

**Definitive Map Review 1996-2008  
Parish of Colebrooke (part 3)**

Report of the Director of Environment, Economy and Culture

**Please note 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 upgrade Footpath No. 19, Colebrooke to a Public Bridleway between Rowes Orchard and Penstone Bridge (Suggestion 7) between points G - H as shown on drawing number ED/PROW/07/44.**

**1. Summary**

The report examines one suggestion arising out of the Definitive Map Review in the Parish of Colebrooke. Reports on the remaining suggestion will be presented at the next Committee meeting.

**2. Background**

The original survey under s. 27 of the National Parks and Access to the Countryside Act, 1949 completed in 1951, revealed 19 footpaths and 1 bridleway, although 14 footpaths (to include Footpath No. 19 put forward by District Surveyor) and 1 bridleway were recorded on the Definitive Map and Statement for Colebrooke published in 1958.

Due to parish boundary changes Footpaths No. 1, 3 and part of 2 are now in Copplestone parish and Colebrooke parish currently has 12 footpaths and 1 bridleway.

The reviews of the Definitive Map, under s. 33 of the 1949 Act, which commenced in the 1960s and 1970s but were never completed, produced several proposals for addition including in 1970 one proposal for the addition of a footpath along a route already recorded on the general roads map. In 1978 there was a proposal regarding the correct route of Footpath No. 12 but the alternative route was already recorded as a county road. The proposals previously suggested in 1957 were not followed through.

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

The following Orders have been made:

- (a) Tiverton District Council (Footpath No. 12, Colebrooke) Public Path Diversion Order 1976;
- (b) Tiverton District Council (Footpath No. 4, Colebrooke) Public Path Diversion Order 1977;
- (c) Tiverton District Council (Bridleway No. 15, Colebrooke) Public Path Diversion Order 1977;

- (d) Mid Devon Parishes Order 1992 Footpaths Nos 1, 3 and part 2 transfer to Coplestone;
- (e) The Devon County Council (Footpath No. 4, Colebrooke) Public Path Diversion Order 1992;
- (f) The Devon County Council (Footpath No. 4, Colebrooke) Public Path Diversion Order 1994;
- (g) Mid Devon District Council (Footpath No. 10, Colebrooke) Public Path Diversion Order 2000;
- (h) Mid Devon District Council (Footpath No. 12, Colebrooke) Public Path Diversion Order 2001.

### **3. Consultations**

The review was initially opened in Colebrooke with a parish meeting held on 23 January 1996. In October 1996 the parish council made comments on the existing recorded public rights of way and suggested the addition of a public footpath/byway along the path by the churchyard past the cemetery to the Coleford road by the Old School. A consultation map and schedule of proposals was published in September 1997 with 3 proposals. Local user group representatives brought additional suggestions forward but the review was not progressed and left in abeyance until 2005. When the Parish Council queried formalising the status of the route from the Old School to the cemetery, the review was re-opened and due to the time passed a second public meeting to start the review process again was held in December 2006.

After re-examination of the routes previously included, the routes submitted by the parish council in 1957 and review of the evidence received for additional routes, a further consultation map was published in March 2007 with 12 suggestions for change. Reports on 3 suggestions were taken to committee in November 2007, 5 suggestions to Committee in March 2008 and a further suggestion is brought to this Committee meeting. The remaining suggestions will be considered at the next Committee meeting.

General consultations have been carried out since March 2007 with respect to these proposals and the responses have been:

County Councillor N. Way	-	no comment
Mid Devon District Council	-	no comment
Colebrooke Parish Council	-	comments on all suggestions
British Horse Society	-	no comment
Byways and Bridleways Trust	-	comments on all suggestions
Country Landowners' Association	-	no comment
National Farmers' Union	-	no comment
Open Spaces Society	-	no comment
Ramblers' Association	-	comment on all suggestions
Trail Riders' Fellowship	-	no comment
Cyclists Touring Club	-	no comment

#### 4. Conclusion

It is recommended that no Order be made in respect of Suggestion 7. Reports on the remaining suggestions will be brought to the next Committee.

Edward Chorlton

#### **Electoral Division: Crediton Rural**

Local Government Act 1972

List of Background Papers

Contact for enquiries: Mike Jenkins

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Background Paper	Date	File Ref.
Correspondence File	1995 to date	DMR/COL

tw270508pra  
sc/parish of Colebrooke (pt 3)  
3 hq 020608

## Background to the Suggestions

### Basis of Claims

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

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

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

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 –

[i] that 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] that a highway shown in the map and statement as a highway of a particular description ought to be there as a highway of a different description; or

[iii] that there is no public right of way over land shown in the map or statement as a highway of any description, or any other particulars contained in the map and statement require modification.

Wildlife and Countryside Act 1981, Section 56[1] – 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.

**A. Suggestion 7:** Upgrading of Footpath No. 19, Colebrooke to a Public Bridleway, from Rowes Orchard to Penstone Bridge as shown on Drawing ED/PROW/07/44.

