

**Definitive Map Review 2006-2010
Parish of Colebrooke**

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 recommend that an application be made under Section 116 of the Highways Act 1980 to the Magistrates' Court for the extinguishment of the section of Footpath No. 7, Colebrooke between points H and D as shown on drawing number ED/PROW/10/03a.

1. Summary

The report seeks approval for an application to the Magistrates' Court for the extinguishment of part of Footpath No. 7, Colebrooke which, if successful, will result in the creation of a new bridleway and footpath.

2. Background

At the meeting of this Committee of 4 March 2008, Members resolved that a Modification Order be made to record a restricted byway along the historic route of Butsford Lane between Butsford Barton and the county road running south from Coleford, points Z – C – E – G as shown on drawing number ED/PROW/10/03a. The landowners, Mr. and Mrs. Hockridge, were very concerned about health and safety issues with the public passing through the farmyard and subsequently advised that they would be willing to enter into a Creation Agreement under section 25 of the Highways Act 1980 to record the route, providing the west end of it was diverted away from the farmyard to connect with the county road at point B rather than at point Z.

This was reported to the Committee in March 2009 who agreed to the agreement, but with the caveat that if the agreement could not be concluded satisfactorily the Modification Order should be made as originally resolved in March 2008.

3. Subsequent Developments

Since March 2009 there have been numerous meetings and site visits with the landowner and his representatives to decide on the line and status of the dedicated public right of way and the associated diversion of Footpath No. 7, Colebrooke.

In March 2010 agreement was finally reached and two public rights of way have now been dedicated by Mr & Mrs Hockridge: Footpath No. 23, Colebrooke and Bridleway No. 25, Colebrooke. The agreement is, however, conditional on the extinguishment of Footpath No. 7 between points H and D.

Footpath No. 23, Colebrooke starts at Butsford Barton (point B) and passes through the paddock south of the farm buildings, avoiding the farm yard (point B1). The footpath then turns north to proceed as a headland path through the field where the hedge had been removed some years ago (point C), passing the south-west end of the cul-de-sac Footpath No. 7, Colebrooke and continues along Butsford Lane for about 270 metres to the junction with the dedicated Bridleway No. 25, Colebrooke (point F).

Bridleway No. 25, Colebrooke starts at the county road between Coleford and Colebrooke (point G) and proceeds east along Butsford Lane to the junction with Footpath No. 23, Colebrooke (point F). The way then turns north westwards and follows a route along the headlands of three fields for about 1,160 metres to the county road south of Broomhill Cross (point K).

This alternative arrangement was reached after having regard to a recent decision by an Inspector for bridleways in the nearby parish of Morchard Bishop concerning the evidence required to show dedication by a landowner at common law. This decision may have made confirmation of the Order as a restricted byway doubtful.

Public Footpath No. 23, Colebrooke follows the historic route of Butsford Lane and the diversion out of the farmyard resolves the landowners' concerns, but provides the link for walkers to connect with the nearby Footpaths Nos. 12 and 5, Colebrooke. It also resolves the anomaly of Footpath No. 7, Colebrooke being a cul-de-sac path. Bridleway No. 25, Colebrooke provides a new route of an additional 1,400 metres for riders, walkers and cyclists in the parish, and creates an additional circular route in the locality.

In the previous report of March 2009 it was stated that following completion of the Creation Agreement, the Council would endeavour to obtain the extinguishment of the section of Footpath No. 7, Colebrooke between points H and D, as an alternative route is now available using Bridleway No. 25 and Footpath No. 23, between points H – F – E – D. The High Court and Court of Appeal case of Hertfordshire County Council v Defra (Tyttenhanger) 2006 has confirmed that an Inspector, when determining a Public Path Extinguishment Order cannot take into account rights of way to be created by a Creation Agreement, that will only come into force on extinguishment of the right of way or part of the right of way to be extinguished, as the created routes are not legally in force when the Inspector is considering the extinguishment.

It is therefore necessary, on this occasion, for an application to be made to the Magistrates Court under Section 116 of the Highways Act 1980 for the extinguishment of the section of Footpath No. 7, Colebrooke on the grounds that it is no longer needed for public use. This action requires the approval of the Public Rights of Way Committee and this approval is now sought.

If the application is approved by the Magistrates Court and the section of Footpath No. 7, Colebrooke is extinguished between points H and D, the Creation Agreements for Footpath No. 23, Colebrooke and Bridleway No. 25, Colebrooke will come into force and the rights of way opened for use by the public.

4. Conclusion

It is recommended that following completion of a Public Path Creation Agreement for Footpath No. 23, Colebrooke and Bridleway No. 25, Colebrooke, the Committee approve the submission of an application under Section 116 of the Highways Act 1980 to the Magistrates Court for the extinguishment of the section of Footpath No. 7, Colebrooke between points H and D as shown on drawing number ED/PROW/10/03a.

The extinguishment of this section of Footpath No. 7, Colebrooke will enable the Creation Agreement to come into force and the two rights of way opened for use by the public.

5. Reason for Recommendation/Alternative Options Considered

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

6. Legal Considerations

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

7. Sustainability Considerations

There are no implications.

8. Carbon Impact Considerations

There are no implications.

9. Equality Considerations

There are no implications.

10. Risk Management Considerations

There are no implications.

Chris McCarthy

Electoral Division: Crediton Rural

Local Government Act 1972

List of Background Papers

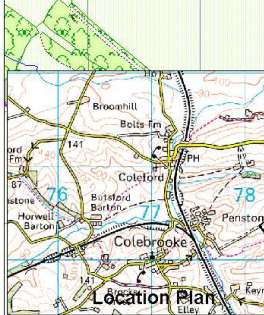
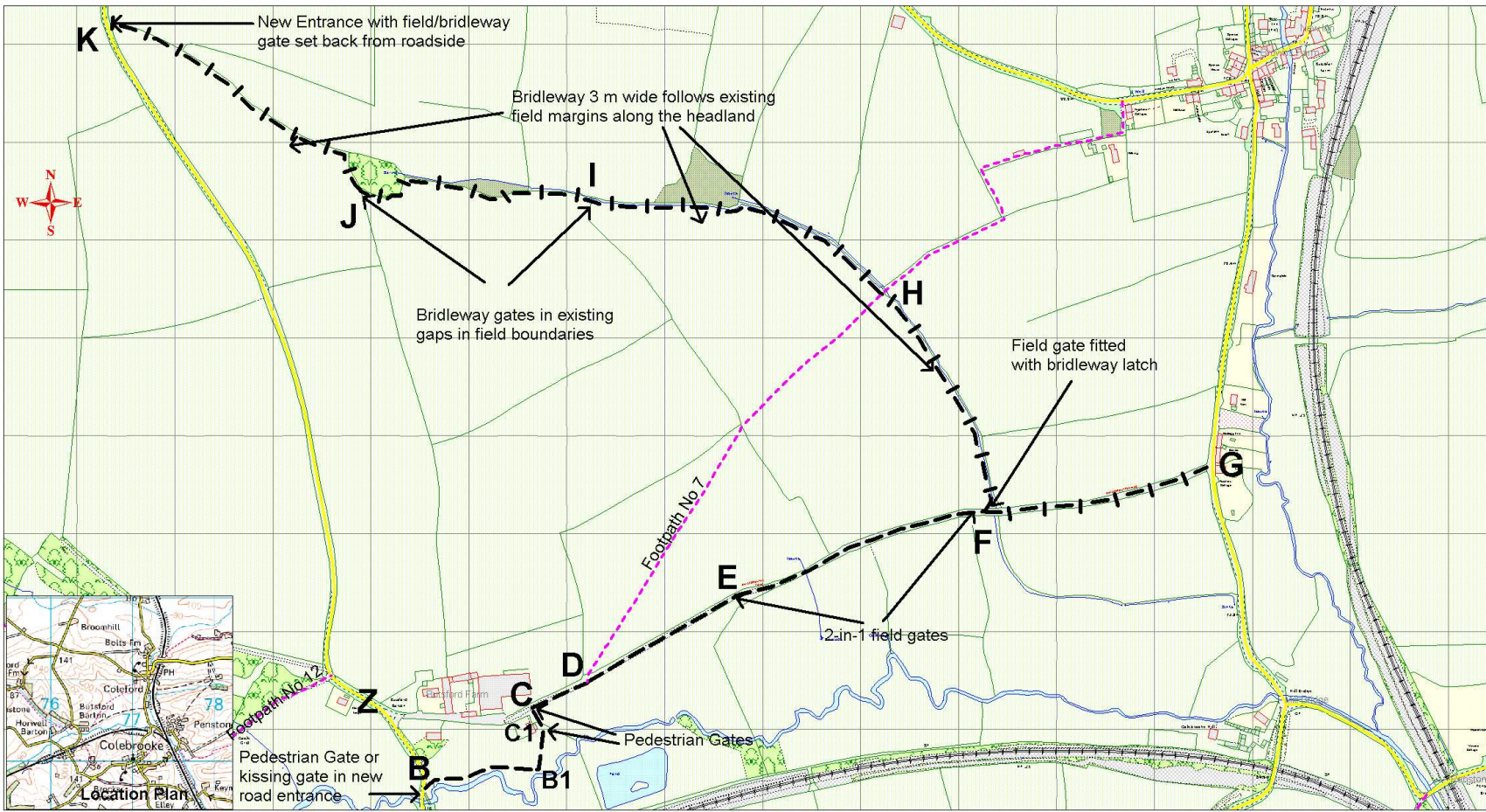
Contact for enquiries: Mike Jenkins

Room No: ABG

Tel No: 01392 383240

Background Paper	Date	File Ref.
Correspondence File	2006 to date	DMR/COL

tw040510pra
sc/dmr colebrooke parish
2 hq 200510



map ref SS 7600, 7601, 7700

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**DEVON COUNTY COUNCIL
PUBLIC PATH CREATION AGREEMENT
FOOTPATH NO. 23, COLEBROOKE & BRIDLEWAY NO. 25, COLEBROOKE**

drawing number **ED/PROW/10/03a**
 date **Mar 2010**
 scale **1 : 4,000 (at A3)**
 drawn by **TW**

Notation					
To be created	Public Footpath	B-B1-C1-C-D-E-F	-----	710m	Public Bridleway
					G-F-H-I-J-K
					- . - . - . 1400m

Chris McCarthy
 EXECUTIVE DIRECTOR OF ENVIRONMENT,
 ECONOMY & CULTURE

