

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

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

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

Recommendation: It is recommended that Modifications Orders be made to modify the Definitive Map and Statement by:

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

1. Summary

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

2. Background

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

3. Consultations

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

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

The responses were as follows:

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

Please refer to the appendix to this report.

4. Proposals

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

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

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

5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

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

9. Conclusion

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

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

10. Reasons for Recommendations

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

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Combe Martin Rural

Local Government Act 1972: List of Background Papers

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

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

A. Basis of Claim

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

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

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

- (i) A right of way not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates;

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

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

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

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

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

1. Proposal 17: Claimed addition of bridleway between points A-B-C as shown on drawing number HTM/PROW/17/56

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

1.1 Background

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

1.2 Description of the Route

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

1.3 Documentary Evidence

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

1.3.2 Tithe Map and Apportionments 1842

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

1.3.3 Quarrying in Combe Martin

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

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

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

1.3.6 Ordnance Survey Mapping

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

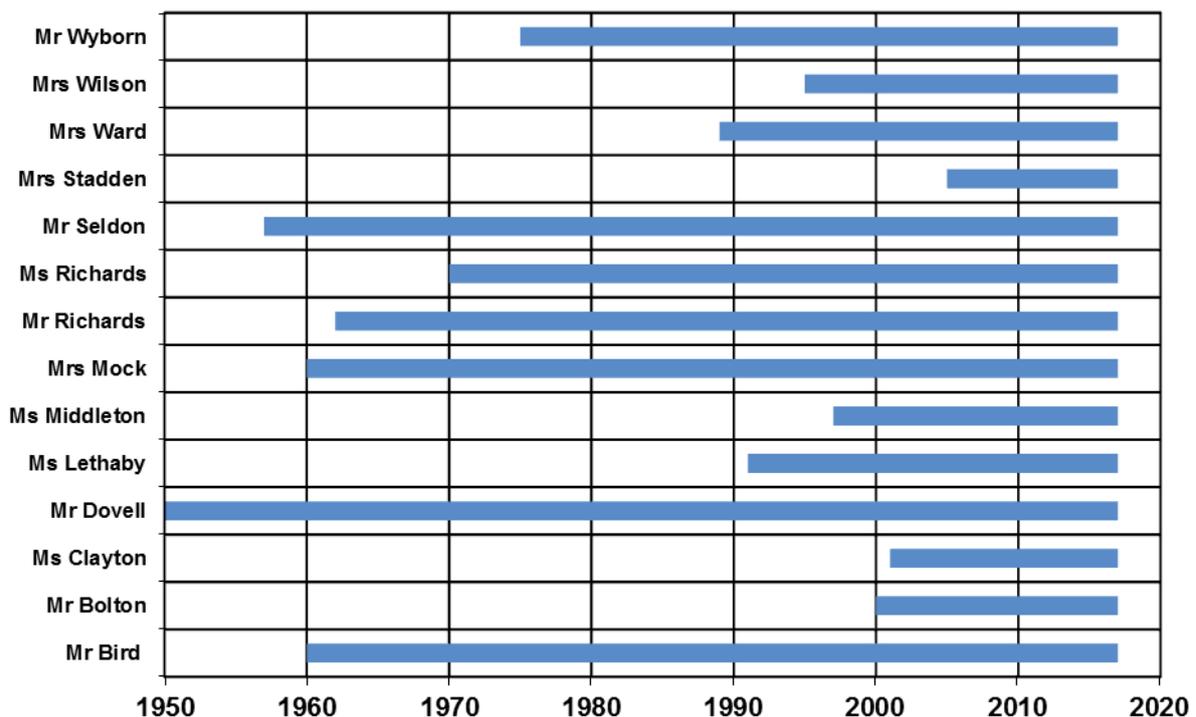
- 1.3.7 1904-1906 2nd Edition OS map 25" to 1 mile Pigs lane is shown in the same way as the previous map.
- 1.3.8 All subsequent OS maps show the claimed route in the same way, with the modern maps showing the route as Kiln Lane.
- 1.3.9 Historic England's Listed Structure
The Tunnel on the south side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

