

**Definitive Map Review 1996-2008
Parish of Colebrooke (part 4)**

Report of the Executive Director of Environment, Economy and Culture

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

Recommendation: It is recommended that:

- (a) A Modification Order be made to modify the Definitive Map and Statement by adding a Modification Order be made to modify the Definitive Map and Statement by adding a Public Bridleway from Penstone via Lower Coombe Lane to Lower Combe and then to the county road between Coleford & Crediton (suggestion 6 – Lower Coombe Lane) between points A – B – C – D as shown on drawing number ED/PROW/07/43;**
- (b) subject to confirmation of the Order, and at the landowner's request, the section of the bridleway between points C and D, be diverted by means of a Public Path Diversion Order onto the new headland access track at no cost to the landowner.**

1. Summary

The report examines the final suggestion arising out of the Definitive Map Review in the Parish of Colebrooke.

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:

Tiverton District Council (Footpath No. 12, Colebrooke) Public Path Diversion Order 1976;

Tiverton District Council (Footpath No. 4, Colebrooke) Public Path Diversion Order 1977;
 Tiverton District Council (Bridleway No. 15, Colebrooke) Public Path Diversion Order 1977;
 Mid Devon Parishes Order 1992 Footpaths Nos 1, 3 and part 2 transfer to Coppleshone;
 The Devon County Council (Footpath No. 4, Colebrooke) Public Path Diversion Order 1992;
 The Devon County Council (Footpath No. 4, Colebrooke) Public Path Diversion Order 1994;
 Mid Devon District Council (Footpath No. 10, Colebrooke) Public Path Diversion Order 2000;
 Mid Devon District Council (Footpath No. 12, Colebrooke) Public Path Diversion Order 2001.

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 including the current suggestion 6 (the route from Penstone through Lower Coombe to the Coleford to Crediton road) 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 to Committee in June 2008. The remaining suggestion is to be considered at this Committee meeting is suggestion 6 – Lower Coombe Lane.

Suggestions 11 and 12 on the consultation map related to the diversion of Footpath No. 14, Colebrooke and Bridleway No. 15, Colebrooke in the vicinity of West Wotton Farm. These diversions will be considered under the delegated powers.

3. Consultations

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 an Order be made in respect of Suggestion 6. This report concludes the suggestions proposed and considered for the parish of Colebrooke.

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

tw161008pra
sc/parish of Colebrooke - part 4
2 hq 291008

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 6: addition of a Public Bridleway from Penstone via Lower Coombe Lane to Lower Coombe and then to the Coleford/Crediton road between points A – B – C – D as shown on drawing number ED/PROW/07/43.

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a Public Bridleway from Penstone via Lower Coombe Lane to Lower Combe and then to the county road between Coleford & Crediton (suggestion 6 – Lower Coombe Lane) between points A – B – C – D as shown on drawing number ED/PROW/07/43; and subject to confirmation of the Order,

that at the landowner's request, the section of the bridleway between points C and D, be diverted via a Public Path Diversion Order onto the new headland access track at no cost to the landowner.

1. Background

A public right of way along Lower Coombe Lane running from Penstone to Lower Coombe was not claimed as one of the 20 footpaths surveyed in the parish in September 1950. A footpath, numbered 9 on the list of paths surveyed by Mr Thorne and Mr Matanle in the parish, was included in the survey returns and described as 'From Lower Coombe to Raddon Down-Coleford Road'. This path was shown along a footpath marked on the 6" to a mile OS mapping used by the parishes and ran from Lower Coombe north across one field to the Coleford-Raddon Down (also referred as the Coleford/Crediton) road (from points B-C-D) on the plan). The District Surveyor comments considered the path to be a private footpath and the county surveyor's recommendation was that the path be omitted from the draft map as this was a private footpath.

No objection appears to have been made to the omission of the footpath from Lower Coombe to the county road from the draft definitive map or the omission of Lower Coombe Lane from Penstone to Lower Coombe (points A-B). In March 1957 the parish council wrote to the County Council advising that the following Bridle Paths appear to have been omitted from the map. One of these was described as 'Penstone to Lower Coombe and a public footpath from Lower Coombe northwards to Coleford, Raddon Cross road and also from Lower Coombe to Coombe House and north to Coombe Lodge and gate'.

When the consultation map for the aborted review of 1996/7 was published, two local user group representatives requested that an additional route be considered and forwarded user and documentary evidence in support of their claim. This evidence was kept on file and the route was included in the consultation map published in 2007 as suggestion 6 – addition of a public bridleway from Penstone via Lower Coombe to the Coleford/Crediton Road.

2. Description of the Route

The route starts at Penstone (point A), a hamlet north east of Colebrooke village centre and follows a defined lane bordered by hedge banks in a north easterly direction for 750 metres, crosses a stream and continues north for 50 metres to Lower Coombe, a small settlement with 3 dwellings (points B and C). The route then follows a hardcore surface track northwards across a field for 200 metres to join the county road (point D). The hedged lane is narrow, generally not more than 3 metres wide with an earth surface and muddy where the route crosses the stream just south of Lower Coombe. Photos of the route were taken in September 2006.

