

CET/23/14

Public Rights of Way Committee
9 March 2023

Definitive Map Review 2020-2023 Parish of Washfield

Report of the Director of Climate Change, Environment and Transport

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

1) Recommendation

It is recommended that no Modification Order be made to modify the Definitive Map and Statement for the addition of a Bridleway A – B – C - D as shown on drawing number HIW/PROW/22/17a (Proposal 1).

2) Introduction

This report examines the route referred to as Proposal 1 arising out of the Definitive Map Review in the Parish of Washfield in Mid Devon. A report on Proposal 2 will be brought to the next committee meeting in July 2023.

3) Background

The original Parish of Washfield survey under s. 27 of the National Parks and Access to the Countryside Act, 1949 completed in the summer of 1950, initially proposed 10 routes for consideration as public rights of way. After review by Tiverton Rural District Council and Devon County Council and publication of the draft and provisional Definitive Map, 9 public footpaths and 1 bridleway were recorded on the conclusive Definitive Map for Washfield parish, part of Tiverton Rural District Council, published in June 1964.

No suggestions were made by the parish for changes to the public rights of way in the uncompleted Devon County reviews of 1968 and 1977. The Limited Special Review of Roads Used as Public Paths (RUPPS), also carried out in the 1970s, did not affect this parish.

The following Orders affecting the Definitive Map for Washfield have been made and confirmed since 1964:

Mid Devon District Council Footpath No. 1, Washfield Public Path Diversion Order 1978

Schedule 4 North Devon Link Road (Tiverton – Newton Side Roads) Order Footpaths No. 4 and No. 11, Washfield 1986

Devon County Council Footpath No. 8, Washfield Public Path Diversion Order 2006

Devon County Council Footpath No. 4, Washfield & Footpath No. 36, Tiverton Public Path Diversion Order 2007

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

The definitive map review was due to be opened at a public meeting to be held as part of a parish council meeting in April 2020. Unfortunately, this had to be postponed due to the Covid-19 outbreak and the review opening meeting was subsequently held in September 2021, prior to the parish council meeting, at Washfield Memorial Hall. The consultation map of the 2 proposals for change, for the addition of two bridleways, was published in May 2022.

4) Proposal

Please refer to the appendix to this report.

5) Consultations

General consultations have been carried out with the following results in respect of the suggestions considered in this report:

County Councillor Chesterton	-	no response
Mid Devon District Council	-	no response
Washfield Parish Council	-	response received
Stoodleigh Parish Council	-	response received
Country Landowners' Association	-	no response
National Farmers' Union	-	no response
British Horse Society (Devon)	-	no response
Ramblers' Association (Devon)	-	no response
Ramblers' Association (Tiverton)	-	no response
Trail Riders' Fellowship	-	no response
Cycling UK (Devon)	-	no response

6) Strategic Plan

The Council's Plan 2021 – 2025, <https://www.devon.gov.uk/strategic-plan/>, has, where appropriate under the provisions of the relevant legislation, been taken into account in the preparation of the report.

7) 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.

8) Legal Considerations

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

9) Risk Management Considerations

No risks have been identified.

10) Equality, Environmental Impact (including climate change) and Public Health Considerations

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

11) Conclusion

It is recommended that no Modification Orders be made in respect of Proposal 1.

12) Reasons for Recommendations

To undertake the County Council's statutory duty under the Wildlife & 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 Council area.

Meg Booth

Director of Climate Change, Environment and Transport

Electoral Division: Tiverton West

Local Government Act 1972: List of background papers

Background Paper DMR/Correspondence File

Date 2019 to date

File Reference DMR/Washfield

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Appendix To CET/23/14

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 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 – Addition of Public Bridleway

This is a proposal for the addition of a public bridleway from the county road at Parkhouse Water, south of Pond House at point A (GR SS9316 1802) and running generally north north eastwards along a defined track through the woodlands known as Barehills Wood and then through Lower Dryhill, northwards to the county road (the old Stoodleigh Drive) north of Dryhill Nap at point D (GR SS9350 1877).

Recommendation: It is recommended that no Order be made to modify the Definitive Map and Statement for the addition of a public bridleway A – B – C – D as shown on drawing number CCET/PROW/22/17a (Proposal 1).

1.1. Background

1.1.1 In January 2009 correspondence was received from Stoodleigh Parish Council wishing to claim a route from Parkhouse Water to Dryhill. The letter received advised that *'the footpath closure has caused considerable concern locally'* and *'this ancient bridleway has been used by the villagers of Stoodleigh for many years mainly for riding and walking'*. A number of user evidence forms were received in February 2009. In line with the County Council's policy, as it was understood that the route was not under immediate threat of loss, Stoodleigh Parish Council were advised that the claim would be kept on file and considered when the definite map review reached Washfield parish.

1.2 Description of the Route

1.2.1 The proposed bridleway starts at the county road at Parkhouse Water at point A (GR SS9316 1802) and proceeds northwards through the gateway to Pond House (that was until recently also the southern access route from Barehills Wood to the county road) past the dwelling and garage at Pond House and proceeds north eastwards along a defined track through the length of the woodlands. At the northern boundary of the woods, the way bears north north westwards and follows two alternative routes. In more recent years it appears that most of the users had proceeded through the holding of Lower Dryhill following the improved track along the western boundary to the county road (known as the old Stoodleigh Drive) at point D (GR SS9350 1877). Prior to the holding being established at Lower Dryhill in the 1990s, some users have advised that the route followed a parallel path on the other side of the hedge along the eastern boundary of the woodlands of Dryhill Nap to point D.

1.2.2 The total length of the proposed bridleway (points A – B – C – D) is approximately 915 metres with an improved hardened surface along the track past Pond House, through Barehills Woods and through Lower Dryhill. There are additional photographs of the route in the backing papers.



Point A looking northwards
Parkhouse Water/Pond House
June 2009
(Google Street maps)



Point D looking southwards at Lower
Dryhill/County Road
September 2020

1.3 Consultations

- 1.3.1 Washfield Parish Council initially responded to say that they would support the proposal subject to landowner agreement and evidence of historical use.
- 1.3.2 At the Washfield parish council meeting in November 2022 some of the landowners connected with the proposals attended and during the item for public participation disputed the claims made to the County Council. The Parish Council subsequently advised that as it is clear to their councillors that the landowners are not in agreement and as the historical evidence is contested; the Parish Council agreed that it does not support the proposal.
- 1.3.3 Stoodleigh Parish Council advised that at the Annual Stoodleigh Parish Meeting in June 2021 the topic of the bridleway through Barehills Wood was mentioned and concern expressed that this should be retained.
- 1.3.4 Other responses were received from members of the public to the consultation. A response in support of the proposal was received from Mr George who commented 'I wish to show my complete support for the proposal. It provides a valuable addition to the current, rather limited rights of access'.
- 1.3.5 Mrs Murray advised that they had recently moved close to the proposal and felt it was a beautiful walk but considered that access at the south end should be via the new forestry track and at the north end through the woodland to avoid walking through the properties at Pond House and Lower Dryhill.

- 1.3.6 Ms Douglas advised that it is a permissive footpath/concessionary path. She had walked the area for seven years. There is no public right of way shown on an Ordnance Survey map.

1.4 Documentary Evidence

1.4.1 Ordnance Survey and Other Maps

- 1.4.1.1 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.

- 1.4.1.2 OS 1 inch to a mile maps 1894, 1909 & 1933 Sheets 310 & 128 Tiverton
These three editions, printed after the new Stoodleigh Drive had been constructed, all show a defined track along the proposal route through Barehills Wood and Lower Dryhill to the private Drive. The track is shown by a double line partly pecked and partly with a solid line on the west side.

- 1.4.1.3 OS 1st Edition 25" to a mile 1880-1890
This edition shows a clear track on the line of the proposal route through the two Ordnance numbers 804 and 806 in the now called Barehills Wood between points A and C. A defined headland track is shown along the west side of the field Ordnance number 828 between points C and D. The new Stoodleigh Drive (county road at point D) had been constructed by this time. There is a dashed line across the track at point A, believed to indicate a change in surface and two solid lines across the track on the boundaries of Ordnance 828 believed to indicate gates. No buildings at Lower Dryhill or Pond House are shown. About 35 metres north of point A, a 'P' is annotated on the map in the south western corner of Ordnance 804 adjacent to the track, to show the location of the pump for water referred to in the estate sale of 1926 for the benefit of lot 34 Bungalow Cottage at Park House Water and Parkhouse Water Cottage that was not part of the estate.

- 1.4.1.4 OS 2nd Edition 25" to a mile 1904-1906
On the 2nd edition map, a defined track is again shown along the proposal route through Ordnance numbers 804, 806 and 828. There is also a dashed line at point A and solid lines at points C and D on the field boundaries. A small building is shown in the southwestern corner of 828. The 'P' for the pump is also shown in 804.

- 1.4.1.5 OS 1 inch to a mile maps of 1946, 1960 & 1966 Sheet 164 Minehead
On the 1946 edition, the proposal route is shown as a double pecked line track. On the 1960 map, the route is shown by a dashed line along the route. On the 1960 key, a dashed line refers to 'Footpaths and Tracks', although this edition was printed before the public rights of way included on the Definitive Map were shown on the OS maps. On the 1966 edition, the proposal route is again shown as an uncoloured double lined track with a mainly pecked line and part solid on the western side. The map shows a solid line across the route at point A but no line at point D. The key refers to these tracks as 'Minor Roads in towns, Drives and Unmetalled Roads'. Recorded Public Rights of Way are now shown on these maps by red dotted,

dashed or dashed blocks to represent footpaths, bridleways or roads used as public paths.

1.4.1.6 OS 1:25,000 maps of Great Britain – Sheet 21/60 SS92 1950

The 1:25,000 'Provisional edition' or 'First Series', was Ordnance Survey's first civilian map series at this medium scale, the forerunner of the modern *Explorer* and *Outdoor Leisure* maps and published in limited colour between 1937-1961. By 1956 it covered 80% of Great Britain, everywhere apart from the Scottish Highlands and Islands. The series is useful for showing rural and urban areas in much greater detail than the standard one inch to the mile (1:63,360) maps.

1.4.1.7 Minor roads, lanes and private drives/access lanes are all shown as white uncoloured roads/lanes described as 'Other Roads, Poor, or unmetalled'. The conclusive Definitive Map had not been published when this map was published. Some routes are shown as pecked lines labelled F.P. and B.R. and some as two narrow solid lines. The map contains the standard OS disclaimer 'The representation of any other roads, tracks or paths is no evidence of the existence of a right of way'.

1.4.1.8 The sheet published in 1950 shows a defined track between points A and D, partly fenced in Barehills Wood. No field boundaries are shown on this map but the track between points C and D is within the open field that is now Lower Dryhill rather than through the woods of Dryhill Nap. There is only one line across the track at point D at junction with the county road.

1.4.1.9 OS Post War Mapping A Edition 2500 1969

On this map, a defined track along the proposal route is shown through Barehills Wood in ordnance 3200 and 4114 between points A and C. At point A, a solid line is shown at the junction with the county road, possibly indicating a gate. Pond House appears to have been constructed but is not named. A defined track along the headland is also shown between points C and D within ordnance number 5970, with two buildings shown within the compartment. Two solid lines are also shown at points C and D on the boundary of this compartment, possibly indicating gates.

1.4.2 **Tithe Maps and Apportionments**

1.4.2.1 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*'.

1.4.2.2 Washfield Tithe Map & Apportionment 1840

On the Washfield Tithe Map, a clear faintly colour washed track, with partly pecked and partly solid lines on the western side, is shown along the current

alignment of the proposal route through Barehills Wood, between points A and C. A clearly defined lane with solid lines and colour washed is shown between points C and D along the boundary between Dryhill Knap and Lower Dryhill. This has a solid line across both ends which may indicate gates. The tithe map was prepared before the Stoodleigh Drive road had been constructed and a headland track continued from point D to Dryhill Farm. This headland track and the proposal route appearing to be the main access to Dryhill Farm from the road shown at Park House Water (point A).

- 1.4.2.3 The Tithe apportionment gives Barehills Wood, which includes the section of the route between points A to C, plot number 771 and the lane between points C and D plot number 764a. Number 771 was owned and occupied by William Talley and named 'Beer Hills Copse and Road therein' state of cultivation 'Coppice'. Plot number 764a was owned and occupied by Thomas Daniel, the estate is listed as Part of Dryhill, description 'Roadway' and state of cultivation 'Road'.

1.4.3 Finance Act Plans and Field Books 1910

- 1.4.3.1 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.
- 1.4.3.2 The allowance given was often on the basis of a figure such as £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 often used in Finance Act valuations.
- 1.4.3.3 The southern end of the proposal route points A – B – C is within part of hereditament number 3050, crossing ordnance numbers 804 and 806. The section C to D within Lower Dryhill lies within part of hereditament number 3035 and ordnance number 828. The alternative route through Dryhill Nap would also lie in hereditament 3050. The new Stoodleigh Drive (now the county road at point D) is hereditament 4 within Stoodleigh Parish.
- 1.4.3.4 The field books for Washfield parish are included within Tiverton parish. Hereditament 3050 is described as woods of 241 acres owned and occupied by Mr Money Coutts and described as comprising the woods in hand on the Stoodleigh Court Estate found in Washfield parish. No reference or allowance is made for a public right of way or any other right of way, easement or restrictions.

1.4.3.5 Hereditament 3035 is Dry Hill farm of 148 acres was occupied by Mr Henson and owned by Mr Coutts. The valuation includes an allowance for the sporting rights but there is no reference to, or allowance given for, a public right of way on the holding. The building in the southwest corner of ordnance 828 is described as a linhay.

1.4.4 Stoodleigh Estate Auction Poster 1894 & Catalogue 1926

1.4.4.1 A poster advertised the complete Stoodleigh Court Estate of around 4,460 acres for sale by auction in London on 23rd October 1894.

1.4.4.2 In May 1926 a catalogue was produced for the sale of the house and part of the original estate including six farms and cottages totalling 1,247 acres in 51 lots. The catalogue plan showed that proposal 1 was included in Lot 35 Barehills Wood (points A to C) and Lot 32 Dryhill Farm (points C to D). Dryhill Farm included Dryhill Nap and Lower Dryhill in 1926. The particulars for Lot 32 Dryhill Farm advise that there is a right of way for Lots 20 (Stoodleigh Barton) and 30 (Easterlands) across ordnance 804, 806, 807 (Barehills Wood), east side of 829 (Dryhill Nap) and 828 (now house and buildings of Lower Dryhill) to the Drive (now the county road at point D). Also, a right of way across the east side of ordnance 829 (Dryhill Nap) for Lot 35 (Barehills Wood). Dryhill Farm has a right of way across ordnance numbers 804,806 & 807 (Barehills Wood) to Parkhouse Water Lane (point A).

1.4.4.3 The details for Easterlands Lot 30 state that there is a right of way reserved for the owner of this lot across Barehills Wood and along the east side of Dryhill Knapp, to the private drive (now the county road) adjoining New Close Copse. The details for Barehills Wood Lot 35 (noted SOLD in the catalogue) state right of way for purchaser of Lot 20 (Stoodleigh Barton) and Lot 32 (Dryhill) across compartment numbers 804, 806 and 807. It also stated that owner of Barehills Wood has a right of way across east side of ordnance 829 (Dryhill Nap) to the private drive.

1.4.4.4 The details for Lot 20 Stoodleigh Barton state that the lot has a right of way across Barehills Wood, along east side of Dryhill Knap to Drive.

