

**Definitive Map Review 2012/13
Parish of Berrynarbor - Part Two**

Report of the Head of Highways, Capital Development and Waste

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 Proposal 3, as shown on drawing number HTM/PROW/13/70.

1. Summary

The report examines the third proposal arising out of the Definitive Map Review in the parish of Berrynarbor in North Devon District and is a continuation of the report HCW/13/9.

2. Background/Introduction

The original survey, under s. 27 of the National Parks and Access to the Countryside Act 1949, revealed nineteen footpaths and two bridleways in Berrynarbor, which were recorded on the Definitive Map and Statement, Barnstaple Rural District with the relevant date of 1 September 1957.

Other changes were noted in previous report.

3. Consultations

The current review began in March 2011 with a Public Meeting held in the in the Manor Hall attended by about 30 people.

Public consultations were carried out through January to March 2013 for the six proposals that were put forward following the parish meeting. The review and proposals were advertised around the parish, in the community shop, in the North Devon Journal and notices were placed at the ends of each proposal.

The responses were as follows:

County Councillor Andrea Davis	-	queried individual routes
North Devon District Council	-	no comment
Berrynarbor Parish Council	-	commented on individual routes
British Horse Society	-	no comment
Byways and Bridleways Trust	-	no comment
Country Land & Business Association	-	no comment
Open Spaces Society	-	no comment
Ramblers' Association	-	no comment
Trail Riders' Fellowship	-	no comment

Six valid proposals arose as a result of the consultation. Proposal 3 is considered in this report. The other proposals will be the subject of future reports.

4. Conclusion

It is recommended that Proposal 3 is not added to the definitive map, from the Sterridge Road via point G – H - I as shown on drawing number HTM/PROW/13/70.

5. Financial Considerations

The implications/consequences of the recommendation have been taken into account in preparing the report. Financial implications are not a relevant consideration to be taken into account under the provision of the Wildlife and Countryside Act 1981. The Authority's costs associated with Modification Orders, including Schedule 14 appeals, the making of Orders and subsequent determinations, are met from the general public rights of way budget in fulfilling our statutory duties.

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 preparation of the report.

10. Risk Management Considerations

There are no implications.

11. Public Health Impact

There are no implications

12. Options/Alternatives

The County Council has statutory duty to undertake a review of the Definitive Map and Statement under the Wildlife and Countryside Act 1981 and is undertaking this duty through the parish by parish review across the county.

13. Reasons for Recommendation/Alternate Options Considered

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

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Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence files	2012 - date	AS/DMR/BERRYNARBOR

as241013prw
sc/cr/dmr Berrynarbor part 2
03 hq 111113

Background to the Proposals

1. 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 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.

Highway Act 1980 Section 31(6) States a landowner may deposit with the county council, a map and statement that indicates what way (if any) over the land he admits to having dedicated as highways, for a period of years. To the effect that *no additional way over the land* delineated on the said map has been dedicated as a highway since the date of the deposit. This is in law sufficient evidence to negate the intention of the owner or his successors in title to dedicate any such additional way as a highway.

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.

Proposal 3: Addition of a public footpath from the Sterridge Valley county road along an old track past The Woodlands to re-join the county road near Venture Cottage.

Addition of a public footpath from the Sterridge Valley county road, along an old track past The Woodlands to re-join the county road near Venture Cottage. The route is shown between points G - H – I on drawing no. HTM/PROW/13/70.

Recommendation: It is recommended that no Modification Order be made in respect of proposal 3.

1. Background

During the course of the Review in April 2012, Berrynarbor Parish Council contacted Devon County Council to inquire if the route of Proposal 3 was a public right of way. They were told it was not a right of way and that user evidence would have to be gathered to show the public have acquired the rights to use the claimed route. Shortly afterwards, landowners Mr & Mrs Reynolds also contacted the Public Rights of Way section to ask if an application had been made to add a public right of way over their ground and they were told that no application had been made.

No Schedule 14 Application was received. Three individual User Evidence forms were submitted. This claim has therefore been investigated as part of the Parish Review.

2. Description of Route

The route commences at point G on the Sterridge Valley road, also known as Sterries Valley, just south of Footpath No.16. It proceeds in a generally south, south west direction, steeply uphill to point H, then turns south in an old lane before being dissected by the private access to Woodlands House, it crosses a dilapidated culvert, turning south, south easterly through a rough garden area then steeply up on a narrow section cut through bedrock between old properties to re-join the Sterridge Valley road at point I, near Venture Cottage. The claimed route forms the shape of an archery bow, the county road forming the 'string of the bow'. The first section of the route has a concrete surface then a mud and stone surface before turning to bedrock.

3. Documentary Evidence

Ordnance Survey Mapping

The 1804 Surveyor drawings (the 1st topographical map survey) shows, at a small scale of 2" to 1 mile, the whole area around Berrynarbor. This survey was a topographical survey showing the lie of the land. Its purpose was to record everything that the surveyor saw. It made no differentiation between public and private roads or land only recording topographical features of the ground.

The road network around Berrynarbor parish was very different than that of the network today, and many routes shown on this map are not public highways. Only parts of the road through the Sterridge valley are similar to today's road network. The shown route from the Berry Down area is through Ruggaton on a ridge road, which then looped through the bottom on the Sterridge Valley probably through the string of the bow.

1886-7 1st Edition OS map 25" to 1 mile, published 1891. Shows the old line of the lane and that the new 'the string of the bow' has come into existence. These maps carried the OS disclaimer that the OS did not claim to show the status of any way shown.

1904-1906 2nd Edition OS map 25" to 1 mile. The claimed route is shown as a minor lane on this map. The county road, 'the string of the bow', is clearly shown as the more major route.

It is shown on subsequent OS maps as a minor lane.

Tithe Map 1845.

The purpose of the Tithe Map was to gather tithes for the church and the topographical information is incidental. The roads of the day were shown because this land was unproductive and therefore not titheable. This map showed the original layout of routes in the parish, which varies considerably from that of the maintained road network of today.

The claimed route is shown as a defined unproductive lane throughout its length in a similar manner to other routes in the parish, some of which are now publicly maintained and others which are private. The continuation of this route through Ruggaton and Lower Cockhill are examples of routes that are not public.

Therefore, apart from its topographical information, this Tithe Map has little to offer in the way of evidence of a public route.

Map of Land in the Parishes of Ilfracombe, East Down and Berrynarbor Devon. Property of AD Bassett Esq 1854.

This is a detailed large scale map of the Estate property. It shows the parish in the same way as the Tithe Map shows the area, with roads that are not public today. It also shows some small holdings in other private ownership.

Parish Council Minutes from 1894

From the inception of Parish Councils in 1894, they have kept detailed minute books that were audited by an independent auditor and kept in a way so as to prevent tampering with the contents. The Parish minutes often provide contemporaneous accounts of what happened in the parish. From 1896 Parish Council's had powers to improve roads and make them parish roads repairable by the inhabitants at large.

Berrynarbor Parish Council were diligent in their duties and kept excellent minute books of their quarterly meetings, dating from their first meeting on 4 December 1894.

May 2nd 1896

A Special meeting of this Parish Council for the purpose of considering the Local Government (Highway) Bill now before Parliament. The object of the said Bill is to transfer the maintenance of highways in every rural parish, to the Parish Council.

After reading the Bill and considerable discussion the Parish Council unanimously resolved to support it. Parish Council members each signed a petition and the clerk was instructed to send it to the Member of Parliament for his support." They concluded that if this Bill becomes law it "would be of a great benefit to this parish".

July 10th 1897.

The Council moved the following resolution, that this Council ask the District Council [Barum or Barnstaple District Council] to improve the corners in the road by Sterries Bridge, which is south of the claimed route. Another road by Old Rectory gate was also as to be improved.

October 9th 1897

The principal business of this meeting was “this question of improving the corners in the road by Sterries Bridge **and the taking over the road through Sterries Valley by the parish.** In reference to the improvement of the corners.”

The Clerk read the following letter from the District Council.
Barnstaple 5 October 1897

Sir

Improvements of the Roads in Berrynarbor. “Adverting [referring to] to the Resolution passed by your Council 10th July last, as to the dangerous state of the Roads by Sterries Bridge and the Old Rectory Gate, Berrynarbor, the matter was referred to a committee who have now made their report, in which they recommend that the necessary work should be carried out at a cost not exceeding £18. The District Council is prepared to carry out the necessary works to make the proposed improvement provided the District to be benefitted thereby will contribute one half of the work thereof.”

Yours truly

WH Tollen Clerk.

After considerable discussion it was resolved that a small committee be formed from the members to collect subscriptions and assist in carrying out the work. Committee appointed 5 members including CH Basset [Chairman] and Thomas Richards. The clerk was directed to inform the District Council.

At the same meeting of October 9th 1897

The clerk read correspondence forwarded by the District Council with a plan (for the consideration of the Berrynarbor Parish Council) which had taken place between the District Council and Messer's Pitt Tuckers & Son, agent to Mrs Basset [owner of Watermouth Estate] in “reference to the taking over the road through Sterries Valley and Smithen, and the road commencing from the church and ending to and adjoining the High Road at the head of the farm called Chichesters occupied by Mr Richards, and asked the opinion of this parish council thereon.”

After debate it was resolved that Parish Council approves of the Parish taking over the roads as shown on this plan, and would ask Rural District Council to carry it into effect, and see that the roads meet their requirements.

A second resolution was suggested “That the portion of road between the new Smithen Farm house and the old one be made wider.” At a vote this resolution was lost.

January 8th 1898

The committee appointed to assist in the improvement of the corners at Sterries Bridge presented their report and was accepted by the Council. “The Council expressed satisfaction with the improvement of the corners and also the manner in which the work had been carried out, and thanked those who had contributed towards half of the cost.”

“In reference to the taking over of the Smithern Road by the parish” [The continuation of the road between Smithern and Sterries Bridge, not the claimed route], the Chairman informed the Council that the Magistrates appointed to inspect the road had given their decision against them, and would not sanction the taking over of the road by the parish. The Council “expressed indignation at the Magistrates decision as they considered this road would be of benefit to the parish.” Mr Thomas Richards moved and Samuel Bowden seconded the following resolution. That the Parish Council express their regret that the Magistrates have refused to sanction the taking over of the Smithern Road by the parish and would ask the District Council to invite the Magistrates to re-consider their decision.”

March 26th 1898

“(The question of the Sterridge Road and also the road leading near the Church to Chichesters Farm and ending on the Highway leading to Berry Down having arisen out the minutes of the previous meeting) **The Chairman said he was pleased to announce that the matter was settled, and that in future the above named roads, Would be parish roads.**” A letter of thanks was sent to the Rector thanking him for granting the land necessary for the improvement of the corners near Sterries Bridge.

The next reference in the Parish Council’s minute books is:

6th March 1930 Road by The Woodlands

When it is resolved that a letter be written to Mr GD Smith about Road by The Woodlands “pointing out that the same is an occupation road and that Parish Council have no control over same”.

This is considered to relate to the claimed route of Proposal 3. It clarifies Proposal 3 was not the responsibility of the Parish Council in 1930 and the parish were not spending public money on this occupation road.

Summary of Parish Council minute book entries

These books show Berrynarbor Parish Council gathered public subscriptions to help meet the cost of bringing the whole Sterridge valley road, which was a private accommodation road not repairable by the inhabitants at large, up to a standard so it could be adopted as a public road. It became a public road for the first time in March 1898. This public road did not include the route of Proposal 3.

Mrs Basset Watermouth and Umberleigh Estates Steward Accounts 1894 – 1906

May 1898

The accounts ledger of May 1898 under the heading of Roads, shows the Watermouth Estate paid “Bray” donation of “£5.0.0” towards altering Road at Sterridge.

And further down under the same heading of Roads the Estate paid another amount of “£8.0.0” to “Barum District Council amount agreed on their taking over Sterridge Road”.

Therefore this shows that prior to 1898 the Watermouth Estate owned The Sterridge Road. It shows the Estate paid the Barum (Barnstaple) District Council, paid a contribution for the up-grading of the road prior to public adoption.

Barnstaple Rural District Council Handover Map

This map shows the string of the bow as the publicly maintained highway. The claimed route is not shown as a publicly maintained highway.

Original Definitive Map of Rights of Way Survey 1950

Berrynarbor Parish Council did not claim the route of Proposal 3 as a right of way of any description.

In brief conclusion of the historical evidence, prior to 1898 the Sterridge road as a whole was a private road owned and maintained by the Watermouth Mouth Estate, as was the separate section of the lane to Smithern. Most land and property in the valley belonged to the Estate. The Estate had bypassed the line of Proposal 3 with a new section of road that it had built before 1886, [between points G and I on the plan] the ‘string of the bow’.

The public records very clearly show this road's subsequent adoption as a parish road in 1898. The publicly adopted road did not include the line on Proposal 3. The Handover Maps from Barnstaple District Council show the string of the bow as the adopted and maintained public road.

4. User Evidence

Three user evidence forms have been submitted from walkers, two of those are adjoining landowners.

Mrs J Alcock, owner of Woodlands House, which adjoins the claimed route, has occasionally used the route to lead a horse to a field while going from Woodlands House to Pixie Dean Meadow. She has used the route between 1988 and 2013. She says it had been obstructed recently by a neighbour claiming ownership. She says she owns some of the route.

She adds that: "This narrow, overgrown track only links properties around Knockers Hole. Probably important a hundred years ago and not really suitable today for general public use, but if neighbours can claim ownership of path near them, I wish to claim land alongside my boundary being the path."

Mrs L Bowden has known of the lane since childhood. She has walked, and picked blackberries and sloes as a child and used the Sterridge valley route to visit friends at Woolacott for a change. "In the late 1960's - 1970's we were friends of the Pringle family who lived at Woodlands House. This part of the valley became our children's exploring area and playground. Even at this time parts of the lane were becoming difficult to pass for lack of hedge maintenance."

She has crossed the way by car when visiting Woodlands. (The vehicular access to Woodlands crosses the line of the claim.) She comments, "It is an ancient, original "Road" through the valley." Land Registry shows it is not owned by the cottages there. It was bypassed before the 1899 map was produced by a new road from Lower Rows to Knocker's Hole. The only notices were house names. It has been obstructed by the new owners of Venture Cottage who have fenced off the lane and stored piles of logs there.

Mr G Sanders believes the route is a byway open to all traffic. He says he was going from Lower Rows to Woolscott between mid 1960's and 1999, when he bought the adjoining woodland and has since has only used it for business purposes. He has "traversed this track on numerous occasions". In a letter of 18 October he explains "I own the land that surrounds Knockers Hole, edged blue... and together with my predecessors, James, Ivan and William Huxtable have hitherto exercised the public right of way, with or without vehicles to inspect and maintain the boundary which borders the red road" (the south south-easterly third of the claimed route, between the stream south of Woodlands drive and point I.) In answer to where there any other obstructions, he says, wire fence and log pile to south of Venture Cottage, placed recently. He has been stopped from using the route by the fence and log pile.

5. Land Registry

The properties that are registered with The Land Registry adjacent to Proposal 3, show their boundaries up to but not including the track. The track itself is currently unregistered.

6. Site Observations

The overgrowth in the centre section of the route was experienced by the officer. It was impassable on the day of the first inspection. Subsequent clearance of the centre section has taken place.

7. Historical Landowner information

The Bassett Family

The Bassett Family appear to have owned the manors of Berrynarbor and Umberleigh since about 1558. They had a seat at Heanton Punchardon and one at Watermouth Castle. The Watermouth Estate passed through the female heir of the family twice and was held until 1920 when some of the estate lands were sold off. The Castle remained with the family until 1945.

From the historical estate records, as seen above, the Bassett's owned many of the roads in the parish, except those laid out by statute, i.e. the Turnpike roads to the north and south of the parish. It can be seen from their account books and maps the vast areas of land and property owned by them and tenanted. The majority of the farms in the parish, the two mills and common lands were held by them. They paid labourers to maintain their roads.

In 1898 the Bassett's contributed to the fund for the adoption of the road. Mr CH Bassett was Parish Council Chairman, and was on the Parish Council committee set up to look at the adoption some private of roads in the parish. Especially to bring the Sterridge Road on the line of the 'string of the bow' and the area around Sterries Bridge to the required standard prior to adoption as a Parish Road.

Mr CH Bassett knew the Bassett estate had privately owned and maintained this road. However he was instrumental in its adoption as a Parish Road in 1898, because as he had said in the parish minutes in 1896 when the Bill was going through parliament it would be a great benefit to this parish if the Parish Council could have management of this parishes roads.

8. Landowner Evidence

Mr & Mrs Reynolds

Mr & Mrs Reynolds have written letters and submitted information, all of which are included in full in the backing papers.

Mr & Mrs Reynolds are the owners of Venture Cottage. They state that they have had adverse possession of the land adjoining the garden of their cottage since they bought the property in 2007. They have physical control over the land in the section of the route from just south of Woodlands drive to the western corner of their cottage. They state "We erected fencing across the track immediately upon our purchase of the property Venture Cottage and have intentionally obstructed, and physically prohibited access, in order to exclude the world at large from this land since".

This action therefore brought the route into question. Until last year they had not seen the public using the claimed route.

Mr & Mrs Reynolds were contacted by the Berrynarbor Parish Council in April 2012, because an observational complaint had been made to them, about a log pile and fence blocking what was said to be a public right of way. The parish council requested they cleared the log pile and fence.

In October 2012 the fence was stolen and the matter reported to the police and on their advice CCTV was installed.

In response to the claim Mr & Mrs Reynolds have stated the route of Proposal 3 was impassable with overgrowth when they bought the property in 2007, and the previous owners of the cottage also confirm that the route was overgrown during the 18 years they owned the property.

The Reynolds have permitted Western Powers contractors Bawden Partnership to carry out necessary works to clear power-lines and temporarily removed their fencing while the works were carried out.

Mrs Reynolds has done historical research and refers to Watermouth Estates documents, auction documents and the Berrynarbor Parish Council minute books of March 6th 1930, in which it says "Road by the Woodlands. It was voted and carried that a letter be written to Mr GD Smith pointing out that same track is an occupation road and that Parish Council has no control over the same." Therefore she concludes that the modern Parish Council's recent claim that this is an old parish road had no grounding, as can be seen from historical parish council minutes.

In their submission Mr & Mrs Reynolds explain there is a private dispute with Mr Sanders which has also involved Mr and Mrs Williams the former owners of property 77 Sterridge Valley. A Letter about this is included in the backing papers.

Mr Sanders

Mr Sanders has written letters and submitted information all of which are included in full in the backing papers.

Since 1999 Mr Sanders has been the owner of the woodland that adjoins a short section of the route between the stream south of Woodlands House and the cottage 77 Sterridge Road. He is the same Mr Sanders who completed a user evidence form. He says that the route was a highway pre 1835 and would be publicly maintained and that mere disuse of a highway cannot deprive the public of their rights.

He uses the Highways Act 1835 to support his argument. He says that "Prior to coming into force of the Highways Act 1835, there were no public rights of way which were not highways and all highways were considered to be maintained by the "inhabitants at large in the parish". The 1835 Act defined the word "highways" to mean all roads; bridges (not being county bridges; carriageways; cart ways; horse ways; bridleways; footway; causeways; church ways; and pavements and provided that any highway in existence at 31 August 1835 was prima facie repairable by the highway authority, but also provided that from 1835 onwards, any road or occupation road coming into existence, only became publicly repairable if adopted under the prescribed statutory procedure. Maintenance by 'the inhabitants at large' is recognised in Section 36(b) of the 1980 Act as indicating adoption."

"After the 1835 Act it was possible that roads already in existence continued to be repaired by the inhabitants of the parish. The common law duty of the inhabitants was not removed until the coming into force of the Highways Act 1959, Section 38. It was therefore, very likely, on the balance of probabilities, that the inhabitants of the parish continued to take responsibility for maintenance of Proposal 3 after 1835, as they would have done for many hundreds of years prior to that date. Please refer to Mr Thomas Senior's Statutory Declaration."

Mr Sanders says "Surveyors drawings for the Ordnance Survey of 1804 indicates the route of proposal 3 in its entire length as the only highway through the Sterridge Valley. The title

map of 1845 confirms the same.” He also says “Parish Records of the wedding of George Dallon of Knackers Hole (77 Sterridge Valley) in 1650 provides clear evidence of the existence of the building and road now the subject of proposal 3.”

He says “The sale particulars of the Watermouth Estate 17th August 1920, identifies Proposal 3 as “white road” and grants no right of way to the four properties deriving their only means of access via Proposal 3. This provides clear evidence of acceptance in 1920, that prior to the Bassett family’s purchase of the manor in 1712, or at some point thereafter, the family considered the highway ‘public’, thereby confirming that they demonstrated no intention whatsoever, to restrict use of the highway by the public throughout their ownership.”

“Land Registry Certificates provide conclusive evidence of the current lack of contractual rights of access over the “white road”, thereby confirming its public status.”

He says, “The highway is clearly defined by high banks and purpose built stone walls as evidenced from the photographs on file... Furthermore, the highway has been clearly defined on successive O.S. maps since 1809.”

Mr Sanders goes on to say “A valid objection can only be submitted by ‘the landowner’ who can prove title prior to an application for an amendment to the Definitive Right of Way Map (i.e. 26th August 2012- Mrs Bowden and 20th October 2012- myself). Such an objection must prove that the “landowner” had clearly demonstrated no intention to dedicate and actively curtailed the use of the highway by the public, in this case over many hundreds of years. Evidence already detailed in previous correspondence confirms quite the reverse.”

NOTE it must be noted that, no Schedule 14 application has been made for Proposal No.3, by Mrs Bowden, Mr Saunders or anyone else.

He details Watermouth Estate sale in 1920. Saying it “did not include Rights of Way or access to any lot sold here, but rights were granted to other plots.

When referring to the sworn Statutory Declaration from Mr Thomas. Mr Saunders said Mr Thomas only lived at the cottage for ten years never returning to live in Berrynarbor on a permanent basis there after. His son never lived at the cottage only visiting grandparents. He states “Their statements relating to natural weed growth and usage are irrelevant to this Definitive Map modification as neither constituted Landowner’s intention to restrict public access and ‘once a highway, always a highway.’ “

He maintains that the statement Mr Thomas senior made about the track being used and maintained by the adjoining residents, was made by “a very old man recalling his childhood some 80 years ago, were on the balance of probabilities ‘inhabitants at large’.”

He says the new driveway built in 1930 to Woodlands House actually only linked the two roads and the ‘bow’ remained necessary. “A reasonable assumption could be drawn that the alleged Minute of March 1930 actually referred to the new link road accessing Woodland House and as quoted as ‘the road The Woodlands which of course, without doubt, is not a public highway and is not currently being claimed as such.’”

Mr Sanders states Land Registry hold no record in respect of the property [line of proposal 3]. He details Land Registry procedure for claiming Possessory Title but says it is a public highway.

He states "I believe that without doubt, the afore-mentioned provides conclusive evidence that no current or previous 'landowner' has called proposal 3 into question. Furthermore, I contend that in this case, the landowner evidence would have to pre-date 1835 and prove non intention to dedicate, to be considered in any way valid."

9. Rebuttal Evidence

The following Statutory Declarations were submitted in respect of this route.

Mr Phillip Thomas Statutory Declaration made under 1835 Act

Mr Phillip Thomas, son of William and Florence Thomas (nee Jones). Florence and her parents Philip and Mary Jones moved to Venture Cottage in 1888 as tenants of Watermouth Estate. In 1921 Phillip and Mary bought Venture Cottage from the Estate. They died in 1929 and Florence and William then inherited part of the property and bought out the other shares from siblings. They moved to Venture Cottage in 1929 with their son Phillip who was aged 8. Before Phillip lived permanently to the cottage, he and his mother had stayed with his grandparents in the holidays.

His parents remained at Venture Cottage until his father died in January 1963. His mother moved and they let out the cottage until selling it 1971.

"As regards to the track at the rear of Venture cottage my knowledge is that the track lane was used and maintained by adjoining residents and their visitors as far up to Woodlands and Middle Cockhill. I recall that the maintenance of the track was undertaken by my grandfather Phillip and father William and the other resident users. The County, District or Parish Councils did not maintain the track." He says as a child and teenager he helped his parents and grandparents with the maintenance of the track.

He records usage of the track beyond the well ceased after mid 1930s because a new access road was cut across the land north of Venture Cottage to Woodlands and Middle Cockhill area, by Mr D Jones for Mr Goss.

He solemnly declares his Statutory Declaration.

Phillip Wayne Thomas Statutory Declaration made under 1835 Act

Son of Phillip Ivor Thomas, and grandson of William and Florence Jones. He explains his association with Venture Cottage and the track behind. He stayed at Venture cottage with his Grandparents during summer and Christmas holidays in 1950's until 1963. "During our stays my father and I frequently helped his parents with maintenance of the property, clearance of the track to the well and inspections for any water accumulation or wall dampness." During summer visits he and his sister explored the area. "In summer 1971 Venture cottage was sold.

He solemnly declares his Statutory Declaration.

10. Discussion of Highway Act 1980, Section 31 (1) evidence

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.

Proposal 3 was brought into question in early 2007 by the erection of a wire fence on the line of the route by Mr & Mrs Reynolds who “intentionally obstructed, and physically prohibit access in order to exclude the world at large” from the route of Proposal 3.

The Parish Council contacted DCC in May 2012, to inquire if it was a public right of way, and were told it was not and user evidence would have to be gathered to show the public have acquired the rights to use the claimed route. Proposal 3 was followed up as part of the parish review. It is not supported by a formal Schedule 14 Application; therefore there is no right of appeal. Only 3 user evidence forms have been submitted in support of the claim.

As fences were erected and the route blocked and the public's right have brought into question, the evidence of use has to be inspected in the 20 years prior to 2007. Therefore 'the relevant period' is between 1987 and 2007.

The Highways Act states; the claimed route “has actually been enjoyed by the public as of right and without interruption for a full period of 20 years. Each individual users does not have to use a way for the full period of 20 years, rather the period can be covered by several users making up that period.

Three User Evidence forms have been submitted from:

Mrs Alcock an adjoining landowner who bought Woodlands House in 1988 and has always used the 1930's access track to the house and has also used part of the claimed route as a landowner to lead a horse to a field. She made no use of the track prior to moving to Woodlands, so as an adjoining landowner it is hard to find that her use of the track was as a member of the public.

Mrs Bowden, she has walked parts of Proposal 3 when visiting The Woodlands property or sometimes when just walking. She recalls the overgrown nature of the section near The Woodlands in 1960's 'and 1970's which she observed when visiting the property.

Use by invitation cannot be counted as use by the public. She walked through the route some years ago, before the 1960's. The period that the public need to show use throughout is the 20 years between 1987 & 2007. Therefore her use adds no weight to the evidence of the public having acquired the right to use the route. She has given historical detail about the route.

Mr Sanders states he has used the route since the mid 1960's. He became an adjoining landowner in 1999 and since then has only accessed the route for business. He therefore could have only used the route as a member of the public for 12 of the necessary 20 years of the relevant period.

Therefore, Mr Sanders is alone in his use of the way 'as of right', and he has only used it for 12 of the relevant 20 years.

The user evidence failure is compounded, as a lone person is unlikely to show that the public at large (not for example, merely for use of the inhabitants of a particular parish) have established the right to use the route of Proposal 3.

Therefore, there is insufficient user evidence to show presumed dedication of a Public Footpath over Proposal 3 under the Highways Act 1980.

11. Evaluation of the historical evidence and Discussion of Evidence at common law:

The Bassett family had owned Berrynarbor and Watermouth Estate since about 1558. They were the landowners of the majority of the land and farms in the Sterridge valley.

Historically the line of a lane that follows the Sterries Valley terminated after the Watermouth Estates mill. The historical through route went via Ruggaton and onto the old Smithern Farm to join with Smithern Lane and the Toll road, as seen on the OS drawing and the Tithe map. [Very little trace of this route can be seen on modern mapping.] The OS map was a topographical survey of the area, the Tithe map has incidental information of the line of lanes, as its purpose was to levy the Tithe Tax. The lanes were shown because they were unproductive land and not taxable. The acreage of roads in a parish were added up and removed from the productive land, the map had no intention to show the status of the roads on it.

Between 1845 and 1880's the new road between points G and I the 'string of the bow' was constructed by the estate as seen on the OS mapping 1886/7.

The Berrynarbor Parish Council minute books are very clear in their recording of the story of how the road through the Sterridge valley [including line of the road between points G and I, excluding the route of Proposal 3] became a publicly maintained parish road, which then became a county road.

These books detail the discussions that took place, with the District Council, Parish Council and Magistrates, and explain how public subscriptions were gathered for the roads improvement. It would appear that the money was probably spent on the corners at Sterries Bridge and the new linking lane between Smithern and Sterries Bridge. The Watermouth Estate account books show it was one of the contributors.

The Public records very clearly show this roads subsequent adoption as a parish road in 1898. The handover maps from Barnstaple District Council show the string of the bow as the adopted and maintained public road. Therefore the new road (the string of the bow) was adopted as a parish road in the late 1898, leaving the line of the claimed route, Proposal 3, with the estate and its successors and not adopted as a public highway.

This ties in with the reference in the Parish Council Minute books in October 1930, where it appears the Parish Council had been approached about maintenance of the "Road by The Woodlands" they pointed out the same is an occupation road and that Parish Council have no control over it. (The new private access track was not built until mid 1930's). The Parish Council knew that the line of Proposal 3 was not a public road. They stated that it was in fact an occupation road and they did not pay for its up keep or maintenance.

Mr Thomas senior's Statutory Declaration makes it quite clear that his family were maintaining the route for their convenience and benefit so water did not get into the house and they had access to their well. But those other sections of the route were not being maintained by the other owners and became overgrown. The Parish Council minutes corroborate the evidence given by Mr Thomas and show the recollections of this old gentleman to be true and correct, that the route of Proposal 3 was an occupation road maintained by and for the residents, not by the 'inhabitants at large' as Mr Sanders has claimed.

For the route of Proposal 3, Mr Sander's assertions, that the route is an ancient public highway, are not backed up by evidence. Although the route physically existed, no evidence has been presented or found, that show public maintenance, prior to 1835 or since. No

Quarter Sessions records, and no Way Wardens accounts. The claimed route of Proposal 3 is in fact shown as an estate road on the 1854 Watermouth Estate Map. The 'string of the bow' [G to I] as seen on OS maps had been built by 1886, by the Watermouth Estate bypassing the claimed line of Proposal 3.

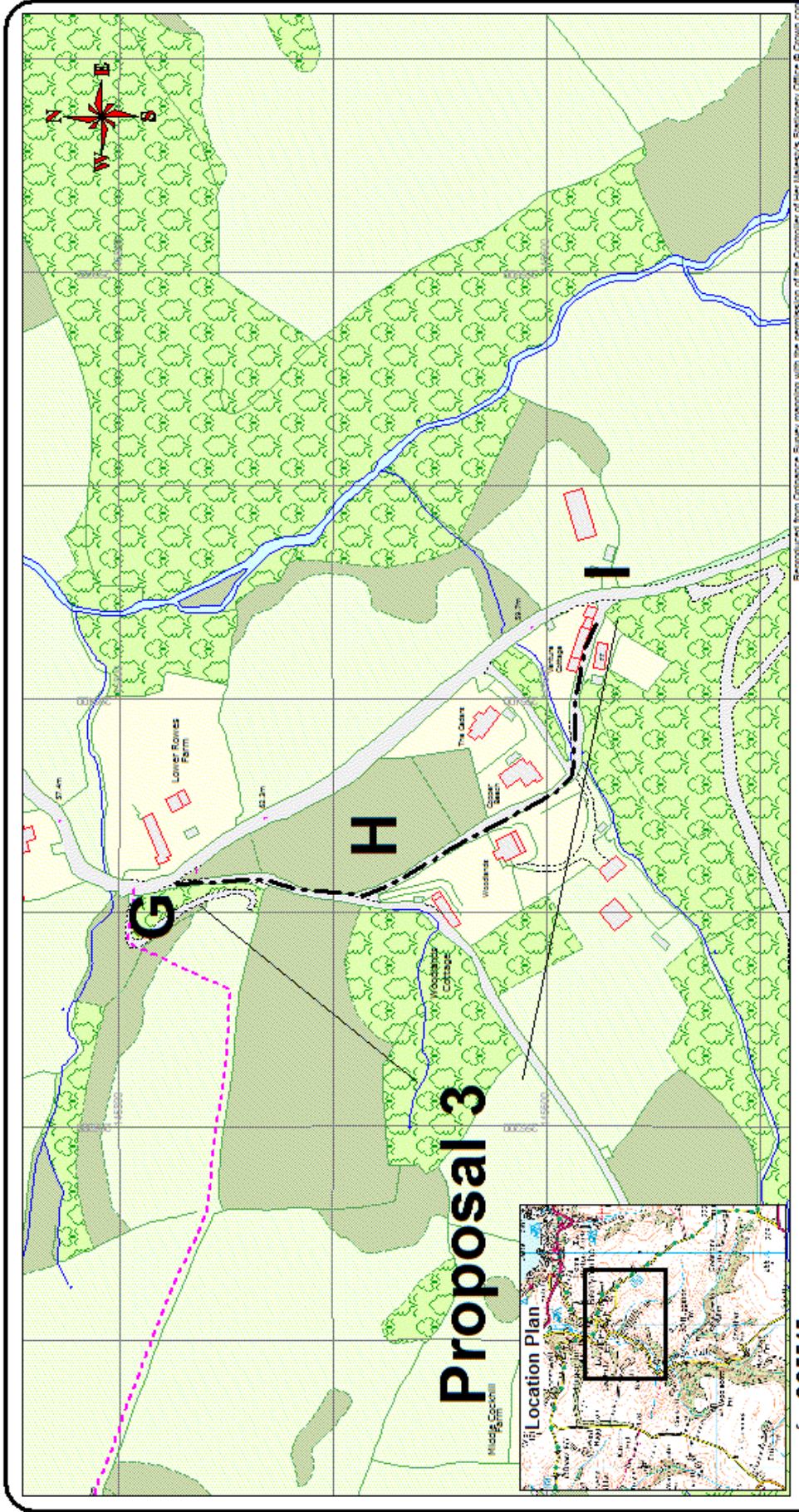
Subsequently between 1897 to 1898 the records of the transactions by the Parish Council, District Council and Magistrates show that they were all involved in bringing the new line [including the section G to I] of the road through the Sterridge Valley to Smithern Cross up to a standard suitable for adoption as a parish road, maintainable by the inhabitants at large. The process to add this road was done under the prescribed statutory procedure. It was shown on the District Handover Map and subsequently became a county road.

The Parish Council in 1950s did not include the line of Proposal 3 as a Public Right of Way of any class, when they drew up their submission for the definitive map of public rights of way.

Therefore, there is a lack of historical documentary evidence to show implied dedication of public rights over the route of Proposal 3 at common law.

12. Conclusion

On the basis of all the available evidence, considered under statute and common law, there is insufficient evidence to show that a right of way subsists or is reasonably alleged to subsist over the route of Proposal 3. It is therefore recommended that no Modification Order be made to add a footpath between points G-H-I, as shown on drawing no. HTM/PROW/13/70.



map ref: SS5545

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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW
BERRYARBOR PROPOSAL 3
Claimed Footpath in Sterridge Valley**

drawing number HTM/PROW/13/70
date May 2013
scale 1:2500 (at A4 only)
drawn by BM/AS

Notation
G-H-I
Existing public footpath - - - - -

David Whitton
Head of Highways, Capital Development and Waste