

**Definitive Map Review 2011 – 2012  
Parish of Yealmpton**

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.**

**1. Summary**

The report examines the Definitive Map Review in the Parish of Yealmpton in the District of South Hams, including a Schedule 14 application made by the Trail Riders Fellowship to upgrade Footpath No. 33, Yealmpton to Byway Open to All Traffic status.

**2. Background**

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 23 footpaths, 1 bridleway and 1 Road Used as a Public Path (RUPP) in Yealmpton, which were recorded on the Definitive Map and Statement with a relevant date of 11 October 1954.

The review of the Definitive Map, under s. 33 of the 1949 Act, which commenced in the 1970s but was never completed, produced no valid proposals for change to the Definitive Map at that time.

The Limited Special Review of RUPPs, carried out in the 1970s, resulted in the reclassification of RUPP No. 33 to Footpath No. 33.

The following Agreements and Orders have been made:

Plympton St Mary RDC (Footpath No. 24, Yealmpton) Public Path Diversion Order 1970

Plympton St Mary RDC (Footpath No. 19, Yealmpton) Public Path Diversion Order 1971

South Hams District Council (Footpath No. 24, Yealmpton) Public Path Diversion Order 1975

South Hams District Council (Footpath No. 18, Yealmpton) Public Path Diversion Order 1978

Devon County Council (Footpath No. 19, Yealmpton) Public Path Diversion Order 1988

Devon County Council (Bridleway No. 34 & Footpath No. 4, Yealmpton) Public Path Diversion Order 1989

Devon County Council (Footpath No. 9, Yealmpton) Public Path Extinguishment Order 1990

Devon County Council (Footpath No. 4, Yealmpton) Public Path Diversion Order 1991

Devon County Council (Footpath No. 14, Yealmpton) Public Path Diversion Order 1993

Devon County Council (Footpath Nos. 11, 12 & 13, Yealmpton) Public Path Diversion Order 1994

South Hams District Council (Footpath No. 3, Yealmpton) Public Path Diversion Order 1995

Devon County Council (Footpath No. 48, Yealmpton) Definitive Map Modification Order 2000

Where necessary, Legal Event Modification Orders will be made for these amendments in due course.

### **3. Review**

The current Review began in June 2011 with a public meeting held in the Yealmpton Community Association Hall. It picks up a Schedule 14 application made in 2005 by the Trail Riders Fellowship for the upgrading of Footpath No. 33 to a byway open to all traffic. No additional claims or suggestions for modifying the Definitive Map were put forward following the parish meeting. A public consultation on the review was carried out in August 2011.

The responses from councils and user/landowner groups were as follows:

County Councillor William Mumford	-	does not support the claimed upgrade
South Hams District Council	-	comments
Yealmpton Parish Council	-	do not support the claimed upgrade
British Horse Society	-	no comment
Byways and Bridleways Trust	-	no comment
Devon Green Lanes Group	-	no comment
Country Landowners' Association	-	no comment
National Farmers' Union	-	no comment
Open Spaces Society	-	no comment
Ramblers	-	no comment
Trail Riders' Fellowship	-	no comment – s.14 applicant for BOAT status

### **4. Conclusion**

It is recommended that no Order be made in respect of the application.

Should any further valid claim be made in the next six months it would seem sensible for it to be determined promptly rather than 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 South Hams district area.

Lester Willmington  
Head of Highways and Traffic Management

## **Electoral Division: Yealmpton**

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

Contact for enquiries: Helen Clayton

Room No: ABG, Lucombe House

Tel No: (01392) 382602

Background Paper	Date	File Ref.
Correspondence file	2011 – date	DMR/Yealmpton

hc300112pra  
sc/cr/dmr parish of Yealmpton  
02 hq 080212

## **Background**

### **A. Basis of Claims**

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

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.
- (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or
- (iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

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.

