

CET/23/12

Public Rights of Way Committee
9 March 2023

Definitive Map Review Parish of Newton Poppleford & Harpford Report of the Director of Climate Change, Environment and Transport

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

1. Recommendation

Recommendation: It is recommended that:

- (a) a Modification Order be made in respect of Proposal 1; and
- (b) that no Modification Order be made in respect of Proposal 2.

2. Introduction

This report examines two proposals arising from the Definitive Map Review in the parish of Newton Poppleford & Harpford. One additional proposal is awaiting further information from the landowner (East Devon District Council), and will be presented at a subsequent committee meeting.

3. Background

The original survey by Harpford Parish Council (as it was then called) in 1950 under s.27 of the National Parks and Access to the Countryside Act of 1949 produced a map and details of 34 routes submitted to the County Council. After several amendments and revisions during the draft and provisional stages, 26 footpaths and 1 bridleway were recorded on the Definitive Map and Statement with a relevant date of 17th May 1966.

The Limited Special Review of RUPPs, which commenced in 1971, did not affect this parish. The general review of the Definitive Map, under s. 33 of the 1949 Act, which commenced in 1977 produced several proposals for changes, though almost exclusively for deletion of paths and which were not considered valid.

The following orders have been made and confirmed:

St Thomas Rural District Council (Newton Poppleford Footpath No.1 part) Public Path Extinguishment Order 1969

East Devon District Council (Newton Poppleford Footpath No.1) Public Path Diversion Order 1984

East Devon District Council (Newton Poppleford Footpath No.22) Public Path Diversion Order 1984

East Devon District Council (Newton Poppleford Footpath No.28) Public Path Diversion Order 1985

The East Devon Parishes Order 1989 – transfer of Otterton Footpath No.21
Devon County Council (Newton Poppleford & Harpford Footpath No. 16) Public Path Diversion Order 1991

Devon County Council (Newton Poppleford & Harpford Footpath Nos. 30 & 31) Public Path Diversion Order 1994

Devon County Council (Newton Poppleford & Harpford Footpath No. 3) Public Path Creation Agreement 1996

Devon County Council (Newton Poppleford & Harpford Footpath Nos. 6 & 8) Public Path Diversion Order 1996

Devon County Council (Newton Poppleford & Harpford Footpath No. 25) Public Path Extinguishment Order 1999

Devon County Council (Newton Poppleford & Harpford Footpath No. 25) Public Path Diversion Order 1999

Devon County Council (Newton Poppleford & Harpford Footpath No. 24) Public Path Creation Order 1999

Devon County Council (Newton Poppleford & Harpford Footpath No. 21a) Public Path Creation Agreement 2009

Devon County Council (Newton Poppleford & Harpford Bridleway No. 57) Public Path Creation Agreement 2012

Devon County Council (Newton Poppleford & Harpford Footpath No. 38) Definitive Map Modification Order 2022

The current review began in March 2022 with a public meeting in the parish.

4. Proposals

Please refer to the appendix to this report.

5. Consultations

General consultations have been carried out with the following results:

County Councillor Jess Bailey	- no comment;
East Devon District Council	- no comment;
Newton Poppleford & Harpford Parish Council	- comments included in background papers
Country Land and Business Association	- no comment;
National Farmers' Union	- no comment;
Trail Riders' Fellowship/ACU	- no comment;
British Horse Society	- no comment;

Cycling UK	- no comment;
Ramblers	- no comment
Byways & Bridleways Trust	- no comment;
4 Wheel vehicle Users	- no comment;
Open Spaces Society	- no comment.

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

6. Financial Considerations

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

7. Legal Considerations

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

8. Risk Management Considerations

No risks have been identified.

9. Equality, Environmental Impact (including Climate Change) and Public Health Considerations

Equality, environmental impact (including climate change) and public health implications have, where appropriate under the provisions of the relevant legislation, been taken into account in the preparation of the report.

10. Conclusion

It is recommended that a Modification Order be made in respect of Proposal 1, but that no Modification Orders be made in respect of Proposal 2.

11. Reasons for Recommendations

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

Meg Booth

Director of Climate Change, Environment and Transport

Electoral Division: Otter Valley

Local Government Act 1972: List of background papers

Background Paper Correspondence file: Newton Poppleford

Date 2000-date

File Reference TCG/DMR/NPOPP

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Appendix I To CET/23/12

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.

Section 67 of the Natural Environment and Rural Communities Act 2006 (NERC) extinguishes certain rights of way for mechanically propelled vehicles except for the circumstances set out in sub-sections 2 to 8. The main exceptions are that:

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

**Proposal 1: Schedule 14 Application to add a footpath between the county road Lynch Head and the unclassified unsurfaced county road west of Hoppins Farm, points A-B on the proposal map CCET/PROW/22/84.
Grid Ref: SY 077908 – SY 081908**

Recommendation: It is recommended that a Modification Order be made in respect of Proposal 1.

1.1 Background

1.1.1 Following the opening meeting that started the parish review, a duly made Schedule 14 application was submitted by Mr Ronald Swan on 20 June 2022 claiming the route as a public footpath. The application was accompanied by 25 user evidence forms. No documentary evidence was submitted with the application.

1.1.2 The route has not previously been brought to the attention of Devon County Council and is currently unrecorded.

1.2 Description of the Route

1.2.1 The application route starts at uUCR 303 at point A on plan CCET/PROW/22/84. It heads in a westerly direction along an enclosed but overgrown unsurfaced track for approximately 380 metres where it joins county road C219 Lynch Head at point B. In the middle section of the route there are several badger setts – mostly disused, but some still active. At point A and point B there are crude timber staggered barriers which appear to have been erected to deter motorcycles, uUCR 303 being a popular trail riding route.



Point A



Point B



Pictures showing a well-defined section of the application route.

1.3 Documentary Evidence

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

Early historical maps at smaller scales, particularly the OS drawings and 1st edition map, all show the application route, though the OS Drawings and Greenwood's Map do not show uUCR 303 at point A. The lane is shown in the same way as some of those recorded now as public roads, but also including others that are not recorded now as public, or no longer existing.

