

**Definitive Map Review 2006–17  
Parish of Luppitt part 3**

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

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

**Recommendation:** It is recommended that no Modification Orders be made in respect of Proposals 20–24 for the applications to record claimed public footpaths in parts of Luppitt parish.

**1. Summary**

This report examines proposals arising out of the Definitive Map Review in the parish of Luppitt in East Devon district. It concerns the final investigation of Schedule 14 applications made by the Ramblers in 2008 to add claimed public footpath routes in the parish.

**2. Introduction – Review and Consultations**

The current review was started in April 2006 and consultations on 24 applications for routes throughout Luppitt parish, including some crossing from or into parts of the adjoining parishes, took place in July and November 2014. Most of the proposals in the consultations have been considered in reports to previous meetings of the Committee, with decisions not to make Orders for any of the claimed routes. Appeals against some of those decisions have been made to the Secretary of State.

The proposals in this report relate to the five remaining applications claiming routes as public footpaths in several parts of Luppitt, to complete the Definitive Map review process for the whole parish.

Responses to the overall consultations were as follows:

County Councillor Paul Diviani	-	does not support any of the proposals;
East Devon District Council/AONB	-	no comment;
Luppitt Parish Council	-	do not support any of the proposals;
Country Land and Business Association	-	no comment;
National Farmers' Union	-	no comment;
ACU/TRF	-	no comment;
British Horse Society	-	no comment;
Cyclists' Touring Club	-	no comment;
Ramblers	-	support all proposals from their own applications.

Specific responses, including from the owners of the land affected, are detailed in the Appendix to this report and included in the background papers.

### **3. 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.

### **4. Legal Considerations**

The implications/consequences of the recommendation have been taken into account in preparing the report.

### **5. Risk Management Considerations**

No risks have been identified.

### **6. 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.

### **7. Conclusion**

It is recommended that no Modification Orders be made in respect of the applications for Proposals 20–24, as the evidence is considered insufficient to meet the requirements of the legislation. Details concerning the recommendations are discussed in the Appendix to this report.

There are no recommendations to make concerning any other modifications in Luppitt parish. However, should any further valid claim with sufficient evidence be made within the next six months it would seem reasonable for it to be determined promptly rather than deferred.

### **8. 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.

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Chief Officer for Highways, Infrastructure Development and Waste

**Electoral Division: Honiton St Paul's**

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence File	2005 to date	NSC/DMR/LUPP

ns270117pra  
sc/cr/DMR Parish of Luppitt Part 3  
02 210217

**A. Basis of Claims**

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.

The Wildlife and Countryside Act 1981, Section 53 (3)(c) enables the Definitive Map and Statement 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; and

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.

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

## **B. Introduction: Background to all applications**

Twenty-four formal applications under Schedule 14 of the Wildlife and Countryside Act 1981 were submitted in April 2008 on behalf of the Ramblers. They were for routes in the parish of Luppitt not currently recorded as public rights of way claimed for recording as public footpaths. They included three routes crossing the parish boundary to the west, which were duplicated in the twelve applications submitted at the same time for claimed routes in the adjoining parish of Combe Raleigh and connected with other routes in Luppitt. Another was for a claimed route crossing into the adjoining parish of Upottery to the east.

The Ramblers had served notice of their applications on those believed to be the owners of the land affected at that time. They certified having served that notice and submitted copies of all the evidence in support of their claims with the applications, which were mainly copies of historical maps with other historical documentary material. Most of those were included with individual applications and other evidence common to all of the applications, mainly historical maps, was submitted at that time in a separate appendix. Further supporting evidence in the form of copies from other historical maps and documents was submitted a year later.

### **Historical documentary evidence common to all applications**

Most of the documents providing evidence relating to all of the applications submitted in a separate appendix are historical maps. They were mainly produced by the Ordnance Survey at a range of scales between 1"/mile and 2½"/mile from 1809 to 2006, with one by Bartholomew at ½"/mile from 1960. Copies of the legends to the maps were also supplied, most of which included the standard disclaimer that the representation on the map of a road, track or footpath is no evidence of a right of way. Other historical maps and documents submitted later were also related to all of the applications.

The individual applications indicated which of the maps, if not all of them, was intended to be included with the evidence supporting the claim for that particular route, although with no interpretation of its significance as to whether or not it was shown, or how it was depicted. Other historical documents common to several of the applications are discussed in the individual sections for each proposal below.

### **User evidence**

No direct evidence of current or recent use by the public on any of the claimed routes was submitted in support of the applications. There is, therefore, no need to consider statutory dedication of any of the claimed routes as public footpaths under Section 31 of the Highways Act 1980 from 20 years' use of them by the public up to the date of the applications. There is no date other than the applications for any calling into question and also, therefore, no need to consider any evidence of actions by the landowners to show lack of intention to dedicate during that specific 20 year period.

The only statutory element is consideration of the historic maps and documentary evidence in accordance with Section 32 of the Highways Act. That is in relation to a test of whether an intention by the landowners to dedicate the routes as public footpaths at some time in the past can be inferred under common law. It would require sufficient evidence from which it can be inferred that there was use by the public of the claimed routes in the past, with the landowners acquiescing to that use and taking no actions to prevent it, with acceptance by the public in continuing to use them.

**1. Proposal 20: Schedule 14 application – claimed addition of footpath between minor road, Rollshayes Farm and Penny Thorn Cross, points A1–B1 shown on drawing number HTM/PROW/14/141**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 20 for the claimed addition of a footpath.

**1.1 Description**

- 1.1.1 The claimed route for this application starts from a gateway in the hedge on the minor road south of Luppitt village, opposite the buildings of Rollshayes Farm (point A1). It runs across fields, through gateways and crossing a river, ending at a hedge on the minor road at Penny Thorn Cross, where there are small gaps but no gateway (point B1).

**1.2 The Definitive Map process**

- 1.2.1 This claimed route was not included in the survey of paths on behalf of Luppitt Parish Council in 1951 to put forward for recording as a public right of way, so it was not included at the Draft and Provisional map stages for recording on the Definitive Map.

**1.3 Documentary Evidence**

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

No parts of this claimed route are shown crossing the land between the roads at Rollshayes Farm and Penny Thorn Cross on any of the earlier maps at smaller scales, which do not usually show the lines of footpaths.

- 1.3.2 Later 19<sup>th</sup> century historical mapping: Luppitt Tithe Map 1842 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

Later maps at larger scales show parts of the route in more detail. The Tithe Map for Luppitt parish dated 1842 does not show the line of any path crossing the fields between the roads. There is no reference to any path in the Apportionment or in the names of the fields on the claimed route, but the map does record the existence then of gates in the field boundaries on part of the route and from the road at Rollshayes, but not at Penny Thorn Cross. They are also shown on the lines of other tracks and in the boundaries of other fields without showing tracks or paths throughout the parish, although part of the map in this location is damaged. They indicate where access can be interpreted mainly as being provided only for agricultural uses of the land.

- 1.3.3 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose. The Tithe Map records do not, therefore, provide strong supporting evidence that any part of the claimed route may have existed as a path to be considered then as public.

