

**Definitive Map Review  
Parish of Combe Martin North Devon - Part 5**

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 Modifications Orders be made to modify the Definitive Map and Statement by:**

- (a) adding a Footpath between points A-B-C as shown on drawing number HIW/PROW/18/7 (Proposal 22).
- (b) adding a Restricted Byway between points D-E as shown on drawing number HIW/PROW/18/8 (Proposal 24).

**1. Summary**

This report examines the last two proposals from the twenty-five that arose from the Definitive Map Review in the parish of Combe Martin in North Devon district.

**2. Background**

The Background for the Definitive Map Review in the parish of Combe Martin was set out in Committee report HTM/13/14 February 2013.

**3. Consultations**

The current review began in January 2011 with a special public meeting held in the Town Hall attended by about 50 people.

Public consultations were carried out through October and November 2011 for the twenty-five valid proposals that were put forward following the parish meeting. The review and proposals were advertised around the parish, in the North Devon Journal and notices were placed at the ends of each proposal and letters sent to land and property owners.

The responses were as follows:

County Councillor Andrea Davis	-	queried individual routes
North Devon District Council	-	no comment
Combe Martin Parish Council	-	supports Proposal 22 does not support Proposal 24
British Horse Society	-	no comment
Byways and Bridleways Trust	-	no comment
Country Land & Business Association	-	no comment
Open Spaces Society	-	no comment
Ramblers' Association	-	no comment
Trail Riders' Fellowship	-	no comment

Please refer to the appendix to this report.

#### **4. Proposals**

There were 25 proposals arising from the Definitive Map Review in the parish. Nine proposals have been the subject of previous reports to the Committee. A further three proposals (1, 2 and 7) for the addition of footpaths to the Definitive Map and Statement cross land owned by the Parish Council and will be dealt with by means of creation agreements under delegated powers and three possible diversions which will be dealt with using delegated powers and 3 proposals further by agreement with National Trust and Coastal Access.

Proposals 22 & 24 are the final group of proposals in the parish and are referred to in the Appendix to this report.

#### **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(s) have been taken into account in preparation the report.

#### **7. Risk Management Considerations**

No risks have been identified.

#### **8. Equality, Environmental Impact and Public Health Considerations**

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

#### **9. Conclusion**

It is recommended that Modification Orders be made the add a Footpath in respect of Proposal 22, between points A-B-C as shown on drawing number HIWPROW/18/7 and to add a Restricted Byway in respect of Proposal 24, as shown between points D-E on drawing number HIW/PROW/18/8.

Details concerning the recommendations are discussed in the Appendix to this report.

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 District area.

Meg Booth  
Chief Officer for Highways, Infrastructure Development and Waste

**Electoral Division: Combe Martin Rural**

Local Government Act 1972: List of Background Papers

Contact for enquiries: Alison Smith

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

Tel No: 01392 383370

Background Paper	Date	File Ref.
Correspondence Files	2011- date	AS/DMR/COMBE MARTIN

as070218pra  
sc/cr/DMR parish combe martin part 5  
03 280218

**A. Basis of Claim**

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 (2) (b) enables the surveying authority to make an order to modify the Definitive Map. The procedure is set out under WCA 1981 Schedule 15;

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

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

Common Law presumes that 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.

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.

The Natural Environment and Rural Communities Act 2006 (NERC Act) extinguished the rights for mechanically propelled vehicles to use public rights of way 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.

**1. Proposal 22: Claimed addition of footpath between points A-B-C as shown on drawing number HIW/PROW/18/7.**

**Recommendation:** It is recommended that a Modification Order be made to add a public footpath between points A-B-C as shown on the plan.

**1.1 Background**

- 1.1.1 During the course of the current Definitive Map Review, Proposal 22 was put forward by the Parish Council and members of the public following the Definitive Map Review meeting in Combe Martin. In a file dating from 1979, there was also a written request from Combe Martin Parish Council to record Adderstable to Woodlands as a public right of way, and 14 evidence forms were submitted with this request.

**1.2 Description of the Route**

- 1.2.1 The claimed route starts at Woodlands the A399, point A, it travels over an un-adopted road south easterly then turns through ninety degrees and continues in a south westerly direction before turning through another ninety degrees at point B and along a stone and mud track between woods and Combe Martin Beach Holiday Park. There is a fence between the track and the holiday park with pedestrian gates leading on to the track. The claimed route passes through a gate and joins the Definitive Footpath Number 2, Combe Martin at point C.
- 1.2.2 From Woodlands Road the route has a hardened surface and is used by the adjoining residents to access their properties in vehicles. After point B, the lane narrows and is steeper. This section has a rough stone and mud surface. When the officer inspected the route there was a gate at point C.

**1.3 Documentary Evidence**

**1.3.1 Tithe Map and Apportionments 1842**

The claimed route is not shown on the map as such because the A399 had not been rerouted. The main road into Combe Martin is still shown on its original alignment close to the coast. However, the apportionments show that Mr John Doodle was the owner and occupier of Field no.5. At the edge of this field was a track, (which is part of the claimed route now behind Grey Walls.) This track was detailed as waste in the apportionments. Field No.4 was arable and field No.15 named as Adders Table. This name has been corrupted to Adderstable on modern mapping.

**Turnpike Trust**

Barnstaple to Ilfracombe Turnpike Trust built the new alignment of the A399. Enacted in Parliament in 1865 and built between 1867-69. The claimed route starts from this road at point A, although there is no reference to the route in the setting out.

**1.3.2 Ordnance Survey Mapping**

1890s 1<sup>st</sup> Edition OS map 25" to 1 mile. Shows route of the Proposal 22 starting at Woodlands which at that time was just a row of 5 houses. The rest of the route is undeveloped.

1904-1906 2<sup>nd</sup> Edition OS map 25" to 1 mile, shows Proposal 22 in the same way as the previous map.

The Post War mapping shows the area fully developed and the route is clearly shown as a lane between A-B-C.

1.3.3 All subsequent OS maps show the claimed route in the same way.

1.3.4 Highway Handover Book  
Proposal 22 does not appear on this.

#### **1.4.1 User Evidence**

1.4.2 Twenty-one user evidence forms were collected by Combe Martin Parish Council to support this claim. Fourteen completed between 1978 and 1979 during an earlier uncompleted Review, (these have been held on file pending investigation) and a further seven forms collected by the Parish Council during the current review process. One user, Mr Spencer, completed an evidence form in 1978 and another for the current review. All the users identified Proposal 22 as part of the recreational routes around this area. All twenty-six users have walked the route for pleasure, to get around the village and/or dog walking.