3. Consultations

Colebrooke Parish Council – the comment made was 'No Comment' in respect of this suggestion.

Byways and Bridleways Trust – supports the suggestion. The Trust had forwarded supporting evidence for bridleway status in February 1999.

Ramblers Association – the local representative had collected some user evidence in 1996 in support of the route.

4. Documentary Evidence

Colebrooke Tithe Map and Apportionment, 1845

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 section of route between A and B comprising what is known as Lower Coombe Lane is shown on the Tithe map as coloured in a similar manner to the adjoining county roads. The only apportionment number recorded is placed at the end of the coloured section at point B, number 530. This number is listed as being part of the property known as Pinds or West Coombe and 530 is described as Houses, Lane and West. The map shows an uncoloured continuation of a defined lane west from point B past apportionments 533 and 534 to the south and 535, 536 and 537 to the north before turning north along the eastern boundaries of fields numbered 489 and 488 and then shown as a headland track through field number 487 to the coloured Crediton to Coleford road. A solid line crosses the Lower Coombe Lane at the south eastern corner of field number 492 and where the lane enters field number 487.

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.

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

The route appears to be shown as a defined lane between two solid lines running from Penstone to the Coleford/Crediton turnpike road. The section from Lower Coombe to the road is in a north north westward direction similar to the route depicted on the Tithe map.

Cassini Historical Maps are reproductions of the Ordnance Survey One-Inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Landranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.

Old Series (from sheets originally published in 1809)

The map shows a defined lane running north east from 'Penson' to 'Coombe Farms', which turns west and then north to the Coleford/Crediton road.

Revised New Series (from sheets originally published in 1899-1900)

A lane corresponding to 'Unmetalled Roads' on the key is shown from 'Penstone' to 'Coombe'. An unfenced track appears to go to Coombe House to the east but no road/lane is shown going north of 'Coombe' to the road.

Popular Edition 1919 (from sheets first published in 1919)

A lane corresponding to 'Minor Roads' in the key is shown from 'Penstone' to Coombe but no lane is shown north from Coombe to the Coleford/Crediton road.

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

The first edition shows Lower Coombe lane as a named and defined lane bordered by two solid lines between Penstone and Lower Coombe. The Penstone end of the lane falls within

ordnance number 615 and the section towards Lower Coombe under number 135. No large or mature trees are depicted within the hedges bordering the lane until for a short section close to Lower Coombe. There is a solid line, possibly a gate, across the sharp bend in the lane just south of Lower Coombe and to the east of the building now known as Rick Park Cottage. A double dashed line labelled 'F.P.' runs from this cottage north eastwards across field number 81 to the Coleford/Crediton road.

OS 1 inch to a mile 1960

Lower Coombe Lane from Penstone to Lower Coombe is shown as a dashed line corresponding to Footpaths and Tracks. A double pecked line from Lower Coombe north north east across the field to the Coleford/Crediton road is shown in the position of the current unfenced cross field track (Minor Roads in towns, Drives and Unmetalled Roads) and the map also shows the separate entrance track to Lower Coombe.

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

On the 1924 and 1932 maps an uncoloured lane is shown from Penstone to Lower Coombe and then east to Coombe House. This corresponds to an inferior road and not recommended. In 1944 and 1955 editions the route appears as a narrow uncoloured lane, representing other roads and tracks and shown from Penstone to Lower Coombe and then turning east towards Coombe House. In 1975 the route is depicted in a similar way described as minor roads and tracks.

OS 1st Edition Post War

Lower Coombe Lane between points A and C is shown as a defined lane bordered by solid lines. A solid line is shown across the lane just south of point B but this would appear to be the stream flowing west to Coleford. The track from point C to D across the field is shown by a dashed line labelled 'Path'. An entrance to Middle Coombe from the Coleford to Crediton Road is shown as 'track'.

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 defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.

Lower Coombe lane between points A and the stream south of point B is shown as excluded from any hereditament and the colouring breaks where hereditament number 61 at Penstone crosses the lane in two places. At the stream where the lane turns north, the lane and the remainder of the route to the Coleford to Crediton road, falls within hereditament number 107. At the stream the colouring extends across the lane. The current Middle Coombe House and the cottages and land now known as Lower Coombe and Rick Park are recorded under separate hereditaments numbered 114 and 117 respectively. The four hereditaments were in the ownership of Arthur Onslow Sillifant and tenanted.

In the vicinity of Lower Coombe and within the hereditament number 107 there are two tracks labelled 'F.P.' in field ordnance number 81 (the field crossed between points C and

D). No reference to or allowance for a public right of way in this field has been recorded in the field book entry for the hereditament.

