

**Definitive Map Review  
Parish of Hemyock (part 1)**

Report of the Head of Highways and Traffic Management

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

**Recommendation:** It is recommended that no Modification Order be made in respect of Suggestion 1 shown on drawing number HTM/PROW/11/122.

**1. Summary**

The report examines the first of two proposals arising from the Definitive Map Review in the Parish of Hemyock in the District of Mid Devon.

**2. Background**

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 31 footpaths & 2 bridleways, which were recorded on the Definitive Map and Statement with a relevant date of 1 March 1958.

As part general review of the Definitive Map, under s. 33 of the 1949 Act, which commenced in 1977 but was never completed, the parish council put forward the proposal to record a bridleway between Toogood's Cottages and Blackdown Common. This is the claim which is referred to in the appendix as Suggestion 1.

The following Orders have been made and confirmed:

Footpath No.34 Public Path Diversion Order 1972  
Footpath No.37 Public Path Diversion Order 1977  
Footpath No.25a Public Path Diversion Order 1991  
Footpath No.33 Public Path Diversion Order 1992  
Footpath No. 42b Public Path Diversion Order 1996  
Footpath No.42 Public Path Diversion Order 1998  
Bridleway No.22 Definitive Map modification Order 1996  
Footpath No.35 Public Path Diversion Order 2006  
Footpath No.19 Public Path Diversion Order 2006  
Footpath No.8a Public Path Diversion Order 2010

Legal Event Modification Orders for these changes will be made under delegated powers in due course.

**3. Review**

A public parish meeting held in Hemyock Village Hall in November 2005. Two proposals have been put forward for modifying the Definitive Map, along with several proposed diversions of existing rights of way. The diversions will be dealt with under delegated powers and the second proposal will be the subject of a future report.

Informal consultations have been carried out with the following results:

County Councillor Ray Radford	-	no comment
Mid Devon District Council	-	no comments or objections
Hemyock Parish Council	-	supports proposal
Culmstock Parish Council	-	supports proposal
British Horse Society	-	supports proposal
Byways and Bridleways Trust	-	no comment
Devon Green Lanes Group	-	support proposal
Country Land and Business Association	-	no comment
National Farmers' Union	-	no comment
Ramblers' Association	-	no comment
Trail Riders' Fellowship	-	no comment
Forestry Commission	-	object
Natural England	-	object

#### **4. Conclusion**

It is recommended that no Modification Order be made in respect of the suggestion 1 as shown on drawing no. HMT/PROW/11/122

#### **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.

Lester Willmington  
Head of Highways and Traffic Management

**Electoral Division: Willand & Uffculme**

Local Government Act 1972: List of Background Papers

Contact for enquiries: Emily Spurway

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Background Paper	Date	File Ref.
Correspondence File	2005- to date	DMR/HEM

es131011pra  
sc/cr/DMR Hemyock part 1  
03 hq 271011

**A. Basis of Claim**

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 WCA 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 Wildlife and Countryside Act 1981, Section 53[3] [c] enables the Definitive Map and Statement 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;

The Wildlife and Countryside Act 1981, Section 56[1] states that 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.

**Suggestion 1: Addition of a public bridleway from the minor county road south of Toogood's Cottages, Culm Davy, Hemyock to Bridleway No. 34, Culmstock.**

The route is shown between points A - B - C - D on drawing number HTM/PROW/11/122.

**Recommendation: It is recommended that no Modification Order be made to record a public bridleway in respect of this suggestion.**

**1. Description of Route**

The route starts at the minor county road south of Toogood's Cottages, Culm Davy, point A, and proceeds in a north westerly direction along a stone and earth track, defined by hedged banks on both sides, passing Little Thatch Cottage at point B. The route continues west along the trackway to exit through a gate onto Blackdown Common, point C, and continues west to join Bridleway No. 34, Culmstock on Blackdown Common, point D.

**2. Documentary Evidence**

Ordnance Survey Maps

1880s 1<sup>st</sup> Edition OS map 25 inch to 1 mile

The route is clearly shown on this map along its entire length.

1904-06 2<sup>nd</sup> Edition OS map 25 inch to 1 mile  
The route is also shown on this mapping.

Modern Ordnance Survey Map 128 - Taunton & Blackdown Hills  
The route is shown in its entirety as a white track on this mapping.

#### Greenwoods Map 1827

This early mapping shows the claimed route from the cross roads in Culm Davy going north westwards onto Blackdown Common to join the south western section of a track (likely to be what is now Bridleway No. 34 Culmstock) and proceeding to Blackdown Gate in the parish of Culmstock.

#### RAF Aerial photo 1946- 1949

This shows the whole of the claimed route.

#### Hemyock Parish survey 1950s

On the parish survey map this route is not indicated or claimed as a path.

### **3. Other Information**

#### Correspondence between Tiverton/Mid Devon District Council & Devon County Council 1976 -1978

Prior to Hemyock Parish Council's submission under the Limited Special Review in May 1978, Tiverton District Council wrote to the County Council on 22 October 1976 concerning "Access to Culmstock Beacon Parishes of Culmstock and Hemyock".

It seems that the author, Mr Connor, had been liaising with the Forestry Commission (FC) in relation to access from Culm Davy over Blackdown Common, via the Beacon to Woodgate in Culmstock. A plan was included indicating a route that is the same as the current parish proposal and describes it as a bridleway. The letter states "The land in question is owned by the Forestry Commission and they do not acknowledge that there is any public right of way although the evidence which I have gathered indicates that the way was open to members of the public even before the First World War. Unfortunately this public right of way was never included on the definitive map and there have been many disputes and not little argument between the occupier of Coombes Head Cottage [now called Little Thatch] and members of the public who wish to reach Blackdown Common. The occupier maintains that the public have no rights of passage although experience shows that he has limited his arguments to horse riders, ramblers do not appear to be molested in any way". The final paragraph states; "The Forestry Commission have been involved in the arguments and they have suggested that as owners of the land they should dedicated the track or way as a Bridleway but subject to their having access thereover for the purpose of forestry matters. The Parish Councils are in agreement but they would wish the Bridleway to be entered on any future definitive map. Before I write to the Forestry Commission agreeing to their suggestion, I would welcome any comments which you would wish to make".

Subsequent correspondence of 28 October 1976 and 2 February 1977 between Tiverton District Council and the District Engineer agree that the Forestry Commission's proposals to dedicate the route are "warmly welcome" and "the route has now been walked and it is recommended that the necessary action be taken to create a bridleway in a way to enable it to be included in any future Definitive Map".

Further correspondence between Mr Blake of Mid Devon District Council and Devon County Council's Area Engineer is as follows.

3 May 1978: "Following enquiries from the Parish Council, I have had the Bridleway, as shown on the enclosed plans, inspected. The whole length as shown is unobstructed and already being used by horses, but only part is an official Bridleway (No. 34), coloured brown. I would be grateful if you would let me know if any creation agreement has been made for the remainder of the Bridleway, coloured red, as it has been suggested that this may be the case".

August 1978: Area Engineer replies "The Area Secretary (East) has been carrying out an investigation into this possibility following a request from the Parish Council and the County Councillor Miss Elmes. I understand that the Forestry Commission were to dedicate that part of the track situated on land in their control. Unfortunately part of the proposed bridleway traversed ground in private ownership and therefore, because of the impending Review, it was decided that the Parish should make an application for its inclusion at the General Review".

#### Hemyock Parish submissions 1978

In January 1978 the Hemyock Parish Clerk wrote to Mr Blake requesting if the footpath from Toogood's Cottages to Blackdown Common be inspected. The clerk states "This is an unnumbered Bridleway we wish to register and Mr Grey has dug a deep ditch to prevent 'transport' along this old Bridleway".

In May 1978, as part of the Limited Special Review for the definitive map, Hemyock Parish Council submitted a list of paths to be included in the new definitive map. The bridleways are underlined including the suggestion submitted as "UNNumbered Bridle Way ---- Toogood's Cottage to Blackdown Common" The Parish Council also say "Hemyock Parish Council wish this Bridleway to be numbered and included that Mr. Blake of Mid Devon District Council would be inspecting the Bridleway and will be reporting on the same".

#### **4. User Evidence**

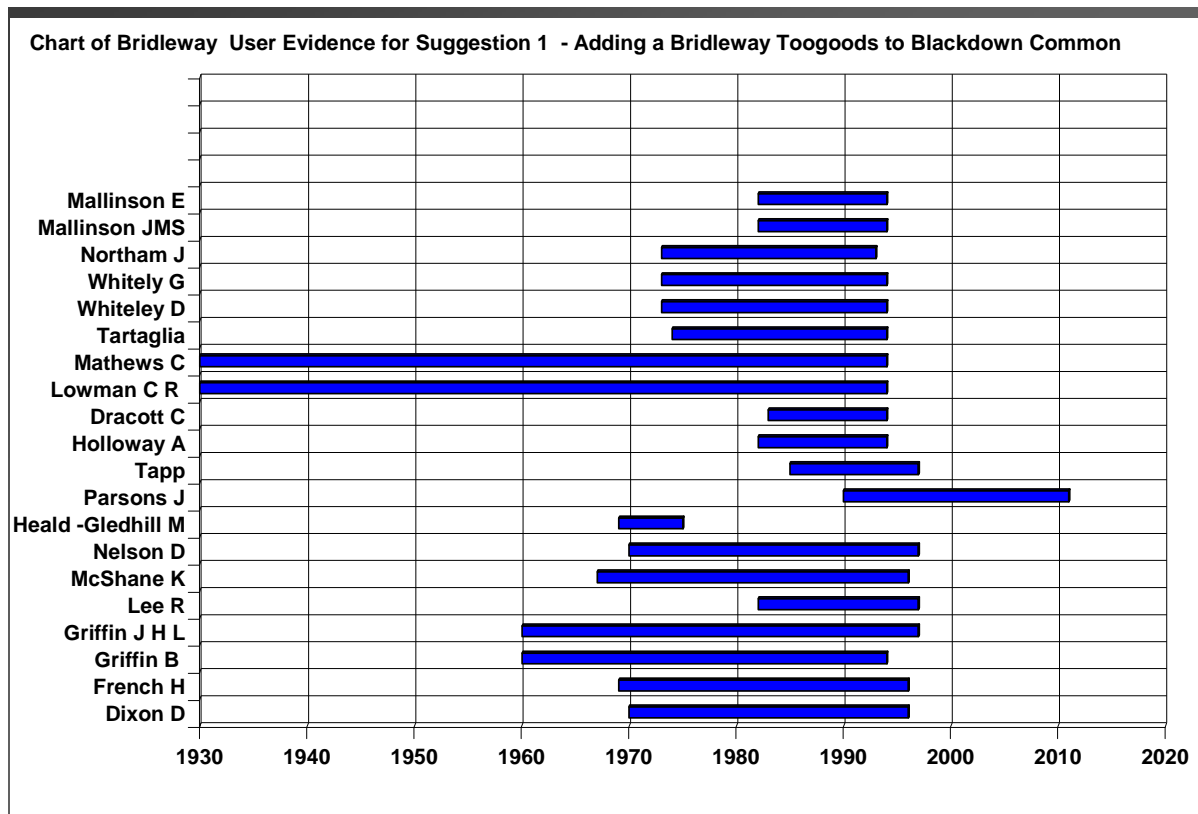
Twenty user evidence forms have been submitted in support of this route. Ten evidence forms were submitted in mid 1994 from local walkers and ten forms from local horse riders were submitted in early 1997.

One of the earliest walkers, Christine Mathews, to have supplied a user evidence forms states that they have used the route on foot from 1929 - 1994 countless times going from Culm Davy to various places on Culmstock Beacon for pleasure. She states that for the past 60 years she had seen members of the public using the way. She had not been stopped or challenged and says that the owner knew the path was being use as it was common knowledge.

Another resident of Hemyock, Mr C Lowman, said he had used the route, described as Culm Davy Post Box to Blackdown Common passing Little Thatch since the early 1930s to 1994 (when the form was completed). He said he used the route weekly from 1930 to 1960. He states that his mother, who was 90 at that time, was clear that it was always regarded as a public route. He walked from his home to Culmstock Beacon for pleasure and was not stopped or challenged about his use. He mentions a gate on Forestry Commission property, but no plan to indicate where it was placed. In response to question 'Do you believe the owner occupier was aware the public was using the way?' he replies "Clearly - it was well used and still is."

Four other users (Mr & Mrs Whitley, J. Northam, E. Tartaglia) walked the route between 1960 - 1964 and 1973 - 1994. All four have used the path open and freely without challenge or encountering obstructions 25 - 30 times. Three of the walkers have stated that the route

was well known and well used and one mentions that notices were put up when felling was in process.



Mr C Dracott states on his evidence form that he used the route from 1983 - 1994 on foot going from Culm Davy to Culmstock Beacon or the reverse. He has not been challenged or prevented from using the path. He adds, "the path has been used over a long period known from local information" but acknowledges that it is not shown on the definitive map.

The three remaining walkers, (Mr A Holway, E & J Mallinson) have used this path from 1982 - 1994 (when the forms were completed) with a frequency of use of 3 -25 times a year. All three say that the path is well used and that it has been used by the public for many years. Two walkers mention a gate but with access at the sides for pedestrians and the only notices mentioned were about the use of fire beaters in the case of fire. One of the walkers states that "I have not been turned back or stopped, but a gentleman did tell me not to come back".

Of the ten walkers, six mention that they thought the land was owned by the Forestry Commission and the common owned by Peter Dobree' - the others did not know. None of the walkers have recalled seeing 'private' or 'no thoroughfare' notices along the route.

The route is still well used by walkers to the present day.

Of the ten riders who completed evidence forms in 1996 - 7, J & B Griffin used the route since 1960, both for more than 35 years as part of a round route on horseback via Toogood's and Little Thatch to Culmstock Beacon. Both riders used the route about 5 times a year and had never been given permission. However, both had been challenged by the late Mr Gray, previous owner and resident of Little Thatch. One rider also mentions that at some time a deep ditch was dug by Little Thatch and states in response to question 'Do you believe the owner or occupier was aware the public was using the route?' "He knew and objected."

One of the riders states that there were gates, but they were not locked. She says she was “stopped by Mr Bert Gray for riding past his cottage but not prevented” and this was a regular occurrence from 1960. Neither rider says that they saw any private notices along the route.

The third rider, Ms K McShane, used the route for 29 years from 1967 - 1996. Between 1967 and 1976 she used the route regularly 30 times a year and then less frequently for 20 years from 1976 to 1996. She says that she was not given permission to use the route. When she first started using it there was no gate, but later a gate was erected but not locked. She also mentions that there were no obstructions. However, she also says “Although the late Mr Gray dug a ditch across the track, it was still possible to negotiate”, but every time he was at home he would shout at her.

Ms H. French says she has used the route on foot, horseback and in a vehicle about 10 times a year between 1969 - 1996. She says in response to the question about obstructions “Occupant of Little Thatch protested when I rode past”, but she was not stopped or turned back, nor given permission to use the track. Also, that the route was very well used by local riders.

M Heald-Gledhill and Ms D Nelson used the track on foot and horse between 1969 - 1975 and 1970 onwards. Both of these users state that they used the route frequently and have always known it to be public. Neither has been stopped or challenged when using the way and both thought the owner was aware of the public using the route because of constant use by the public.

Ms D Dixon used the route up to 6 times a year between 1970 - 1996 riding from Culm Davy to Culmstock Beacon and has always considered it to be public. She mentions that although she was not stopped or turned back, some other riders were “discouraged by the owner of Little Thatch” and adds that the “occupant of Little Thatch protested whenever I rode past”.

Ms R Lee and Ms T Tapp from Culmstock rode the route from 1982 - 1997 (15 years) and 1985 -1997 (12 years) frequently once or twice a month or more as part of a long ride to Culmstock Beacon. Neither rider mentions any obstructions or any challenges to their use.

Mrs J Parsons used the route from 1990 to 1996 and subsequently updated her form to indicate that she was still using it in 2011. This rider has ridden the route about 10 times a year from Toogood’s onto Blackdown Common for 21 years. She mentions a five bar gate at the north west of the track where it joins the common, but does not indicate if it was locked. The rider states that she has not been given permission to use the route or told that the way was private. However she was aware that the previous owner of Little Thatch did not like people using it, although she said she never met him herself.

Of the ten riders only three mention an awareness of landownership and two state “various owners” and one mentions the owners of Little Thatch claim to own a section adjacent to their property. The other seven said they didn’t know.

## **5. Other Supporting Evidence**

Mr B Spiller, who owns land adjoining the proposal to the north of point B returned a Landowner Evidence Form saying he thought the route was public and that he has seen the public using it regularly. He also says that he has not required people to ask permission, turned anyone back or erected any signs stating that the route was not public. He refers to a forestry gate, but as a landowner he has a key to get to his fields. This landowner supports the recording of the route as a bridleway.



The owners of Toogood's Cottage state on their Landowner Evidence that they have owned the property for 36 years and have seen or been aware of the public using the route daily on foot, horse and bicycle. They state that they have turned people back attempting to use the route in motor vehicles and getting lost using "sat navs". They also mention that they have never told anyone the route was not public and have advised people it is unsuitable for motor vehicles.

Culmstock Parish Council is in favour of the route as a bridleway and state in their response "We have absolutely no objection to this public equestrian access along the track which forms the upper border of our owned land on Blackdown Common. Your proposal seems to us to be both currently sensible and historically provable as a restoration of an ancient route onto the common from the East".

Sandra

## **6. Rebuttal Evidence**

Two other adjoining landowners have completed Landowner Evidence Forms and they oppose this proposal. A representation has also been received by Natural England as the section of the proposal that crosses Blackdown Common is a SSSI. No response has been received from the owners of Toogood's Cottages.

The Forestry Commission has been the freehold owners of the forestry land between Toogood's Cottages (near point A) towards Little Thatch near point B since 1957. They also own the woodland on either side of the path where it borders Blackdown Common between B - C, but have not included it as part of their land holdings in their Section 31 (6) deposit.

On the Landowner Evidence form submitted in September 2011, the Acting Forest Management Director and Area Land Agent states that "our ownership only covers part of Proposal 1 shown coloured blue on the plan". They do not regard the route as a public right of way since their acquisition in 1957. However, they have been aware of the public using the route at varying frequencies. They also add that neighbours have formal rights of way over the track. They state that they have turned people back whenever they carry out forest operations and have occasionally told individuals that the route was not public. No specific details are available.

They have stated that threshold signs have been in place for many years and on occasion they have incorporated the words 'No unauthorised access'. They also refer to a gate (near Toogood's Cottage) which has been locked "from time to time, but generally left unsecured to enable emergency vehicle access to private dwellings".

A statutory declaration was made under Section 31 (6) of the Highways Act 1980 and was put on deposit with Devon County Council in January 2000. This states that as at that date and from then onwards there is no intention by the Forestry Commission to dedicate any public rights across the forestry land at Culm Davy.

Under the Forestry Act 1967 sc 46(1) the Forestry Commission are enabled to make byelaws to manage the land they control. Such byelaws came into operation nationally on 1 June 1982. Part 5 of the Byelaw is titled "*Acts Prohibited on the Lands of the Commissioners*" and states; "*No person shall in or on lands of the Commissioner:- (i) enter any area on or near which there is displayed by the Commissioners a notice prohibiting entry thereon;*". Subsection (xiii) states "*except in the New Forest or on bridleways, which are public bridleways or bridleways specified by the Commissioners, ride or lead any horse;*"

The threshold signs placed on this route do not inform the public of the existence of the Byelaws and that horseriding is not permitted.

The current owner and occupier of the property at Little Thatch submitted a Landowner Evidence form and three letters in relation to this proposal. The following are extracts of her evidence:

*"I moved to Little Thatch with my parents in 1958. Local people walked the track, but I do not recall horseriders wishing to use it until the creation of the gallops on the top of Blackdown Common in the 1960s. My late father did not allow horseriders to use the track. Right up to his death in 1995, he was exceedingly vigilant in informing all riders that it was a private track and he made them turn back".*

*"The track is comprised of soil and stone and is about half a mile long. From time to time, it has been necessary to maintain the track by adding more local stone (flint) to it. Also in winter, channels to drain sections of the track need to be dug out and kept clear. This has been carried out, as and when it is needed, by my father and now by myself. I personally need the track to remain (as it has for over 50 years) easily passable by foot, bicycle and car and for there to be no access problems for my postal delivery, tradesmen and other essential services to my home. This is why my father and subsequently myself have been at pains not to allow it to become a public right of way for horseriders".*

*"In 1997, the Forestry Commission confirmed to me in writing that there was no public right of access over the track other than by pedestrians. They decided to erect a gate over the track near Toogood's Cottage together with a sign indicating that foot access alone is permitted."*

The letter from the Forestry Commission sent to Little Thatch in November 1997 talks about access to the Culm Davy plantation and part of the letter says "Given the difficulties that you and your neighbours are having, I propose to erect a timber gate and any necessary rails at the entrance to Forestry Commission land at Toogood's Cottage. Provision will be made to the side of the gate for foot access only. The gate will carry a sign indicating that foot access alone is permitted. The gate will be latched and not locked but will be shut at all times". Copies of these letters are included in the backing papers.

Mr D Bartlett who owns the northern area of Blackdown Common and the section crossed by the route between C - D has to date made no representation about the claimed route. The dilapidated gate at point C is solely for the purpose of preventing livestock escaping from Blackdown Common.

Natural England, as a Statutory Consultee for SSSIs, has objected to the route on the grounds that it could have an adverse effect on the special interest feature of the SSSI.

## **7. Discussion**

Blackdown Common is an ancient and historical landscape dominating the landscape at the head of the parishes of Culmstock and Hemyock and also an important link into the Blackdown Hills. Greenwoods map of 1827 shows that the claimed route has physically existed since the early 1800s and has continued to be a clearly well defined route to the present day linking onto Blackdown Common and the surrounding parishes. The later Ordnance Survey maps of 1880 and 1904 - 06 to the present day display the disclaimer that the representation of tracks, paths or other roads on their maps is no evidence of the existence of a right of way. However they provide clear evidence that the lane has remained as a physical feature for about 200 years and undoubtedly provides a means of access on and over Blackdown common to other places in neighbouring parishes.

The user evidence provided by the ten horse riders shows that this route was easily passable and frequently used over many years. However, five riders had either been directly spoken to or challenged by Mr Gray of Little Thatch or knew of someone who had been. Mr Gray's challenges may have been limited to the times he was at home but they were very direct. There is, however, no explanation why 'private' notices were not erected to make his intentions clear at all times.

The Forestry Commission under the Forestry Act 1967 were empowered to apply Byelaws to their land which came into operation on 1 June 1982 and effectively prohibited riding or leading a horse over forestry land. Bizarrely perhaps, it would seem that there is no requirement for the Forestry Commission to publish that the bylaws had been implemented and thus to inform the public that horseriding was not permitted. This seems to be at variance with case law i.e. *Godmanchester and Drain (2000)* which advises that actions to disabuse the public that they have no public right of passage along a route must be overt.

The issue of the bylaws is not, however, the overriding consideration in determining this proposal. There are two tests which can usually be applied to evidence of public use of a route in order to determine whether that use leads to a conclusion that public rights have been dedicated. There is the statutory test set out in Section 31 of the Highways Act 1980 and there is the common law test. Section 327 of the 1980 Act provides that unless there is agreement between the appropriate authority in relation to any land and the highway authority, the Act does not apply to, among other things, land 'belonging to a government department.'

The Forestry Commission has been the freehold owner of part of the route since 1957 and has objected to the proposal. The statutory test in Section 31 of the 1980 Act cannot therefore be applied. The only applicable test to be applied to determine whether public rights exist on the route is the common law test. The question is, therefore, whether it may be inferred, from the evidence of public use of the route prior to 1957, that the previous owners of the land dedicated rights to the public.