## **1. Suggestion 1: Schedule 14 Application for upgrading Footpath No. 33, Yealmpton to a Byway Open to All Traffic**

Claim to upgrade Footpath No. 33, Yealmpton to Byway Open to All Traffic (BOAT) status, from the Lyneham Road to Yeo, as shown on drawing no. HTM/PROW/11/98.

**Recommendation: It is recommended that no Order be made in respect of the application.**

### **1.1 Background**

Footpath No. 33, Yealmpton was previously recorded on the Definitive Map and Statement as a Road Used as Public Path (RUPP) but had been reclassified as a public footpath in 1974, under the Limited Special Review of all RUPPs in the county, and confirmed by the Secretary of State following a Public Inquiry in 1977.

The footpath was signed by the County Council as a bridleway in 1987 as the result of some confusion over the implications of the Court of Appeal's decision in *R v Secretary of State for the Environment Ex parte Hood [1975]*. It was subsequently clarified by the Department of the Environment that the case could not be applied automatically to RUPPs which had already been reclassified and as a result the route was again signed as a Public Footpath in 1991. The then landowner of Cox's Cottage, Mr Hawkins, also erected a stile on the route, preventing public use apart from on foot. Yealmpton Parish Council considered the case for up-grading the footpath to a bridleway but resolved at that time that it should remain as a footpath.

In 1997 the British Horse Society made an application under Schedule 14 of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement for the parish of Yealmpton by upgrading Footpath No. 33 to a bridleway. 14 User Evidence Forms were submitted in support of the application and a further form was found in an existing correspondence file, bringing the total to 15. The forms were all dated 1991 and appear to have been prompted by the dispute over the signing of the route as a bridleway and the subsequent erection of the stile by Mr Hawkins.

A report in respect of this application was presented to the Public Rights of Way Sub-Committee on 9 January 1998. The relevant report is attached at Appendix II to this report, with a description of the route and examination of the evidence available and considered then. The recommendation in the report was that no Order should be made to upgrade the route to a Bridleway because public use on horseback did not cover the 20 year period required under s.31 Highways Act 1980, prior to a calling into question of public equestrian rights in 1991 by Mr Hawkins, and therefore could not give rise to presumed dedication. Documentary evidence considered did not provide any additional information in support of higher rights. The report was accepted by Members, who resolved that no Modification Order be made. The evidence referred to therein is included in the background papers to this report.

On 18 November 2005 Mr Cocker, on behalf of the Trail Riders Fellowship (TRF), submitted a Schedule 14 Application for the upgrade of Footpath No. 33 to a byway open to all traffic (BOAT). The application was triggered by the impending Natural Environment and Rural Communities Act 2006, which was going through parliament at that time.

### **1.2 User Evidence**

The User Evidence Forms submitted in support of the 1997 application are examined in detail in the Committee report at Appendix II. In summary, they provided evidence of use on

horseback from 1939 to 1991. The earliest use was found to be in consequence of access to adjoining fields. Four users owned or occupied property adjoining the route or had association with the adjoining estate of Lyneham, previously Kitley. Other use started from the late 1970s onwards. Three users reported being stopped by Mr Hawkins in 1991 and told that it was not a bridleway. Analysis of the evidence showed that of those who could be said to be members of the general public, one person claimed to have ridden the route for over 20 years, one for over 18 years, four of between 10 and 15 years, one claimed 7 years use and two claimed 3 and 1 years use.

The TRF's application was accompanied by 5 User Evidence Forms all detailing use on motorcycle. One person claims use from 1984 to 1992, one from 1984 to 2003, one from the late 1980s and two from 1990 to 1999. Frequency of use varies from 3 or 4 times in total to 6 or 7 times a year.

Mr Cooper, reports a gate on the route and Mr Norris, reports that an occupier opened a gate for him but does not state where. In response to the question whether there had ever been any gates on the path he replied no. None of the users report there ever being a stile on the route.

Mr Cooper also states that he was stopped or turned back by a property owner in the early 1990s. No other user reports having been challenged when using the route.