OS Name Book 1904

OS name books were a record of correct spellings of the names of places that would appear on OS maps. The names would usually be signed as correct by the owners. Lower Coombe Lane is included in the name book completed in April 1904 and signed for by Messrs Groves, Cooper, Stapleton and Powell, agents for A Sillifant.

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, 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. The two lines run west of Penstone and the area of survey for some of the plans included the south west end of Lower Coombe Lane.

Great Western Extension 1845

The south west end of Lower Coombe Lane is shown as a lane bordered by solid lines in a similar style as the county road through Penstone and appearing as a continuation of the road.

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

Lower Coombe Lane from Penstone to Lower Coombe (Points A-B-C) was not put forward by the parish council in the parish survey completed in 1950. A footpath along a track marked 'F.P' on the 6" to a mile 1906 maps used by the parishes (points C – D on plan) and numbered 9 on the list of paths surveyed by Mr Thorne and Mr Matanle in the parish, was included in the survey returns and described as 'From Lower Coombe to Raddon Down-Coleford Road'. The path linked in with path number 8 which ran from Coleford through Lower Coombe and Middle Coombe to Coombe House and then north to the Coleford-Raddon Down road. The District Surveyor described the path as 'No 9 is just a branch path to Lower Coombe across one pasture field, from 3rd class road no 496, with general comments 'Path leads to Lower Coombe only' and was considered to be a private footpath. In accordance with the District Surveyor's opinion the county surveyor's recommendation was that the path be omitted from the draft map as this was a private footpath. Path number 8 was also omitted.

No objection appears to have been made to the omission of the footpath from Lower Coombe to the county road from the draft definitive map. In March 1957, possibly after perusal of the provisional definitive map, the parish council wrote to the County Council advising that the following Bridle Paths appear to have been omitted from the map. One of these was described as 'Penstone to Lower Coombe and a public footpath from Lower Coombe northwards to Coleford, Raddon Cross road and also from Lower Coombe to Coombe House and north to Coombe Lodge and gate'.

The County Council responded that it was not open to anyone to object to the omission of paths from the provisional map (only landowners and persons with an interest in land could object at this stage). Path number 9 was omitted from the draft map as it appeared from the county surveyor to be a private path. The County Council did not seem to differentiate that it was only the section from Lower Coombe north to the Coleford/Crediton road that was claimed as Footpath 9. However, with reference to two other lanes which the parish council referred to in their letter as being bridlepaths omitted from the provisional map, the parish council was merely advised that these were not claimed by the council. It was the original intention that once the conclusive definitive map had been completed, there would be a review in 5 years time and such routes that had not been included could be raised at that time.

Colebrooke Parish Council Minutes & Parish Council Correspondence

Colebrooke Parish Council

There have been several references to Lower Coombe Lane in the parish council minutes. On several occasions the minutes report that correspondence was to be sent to the Rural District Council.

In 1934 and 1955 complaints were received about the bad state of the cart track (in 1934) and road (in 1955 supported by 24 signatures) and the clerk was to write to the Rural District Council (RDC). In 1955 the RDC suggested that the parish council write to Devon County Council and request that the lane be included in the survey as a Public Footpath.

In 1957 the parish wrote to the County Council saying that Lower Coombe Lane was a bridlepath omitted from the provisional map. Between 1961 and 1964 there were many references to Lower Coombe Lane and correspondence with the Rural District Council and DCC. Although the status of the lane seemed uncertain the parish council agreed to pay the sum of £9 towards repairing the lane in March 1962. In November that year it was questioned whether the work was now necessary due to the changed circumstances of the property etc. The parish council agreed that the work should not be done. It is believed that this is about the time that track north across the field from Lower Coombe was improved (parish council minute of September 1963) and made suitable for vehicles. Prior to this it would seem that Lower Coombe Lane was the vehicular access to Lower Coombe from Penstone.

In 1969 the parish council asked the RDC (Rural District Council) about the overgrown hedges in Lower Coombe lane and were advised that this was the responsibility of the owners. A letter of complaint was received in 1977 and forwarded to the district engineer at Mid Devon District Council for attention. In 1988 a request was received from DCC for adoption of Lower Coombe Lane under the 'adopt a footpath scheme'. The minutes report this was a private path and cannot therefore be adopted. In 1991 under 'Other Urgent Business' Mrs Crocker who lived at Lower Coombe Cottage reported that a shed had been erected at the Penstone end of Lower Coombe Lane. Chairman to request that J Richards to remove it quickly.

During the uncompleted review of 1996 the parish minutes considered the addition of Lower Coombe Lane and Rick Park track (the track across the field north from Lower Coombe to the Coleford/Crediton Road) as bridleway. The Chairman reported that the owner Mr Drew had advised that his deeds showed the track was for Lower Coombe residents only. Mrs Crocker advised that the track had been used as a footway for many years and the council agreed to change the proposed bridleway status to footpath only. Mr Drew did not agree and the parish council decided not to list Rick Park as a possible addition in the review letter to DCC.

