

**Definitive Map Review 2008-2010  
Parish of Sydenham Damerel**

Report of the Executive Director of Environment, Economy and Culture

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

**Recommendation: It is recommended that a Modification Order be made to record a restricted byway regarding Suggestion 1 as shown on drawing ECC/PROW/09/95.**

**1. Summary**

The report concerns the Definitive Map Review in the Parish of Sydenham Damerel.

**2. Background**

The original survey under s. 27 of the National Parks and Access to the Countryside Act, 1949, revealed 8 footpaths and 1 bridleway, recorded on the Definitive Map and Statement for Sydenham Damerel with a relevant date of 1 May 1958. Due to parish boundary changes, Sydenham Damerel currently has 11 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 no valid proposal for any addition, upgrading or deletion.

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) The West Devon Parishes Order 1986;
- (b) The Devon County Council (Footpath No. 20, Sydenham Damerel) Public Path Diversion Order, 1990; and
- (c) The Devon County Council (Footpath No. 9, Sydenham Damerel) Public Path Diversion Order, 1995.

**3. Review**

The current review started in 2009 has consulted all statutory consultees and landowners. Suggestions submitted to Devon County Council since the original Review were picked up, and consultations for modification of the Definitive Map included a Schedule 14 application for a byway open to all traffic.

General consultations have been carried out since August 2009 with respect to these suggestions and the responses have been:

County Councillor D Sellis	-	no comment
West Devon Borough Council	-	comments included in report
Sydenham Damerel Parish Council	-	comments included in report
British Horse Society	-	no comment
Byways and Bridleways Trust	-	no comment
Country Landowners' Association	-	no comment
National Farmers' Union	-	no comment
Open Spaces Society	-	no comment
Ramblers' Association	-	no comment
Trail Riders' Fellowship	-	made Schedule 14 application and support claim
Cyclists Touring Club	-	no comment

### **3. Conclusion**

It is recommended that a Modification Order be made in respect of Suggestion 1 as discussed in the appendix to this report. It is also noted that a Public Path Diversion Order is required in the parish and this will be made under delegated powers.

There are no other recommendations to make concerning any further modifications. However, should any valid claim be made or further evidence received in the next six months it would seem sensible for it to be determined promptly rather than deferred.

### **4. Reasons for Recommendation/Alternative Options Considered**

To progress the parish-by-parish 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 considerations.

### **7. Equality Considerations**

There are no considerations.

Chris McCarthy

### **Electoral Division: Tavistock**

#### Local Government Act 1972: List of Background Papers

Contact for enquiries: Mike Jenkins

Room No: ABG

Tel No: 01392 383240

Background Paper	Date	File Ref.
Correspondence file	2008 to date	DMR/SYD

cg080210pra  
sc/sydenham Damerel  
2 hq 110210

## **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.

### **Route 1: Schedule 14 application – Addition of a Byway Open to All Traffic**

Addition of a byway open to all traffic between Radaford and the B3362 near the junction with Wonwood Lane, as shown on Drawing EEC/PROW/09/95.

**Recommendation: It is recommended that a Modification Order be made in respect of Route 1 to record a restricted byway between points A – B shown on drawing no. ED/PROW/09/95.**

## **1. Background**

The application was made by the Trail Riders Fellowship in response to the Natural Environment and Rural Communities Act 2006.

## **2. Description of Route**

The route runs from the unclassified county road by Radaford, previously known as Redford (point A) for almost 285 metres along a short piece of old unmetalled lane to meet the main road between Tavistock and Launceston, the B3362 near the junction with Wonwood Lane, at point B. The lane has verges on both sides and is defined by hedge banks on both sides. It has a width varying between 4 and 9 metres, and has a stony surface. It was originally part of the main road between Launceston and Tavistock which was turnpiked in 1762. Subsequently it was superseded when a new section of road was constructed to the north, which now forms part of the B3362.

## **3. Consultations**

The Parish Council do not support the application primarily on the grounds of suitability and safety, which are issues that cannot be taken into consideration when deciding whether a public right of way is reasonably alleged to subsist. They also state their belief that the evidence submitted with the initial application alone does not warrant any alteration to the unrecorded status of the lane. The relevant district councillor reserved comments until after attending a Parish Council meeting. However, no such additional comments were received.