### **1.3 Documentary Evidence**

The 1998 Committee report attached examines evidence of:

Ordnance Survey Maps;

Yealmpton Tithe Map;

1910 Finance Act Map and Field Book; and

Yealmpton Parish Council Definitive Map Submissions

With their application the TRF referred to other historical commercial maps, which they state show the route as an 'other road' or 'inferior road'. An extract of one such map which shows the route as a through route is included but the map is not identified.

### **1.4 Landowner Evidence**

Following the 1997 application the owners of the properties on or adjoining the route were contacted for their views. This is detailed in the report at Appendix II. Mr Hawkins, who owned Cox's Cottage between 1984 and 1994, stated that when he purchased the property in 1984 it was impassable until cleared by the Manpower Services Commission. After that he saw horse-riders on three occasions but he raised no objections to that limited use. After the footpath signs were replaced in 1991 he saw horse-riders on two occasions to whom he explained that there was no right of way on horseback.

The subsequent owner Mr Kelly stated that there had been no use of the route by horse-riders during his occupancy as a result of the locked gate and stile erected by Mr Hawkins.

Mrs Harvey of Lyneham House also responded in 1997, having owned much of the land crossed by the route for the previous 4 years. She stated that staff had been instructed to turn back any horse-riders found using the footpath. She also stated that the route had been impassable prior to purchasing the land. It was cleared and gates fitted to enable them to drive sheep from one field to the other.

The current landowners were consulted in 2011 in respect of the TRF's application and they have completed Landowner Evidence Forms. Mr & Mrs Streak have owned Cox's Cottage for the last 8 years. They state that they have seen many people walking the footpath but not any horse-riders or motorcycles during that period. Mr Streak also comments that horse-riders and motorcyclists could not have entered past the stile. He believes the current stile was erected after 2001 as a photo from 2001 shows a gate in that position. Mr and Mrs Streak also oppose the claimed upgrading on the grounds of safety, suitability and the effects on their property, namely damage and disturbance to their drainage system and water supply. Whilst understandable concerns these are not issues which cannot be taken into consideration in determining whether or not higher public rights subsist over the route.

Mrs Reynard of Yeo Cottage has owned land crossed by and adjoining the route for 17 years but has lived nearby for 35 years. She completed a User Evidence Form in 1991 in respect of her use as a horse-rider, but subsequently withdrew her evidence prior to determination of the 1997 application. In response to the TRF's application she states that the footpath sign was reinstated in 1991, as it had been wrongly marked as a bridleway. Since then she has only seen walkers using the route and has not witnessed any horse-riders or motorcycles. She also raised concerns regarding the safety, suitability and the effect on her water supply and Mr Streak's septic tank.

Mrs Harvey also responded confirming that she and her gamekeepers have only ever seen walkers using the route, and that there had been no other use attempted during the 16 years of her ownership.

## **1.5 Consultations**

Statutory consultations on the TRF's application have been undertaken with the District and Parish Councils. The Parish Council opposes the proposed upgrading to BOAT, as it did the proposed upgrading to bridleway in 1998. The District Councillor, Keith Baldry, has raised safety concerns should the route be upgraded.

County Councillor William Mumford is also opposed to the proposed upgrading on the grounds of safety and suitability.

A number of other responses have been received during the consultation period from parishioners and a representative of the Campaign to Protect Rural England (CPRE).

A letter has been received from Robin Hogg, Chairman of the Plymouth and South Hams branch of the CPRE. He believes that the footpath should remain designated as such and opposes the upgrading to BOAT on the grounds of suitability, noise and environmental impact.

Letters have been received from Mr Spry at Worston Mill Farm and Mr and Mrs Weston-Baker at Worston Mill opposing the proposed upgrading. They also object on the grounds of safety, suitability and cost. Five User Evidence Forms have also been submitted from people confirming their use of the route as a footpath and objecting to the proposed upgrading on the basis that it will spoil the route.

It should again be noted that issues such as safety and suitability cannot be taken into consideration when determining whether or not the claimed rights subsist. All responses are included in full in the background papers to this report.