Crediton Rural District Council Minutes

The entries in the Rural District Council minutes corresponded to entries in the Parish Council minutes where items or correspondence was to be referred to or were received from the RDC.

In 1955 the minutes record the lane being used by children to go from Middle Coombe to Colebrooke and Mr Dart stating the lane to have been a public right of way as long as he could remember. The parish were to be advised to request the County Council include it in the survey as a public footpath. In 1960 the residents of Lower Coombe wrote to the RDC asking for repair of the lane. The surveyor stated it was an occupation road and not a scheduled footpath. Cllr Miss Pope said the Parish Council had wanted the County Council to take it over and the lane had always been used as a footpath. By March 1961, the County Council had inspected the lane and estimated repairs at £80. In October 1961 Devon CC asked for evidence as to the existence of a Public Right of Way along Lower Coombe Lane and this was submitted by the Parish Council. In March 1962 the clerk at Devon County Council was prepared to accept the evidence for a footpath and asked for £9 contribution towards the cost of repairs.

A year later in April 1963 a Mr Munday asked for Lower Coombe Lane to be repaired and maintained at public expense. Cllr Miss Pope advised that the Parish Council had decided not to proceed with this footpath and suggested that the adjoining owner and Mr Munday could perhaps co-operate by making a track from the main road across the field to Lower Coombe. Cllr Dart could not understand why the footpath had not been repaired by the Parish Council. Mr Munday was to be informed that the RDC could not recommend that this road be repaired and adopted as a public highway.

Tiverton District Council Correspondence

Copy correspondence from Mid Devon District Council in the parish council files shows that on receipt of correspondence in 1977, the District Engineer Mr Blake, replied to Mr Crocker of Lower Coombe Cottage and Mr Harle of Providence at Lower Coombe regarding the footpath adjoining their property. (The letter is headed Coombe Lane and is understood to refer to Lower Coombe lane although the description of the lane adjoining both properties would more accurately apply to the section of lane going west from Lower Coombe towards Coleford). Mr Blake advised that he was of the opinion the footpath was a private one, not shown on the Definitive Map, and therefore neither the Parish Council nor District Council were in a position to give you any advice in the matter.

Devon County Roads Minutes – East Divisional Sub Committee

In July 1961 under Item 9 – Crediton Rural District Council it was reported that Colebrooke Parish Council had offered £9 towards the cost of repairing Lower Coombe Lane. The path was not shown on the map of public paths recently prepared by the County Council and seems to have been omitted by the Parish Council in error. Recommended that the Parish Council be asked to produce evidence that this is a public right of way on foot.

The Rural District Council minutes of March 1962 confirm that Devon County Council had accepted the evidence for a footpath supplied by the Parish Council.

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

The 1946 aerial photograph records a clearly defined lane can be seen between the two hedge boundaries between Penstone and Lower Coombe. A track across the field (points C to D) can be seen in the photo but would appear to have a grass surface. Access to the property east of Lower Coombe known as Middle Coombe also seems to have been via

Lower Coombe Lane or across the field north of Lower Coombe as no other access to Middle Coombe is visible.

In 1999 the hedgerow trees have grown over the track and Lower Coombe Lane itself can not be seen. A clear track can be seen across the field from Lower Coombe to the road, which appears to have the hardcore surface as seen in the photographs taken in 2006. The separate entrance to Middle Coombe is clearly visible on the other side of the hedge of field number 81.

The 2006 aerial photograph again shows the hedges along Lower Coombe Lane obscuring the surface of the lane. In the field north of Lower Coombe the track going north east across the field can be seen. The photograph also shows the new track around the field headland going east from Lower Coombe and then north to the road following the headland of the field.

HM Land Registry

A search at Land Registry has confirmed that the Lower Coombe Lane between points A to C on the plan is not registered although the adjoining land is under several different titles. The field crossed by the track between points C and D is registered under title DN 511183 in the ownership of Messrs D and F Metherell since 21 March 2005. This land does not appear to have been registered prior to 2005 but was previously owned by Mr Michael Drew.

The property register for Lower Coombe Cottage includes reference to a conveyance and plan dated 24 June 1924 between John Sillifant (Vendor) & others and Richard & Ann Guy (Purchasers). The conveyance referred to a right in perpetuity for the purchasers and their successors in title either with or without horses, cattle or other animals carts or other means of traction laden or unladen for all purposes in connection with the user and enjoyment of the hereditaments first and secondly hereby conveyed to pass and repass over and along the track or way coloured brown on the said plan to and from the road on the north side of Ordnance number 81. This conveyance granting the private right of way for all purposes for the owners/occupiers of Lower Coombe across the field track to the Coleford/Crediton road.

