

**Definitive Map Review 2012–13
Parish of Sidmouth – part 2**

Report of the Head of Highways, Capital Development and Waste

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

Recommendation: It is recommended that a Modification Order be made in respect of:

- (a) **Proposal 1:** addition of Footpath No. 40a from the Sidmouth–Ottery St Mary road to Footpath No. 12 Newton Poppleford and Hartford at the parish boundary in Harpford Wood, points A–B shown on drawing number HTM/PROW/13/27;

that no Modification Orders be made in respect of unrecorded routes;

- (b) **Proposals 8, 9 & 10:** from Malden Road, Primley Gardens and Livonia Road to Footpath No. 53 with the cycleway on The Byes, points B1–C1, D1–E1 and F1–G1 shown on drawings numbered HTM/PROW/13/34, /35 & /36;

but to consider recording them as linking footways in the network of maintainable highways;

and that no Modification Orders be made in respect of unrecorded routes;

- (c) **Proposal 13:** from the north end of Kestell Road to Hillside Road, points M1–N1 shown on drawing number HTM/PROW/13/27; and
- (d) **Proposal 14:** from Peaslands Road to Upper Highfield, points O1–P1 shown on drawing number HTM/PROW/13/27.

1. Summary

The report examines six proposals in connection with the Definitive Map Review for the parish of Sidmouth. They concern a connecting footpath identified as having been omitted wrongly when the Definitive Map was originally drawn up and other routes in the town of Sidmouth identified in the Review process with no recorded public status as missing links in the public rights of way and maintainable highways networks. Other remaining proposals will be considered in a subsequent report to the committee.

2. Introduction – Background

The original survey by Sidmouth Urban District Council under s.27 of the National Parks and Access to the Countryside Act of 1949 produced a map and schedule of 154 paths submitted to the County Council. Those were returned in 1954 as they did not provide the details as required, but the date of the original survey is not known. The details for 156 individual paths were provided, dated in 1956, with a few comments added on behalf of the County Surveyor and recorded at the Draft Map stage in 1957. Footpaths were omitted where there was no continuation into adjoining parishes and one bridleway was amended to footpath. Bridleway and footpath routes were later combined by the County Surveyor, with 23 paths deleted by the County Roads Committee in 1961, with two more added and one amended.

It left 114 routes to be recorded on the Provisional Map for consultations. One footpath was amended and four others were deleted in 1964 and 1965 from applications by landowners to Quarter Sessions. The remaining footpaths and bridleways with two Roads Used as Public Paths (RUPPs) were recorded on the original Definitive Map, considered to have existed from the relevant date of 1 September 1957.

The reviews of the Definitive Map under s.33 of the 1949 Act, which commenced in the 1960s and 1970s but were never completed, produced suggestions submitted by Sidmouth Town Council in 1978. They were for the addition of several routes and amendment of others already recorded, some with supporting evidence, that are being considered in the current review. The Limited Special Review for the reclassification of RUPPs, carried out in the early 1970s, resulted in the two routes recorded with that status being reclassified as bridleways.

Investigation of several formal applications, with claims made earlier and other unrecorded routes identified by the Town Council more recently have been deferred to be included as part of the current review process. Some have been investigated for this report and others will be considered in a further report to the Committee. Other footpaths and bridleways have since been recorded, by Modification Orders and creation agreements, or in connection with diversions, resulting in the current large number of public rights of way in the parish with the latest footpaths numbered 169 and 170.

More than 50 Public Path Orders have been made and confirmed between 1963 and 2013 for alterations to existing recorded footpaths and bridleways, including stoppings-up, diversions and creations of new routes and will require the making of a Legal Event Modification Order for recording on a new revised Definitive Map.

3. Review and Consultations

The current Review was started in September 2012 with an introductory public meeting in Sidmouth. At the meeting, reference was made to the applications and claims that had been put forward previously and kept on file, with or without any supporting evidence. Those included an application made in May 2012 to record public footpaths crossing the grounds of Knowle, the headquarters of East Devon District Council. Following the meeting, a second application was made relating to a further route at Knowle. A limited consultation specifically on those applications took place in March 2013 ahead of a wider consultation for all of the other routes involved. A report on the investigation of those applications was presented to the last meeting of this Committee, when members turned down the applications and resolved that no Modification Order should be made to record the routes in the Knowle grounds as public footpaths. The applicants have appealed against that decision, which is currently being considered by the Secretary of State.

The wider general public consultations on all of the other routes considered for the review were carried out from August and advertised in the local press, extended to October 2013. They were in respect of fifteen proposals for changes to the Definitive Map, including a proposed footpath addition, with claims for a footpath and bridleway, the upgrade of recorded bridleways to Byway Open to All Traffic and addition of a byway from formal applications and evidence submitted and other unrecorded routes identified as having no recorded public status.

Responses to the consultations were as follows:

County Councillor Stuart Hughes	-	responded in connection with Proposal 4;
County Councillor Claire Wright	-	no comment;
East Devon District Council	-	responded with no comments, but passing on comments from East Devon AONB in connection with Proposal 4;
Sidmouth Town Council	-	responded with comments in support of Proposals 1, 2, and 6–10 and not supporting Proposals 4, 11 and 13–16;
Otterton Parish Council	-	responded with objection to Proposal 4;
Ottery St. Mary Town Council	-	responded with objections to Proposals 5 and 15;
Country Land and Business Association	-	no comment;
National Farmers' Union	-	no comment;
ACU/TRF	-	no comment;
British Horse Society	-	no comment;
Ramblers	-	responded in support of Proposals 1, 2 and 6–14, with nothing to add to other proposals.

4. Conclusion

The recommendations include to make a Modification Order adding the footpath omitted in the process of drawing up the original Definitive Map for Proposal 1. Others are that no Orders should be made to record the identified missing links as public footpaths for Proposals 8, 9, 10, 13 and 14, but to consider recording the first three of them as linking footways in the maintainable highway network, where appropriate. Details concerning the recommendations are discussed in Appendix I to this report. The remaining claims and applications for the routes in the other proposals will be investigated for a subsequent report to the committee.

There are no other recommendations to make concerning any further modifications. Other identified missing links in urban surfaced footpaths in the town of Sidmouth without any supporting evidence can be dealt with by other procedures for possible dedication and creation from powers under delegated authority, or recording them as linking footways. However, should any further valid claim with sufficient evidence be made while the review is open in the parish it would seem sensible for it to be determined promptly rather than deferred.

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 considerations.

9. Legal Considerations

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

10. Risk Management Consideration

There are no implications.

11. Public Health Impact

There are no implications.

12. Options/Alternatives

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

13. Reasons for Recommendation/Alternative Options Considered

To progress the parish-by-parish review of the Definitive Map in East Devon.