- 1.3.4 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows a path with double-dashed lines labelled 'F.P.' from the road at Rollshayes Farm on the line of the route as claimed, crossing two fields to a footbridge on the river. Another track, not labelled, is shown crossing the second field from the road north of the farm to a ford on the stream near the footbridge. That track continues across the two fields beyond the ford on the line of the route as claimed, but not labelled, to end on the road at Penny Thorn Cross. The line of another path, labelled 'F.P.', is shown

branching off from the track lower in the last field to end on the road south of the crossroads, with another path continuing across the field on the opposite side of the road to end on the road from Penny Thorn Cross leading to Higher Shelvin. The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century shows the track from the road north of Rollshayes, as in the earlier editions, to the ford and continuing on the rest of the claimed route. It does not show the first section from point A1, or the other labelled footpaths shown on the larger-scale edition.

1.3.5 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map, with the line of the paths in the fields at the start and end of the claimed route labelled 'F.P.'. Copies of the same later maps used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation were submitted with the additional material for all of the applications. The map shows the claimed route to have been included in the defined hereditament, or assessment area of land, for Rollshayes with a total area of 83 acres.

1.3.6 Copies of the Field Book for that hereditament with details of the assessment for Rolleshayes were included with the application, indicating that it was "a scattered farm". A total deduction of £50 was recorded in respect of a charge for Public Rights of Way or User, noted in 'Charges, Easements and Restrictions' affecting the value of the land. The Particulars refer to those as 'R[igh]t of Way' specifying four fields with Ordnance Survey numbers, three of which are on the claimed route: 1184, 1119 and 1182, but not for the first field opposite the Rollshayes Farm buildings (1215).

1.3.7 Two of the numbered fields are also crossed by the lines of the other tracks or paths shown on the maps, which adds some uncertainty as to which of them may have been intended to be the subject of the deduction. The other field with a deduction was further to the north of Rollshayes, as an outlying and isolated part of the hereditament. It was adjoining the road near Luppitt Mill on the same river, shown with a path crossing it labelled 'F.P.', on the line of another claimed route for Proposal 23 considered below.

1.3.8 The deductions suggest that parts of the claimed route may have been considered to carry some form of right of way at the time, although without any specific reference to it as a 'public footpath'. Part of it in one field was specifically not included and there is uncertainty about whether the deductions may have been for other tracks or paths in two fields not on the route as claimed. Those may have been for providing access onto roads and tracks connecting with other outlying smaller parts of land in the Rollshayes Farm hereditament around Higher Shelvin to the west.

1.3.9 Details from Finance Act evidence for Little Shelvin to the north considered for Proposal 8 in a previous report show that part of one road leading to it was recorded then as a track noted specifically as having rights for other farms. Those must have been for private rights of access to such outlying parts of 'scattered' farms in the area, including Rollshayes, as a continuation from the paths on this claimed route.

1.3.10 Later Ordnance Survey mapping and Bartholomew's maps

Most smaller scale maps from the earlier 20<sup>th</sup> century, particularly Ordnance Survey and Bartholomew's map editions from 1910 up to the early 1970s and other subsequent editions that showed recorded public rights of way, show a track only from the road north of Rollshayes as in the earlier editions, to the ford and on the central part of the claimed route. They do not show the first section from Rollshayes,

or the other labelled footpaths indicated on the early larger-scale editions. The 1948 edition shows the track as well as the other paths marked 'F.P.' Their keys included dashed lines to show footpaths and bridleways, but were subject to the general disclaimer that they were not evidence of a right of way.

- 1.3.11 Later Ordnance Survey 'A' edition larger-scale mapping from 1961, around the time that the Definitive Map was being drawn up, shows the track leading to the ford, near a footbridge. It continues on the central part of the claimed route, but not through the next field to Penny Thorn Cross. There are no lines of any paths shown on the first part of the route as claimed, or in other fields
- 1.3.12 The showing of the track and path on parts of the claimed route on early and later maps records their physical existence at those times until more recently and up to the present. They do not indicate on their own or support the existence of public rights of way on them, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889 and by other editions, which may be presumed to apply to earlier and other commercial maps as well.
- 1.3.13 Aerial photography  
RAF aerial photography from 1946–9 is incomplete for most of the area of this claimed route, but does not show the worn line of any used path on the first section in the field from the road opposite the Rollshayes Farm buildings. More recent aerial photography from between 1999–2000 and 2007 shows the worn line of the continuation of a track on the central part of the claimed route, probably from access by farm vehicles. There no other worn tracks that can be interpreted as the line of any path crossing the fields on the rest of the route as claimed.

## **1.4 Definitive Map Reviews and Consultations**

- 1.4.1 There have been no previous suggestions that the claimed route should be considered for recording as a public right of way in earlier review processes that were started but not completed. The claimed footpath was included in the consultations in November 2014 on the basis of the application submitted in 2008. The responses included objections on behalf of the Parish Council, the affected landowners and the local County Councillor, with support only from the Ramblers as the applicants.

## **1.5 User Evidence**

- 1.5.1 No evidence of claimed use was submitted in support of the application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

## **1.6 Landowner and Rebuttal Evidence**

- 1.6.1 The owners of land on the claimed route, from Woodford Barton in Ottery St. Mary and from Talaton in other parts of East Devon, completed landowner evidence forms. They indicated that the claimed route crossed land in their ownership and did not believe it to be public. They had not seen, or been aware of, the public using the route, had not required people to ask permission when using it and had not turned back or stopped anyone from using it.
- 1.6.2 They had not obstructed the claimed route or put up notices to say that it was not public and had not made Section 31 deposits to show lack of intention to dedicate. They indicated that there were gates on the route, between fields and giving access



to the road, which one of them said had never been locked. In further information, one owner included letters from previous occupants or farmers of land at Rollshayes Farm referring back to the 1950s reporting that there had never been a public footpath on the land and nobody had used the claimed route during that time.