The register for Providence at Lower Coombe refers to the same conveyance of June 1924 and a right to pass and repass along the track in Ordnance number 81. In March 1988 the registered proprietor at that time claimed the benefit of a right of way over the tracks tinted yellow in the filed plan. The track coloured yellow includes the north east end of Lower Coombe lane to the gateway at point C. The register for Rick Park refers to a conveyance dated 15 February 1952 which refers to a right in perpetuity to pass and repass at all times and for all purposes over and along the track or way coloured brown.

5 User Evidence

A total of 28 user evidence forms have been received in support of the route mostly completed in 1996, 1999 or 2007. A total of 15 individuals report use on foot, 3 on foot and on horseback, 12 just on horseback, 1 on foot and bicycle and 1 with a pony and trap. The recorded use covers the period from 1915 to 2007 when the most recent forms were completed and as summarised in the chart of user evidence. Some of the forms were completed by people who resided or had resided at Lower Coombe. Whilst living at Lower Coombe or visiting relatives/friends who lived at Lower Coombe these users would be considered as using the private right of way along the track across the field (points C to D). These users are the Symons family including Mrs N Turner, Miss Crocker and Mrs Aheam daughters of Mrs Crocker of Lower Coombe Cottage. Mr Leyman refers to use with a pony and trap bakers at the end of the 1920s and beginning of the 1930s.

Most use occurred between the mid 1980s and 1997, when a number of user evidence forms were completed. Frequency of use varies from 3-4 times a week, by a resident at Lower Coombe to 3-4 times a year by Ms Bexter who used the route from 1986 to 1997. Several users refer to the two gates at the top and bottom of the field but these were never locked. Mr J Symons, who used the route from 1925-1937, described the cross field path as running beside the hedge from Lower Coombe to the road.

Most users consider the route to be a footpath and bridleway and consider the route to be a public right of way. Mr A Howe (used route from 1931 to 1934 when aged 11-14 years) advises being stopped or turned back from 'up across the field' and comments 'there was always a dispute over the line of the footpath between the two landowners at Lower Coombe'. Miss M Crocker (use from 1965 – 1996) when asked have you ever been stopped or turned back when using this way, or do you know or have you heard of anyone else having been stopped or turned back?, advises 'Mrs Drew at Coleford tries to stop you'. In response to 'Have you ever known any locked gates or other obstruction to the way?' Miss Crocker had advised 'Yes - blocked by gate and electric fences'. Subsequent enquires with Miss Crocker have confirmed that this was the route from Lower Coombe to Coleford, (suggestion 10 of the Colebrooke Definitive map review considered at committee in March 2008) and not the route across the field to the Coleford/Crediton road. Miss Crocker initially resided at Lower Coombe Cottage and would have had a private right of way whilst resident and when subsequently visiting relations still resident at Lower Coombe.

Mr Howe and Miss Crocker were previous residents of Lower Coombe and while residing there or visiting relations would have been expected to be exercising their private rights of way. No other users have mentioned being stopped or turned back or referred to any obstructions apart from the unlocked gates, occasional overhanging vegetation in Lower Coombe Lane and Mrs Martin mentioning an old car dumped near the stream in 1998, but she could still get through on horseback. Mr Conibere who used the way on foot from 1945 to 1960 refers to their being a notice on the way, but can't remember what it said. No other users have mentioned seeing any notices.

Most users have described the route used as running from Penstone to the road. Mr Colville-Hyde and Ms M Crocker have described the way used as being from Lower Coombe to Penstone only and Miss D Symons, Miss G Symons & Mr J Symons (their use 1925-1937) referred to going from Lower Coombe to the road only and the two maps attached just show a route across the field. The Symons family are understood to have resided at Lower Coombe during this time and so would have been exercising their private right of way across field number 81. Mr Hooper (1919 -1929) and Mr Howe (1931-1934) also refer to going from Lower Coombe to Crediton and Coleford. Mr Howe used the path to go to school and as the school was at Colebrooke, it would seem that he would have continued along Lower Coombe Lane to Penstone and then to Colebrooke.

6 Landowner Evidence

Landowners and adjoining landowners were contacted during the consultation stage and completed landowner evidence forms received from the following landowner and adjoining occupiers.

Mr E B Colville-Hyde has owned Higher Penstone Farm at Penstone since 1980 and his land borders the north west side of Lower Coombe Lane between Penstone and Lower Coombe. He considers the lane to be a footpath and bridleway and has answered yes to the question 'Have you seen, or been aware of, members of the public using the way'. Mr Colville-Hyde has also submitted a completed user evidence form in respect of the Lower Coombe Lane section of the route (points A to C).

Mr F Cook of Easterbrook Farm House at Penstone had resided at that property since 1970 and owned property adjoining the lane. He considered the route to be a public bridleway and had been aware of walkers and horse riders using the route during that time.