1.4 User Evidence

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

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

User Evidence Chart Proposal 17



1.5 Adjoining property holder's evidence

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

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

1.6 Rebuttal Evidence

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

1.7 Discussion

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

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

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

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

1.8 Conclusion

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

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

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

2.1 Background

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

2.2 Description of the Route

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

2.2 Documentary Evidence

2.2.1 Tithe Map and Apportionments 1842

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

2.2.2 Ordnance Survey Mapping

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

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

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

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

2.3 User Evidence

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

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

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

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

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

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

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

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

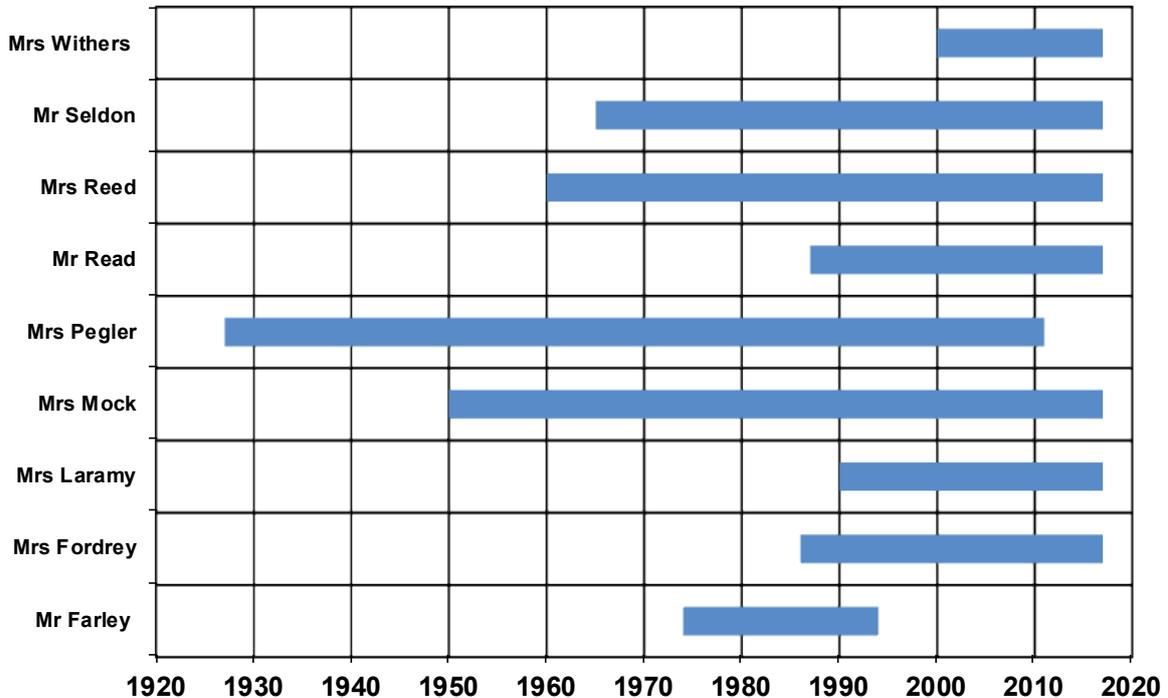
2.3.9 Mrs Read has used Rock Lane since 1960 a minimum of 6 times a year, going between home and the church yard on foot. She thinks its public because it has been used by the public for centuries. The gate was erected in 2009 but never locked. There was no gate prior to that.

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

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

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

User Evidence Chart Rock Lane



2.4 Adjoining property holder's evidence

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

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

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

2.5 Rebuttal Evidence

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

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

2.6 Discussion

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

2.7 Conclusion

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

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

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

3.1 Background

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

3.2 Description of the Route

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

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

3.3 Documentary Evidence

3.3.1 Tithe Map and Apportionments 1842

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

3.3.2 Ordnance Survey Mapping

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

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

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

3.3.5 Highway Handover Book

Water Lane does not appear on this.