## **1.6 Discussion**

The County Council investigated the status of Footpath 33 following the Schedule 14 Application by the British Horse Society in 1997. On the basis of the evidence available at that time it concluded that the route had been subject to some public use on horseback but that such use was not sufficient to give rise to a presumption of dedication in the 20 year period prior to a calling into question of equestrian rights by Mr Hawkins in 1991. It should also be noted that for part of that 20 year period 1971-1991 the route was recorded on the Definitive Map and Statement as a RUPP and, as such, equestrian use would have been by right and therefore may not be capable of giving rise to a presumption of dedication.

Documentary evidence did not provide any additional information in support of the existence of higher public rights at Common Law.

The user evidence forms submitted by the TRF with their current application collectively cover a period from the early 1980s to 2003. It is well documented that use of the route, other than on foot, was prevented at the eastern end in 1991 by the erection of a locked gate with a stile, and later by a fence and stile, near Cox's Cottage. Motorcycles could only have accessed the route from the western end after 1991 and returned the same way. The user evidence forms make no mention of this obstruction, which infers that users did not go all the way through. The additional user evidence does not add any significant weight to the evidence of use previously submitted with the 1987 application.

The Natural Environment and Rural Communities Act 2006 also provides that the date of a schedule 14 application may be taken as the date at which the right of the public to use a claimed route was called into question. The TRF's application was made in 2005 and the relevant 20 year period would therefore be 1985-2005. This overlaps the earlier 20 year period 1971-1991 and the obstruction of the route at the eastern end. This blocking of the route to horseriders and vehicles is an effective interruption within the meaning of section 31(1) of the Highways Act 1980 and, as such, the use is not sufficient to raise a presumption of dedication of vehicular rights between 1985 and 2005.

No significant new documentary evidence has been submitted by the TRF to further support the implied dedication of vehicular rights at Common Law.

## **1.7 Conclusion**

It is therefore recommended that no Modification Order be made.





map ref: **SX 5853 - 5952**

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**DEVON COUNTY COUNCIL - DEFINITIVE MAP REVIEW: YEALMPTON PARISH**

**Informal consultation**

**Route 1: Schedule 14 application for upgrade of Footpath No. 33 to Byway Open to All Traffic**



drawing number HTM/PROW/11/98


date August 2011

scale 1:7500

drawn by HFC

Notation

Existing footpaths  Existing brideways 

Claimed upgrading of Footpath No. 33 to Byway Open to All Traffic A-B  (approx 1,260 m)

**Lester Willmington**

Head of Highways and Traffic Management



ED/98/6/HQ

Public Rights of Way Sub-Committee  
9 January 1998

**Schedule 14 Application  
Upgrading to Bridleway: Footpath No. 33, Yealmpton**

Report of the County Environment Director

**Recommendation: It is recommended that no Order be made in respect of the application.**

**1. Summary**

This report relates to a claim to upgrade Footpath No. 33, Yealmpton to bridleway status.

**2. Background**

Footpath No. 33, Yealmpton was originally recorded on the Definitive Map as a Road Used as a Public Path (RUPP) but had been reclassified as a public footpath following a Public Inquiry under the Limited Special Review of all RUPPs which Devon County Council undertook in the 1970s.

On 15 August 1997, Mrs J Cox on behalf of the British Horse Society submitted an application under Schedule 14 of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement for the Parish of Yealmpton by upgrading Footpath No. 33 to a bridleway. The application was accompanied by a Certificate of Service on the landowners, Mr J Kelly of Cox's Cottage, Yealmpton and the Lyneham Estate, a plan showing the extent of the claim, copies of correspondence associated with the claim and 14 User Evidence Forms. A further form was found in the existing correspondence file, bringing the total to 15.