Mrs P Crocker has resided at Lower Coombe Cottage since 1964. She considers Lower Coombe Lane to be an accommodation lane and seen members of the public most days walking and on horseback. People have sometimes being stopped from using the lane because of vehicles parked at the Penstone end of the lane. There are gates at the top and bottom of the field at Lower Coombe end. Mrs Crocker advised that they had to stone the track across the field in about 1970 as the ruts were bad. Her late husband and she and later her son had helped to keep the lane clear for the last 36 years as she uses it to get to her field at Penstone.

No reply was received from Mr Broughton, the owner of the two fields bordering the south east side of Lower Coombe Lane.

7 Rebuttal Evidence

Mr D Metherell of Providence at Lower Coombe had owned Providence house and land since 1977 and the field crossed by the route between point C and D since February 2005. He considered the section from A to C, the part comprising Lower Coombe Lane to be a bridleway but the section of the route from C to D to be private for access for residents of Lower Coombe only. He had seen occasional dog walkers since 2005 and spoken to odd people who looked lost but had no idea of dates. Gates at points C and D would be shut but not locked when there was livestock in the field.

Mr Metherell added that historically the track from Penstone (point A) to Lower Coombe (point B) was part of the highway to Crediton passing up the valley past Coombe House and on to the cross roads near the dump (going the Coleford/Crediton road further east). The path from C – D has never been a public right of way and only a right of way for residents of Lower Coombe. He enclosed a copy letter from the Parish Council Clerk in July 1996 when the parish council wrote *'There is still some support to make this route a public right of way. Some councillors stated that the general public have been walking it for several years'*. Mr Drew, the owner of the field at that time, replied that the track as defined in the deeds of 1908 and 1927 is access to the three named properties at Lower Coombe and they do not give permission for this to be changed in any way. Mr Metherell advised that he had the deeds referred to and these confirm that the right of way only refers to properties at Lower Coombe. They are only aware of a couple of people who they have seen walking the route and this has only been irregularly over the last couple of years (2005-2007).

Mr M Armstrong of Crediton wrote with regard to suggestions 6 and 7 following publication of the consultation map and asked if it was possible to object to the provision of Public Bridleways. If the change was approved, he asked that consideration be given for a fence to be erected to segregate the footpath to the bridleway. Otherwise he states that in his experience the footpath will become unusable between late autumn and spring due to the horses churning up the path.

8 Discussion

This suggestion running along a defined lane and then as a cross field path and the evidence researched can be considered as falling into two parts. The section of the route known as Lower Coombe Lane between points A – C on the plan has physically existed as a defined lane since prior to 1809 as recorded the OS Old Series 1" to a mile map and subsequently recorded on Greenwood's Map of 1827, Tithe Map of 1845, Great Western

Extension Railway plan of 1845, Bartholomew's maps from 1924 and later OS maps. In the 1946 aerial photograph the surface of the lane can be seen between the hedges but by 1999 the hedges and hedgerow trees have grown over the lane.

The section of the route running along the defined lane between point A and just south of point B was not included in the hereditaments of the adjoining holdings in the Finance Records of 1910. The adjoining hereditaments were in the ownership of Arthur Sillifant and in the OS Name Book of 1904 the name 'Lower Coombe Lane' was signed for by the agents of Mr Sillifant. This could indicate that the lane was considered to have been part of the estate of that time but does not appear to have been included within the adjoining land when the farms were sold off from the estate.

Lower Coombe Lane, the section between A – C, was not initially put forward by the parish to Devon County Council for inclusion in the paths proposed to become public rights of way in 1950. In March 1957 the Parish Council wrote to Devon County Council to advise that Bridle Paths appear to have been missed off the (Provisional Definitive) map. One of these was described as 'Penstone to Lower Coombe and a public footpath from Lower Coombe northwards to Coleford, Raddon Cross road'. The County Council responded that it was not open to anyone to object to the omission of paths from the provisional map and confirmed that the footpath from Lower Coombe to Coleford, Raddon Cross road (points C – D) had been initially included in the original survey, but had been omitted from the draft map as it appeared from the county surveyor to be a private path.

The Parish Council minutes include supporting references that the parish council considered Lower Coombe Lane to be a public right of way. In 1934 complaints were received about the bad state of the cart track and in 1955 a complaint supported by 24 signatures was forwarded to the Rural District Council. The number of signatures would indicate that there were a number of local people who used or wished to use the lane. At the Rural District Council meeting in 1955 Cllr Dart stated the lane to have been a public right of way as long as he could remember. Following further complaints in the 1960s, the lane was called an occupation road by the RDC surveyor, was inspected by Devon County Council who estimated repairs at £90 and were prepared to accept the evidence for a footpath and asked the parish for a £9 contribution to the repairs which was paid. The repairs were not completed however and in 1963, following a further complaint from Mr Munday, the RDC councillor Miss Pope suggested that the two owners of the field between Lower Coombe and the road co-operate by making a track across the field to Lower Coombe.