## **1.7 Discussion – Statute and Common Law**

- 1.7.1 As discussed in the background to all applications (part B, above), no evidence of use has been submitted to support this claimed addition, so that there is none during any 20-year period before the date of the application to consider whether a statutory presumption of dedication has arisen from use by the public.
- 1.7.2 Considering the application in relation to common law requires taking into account the historic maps and other historical documentary evidence submitted and discovered, but without being able to consider any evidence of claimed actual use by the public. Earlier historical mapping shows that tracks or paths have existed on the ground since at least the later 19<sup>th</sup> century on parts of the route, although with others connected to them shown on some smaller-scale editions. Later mapping shows that some of them continued to exist physically on the ground as parts of the claimed route up to more recently in the 20<sup>th</sup> century, or as part of an access track on a different line shown on smaller-scale editions. They do not provide any support, though, for the claim that the route may have been considered to be public at those times.
- 1.7.3 The Finance Act records are the only evidence submitted in support of this application that could be said to have been discovered and not available to the Parish Council in the 1950s. It is, therefore, the only piece of evidence suggesting that parts of this claimed route may have had any earlier reputation of being a public footpath at that time, but without any other new evidence from later. However, there is no evidence for how that was determined as the basis from which any earlier presumed dedication by the landowner or the extent of any use by the wider public could be inferred.
- 1.7.4 Its weight in support of this claim is also reduced, as it is not complete for the whole route and with deductions specified for two of the fields on the route as claimed shown on maps to be crossed by other routes on different lines. Those may have been connected with private rights of access leading to other smaller and isolated parcels of land nearby on what was described then as a ‘scattered’ farm. Later mapping with aerial photography and other records show only that a section of the route as claimed has continued to exist up to more recently as part of a track used for agricultural access to fields.
- 1.7.5 For the claims in Luppitt, there were no lists of what were considered to be public footpaths in the parish in 1913 and 1934, as for other claims made in Combe Raleigh from previous reports, for any additional continuity of evidence suggesting that this route may have had the reputation of being public at those times. No records have been submitted of any expenditure by the Parish Council for maintenance or repairs on this route for any further evidence that it may have been considered to be public at any other time, as with other claims. In particular, this route was not included by Luppitt Parish Council for its 1951 survey and not included at the Draft and Provisional map stages for recording on the Definitive Map, with no objection made to its omission.
- 1.7.6 No other more significant historic maps or references in historical documentary material have been submitted or discovered to provide any substantial weight to a

suggestion that the route may have had the reputation of being a public footpath in the past, or more recently. No claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Luppitt Parish Council.

- 1.7.7 Considering the historical evidence, but without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath for an inference that it had the reputation of being available and used by the public for any previous period of time. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted any dedication and continued to use it on that basis.

## **1.8 Conclusion**

- 1.8.1 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the application for Proposal 20.

## **2. Proposal 21: Schedule 14 application – claimed addition of footpath between minor road, south of Beacon and minor road, west of Halsdon House, points C1–D1–E1, with link to Claim 22, points D1–G1 shown on drawing number HTM/PROW/14/142; and**

**Proposal 22: Schedule 14 application – claimed addition of footpath between minor road, north of Dumpdon Hill and minor road, west of Halsdon House, points F1–G1–H1 (with link to Claim 21) shown on drawing number HTM/PROW/14/142**

Recommendation: It is recommended that no Modification Orders be made in respect of Proposals 21 and 22 for the claimed addition of footpaths.

## **2.1 Description**

- 2.1.1 The claimed route for the application in Proposal 21 starts from a gateway in the hedge on the minor road to Beacon north of Dumpdon Hill (point C1). It runs across fields and over a stream (point D1) to a gateway in a hedge on the minor road southeast of Beacon, west of Halsdon Cottage and Halsdon House (point E1). A spur is claimed continuing from point D1 across the field as a link to connect with the claimed route of Proposal 22 (point G1).
- 2.1.2 The claimed route for the application in Proposal 22 starts from further south on the same minor road, Dumpdon Lane near Dumpdon Hill (point F1). It runs from the road crossing the grass verge and through a gateway in a hedge, across fields to the end of the spur on the claimed route of Proposal 21 (point G1). It continues across a field to end at a gateway on the minor road south of point D1 on Proposal 21, opposite the entrance to Halsdon Cottage (point H1).

## **2.2 The Definitive Map process**

- 2.2.1 The main part of the claimed route in Proposal 21 was included in the survey of paths on behalf of Luppitt Parish Council in 1951, surveyed as path No. 31 to the Halsdon road through fields, but without the spur. The claimed route in Proposal 22 was also included in the survey of paths, surveyed as path No. 32 from the road to Halsdon Cottage ruins, the site of a former building with that name. As with most of the other paths surveyed in the parish, it was for both of them only on the basis of being shown on old Ordnance Survey maps and noted as recorded on the Rural District Council 1932 Rights of Way Act map. They were both proposed to be omitted and did not go on to be included on the Draft and Provisional Maps and were not recorded on the Definitive Map.

## **2.3 Documentary Evidence**

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

Early historical maps at smaller scales, particularly from the Ordnance Survey drawings for the 1<sup>st</sup> edition map, do not usually show the lines of footpaths and no line of any paths are shown on the start of the claimed routes leading from the road near Dumpdon Hill, or on the spur connecting them. A short section of track is shown leading from the road on part of the end of the route of Proposal 22, leading to the buildings on the former site of Halsdon Cottage. The track is shown in the same way as some of those recorded now as public roads, but also including others that are not recorded now as public or no longer existing. It is shown on the 1<sup>st</sup> edition map in the same way and also on Greenwood's later map, believed to have been mainly copied from earlier Ordnance Survey map editions.

- 2.3.2 Later 19<sup>th</sup> century historical mapping: Luppitt Tithe Map 1842 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

Some later maps at larger scales show the claimed route in more detail. The Tithe Map for Luppitt parish dated 1842 does not show the line of any paths crossing the fields between the roads, or on the spur. There is no reference to any path in the Apportionment or in the name of the fields on the claimed routes, but the map does record the existence then of gates in the field boundaries on parts of the line of the routes as claimed, including onto the roads at each end of Proposal 22. However, they are also shown on the lines of other tracks and in the boundaries of fields without showing tracks or paths throughout the parish. They indicate where access can be interpreted as being provided only for agricultural uses of the land.

- 2.3.3 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, although the lines of paths or unenclosed tracks are shown crossing some fields in other parts of the parish. The Tithe Map records do not, therefore, provide any supporting evidence that the claimed routes may have existed then to have been considered as public footpaths.

- 2.3.4 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows the claimed routes as paths with double-dashed lines and labelled 'F.P.' crossing the fields between the roads and on the spur. The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century is at too small a scale to show the lines of any paths on the claimed routes. It does show the section of track leading to the former site of Halsdon Cottage, opposite Halsdon House.

2.3.5 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the routes in the same way as in the 1<sup>st</sup> edition map. Copies of the same later maps used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation were submitted with the additional material for all of the applications. The maps shows the claimed routes to have been included in the defined hereditaments, or assessment areas of land, for Lowman's Farm and Smythenhayes with total areas of 66 and 58 acres respectively.

2.3.6 Copies of the Field Books for both of those hereditaments with details of the assessments for the two farms were included with the applications. They record total deductions of £50 in respect of Public Rights of Way or User affecting the value of the land for Lowman's Farm and £25 for Smythenhayes. Details of 'Charges, Easements and Restrictions' affecting the value of the land for both refer to those as 'R[ight] of Way', giving the Ordnance Survey numbers for some of the fields crossed by the claimed routes.

2.3.7 The records for Lowman's Farm include a field numbered 367, which is not on the route as claimed but is for a field nearby in the area that is shown on the earlier edition of the map and not on the later version used for the Finance Act survey. That may have been written in error for the number of the field crossed by the start of the claimed route for Proposal 21, which was numbered 397. The other field on the route is noted as '398 (twice)', perhaps to indicate that it was crossed by two paths, including the spur connecting with the claimed route of Proposal 22.

2.3.8 Other fields numbered 1158 and 1220 are crossed by part of the claimed route of Proposal 22 from the road opposite the open common land of Dumpdon Hill. The records for Smythenhayes indicate two numbered fields, 391 and 400, only one of which is on the route as claimed (400). The other field is nearby across the road, leading to the driveway to Halsdon House, which is connected to another access track to the house and other paths in its grounds including within the adjoining enclosed woodland of Halsdon Plantation. The field crossed by the middle section of this claimed route, numbered 283, is not included for the deduction.

2.3.9 The deductions suggest that parts of the claimed routes may have been considered to carry some form of right of way at the time, although without any specific reference to them as 'public footpaths'. Part of the route in one field for Proposal 22 was specifically not included and there is also some uncertainty about the deductions as recorded including other rights on tracks or paths elsewhere in the hereditaments and not on the routes as claimed. Both farms are recorded as having rights of common, which for Lowman's Farm were said to be 'unlimited'. Those are likely to have included the nearby unenclosed common land of Dumpdon Hill, where there is a track across the road from the start of Proposal 22, as well as other open common land elsewhere in the parish. It suggests that one of the routes as claimed may have had some other form of more limited rights, perhaps specifically for direct access onto Dumpdon Hill as open common land, rather than as a right of way for the wider public.

2.3.10 Later Ordnance Survey mapping and Bartholomew's maps

Most smaller scale maps from the earlier 20<sup>th</sup> century, particularly Ordnance Survey and Bartholomew's map editions from 1910 to the later 1920s, do not show the lines of any paths or tracks on the claimed routes, apart from the short section of track leading to Halsdon Cottage, as on earlier editions. The only later edition showing the claimed routes with dashed lines as paths marked 'F.P.' is from 1948, with other

subsequent editions up to those in the early 1970s with recorded public rights of way not showing them.

2.3.11 Their keys included dashed lines to show footpaths and bridleways, but were subject to the general disclaimer that they were not evidence of a right of way. Later Ordnance Survey 'A' edition larger-scale mapping from 1961, around the time that the Definitive Map was being drawn up, does not show the line of any paths or tracks on the claimed routes, or a track leading to the former site of Halsdon Cottage.

2.3.12 The showing of the claimed routes on some early and later maps records their physical existence as paths or tracks at those times but not until more recently. They do not indicate on their own or support the existence of public rights of way, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889 and by other editions, which may be presumed to apply to earlier and other commercial maps as well.

2.3.13 Aerial photography

The earlier RAF aerial photography from 1946–9 is also incomplete for most of the area of Proposal 21 on these claimed routes, but does not show the worn line of any used path crossing some of the fields on the line of Proposal 22 and the connecting spur. A worn track is shown connecting to a building on the former site of Halsdon Cottage from the road on the end of the claimed route. More recent aerial photography from between 1999–2000 and 2007 shows only the worn line of tracks on parts of the claimed routes, probably from access by farm vehicles particularly from gates. There no other worn tracks that can be interpreted as the lines of any paths crossing the fields on the rest of the routes as claimed.

## **2.4 Definitive Map Reviews and Consultations**

2.4.1 There have been no previous suggestions that these claimed routes should be considered for recording as public rights of way in earlier review processes. The claims were included in the consultations in November 2014 on the same basis as the applications for other proposals, with the same responses in objection and support only from the applicants.

## **2.5 User Evidence**

2.5.1 As with Proposal 20, no user evidence was submitted in support of these applications for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

## **2.6 Landowner and Rebuttal Evidence**

2.6.1 The owners of the land crossed by the claimed routes, as parts of Whitehall Farm and Lowmans Farm, completed landowner evidence forms. They indicated that the route crossed the land that had been in their ownership for over 20 and 30 years, or as tenants for the previous 21 years going back to 1958. They did not believe the routes to be public, had not seen or been aware of the public using them, or had required people to ask permission when using them. They had not obstructed the claimed routes, had not put up notices to say that the routes were not public and neither had made a Section 31 deposit to show lack of intention to dedicate.

2.6.2 In additional information, they reported that there was no evidence of footpaths on the routes as claimed and they had never been aware of any paths on the routes or anyone walking on them, which had been stated in a letter submitted in response

when the claims were made in 2008. Letters from the owners of other properties or land nearby were also enclosed, reporting that they had also never known the claimed routes to be footpaths and they had never seen anybody using them.

## **2.7 Discussion – Statute and Common Law**

- 2.7.1 As with Proposal 20, no evidence of use has been submitted to support the claimed additions so that there is none during any 20-year period before the date of the application to consider whether a statutory presumption of dedication has arisen from use by the public.
- 2.7.2 The historic maps and some of the other historical documentary evidence for this application are the same as for the previous proposals with some differences in detail and there is, again, also no evidence of claimed use for an inference of dedication under the common law test. Earlier historical mapping does not show the line of any path on the claimed routes, although they are shown on some later maps up to the middle of the 20<sup>th</sup> century and labelled in only one edition as footpaths. However, they do not provide any support for the claim that the route may have been considered to be public at those times.
- 2.7.3 The Finance Act records are, again, the only evidence submitted in support of these applications that could be said to have been discovered and not available to the Parish Council in the 1950s. It is, therefore, the only piece of evidence suggesting that there may have been any earlier reputation for this claimed route to be a public footpath, but without any other new evidence. However, there is no evidence for how that was determined as the basis from which any earlier presumed dedication by the landowner or the extent of any use by the wider public could be inferred.
- 2.7.4 Its weight in support of these claims is also reduced, as the evidence is not complete for the whole of both routes. There is also uncertainty with deductions specified for other fields and another unconnected route that has not been claimed which may have been connected with private rights of access to other land nearby, or connected with access to open common land on Dumpdon Hill from Proposal 22. Later mapping with aerial photography and other records do not show that they had continued to exist as paths on the claimed routes more recently and up to the present.
- 2.7.5 Again, there were no lists of what were considered to be public footpaths in Luppitt parish in 1913 and 1934, as for other claims made in Combe Raleigh from previous reports, for any additional continuity of evidence suggesting that this route may have had the reputation of being public at those times. No records have been submitted of any expenditure by the Parish Council for maintenance or repairs on these routes for any further evidence that they may have been considered to be public at any other time, as with other claims.
- 2.7.6 These routes were also included by Luppitt Parish Council for its 1951 survey, but without the spur connecting them. That was again only on the basis of being shown on old Ordnance Survey maps and also noted as recorded on the Rural District Council 1932 Rights of Way Act map. No list of paths in the parish following that Act was compiled, as in Combe Raleigh. There was no reference to known use by the public for any previous period of time. They were also proposed to be omitted without sufficient evidence that they were public and not included at the Draft and Provisional map stages for recording on the Definitive Map. There was again no objection made to their omission from the Draft Map.

- 2.7.7 No other more significant historic maps or references in historical documentary material have been submitted or discovered to provide any substantial weight to a suggestion that the routes as claimed may have had the reputation of being public footpaths in the past, or more recently. No claims for their addition or evidence relating to their past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Luppitt Parish Council.
- 2.7.8 Considering the historical evidence, but without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claims that there is any historical basis to these routes being considered as public footpaths for an inference that they had the reputation of being available and used by the public for any previous period of time. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the routes as public footpaths, or that the public may have accepted any dedication and used them at any time in the past on foot, or have continued to use them on that basis.