#### **1.4.3 User Evidence Forms collected in 1978**

1.4.4 Mr Beaumont walked the claimed path between Woodlands and Adderstable, many times between 1920 and 1978 to avoid traffic. He states that there were no notices and there was an unlocked gate into the Adderstable field. He had never been challenged for turned back.

1.4.5 Mrs Boyer had walked the claimed path several times a year between 1942 and 1976 for pleasure and to keep off the main road, the route she used had never varied, there was one gate from the Adderstable field into the lane and she knew the land was owned by several different people. She was never stopped, or challenged.

1.4.6 Mrs Cowell had walked the route since she was a child, however her forms give no dates. She comments that the route had never altered and she was never challenged or stopped from using it.

1.4.7 Miss Darch had walked the path since 1954, completing her form in 1978. She reports that she used it numerous times, saying there was a gate and that she had seen a private road notice. She did not clarify this and continued to walk the path regularly.

1.4.8 Mrs Eastman, who was 50 years old in 1978, had walked the claimed route all times since she could remember. She said there was a wire fence and a gate and a private road notice but no more detail was given.

1.4.9 Mr Everett who was 74 in 1978, says he had walked the route hundreds of times since about 1955 to 1973, 3 to 4 times a week for periods of that time as it was the quickest route to the bus stop. He was a resident at Glenavon Caravan Park from 1960 to 1973. He said that the path was used by the farmer to get to fields until he made a more convenient entry via Park Lane. He also says that a notice board at Gables end saying, "Private No Public Footpath" or words to that effect. *(Note the Gables is not on the claimed route and this would appear to relate to a cut through from the campsite.)* He adds a foot note saying "since writing this I am informed that a gate has recently been fitted and secured against entry. This denies access to an attractive Public Footpath leading to Park Lane." *(Note this is not on the line of the claimed route.)*

1.4.10 M E Greenfield was 67 in 1978, he had been walking the path several times a year between 1960 and 1976, saying it was a "very pleasant walk from one end of the village to the other". There was a gate at Adder Stable. He says he was "unmolested until Xmas 1974, a very unpleasant character came out and said if I didn't turn back he would

kick the dogs guts out and knock my bloody block off. Mr Squires informed me in no uncertain terms the road was his.” However, Mr Greenfield continued to use the path.

- 1.4.11 Miss Gregory was 59 in 1978, had used the route since 1936 for walking. There was a gate between field and path, when animals were kept in the field. She had not been stopped or turned back.
- 1.4.12 Mr Lawrence had walked the route since about 1960 to 1978 always over the same route, there was one gate at the edge of the ‘Adder Stable’ field, he had not been stopped or turned back and the gate was never locked.
- 1.4.13 Silvia Lawrence had walked the route since about 1960 there was one gate into Adder Stable field that was not locked. She was never challenged or saw any notices.
- 1.4.14 Mrs Miller had used the route since approximately 1948 walking the dog several times a year, there was one gate leading into the ‘Adder Stable’ field and she was not stopped or challenged, however said there was a notice somewhere on the route that said private.
- 1.4.15 Mr Spencer in 1978 said the route was commonly regarded as public. When he lived in that part of the village he had used it quarterly for a country walk from between 1955 and 1965. There was a gate into ‘Adder Stable’ field. He writes that within the last year (1977-1978) a new notice that said ‘Private’ was put near the gate. He says, “Steps to bar access appear to have been taken since the institution of the Footpath Review”.
- 1.4.16 Mrs Smith had walked the path our times each year summer since 1966, walking from one end of the village to the other bypassing the main street. There was a gate as ‘Adder Stable’ into the lane. She was not challenged, stopped or saw any notices.
- 1.4.17 Mrs Upton walked the route 50-60 times a year between 1968 and 1975 she says there was a gate at ‘Adder Stable’ and a new notice saying private road, she thinks the land is owned by Mr Squires or Gilbert.

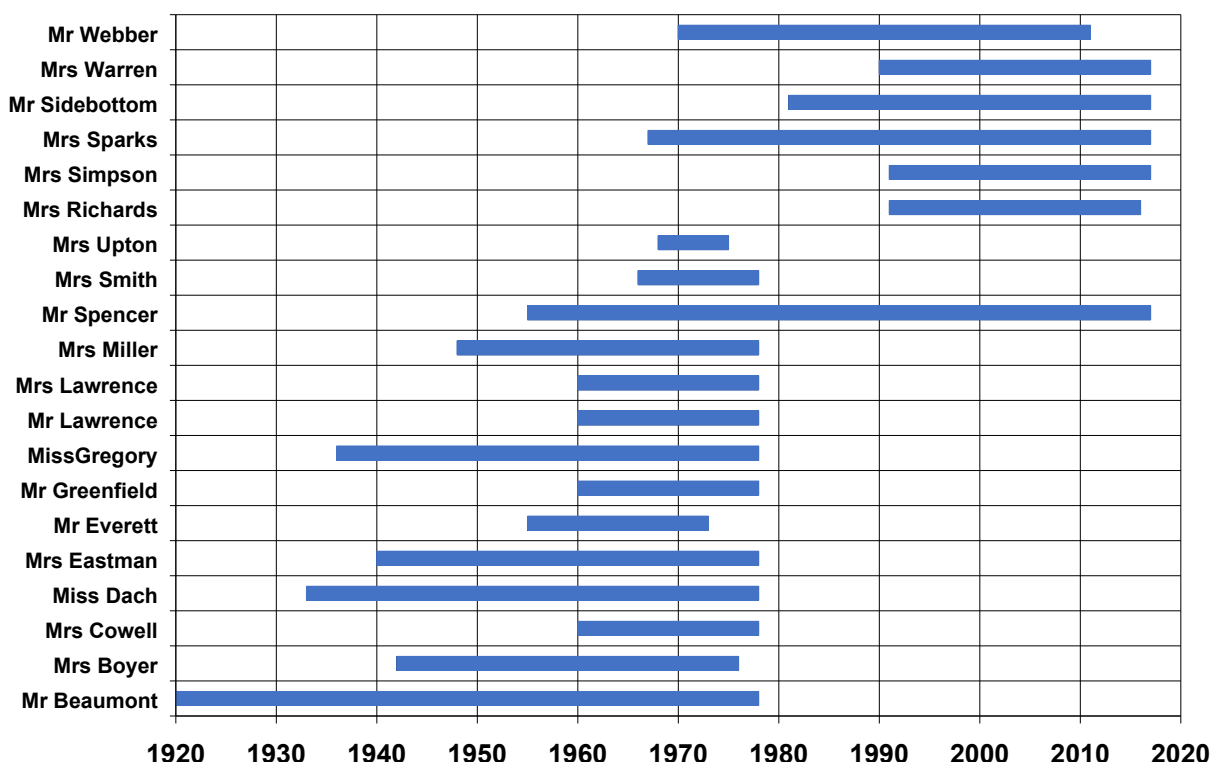
#### **1.4.18 User Evidence Forms completed in 2011**

