

**Definitive Map Review
Parish of Cruwys Morchard**

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

Report of the Deputy Executive Director of Environment Economy and Culture

Recommendations: It is recommended that Modification Orders be made to modify the Definitive Map and Statement to add restricted byways between points E – D - F and A – B – C - D as shown on drawing number ED/PROW/11/14a (Suggestion 1).

1. Summary

The report examines the route referred to as Suggestion 1 arising out of the Definitive Map Review in the Parish of Cruwys Morchard.

2. Background

The original parish survey under s. 27 of the National Parks and Access to the Countryside Act, 1949 completed in August 1950, proposed just one footpath put forward by the parish council. A further two footpaths that mainly lay in the neighbouring parishes of Templeton and Tiverton were subsequently added and these three footpaths were included on the draft and provisional maps. As no objections to their inclusion or comments regarding omissions appear to have been received, these three footpaths were recorded on the Definitive Map and Statement for Cruwys Morchard published in the late 1950s.

The reviews of the Definitive Map, under s. 33 of the 1949 Act, which commenced in 1968, produced no comments and the uncompleted review initiated in 1977, produced no suggestions for change. The Limited Special Review of Roads Used as Public Paths (RUPPS), carried out in the 1970s, did not affect Cruwys Morchard. In 1988 a Diversion Order for Footpath No. 1, Cruwys Morchard received objections and a Schedule 14 application was made for the path to be upgraded to a byway open to all traffic. A Modification Order was made, objected to and determined by the Planning Inspectorate by way of a public inquiry. The Inspector's decision being that the Order was not confirmed.

The following Orders affecting the Definitive Map for Cruwys Morchard have been made and confirmed since 1958.

Mid Devon District Council (Footpath No. 1, Cruwys Morchard) Public Path Diversion Order 1997;

Devon County Council (Footpath Nos. 2, Templeton & 2, Cruwys Morchard) Public Path Diversion Order 2007.

The review was opened in Cruwys Morchard with a parish public meeting held on 7 October 2010. No changes to the definitive map were proposed by the Parish Council following the opening meeting but the Parish Council had previously enquired about the status of Vulscombe Lane, after the erection of a locked gate in the lane in December 2007.

3. Consultations

General consultations have been carried out with the following results:

County Councillor Michael Lee	-	no response
Mid Devon District Council	-	no response
Cruwys Morchard Parish Council	-	are happy with the addition
Tiverton Town Council	-	support the application
British Horse Society	-	no response
Byways and Bridleways Trust	-	no response
Country Landowners' Association	-	no response
National Farmers' Union	-	no response
Open Spaces Society	-	no response
Ramblers' Association	-	no response
Trail Riders' Fellowship	-	consider should be added to list of streets
Cyclists Touring Club	-	no response
Devon Green Lanes	-	support the suggestion

4. Conclusion

The suggestions are considered in detail in the Appendix to the report. It is recommended that Modification Orders be made to modify the Definitive Map and Statement by adding restricted byways between points E – D – F and A – B – C – D as shown on drawing number EEC/PROW/11/14a.

The Definitive Map review for the parish of Cruwys Morchard has now been completed. Should any new evidence or a valid claim be made in the next six months it would seem sensible for it to be determined promptly rather than be deferred.

5. Financial Considerations

There are no implications.

6. Sustainability Considerations

There are no implications.

7. Carbon Impact Considerations

There are no implications.

8. Equality Considerations

There are no implications

9. Legal Considerations

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

10. Risk Management Considerations

There are no implications.

11. Reasons for Recommendation/Alternate Options Considered

To progress the parish by parish review of the Definitive Map in the Mid Devon area.

Ian Harrison

Electoral Division: Newton St Cyres & Sandford

Local Government Act 1972

List of Background Papers

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

tw090511pra
sc/cr/DMR Cruwys Morchard
02 hq 120511

**Appendix I
To EEC/11/86/HQ**

Suggestion 1: Addition of a Restricted Byway from Vulscombe Cross to the B3137 west of Mill Farm (in Tiverton parish) and from Vulscombe Lane to Thorn Hill

Recommendations: It is recommended that two Modification Orders be made in respect of Suggestion 1:

- (a) the addition of a Restricted Byway from the B3137 west of Mill Farm (in Tiverton parish) along Vulscombe Lane to Riverside, then along Groubear Lane to Thorn Hill (E – D – F) and;**
- (b) the addition of a Restricted Byway from Vulscombe Cross along Vulscombe Lane to the junction with Groubear Lane (A – B – C – D).**

1. Basis of Claim

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;

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.

2. Background

The Cruwys Morchard Parish Clerk contacted Devon County Council on 14 December 2007 after it was raised at the Parish Council Meeting the evening before that a locked gate had been erected along Vulscombe Lane and access for vehicles was now denied.

The Clerk was advised that the lane currently had no recorded status; it was not on the list of streets or recorded on the Definitive map as a public right of way. A Land Registry search had shown that the lane was not included within the titles of the adjoining properties along the lane. The status of the lane would be investigated when the Definitive Map Review reached the parish and in the meantime user evidence could be collected in support of the lane being a public right of way.

A direct complaint was also received about the locked gate by a 4x4 user in December 2006 and at Mid Devon Show the following Summer it was reported that although walkers and horse riders could pass through a gap by the gate, it was too small for a pony and trap to use.

3. Description of the Route

The west end of the route starts at Vulscombe Cross (point A) on the county road known as Cruwys Morchard Mill Hill and follows a defined lane eastwards with an improved surface past Vulscombe Farm (Point B) and the properties known as Higher, Middle and Lower Vulscombe. After Lower Vulscombe (point C) the lane bears east north east and goes downhill past Riverside and the junction with Groubear Lane (point D). Turning north eastwards the lane crosses a bridge over the River Dart (the Parish boundary) and passes Witleigh Mill before turning north westwards and proceeding uphill past Mill House and The Old Chapel to meet the B3173 road opposite to Mill Farm (point E). The length of the section from Vulscombe Cross to the B3173 is approximately 1,280 metres.