3.4 User Evidence

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

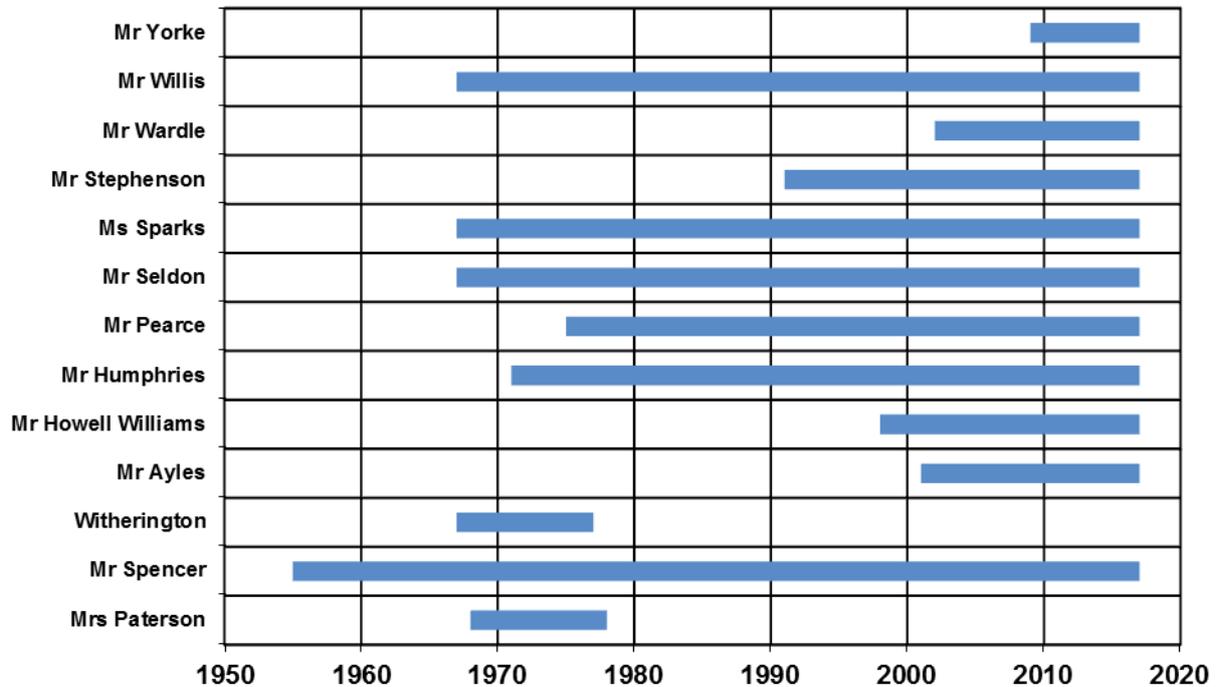
thirteen users have walked along the route for pleasure, dog walking or just going about their daily business.