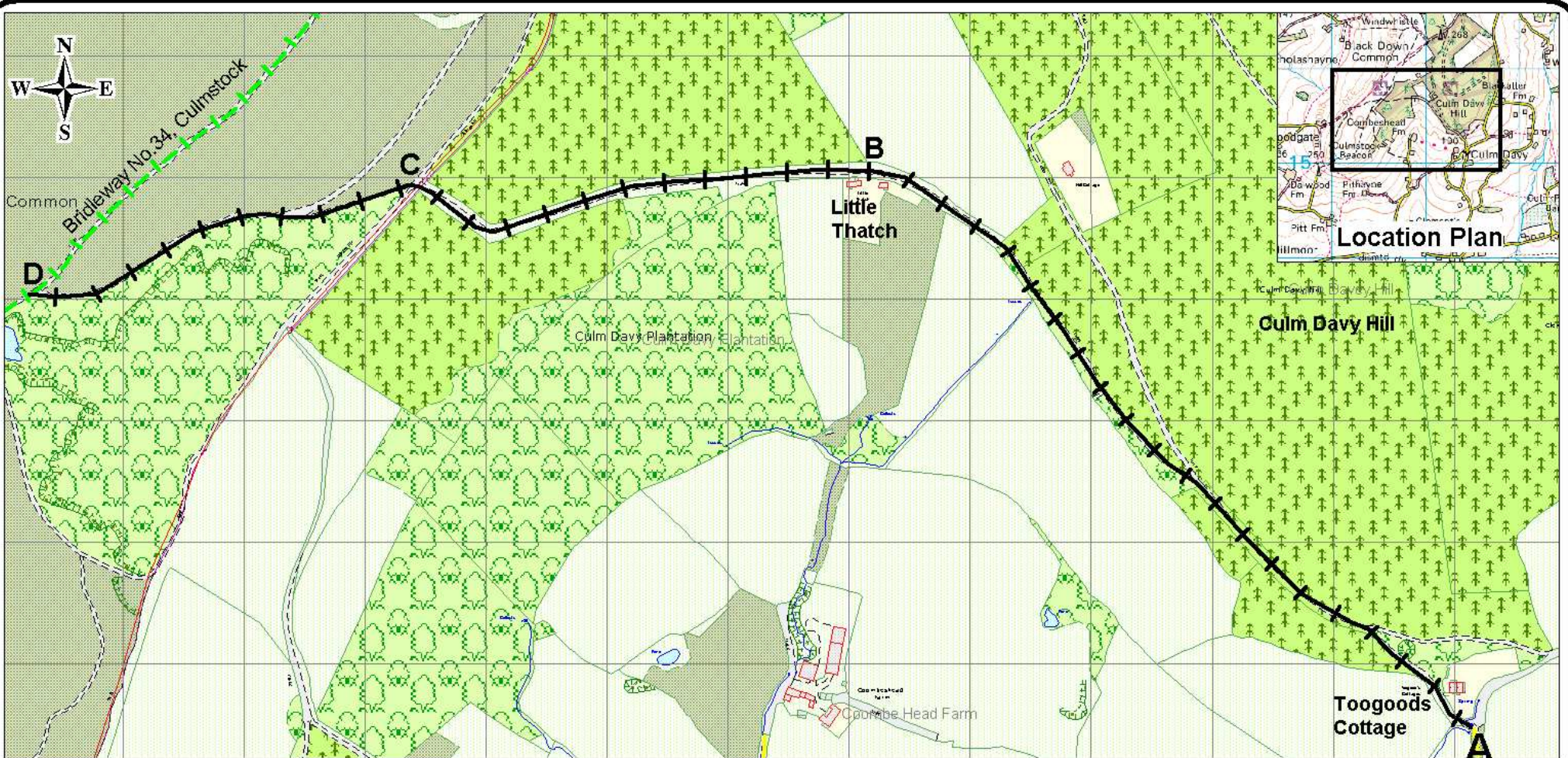
Although it is clear that the route has physically existed for over 200 years, only two users have provided evidence indicating use prior to the Commission's ownership. In 1976 it is clear from the correspondence with Mr Connor and the Tiverton District Council that the Forestry Commission did not acknowledge that there were any public rights of way along the route. Accordingly it cannot be demonstrated there is sufficient evidence to justify the making of an order under common law.

## **8. Conclusion**

In the light of the above it is recommended that no order be made in respect of Suggestion 1.

Should any further information be received in the next six months it would seem sensible that it be considered straightaway.







map ref: ST 1115 & 1215 Grid 100m

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**DEVON COUNTY COUNCIL**  
**Definitive Map Review - Hemyock**  
**Route 1 suggested addition of public bridleway**  
**Toogood's Cottages, Hemyock to Bridleway No.34, Culmstock**

drawing number HTM/PROW/11/122  
 date Oct 2011  
 scale 1:5000 at A4  
 drawn by ES

Notation Proposed addition **A - B - C - D**   
 Existing public bridleways 

Hemyock: A - C (1,090 m)  
 Culmstock: C - D (340 m)

**Lester Willmington**  
 HEAD OF HIGHWAYS AND TRAFFIC MANAGEMENT