## **2.8 Conclusion**

- 2.8.1 From this assessment of the evidence submitted with the applications, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights can be reasonably alleged to subsist on the routes or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making Orders. Accordingly, the recommendation is that no Orders be made to add footpaths on the claimed routes in respect of the applications for Proposals 21 and 22.

## **3. Proposal 23: Schedule 14 application – claimed addition of footpath between minor road, north of Barn Cross and minor road, west of Beacon, points I1–J1, shown on drawing number HTM/PROW/14/142**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 23 for the claimed addition of a footpath.

### **3.1 Description**

- 3.1.1 The claimed route for this application starts from the same minor road south of Luppitt village as in Proposal 20, to the north of Barn Cross (point I1), where there is no gap or gateway in the high roadside hedge. It runs across fields to a gateway in the hedge onto the wide verge of a minor road west of Beacon (point J1).

### **3.2 The Definitive Map process**

- 3.2.1 This claimed route was included in the survey of paths on behalf of Luppitt Parish Council in 1951, surveyed as path No. 30 to 'Pit ruin' across arable and grass fields. It was again only on the basis of being shown on old Ordnance Survey maps and noted as recorded on the Rural District Council 1932 Rights of Way Act map. It was proposed to be omitted and did not go on to be included on the Draft and Provisional Maps and was not recorded on the Definitive Map.

### 3.3 Documentary Evidence

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

No line of a path on this claimed route is shown crossing the land between the roads on any of the earlier maps at smaller scales, which do not usually show the lines of footpaths. A short length of track is shown on the end of the route as claimed, providing access to the land and buildings of Pitt Farm from the road at point J1.

3.3.2 Later 19<sup>th</sup> century historical mapping: Luppitt Tithe Map 1842 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

Some later maps at larger scales show the claimed route in more detail. The Tithe Map for Luppitt parish dated 1842 shows the entrance track to the yard and buildings of Pitt Farm on the end of the route leading into the fields beyond. It does not show the line of any path continuing from its end crossing the fields to the road at point H1.

3.3.3 There is no reference to any path in the Apportionment or in the names of the fields on the route, but the map does record the existence then of gates in the field boundaries on the line of the route as claimed and at each end onto the road and access track. However, they are also shown on the lines of other tracks, in field boundaries and on roads without showing tracks or paths throughout the parish, in some places now without gates. They indicate where access can be interpreted as being provided only for agricultural uses of the land.

3.3.4 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, although the lines of paths or unenclosed tracks are shown crossing some fields in other parts of the parish. The Tithe Map records do not, therefore, provide any supporting evidence that the whole of the claimed route may have existed then to have been considered as a public footpath.

3.3.5 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows the access track to Pitt Farm and a path continuing from its end with double-dashed lines, labelled 'F.P.' on the rest of the claimed route, crossing the fields to the road. The line of another path not labelled is shown in the second field turning from it into other fields to the north alongside the road. The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century shows the section of access track at Pitt Farm, but is at too small a scale to show any path continuing on the rest of the claimed route.

3.3.6 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map. Copies of the same later maps used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation were submitted with the additional material for all of the applications. The map shows the claimed route to have been included in the defined hereditaments, or assessment areas of land, for Pitt Farm and Rolleshayes with total areas of just over 60 and 85 acres, respectively.

3.3.7 Copies of the Field Books for those hereditaments with details of the assessment for the farms were included with the application. For Pitt Farm, it indicates that the house and buildings were then in ruins and it was also a scattered farm. A total deduction of £50 is recorded in respect of Public Rights of Way or User affecting the value of the land. Details of 'Charges, Easements and Restrictions' affecting the value of the land refer to those as 'R[ight] of Way' with only one Ordnance Survey field, numbered



1032, crossed on this claimed route. The number for land with the farm buildings and yard, including the section of access track from the road, was not recorded as being subject to a deduction.

- 3.3.8 The records for Rolleshayes were considered for Proposal 20 above and indicate a deduction for the other field on this claimed route, numbered 1035, also as part of a scattered farm. It leads to the road near Luppitt (Corn) Mill and with the other path in the field branching off to lead into other nearby fields and the deduction may have been related to other more limited rights of access, particularly from Pitt Farm. It suggests that only parts of the route as claimed may have been considered to carry some form of right of way at the time, although without any specific reference to it as a 'public footpath' and not including the Pitt Farm access track from the road.

3.3.9 Later Ordnance Survey mapping and Bartholomew's maps

Most smaller scale maps from the earlier 20<sup>th</sup> century, particularly Ordnance Survey and Bartholomew's map editions from 1910 to the later 1920s, do not show the line of any path or track on the claimed routes, apart from the short section of track leading to Pitt Farm, as on earlier editions. The only later edition showing the claimed route with a dashed line as a path marked 'F.P.' is from 1948, with other subsequent editions up to those in the early 1970s with recorded public rights of way not showing the line of any path or track.

- 3.3.10 Their keys included dashed lines to show footpaths and bridleways, but were subject to the general disclaimer that they were not evidence of a right of way. Later Ordnance Survey 'A' edition larger-scale mapping from 1961/3, around the time that the Definitive Map was being drawn up, does not show the line of any path or track on the claimed route. The land on the track leading to Pitt Farm is shown as part of a field and with no indication of the former site of the farm buildings at that date.

- 3.3.11 The showing of the claimed route on some early and later maps records its physical existence as a path or track at those times until more recently. They do not indicate on their own or support the existence of public rights of way, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889 and by other editions, which may be presumed to apply to earlier and other commercial maps as well.

3.3.12 Aerial photography

Earlier and later aerial photography between 1946–9 and 2007 up to 2011 shows only the section of access track passing the site of the former buildings at Pitt Farm, but no worn line of any track or path on the rest of the claimed route crossing the fields between to the road.

### **3.4 Definitive Map Reviews and Consultations**

- 3.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes. The claim was included in the consultations in November 2014 on the same basis as the applications for previous proposals, with the same responses in objection and support only from the applicants.

### **3.5 User Evidence**

- 3.5.1 As with previous proposals, no user evidence was submitted in support of this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

### **3.6 Landowner and Rebuttal Evidence**

- 3.6.1 One of the owners of land on the routes claimed in Proposals 21 and 22 considered above also completed a landowner evidence form for part of this claimed route. They indicated that the claimed route crossed land in their ownership and did not believe it to be public. They had not seen, or been aware of, the public using the route, had not required people to ask permission when using it and had not turned back or stopped anyone from using it.
- 3.6.2 They had not obstructed the claimed route or put up notices to say that it was not public and had not made Section 31 deposits to show lack of intention to dedicate. They indicated that there were gates on the route, between fields and giving access to the road, which one of them said had never been locked. In further information, the letters from previous occupants or farmers of land at Rollshayes Farm referring back to the 1950s reporting that there had never been a public footpath on the land and nobody had used this claimed route during that time.