**Recommendation:** It is recommended that a no Modification Order be made to modify the Definitive Map and Statement by upgrading Footpath No. 19, Colebrooke to a bridleway (Suggestion 7) between points G and H as shown on drawing number ED/PROW/07/44.

## **1. Background**

Footpath No. 19, Colebrooke was not one of the initial 20 footpaths surveyed in the parish in September 1950 and the path was not numbered or labelled on the maps completed by the parish council with their survey forms. Following submissions of the surveyed paths to Devon County Council the proposed paths were scrutinised by the District Surveyor and County Surveyor. In July 1952 the County Surveyor wrote to the Divisional Surveyor, Crediton and advised 'I notice that the Colebrooke Parish Council have omitted what I consider to be an important footpath, viz:- OS LXVI NE From the Class III Road (NO. 535) near the Church in Colebrooke Village to the Unclassified County road at Penstone railway bridge.

Will you please complete the enclosed form so that this footpath can be included in the Draft Map which I am preparing and will you please describe the crossing of the path under the railway and let me know if this path is fenced on both sides and whether or not it is metalled.

*The next paragraph concerned a query with Footpath No 6.*

Please will you arrange to meet the Clerk of the Parish Council and ascertain from him if both of the above footpaths can reasonably be claimed to be public rights of way which should be included in the Survey.'

In September 1952, the surveyor replied 'I enclose parish forms duly completed by Mr R J Olding, as requested.' The form completed by Mr Olding on 21<sup>st</sup> July 1952 advised path surveyed by Mr Thorne and Mr Pope, remarks 'path used very considerably'. The path was described as 'From Class II Road No 535 East of church to unclassified county road at Penstone. Path fenced both sides except on the main Exeter – Plymouth line which is enclosed by kissing gates each side. Path metalled in parts.' The route of Footpath No. 19 was at this time along a hedged and defined lane.

The path was included on the draft and provisional maps and duly recorded on the definitive map as Footpath No. 19, Colebrooke. In the 1950s the route followed a hedged and defined lane. An electricity pole stands in what would have been the northern hedge of the old lane.

In October 2000 and following the publication of the Consultation map for the review in September 1997, a submission supported by evidence was forwarded to the Council for the upgrading of Footpath No. 19, Colebrooke to a public bridleway. The suggestion for the footpath to be upgraded to a public bridleway was included as Suggestion No. 7 in the consultation map and schedule.

## **2. Description of the Route**

From point G the path starts at a stile adjacent to a field gate on the county road between Coleford and Colebrooke, north east of Rowes Orchard and continues north east as a headland path down hill to a kissing gate/pedestrian gate combination. The footpath crosses over the railway line known as the Meldon Branchline, through another kissing gate/pedestrian combination to rejoin the county road at point H, south west of Penstone Bridge. The surface is earth and grass with remains of previous metalling in some places. The total length of the route is approximately 890 metres. The northern hedge is believed to have been removed in the 1970s. The railway line crossed by the footpath was opened in November 1865.

### **3. Consultations**

Colebrooke Parish Council – disagree with the suggested upgrading to bridleway status because of the danger caused by the proximity of the railway.

Byways and Bridleways Trust – supports the upgrading but have not been able to carry out any research on the route.

### **4. Documentary Evidence**

#### **Colebrooke Tithe Map and Apportionment, 1846**

Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring generally indicates carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the route shown.

In Colebrooke there was an Apportionment of Rent Charge in lieu of Tithes confirmed by the Tithe Commissioners in 1845. A Tithe Map and Apportionment was still produced detailing all land and property in the parish. The map was produced prior to the construction of either of the railway lines through the parish. The route is shown on the Tithe map as coloured in a similar manner to the adjoining county roads and with no apportionment number recorded on the lane. The lane is depicted as a route to Penstone from Colebrooke village. An uncoloured narrower width track, part of which would also be the river is shown between Colebrooke Mill and Penstone.

#### **Ordnance Survey and Other Maps**

The Ordnance Survey and other mapping do not provide evidence of the status of the route but rather its physical existence over a number of years.

Benjamin Donn's One inch to a mile map of Devon 1765

This mapping only shows the more important roads in the county.

OS 1 inch to a mile Sheet 82 Bideford initially produced 1809 and subsequently revised

In the edition published in the 1960s the North Devon Railway line from Crediton to Barnstaple is shown. The maps shows the three roads to Penstone, the one from Colebrooke Mill believed to have been constructed when the railway line was built, the route of Footpath No. 19 and the road over the ford via Waterleat.

Christopher Greenwood's Map of the County of Devon 1827 Section SS70

The route appears to be shown as the northern most of the two lanes running from Colebrooke to Penstone. There is no evidence of a road from Colebrooke Mill to Penstone.