- 1.4.19 Mrs Richards had used the footpath between 1991 and 2001, 160 times a year for walking for the dogs for pleasure, she said it is frequently used by many people. There were no notices and she was never stopped.
- 1.4.20 Mrs Simpson walked the route with her dogs between 1991 and 2011 about 180 times a year, she said it has always been used and there were no notices.
- 1.4.21 Mrs Sparks has walked the footpath since 1967 at least 12 times a year. On one occasion the path was shut while they were siting caravans on the adjacent site. Other than that, she has not been stopped for challenged.
- 1.4.22 Mr Spencer, completed another user evidence form in 2011. He has continued to walk the route on average every fortnight.
- 1.4.23 Ms Sidebottom has walked the path since 1986 about 200 times a year, she says it in constant use by local walkers. There is a gate at the entrance to Adder Stable and many people regularly walk it from one end of the village to the other.
- 1.4.24 Mrs Warren has used the route for many years walking the dog about 52 times a year. The gate has never been locked.

1.4.25 Mr Webber walked the path over 100 times a year since 1970, because he believes it has always been used by the public. The gate at 'Aderstable' has never been locked and he has not been stopped or turned back.

1.4.26 The users who have filled in forms are probably a small sample of the public who are, and have been using the route without let or hindrance. On each site visit the Officer has observed walkers freely using the route.

## 1.5 User Evidence Table Proposal 22 Adderstable



## 1.6 Adjoining property holder's evidence

1.6.1 During the public consultation, prominent notices were displayed at each end of the route and notices and letters also sent to all adjoining properties.

1.6.2 The lane from point A to B is used as shared access for numerous properties; no-one has responded giving the opinion that this route was not a public path.

1.6.3 The presumption of *ad medium filum* means that when land abuts a highway (or private right of way), the boundary of that land is presumed to extend to the middle of that right of way (or highway), unless it can be shown otherwise, and it may therefore mean that all the adjoining landowners may own the lane, and have the power to dedicate.

## 1.7 Rebuttal Evidence

1.7.1 There is no direct rebuttal evidence.

1.7.2 This route was initially claimed by the Combe Martin Parish Council in 1978, during a previous rights of way review. They submitted 14 user evidence forms, which have been held on file and undetermined until now. Contained within these was the evidence from Mr Greenfield who appears to have been challenged at Christmas 1974. Mr Greenfield was 74 years old when he gave his evidence and is no longer around to be asked for



further clarification. From his form it appears that he used the path from 1960 frequently, without let or hindrance, and after the challenge he continued to walk the path for a further two years (before he completed his form) without further problems. No other users, from that time have been challenged, but a few did report a new (at that time) private sign although it is now hard to establish where this was sited.

## **1.8 Discussion**

### **Statute (Section 31 Highways Act 1980)**

- 1.8.1 Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.
- 1.8.2 Proposal 22, is supported by 20 user evidence forms giving direct evidence of use on foot, back to 1920. From the spread of evidence, it can be seen walkers have been using the claimed footpath regularly from the 1920s to the present day. Some users have been contacted by telephone and they verified they are still using the path without hinderance. The PROW Officer has observed the public freely using the path on the occasions that the site has been visited. It is likely the users who completed forms are just a sample of those using it.
- 1.8.3 One user was challenged in 1974, however, because of the time elapsed it is impossible to question him to establish the facts. However, it can be seen from the contemporary user evidence the path was being frequently walked and no-one else reports being stopped or challenged. It is therefore felt unlikely that this one incident is enough to show that a landowner challenged use and called the public's use of the route into question for the purposes of considering the claim for presumed dedication under Statute.
- 1.8.4 No landowner has made the case that the route is not public, or have said they have made any challenge to those people using it.
- 1.8.5 The adjoining Caravan park has an access gate from its site onto the track, so visitors from the site are also using the path, however there is no way of capturing that data from those visitors using the path.
- 1.8.6 From the evidence forms collected in 1978, two users report a 'private notice', neither detail the position of this. The private access road from point A, is not maintained by the county council, this sign may have indicated this. It did not have the effect of stopping the public believing there was a public footpath over the route or calling their use of the route into question.
- 1.8.7 Users consistently report a gate leaving the field at Adderstale, point C, to keep stock contained. No one ever found this to be lock or obstructed.
- 1.8.8 So on balance there are no objections from landowners. The user evidence shows the public have been walking the path since 1920, and the single challenge of one walker is not sufficient to call the route into question. No other users knew of this single challenge.
- 1.8.9 The incident in 1974 is not considered to calling the public's use of the route into question. Therefore, without a date having been clearly identified as having called into question the public's right to use the way, the proposed addition cannot be considered for presumed dedication under Statute.

## **Common Law**

- 1.8.10 In addition to the presumption of dedication which arises under Statute, 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 either expressly, the evidence 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.
- 1.8.11 At Common Law use does not raise a presumption of an intention to dedicate, but merely evidence of such an intention. Thus, the onus of proof lies on a person claiming a way as public to show that the facts, when taken, were such that the rightful inference to be drawn from them was that there was an intention to dedicate the way as public. Each case turns on whether the facts indicated this intention. No minimum period is required to be shown.
- 1.8.12 About the meaning of the words 'as of right' the common law adopted the Roman law principle that for long usage to give rise to a presumption of dedication, the user had to be *nec vi, nec clam, nec precario*: without force, without secrecy and without permission. This is what 'as of right' means.
- 1.8.13 The facts are when taken, are of frequent use of Proposal 22 by numerous people on foot since the 1920's. The use has been without challenge, interruption, force, secrecy or permission and show rightful inference to be drawn from this use: that there was an intention to dedicate the way as public and that the public's continued use is evidence of acceptance of that dedication at Common Law.
- 1.8.14 The current adjoining property owners have made no comment or objection.
- 1.8.15 Proposal 22 is not seeking to change any rights of the public the path, only to have those rights recorded on the Definitive Map.

