway maintenance came from a variety of sources to give a capital budget for improvement works and a revenue budget for repair and maintenance of the asset. The Capital budget is made up of the needs based formula allocated by the Department for Transport for local highway maintenance. Other capital funding comes from the Incentive and Challenge Funds which local authorities compete for, Pothole Action Fund and additional one-off funding such as the Flood Resilience Fund allocated following the severe weather events in February and March this year. The total Revenue budget for 2018-19 sits at £29.6 million and includes an additional £6.5 million for drainage and other cyclical works and safety defect type works. Capital budgets are much more rigid in terms of their areas of spend and are often ring-fenced whereas revenue budgets have a greater level of flexibility.

In terms of asset management, the overarching principle is to extend the life of the asset, intervening before deterioration accelerates and repairs become more costly, 'doing the right thing at the right time'. Thus, adopting a worst-first strategy is not sustainable and in the longer term is more costly hence why the whole life cost strategy is used when deciding on the appropriate treatment.

Mr Davis said that he would check whether categories were described on the DCC public facing portal. A Forum member mentioned that roads maintainable at public expense listed the categories.

Action: Paul Davis, DCC

The Forum noted the safety defect repair risk matrix and the response times for different road categories. As recommended in the new Code of Practice for Well Managed Highway Infrastructure the safety inspection regime uses a risk assessment process to determine the degree of risk a defect which meets the investigation criterion impacts upon highway users.

Mr Davis confirmed the new Code of Practice for Well Managed Highway Infrastructure allows an authority to manage its network by assessing the level of risk something poses on its network. Potholes for example constitute a potential serious risk and may, if located in a dangerous part of a carriageway, require an urgent response because they are deemed to pose a threat to life i.e. response within 2 hours and made safe or repaired urgently. Mr Davis referred to the Highway Safety Policy for Devon which scheduled the various defects that an inspector will look for on an inspection i.e. a pothole was defined as being 300mm in any horizontal direction and 40mm in depth. He confirmed that the risk assessment process will include inspecting for defects that could impact on all users such as cyclists and those with disabilities.

All personnel involved in safety inspections are competent and have successfully completed the UK Highway inspectors training and certification scheme as approved by the UK Roads Board. The frequency of inspections is dependent on the maintenance category of the road, for example maintenance category 3 road ('A') is inspected monthly whereas a maintenance category 8 road (minor collector road) will be annually. When the public report a problem, the matter goes through a triage process and, where appropriate, a contractor is instructed to make the repair. Sometimes the problem is reported incorrectly with a wrong location which can involve abortive costs.

Members viewed photographs supplied by a DCAF member showing re-emergence of pothole defects only a couple of weeks after repair. Mr Davis confirmed that on lower category roads the specification for pothole repair is clean out void and fill with either cold or hot material whereas on the main road network a pothole has to be cut out to vertical edges and then only filled with hot material. The matter of surface water on the network was raised. DCC has a programme of siding and water tabling however this has over recent years been limited in the main as preparation works to surface dressing roads. It was felt that more minor roads would benefit from regular siding and water tabling works. A member highlighted the problems caused to the minor road network from large farming plant and haulage vehicles which damaged ditches and caused damage to the channel edge of the carriageway. Problems with water run-off from fields were cited and it was suggested DCC could interact more with landowners to determine how best to deal with field water discharging onto the highway. Mention was made of potholes half-filled and incomplete. Mr Davis confirmed that where members of the public identify locations where work is not up to standard DCC would appreciate this being raised through the Customer Service Centre as a formal complaint which will then be flagged up to the appropriate team for action.

Verge maintenance had been raised by the DCAF. Mr Davis confirmed that the Environment Agency permits verge waysoil to be de-positioned to another verge within 3 kilometres of its source, the TMC specification details the full requirements in this respect. The specification permits only waysoil arising from siding, ditching or cleaning operations to be disposed of on verges and hedge banks. The waysoil on verges shall be spread to a depth of 50mm on the verge within 7 days of deposition, all litter and large stones shall be removed and then the site rotavated or otherwise broken down to a fine tilth and re-levelled. Members re-iterated the problems arising from spread of noxious weed through seeds which might not be apparent.

Mr Davis outlined the grass cutting policy which is to maintain visibility for highway users by cutting junctions, the inside of bends and laybys and places where pedestrians are encouraged to cross, for example where a public right of way meets a road. Wholesale grass cutting was no longer carried out due to budget cuts. Some money went to districts and parishes to cut urban grass (four times per year). Rural grass is cut once or twice. Some districts/parishes are cutting additional areas at their discretion.

Mr Davis said that where a public right of way met a carriageway on a narrow road with no footpath it made sense to create a safe verge passage to a nearby public right of way, if in close proximity. It would be useful to look at the policy again. It was agreed this would be an asset for walkers and horse-riders. However, any such cut

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would only be once cut per year. It was possible to report the need for an exception to the parish and Neighbourhood Team.

Action: Paul Davis to report back on progress.

Concern had been raised by Forum members about lack of friction on roads used by horse riders. Mr Davis explained that stone mastic asphalt (SMA) surfaces have a temporary binder film occluding the aggregate for a period immediately following laying; this can be for several months on roads with minimal traffic. Applying grit during the laying process speeded up the removal of the binder film. In locations of high equestrian use, grit is applied to all asphalt concrete surfaces and not just SMA. Devon is leading the way in its policy of applying grit to new surface courses on routes regularly used by horses. The use of surface dressing was seen as a good surface for horses however its use is as an intermediate protective treatment and is not a replacement for the structural benefits gained through resurfacing.

Forum members explained that tungsten studs on horse shoes provided some road purchase but too many would reduce the flow of the horse. Mr Davis said DCC will always risk assess a site prior to any resurfacing works to determine whether there were stables in the vicinity or it was a popular riding route and, if so, through consultation the design would include measures to mitigate any risk. For example, on heavily used equestrian routes there were options available to reduce the impact of new surfaces, for example to overlay the new surface with a narrow surface dressing or high friction surfacing along one or either side of the carriageway or perhaps improve verge availability and maintenance for a period after the laying of the surfacing.

Chris Cole mentioned he had noted a proliferation of temporary road closed signs on the very minor roads. These often got damaged or knocked over and the ambiguous wording reduced recreational use of the lane. He said user groups, such as the Trail Riders' Fellowship, could assist with erecting appropriate signage, e.g. road unsuitable for motor vehicles signs, mounted on steel posts with concrete foundations to make them more robust should they get hit. Mr Davis confirmed he could look at budgets but the process would need to be controlled and with effective liaison. He agreed he could build up an approval process and would welcome ideas on a suitable approach and interaction with the community. It was agreed Ros Mills, DCC, would consider the detail and report back to the next meeting. Members were asked to advise the Forum Officer if they had comments.

Action: Ros Mills and Forum members.

Mr Davis acknowledged that parishes did not always understand the maintenance selection process and why a road is selected over another which may be in a worse condition. He reiterated that under its Asset Management Plan DCC does not operate on a worst-case basis. However, he did recognise that more consultation was needed by the Neighbourhood Teams to determine the usage of local roads and hence its maintenance category and ultimately the level of maintenance that category attracts. The situation in parishes sometimes changes through increased usage from new developments, businesses expansions etc. that can result in formerly little used routes becoming the popular route. Conversely once popular routes could become infrequently used routes as situations change.

Paul was thanked for his talk

12. To note and approve responses to consultations and note feedback

12.1 Response to Natural England on coastal access

The response had been approved at the last meeting. Natural England had subsequently provided an update.

- a) Cremyll to Kingswear
Initial letters to landowners were sent out in December and Natural England has been discussing options with DCC and relevant local and national organisations with an interest in the stretch. Detailed options are being discussed with people who own and manage land.
- b) Combe Martin to Marsland Mouth
Initial letters to landowners would be sent out at the end of April. Natural England has been discussing options with DCC and relevant local and national organisations with an interest in the stretch. Options would be discussed with owners and managers of land over the next few months.

12.2 South West Coast Path funding

The letter to Natural England was approved. This had been copied to Devon MPs with coastline in their constituencies. The responses from Natural England and MPs were noted. The most recent letter from Lord Gardiner of Kimble, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, stated that Natural England had written to the Chairs of each of the national trail partnerships to confirm funding at 2017-18 levels. It was noted that work would be taking place with national trail partnerships and other stakeholders to explore options for a more sustainable funding model, to ensure that the important trail assets are maintained while making them less reliant on the public purse.

Ros Mills, DCC, thanked the Forum for its letter. There is likely to be a 5% reduction in budget for 2019-2020. The national group of trail officers is lobbying for a three-year settlement. Adept is bidding for money to seek counsel opinion on the liability for new structures on the coast path which are not public rights of way. It was noted that although the new England coast path is coastal access land it is not necessarily on a right of way on the Definitive Map.

12.3 Exe Estuary Partnership Dog Walking Code

The response to the Exe Estuary Partnership was noted and approved. A helpful response had been received from the Exe Estuary Officer outlining where the Forum's advice had been taken into account. The final code had not yet been published as further changes were being made to visual clarity.

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12.4 Torridge District Council Public Spaces Protection Order

The response was approved.

13. Current consultations

A discussion took place, led by the Chair, on how best to involve DCAF members in formalising and agreeing consultation responses. It was agreed that a clear process was required. It was important that members should firmly indicate their approval, or otherwise, to any draft before submission. Not all Forum members were on email.

As members were all volunteers, some concern was expressed at the practice of 'reply all' which could result in overload. It was agreed that replies should be sent to the Forum Officer who would collate into an email or draft. Members should give their assent to a response or detail proposed amendments by a given date. Where a member had expressed a strong view on an issue feedback from other members was particularly important. This would provide the opportunity to send round further drafts as necessary.

Other ways of communicating through blog or Microsoft teams were mentioned and would be explored further. A presentation on Microsoft teams, if appropriate, could be part of a presentation at the next meeting.

The Chair reminded members that advice should not be political.

13.1 Health and Harmony: the future for food, farming and the environment in a Green Brexit. Defra

Land managers on the Forum expressed concern about the changes to agricultural support that the proposals indicated. Organisations representing the farming community would be responding.

Ros Mills, DCC, said DCC and the Adept group had been asked for views. Where there is non-compliance on rights of way issues, for example obstructions, DCC can ask the Rural Payments Agency to investigate. It is likely that replacement support for access and recreation will be requested, with a basic payment for landowners with public rights of way and not just those in designated landscapes. Funding pots for improvements supported by parishes was an option.

After discussion it was agreed that the questions requesting consultees to rank environmental outcomes and other public goods were inappropriate. Many items were inter-connected and were all important and fundamental. Improvements in one area, such as soil health, would lead to improved water and air quality. Public access in the second list could also be included as part of 'enhanced beauty, heritage and engagement with the natural environment'. There were links to health and well-being.

Permissive access was one option. It was noted that fences to secure the public against livestock and crops currently resulted in financial penalties due

to the reduction of farm area. Fences could be an extra burden for the public rights of way team if not maintained by the landowner.

It was agreed funding for public access should be supported but the matter required careful consideration due to its complexity. Public access could, for example, compromise biosecurity. Consideration was given to sending the DCAF position statements but it was agreed these were developed for specific purposes and did not fit so readily into the consultation questions.

It was noted that Devon had a wealth of access opportunities in natural settings, unlike some areas of the country.

It was agreed the Forum Officer should draft a response to be sent to members for approval.

Action: Forum Officer.

13.2 Cycling and Walking Investment Strategy (CWIS) safety review. Department for Transport

There was insufficient time to consider a response. It was agreed members should email views to the Forum Officer to compile a draft, taking into account advice previously developed.

Action: Forum members and Forum Officer.

13.3 National Planning Policy Framework - draft revised text. Ministry of Housing, Communities and Local Government.

Following discussion, it was agreed not to respond to the consultation. The revisions to the National Planning Policy Framework affecting access were appropriate and largely not mandatory.

13.4 Developing a national approach to physical activity for children and young people. ukactive

There was insufficient time to consider a response. It was agreed members should email views to the Forum Officer to draft a response, taking into account opinions previously developed.

Action: Forum members and Forum Officer.

14. To approve draft Annual Report

The Annual Report was approved. Photographs would be added prior to publication.

15. To discuss and agree Work Plan for 2018-19

Members considered the work plan for 2018-19. It was suggested and agreed that a speaker from the AONBs should be invited to the October meeting to discuss the forthcoming management plan reviews. The AONB position statement should be reviewed at this meeting.

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The erosion at Slapton was suggested as a topic. Ros Mills, DCC, agreed to give an update at the next meeting.

Carriage driving was also suggested by Linda Lee who thought it was permitted on routes in Bath and North East Somerset. Ros Mills said she had received information on carriage use on trails in the SW - the response was if landowners agreed then that use would be available. However very few routes had this type of access.

16. Invitation to a training workshop on the Definitive Map process and 2026

Chris Cole, Councillor Philip Sanders, Councillor Tony Inch and Sue Pudduck expressed interested in attending. It was noted that the review in Devon is proactive on a parish by parish basis, using schedule 15 of the Wildlife and Countryside Act 1981, through parish consultation and a review of historic information. Other authorities receive schedule 14 applications and deal with these on a case by case basis.

Action: Forum Officer

17. Training Day

After discussion, it was agreed a training day at Haldon Forest looking specifically at provision for young people and health would be useful. Either 18th or 20th June would be explored.

Action: Forum Officer.

Dementia awareness was raised and it was suggested this could be picked up as a post-meeting event, possibly at Honiton or the Grand Western Canal. The impact of digital mapping and other digital applications was affecting how people access and approach the countryside and it was suggested it would be useful for the Forum to gain an understanding of this.

18. Any other business

There was no other business.

19. Date of next meeting

The next meeting would be held on 11 October.