OS 1<sup>st</sup> & 2<sup>nd</sup> Edition 25 inch to a mile 1880-1890 & 1906

The original lane is shown as a through lane defined by a solid line indicating a hedged or other boundary. The solid line at the southwest end of the route is believed to represent a gate and further lines, also believed to represent gates, are shown along the lane north east and south west of the railway line. No solid or dashed line is visible where the lane meets the county road at the sharp corner by Penstone Bridge. The lane has a separate apportionment numbers 644, measuring 0.342 acres in area., 306 .549 acres and 343 0.591 acres. The south end of Footpath No. 7, Colebrooke is shown joining the lane just east of the orchard, as described in the path statement. It crosses field numbers 310, 307, 121, 120 and 180 on its route from Coleford.

In the 2<sup>nd</sup> edition of 1906 the lane is recorded as in the earlier edition with the same lines at the south west end of the route and by the railway crossing and same apportionment number and area. The lane is however annotated 'F.P.' on this second edition.

OS 1<sup>st</sup> and 2<sup>nd</sup> Edition 6 inch to a mile 1880-1890 & 1906 (2<sup>nd</sup> Edition was used as base mapping for the Definitive Map).

The first edition records the lane from Colebrooke to Penstone Bridge with a solid line across the south western end and open at the north eastern end where it joins the road from Colebrooke Mill to Penstone. The second edition depicts the lane in a similar manner but with the letters 'F.P.' noted mid way along the lane.

Bartholomew's Half-inch Maps 1924 North Devon, 1932 Exmoor, 1944 Exmoor, 1955 Exmoor & 1975 1:100,000 North Devon

Only the road from Colebrooke to Penstone via Waterleat is clearly shown. The lane used by Footpath No. 19 is not shown.

OS 1 inch to a mile circa 1946 and 1960

The route is recorded as a dashed line representing Footpaths and Bridlepaths on the 1946 edition and Footpaths and Tracks on the 1960 edition.

OS 1<sup>st</sup> Edition Post War circa 1972

The two county roads to Penstone are shown in a similar style and width. The lane which is now Footpath No. 19 is shown as a defined lane, open ended at the Colebrooke end by Rowes Farm and with a solid line across the junction with the county road at Penstone Bridge.

### **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.

The lane, subsequently recorded as Footpath No. 19 was within the hereditament number 126, part of Rowes. It was depicted on the map in a similar manner to the county road from Colebrooke Mill to Colebrooke village, which was also within the hereditament, with the individual hereditament colouring breaking where it crossed the lane (Footpath No. 19) and the county road.

In the field book, the entry for Rowes records 'P.R. of Way through Ord Nos:-' in the section for Particulars, description, and notes made on inspection but unfortunately the ordnance numbers are missing. In the next section for Charges, Easements and Restrictions affecting market value of Fee Simple the entry is made for Right of Way £2 x 25 yr but only the amount for the Tithe at £300 appears to have been entered at the bottom of the page.

On the second page no amount has been inserted against the column for Public Rights of Way or User and only the tithe allowance of £300 is shown. There are no other current recorded public rights of way across the land included within hereditament number 126.

## Deposited Railway Plans

Before the construction of a major undertaking such as railways, major roads and canals plans of the undertaking had to be deposited with the appropriate public authorities. This was usually followed by a Private Act of Parliament then being passed for the plans accepted for the building of the Railway.

Colebrooke parish is crossed by two railway lines; the line between CREDITON and Fremington in North Devon was constructed by the North Devon Railway Company and opened in August 1854. The line from Coleford Junction, south east of Colebrooke village, to North Tawton which is crossed by Footpath No. 19 at grade, was opened by the London and South Western Railway (incorporating the North Devon Railway) in November 1865. Many of the railway company surveys were undertaken at the time when the Tithe map was prepared.

**North Devon Railway 1844** This plan was undertaken by the company that built the line to North Devon that opened in 1854 although the Act of Parliament to build a 31 mile line from CREDITON to Barnstaple was obtained by the Taw Vale Extension Railway in August 1846. It shows the old lane that is now Footpath No. 19, Colebrooke from Colebrooke to Penstone, numbered 25 and described as a Parish Road in the book of reference with the owner or reputed owner listed as the Waywardens of the parish. The other road to Colebrooke, south of Footpath No. 19, by Waterleat is also recorded as number 16 and described as a Parish Road owner Waywardens of the parish. A way from Colebrooke Mill/Coleford to Penstone is shown at number 32 and described as an Occupation Road and stream owner Waywardens of the parish.

**Taw Vale Railway Extension 1845** The plan shows the proposed railway passing along a line adjacent to the river, numbers 3A, 10, 12, 23A, 25 and 28 in the book of reference. The lane to Colebrooke now known as Footpath No. 19, Colebrooke is numbered 29 and described in the Book of Reference as Parish Road and Bridge owned by the Surveyors of Highways. The other road to Penstone south of Footpath No. 19, which crosses a ford is numbered 17 and described as Parish Road, Footpath and Bridge. A track/lane is shown going north west from Penstone towards Colebrooke Mill/Coleford numbered 31 and described as River and Parish Road along the bed of the River owned by the Surveyors of Highways.