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Electoral Divisions: Sidmouth Sidford and Ottery St. Mary Rural

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence file	1993 onward	NSC/DMR/SID

ns231013prw
sc/cr/Sidmouth part 2
03 hq 111113

Background to the Suggested Changes

Basis of Claims

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.

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 that:

- (i) 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 relate;

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.

Common Law presumes that a public right of way subsists if, 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.

1. **Proposal 1: addition of Footpath No. 40a from the Sidmouth–Ottery St Mary road to Footpath No. 12 Newton Poppleford and Hartford at the parish boundary in Harpford Wood, points A–B shown on drawing number HTM/PROW/13/27**

Recommendation: It is recommended that a Modification Order be made in respect of Proposal 1, for the addition of Footpath No. 40a, omitted in the process of drawing up the original Definitive Map.

1.1 Background and Description of the Route

This footpath was surveyed by Sidmouth Urban District Council in 1956 as No. 40a for the process of drawing up the original Definitive Map, but was not included in its Schedule of the paths. It was not put forward for including in consultations for the Draft Map in the later

1950s and for the Provisional Map in the early 1960s, so that it was not recorded on the original Definitive Map.

The route is a continuation from the recorded Footpath No. 40 in Sidmouth parish at the Sidmouth to Ottery St. Mary road, starting on the opposite side of the road at point A at Harpford Wood. It runs into the wood for just over 20 metres to the parish boundary (point B), where it meets the end of the recorded Footpath No. 12 in Newton Poppleford and Harpford parish through the woodland. Although not shown on the original Definitive Map, the route was mistakenly included in the recording of public rights of way more recently for the digital version of the Definitive Map and digitised as part of Footpath No. 40 continuing from across the road. It has been open and available for the public to use, with a signpost and a kissing gate, as a continuation from directly across the road opposite the recorded end of Footpath No. 40 since a formal diversion of that route was confirmed in 1995 after a public inquiry.

1.2 The Definitive Map process and Historical Mapping

Footpath No. 40 was surveyed by Sidmouth Urban District Council in 1956 as running from Fire Beacon Lane across fields to end at the Sidmouth to Ottery St. Mary road, then the B3176, northwest of Bowd, near the parish boundary. It was included in the Draft and Provisional Maps to be recorded on the original Definitive Map ending at the road, more than 20 metres further south. Footpath No. 40a was also surveyed as running westwards from the road to the then Urban District boundary in Harpford Wood, but was considered not to be necessary and omitted from the Draft Map stage. That was noted to have been because there was no continuation to Harpford from there and a path 100 yards to the north had been claimed in that parish.

Footpath No. 12 in Newton Poppleford and Harpford parish was included by the then Harpford Parish Council in their survey in 1950. It was described as running northwards from Footpath No. 11 and turning eastwards towards the road further to the north. A footpath numbered 13 was surveyed as starting from halfway along it leading towards the Bowd Road and Footpath No. 40a. Footpath No. 12 was said to be private and used by permission only, so could not be claimed as public and was disputed along with other paths in Harpford Wood, although considered by the Parish Council as doubtful that it would be disputed.

The northern part of the surveyed Footpath No. 12 route does not seem to have been put forward for the Draft and Provisional Maps. It was replaced with the route of the footpath surveyed as No. 13 added onto it, becoming a continuation on the route of what is now recorded throughout as Footpath No. 12, as a cul de sac route ending at the parish boundary in the wood at the end of Footpath No. 40a.

Earlier large scale historical maps, particularly the Ordnance Survey 25"/mile 1st and 2nd editions of the 1880s and early 1900s, show that the lines of the tracks for the footpaths in Harpford Wood existed then, including the paths surveyed by Harpford Parish Council as numbers 12 and 13. They show the line of what was surveyed as Footpath No. 40a, although with the parish boundary then further to the north. A later edition from 1959, around the time that the Definitive Map was being drawn up, shows the path as continuing to exist on that route and crossing the current line of the parish boundary to the road. None of the maps show any line for the route of Footpath No. 40 in Sidmouth parish.

1.3 Reviews, Consultations and Landowner Evidence

There were no suggestions during any earlier reviews that the footpath should be considered for recording on the Definitive Map as an indication that its omission may have been noted, particularly by either the Parish or Town Councils involved. It was identified during the

current review from checking the details for the digitised Definitive Map records in relation to those from the process for drawing up the original Definitive Map.

From being recorded wrongly as part of the line of Footpath No. 40, but having been signed and used to make the connection with Footpath No. 12, its proposed addition was included in consultations for the review process as an omission needing to be considered for possible correction. There was general support for it from consultations, including from Sidmouth Town Council and also more significantly on behalf of the landowner, Clinton Devon Estates. In a completed landowner evidence form, the agent to the estate said that they had no objection as it was believed to be a mapping issue with the route signed and used as a continuation of Footpath No. 40.

1.4 Discussion and Conclusion

There has been no challenge to use of the route for this proposed addition and no event for calling its use into question, such as an obstruction or a formal application. No user evidence has been submitted, so there is none to take into account for any investigation strictly in accordance with the test for statutory dedication under Section 31 of the Highways Act 1980. It can be considered mainly on the documentation from the process for drawing up the original Definitive Map, with some historical mapping and the recent circumstances of how the route of the footpath has been recorded and managed, in relation to a test under common law, including any evidence from which its past and current use can be inferred.

The signing of the route with a kissing gate for access from the road as a continuation of Footpath No. 40 to link with Footpath No. 12 indicates that it is considered to be a public footpath. It has been maintained as a route that has been available for the public to use and suggesting use in the recent past that has continued. It is also included as part of a promoted recreational route, the East Devon Way and links with one of a network of permissive paths in Harpford Wood from agreements with the landowner.

Historical mapping shows that the line of the route has existed on the ground since at least the later 19th century, with the records for drawing up the Definitive Map indicating that it was considered for including on the Draft Map. The reason for its omission, noted at the time by the County Surveyor responsible for the process, was that no continuation was proposed to be recorded in the adjoining parish.

The records for the corresponding process in Harpford parish show that to have been the case at the earlier stages of surveying its paths, with routes nearby and connecting to the omitted route considered then likely to be disputed to indicate that there was then no continuation of Footpath 40a as surveyed. However, the circumstances appear to have changed at a later stage, with amendments to the routes of the paths surveyed as Nos. 12 and 13 leading to Footpath No. 12 being recorded on the Definitive Map as a cul de sac to the parish boundary as a direct continuation for Footpath No 40a.

That seems to have been overlooked in consideration of the records for the adjoining parishes and perhaps from a lack of co-ordination in the process of dealing with the respective Parish and Urban District Councils at the later stages. It is clear that there was an intention for the footpath to be recorded on the Definitive Map and its omission was the result of something that was missed in the administrative process. Although technically not recorded on the Definitive Map, the route has existed on the ground for at least 125 years and is considered by the landowner to be public. That is significant, which can be interpreted as an inference of a previous dedication at some time in the past that has been accepted by the public, who have continued to use it as a footpath. It has also been signed and managed for some time as part of the public rights of way network.