HIW/18/42

Public Rights of Way Committee
5 July 2018

Definitive Map Review 2017 - 2018 Parish of Eggesford

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 it be noted that the Definitive Map Review has been completed in the parish of Eggesford and no modification orders are required to be made.

1. Introduction

This report examines the Definitive Map Review in the parish of Eggesford in Mid Devon District.

2. Background

The original parish survey, under s. 27 of the National Parks and Access to the Countryside Act 1949, proposed nine footpaths and one bridleway in Eggesford. All ten paths were included on the draft definitive map and after representations were made to paths 4 and 7 which were considered to be private paths, seven footpaths and one bridleway were recorded on the Definitive Map and Statement for Eggesford in Crediton Rural District Council with the relevant date of 25 February 1958.

In the County Council's 1968 review, it was unanimously agreed at the Parish Meeting that the existing paths should remain as designated on the definitive map, with no additions or deletions recommended. In the 1977 review the Parish Meeting proposed that the paths as listed on the Definitive Map should remain as at present with no additions or deletions. It was also requested that direction signs should be placed on the paths so that the public would know where they were and where they led to.

The Limited Special Review of Roads Used as Public Paths (RUPPS), also carried out in the 1970s, did not affect this parish.

The following Orders have been made and confirmed:

County of Devon Footpath No 2 Eggesford/Footpath No 8 Chawleigh Public Path Diversion Order 1990

Mid Devon District Council Footpath No 1 Eggesford Public Path Diversion Order 1994

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

In March 1987 a Schedule 14 application was received for the addition of a public footpath along the eastern side of the ten terraced cottages known as Four Ways Cottages at Eggesford Fourways. The application was considered the County Council's Amenities and

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Countryside Committee. The claimed path was considered to have only ever been used by the residents of Four Ways Cottages or their visitors and not by the general public. In the absence of any evidence to show use by the public, the application was rejected and no modification order was made.

The current review recommenced in December 2017 with a parish public meeting held at the Eggesford Garden Centre, prior to the annual Parish Meeting, which was well attended by over twenty people.

3. Proposals

No proposals for change were suggested for the addition, amending or deletion of any public rights of way in the parish by the Parish Meeting or any members of the public.

It was noted that the definitive map statement for Footpath No. 6, Eggesford refers to that footpath being a continuation of Footpath No. 5, Coldridge whereas Footpath No. 6, Eggesford is in fact a continuation of Footpath No. 5, Brushford. This is an administrative correction which can be made under the appropriate legal event order under delegated powers.

In the absence of any other valid proposals or claims for change, the definitive map review consultation map for Eggesford was published with no other proposals for change to the Definitive Map in the parish.

4. Consultations

Public consultation for the Definitive Map Review in the parish was carried out in March to May 2018 with no proposals received for any changes to the Definitive Map. The review was advertised on a parish noticeboard, in a local newspaper and a copy of the consultation notice and parish map was also placed at the Eggesford Garden Centre in Eggesford.

The responses were as follows:

County Councillor Mrs M Squires	-	no comment
Mid Devon District Council	-	no comment
Eggesford Parish Meeting	-	no proposals made
British Horse Society	-	no comment
Devon Green Lanes Group	-	no comment
Ramblers' Association	-	no comment
Trail Riders' Fellowship	-	no comment
Country Landowners Association	-	no comment
National Farmers' Association	-	no comment
Cyclists Touring Club	-	no comment

No further proposals have been received during the period of consultation with the parish meeting, public and local user group representatives.

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 members note that the Definitive Map Review has been completed in the parish of Eggesford and no modification orders are required to be made at this time. Should any valid claim with sufficient evidence be made in the next six months, it would seem reasonable for it to be determined promptly rather than be deferred.

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 Highways, Infrastructure Development and Waste

Electoral Division: Creedy, Taw & Mid Exe

[Local Government Act 1972: List of Background Papers](#)

Contact for enquiries: Tania Weeks

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Background Paper	Date	File Ref.
Correspondence files	1997 - date	TW/DMR/Eggesford

tw310518pra
sc/cr/DMR Parish of Eggesford
03 250618

HIW/18/43

Public Rights of Way Committee
5 July 2018

Definitive Map Review 2017-2018 Parish of Feniton

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 it be noted that the Definitive Map Review has been completed in the parish of Feniton and no modifications are required.

1. Introduction

The report examines the Definitive Map Review in the parish of Feniton in East Devon District.

2. Background

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 8 footpaths, which were recorded on the Definitive Map and Statement with a relevant date of 1 September 1957.

The reviews of the Definitive Map, under s. 33 of the 1949 Act, which commenced in the 1970s but were never completed, produced no proposals for change to the map in the parish of Feniton at that time.

The Limited Special Review of Roads Used as Public Paths (RUPPS), also carried out in the 1970s, did not affect this parish.

The following orders have been made and confirmed:

East Devon District Council (Footpath No. 1, Feniton) Public Path Diversion Order 1980;
East Devon District Council (Footpath No. 7, Feniton) Public Path Diversion Order 1980;
Devon County Council (Footpath No. 8, Feniton) Public Path Diversion Order 1988;
East Devon District County Parishes Order transferred part of Footpath No. 3, Feniton to Payhembury parish;
Devon County Council (Footpath No. 3, Feniton) Public Path Diversion Order 1998;
A30 Trunk Road Honiton to Exeter Side Roads Order created Footpath No. 10, Feniton;
Devon County Council (Footpath No. 18, Buckerell and Footpath No. 7, Feniton) Public Path Diversion Order 2007;
Devon County Council (Footpath No. 2, Ottery St Mary and Footpath No. 11, Feniton) Public Path Diversion Order 2009 – created Footpath No. 11, Feniton; and
Devon County Council (Footpath No. 4, Feniton) Public Path Diversion Order 2009.

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

The current review began in December 2017 with a public meeting held in Feniton Village Hall, which was advertised in the parish, in the local press and online.

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3. Proposals

No valid proposals arising out of this or previous reviews.

4. Consultations

Public consultation for the Definitive Map Review in the parish was carried out in March and April 2018 with no proposals received for any changes to the Definitive Map. The review was advertised in the parish, in a local newspaper and on the County Council's website.

The responses were as follows:

County Councillor Mr P Twiss	-	no comment
East Devon District Council	-	no comment
Feniton Parish Council	-	no comment
British Horse Society	-	no comment
Devon Green Lanes Group	-	no comment
Ramblers'	-	no comment
Trail Riders' Fellowship/ACU	-	no comment
Country Landowners Association	-	no comment
National Farmers' Association	-	no comment
Cycling UK	-	no comment

5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

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

9. Conclusion

It is recommended that Members note that there are no proposals for modifying the Definitive Map in the parish of Feniton. Should any valid claim with sufficient evidence be made in the next six months, it would seem reasonable for it to be determined promptly rather than be deferred.

10. Reasons for Recommendations

To undertake the County Council's statutory duty under the Wildlife and Countryside Act 1981 to keep the Definitive Map and Statement under continuous review and to progress the parish by parish review in the 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: Helen Clayton

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Tel No: 01392 383000

Background Paper	Date	File Ref.
Correspondence file	2017 to date	DMR/Feniton

hc310518pra
sc/cr/DMR Parish of Feniton
02 250618

HIW/18/44

Public Rights of Way Committee
5 July 2018

Definitive Map Review 2018 Parish of Shaugh Prior

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 it be noted that the Definitive Map Review has been completed in the parish of Shaugh Prior and no modifications are required.

1. Introduction

The report examines the Definitive Map Review in the parish of Shaugh Prior in South Hams District.

2. Background

The original parish survey under s. 27 of the National Parks and Access to the Countryside Act 1949 proposed a total of 66 footpaths and bridleways. Of those, 41 were omitted from the draft map, either having been considered private paths or county roads. Accordingly, 19 footpaths and 9 bridleways were recorded on the Definitive Map and Statement with a relevant date of 11 October 1954.

The reviews of the Definitive Map, under s. 33 of the 1949 Act, which commenced in the 1970s but were never completed, produced no proposals for change to the map in the parish of Shaugh Prior at that time.

The Limited Special Review of Roads Used as Public Paths (RUPPS), also carried out in the 1970s, did not affect this parish.

The following orders and agreements have been made and confirmed:

Plympton St Mary RDC (Footpath No. 45, Shaugh Prior) Public Path Stopping-Up Order 1973;

Plympton St Mary RDC (Footpath Nos. 31 and 47, Shaugh Prior) Public Path Diversion Order 1973;

South Hams District Council (Bridleway No. 44 and Footpath No. 55, Shaugh Prior) Public Path Diversion Order 1975, made by Secretary of State for the Environment;

Devon County Council (Footpath Nos. 31 and 47, Shaugh Prior) Public Path Diversion Order 1975;

Devon County Council (Footpath No. 44, Shaugh Prior) Public Path Diversion Order 1979;
Plymouth Magistrates Court Order Stopping-Up of UCR 114 with reservation of a footpath, recorded as Footpath No. 70, Shaugh Prior;

Devon County Council (Footpath No. 68, Shaugh Prior) Definitive Map Modification Order 1990;

Devon County Council (Footpath No. 2, Shaugh Prior) Public Path Extinguishment Order 1990;

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Devon County Council (Footpath Nos. 31 and 47, Shaugh Prior) Public Path Diversion Order 2009;
Devon County Council (Footpath No. 31, Shaugh Prior) (Part) Public Path Extinguishment Order 2009;
Devon County Council (Bridleway, No. 41, Shaugh Prior) Public Path Extinguishment Order 2009;
Devon County Council (Bridleway No. 44, Shaugh Prior) Public Path Diversion Order 2009;
Devon County Council (Bridleway No. 71, Shaugh Prior) Public Path Creation Agreement 2009;
Devon County Council (Bridleway Nos. 59, 60 and 61, Shaugh Prior) Public Path Stopping-Up Order 2013 (under the Town & Country Planning Act 1990);
Devon County Council (Bridleway No. 57, Shaugh Prior) Public Path Diversion Order 2016;
and
Devon County Council (Bridleway No. 72, Shaugh Prior) Public Path Creation Agreement 2017.

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

The current review began in February 2018 with a public meeting held in Shaugh Prior Recreation Hall, which was advertised in the parish, in the local press and online.

3. Proposals

No valid proposals arising out of this or previous reviews.

4. Consultations

Public consultation for the Definitive Map Review in the parish was carried out in May 2018 with no proposals received for any changes to the Definitive Map. The review was advertised in the parish, in a local newspaper and on the County Council's website.

The responses were as follows:

County Councillor John Hart	-	no comment
South Hams District Council	-	no comment
Shaugh Prior Parish Council	-	no comment
British Horse Society	-	no comment
Devon Green Lanes Group	-	no comment
Ramblers'	-	no comment
Trail Riders' Fellowship/ACU	-	no comment
Country Landowners Association	-	no comment
National Farmers' Association	-	no comment
Cycling UK	-	no comment

5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

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

9. Conclusion

It is recommended that Members note that there are no proposals for modifying the Definitive Map in the parish of Shaugh Prior. Should any valid claim with sufficient evidence be made in the next six months, it would seem reasonable for it to be determined promptly rather than be deferred.

10. Reasons for Recommendations

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

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Bickleigh & Wembury

Local Government Act 1972: List of Background Papers

Contact for enquiries: Emily Spurway

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Tel No: 01392 383000

Background Paper	Date	File Ref.
Correspondence file	2017 to date	DMR/Shaugh Prior

es010618pra
sc/cr/DMR Parish of Shaugh Prior
02 260618

HIW/18/45

Public Rights of Way Committee
5 July 2018

Definitive Map Review 2011-2018 Parish of Combe Martin North Devon - Part 6

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 no Modification Order be made in respect of Proposal 25, between points A-B-C-D and C-E as shown on drawing number HIWPROW/18/25.

1. Summary

This report examines the last proposal 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	-	no comment on Proposal 25
North Devon District Council	-	no comment
Combe Martin Parish Council	-	supports Proposal 25
British Horse Society	-	no comment
Byways and Bridleways Trust	-	no comment
Country Land & Business Association	-	no comment
Open Spaces Society	-	no comment
Ramblers'	-	no comment
Trail Riders' Fellowship	-	no comment

Please refer to the appendix to this report.

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4. Proposals

There were 25 proposals arising from the Definitive Map Review in the parish. Eleven proposals have been the subject of previous reports to the Committee. 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 and three possible diversions which will be dealt with using delegated powers and 3 proposals further by agreement with the National Trust and part of the England Coastal Access Mapping process.

Proposal 25 is the final proposal in the parish and is referred to in the Appendix to this 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 its 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 no Modification Order be made in respect of Proposal 25, between points A-B-C-D and C-E as shown on drawing number HIWPROW/18/25.

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

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

10. Reasons for Recommendations

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

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Combe Martin Rural

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Local Government Act 1972: List of Background Papers

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Tel No: 01392 383370

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

as060618pra
sc/cr/DMR parish combe martin part 6
02 260618

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Appendix I
To HIW/18/45

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.

Proposal 25: Claimed addition of footpath between points A-B-C-D and C-E as shown on drawing number HIW/PROW/18/25.

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 25, between points A-B-C-D and C-E as shown on drawing number HIWPROW/18/25

1 Background

- 1.1 During the course of the Definitive Map Review, Proposal 25 was put forward by members of the public following the Definitive Map Review meeting in Combe Martin.

2 Description of the Route

- 2.1 The claimed route starts at Five Turnings, point A, it travels north steeply down, along the edge of an undeveloped narrow plot of land. It is hedged on one side and has a retaining house and garden wall on the other. It has a very rough mud and stone surface with considerable over growth. This section is known locally as 'Monica's path'. The route then crosses a footbridge made of two planks at point B, before turning sharply westwards and onto a narrow un-adopted private road called Rosea Bridge Lane, it continues west along this lane to point C before turning south-westwards and along the continuation of Rosea Bridge Lane, to join Footpath No.13 at point D. Another spur of the path runs westwards from point C, over the un-adopted private road Rews Close, to join with Footpath No 3, Hangman path, at point E. Rosea Bridge Lane (B-D) and Rews Close (C-E) have tarmac surfaces and are used by the adjoining residents to access their properties in vehicles.

