

**Definitive Map Review
Parish of Culmstock**

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

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

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

1. Introduction

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

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

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

2. Background

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

The following Orders have been made and confirmed:

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

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

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

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

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

Devon County Council (Footpath No. 9, Culmstock) Public Path Diversion Order 2011
Devon County Council (Bridleway No. 35, Culmstock) Definitive Map Modification Order 2012

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

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

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

3. Proposal

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

4. Consultations

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

5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

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

9. Conclusion

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

10. Reasons for Recommendation

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

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Local Government Act 1972: List of Background Papers

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

tw111017pra
sc/cr/DMR Parish of Culmstock
03 261017

**Appendix I
To HIW/17/82**

A. Basis of Claim

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

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

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

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

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

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

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

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

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

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

1 Background

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

2 Description of the Route

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

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

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

3. Documentary Evidence

3.1 Ordnance Survey and Other Maps

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

- 3.1.2 Cassini Historical Maps 1809 – 1900 Sheet 181 Minehead & Brendon Hills
These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.

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

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

3.1.5 Popular Edition 1919

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

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

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

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

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

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

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

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

3.1.10 OS Post War Mapping A Edition 2500 1965

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

3.2 Tithe Maps and Apportionments

- 3.2.1 Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring can indicate carriageways or driftways. Public roads were not tithe able. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not included within an individual apportionment are usually included under the general heading of '*public roads and waste*'.
- 3.2.2 Culmstock Tithe Map & Apportionment 1841 shows the access lane (C to B) as a fairly wide lane leading directly onto the common. The lane is not numbered or coloured and is shown in a similar way to the now county road at point C. There is no drive or access lane shown to Axon Farm, owned and occupied by Dorcas Temple (field number 451 is called entrance field). The two lanes through Gipsy Town, northwards from points X and A are shown but not numbered. The Gipsy Town plots are recorded with a number of different owners and occupiers. Maiden Down Common is apportionment number 1392 and included at the end of the apportionment with the parishes other commons with no owner or occupier listed. It is described as Commons, cultivation as Waste and area 112 acres.

3.3 Finance Act Plans and Field Books 1910

- 3.3.1 The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.
- 3.3.2 The allowance given was often on the basis of a figure such as a £1 times 25 yp. The yp refers to years purchase, a method of valuation used to convert a property's income flow (rent) into an appropriate capital sum on the basis that the capital value of a property is directly related to its income producing power. This method of valuation was usually used in Finance Act valuations.
- 3.3.3 The access lane between points C and A appears to be excluded from the adjoining hereditaments. The hereditament for Heathfield number 279, at the west end of the lane has land on both sides of the lane and the colouring for Heathfield breaks across the lane in the section between points C and X. The field book records for Heathfield, owned by Jesse Authers, occupied by Florence Authers; do not include any reference to any right of way.

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

3.4 Parish Council Minutes

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

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

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

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

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

3.6 County Council Correspondence

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

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

3.7 Devon County Uncompleted Reviews of 1968 and 1977

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

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

3.8 British Newspaper Archive

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

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

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

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

3.10 Land Registry

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

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

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

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

4 User Evidence

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

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

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

5 Landowner Evidence

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

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

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

6 Consultation Responses

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

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

7 Discussion

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

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

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

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

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

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

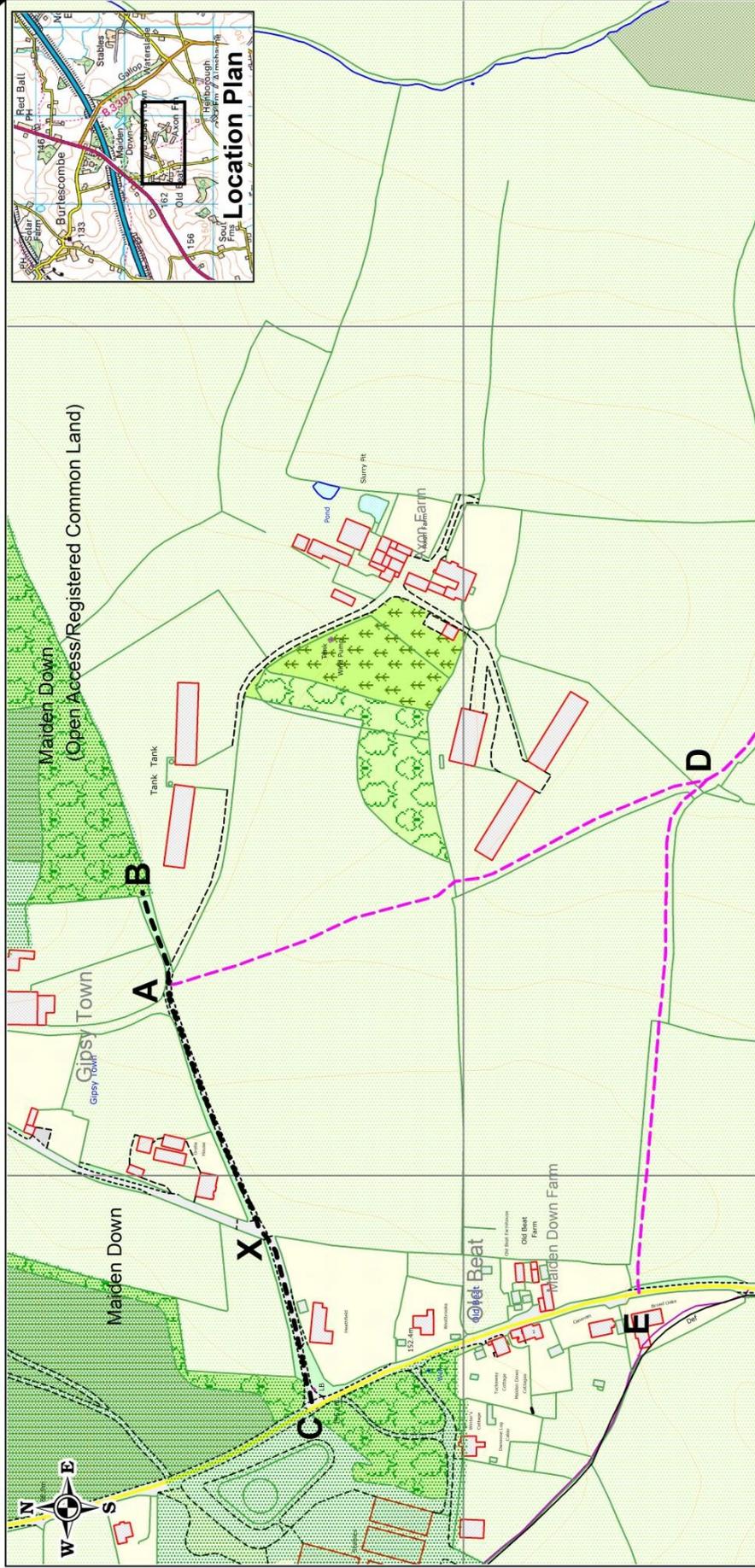
- 7.22 Of the two users whose additional information indicated that they used the section B to A, Mr Salter refers to walking across the common from Sand Pitt Hill on the B3391 westwards to Old Beat via delivering bread at Axon Farm. Mrs Laidlaw refers to accessing the common from 1920 to 1936, on the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

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

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

8 Conclusion

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



Map Ref: ST 08 15 Grid 500m

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

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

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

Meg Booth
 Chief Officer for Highways,
 Infrastructure Development & Waste

Devon
 County Council