### **3.7 Discussion – Statute and Common Law**

- 3.7.1 As with previous proposals, no evidence of use has been submitted to support the claimed addition, so that there is none during any 20-year period before the date of the application to consider whether a statutory presumption of dedication has arisen from use by the public.
- 3.7.2 The historic maps and some of the other historical documentary evidence for this application are the same as for the previous proposals with some differences in detail and there is, again, also no evidence of claimed use for an inference of dedication under the common law test. Earlier historical mapping shows the track from the road passing the former site of Pitt Farm for access to the buildings and into fields, but do not show the line of any path continuing from its end on the rest of the claimed route. A path is shown on some later larger-scale maps labelled as a footpath, but not on most more recent smaller-scale editions and they do not provide any support for the claim that the route may have been considered to be public at those times.
- 3.7.3 The Finance Act records are again the only evidence submitted in support of this application that could be said to have been discovered and not available to the Parish Council in the 1950s. It is also, again, the only piece of evidence suggesting that there may have been any earlier reputation for only part of this claimed route to have been a public footpath, but without any other new evidence and not including the Pitt Farm access track. Again, there is no evidence for how that was determined as the basis from which any earlier presumed dedication by the landowner or the extent of any use by the wider public could be inferred. Later mapping with aerial photography and other records show only that the section of track has continued to exist for access to fields on part of the claimed route more recently and up to the present.
- 3.7.4 Again, there were no lists of what were considered to be public footpaths in Luppitt parish in 1913 and 1934, as for other claims made in Combe Raleigh from previous reports, for any additional continuity of evidence suggesting that this route may have had the reputation of being public at those times. No records have been submitted of any expenditure by the Parish Council for maintenance or repairs on this route for any further evidence that it may have been considered to be public at any other time, as with other claims.
- 3.7.5 This route was also included by Luppitt Parish Council for its 1951 survey, but again only on the basis of being shown on old Ordnance Survey maps and also noted as

recorded on the Rural District Council 1932 Rights of Way Act map. No list of paths in the parish following that Act was compiled, as in Combe Raleigh. There was no reference to known use by the public for any previous period of time. It was also proposed to be omitted without sufficient evidence that it was public and not included at the Draft and Provisional map stages for recording on the Definitive Map. There was again no objection made to its omission from the Draft Map.

- 3.7.6 No other more significant historic maps or references in historical documentary material have been submitted or discovered to provide any substantial weight to a suggestion that the route may have had the reputation of being a public footpath in the past, or more recently. No claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Luppitt Parish Council.
- 3.7.7 Considering the historical evidence, but without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath for an inference that it had the reputation of being available and used by the public for any previous period of time. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted any dedication and used it at any time in the past on foot, or have continued to use it on that basis.

### **3.8 Conclusion**

- 3.8.1 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the application for Proposal 23.

## **4 Proposal 24: Schedule 14 application – claimed addition of footpath between minor road, east of Lower Moorlands Farm and minor road, Highwood Plantation, points K1–L1 shown on drawing number HTM/PROW/14/144**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 24 for the claimed addition of a footpath.

### **4.1 Description**

- 4.1.1 The claimed route for this application starts from the minor road southwest of Luppitt village (point K1), following part of a section of track recorded as a cul-de-sac minor surfaced road leading towards Moorlands Cottages. The route as claimed turns off the road to run across fields and then back onto an access track continuing from the recorded end of the maintainable highway beyond the cottages, near to the buildings of Moorlands Farm. It continues along the track passing Lower Moorlands Farm and Higher Moorlands to end on the minor road leading to Honiton crossing Luppitt Common, opposite Hill View Farm and Highwood Plantation (point L1).

## **4.2 The Definitive Map process**

- 4.2.1 This claimed route was not included in the survey of paths on behalf of Luppitt Parish Council in 1951 to put forward for recording as a public right of way, so it was not included at the Draft and Provisional map stages for recording on the Definitive Map.

## **4.3 Documentary Evidence**

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

Early historical maps at smaller scales, from the Ordnance Survey drawings for the 1<sup>st</sup> edition map, show a section of access track on parts of the claimed route leading from the road to Moorlands. The track is shown in the same way as some of those recorded now as public roads, but also including others that are not recorded now as public or no longer existing. It is shown on the 1<sup>st</sup> edition map in the same way and also on Greenwood's later map, believed to have been mainly copied from earlier Ordnance Survey map editions. The maps do not usually show the lines of footpaths and no line of any paths are shown crossing land at the start of the claimed route, or continuing from the end of the track at Moorlands to the road crossing Luppitt Common.

- 4.3.2 Later 19<sup>th</sup> century historical mapping: Luppitt Tithe Map 1842 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

Some later maps at larger scales show the claimed route in more detail. The Tithe Map for Luppitt parish dated 1842 shows the enclosed track leading to the buildings and yard of Moorlands Farm. No line of any path is shown crossing the fields between parts of the track on the start of the route as claimed, but an unenclosed track or path is shown continuing beyond the farm through fields leading to the road crossing Luppitt Common along the parish boundary with Dunkeswell at point L1.

- 4.3.3 There is no reference to any path in the Apportionment or in the names of the fields on the route as claimed, but the map does record the existence then of gates in some of the field boundaries on the track or path beyond the farm buildings. However, they are also shown on the lines of other tracks, in field boundaries and on roads without showing tracks or paths throughout the parish, in some places now without gates. They indicate where access can be interpreted as being provided only for agricultural uses of the land.

- 4.3.4 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, although the lines of paths or unenclosed tracks are shown crossing some fields in other parts of the parish. The Tithe Map records do not, therefore, provide any supporting evidence that the whole route as claimed may have existed then to have been considered as a public footpath, or that any tracks on it were considered then to be part of a public road.

- 4.3.5 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows the track on the start of the claimed route leading to Moorland Farm, with the path between parts of it shown with double-dashed lines and labelled 'F.P.' crossing a stream and two fields. The access track beyond the farm is shown in the same way as a mainly unenclosed path or track, but not labelled, running alongside the boundaries of woodland and several fields onto the narrow strip of open land in that part of Luppitt Common. It ends as a short section of unenclosed track crossing part of the open land connecting with the unenclosed road running across the common land.