3 Documentary Evidence

3.1 Ordnance Survey Mapping

- 3.1.1 **The 1804 OS Surveyor Drawings**, clearly show the historical layout of the lanes in the parish of Combe Martin. This map does not show the claimed route (A-B-C-D and D-E) at all. For clarification the historical line into Combe Martin from point A was along the ancient hollow-way, which is now recorded as Footpath No. 13. This lane crossed the stream at point D (over Rosea Bridge) and then followed the line of the lane now known as Rosea Bridge Lane south-westwards to the High Street.
- 3.1.2 **The 1890s 1st Edition OS map 6" to 1 mile** shows a lane from the High Street along a lane, part of which is now recorded as Footpath No. 13 to point D, then along part of the claimed route to point C and continuing north. This is named Rowe's Bridge Lane. This lane extends to the landlocked field known as Rews Close (as shown on the Tithe Map below). No other part of the claimed route is shown, only the section of the claim between D and C.
- 3.1.3 The surroundings of the area were undeveloped and shown as fields. From point C, neither the easterly continuation of Rosea Bridge Lane, nor the westerly continuation of Rews Close are shown.
- 3.1.4 **1904-1906 2nd Edition OS map 25" to 1mile**, shows the section D to C in the same way as the previous map, with the lane named Rowe's Bridge lane.
- 3.1.5 The **1963-64 Post War OS mapping** shows the area has started to be developed. There is a long thin strip of land between point A and B which has not been built on. Rosea

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Bridge Lane (previously Rowe's Bridge Lane) has been extended between points B-C and some houses built on the north side of this lane. The map also shows the original line of Rosea Bridge Lane between C-D as the older maps did (see above). The map also shows the section of Rew's Close between C-E has been built and the land to the north of the claimed route, has been split into plots and four of these have houses built on them.

3.1.6 All subsequent OS maps show the claimed route in the same way with more house built in the plots.

3.2 **Tithe Map and Apportionments 1842**

3.2.1 On the Tithe Map, at point A the current county road (West Challacombe Lane) is numbered 1200 and in the apportionments, it is called a parish road. The claimed path from point A to B is not shown. Only a field called Beckham Meadows is shown in this location.

3.2.2 The Tithe Map clearly shows the historical continuation of West Challacombe Lane leading down into the village via the hollow-way, that is now recorded as Footpath No 13. At point D, the historical route (FP No. 13) crosses the stream on a substantial old bridge likely to be Rowe's or Rosea Bridge. The claimed part of Rosea Bridge Lane between B-C and is not shown.

3.2.3 From point D, the original route of a narrow lane is shown leading to a land locked field called Rew's Close, (on modern mapping this is the field that the properties called Spring Bank and Silver Springs are built in). The new lower section of the lane between C -E now called Rews Close was not shown at all.

3.3 **Highway Handover Book**

Proposal 25 does not appear on this.

4. **User Evidence**

4.1 The evidence forms that support this claim fall into three sets. The first of users who have walked the route from Point A, Five Turnings and along Rosea Bridge Lane to point B and C and some to D. The second set have walked from point D or C along Rew's Close to point E, and the third set who have combined the entire route.

4.2 **User Evidence Forms for the route A-B-C-D 'Monica's path' and Rosea Bridge Lane**

4.3 Mrs Baker has walked the path between A-B-C-D from 1970 to 2011, when she filled in the form, about 100 times a year. She says the path is by "kind agreement of Monica Rice" She says the path is owned by Monica Rice.

4.4 Mrs Clener has walked her dog along a path she describes as Monica's Lane about 200 times a year between 2007 and 2011. She has not been challenged but is not sure the owners are aware it is being used. From the map attached to her form she only shows the section between A-B.

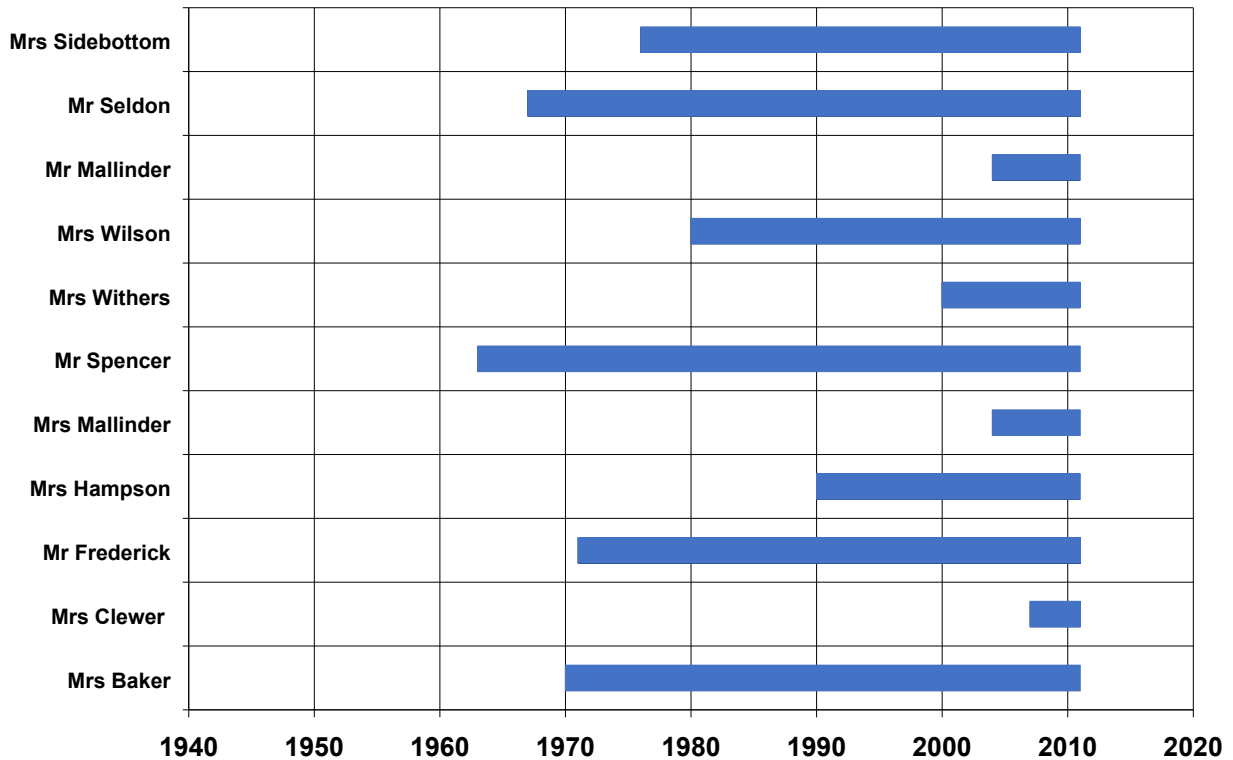
4.5 Mr Frederick has used the path for about 50 years on foot about every fortnight. There were no notices until recently when notices were erected on Rew's Close which connects, to this route. There are no notices from the Challacombe Lane end. He knows that the land is owned by Mrs Monica Rice. He say's "This footway has always had access, via three successive footbridges, erected by CMPC (Combe Martin Parish Council). Only obstructed by notices as detailed."

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- 4.6 Mrs Hampson has walked the route since 1990 about 75 times a year. She knows the route is owned by Monica Rice. She does not give the information to say if she had permission to use the route.
- 4.7 Mrs Mallinder has walked the route between 2004 and 2011 (when she completed her evidence form) about 30 times a year, she says it was shown on a walking map, and that she has not been stopped or turned back.
- 4.8 Mr Spencer has used "Monica's Path" since the 1960's to 2011, about 50 times a year on foot. He says CMPC have put up a street light. Before 2011 there has been a notice saying, "No vehicles or Foot Right of way from Rew's Close which leading into Monica's path." The route is owned by Monica Rice, but he has not had permission to use it. He says "access to the claim, at the south end, prevented by notices on Rews Close. It has had two footbridges erected over the stream by CMPC."
- 4.9 Mrs Withers has walked the route taking children to school since 2000. She says she thought it was signposted and has not noticed other signs or been turned away.
- 4.10 Mrs Wilson has walked the claimed route since 1980 to 2011. About 50 times a year when going to and from school, shops and the beach. She says there were no notices and everyone used it.
- 4.11 **User Evidence Forms for the route C-E Rews Close**
- 4.12 Mr Mallinder has walked Rew's close between 2004-2011. He says there is a sign stating, "Private Road No Access". He has not been given permission to use the route.
- 4.13 Mr Seldon has walked and cycled and used the route in a car from 1967 to 2011 when he filled in his form. He says a sign has been put up on Rew's close in approximately 2004 when the Sure Start centre was built. He has not obtained permission to use the route, additionally he says "Used it all the time even after the sign went up, when they built Sure Start. Used a lot as when a child, took own children that way, and played on bike to keep off main road."
- 4.14 Ms Sidebottom had used the route since about 1976, on foot for pleasure. She says in approximately 2008 a 'Private Road, No Public Right of Way on Foot or Vehicle' was erected. She appears to have continued to use it and says it had been used for many years and the street lights were paid for by CMPC.
- 4.15 **User evidence between points A-E: Combined Rosea Bridge Lane and Rews Close**
- 4.16 Mr Spencer has walked the route about once a week for 50 years. No notices until 2008, the street lights were put up by CMPC. The land was owned by Mr & Mrs Somerville. He adds "Rews Close formally open to public, but since 3 signs "Private Road, No Vehicular or Pedestrian Rights of Way" probably arising from improper HGV use to Combe Martin School. Street Light by CMPC arising from unrestricted used by public."
- 4.17 Mrs Withers has walked the route since 2000, about 100 times a year doing the 'school run' on foot and bicycle. On the user evidence form when asked "Have there to your knowledge ever Notices on the path? Her answer was "None that made sense."

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4.18 Combined User Evidence Table Proposal 25 A-B-C-D-E



5. Adjoining property holder's evidence

- 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 and many responses and a petition from 34 residents were received.
- 5.2 Both Rosea Bridge Lane and Rew's Close between points B-C-D and C-E are used as shared private access for numerous properties and these properties all contribute to the maintenance of these access roads by a formal agreement.
- 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.
- 5.4 However in this case, Mr & Mrs Somerville of Hillside, Rew's Close and their successors, own the freehold of Rew's Close and Rosea Bridge Lane between points C-D.
- 5.5 Mr Somerville sold access to each of the properties as they were built, along his private roads. Each new owner having to pay a fee to allow access to building plots. The Grantors, Mr & Mrs Somerville, reserved rights to erect gates at either end of the private roadways, and had those people paying for the private access to legally guarantee they and their successors in title would pay a proportion of maintaining the private roads Rew's Close and the additional section of Rosea Bridge Lane, between B-C-D-E.
- 5.6 Mrs M Gosh, Granddaughter of Mr & Mrs Somerville, has been interviewed. She was the successor in title of her Grandparents and is still a Combe Martin resident. She has knowledge of her Grandfather 'roping off' the roads at both ends, one day each year to make sure they remained private. She remembers her grandfather being most particular about this and he did it for many, many years. He died in 1996. She inherited the title to the roads, when her grandmother died 21 months ago in August 2016.

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- 5.7 During Mrs Somerville's latter years, she asked Mr Webber, of Heather Brae (now of Blue Bay) Rews Close, to administer the upkeep of the private roads and to keep day to day control of the roads.
- 5.8 Mrs Gosh knew that her Grandmother had been approached in the mid 2000's, by Mrs Lawson the Head Teacher of Combe Martin Primary School, to see if she would allow permissive foot access along the private roads for a 'Safer Walking Route to School'. Mrs Somerville had agreed in writing with the School and had permitted foot access for the children and all the families. She also allowed contractors working at the school to access the grounds via Rew's Close when necessary.
- 5.9 Mrs Gosh said that matters of parking and access had come to a head when the Sure Start Building was erected next to the school, resulting in new very clear signs being erected to state the roads were private and there was no public right of way, or parking.
- 5.10 Mrs Gosh has recently sold the private roads and the rights to grant access for Rew's Close C-E and Rosea Bridge Lane B-C-D, to Mr Webber (who previously helped her grandmother and grandfather look after the roads).
- 5.11 Mr Webber has been interviewed and has completed evidence forms. Rew's Close C-E and Rosea Bridge lane, D to B, were sold to him by Mrs Gosh from her Grandmother's estate in the last two years. Mr Webber has lived on Rew's Close at Heather Brea, since 1970, when he bought access to his own house. He later bought extra access from Mr Somerville to get to his garage, then he bought further access as he built his latest house Blue Bay on Rews Close. This access is clearly laid out on his deeds.
- 5.12 Mr Webber helped to organise the resurfacing of the lanes with Mr Somerville in 1974 and 1987, and on behalf of Mrs Somerville in 2014. Each of the house holders had to contribute to this. He knew Mr Somerville regularly put a rope at each end of the routes through the 1970's and continued to do this for many years after this. "The Private Signs were erected and paid for by funds donated by the residents. The road is maintained by the residents and the signs erected to stop vehicles going the full length of the road only to find they could not turnaround."
- 5.13 Mr Webber was aware of the permitted access to allow school children to walk the route and permitted access for the maintenance of the school grounds on occasions. He erected the latest signs at each end of the route on behalf of Mrs Somerville.
- 5.14 Now as the landowner of Rew's Close and Rosea Bridge Lane, Mr Webber knows the claimed paths to be Permitted Footpaths and is more than happy to allow access on a permissive basis. People are not stopped from walking over the roads or visiting. He has continued to allow permitted access for the school children and their families to walk the path and annually remind the school about asking the parents not to park on the private roads. He has kept the signs clean and added 'No through road' sign to the signs.
- 5.15 Mrs Irwin owned and lived at Sunhaven, Rosea Bridge Lane from 1956, until she died a couple of years ago. In her landowner evidence form she says, that she has had reason to remonstrate, with some people when they abused the privilege granted to them to walk through. She has owned her property for 60 years and during that time on numerous occasions she has told people that it was not a public right of way. She says that to her knowledge barriers were put up every New Year's Day to stop it being made public.