In 1977 the district council were unable to take any action as the path was not on the Definitive Map and in 1988 the path could not be adopted under the County Council's 'Adopt a footpath scheme' as the parish council minutes reported it to be a private path. However, in 1991 when it was reported that a shed had been erected at the Penstone end of Lower Coombe Lane the chairman of the parish council requested the owner to move it quickly.

In 1996 the parish council wished to put forward a proposal to add a bridleway to the definitive map as part of the Definitive Map Review. After correspondence with Mr Drew, the owner of the field at that time, who said that he would not want a bridleway or a footpath across his field, the proposal was not submitted. It would appear that this proposal would initially have had the support of the majority of the parish councillors at that time and the parish clerk's letter to Mr Drew regarding the proposal advised that some councillors stated that the general public have been walking it (the track across the field) for several years.

Adjoining landowners consider Lower Coombe Lane (points A – C) to be a public right of way and two landowners at the Penstone end of the lane and one at Lower Coombe report seeing the lane being used by the public.

The precise status of Lower Coombe Lane has varied in the references contained in the various committee minutes over the years, being a footpath, bridle path, occupation road, cart track and public right of way. However, the consensus of most references is that the lane was a public right of way for use by the public and has been used and was being used as such for many years, from the first parish council minute reference in 1934 to the proposal in 1996. The user evidence submitted confirms use by the public between 1915 and 2007 and the nature of use on foot and on horseback support the status of Lower Coombe Lane as being a public bridleway. Overall the evidence indicates Lower Coombe Lane having being dedicated as a public right of way at some time in the past and that the dedication has been accepted by the public.

The cross field section of the route between points C and D does not appear to have come into existence until the late 19th century. The Tithe Map 1846, Greenwoods Map Of 1827 and early OS map of 1809 all show a different route from Lower Coombe to the Coleford/Crediton road to the west of the current track. In the OS 25" to a mile first edition of 1880-1890 a double dashed line labelled 'F.P.' runs across field number 81 north eastwards from Lower Coombe. A vehicular width track can be clearly seen across the field in the 1946 aerial photograph.

No allowance was claimed by Mr Sillifant or his agents in the Finance Act valuations of 1910 for the footpaths shown on the 1880 and 1906 25" and 6" to a mile OS maps and this could indicate that the paths were not considered to be public footpaths at that time. The path from Lower Coombe to the road was included in the parish survey of 1950 but omitted from the draft Definitive Map as it was considered to be a private path. The fact that the path was included in the parish survey could indicate that the parish were aware of use by the public prior to 1950, as the parish did not automatically include all paths marked 'F.P.' on the second edition 1906 6" to a mile maps used for the survey. The parish council queried the path's omission from the provisional map in 1957 together with Lower Coombe Lane but were too late to have the map amended.

Most references in the minutes relate to Lower Coombe Lane and not the track across the field. The properties at Lower Coombe appear to have been sold in 1924 and in the conveyance of that date; a private right of way across the track in field number 81 was recorded for the benefit of the owners and occupiers for all purposes of Lower Coombe Cottage and Providence. It is not usual for public rights of way to be recorded in property deeds and the inclusion of a private right of way does not mean that a public right of way does not exist along the same route.

The user evidence supports use of the way as a through route by most of those completing user evidence forms, describing the route as from Penstone to the road. Although Mr Drew told the parish council in 1996 that he did not wish the route across his field to be put forward as a bridleway to be added to the definitive map; he does not seem to have taken any steps to prevent continued use by the public or by erecting notices to make it clear that the field track was not a public right of way or that use was by permission. The clerk had mentioned use by the public for several years and as Mr Drew did not live in the parish he may not have been aware of the public's use of the route. However, the raising of the suggestion would have put him on notice of the public use. The user evidence confirms the public continued to use the way after 1996 and this use appears to have continued during the remainder of Mr Drew's ownership and during Mr Metherell's ownership since 2005. The users consider the route to be a public right of way and their use has been as of right on foot, horseback and bicycle.

Continued use by the public of a way as of right, without force, secrecy or permission, for a number of years can create a public right of way. Under section 31 of the Highways Act 1980 and following the Court of Appeal case of Godmanchester, Mr Drew's letter to the