## **1.9 Conclusion**

- 1.9.1 The evidence is considered sufficient to show that a public footpath subsists, or is reasonably alleged to subsist, over the route of Proposal 22. It is therefore recommended that a Modification Order be made to add a Public Footpath between points A-B-C as shown on drawing number **HIW/PROW/18/7** and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

**2. Proposal 24 Claimed addition of a Byway Open to All Traffic (BOAT) between points A-B as shown on drawing number HIW/PROW/18/8**

**Recommendation:** It is recommended that that a Modification Order be made to add a Restricted Byway between points D-E as shown on drawing number HIW/PROW/18/8.

**2.1 Background**

- 2.1.1 During the course of the current Definitive Map Review, Proposal 24, to record a Byway Open to All Traffic over the Slipway leading to Combe Martin Beach, was put forward members of the public as a result of the Definitive Map Review meeting in Combe Martin.

**2.2 Description of the Route**

- 2.2.1 The claimed route runs between Cross Street, Point D, and the foreshore, Point E, on the beach. This is a slipway giving access to the beach. There is a bollard on the slipway to prevent vehicle access to the beach.

**2.3 Documentary Evidence**

2.3.1 Combe Martin Tithe Map and Apportionments 1842

The Tithe Map shows a gap in the harbour wall where the slipway is located.

2.3.2 Ordnance Survey Mapping

1890s 1<sup>st</sup> Edition OS map 25" to 1 mile, also shows a gap in the sea wall where the slipway is.

- 2.3.3 1904-1906 2<sup>nd</sup> Edition OS map 25" to 1 mile and all subsequent OS maps the claimed route in the same way.

2.3.4 Highway Handover Book

The route does not appear on this.

2.3.5 Historical Background

Combe Martin Harbour has been a busy harbour for hundreds of years. There are references to it dating back to 994AD. Lead and silver from the mines were exported from the beach on boats, and later limestone was exported and coal brought in from Wales. Farmers also exported their produce from the beach, loading it onto boats to then be taken to Wales, Bristol and further afield. Usually the boats were unloaded at low tide and pack horses, horse and carts and later lorries moved the cargo to the shore up the slipway.

- 2.3.6 In the seventeenth century, Combe Martin was still largely cut off from the rest of the country by the hills that surround it. There were relatively few buildings and no continuous street, as we know it today. Combe Martin's inhabitants eked out a living from the soil and from working the lead and silver mines which had for long brought a measure of prosperity to the area. Until the end of the 19th century, the harbour used to be filled with coastal vessels. Most of the roads were little more than dirt tracks, so the majority of the area's goods had to be transported by sea. Horses and carts and pack ponies were used to carry goods from the ships beached in the harbour. Mining for silver was once very important here and evidence of silver mines, and limekilns. (everythingexmoor.org.uk)

- 2.3.7 Another website, [Ports.org.uk](http://Ports.org.uk) details “Until the end of the 19th century, the Combe Martin harbour used to be filled with coastal vessels. It was once a very prosperous harbour, exporting locally grown strawberries and hemp. There is now no evidence of a quay, except possibly at the very head of the bay, which dries out at most tides.” (ports.org.uk)
- 2.3.8 Old Photographs taken circa 1910, show cargo vessels on Harbour Beach Combe Martin being unloaded by horse and cart. The photograph from 1931 shows the transport of the day had progressed to motorised transport, because the ship was being unloaded by a motorised lorry. By the time the photographs were taken in 1951 the boats on the Harbour beach were smaller fishing boats, rather than large cargo vessels. The only way on and off the beach for all the vehicles (whether that was horses and carts or motorised vehicles) was via the slipway, the claimed route.
- 2.3.9 Court Papers 1960  
In July 1960, Combe Martin Parish Council, the plaintiffs, and Mr and Mrs Alldridge and Lloyds bank, the defendants, went to court to settle who owned which parts of Combe Martin Beach above the mean high-water mark. It was settled that Combe Martin Parish Council owned the coastal slope and higher beach and the Alldridge’s and the Bank owned the beach above high water.
- 2.3.10 Section 3 of these Court Papers set out; “The Parties and each of them admit and acknowledge that the public have rights of access (free of charge) to the said lands coloured pink for the purpose of bathing air and exercise and rights ancillary thereto as hitherto enjoyed.” This land is to the northeast of the beach and does not cover the claimed route.
- 2.3.11 Conveyance 1982  
A conveyance dated 24 March 1982, describes that the foreshore was sold from the Kings Estate by the Commissioners of the Crown Lands in 1925. It has subsequently been bought and held by other individuals, including the Alldridge’s, before being held by a company called Overseas Negotiations Limited. It would appear Combe Martin Parish Council may have purchased the part of the foreshore from Overseas Negotiations Limited in 1982. However, there is no map showing the land that was bought. This deed allowed for continuing access to the adjoining property for repair, maintenance etc.
- 2.3.12 These documents show that Combe Martin Parish Council are in the unusual position of being the owners of the foreshore of some of Combe Martin beach, but the exact extent of this ownership is hard to ascertain.

