

**Definitive Map Review 2007-2009
Parish of Lamerton**

Report of the Deputy 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) no order be made to record Proposal 1 as a public right of way; and**
- (b) no order be made to upgrade Footpath No. 17, Proposal 2, as a public bridleway.**

1. Summary

The report examines the Definitive Map Review in the Parish of Lamerton in the district of West Devon.

2. Background

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed twenty nine footpaths and one bridleway in Lamerton with twenty one footpaths and the one bridleway recorded on the Definitive Map and Statement dated 1 May 1958.

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

In response to the general review started in the late 1970s, the Parish Council requested that Footpath Nos. 1, 17 and 25 be amended. The proposal relating to Footpath No. 17 is discussed in Appendix I to this report. Footpath Nos. 1 and 25 were and are the subject of diversion orders.

Under the West Devon Parishes Order 1986, Footpath Nos. 20, 22 and 29 were transferred to Sydenham Damerel and Footpath No. 55 was transferred from the former parish of Tavistock Hamlets.

The following Diversion Orders have been made in the parish:

- (a) The Devon County Council (Footpath No. 2, Lamerton) Public Path Diversion Order, 1990;
- (b) The Devon County Council (Footpath No. 20, Lamerton) Public Path Diversion Order, 1990;
- (c) The Devon County Council (Footpath No. 1, Lamerton) Public Path Diversion Orders, 1992 and 2009;
- (d) The Devon County Council (Footpath No. 12, Lamerton) Public Path Diversion Order, 1994;
- (e) The Devon County Council (Footpath No. 18, Lamerton) Public Path Diversion Order, 2002;
- (f) The Devon County Council (Footpath No. 4, Lamerton) Public Path Diversion Order, 2003;
- (g) The Devon County Council (Footpath No. 55, Lamerton) Public Path Diversion Order, 2004; and

- (h) The Devon County Council (Footpath No. 9, Lamerton) Public Path Diversion Order, 2008 and 2009.

2. Review

The current review began in May 2007 with a public meeting held in the Sports and Community Hall. The review was advertised in the Okehampton Times and Tavistock Times newspapers and on the village notice boards. Consultations were carried out in 2009 with the following results:

County Councillor Sellis	- no reply
West Devon Borough Council	- comments included in the report
Lamerton Parish Council	- objects to proposals
British Horse Society	- no reply
Byway and Bridleways Trust	- no reply
Country Landowners & Business Association	- no reply
National Farmers' Union	- no reply
Open Spaces Society	- no reply
Ramblers' Association	- no reply
Cyclist Touring Club	- no reply
British Driving Society	- no reply
South West Water	- no reply
Transco	- no reply
BT	- no reply

Applications have been received from landowners relating to diversions on Footpath Nos. 1 and 9. The first diversion of Footpath No. 9 has been confirmed and no objections have been received with regard the second one. No objections have also been received to the diversion of Footpath No. 1. The proposed diversion Footpath No. 25 from 1978 is currently under discussion. The resulting orders are made under delegated powers.

3. Conclusion

It is recommended that no order be made in respect of either proposal. There are no other recommendations to make concerning any further modifications. However, should a valid claim be made in the next six months it would seem sensible for it to be determined promptly rather than deferred.

4. Reason for Recommendation/Alternative Options Considered

To progress the review of the Definitive Map in West Devon.

5. Legal Considerations

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

6. Carbon Impact Considerations

There are no implications.

7. Equality Considerations

There are no implications.

Ian Harrison

Electoral Division: Tavistock

Local Government Act 1972

List of Background Papers

Contact for enquiries: Mike Jenkins

Room No:

Tel No: (01392) 383240

Background Paper	Date	File Ref.
Correspondence Files	2007 to date	DMR/LAMERTON

cg131009pra
sc/parish of lamerton
3 hq 301009

Background to the Proposals

Basis of Claims

The Wildlife and Countryside Act 1981, Section 53 (5) enables any person to apply to the surveying authority for an order to modify the Definitive Map. The procedure is set out under the Wildlife and Countryside Act 1981 Schedule 14.

