

**Definitive Map Review
Parish of Bittadon, with Marwood and West Down**

Report of the Acting 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 Order be made to modify the Definitive Map and Statement in respect of Proposal 1, in the parish of Bittadon, with Marwood and West Down.

1. Introduction

This report examines a claim submitted by the Trail Riders Fellowship in November 2005 in the parish of Bittadon.

2. Background

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed that four footpaths and no bridleways were recorded on the Definitive Map and Statement with a relevant date of 1st September 1957.

The review of the Definitive Map, under s.33 of the 1949 Act, which commenced in the late 1960s but was never completed, produced a number of proposals for change to the Definitive Map at that time. The Limited Special Review of RUPP's, carried out in the 1970s, did not affect the parish.

The following order has been made and confirmed:

Devon County Council (Footpath No. 4, Bittadon) Public Path Diversion Order 1999.

A Legal Event Modification Order will be made for this change under delegated powers in due course.

The current review began with an opening public meeting held in May 2010 in the parish. No proposals arose from previous reviews. A Schedule 14 application made in 2005 has been picked up as part of the current Review.

3. Proposals

Please refer to the appendix to this report regarding the Schedule 14 application: Proposed addition of a byway open to all traffic along Bittadon Lane, Bittadon, as shown between points A – B – C – D – E –F on plan EEC/PROW/11/67.

4. Consultations

General consultations have been carried out with the following results:

County Councillor Andrea Davis	– no comment
North Devon Council	– no comment
Bittadon Parish Meeting	– no comment
West Down Parish Council	– no objection to the application
Marwood Parish Council	– no comment
British Horse Society	– no comment
Byways & Bridleways Trust	– no comment
Country Landowners' Association	– no comment
Devon Green Lanes Group	– no comment
National Farmers' Union	– no comment
Open Spaces Society	– no comment
Ramblers'	– no comment
Trail Riders' Fellowship	– no comment

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

5. Financial Considerations

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

6. Legal Considerations

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

9. Conclusion

It is recommended that no Modification Order be made in respect of Proposal 1. There are no further proposals for modifying the Definitive Map. A diversion of Footpath Nos. 3 and 4 will be dealt with under delegated powers.

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.

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 North Devon area.

Meg Booth
Acting Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Combe Martin Rural

Local Government Act 1972: List of Background Papers

Contact for enquiries: Caroline Gatrell

Room No: ABG Lucombe House

Tel No: 01392 383240

Background Paper	Date	File Ref.
Correspondence Files	Current	DMR/BITTADON

cg090617pra
sc/cr/DMR Bittadon
04 260617

A. Basis of Claim

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

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

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

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

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

The Wildlife and Countryside Act 1981, Section 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 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.

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

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

(e) it was created by virtue of use by such vehicles before 1 December 1930.

Extinguishment of rights for mechanically propelled vehicles also does not apply if, before the relevant date (20 January 2005), an application was made under section 53(5) of the Wildlife and Countryside Act 1981, or such an application was determined by a surveying authority, for an order to modify the definitive map and statement as to show a BOAT.

The judgement in the case of *R. (on the application of Winchester College) v Hampshire County Council (2008)* however, found that for such exceptions to be relevant the application must fully comply with the requirements of paragraph 1 of Schedule 14 to Wildlife and Countryside Act 1981. It is appropriate therefore firstly to determine whether or not the claimed vehicular rights subsist and, secondly, whether or not any exceptions apply; if vehicular rights subsist but the exceptions are not engaged then the appropriate status is restricted byway. Such claims may also be considered for a lower status.

B. Definition of Ratione tenurae Roads

Research into Highway Board, Rural District Council and Parish Council minutes has indicated that '*ratione tenurae*' roads were, from the late 19th century types of road expected to be used by the public, but with the adjacent landowners/occupiers of the road/lane being responsible for the maintenance of the roads.

Section 25(2) of the Local Government Act 1894 enacted that if a person liable to repair a highway '*ratione tenurae*' failed to do so, after being requested by the district council, the council could repair the highway and recover the expenses from the person liable.

1 Proposal 1: Schedule 14 application: Proposed addition of a byway open to all traffic along Bittadon Lane, Bittadon, as shown between points A – B – C – D – E –F on plan EEC/PROW/11/67.

Recommendation: That no Modification Order be made in respect of Proposal 1.

1.1 Background

- 1.1.1 The claim is one of a number of Schedule 14 applications submitted by the Trail Riders Fellowship in response to the proposed Natural Environment and Rural Communities Act 2006 (NERC Act). The NERC Act would restrict the ways that new rights of ways for motorised vehicles in the countryside could be created or recorded. A right for motor vehicles was preserved under the NERC Act if a Schedule 14 Application, that is compliant with the regulations for Schedule 14 applications under the Wildlife & Countryside Act 1981, had been made prior to 20 January 2005 or the surveying authority has made a determination of an application for a Byway open to all traffic (BOAT) before 2 May 2006.
- 1.1.2 The application in question was however made in November 2005 which was after 20 January 2005 and therefore does not engage this particular exception to extinguishment of rights for motorised vehicles.
- 1.1.3 In line with our policies, determination of the application was deferred, to be dealt with as part of the parish-by-parish Definitive Map Review, by which the County Council carries out its statutory duty to keep the definitive map and statement under continuous review. It was included in the parish review consultation as a proposal for the addition of a BOAT, as originally applied for, as there are other limited exemptions in which vehicle rights may be preserved.