1.3.2 Later historical mapping at smaller scales: OS 1" editions 1892-1967, Bartholomew's Mapping 1903-1943

OS 1" maps from the late 19th century show the application route as an enclosed third-class metalled road, extending beyond point A to the west to join the current uUCR 303. The 1946 edition no longer shows the application route, only the extension to the west. Subsequent editions show neither the application route nor the extension.

1.3.3 The application route is not shown on any of the Bartholomew's editions. These commercial maps were produced for the benefit of '*tourists and cyclists*' and were widely available to the public. The exclusion of the route suggests that it was not considered suitable for cyclists during this period.

1.3.4 Later historical mapping at larger scales: OS 25" editions 1888-1961, OS 6" editions 1889-1944

OS mapping from 1888 onwards, both 6"-to-the-mile and 25"-to-the-mile, all show the application route as an enclosed road/track. The 6" editions show no gates or obstructions on the route. The 25" editions show a dotted line across the ends of the route at points A and B, with the 1961 edition showing a solid line across the route where it joins Lynch Head at point B. A solid line is normally taken to indicate a gate or similar obstruction.

1.3.5 Venn Ottery Tithe Map & Apportionment 1839

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 titheable. 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'.

1.3.6 The Venn Ottery Tithe Map, produced in 1839, shows the application route in the same manner as the other early historical mapping and following the same line as it does today. Roads were not labelled or identified in the Apportionment as public and included those which were obviously public, as well as others more likely to have been private tracks for access to fields and some not now existing.

1.3.7 Aerial Photography 1946-2015

Aerial photography from 1946 shows the whole length of the application route. Hedges are visible on either side of the route, along with occasional mature trees. Photography from 1999-2015 shows the application route heavily tree-lined, with hedges only visible at the far western end. The surface of the route is not visible in any of the aerial photography.

1.3.8 Highway maintenance records/Handover maps/List of Streets

Highway maintenance records from the 1920s and used through to the 1970s, often called handover maps, show that the application route was not at that time considered to be maintainable at public expense. The application route is left uncoloured and there are no notes or annotations relating to it. These maps did not show footpaths and bridleways, only public roads.

1.3.9 The application route is not recorded on the List of Streets, which is the current record of highways maintainable at public expense kept by Devon County Council.

1.4 Definitive Map process

1.4.1 Original Definitive Map process

The application route was not put forward by Harpford Parish Council for inclusion on the Definitive Map in the 1950s.

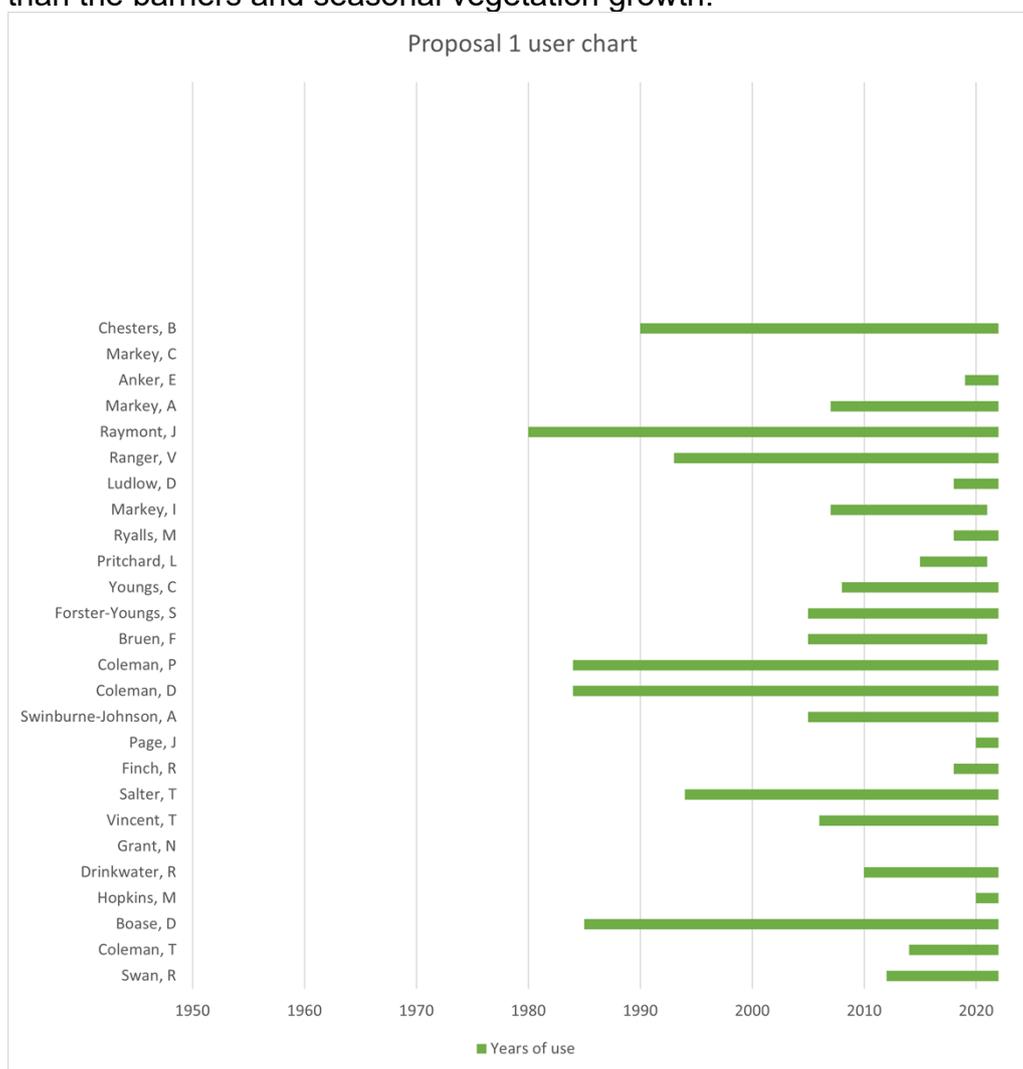
1.4.2 Devon County Council reviews of 1970 and 1977

Likewise, the application route was not put forward for consideration during the incomplete reviews of the Definitive Map in the 1960s and 1970s.

