

HIW/17/7

Public Rights of Way Committee
2 March 2017

**Definitive Map Review 2016 - 2017
Parish of Clyst St George**

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

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

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

- (i) adding a footpath between points A – B – C as shown on drawing number HIW/PROW/17/06; and
- (ii) adding a footpath between points D – E as shown on drawing number HIW/PROW/17/07.

1. Introduction

This report examines two proposals arising from the Definitive Map Review in the Parish of Clyst St George, in East Devon District.

2. Background

The original survey, under s. 27 of the National Parks and Access to the Countryside Act 1949, revealed four footpaths in Clyst St George, which were recorded on the Definitive Map and Statement, St Thomas Rural District with the relevant date of 1 June 1957.

The review of the Definitive Map, under s. 33 of the 1949 Act, which commenced in the 1970s, but was never completed, produced no proposals for change to the map in the parishes.

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

The following orders have been made and confirmed:

St Thomas Rural District Council Footpath No. 4 Extinguishment Order 1967
St Thomas Rural District Council Footpath No. 2, Extinguishment Order 1972
County of Devon Stopping Up Order Footpath No. 1, Clyst St George Side Roads Order 1984
County of Devon Stopping Up Order Footpath No. 1a, Clyst St George Side Roads Order 1984
East Devon Parishes Order 1987 Footpath No. 7 transferred from Woodbury Parish
Devon County Council (Footpath No. 6, Clyst St George) Definitive Map Modification Order 1994

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

The current Review began in January 2016 with a public meeting held in the Clyst St George Village hall, which was well attended by members of the public and the parish councillors.

3. Proposals

Please refer to the appendix to this report.

4. Consultations

Public consultations for Clyst St George Parish were carried out during October, November and December 2016. The review was advertised around the parish with notices placed in local notice boards, in the village hall and in the local press.

The responses were as follows:

County Councillor P Bowden	-	no comment
East Devon District Council	-	no comment
Bishops Clyst Parish Council	-	no comment
British Horse Society	-	no comment
Byways and Bridleways Trust	-	no comment
Country Land & Business Association	-	no comment
Open Spaces Society	-	no comment
Ramblers' Association	-	supports proposals
Trail Riders' Fellowship	-	no comment

5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

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

9. Conclusion

It is recommended that Modification Orders be made in respect of Proposals 1 and 2.

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

10. Reasons for Recommendations

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

David Whitton
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Broadclyst & Whimble

Local Government Act 1972: List of Background Papers

Contact for enquiries: Alison Smith

Room No: ABG Lucombe House, County Hall, Topsham Road, Exeter

Tel No: (01392) 383370

Background Paper	Date	File Ref.
Correspondence files	2016 - date	AS/DMR/Clyst St George

as020217pra
sc/cr/DMR Clyst St George
04 200217

A. Basis of Claim

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

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

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

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

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

1. **Proposal 1: Proposed addition of a footpath from Pytte Lane, along the edge of a field and the cricket ground to Woodbury Road, as shown between points A – B – C on drawing number HIW/PROW/17/06.**

Recommendation: That a Modification Order be made to add a footpath to the Definitive Map and Statement in respect of Proposal 1.

1.1 Background

- 1.1.1 A public meeting was held in Clyst St Mary School Hall in January 2016 with local people plus the Parish Councillors and the local County Councillor.
- 1.1.2 The proposal was put forward by members of the public as the result of the Definitive Map Review meeting.

1.2 Description of the Route

- 1.2.1 Proposal 1 commences at point A on the plan on Pytte Lane. It runs westward through an old, tall, solid wooden gate, through a narrow strip of woodland and over a stile along the edge of one field. It continues over a stile, originally through an old gate, at point B, around the cricket pavilion and continuing along the hedge line to the gap at point C.
- 1.2.2 Currently the gate at point A is locked and new field fences have been installed on the field side of point A and at point B with no stiles. The cricket ground access at C is still available.