Without any test for statutory dedication, there would appear to be sufficient evidence from consideration under common law of the records for drawing up the Definitive Map and historical mapping, with evidence inferring its past and continuing use, to be reasonable to allege that the route subsists as a public footpath. On that basis, it is sufficient grounds for making a Modification Order in respect of the proposed addition of a footpath. It would be appropriate for the footpath to be numbered 40a in line with the original intention when the route was surveyed. Accordingly, the recommendation is that an Order be made for addition of the route as Footpath No. 40a on the Definitive Map and Statement for Sidmouth parish.

2. Proposals 8, 9 & 10: unrecorded routes from Malden Road, Primley Gardens and Livonia Road to Footpath No. 53 with the cycleway on The Byes, points B1–C1, D1–E1 and F1–G1 shown on drawings numbered HTM/PROW/13/34, /35 & /36

Recommendation: It is recommended that no Modification Orders be made in respect of the unrecorded routes from Malden Road, Primley Gardens and Livonia Road to Footpath No. 53 with the cycleway on The Byes, but to consider recording them as linking footways in the network of maintainable highways.

2.1 Background and Description of the Routes

These three routes were identified with several others in preparations for the Definitive Map Review process in the parish as having no recorded status, either as public rights of way on the Definitive Map or as footways in the records of maintainable highways, the List of Streets. They were in addition to other routes in the same area identified by Sidmouth Town Council or claimed from roads for access to The Byes, an extensive area of parkland with meadows and woodlands alongside the River Sid to the east of the town. One was a claim submitted with user evidence forms that were considered insufficient to justify further investigation, but the rest were identified without the submission of any supporting user evidence.

The route of Proposal 8 starts from Malden Road in a suburban residential estate east of Sidford Road to the north east of Sidmouth (point B1), running between the boundary fences of two bungalows onto the recorded Footpath No. 53 with a cycleway lane running through a wooded section of The Byes (point C1). It is about 70 metres long, has a tarmac surface and has no signs to indicate that it is a connecting public footpath or cycleway.

Proposal 9 is nearly half a kilometre to the south in the same area, starting from Primley Gardens (point D1) and running between the fences of two houses onto the same footpath and cycleway along The Byes (point E1). It is about 60 metres long with a tarmac surface and no signs. The recorded Footpath No 155 and cycleway continues from its end, running across The Byes and crossing the River Sid up to join Sid Road at Fortescue.

Proposal 10 is another half a kilometre again further to the south in the same area, starting from the corner of Livonia Road (point F1). It is a short length of track continuing from the road between adjoining gardens, connecting onto the footpath and cycleway along The Byes passing through a wooded section (point G1). It is about 15 metres long with a tarmac surface and has a safety warning notice about the crossing cycle lane. Pedestrian and field gates opposite provide access on foot and in vehicles through a woodland into an open meadow beyond, where there is also a permissive path provided by the Sid Vale Association.

2.2 Historical Mapping, the Definitive Map process, Reviews and Consultations

None of the routes are shown on earlier Ordnance Survey maps, as the residential housing estates in that area were not built until the 1950s and later. Ordnance Survey 'A' edition mapping from 1953/4 shows the land in the area of Malden Road for Proposal 8 as then undeveloped. Primley Gardens is shown to have been built by then, with the route of

Proposal 9 on its current line leading from the road onto the footpaths on The Byes before the development of the cycleways. Proposal 10 is shown as a connecting link from the corner of Livonia Road onto a track leading into the footpaths on The Byes on the line used later for the cycleway.

Later mapping used for previous versions of the records for publicly maintainable highways from the 1960s shows the beginning of housing development on part of Malden Road, but not as far up as the area of Proposal 8. Proposal 9 is shown but not included in the extent of maintainable highway to suggest that it might have been considered then as a linking footway onto the paths along The Byes. The corner of Livonia Road is shown as appearing to include the route of Proposal 10 in the extent of maintainable highway connecting with the track on The Byes, although it is at too small a scale to show it in detail and the layout on the ground may have been altered since then with the development of the cycleway.

None of the routes were included with those surveyed originally by the Borough Council in 1956 for putting forward as public rights of way and they are not recorded on the Definitive Map and Statement. They have not been recorded specifically as linking footways in earlier, later and current records of maintainable highways, apart from the apparent inclusion of Proposal 10. The current records show other similar routes to the north and south connecting public roads onto the recorded public footpath and cycleway along The Byes. There were no suggestions in the previous uncompleted reviews that the routes should be considered for recording as a public rights of way, but they were put forward later with others in the same area identified by Sidmouth Town Council as unrecorded links or claimed from adjoining roads giving access to The Byes.

The routes were included in the general consultations for the current review on the basis of having no recorded public status connecting recorded public routes or roads to consider whether they should be recorded as public and with an appropriate status. There was a very limited response from the consultations with support for them from Sidmouth Town Council and the Ramblers generally, but there were no specific responses with any supporting evidence, particularly of past use, to support recording them as public footpaths.

2.3 User and landowner evidence

From the consultations, there were responses from some residents in the immediate locality of Proposal 8 who said that they had used the footpath, although without completing and submitting any user evidence forms. Some were concerned that the consultations meant that there was the possibility of the route being closed and for others the main concern was with the effects of additional cars parking along that part of the road for people using it as access on foot for playing fields on The Byes.

One resident of Malden Road reported using it regularly for access to The Byes as well as for walking to Sidford and into Sidmouth, saying that it was also used by dog walkers, cyclists and for access to the new rugby pitch. It was also reported by older neighbours that the path had been in existence since the bungalows were built in the late 1960s. There was no response from the adjoining landowners for Proposals 8 and 9.

Landowner evidence forms were completed and returned by the adjoining owners on both sides of Proposal 10, but neither indicated that any part of it was considered to be included in the boundaries of their ownership. One reported believing that it was public with continual use on foot and bicycles during the 11 years of their ownership and indicating that it had also been used occasionally by the emergency services for access to land on The Byes.

2.4 Discussion and Conclusions

There have been no applications or claims that these routes should be recorded as public rights of way. They have been identified as unrecorded routes, that is without having any recorded public status as footpaths or footways as part of the maintainable highways network. There has been no challenge to use of the routes and no event that could be taken to have called their use into question, such as an obstruction or a formal application. No user evidence has been submitted, so there is none to take into account for any investigation strictly in accordance with the test for statutory dedication under Section 31 of the Highways Act 1980.