## **4. Supporting Evidence**

### **Documentary Evidence**

#### **Quarter Sessions records 1762-1974**

These records dating from the time of the creation of the Tavistock Turnpike Trust can provide conclusive evidence of the stopping up or diversion of highways and are conclusive evidence of those matters decided. No decision was ever made relating to the stopping up of the application route when a new section of public highway was created running parallel to the northeast, now forming part of the B3362.

#### **Donn's Map, 1765**

This is considered to be one of the first important large scale maps of Devon. It only shows the more important roads in the county and was surveyed from August 1759. It shows the major highways of the day and the route is shown as part of the main turnpike highway between Tavistock and Launceston passing Redford now known as Radaford, under the control of the Tavistock Turnpike Trust set up by Act of Parliament in 1762. The newer section of highway running parallel north of Radaford is not shown.

#### **Ebden's Map, 1811/26**

Ebden was a well-known published cartographer of the day. This map shows the route as part of the turnpike road between Launceston and Tavistock, identified as a 'great and direct road'. The newer section of highway running parallel above Radaford is not shown.

## **Tavistock Turnpike Trust Deposited Plan, 1824**

Turnpike Trusts were created by Act of Parliament and took on the repair and improvement of existing roads, though the creation of a Turnpike Trust for a particular road did not remove the statutory duty of maintenance from the Parishes through which the road passed. Where a highway or turnpike had been lawfully diverted, the 1773 Act made provision for the liability for maintenance of the old section of road to be transferred to the new section of highway or turnpike with the liability to maintain the former section being extinguished. The 1822 Act made specific provisions for the disposal by sale of turnpike roads that had become superfluous and allowed the trustees to stop up any former roads, or such parts of them, which in their judgment had thereby become useless or unnecessary. However, roads leading to towns, villages, mills, churches, etc., to which the new roads did not directly lead, were to be kept open either as private or as public ways.

Turnpike roads were public carriageways, and many retained this status when the turnpike ceased to operate. Others which were not public roads prior to turnpiking reverted to their original status.

The physical evidence of the route on the ground may now bear no resemblance to the physical conditions pertaining before or during the time of the turnpike, and assumptions made on the basis of current physical characteristics should be treated with caution.

The plan enacted by Parliament in 1824 shows the route as a road belonging to the Tavistock Trust, being coloured yellow.

## **Greenwood's Map, 1827**

Greenwood was a well-known published cartographer of the day. The route is included on the map as a through cross-road.

## **Sydenham Damerel Tithe Map and Apportionment, 1839-42 and Lamerton Tithe Map and Apportionment, 1839-42**

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.

All tracks/roads in these parishes appear to be colour washed regardless of status. In the Devon Record Office leaflet on Rights of Ways Records it states under Tithe Maps and Apportionments that where a track is numbered on the map and listed with the holdings of a private individual, it was regarded as of essentially private character. It is possible that the private character referred to maintenance rather than use. However, in both Sydenham Damerel and Lamerton parishes' currently recorded county roads are not apportioned whereas private roads/farm tracks are.

The claimed route which was the original turnpike road between Launceston and Tavistock is coloured and annotated as 'from Tavistock', as is the new section of road to the northeast.

None of the roads in Lamerton parish are coloured. The continuation of the claimed route which was the original turnpike road between Launceston and Tavistock is coloured and annotated as 'from Launceston', while the new section of road to the northeast now forming part of the B3362 is not annotated.

## **Devon and Cornwall Central Railway Deposited Plan, 1881**

Both canal and railway deposited documents were in the public domain. The statutory process required for the authorisation of railway schemes, and to a lesser extent canal schemes, was exacting and the book of reference and deposited plans made in the course of the process needed to be of a high standard. In particular, railway plans, which were normally specifically surveyed for the scheme, usually record topographical detail faithfully. They have been admitted by the courts as evidence of public rights of way. In addition, where available, surveyors' notes can provide useful information regarding the then function of a particular way.

The process for the authorisation of railway schemes provided for scrutiny of the plans by involved parties. Landowners would not have wished unnecessarily to cede ownership, Highway Authorities would not have wanted to take on unwarranted maintenance responsibilities, and Parish Councils would not have wished their parishioners to lose rights. Railway plan sections and cross-sections usually differentiate between public and private roads. The status of a way had an impact on the cost of the scheme and it is unlikely that railway plans would show a route at a higher status than was actually the case.

