

**Definitive Map Review
Parish of Sandford**

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.

Recommendations: It is recommended that:

- (a) an Order be made to modify the Definitive Map and Statement for the addition of a Restricted Byway A - B as shown on drawing number HCDW/PROW/13/14a (Suggestion 6);**
- (b) an Order be made to modify the Definitive Map and Statement for the addition of a Restricted Byway A - G to as shown on drawing number HCDW/PROW/15a (Suggestion 7);**
- (c) an Order be made to modify the Definitive Map and Statement for the addition of a Bridleway A - B as shown on drawing number HCDW/PROW/17a (Suggestion 9).**

1. Summary

The report examines the routes referred to as Suggestions 6, 7 and 9 arising out of the Definitive Map Review in the Parish of Sandford in Mid Devon. Suggestions 3 -5 and 8 will be brought to a subsequent committee.

2. Background

The original parish survey under s. 27 of the National Parks and Access to the Countryside Act, 1949 completed in autumn 1950, proposed 43 footpaths for consideration as public rights of way. Footpath Nos. 11, 26, 27, 35 & 43 were deleted as these were considered to be private footpaths and 38 footpaths were therefore included on the draft and provisional maps. As no objections to their inclusion or comments regarding omissions appear to have been received, the 38 footpaths were recorded on the Definitive Map and Statement for Sandford published, as part of the Crediton Rural District Council area in 1958.

In response to the review of the Definitive Map, under s. 33 of the 1949 Act, which commenced in 1968, the Parish Council advised that after holding a parish meeting and considering the definitive map, no evidence was produced as to any change in the rights of way shown thereon.

In 1970-71 there was correspondence regarding the addition of a footpath at New Buildings. It was decided that this would be looked at in the next review (1977). Footpath No. 44, Sandford was subsequently added to the definitive map by modification order in 1990. The Limited Special Review of Roads Used as Public Paths (RUPPS), carried out in the 1970s, did not affect Sandford.

The following Orders affecting the Definitive Map for Sandford have been made and confirmed

since 1958.

Mid Devon District Council (Footpath No. 17, Sandford) Diversion Order 1989
Mid Devon District Council (Footpaths No. 14 & 15, Sandford) Diversion Order 1992
Devon County Council (Footpath No. 44, Sandford) Modification Order 1990
Devon County Council (Footpath No 26, Sandford) Modification Order 2001
Devon County Council (Restricted Byway No. 45, Sandford) Modification Order 2004
Devon County Council (Footpath No. 20, Sandford) Diversion Order 2004

The last Definitive Map review was initially opened in Sandford in 1996 and a consultation map of proposals for change was published in March 1997 but was not progressed further at that time apart from the addition of Footpath No. 26, Sandford by way of a Modification Order in 2004. The review was re-opened with a parish public meeting in October 2012. The consultation map of 9 suggestions was published in April 2013, to include a number of routes proposed by a user group representative in 1997 and Schedule 14 applications made in 2005 by the Trail Riders Fellowship.

3. Proposals

Please refer to the appendix to this report.

4. Consultations

General consultations have been carried out with the following results in respect of the suggestions considered in this report.

County Councillor Cllr Margaret Squires	-	no response
Mid Devon District Council	-	no response
Sandford Parish Council	-	response received
Copplestone Parish Council	-	response received
Country Landowners' Association	-	no response
National Farmers' Union	-	no response
British Horse Society	-	response received
Ramblers' Association	-	response received
Trail Riders' Fellowship	-	response received
Devon Green Lanes Group	-	response received

5. Financial Considerations

The cost of making any Orders or works required to the public rights of way discussed will be funded by the Public Rights of Way general budget.

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 lawful implications/consequences of the recommendations have been considered and taken into account in the preparation of this report.

10. Risk Management Considerations

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 the Mid Devon.

David Whitton
Head of Highways, Capital Development and Waste

Electoral Division: Newton St Cyres & Sandford

[Local Government Act 1972: List of Background Papers](#)

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Background Paper	Date	File Ref.
DMR/Correspondence File	1997 to date	DMR/Sandford

tw231013prw
sc/cr/DMR Sandford part 2
02 111113

**Appendix
To HCW/13/69**

A. Basis of Claim

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.

Wildlife and Countryside Act 1981, Section 53[3][c] enables the Definitive Map to be modified if the County Council discovers evidence which, when considered with all other relevant evidence available to it, shows –

(i) that a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.

The Wildlife and Countryside Act 1981, Section 56[1] states that the Definitive Map and Statement shall be conclusive evidence as to the particulars contained therein, but without prejudice to any question whether the public had at that date any right of way other than those rights.

Suggestion 6 – Addition of a Byway Open to All Traffic along Green Lane

Schedule 14 Application for the addition of a BOAT for 660 metres northwards along Green Lane from the county road at West Sandford, north of Hele Cottages to the county road between Ridegway's Cross & Reedsdown Cross, opposite the east end of Footpath No. 7, Sandford (GR SS 8109 0279 to SS 8121 03338).

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement for the addition of a Restricted Byway A - B as shown on drawing number HCDW/PROW/13/14a.

1. Background

After the County Council review started for Sandford in 1996, a number of suggestions for change to the Definitive map were received from the Devon representative of the Byways & Bridleways Trust and Trail Riders Fellowship. One suggestion was for the addition of Green Lane as a BOAT or bridleway. User and map evidence was submitted in support of this proposal.

Some years later the TRF also submitted a Schedule 14 Application to the County Council for the addition of the lane to the Definitive Map as a byway open to all traffic, supported by map and user evidence. This was one of a number of Schedule 14 applications made by local representatives of the Trail Riders Fellowship in autumn 2005 prior to the Natural Environment & Rural Communities Act 2006 (the NERC Act) that came into force in May 2006. The NERC Act would restrict the ways that new rights of ways for motorised vehicles in the countryside could be created. A right for motor vehicles was preserved under NERC if a Schedule 14 Application had been made prior to 20 January 2005, that is compliant with the regulations for Schedule 14 applications under the Wildlife & Countryside Act 1981, or the surveying authority has made a determination of an application for a BOAT before 2 May 2006.

The application received for the addition of Green Lane as a BOAT, was made after 20 January 2005 and was also not compliant with the regulations as notice of the application had not been served on the landowners. However, as an application had been received the proposal was included in the parish review as made and for the addition of a BOAT, as there are limited exemptions in which vehicle rights may be preserved.

2. Description of the Route

Green Lane is a hedged lane throughout its length and starts at the county road north of Hele House and proceeds northwards for about 660 metres to the county road between Ridgeway's Cross & Reedsdown Cross, opposite the east end of Footpath No. 7, Sandford. The lane is lower than the adjoining fields at the southern end (was previously known as Deep Lane) and generally climbs uphill with a surface of mud and grass.

On the day of inspection there was evidence of use by agricultural vehicles and horses. Photographs of the route along the lane from the southern end are included in the backing papers.

3. Consultations

The following responses were received:

Sandford Parish Council replied that this ancient sunken lane is unsuitable for a BOAT and a restricted byway is considered to be all that is necessary.

Devon Green Lanes Group supports the proposed suggestion. Copies of evidence in support of this route and user evidence forms were sent in 1977 on behalf of the Byways and Bridleways Trust.

Mr R Drake responded on behalf of the Devon Group of The Trail Riders Fellowship. He advised that he had researched their records and found no evidence to conclude that the schedule 14 claim would be NERC exempt. They still feel that the route has enough evidence to

be considered for adding to the definitive map and would support the county in any considered modification orders with the backing of the evidence previously submitted. In conclusion they/he support modifications as suggested for the route.

The Chair of Creedy Walkers, Simone Romain, advised that they would be perfectly happy for the suggestion to be recorded as a restricted byway or bridleway. The group use Green Lane from time to time on their walks.

The British Horse Society Devon representative advised that suggestions 3 to 9 are shown as clear on the 1910 Finance Act Maps and therefore the BHS confirms support for the proposal.

4. Documentary Evidence

Ordnance Survey and Other Maps

The Ordnance Survey and other mapping do not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.

Cassini Historical Maps 1809 - 1900

These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.

Old Series 1809

Green Lane is shown as a defined lane in a similar manner to the surrounding lanes and county roads of today.

Revised New Series 1899-1900

The lane is shown as a thick black line, an unmetalled road. The county roads it joins are metalled 1st and 2nd class roads.

Popular Edition 1919

The lane is recorded as a double sided defined lane, uncoloured and appears to correspond to Roads under 14' wide. The key advises that private roads are uncoloured (but it is not known if this refers to maintenance or ownership) and the now county road west of Green Lane is also uncoloured.

OS 1 inch to a mile maps of 1946, 1957-58 & 1967

On all three editions of these maps Green Lane is shown as a defined white lane which corresponds to Minor Roads in towns, Drives and Unmetalled Roads for 1946 and 1957-8 and Minor Road in towns, Drives or Track (unmetalled) for 1967. No reference is made to the roads being private or otherwise

OS 1st Edition 25" to a mile 1880-1890

Green lane is depicted as a defined lane with mature hedgerow trees shown along both sides of the lane. The lane is called Deep Lane on this map and has its own compartment number 1321 and area of 0.865 acres. On the 25" Second Edition of 1904-06 the lane was called Green Lane.

OS Post War Mapping 1:2:500 scale 1970

The lane is now called Green Lane (track) and depicted as a defined double hedged lane. The lane has two compartment numbers (as it was recorded on two adjacent map sheets) still separate from the adjacent fields. The dashed line at each end of the lane is believed to represent a change in surface.

Tithe Maps and Apportionments

Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring can indicate carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown.

Sandford Tithe Map 1839

On the Sandford Tithe Map Green Lane is shown as a defined lane and in a similar manner, being coloured, to the neighbouring lanes that are now county roads.

OS Object Name Book 1903-1904 (PRO references OS 35/1749)

The OS name books gave the definitions of features, houses, rivers, places, lanes printed on the OS maps. The definitions were typically authorised by the owner where an object (say a farmhouse or gentleman's residence) was privately owned and by the district overseer/surveyor or someone in a public position where they were in public ownership.

Green Lane (changed from Deep Lane) is described as 'an occupation road extending from West Sandford to the parish road situate about ½ mile E of Ridgeways Cross.' It was signed for by Mr Wreford, owner at West Sandford Barton.

Finance Act Plans and Field Books 1910

The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.

Green Lane is excluded from the adjoining hereditaments in the similar manner to roads that are public today. This could indicate that the lane was considered to be public or that none of the adjoining landowners claimed ownership of the lane. The land on the east side of the lane was included under hereditament number 123, Hele owned and occupied by James Lee. The land to the west under number 247 West Sandford Barton, owned and occupied by J Wreford. No reference is made to the lane or to any rights of way in the field books.