1.2 Description of the Route

- 1.2.1 The route starts at the county road, C582 at Burland Cross, point A in West Down parish and runs along an unmetalled lane, Bittadon Lane east south eastwards to the boundary with Marwood parish at point B. It continues along Bittadon Lane through Marwood parish to the boundary with West Down parish at point C where it passes into West Down parish again. The lane then passes under the B3230 and then through to a tributary of the Colam Stream and the boundary with Bittadon parish at point D. From there it continues into the hamlet of Bittadon where it meets Bittadon Footpath Nos. 1 and 3 at point E by Bittadon Barton, where it turns southwards along Bittadon Footpath No. 3 to meet the county road, R1409, at point F.

1.3 Documentary Evidence

- 1.3.1 Barnstaple Turnpike Trust records, 1763-1879. The statutory processes for turnpike management were set out under the General Turnpike Acts of 1766, 1773, and 1822.
- 1.3.2 Turnpike Trusts were bodies set up by individual acts of Parliament, with powers to collect road tolls for maintaining the principal roads in Britain from the 17th but especially during the 18th and 19th centuries. At the peak, in the 1830s, over 1,000 trusts administered around 30,000 miles of turnpike road in England and Wales, taking tolls at almost 8,000 toll-gates and side-bars. Turnpikes declined with the coming of the railways and then the Local Government Act of 1888 gave responsibility for maintaining main roads to county councils and county borough councils.

- 1.3.3 The Barnstaple Turnpike Trust was set up under an Act of Parliament in 1763 covering over 100 miles of roads around Barnstaple, with one of its main responsibilities being the road to Ilfracombe. Some of the Trust's returns of accounts have survived; though those between 1825-1827, when a new turnpike road was constructed (now the B3230) which affected Bittadon Lane, have not. There is however, a reference in the return for 1824-5 to £9250/0/0 being paid to the Ilfracombe New Road account. This road was created by an Act of Parliament under the Public Act, 7 & 8 Geo4 c14 in 1827.
- 1.3.4 Individual road schemes were promoted by Special Acts. The books of reference and deposited plans made in the course of the process needed to be of a high standard, as they formed the basis for legislation and were in the public domain. Consequently, they were scrutinised by all relevant parties who would not unnecessarily to cede ownership, rights or responsibilities, as the status of a way had an impact on the cost of the scheme.
- 1.3.5 A plan was drawn up by the Barnstaple Turnpike Trust and deposited with the County's Clerk of the Peace in 1826, to create a significant new road along the Taw valley to replace the old Exeter highway. The deposited plan showed the proposed lines of roads to form part of the Barnstaple Turnpike Trust, and was surveyed by Charles Bailey, who was employed by five turnpike trusts, at a scale of 3" to 1 mile.
- 1.3.6 The plan shows the proposal route as the shortest route to the hamlet of Bittadon from the original turnpike road (now the county road, C582) from Burland Cross at point A. It is shown as a more substantial highway than what is currently recorded as a county road between Burland Cross and West Down. It also shows the alignment of the proposed new road and that of the existing turnpike road. It also shows the current county road access to Bittadon (R1409), which was part of a longer access route to the hamlet from the south across formerly unenclosed Swindon Down from Gipsy Corner in Marwood parish. None of the highways affected were referred to.
- 1.3.7 In the land valuation particulars for the new turnpike road through Bittadon, no existing highways are included or referenced, including the current county road (R1409) into Bittadon. Bittadon Lane, between points A – B – C – D, is shown on the deposited plan wholly within Marwood parish, which is incorrect. A reference is made under plot 58 owned by Mr Anthony Loveband Esq. that *'a tunnel [was] to be constructed under the [new turnpike] Road for cattle to pass to water in any proper situation which might be pointed out by the Proprietor'*.
- 1.3.8 Highway Presentments, 1766-1812. Such records may provide conclusive evidence of the stopping up or diversion of highways. Presentments or indictments for the non-repair of highways may also be included and may provide strong evidence of status where they are confidently identifiable.
- 1.3.9 There are several relevant references in the locality of the proposal route. In 1772, a presentment was recorded for the non-repair of the road from Ilfordcombe (Ilfracombe) to Barnstaple through the parish of West Down, the fine for which was £50 (value conversion 1770 to 2005 is £3,184.50). In 1809, a presentment was recorded for the road 'from a gateway and hedge which divides West Down from Marwood home to stone which divides West Down from Bittadon. In 1810, there was a presentment for the road through Bittadon parish from Hoar Down Gate to the road to Berry Down Gate.