The plot containing the route and its newer alternative are both shown on the plan annotated with the number 91. In the Book of Reference, plot 91 is listed as a 'public road' owned by the Tavistock Highway Board. Deposited plans are good evidence to support a claim that a highway existed at the time they were made.

## **Ordnance Survey Maps, C19th onwards**

The Ordnance Survey mapping does not provide evidence of the status of the route but rather its physical existence over a number of years. The section of lane past Redford now known as Radaford is shown on the 1809 Draft Drawings along with the 1884 (1<sup>st</sup> Edition, 25") and all subsequent maps as a continuous through route.

## **List of Streets**

The List of Streets show a cul-de-sac county road terminating at Radaford annotated '24/05/1988' indicating that it has only been regarded as public until quite recently. The continuation of the lane along the claimed route A – B is uncoloured.

## **Sydenham Damerel Parish Council Minutes**

The historic minute books for the parish have been lost. Only very recent records survive and are held by the current Clerk. They do not mention the claimed route.

## **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 suggestion is included within any hereditament there is a possibility that it was considered a private highway, though there may be other reasons to explain its inclusion. The route is included within hereditament 29 Redford, which is described as land, house and buildings. It is not specifically referenced.

### **Tavistock Rural District Council Minutes, 1906-74**

Between 1927 and 1930 the status of the old road near Collacombe past Radaford was considered by the Council on a number of occasions. The route was regarded to be a public highway which had not been stopped up or “deparished”. In 1930 a letter was written to Devon County Council suggesting that the road was “deparished”.

### **Devon County Council Roads Committee Minutes, 1894-74**

In November 1930 the above letter was received from the Tavistock Rural District Council requesting the formal stopping up of the route and it was resolved that the Clerk apply to the Justices for such an Order. However, no record has been found to indicate that the route was subsequently stopped up.

In 1966 the route was again considered. After investigation it was found that it was not recorded as a public footpath or included in the list of roads supplied by the Rural District Council on the cessation of delegation in 1947. Though the Rural District Council could apparently not discover records regarding its maintenance, a member of the Committee could recall their maintenance of it. The Committee resolved to inform the farm owner at Radaford that the road appeared to be a public right of way.

### **Bartholomew's Maps, 1920s**

Bartholomew's maps were designed for *tourists and cyclists* with the roads classified for *driving and cycling purposes*. They were used by and influenced by the Cyclists Touring Club founded in 1878 which had the classification of First Class roads, Secondary roads which were in good condition, and Indifferent roads that were passable for cyclists and other vehicles but were considered inferior. Additionally, Footpaths and Bridleways were marked on the maps as a pecked line symbol. Cyclists were confined to public carriage roads until 1968.

The small scale permitted only the most important suggestions to be shown. The purpose of these maps was to guide the traveller along routes most suitable for their mode of transport, not to encourage trespass. The route is shown as an Uncoloured Road on the 1923 and 1927 editions.

### **Aerial Photographs, 1946-2006**

The photographs show the physical availability of this route.

### **Land Registry, 2009**

The route is not registered.

### **User Evidence**

Three user evidence forms, detailing use were received in support of the Schedule 14 application.

The earliest known use dates back seventy-five years although most detailed use covers the period between 1984 and 2005 with motorbikes about one to four times a year for pleasure. A further two forms were received in response to the parish consultation from Messers Turner and Martyn, who are local residents who have used the route on foot for work purposes, and have knowledge of the route for many years by walkers and horse riders. Mr Turner believes the route to be a byway while Mr Martyn believes the route to be a

bridleway. The route is believed to be part of the old turnpike road between Launceston and Tavistock.

One user reports not seeing any gate while the remaining four were aware of a gate but noted this was never locked until 2009. None of the users report seeing any notices. No users sought permission to use the route nor were they stopped or turned back.

A letter was also received from Mr Horn, a local resident and councillor in support of the lane as a public right of way, stating that it should never have been closed as it was a safer route from Tuell to the local vets at Lamerton, and pony club rallies and other events in the area. He believes that the gates were in place to deter vehicles but that it was an existing right of way and should be maintained as such.

The locking of the gate across the route together with the notices attached to it in 2009 appears to have had the effect of calling the public's right to use the route into question. The qualifying twenty year period for the purposes of presumed dedication under Section 31 of the Highways Act 1980 would therefore be from 1989 to 2009.

## **5. Rebuttal Evidence**

### **Landowner Evidence**

Mr and Mrs Harrap the current owners have lived at the property since 1966 and state that the lane was included on their deeds.