1.3 Documentary Evidence

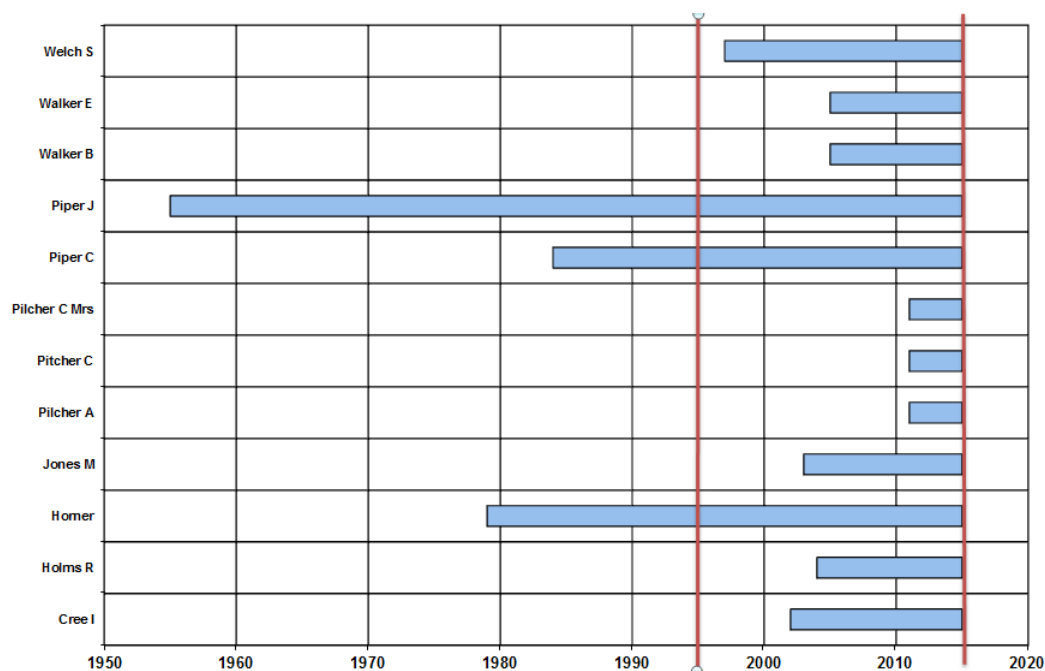
- 1.3.1 Ordnance Survey Mapping
1880s 1st Edition OS map 25" to 1 mile shows the area as fields. No paths are marked.
- 1.3.2 There is no historical documentary evidence for this route.

1.4 User Evidence

- 1.4.1 Thirteen users have completed user evidence forms giving evidence of use since 1946 through to the Summer 2015, when the Gate at point A was bolted, locked and the latch removed. The evidence forms are included in full in the backing papers and the evidence is summarised as follows:
- 1.4.2 Mr Creer has walked the route since 2002 – in the last 4 years 20-30 times a year, less frequently before that. He states that there has always been a gate, then a stile over the ancient metal fence near the access point at A. Recently it has been blocked by a new barbed wire fence and the gate at point A bolted shut. There were no notices and no obstruction until recently.
- 1.4.3 Mr Holmes has used the route between 2004 and 2015, during the last four years every other day and previously once a week, for pleasure on foot. He has seen many people using it and has been told by an old resident that it has been used for at least 50 years. He says that the gate was bolted and locked for the first time in summer 2015, and that there have been no signs or notices. When he moved to the village he found the route well-worn as it was regularly walked by many people.
- 1.4.4 Mrs Horner has walked the route from 1979, when she moved into the village, to 2015 at least once a week. She states that the gate was never locked during that time. There were stiles on the route just inside the gate at point A and at point B; this one replaced an old gate. She comments that she and many others have walked this path for the last 36 years and it has always been a public right of way, she has never been turned away. Until summer 2015 it was freely available.
- 1.4.5 Mr Jones has walked the path twice a day from 2003 to 2015 as part of his regular circular walk dog walk with his dog on a lead. He says that there was a worn track and purpose-built stiles, that the gate at point A has never been locked and that there was a stile just after the gate.
- 1.4.6 Mr C Pilcher has walked the route six to ten times a year since he arrived in the village in 2011 until it was closed in summer 2015, when the gate was permanently

locked and the stile was replaced with a fence. Previously it had been well walked and worn path with stiles in place.