A spur of the route starts along Vulscombe Lane north east of Riverside (point D) and after crossing a ford, with a sleeper footbridge, follows a defined lane south eastwards past Groubear Farm to the junction with the county road known as Thorn Hill (point F). The length of the section from Vulscombe Lane to Thorn Hill is approximately 410 metres.

The lanes have a minimum width of 3 metres and an improved surface for most of their lengths apart from between points C and D, where the surface is earth and grass.

The routes are as shown on drawing number EEC/PROW/11/14a and photographs of them are included in the backing papers.

4. Consultations

Cruwys Morchard Parish Council advised that the parish council are happy with the addition of the restricted byway at Vulscombe Lane and have no further comments to make on the review.

Tiverton Town Council advised that the council is happy to support this application.

The Trail Riders Fellowship advised that they have records of trail riders using this lane going back to 1989 when the Devon TRF Group first started to collect run records. There are more records of recent use. If the claim goes through as a Restricted Byway then it probably means that TRF members will no longer be able to use it openly as they do now. They consider that as the claimed route has a reputation as an old Parish Road it should be added to the List of Streets (the County Council's record of maintainable highways) rather than be designated as a PROW with all the expense that would involve for Devon County Council.

Devon Green Lanes Group advised that they support the suggestion and also with restricted byway status. They have researched the OS 1809 Mudge Map and Cruwys Morchard Tithe map and consider this supports the lanes being considered public at that time.

No other responses or replies have been received.

5. Documentary Evidence

Tithe Maps and Apportionments

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 can indicate 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 routes shown.

Cruwys Morchard Tithe Map 1840

On the map Vulscombe Lane is coloured blue from the junction with Cruwys Morchard Mill Lane (also coloured blue) to Higher Vulscombe, point B; then uncoloured east of Lower Vulscombe and point C. The lane is then coloured brown to the junction with Groubear Lane, point D and the brown colouring continues all along Groubear Lane to the junction with Thorn Hill (point F) which is also coloured brown. The section from point D to the parish boundary is uncoloured. No sections of either lane have been given an apportionment number.

Groubear (spelt Crewbeer on the map) and Lower Vulscombe totalled 52 acres owned by Glass Black occupied James Carpenter. Middle Vulscombe 24 acres owner George Melhuish, occupier William Hunt. Higher Vulscombe 19 acres owner and occupier Richard Morrish.

Tiverton Tithe Map (Clare) 1842

The Tiverton part of the suggestion is on the Clare section of the Tiverton Tithe Map. The B3137 is shown along its current route. The roads (including current highways) and lanes are not coloured. The east end of Vulscombe Lane falls under apportionment number 1604 described as Cottages, Outhouses, Gardens and Road, part of Withleigh Mill Tenement owned and occupied by William Carpenter junior.

Ordnance Survey and Other Maps

The Ordnance Survey and other mapping do not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.

OS 1" to a mile – Cassini Reproductions Sheet 181 Minehead & Brendon Hills and Sheet 192 Exeter & Sidmouth

Old Series 1809

The map predates the current path of the B3137 in the vicinity of point E. Thorn Hill is shown in a similar manner to the road that becomes the B3137, with thicker shading along one side of the road. Vulscombe and Groubear Lanes are shown in a similar style to Morchard Mill Hill Lane. The lanes appear to meet the then road from Tiverton to Witheridge at the junction with Plainfield Lane, north of point E - the west end of Groubear Lane appearing to bear in a more north westerly direction to meet Plainfield Lane.

Revised New Series 1900

The B3137 road is shown on its current route and coloured orange as is Thorn Hill. Vulscombe and Groubear Lanes are shown as defined lanes on their current routes, uncoloured and in a similar manner to Morchard Mill Hill Lane. Vulscombe and Mill are named.

Popular Edition 1919

The routes are shown as uncoloured defined lanes in a similar style to Morchard Mill Hill Lane. Thorn Hill is shown coloured with white and orange dashes.

OS 1st Edition 25" to a mile 1889

Both Vulscombe and Groubear Lanes are shown as defined lanes bordered by solid lines and ungated along their length. Vulscombe Lane is named but the lane referred to as Groubear Lane is not named as such on the map. A pecked line at the junction with the county roads at points A, E and F is believed to indicate a change in surface. The west end of Vulscombe Lane is compartment number 997 area .572 acres and the centre section braced to include Groubear Lane is numbered 1472 with area 1.402 acres. The northern end of Vulscombe Lane appears to be braced with the lane running east opposite Withleigh Mill, compartment 1987a, area .552 acres. A bench mark at 370.4 is recorded on Vulscombe Lane at Withleigh Mill and another at 388.4 along Groubear Lane about 40 metres north of the junction with Thorn Hill.

OS 1 inch to a mile 1946 Sheet 176 Exeter

Vulscombe and Groubear Lanes are shown as uncoloured defined lanes representing roads with under 14 foot of metalling – bad; and open at the junctions with Cruwys Morchard Mill Lane and Thorn Hill. Cruwys Morchard Mill Lane and Thorn Hill are coloured yellow corresponding to a road of under 14 foot of metalling – good.

OS 1 inch to a mile 1960 Sheet 176 Exeter

Vulscombe and Groubear Lanes are shown uncoloured, the same width and colour as Cruwys Morchard Mill Lane and Thorn Hill corresponding to Roads under 14 foot of metalling – untarred.

OS 1 inch to a mile 1967 Sheet 176 Exeter – Public rights of way recorded on the definitive map were included in this edition of the 1 inch maps for the first time in red ink.

Vulscombe and Groubear Lanes are uncoloured and a similar width to the uncoloured Thorn Hill representing Roads under 14 foot of metalling – untarred. Cruwys Morchard Mill Lane is coloured yellow, narrower representing Roads under 14 foot of metalling – tarred.