They state that they have seen walkers and horse riders using the route and have not objected to this use. When asked they gave their permission. They do not believe that vehicles have a right of way and had not seen many until recent years. The gate was erected soon after they purchased the property. In the last five years they have had issues with speeding motorbikes along the lane. They spoke with some such users requesting a reduction in speed and most were understanding. However due to the behaviour of a minority, the owners of Radaford have locked the gate since July 2009, after consulting with the relevant County Highway Engineer who confirmed that the route was not adopted by the Council. They also have safety and maintenance concerns.

Mr Forrest of Collacombe Farm, an adjacent landowner along with his solicitor objects to the suggestion and disputes the evidence supporting the Schedule 14 application. He states that the gate has been locked for a number of years and has never seen anyone using the route during his ownership since 2008.

He states that there is an adequate public highway serving the area. He also doubts that there is genuine public usage and believes that any change to the current status will conflict with farming practices. In addition, he has health and safety concerns.

### **Sydenham Damarel Parish Council**

The Parish Council do not support the application for a byway open to all traffic, believing it to only be suitable as a footpath, and question whether it may even be a public right of way. Their objection to the recoding of the route is based on the danger to traffic at its junction with the B3362. They also question the user evidence received with the application.



## **Lamerton Parish Council**

Though the claimed route is not within Lamerton parish, the continuation of the route is within the parish and is recorded as a minor county road. The parish object to the claimed route on the basis of receiving letters of objection and no supporting evidence. They state there is a lack of clarity regarding the proposal. The Council also state that an increase in the use of the route by vehicles will impact on the locality and the state of the route. They are also concerned that the continuation of the route in their parish was not under consultation.

### **6. Discussion**

It would appear that there has been uninterrupted use of the route by the public for over seventy five years at least. The current owners have been aware of this use and acquiesced to it. The use of the route was only called into question in 2009 when the owners of Radaford locked the gate after having problems with speeding motorbikes past their property. Until this time they had seen use by the public on foot, horse and with motorbikes. They apparently only gave permission to those who sought it. None of the users who supplied evidence had sought permission and had never been stopped or turned back.

Due to only five user evidence forms having been submitted, it is considered that this is insufficient to support the recording of the route as a public right of way by presumed dedication.

However, the claim must also be considered under common law which requires taking into account the historical and other documentary evidence discovered, in conjunction with the evidence of use.

Mapping evidence shows that the route has physically existed since at least 1765, as the original main public highway between Launceston and Tavistock. It is depicted on the Donn's, Ebden's, Greenwood's, Tithe, Bartholomew's, and Ordnance Survey maps. The route's inclusion on the small scale maps of Ebden and Bartholomew would seem to indicate its importance in the local highway network and its availability for the public.

The public nature of the route is strongly supported by its inclusion on the 1824 deposited plan relating to the Tavistock Turnpike Trust which was enacted by Parliament and describes the route as a public road. The Devon and Cornwall Central Railway deposited plan, though not enacted, is good evidence of the route's status at that time as a public highway. The process involved in the production of such plans was scrutinised by all parties involved and no party would wish to unnecessarily cede ownership, take on unwarranted maintenance liabilities or lose rights.

It is clear from the minutes of the Tavistock Rural District Council and the Devon County Council Roads Committee that the route was considered to be a public highway. Although a formal request was made for the route to be stopped up there is no evidence from these minutes or the Quarter Sessions records that an application was made or granted. Consequently, the route remains a public highway.