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- 5.16 Mrs Irwin, enclosed a detailed sheet with her landowner evidence form and it is copied verbatim below, because it provides much clarification:

“Circa 1953 - A hedge separated Rosea Bridge Lane and Rew's Close. This was taken down by Mr Challacombe, at that time living in Rosea Bridge Lane, to access land he had purchased in Rew's Close field, that he used as a builder's yard. Mr Somerville, then bought and laid out Rew's Close and the new section of Rosea Bridge Lane. Mr Somerville, closed the road each New Year's Day by placing a rope across, preventing access from Rosea Bridge Lane, to maintain his legal rights.

Circa 1958 – My Mother-in-law, then living at Cranleigh Terrace, West Challacombe Lane, was taken ill and my husband placed a plank across the stream (West Challacombe Water) with the owner's permission, to enable me to visit her more easily.

Later – The residents of Rosea Bridge Lane were approached by Parish Councillor Mr S Irwin asking if anyone would object to a more stable plank being placed across the stream, no one objected, but the owner of the land did not agree in writing as she was advised not to by her solicitor.

Subsequently – The Parish Council widened the plank, without any consultation with the residents, or owners, and we were inundated with scramble bike riders, day and evenings, using the route as a race track. After complaints from the residents, the plank was narrowed to prevent this.

No-one, to my knowledge, has objected to pedestrians using the roads but having given an inch, some it would appear, want to take a mile.

The only reason properties in Rosea Bridge Lane have access across Rew's Close (Becky Meadow) is because each property owner purchased a right of way from Mr Somerville in the 1960's, additional properties since that time have had to purchase a right of way from Mr Somerville's heirs. At present, the residents of Rew's Close and Rosea Bridge Lane have some control over the roads. But if they become designated rights of way/public footpaths this control would be lost.”

- 5.17 Mrs Irwin, also enclosed a copy of a letter she had sent to CMPC on 5th December 2005, following the Parish Council meeting in November 2005, regarding the alterations to the footbridge in Rosea Bridge Lane. In this letter she says “as landowners of the section of the tarmacked road outside my property, I would like to object to any proposal to alter the bridge.” She explains the nuisance use by motorbikes. Mrs Irwin goes on to say “I would also like to object that nobody has consulted the owners of Rosea Bridge Lane who all part-own their frontages, the rights of way over by others seems to have been taken for granted. This section of Rosea Bridge Lane is a private road with no unauthorised access.”
- 5.18 Mrs Thwaites, of The Old Forge, Rosea Bridge Lane Footpath No 13, (just at Point D) says it is a private road, access rights were sold to them with the acknowledgement of access only to Rosea Bridge residents it is not a Byway open to all traffic. She explains the Private Road signs were put up to stop traffic trying using the lane. She gives an example of a Transit Van actually getting stuck between her property and the side of the lane.
- 5.19 Mrs Harding of the Mooring Rosea Bridge Lane has owned the property since 2007. The signs saying Private Road were in place before she moved in. Rew's Close and Rosea Bridge Lane are private roads. Rew's Close is owned by the Somerville Family and is used for access to properties. It is maintained by residents and is not a through road it is a Private Road.

- 5.20 The section of the route between points A and B crosses an empty plot of land that is owned by Mrs Monica Rice, she has owned it since the 1960's. Originally when the area was just fields, before the development in the 1950 and 60's, there was a gate at point A with the old gate post remaining. Mrs Rice regards the route as a permissive path. She has given permission for the route to be used a 'Safe route to School', but has not signed the route in any way at point A. Most Combe Martin residents still call the path between points A and B 'Monica's path'. Before retiring Monica owned a shop in the village and is very well known in the area.
- 5.21 Very clear notices were instated in 2004/5 paid for by the residents and the landowner at points B, C, D, E, saying at points B and C "Rosea Bridge Lane PRIVATE ROAD NO PARKING No vehicular or pedestrian right of way. Weight limit 7.5 tonnes." And at points C and E "Rews Close PRIVATE ROAD NO PARKING No vehicular or pedestrian right of way. Weight limit 7.5 tonnes."
- 5.22 A Petition was received in 2012, from the thirty-four residents and householders of Rew's Close and Rosea Bridge Lane, giving their names and addresses. They expressed very strongly that the roads were private and state:

"We the undersigned, as residents of Rews Close and Rosea Bridge Lane, strongly protest this proposal (the proposal to add a footpath). The only purpose for this proposal is to access West Challacombe Lane via the bridge at the top of Rosea Bridge Lane. There is a perfectly adequate footpath accessing West Challacombe Lane already designated via the lower part of Rosea Bridge Lane. We would suggest this proposal would be a gross misuse of tax payer's money as the bridge would have to be replaced to comply with health and safety regulations and the Council would be liable to pay for Liability insurance for both the roads and the bridge."

6. Parish Council involvement

- 6.1 It would appear from the landowner evidence that the original plank was put across the stream at point B, in 1958 by the one of the property owners to get to their relative's house more quickly than walking all the way round on Footpath No 13.
- 6.2 In the 1960s or 1970s another plank would appear to have been added, probably by CMPC, without permission from the landowner. This unauthorised work to enlarge the bridge, inadvertently allowed motorbikes and bicycles to use route and the Parish Council was quickly requested stop this from happening. Apparently, they subsequently installed handrails to narrow the bridge to stop this use. The structure remains unaltered today.
- 6.3 In the 1970s Combe Martin Parish Council apparently helped the residents of Rew's Close and Rosea Bridge Lane with street lighting, however this is no longer the case.
- 6.4 In 2005 it would again appear that CMPC wanted to upgrade the plank bridge and the landowners did not want the structure of the bridge changing because of the issues with motorbikes last time the parish council altered the bridge. The Parish Council were informed by letter that this was not a public right of way and the owners and frontages would not give permission for alterations on the permissive path. The Parish Council appears to have accepted this, as no physical changes have been made to the bridge.
- 6.5 In 2016 the Parish Council was again inquiring about repairing the footbridge, because the wood needed replacing and the underlying structure was badly corroded. They approached Devon County Council to ask when this path was likely to be considered for adding to the Definitive Map as a footpath and were told the review was still on going and at present it was not a recorded public footpath.

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7 Rebuttal Evidence

- 7.1 There is direct rebuttal evidence given Mrs Goss the granddaughter of the first owner, Mr Somerville, who set out the private roads Rew's Close and the new part of Rosea Bridge Lane. She knows them to be private roads, with private access along them. Each of the plot owners having to purchase access rights on foot and in with vehicles from her Great Grandfather. Mr Somerville annually blocked access to the lane for all other users, by closing both ends of the lanes with a rope from 1953/54, to clearly demonstrate it was a private path and road, with permitted access only. Mrs Irwin, Mr Webber, Mr Harding and Mr and Mrs Thwaites corroborates this evidence stating that Rew' Close and Rosea Bridge Lane had been shut once a year to stop public rights of way from forming. This act clearly shows the lack of intention by the landowner to dedicate the route as any form of public right of way since it was first created in 1953/54.
- 7.2 Before 1958 there was no bridge of any kind at point B, the stream being too deep to cross. Mrs Irwin gives direct evidence that she asked permission from the owner to put a plank across the stream to enable her to reach an elderly relative more quickly. This plank bridge was put in with permission as a private access path.
- 7.3 The landowners jointly funded and have erected signs which clearly state it was a private road with no public rights, leaving no doubt that it was not a public highway or a public right of way. On occasions landowners have challenged users.

8 Discussion

8.1 Statute (Section 31 Highways Act 1980)

- 8.2 Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.
- 8.3 Proposal 25, is supported by eleven user evidence forms giving evidence back to 1960's. These people have used it on foot. Mrs Baker who had been using it for one of the longest periods actually described the route as 'by kind permission of Monica Rice'. Other users with long usage knew it to be Monica's Path and some gave the oldest evidence, acknowledge the permission of Monica Rice for the section between points A and B. Of the eleven users, five have either said by permission of Monica or have used it to get to school, with express permission of the Somerville family.
- 8.4 Mr Somerville, the original owner, went to great lengths to stop public rights being gained on his new private roads, by barring the ways each New Year Day, from 1953/4. None of the user's report having seen the annual barrier, perhaps because they were not using the route on New Year's Day.
- 8.5 Mrs Irwin gives a good history of the route, she installed the first plank to bridge the stream, after asking permission of the landowner, CMPC seen to have done the occasional repair to the footbridge, although Mrs Irwin records this was not welcomed and the landowner would not give permission because it was a private permissive path.
- 8.6 The landowner clearly intended not to dedicate these private roads as public paths. However, have the public gained rights over these roads in the intervening years between the early 1980's and the new notices in 2004? Mr Webber (now the owner of the roads) helped Mr Somerville the then owner, arrange resurfacing and maintenance of the roads in 1974, 1987 and 2014. He is adamant that it was still known as a private

road and that the school asked permission from Mrs Somerville to use the route because they knew it was not a public path.

8.7 This is not a historical path. Rew's Close and the part of Rosea Bridge Lane and Monica's Path were developed from 1958, and as plots were sold and houses developed each new owner has had to buy access from the landowner and their heirs.

8.8 Some users noted new signs in 2008 indicating that the path was not private. This may be considered a calling into question of the public's rights for the purposes of considering the claim under statute, with the relevant period of use between 1988 and 2008. However, only six people have claimed used of the route as of right during that period and those have only been using parts of the route, thereby reducing the weight of the evidence. This use is not considered sufficient to raise a presumption of dedication at statute.

8.9 The annual blocking from 1958 is also considered to show a very clear lack of intention to dedicate the path as a public right of way. The notices reinforced this to the next generation of users. Therefore, the proposed addition cannot be considered for presumed dedication under Statute.

9. Common Law

9.1 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 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.

9.2 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, when taken, 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.

9.3 About 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.

9.4 The facts are that this is not a historical route and it did not physically exist before 1958. The roads were laid out as private roads. The landowner overtly continued to show this by: the annual blocking of the rights of all those who had not purchased access; giving permission to the school to use the route as a permissive footpath; and by putting notices on site clearly challenging public use. The modern use has been without challenge, interruption, force, or secrecy however it has been with permission. Therefore, an inference of dedication cannot be shown.

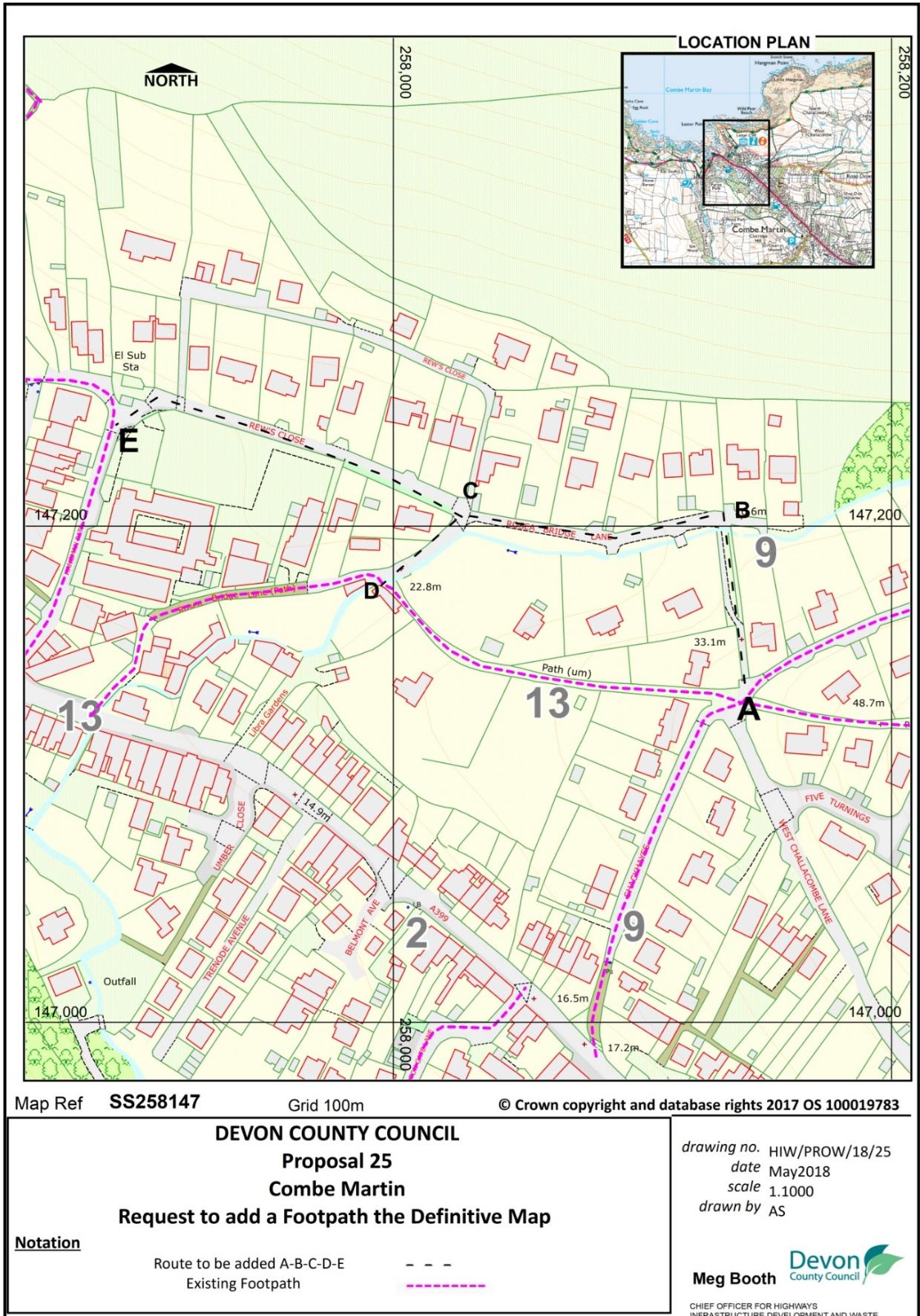
9.5 All thirty-four adjoining property owners have formally objected says they are private roads and not public rights of way.