5. Parish Survey under National Parks & Access to the Countryside Act 1949

The Parish Council survey of their public rights of way to be considered for inclusion on the Definitive map was undertaken in 1950 and Green Lane was not included as a proposal.

6. Devon County Council Uncompleted Reviews of 1968, 1977 & 1996

In the 1968 review the Parish Council claimed no additional public rights of way. There appears to be no correspondence from the Parish in connection with the 1977 review.

In the 1996-97 review, the suggestions proposed on the consultation map published by Devon County Council were for the addition of a footpath and variation of particulars of footpaths in the parish only. In response to the consultation the local representatives of the Byways and Bridleway Trust and Trial Riders Fellowship both proposed that Green Lane should be considered. The TRF enclosed a list of maps depicting the lane and considered the lane should be recorded as a BOAT. The BBT subsequently forwarded some user and other documentary evidence to support the route being recorded as a bridleway.

7. Vestry and Parish Meeting Minutes 1828 - 2008

The Vestry Meeting minutes from 1828 - 1900 are held at the Devon Record Office.

The Parish Council minutes from 1896 – 1975 and from 1993 – 2008 are held at the Devon Heritage Centre. The minutes are missing between 1975 and 1993.

At the Parish Council meeting on 7 May 1998 the minutes record 13) Roads and Footpaths It was agreed to investigate efforts to create a bridleway at “Green Lane”.

Further references about the condition of Green Lane were made in the meetings under Roads and Footpaths on 6 March, 3 April, 4 September and 8 October in 2008.

Sandford Parish has been a member of the Parish Paths Partnership (P3) scheme since 1993 and the local co-ordinator was Mr Ken Sharman for fourteen years. Mr Sharman undertook work on the public rights of way in the parish. He confirmed that the lane was maintained by him and on one occasion he had to borrow a chainsaw to cut up some large trees that had fallen across this track.

8. Aerial Photography

The 1946 and 2006-2007 aerial photography show the suggestion as a defined double hedged lane running north from West Sandford. Several mature hedgerow trees are still shown in the 2006-2007 photograph and the lane's hedges have been trimmed recently.

9. Land Registry

Land Registry records confirm that the lane is not registered. None of the adjoining landowners claim to own the lane.

10. User Evidence

More than twenty user evidence forms were submitted by the Byways & Bridleways Trust in 1994-98 in support of the lane been used and considered as a public bridleway. Most of the forms completed in the 1990s were from horse riders who had used the lane from weekly to a few times a year. The users all considered the route to be public through local knowledge, word of mouth or riding friends and the user evidence records use of the route from the 1950s to the present day (1994-8 when their forms were completed). No users report ever seeing any notices, obstructions or anything else to indicate that the lane was not public.

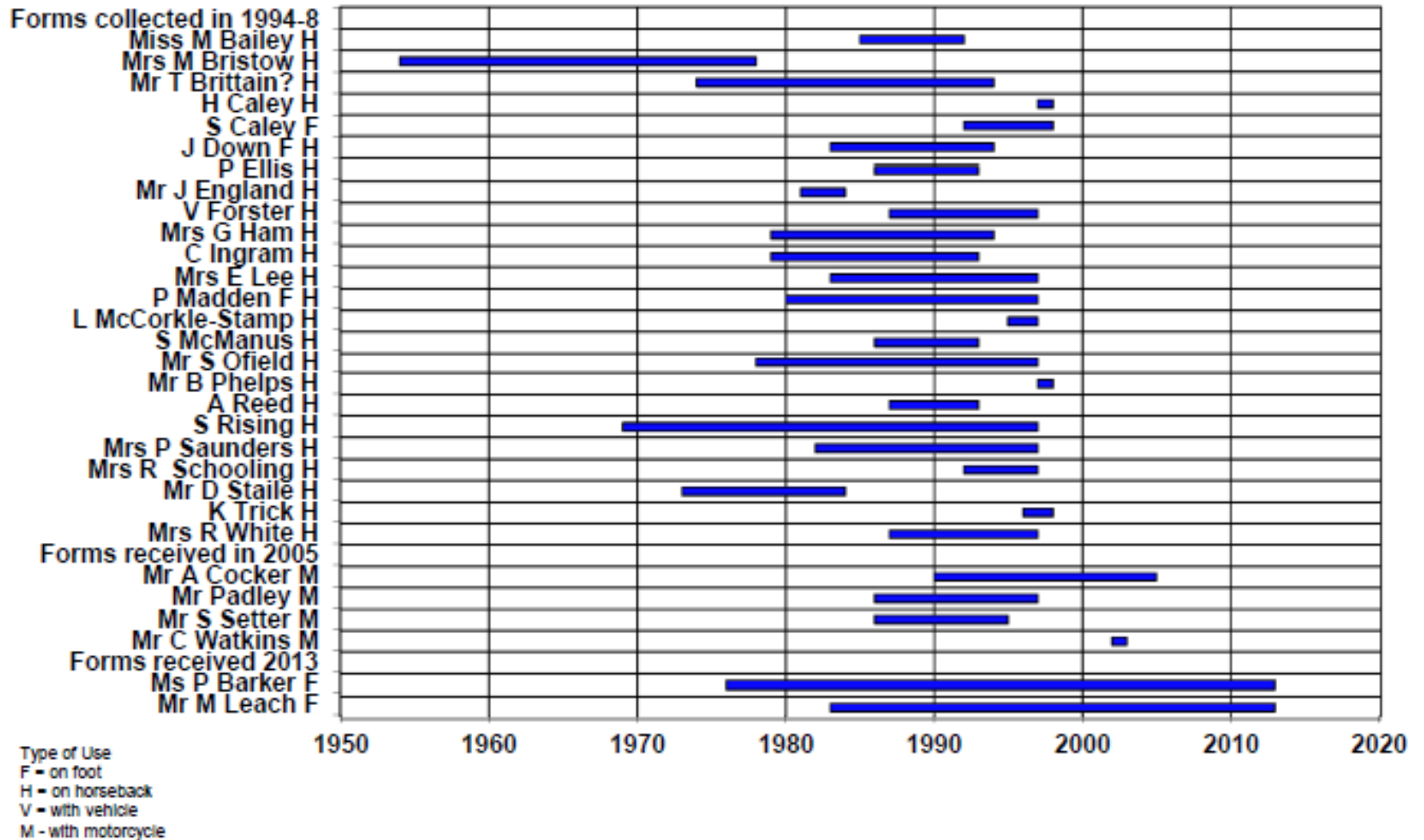
The schedule 14 application received in 2005 enclosed six user evidence forms from motorcycle users. Two of the users had only used the route once or only in the one year but the use of the other riders records use of the lane from 1986 to 2005 between three to five and many times a year. They considered the route to be public through reputation or map evidence and believed that adjoining landowners were aware of their use.

Two forms have been recently received from long term local walkers of the lane who have used the route for dog walking and leisure from 1976 and the 1980s to date (2013). They considered the lane to be public and both advise only rarely meeting other users.

The status of the route is considered to be a bridleway by the horse riders, a byway open to all traffic by the motor cycle users and bridleway and restricted byway by the two walkers.

The period and type of use is summarized on the chart of user evidence for this suggestion. Some of the people who contacted the Council to object to the lane becoming a Byway Open to All Traffic, also referred to their use of the lane in the past.

Chart of User Evidence Received for Suggestion 6 - Green Lane



11. Landowner Evidence

All the landowners/occupiers adjoining the lane were contacted and informed of the suggestion.

Mr S Colombe owns the paddock on the east side near Point A. He considered the lane to be public and advises that it is a popular route for walkers and used by considerable numbers over the course of a year. Previous use by off-road 4 x 4 and motorbikes have rendered the lane impassable for pedestrians.

Mr & Mrs A Down have owned the two fields on the east at the north end of the lane for over ten years. They consider the lane to have the status of a restricted byway and it is used as footpath or bridleway. The previous owner told them Green Lane was just a foot and bridlepath.

Mr G Watson has owned the field to the east of the lane at the southern end for twenty seven years. He believes the lane to be footpath and bridleway and has seen walkers periodically. He has stopped or turned back vehicles from time to time.

Ms A & Mr J Johansen from Hele House advise that the lane is used for driving sheep and by walkers and horse riders. Use by motorised vehicles would make the lane muddier in winter and it is one of the few places horse riders can be safe from traffic. Ms Johansen advised she occasionally sees or hears walkers and horse riders on the path.

It is understood that the fields on the west side of Green Lane are owned/farmed by the Squires at Barton and a response was received from Mr F Squire in 1998. Mr Squire advised that the land adjacent to the lane had been in their ownership since 1961 and considered the lane to be a public right of way for everyone and members of the public had been seen using the way. Each year his neighbour and he cut the hedges for the benefit of the public. He was concerned that if only a bridleway they would not be able to use the lane with their tractors to cut the hedges. A further landowner form was sent in 2013 but no response was received.

12. Rebuttal Evidence

A number of local people either saw the consultation notices or heard about the BOAT proposal for the lane from friends, family or neighbours. This produced eighteen emails and letters to the County Council against the recording of the lane as a BOAT and its use by motorised traffic apart from local farmers.

The comments received included:

- Concern for damage to flora and fauna;
- Safety for walkers and riders using the lane;
- Suitability for traffic;
- Effect on the public's enjoyment of the route.

These views and concerns are not factors which can be taken into consideration when determining whether public rights exist under present legislation. Several responders also commented on their own use of the lane or use by others on foot or horseback.

Most of the people who wrote to or emailed the County Council were contacted and the circumstances explained about why the BOAT proposal had been made. Many of them either

subsequently confirmed that they would be happy for the lane to be designated as a bridleway or restricted byway or proposed this status in their initial communication.

13. Discussion

A claim for a public right of way can arise through use by the public under section 31 of the Highways Act 1980, if twenty years use can be shown after the public's use of the route is called into question. A claim for a right of way may also exist at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.

The proposed addition of Green Lane to the definitive map as a public right of way was first raised by the local representative of the Byways and Bridleways Trust and Trail Riders Fellowship in 1996 during an uncompleted review in the parish. A Schedule 14 application for the addition of the route as a Byway Open to All Traffic was subsequently made by the Trail Riders Fellowship in 2005. Both representatives forwarded map and user evidence in support of their claims.

The documentary map evidence records the existence of the lane since at least the early 1800s and on the tithe map the lane is depicted in a similar manner to adjacent roads and lanes that are now public today. In the OS name books of 1903-04 the lane is described as 'an occupation road' and signed for by Mr Wreford landowner at West Sandford Barton. This would indicate that the lane was considered part of the farm holding and as an occupation road would be used by local landowners for access. However, some seven years later the lane is excluded from the adjacent hereditaments on the 1910 Finance Act plan. This could indicate this was because the lane was considered public or alternatively that neither of the adjacent landowners claimed ownership of the lane. Mr Wreford is recorded as the owner of West Sandford Barton in the Finance Act field book.