OS 1st Edition Post War A Edition 1:2,500 1968-1970

The suggestion is shown as defined lanes, the pecked lines at points A, E and F considered to represent a change in surface. No gates are shown across the route. Riverside Bungalow has been constructed but not any buildings north of the lane at Vulscombe Farm.

Bacons Cycling and Motoring Map 1905

A defined lane, similar to minor roads in the locality is shown along the route of the suggestion.

Bartholomew's Revised "Half-inch" contoured maps Sheet 3 Exmoor 1955

Vulscombe and Groubear Lanes are shown as uncoloured defined lanes in a similar manner to Cruwys Morchard Mill Lane and Thorn Hill.

Bartholomew National Map Series 1:100,000 North Devon 1975

Vulscombe and Groubear Lanes are shown as uncoloured defined lanes in a similar manner to Cruwys Morchard Mill Lane and Thorn Hill.

OS Object Name Books 1904 (PRO references OS 35/1714 & OS 35/1719)

The OS name books gave the definitions of man made features printed on the OS maps. The definitions were typically authorised by the owner where an object (say a farmhouse or

gentleman's residence) was privately owned and by the district overseer/surveyor or some other local noteworthy where they were in public ownership.

In book reference OS 35/1719, the name Vulscombe Lane was signed for by Mr A G Mildon, Rural District Surveyor, Tiverton and described as 'A district road extending from the main road near Mill Farm to a junction of roads about ½ mile west.' As the crow flies, the west end of Vulscombe lane is about 1,000 metres west from Mill Farm.

In book reference OS 35/1714 the names Vulscombe Cross and Vulscombe Lane were both signed for by Mr A G Mildon, District Surveyor, Ash Thomas and described as 'The junction of Vulscombe Lane with Cruwys Morchard Mill Lane' and 'A parish road extending from Cruwys Morchard Mill Lane to the parish road, about ½ mile SW of Nethercleave'. The distance of 800 metres (1/2 mile) from Nethercleave would equate to the junction of Vulscombe Lane with Groubear Lane or to the junction with the B3137 at Mill Farm but the direction of south west would more accurately correspond to the junction of Groubear Lane with Thorn Hill, although this would be closer to 600 metres.

Finance Act 1910

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 bring this to the attention of the valuers/surveyors and the hereditament could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.

The allowance given was often on the basis of a figure such as a £1 times 25 yp. The yp refers to years purchase, a method of valuation used to convert a property's income flow (rent) into an appropriate capital sum on the basis that the capital value of a property is directly related to its income producing power. This method of valuation seems to be often used in Finance Act valuations.

Along Vulscombe Lane there are a total of eleven hereditaments.

In Tiverton parish lie hereditament number 3220 The Congregational Chapel owned by trustees, number 253 & 254 included together two cottages owned by W Morrish, 252 including number 251 Withleigh Mill owned and occupied by W Morrish and 257 Withleigh Mill Tenement (Mill Farm on the map) of 38 acres owned by Thomas Lake of Tiverton. None of these hereditaments refer to a right of way in the field books.

In Cruwys Morchard parish lies hereditament number 109 Groubear Farm of 50 acres owned by Rev Ansley of London occupied by James Morrish. The field book includes under Fixed Charges, Easements, Common Rights and Restrictions 'There is a public way through the farm'. Under the heading Charges, Easements and Restrictions affecting market value of Fee Simple is included 'Footpath £1 x 22 and a sum of £22 is shown under 'Public Rights of Way or User'. Groubear Lane (points D – F) is all within the hereditament.

Hereditament 108 includes land in the vicinity of Riverside on the south side of Vulscombe Lane, called Little Silver or Pellake, 3 acres of farmland and small orchard owned and occupied by James Morrish of Withleigh Mill formally the site of a cottage (was called

Sellick's Cottage on the 1890 25" OS map). No reference is made to or any allowance given for rights of way.

Lower Vulscombe was included under number 97, 28 acres, owned by Richard Cooke of Cruwys Morchard and occupied by Tom Ash. The house was described as new. No reference is made to or any allowance given for rights of way.

Middle Vulscombe was included as hereditament number 124 called Vulscombe Cottage, owned by William Hunt of Bradninch and occupied by Isaac Collard, in pencil Mrs Burrow. No reference is made to or any allowance given for rights of way.

Hereditament number 66 was Higher Vulscombe 19 acres, owned by William Hunt occupied by Thomas Grant. All buildings on the south side of the lane. No reference is made to or any allowance given for rights of way.

Land on the north side at the west end of Vulscombe Lane was part of Higher Lugsland, hereditament 98. Field book not available.

Three hereditaments include land on both sides of the route. Along Vulscombe Lane the colouring for number 66 Higher Vulscombe and 97 Lower Vulscombe breaks where the land lies on both sides of the lane. For hereditament 109 Groubear the colouring breaks along Vulscombe Lane south west of point D but appears to be continuous at the parish boundary.

A Cruwys Morchard Note Book 1066-1874 by Margaret Cruwys published 1939

This book mainly describes the history of the Cruwys family but it refers to Groubear as a dwelling existing in the 14th century, Middle Vulscombe from the 17th century and Higher Vulscombe from the 18th century.

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

In Cruwys Morchard parish no path relating to the route was put forward as part of the initial parish survey of paths to be included in the definitive map.

Devon County Council Uncompleted Reviews of 1968 and 1977

No suggestions for any additions, upgrading, deletions or diversions of the existing recorded public rights of ways were made by the parish council under these reviews.

Cruwys Morchard Parish Council Minutes

The Cruwys Morchard parish council minutes are available for the period 1894 – present. Within the minutes there are some references to suggestion 1 as included below.

11 October 1944

Accommodation Roads

Mr A Ayre proposed that the portion of road from Stubborn Cross to the gate leading into Deptford, should be taken over by the District Council, this was seconded by Mr W Truscott. It was also decided to include in the above arrangement the portion of road from Vulscombe Cross to Withleigh Mill Bridge towards main Road & to Thorne Hill towards Groubear.