The forms are all dated 1991, and would appear to have been prompted by a dispute over the signing of the route by Devon County Council. In 1987, the County Council was contacted by the then owner of Cox's Cottage, Mr A J S Hawkins, seeking clarification of the use of the footpath by motorcyclists. Mr Hawkins was informed that the route was in fact a bridleway and the footpath signs were replaced accordingly. It appears that the County Solicitor's Department took the view that following the Court of Appeal's decision in *R v Secretary of State for the Environment Ex parte Hood [1975]*, which stated that unless there was independent evidence that the way in question ought originally to have been classified merely as a footpath, nothing in Part III of Schedule 3 to the Countryside 1968 Act permitted a way originally classified as a RUPP to be reclassified as a footpath and, at the very least, it had to be a bridleway. The County Council maintained this position until 1991 when it decided that the *Hood* case could not be applied automatically to RUPPs which had already been reclassified under the 1968 Act. Neither was it open to the County Council to reconsider the status of reclassified RUPPs under s. 54 of the Wildlife and Countryside Act 1981 which states that "(a) [to] carry out a review of such particulars contained in the map and statement as relates to roads used as public paths" as that only applied to RUPPs still shown on the Definitive Map as such. Any change of status would therefore have to be done via the normal modification procedures allowed under s.53 of the 1981 Act. The signs were then changed back to "Public Footpath".

Mr Hawkins then began challenging horse-riders who had begun to use the lane as a result of the erection of bridleway signs, and who naturally resented the loss of this amenity. He finally erected a stile over a locked gate across the lane at the western boundary which has effectively stopped all public use apart from on foot to the present day. That gate has very recently been replaced by a newer fence and stile by the present owner, Mr J Kelly.

### **3. Description of Route**

Footpath No. 33 runs along a lane for almost all of its entire length from Lyneham to Yeo. It starts at the Lyneham road (Point A) just north of the access road to Lyneham and proceeds eastwards for approximately 790 metres to the site of a ruined cottage (Point B) immediately west of Allercombe Wood. It continues generally south-eastwards (approximately 80 metres of the hedge east of the ruin has been removed, and its north side is fenced) for approximately 405 metres to a stile (Point C) at the western boundary of Cox's Cottage and then another 50 metres along the driveway and past the Cottage to the Yeo road (Point D) where the county road comes to a cul-de-sac at Yeo Farm.

Previously, all the adjoining land belonged to the Bastard Family of Kitley, and the lane connected that eastern part of the Estate, comprising of Worston Mill and Yeo, with Lyneham House. The two cottages along it, Cox's Cottage and the ruin west of Allercombe Wood, both belonged to the Kitley Estate and housed their employees. Cox's Cottage at the eastern end was so called because it had previously been inhabited by one Charlie Cox, a tenant of the Estate, and his wife's family, also Estate employees, lived in the ruined cottage. When the Estate started to be broken up in the 1960s, Cox's Cottage was sold to a private individual, as were the other properties. The Lyneham Estate bought most of the adjoining land in 1995.

### **4. Basis of Claim**

Section 53(3)(c)(ii) 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 that a right of way which is shown on the Map and Statement as a highway of a particular description ought to be shown as a highway of a different description.

The Wildlife and Countryside Act 1981 s.66 defines a bridleway as "a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without the right to drive animals of any description along the highway."

### **5. User Evidence**

The application was accompanied by 14 user Evidence Forms from persons who had used the route for various periods. A further Evidence Form was found in the County Council's correspondence file, which had been forwarded by Yealmpton Parish Council in 1991. As the forms were completed over six years ago, attempts have been made to contact the persons with a view to seeking clarification of the information they provided, as well as their present views on the situation. Replies have only been received from a handful. Information has also been provided by Mr R Watts on the general condition of the route and its history.

Of the user evidence provided, one person claims use of the route on horseback from 1939, two from the early 1950s, one from the early 1970s, four from the late 1970s, one from early 1980s, five from late 1980s, and one from 1990. Those persons with the longest use are Mr and Mrs Spry and Mrs C Ricketts. Mr and Mrs Spry, who claim use of the route from 1939 and 1950 respectively, own Worston Mill Farm to the east and fields adjoining the route. Mr Spry states that he has used the route to take food to and move cattle (to access fields), exercise race horses, and has driven a horse and cart along it. Mrs C Ricketts claims use "on

and off since 1951...100 [times a year] at least", using the route as part of a 15 - 20 mile ride each time. Other use does not start until the early 1970s and then appears to increase from the late 70s onward. Four other persons claiming use from the late 1980s either own or live in property adjoining the route, or have associations with the Kitley and Lyneham Estates. Mrs S Reynard, who lives at Yeo Cottage (Yeo Farm) claims ownership of part of the route. Although previously having submitted a User Evidence Form, and stated she had been riding the route from the late 80s, she now opposes the upgrading on the grounds that increased traffic on the Lyneham road would make the exit there dangerous. Two others live at Old Treby Farm immediately to the north, and a third with Estate connections has chosen to withdraw evidence. One other person, Mrs V Milden, who lived in Brixton, stabled her horse at Worston Mill Farm between 1979 (when she started using the route) and 1983 when she rode the route weekly. From 1983 until 1991, when her horse was stabled elsewhere, she rode the route only 2 - 3 times a year.

Mrs Milden also states that she was stopped by Mr Hawkins in 1991 when she was out riding with two friends and told it was not a bridleway and that they should not use it. Mrs S Treeby and Mrs S Axell, who both also live in Brixton, state in their forms that they too were stopped by Mr Hawkins in 1991.

In summary, of those persons who can be said to be members of the general public, only one has ridden the route for over 20 years. One person refers to use over 18 years, four persons speak of between 10 to 15 years use, one person claims 7 years use, and two persons claim 3 and 1 years use respectively.

Mr Ray Watts, a previous Yealmpton Parish Councillor and the present Parish Paths Partnership Co-ordinator has submitted a statement providing some background history to and his own use of the route. He states that he has knowledge of the area since 1958 and has tried to walk the route on several occasions but had been unable to use it in its entirety until it was cleared by the Manpower Services Commission in the early 1980s. Brambles had formed thickets across the route in at least three locations and he had been either forced to retrace his steps or divert into the adjoining fields in order to continue. After its initial clearance, the route once again became overgrown after about 2 - 3 years with brambles and again he found himself having to walk through fields alongside the footpath. In 1991, having joined Yealmpton Parish Council, efforts were again made to clear the route, which took three days, and he himself has cut the route once a year since then.

Mr Watt's description of the route as impassable in the late 1950s is corroborated by the Yealmpton Parish Council's 1950s submissions to Devon County Council in which it stated that the lane was "at present impassable owing to overgrowth." Furthermore, the Divisional Surveyor's comments in 1953 state that the route was obstructed in two places by barbed wire fencing and was rarely, if ever, used.

## **6. Landowner Evidence**

The present owner of Cox's Cottage, Mr J Kelly, has been interviewed, and the previous owner, Mr Hawkins, has submitted a statement. Information has also been obtained from previous correspondence between Devon County Council and Mr Hawkins dating from the early 1980s. Mrs S Harvey of the Lyneham Estate has completed a Landowner Evidence Form.

Mr Hawkins stated that when he bought the Cox's Cottage in 1984, the route was totally impassable for that first summer, until cleared by the Services scheme, and that he had been told by neighbours that it had been impassable for some years before. After the clearance, he had only been aware of horse-riders using the route on three occasions, but raised no objection to that limited use. Mr Hawkins also stated that throughout his residence between

1983 and 1994, he never saw any of his immediate neighbours use the route on horse-back, which included Mr and Mrs Spry whom he regularly saw riding past on the metalled road to exercise their horses elsewhere. After the footpath signs were replaced in 1991, he only saw horse-riders on two occasions, involving no more than three ladies who rode in each others company (whose names he did not know), and to whom he explained that there was no right of way on horseback.

Mr Kelly stated in his evidence that there had been no use of the route by horse-riders during the years of his occupancy as a result of a gate erected by Mr Hawkins.