- 4.3.6 The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century is at too small a scale to show the path on the start of the claimed route. It shows the sections of the tracks leading to and beyond Moorlands Farm between the roads in the same way as on earlier editions.
- 4.3.7 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records  
The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the claimed route in the same way as in the 1<sup>st</sup> edition map. It indicates the location of a footbridge marked 'F.B.' on the stream at the start of the labelled footpath between parts of the track to Moorlands Farm. Copies of the same later maps used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation were submitted with the additional material for all of the applications.
- 4.3.8 The copies of the maps for this claimed route are not clear, but suggest that the first part of the track leading towards Moorlands Cottages and now recorded as a minor public road was excluded from adjoining defined hereditaments, or assessment areas of land. The rest of the route, from the footpath and on the track passing and continuing beyond the farm buildings, was included in the hereditament numbered as part of 138.
- 4.3.9 No other documents from the Finance Act process were submitted with the application for this claim, but the Valuation Book from local records shows that numbered hereditament to be for Moorlands with a total area of 215 acres. The rest of the track on the claimed route, from the road to Moorlands and beyond the farm towards the road on Luppitt Common, is not shown on the maps excluded in the same way as other tracks and most of what are now recorded as public roads. A short section from the track to the end of the route as claimed is shown continuing across a small part of the narrow open land of Luppitt Common in that area to connect with the road crossing along it and not excluded. That land was included in the hereditament numbered as part of 16 for all of the areas of open common land in the whole parish.
- 4.3.10 Copies of the Field Book for the Moorlands hereditament with details of the assessments for that farm were not submitted with this application, but were obtained from National Archives. They confirm the record in the Valuation Book of a total deduction of £10 in respect of Public Rights of Way or User affecting the value of the land in the whole hereditament of 220 acres. Details in the Field Book recording 'Charges, Easements and Restrictions' affecting the value of the land refer to those as 'Right of Way' with the Ordnance Survey number of one field, which is not crossed on this claimed route.
- 4.3.11 It is one of several individual fields nearby in the area shown on the map to be smaller outlying parts of the same hereditament and is crossed by the route of what is now recorded as Footpath No. 1 in the parish. None of the Ordnance Survey numbers for any of the fields crossed by this claimed route, leading to and beyond Moorlands Farm, are indicated in the records. They show that no parts of the route as claimed were considered then to carry any form of right of way to suggest that it may have been considered at the time to be a public footpath. That includes the sections labelled as a footpath leading towards Woodlands Farm and the unenclosed track from the farm with its continuation onto the open land of Luppitt Common. It suggests that the route on that track was not considered to be a public right of way, but will have had other forms of private rights and perhaps common rights for access to and from parts of Luppitt Common.

- 4.3.12 A copy of the Field Book for all of the common land in Luppitt parish was obtained for the proposals considered in previous reports and refers to it as an area of common and waste land with rights of common and 'probably many rights of way'. There is a large deduction specified for the rights of common, but no deduction for any public rights of way or user. Many lines of paths or tracks are shown on the maps crossing the different areas of open common land in the parish. It would be difficult to specify whether that reference to rights of way could have included the small section of this route as claimed. That is particularly without any specific deductions referring to them, as well as distinguishing them from what are likely to have been considered as routes connected with access for other more limited private and common rights on Luppitt Common.
- 4.3.13 Luppitt Parish Council minutes – repairs to footbridges, 1907–8  
Transcripts of selected extracts from Luppitt Parish Council minutes, with photographed copies from the minute books, were submitted with the application for this claim. The notes were from references to the repairs of footbridges over streams at several named locations in the parish, including some identified as being on the path for this claimed route and on others considered in previous reports.
- 4.3.14 One of the locations named suggesting that it may have been on this route was recorded as 'To Moorlands'. The presence of a footbridge was noted on the larger-scale Ordnance Survey map as crossing a stream at the start of the section of path between parts of the track leading to Moorlands, mentioned above. The earliest Parish Minutes record in November 1907 that tenders put out for the repairs there and at two named locations on other claimed routes were considered. Details of the specification for the Moorlands bridge were amended and the bill for payment of repairs to all of the bridges was noted in April 1908 with a resolution that they should be paid.
- 4.3.15 Later Ordnance Survey mapping and Bartholomew's maps  
Most smaller scale maps from the earlier 20<sup>th</sup> century, particularly by Ordnance Survey and Bartholomew's map editions up to more recently, show the tracks on the claimed route leading from the road to Moorlands and continuing to the road on Luppitt Common in the same way as in earlier editions. Some later editions up to those in the 1970s with recorded public rights of way show the dashed line of the path between parts of the track, marked 'F.P.' only in the 1948 edition.
- 4.3.16 Their keys included those dashed lines to show footpaths and bridleways or some roads and tracks, but were subject to the general disclaimer that they were not evidence of a right of way. Later Ordnance Survey 'A' edition larger-scale mapping from 1963/4, around the time that the Definitive Map was being drawn up, shows the line of a path on the first part of the claimed route, labelled 'F.P.', leading on to the track as in earlier editions. The track on the rest of the route is also shown mainly enclosed and partly unenclosed, including on the connection with the road crossing Luppitt Common, as in earlier editions.
- 4.3.17 The showing of the claimed route on some early and later maps records its physical existence as a track or path at those times until more recently. They do not indicate on their own or support the existence of public rights of way, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889 and by other editions, which may be presumed to apply to earlier and other commercial maps as well.

#### 4.3.18 Aerial photography

Earlier and later aerial photography between 1946–9 and 2007 up to 2011 shows only the lines of the mainly enclosed and surfaced sections of the tracks on the claimed route, with the roads in the area. No worn line of any path is shown crossing the fields on the first part of the route as claimed between parts the track.

#### 4.3.19 Highways records

Older and more recent highways records show that only part of the track on the start of the route as claimed has been recorded as a cul-de-sac section of maintainable highway, leading from the minor road and passing properties to end near Moorlands Cottages. It means that part of the claimed route from point K1 to where the footpath is shown on maps leaving the track already has rights for the public to use on foot from being recorded as a minor surfaced public road. However, the application does not claim that any part of the track's continuation beyond its recorded end is considered to be a public road with higher rights than just for public use on foot. The claim does not have any effect on the existence of private rights for access in vehicles on the whole route to other adjoining properties and land.

### **4.4 Definitive Map Reviews and Consultations**

- 4.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes. The claim was included in the consultations in November 2014 on the same basis as the applications for previous proposals, with the same responses in objection and support only from the applicants.

### **4.5 User Evidence**

- 4.5.1 As with previous proposals, no user evidence was submitted in support of this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

### **4.6 Landowner and Rebuttal Evidence**

- 4.6.1 The owners of some of the land and adjoining properties on the claimed route completed landowner evidence forms. They all indicated that the route crossed or adjoined the land or properties that they had owned for between five and over 60 years and none of them believed it to be public. One of the owners indicated that the route adjoining his property is a public highway. None of them had seen, or been aware of, the public using the claimed route, or had required people to ask permission when using it. They had not obstructed the route, or locked gates on it. They had not put up notices to say that it was not public and had not made Section 31 deposits to show lack of intention to dedicate.
- 4.6.2 In additional information, they gave further details of their views in objection to the route being recorded as a public footpath. Some of them reported their own experiences and those of other family members and former residents of Moorlands since the early 20<sup>th</sup> century. All of them said that they had never known of the existence of a public footpath on the claimed route and that nobody had ever used it.

### **4.7 Discussion – Statute and Common Law**

- 4.7.1 As with previous proposals, no evidence of use has been submitted to support the claimed addition, so that there is none during any 20-year period before the date of

the application to consider whether a statutory presumption of dedication has arisen from use by the public.

- 4.7.2 The historic maps and some of the other historical documentary evidence for this application are the same as for the previous proposals with some differences in detail and there is, again, also no evidence of claimed use for an inference of dedication under the common law test. Earlier historical mapping shows only the tracks leading to and beyond Moorlands Farm between the roads. Most do not show the line of any path on the first section of the claimed route, although it is shown on some later maps until more recently and labelled as a footpath. However, they do not provide any support for the claim that the route may have been considered to be public at those times.
- 4.7.3 Without support from the Finance Act records, there is no evidence submitted in support of this application that could be said to have been discovered and not available to the Parish Council in the 1950s. They show that there is no new evidence to support a claim that there may have been an earlier reputation that any part of this claimed route may have been considered to be a public footpath. They indicate that the sections of the track beyond the end of the section of recorded public road was not considered to be public and will only have had more limited private rights of access or with common rights for access to Luppitt Common beyond Moorlands Farm.
- 4.7.4 Later mapping with aerial photography and other records show only that the track has continued to exist on the claimed route more recently and up to the present, although indicating a section of path leading to it. Again, there were no lists of what were considered to be public footpaths in Luppitt parish in 1913 and 1934, as for other claims made in Combe Raleigh from previous reports, for any additional continuity of evidence suggesting that the path and tracks on this route may have had the reputation of being public at those times.
- 4.7.5 The records submitted of expenditure by the Parish Council for the repair of a footbridge on part of this route during the early years of the 20<sup>th</sup> century could suggest that they accepted some responsibility for minor repairs and provides other minimal evidence that it may have been considered then to be public. However, that may have been considered as a discretionary power rather than a duty, without any formal obligation, as there had then been no statutory recording of public rights of way. That one recorded instance does not add sufficient or substantial weight to evidence for its reputation of being used by the wider public then or at any other time, rather than perhaps by a more limited section of local inhabitants.
- 4.7.6 The repair was to a footbridge over a stream on a route providing access leading onto part of the open land of Luppitt Common. It may have been considered by the Parish Council as something that was within their responsibility to maintain in connection with the rights of commoners in Luppitt, rather than as a public right of way for the wider public. Later records show that there were also repairs to footbridges at locations in other parts of common land elsewhere in the parish, such as on Hense Moor. Some of those appear not to have been on routes either claimed or recorded later as public footpaths and perhaps connected with other and more limited common access rights.
- 4.7.7 More significantly, though, this route as claimed was also not included by Luppitt Parish Council later for its 1951 survey and was not put forward as a public footpath to be included at the Draft and Provisional map stages for recording on the Definitive Map. There was again no objection to its omission from the Draft Map.



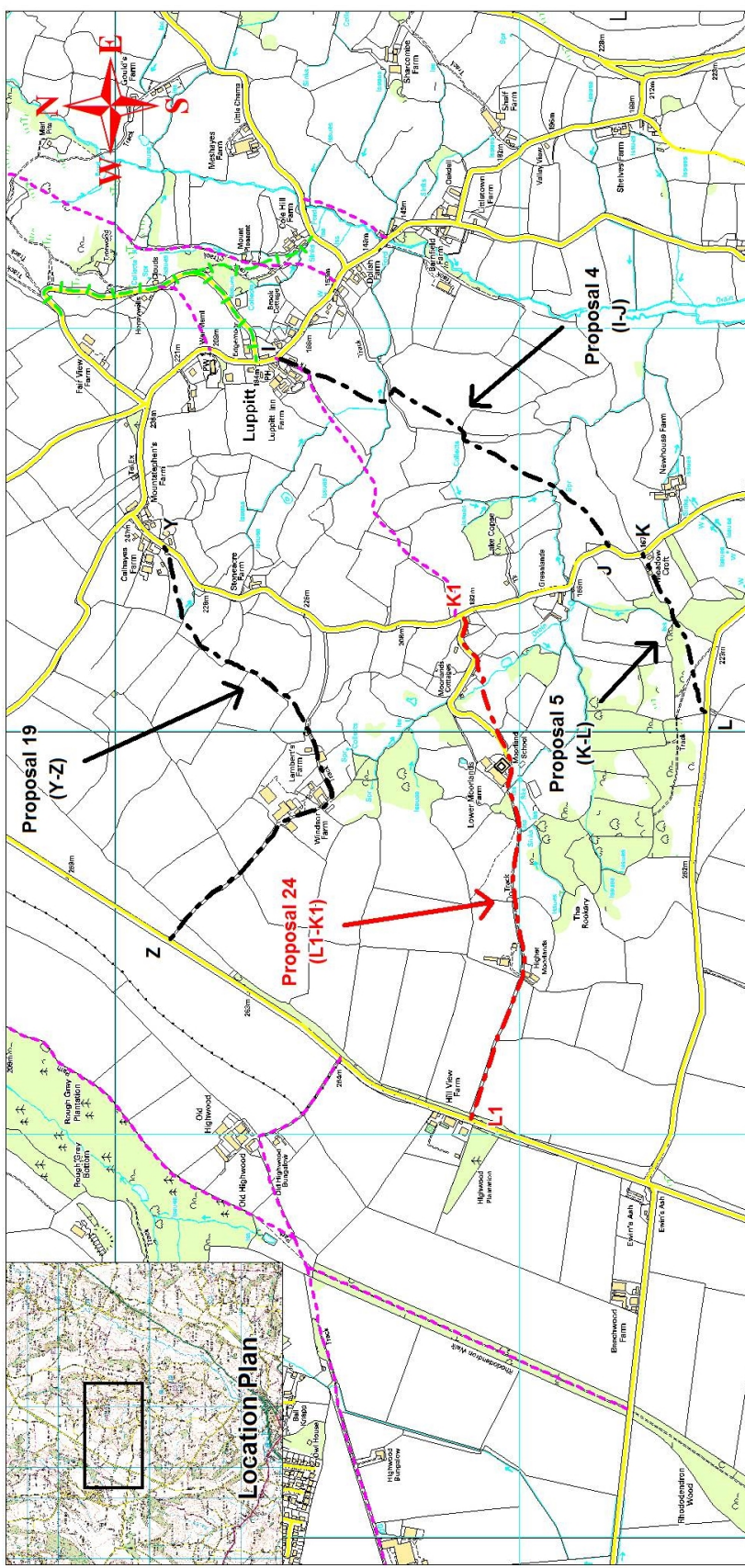
- 4.7.8 No other more significant historic maps or references in historical documentary material have been submitted or discovered to provide any substantial weight to a suggestion that the route may have had the reputation of being a public footpath in the past, or more recently. No claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Luppitt Parish Council.
- 4.7.9 Considering the historical evidence, but without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath for an inference that it had the reputation of being available and used by the public for any previous period of time. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted any dedication and used it at any time in the past on foot, or have continued to use it on that basis.

#### **4.8 Conclusion**

- 4.8.1 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the application for Proposal 24.







map ref: ST1407-1707/1406-17067/1405-1705

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**DEVON COUNTY COUNCIL**  
**Definitive Map Review, Luppitt parish (Central)**  
**Informal consultations - Claimed addition of footpaths:**  
**Proposals 4, 5, 19 & 24**

Notation	Claimed footpaths	Existing footpaths
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drawing number **HTM/PROW/14/144**  
 date **Nov 2014**  
 scale **1:15 000**  
 drawn by **NSC**

**David Whitton**  
 HEAD OF HIGHWAYS, INFRASTRUCTURE DEVELOPMENT AND WASTE

**Devon**  
 County Council