1.4.4.5 The catalogue refers to the private drive from New Lodge to Stoodleigh Court sold with reservation of rights (except for Motor Lorries, Farm Carts, Implements, Timber and Cattle) in favour of all lots in sale (excepting 40-46). It was also stated that it was contemplated that the private drive would be taken over by the Rural District Council as correspondence was pending. The private drive was subsequently taken over as county road by Tiverton Rural District Council at the end of May 1926.

1.4.5 Parish Council Meeting Minutes

1.4.5.1 The minutes for Washfield Parish Council from 1894 to 1974 were available in the Southwest Heritage Centre. The minutes from 2018 to date are available on the parish council website. The minutes between 1974 to 2018 were not found.

1.4.5.2 Within the period between 1894 to 1974 there are several references to public footpaths and public rights of way that correspond to public footpaths that are now recorded on the Definitive Map. The parish council spent money on these routes but there are no entries that refer to the proposal route. The parish council set up a Footpath and Bridges sub-committee meeting in 1896 but only two meetings were recorded in the minute book of July 1896 and October 1896.

1.4.6 British Newspaper Archive (online)

1.4.6.1 The British Newspaper Archive holds digitised copies of many of the newspapers published. In the Exeter Flying Post and Exeter & Plymouth Gazette newspapers there are references to timber being for sale at Beer Hills Wood (name on the Finance Act map of 1848) in 1806, 1851 and 1856.

1.4.6.2 There are also advertisements and reports of the auction/sale of the Stoodleigh Court Estate from 1895 to 1926. In December 1895 the estate of 4,460 acres was sold to Mr Dunning and then sold to Mr Money-Coutts in March 1908. In November 1908 a report stated that a lot of money had been spent on the estate by Mr Money-Coutts.

1.4.6.3 In September 1925 the estate was offered for sale but did not meet the reserve. In January 1926 4,000 acres of the estate was sold but did not include the mansion and other property including Dryhill Farm. The mansion and 30 acres were offered for sale in May 1926 and in June 1926 offers were invited for the remaining unsold portion of the estate.

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

1.4.7.1 The parish survey for paths in the northern part of Washfield parish was completed in the Autumn of 1950. The survey forms advised that the persons carrying out the survey was the parish council. The forms were signed by Thomas Norman as clerk and Frank Voysey as Chairman. Nine footpaths and one bridleway were claimed but no path or route was claimed along the proposal route.

1.4.8 Devon County Council Reviews of 1968, 1971 & 1977

1.4.8.1 No proposals for any changes to the public rights of way in Washfield parish were made by Washfield Parish Council in the uncompleted county review of 1968. The Limited Special Review of 1971 concerned the reclassification of RUPPS only and did not affect Washfield Parish.

1.4.8.2 In the 1977 county review, the parish council responded to say that the existing recorded public rights of way should be on the definitive map. No other changes or requests for additions were made.

1.4.9 Aerial Photography RAF 1946-1949, 1999-2000, 2006-2007 & 2015-2017

1.4.9.1 On the 1946-1949 aerial photography, a clear and defined track from points A to C can be seen through Barehills Wood as the tree cover is not dense. A

building is located just north of point A, east of the track but this is not in the same location as the present Pond House. Between point C and D, a clear and defined track is also shown, in a similar style to the county road it connects to; along the west side of the field, that is now Lower Dryhill.

1.4.9.2 In the 1999-2000 aerial photography, most of the track through the woods, except for the driveway at Pond House (now constructed), is obscured by the tree cover. A clear track is shown between points C and D at Lower Dryhill, where buildings are also now seen.

1.4.9.3 On the 2006-2007 and 2015 aerial photography, the surface of the track cannot be seen from just north of point A to point D due to tree cover, although the location of the track can be determined within Barehills Wood.

1.4.9.4 On the most recent Google imagery available on their web site in 2023, the track within the woods can be seen in places within Barehills Wood. The newly constructed access into Barehills Wood to the west of Pond House can also be seen.

1.4.10 Land Registry

1.4.10.1 The land crossed by the claimed route is registered at HM Land Registry. At the time when the claim for the bridleway was made by Stoodleigh Parish Council in 2009, the section of track between points A to C within Barehills Wood was in the ownership of Mr Unwin of Easterlands House under DN697000. None of the track north of the county road at point A was within the ownership of Pond House but was included within the above title for Barehills Wood as a whole.

1.4.10.2 In 2018, Barehills Wood was sold to Woodlands UK Ltd, who then obtained planning permission for the construction of a culvert over the stream west of point B and therefore for the creation of a new access track using the existing gateway west of point A. Having created the new access to the woodlands, the original section of access track between points A and just south of point B was sold to Mr Drown, the then current owner of Pond House in 2019 with a new registered title DN720836. Pond House DN691843 together with the newly purchased section of the original woodland access track was then sold to new owners Mr & Mrs Duckett in 2021.

1.4.10.3 The section of the claimed route through Lower Dryhill, an established separate holding under DN221831, has been in the ownership of Mr & Mrs Coles since 1993. The title includes a conveyance dated 6th July 1926 that refers to Rights reserved to Vendor and describes 'a full and free right and liberty for Vendor and respective owners of hereditaments described in 4th and 5th Schedules or any part of such hereditaments respectively and all persons authorised by such owners respectively all times thereafter and for all purposes (in common with all other persons having like right) to pass and repass with or without horses cattle or other animals carts carriages motor cars motor lorries or other vehicles of any description laden or unladen over closure of land nod 828 on said plan but only subsisting wheel track indicated by dotted lines between points marked A & B on said plan for purpose of going to and from Private Drive indicated on said plan'. A note says that the

right of way indicated by dotted lines referred to is the track adjoining the western boundary of ordnance Nos 5970 shown on the filed plan. The points A and B referred to in the conveyance are reproduced on the plan to a later conveyance dated 28th August 1984 referred to in the property register. This refers to the section of the proposal route between points C and D.

1.5 User Evidence

- 1.5.1 A total of twenty user evidence forms completed in 2008/2009 were received via Stoodleigh Parish Council in 2009 in support of their bridleway claim. Sadly by 2022 six of these users had passed away including Mrs Byles. The remaining users, where possible, were contacted about the review consultation and given the opportunity to update their earlier user evidence. A chart of user evidence for these users and subsequent user evidence is included below.
- 1.5.2 Mrs B Byles of Stoodleigh, who was the Stoodleigh Parish Council Chairman in 2009, completed a form in respect of her own use of proposal 1. She describes the route as from Parkhouse Water to Dryhill and the map attached indicates her route between points C and D through Lower Dryhill. She used the route between 1970 and the present time (2008) on foot, weekly in the early years and latterly two to three times a year. She refers to a sign seen eighteen months to two years ago saying 'Private Property No Public Right of Way' and a second sign recently. She never obtained permission to use the route and was never stopped or turned back. She believed the father of the current owner knew the route was used by the public and commented 'In the memory of the oldest members of the village the path has always been used, both for people and horses'.
- 1.5.3 Mr T Drew of Stoodleigh refers to a route from Parkhouse Water to Dry Hill (Drive) that he used from 1953 to 2001 on foot and horseback for pleasure purposes. He mentioned the sign at the Park House Water end eighteen months to two years ago. He had never obtained permission to use the route and was never stopped or turned back. He thought the owner was aware the public was using the path and no objections made. He commented 'This is part of a very old route from Washfield to Bampton. Elderly villagers remember clearly its use for a long time'.
- 1.5.4 Mrs J Knowles of Stoodleigh Barton refers to use by her daughter between 1976 and 1982 of the proposal route on horseback. She refers to the gate near Stoodleigh Drive (county road) and had been aware of notices a few months ago saying 'Private Property' and since Barehills Wood was inherited by Mr J Unwin. The Stoodleigh Estate sale catalogue of 1926 refers to a right of way through Barehills Wood along the proposal route and through *the east side of 829 (Dryhill Nap) and through 828 (house and buildings at Lower Dryhill)* for the occupants of Stoodleigh Barton. Using the route with a private right of way would not be use as of right (without permission, without secrecy and without force).
- 1.5.5 Mrs J Knowles of Stoodleigh Barton completed a second form in September 2021 describing her own use of a track between Pond House and Lower Dryhill on foot monthly and on horseback weekly from 2011 to until when it

was padlocked. With reference to having permission she said 'when owned by Mr & Mrs Unwin, the forestry workers have given me verbal permission when logging not being carried out'. She also mentions the private right granted in the estate catalogue of 1926. The map attached shows gates marked north of Pond House and near point C at the northern part of Barehills Wood believed erected around 2018 and initially unlocked. There is now a sign on the road at Pond House end (point A).