None of the routes are shown on earlier historical mapping from before housing development in the area. Only two of them are shown to have existed on later mapping for any assessment of whether they can be shown to have been considered as public for a test under common law, including any evidence from which their past and current use can be inferred. There is only reported evidence that one of the routes is used regularly by the public on foot and bicycles, as access to the footpath and cycleway on The Byes. They could all be presumed to be in use by the public, as reported, for access from residential areas of Sidmouth to a popular recreational area in the town, as well as to other parts of Sidmouth including the seafront. However, there is no more substantial evidence of use and no basis from historical records and mapping from which any inference of earlier dedication can be inferred, or an intention for the routes to be considered as part of the maintainable highways network.

Without any test for statutory dedication, there would appear to be insufficient evidence from consideration under common law for it to be reasonable to allege that the routes subsist as public footpaths. On that basis, there are considered to be no grounds for making Modification Orders to record the routes as public rights of way on the Definitive Map. Accordingly, the recommendation is that no Orders be made to record the three unrecorded routes as public rights of way but to consider the possibility of recording them as linking footways in the maintainable highways network. That would help to clarify for the public what rights they have to use them on foot and perhaps also on bicycles for connections to the recorded public footpath cycleway along The Byes, as is the case with other routes connecting onto them from other roads in that area.

3. Proposals 13 and 14: unrecorded routes from the north end of Kestell Road to Hillside Road, points M1–N1 shown on drawing number HTM/PROW/13/27 and from Peaslands Road to Upper Highfield, points O1–P1 shown on drawing number HTM/PROW/13/27

Recommendation: It is recommended that no Modification Orders be made in respect of the unrecorded routes from Kestell Road to Hillside Road and from Peaslands Road to Upper Highfield, as the evidence is insufficient.

3.1 Background and Description of the Routes

These are two of other unrecorded footpath routes in the town of Sidmouth identified by Sidmouth Town Council in advance of the Definitive Map Review process in the parish. They also have no recorded status, either as public rights of way on the Definitive Map or as footways in the records of maintainable highways, the List of Streets.

The route of Proposal 13 starts from the end of Kestell Road, a cul de sac in a residential area in the eastern part of Sidmouth (point M1). It starts from near a gate on the entrance to a property, running as a narrow path between the boundary fences and hedges of adjoining properties and continues as the vehicular access track for another property to end at its

entrance on Hillside Road, (point N1). It is 115 metres long and is unsurfaced on the narrow path, with a tarmac surface on the driveway from Hillside Road.

Proposal 14 is nearly a kilometre away in a residential area to the north west of the central part of Sidmouth. It starts from Peaslands Road (point O1) running along a track between the low walls and fences of two houses providing vehicular access to a property. It ends at a gate, with a sign saying 'Private'. Beyond the gate, a track along the back of the gardens is fenced off and hedged, more open and widening near garages at the end of the gardens of several properties further along Peaslands Road, with vehicular access from Upper Highfield where the track ends (point P1). It is 130 metres long with a tarmac surface on the track from Peaslands Road, with rougher stone and grass on the section leading from Upper Highfield.

3.2 Historical Mapping, the Definitive Map process, Reviews and Consultations

Neither of the routes are shown on earlier Ordnance Survey maps, as both residential areas were not developed until during the first half of the 20th century, with aerial photography from 1946–9 showing that properties in the area had been built by then in both areas. Ordnance Survey 'A' edition mapping from 1953/4 shows the layout for the properties in both areas and the lines of both routes. The route of Proposal 13 from the north end of Kestell Road is shown as a narrow track between the gardens, marked 'F.P.' for footpath, widening at the driveway to the properties from Hillside Road.

Proposal 14 is shown as a track leading from Peaslands Road at the end of the row of houses that had been built by then, with a line across it indicating that there was probably a gate at that time. It leads into the grounds of a property, not connected directly to the track behind the Peaslands Road gardens, which is enclosed and wider as access from Upper Highfield. The later 'B' edition mapping from 1963 shows both routes in the same way at that date.

Neither of the routes were included with those surveyed originally by the Borough Council in 1956 for putting forward as public rights of way and they are not recorded on the Definitive Map and Statement. They have not been recorded specifically as linking footways in earlier, later and current records of maintainable highways. There were no suggestions in the previous uncompleted reviews that the routes should be considered for recording as public rights of way, but they were put forward later with several others in various parts of Sidmouth identified by Sidmouth Town Council as unrecorded rather than as claims or formal applications.

The routes were included in the general consultations for the current review on the basis of having no recorded public status connecting recorded public roads to consider whether they should be recorded as public and with the appropriate status. There was a limited response from the consultations with general support from the Ramblers and information provided by adjoining property owners, but they were not supported by Sidmouth Town Council. There were no specific responses with any supporting evidence, particularly of past use, to support recording them as public footpaths.

3.3 User and landowner evidence

No user evidence was submitted before the consultations to support any claim that the routes should be recorded as public rights of way and none was received as a result of the consultations. From the consultations, there were responses from residents in the immediate locality of both proposals and particularly from some of the adjoining property owners.

For Proposal 13, two of the owners of properties adjoining the access from Hillside Road completed landowner evidence forms. One gave further details about the route particularly

as it was their driveway and they did not believe it to be public. They had rarely seen members of the public using it and said that it was used by adjoining residents and occasionally from other properties at the north end of Kestell Road. The other adjoining owner believed it to be public and said that the route was used daily by people going from Kestell Road to town, as did one of the owners of those Kestell Road properties.

For Proposal 14, landowner evidence forms were submitted by several owners of adjoining properties along that part of Peaslands Road and the main property with vehicular access from it along the route. Almost all of the Peaslands Road owners did not believe it to be a public right of way and had not seen members of the public using it, although one said that they were advised when they bought their house that it was a footpath. Others said that it was not possible to use the whole route as it was obstructed by a hedge, with a gate and a notice saying that it was private. Those with vehicular access from Upper Highfield to garages nearer that end gave further information, particularly about their private rights of access and permission for other owners to use as access to the rear of the properties.

The owner of West Lyn in Upper Highfield did not believe that the route had ever been a public right of way and no members of the public had used it. He supplied further details about the route, including a copy from the deeds to the property from when it was built in the 1930s. It showed the layout of the roads from that time, relating to the access from Peaslands Road and the rest of the track on the route. In particular, he referred to it being obstructed by a gate for a long time and reported that the section beyond was obstructed by a large privet hedge on their boundary that was up to 50 years old.