- 1.4.7 Mr Pilcher has used the route since 2011 three to four times a year when walking around the village with his parents.
- 1.4.8 Mrs Pilcher has used the path from 2011 and 2015 approximately once a month on a circular walk around the village. Other residents had pointed this walk out to them when they arrived in the village. She says the gate was locked and fence put in place of the stile in 2015.
- 1.4.9 Mrs Piper has walked the route since 1984 about five times a year until it was locked. She says it had been public for many years and she has not been aware of any problems about using this path.
- 1.4.10 Mr Piper has used the route since 1955 to 2015, 10 times a year on foot. He thought it was a public path because it had always been used. There was a stile after the gate near point A to get out of the narrow wood lane that belonged to Pytte.
- 1.4.11 Mr Walker has used the route on foot for the last 10 years about 5 times a year. There was a gate and a stile, the gate was never locked.
- 1.4.12 Mrs Walker has walked the path up to five times a year during the last ten years 2005 to 2015. The gate has now been locked.
- 1.4.13 Mr Welch has walked the route daily (when he was not working away) since 1997 as a walk and a dog walk. There were stiles and an occasional electric fence if there were sheep in the field. He says the gate was locked and fences erected in early summer 2015 and the stiles removed.
- 1.4.14 Mrs Williams has used the route since 1946 being brought up in the cottages near the gate at point A; she first used it with her grandma and has used the footpath ever since, numerous times. There was a stile just after the gate at point A and another gate at point B that long since rotted away and was replaced with a stile. At point C a stile was replaced with the gap. The route has been closed with a fence and the gate locked.
- 1.4.15 User evidence chart.



1.5 Land Owners Evidence

- 1.5.1 Face to face discussions with the two landowners and the tenant have been undertaken and the resulting Landowner Evidence forms and letters are included in full in the backing papers for this report. The evidence is summarised as follows:
- 1.5.2 Mr Broom senior (deceased) bought the field between the gate and the cricket pitch in 1957 after being the tenant since 1932. Mr P Broom has inherited this field and is now the landowner. He has written a letter containing a series of points as follows: There has never been a footpath across the land. The door was locked in July 2015 and he has had no request to open it. He has on many occasions asked people to leave the field as there is no right of way. He says "the door was locked many years ago in my father's time, but it was unhung". The railed fencing was installed by the cricket club for the sole purpose of collecting stray balls. No one has ever been given permission to walk the fields. On one occasion he found "a number of dogs and owners running around the field allowing the dogs to foul, which was due to be cut for hay, they were asked to leave".
- 1.5.3 Mr Bragg has owned the cricket club field for 60 years. The Clyst St George Cricket Club is his tenant. He does not believe it is a public right of way. He has been aware of dog walkers once or twice a year. He has not stopped or turned anyone back. He has always believed that the access by the gate was the back entrance to Pytte House and this gate was blocked over 12 months ago by another landowner. He has not obstructed the path. In an interview Mr Bragg said the entrance at point C used to be a hop over stile nailed to a tree until 1988 when the boundary to the new house, Oaktree, was straightened and the new gap installed at point C instead of the stile. Mr Bragg allows Clyst St George School to use the cricket pitch field as their sports field and Devon County Council cuts the pitches as part of this agreement.
- 1.5.4 Clyst St George Cricket club oppose the proposed footpath, because, they say, no proper footpath exists and the perimeter boundary gets very wet in winter, foot traffic would churn up the grass. They said that they would have to bring in the boundary rope and thereby reduce the size of the pitch and the ground is not large enough for this. They are concerned about increased insurance and safety on match days of people straying on to the pitch causing delay and danger. Also when the cricketers warm up they throw balls at the net that protects the adjoining houses right where the path would be. They also do not want uncontrolled dogs running onto the pitch and worry about dog fouling. They have concerns about security of the clubhouse and maintenance machinery. They have said that they have a temporary arrangement with the farmer to collect balls via the new locked gate created behind the pavilion. They conclude for all these reasons a footpath would have be a detrimental effect on the Cricket Club.

1.6 Discussion

- 1.6.1 Statute – Section 31 Highways Act 1980. The gate at point A was locked in July 2015 by Mr Broom, the fences were renewed around his field in spring 2016 and no stiles installed. The route was therefore brought into question in summer 2015. The twenty year period to be examined for consideration of presumed dedication under statute is therefore between 1995 and 2015.
- 1.6.2 The route appears to have been used for at least the last 69 years, with user evidence forms having been submitted by thirteen people in support of the claim. Long standing residents of Clyst St George village have given consistent evidence of

extensive use of the path. Mrs Williams has given evidence of walking the claimed path since 1946, Mr Piper has walked the route since 1955 and Mrs Horner since 1979 at least once a week until it was locked. These users show long established use prior to and during the 20 year period. All of them say there was an old stile just to the west of the gate at point A, between the thin strip of woodland and the field, and originally a gate at point B which was later replaced with a stile. The evidence from the rest of the users spans 31 years from 1984 to 2015. Most of the users were walking the route frequently at least once a month and some on a daily basis. Until the gate was locked in late summer 2015, none of the users report having been stopped from using the footpath, either physically, or by any signs, or by the landowner.