1.5 User Evidence

1.5.1 25 user evidence forms were submitted with the application, with one additional form being received during informal consultation. Of the 26 users who submitted forms, all of them claimed use on foot only. None of the forms mention witnessing any other use than on foot.

1.5.2 The user evidence covers the period from 1980-2022 (see chart below) and there is no suggestion that it has ever been interrupted or stopped. Staggered barriers were erected at either end around 2021 to prevent horse/vehicular traffic but they appear not to have been intended to prevent use on foot. One user (Ryalls) refers to meeting a man erecting the railings and being told that using the route on foot was fine. None of the users mention there being any obstructions or notices on the application route other than the barriers and seasonal vegetation growth.



1.5.3 7 of the users have used the application route for in excess of 20 years (4 of these in excess of 30), with one additional user not stating which years she had used the route but simply saying she had lived in the village for 30 years. Conversely, six users have only claimed use for less than 4 years. The mean average length of use is 17 years.

1.5.4 Frequency of use varies between users, as would be expected: 9 users state use every few months, 6 users every month, 7 claim weekly use and one claims use 'several times a week'. 3 users only claim use of the application route once per year. Perhaps of note are those users who have used the route regularly for long periods. Ranger has used the route since 1993 on a

weekly basis; Salter has likewise used it weekly since 1994; Chesters has used it monthly since 1990. Raymont and Coleman claim to have used the route every few months since the early 1980s.

- 1.5.5 None of the users state that they have ever sought or received permission to use the application route, nor worked for any affected landowners. Many of the users state that they believe the landowner(s) would have been aware of the public using the route, mostly based on the well-worn path and frequency of use. Several also state that the erection of the staggered barriers shows that the landowner was aware of public use. Two users (Ryalls and Page) refer to having met and spoken to landowners while walking the route and not been turned back or told that the route was not public. A further user (Vincent) states that he has seen the landowners in the adjacent fields when walking the route but does not provide further information. Several users state that they believe the landowner(s) was unaware of public use of the route but do not provide further details as to why.
- 1.5.6 Swinburne-Johnson, who has used the route since 2005, provides some additional comments. They state that they have lived in Southerton for 44 years and that *'this path has been used as a right of way by pedestrians for at least 15 years.'* They explain that this followed the death of Kenny Drake and the sale of his land at auction to several different people in 2006. No other users mention this, nor is there any suggestion of use only beginning in 2006.

1.6 Landowner and rebuttal evidence

- 1.6.1 Three landowners were identified with the Land Registry as owning land adjacent to the application route, the route itself being unregistered. All three landowners were consulted but only Heath Land and Property Ltd returned a landowner evidence form.
- 1.6.2 Heath Land and Property Ltd confirmed that they have owned the field to the southwest of the application route since September 2020. They believe the route to be a public right of way but do not have any deeds, maps, or agreements to clarify this. They have seen people using the route and have never stopped or turned back anyone using it. They have also never been asked for, or given, permission to use the route. They have never obstructed the route or erected any notices.
- 1.6.3 Though their evidence form does not refer to the staggered barriers, subsequent enquiries with them have confirmed that they were not responsible for erecting them.
- 1.6.4 In their additional comments, Heath Land and Property Ltd reiterate their belief that the route is a public footpath and express concerns over possible motorcycle use if the route was designated as a higher status. They suggest that footpath gates at point A and B would be sensible if the route were to be recorded as a public footpath.

1.7 Discussion

1.7.1 Statute (Section 31 Highways Act 1980)

Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged. This application was made during the parish Definitive Map Review and not in response to any specific action taken by a landowner to obstruct or prevent access to it from a particular date. There is no evidence of any actions by a landowner having called into question use of the route at a specific time for consideration under statute law. Therefore, the date of the application (June 2022) is to be used as the date of calling into question for the purposes of determining statutory dedication. The relevant period will be June 2002 to June 2022.

1.7.2 The available user evidence comfortably covers the relevant period, with just over a quarter of users having used the route for the full 20 years and use going back as far as 1980. 26 user evidence forms would appear sufficient to reflect the public at large in a rural location that is approximately a mile away from the nearest settlement of any size – Newton Poppleford.

1.7.3 The user evidence forms unanimously support use as of right. None of the forms mention anything to suggest any force, secrecy or permission was involved. None mention any signs, obstructions or actions taken by a landowner to indicate that the route was not public. Several users report meeting landowners without being challenged on their use.

1.7.4 Only one of the three affected landowners responded to consultation. Though Heath Land and Property Ltd have only owned the land since September 2020 they consider the application route to be a public footpath. Their evidence form does not contradict any of the user evidence.

1.7.5 The erection of the staggered barriers, possibly in 2021, and possibly (but by no means certainly) by the landowners, could be seen as a challenge to use of the route on horseback/bicycle/motorcycle. However, the barriers are not evidence of a challenge to use on foot, and if anything, are an indication that use on foot was actively tolerated.

1.7.6 As there is evidence of use by the public as of right and uninterrupted for more than 20 years, with no evidence to suggest a lack of intention to dedicate on the part of any landowner, it appears that the test for statutory dedication has been met.

1.7.7 Common Law

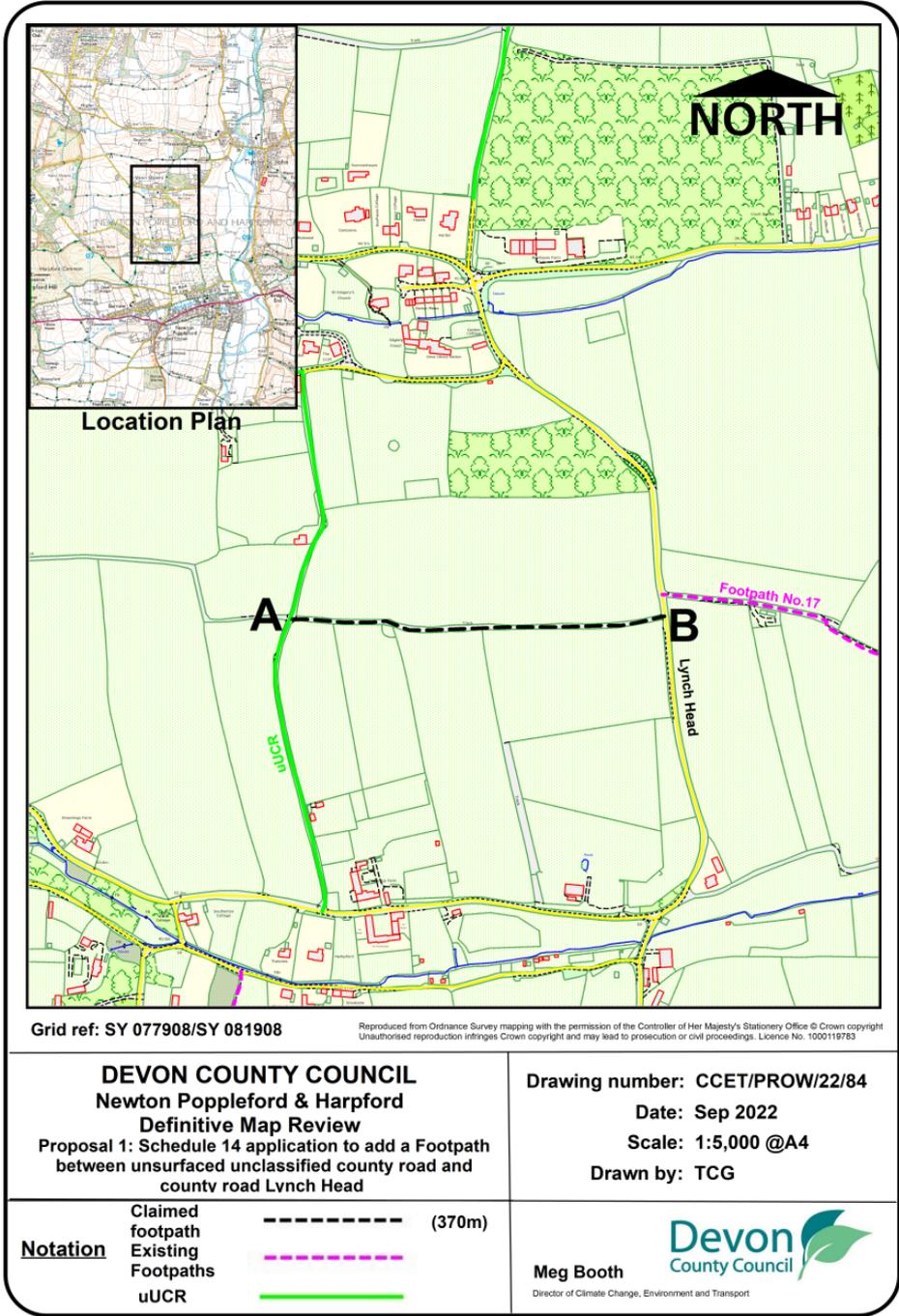
The only other basis for its possible consideration as a vehicular highway is if there was any other significant supporting evidence from which an earlier dedication of the route as such can be presumed or inferred under common law. At Common Law, evidence of dedication by the landowners can be

express or implied and an implication of dedication may be shown if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway of the higher status and that the public has accepted the dedication.

- 1.7.8 Historical mapping shows that the application route has physically existed since at least the early part of the 19th century. The OS Drawings and Tithe Map suggest that it may have formed part of the local road network during this period. However, there is no further documentary evidence to substantiate or elaborate on this. Historic highway maintenance records show that the application route was not considered then to be highway maintainable at public expense.
- 1.7.9 The fact that the application route was not proposed for inclusion during the original Definitive Map process, nor at subsequent uncompleted reviews, perhaps suggests that at this time it was not considered to be public by the Parish Council. However, there is no evidence to suggest why it was not included and it may simply have been overlooked. As such, the Definitive Map process and reviews provide little evidence either for or against public rights on the application route.
- 1.7.10 The available user evidence suggests that the public have used the route as of right since the 1980s. There is a general consensus among the users that the landowner would have been aware of this public use. There is no evidence, either provided by users or landowners, to suggest that any landowners ever took any actions to challenge public use on foot. As such, a case can be made for dedication having occurred under common law.

1.8 Conclusion

- 1.8.1 From this assessment of the evidence, in conjunction with other historical evidence and all evidence available, it is considered sufficient to support the claim that public rights subsist on the balance of probabilities. Accordingly, the recommendation is that an Order be made to record a Footpath in respect of this application.



Grid ref: SY 077908/SY 081908

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DEVON COUNTY COUNCIL
Newton Popleford & Harpford
Definitive Map Review
 Proposal 1: Schedule 14 application to add a Footpath
 between unsurfaced unclassified county road and
 county road Lynch Head

Drawing number: CCET/PROW/22/84
 Date: Sep 2022
 Scale: 1:5,000 @A4
 Drawn by: TCG

Notation		
Claimed footpath	---	(370m)
Existing Footpaths	- - -	
uUCR	—	

Meg Booth
 Director of Climate Change, Environment and Transport



**Proposal 2: Claimed footpath through Harpford Woods from Footpath No.11 to Footpath No.14, points C-D on proposal map CCET/PROW/22/85.
Grid Ref: SY 097902 – SY 100907**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 2.