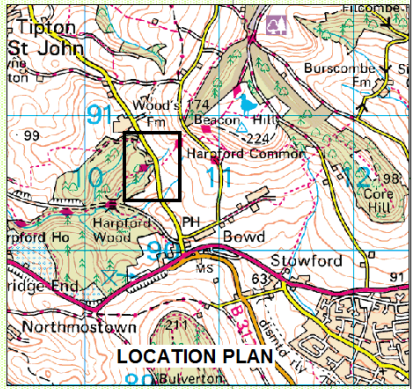
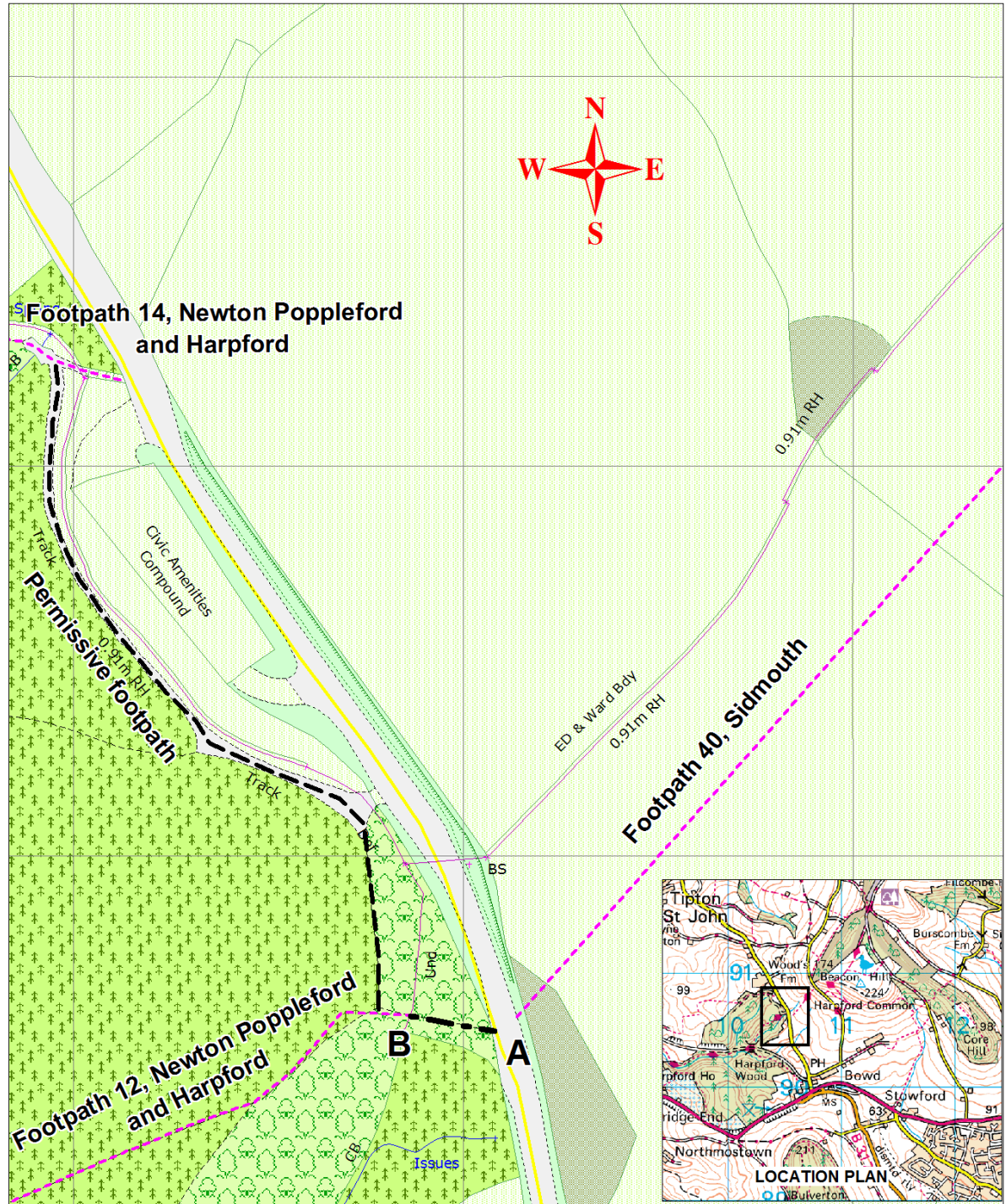
3.4 Summary and Conclusions – Dedication under Statute and Common Law

There have been no formal applications or claims that these routes should be recorded as public rights of way. They were identified as unrecorded routes, that is without having any recorded public status as footpaths or footways as part of the maintainable highways network. There has been no challenge to use of the routes and no event that could be taken to have called their use into question, such as an obstruction or a formal application. No user evidence has been submitted, so there is none to take into account for any investigation strictly in accordance with the test for statutory dedication under Section 31 of the Highways Act 1980.

None of the routes are shown on earlier historical mapping from before housing development in both areas. Some later mapping shows them to have existed on the ground since at least that time for any assessment of whether they can be shown to have been considered as public for a test under common law, including any evidence from which their past and current use can be inferred. There is only a very limited amount of reported evidence that Proposal 13 may be used regularly, but it is said only to have been mainly by the residents of nearby properties. None of the residents adjoining Proposal 14 said that it had been used by the public, but only by those with private rights of access at both ends, including in vehicles from Peaslands Road and from Upper Highfield.

There is no more substantial evidence of use and no basis from historical records and mapping from which any inference of earlier dedication can be inferred, or an intention for the routes to be considered as part of the maintainable highways network.

Without any test for statutory dedication, there is insufficient evidence from consideration under common law for it to be reasonable to allege that the routes subsist as public footpaths. On that basis, there are considered to be no grounds for making Modification Orders to record the routes as public rights of way on the Definitive Map. Accordingly, the recommendation is that no Orders be made to record these two unrecorded routes as public rights of way.



map ref SY1090

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DEVON COUNTY COUNCIL

Definitive Map Review, Sidmouth parish
 Informal Consultations, Proposal 1:
 Proposed addition of Footpath 40A