- 1.5.6 Mr C Summers of Stoodleigh describes the route used by him on foot from 1989 to 2008 two to three times a year from Parkhouse Water/Pond House to Stoodleigh Drive (Lower Dryhill). He advises that he had obtained permission from Mr Fred Unwin in 1989-1990. He comments 'I have used the route on a number of occasions during the past 20-25 years – it seems to be part of the customary routes within the parish'.
- 1.5.7 Mrs B Wotton of Stoodleigh indicates occasionally using a route from Stoodleigh Drive near Shillhay & Lower Dryhill to Parkhouse Water on foot between 1957 to 2008. She had seen notices only recently, had not ever obtained permission to use the route or ever been stopped or turned back. She had commented 'For the fifty plus years that I have lived in Stoodleigh this path has been used for pleasure by family and friends. My children also used it for the 'Cross Country Runs' from the village school'.
- 1.5.8 Mr D Wotton of Stoodleigh advises using a route occasionally from 1957/8 to 2008 on foot from Parkhouse Water to Stoodleigh Drive near Shillhay and Lower Dryhill. He refers to notices only recently and obtaining permission from the residents at Parkhouse Water during past years but was not told the route was not public.
- 1.5.9 Mrs I Wotton of Stoodleigh described a route from Valleys Meet to a mid-way point on Stoodleigh Drive. She had used the route on horseback and on foot from 1970 to 2009 thirty times a year. There were notices very recently saying 'Private Property'. She had not obtained permission to use the route or been stopped or turned back when using the route. Under additional information she commented 'I have ridden this route for many years and more recently with my daughter. Many of my friends use this route as well and have done so for at least 40-50 years'.
- 1.5.10 Mrs Wotton completed a second user form in April 2020 describing use on horseback from 1975 to 2020, thirty to forty times a year. She mentions 'very recently three padlocked gates from March 2020'. Under other obstructions she describes 'banks put in by heavy machinery to make access/exit more difficult'.
- 1.5.11 Mrs Wotton completed a third user form in February 2022. This referred to use from 1971 to present day until recently obstructed by padlocked gates. On the question asking about having a private right she said 'Not on paper but Mr Henson, previous owner of Dryhill (now deceased) gave me permission'.
- 1.5.12 Miss E Wotton of Stoodleigh advises using a route from Valley's Meet to a mid-way point on Stoodleigh Drive between 1990 and 2009 about thirty plus

times a year on horseback. She refers a recent sign saying Private Property. She had not obtained permission or ever been stopped or turned back when using the route. Miss Wotton completed a second form in her married name in June 2022. This refers to access later than 2009 and only stopped using the route when it became obstructed by locked gates at Pond House and Lower Dryhill. Under the question on permission, she refers to 'only at Lower Dryhill on the lane past the bungalow'. She had been told by the owner of Easterlands that the route was not public when hacking that way.

- 1.5.13 Mrs P Fish of Stoodleigh described a route from Parkhouse Water to Dryhill that she had used 5-10 times a year on foot and horseback. Approximately two years ago there was a notice 'Private Property – No Public Right of Way' and also 'Please walk horses across the gravel'. She had not obtained permission to use the route, ever been stopped or turned back, or told the way was not public'.
- 1.5.14 Mr R Fish of Stoodleigh had used the route between 1981 to 2002 on horseback for pleasure purposes approximately 6 times a year. He refers to seeing the sign 'Private No Public Right of Way' summer 2008. He had not obtained permission to use the route, ever been stopped or turned back, or told the way was not public'. The one plan attached and signed by Mr & Mrs Fish shows a route through Dryhill Nap rather than Lower Dryhill.
- 1.5.15 Mrs C Rawle, now of Somerset, describes the route she used as shown on the attached plan which shows the route along the track through Barehills Wood and then the track through Lower Dryhill. She had used the route many times a year between 1976 and 1981 on horseback for pleasure purposes. There were gates but never locked and no notices that she could remember at that time. She had not obtained permission to use the route, ever been stopped or turned back or told the route was not public.
- 1.5.16 Mrs Rawle completed a second form in September 2021. This advised that when using the route from 1976 she was residing at Stoodleigh Barton. Occupants of Stoodleigh Barton had a right of way granted to them in the 1926 Stoodleigh Estate sale catalogue. The map attached to the 2021 form shows a route through Dryhill Nap at the north end.
- 1.5.17 Mrs A Rigg of Stoodleigh described the route used from Parkhouse Water to Dryhill that she had used on average once a year on foot from 1987 to 2007. There is no mention of gates or notices. She had not obtained permission to use the route, ever been stopped or turned back, or told the route was not public. She believed the owner was aware the public was using the path because it had been used frequently. Under additional information she commented 'Pleasant and obvious path to walk'.
- 1.5.18 Mr B Rigg user evidence was the same route and frequency of use as his wife. Under additional information he commented 'A pleasant path for walking by Stoodleigh residents as part of a circular route'.
- 1.5.19 Mrs A Roberts of Washfield described the route from Parkhouse Water/Valleys Meet to Stoodleigh Drive/Shilhay with the plan showing a line through Dryhill Nap rather than Lower Dryhill. She had used the route about

once a year on foot, off and on since 1976 (to 2009). A gate was located at about point C but no notices had been seen. She had not obtained permission to use the route, ever been stopped or turned back or told the route was not public. She believed the owner was aware the public was using the path as they could see them. Mrs Roberts confirmed in 2022 that she had not used the route since 2009.

- 1.5.20 Mr T Roberts of Washfield user evidence was for the route as described by Mrs Roberts although the map attached indicated a route through Lower Dryhill between points C and D. He had used the route about once a year on foot, off and on since 1976 (to 2009). A gate was located at about point C but no notices had been seen. He had not obtained permission to use the route, ever been stopped or turned back, or told the route was not public. He believed the owner was aware the public was using the path as they could see them. Mr Roberts confirmed in 2022 that he had not used the route since 2009.
- 1.5.21 Mrs J Russell of EX16 9 described a route from Parkhouse Water to Dry Hill that she has used from 2001 to 2008 approximately 15 times a year on foot and on horseback for pleasure. She thought the path was public as historically a connecting track between two highways. She refers to a notice about two years ago saying 'Private Property – No Public Right of Way'. She had not obtained permission to use the route, or ever been stopped or turned back. On additional information she noted 'On moving to this area in 2000, I was soon aware that riders and walkers regularly used this track'.
- 1.5.22 Mrs Russell completed a second form in July 2022. This referred to use on foot once a year and on horseback weekly between 2001 and 2019. The map attached shows three gates, one about 100 metres past Pond House and two near Lower Dryhill and she has been prevented from using the route as gates were padlocked.
- 1.5.23 Mrs Summers of EX16 9 described a route from Parkhouse Water/Pond House to Lower Dryhill that she had used two to four times a year on foot for pleasure for the last twenty five years (1987-2009). She refers to current notice 'Private – No Public Right of Way', exact date of erection unknown. She had permission to use the route from Fred Unwin for last twenty five years. She had not been stopped or turned back or told it was not public.
- 1.5.24 Mrs Summers had completed a further form in July 2022 which confirmed she had continued to use the route on foot every few months from 1987 until 2015, after when she was unable to continuing walking. She refers to a 'Private' notice seen 1988 onwards but no gates until recently. The padlocked gate happened after she had left Stoodleigh parish.
- 1.5.25 Mrs G Talbot of Stoodleigh described the path as from Parkhouse Water to Stoodleigh Drive that she had used on foot for occasional use from 1983 to 2009. She believed the path to be public as she had been shown the path by other local people and there was no indication that it was private. A gate was located between the woods and the small holding, and she has been advised that signs have been put up recently. She had not obtained permission to use the route or ever been stopped or turned back.