**Great Western Extension 1845** The plan shows the lane (Footpath No. 19), numbered 31, running from Colebrooke direction into Penstone in a similar manner to the other road into Penstone via Waterleat. The book of reference for these plans is missing.

**Bristol & Exeter Railway Extension (CREDITON to Launceston) 1846** This plan is for a line from CREDITON to Okehampton and was prepared prior to the CREDITON to Barnstaple line being constructed. It shows the two lanes to Penstone from Colebrooke, via Footpath No. 19 and via the ford at Waterleat, numbered 21 and 10 with both recorded as Parish Road Bridge and Stream in the book of reference. The road from Colebrooke Mill to Colebrooke is numbered 25 and also recorded as Parish Road Bridge and Stream.

**Plymouth, Tavistock, Okehampton, N Devon & Exeter Railway 1852** The survey for this line to Okehampton was surveyed whilst the CREDITON to Barnstaple line was in course of construction. The original roads to Penstone via Waterleat and along the lane now Footpath No. 19 are both shown in a similar manner numbered 127 and 117 respectively and recorded as Parish Road, Stream and Bridge and Parish Road, both owned by Surveyors of Highways. The way to Penstone from Colebrooke Mill/Coleford is numbered 115 and recorded as Stream and Parish Road. The road from Colebrooke Mill to Colebrooke is numbered 111 and recorded as a Parish Road.



**Mid Devon & Cornwall Railway 1860** This survey was completed after the North Devon Railway line had opened in 1854. The plan shows the new road from Colebrooke Mill to Penstone Bridge, believed to have been constructed when the North Devon Line was constructed. The road is numbered 11 and recorded as Public Road in the Book of Reference owned by The Surveyors of Highways, James Lee Wreford and Andrew Snell. The lane subsequently known as Footpath No. 19, Colebrooke is clearly shown and recorded as number 10, and also described as Public Road owned by The Surveyors of Highways. The plan also showed a proposed diversion of Footpath No. 19 north west and a new section linking Footpath No. 19 to the Colebrooke to Colebrooke Mill road or the diversion could have been proposed as it was intended to stop up the road just south of the proposed railway crossing of that road by Colebrooke Mill and the route to Coleford would then have been via Footpath No. 19 and the new road constructed adjacent to the river in the 1850s. The southern road to Penstone via Waterleat, numbered 1 is also recorded as Parish Road rather than as a Public Road.

**North Devon & Okehampton Railway 1861** This survey was also completed after the North Devon Railway line had opened in 1854 and by the surveyor Mr W R Galbraith who undertook the survey for the Mid Devon & Cornwall Railway the year earlier. The plan appears to be the same as the one produced for the 1860 survey and has the same reference numbers. The book of reference is different however, being handwritten for this survey and describes the route now known as Footpath No. 19, number 10 on the plan as a Public Road names of owners or reputed owners being The Surveyors of Highways Robert Madge and Andrew Snell.

The plan also shows the new road from Colebrooke Mill to Penstone Bridge, believed to have been constructed when the North Devon Line was constructed. The road is numbered 11 and recorded as Public Road in the Book of Reference owned by The Surveyors of Highways, Robert Madge and Andrew Snell. The road from Colebrooke to Penstone via Waterleat is numbered 1 and described as Parish Road, owners being The Surveyors of Highways Robert Madge and Andrew Snell. The road from Colebrooke to Colebrooke Mill numbered 15 is recorded as a Public Road owned by Surveyors of Highways. The plan also showed the proposed diversion of the lane being Footpath No. 19 and a new section linking Footpath No. 19 to the Colebrooke to Colebrooke Mill road as recorded in the 1860 plan. The southern road to Penstone via Waterleat, numbered 1 is recorded as a Parish Road rather than as a Public Road, owner Surveyor of Highways.

The route of Footpath No. 19 is also understood to be shown and recorded as a Public Highway as number 33 on the plans for the Great Western and Falmouth Railway of 1845 and as a Parish Road in ownership of the Surveyors of the Highway on the plans for the Cornwall and Devon Central and Plymouth Railway and branches of 1846.

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

The path was initially omitted from the list of paths surveyed by representatives of the Parish Council in September 1950. In July 1952 the County Surveyor wrote to the Divisional Surveyor, Crediton and advised 'I notice that the Colebrooke Parish Council have omitted what I consider to be an important footpath, viz:- OS LXVI NE From the Class III Road (NO. 535) near the Church in Colebrooke Village to the Unclassified County road at Penstone railway bridge'. The surveyor was instructed to meet the Parish Clerk and the parish clerk completed a survey form for the path on 21<sup>st</sup> July 1952. The path was described as used very considerably, fenced both sides except for the main Exeter-Plymouth railway line which is enclosed by kissing gates each side, path metalled in parts.

