

**Definitive Map Review 1996-2009  
Parish of Colebrooke**

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

Report of the Executive Director of Environment, Economy and Culture

**Recommendation:** It is recommended that the Committee note that following the Committee's resolution at the meeting of the 4 March 2008 for a Modification order to be made adding a restricted byway along Butsford Lane, Colebrooke along the line H – B - F, the landowner has advised that he is willing to consider dedicating a restricted byway along Butsford Lane along the line A – B – F by means of a Creation Agreement under section 25 of the Highways Act 1980, as indicated on drawing number ED/PROW/09/07a.

**1. Summary**

At the Committee meeting of 4 March 2008, Members resolved that a Modification Order be made for a restricted byway along the historic route of Butsford Lane H – B - F, from the county road at Butsford Barton and the county road between Coleford and Colebrooke Mill, in the parish of Colebrooke and district of Mid Devon. The landowners were very concerned about health and safety issues with the public passing through the farmyard and have advised that they are willing to dedicate the right of way to enable the west end of the route to be diverted away from the farmyard.

**2. Background**

The definitive map review in Colebrooke Parish was reopened in 2006, the initial review opened in 1996 having being aborted after publication of suggestions for change. A consultation map containing 12 suggestions for change was published in March 2007 and reports on all the suggestions (except for the two diversion proposals to be considered under delegated powers) have been considered by the Public Rights Of Way Committee between November 2007 and November 2008.

One of the suggestions considered at the meeting of March 2008 was for the addition of a restricted byway along the route of the old Butsford Lane from Butsford Barton to the county road between Coleford and Colebrooke Mill opposite Poacher's Cottage.

At the Committee meeting Mr Hockridge spoke about his concerns if the public, including horse riders and children on bicycles could be passing through the farm yard when large tractors and machinery were in use, and the possibility of a serious accident occurring. Members were sympathetic to the landowner's concerns and noted that once the Modification Order had been confirmed, the section of the route through the farmyard could be diverted through the field south of the track by way of a Public Path Diversion Order under the Highways Act 1980. After considering the user and documentary evidence discovered and examined in support of the route being an unrecorded public right of way, namely a restricted byway, it was resolved that a modification order be made for the addition of a restricted byway as recommended, which included passing along the farm track adjacent to the farm buildings.

### 3. Subsequent Developments

Following the Committee's decision several meetings have taken place with the landowner and Mr Hockridge was advised that although a Public Path Diversion Order could be made once the restricted byway modification order was confirmed for the historic/used route; this could be objected to by members of the public and there would be the possibility that the diversion order would not be confirmed. It was therefore suggested that if the landowner was willing to enter into a creation agreement under section 25 of the Highways Act, it may be possible to include a diversion within the agreement as long as this gave a suitable and convenient alternative route for the public.

Mr Hockridge initially proposed an alternative route to the historic/user route along the east end of the lane and then going in a north westerly direction across three fields to meet the county road some 700 metres north of Butsford Barton. This alternative was circulated to the parish council and local user group representatives for comment. The unanimous response was that the alternative route was not suitable and the Ramblers' representatives in particular, commented that walkers would have to walk down a much longer section of road to continue along Footpaths Nos. 5 and 12, Colebrooke, than they would need to do along the original route. The British Horse Society and parish council were also not in favour of the alternative route over the historic one.

Due to the lack of support for the alternative route preferred by the landowner the options then to be considered amounted to:

1. Mr Hockridge enters into a creation agreement under section 25 of the Highways Act 1980 for dedication of a restricted byway along Butsford Lane but diverting through the paddock south of the track at the west end of the route. Route A – B - C – D – E – F on the attached plan or
2. The definitive map modification order is made for the public right of way to follow the route of the old lane as agreed at the committee meeting. Route H – B - C – D – E – F on the plan. Mr Hockridge could choose to object to the order, as could anyone else who wished to do so. An objected order would be determined by an inspector, most probably by way of a local public inquiry. If the Order is confirmed, a public path order could then be made to divert the section H – B onto the line A - B on the plan, although this Public Path Order could also be objected to and then would be subject to determination by an Inspector appointed by the Planning Inspectorate.

Mr Hockridge has advised that he wishes to dedicate the restricted byway along the route as shown between the points A - B - C – D – E - F by entering into a creation agreement under section 25 of the Highways Act 1980, as this will enable the route to be diverted out of the farm yard with certainty. A site inspection, also attended by the public rights of way warden, will be undertaken to agree the final route and to confirm that the route through the field will be suitable for public use and provide an acceptable alternative throughout the year for all users. If agreement cannot be reached on an acceptable alternative route, a Definitive Map Modification Order will be made for the original route as resolved at the meeting on 4 March 2008.

In recognition of the time and expense saved by Devon County Council in not having to make a modification order for the restricted byway it was proposed that once the creation agreement has been completed, Devon County Council could make a Public Path Order for the diversion of Footpath No. 7, Colebrooke at no cost to the landowner. This diversion would be in the interests of the landowner and would remove the cross fields section of

Footpath No. 7, Colebrooke from a route running between points G – C to a route running from points G - E along the field headland.

#### **4 Conclusion**

It is therefore recommended that the Committee note that following the earlier resolution at the meeting of 4 March 2008 for a Modification order to be made adding a restricted byway along Butsford Lane, Colebrooke; the landowner has advised that he is willing to consider dedicating a restricted byway along Butsford Lane by way of a Creation Agreement under section 25 of the Highways Act 1980, along his preferred route as shown between points A – B - F on drawing number ED/PROW/09/07a; as this which will include a guaranteed diversion of the modification order route away from the farm yard and farm buildings. If the agreement cannot be concluded satisfactorily, a Modification Order will be made for the original route as resolved at the meeting of March 2008.

Edward Chorlton

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

Local Government Act 1972

List of Background Papers

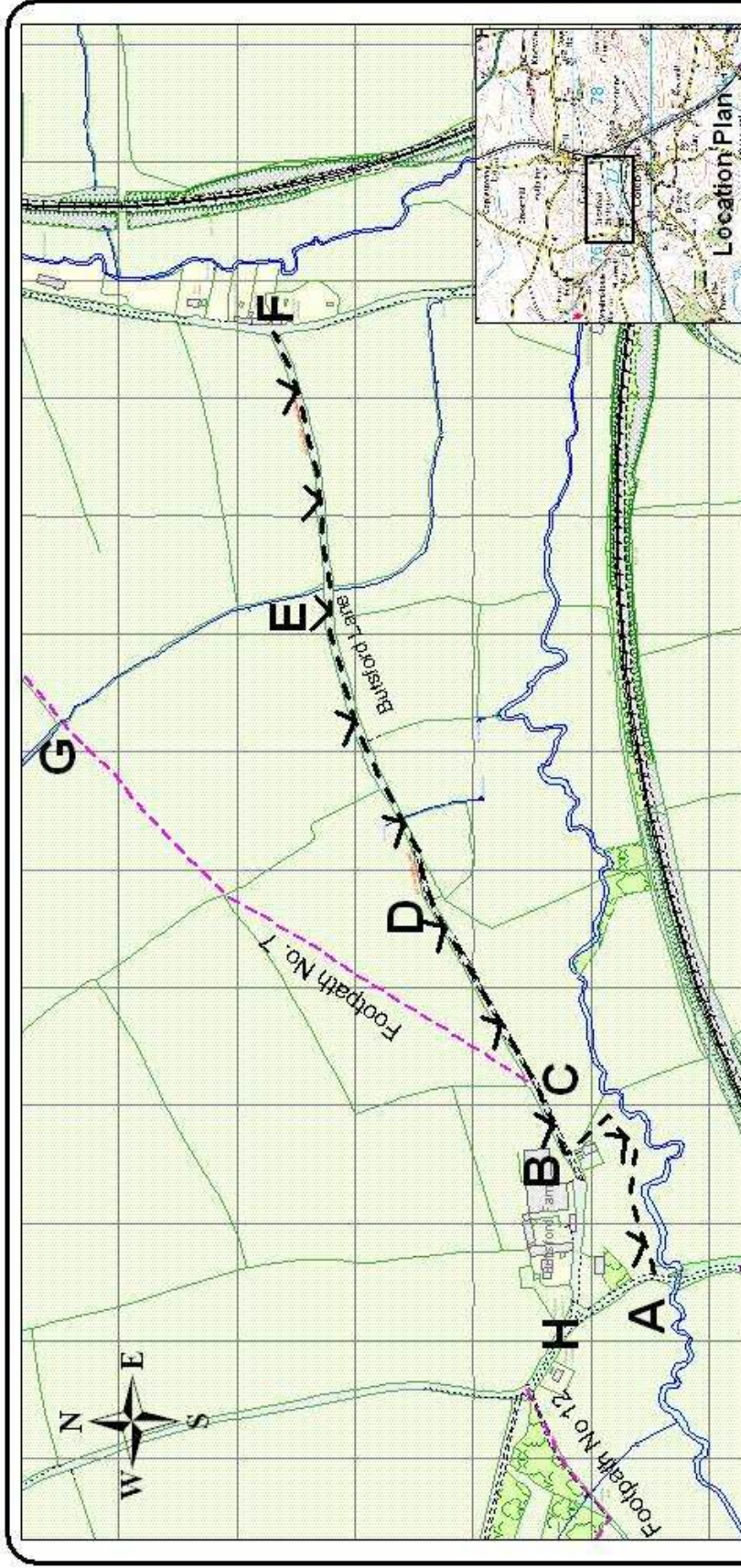
Contact for enquiries: Mike Jenkins

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

tw130209pra  
sc/dmr parish of colebrooke - update  
2 hq 180209




map ref: SS 7600, 7700

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drawing number ED/PROW/09/07a  
 date Jan 09  
 scale 1:5,000 at A4  
 drawn by TW

**DEVON COUNTY COUNCIL**  
**RESTRICTED BYWAY NO. 23, COLEBROOKE**  
**PUBLIC PATH CREATION AGREEMENT 2009**

Notation To be created A - B - C - D - E - F Restricted Byway  (approx 980 m)

**Edward Chorlton**  
 County Council  
 DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE