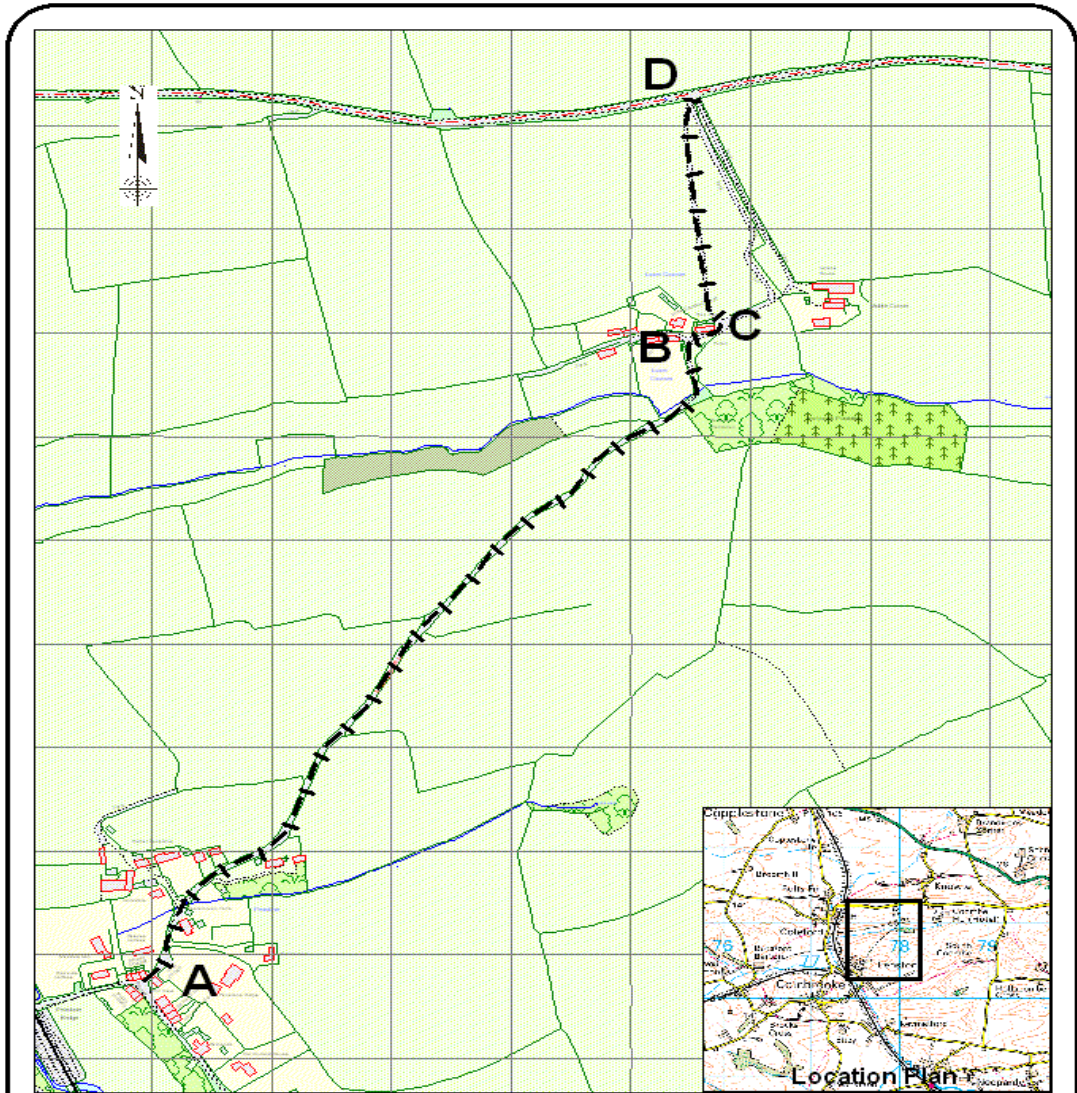
parish council of 1996 would not be considered sufficient evidence to show a lack of intention to dedicate as it would only have called the use of the way into question to persons present at the parish council meeting when the matter was discussed. There has also not being any action to prevent use of the way by the public or call the public's use of the route into question by way of notices or locked gates. A lack of action on the part of landowners could be taken to indicate that a public right of way had been dedicated.

9 Conclusion

When considered overall, the evidence examined is considered sufficient to indicate that it is reasonable to allege that on the basis of common law a public right of way has been dedicated along the Lower Coombe Lane between points A – B – C at some time in the past by the landowner/s and has been accepted by the public.

The right of way across the field between points C and D is deemed to have come into existence in the 20th century, possibly after the Finance Act of 1910, after 1924 when the estate was sold or even through use after 1950. The evidence discovered is considered sufficient to indicate that also on the basis of common law it is reasonable to allege that a public right of way subsists between points C and D along the track across the field from Lower Combe to the Coleford/Crediton road.

It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a Public Bridleway from Penstone via Lower Coombe Lane to Lower Coombe and then to the county road between Coleford and Crediton (suggestion 6 – Lower Coombe Lane) between points A – B – C – D as shown on drawing number ED/PROW/07/43; and subject to confirmation of the Order, that at the landowner's request, the section of the bridleway between points C and D, be diverted via a Public Path Diversion Order onto the new headland access track at no cost to the landowner.



map ref SS 7700, 7701.

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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - COLEBROOKE
SUGGESTION NO 6 - LOWER COMBE LANE**

drawing number	ED/PROW/07/43
date	Mar 2007
scale	1:5,000 at A4
drawn by	TW

Notation To be added

A - B - C - D Public Bridleway (1070 metres approx)

Edward Chorlton

DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE