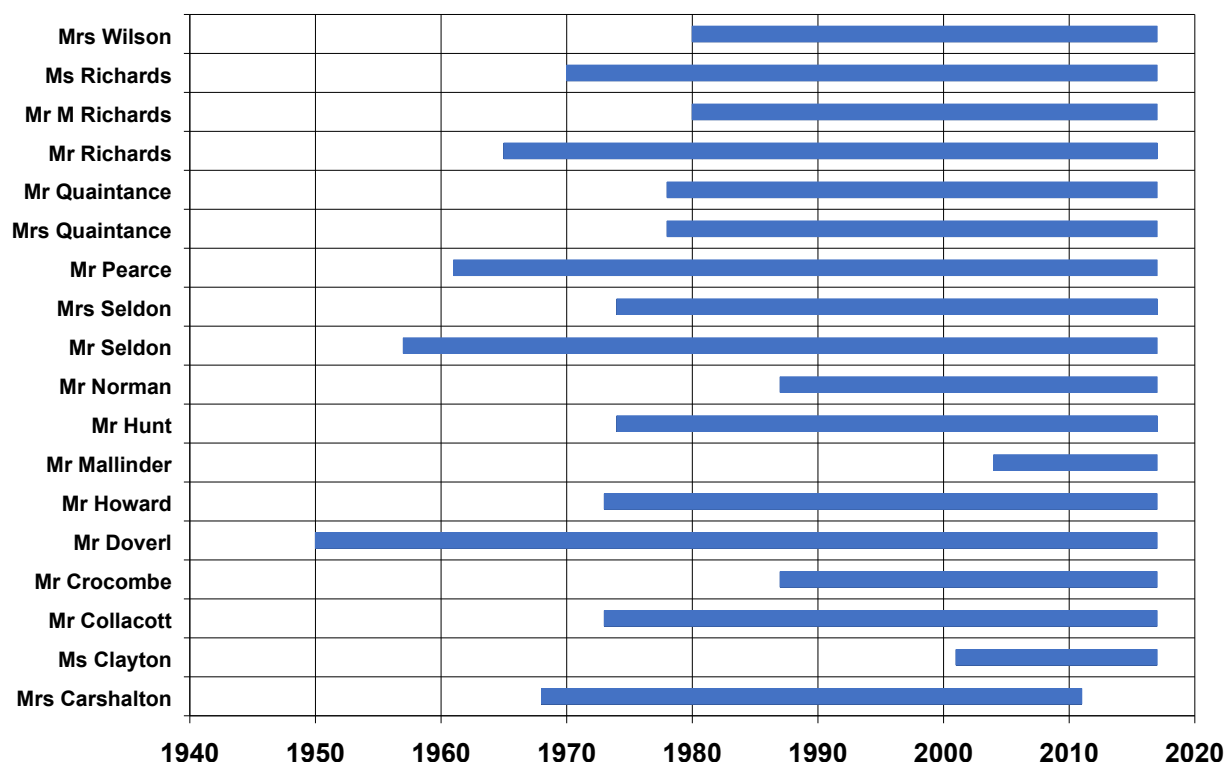
## **2.4 User Evidence**

- 2.4.1 Eighteen user evidence forms have identified Proposal 24 as a claimed Byway Open to all Traffic (BOAT), users having used it on foot, horse, bicycles and in vehicles.
- 2.4.2 None of the users have asked for or been given permission to use the route, believing it to be public. Bollards were erected on the slipway by Combe Martin Parish Council in 1999. The user evidence is as follows:
- 2.4.3 Mrs Carshalton believes the slipway is a BOAT. She has used it to get to the beach on foot, bicycle and in a vehicle to launch boats and kayaks, between 1968 and 2011. She said the public had used it for many years, before a bollard was put up.
- 2.4.4 Ms Clayton has used the slipway on foot and horseback since 2001, and for exercising her horse on the beach.

- 2.4.5 Mr Collacott believes the route is a BOAT, and has used it since 1973 more than 50 times a year; on foot, bicycle and in a vehicle. There was a notice about the restrictions on the beach in the summer. He says the slipway was used by his Great Grandparents, and his Grandparents for access to the beach. The bollard was put up in 1999 when the Parish Council went for the Flag Award.
- 2.4.6 Mr Crocombe has used the slipway on foot and bicycle and in a vehicle to launch boats with his uncle as well as kayaks and to walk the dogs and ride bikes from 1987. He says there has been a bollard blocking vehicles since the Flag Award. He believes that the route is public, as it has always been used.
- 2.4.7 Mr Dover has used the slipway since 1950 to get on to the beach on foot and horse. He says, "I do not use the beach with the horse in the summer for obvious reasons, only the dog".
- 2.4.8 Mr Howard used the slipway since 1973 to get on to the beach on foot and in a vehicle to launch his boats and kayaks, saying it's the main access to the beach. There has been a bollard since the Flag Award.
- 2.4.9 Mr Mallinder has walked over the slipway to the beach since 2004 about 100 times a year.
- 2.4.10 Mr Munt has used the slipway in a vehicle to launch boats, on foot and on a bicycle over 30 times a year but has not driven it since the bollard.
- 2.4.11 Mr Norman has walked, cycled and driven over the slipway since 1987 at least 30 times a year. There has been a bollard since 1999. He says it has been used for 100's of years. His Grandad used to take his strawberries over the slipway to load onto the waiting boat.
- 2.4.12 Mr Pearce has used the route since the early 1960's on foot as the main access to the beach.
- 2.4.13 Mrs Seldon has used the slipway to access the beach on foot and bike. She says a bollard was put on the slipway. She has watched boats being taken onto the beach to be launched since 1974, she has also seen horses using the beach.
- 2.4.14 Mr Seldon has used the slipway to access the harbour at least 100 times a year on foot and bicycle for pleasure. He says he thinks it public because there has been access to the harbour for 100s of years. He says a bollard was put up to stop vehicular access with a notice that says "No" to everything in the summer. He says from historical information he has found the slipway and harbour was the main way everything come in and out of the village. He gives a further statement in which he says "My Grandfather and Great Grandfather took produce down to the harbour as did other farmers and growers to meet the boats to take strawberries and other produce to Wales. They also unloaded coal boats. All done with no restrictions whatsoever. Fishermen have used the slipway for access for vehicles to service their boats, parking at the top of the beach. Seaweed has been picked from the beach for as far back as I can remember using the slipway for access for transport. With the exception of a couple of years, I have lived in Combe Martin all my life, and it is only since 1999 people have had restrictions yet they have still used it. These restrictions were made by the Parish Council although the Parishioners were strongly against them." Signed Councillor Steve Seldon, Combe Martin Parish Council.