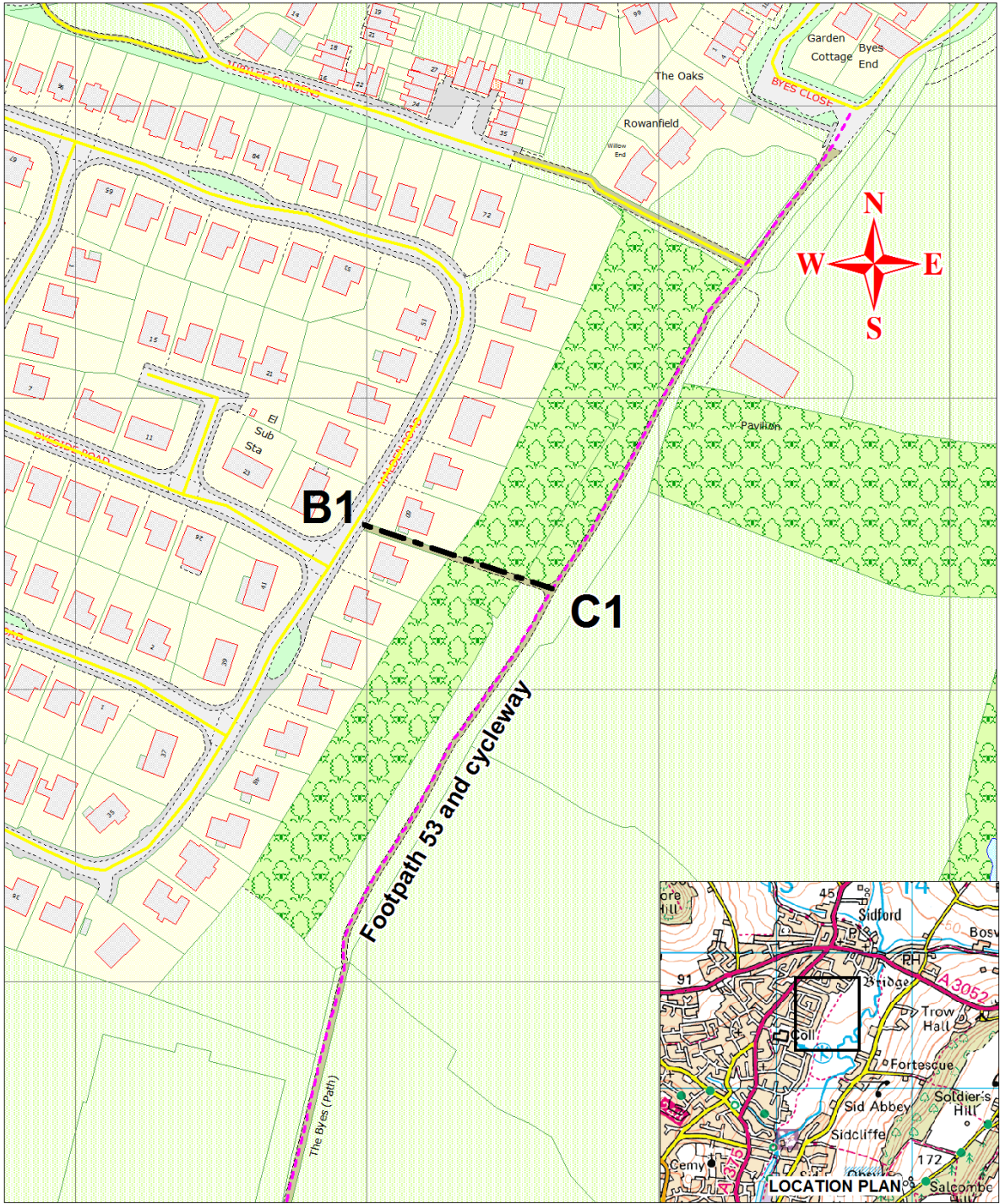
drawing number	HTM/PROW/13/27
date	Mar 2013
scale	1:1500
drawn by	NSC

Notation

Footpath to be added A - B (21 metres) - - - - -
 Existing footpaths - - - - -

David Whitton
 HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE





map ref **SY1389**

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DEVON COUNTY COUNCIL
Definitive Map Review, Sidmouth parish
Informal Consultations, Proposal 8:
Unrecorded route - Malden Road to
Footpath 53, The Byes

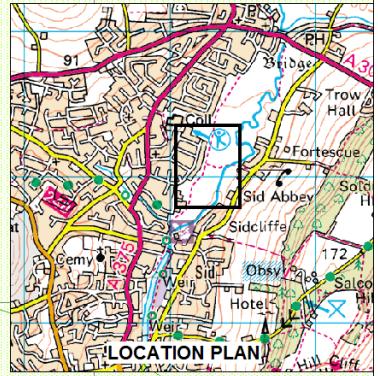
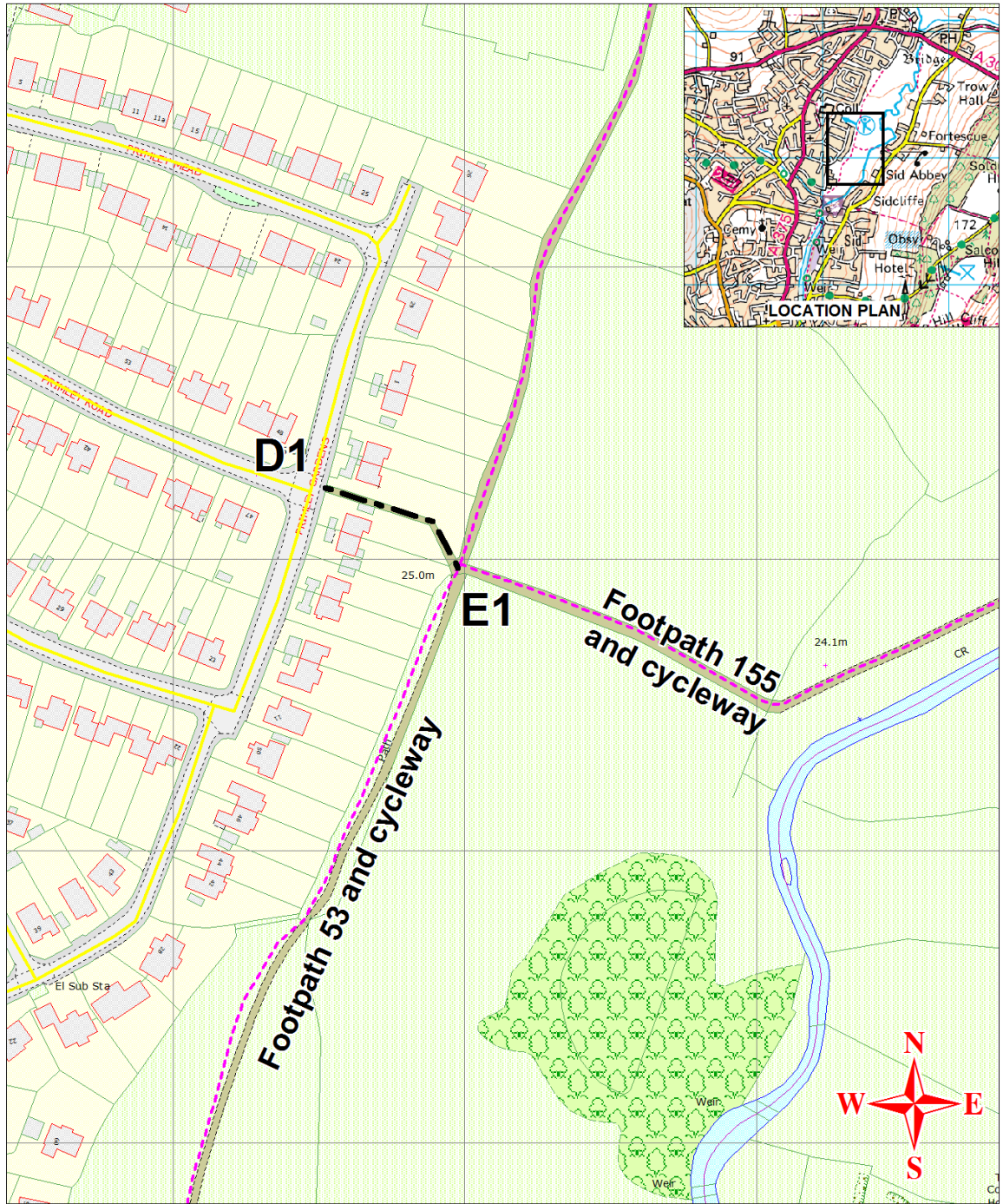
drawing number HTM/PROW/13/34
 date Mar 2013
 scale 1:2000
 drawn by NSC

<u>Notation</u>	Unrecorded route (70 metres)	-----
	Existing footpath	-----

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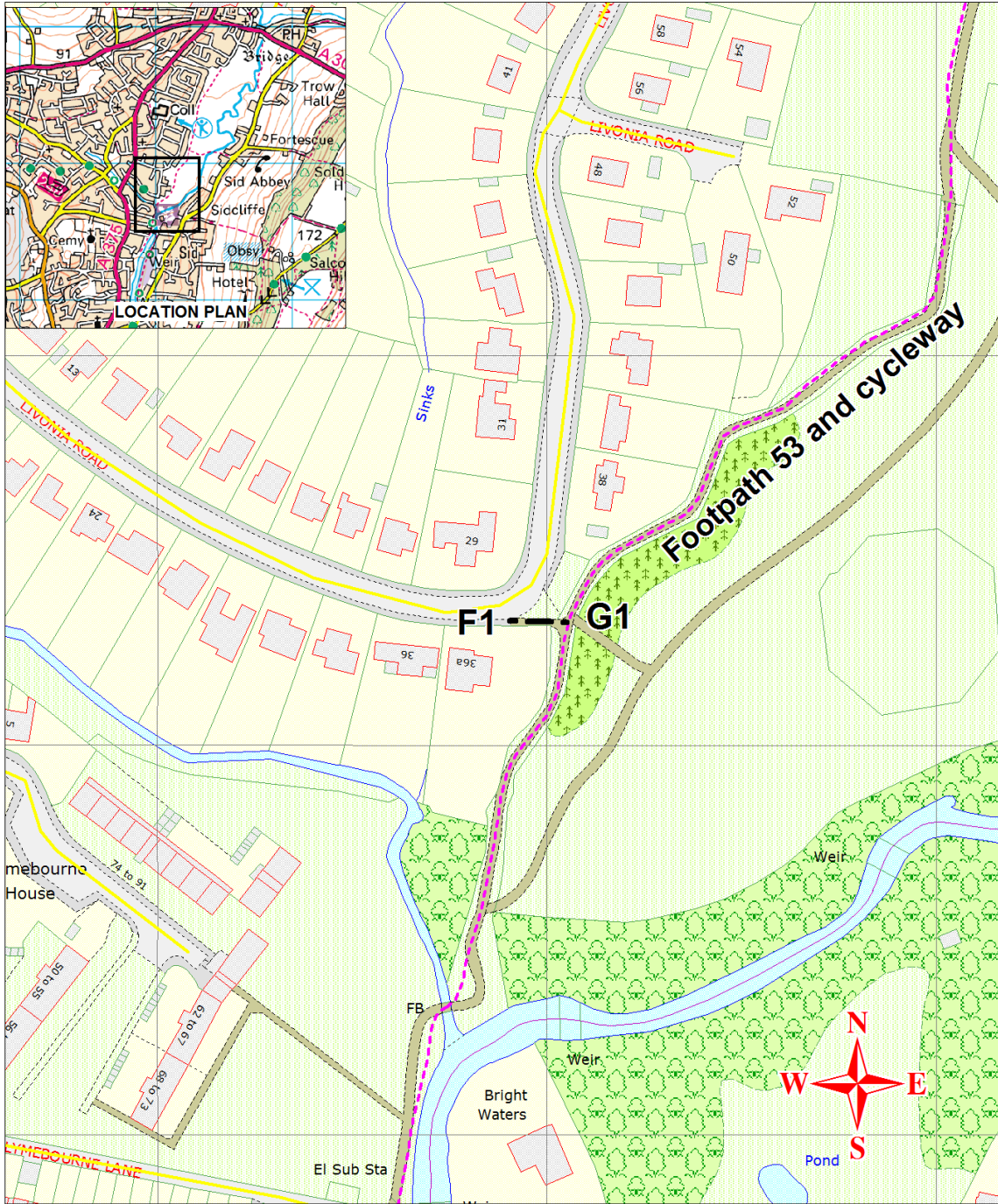
DEVON COUNTY COUNCIL
Definitive Map Review, Sidmouth parish
Informal Consultations, Proposal 9:
Unrecorded route - Primley Gardens to
Footpath 53, The Byes

drawing number HTM/PROW/13/35
 date Mar 2013
 scale 1:2000
 drawn by NSC

<u>Notation</u>	Unrecorded route (60 metres)	-----
	Existing footpath	-----

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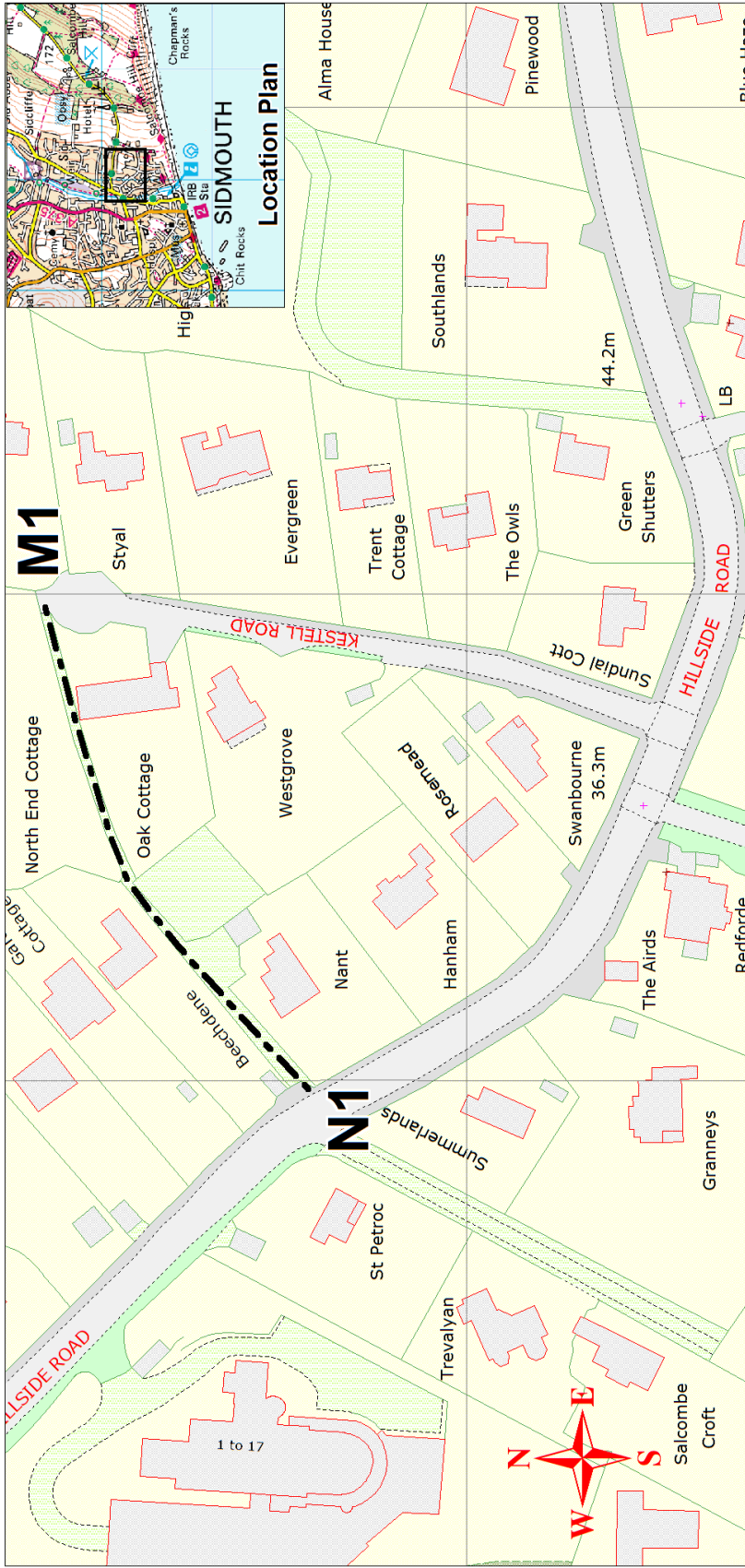
DEVON COUNTY COUNCIL
Definitive Map Review, Sidmouth parish
Informal Consultations, Proposal 10:
Unrecorded route - Livonia Road to
Footpath 53, The Byes

drawing number HTM/PROW/13/36
 date Mar 2013
 scale 1:2000
 drawn by NSC

Notation	Unrecorded route (15 metres) - - - - -
	Existing footpath - - - - -

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map ref: SY1287/1387

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 date Mar 2013
 scale 1:1250
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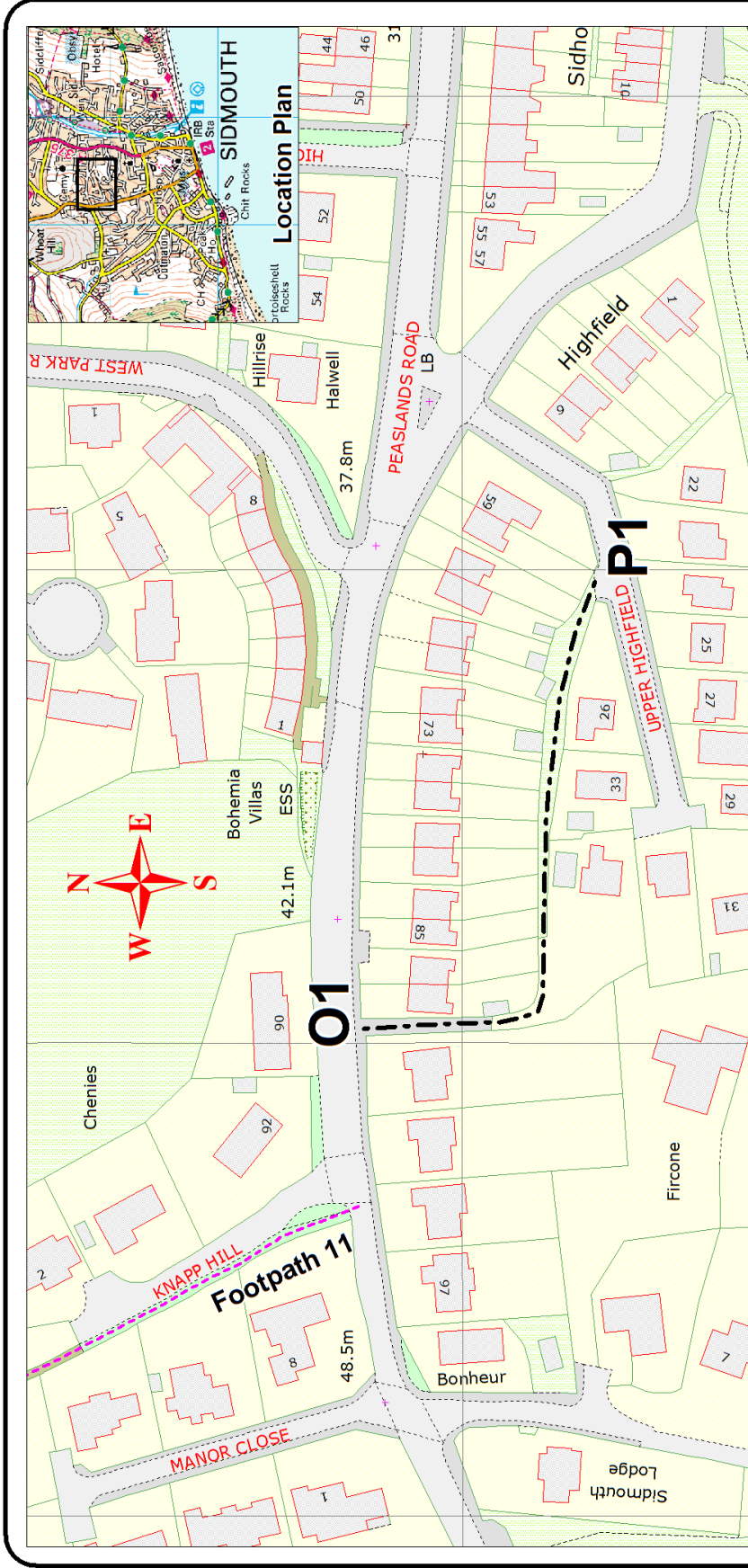
DEVON COUNTY COUNCIL
Definitive Map Review, Sidmouth parish
Informal Consultations, Proposal 13:
Unrecorded route, Kestell Road to Hillside Road

Notation

Unrecorded route, M1 - N1 (115 metres) - - - - -

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map ref: **SY1288**

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drawing number **HTM/PROW/13140**
 date **Mar 2013**
 scale **1:1250**
 drawn by **NSC**

DEVON COUNTY COUNCIL
Definitive Map Review, Sidmouth parish
Informal Consultations, Proposal 14:
Unrecorded route, Peaslands Road to Upper Highfield

Notation	
Unrecorded route, O1 - P1 (130 metres)	- - - - -
Existing footpath	- - - - -

David Whitton
 HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE

Devon
 County Council