The user evidence records use of the lane by various members of the public for many years from the 1950s on foot, horseback and with motorcycles. The users advise that they considered the lane to be public through maps, reputation or word of mouth and there are no reports of their use ever being called into question or obstructed.

All five adjacent landowners advise being aware of the lane being used by walkers or horse riders and consider the route to be a public right of way.

A large number of local residents contacted the County Council on becoming aware of the proposal to record the lane as a Byway Open to All Traffic, saying that the lane was used by walkers and riders and that allowing use by motor vehicles would affect their use and the local wildlife found in the lane. Many of these parishioners either suggested or subsequently confirmed that the lane should be a restricted byway or bridleway.

Sandford Parish Council confirmed that they felt a restricted byway was all that was necessary. The parish minutes confirm that the councillors agreed to investigate the recording of the lane as a bridleway in 1998 and the condition of Green Lane was raised at four parish council meetings in 2008. A previous P3 co-ordinator confirms undertaking maintenance on the lane for the benefit of the public.

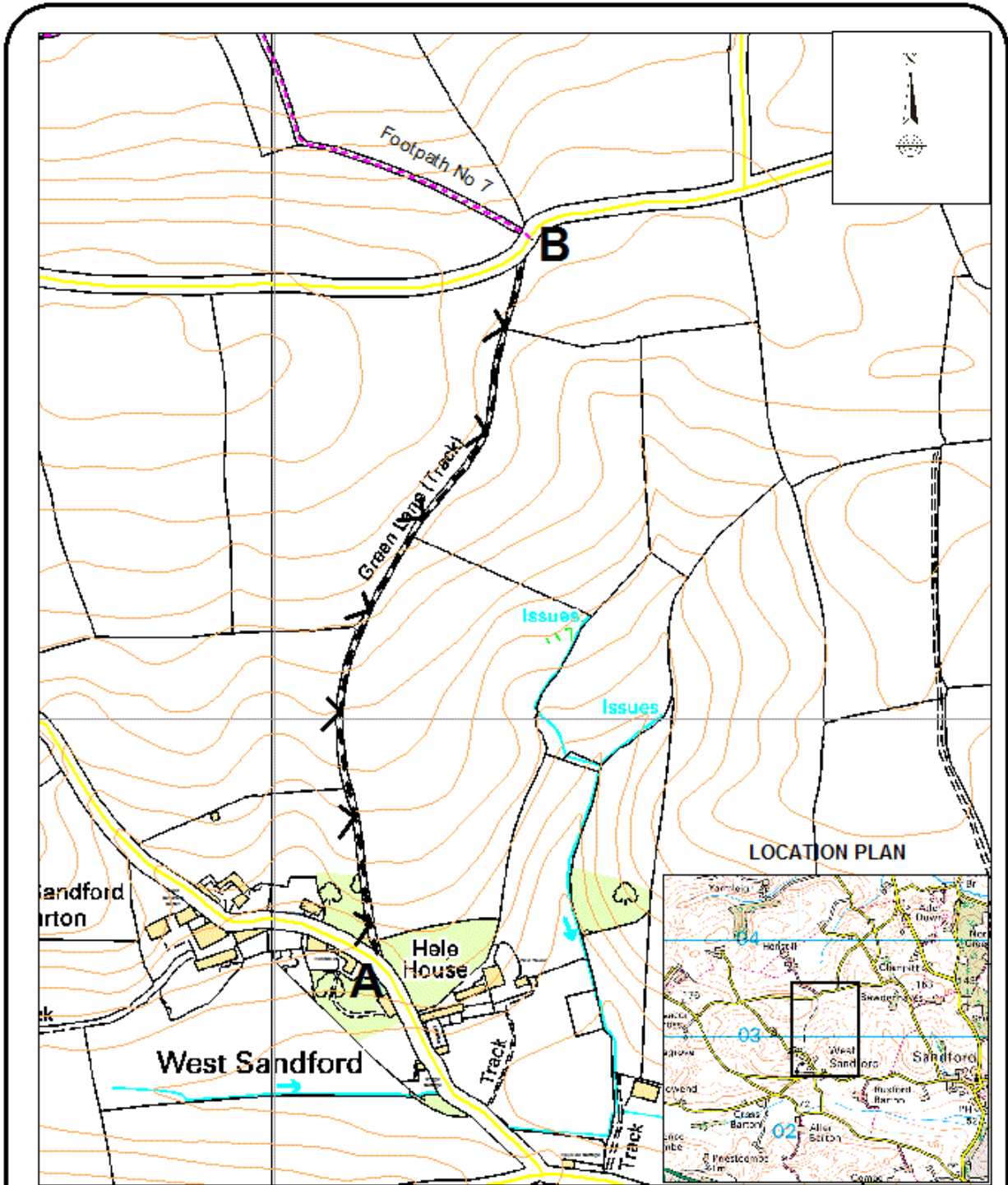
The documentary evidence and some evidence of vehicular use of the lane would support designation of the suggestion as a BOAT. However, the introduction of the NERC Act in 2006 and confirmation from the current TRF representative that none of the exceptions are considered to apply, means that the route could only be recorded on the definitive map and statement as a restricted byway. If the lane is recorded as a restricted byway, landowners and occupiers would be retain a private right of access to use the lane in vehicles.

There is no one piece of evidence to provide conclusive evidence of dedication of Green Lane as a public right of way. However, the dedication of the route as a public right of way at some time in the past appears to have been accepted by the adjacent landowners and the public, and the latter have shown acceptance of the dedication through their use of the lane over many years.

14. Conclusion

There has not been any calling into question of the public's use of Green Lane and the existence or otherwise of a right of way cannot therefore be considered under section 31 of the Highways Act 1980. However, it is considered that the documentary evidence when taken as a whole supports implied dedication of the lane as a public right of way many years ago. There is also sufficient evidence of acceptance by the public as indicated by the user evidence and other correspondence received, to show that a right of way, namely a restricted byway, on the basis of the documentary and user evidence, can be reasonably alleged to subsist at common law.

It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement to for the addition of a Restricted Byway A - B as shown on drawing number HCDW/PROW/13/14a.



Map Ref **SS 8102 8103**

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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - SANDFORD
SUGGESTION NO 6 - ADDITION
OF RESTRICTED BYWAY
GREEN LANE**

drawing number	HTM/PROW/13/14
date	Sept 2013
scale	1:5,000 at A4
drawn by	TW

Notation Addition of Restricted Byway A - B (660 metres approx)

Existing Public Footpaths

David Whitton

HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE



Suggestion 7 – Addition of a Byway Open to All Traffic from Ash Bullayne to Elston Cross

Schedule 14 Application for the addition of a Byway Open to All Traffic from the county road at Ash Bullayne southwards along the lane, Brendon and Furzeland Hills for 1810 metres, to the county road at Elston Cross (GR SS 7737 0435 to SS 7822 0311)

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement for the addition of a Restricted Byway A - G as shown on drawing number HCDW/PROW/13/15a.

1. Background

In the County Council review that started in Sandford in 1996, one of the proposals was for the variation of particulars of Footpath No. 19, Sandford to clarify that a right of way extends to the county road at Ash Bullayne. Subsequently the Devon representative of the Byways & Bridleways Trust proposed that the whole length of the lane from Ash Bullayne to the county road at Elston Cross should be recorded as a bridleway. User and map evidence was submitted in support of this proposal. The Devon Trail Riders Fellowship also submitted evidence in support of the route in 2003.

In December 2005 the TRF also submitted a Schedule 14 Application to the County Council for the addition of the lane to the Definitive Map as a byway open to all traffic, supported by map and user evidence. This was one of a number of Schedule 14 applications made by local representatives of the Trail Riders Fellowship in 2005 prior to the Natural Environment & Rural Communities Act 2006 (NERC Act) that came into force in May 2006. The NERC Act would restrict the ways that new rights of ways for motorised vehicles in the countryside could be created. A right for motor vehicles was preserved under NERC if a Schedule 14 Application had been made prior to 20 January 2005, that is compliant with the regulations for Schedule 14 applications under the Wildlife & Countryside Act 1981, or the surveying authority has made a determination of an application for a BOAT before 2 May 2006.

The application received for the addition of the lane as a BOAT, was made after 20 January 2005 and was also not compliant with the regulations as notice of the application had not been served on the landowners. However, as an application had been received the proposal was included in the parish review as made and for the addition of a BOAT, as there are limited exemptions in which vehicle rights may be preserved.

2. Description of the Route

The route is a hedged and defined lane throughout its length and starts at the county road north east of Ash Bullayne Farm and proceeds south westwards and then generally south eastwards to the county road at Elston Cross. Along the lane at point C there is an access track leading to Sandford Ash farm and at point D just north west of Brendon Cottage Footpath No.19, Sandford joins the lane. The lane originally ran directly in front (south west) of Brendon Cottage but in 1999, a previous owner purchased some neighbouring land and a new route was created behind (north east of) the cottage and the section of lane in front of the cottage gated.

The lane continues south eastwards from Brendon Cottage, named Brendon Hill, and passes access tracks to Davies Barn/Davysland to the west and to Higher and Lower

Furzeland to the east. The next section of lane is called Furzeland Hill and rises steadily to the county road at Elston Cross. The centre section of the southern end of the lane from the access to Davies Barn to Elston Cross is the parish boundary between Sandford and Copplestone.

The lane has a minimum width of 2.5 – 3 metres throughout and has an improved surface from north of Brendon Cottage southwards, where the lane is used as vehicular access to farms and properties. The northern section of the lane has a surface of mud and grass, with some improvement in the last section adjacent to Ash Bullayne Farm.

On the day of inspection there was evidence of use by agricultural vehicles and horses. Photographs of the route along the lane from the southern end are included in the backing papers.

3. Consultations

The following responses were received

Sandford Parish Council replied that footpath or bridleway is all that is necessary.

Copplestone Parish Council initially advised that the Parish Council would oppose plans for the addition of a BOAT based on concerns for Copplestone Walkers who would exit their pathway on to the proposed BOAT. They would support the recording of the said lane as a restricted byway or bridleway.

Devon Green Lanes Group supports the proposed suggestion. Copies of evidence in support of this route and user evidence forms were sent in 1978 on behalf of the Byways and Bridleways Trust.

Mr R Drake responded on behalf of the Devon Group of The Trail Riders Fellowship. He advised that he had researched their records and found no evidence to conclude that the schedule 14 claim would be NERC exempt. They still feel that the route has enough evidence to be considered for adding to the definitive map and would support the Council in any considered modification orders with the backing of the evidence previously submitted. In conclusion they/he support modifications as suggested for the route.

The Chair of Creedy Walkers, Simone Romain, advised that they would be perfectly happy for the suggestion to be recorded as a restricted byway or bridleway.

The British Horse Society Devon representative advised that suggestions 3 to 9 are shown as clear on the 1910 Finance Act Maps and therefore the BHS confirms support for the proposal.

4. Documentary Evidence

Ordnance Survey and Other Maps

The Ordnance Survey and other mapping do not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.

Cassini Historical Maps 1809 - 1900

These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published

in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.

Old Series 1809

The route is shown as a defined lane although the southern section of the land south of Ash Brook appears in a different position to the route of today as the lane does not join the Copplestone road at Elston Cross but some way to the west. Ash Bullayne is called Great Ash and Furzeland is situated north of Ash Brook but with the entrance drive from the southern end of the lane. The width of the lane is a similar width to the surrounding lanes that are county roads of today.

Revised New Series 1899-1900

The route is shown as a defined lane along the present position of the lane and in a similar manner to the county road Sandford Ash Lane, a metalled road, third class. Furzeland has moved to its current location, the holding at Sandford Ash has been created and Great Ash is now Ash Bullayne. The county road it joins at Elston Cross is a second class metalled road.

Popular Edition 1919

The lane is recorded as a double sided defined lane, uncoloured and appears to correspond to Roads under 14' wide. The key advises that private roads are uncoloured, but it is not known if this refers to maintenance or ownership, and the now county road east of Ash Bullayne is also uncoloured.

OS 1 inch to a mile maps of 1946 & 1957-58

On the 1946 edition the lane is shown coloured corresponding to road under 14' metalling - good and in the same manner as the two county roads the lane joins. On the later edition the route is shown as a defined white lane which corresponds to Minor Roads in towns, Drives and Unmetalled Roads. No reference is made to the road being private or otherwise

OS 1st Edition 25" to a mile 1880-1890

The route is depicted as a defined lane with mature hedgerow trees shown along both sides of the northern end of the lane. The southern section is labelled Brendon Hill and Furzeland Hill and the absence of trees shown would be consistent with this section of the lane being set out in the previous fifty plus years. Furzeland Hill has its own compartment number 207 and area of 0.307 acres.

OS Post War Mapping 1:10 000 scale

The route is depicted as a defined double hedged lane. Brendon Hill and Furzeland Hill are named. The present access drive to Davidsland Farm from Furzeland Hill has not been constructed yet.

Surveyors of Highways Records 1810

Records of the parish surveyors of the highways deposited in the Devon Record Office (reference 1238/PS 1-26) contain a collection of loose leaf papers. Amongst these is a sheet headed 'A True list of fair measurement of the Roads in the Parish of Sandford in the county of Devon taken by John Morgan and the four surveyors of the Highways in the year 1810'. The measurement was listed in miles, furlongs and poles and the list included the road described as 'From Ash Court to Furzeland 1-0-0'.

Ash Bullayne was called Great Ash on the 1809 1st edition 1 inch to the mile and although Furzeland was then situated north of Ash Brook, the entrance to the farm

drive was situated further south than the present day access. One mile is 1610 metres and as the total lane measurement of the lane on its 1810 alignment is estimated to be 1700-1800 metres. The 1810 description could refer to the lane from Ash Bullayne southwards to the 1809 entrance to Furzeland as the surveyors may have considered the last section to be in Crediton Hamlets (now Copplestone) parish. There would not appear to be any other road in Sandford that the description could apply to.

In 1837 surveyors completed a return of roads in the parish which, excluding the Turnpike road, totalled 39 miles 5 furlongs and 12.25 poles of which 13 miles 3 furlongs and 10 poles were repaired by private individuals.

A poster of 1862 for the letting of roads for maintenance in the parish refers to a length of about 27 miles. This length would correspond to the 1837 total after deduction of the privately maintained roads.

Tithe Maps and Apportionments

Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring can indicate carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown.

Sandford Tithe Map 1839

On the Sandford Tithe Map the route is shown along the present day line and as a defined lane and in a similar manner, being coloured, to the neighbouring lanes that the lane connects with and that are now county roads. The shading continues through the Brendon Cottage apportionment, number 903, described as cottages and waste and part of the holding Brenon & Ash. Ash Bullayne was called Ash Bullion.

Finance Act Plans and Field Books 1910

The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.

The route is depicted on two map sheets and on the sheet for the northern end of the route; the hereditament shading is shown broken in five out of six places where the lane crosses hereditament boundaries. On the southern map sheet the hereditament colouring again breaks where the lane is included within holdings. This break in colouring across the route indicates that the route is excluded from the adjoining hereditaments in the similar manner to county roads. This could indicate that the lane was considered to be public or that the adjoining landowners did not claim ownership of the lane.

The hereditaments bordering or including the lane were numbers 18, 29, 44, 167, 200 & 243.

5. Parish Survey under National Parks & Access to the Countryside Act 1949

The Parish Council survey of their public rights of way to be considered for inclusion on the Definitive map was undertaken in 1950 and the lane was not included as a proposal. Footpath No. 19, Sandford was proposed by the parish council and described as footpath from Brendon to Copplestone Road. The survey form noted that only a very small portion is in Sandford parish. The parish description describes the path as going from a field gate at the bottom of the lane leading from Brendon. The bridge (across the parish boundary) is stated to be unsafe and it was advised that Crediton Hamlets (prior to Copplestone parish been created) & Sandford Parish Councils repaired the footbridge many years ago. On the map submitted with the form the parish marked in the short section of the path between the field gate and the foot bridge.

The path was walked by a surveyor from the Rural District Council in February 1951. He described the route as 'This path starts off by the entrance of Sandford Ash Farm, unclassified road, through the farm yard to a lane leading to Brendon Cottage through the gate 50 yards north of the cottage, to field on to a footbridge, and then a stile on the parish boundary'. The surveyor comments the lanes are clean but appears to describe a longer route through Sandford Ash farm from the county road north of the farm, rather than just the section of footpath from the lane to the parish boundary.

On the submitted map the county council annotated the lane adjacent to Brendon Cottage 'Public accomm Rd' and on the form commented '? Accom roads at each end'. After checking that the continuation of the footpath had been claimed in the adjacent parish (Crediton Hamlets), the county surveyor recommended the path to be included in the draft map and the footpath was subsequently confirmed as Footpath No. 19, Sandford on the final definitive map for the Crediton Rural District Council area. The definitive map statement for the path reading 'Continuation of Path No. 26 in the Crediton Hamlets Parish, from the footbridge at the Parish boundary, across a small pasture field, through a field gate, then along a private Accommodation Road (not repairable by the inhabitants at large) until it joins Brendon Hill.' This statement describes the route shown on the definitive map from the parish boundary to the lane just north of Brendon Cottage.

6. Devon County Council Uncompleted Reviews of 1968, 1977 & 1996

In the 1968 review the Parish Council claimed no additional public rights of way. There appears to be no correspondence from the Parish in connection with the 1977 review.

In the 1996-97 review, one of the suggestions proposed on the consultation map published by Devon County Council was for the continuation of Footpath No. 19 northwards to the county road at Ash Bullayne. In response to the consultation the local representative of the Byways and Bridleway Trust proposed that the whole length of the lane from Ash Bullayne to Elston Cross route should be considered as a bridleway. The BBT subsequently forwarded some user and other documentary evidence to support the route being recorded as a bridleway.

7. Vestry and Parish Meeting Minutes 1828 - 2008

The Vestry Meeting minutes from 1828 - 1900 are held at the Devon Record Office.

The Parish Council minutes from 1896 – 1975 and from 1993 – 2008 are held at the Devon Heritage Centre. The minutes are missing between 1975 and 1993.

In March 1911 letters were received from the Crediton Rural District Council and Crediton Hamlets Parish Council regarding the footbridge across the stream at Ash Farm.

On 4 January 1912 the minutes refer to the dangerous state of the footbridge across the stream at Burham (now Brendon). A complaint was made with regard to the bad state of the road leading from Ash Farm to the Coppelstone Road via Furzeland Quarry. The clerk was instructed to write to the Clerk of the RDC calling his attention to the matter.

In early 1913 an estimate of £1-5-0 was accepted for the footbridge.

In November 1957 under Footpath at Brendon, a letter from Mr Cleverdon was read asking for repairs to be carried out on two bridges crossing Ash Brook at Brendon. One of the bridges was on an occupation road and not repairable by the parish. It was agreed that the bridge below Brendon Cottage on a public footpath should be repaired and the clerk was instructed to ask Mr Cleverdon to carry out necessary repairs and submit account to the council. Authorisation to spend up to £4 was given.

On 6 February 1958 in connection with footpath at Brendon, Mr Cleverdon advised that he had employed G F Palfreman and Son to carry out repairs to the bridge and their account would be presented for payment.

8. Aerial Photography

The 1946 and 2006-2007 aerial photography show the route as a defined double hedged lane with some hedgerow trees and trimmed hedges.

9. Land Registry

A search of the lane and adjoining land/property produced ten registered titles and confirmation that part of the land was unregistered. On the registered title for Middle Davies Barn, the vehicle access now via Furzeland Hill, there is no reference to a private right of way over Furzeland Hill.

In January 2013 Sandford Parish Council received a B149 notice from Land Registry which related to the application received from the owners of Brendon Cottage for the registration of land adjoining Brendon Cottage comprising the route of the original lane passing in front (south west) of the property. Prior to the application the lane was excluded from the registered title for the cottage.

The application was supported by statutory declarations from previous owners which confirmed that the alternative track around the back (north east) of the cottage was constructed by Mrs Ford in October 1999, shortly after her purchase of Brendon Cottage and some adjacent land. Mrs Ford and subsequent owners confirmed that after construction of the alternative route around the cottage the old route was closed off by double gates and only used by the owner, friends, invitees and those visiting

the cottage. Since gating the old route no one had claimed ownership of the enclosed section of lane or claimed that they have rights of way thereover.

10. Sales Particulars

Brendon Cottage was advertised for sale in 1998 by an Exeter estate agent. On the particulars the estate agents, under the general description of the property, advised that access was gained down the farm lane, that was unmade and had a good hard-core base but was not considered suitable for low hung sports cars etc. There was a NB added of 'Being a rurally situated property an existing bridle path leads through the property which we understood is seldom used'.

11. Planning Applications

In 2009 four separate but linked planning applications were made to Mid Devon District Council for the erection of agricultural buildings for rearing ducks on land east of the lane near Higher Furzeland and using Furzeland Hill for access. There were a number of public responses to the applications and some of the comments were included in the planning officer's report under the headings:

Impact on Character of Historic Lane

1 Furzeland Hill is the parish boundary and is shown on maps dating back to the 9th century.

2 The green lane is a historic track which reputedly dates back to Saxon maps and is a precious country resource for dog walkers, horse riders and local families in times of increasing road traffic. Heavy vehicles would damage the track and resurfacing would be a hazard for horse riders as concrete is very slippery for shod horses and destroy the historic element of the track and under

Road Safety and Rights of Access

1 Usage of lanes by commercial traffic causing inconvenience and hazard to other road users, walkers and horse riders.

2 The access is not suitable for heavy vehicles on what is one of the longest bridleways in the county. It is used by ramblers and horse riders as a safe and vehicle free alternative to busy roads.

3 Horse riders use the track every day.

4 The lane has been put forward to be recorded as a right of way on the definitive map.

In his summary under Road Safety and Rights of Access the officer concluded. 'Concerns were raised over the anticipated increase in traffic, particularly large lorries, and the impacts this increase in traffic will have on the safety of other road users, particularly children and horse riders.'

12. User Evidence

Nearly thirty user evidence forms were submitted by the Byways & Bridleways Trust, completed in 1994-98, in support of the lane been used and considered as a public bridleway. Most of the forms completed in the 1990s were from horse riders who had used the lane from weekly to a few times a year. The users all considered the route to be public through local knowledge, word of mouth or riding friends and the user evidence records use of the route from the early 1930s to the present day (1994-8 when their forms were completed). No users report ever seeing any notices or anything else to indicate that the lane was not public. Some users refer to obstruction by parked cars at Brendon Cottage and a tractor user reports a low lying

over head electric cable running from the cottage to an outbuilding the other side of the lane.

In 1998 Mr S F Conibere, born in 1930, submitted a written statement and had lived at Elstone Cottages, south of the route, from 1940 to 1959. He would regularly use Furzeland Hill and Brendon Hill to visit his aunt and uncle most Sundays at Brendon Cottage. He had always believed the route from Elston Cross to Ash Bullayne to be public for vehicles, horses and people on foot. He advised that in the war years all the local signposts were stored on one of the quarries nearby.

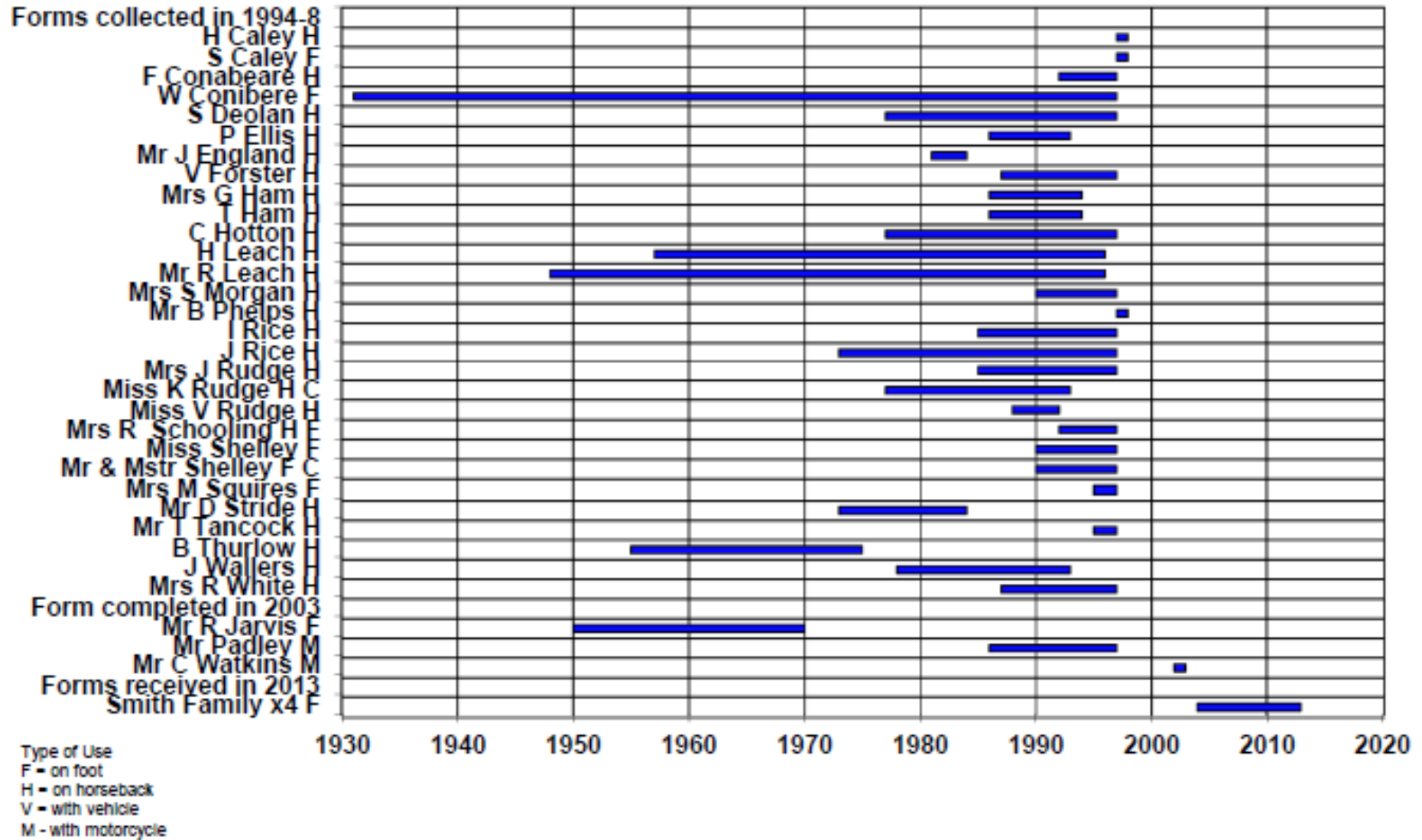
Mr Jarvis completed a form in 2003 in relation to his use of the lane on foot from 1950 to 1970, twenty to thirty times a year. In a covering letter he advised that when he joined Devon County Council as a mason on the highways department, one of the first jobs he undertook was some work near this route. He could remember that there was talk at that time that the whole route was being considered for having a hard surface of tarmac being laid along it. He therefore believed that the route must have been of some importance at that time, although the surfacing work was never undertaken. He states that he was always informed that this route was a right of way for the public.

The schedule 14 application received in 2005 enclosed three user evidence forms from motorcycle users. One of the users had only used the route once, one only 3-4 times a year in 2002-3 and the third described their frequency as many for eleven years from 1986. They considered the route to be public through reputation or map evidence and believed that adjoining landowners were aware of their use. Mr Watkins recalls been stopped in March 2003 and told by a property owner along the lane that because he maintained the lane it was not public.

Four forms were received in 2013 from a local family who have used the lane for walking since 2004 between 2 and 6 times a year.

The status of the route is considered to be a bridleway by most of the horse riders, a byway open to all traffic by the motor cycle users and a restricted byway by the Smith family. The period and type of use is summarized on the chart of user evidence for this suggestion.

Chart of User Evidence Received for Suggestion 7 - Ash Bullayne to Elston Cross



13. Landowner Evidence

All the landowners/occupiers adjoining the lane were contacted and informed of the suggestion. The landowners/occupiers were previously contacted in 1998 in connection with the proposal to continue Footpath No. 19, Sandford northwards to the county road at Ash Bullayne.

Mr Bristow? (signature difficult to read) of Davidsland responded in 1998 and advised that he consider the way to be a footpath/bridleway for the last eleven years since they moved to the property. They had seen very occasional horse and riders.

Ms H Carter purchased Brendon Cottage in September 2012. She does not believe the way to be public and reports only seeing neighbours walking their dog. She has not stopped or turned back any anyone and says that the route from D to G would be potentially dangerous to walkers due to car use of adjoining property owners and narrowness of lane. The existing (FP 19) footpath takes people to Bewsley Hill in any event.

In February 2013 in connection with the land registry application to register a possessory title on the route of the old lane south west of Brendon Cottage, Ms Carter wrote to the County Council to advise that they would have no objections to the anticipated recommendation that the route marked on the map (the new route north east of the cottage) be designated a restricted byway.

Mr and Mrs A & Mr P Cleverdon have owned Sandford Ash since 1920 and farm land both side of the lane mainly between points C and E. They have always believed the lane to be a public footpath, originally used by the postman. They rarely see anyone on horseback and a few walkers during the year. They have not stopped or turned back anyone, gates were never locked and the way was only obstructed during Foot and Mouth in 2001 and with vehicles when bringing cattle to and fro.

In a covering letter they advise the track has always just been used by them, the Saunders at Ash Bullayne and Brendon Cottage. The public footpath finishes at point D. Any walkers now do continue along the track from D to B & A. They strongly oppose any form of motor bikes using the track as the noise would be very frightening and upsetting to any cattle or cows and calves being walked along the track back to their farm. They are also continually crossing the track when farming their land and seeing stock twice a day.

In 1998 Mr A Cleverdon responded and believed the way to be a footpath with very rare walking seen. He mentioned the old stile at the lane's junction with Footpath No. 19, Sandford and also advised that the way should continue to the Copplestone road. It was also a byway having used by his parents weekly with pony and trap to Copplestone from 1920 and from 1939 tractors and land rovers used it. It is becoming more difficult because of vehicle obstruction at Brendon Cottage sometimes. Mr Cleverdon had also completed a user evidence form in 1997 in respect of his use of the lane all his life for pleasure, business and work and on foot, on horseback and in a vehicle.

Mr J Gush resides at Kestral Barn, at Davidsland. He does not believe the way to be public but reports seeing dog walkers weekly and up until a year or two ago, fortnightly horse riders. He has never stopped or told anyone the route was not public. Under other information Mr Gush notes that the first (southern) end of the

lane is very narrow and dangerous for walkers/riders when motor vehicles pass as there are no refuges in the hedges.

Mrs K Hotton has owned Higher Furzeland and land east of Furzeland Hill since 1983. She considers the lane to be a footpath/bridleway and advises that people have been using the lane for walking, access and riding for all of the 35 years she has ridden and walked down it. She has not stopped or turned back anyone and says this track is much used and valued by locals. She comments that it is in no way suitable for vehicles being unmade and badly drained and that it would be exceedingly dangerous if used by vehicles.

Mr & Mrs K McSweeney are the current owners of Davisland and land west of the lane between points E and F since 2012. They do not consider the way to be public and have not seen use by the public. They advise that the top section G to F is a steep slope, narrow with high banks. It is the vehicular access to several properties. Cars and pedestrians cannot pass. The whole length of track is clearly unsuitable as a BOAT.

In 1998 Mr Pearcey of Bewsley Farm replied in respect of his ownership since 1996 of land east of the lane between points E and F. He did not consider the way to be public but private terminating at Brendon Cottage. According to his deeds he is expected to help with maintaining what he understands to be a private lane, shared by the owners of Higher, Middle & Lower Furzeland, the thatched property and converted barn at Davidsland and owners of Brendon Cottage. Mr Pearcey's land is understood to now be owned by Mr Coleman, from whom no response was received.