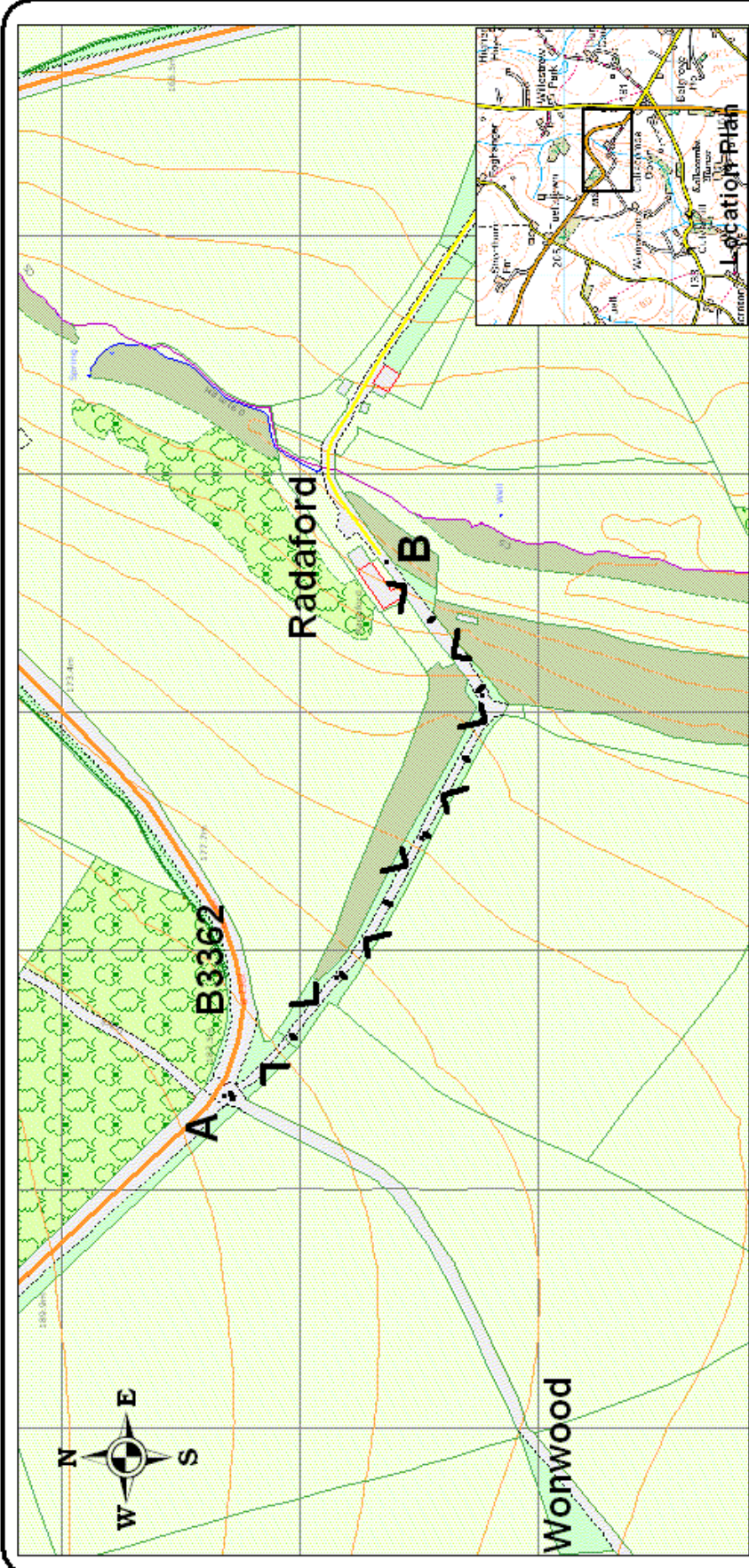
Both affected landowners and the parish councils for Sydenham Damerel and Lamerton have safety and maintenance concerns, but these cannot be taken into account when determining the status of the route. There was also some debate regarding the evidence supporting the Schedule 14 application, but further evidence has since been discovered since they were consulted.

The TRF claimed the route under Schedule 14 as a byway open to all traffic. However, it does not satisfy any of the exceptions listed under Section 67 of the Natural Environment

and Rural Communities Act 2006 and the highest status that can be considered is for a restricted byway.

## **7. Conclusion**

There is good documentary evidence to indicate that the claimed route has had the reputation and status of a public highway since at least the mid 18<sup>th</sup> century. Recent user and landowner evidence confirms that it has been used on foot, horse and with vehicles. The evidence therefore is considered sufficient to show that a public right of way not presently shown on the Definitive Map and Statement either subsists or is reasonably alleged to subsist. In line with the provisions of the NERC Act 2006, it is recommended that an order be made to add the route between points A – B to the Definitive Map as a restricted byway.



map ref: SX 4377

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drawing number	ED/PROW/09/95
date	August 2009
scale	1:2,500
drawn by	CLG

**Sydenham Damerel  
Definitive Map Review - Route 1  
Schedule 14 application to add a Byway open to all traffic**

<u>Notation</u>	Existing footpaths	Existing bridleways
	Schedule 14 appn route A - B	(approx 285 metres)

**Edward Chorlton**  
EXECUTIVE DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE