

## **Proposed Diversion: Bridleway No. 44, Shaugh Prior**

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 a Public Path Diversion Order be made under Section 257 of the Town and Country Planning Act 1990 to divert Footpath No. 44, Shaugh Prior from the line A – B to the line A – C – D – E – F as shown on drawing no. HTM/PROW/12/114 and that if there are no objections, or if such objections are made and subsequently withdrawn, it be confirmed as an unopposed order.

### **1. Summary**

The report examines an application by Sibelco UK to divert a public bridleway in the parish of Shaugh Prior to enable permitted development to take place. The current proposal is shown on plan no. HTM/PROW/12/114.

### **2. Background**

Planning permissions relating to the winning and working of china clay at Shaugh Lake and Lee Moor date originally from the 1950s, with further additions and amendments made in the 1960s and 1970s. The main Lee Moor working area was granted a further permission as the result of a major planning Inquiry in 1971.

Bridleway No. 44 is situated between two clay pits: Shaugh Lake to the north west and Lee Moor to the south east. Originally these were operated by two separate companies: Sibelco UK Ltd (formerly Watts Blake Bearne) and Imerys Minerals Ltd (formerly English China Clay) respectively. As the two companies were previously pursuing separate operations, they had not worked right up to the joint boundary of their respective permissions and had left a narrow bridge of land over which the bridleway runs, although the bridleway has been diverted on two previous occasions as the operational areas have expanded.

In 2009, following the decision of Imerys Minerals Ltd to cease china clay production at its Lee Moor Complex, the companies entered into an agreement whereby Sibelco UK will continue to work some of Imerys' sites, within the existing mineral planning permissions. In particular Sibelco is continuing mineral extraction within the Lee Moor pit immediately south of Shaugh Lake pit, with the intention of combining the two permitted and contiguous areas of extraction. At present the County Council as Mineral Planning Authority is considering the review of the conditions of the old mineral permissions under the Environment Act 1995 (the ROMP applications). The mineral operators have agreed in principle to surrender (without compensation) their existing rights to extract or tip in adjoining areas within the National Park, known as areas X, Y and Z – see supplementary plan. This in principle agreement is based on the operators' ability to access the clays between the Shaugh Lake and the Lee Moor pits and the final legal agreements to protect areas X, Y and Z will not be concluded until such time as the operators have confidence that they can access the clays beneath this right of way.

As a result, in 2009, Sibelco made an application for the diversion of the bridleway between points A – B.

The proposal is to divert the bridleway onto the line A – C – D – E – F through the northern area of Shaugh Lake workings, which is currently in the process of being restored to open grassland, to rejoin the cul-de-sac county road approximately 200 metres north of Blackaton Cross, where the bridleway continues. The proposed route follows an existing sand road through the site. Informal consultations in March 2010 resulted in objections from the Ramblers' Association and Open Spaces Society. The main concerns were inconvenience due to the length of the diversion and gradient. A site meeting was held with representatives of the Ramblers' Association and the Dartmoor Preservation Association (representing the Open Spaces Society) in January 2011. The Company explained why the diversion was being sought, and an inspection of the proposed route carried out to discuss accommodation works. Subsequently, the Ramblers' Association and Open Spaces Society confirmed that they would have no objection to the order, provided that the existing route would not be stopped-up until the new route had been established to the satisfaction of the County Council. Such provisions are set out in the legislation.

#### Previous Order

An order to divert the path, under section 257 of the Town and Country Planning Act 1990, was made under delegated powers and published in September 2011. Nine letters of objection were received from the Shaugh Prior Parish Council, local commoners and residents. The main concerns related to the effect the diversion would have on the Shaugh commoners who currently use the existing route when moving stock. One other objection was received from Alan Kind of the Byways and Bridleways Trust, in relation to the specification of the width in the order and to that part of the order which modified the definitive statement.

A meeting was held with the commoners and Parish Councillors to discuss the objections. At the meeting it was also brought to the attention of the County Council that, whilst Sibelco and Imerys own the mineral freehold, the surface of the area crossed by the proposed route is leased to Sibelco by the Maristow Estate and, as freehold owner of the surface, the Estate should have been notified of the order.

The concerns of the commoners were acknowledged, but it was felt that these related to the expansion of the pits and resulting loss of land used by the commoners for grazing and driving animals, rather than being of direct relevance to the bridleway diversion. These issues would have been considered when the mineral permissions were originally granted and the diversion of the bridleway does not allow objectors to seek to re-argue the merits of the development for which planning permission has been granted. The bridleway itself does not carry a general right to drive animals – such use would be in exercise of commoners or occupiers rights and therefore does not rely on the existence of public rights over the land in question. It was however acknowledged that commoners would also need to use the part of the route of the proposed bridleway diversion should it be confirmed and, following a site inspection, Sibelco agreed to a number of practical measures to accommodate such use. These included the removal of fencing to make more of the restored area available for grazing, improve access from the road, and also to create an access from the bridleway onto the moor near point D to provide a more direct route for stock.

With regards to the interests of the Maristow Estate, current government guidance, DEFRA Rights of Way Circular 1/09, states:

*“When the diversion or alternative right of way is proposed to be provided and dedicated over land not owned by the developer, the consent of the landowner(s) to the proposed dedication must be obtained before the order is made.”*

Although this is only guidance, the County Council therefore initially took the view that Sibelco UK would need to obtain the consent of the Estate before the order could be proceeded with. However, having sought their own legal opinion, the Company considers that, as the property is let on a long lease basis, they constitute the landowner for the purposes of the 1990 Act.

The order would however still be subject to the statutory consultation process and the Estate formally notified as an interested party.

The decision was made to abandon the order as made but seek to make a new order for the same route, with minor amendments to the specifications for the proposed route.

### **3. Site Meeting**

A further site meeting was held on 15 January 2013 with a number of those who had objected to the previous order to identify where the company had already carried out works and to discuss any further concerns. The company again explained why the diversion was being sought, and reiterated that although an area of 11 acres of common would be lost, a further 200+ acres of land within the Dartmoor National Park area would be protected in perpetuity through the surrender of existing permissions. In addition it was explained that the restored areas to the north of the proposed route would be open and available. The commoners still had concerns regarding the loss of access through operational areas elsewhere. This was acknowledged by the company and it was agreed that further consideration could perhaps be given to providing access by agreement for individuals over company land. This would be the subject of further discussions between the Company and commoners. With regards to the bridleway diversion, a site inspection identified further measures which could be taken by the company to accommodate use by the public and commoners. This included works to harden the proposed track between points E – F. The company also agreed to maintain communications with the commoners and discuss their specific requirements regarding access as a whole.

A meeting was also held on 17 January 2013 with Sibelco and the agent for the Maristow Estate. The Estate's principal concern appeared to be whether the existing permissions allowed the joining of the two pits, and also the effect the development would have on tenants and commoners.

### **4. Highway Considerations**

Section 257 of the Town and Country Planning Act 1990 sets out the criteria for making and confirming a public path order to stop-up or divert a footpath or bridleway affected by development. They are:

***Section 257(1):***

***Subject to section 259, a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied that it is necessary to do so in order to enable development to be carried out:***

- (a) in accordance with planning permission granted under Part III, or***
- (b) by a government department.***

Planning permission for the winning and working of minerals was granted for Shaugh Lake and Lee Moor pits in 1951 and 1958 respectively. The permission areas share a joint boundary, and the County Council is satisfied that the existing permissions enable the two pits to be combined. The Inspector at the 1971 Inquiry noted that the proposed pit

development would see the Lee Moor and Shaugh Lake pits join and that it would also necessitate the closure of part of Bridleway No. 44.

Without an order to stop-up or divert the bridleway the proposed development cannot be carried out. Therefore it is felt that this test is met.

(Section 259 of the Town and Country Planning Act 1990 provides that an order shall not take effect unless confirmed by the Secretary of State, or unless confirmed as an unopposed order by the authority who made it.)

**Section 257(2):**

**An order under this section may, if the competent authority are satisfied that it should do so, provide:**

**(a) for the creation of an alternative highway for use as a replacement for the one authorised to be stopped up or diverted, or for the improvement of an existing highway for such use;**

**(b) for authorising or requiring works to be carried out in relation to any footpath, bridleway or restricted byway for whose stopping up or diversion, creation or improvement, provision is made by the order;**

**[(c) not included]**

**(d) for requiring any person named in the order to pay, or make contributions in respect of, the cost of carrying out any such works.**

An order under section 257 may therefore provide for the stopping-up of a footpath, bridleway or restricted byway without replacement, for the diversion of a footpath, bridleway or restricted byway onto a new line, or for the stopping up of a path or way subject to the provision of an alternative path. An alternative path, unlike a diversion does not have a terminus on the original path.

It is felt that the preferred option should be for a diversion of the bridleway onto the proposed route. The other option, to enable the permitted development to take place, would be to provide for the stopping-up of the existing bridleway between points A – B, with no replacement. This would require a deviation for users of 4 kilometres, via the Shaugh Prior - Cadover Bridge road, to rejoin the existing bridleway near Blackaton Cross. It would also sever two areas of Dartmoor Common, within the boundary of the National Park. Whilst, as stated previously, the bridleway does not carry public rights to drive animals, it is also used by commoners for moving stock on and off the moor. Sibelco acknowledge that commoners would also want to use the new route to avoid the road and have therefore agreed to take further measures to accommodate their needs as well as those of bridleway users.

The Company would be required to carry out works to improve the surface of the new bridleway to bring it to an acceptable standard before the old route is extinguished.

**Department for Environment, Food and Rural Affairs Rights of Way Circular 1/09; Paragraph 7.15:**

**The local planning authority should not question the merits of planning permission when considering whether to make or confirm an order, but nor should they make an order purely on the grounds that planning permission has been granted. That planning permission has been granted does not mean that the public right of way will therefore automatically be diverted or stopped up. Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties adjoin or are**

**near the existing highway should be weighed against the advantages of the proposed order.**

With regards to the disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally, a stopping-up will require a deviation of 4 kilometres via roads, therefore the proposed diversion would be preferable. The diversion route is 275 metres longer than the existing route. From point F walkers or riders have a general right of access over the moor. Should they wish to continue along, or adjacent to, the minor road to rejoin the existing route at Blackaton Cross the total diversion would be 475 metres. The diversion is not considered a significant inconvenience given the length and general character of the existing route.

Having regard to the effect on persons whose properties adjoin or are near the existing bridleway, there are no residential properties in the vicinity. As discussed above, the stopping-up of public bridleway rights would not in itself disadvantage the local farmers, who use the same alignment to drive cattle, as they are exercising private or commoners rights and are not therefore relying on public rights. They would be affected by the physical loss of the land if the Shaugh Lake and Lee Moor pits are combined as proposed. However, the effect of the development on agriculture and commons would have been considered when the planning permissions were granted and cannot be reconsidered at this stage.

The advantages of a diversion order is that it would allow the exploitation of an important mineral resource, whilst ensuring the continuity of a means by which equestrians, walkers and cyclists can travel between the Saddlesborough and Blacka Brook areas. Furthermore, there would be a significant benefit to the amenity, environment and agriculture by the preservation of areas X, Y and Z. Therefore it is felt that any disadvantages to the public arising from the diversion are not so significant as to outweigh the advantages of the diversion.

## **5. Other Considerations**

There is no alternative route for consideration in this instance.

## **6. Conclusion**

The application would appear to meet the requisite legal tests for the making and a public path diversion order under section 257 of the Town and Country Planning Act 1990. Improvements will be required to the surface of the new bridleway, but the order will state that the old way is not extinguished until these have been carried out to the County Council's satisfaction. It is recommended that an order be made and published.

## **7. Financial Considerations**

The landowners have agreed to meet the County Council's standard charge for processing a diversion order application and will meet the cost of all accommodation work required to establish the new path.

## **8. Sustainability Considerations**

There are no implications.

## **9. Carbon Impact Considerations**

There are no implications.

## 10. Equality Considerations

There are no implications

## 11. Legal Considerations

Section 4 above refers.

## 12. Risk Management Considerations

There are no implications.

## 13. Options/Alternatives

If the decision is taken not to proceed with a diversion order it is likely that Sibelco UK Ltd will apply for an order to stop-up the bridleway with no replacement. Without such an order the permitted development cannot take place and opens up the possibility that the company may wish to exercise their options for development on Areas X, Y and Z.

## 14. Reasons for Recommendation/Alternate Options Considered

The application would appear to meet the relevant legal tests.

Lester Willmington  
Head of Highways and Traffic Management

### **Electoral Division: Bickleigh & Wembury**

Local Government Act 1972: List of Background Papers

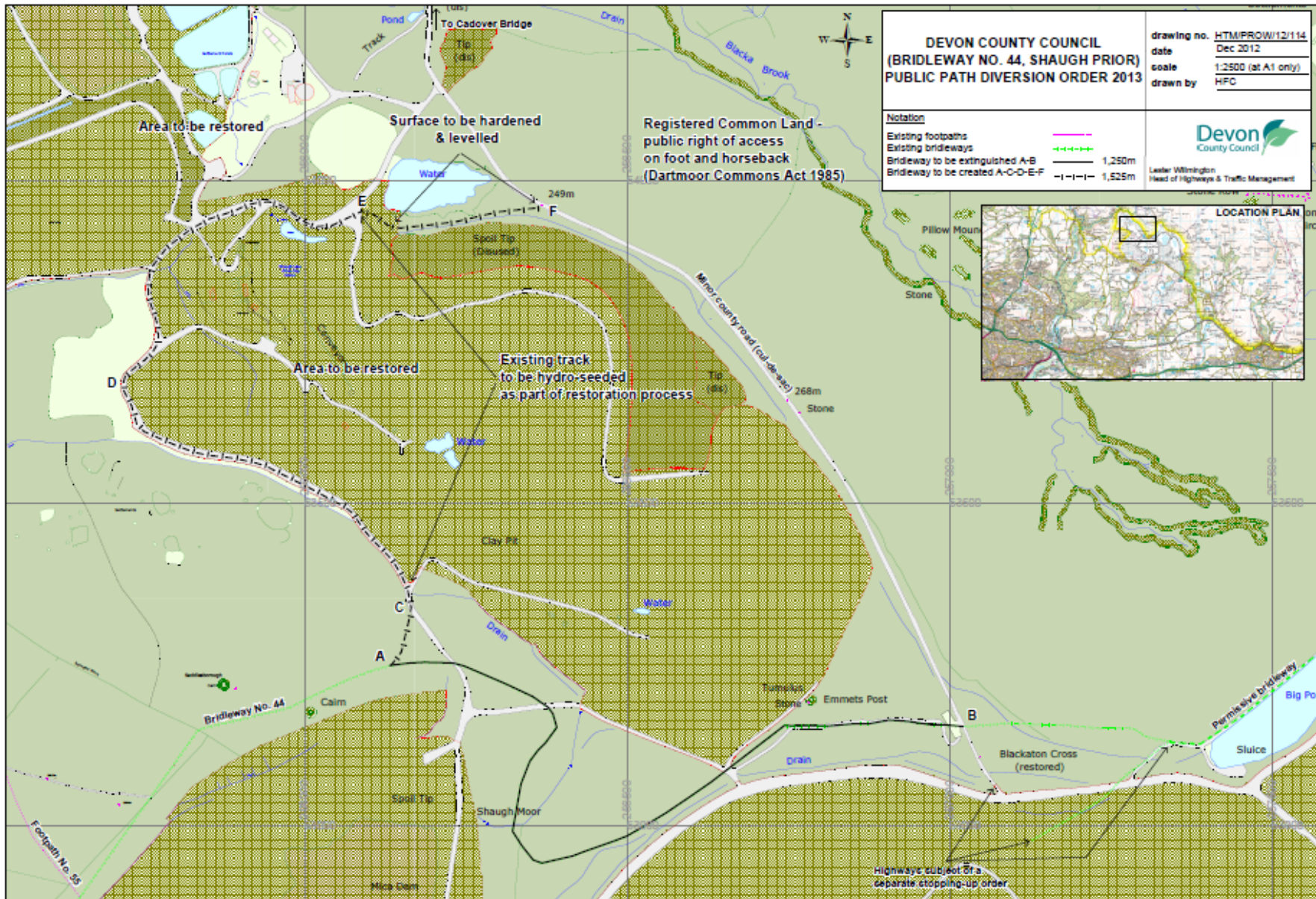
Contact for enquiries: Helen Clayton

Room No: ABG, Lucombe House, County Hall, Exeter

Tel No: 01392 382602

Background Paper	Date	File Ref.
Correspondence file	2009 – date	

hc290113pra  
sc/cr/proposed diversion Shaugh Prior BW44  
03 150213



**DEVON COUNTY COUNCIL**  
**(BRIDLEWAY NO. 44, SHAUGH PRIOR)**  
**PUBLIC PATH DIVERSION ORDER 2013**

drawing no.	HTM/PROV/12/114
date	Dec 2012
scale	1:2500 (at A1 only)
drawn by	HFC

**Notation**

Existing footpaths	—	1,250m
Existing bridleways	—	1,250m
Bridleway to be extinguished A-B	—	1,250m
Bridleway to be created A-C-D-E-F	—	1,525m

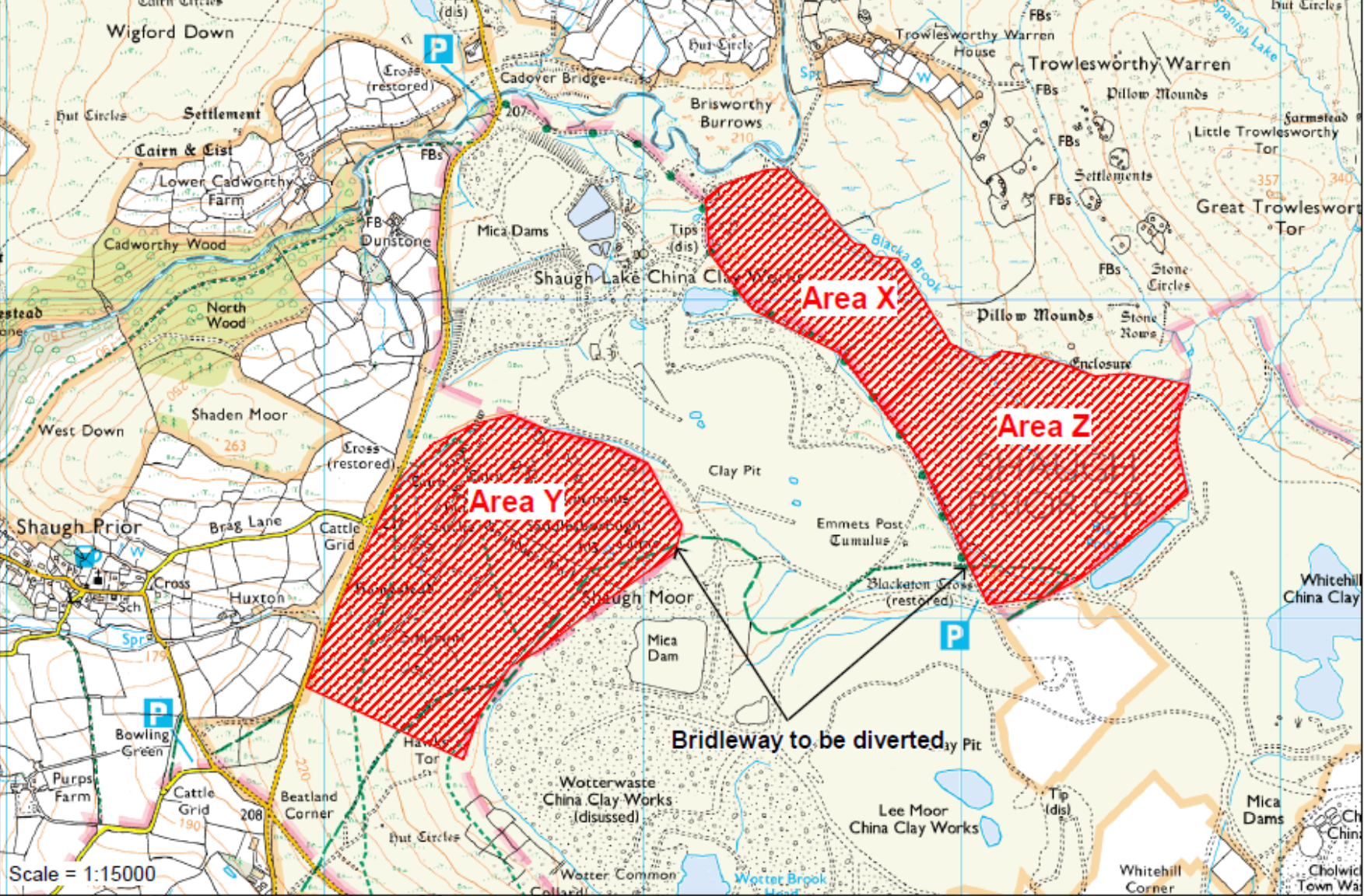
**Devon**  
 County Council

Leslie Willington  
 Head of Highways & Traffic Management



Highways subject of a separate stopping-up order

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Scale = 1:15000