Mr A Redfern has owned land west of the Furzeland and Brendon Hill sections of the lane at Middle Davidsland since 1997 and does not believe the way to be public. He has not been aware of the lane being used by the public, only by adjoining residents and their visitors. He does not see any reason for the track/lane to become a public right of way as it would increase the need for maintenance putting an unwarranted financial burden on either or both the tax payer and adjoining land owners. It would reduce their privacy and security of the adjoining properties. Should the lane become a public right of way he proposes that Footpath Nos. 76, Copplestone and 19, Sandford be closed as the new right of way would render the footpath an unnecessary duplication.

Mr & Mrs S Saunders and their family have owned Ash Bullayne Farm since 1932 and own land adjoining the route between points A and C. In a covering letter they advised they had always believed through family that the lane was a bridleway. On learning that this is not the case, they have no objections to the lane being used by horses or people on foot. They would however object to the lane being opened up to vehicles due to the lane being used to move stock around and they occasionally block the lane to move livestock. The lane also passes through their farm yard used for playing in by their children and it would be very dangerous if unexpected vehicles pass through.

On the evidence form Mr Saunders advises seeing 2-5 horses a week and he has required people to ask permission sometimes if they don't know the way. He has not stopped, turned back or told anyone the route was not public. He has obstructed the way with a tractor when moving cattle.

In 1998 Mr E Saunders replied and advised that he considered the way to be a bridleway since 1970. He had seen people weekly on horseback and also pointed

out that the bridleway continues to join the Copplestone/New Buildings road. It is important that this is kept open as a public right of way.

Mr E J Saunders also completed a user evidence form in 1997 in respect of his own use of the route from 1967 to 1997 on horseback and sometimes in a vehicle, about 100 times a year. He refers to the cars obstructing the way at Brendon Cottage and advises that the owners were always considerate to move vehicles.

14. Rebuttal Evidence

A number of local people either saw the consultation notices or heard about the BOAT proposal for the lane from friends, family or neighbours. This produced thirteen emails and letters to the County Council against the recording of the lane as a BOAT and its use by motorised traffic apart from local farmers.

The comments received included:

Concern for damage to flora and fauna;
Safety for walkers and riders using the lane;
Suitability for traffic;
Effect on the public's enjoyment of the route.

These views and concerns are not factors which can be taken into consideration when determining whether public rights exist under present legislation. Several responders also commented on their own use of the lane or use by others on foot or horseback.

Most of the people who wrote to or emailed the County Council were contacted and the circumstances explained about why the BOAT proposal had been made. Many of them either subsequently confirmed that they would be happy for the lane to be designated as a bridleway or restricted byway or proposed this status in their initial communication. Mr & Mrs Smith and their children completed user evidence forms in respect of their use of the lane from 2004 to the present day.

Most of the people who wrote to or emailed the County Council were contacted and the circumstances explained about why the BOAT proposal had been made. Many of them either subsequently confirmed that they would be happy for the lane to be designated as a bridleway or restricted byway or proposed this status in their initial communication.

13. Discussion

A claim for a public right of way can arise through use by the public under section 31 of the Highways Act 1980, if twenty years use can be shown after the public's use of the route is called into question. A claim for a right of way may also exist at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.

The proposed continuation of Footpath No. 19, Sandford to join the county road at Ash Bullayne was proposed in the County Council's review in 1996. The local representative of the Byways & Bridleways Trust responded and proposed that the whole lane should be recorded as a bridleway and forwarded user evidence and

maps in support. A Schedule 14 application for the addition of the route as a Byway Open to All Traffic was subsequently made by the Trial Riders Fellowship in 2005. The TRF also forwarded map and user evidence in support of their claim.

There has not been any calling into question of the public's use of the lane and as the application made by the TRF in 2005 is not considered sufficient to do so, the existence or otherwise of a public right of way is considered at common law.

The documentary map evidence records the existence of the lane since at least the early 1800s although the southern end of the lane moved eastwards between the first edition OS 1" of 1809 and when the tithe map was completed in 1839. During this time the holding of Sandford Ash was created and Furzeland moved south of Ash Brook. On the tithe map the lane is coloured in a similar manner to adjacent roads and lanes that are now public today

In the list of the measurement of roads of 1810 the description and distance quoted of a mile appear to correspond to the length of the lane.

The lane generally appears excluded from the adjacent hereditaments on the 1910 Finance Act plan. This could indicate this was because the lane was considered public or alternatively that neither of the adjacent landowners claimed ownership of the lane.

In 1912 there was a complaint to the parish council about the bad state of the road from Ash Farm to the Copplestone road and the matter was to be reported to the Rural District Council. This would support the lane being used by the public for perhaps more than just on foot or horseback at that time, as a parish council would not usually be concerned by routes that were solely used as private access.

In 1950 Footpath No.19, Sandford was proposed for inclusion on the definitive map by the Parish Council and there is no apparent reason for the path to be a cul-de-sac route. It would seem that the lane was deemed to be public at that time and so used by the public as a continuation of the footpath.

The user evidence records use of the lane by various members of the public for many years from the 1930s (one user) on foot, horseback and two users with motorcycles. The users advise that they considered the lane to be public through maps, reputation or word of mouth and there are no reports of their use ever being called into question or obstructed. Mr Saunders advised his parents used the lane in a pony and trap from 1920 to go to Copplestone.

It was the extra hazards to walkers and riders that were a concern to several of the people who responded to the duck farm planning application in 2005, indicating that the lane was being used by the public at that time. Use by the public is understood to be continuing at the present day.

The original route of the lane changed in the first half of the 19th when the southern section was moved eastwards to exit at Elston Cross. Then in 1999 a new track was created around the back of Brendon Cottage for the public to use and the original track obstructed. There is nothing to indicate that the landowners at the respective times did not intend to dedicate the new routes for use by the public and the public have accepted and used the alternative ways provided.

Several of the longer term landowners whose land adjoins the lane have advised that they had considered the lane to be a bridleway or footpath and report seeing the

route used by members of the public over many years. The sale particulars for Brendon Cottage of 1999 make reference to a public bridleway passing the cottage. Some of the adjoining landowners do not believe the lane public and have not observed use apart from by neighbours.

A large number of local residents contacted the County Council on becoming aware of the proposal to record the lane as a Byway Open to All Traffic, saying that the lane was used by walkers and riders and that allowing use by motor vehicles would affect their use and the local wildlife found in the lane. Several of these parishioners either suggested or subsequently confirmed that they felt or would be happy if the lane became a restricted byway or bridleway. Sandford Parish Council confirmed that they felt a footpath or bridleway was all that was necessary.

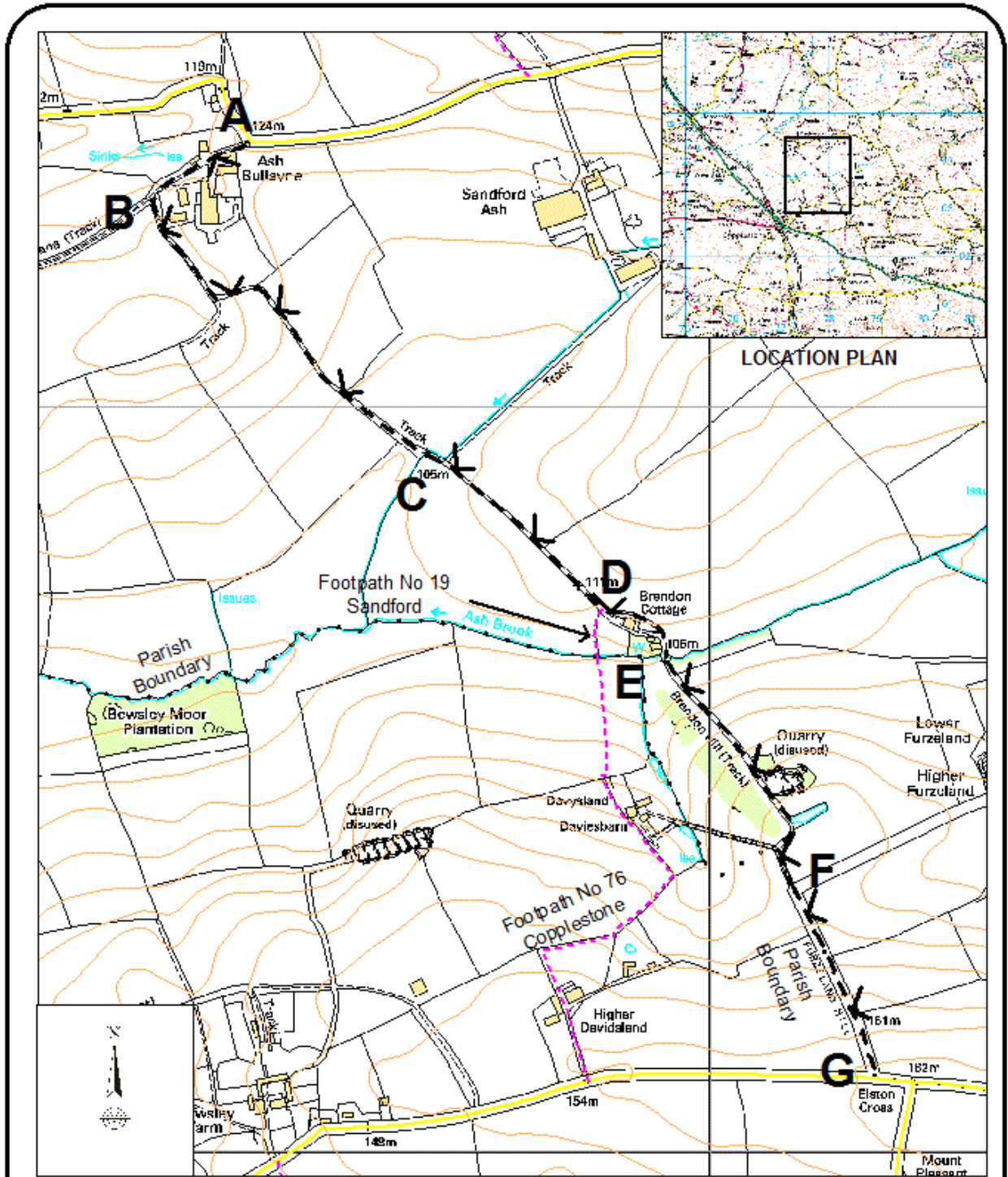
The documentary evidence supports the existence of the lane for many years. For some of that time the route has been depicted in a similar manner to today's county roads and its poor condition was to be referred to the Rural District Council in 1912. This evidence and some evidence of vehicular use of the lane would support designation of the suggestion as a BOAT. However, the introduction of the NERC Act in 2006 and confirmation from the current TRF representative that none of the exceptions are considered to apply, means that the route could only be recorded on the definitive map and statement as a restricted byway. If the lane is recorded as a restricted byway, landowners and occupiers would be retain a private right of access to use the lane in vehicles.

There is no one piece of evidence to provide conclusive evidence of dedication of the route as a public right of way at common law. However, the implied dedication of the route appears to have occurred at some time in the past and to have been accepted by the adjacent landowners. The dedication has been accepted by the public as shown through their use of the lane over many years.

14. Conclusion

There has not been any sufficient calling into question of the public's use of the route and the existence or otherwise of a right of way is not considered under section 31 of the Highways Act 1980. However, it is considered that the documentary evidence when taken as a whole supports implied dedication of the lane as a public right of way many years ago. There is also sufficient evidence of acceptance by the public as indicated by the user evidence to show that a right of way, namely a restricted byway, on the basis of the documentary and user evidence, can be reasonably alleged to subsist at common law.

It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement to for the addition of a Restricted Byway A - G as shown on drawing number HCDW/PROW/13/15a.




Map Ref **SS 7703 7704 7803**


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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - SANDFORD
SUGGESTION NO 7
ADDITION OF RESTRICTED BYWAY
ASH BULLAYNE TO ELSTON CROSS**

drawing number	HCDW/PROW/13/ 5a
date	Feb 2013
scale	1:7,500 at A4
drawn by	TW

Notation

Addition of Rest Byway A - G (1810 metres approx) 

Existing Public Footpaths 

David Whitton

HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE



Suggestion 9: Addition of a bridleway along Willie Lane

Addition of a bridleway along Willie Lane from the west end of Henstill Lane and the north end of Footpath No. 8, Sandford at East Henstill north eastwards for 490 metres to the county road known as Perrymans Hill (GR SS 8124 0411 to SS 8155 0442).

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement for the addition of a Bridleway from A - B along Willie Lane as shown on drawing number HCDW/PROW/13/17a.

1. Background

After the County Council review started for Sandford in 1996, a number of suggestions for change to the Definitive map were received from the Devon representative of the Byways & Bridleways Trust and Trail Riders Fellowship. One suggestion made by the Byways and Bridleways Trust was for the addition of Willie Lane as a bridleway. User and map evidence was submitted in support of this proposal.

2. Description of the Route

Willie Lane is a hedged lane throughout its length and starts at the end of the unsurfaced county and east end of Footpath No. 8, Sandford at East Henstill and proceeds north eastwards along a surfaced track for about 490 metres to the county road known as Perryman's Hill.

On the day of inspection there was evidence of use by vehicles and horses. Photographs of the route along the lane from the western end are included in the backing papers.

3. Consultations

The following responses were received.

Sandford Parish Council replied that they deemed Willie Lane to be acceptable as a bridleway.

Devon Green Lanes Group supports the proposed suggestion. Copies of evidence in support of this route and user evidence forms were sent in 1977 on behalf of the Byways and Bridleways Trust.

Mr R Drake responded on behalf of the Devon Group of The Trail Riders Fellowship. He queried the point at which the county road stopped and advised that he was awaiting any user evidence for the lane. He would be interested in supporting any modification order made for this route. In conclusion they/he support the modifications as suggested.

The Chair of Creedy Walkers, Simone Romain, advised that they would be perfectly happy for the suggestion to be recorded as a bridleway.

The British Horse Society Devon representative advised that suggestions 3 to 9 are shown as clear on the 1910 Finance Act Maps and therefore the BHS confirms support for the proposal.

4. Documentary Evidence

Ordnance Survey and Other Maps

The Ordnance Survey and other mapping do not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.

Cassini Historical Maps 1809 - 1900

These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.

Old Series 1809

East Henstill is called Lower Henstill and Willie Lane is shown as a defined lane in a similar manner to the surrounding lanes and county roads of today.

Revised New Series 1899-1900

The lane is shown as a thick black line, an unmetalled road. Henstill Lane is uncoloured indicating a third class metalled road and Perryman's Hill is coloured as a second class metalled road.

Popular Edition 1919

The lane is recorded as a double sided defined lane, uncoloured and appears to correspond to Roads under 14' wide. The key advises that private roads are uncoloured (but it is not known if this refers to maintenance or ownership). Henstill Lane and Perryman's Hill are dashed coloured indicating Indifferent or bad winding road.

OS 1 inch to a mile maps of 1946, 1957-58 & 1967

On all three editions of these maps Willie Lane is shown as a defined white lane which corresponds to Minor Roads in towns, Drives and Unmetalled Roads for 1946 and 1957-8 and Minor Road in towns, Drives or Track (unmetalled) for 1967. No reference is made to the roads being private or otherwise. In 1946 Willie lane is shown wider than Henstill Lane and in 1957-58 & 1967 at a similar width to Henstill Lane.

OS 1st Edition 25" to a mile 1880-1890

Willie Lane is depicted as a defined named lane with mature hedgerow trees shown along the middle portion of the lane. The lane appears to be included in the compartment number for the connecting section of Henstill Lane, number 1196. There is no evidence of any gates across the lane and the dashed line at the north east end of the lane is believed to represent a change in surface. The farm is called Adam's Henstill and Copley's Henstill and East Henstill Cottages are called Reed's Henstill. Footpath No. 12, Sandford is shown as a double pecked line labelled *F.P.* and Footpath No. 8, Sandford runs along a section of defined lane.

OS Post War Mapping 1:2:500 scale 1970

The lane is called Willie Lane (track) and depicted as a defined double hedged lane. The lane again appears to be included in the compartment number for Henstill Lane, number 2915. There is no evidence of any gates and a dashed line at the north east lane of the lane. The farm and cottages are both called East Henstill.

Tithe Maps and Apportionments

Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring can indicate carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown.

Sandford Tithe Map 1839

On the Sandford Tithe Map Willie Lane is shown as a defined lane and in a similar manner, being shaded and not having an apportionment number, to the neighbouring lanes that are now county roads. The farm is called East Henstill and was owned by Sir Stafford Northcote and occupied by John Pope.

OS Object Name Book 1903-1904 (PRO references OS 35/1749)

The OS name books gave the definitions of features, houses, rivers, places, lanes printed on the OS maps. The definitions were typically authorised by the owner where an object (say a farmhouse or gentleman's residence) was privately owned and by the district overseer/surveyor or someone in a public position where they were in public ownership.

Willie Lane is described as 'applies to a lane running in a North Easterly direction from Cobley's Henstill to a junction of roads about 5 chains N.E. of Quarry Cottages.' The entry is signed for by Mr A Pope, owner Cobley's Henstill, Sandford.

Finance Act Plans and Field Books 1910

The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.

Willie Lane falls within hereditament number 170, described as Henstill owned and occupied by Alfred Pope and the boundaries of the hereditament include the lane in its entirety. There is no colouring to indicate whether the lane was excluded or included within the holding and the county road Perryman's Hill is also included in the hereditament. There is no reference to public rights of way in the field book. On the plan of the buildings on page 2, Henstill Lane is labelled as road and the plan indicates that this continues into Willie Lane with no apparent break between the end of Henstill Lane and start of Willie Lane.

5. Parish Survey under National Parks & Access to the Countryside Act 1949

The Parish Council survey of their public rights of way to be considered for inclusion on the Definitive map was undertaken in 1950 and Willie Lane was not included as a proposal.

6. Devon County Council Uncompleted Reviews of 1968, 1977 & 1996

In the 1968 review the Parish Council claimed no additional public rights of way. There appears to be no correspondence from the Parish in connection with the 1977 review.

In the 1996-97 review, the suggestions proposed on the consultation map published by Devon County Council were for the addition of a footpath and variation of particulars of footpaths in the parish only. In response to the consultation the local representative of the Byways and Bridleway Trust proposed that additional routes in Sandford should be considered, in her letter of 6 August 1997, Willie Lane. The BBT subsequently forwarded some user and other documentary evidence to support the route being recorded as a bridleway.

7. Vestry and Parish Meeting Minutes 1828 - 2008

The Vestry Meeting minutes from 1828 - 1900 are held at the Devon Record Office.

The Parish Council minutes from 1896 – 1975 and from 1993 – 2008 are held at the Devon Heritage Centre. The minutes are missing between 1975 and 1993.

No references were found relating to Willie Lane in the parish or vestry minutes available.

Sandford Parish has been a member of the Parish Paths Partnership (P3) scheme since 1993 and the local co-ordinator was Mr Ken Sharman for fourteen years. Mr Sharman undertook work on the public rights of way in the parish and has confirmed that the lane was maintained by him regularly. In his day it was used by the more serious walker.

8. Aerial Photography

The 1946 and 2006-2007 aerial photography show the route as a defined double hedged lane running north east from buildings at East Henstill. Some of the mature hedgerow trees are still shown along the lane and the hedges trimmed recently in both photographs.

9. Land Registry

Land Registry records confirm that neither Willie Lane or East Henstill is registered.

10. User Evidence

A total of seventeen use evidence forms covering the use of eighteen people, were collected and then submitted by the Byways & Bridleways Trust in 1997-1998 in support of the lane been used and considered to be a public bridleway. Most of the forms completed in the 1990s were from horse riders who had used the lane from

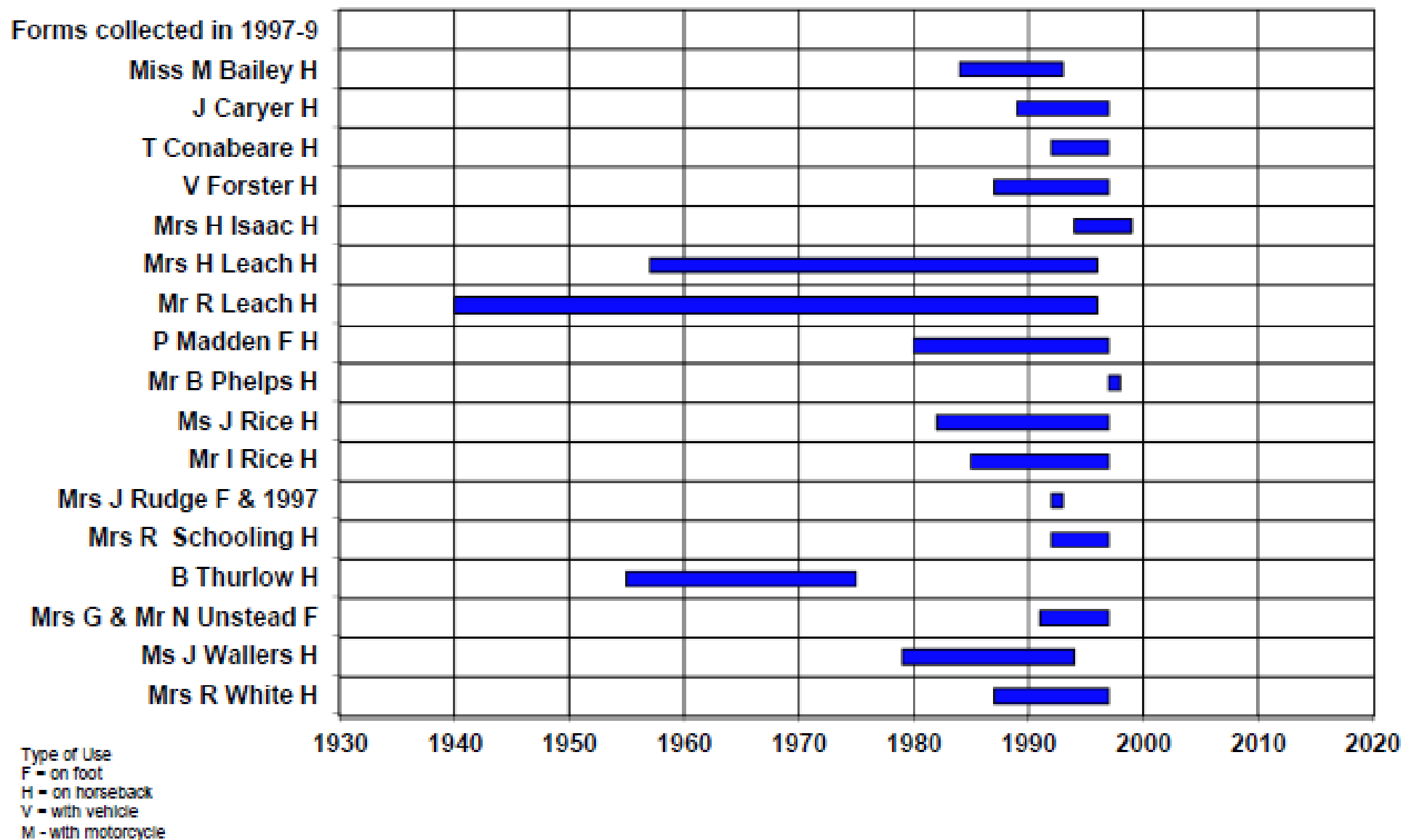
nearly weekly to once a year, with the majority being 3-10 times a year. The users all considered the route to be public through local knowledge, word of mouth or riding friends and the user evidence records use of the route from 1940 (Mr Leach) to 1997-8 when the forms were completed. No users report ever seeing any notices, obstructions or anything else to indicate that the lane was not public or being stopped or told the route was not public at any time. Most mention the gate at the East Henstill end of the route but refer to the gate being always unlocked or open.

The status of the route was considered to be a road, byway or bridleway by the users. Some users report seeing the landowner whilst using the lane or that they knew it was used as a right of way. The period and type of use is summarized on the chart of user evidence for this suggestion.

Other supporting evidence

A local resident Mr Elliott wrote to advise that he had no objection to the route being recorded as a bridleway.

Chart of User Evidence Received for Suggestion 9 - Willie Lane



11. Landowner Evidence

Mr Crooke of Cross Barton, Sandford was understood to be the occupier of East Henstill Farmland and returned a completed landowner evidence form. He confirmed that the land has been in their tenancy for forty four years and although he does not believe the way to be public, advises that it does get used to join up the two footpaths No.8 and 12. He is aware of the lane being used by walkers and horse riders regularly – weekly or more often. He has never stopped or told users the way was not public, given permission to any users or erected any notices or obstructed the way.

Under other information, Mr Crooke advises ‘This lane has always been used by walkers, horse riders since we have rented the land – but not for motor traffic except we use it for tractors’.

The occupier of East Henstill farmhouse was written to in 1998 and 2013 but no response was received.

12. Rebuttal Evidence

No rebuttal evidence was received.

13. Discussion

A claim for a public right of way can arise through use by the public under section 31 of the Highways Act 1980, if twenty years use can be shown after the public’s use of the route is called into question. A claim for a right of way may also exist at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.

The proposed addition of Willie Lane to the definitive map as a public right of way was first raised by the local representative of the Byways and Bridleways Trust in 1997 during an earlier review in the parish. The BBT representative forwarded map and user evidence in support of the claim. There has been no event which may be considered as having called the route into question for the purposes of presumed dedication under statute and the existence or otherwise of a public right of way is therefore considered at common law.

The documentary map evidence records the existence of the lane since at least the early 1800s and on the tithe map the lane is depicted in a similar manner to adjacent roads and lanes that are now public today. In the OS name books of 1903-04 the lane is described as ‘a lane’ and signed for by Mr Pope landowner at East Henstill. This could indicate that the route was considered to be more than an occupation road as the term lane is also used for routes that were signed for by the local surveyor and are county roads today.

The Finance Act plan does not indicate whether the lane was included or excluded from the hereditament but the plan of the house and farm buildings in the field book shows Willie Lane as a continuation/extension to Henstill Lane.

The user evidence records use of the lane by various members of the public for many years from 1940 on foot and horseback. When used on foot the lane provides a useful link from the east end of Footpath No. 8, at East Henstill to the west end of Footpath No. 12 leading to Stoneshill Cross and the Old Forge. The users advise that they considered the lane to be public through maps, reputation or word of mouth and there are no reports of their use ever being called into question or obstructed.

The long term tenant of the land at East Henstill advises being aware of regular weekly use by the public since 1970. No response was received from the owner/occupier at East Henstill farmhouse.

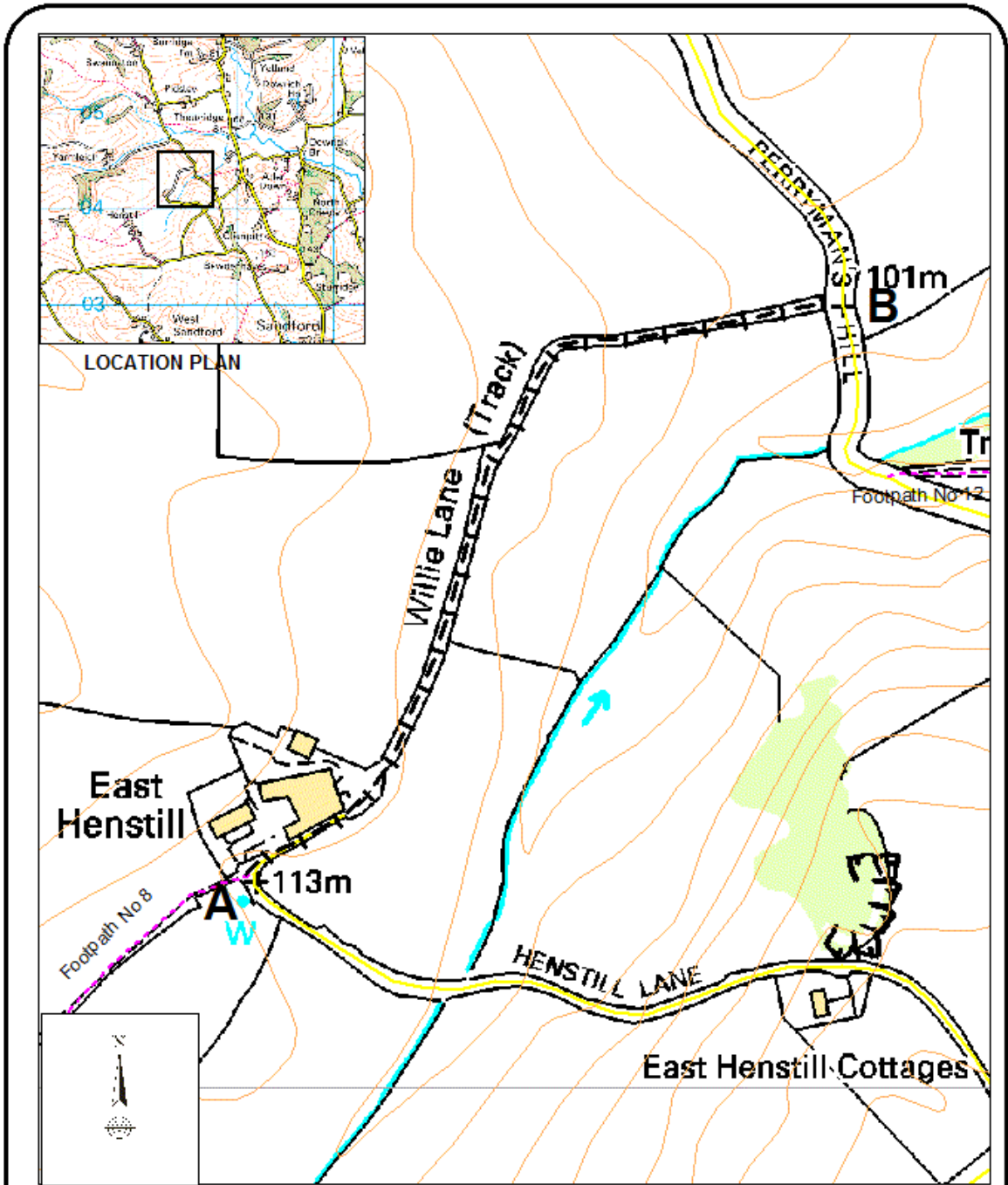
Sandford Parish Council support the lane being recorded as a bridleway and a previous P3 co-ordinator confirms undertaking maintenance on the lane for the benefit of the public. It is assumed that the landowner would have been aware that works had been undertaken.

On considering all the available evidence including the long term regular use by the public and works undertaken on behalf of the parish council, it is believed this is sufficient to show that implied dedication by a landowner has occurred at some time in the past and that the dedication has been accepted by the public.

14. Conclusion

There has not been any calling into question of the public's use of Willie Lane and the existence or otherwise of a right of way cannot therefore be considered under section 31 of the Highways Act 1980. However, it is considered that the documentary evidence when taken as a whole supports implied dedication of the lane as a public right of way. There is also sufficient evidence of acceptance by the public, as indicated by the user evidence, to show that a right of way, namely a public bridleway, can be reasonably alleged to subsist at common law.

It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement for the addition of a Public Bridleway A - B as shown on drawing number HTM/PROW/13/17a.



Map Ref **SS 8104**

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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - SANDFORD
SUGGESTION NO 9
ADDITION OF BRIDLEWAY - WILLIE LANE**

drawing number	HCDW/PROW/13/17a
date	Feb 2013
scale	1:3,000 at A4
drawn by	TW

Notation

Addition of Bridleway A - B (490 metres approx) **-|-|-**

Existing Public Footpaths **---**

Lester Willmington
HEAD OF HIGHWAYS & TRAFFIC MANAGEMENT