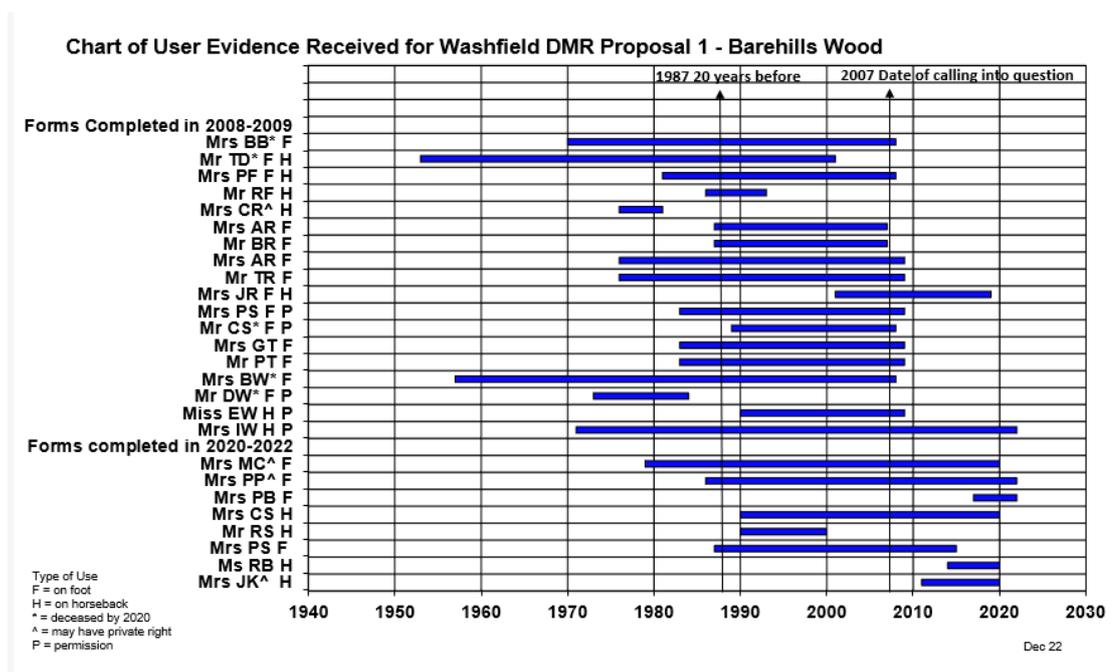
- 1.5.26 Mr P Talbot of Stoodleigh described the path from Parkhouse Water to Stoodleigh Drive and had used the route on foot very infrequently from 1983 to 2009 for pleasure. There was a gate towards the northern end not locked and he understands that signs have been erected recently. He had not obtained permission to use the route, or ever been stopped or turned back.
- 1.5.27 Four user evidence forms (including two referred to above) were handed in at the review opening meeting in September 2021 and other user evidence forms have been received since the parish review started.
- 1.5.28 Ms Brown of Stoodleigh completed her form in September 2021 and described a route as a car width track running through the woods from Washfield to Lower Dryhill that she had used on horseback weekly from 2014 to 2020. With reference to gates on the route she commented 'You could ride around the gate at the Lower Dryhill end and open the one at Pond House end. These were only put in during 2019 and locked in the last year. No access for the last 18 months'. She had not obtained permission to use the route, been stopped or turned back when using the route or told it was not public.
- 1.5.29 Mrs Cuningham of Stoodleigh completed her form in September 2020 and describes a route from Parkhouse Water to Stoodleigh Drive that she had used from 1979 to 2020 twelve to fifteen times a year on foot for pleasure purposes. She refers to the path been diverted in 2019 but does not give any details. She had not obtained permission to use the route, been stopped or turned back when using the route, or told it was not public. Under the question about a private right, she commented 'Told when purchased Parkhouse Water in 1975 that we had a right of way up to Stoodleigh Drive and onto Dryhill'. Mrs Cunningham's map shows the route going through Dryhill Knap between points C and D.
- 1.5.30 Mrs Pennington of Stoodleigh completed her form in April 2020 and described a route from Parkhouse Water to Stoodleigh Drive that she had used on foot numerous times a year for pleasure from 1986 to 2020. With reference to any path diversion she commented 'A new track has recently been used (1990). The original path was along the hedge of Dry Hill Nap'. She also refers to recently a private sign and gates. On the question about a private right she advised 'From the owners of Dry Hill I have used it for 30 years'. Under additional information she commented 'The path from Parkhouse Water to Dry Hill has been in use for more than 100 years and is used by locals (and postman before vans were used) both on foot and horseback. The latest purchaser has erected locked gates at each end'. Additional information is included on a separate page including 'In fact the track at the Stoodleigh Drive end, passes along Dryhill Nap on the west side of the hedgerow which divides it from the property known as Lower Dryhill. Many people have used the farm track on the east side of the hedge but that is recently, since the property was built in the 1980s'.
- 1.5.31 Mrs Pennington completed another form in June 2022 which described use from 1986 to the present day 2022, bypassing the recently installed gates as she could walk around. On this form she did not refer to having a private

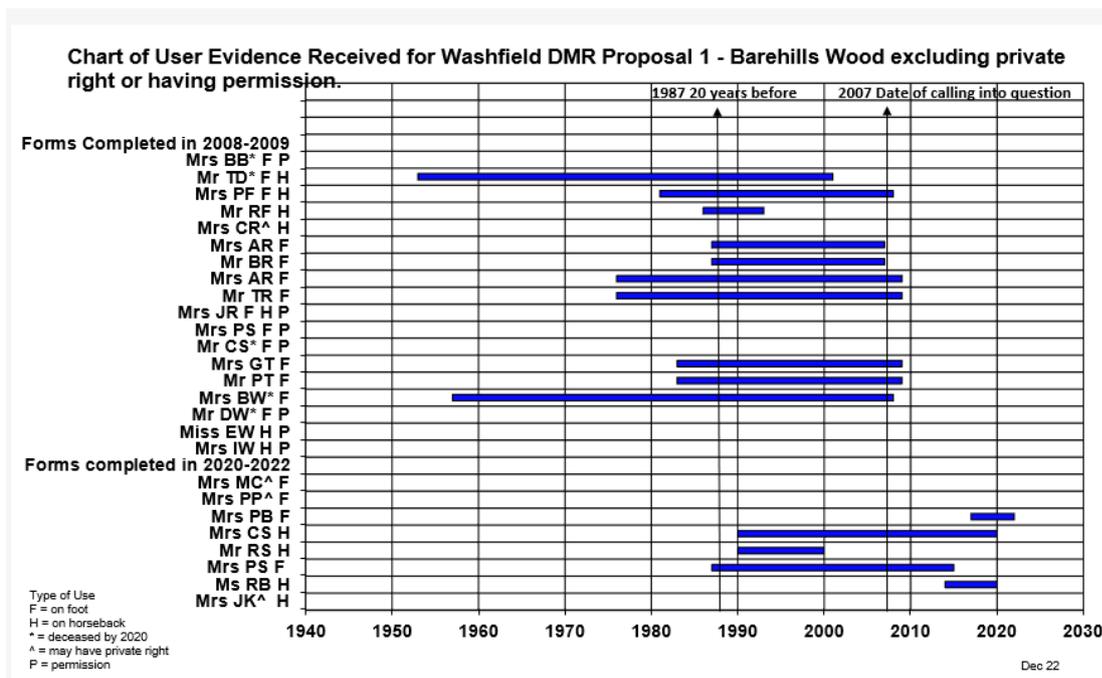
right, having permission, been stopped or turned back, or told it was not public.

1.5.32 Mrs Bere of Cove completed a user evidence form in July 2022 and described a route from Parkhouse Water to Stoodleigh Drive that she had used on foot two to three times a week between 2017 and 2022 for pleasure. Under the question about always following the same route she commented 'no longer walk through Pond House drive but along new track put in'. This alternative route is shown on her map. She refers to gates but not signs (gate marked on her map at point A). She had not obtained permission to use the route, been stopped or turned back when using the route or told it was not public. Under additional information is commented 'This route has obviously been used for years, probably horse and cart years ago. It is a good track with stone base and wide enough for vehicles so anyone riding or walking can do no damage to woodlands'.

1.5.33 Mrs Scholes of Washfield completed a user form in July 2022 and described a route from Parkhouse Water to Dryhill that she had used 1990 to 2000 every few months on horseback for pleasure. She refers to the gate at Parkhouse Water end which did not prevent use of the route. She had not obtained permission to use the route, been stopped or turned back when using the route or told it was not public. She is aware of others prevented from using the route recently by relocation and locking of gate.

1.5.34 Mr Scholes of Washfield completed a user evidence form in July 2022. He described a route from Parkhouse Water to Dryhill that he had used from 1990 to 2000 on horseback every few months for pleasure. He refers to a gate at the Parkhouse Water end as indicated on his map. He had not obtained permission to use the route, been stopped or turned back when using the route or told it was not public. He was aware of recent relocation and locking of gate.





1.6 Landowner Evidence

- 1.6.1 When the review consultation was published in 2022, the landowners/occupiers who owned land crossed by or adjacent to the proposed bridleway, including the 2009 landowners, were contacted and advised of the proposal. They were invited to submit their comments and information by way of a completed landowner evidence form or otherwise.
- 1.6.2 In 2009, following receipt of the claim from Stoodleigh Parish Council, a landowner evidence form was sent to the two landowners concerned at that time, Mr J Unwin and Mr & Mrs Coles.
- 1.6.3 Mr & Mrs Coles returned a completed landowner form in September 2009 and advised no right of way at all. They had owned the property sixteen years (since 1993) and before they came it was a field and stock proofed with gates. They did not believe the way to be public and had not seen or been aware of members of the public using the way. They had required people to ask permission before using the way and had stopped or turned back those not having asked to go through. At various times since 1993 they had told people it was not public. The way was sometimes obstructed with machinery loading/unloading and with cattle and sheep.
- 1.6.4 In July 2019 Mrs Coles emailed the County Council with regard to their track into Lower Dryhill. She was under the impression that the matter was closed. Their title deeds give a right of way along the track to the owners of Barehills Wood. They have never stopped people riding or walking but they have always asked for permission and they have granted it. In September 2019 Mrs Coles telephoned the Council and advised that they had recently confronted people coming through with vehicles (understood to be following the sale of Barehills Wood to Woodland Investments Ltd and the advertising

of plots of woodland for sale) and they were going to put up a new gate. In the last two months a horse rider had ridden through and a couple on foot not known to her who were challenged. She would only see about one person a month.

- 1.6.5 In March 2020, a further email was forwarded enclosing a list of people (about twenty individuals/couples) they have given permission to ride or walk through Lower Dryhill to get to Barehills Wood, plus the three local hunts who would ring just before the day they were hunting. Some of the names given are those of people who completed user evidence forms but with twelve additional names that are not believed to have completed a user evidence form. Mrs Coles also advised that the lane is not a dedicated right of way but a private drive to Lower Dryhill. It ends at the gate to Barehills Wood which has been locked for some time now and no one has complained or been through. They only ever gave permission to people to walk or ride through. It has never been a public right of way and they wish it to remain as a permission only walk/ride. During the end of 2014/early 2015 timber was being taken out and the woodland was closed to walkers and riders at that time.
- 1.6.6 A second evidence form was completed in October 2022 which generally referred to the attached additional information enclosed. They purchased Lower Dryhill in April 1993. A search carried out prior to purchase showed no public rights of way. Originally there was a sign on a gate at point D that said 'Lower Dryhill Private'. The gate was then demolished by a lorry turning, replaced once but not the second time it happened. They have seen people using the route very infrequently. They have stopped or turned back people using the route and told them it was not public. They have supplied a list of the people given permission to use the route points C to D. Mr Coles was given permission to use the track through Barehills Wood (points A to C) with his own horses by Mr J Unwin from approximately 2010. After residing at Lower Dryhill for several years, local people would ask if they could ride or walk through from point C to D as an easier route to the muddy wood. The Stoodleigh Walking Group asked permission for occasional walks. The metal gate now at point C is locked by the woodland owners. They have marked the original route through the wood (Dryhill Knap) on a plan.
- 1.6.7 Mr Unwin completed a landowner evidence form in June 2009. The family had owned Barehills Wood since 1963 and did not believe the way to be public. He had seen or been aware of members of the public using the way once or twice a year and stated that 'we have always requested people ask permission'. They have stopped or turned back people over the years when they have come across strangers and strangers were informed that it was not public. Old gates, often left open, were erected 1963 with signs stating 'Easterlands Private'. Gates at top and bottom were locked. Gates removed for logging and new sign erected 'Private No Public Right of Way' in 1998. On the map attached to the form a gate is shown at points A and C with the sign placed on the track shortly pass Pond House. Mr Unwin also forwarded a letter from his solicitor confirming they had checked with Mid Devon District Council and Devon County Council with the reply that there is no footpath, bridleway, restricted bye-way or bye-way on that track. In his covering letter Mr Unwin advised that although people had stated they had been using the

path through the woods for many years, that may be so, but they have either been trespassing or have been using the path with permission over the last sixty years that we have owned Easterlands and the adjoining land.

- 1.6.8 Mr Unwin completed a further landowner form in June 2022. This confirmed that he and his father owned the woodland (points A to C) between 1963 and 2018. The route has never been anything but private property. People seen using the route are a small number of Stoodleigh residents who have asked permission over the last 55 years. Various people on horseback or motorbikes have been stopped, turned back, or told it was not public maybe once or twice a year. People (forgotten names) have asked for and been given verbal permission to use the claimed route and also the Tiverton Stag Hounds. The route was difficult when timber felling in operation. Wooden field gates were at the top and bottom of Barehills track, not generally locked. Notices 'Private Property No Public Right of Way' were erected late 1960s/1970s at points A and C and replaced regularly over the last 55 years.
- 1.6.9 Mr & Mrs Drown purchased Pond House in 1982 and sold the property in December 2020. Mr Drown did not complete a landowner evidence form but telephoned to provide some information on the route's history. Pond House was initially constructed for a relative of Mr Fred or Bill Unwin (believed prior to 1974 as reference to deed of gift in property title). The Private sign was not put up due to the felling but following Mrs R Unwin been told by somebody she saw using the route that they had permission when they had not. This was about halfway through their time at Pond House. They could see people if they passed but did not see people. Prior to Mr Drown purchasing part of the original woodland access track, between points A and B in November 2019, the proposal route did not pass across any land registered to Pond House.
- 1.6.10 Ms E Fitzherbert had owned the woodland known as Dryhill Nap since about 2006. They were not contacted in 2009. The right goes alongside their land on the track between D and C. They don't know if the claimed route is a public right of way. They have seen people walking along the track between D – C so it may be a public footpath. They have seen only walkers now and then, but they are not there all the time. They have never stopped or turned back anyone, told them it was not public or being asked for or given permission to use the claimed route. Under other information is commented 'I think it is very likely that there is a right of way on foot only between the points C and D but do not think it is a bridleway for horses, bikes etc'.
- 1.6.11 By the time the review consultation was published, Barehills Wood and then subsequently several of the plots of woodland within Barehills Wood had been sold. The track, the subject of the proposal route, was not included within any of the plots for sale but retained within the main title for Barehills Wood. Access to the woods from the county road to the south, including access to the plots now separately owned, is now via the new access track constructed by Woodlands UK Ltd, west of Pond House and not via the track by Pond House. The new woodland owners were advised of the consultation and some responded as detailed below.

- 1.6.12 Woodlands Investment Management Ltd who had purchased Barehills Wood and the land included within the registered title DN69700 from Mr Unwin in April 2018. A landowner evidence form was completed on their behalf by Mr S Brooking in August 2022. The woods still owned by them included the claimed route between just south of point B and point C, an area of woodland to the east of the southern half of the track and an area to the west of the northern half together with the new access track. Land registry records indicate that up to nine separate woodland plots with new title numbers have now been registered within the original area of Barehills Wood. Four of these plots adjoin the proposal route.
- 1.6.13 Mr Brooking advised that the previous owner stated that there has never been a public right of way. They have never allowed people to use the track without permission. He has not seen people using the claimed route, has not stopped or turned anybody back, or told them it was not public. Verbal permission has been given to two local hunts in 2018 and 2019 and to Mr Coles. An existing gate at point C, entrance to Lower Dryhill has been locked during his ownership. A new gate was installed near point C at the northern end of the woods. This gate was locked to keep the site secure. No one had got in touch about this gate despite the large 'Woodlands For Sale' sign there with website details. There have been signs of trespass to the south of this gate, over an historic boundary bank. Another gate was erected north of Pond House (point B), also locked. There was also a gate at Pond House entrance (point A). There was a sign at the bottom of the track (point A) since before we owned it believed to say 'No Public Right of Way'; the sign was there when he viewed the woodland in 2018.
- 1.6.14 Mr & Mrs Duckett purchased Pond House and the southern end of the proposal route and original forestry track between points A and just south of point B in December 2020, and moved permanently to the property in July 2022. They do not think the claimed route is a public right of way. They have not seen anyone using the proposal route, although they have seen two couples using the new access track west of point A and told them the wood was not public. They have not been asked for permission to use the route but they understood people had asked previous owners and been given permission. They erected a new gate with a notice 'Private No Right of Way' at the entrance to Pond House (point A) which was kept locked unless somebody was at the property between April 2021 to July 2022. In November 2022, they found a rotten wooden post in the undergrowth to the west of the route, north of point A, with a sign attached saying 'Private No Public Right of Way'. This sign would appear to be the sign erected in about 2007 and referred to in the 2009 user evidence forms. Mr & Mrs Duckett have submitted additional statements and documentation to support the route not being a public right of way which is included in the backing papers. Much of the evidence they have included is discussed elsewhere in the report.
- 1.6.15 Mr Beaney is a joint owner of one of the plots of woodland within Barehills Wood that they purchased in September 2019. The north western corner of their plot adjoins the proposal route between points B and C. They do not think the route is public as it was purchased to make a suitable access route for the woodland owners only. They have not seen anyone using the route. There are locked gates at points B and C. Under additional information he

advises that they are concerned about the public using the other main track that goes south from point C through their woods as this would make a circular route for riders, walkers, and cyclists. This would disturb wildlife and damage the track surface that the woodland owners are jointly responsible to maintain.

1.6.16 Mr McFarling purchased a plot of woodland to the west of the proposal route north of point B in July 2022. They do not think the claimed route is a public right of way and have not seen people using the route. They are concerned about strangers and that people will stray off the track into the woods and damage the biodiversity.

1.6.17 E Novoa purchased their plot of woodland which adjoins the proposal track along the plot's western boundary in November 2022. No public rights of way were shown on their searches before purchase. They have not seen or stopped anyone using the route. The new owners at Pond House have put a notice on their gate stating that it is not a public right of way.

1.6.18 No other responses were received from the other landowners/occupiers adjoining the route.

1.7 Additional Rebuttal Evidence

1.7.1 Mr O'Connor who owns one of the recently purchased plots of woodland not adjoining the proposal route, forwarded an email to say he had challenged some local people walking in his woodland and told them it was not public.

1.8 Discussion

Statute (Section 31 Highways Act 1980)

1.8.1 Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.

1.8.2 The erection of the sign just north of point A, on the track leading into Barehills wood, as referred to in the user evidence forms of 2009 appears to have been why the claim was made by Stoodleigh Parish Council in 2009. The erection of the sign saying 'Private - Not a Public Right of Way' would be considered 'a calling into question'. It would therefore be necessary to consider the user evidence that dates from prior to 2007 (as some users refer to seeing a sign eighteen months earlier) to consider whether there is sufficient evidence of use by the public to raise a presumption of dedication under the Highways Act 1980 prior to the calling into question. The relevant twenty year period would therefore be 1987 to 2007.

1.8.3 Mr and Mrs Coles advised that they had always given permission to people who were then using or wished to use the route through Lower Dryhill, rather than the woodland route through Dryhill Knap, after they had bought the land

in the 1990s. The giving of permission would not be sufficiently overt, as it would not have been brought to the attention of all users, for this to also be considered a calling into question.

- 1.8.4 The user forms received in 2009 appear to be mainly using the route through Lower Dryhill rather than the woodland route. These users, together with those forms subsequently received show use of the proposal route by sixteen to nineteen users in the relevant twenty year period.
- 1.8.5 For the user evidence to be valid it is also necessary that the members of the public were using the route 'as of right'; that is without force, without permission and without secrecy. A number of the users refer to have been given permission to use the route by Mr Unwin senior or Mr & Mrs Coles. It is also recorded in the 1926 Stoodleigh Estate Catalogue that the occupants of Dryhill Farm and Stoodleigh Barton had a right of way to use the proposal route. Those users with a private right or deemed to have been given permission would be using the route 'by right', as they would be deemed to have had permission and not 'as of right' as a member of the public.
- 1.8.6 After removing those users deemed to have had permission, or a private right by way of where they were living at the time of their use, the number of users recorded within the twenty year period reduces to between ten and twelve, with eight users belonging to four families. This number could be considered just sufficient to show a representative use by the public during the twenty year period for a public right of way to be deemed to be dedicated. However, the deemed dedication will fail if it can be shown that during that period there was sufficient evidence by the landowners of any intention not to dedicate a public right of way.
- 1.8.7 The two relevant landowners in 2009 both advised that at that time that the route was not a public right of way. Mr and Mrs Coles have advised that use of the route through Lower Dryhill was with their permission and people started asking to use the hardened track along the west side boundary once they were living there. They had always considered that use was permissive and were aware of the people that they had given permission to and able to name them. This would be considered sufficient evidence of a lack of intention to dedicate for the section of route through Lower Dryhill, points C to D, which was the route claimed by Stoodleigh Parish Council.
- 1.8.8 There would not be any evidence of the landowners' lack of intention to dedicate for the alternative route between points C and D through Dryhill Nap. There is however, insufficient user evidence for this alternative route, as most of the 2009 users show the route used through Lower Dryhill on their plan.
- 1.8.9 Mr J Unwin, the second landowner during the period 1987 to 2007, also advised that the route was not public and that people using the route either had permission from him or his now deceased father or were trespassing. Mr Unwin did not provide any details of the people he had given verbal permission to. He advised that signs had been erected at points A and C from the late 1960s/1970s and replaced as necessary. There has not been any evidence of any signs at the northern end of the route at points C or D

since Mr & Mrs Coles' 'Private' sign on a wooden gate for a limited time after their purchase of Lower Dryhill. Mr Drown, the owner of Pond House during the twenty year period, advised that there was a sign put up near the south end of the route about late 1990s early 2000s. One user who had permission to use the route from Mr F Unwin refers to seeing a 'Private' notice 1988 onwards.

1.8.10 Users walking or riding the route from Lower Dryhill to Pond House may not have noticed the signs at the southern end. However, the fact that signs are understood to have been in situ during the relevant twenty year period on Mr Unwin's land, this would also be considered sufficient to show a lack of intention to dedicate a public right of way.