2.1 Background

2.1.1 During preparations for the parish review, it was discovered that the Sid Vale Association had claimed this path in the uncompleted review in started in 1968. A letter from Dr Gibbens (Honorary Curator of Sidmouth Museum, which was run by the SVA) claims the path on the basis of 106 persons who can swear to use of the route as of right. Dr Gibbens again claims the path in 1977, stating that over 120 people claim use of the route. DCC replied to Dr Gibbens to confirm that the claim would be considered during the next review.

2.2 Description of the Route

2.2.1 The route starts at point C on plan CCET/PROW/22/85 on the existing Footpath No.11. It proceeds in a generally northerly direction up a very steep embankment, crossing the now disused railway line which is a permissive bridleway, continuing up another very steep embankment. This section is marked on a plan drawn by Dr Gibbens but is now barely discernible on the ground. The route then continues in a generally north-easterly direction along one of Clinton Devon Estates permissive paths, known as CD2 (and signed on the ground as the 'red route') and created in 2008, through Harpford Woods to join Footpath No. 14 at point D. Users access CD2 from the permissive bridleway on the former railway line and the steep sections referred to above appear to have fallen out of use many years ago.



Point C



Point D



Start of permissive path CD2

2.3 Documentary Evidence

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

Early historical maps at smaller scales do not show the claimed route. Footpath Nos. 11 and 14 appear to be shown to varying degrees of accuracy, though it is by no means certain. These maps generally do not show footpaths, only roads/tracks. There is nothing to suggest that the claimed route existed physically as a track or road during this period.

2.3.2 Ottery St Mary Tithe Map and Apportionment

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 titheable. 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'.

2.3.3 The claimed route is not shown on the Tithe Map for Harpford parish, produced in 1839. Footpath Nos. 11 and 14 are shown as Woods Lane and Knapp Lane respectively. Harpford Woods is shown as plot 404 and is listed in the apportionment as woodland owned by Lord Rolle.

2.3.4 Quarter Session deposited plan: Sidmouth Railway and Harbour 1861

The legal deposit of plans or public undertakings was first provided for in the 1793 Standing Orders of the House of Lords. The need for such deposits was

recognised following the canal mania of the early 1790s when it became evident that canal bills were being hurried through Parliament without proper scrutiny. Thereafter, promoters were required to submit to the Lords plans of works, books of reference, and other papers before a bill was brought up from the Commons to the Lords. In 1837 an Act compelled the local deposit of plans of public undertakings with the Clerk of the Peace, and therefore available to public inspection.

- 2.3.5 Any of this type of document may provide evidence on crossed or adjacent paths, roads or tracks and therefore could be relevant as evidence in relation to the existence of Highways, particularly if the scheme was constructed.
- 2.3.6 The railway proposed by this plan was never constructed, though a further plan deposited in 1870 was and the line followed the same route. Unfortunately, this plan, although held at the Devon Records Office, is unfit for production. The Sidmouth Railway and Harbour plan shows the proposed railway passing through Harpford Woods on an almost identical line to the disused railway now in existence. Plot 29 is identified in the book of reference as Harpford Woods and a crossing point is indicated on the plan where the claimed route crosses it. Harpford Woods is listed as being owned by Lord Rolle and consisting of '*woodland and occupation roads*'.
- 2.3.7 Ordnance Survey 25" to a mile 1st and 2nd edition maps
Surveyed in 1887, the 1st Edition map shows the claimed route as a track depicted by two parallel pecked lines. The 2nd Edition map, revised in 1903, shows the claimed route in the same manner, apart from the very southern end where the small S-bend is shown much straighter. On both editions there are several other tracks in Harpford Woods depicted in the same style.
- 2.3.8 Ordnance Survey 1" to the mile maps, 1892 -1972
The 1892 1" to the mile map partially shows the claimed route as track, though only the northern part. The southern section does not correspond with the application route. None of the subsequent 1" editions show the claimed route at all.
- 2.3.9 Bartholomew's Maps, 1902, 1923, 1943
The claimed route is not shown on any of the Bartholomew's editions. These commercial maps were produced for the benefit of '*tourists and cyclists*' and were widely available to the public. The exclusion of the route suggests that it was not considered suitable for cyclists during this period.
- 2.3.10 Highway maintenance records/Handover maps
Highway maintenance records from the 1920s and used through to the 1970s, often called handover maps, show that the claimed route was not at that time considered to be maintainable at public expense. The claimed route is left uncoloured and there are no notes or annotations relating to it. These maps did not show footpaths and bridleways, only public roads.

2.3.11 List of Streets

The claimed route is not recorded as highway maintainable at public expense on the List of Streets.

2.3.12 Harpford Parish Council minutes 1894-1934

Several entries relating to paths in Harpford Woods are found in parish council minutes in the 1920s and early 1930s. These include discussion over damage to 'Harpford Woods Lane' caused by timber contractors in 1926, though this appears to refer to the current Footpath No. 11, as well as reports of the obstruction and closure of paths by the Rolle Estate. The parish council investigated these issues, even forming a sub-committee in 1932. The minutes of 28 March 1932 state: '*Capt Last presented the report of the sub-committee on Rights of Way. He said they had met a delegation from the RDC (Rural District Council) who had agreed that all paths shown to them were rights of way.*' However, there is no clarification of exactly which paths are being discussed and nothing to indicate that the claimed route is included in these paths. Unfortunately, there appear to be no surviving minutes after 1934.

2.3.13 Exeter and Plymouth Gazette 1929-1934

The British Newspaper Archives hold a wealth of articles from the nineteenth century onwards that mention Harpford Woods. Almost all relate to reports of organised picnics, hunts, accidents, etc, and do not provide any information on rights of way. It is quite clear though that Harpford Woods were a popular beauty spot to which the public appear to have had access (though whether permissive or as of right, or simply using existing recorded PROW, it is impossible to tell). However, several Exeter and Plymouth Gazette reports relating to a rights of way dispute referred to in the Harpford Parish Council minutes do throw some light on this claim.