- 1.6.3 The Cricket Club have an informal tenancy agreement with Mr Bragg. As his tenant they have not put up any signs or notices saying No Right of Way, nor have they turned people off the path. The new fence and club compound with a gate were installed in Spring 2016.
- 1.6.4 Mr Broom says, at some time in the past, his father locked the gate at point A and it was apparently taken off its hinges (he cannot remember when). His father then appears to have rehung and unlocked it. However, none of the users can recall having encountered a locked gate previous to July 2015. Mr Broom says he had asked people to leave his field when they were letting the dogs run through his hay and, on other occasions, he has told people it was not a right of way. However, none of the users, say that they have ever been told to leave the field.
- 1.6.5 This path is away from the farm and due to its nature once a walker had closed the gate their use could not be observed from the road. This could not be regarded as secret use; rather it was just because the gate is solid.
- 1.6.6 The Highways Act 1980, Section 31(1) states that where a way over any land, 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.
- 1.6.7 Prior to the gate being locked in July 2015. None of the users who have given evidence have been interrupted or stopped from using the route, nor have they been challenged, nor have there been any signs on the route to show there was no intention on behalf of the landowners. The route has been accepted and walked by the public for more than the statutory period of 20 years.
- 1.6.8 With regard to the meaning of the words 'as of right', the common law adopted the Roman law principles that for long usage to give rise to a presumption of dedication, the use had to be 'nec vi, nec clam, nec precario', without force, without secrecy and without permission.

1.7 Conclusion

- 1.7.1 The evidence is considered sufficient to show that a public footpath subsists, or is reasonably alleged to subsist, over the proposed route. It is therefore recommended that a Modification Order be made to add a footpath between points A – B – C as shown on drawing number HIW/PROW/17/06 and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

2. **Proposal 2:** Proposed addition of a short footpath from Old Ebford Lane to the A379, as shown between points D – E on drawing number HIW/PROW/17/07.

Recommendation: That a Modification Order be made to add a footpath to the Definitive Map and Statement in respect of Proposal 2.

2.1 Background

- 2.1.1 A public meeting was held in Clyst St Mary School Hall in January 2016 with local people plus the Parish Councillors and the local County Councillor.
- 2.1.2 Proposal 2 was identified by members of the public at the Definitive Map Review meeting, being regarded locally as a missing link.

A Schedule 14 Application was made to add the route of Footpath number 6 in 1992, this was determined in 1993 and the resulting Definitive Map Modification Order made and confirmed as unopposed in 1994. The continuation appears to have been omitted and not considered at that time, although the route has continued to be used.

2.2 Description of the Route

- 2.2.1 Proposal 2 commences at point D, on Old Ebford Road, and runs along a short length of an old stony lane called Marsh Lane to the A376, at point E on the plan. Marsh Lane was bisected by the A376 in 1931. To the west side of the A376 Marsh Lane is recorded as Footpath No. 6, Clyst St George. This proposal is to record the short remaining section of Marsh Lane as a continuation of that footpath.

2.3 Documentary Evidence

- 2.3.1 Donn's Map of Devon 1765 depicts the route of Marsh Lane.
- 2.3.2 The Woodbury Tithe Map 1839 shows Marsh Lane, as a whole including the claimed route, coloured in the same way as parish roads. There is no specific description in the apportionment to indicate status. (Historically, Ebford lay within Woodbury Parish.)
- 2.3.3 Ordnance Survey Mapping
1st Edition OS map 25" to 1 mile, surveyed in 1888 and revised in 1904, clearly shows the whole of Marsh Lane leading from the historical route of the main Ebford Road at point D through point E and along the line of Footpath No. 6.
- 2.3.4 Subsequent OS maps show the Ebford bypass, which was built in 1931, and Marsh Lane bisected by this new road.

2.4 User Evidence

- 2.4.1 The reputation of this path is that of a public footpath, and this is acknowledged by the adjoining property owners and the Parish Council. No individual user evidence forms have been submitted but walkers have been observed using the path on a regular basis, as a continuation of Footpath No. 6. During the course of the Definitive Map Review it became apparent that this section of Marsh Lane had no recorded status. The walkers and the Parish Council did not appear to realise that Footpath No. 6 does not extend between Points D and E. It is walked without let or hindrance. The reputation of the path is as a public footpath.