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.

Proposal 1: Addition of a Public Bridleway at Chaddlehanger

Background

In 2001 the Clerk to the Parish Council contacted the County Council about the proposal which was believed to have some public right though was not currently recorded. User evidence forms were in anticipation of the review arriving in the parish, as new landowners were denying access. No evidence has been provided.

Description of the Route

The route is indicated on drawing no. EEC/PROW/09/96 as an enclosed lane running between points A – B – C – D, south of the hamlet of Chaddlehanger. It is approximately 740 metres in length.

Consultations

The current Parish Council has expressed its objection to the proposal, while the West Devon Borough Councillor wishes the route's current status to remain unaltered.

Historical Evidence

The route is shown on the Lamerton Tithe Map, 1st edition Ordnance Survey map and subsequent editions, and is excluded on the Finance Act records. However, these are not sufficient on their own to suggest this route has enjoyed public status only that it physically existed at the time the maps were drawn.

Landowners/Rebuttal Evidence

Adjoining landowners have been contacted for their views. Knowledge of the route dates back to the 1940s and recalls it as a private lane with some use on foot and horseback by permission to local people, with others being stopped and turned back. The local Hunt has also used the route with permission. The affected landowners are opposed to the recording of the route as a public right of way and state that it is regularly obstructed with livestock and farm vehicles. A number of other residents in the hamlet of Chaddlehanger affirm this position.

Conclusion

The historic mapping indicates that the route has physically existed for 200 years, but does not assist in determining status of the route. No evidence of public use has been provided to support the proposal. In the absence of further supporting information it is felt that there is insufficient evidence to justify the making of a modification order to add it to the Definitive Map and Statement.

Proposal 2: Upgrade Footpath No. 17 to a Public Bridleway

Background

The proposal to upgrade the footpath on the Definitive Map and Statement was made by the Parish Council in April 1978, based on evidence of a local resident.

Description of the Route

The route starts at the minor county road by Higher Woodley, as indicated as point A on drawing no. EEC/PROW/09/97, and proceeds north-eastwards along a track through a farm and thence across fields and through Jarvis Wood to join the County road south of the entrance to Collacombe Barton, at point B. It is about 1,385 metres in length.

Consultations

The current Parish Council has expressed its objection to the proposal, while the West Devon Borough Councillor wishes the route's current status to remain unaltered.

User Evidence

No user evidence forms have been received in support of the proposal since the amendment was requested by the Parish Council in 1978.

Historical Evidence

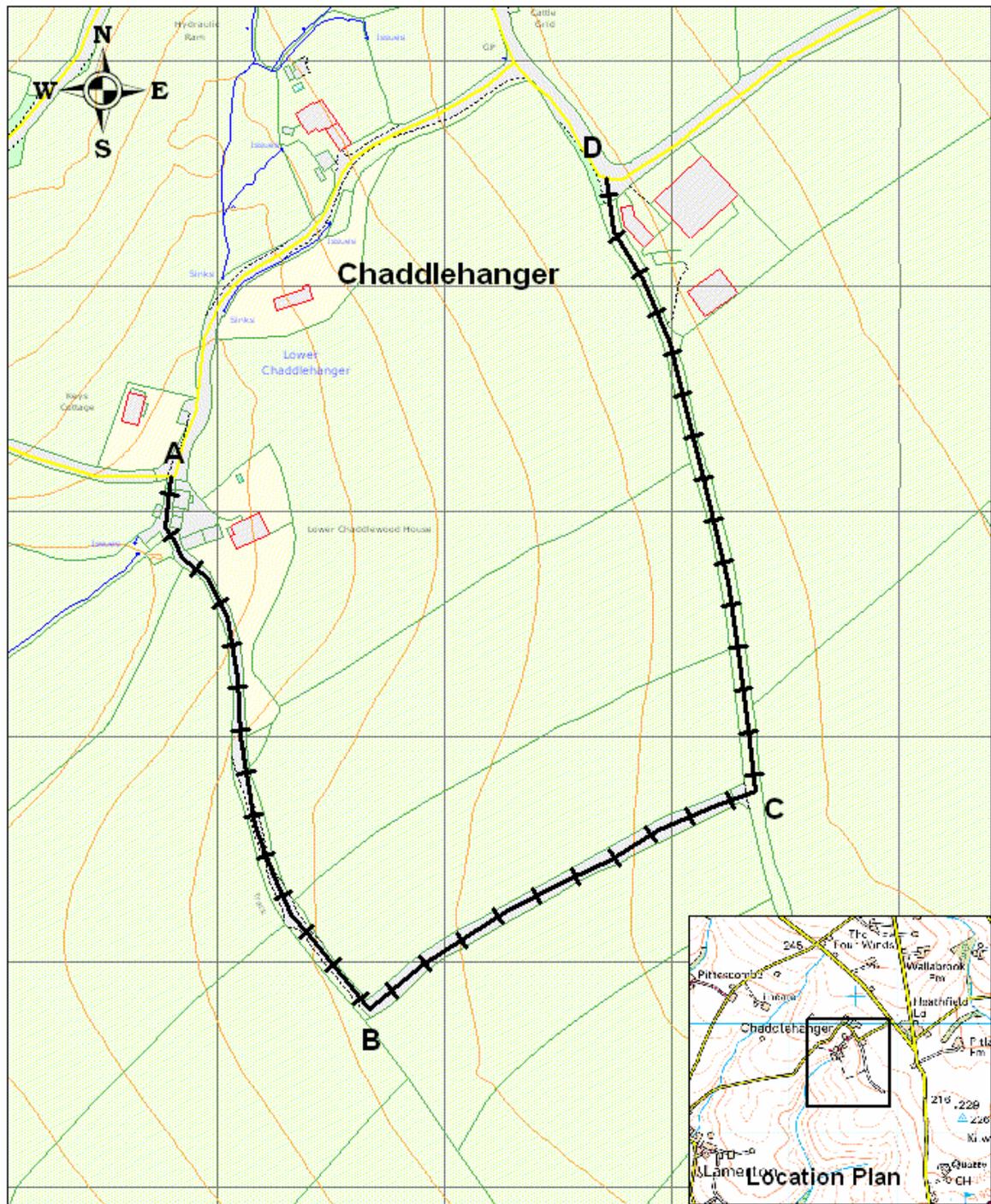
The route is shown on the historical map records of the 1st edition (and all subsequent editions) Ordnance Survey maps, and other historic maps of the area. However, none of these are sufficient on their own to suggest this route has enjoyed public bridleway status only that it physically existed at the time the maps were drawn.

Landowner/Rebuttal Evidence

The route has four affected landowners who have been contacted for their views. All are opposed to the upgrade and state there is no history of public use on horseback.

Conclusion

The historic mapping indicates that the route has physically existed for 200 years, but does not assist in determining status of the route. No evidence of use has been provided to support the proposal. In the absence of further supporting information it is felt that there is insufficient evidence to justify the making of a modification order to add it to the Definitive Map and Statement.



map ref: SX 4677

Reproduced from Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Licence No. 100019783

**Lamerton
Definitive Map Review - Proposal 1
Addition of a bridleway at Chaddlehanger**

drawing number ED/PROW/09/96

date August 2009

scale 1:2,500

drawn by CLG

Notation

Existing footpaths

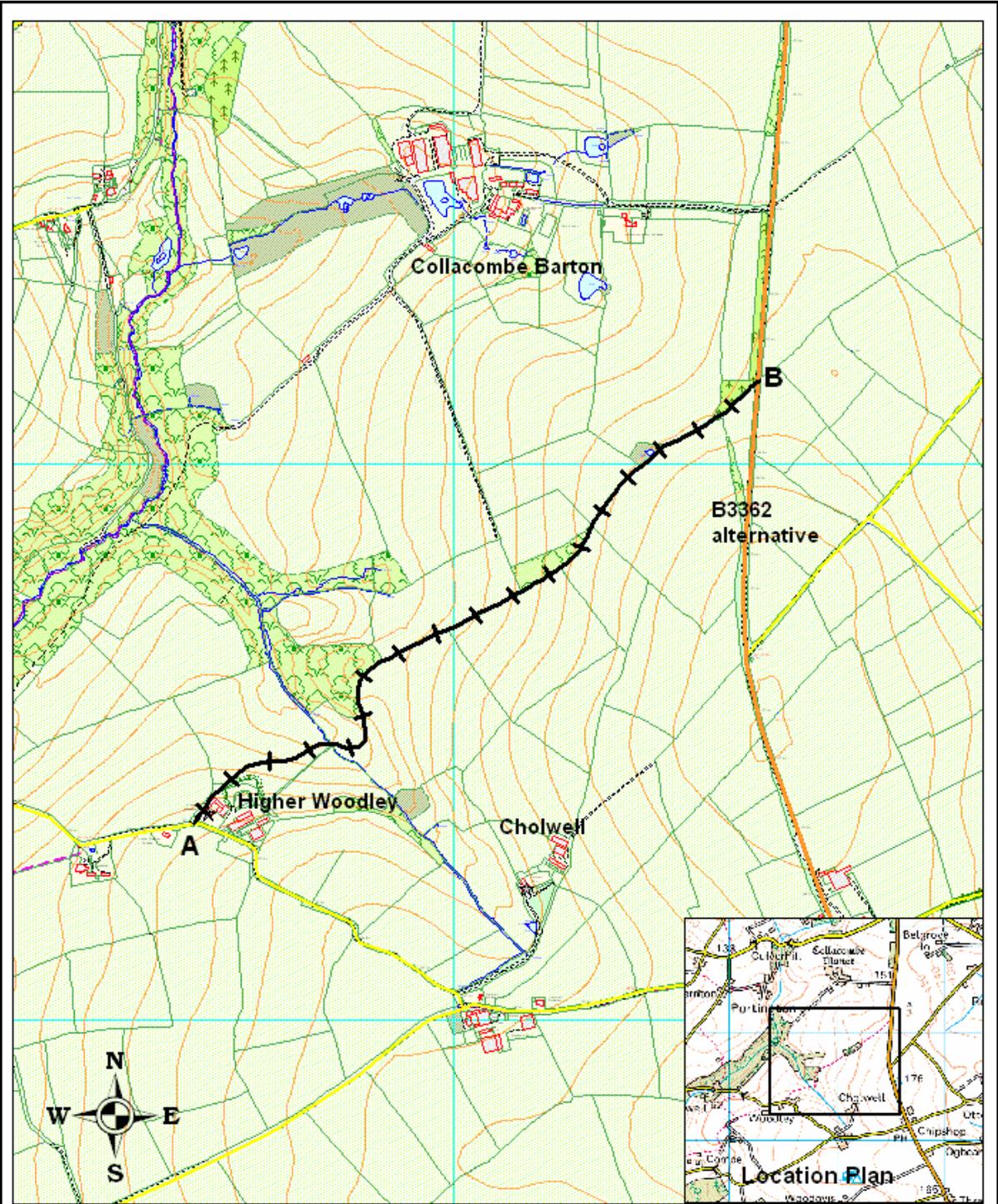
Existing bridleways

Proposed Bridleway A - B - C - D  (approx 740 metres)

Edward Chorlton

EXECUTIVE DIRECTOR OF ENVIRONMENT,
ECONOMY & CULTURE





map ref: SX 4275, 4375

Reproduced from Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office. © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Licence No. 100019783

**Lamerton
Definitive Map Review - Route 2
Upgrade of Footpath No. 17
to bridleway**

drawing number ED/PROW/09/97
 date August 2009
 scale 1:10,000
 drawn by CLG

Notation

Existing footpaths	Existing bridleways
Proposed Bridleway A - B	(approx 1,385 metres)

Edward Chorlton
 EXECUTIVE DIRECTOR OF ENVIRONMENT,
 ECONOMY & CULTURE