Mrs Harvey has indicated the extent of land which has been owned by the Lyneham Estate, to include the route, for the last four years. She states that all farm staff have been instructed to turn back horse-riders found using the footpath. The route had been impassable prior to purchasing the land, blocked by fallen trees and overgrowth. It was cleared and gates fitted to enable them to drive sheep from one field to another.

## **7. Documentary Evidence**

### Ordnance Survey Maps

The route is shown on all Ordnance Survey maps from the 1st edition 1" 1809 map onward as a defined lane.

### Yealmpton Tithe Map 1843

The route is shown brown washed as are all roads, lanes, farms and field access tracks. Roads in general are given Hereditament Number 1363 in the Apportionment, although the route itself is not specifically numbered. Some "Roads" have specific Hereditament numbers in the Apportionment although the numbering does not appear to distinguish between public or private, tithed or untithed routes. Two defined ungated field accesses are shown emerging north and south from the middle part of the route, and are represented in exactly the same manner as the main route itself. The Map shows the route as gated in two places, the first being immediately east of the ruined cottage, and the second at the western boundary of Cox's Cottage.

### Finance Act 1910 Map and Field Book

A hand coloured copy of the Finance Act 1910 map for the immediate area has been provided by the applicant. The route is shown excluded from adjoining properties in the coloured boundary outlines, but certain sections of the route are shown as included in adjoining plot no. 279 by the use of braces. The field book reference makes a deduction of £28 for a public footpath within plot no. 279, although the location of the footpath is not specified.

### Yealmpton Parish Council Definitive Map Submissions

The 1950s parish submissions describe the route as "a path used in the past probably as a cart track connecting the main road at the top of Lyneham with Yeo". Based on the Parish Council's description, Devon County Council correctly identified the route as an accommodation road with public footpath rights ("CRF" scribbled by the County Surveyor's office on the form) and duly recorded it as a Road Used as a Public Path (RUPP) on the Definitive Map. Under the Limited Special Review which reclassified such RUPPs, Yealmpton Parish Council maintained its true status was that of public footpath, and has never wavered since then.

## **8. Consultations**

Statutory consultations have been undertaken with the District and Parish Councils. The District Council has no objection to the proposed upgrading. However, the Parish Council

opposes the proposal, and added that “It should be noted that this council took a similar view when this was last unsuccessfully raised in 1991.”

## **9. Conclusion**

The route would appear to have been used as an accommodation lane in the past with private rights of way for tenants and occupiers of certain adjoining land, including possibly droving rights for farms in the vicinity. The route appears to have been subject to some public use on horse-back in more recent times, since its clearance by the Manpower Services Commission in the early 1980s, and as a result of the mis-signing of the footpath as a bridleway in 1987. However, such public use did not cover the 20 year period required under s.31 Highways Act 1980 prior to the calling into question of public equestrian rights in 1991 by Mr Hawkins, and therefore does not amount to a dedication.

The Tithe and Finance Act maps do not provide any additional information in support of the existence of higher public rights. Certainly the Finance Act map does not treat the entire lane as excluded from adjoining plots which suggests it was not considered to be a public road.

In the absence of proof of dedication as a bridleway, and the inconclusive nature of the documentary evidence provided, it is recommended that no Order be made in respect of the above application.