The path was included on the draft and provisional maps as Footpath No. 19 and in the absence of any known objections to its inclusion or to the omission of higher rights the route was recorded on the definitive map for Colebrooke Parish as Footpath No. 19, Colebrooke.

### **Parish Council Correspondence**

There is no records of any correspondence from the parish council relating to Footpath No. 19. In the uncompleted review of 1977/78 the parish clerk in a letter to the County Council reported that at the public meeting held in the parish it was decided to leave the paths on map, also alteration to Path 12 mentioned again.

### **Colebrooke Parish Council Minutes**

There is only one record in the Parish Council minutes relating to Footpath No 19. The path was discussed at the meeting in July 1952, presumably following contact from the Divisional Surveyor as requested by the County Surveyor. The two paths queried by the County Surveyor were discussed at this meeting and the survey forms completed.

21<sup>st</sup> July 1952

Public Paths

Letter was read on 2 Public Paths and forms filled out being Path from Class 3 road no 535 East of Church to unclassified road at Penstone & Path no 6 (revised no 12).

Subsequent entries in the parish minutes refer to general comments on the public rights of way in the parish, sometimes arising out of the earlier and generally uncompleted reviews.

17<sup>th</sup> March 1958

Right of way map

The Clerk produced the Right of Way map and it was agreed, it should stay with the Parish Documents until such time it was required for revision. Clerk of the County Council to be notified accordingly.

23<sup>rd</sup> July 1968

Rights of Way

A discussion over the map of Rights of Way, and it was decided to call a Parish Meeting to consider public footpaths, prior to the next Parish Council.

*This meeting would have been in response to the uncompleted review of 1968*

17<sup>th</sup> September 1968

A Parish Meeting called was attended by only one parishioner and councillors Mr F Hockridge, Mr W Hockridge, Mr May, Mr Mock, Mr Burrow, Mr Ford Mr Pennington under chairmanship of Mr A Thorne.

Business

The Right of Way map and the paths were examined and it was agreed that map should be left as it was, as no protests had been received, and no objectors.

Addition

One should be added from South West Entrance to 'Green' to the Coleford Spreyton Road, footpath only.

10<sup>th</sup> November 1964

Footpaths

Members examined the map and schedules of foot paths.

19<sup>th</sup> January 1965

Right of Ways

Clerk read letter from DCC on the Paths and Right of Way inspection proposed in future.

## **Sale Catalogues**

Colebrooke Estate of W Coryton sold by Auction in June 1919

In the auction catalogue the land either side of the lane falls under Lot No 21, Rowes Farm, the farm house and buildings located just east of the church. The lane annotated F.P. on the base mapping used for the sale catalogue is uncoloured and apparently excluded from the land (coloured brown) and depicted in a similar manner to the other roads in the locality.

The base mapping used and the depiction of the lane now recorded as Footpath No. 19, Colebrooke is the same as recorded by the Finance Act plans and field book of a few years previously.

## **Aerial Photographs, 1946-9, 1999-2000 & 2005-6**

The photographs show the existence of the route within the hedged lane in 1946. By 1999-2000 the northern hedge has been removed and the old lane incorporated into the field. A track adjacent to the hedge appears to be visible in the south west end of the route. In 2005-6 the field has been planted with an arable crop but the headland strip corresponding to the location of the old lane has been left.

## **HM Land Registry**

Mr Pitts of Colebrooke, has owned the field crossed by the path to the southwest railway embankment since 2002 and the field is registered under title no DN328905. The section of field corresponding to the old lane is however registered under a separate title number DN472573, described as Trackway at Colebrooke. Under the Proprietorship Register it records a Title Possessory in favour of Mr Pitts rather than the usual Title Absolute. A possessory title is usually granted where the applicant is claiming adverse possession or where the title deeds have been lost or destroyed. The former would appear to apply in this instance following removal of the hedge the land previously included within the lane would no doubt have been farmed and cropped as part of the adjoining field. As the lane would not appear to have been recorded in the deeds for the adjoining field, land registry would not have been able to grant a title absolute.

In the Finance Act plan of 1910 and the sale catalogue of 1919 the lane was not included within the hereditament or lot.

## **5. User Evidence**

No user evidence has been received for the suggestion and both the current landowner and parish council have no knowledge of the route ever been used by horses. A local rider canvassed support amongst local riders for more off road riding in the area and support was shown for all those suggestions for bridleway or restricted byway. However no evidence of use as a bridleway was forwarded for any of the suggestions including the upgrading of Footpath No. 19 to a footpath.

## **6. Landowner Evidence**

Landowner evidence forms were sent to the two landowners whose land is crossed by Footpath No. 19, Colebrooke. Mr Pitts of Colebrooke, has owned the field crossed by the path to the southwest of the railway embankment since 2002. Mr Pitts replied in a letter advising 'This footpath has never to my knowledge been used as a bridleway and is unsuitable for such because of the rail track crossing'. In an earlier letter to the parish

council he had advised that he would oppose the suggestion to upgrade this to a bridleway. "I have no memory of horses on this path the entry was always by stile".

Mr C Yelland responded on behalf of Euston Holdings Ltd, a subsidiary company of Aggregate Industries UK Ltd, who own the freehold of the Meldon Branchline. He advised that they would have concerns about increased use of the Penstone crossing in view of the increase in the volume of freight traffic now using the railway line. If the crossing is upgraded to a bridleway who would be responsible for signage and gates, and it would be necessary to have a whistle board to the south east. As the route is already a footpath the apparently missing whistle board had been raised by the parish council and was due to be installed.

Although not a landowner, Western Power Distribution wayleave services was contacted with regard to the electricity pole that appeared to have initially been erected in the northern hedge that has since been removed. Western Power advised that a pole was first erected in that location in the latter part of 1967 and receives hedge/ditch compensation rates. This would confirm that the hedge was removed after 1967.

## **7. Rebuttal Evidence**

Mr D Gosling of 1 Waterleat Cottages, southeast of Footpath No. 19, wrote commenting on the proposal. He made several observations mainly concerning safety issues from his experience as an ex-professional railwayman but did not refer to any specific evidence.

The Parish Council do not support the upgrading of Footpath No. 19 to a public bridleway because of the danger caused by the proximity of the railway.

Prior to the review being formally opened a parish councillor had spoken to parishioners about the suggestions that had been raised in the uncompleted review and reported to the parish council. The comments with regards to suggestion 7 were that while Footpath No. 19 was well used by walkers the proposal to reclassify it as a bridleway gets no support. It was thought that letting horses near a railway line could lead to a potentially catastrophic accident.

Mr Enderson, a long time resident of the parish and Parish Council Chairman commented that the upgrading of Footpath No. 19 would be foolish and unsafe. At its eastern end is an unmanned level crossing over the Exeter to Okehampton railway.

## **8. Discussion**

The original lane that ran from the Colebrooke village, east of the church to the hamlet of Penstone had existed since at least 1846 as depicted on the Tithe Map of 1846. At that time, which was shortly before the railway line was constructed through the parish, there appeared to be three routes to Penstone from the east.

One was the route from the south side of the village which passed Waterleat and crossed over a ford to Penstone and one was the lane that is now Footpath No. 19, Colebrooke.

The third was the road from Colebrooke Mill to Penstone which appeared to run along the river bed as this route was described as an Occupation Road and Stream in a railway plan of 1844, as River and Parish Road along the bed of the River in 1845, as Parish Road Bridge and Stream in 1846 and as Stream and Parish Road in 1852.

In plans prepared after construction of the line to Barnstaple which opened in 1854, the route between Colebrooke Mill and Penstone was described as a Public Road in 1860 and 1861.

It is believed (and supported by information from a local inhabitant) that a new road to Penstone from Colebrooke Mill was constructed at the same time as the railway, possibly to assist in bringing the stone that was needed for the three bridges built at Penstone to replace the old road that partly ran along the river bed.

Prior to the new road being constructed, in times of high water flow it is possible that the Footpath No. 19 lane may have been the drier option as the books of reference with the railway plans of 1845, 1846 & 1852 refer to a bridge in connection with the entry for the lane. It is not known if this was only a pedestrian bridge as there is at the ford by Waterleat, or a bridge suitable for horses or vehicles. Once the new road to Penstone from Colebrooke Mill was constructed it is possible that this way then provided a preferred route to the hamlet rather than continuing to the village and then using Footpath No. 19 and would also have been a more direct route for traffic from Coleford to Penstone.

The construction of the railway line to Okehampton was completed in November 1865, and although a bridge was built over the railway for the road from Colebrooke Mill to Colebrooke village, no bridge or tunnel was constructed for the lane (Footpath No. 19) and the route crossed over the railway line at grade. It is considered that the railway company must have consulted with the parish, landowners and occupiers when constructing the railway particularly when deciding where bridges or tunnels were required to minimise the effects of the railway on roads, lanes and access to land. Further west along the Okehampton line but also in the parish, a tunnel was built under the line north of Brocks Farm in Colebrooke which connects two fields and is also the route of Footpath No. 5, Colebrooke.

As no tunnel or bridge was provided where Footpath No. 19 crossed the line it would appear that the degree or type of use at that time was not sufficient to justify the additional expense or possibly that a tunnel or bridge was not requested by the lane's owner (recorded in the books of reference from 1844 to 1861 as the Surveyors of the Highways or Waywardens of the parish). It is possible that with the construction of the new road to Penstone from Colebrooke Mill ten years earlier, this new road together with the other road via Waterleat were the preferred routes into Penstone for horses and vehicular traffic. If Footpath No. 19 lane was mainly used by people on foot, it seems possible that the surveyors of highways for the parish at that time were prepared to accept the at grade crossing of the line.