2.5 Land Owners Evidence

- 2.5.1 Discussions and consultations have been undertaken with the four adjoining landowners. Two have returned Landowner Evidence forms which are included in full in the backing papers for this report. The evidence is summarised as follows:
- 2.5.2 Mrs K Gillioz now of Topsham, but previously of Ebford House, which was the Manor House, has owned the adjoining land since 1982. She believes it is an un-adopted lane. She has seen and is aware of the members of the public using the route occasionally on foot. She has never required people to ask permission, nor has she ever told anyone it was not a path or put signs up to dissuade use. She comments that the route has substandard foundations which are not suitable for heavy traffic.
- 2.5.3. Mr G Prescott has lived in Elm bungalow since 2000. This property was built in the 1960's half way between points D and E on Marsh Lane. He uses this section of lane to access his property. He does not believe it to be a public road. Occasionally he has seen the public using it mostly on foot and has not stopped them. In 2015 he put up a small sign at point E, saying Private Road, because he has had an incident where a lorry following a satellite navigation system had got stuck in the lane and caused damage to the surface and hedges. When he installed a sewage pipe down the lane in 2003, the lane was impassable for short while and he has re-stoned the lane on occasions obstructing it during that time. In the interview he said that horses riders occasional used the lane and two or three cars use it each day. The lane is not shown on the property's deeds, only access is recorded.
- 2.5.4 Mrs C Humphreys of Wayside was interviewed. She has owned the property for 2 years and uses the route as car access to the house sometimes. She and her family walk the route. She has seen others walking the route and the other adjoining landowners using the lane in the car. She has not blocked it or stopped anyone from using it, she believes it is an old lane without a status and knows she does not own it.
- 2.5.5 Dr S Esson of Elmfield House had a telephone discussion with the officer as she felt there was no need to meet. She stated the lane was unregistered, her garden bounded the lane but that they did not own it or have any claim to it. Her and her family walk the lane, but she does not observe walkers using the route because of the lanes hedges.

2.6 Discussion

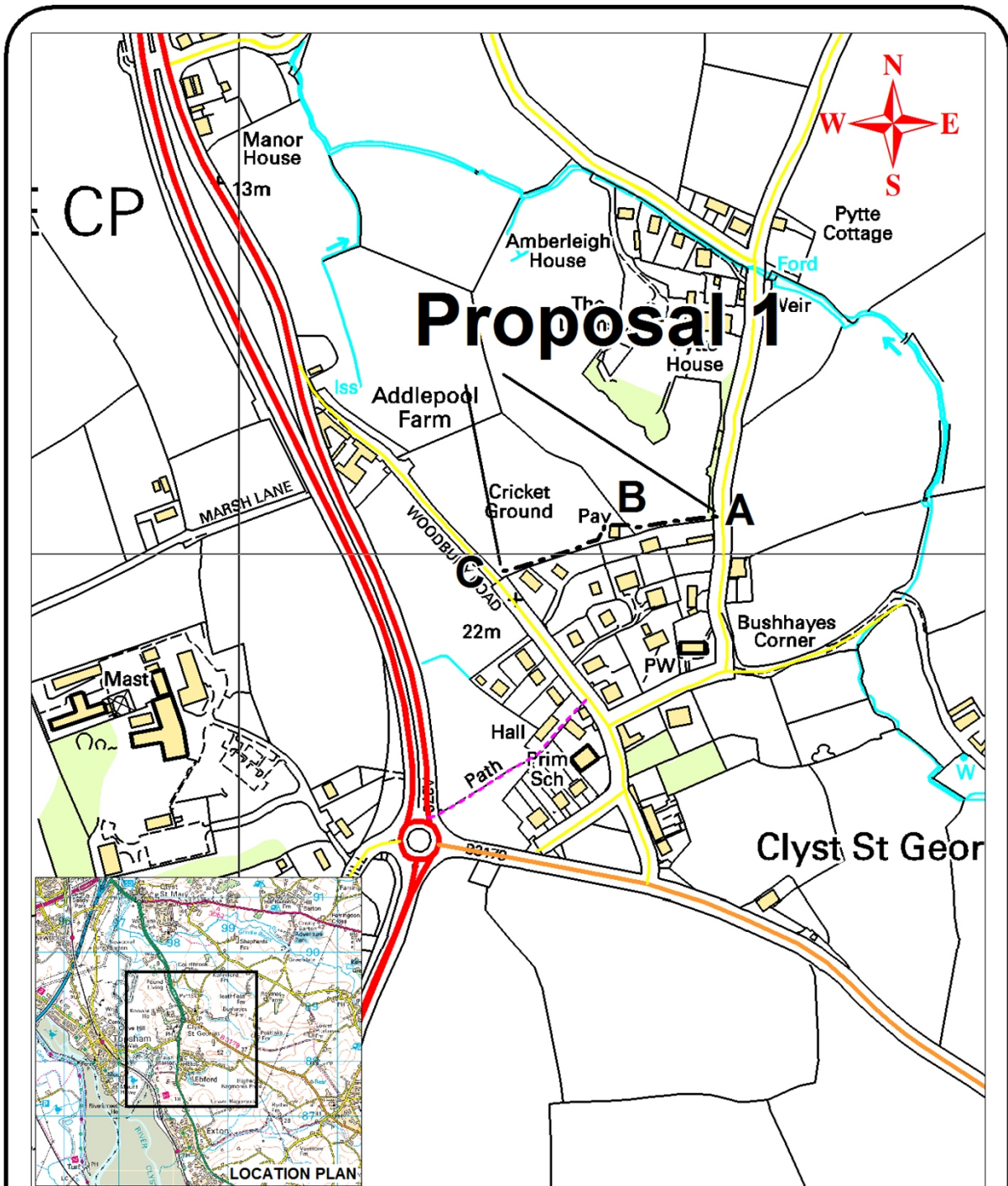
- 2.6.1 The reputation of this path is that of a public footpath and this is acknowledged by the adjoining property owners and the Parish Council. Walkers have been observed using the path on a regular basis, to link with Footpath No. 6. The walkers and the parish council do not appear to realise that Footpath No. 6 does not extend between Points D and E. It is walked without let or hindrance. The reputation of the path is as a public footpath
- 2.6.2 Use of the route has never been challenged. The lane has being occasionally blocked for maintenance activities, but this was never done with the intention of preventing the public from using it on foot.
- 2.6.3 As there has been no calling into question of use by the public, the proposed addition cannot be considered for presumed dedication under Statute. It is therefore considered under Common Law. 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.

- 2.6.4 The historical evidence shows Marsh Lane has been shown on maps since 1765 and probably existed before that date and was coloured in the same way as other roads in the parish. Marsh Lane was bisected by the bypass in 1931 and this stub between points D – E was left unrecorded when Footpath No. 6 was added to the Definitive Map.
- 2.6.5 With regard to the meaning of the words ‘as of right’, the common law adopted the Roman law principles that for long usage to give rise to a presumption of dedication, the use had to be ‘nec vi, nec clam, nec precario’: without force, without secrecy and without permission.
- 2.6.6 The facts, when taken as a whole, are that this route has been used by members of the public, on foot, without challenge, interruption, force, secrecy or permission and show that rightful inference can be drawn from this use: it may therefore be inferred that a landowner(s) (all be it historical) intended to dedicate the path as public, and the public’s continued use is evidence of acceptance of that dedication at Common Law.

2.7 Conclusion

- 2.7.1 Therefore the evidence is considered sufficient to show that a public footpath subsists, or is reasonably alleged to subsist, at Common Law over the proposed route. It is therefore recommended that a Modification Order be made to add a footpath between points D – E as shown on drawing number HIW/PROW/17/07, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.



map ref

Reproduced from Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown copyright
Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Licence No. 1000119783

DEVON COUNTY COUNCIL

Definitive Map Review
Clyst St George
Proposal 1 claimed footpath

drawing number HIW/PROW/17/06

date Jan 2017

scale 1:5,000

drawn by AS

Notation

Claimed footpath (Proposal 1)