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

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

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

User Evidence Chart Water Lane



3.5 Adjoining property holder's evidence

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

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

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

3.6 Rebuttal Evidence

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

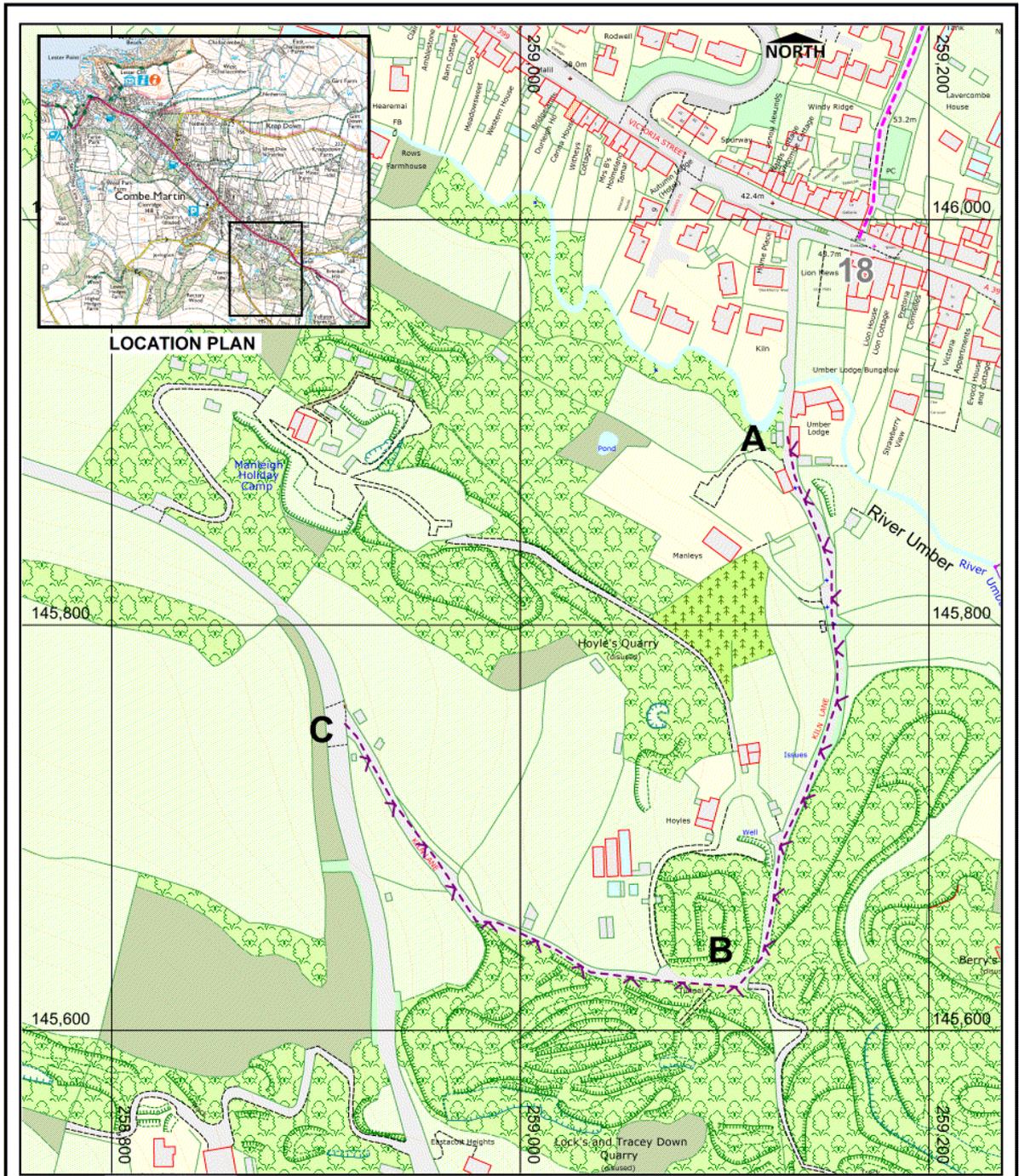
3.6.2 None of the users have been stopped from using the route. The only sign said Public Footpath. Use of the path by the public appears to be accepted by the adjoining landowners and acknowledged by the parish council.

3.7 Discussion

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

3.8 Conclusion

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

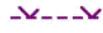


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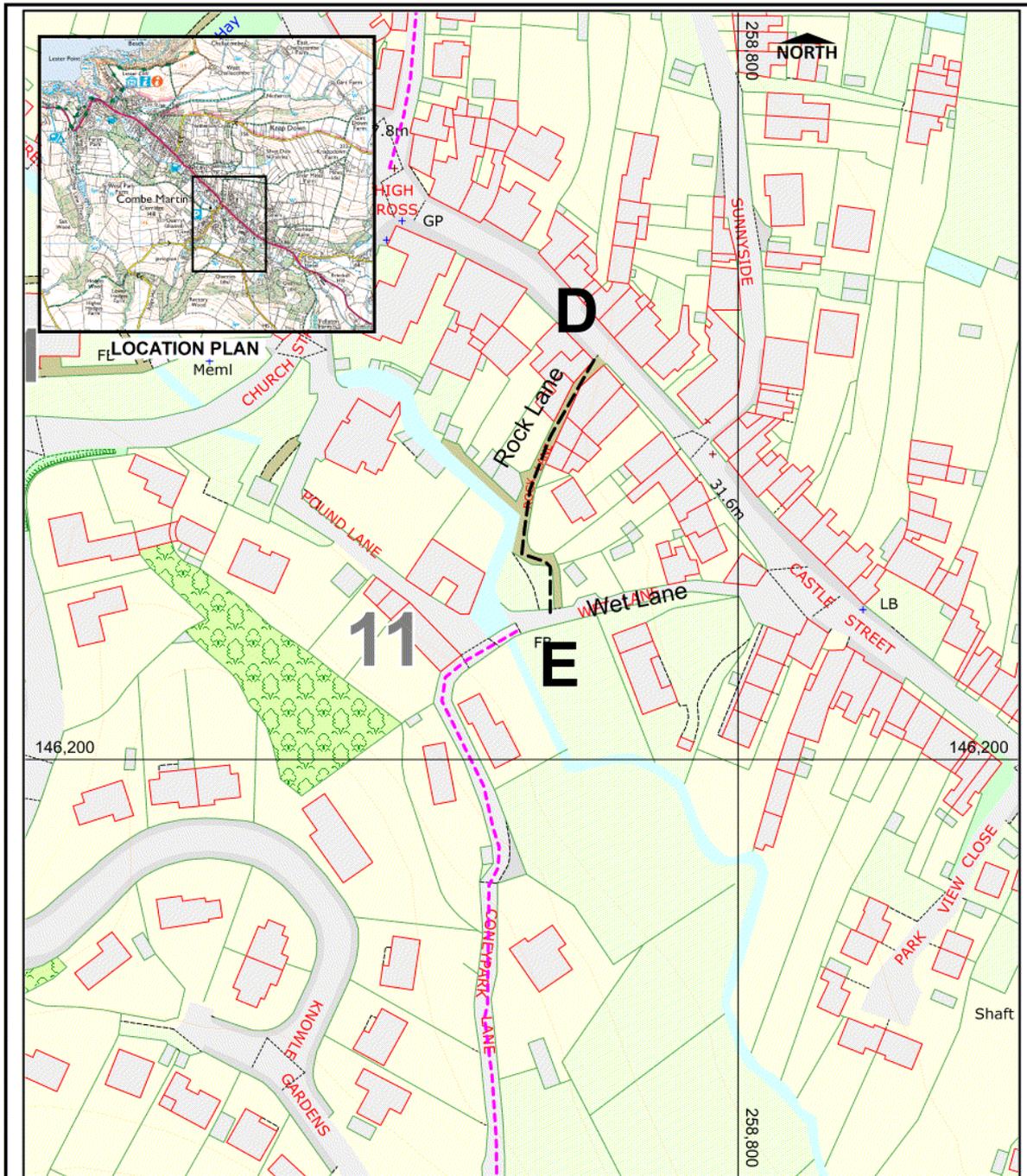
DEVON COUNTY COUNCIL
Proposal 17 For a brideway
Combe Martin
To add Restricted Byway to the Definitive Map

drawing no. HIW/PROW/17/56
 date Oct 2017
 scale 1:2500
 drawn by AS

Notation

Route to be added A- B - C 
 Existing Footpath 

Meg Booth 
 CHIEF OFFICER FOR HIGHWAYS
 INFRASTRUCTURE DEVELOPMENT AND WASTE



Map Ref **SS25871464**

Grid 100m

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DEVON COUNTY COUNCIL

Proposal 18

Combe Martin

To add a Footpath to the Definitive Map

Notation

Route to be added D - E - - - - -
 Existing Footpath - - - - -

drawing no. HIW/PROW/17/57
 date Oct 2017
 scale 1:1250
 drawn by AS

Meg Booth 

CHIEF OFFICER FOR HIGHWAYS
 INFRASTRUCTURE DEVELOPMENT AND WASTE