This would have been in response to the letter sent by Tiverton Rural District Council in Summer 1944 to all their Parish Councils or Chairman of Parish Meetings following the decision taken at the Devon Roads Committee meeting in May 1944 when the Chairman proposed that the time had arrived when consideration should be given to the taking over by the Council of the large number of accommodation roads in the County which are necessary

for public use, as highways repairable by the inhabitants at large. A Special Sub-Committee was set up to consider the matter.

11 June 1979

Highways

It was also proposed by J Stubbs Esq. & Sec W G Davey & B S Gibbs that some comment be made regarding the road from Thorne Corner – Withleigh rectory as part of this section as far as Withleigh Mill on the Cruwys Morchard side was in a reasonable order.

This could be referring to Groubear Lane as this would be the route used from Thorn Hill to Withleigh Mill. The B3137 road route between Withleigh Rectory and Withleigh Mill is all in Tiverton Parish.

13 May 2004

Highways

The Following highways problems were reported:-

- 1) Potholes in Church Lane
- 2) Potholes in Cotton Lane and especially by Cotton Heath House
- 3) Pothole by Way Corner House
- 4) Hedge needs cutting along Vulscombe Lane down to the main road on the right
- 5) Hedges need cutting back on Cruwys Estate especially between Two Post Cross and Mudforgate Cross.

12 August 2004

Highways

The clerk read two letters from DCC stating that previously reported problems on the highways had been fixed.

13 December 2007

Highway Problems

The following problem on the road was reported:

- 1) A locked gate had been erected along Vulscombe Lane and access for vehicles was now denied. A small gate for pedestrians was accessible. The clerk was asked to investigate what could be done.
- 2) Mr. Lee stated he would report the following problems:
 - Edge of road eroding away by Hill Farm
 - Road surface in need of repair just past Way Village.

17 January 2008

Vulscombe Lane Access

The clerk reported that there had been complaints about a locked gate being erected along Vulscombe Lane thus preventing horses and traffic accessing it. On contacting the Public Rights of Way Officer at Devon County Council she had stated that the lane is not registered and therefore it is not possible to enforce the gate to be removed. The Public Rights of Way Officer did say that she is doing a review of all parishes concerning rights of way and that Cruwys Morchard would be looked at in a few years, but in the meantime there are evidence forms which the clerk has a supply of which anyone interested can complete detailing the use of the lane over the past 20 years. The clerk would keep these completed forms to be passed to the Public Rights of Way Officer when the review started and the status of the lane can then be considered.

Devon County Council Roads Committee Minutes 1950-1953

8 December 1950

Accommodation Roads (6th report of the Special Sub-Committee appointed to consider accommodation roads in the County which should be taken over as highways repairable by the inhabitants at large, which met at the Castle, Exeter on 25 September 1950).

4) The Clerk reported applications in respect of the following roads and stated that in accordance with the policy laid down by the Sub-Committee, the applicants had been informed that no funds had been allocated for this purpose this year, but that as and when funds were made available, consideration would be given to these roads.

b) Road from Vulscombe Cross to Withleigh Mill Bridge.

12 June 1953

10) Tiverton Rural District

a) Road from Stubborn Cross to Deptford and Crandle Farms

On consideration of a letter from the Cruwys Morchard requesting the taking over of this road.

Recommended that no action be taken.

Aerial Photographs, 1946-9, 1999-2000 & 2006-2007

In the 1946 aerial photograph the lanes can be clearly seen throughout their entire length, indicating that the hedges were kept trimmed along the entire route. The lighter colour of the lane also indicating that the surface was probably improved and not just earth/grass.

In the 1999 and 2005-2006 the surface of the lane is clearly visible near point D, between Lower Vulscombe and Riverside and the south east end of Groubear Lane near point F and in addition by 2006-2007 can also be seen the whole section of Vulscombe Lane between points C and D and the section between point A and B. The remainder of the lane's surface is screened by hedgerow trees.

HM Land Registry/Landowners

There are thirteen registered titles for land/properties adjoining the lanes. The lanes do not appear to be owned by any of the properties or land adjoining the lane and no other owner has been traced as the lanes are not included within the ownership of any of the registered titles. The title plans for those two properties which include land on either side of the lane, Lower Vulscombe and Groubear Farm, show the section of lane clearly excluded and not being part of the registered title for those properties. Only the registered title for Groubear Farm DN362311 refers to the land having a right of way with and without vehicles at all times and for all purposes connected with the use and enjoyment of the land in this title over and along the land shown tinted brown on the filed plan. The land tinted brown on the plan is the east end of Vulscombe Lane between points E to D and along the whole length of Groubear Lane between points D to F. None of the other registered titles refer to any right of access, easements or wayleaves for the benefit of the properties along Vulscombe Lane.

Planning Application for Land on the North Side of Vulscombe Lane

A planning application to Mid Devon District Council for retention of and alterations of Horticultural building and other items in connection with their horticultural business was made in 2007 by Mr & Mrs Sherwell who owned the land at that time (since sold). In their supporting design and access statement, they state that access is to be obtained from Vulscombe Lane, an unclassified road.

Sale Particulars for Middle Vulscombe

Middle Vulscombe was advertised for sale in April 2011. The property situation description stated *The cottage is approached via a private lane, of about 300 yards in length, which is shared with two other properties at the top of the lane and one other property further down. The lane was originally a through road but which is no longer maintained by the Council, and although it has a good solid stone base it is fairly rough in places. If the various owners wanted to improve the road, then there is nothing to stop them from doing so.* It is not stated from where this information was obtained from.

6. User Evidence

The parish council collected five user evidence forms in Spring 2008. All were from local people who had used both or part of the lanes with a vehicle and four also on foot. Their use covered the period from 1959 to 2008.

Mr Dudley-Williams of Cruwys Morchard had used Vulscombe and Groubear Lanes for 20 years for pleasure on foot and in a vehicle, 5 times a year. He thought the path public as he had often used it and had never been stopped. Recently a gate has been put up and the road closed.

Mr Gillbard, farmer of Cruwys Morchard had used both Vulscombe Lane through to the B3137 and to Thorn Hill at Groubear Farm from 1959 on foot and in a vehicle 2 or 3 times a year for pleasure and work purposes. He believes the route to be a byway open to all traffic and public as no signs at either end and other vehicles used it. In 2006 there was a notice that said 'Warning No Vehicle Access Beyond Vulscombe Farms' but no gates until the existing gate was erected. He was a grazier of land at Lower Vulscombe in 2005-2006.

Mr Isaac, farmer of Pennymoor had used Vulscombe Lane to Withy Mill from 1960 to 1990 on foot and in a vehicle 10 times a year to go to Witleigh to look for sheep. He considered the path public because it has been since year one. Gates were only present when Mr Ven's (lived at Lower Vulscombe) cows went down to his fields but never locked. He considered the owner to be Devon County Council and the lane to be part of the road network.

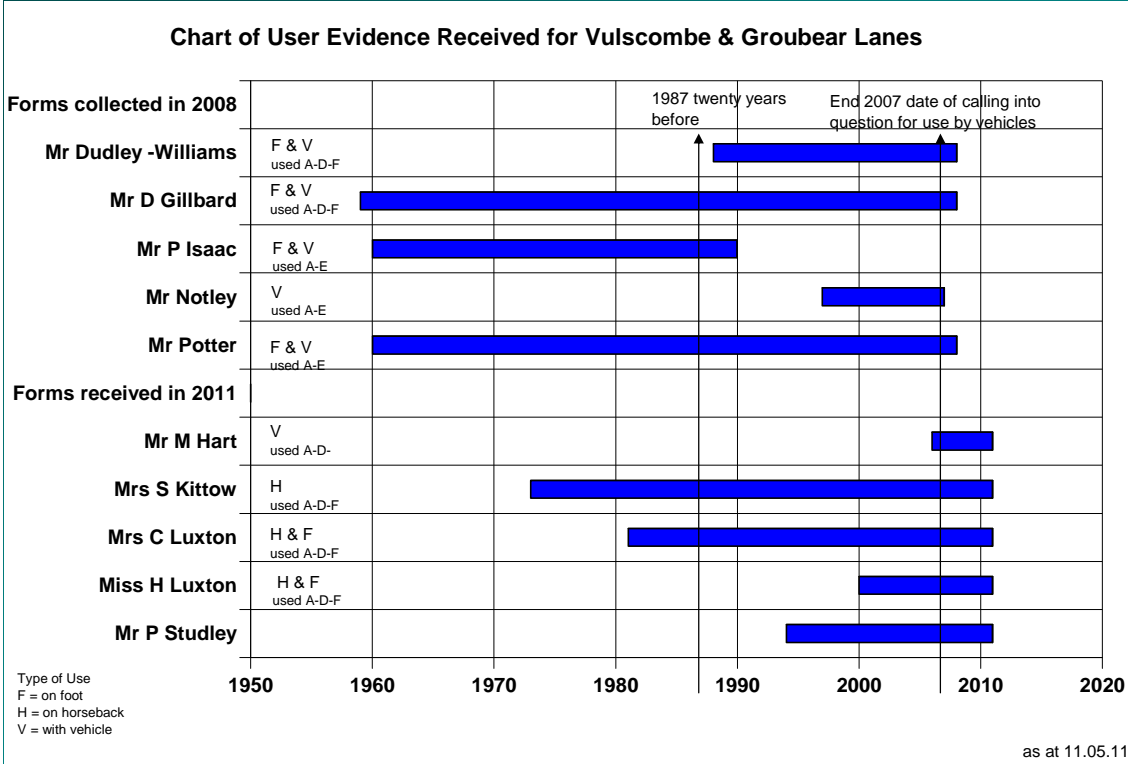
Mr Notley of Pennymoor had used Vulscombe Lane from 1997 to 2007 in a vehicle as through traffic and visiting horses in lane for pleasure and work, at various times. He considers the path to have always been public and didn't see any notices until Winter 2007/08 and the gate in Autumn 2007. The route was a useful road when visiting members of the parish. The current gate is a nuisance and involves a long detour.

Mr Potter, farmer of Pennymoor considers the lane to be an old road and used it from Vulscombe Cross to Witleigh Mill Road from 1960 to 2008 on foot and with a vehicle 12 times a year on average. He mentions the locked gate now and in 2007 the sign No access past Vulscombe Farm. It has been an old road as long as he can remember used by cars and tractors etc.

Additional user evidence forms were received in 2011 from three local riders who had used the lanes from Vulscombe Cross to Riverside and along Groubear Lane to Thorn Hill (route A – D – F).

Mrs Kittow had used this route on horseback from 1973 to the present day, her use varying from twice a month and every day between 1973 and 2001 and since 2001 3 times a week from October to April. Currently her daughters may use the route once a week on average from April to October. She considers the path public as it was the main road before the

present B3137. Gate put up below Vulscombe Farm stopping traffic going through but horses can get around the gate – just!!



Mrs Luxton has used the route on horseback and foot since 1981 on average once every 10 days. She believed the path to be public as she has used the track without any hindrance or comment from any of the landowners. A gate was put up at Lower Vulscombe about 4 years ago but access was left for riders. She regularly sees and speaks to landowners.

Miss Luxton has used the route on foot and horseback from 2000 about once a week with no comment from landowners/householders along the track. There was a locked gate in 2007 with passage to the side for walkers and horses.

Mr Studley from Honiton had used the route from Thorn Hill to the B3137 (F – D – E) on a motorcycle from 1994 to 2011 about 2-3 times a year. A further three user evidence forms were received from motorcycle users who had used the same route (F – D – E) once in 2011.

Mr J Butt, a local 4x4 user telephoned the customer service centre in December 2006 to report a locked gate along Vulscombe Lane. He asked if this was a recognised right of way as he had used it many times over the years. In a subsequent telephone conversation he advised that in the 1960s, early 1970s there was an 'Unfit for motor vehicles' sign. He and other people used the lane. He understood that an occupier had died recently and the property sold.

7. Landowner Evidence

A total of thirteen landowners were identified as owning or occupying land adjacent to one or both lanes and these were all contacted about the consultation and asked for their comments. Completed evidence forms were received from eight landowners.

Mr & Mrs Benson have resided at Riverside House for 7 years and 3 years ago also purchased some land on the north side of Vulscombe Lane. They believe the way to be

public and have been aware of members of the public using the way including delivery access 'sat nav' misdirected vehicles about once every two weeks up to Higher Vulscombe. They have stopped vehicles to advise them that the surface up to Higher Vulscombe will rip their vehicles apart. They have never required anyone to ask permission, have not told anyone the way was not public or erected signs or notices stating the way was not public. In a telephone conversation Mrs Benson confirmed that they had purchased and erected a highway 'No Through Road' vehicle sign in an endeavour to stop the sat nav guided vehicles trying to use the lane past their property to access Vulscombe Farm.

Mr Brooke has owned Vulscombe Farm for 6 years (at point B). Since they have been there they have believed the way to be private, the responsibility of the four home owners of Vulscombe and for access to these properties only. They have not being aware of the public using the way and have an understanding with the local horse riders that they can use the lane for their riding use. They have stopped vehicles trying to use the lane to get to Tiverton and told someone that it was private access to Vulscombe Farms only. At the west end of Vulscombe Lane they had erected signs saying 'Access to Vulscombe Farms Only' but this sign was repeatedly taken down and left on the ground. The sign was reinstated on a number of occasions and about 18 months ago the sign was stolen and not replaced. There are gates to restrict access to vehicles. They farm rare breeds on the land and a public right of way would affect security and insurance and a public right of way may affect their firearms certificate. There is no need demonstrated to make any conversion of this track to a restricted byway and there is no passable use beyond Lower Vulscombe. Vulscombe is and has been maintained privately at a cost of many thousands of pounds by them all for their sole use for access.

Mr & Mrs Miles have owned Groubear Farm for 10 years. They consider the way to be an ancient highway and see very rare use by the public. It is used as access for local properties. They have not required anyone to ask permission. They have gates along Groubear Lane in three places which are used to facilitate movement of animals and have restricted access of vehicles and have stopped or turned back people when moving farm animals. Gates are not locked and the way is only obstructed when they are moving livestock. They have not told anyone the way was not public or erected signs or notices stating the way was not public. They have constantly maintained the track from Thorn Hill to Riverview for the past 10 years.

Mrs Palmer has owned land adjoining the south west side of Groubear Lane (between points D – F) for twenty six years. She does not believe the way to be public but has seen people using the lane anytime of the year, occasional walkers and parties of walkers. She has not stopped or turned back anyone, told anyone the way was not public or erected signs or notices stating that the way was not public. In further information she advises on the track from Riverside up to Lower Vulscombe House someone put a gate across the lane about 5 years ago and she did not think they should have because 20 years previous to that you could always drive right the way through.

Mr Snow has owned the Old Chapel (near point E) for 37 years. He believes the way to be public but with a weight limit of 3 tonnes over the wooden bridge (at the parish boundary). He has seen members of the public using the way for access to farms throughout that time. He has not asked anyone to ask permission, has stopped large vehicles, has not told anyone the way was not public or erected signs or notices stating the way was not public.

Mr & Mrs Townsend have owned Higher Vulscombe (point B) for 29 years and do not know if the way is public. During their occupancy they have been aware of use of the way by riders and walkers, but fewer than one a day. Earlier this year they stopped hunt followers in 4x4 vehicles. They have not ever required people to ask permission or told anyone the way was

not public or erected signs or notices stating the way was not public. The track is not suitable for horse drawn vehicles between Lower Vulscombe and Riverside.

Mr & Mrs Twemlow completed their purchase of Lower Vulscombe in February 2011. They believe the way to be an ancient access track serving the properties and farms on its route, since the middle of the 18th century and to their knowledge has not been used by the public. When completing their land owner evidence form after three weeks ownership they had not had the public pass via the route, should a member of the public request access they would not give permission. They have ordered new signs to identify their property and to make reference to the track as being Private access only. When initially viewing the property in 2010 they were able to see that the lane was clearly identified as Vulscombe Farm indicating private access only. These signs were removed in 2010. Two gates are as labelled on their completed map; the first one at the entrance to Lower Vulscombe replaces an old derelict gate and will be locked at appropriate times, generally when the property is not in occupation or during the hours of darkness. The second gate they understand has been in existence for many years, it has side pedestrian access with the ability of being opened for agricultural vehicle access as required. Due to the poor condition of the track repairs have been undertaken to improve access to the properties and during this period the track has been unusable and access has been limited.

They consider the suggestion unreasonable and unacceptable due to privacy and security being compromised, the affect a public right of way may have on the use of firearms by the residents and the additional wear and tear on the track adding to the cost of maintaining the track.

Mr & Mrs Wheeler have owned Middle Vulscombe (near point C) for nearly 16 years. They consider Vulscombe Lane to be a private road for residents, (courtesy use for foot and horseback). They have not seen members of the public using the way, ever required people to ask permission or stopped, turned back anyone, told anyone the way was not public or erected signs or notices stating the way was not public. There has occasionally been gates locked when animals were been moved. From old local knowledge and their own understanding, the lane has not been suitable and parts overgrown – only access to properties and farmers with adjoining land.

Mr & Mrs Stanfa of Withleigh Mill did not forward a completed user evidence form but in a telephone conversation indicated that they would be happy for the way to become a restricted byway as this would prevent use of the lane by members of the public in vehicles, unless they were accessing property or land adjoining the route.

8. Rebuttal Evidence

The Trail Riders Fellowship consider the routes should be added to the 'list of streets' as old parish roads as if they became restricted byways they would no longer be able to use them as they do now.

Mr Drake of Kingsteignton had noted the proposal for a restricted byway in Cruwys Morchard parish. He advised that the small amount of research that he had done had shown that many of the property owners along the route think that it is a county road that is no longer maintained. He has checked several of the deeds to properties and they make no mention of having wayleaves or easements to access their land which puts them in a curious position if it becomes a public right of way less than a byway. Please accept his objection to this route becoming anything less than a byway open to all traffic, ideally it should be a maintainable county road.

9. Discussion

The suggestion is supported by Cruwys Morchard Parish Council and Tiverton Town Council. The three landowners who responded and who live along the section E - D – F and at Riverside consider the lanes to be public and an ancient highway. One landowner adjoining the section D – F did not believe the way public but had seen occasional walkers and parties of walkers. Two landowners along the section A – C who responded consider the lane to be private for access to properties only, but with access for horse riders and a private road for residents with courtesy use for foot and horseback. The landowner who purchased Lower Vulscombe in February 2011 understood the lane to be an ancient access track serving the properties and farms on its route. The longest resident along the section A – C do not know if the way is public but during their occupancy have been aware of regular use by riders and walkers.

The route has not been claimed by either Parish Council in the 1950 footpath survey or subsequent reviews and the status of Vulscombe Lane was queried by the parish council in December 2007 following erection and locking of the gate east of Lower Vulscombe (point C). The locked gate (not locked in November 2010) called the use of Vulscombe Lane into question by motor vehicle users although a gap was left at the side for horse riders and walkers to pass through. Five user evidence forms were collected in 2008 by motor vehicle users confirming use of the route from 1959 to 2008.

Section 31 of the Highways Act provides that a public right of way may subsist if there is twenty years use by members of the public as of right, prior to the calling into question. The number of people using the route is not specified but must be reasonable. The minimum motor vehicle users during the twenty year period from 1987 to 2007 were 3 to a maximum of 5. Some of the users used the route in connection with 'work', although as farmers this could have been in carrying out their day to day business in connection with running a farm and not to go to work at a farm along the route. Users also mentioned using the route to check stock and when doing so their use of the lane would have been considered to be exercising a private right rather than use as of right.

A further three user evidence forms were received from horse riders but as their use of the route was not called into question as a gap was left, their evidence is not considered relevant under the section 31 claim. A claim would also fail if there was sufficient evidence of the landowners' lack of intention to dedicate. Following the House of Lords case of *Godmanchester & Drain* in 2007, the notice saying 'Access to Vulscombe Farms only' at Vulscombe Cross would not be considered sufficient evidence of a lack of intention to dedicate.

In total the user evidence is not considered sufficient to support a claim under section 31 of the Highways Act 1980 for a restricted byway (following the NERC Act of 2006 it is not possible to add byways open to all traffic to the definitive map unless one of the specific exceptions has been met).

A claim for a right of way may also exist at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or a combination of both – from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.

Properties were recorded at Groubear in the 14th century and Middle Vulscombe in the 17th century and the lanes have been as present since 1842 when on the Cruwys Morchard Tithe Map part of the route between A and B was coloured blue as was Cruwys Morchard Mill Lane and coloured brown between C and D and D and F, in a similar manner to Thorn Hill.

Apportionment number 613 refers to a lane marked on the map that crosses Vulscombe Lane, described as lane, occupation road. All roads and lanes are uncoloured on the Tiverton Tithe Map with the east end of Vulscombe Lane appearing to fall within apportionment number 1604 described as Cottages, Outhouses, Gardens and Road.

On subsequent OS maps between 1809 and 1967, one or both lanes have been depicted in a similar manner to the county roads Cruwys Morchard Mill Lane and Thorn Hill. Whilst the OS and other maps provide evidence of the physical existence of a route and how it may have compared with other roads in the locality, they do not provide evidence of status.

Two OS name books of 1903 record Vulscombe Lane described as 'a district road' and 'a parish road' and both entries were signed by Mr A Mildon, District Surveyor indicating the lane was considered to be in public ownership at that time.

In the Finance Act 1910 plans and field books, Vulscombe Lane appears to be mainly excluded as the colouring breaks for the hereditaments of Higher and Lower Vulscombe and for Groubear Lane near point D but appears continuous at the parish boundary. The only hereditament to make reference to a public right of way is Groubear Farm, where it records on page 1 'There is a public way through the farm' and 'Footpath £1 x 22' on page 2. An allowance of £22 for Public Rights of Way or User recorded on page 4. There are no recorded public rights of way on the holding although the 1890 OS 25" to a mile map shows a track labelled F.P. crossing field number 1463 south west of the river, which fell within the hereditament. The description of 'public way through the farm' would appear to apply to Groubear Lane, as it passes through the farm's land on either side of the lane, rather than the footpath in the field, which is in the north west corner of the holding; but the amount of £22 is consistent with the usual sum allowed for a footpath crossing one field.

Neither of the lanes appear to be owned by any of the thirteen identified landowners along the route and in the Land Registry plans for the properties of Groubear and Lower Vulscombe, whose titles include land on either side of Groubear and Vulscombe Lanes respectively, the lane is specifically excluded from the titles. Only the title for Groubear Farm makes reference to the occupiers of that property having a right of way to use the route E – D – F for all purposes. Although several plots of land and property adjoining the route has been bought recently, in the absence of a private right of way being recorded with the title, the landowners would appear to be relying on a public right of way to access their properties.

The parish council minutes record that Vulscombe and Groubear Lanes were put forward in October 1944, one of two accommodation roads in the parish to be taken over by the County Council in 1944. The entry in the Devon County Roads Minutes of December 1950 records that the committee agreed that as and when funds became available, consideration would be given to taking over roads including at item b) the road from Vulscombe Cross to Withleigh Mill Bridge. In May 2004 a complaint was made under highway matters that hedge needs cutting along Vulscombe Lane down to the main road on the right. In August 2004 the minutes stated that the previously reported highway problems had been fixed. The locked gate and the reply from Devon County Council were discussed in December 2007 and January 2008.