10 Conclusion

10.1 The evidence is therefore not considered sufficient to show that a public footpath subsists, or can reasonably alleged to subsist, over the route of Proposal 25. It is

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therefore recommended that No Modification Order be made to add a public path between points A-B-C-D and C-E as shown on drawing number **HIW/PROW/18/25**.



HIW/18/46

Public Rights of Way Committee
5 July 2018

Schedule 14 Application

Addition of a public footpath from the county road opposite Broadmoor Farm to the county road south of Watergate Bridge, in the parish of Chittlehampton

Report of the Chief Officer of 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 no Modification Order be made to modify the Definitive Map and Statement in respect of the application.

1. Introduction

This report examines a Schedule 14 Application made in December 2017 by a resident of Chittlehampton for the addition of a public footpath in the parish.

The Definitive Map Review for the parish of Chittlehampton was completed in 1992. 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 a planning application for development of the land over which the claimed path runs. As there is a risk of the claimed route being lost through the development, the application has been brought forward for investigation in line with current policies.

The evidence submitted in relation to the application is discussed in the appendix to this report.

2. Proposal

Please refer to the appendix to this report.

3. Consultations

General consultations have been carried out with the following results:

County Councillor Richard Edgell	– no comment
North Devon Council	– no comment
Chittlehampton Parish Council	– no comment
Chittlehamholt, Satterleigh & Warkleigh Parish Council	– no comment
British Horse Society	– no comment
Byways & Bridleways Trust	– no comment
Country Landowners' Association	– no comment
Devon Green Lanes Group	– no comment
National Farmers' Union	– no comment
Open Spaces Society	– no comment
Ramblers'	– support the application
Trail Riders' Fellowship	– no comment

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

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 the preparation of 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 have been taken into account.

8. Conclusion

It is recommended that no Modification Order be made in respect of the Schedule 14 application.

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 for Highways, Infrastructure Development and Waste

Electoral Division: Chulmleigh & Landkey

[Local Government Act 1972: List of Background Papers](#)

Contact for enquiries: Caroline Gattrell

Room No: ABG Lucombe House

Tel No: 01392 383240

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

cg240518pra

sc/cr/Addition of public footpath from county road opposite Broadmoor Farm to county road south of Watergate Bridge Chittlehampton 03 260618

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.

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Schedule 14 application for the addition of a footpath from the county road opposite Broadmoor Farm to the county road south of Watergate Bridge, as shown between points A – B on plan HIW/PROW/17/65.

Recommendation: That no Modification Order be made in respect of the application.

1. Background

- 1.1 The application was submitted in December 2017 by Mrs Sherwood of Ferndown. It was made in response to planning application number 63710 submitted to North Devon Council in September 2017 for a free-range egg production unit by Mr and Mrs Webber of Lower Rollestone, Tawstock. North Devon Council consulted on the planning application between October and December 2017.
- 1.2 The Definitive Map Review for Chittlehampton parish was carried out during 1991-2. There were no valid proposals put forward for consideration.
- 1.3 As there is a risk of the claimed route being lost through development, the application has been brought forward for investigation out-of-turn, in line with current policies.

2. Description of the Route

- 2.1 The route starts at the county road, opposite the entrance to Broadmoor Farm, in the parish of Chittlehamholt, Satterleigh and Warkleigh, at point A and runs northwards across a field to meet the county road south of Watergate Bridge at point B, near the junction with Chittlehampton Footpath No. 8.

3. Documentary Evidence

- 3.1 Ordnance Survey mapping, 1809 -1962. Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way".
 - 3.1.1 A route similar to the application route is shown on the 1st Edition large scale 25" Ordnance Survey mapping of 1888 generally as a double dashed track following field boundaries and marked 'FP'. This route also appears on the 2nd Edition 25" mapping of 1904, but not on subsequent mapping.
 - 3.1.2 Several maps using Ordnance Survey base mapping, and dated before the Definitive Map was compiled in the 1950s, were also submitted with the Schedule 14 application. These maps show a route on a similar alignment to the application route, following historic field boundaries.
- 3.2 Chittlehampton Tithe Map and Apportionment, 1840-42. 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'. Being first class, it is a legal and accurate record of all matters shown.

- 3.2.1 Being first class, the Chittlehampton tithe map is a legal and accurate record of all matters shown. It was surveyed by Mr H Crispin of South Molton at a scale of 3 chains to 1". The original document is held at the National Archives, with copies for the parish and diocese held locally.
- 3.2.2 The land crossed by the application route are recorded as plots 2875 – Tree Field, 2878 – Quarry Field, 2879 – Waste, 2880 – Dunn's Field, and 2885 – Wicket Close, which are mainly arable. The plots are part of the Downs, owned by the Trustees of the late Lord Rolle and occupied by a Mrs Crocker. The application route is not shown or referred to on the map or apportionment.
- 3.3 Chittlehampton Vestry Minutes, 1846 -1894. Such records can 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 Vestry had powers only in relation to public highways through the appointed Surveyor of Highways, which they had a responsibility to maintain.
 - 3.3.1 There are no references to the application route or any right of way across the Downs.
- 3.4 Chittlehampton Parish Council Minutes and Records, 1894 onwards. The Minutes provide information about the Council's views regarding the public highways in the parish and, in some cases, the management of such routes. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways, which they had a responsibility to maintain.
 - 3.4.1 The records contain a list of 'footpaths' dated circa 1927, which contains a route on a similar alignment to the application route, described as running from the '2nd gate [on] Dennis's Hill across [the] Downs to Broadmoor Road by Broadmoor Farm to [the] Warkleigh boundary'.
 - 3.4.2 At a meeting on the 16th December 1938 the Parish Council received a letter complaining that a stile near Broadmoor needed repairing and asking who was liable for the repair. It was resolved that the Parish Council would erect a new stile if the Estate (Rolle – Clinton Devon) provided the material.
 - 3.4.3 Amongst the Council's general papers from the 1950s, is a list of the 'public footpaths within the parish', which were grouped into those thought to be required in the future and those it was thought not. Paths 3, 9, and 10 were included in the group that were not thought to be required in the future. Additional comments noted that path 3 would be required but that 9 and 10 would not. Path 9 relates to a route shown on historic mapping on a similar alignment to the application route.
 - 3.4.4 In May 1958, following a meeting between the County Council representative, Mr Rowe and representatives of the Parish Council, a detailed list of footpaths in the parish had been received. The Clerk read the list and the Parish Council signified their approval. The list did not include the application route, on either the claimed or historic alignment.
- 3.5 Definitive Map Parish Surveys, 1950s. 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

Agenda Item 9

definitive stages with repeated public consultations.

- 3.5.1 Path 9 included in the Parish Survey, signed by Miss EH Potter the Parish Clerk, was a path on a similar alignment to the application route.
- 3.5.2 It was described as running ‘from [a] point just below [the] mile-stone at Dennises Hill on [the] Chittlehampton – Chulmleigh Road, to [a] point on [the] road from Brightley Cross to Broadmoor Corner, opposite Broadmoor Farm to [the] parish boundary’.
- 3.5.3 It was described as a ‘track across fields’ which was very little used. The path was put forward for inclusion on the draft Definitive Map, but was withdrawn by the Parish Council on the 28th February 1958, before the draft map was published.
- 3.6 Finance Act, 1909-10. 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.
 - 3.6.1 The application route is included in hereditament 224, part of Eastacott. In the Field Book entry for this hereditament, there is a deduction for public rights of way or user of £125, for a right of way through fields with Ordnance Survey numbers 174, and 424, 471, 506, 505, 504, 474, and 475. The fields numbered 424, 471, 506, and 505, relate to what is now recorded as Chittlehampton Footpath No. 8, while the fields numbered 504, 474, and 475, likely relates to a path shown on base mapping with a similar alignment to the application route.
- 3.7 Aerial Photography, 1946 -2007. A route on a similar alignment to the application can be partially seen on the 1940s RAF photography, though by the 1999/2000 photography, there is no trace, and field boundaries have also been lost.
- 3.8 Land Registry, 2016. The application route passes through DN406564, registered Mr MJ Webber of Rosemoor Barn, Tawstock since 1998. No reference is made to any right of way on a similar alignment to the application route, though the Parish has a right of way for all purposes over and along the track over the enclosure numbered 505 between points C – D on plan 2, which is the eastern end of Footpath No. 8, to access fields 506, 472, and 465.
- 3.9 Route Photographs, 2018. Site photographs of the application route show that it has not been available or used for some time, with wooden fencing blocking it at either end. There is a reasonably substantial hedgerow grown around the fencing at point B, while at point A there is recent stock proof fencing inside the hedgerow and with additional soil dumped on the roadside verge opposite Broadmoor Farm.

4. Planning Application

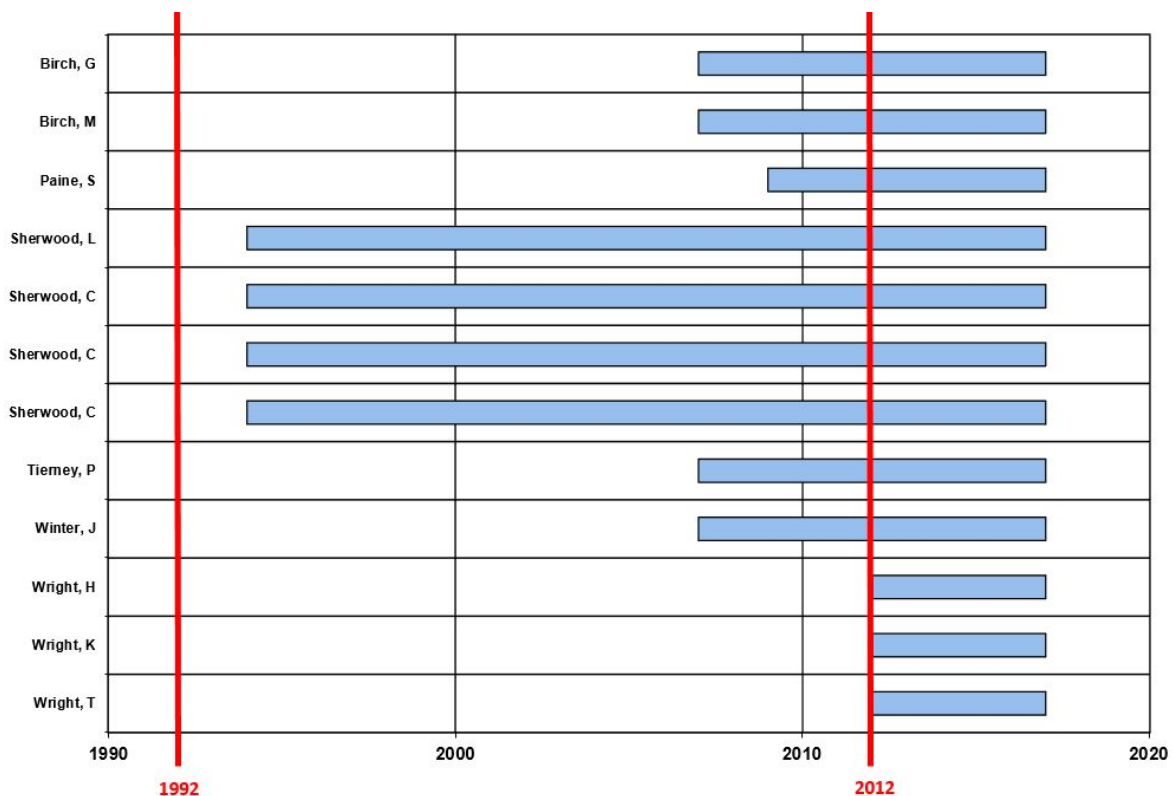
- 4.1 Mr and Mrs Webber submitted a planning application for an egg production unit which affects the application route on the 8th August 2017 and which may also impact on Chittlehampton Footpath No. 8. The planning application and associated planning statement did not initially deal with the matter of Footpath No. 8, which was subsequently raised by an objector and the County Council’s public rights of way section. This application has now been given approval by North Devon Council.

4.2 Representations to the planning application were made by Mr Tierney, Mrs Winter, and Mr and Mrs Sherwood, who have submitted user evidence forms in support of the Schedule 14 application. Chittlehampton Parish Council also responded to the planning application. They all refer to a footpath being affected by the planning which is not currently included on the Definitive Map, which is the subject of the Schedule 14 application.

5. User Evidence

5.1 Ten user evidence forms were received in support of the Schedule 14 application detailing use on foot between 1994 and 2017, from 3 households in close proximity to the application route. No further forms were received in response to the informal consultation between February and April 2018.

5.2 Use of the route has been stated to vary between daily and a couple of times a year, as part of a circular walk incorporating Footpath No. 8. Users state that it has been accessed via a stile at point A and a gate at point B, until these were fenced off in about 2012. Since the stile and gate were obstructed, the users report that they have had to vary the alignment used and have used the gates at points C and D instead, and part of Footpath No. 8 between F-E-D (shown on plan HIW/PROW/17/65/2). Several users state that it is local knowledge that the application route is public. Some users recall being seen by farm workers.