Highway Districts were first formed in 1862 and united areas for the maintenance and repair of highways. A review of roads maintained by the parish may have occurred at this time with the formation of the Highway Boards and the district surveyor taking over the liabilities of the previous parish surveyor. No complete records of highways maintained at public expense survive in this or most other parishes until the formation of the Rural District Councils in 1894.

In the Finance Act field book for the hereditament reference number 126 Rowes Farm, an allowance at £2 x 25 years purchase is mentioned but no sum is carried forward and deducted from the final valuation. This may have been an oversight by the valuer or could possibly have been because it was considered that a public right of way along a hedged lane did not warrant any deduction as use of the lane by the public would not interfere with the day to day operation of the farm and use of the land. No current recorded public rights of way exist on the land included within the hereditament for Rowes Farm in 1910, although in the course of the current review a public right of way is considered to subsist along the track north of the farm house. This track leading to the church was also uncoloured on the sale plan of 1919 as was Footpath No. 19 lane.

The OS large scale 25" to a mile maps of 1880-1890 record a defined lane with a separate compartment number. The lane is shown in the same manner on the second edition of 1906 but with the addition of the annotation 'F.P.' by the lane. The Instructions issued by the

Ordnance Survey to their surveyors in 1905 would presumably have been taken into account when surveying for the revised edition first published in 1906. The instructions state that *'except in gardens, or where the omission is not likely to mislead, the initials F.P. should be inserted to foot-paths, with the object of avoiding the chance of either being mistaken on the plans for roads traversable by horses or wheeled traffic'*. A defined through lane seen on a map would usually be considered to be passable with horses and the addition of F.P. would indicate that the surveyors did not consider this route suitable for horses, possibly due to the crossing of the railway and gates present at the crossing. The map indicates that the route had the reputation of and was being used as a footpath only in the mid 1900s and not for any higher rights.

The lane was not initially included by the parish council in their surveys of rights of way in the parish in 1950 for inclusion on the definitive map. Its omission was noticed by the county council and after been raised with the parish clerk was considered at the parish council meeting in July 1952 and a survey form completed. As the path was considered in relative isolation (a query had also been raised with the path numbered 6 by the parish), it is felt that the parish councillors would have had more time to consider the correct status of this public right of way and could have said the path was a bridleway or road used as a public path if it was felt that this was the case. The path was included on the draft and provisional definitive maps as a footpath, received no objections or representations to its inclusion as a footpath and was duly recorded on the conclusive map as Footpath No. 19, Colebrooke. In March 1957 the parish council wrote to the county council listing two missing bridleways and two missing footpaths that had been omitted from the provisional map but did not mention Footpath No. 19 at this time.

The railway line is crossed by a timber kissing gate with adjacent pedestrian/small hunting gate. Enquires have been made with network rail and railway museums to ascertain whether there were any guidelines on the type of gates to be installed at crossings and when the gates currently present would have been installed. No definite information was received but it was suggested that the type of gates to be installed would be negotiated with the landowner. A normal gate next to a kissing gate may have been used for the movement of livestock and could have been padlocked by the farmer whilst the kissing gate remained available to the public and could not be left open, allowing livestock access to the railway line. The presence of the hunting/pedestrian gate next to the kissing gate is not thought to indicate that the route was used by horses.

There is no user evidence to support the upgrading and several local residents including one of seventy years advise that they have never known the route to be used by horses. The parish council do not support the suggested upgrade to bridleway.

As one of the two ways to Penstone (and as part of the direct route between the manor house at Coombe and the church in Colebrooke) prior to the 1840s and possibly the driest route at some times of the year it is likely that the Footpath No. 19 lane was used by horses and wheeled traffic. However, with the building of the Crediton to Barnstaple Railway in the mid 1850s, a new road appears to have been constructed between Colebrooke Mill and Penstone which would have been more direct for traffic from Coleford whilst the other route via Waterleat Cottage would have been available for traffic from the west end of Colebrooke village. When the railway line to Okehampton was constructed nearly ten years later, an at grade crossing was installed over the lane rather than a bridge as was installed on the Colebrooke Mill to Colebrooke Road or a tunnel between two fields at Brocks Farm. The parish surveyors may have been offered a bridge at either the crossing on the Colebrooke Mill to Colebrooke road instead of the bridge on the Footpath No. 19 lane, but not both. The railway plans of 1860 and 1861 show a proposed diversion which could have meant the closure of the road from the Mill to Colebrooke village.

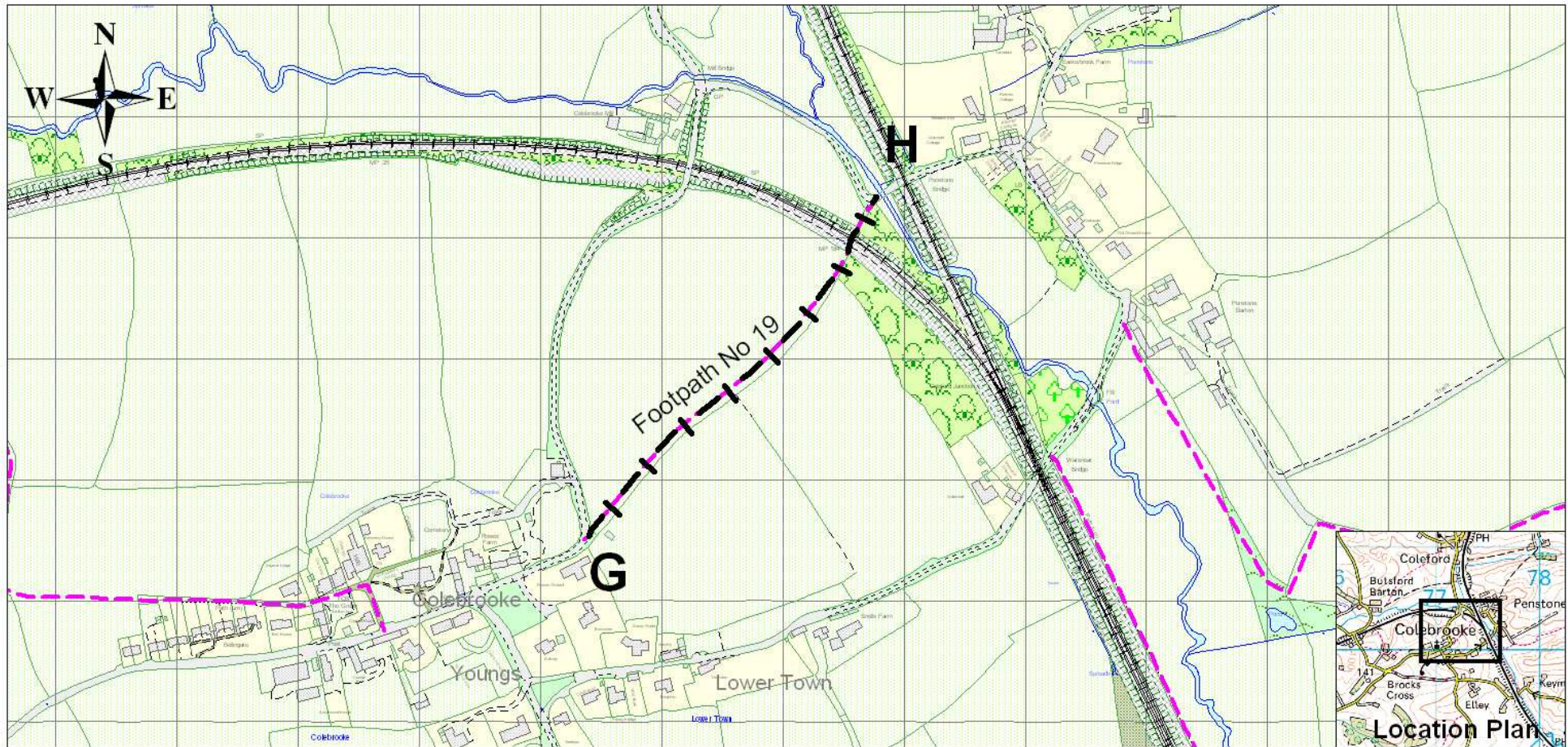
The lane was referred to as a public road or parish road in the railway plans but we do not have any records of how the lane was used at that time. The term road implies higher use than just footpath but most use may have been on foot as the path was a direct route to the school and church in Colebrooke for the residents of Combe estate and Penstone. Following the construction of the new road to Penstone and subsequent construction of the Okehampton line it is possible Footpath No. 19 lane was not used or needed as a road as the horse and wheeled traffic had transferred to the new road. An at grade crossing was accepted as suitable for use by the public on foot and by 1906 the lane was recorded as a footpath in the OS map presumably as it was unsuitable for horses. The higher rights that may have existed in the 1850s are deemed to have transferred to the new road or were otherwise waived by the parish surveyor or the new highway board formed in 1862 after construction of the two railway lines. There is no evidence of use or reputation of higher rights since the mid 1860s, and the path appears to have been correctly recorded on the definitive map as a public footpath.

## **9. Conclusion**

When considered overall, the evidence examined is considered insufficient to justify the upgrading of Footpath No. 19, Colebrooke to a public bridleway.

It is therefore recommended that no Modification Order be made to upgrade Footpath No . 19, Colebrooke to a Public Bridleway (Suggestion 7) between points G - H as shown on drawing number ED/PROW/07/44.






map ref: SS 7600, 7700

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**DEVON COUNTY COUNCIL**  
**DEFINITIVE MAP REVIEW COLEBROOKE**  
**SUGGESTION 7 - UPGRADE FOOTPATH NO. 19 TO BRIDLEWAY**

drawing number	ED/PROW/07/44
date	Mar 07
scale	1:5,000 at A4
drawn by	TW

Notation

To be added	G - H Public Bridleway		(approx 370 m)
Existing Public Footpaths			

**Edward Chorlton**

DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE