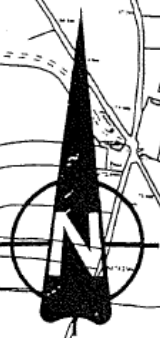
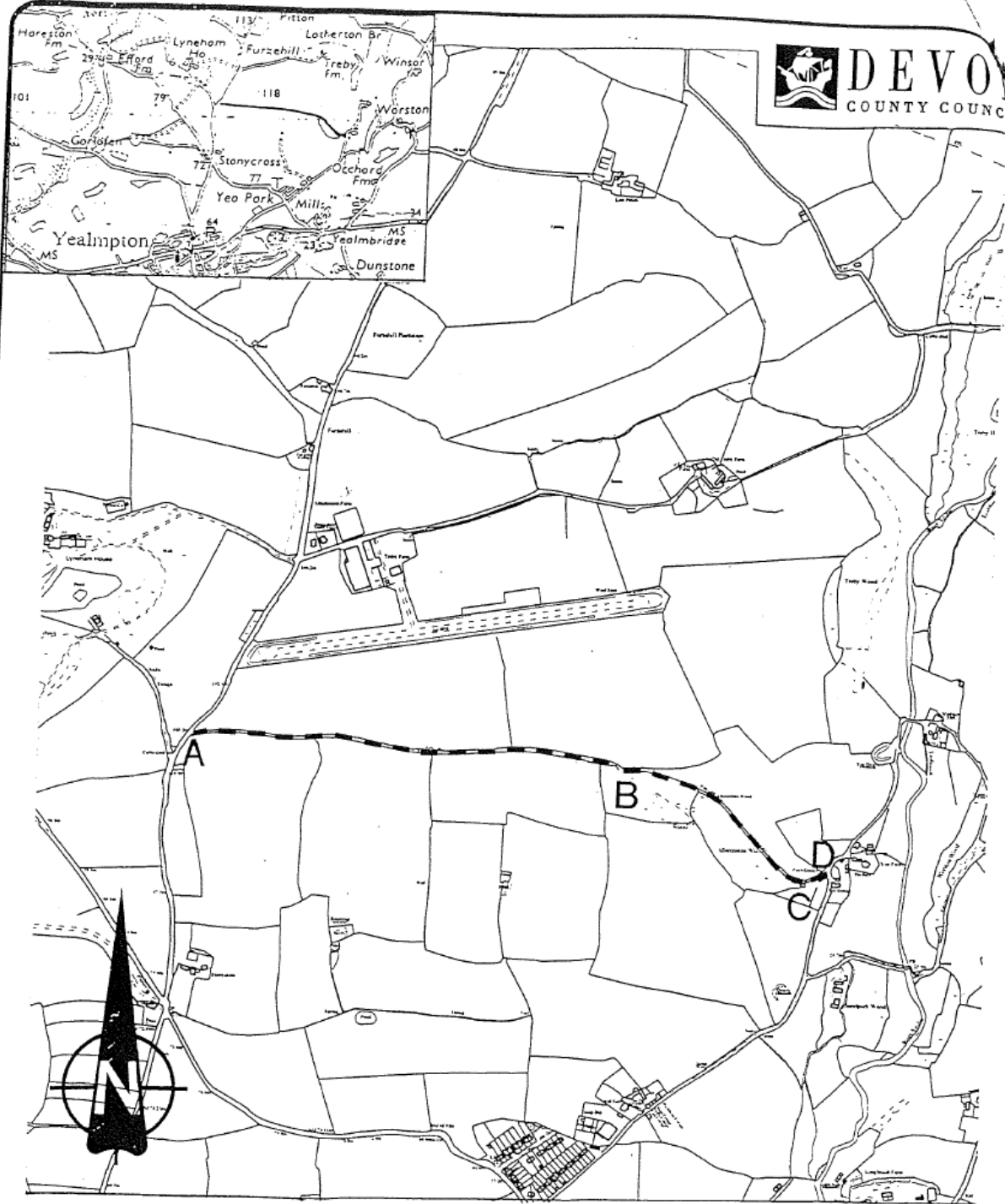
## **10. Local Government Reorganisation**

There are no direct implications for local government reorganisation in Devon.

Edward Chorlton

## **Electoral Division: Wembury and Erme**

ip091297pra  
sc/cr/fp33 yealmpton  
2 hq 151297




map ref SX 5752

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**Proposed Upgrading to Bridleway  
Footpath No. 33, Yealmpion**

drawing number ED/PROW/98/1  
 date Dec.97  
 scale 1:10,000  
 drawn by IP

Notation

Footpath No. 33 A - B - C - D 

 Environment  
**Edward Chorlton**  
 COUNTY ENVIRONMENT DIRECTOR