- 1.3.10 There are no references which could be identified as the proposal route, Bittadon Lane.
- 1.3.11 West Down Surveyors of Highways Accounts, 1796-1840. Prior to the formation of District Highway Boards in the early 1860s and the later Rural District Councils (1894) the responsibility for the maintenance of public highways generally belonged to the parish and was discharged by elected Surveyors of Highways. Relevant Acts of 1766, 1773 and 1835 included the provision for the use of locally available materials and there was a statutory requirement upon parishioners to fulfil a fixed annual labour commitment. The final responsibility for maintenance lay with the local Surveyor of Highways who was obliged to keep a detailed account of public monies expended.
- 1.3.12 The parish roads are not frequently named in the records. There are no references which could be identified as the proposal route, Bittadon Lane, between points A – B – C – D.
- 1.3.13 Ordnance Survey Draft Drawing – Barnstaple sheet, 1804-5. The proposal route, Bittadon Lane, between points A – B – C – D – E – F, is shown as a through route and in the same manner as other local roads. It is the most direct route to Bittadon hamlet from the original turnpike road which ran north/south past Burland Cross at point A.
- 1.3.14 The proposal route, Bittadon Lane, between points A – B – C – D – E – F is shown as a cross road and the shortest route from the original turnpike road (now the county road, C582) into the hamlet of Bittadon. The only alternative to this was an unenclosed road from Metcombe Cross in Marwood parish across the former common from the south, known as Swinham/Swindon Down, which is now mostly recorded as Marwood Footpath No. 10 and the county road into Bittadon, R1409. This would have been only convenient if travelling from Marwood or Barnstaple.
- 1.3.15 Ordnance Survey mapping, 1809-1962. Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way".
- 1.3.16 On the small scale 1" to 1 mile Ordnance Survey mapping shows the proposal route as a cross road from the original turnpike road from Burland Cross at point A, and the most direct route into Bittadon, the only alternative being a road from Metcombe Cross in Marwood parish across the former common from the south, known as Swinham/Swindon Down, which is now mostly recorded as Marwood Footpath No. 10 and the county road into Bittadon, R1409.
- 1.3.17 The proposal route between points A – B – C – D – E – F is shown on the 1st Edition large scale 25" Ordnance Survey mapping of 1889 as open and available, part of the local highway network and shown in the same manner as other recorded public highways. It is annotated 'Bittadon Lane'. There is a well in the lane between points D – E, which is only shown on the 1st Edition. It is shown in a similar manner on the 2nd Edition of 1904, with a change of surface at point A, at Burland Cross, as does the Post War A Edition of 1961, but also with a change of surface at point F at Bittadon.
- 1.3.18 A double dashed track to the B3230 is shown adjacent to the proposal route, Bittadon Lane, which partially follows the alignment of Marwood Footpath No. 19, but only the eastern half.
- 1.3.19 Cary's Map, 1821. Besides the Ordnance Survey, Cary was the leading map publisher in the 19th century. He maintained a high standard of maps, using actual trigonometric

surveys and other up to date source materials including parliamentary documents, which was reflected by his employment to survey the 9,000 miles of turnpike roads in 1794.

- 1.3.20 The proposal route known as Bittadon Lane is shown between points A – B – C – D – E – F, from the then turnpike road (now the county road, C582) which ran from Marwood to Ilfracombe via Burland Cross at point A, near the six mile marker from Barnstaple.
- 1.3.21 Greenwood's Map, 1827. These well-made maps were produced using surveyors and a triangulation system, and are considered to be reasonably accurate.
- 1.3.22 The map appeared in 1827 at a scale of one inch to the mile, and includes a route in a similar position to the proposal route, Bittadon Lane, as a "*cross-road*", enclosed for its entire length as the main route between Burland Cross to Bittadon from the original turnpike road, now the county road, C582.
- 1.3.23 Marwood Vestry Minutes, 1827-94. Such records can provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Vestry had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain. However, many of the roads within the parish were repaired '*ratione tenurae*' and consequently may not be recorded in these records.
- 1.3.24 There are no references which could be identified as the proposal route, Bittadon Lane.
- 1.3.25 Fullabrook Barton & Baker's Tenement Estate Map, 1833. Estate maps were normally compiled by professional surveyors and are therefore likely to be reasonably accurate. The plan was surveyed by Richard Passmore of Braunton.
- 1.3.26 Though the proposal is not shown, the route which is recorded as Braunton uOCR 306 and Marwood Byway No. 29, which ends at Burland Cross, is annotated 'to Bittadon'. The only route to Bittadon from Burland Cross was the proposal route, Bittadon Lane.
- 1.3.27 Bittadon Tithe Map and Apportionment, 1839-40. Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, limiting the possibility of errors. Their immediate purpose was to record the official record of boundaries of all tithe areas. Public roads were not titheable and were sometimes coloured, indicating carriageways or driftways. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over a route shown. Such information was incidental and therefore is not good evidence of such. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not numbered are usually included under the general heading of '*public roads and waste*'.
- 1.3.28 The Bittadon tithe map was surveyed by Charles Cooper of Alverdiscott, Bideford, matters. The original document is held at the National Archives, with copies for the parish and diocese held locally.
- 1.3.29 The proposal route, Bittadon Lane, is shown entering the parish at the boundary with Marwood at the Colam Stream tributary as an enclosed route into the hamlet of Bittadon between points D – E – F. It is included within plot 165 – 'road' – part of the Barton, as what is now recorded as the county road, R1409 into Bittadon hamlet from the new turnpike road, now the B3230.

- 1.3.30 Marwood Tithe Map and Apportionment, 1840-3. Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, limiting the possibility of errors. Their immediate purpose was to record the official boundaries of all tithe areas. Roads were sometimes coloured and the colouring generally indicates carriageways or driftways. Public roads were not titheable and were sometimes coloured, indicating carriageways or driftways. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over a route shown. Such information was incidental and therefore is not good evidence of such. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible.
- 1.3.31 The Marwood tithe map is a second class surveyed at a scale of 3 chains to 1 " by F. Cattlin, a solicitor of 39 Ely Place, Holborn, London, and is only a legal and accurate record of tithe matters. Land that was not subject to tithes was generally accepted to be either public, glebe or crown estates. In many case public roads are coloured sienna as prescribed by Lieutenant Dawson, a military surveyor with the Ordnance Survey, to the Tithe Commissioners.
- 1.3.32 The proposal route, Bittadon Lane, is shown in its entirety as a coloured 'public road' between points A – B – C – D, Burland Cross to the Bittadon/Marwood/West Down parish boundary, open and available, an integral part of the parish highway network, recorded in a similar manner to other currently recorded public highways. It also includes the county road into Bittadon hamlet, the R1409, as part of the network.
- 1.3.33 West Down Tithe Map and Apportionment, 1841-42. Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, limiting the possibility of errors. Their immediate purpose was to record the official record of boundaries of all tithe areas. Public roads were not titheable and were sometimes coloured, indicating carriageways or driftways. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over a route shown. Such information was incidental and therefore is not good evidence of such. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not numbered are usually included under the general heading of '*public roads and waste*'.
- 1.3.34 The West Down tithe map is second class and is therefore only evidence of facts with direct relevance to tithe matters. The original document is held at the National Archives, with copies for the parish and diocese held locally.
- 1.3.35 The proposal route, Bittadon Lane, is shown between points A – B – C – D as a coloured 'public road' and part of the parish highway network, in the same manner as recorded public highways. All roads in the parish are coloured, regardless of whether they were public or private. It is depicted with the parish boundary with West Down running along the middle of Bittadon Lane between points B – C – D to the parish boundary with Bittadon. At point D where the three parish boundaries meet, the proposal route is annotated as 'from Bittadon'.
- 1.3.36 West Down Vestry minutes, 1841-88. Prior to the formation of District Highway Boards in the early 1860s and the later Rural District Councils (1894) the responsibility for the maintenance of public highways generally belonged to the parish and was discharged by elected Surveyors of Highways. Relevant Acts of 1766, 1773 and 1835 included the provision for the use of locally available materials and there was a statutory requirement upon parishioners to fulfil a fixed annual labour commitment. The final responsibility for maintenance lay with the local Surveyor of Highways who was obliged to keep a detailed account of public monies expended.

- 1.3.37 The parish roads are not frequently named in the records. Those roads which are specifically referenced do not include the proposal route, Bittadon Lane.
- 1.3.38 Great Western Railway Extension Exeter to Ilfracombe Deposited Plan, 1845. Individual schemes were promoted by Special Acts. The statutory process required for the authorisation of schemes was exacting, having been set out by parliamentary standing order and the Railways Clauses Consolidation Act 1845. The book of reference and deposited plans made in the course of the process needed to be of a high standard, as they formed the basis for legislation and were in the public domain. Consequently they were scrutinised by all relevant parties who would not unnecessarily to cede ownership, rights or responsibilities, as the status of a way had an impact on the cost of the scheme.
- 1.3.39 The plan shows the proposal route, Bittadon Lane, for its entire length between points A – B – C – D – E – F. Where parish roads were directly affected by the plan's proposal, it is noted in the Book of Reference, which the proposal route is not, as it was outside the limits of deviation for the scheme.
- 1.3.40 Bittadon Vestry Minutes, nd. Such records can provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Vestry had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain. The historic records could not be discovered, and it is believed that they may not have survived.
- 1.3.41 Some modern vestry records dating from the 20th century have survived, though by this time, it was not responsible for all parish matters including highways. In particular these modern records include a letter dated June 1938 regarding the proposed union of the benefices of Bittadon and West Down, which comments on an unattached Ordnance Survey map, surveyed in 1886 and revised in 1903. It refers to features on the map including the proposal route, Bittadon Lane. It comments that it *'has not been in existence from the date of the making of the Turnpike Road.....over 100 years...I can find no-one even the oldest inhabitant who had remember even a cart going along the same. It is completely overgrown, impassable and invisible as far as Lower Ayescott. Very much the same applies to the lanes shown...leading from the Church to Upcott.'*
- 1.3.42 British Newspaper Archive, 1824 onwards. This is a digital copy of many newspapers across the country. It includes local newspapers such as the Exeter Flying Post and the North Devon Journal (except 1826). The newspapers included reports on the proceedings of the Magistrates Petty Sessions, Quarter Sessions and Assizes, along with those of the various district Highway Boards and Vestrys.
- 1.3.43 North Devon Journal, 17.01.1861. At the Braunton Divisional Petty Sessions on 16th January 1861, the Marwood Overseers were summoned for neglecting the highway leading to Bittadon between the stream and the turnpike road (now recorded as a county road, B3230), and the parish road between Bittadon and Fullabrook, the proposal route, Bittadon Lane. The matter was adjourned.
- 1.3.44 Exeter and Plymouth Gazette, 18.01.1861. This reported on the above case, which was adjourned so that further evidence could be obtained.
- 1.3.45 North Devon Journal, 31.01.1861. At the Braunton Divisional Petty Sessions on 30th January 1861, the Marwood Overseers case was resumed. The Bench decided that the road between the stream and the turnpike road (now recorded as the B3230) near Fry's Hotel, was not a highway but private property (now the county road into

Bittadon hamlet, R1409). The report does not mention the parish road believed to be the proposal route, Bittadon Lane.

- 1.3.46 Exeter and Plymouth Gazette, 01.02.1861. This reported on the above case, on which only one of the roads appears to have been decided upon, which may not be the proposal route.
- 1.3.47 Exeter Flying Post, 06.02.1861. This reported on the above case, on which only one of the roads appears to have been decided upon, which may not be the proposal route, Bittadon Lane.
- 1.3.48 North Devon Journal, 16.04.1863. An objection was lodged when the Bittadon Parish Highways Accounts were presented for approval at the County Magistrates Petty Sessions on 15th April 1863, as it was alleged that Bittadon Lane, the proposal route, between points D – F, had been repaired for 8 years at the parish's expense but without an order from the vestry. It was noted that the accounts had not been kept in the prescribed form. The matter was adjourned.
- 1.3.49 North Devon Journal, 30.04.1863. The above case resumed into the charge that the Bittadon Surveyor misappropriated funds to repair the private road, known as Bittadon Lane, the proposal route, and had used his own horses and carts without licence from the Bench. Witnesses gave evidence of parish repairs on the road for over 20 years, whilst others stated that any repair costs had been defrayed by the late Mr Brown, the affected landowner. The Bench decided that Bittadon Lane was not a parish road, but would approve the year's accounts.
- 1.3.50 North Devon Journal, 07.12.1882. At a meeting of the Ilfracombe District Highway Board, the principal matter for discussion was the question of the repair of a road leading from Bittadon to West Down, the proposal route, Bittadon Lane, between points A – B – C – D – E – F, which had been the only road from Bittadon towards Braunton and the neighbourhood before the new turnpike road, now the B3230, was cut. There was a discussion regarding who was liable for the repairs, and reference was made to the 1863 case, when it had been decided that Marwood parish was not liable. The member looking for the repair of the lane contended the route was public and that the Board should see the route repaired by whoever was liable. The matter was adjourned so that the Marwood records could be consulted.
- 1.3.51 North Devon Journal, 22.03.1883. At a meeting of the Ilfracombe District Highway Board, the liability of the Board with regard to the proposal route, Bittadon Lane was discussed at length, including the details from the 1861 case. Correspondence was read from residents of Bittadon and Georgeham parishes, along with that from the Rev. JT Pigot, the rural dean of Fremington. Though in the 1861 case, the magistrates had decided there was no evidence that Bittadon Lane was a public highway, the Board's Chairman recalled that the Board had previously ordered the Surveyor to repair the road, and that order was still in force. *'There was not the slightest doubt that it was a public highway'*, though it appeared that it was repaired *'ratione tenurae'*, by the adjacent occupiers. The Surveyor had served notice on the occupiers in October 1882 to repair Bittadon Lane; some had carried out the required works, others had not. The Surveyor was ordered to get the road repaired by the occupiers.
- 1.3.52 North Devon Journal, 19.04.1883. At a meeting of the Ilfracombe District Highway Board, the Surveyor state he had served notice on Mr Heyward of Hartnoll Barton to repair the proposal route, Bittadon Lane, who denied his liability. After much discussion including the usage and cost of repairs, it was resolved that no further action would be taken in the matter.

- 1.3.53 Ordnance Survey Boundaries Branch, 1883-5. These Ordnance Survey records include sketch maps, remark books, and inspection journals prepared under the Ordnance Survey Act 1841. They record original information on public boundaries, mostly parish boundaries, and related ground features, and bear the marks/signatures of the meresmen for the parishes on each side of the boundary. Other details included are the formal notices for the display of the maps, who inspected them and which sections, any plans they were compared with and any differences identified, and the result of investigations into such differences.
- 1.3.54 Doubt regarding the parish boundary alignment between the parishes of Marwood and West Down was raised by the Marwood Parish Meresman, Thomas Hayward. A Meresman was a person locally appointed to ascertain the exact boundaries of parish, and assisted the Ordnance Survey Surveyors' in their work. The Inspection Journal detailed the discrepancy, referring to the proposal route, Bittadon Lane.
- 1.3.55 The Surveyors were informed by the Marwood Meresman that the proposal route, Bittadon Lane, was considered to be an 'occupation road'. It was noted that it had not been repaired in about 50 years. Any repairs that had occurred, had been carried out by the adjacent occupier in West Down for the portion between points C – D and for the Marwood portion between points B – C. The Surveyor noted that the proposal route, Bittadon Lane, had not been divided between points A – B – C – D – E for the convenience of its repair. This was because adjacent occupiers remembered when the section between points A – B near Burland Cross was unenclosed on the West Down side. At one time, the section between points B – C had also been unenclosed on the Marwood side. In 1884, a resident had known the adjacent land between points B – C for 50 years, and occupied for 32 years, had never known the road repaired by either the adjacent occupiers in Marwood parish or by the Marwood Vestry. The section between points A – B from Burland Cross had apparently belonged to the adjacent farm in West Down parish and had been repaired by the occupier.
- 1.3.56 West Down Parish Council Minutes, 1894-1978. The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.
- 1.3.57 There are no references which could be identified as the proposal route, Bittadon Lane, however what is now recorded as West Down Footpath No. 17/Braunton Footpath No. 68/Marwood Footpath No. 37 is referred to ending at Bittadon Lane, as opposed to Burland Cross, in 1946 and 1950.
- 1.3.58 Marwood Parish Council Minutes, 1894 onwards. The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.
- 1.3.59 There are no references which could be identified as the proposal route, Bittadon Lane.
- 1.3.60 Bittadon Parish Meeting minutes, 1894-2009. The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Parish Council or Meeting had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.

- 1.3.61 The historic records of the Bittadon Parish meeting are not known to have survived.
- 1.3.62 Barnstaple Rural District Council Minutes, 1893-1974. The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a District Council had powers only in relation to public highways through the appointed Surveyor historically, which they had a responsibility to maintain.
- 1.3.63 There are a number of references to the highways in Bittadon parish in these records, but there is little detail, and none relate to the proposal route, Bittadon Lane.
- 1.3.64 Devon County Council Main Roads Committee, 19th-20th century. The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a County Council had powers only in relation to public highways through the appointed Surveyor historically, which they had a responsibility to maintain.
- 1.3.65 At a meeting of the Committee on the 12th February 1909, it was resolved that a contribution was paid of £50 (worth £2,853 in 2005) for works regarding the cattle creep at Burland, West Down, (actually Marwood) under the new turnpike road, now the B3230.
- 1.3.66 Finance Act, 1909-10. The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.
- 1.3.67 The proposal route is excluded between point A at Burland Cross and point D at the tributary of the Colam Stream, where it passes through the parishes of West Down and Marwood. The remainder which falls within Bittadon parish is included within hereditament 1, which also covers part of Marwood parish.
- 1.3.68 The Field Book entry for hereditament 1 in Bittadon parish refers to an easement for a footpath between farms. It also refers to a public footpath over Ordnance Survey number 153 at Narracott. There is no deduction for either right of way, nor what is now recorded as Marwood Footpath No. 19 or Bittadon Footpath Nos. 1 and 3. A plan in the Field Book entry shows the proposal route as a 'road', as is the continuation of the county road from the main road to the hamlet of Bittadon (R1409) along what is the start of Bittadon Footpath No. 1.
- 1.3.69 Bittadon, Marwood & West Down Freehold Estate Sale, 1918. Sales documents were compiled when a public auction took place. They were drawn up by the landowner or their agent. The public roads will have been excluded from such sales. It is also likely that if a lot has an easement or public right of way over it, it is likely to be detailed in the particulars. Sales particulars should be treated with some caution. The art of embellishment in advertising is not a newly acquired skill.
- 1.3.70 The proposal route, Bittadon Lane, between points D – E – F, is included within the sale within lot 2, Bittadon Barton, plot 26, road.
- 1.3.71 Bacon's map, circa. 1920s. This map were designed for *tourists and cyclists* with the roads classified for *driving and cycling purposes*. Its classification includes First Class roads, Secondary roads which were in good condition, Indifferent roads that were