- 2.4.15 Mr Pearce has used the slipway to access the beach on foot since 1971. A post was erected to stop vehicle access. The beach was purchased by the Parish Council several years ago and since then vehicles are only allowed on the beach for launching boats with permission.
- 2.4.16 Mrs Quaintance, has used the slipway on foot and in a vehicle since 1978 at least 6 times a year until the bollard was put up. Since then she has just used it on foot. She attached a newspaper article detailing the parish council meeting where discussions were held about the blocking of the slipway to vehicles and the un-favourable public view of the lack of access to the beach in vehicles.
- 2.4.17 Mr Quaintance has used the slipway on foot and in a vehicle from 1978 onwards as it was the main access to the beach. To illustrate the fact that the slipway was the access for all vehicles, he attaches a newspaper photograph showing the Salcombe registered ketch called Ann discharging cargo into an old Lorry at Combe Martin beach harbour. Also a second article about "Beach access row goes rumbling on", which details the differing opinions of the Parish Council and the public. It describes how the harbour of Combe Martin has been in existence since 994 BC and there has been unrestricted access for 1,100 years. It also details the Parish Council arguments for closing that access. Mr Spencer the Parish Chairman is quoted as saying "We have had vehicles and trailers driven on to the beach and left there, to the disturbance of others. Then they launch high-powered vessels which are driven close to swimmers and paddlers in the harbour." The resort has a Seaside Award Flag.
- 2.4.18 Mr Richards has walked and ridden over the slipway, since the 1960s, to access the beach on a weekly basis, in the quiet season. More recently there have been seasonal restrictions for dogs on the beach.
- 2.4.19 Mr M Richards walked the slipway weekly since 1980 to get to the beach. He says a bollard was erected to stop traffic, and in his opinion, this is wrong.
- 2.4.20 Ms Richards has walked and ridden over the slipway since 1970 at least 50 times a year. She says there has always been access. She has ridden the beach out of season or early in the morning in the summer.
- 2.4.21 Mrs Wilson has walked and ridden across the slipway on foot and horse about 50 times a year since 1980.
- 2.4.22 Other evidence in support  
Mr Seldon adduces a letter sent from Mr Collacott, to Combe Martin Parish Council in September 2004. Mr Collacott was the Chairman of Combe Martin Parish for many years. He writes "My memory of the beach and access to it goes back to before the Second world war. In fact, my Father and Grandfather together with others were regularly involved in conveying coal by horse and cart from ships in the harbour to coal merchants in the village. I most certainly do not remember the access being closed. Even during the War." He goes on to say "Until proved otherwise parishioners and others, individually and collectively have a prescriptive vehicular right of way to and from the beach. He closes "It is my genuine belief, that your council, unless proved otherwise may well be in breach of the law to close this access."

## 2.5 User Evidence Chart Proposal 24 The Slipway



## 2.6 Landownership

- 2.6.1 The land holding of Combe Martin Beach and Harbour is not registered at the District Land Registry. The Court papers from 1960 attach a poor-quality map which show the area of land, on the eastern side of the beach, on which Combe Martin Parish Council and Mr & Mrs Alldridge settled their dispute. The 1982 Conveyance does not have plans attached and it is hard to ascertain without these, the exact area of land that was bought. However, Combe Martin Parish Council now maintain the beach and slipway.

## 2.7 Rebuttal Evidence

- 2.7.1 Combe Martin Parish Council deliberately blocked the slip way with a bollard in 1999 with the express purpose of stopping vehicular access to the beach on health and safety grounds, and to gain the Beach Flag award. The bollard remains on the slipway, blocking vehicular access. Parish Council records and press coverage show that they do not want vehicles on the beach on health and safety grounds, as they do not think beach users mix well with vehicles. They do not believe vehicles have a right to use the slipway and beach.
- 2.7.2 Combe Martin Parish Council minutes show the proceedings of an Extra-Ordinary Parish Council meeting on 20<sup>th</sup> September 2004. Sixty-nine parishioners attended. The bollards on the slipway were the topic for discussion. Parishioners gave the historical perspective that boats and vehicles had always accessed the beach and harbour over the slipway. A majority of parishioner's present expressed their views by voting in favour of unrestricted access onto Combe Martin Beach.

- 2.7.3 The Clerk advised council members that uncontrolled access onto the beach had been identified as a safety hazard five years previous. Were an accident to happen on the beach, the Parish Council could be accused of neglecting its duty of care if councillors did not take steps to protect families and children playing on the beach, which would weaken the Council's defence in the event of an insurance claim and lay ratepayers of Combe Martin open to an unlimited financial risk.
- 2.7.4 The councillors discussed the matters raised by members of the public and expressed their concerns over the safety aspects of the issue and the need to protect beach users and bathers, especially small children. Members of the public were asked to suggest an alternative way of satisfying the Council's duty to protect families, and in particular young children, and there was no response.
- 2.7.5 The Chairman Mr Spencer proposed the first resolution: 'That access to Combe Martin Beach is controlled so that entry is permitted for those wishing to bathe, take air, exercise and ancillary rights thereto and for owners of vehicles and vessels who give evidence of third party insurance and compliance with a code of conduct.'
- 2.7.6 Councillor Hughes then also proposed the second resolution; 'That this Council should adopt the vote of the parishioners present'.
- 2.7.7 Councillor Seldon proposed the third resolution; 'That access to the beach be unrestricted by public request'.
- 2.7.8 The Parish Chairman went on to say; 'As both the second and third proposals were direct negative of the original proposal, only the chairman's proposal to control access was voted upon.' There were 8 councillors including the chairman for the motion and 3 against.
- 2.7.9 On occasions Storm Boards are erected at the top of the Slipway to prevent the sea flooding the village. These are not erected to stop access but rather to stop flooding.

## **2.8 Discussion**

- 2.8.1 Proposal 24, the Slipway is likely to have been in existence for hundreds of years to access the Combe Martin Harbour Beach. It has been used for the day to day access by all to reach the beach and harbour. The evidence shows those journeys have been made on foot, horse, horse and cart and in motorised vehicles.
- 2.8.2 Extract taken from Nature Net Navigation Law Access to and ownership of beaches and the foreshore: Although almost all beaches allow public access, often because of the practical impossibility of preventing it. However, there is no right to cross private land to gain access to a beach. The foreshore is the area between the high-water mark and the low water mark. When the tide is in there is an absolute right to navigate through the water (although not necessarily a right to land a boat or launch one) and so it is not possible to fence off foreshore areas, as this would limit navigation. All foreshore belongs to the Crown unless it has in the past been sold or given away. (*As is the case in Combe Martin.*) This has occurred in a few places. However, there is no legal right of access to the foreshore.
- 2.8.3 The Crown Estate gives what it calls a "general permissive consent" for "non-commercial public access along the foreshore" it controls. This also implies that such permission is necessary and that other landowners might not grant it. Approximately half of the UK foreshore and around half of the tidal riverbeds are owned by the Crown and managed by The Crown Estate, in addition to virtually the entire UK seabed out to 12 nautical



miles. The Crown Estate is governed by The Crown Estate Act 1961. The Crown Estate is a landowner and not a regulatory authority. The Crown is the prima facie owner of foreshore, or land between mean high water and mean low water, by virtue of prerogative right. (Halsburys Laws Vol 12 (1), 1998 Reissue, para 242). The same applies to seabed, being land below mean low water. This, in effect, means that the Crown owns all of it unless it has in the past given it away or sold it.

- 2.8.4 Other owners of foreshore include, for example, the Duchies of Cornwall and Lancaster, Local Authorities, RSPB, National Trust, MOD and some is in the ownership of private individuals. This appears to be the case at Combe Martin, the Crown may have sold away its rights and those ultimately appear have been bought by Combe Martin Parish Council. The Parish Council now appear to control the beach including the slipway. The access to the beach has been challenged; the evidence therefore of how the slipway is being used should be examined.
- 2.8.5 Proposal 24 is supported by 18 user evidence forms, from local people using the route on horseback and foot and in vehicles. The users give direct evidence back to 1950, and indirect family evidence for more than 100 years. 10 of those users have used the route in vehicles. 15 users believe the Slipway is a Byway Open to All Traffic, because it has always been used as such.
- 2.8.6 This spread of user evidence would fit the description of a Byway Open to All Traffic, being a route that is mainly used on foot and horseback, but has been used by vehicles. However, the right to use an unrecorded way in a mechanically propelled vehicle was extinguished by the NERC Act unless one of a few exceptions to this general extinguishment applies. These are that:
- (a) *it is a way whose main use by the public during the period of 5 years ending with commencement (2006) was use for mechanically propelled vehicles;*  
For this exception, to be allowed for the claimed route, the evidence would have to show the Slipway was used mainly by vehicles between 2001 and 2006, however the slipway was blocked to vehicles in 1999.
  - (b) *it was shown on the List of Streets;* the Slipway is not shown on the List of Streets.
  - (c) *it was expressly created for mechanically propelled vehicles;* the Slipway has existed for hundreds of years prior to the invention of mechanically propelled vehicles. It was an all-purpose highway being used by the traffic of the day; on foot packhorses, horse and carts and finally motor vehicles. It was therefore not expressly created for motor vehicles pre-existing these.
  - (d) *it was created by the construction of a road intended to be used by such vehicles;* the Slipway was not constructed solely for use by mechanically propelled vehicles, it pre-existed these.
  - (e) *it was created by virtue of use by such vehicles before 1 December 1930;* the public rights to use the Slipway were not created by mechanically propelled vehicles before 1 December 1930. Rather the evidence shows that the public were using non-mechanical vehicles on the Slipway long before motorised vehicles were invented, and had historically acquired the right to use the slipway.
- 2.8.7 Therefore, none of the exceptions of NERC Act can be applied to the claimed route. It could however be recorded as a Restricted Byway, if public vehicular rights are shown to subsist, which would acknowledge the public's historical rights to use the route, but excludes the public from using a motorised vehicle along the way.

## **Statute**

- 2.8.8 Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.
- 2.8.9 There has been a calling into question of use made of the route by motor vehicle users. Therefore, the proposed addition can be considered for presumed dedication under Statute; the relevant period of use from 1999 back to 1979.
- 2.8.10 Use during the relevant period of 1979 to 1999 for Proposal 24 is supported by 18 user evidence forms, from local people using the route on horseback and foot and in vehicles. 10 of those users have used the route in vehicles, all 18 having walked the route and 12 having also ridden over the slipway on horse and bicycle. The number and frequency of use is considered sufficient to give rise to a presumption of dedication of a public right of way, and until the Parish Council erected the bollard in 1999, there is no evidence of any lack of intention to dedicate the route by the landowner.

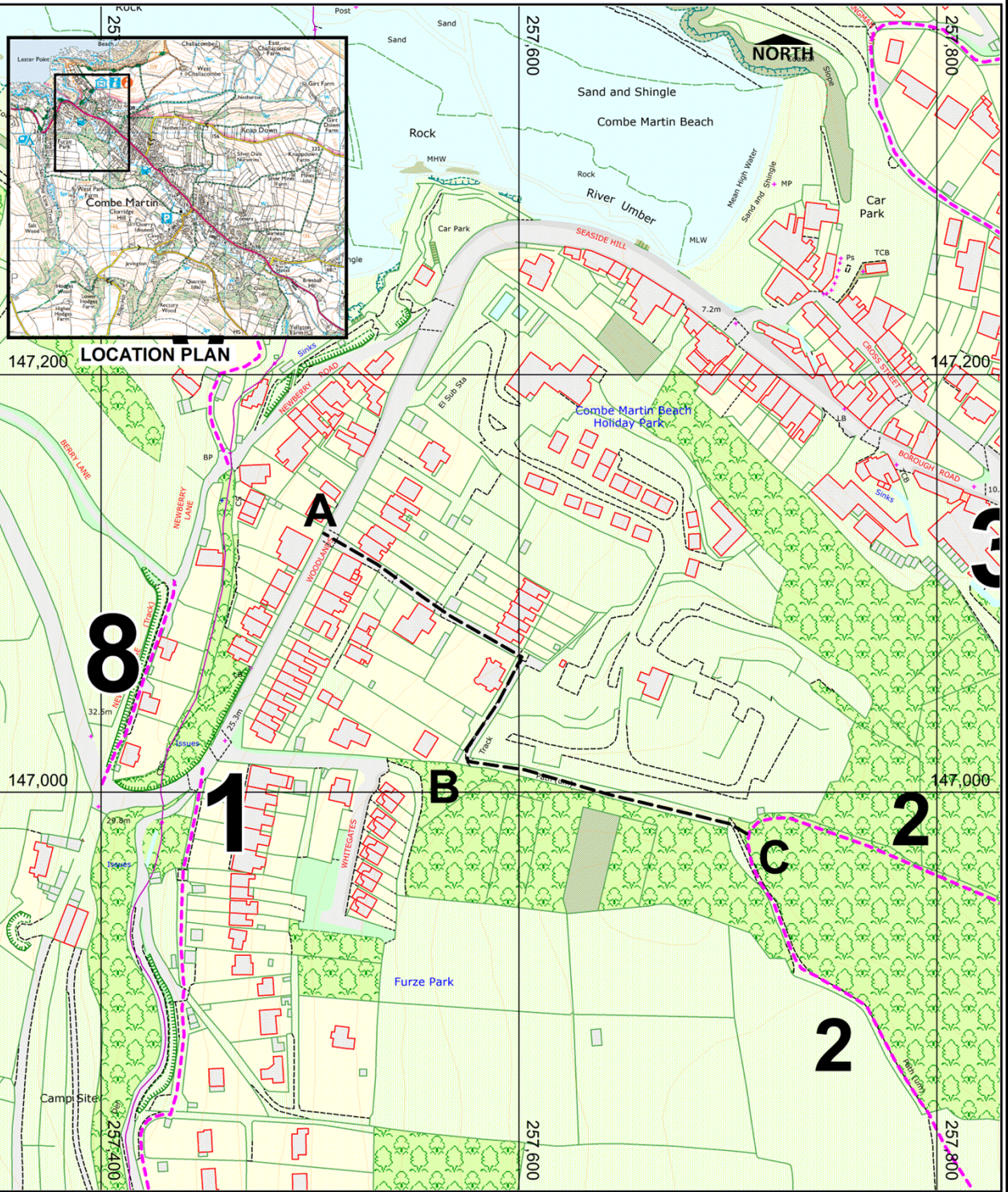
## **Common Law**

- 2.8.11 It is also possible to consider an intention to dedicate at Common Law. 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 either expressly, the evidence 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.
- 2.7.12 The facts are, when taken as a whole, that frequent use of the slipway by numerous people over hundreds of years, on foot and horseback and in the vehicles of the day, has been without interruption, force, secrecy or permission and show rightful inference to be drawn from this use: that there was an intention to dedicate the way as public and that the public's continued use is evidence of acceptance of that dedication at Common Law.
- 2.7.13 As discussed at paragraph 2.8.6, none of the NERC Act exceptions are considered to apply in this case and consequently public rights for mechanically propelled vehicles have been extinguished. Therefore, the highest status that can be recorded is that of Restricted Byway.

## **2.8 Conclusion**

- 2.8.1 The evidence when taken as a whole is considered sufficient to show that a Restricted Byway subsists, or is reasonably alleged to subsist, at Common Law over the proposed route. And that there is sufficient evidence to show presumed dedication under Statute. It is therefore recommended that a Modification Order be made to add a Restricted Byway between points D-E as shown on drawing number **HTM/PROW/18/8** and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.





Map Ref **SS257147**      Grid 100m      © Crown copyright and database rights 2017 OS 100019783

**DEVON COUNTY COUNCIL**  
**Proposal 22**  
**Combe Martin**  
**To add a Footpath to the Definitive Map**

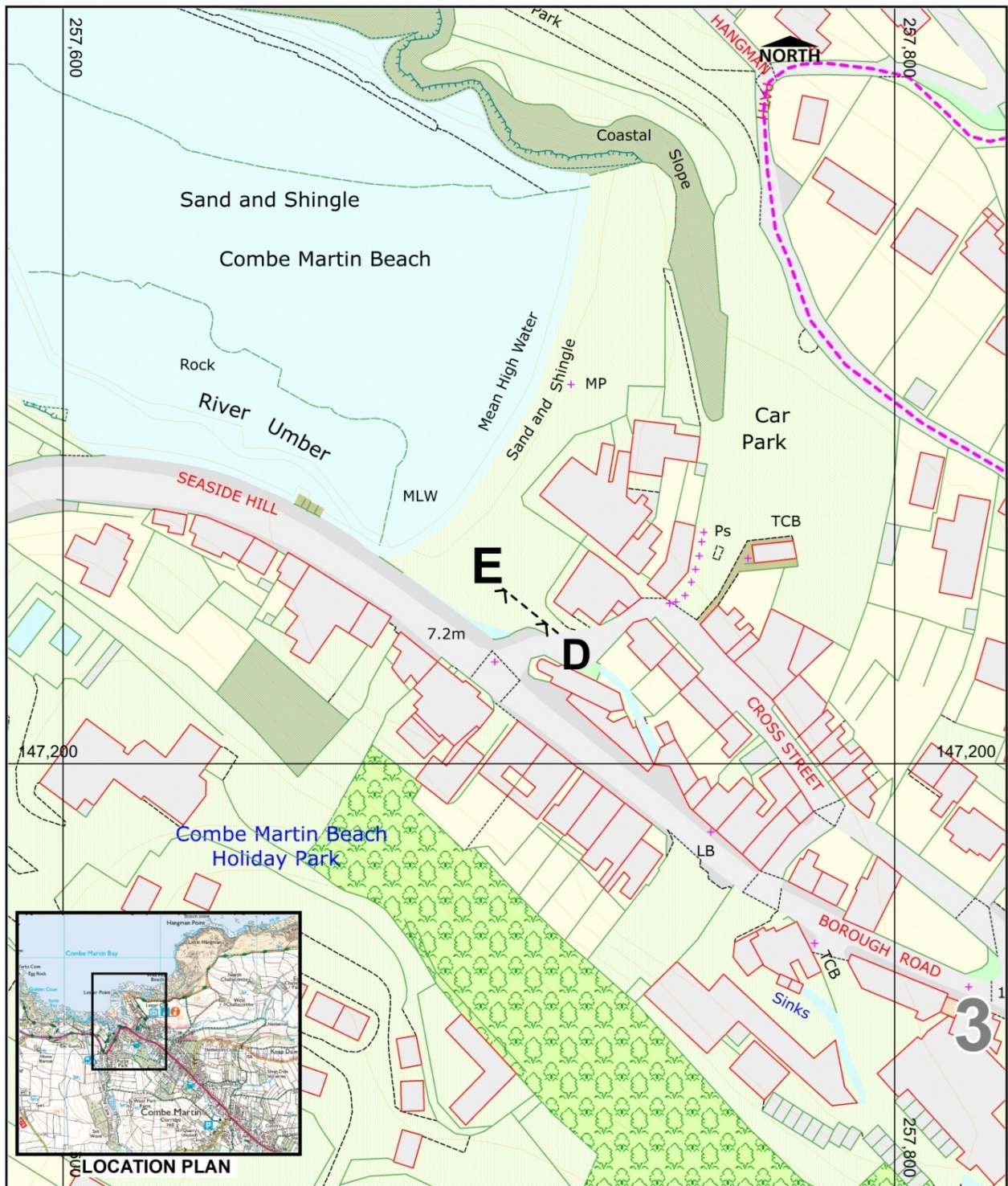
**Notation**

Route to be added A-B-C      - - - - -  
 Existing Footpath      - - - - -

drawing no. HIW/PROW/18/7  
 date Feb2018  
 scale 1:1250  
 drawn by AS

**Meg Booth**   
 CHIEF OFFICER FOR HIGHWAYS  
 INFRASTRUCTURE DEVELOPMENT AND WASTE





Map Ref **SS257147**

Grid 100m

© Crown copyright and database rights 2017 OS 100019783

## DEVON COUNTY COUNCIL

### Proposal 24

### Combe Martin

### To add a Restricted Byway to the Definitive Map

#### Notation

Route to be added D-E  
Existing Footpath



drawing no. HIW/PROW/18/8  
date Feb2018  
scale 1:1250  
drawn by AS

**Meg Booth** Devon County Council

CHIEF OFFICER FOR HIGHWAYS  
INFRASTRUCTURE DEVELOPMENT AND WASTE