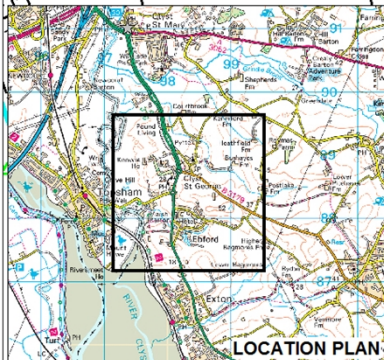
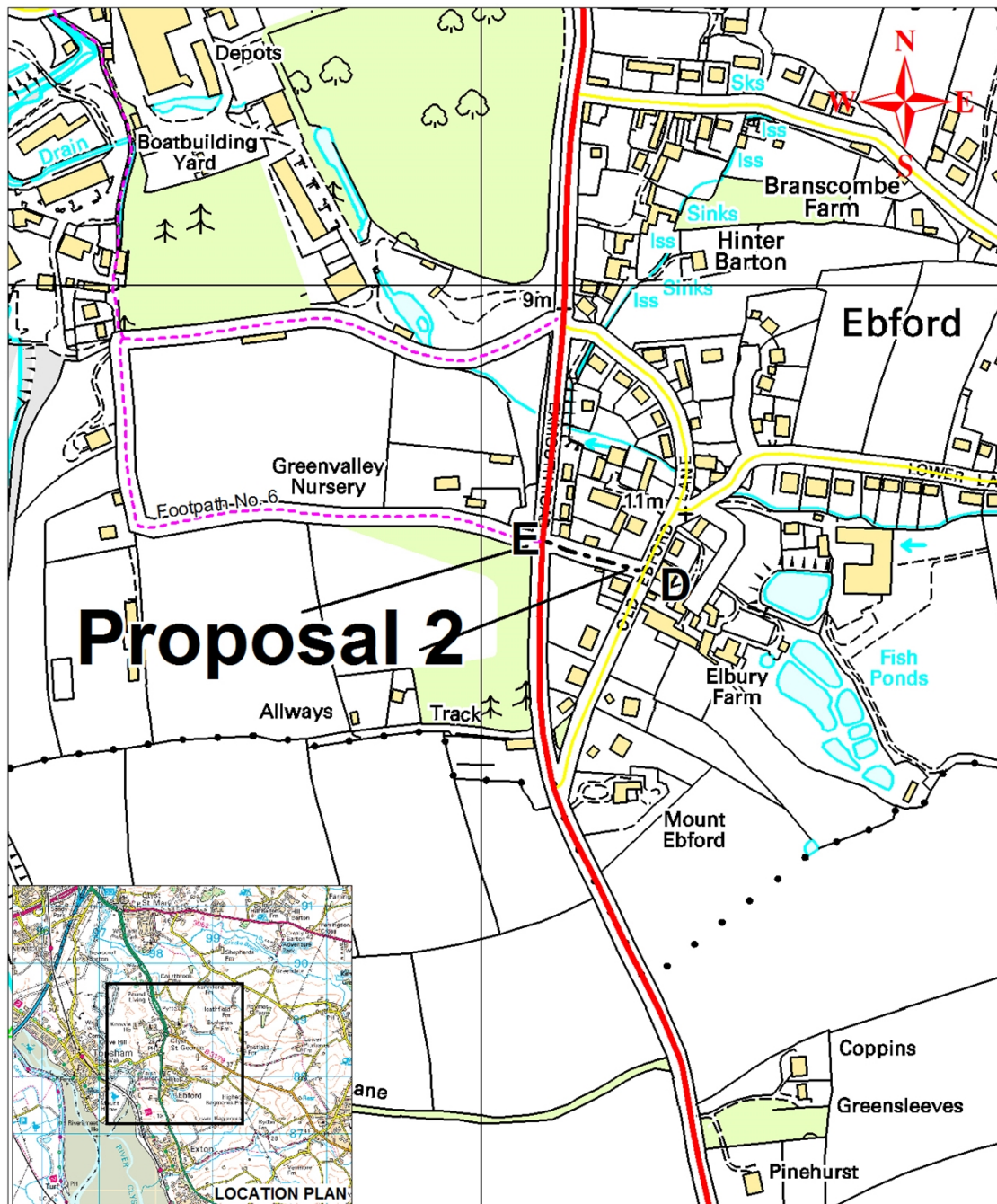
Existing footpaths



David Whitton

HEAD OF HIGHWAYS, INFRASTRUCTURE DEVELOPMENT AND WASTE





map ref

Reproduced from Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown copyright
Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Licence No. 1000119783

DEVON COUNTY COUNCIL

Definitive Map Review
Clyst St George
Proposal 2 claimed footpath

drawing number	HIW/PROW/17/07
date	Jan 2017
scale	1:5,000
drawn by	AS

Notation

Claimed footpath (Proposal 2)	-----
Existing footpaths	-----

David Whitton

HEAD OF HIGHWAYS, INFRASTRUCTURE DEVELOPMENT AND WASTE