passable for cyclists and other uncoloured roads that were considered inferior and not to be recommended. Additionally, Footpaths and Bridleways were marked on the maps as a pecked line symbol. Cyclists were confined to public carriage roads until 1968. The small scale does not permit all existing routes to be shown, omitting some more minor routes. The purpose of these maps was to guide the traveller along the routes most suitable for their mode of transport.

- 1.3.72 The map is too small scale to depict the proposal route, Bittadon Lane, or what is now recorded as the county road between the former turnpike road, the B3230 and the hamlet of Bittadon.
- 1.3.73 Bartholomew's maps, 1920s onwards. These maps were designed for *tourists and cyclists* with the roads classified for *driving and cycling purposes*. They were used by and influenced by the Cyclists Touring Club founded in 1878 which had the classification of First Class roads, Secondary roads which were in good condition, Indifferent roads that were passable for cyclists and other uncoloured roads that were considered inferior and not to be recommended. Additionally, Footpaths and Bridleways were marked on the maps as a pecked line symbol. Cyclists were confined to public carriage roads until 1968. The small scale does not permit all existing routes to be shown, omitting some more minor routes. The purpose of these maps was to guide the traveller along the routes most suitable for their mode of transport.
- 1.3.74 Maps dating from 1924 and 1932 show the proposal route only where it runs through Bittadon parish between points D – E – F. It is depicted as an Inferior Road and not to be recommended, which is the lowest category the maps show. The majority of those roads shown in the parish are included in that category.
- 1.3.75 Definitive Map Parish Surveys, 1950s. The compilation process set out in the National Parks and Access to the Countryside Act 1949 involved a substantial amount of work and such records are considered a valuable source of information. The rights of way included in the process had to pass through draft, provisional and definitive stages with repeated public consultations.
- 1.3.76 There is no reference to the proposal route, Bittadon Lane, in the Bittadon, West Down or Marwood surveys. The West Down parish survey form for path 17 (actually recorded for the majority of its length as Braunton Footpath No. 68 and Marwood Footpath No. 37) as going 'to Bittadon'.
- 1.3.77 Definitive Map and Statement, 1957. The Statement describes Marwood Footpath No. 19 as running through fields on the '*south side of Bittadon Lane*', while the Statement for Marwood Footpath No. 37 describes it starting at the '*county road C582 at Bittadon Lane*', as opposed to Burland Cross.
- 1.3.78 Bittadon Barton sale, 1993. Sales particulars should be treated with special caution, as the art of embellishment in advertising is not a newly acquired skill. Nevertheless, if a public right of way were admitted, a convincing reason for disregarding the entry would need to be provided before it could be entirely discounted.
- 1.3.79 The proposal route, Bittadon Lane was not included in the sale.
- 1.3.80 Route Photographs, 2009 and 2014. Site photographs of the proposal route show that it is open and available, though at times it has been a bit overgrown.

1.3.81 Land Registry, 2016. The proposal route, Bittadon lane, is excluded from land holdings between points A – B – C – D where it runs through the parishes of West Down and Marwood, but included between points D – E – F within Bittadon parish.

1.4 Landowner Evidence

1.4.1 Messers Ayres of Crackaway Barton have been farm tenants since 1896 and have more recently taken ownership of land on the north side of the route. They have believed for over 65 years that the proposal route, Bittadon Lane, to be public for the use of local farmers and residents of Bittadon parish with horses and carts and farm stock. The public have been seen using the route. They have not made a Section 31(6) deposit. They have not challenged anyone using the route or told them it was not public.

1.4.2 Mr Gould has tenanted and subsequently owned no. 1 Bittadon Cottages which is adjacent to the proposal route since 1965. He has known the route for 51 years and does not believe the route to be public. He states on his evidence form that he has not seen anyone using the route. However, he has told about 5 people that the route was not public and has referred a person to the occupiers of Bittadon Barton, who own the Bittadon end of the route between points D – E – F. Mr Gould has not made a Section 31(6) deposit. He believes that the lane originally provided access to Bittadon Barton before the B3230 was constructed.

1.4.3 Mr and Mrs Perkins have owned no. 2 Bittadon Cottages which is adjacent to the proposal route since 2008, but live in Wallingford, Oxfordshire. They do not believe the proposed route to be public and have not seen anyone using it, nor have they made a Section 31(6) deposit. The water supply for the hamlet is on the route and they would be concerned if this was affected.

1.4.4 Mr Crocombe of Burland Farm did not complete a landowner evidence form.

1.4.5 Mr and Mrs Balacke of Bittadon Barton did not complete a landowner evidence form.

1.4.6 Mr Houlford of Church Farm did not complete a landowner evidence form.

1.5 Discussion

1.5.1 Statute – Section 31 Highways Act 1980. There does not appear to be a specific date on which the public's right to use the proposal route, Bittadon Lane, has been called into question. No recorded users have been challenged or notices erected against use by any means.

1.5.2 As there is no specific date of calling into question or user evidence, the proposal cannot be considered under statute law. However, the proposal route, Bittadon Lane, may still be proven to exist as a public right of way at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.

1.5.3 A claim for a right of way may also exist at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.

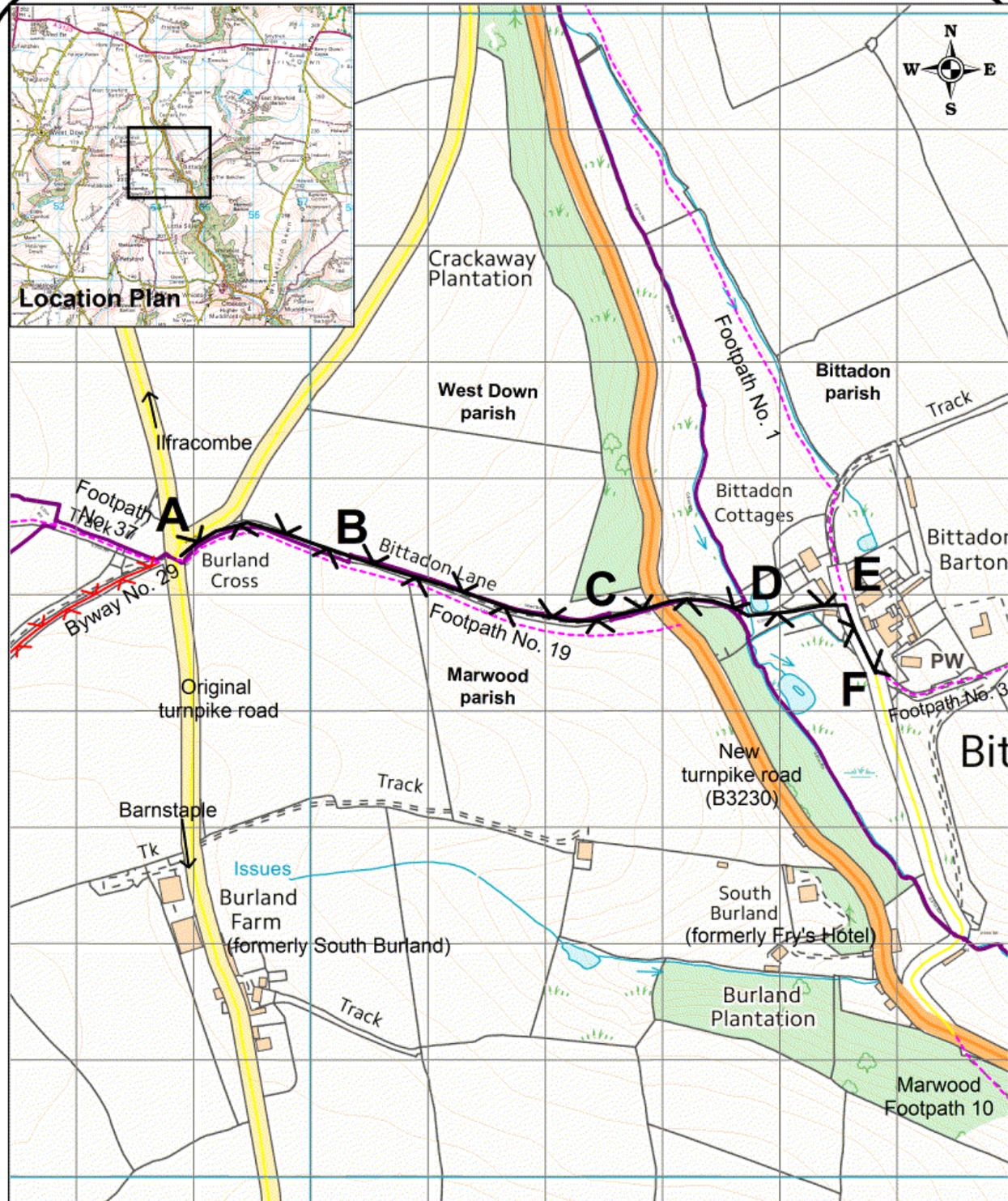
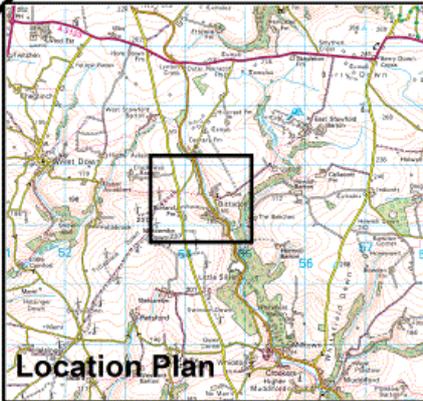
- 1.5.4 Common Law. On consideration of the proposal for Bittadon Lane at common law, the historical mapping shows that the proposal route has physically existed between points A – B – C – D – E – F as the shortest route between Bittadon and the surrounding area, since at least 1804 when recorded on the Ordnance Survey's 1" to 1 mile scale mapping, as a cross road in a similar manner to the currently recorded county road into Bittadon (R1409), which is part of an older route from Metcombe Cross on Swindon Down in Marwood parish, now recorded for the most part as Marwood Footpath No. 10. It is shown in a similar way on Cary's Map of 1821 and Greenwood's Map of 1827, from near the 6 mile marker on the original turnpike road at Burland Cross.
- 1.5.5 The proposal route, Bittadon Lane, between points A – B – C – D – E – F is shown as the most direct route between the original turnpike road between Barnstaple and Ilfracombe at Burland Cross (5 direction crossroads) and Bittadon. There was an alternative route from Metcombe Cross, Marwood, but only if travelling from the direction of Marwood and Barnstaple.
- 1.5.6 In 1826, a deposited plan by the Barnstaple Turnpike Trust proposes a new turnpike road between Barnstaple and Ilfracombe (now the B3230) to follow the river rather than the original road via Burland Cross at point A, at the end of the proposal route, Bittadon Lane. The relevant Book of Reference however does not refer to any existing highways shown on the plan, only the land. The valuation papers relating to land affected by the new road alignment record the proposed construction of 'a tunnel...under the Road [the B3230 as shown on the plan] for cattle to pass to water'. The cattle creeps are on either side of the proposal route, Bittadon Lane between points C – D, under the main road at a higher level than the lane to allow access to the Colam Stream from the fields. In 1827 the deposited plan of 1826 was enacted by Parliament, and the new turnpike road (now the B3230) was completed over the next couple of years. This is interesting as at that time, there could be severe financial penalties from the local magistrates if cattle were on the highway, unless going to market. It implies that the proposal route, Bittadon Lane, between points A – B – C – D – E may have been considered a 'highway' used by the public, which cattle would not be permitted on.
- 1.5.7 The construction of the new turnpike road, which is now recorded as the B3230, Barnstaple to Ilfracombe road, appears to have affected the access routes into Bittadon. The proposal route, Bittadon Lane, was bridged over, with cattle creeps either side for the movement of livestock between points C – D. What used to be the continuation of Marwood Footpath No. 10 became the main access route into Bittadon, now recorded as a county road (R1409), from the new turnpike road, now the B3230.
- 1.5.8 All the 3 relevant Tithe Maps are second class and only evidence of tithe information. Both the West Down and Marwood maps show the proposal route between points A – B – C – D as a coloured '*public road*' whilst Bittadon includes the route between points D – E – F in plot 165, '*road*', part of Bittadon Barton. What is now the county road into Bittadon from the B3230 (R1409), is also included in the Barton as plot 160 – '*road*'. This different treatment is mirrored in the Finance Act records, with the section of the proposal route, Bittadon Lane, between A – B – C – D, being excluded from hereditaments, whilst the remainder between points D – E – F is included in hereditament 1 covering parts of Bittadon and Marwood parishes. It does not have any reductions for Marwood Footpath No. 19 or Bittadon Footpath Nos. 1 and 3, or what is now the county road, R1409 between Bittadon and the B3230.
- 1.5.9 The proposal route, Bittadon Lane, between points A – B – C – D – E – F, does not appear in the various Vestry and other historic highway authority records. This does not mean that the route could not be public, just that it was not repaired by the relevant parishes. An additional complication is the variation in the portrayal of the parish

boundary between West Down and Marwood in relation to the proposal route, Bittadon Lane, between points A – B – C – D. This variation and the subsequent dispute which arose in 1883-5 when the Ordnance Survey Boundaries Branch were carrying out a survey, highlights another reason why the proposal route may not appear in the historic parish and highways records.

- 1.5.10 Though the original Ilfracombe District Highway Board records and the majority of the local petty Session records have not survived, their meetings were reported on in the North Devon Journal. A number of reports featured the proposal route, Bittadon Lane, as well as the route between the new turnpike road (now the B3230) and Bittadon, now a county road (R1409). It appears that both routes were neglected and not considered by the local magistrates in 1863 to be '*parish roads*', roads repairable by a parish, particularly Marwood. It appears that neither Bittadon nor West Down parishes were summoned before the local magistrates for non-repair of these routes. When subsequently a landowner denied his liability to repair in 1883, the Highway Board did not take any enforcement action.
- 1.5.11 The reports of the Highway Board meetings show that many public highways in this area were repaired '*ratione tenurae*', by adjacent landowners and occupiers, and it appears that the proposal route, Bittadon Lane, may have been included in this category, though the evidence is not considered sufficient to demonstrate this. The Ordnance Survey Boundaries Branch records contain inconsistencies about whether repairs were done and by whom. This inconsistency is reflected throughout the documentary evidence.
- 1.5.12 Current landowner evidence dates back to the 1940s, with knowledge dating back to 1896. It documents use of the proposal route, Bittadon Lane, by local farmers and residents in the area with horse and cart, though a more recent landowner has challenged several people over the years.

1.6 Conclusion

- 1.6.1 No user evidence was submitted in support of the Schedule 14 application or received subsequently. The documentary evidence, whilst suggesting that the proposal route may have been considered a public highway two hundred years ago, is insufficient to demonstrate this, with much inconsistency between those records which have survived. Reports of the Petty Sessions showed that local magistrates weighed up evidence both in support and rebuttal of the proposal route, Bittadon Lane, as a public highway in the 19th century, and found that it was not. Key sources such as the records of the Bittadon Vestry, the Surveyors of Highways records, some Petty Sessions, and the Ilfracombe District Highway Board do not survive.
- 1.6.2 It is therefore recommended no Order be made to add a byway between points A – B – C – D – E – F, along Bittadon Lane, in respect of Proposal 1, as shown on drawing number EEC/PROW/11/67.



map ref **SS 5341/5441**

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 -
 Bittadon with Marwood & West Down
 Proposal 1: Schedule 14 application -
 Claimed byway along Bittadon Lane**

drawing number EEC/PROW/11/67
 date May 2017
 scale 1:5000
 drawn by NSC

Notation

- Claimed byway A - B - C - D - E - F (approx 660m)
- Existing footpaths
- Existing byways

Meg Booth
 Acting Chief Officer
 for Highways,
 Infrastructure Development & Waste