2.3.14 The first appearance relating to the dispute is in the 1 February 1929 edition. It reports a letter from the Rolle Estate agent that was read at a meeting of the Honiton Rural Council, disputing a claim made by the parish council concerning paths at Harpford Woods. The article does not identify particular paths. It is reported that the Rolle Estate was in settlement until 1907 and so there was no one able to dedicate. Their agent also pointed out that picnicking and other recreational activities undertaken by the public were not valid evidence of a right of way. The Rural Council decided to take no action. The article also states that: '*a member mentioned that notices had been posted forbidding the public to use a certain footpath*', though again there is nothing to tell which path this refers to.

2.3.15 In the edition on 16 June 1930, it is reported that the Sid Vale Association wrote to the Honiton Rural Council, expressing hope that they would erect noticeboards to show there was a right of way through Harpford Woods. A committee was formed to meet with the SVA to discuss.

2.3.16 The 11 August 1930 edition again reports on a Honiton Rural District Council meeting and a letter that was read from Mr Foster, agent to the Clinton Devon

Estates Company. His letter is reported as stating: *'I am unable to admit any footpath across any lands belonging to the Rolle Estate in your district at all, and notices will have to be posted up in due course.'* The letter also suggests that the estate would be willing to enter into an agreement regarding a path through Harpford Woods. The HRDC agreed to instruct their surveyor to erect notices (presumably signing the alleged right of way).

2.3.17 The edition published on 30 April 1931 reports on events at a meeting of the Sidmouth Urban District Council. Several members expressed displeasure with Lord Clinton for blocking paths on his land, with specific mention of a path in Harpford Woods having trees planted across it. The SUDC were attempting to obtain from local parish councils a list of paths they considered to be rights of way.

2.3.18 The 9 February 1934 edition reports on a meeting of Sidbury Parish Council. It was reported that a letter was read from Mr Jury of Harpford House, alleging that Lord Clinton had closed several paths in Harpford Woods, *'paths which he (Mr Jury) claimed had been enjoyed by visitors as well as residents for generations past.'* It ends by reporting that: *'A motion was unanimously passed urging Honiton Rural Council to do everything in its power to overrule any attempt at infringing public rights of way in its district.'*

2.3.19 Shortly afterwards, the edition of 23 February 1934 reports on a meeting of the St Thomas Rural District Council. Mr Jury's letter had been passed to them and the issue of rights of way being lost was discussed. It was suggested that the council write to local parish councils urging them to define and mark their rights of way.

2.3.20 Definitive Map process

The claimed route was not put forward for inclusion on the Definitive Map by Harpford Parish Council during the original Definitive Map process started in 1950.

2.3.21 Devon County Council reviews of 1970 and 1977

A letter dated 6 April 1970 was sent to DCC by Dr G.H. Gibbens on behalf of the Sid Vale Association (SVA), laying claim to an extension of Footpath 14. He states that the path *'starting from the Simouth-Ottery Road and running southwest, runs within the border of the ancient wood, over the old railway line, to meet the straight Bowd-Harpford path.'* He goes on to state: *'I allege that this path is public in the legal sense: and that I can produce one hundred and six people who can swear that they have walked it for over twenty years, as of right and without hindrance.'* He requests that it be added to the map and confirms that he has sent full details of the claim to the landowners, Clinton Devon Estates. DCC acknowledged this letter in writing.

2.3.22 On 15 October 1970 Newton Poppleford & Harpford Parish Council returned a map and inventory of changes that they wish to propose be made to the Definitive Map during the review. The claimed route is included on the map and inventory, coloured orange (to denote an addition) and marked B.

However, this review was abandoned, and the claim was not investigated further at this time.

- 2.3.23 Dr Gibbens wrote again to DCC on 29 March 1977, though this time on his own headed paper rather than that of the SVA. This letter provides some more background to the claimed route and includes a sketch of the layout of the southern end where it crosses the former railway. Again, DCC replied to say that the claim would be considered at the next Definitive Map Review.
- 2.3.24 Dr Gibbens wrote again to DCC in or around July 1979. He attached five user evidence forms to his letter (one of which was his own), along with a typed statement that appears to be his own. The user evidence forms and statement are discussed in the user evidence section below. Also attached is a copy of a booklet titled 'Strolls around Sidmouth using your car'.
- 2.3.25 The Strolls booklet supplied by Dr Gibbens was published by the SVA and is the fourth edition. It includes 16 walks and a map, of which walk number 5 is titled Harpford Woods, but is undated. The description is very clearly of the claimed route, though it is not described in great detail, nor is there any mention of the status of the route. The text does mention an area of open ground near the route where Keepers Cottage once stood. The text states: *'Keepers Cottage, recently demolished, stood here fifty years ago and teas were available, to be enjoyed at rustic tables beneath the beech trees with clucking hens ready to pounce on any dropped crumbs; a couple of primitive see-saws and swings provided amusement for children – the woods were very popular in those days.'* According to Dr Gibbens the Strolls booklet had sold at least 20,000 copies.
- 2.3.26 DCC replied to Dr Gibbens letter on 25 July 1979 acknowledging the forms and booklet and stating that they were *'all very acceptable evidence.'*
- 2.3.27 The typed statement attached to Dr Gibbens' letter provides some further information relevant to the claim. It is not signed or dated but appears to have been written by Dr Gibbens as a summary of his use of the route and the background history of the route.
- 2.3.28 The statement describes the route as starting from the Ottery-Sidmouth road and following the line of what is now Footpath No.14. The recently demolished Keepers Cottage (and the fact that Mrs Searle used to offer cream teas and ices) is mentioned, along with the fact that this section of the path was acknowledged as a public footpath. It then states how a stile has been erected (at point D) where the footpath is sent across fields towards Harpford (following Footpath No. 14). It is stated: *'We say that the path we know does not run into the field. It goes on along inside the edge of the wood, down a long slope, to a place where there was once a sign Danger: Beware of the Trains. There the path plunges steeply down to the old railway line, across it, and steeply down to join the main path from Bowd-Harpford.'*

2.3.29 It also provides some further information as to the infrastructure of the old railway line: *'There were always thick iron wires in concrete posts on each side of the line, to keep cattle off. But where the path ran, the middle two strands were curled back, and the Notices showed that the wires did not apply to walkers.'* The concrete posts are still in situ, though it is impossible confirm Dr Gibbens' statement as the wires are now loose and mostly not attached to the posts. There are two free standing concrete posts on either side of the line that are not part of the fence – these may have once held the notices referred to.



Remaining post and wire fence in background and possible sign post in foreground.

2.3.30 Dr Gibbens concludes the statement by confirming that he has walked the route for at least 20 years and has never been stopped by anybody.

2.3.31 Aerial photography

Aerial photographs from 1946 are not of good enough quality to distinguish if the claimed route is visible.

2.3.32 Photography from 1999-2000 clearly shows the majority of the claimed route, as well as other paths through the woodland. The claimed route is still clearly visible in 2006-7, but from here on it is increasingly difficult to distinguish as the woodland matures.

2.4 User Evidence

- 2.4.1 Dr Gibbens submitted five user evidence forms with his letter, all dated June 1979 and although signed by the users they were all taken by Dr Gibbens. He also completed a form himself. He states that he has used the route for 45 years, since 1934, at a frequency of '*at least 3 times*' a year. He states that the route has never been diverted during that time and that in 1969 a stile was erected on Footpath No. 14 (at point D on the proposal plan) and that there were two cast iron 'Beware of the Trains' signs where the route crossed the railway. He states that Clinton Estates are the landowner, and also that he has never been stopped or turned back or noticed and signs or obstruction suggesting the route was not public.
- 2.4.2 Olive Lightfoot states that she has regarded the route as public and used it for 60 years. She states that she used it '2 or 3' times a year going to the 'cottage in the woods' from Harpford. She also mentions the signs at the railway line and states that she has never been stopped or turned back. She states that five other members of her family could have made the statement.
- 2.4.3 Saloman (first name illegible) claims use of the route for 47 years at a frequency of 15 times a year. The Beware of Trains signs are mentioned, as well as a sign saying no dogs erected in 1937. They also state that they have never been stopped or turned back.
- 2.4.4 Margaret Woodley states that she had used the route for 25 years, between 1954 and 1979, at a frequency of 20 times per year, for the purpose of dog walking. She was never stopped or turned back and like the other users mentions the Beware of Trains signs.
- 2.4.5 Mrs Parkhouse states that she has used the route since 1933, a total of 46 years, at a frequency of 12 times per year. She also states that she has never been stopped or turned back and mentions the Beware of Trains signs.
- 2.4.6 One additional evidence form was received during consultation. Mr Chesters states that he has used the route since 1990, on a monthly basis, for walking and running. He has never sought or been asked for permission to use the route and states that it has always been well-walked and easily accessible. He mentions the signs relating to the permissive path but does not distinguish between use pre- or post- the permissive path.

2.5 Landowner and rebuttal evidence

- 2.5.1 The claimed route passes through woodland owned by Clinton Devon Estates. They were sent details of the consultation and returned a landowner

evidence form along with a copy of the permissive path agreement that includes the route. The land in question has been the subject of a Section 31(6) Highways Statement since August 2005.

- 2.5.2 The newspaper reports and council minutes (discussed above) suggest that the Rolle/Clinton Estate actively obstructed paths in Harpford Woods in the 1920s and 1930s, as well as stating at public meetings that they had not dedicated any rights of way or had any intention of doing so. However, newspaper reports also show that Harpford Woods was a popular recreational beauty spot that was being accessed by the public.

2.6 Discussion

2.6.1 Statute (Section 31 Highways Act 1980)

Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged. The Section 31(6) deposit made in August 2005 definitively called into question public use of the route. There is no other earlier evidence suggesting clear acts demonstrating a lack of intention to dedicate. Dr Gibbens' claim was not made public (until now) and the actions of the landowner that he alluded to cannot be corroborated. As such, the relevant period for dedication under statute is August 1985 – August 2005.

- 2.6.2 Although there is a small amount of user evidence submitted in 1979, only one form covers the relevant period and only partially. Without any direct evidence of use as of right for the full relevant period it is impossible to conclude that statutory dedication has occurred.

2.6.3 Common Law

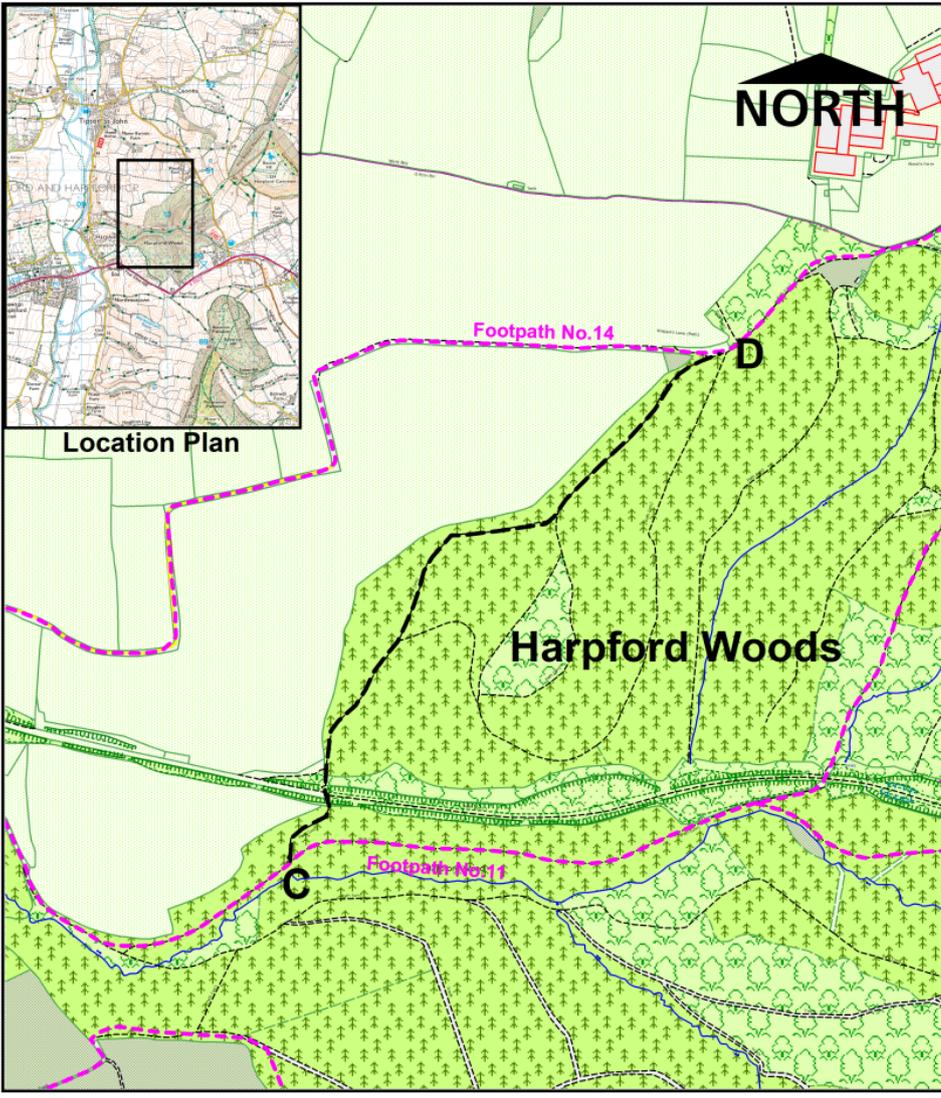
The only other basis for its possible consideration as highway is if there was any other significant supporting evidence from which an earlier dedication of the route as such can be presumed or inferred under common law. At Common Law, evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.

- 2.6.4 The claimed route first appears on historic mapping in the later nineteenth century, being clearly and accurately depicted on the OS 25" First Edition in 1889. It is consistently shown on mapping at larger scales from this date onwards, along with several other paths in Harpford Woods, some of which are recorded PROW and others that are private. The earlier railway plan deposited at Quarter Sessions in 1861 suggests that only 'occupation roads' existed in Harpford Woods at this time.

- 2.6.5 The dispute over the status of paths in Harpford Woods, that commenced in the 1920s and continued into the 1930s, does not provide any conclusive evidence relating to the claimed route. Council minutes and newspaper reports clearly show that members of the public and the Parish and Rural District Councils considered there to be public rights of way through Harpford Woods. However, it is not clear whether the claimed route was one of these or not, or whether this dispute relates to the currently recorded footpaths that were later added to the Definitive Map.
- 2.6.6 The fact that Harpford Parish Council did not propose the claimed route for inclusion on the Definitive Map in the 1950s, while doing so for Footpaths 11 and 14, suggests that they did not consider it to be a public footpath at that time. This process occurred only 16 years after the dispute over the Harpford Woods paths reported in 1934 and so it is reasonable to expect that the Parish Council members would have had sound knowledge of the paths in Harpford Woods and made their decision accordingly. The omission was not challenged at the time, adding some weight to their decision.
- 2.6.7 The claim made by Dr Gibbens of the Sid Vale Association at subsequent uncompleted reviews in the 1970s suggest that at this time the claimed route itself (rather than just Harpford Woods paths in general) was used by the public. Dr Gibbens' initial claim of being able to supply over 100 users appears overly optimistic considering he returned only 5 evidence forms in 1979 (one of which was his). These user statements were also all taken by Dr Gibbens himself (though counter-signed by the users) and appear rather formulaic. None of the users appear to have been stopped or challenged while using the claimed route and they had done so since the 1930s. All the users mention the Beware of Trains signs (perhaps prompted by Dr Gibbens), though these would be expected to be in place at the railway crossing if the route was permissive or private as well as if it were public.
- 2.6.8 There has clearly been historic public access through Harpford Woods, and a degree of public recreational use of the woods themselves. The two footpaths (Nos. 11 and 14) added to the Definitive Map during the original process are testament to this. While the claimed route may have been subject to use by the public, there is no direct evidence to confirm this until the subsequent reviews and the claim submitted by Dr Gibbens. The user evidence presented by Dr Gibbens with his claim is rather sparse and not of sufficient quantity or quality to support a claim under common law.
- 2.6.9 In addition to the lack of evidence of use, the council minutes and newspaper reports from the 1920s and 1930s all suggest that the Rolle/Clinton Estate blocked and obstructed paths in Harpford Woods and expressed a lack of intention to dedicate paths on Estate land. This raises the possibility that the claimed route was blocked or obstructed, which if it was the case would have demonstrated a lack of intention to dedicate.

2.7 Conclusion

- 2.7.1 In the absence of sufficient user evidence of public rights during a relevant period, their existence cannot be considered under Section 31 Highways Act 1980. Under Common Law, the documentary evidence shows that the route has physically existed at least since the late 19th century. There has certainly been a degree of public use of routes in and around Harpford Woods, including along the claimed route. However, no more conclusive evidence has been found to determine the exact nature, extent and location of such use. It is also clear that the landowner has taken various actions since the 1920s to suggest a lack of intention to dedicate, though again there is nothing to pin this down to the claimed route itself.
- 2.7.2 From this assessment of the evidence submitted with the claim, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights subsist on the balance of probabilities. It is therefore recommended that no Modification Order be made in respect of this proposal.



Location Plan

Grid ref: SY 097902/SY 100907

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DEVON COUNTY COUNCIL
Newton Poppleford & Harpford
Definitive Map Review
 Proposal 2: Claimed Footpath between Footpath No.11
 and Footpath No.14, Harpford Woods

Drawing number: CCET/PROW/22/85
 Date: Sep 2022
 Scale: 1:5,000 @A4
 Drawn by: TCG

Notation	Claimed footpath	-----	(675m)
	Existing Footpaths	-----	

Devon
 County Council 
Meg Booth
 Director of Climate Change, Environment and Transport