Common Law

1.8.11 A claim for the addition of a right of way may also be considered under common law. At Common Law, evidence of dedication by the landowners can be express or implied. An implication of dedication may be shown at common law if there is evidence of documentary or user evidence and usually a combination of both; from which it may be inferred that a landowner has dedicated a public right of way and that the public has accepted the dedication.

1.8.12 Maps show the physical existence and location of a track or path but do not usually give any indication as to the status of the route shown. The tithe map confirms that the proposal route, including a defined track along the west side of what is now Lower Dryhill, has physically existed from the early 1800s to the present day. The Tithe apportionment described both sections of the route as 'Road' which indicated that it was used as such. This was before construction of the new Drive and the route appeared to be the main access to and from Dryhill Farm, although cross field tracks continue north eastwards annotated 'to Stoodleigh' on the parish boundary.

1.8.13 On the 1910 Finance Act plans, the proposal route is wholly included in two hereditaments. No allowance was made for any public rights of way or users. It is possible that, as the majority of the land crossed was woodland, rather than enclosed fields, no allowance was claimed, as the presence of a public way through woodland would not have been considered to reduce the sale/rental value of woodland in that era.

1.8.14 The 1926 Stoodleigh Estate catalogue, in granting a right of way to occupiers of certain properties along the proposal route, indicates that the route was not considered a public right of way at that time. Had it been considered so it would not have been necessary to grant the private right of way.

1.8.15 The limited Washfield Parish Council minutes do not include any references to the proposal but do confirm that the parish council did take an interest in public rights of way in the parish.

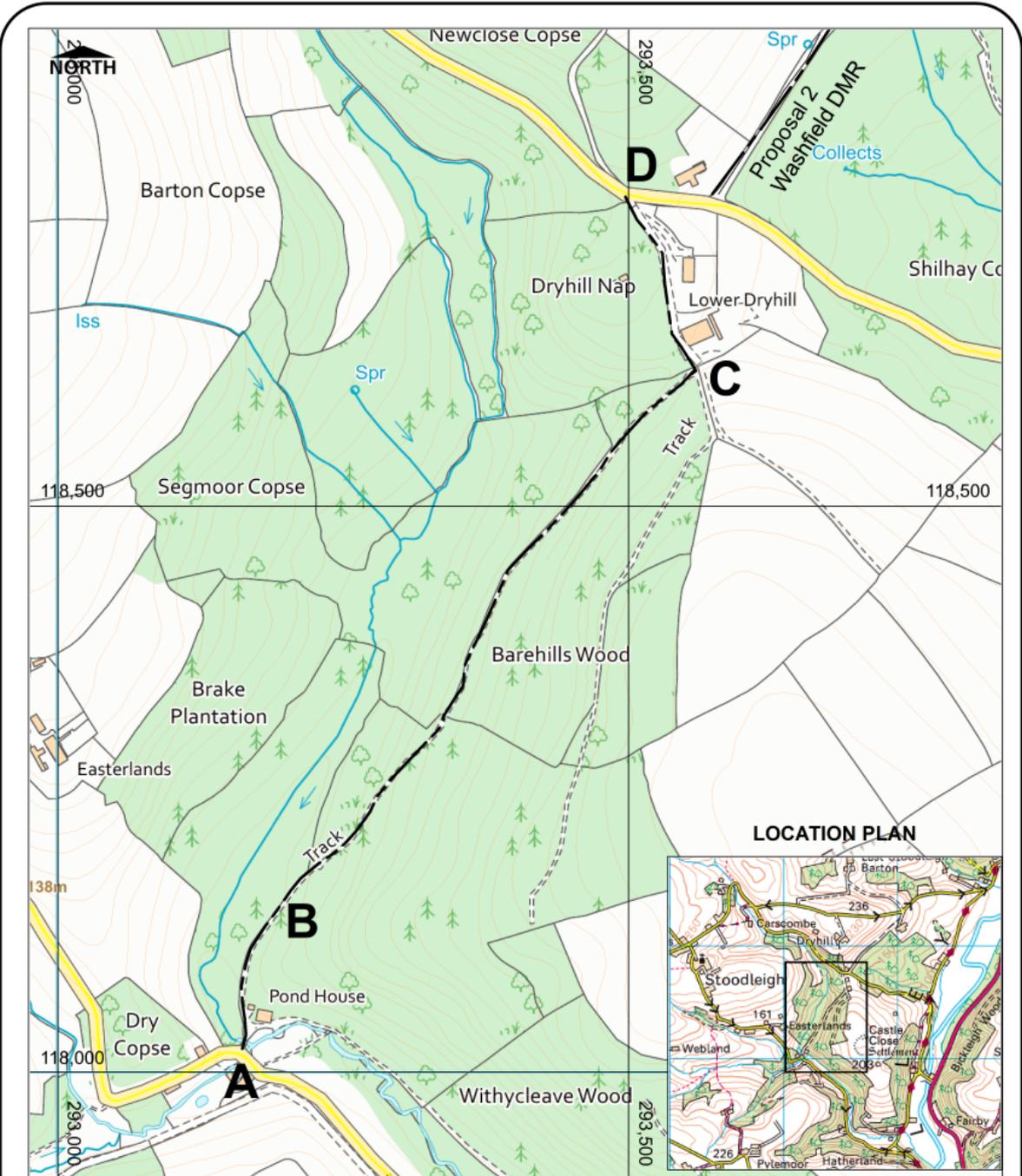
1.8.16 The route has been available to use since the 1800s and with no locked gates. Until very recently there was no obstructions to prevent public use. It appears that Mr F Unwin was perhaps more relaxed about people using the

track and would give permission when asked. Signs at the southern end were erected by Mr J Unwin and seen by users in about 2007 and there is some evidence that a southern sign was erected prior to this date. Mr J Unwin advised that they always requested people to ask permission. The current woodland owners and new Pond House owners have advised that they do not consider the proposal route to be a public right of way.

- 1.8.17 At the northern end, two routes were available either along the east side of Dryhill Nap or the west side of Lower Dryhill, where the Tithe map indicates there is a long-standing track. Users appear to have preferred the drier surface of the Lower Dryhill track. Mr & Mrs Coles purchased Lower Dryhill in 1993 and started residing at the property shortly after. They had been aware of local people using the track and did not object to this use but always considered this use was permissive only. They were able to provide a list of the names of people whom they considered to have been given permission. They wish it to remain as a permission only walk/ride.
- 1.8.18 The user evidence submitted by those users, where use was without permission, and in the absence of reference to seeing any notices, would be use as of right. However, the quantity and frequency of use of this user evidence is considered insufficient by itself, without supporting documentary evidence, to show that a public right of way could be implied to subsist at common law.
- 1.8.19 The available documentary evidence in support of a public right of way is very limited. The total available evidence, together with the rebuttal evidence from the past and present landowners is not considered sufficient to show that a public right of way can be reasonably alleged to subsist at common law.

1.9 Conclusion

- 1.9.1 With evidence of a lack of intention to dedicate by the two landowners during the relevant twenty year period, the existence of a public right of way cannot be considered under section 31 of the Highways Act 1980. Under common law, there is no substantial documentary evidence to support implied dedication by a landowner in the past, and the user evidence available is also considered insufficient by itself to show that a public right of way can be implied to have been dedicated.
- 1.9.2 It is therefore recommended that no Modification Order be made to modify the Definitive Map and Statement in respect of the route considered under Proposal 1.



Map Ref SS 9318 500m grid

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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - WASHFIELD
CONSULTATION ON PROPOSAL NO 1 -
ADDITION OF A PUBLIC BRIDLEWAY FROM
POND HOUSE THROUGH BAREHILLS
WOOD TO DRYHILL**

drawing number HIW/PROW/22/17a
date APR 22/DEC 22
scale 1:5,000 at A4
drawn by TW

Notation

Addition of Public Bridleway A - B - C - D - - - - -
(915 metres approx)

Meg Booth

CHIEF OFFICER HIGHWAYS,
INFRASTRUCTURE DEVELOPMENT AND WASTE