Although there is no one piece of documentary evidence that provides conclusive evidence of dedication of the route as a public right of way, when the various pieces are considered together, they are considered sufficient to indicate that at some time in the past the route was dedicated as a public highway and the user evidence received shows that such dedication has been accepted by the public.

The user evidence received records use by all classes of traffic but following the NERC Act 2006 and as no exceptions appear to apply, the route could only be added to the definitive

map as a restricted byway. If a restricted byway is recorded, landowners and other occupiers would be able to continue to use the lanes with vehicles as they would be exercising their private rights of access but use by members of the public as a through route would be restricted to use on foot, horse or with a non motorised vehicle.

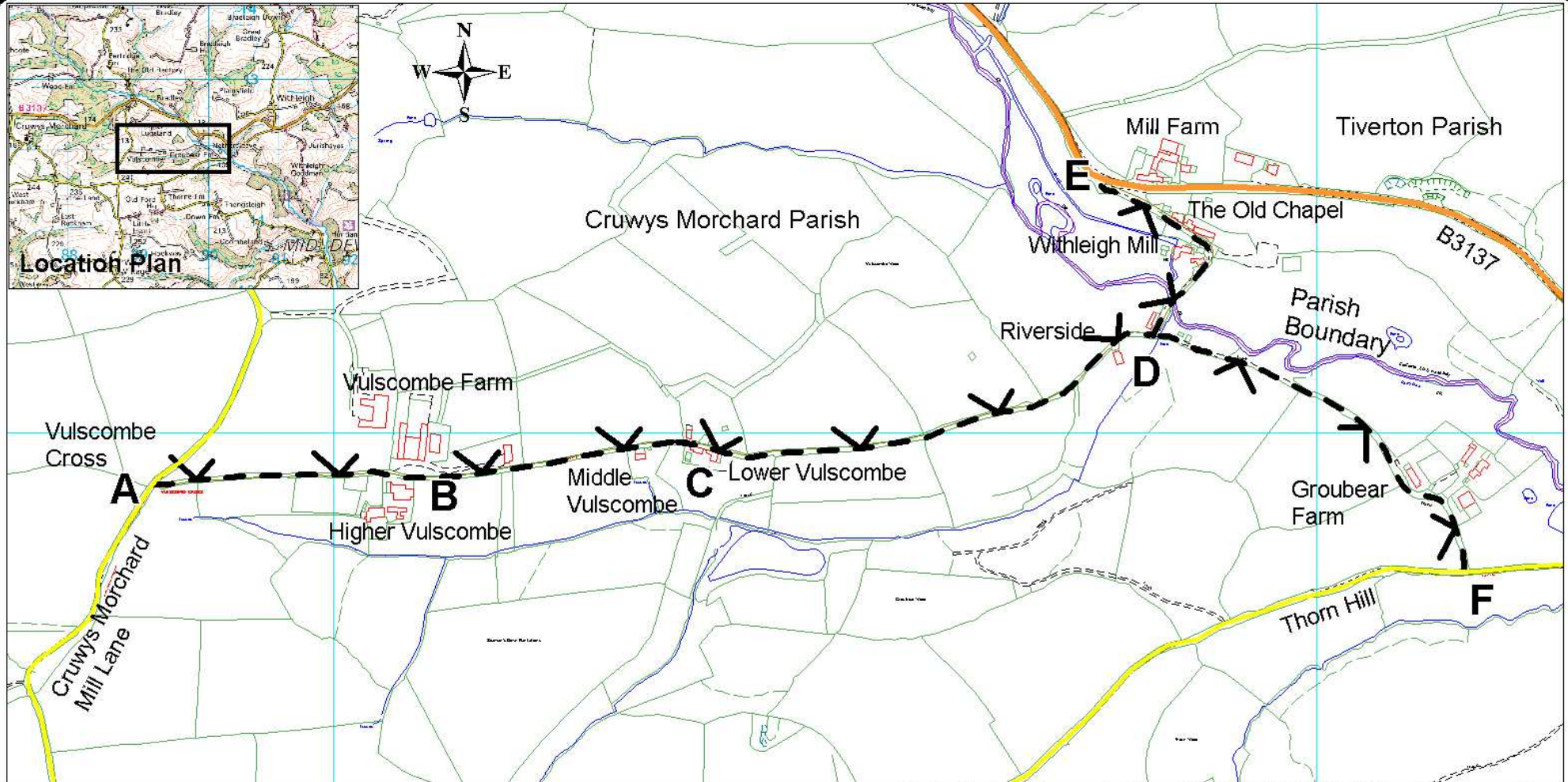
10. Conclusion

Under section 31 of the Highways Act 1980 there must be a clear calling into question preceded by use of the way for twenty years by the public as of right. The twenty year period is deemed to run from 1987-2007 for use of the route between A – E and A - F in vehicles. The user evidence received is considered insufficient to support a claim under section 31 of the Highways Act.

However, it is considered that there is sufficient documentary evidence of implied dedication many years ago and sufficient evidence of acceptance by the public to show that a public right of way, namely a restricted byway, can reasonably be alleged to subsist at common law.

It is therefore recommended that two Modification Orders be made in respect of suggestion 1.

- (a) the addition of a Restricted Byway from the B3137 west of Mill Farm (in Tiverton parish) along Vulscombe Lane to Riverside, then along Groubear Lane to Thorn Hill (route E – D – F) and;
- (b) the addition of a Restricted Byway from Vulscombe Cross along Vulscombe Lane to the junction with Groubear Lane (route A – B – C – D).



map ref: SS 8811/8911/8912/9012/9011

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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - CRUWYS MORCHARD
SUGGESTION 1 - ADDITION OF RESTRICTED BYWAY
VULSCOMBE AND GROUBEAR LANES**

drawing number EEC/PROW/11/14a
date May 2011
scale 1:6,000 at A4
drawn by TW

Notation Suggestion 1: To be added Restricted Byway

Route A - B - C - D (1050 metres approx)
and E - D - F (640 metres approx)



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