6. Landowner Evidence

6.1 Mr and Mrs Webber of Lower Rollestone, Tawstock have personally owned the land at the Downs since 1989 (registered in 1998), though their family have farmed it since 1945 and owned it since 1959. They do not live onsite, visiting the location to carry out their farming business. They have not seen anyone using the route and state that there are established hedgerows at the access points, A and B.

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- 6.2 Mr and Mrs Hammett of Broadview, Broadmoor Farm opposite the southern end of the application route. The farm has been in their family for many decades.
- 6.3 Mrs Hammett was born at the farm in the 1940s and used a footpath on a similar alignment to the application route occasionally to go to and from school. She recalls that at some point in the 1960s, the path she had used was removed, which used the same access points, A and B, as the application route. There is currently no access at these points.

7. Discussion

- 7.1 Statute – Section 31 Highways Act 1980. There are several possible events which may be considered sufficient to call the public's use of the route into question. The Schedule 14 application itself can be considered as such an event if there is no other event which can be considered sufficient. Users do recall fencing being erected at points A and B in about 2012. It is not clear why this fencing was erected; however, it did affect how the application route was used, therefore, the relevant period to be considered is 1992-2012.
- 7.1.2 Though the application route appears to have been used regularly from 1994, without interruption or obstruction, it has not been used for the full 20-year period. Consequently, the application fails under Statute.
- 7.1.3 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.
- 7.2 Common Law. On consideration of the application route between points A – B, the first time a route between these points appears on any maps is on the large-scale Ordnance Survey mapping of 1888 and 1904. These show a route on a similar alignment to the application route, following historic field boundaries. It does not appear on later additions, though from the aerial photography from 1947, a route can mostly be seen.
- 7.2.1 Under the Finance Act 1910, a deduction was made for a Public Right of Way or User which may relate to the claimed route.
- 7.2.2 A path on a similar alignment to the application route, following the historic field boundaries between points A – B rather than the straighter route as now claimed, was initially surveyed by the Parish Council for inclusion on the Definitive Map as path number 9, which suggests that it may have had a reputation of being a public footpath at that time. However, it was subsequently withdrawn by the Parish Council in 1957 and not included on the draft Definitive Map. No objection to the omission of the path was made following publication of the Draft and Provisional maps.
- 7.2.3 No other more significant historic maps or references in historical documentary material 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.
- 7.2.4 This does not mean that re-dedication could not have taken place at a later date, through use by the public. At common law, a shorter period of time than the 20 years required under statute, combined with high frequency use, can be considered for

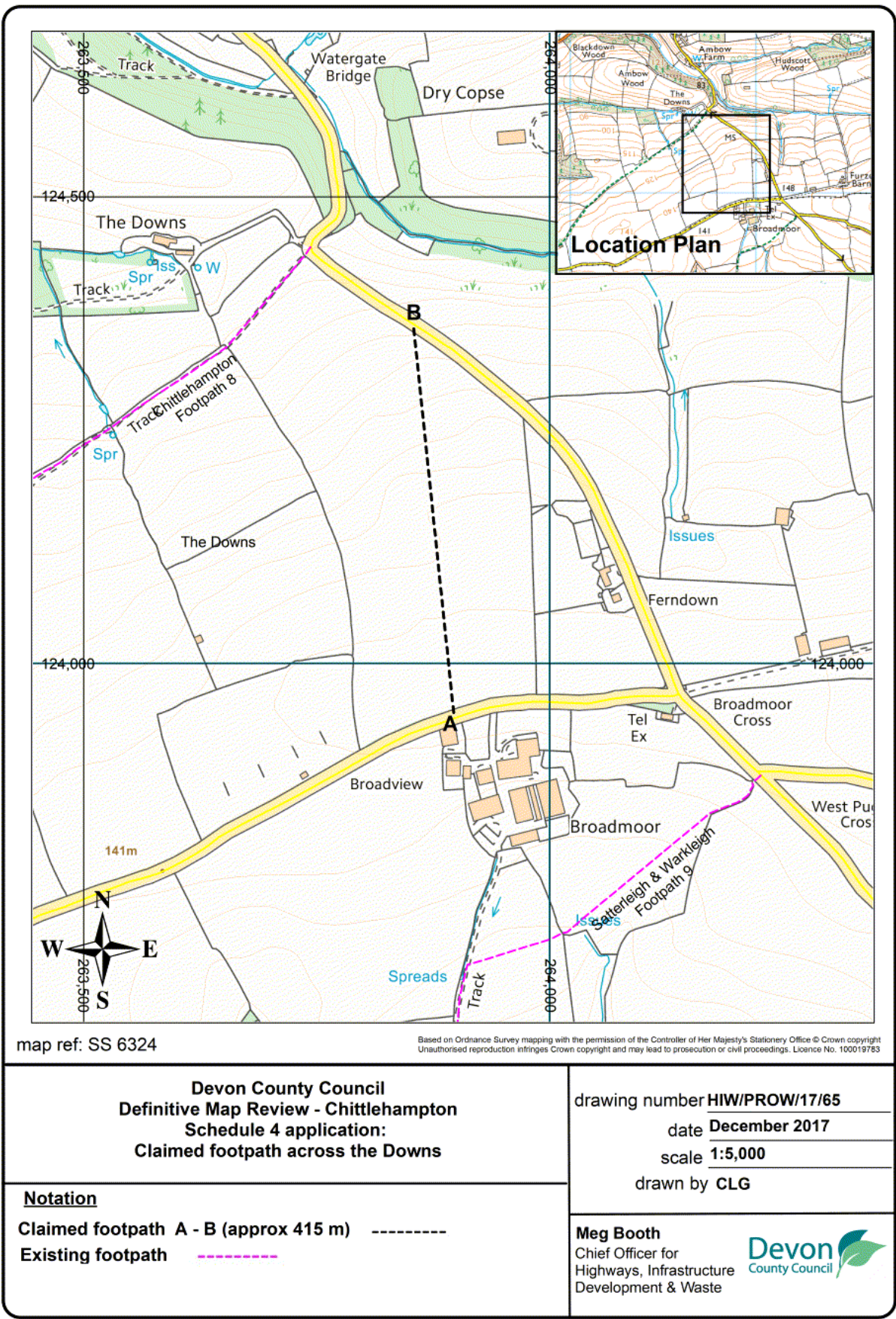
implied dedication, if such use was so open and notorious that a landowner could have been aware of it.

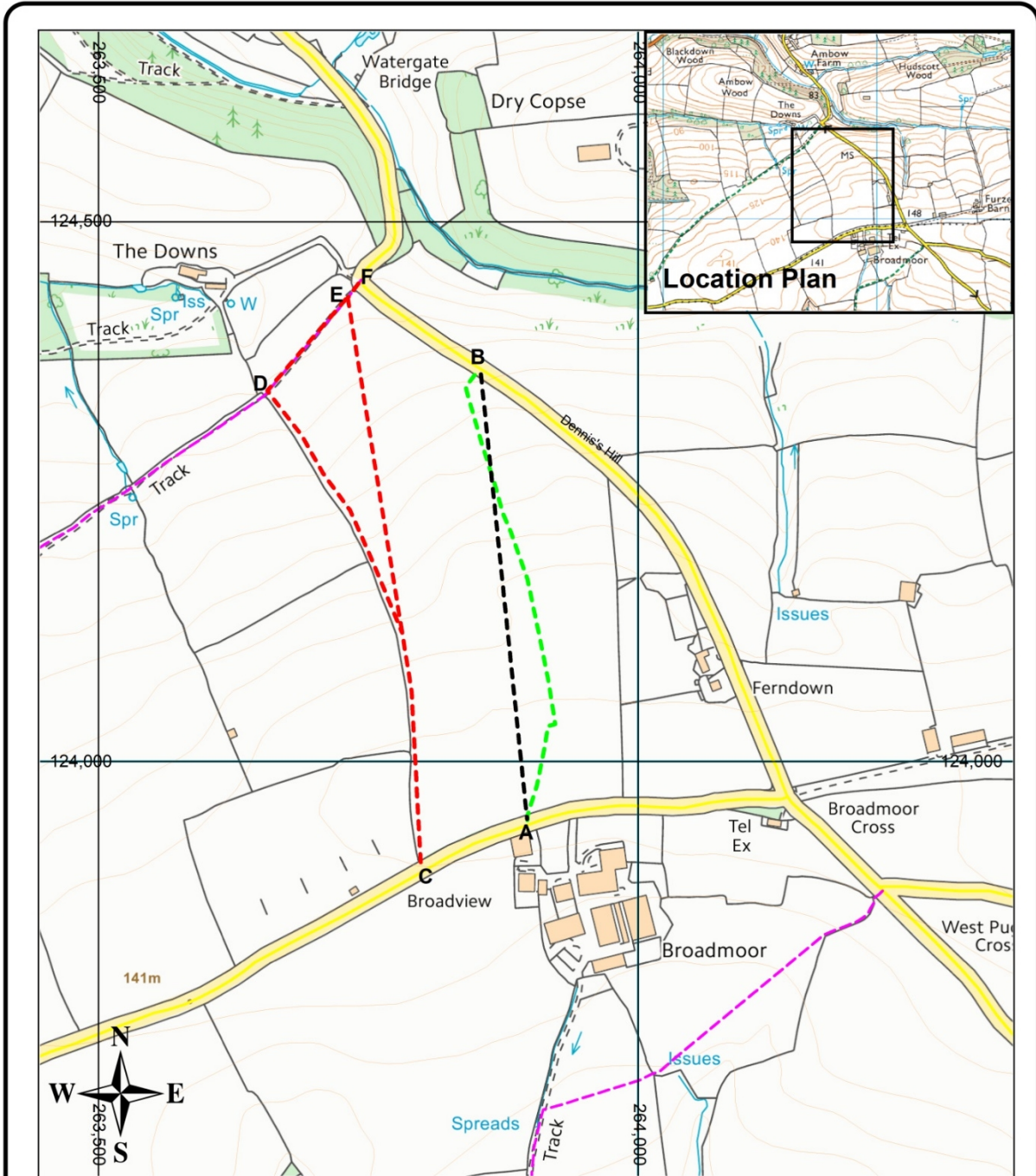
- 7.2.5 The user evidence submitted details use from 1994 until 2012, when fencing appeared at either end of the route. It is not known why this fencing was erected. However, because of it, users varied their route to use a different alignment with alternative access points. Therefore, the use dating from 2012 onwards does not relate to the application route.
- 7.2.6 Responses to the informal consultation from local residents indicates that an alignment similar to the application was used back in the 1940s and 1950s, but only to a minimal extent. They recall that this similar route was 'removed' in the 1960s.
- 7.2.7 The current landowners' knowledge dates back 1945, and they have not seen anyone using the application route, A – B. However, they do not live in the parish and would not necessarily have been aware of any use.

8. Conclusion

- 8.1 The documentary evidence, whilst suggesting that an alignment similar to the application route may have had a reputation of being a public footpath in the past, is contradictory and is considered insufficient to support a claim that a public right of way subsists or is reasonably alleged to subsist over the application route.
- 8.2 As discussed at 7.1.2 the period of use from 1994 – 2012, when fences were erected on the claimed route, is insufficient to raise a presumption of dedication at Statute. The user evidence is also considered of insufficient quantity, and not sufficiently open and conspicuous to support an inference of dedication at Common Law, of either the route as claimed or on an alternative alignment as shown on plan 2.
- 1.3.1 It is therefore recommended that no Order be made to add a footpath in respect of the Schedule 14 application.

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map ref: SS 6324

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Devon County Council
Definitive Map Review - Chittlehampton
Schedule 4 application:
Claimed footpath across the Downs
Committee Plan 2

drawing number **HIW/PROW/17/65/2**

date **May 2018**

scale **1:5,000**

drawn by **CLG**

Notation

- Claimed footpath A - B (approx 415 m) - - - - -
- Historic alignment A - B (approx 435m) - - - - -
- Alternative alignment C - E - F (approx 550m)
- Alternative field edge alignment C - D - E - F (approx 615m) - - - - -
- Existing footpath - - - - -

Meg Booth
 Chief Officer for
 Highways, Infrastructure
 Development & Waste



HIW/18/47

Public Rights of Way Committee
5 July 2018

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 decision has been received from the Secretary of State. The plan is attached in the appendix to this report.

Modification Orders

Order	Decision
Devon County Council (Restricted Byway No. 27, Berrynarbor) Definitive Map Modification Order 2016.	Confirmed on 10 May 2018 following a local public inquiry held on 10 April 2018.

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: Helen Clayton

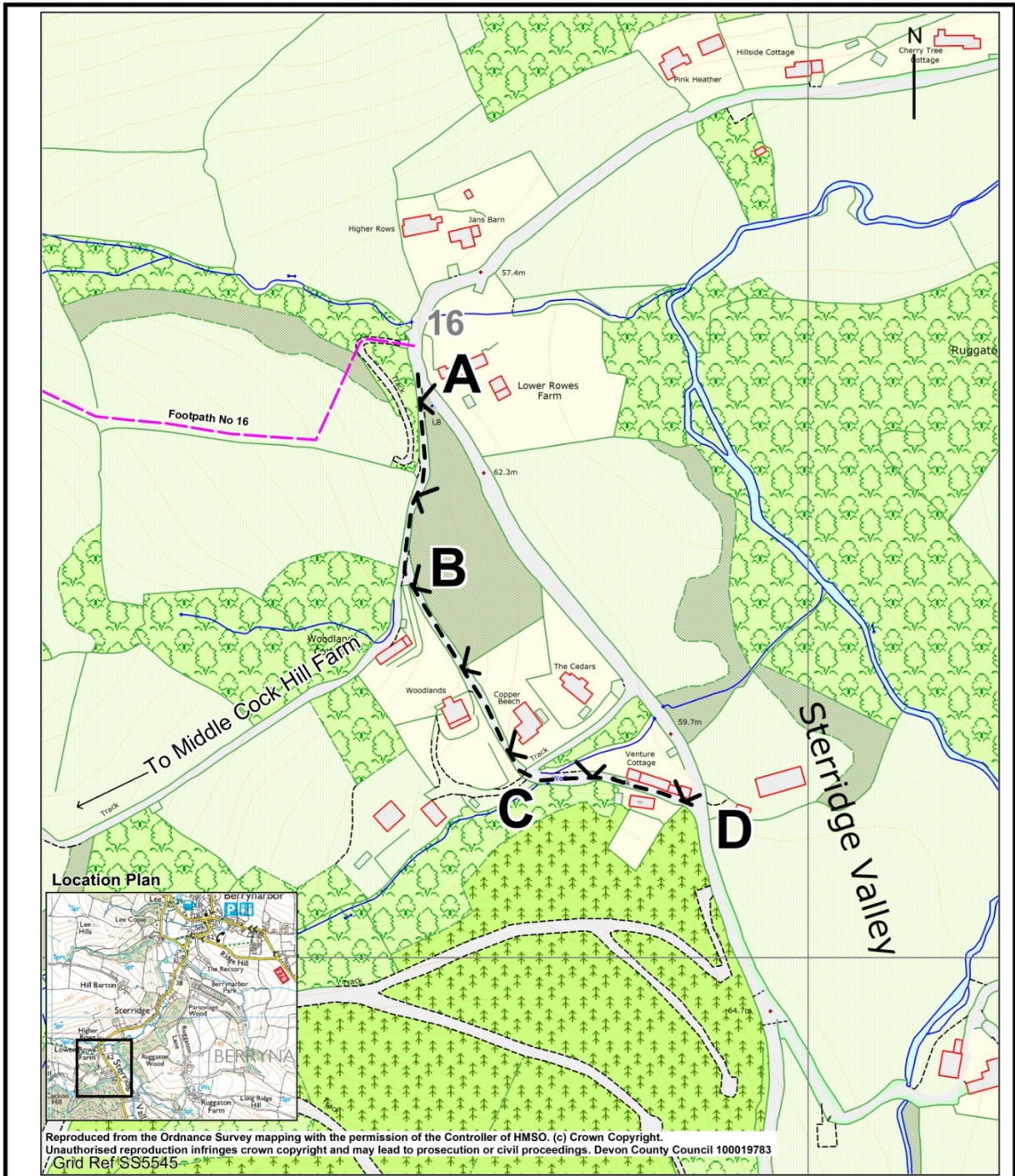
Room No: ABG Lucombe House, Exeter

Tel No: 01392 383000

Background Paper	Date	File Ref.
None		

hc110618pra
sc/cr/Public Inquiry Informal Hearing High Court appeals
02 260618

Agenda Item 10



WILDLIFE AND COUNTRYSIDE ACT 1981
 COUNTY OF DEVON DEFINITIVE MAP
 AND STATEMENT
 DEVON COUNTY COUNCIL
 (RESTRICTED BYWAY NO.27, BERRYNARBOR)

Plan No. HCW/PROW/16/29

Scale 1: 2500

date July 2016

drawn by AS

Notation

Restricted Byway No. 27A-B-C-D 295 m

Existing Footpath

Devon County Council David Whitton
 Head of Highways
 Capital Development & Waste

HIW/18/48

Public Rights of Way Committee
5 July 2018

Modification 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 Modification Order has been confirmed as unopposed under delegated powers. Plans are attached in the appendix to this report.

- (i) Footpath No. 15, Parkham Definitive Map Modification Order 2018

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

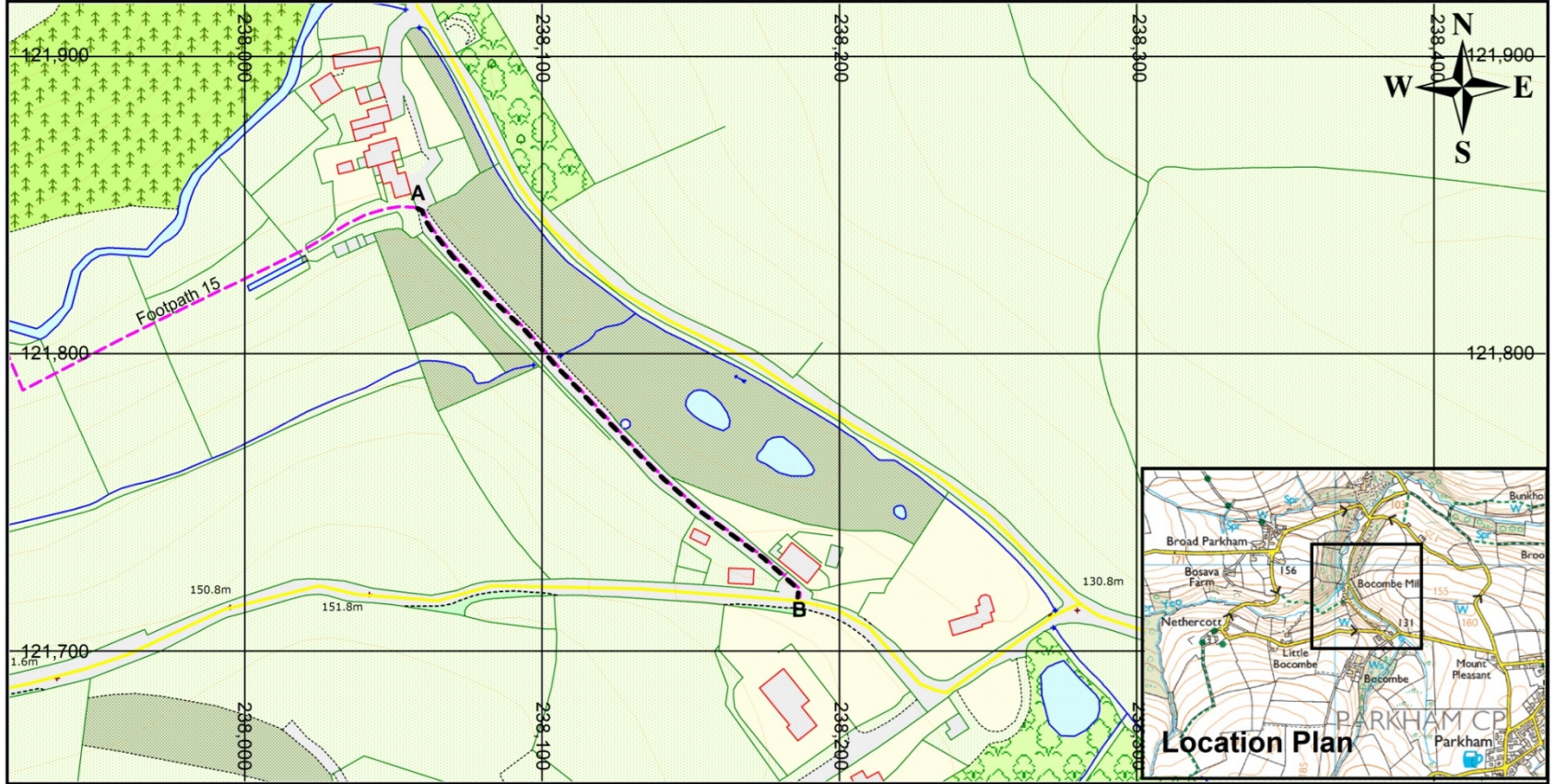
Electoral Division: Bideford West & Hartland

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		

hc070618pra
sc/cr/Modification Orders
02 260618



map ref: SS 3821

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**Devon County Council
 (Footpath No. 15, Parkham)
 Definitive Map Modification Order 2018**

drawing number	HIW/PROW/17/59
date	October 2017
scale	1:2,500
drawn by	CLG

Notation

Footpath No. 15 extension A - B (approx 186 metres) -----

Existing footpath -----

Meg Booth

Chief Officer for Highways,
 Infrastructure Development
 & Waste



HIW/18/49

Public Rights of Way Committee
5 July 2018

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) Diversion Orders

- (i) Footpath No. 11, Welcombe Public Path Diversion & Definitive Map and Statement Modification Order 2018
- (ii) Footpath No. 8, Burrington Public Path Diversion & Definitive Map and Statement Modification Order 2017
- (iii) Footpath Nos. 7 & 19, Okehampton Public Path Diversion & Definitive Map and Statement Modification Order 2017
- (iv) Footpath No. 8, Parkham Public Path Diversion & Definitive Map and Statement Modification Order 2017

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Divisions: Bideford West & Hartland; Chulmleigh & Landkey; and Okehampton Rural

Local Government Act 1972: List of Background Papers

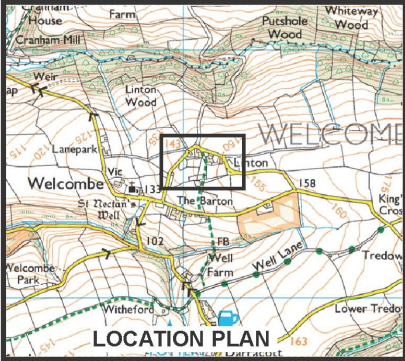
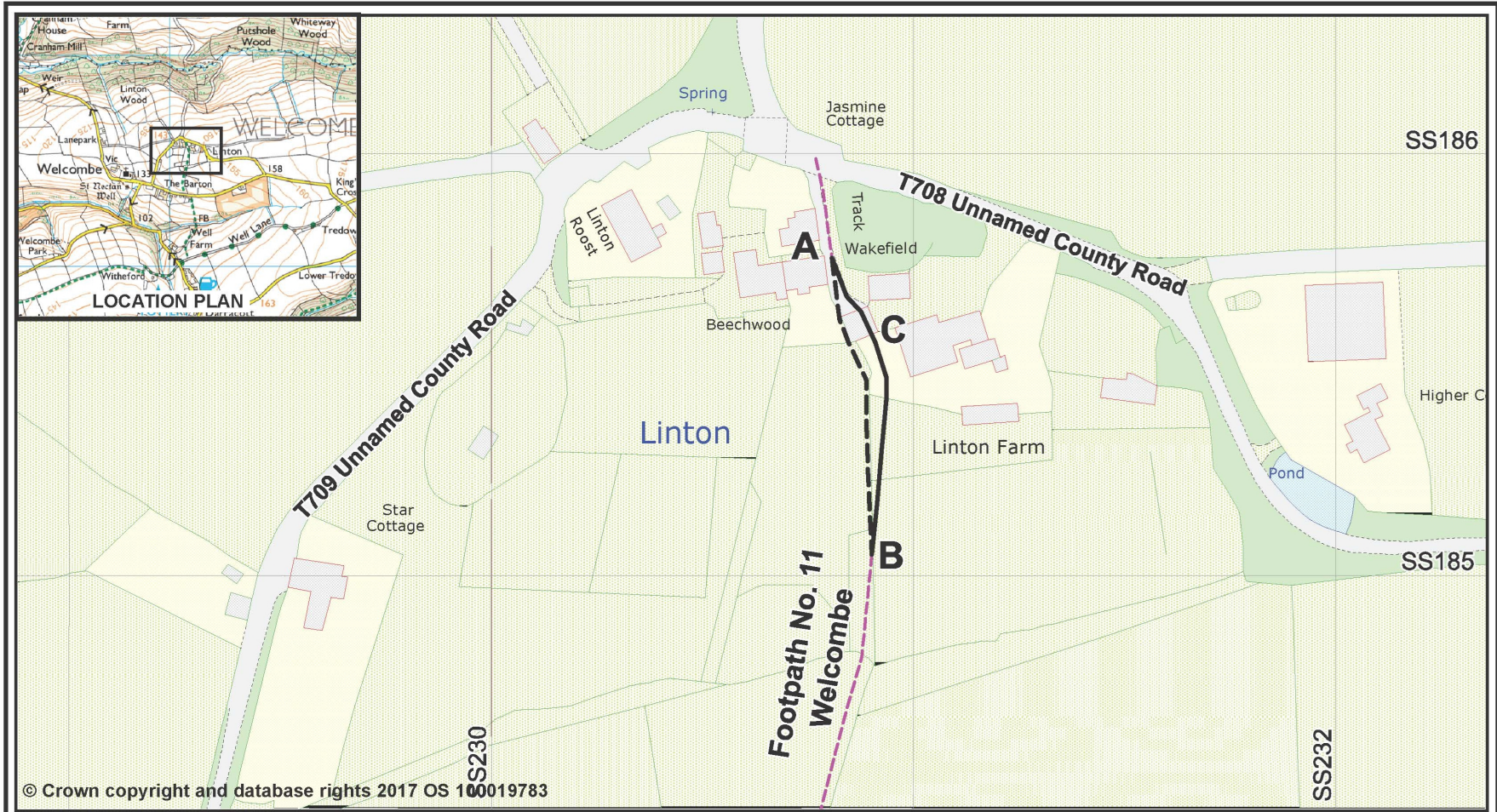
Contact for enquiries: Helen Clayton

Room No: ABG Lucombe House, Exeter

Tel No: 01392 383000

Background Paper	Date	File Ref.
None		

hc070618pra
sc/cr/Public Path Orders
02 260618



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Map Ref **SS 2318** Grid 100m

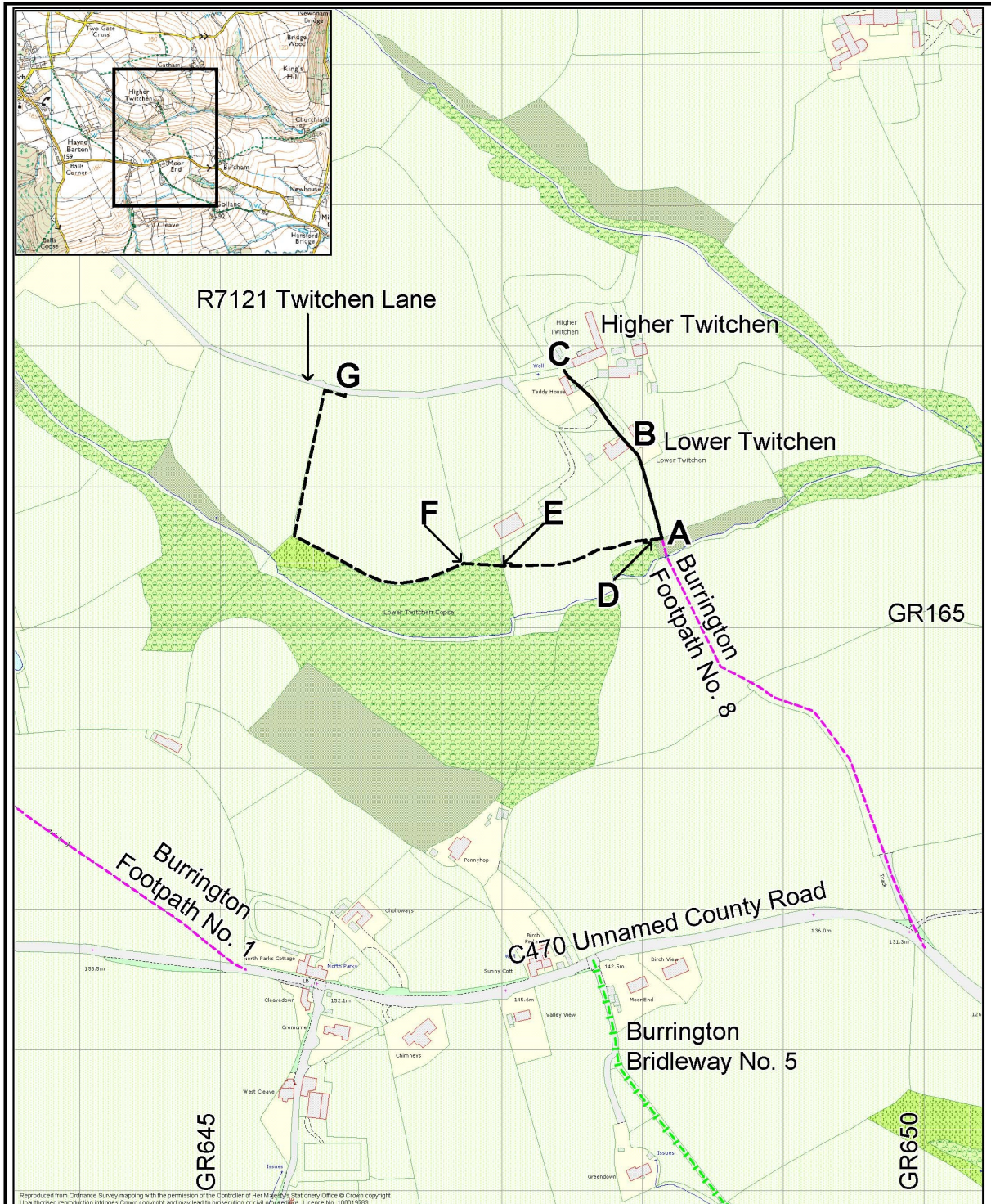
**DEVON COUNTY COUNCIL
PUBLIC PATH DIVERSION AND DEFINITIVE
MAP & STATEMENT MODIFICATION ORDER
2018
FOOTPATH No. 11, WELCOMBE (PART)**

Notation	
	Existing public footpaths
	To be extinguished
	A - C - B (approx 75 metres)
	To be created
	A - B (approx 70 metres)

drawing no. HIW/PROW/17/004
date November 2017
scale 1:1250 at A4
drawn by SCG




CHIEF OFFICER FOR HIGHWAYS
INFRASTRUCTURE DEVELOPMENT AND WASTE



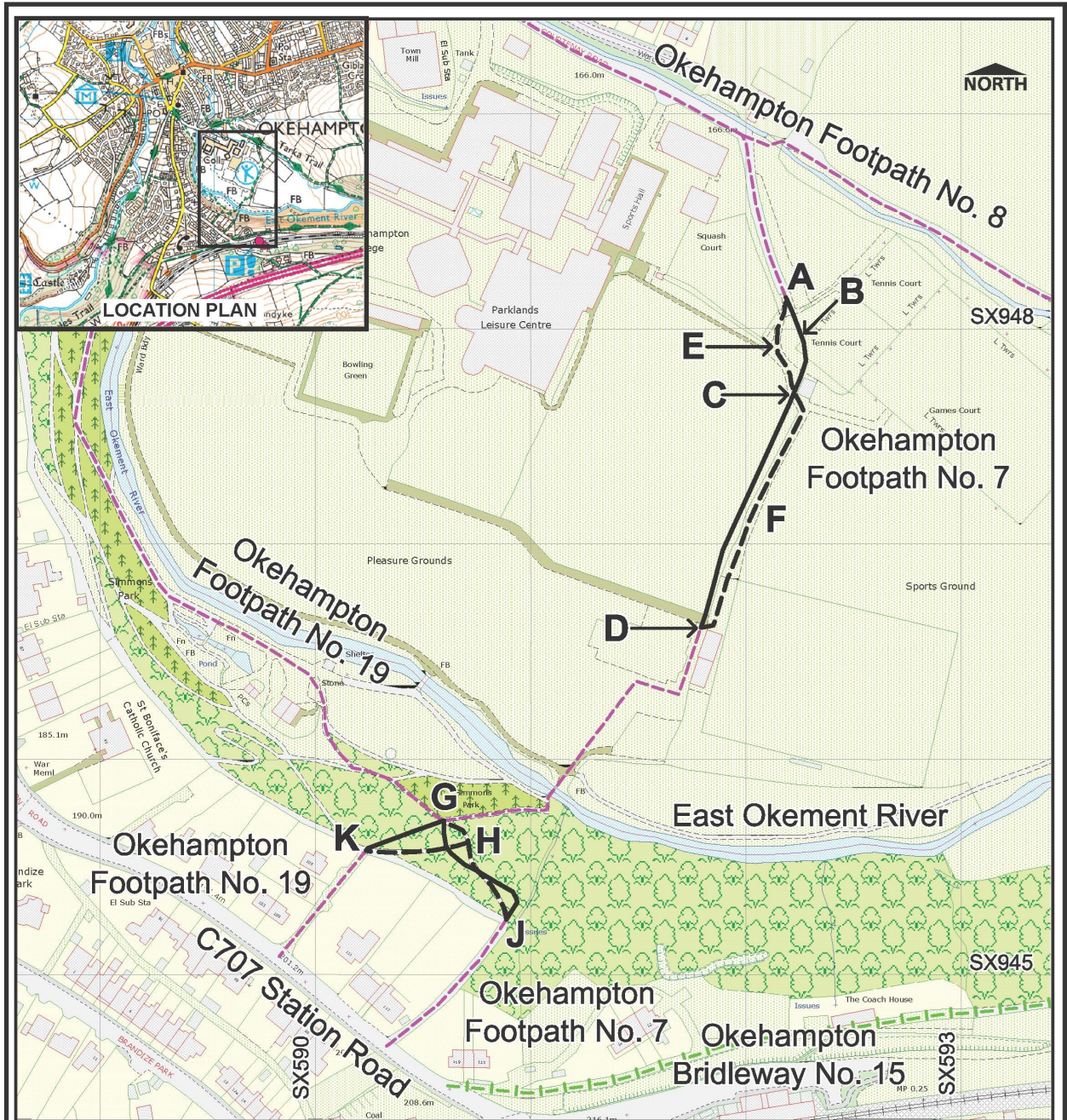
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**DEVON COUNTY COUNCIL
FOOTPATH No. 8, BURREINGTON
PUBLIC PATH DIVERSION AND DEFINITIVE MAP
AND STATEMENT MODIFICATION ORDER 2017**

map ref **SS6416**

Notation	<i>To be extinguished</i>	<i>To be created</i>	drawing no. HIW/PROW/17/028 date June 2017 scale 1:2,500 drawn by SCG	 Meg Booth <small>HEAD OF HIGHWAYS, INFRASTRUCTURE DEVELOPMENT AND WASTE</small>
	A - B - C (approx 140 metres)	A - D - E - F - G (approx 400 metres)		

Agenda Item 12



Map Ref **SX 5994**

Grid 100m

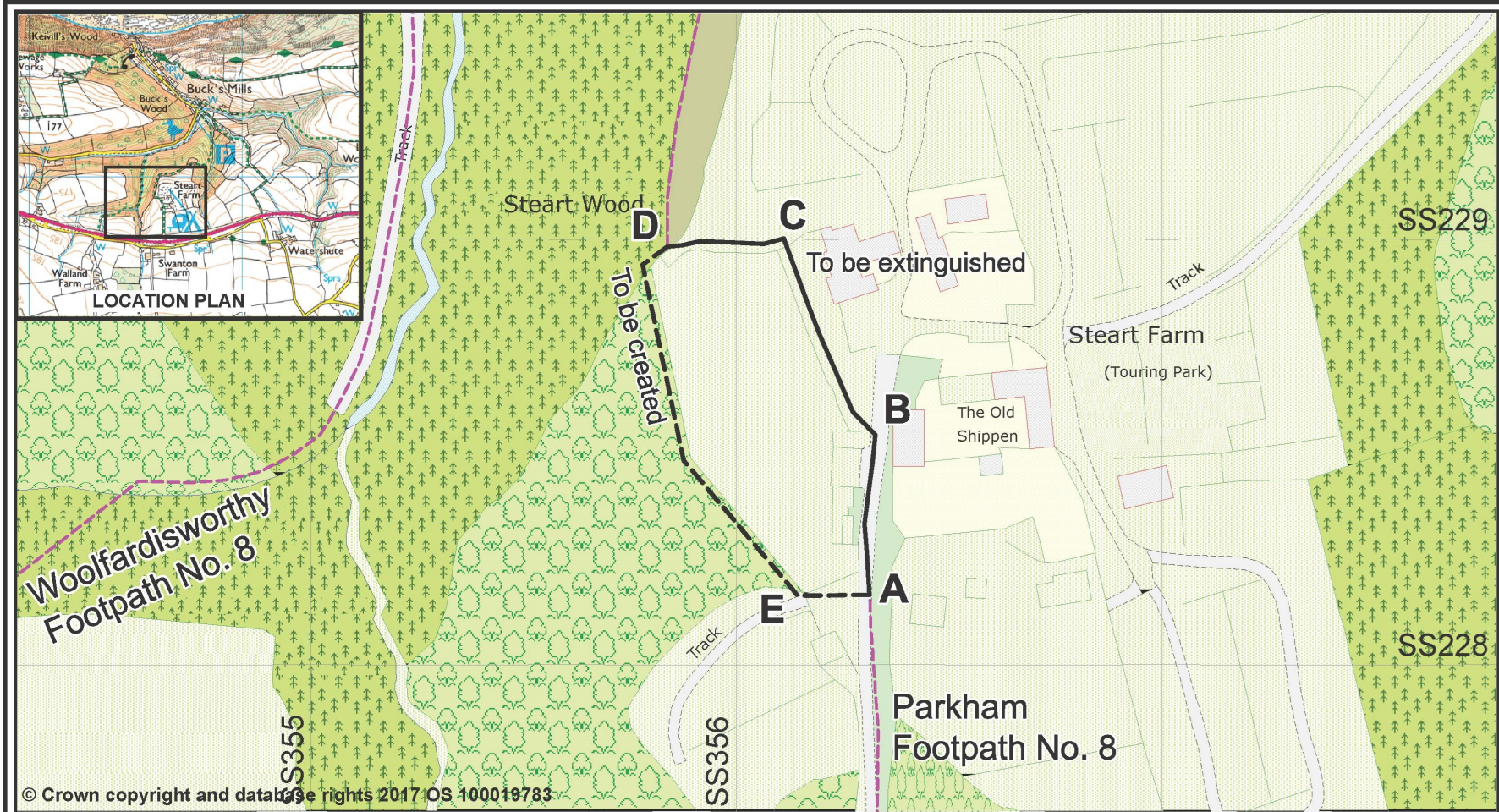
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DEVON COUNTY COUNCIL
PUBLIC PATH DIVERSION AND DEFINITIVE MAP & STATEMENT MODIFICATION ORDER 2017
FOOTPATH Nos. 7 and 19, OKEHAMPTON (PARTS)

Notation	Existing public footpaths	To be created
	To be extinguished	Footpath No. 7
	Footpath No. 7	A - E - C - F - D
	A - B - C - D	(approx 170 metres)
	(approx 165 metres)	G - H - J (approx 60 metres)
	G - J (approx 65 metres)	
	Footpath No. 19	Footpath No. 19
	K - G (approx 40 metres)	K - H (approx 50 metres)

drawing no. HIW/PROW/17/047
date November 2017
scale 1:2500 at A4
drawn by SCG

Meg Booth
 CHIEF OFFICER FOR HIGHWAYS
 INFRASTRUCTURE DEVELOPMENT AND WASTE



Map Ref **SS 3522** Grid 100m

DEVON COUNTY COUNCIL
PUBLIC PATH DIVERSION AND DEFINITIVE
MAP & STATEMENT MODIFICATION ORDER
2017
FOOTPATH No. 8, PARKHAM (PART)

Notation	
	Existing public footpaths
	To be extinguished
	A - B - C - D (approx 115 metres)
	To be created
	A - E - D (approx 110 metres)

drawing no. HIW/PROW/17/008.1
 date December 2017
 scale 1:1250 at A4
 drawn by SCG



CHIEF OFFICER FOR HIGHWAYS
 INFRASTRUCTURE DEVELOPMENT AND WASTE

