

**Definitive Map Review 2012–14  
Parish of Sidmouth – part 3**

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 no Modification Orders be made in respect of:

- (a) **Proposal 4:** Schedule 14 applications – claimed upgrade of Bridleways 19 & 21, Sidmouth and Bridleways 23 & 24, Otterton on Mutter’s Moor to Byways Open to All Traffic, points P–Q–R–S and T–U shown on drawing number HTM/PROW/13/30;
- (b) **Proposal 5:** Schedule 14 application – claimed upgrade of Bridleway 156, Sidmouth on East Hill to Byway Open to All Traffic, points V–W shown on drawing number HTM/PROW/13/31;
- (c) **Proposal 15:** Schedule 14 application – claimed upgrade of Bridleway 39, Sidmouth & Bridleway 83, Ottery St. Mary across Beacon Hill/Harpford Common to Byways Open to All Traffic, points Q1–R1 shown on drawing number HTM/PROW/13/87; and
- (d) **Proposal 16:** Schedule 14 application – claimed addition of Byway Open to All Traffic, track at Fire Beacon Lane, points S1–T1 shown on drawing number HTM/PROW/13/88

**as the evidence is insufficient to record the routes as either Byways Open to All Traffic or as Restricted Byways.**

## **1. Summary**

The report examines four proposals in connection with the Definitive Map Review for the parish of Sidmouth. The proposals relate to five Schedule 14 applications to record eight routes as Byways Open to All Traffic. The applications were made by the Trail Riders’ Fellowship between 2005 and 2006 ahead of the Natural Environment and Rural Communities Act 2006 coming into effect that prevented routes being recorded as Byways Open to All Traffic, except in particular circumstances where evidence is sufficient and meets the specific requirements of limited exceptions.

Three proposals are for the upgrade of four recorded bridleways in Sidmouth to Byways Open to All Traffic, with two of the applications including connecting bridleways in the adjoining parishes of Otterton and Ottery St. Mary. One application is to add a Byway Open to All Traffic on a route in Sidmouth with no recorded public status. The applications are in four discrete and separate areas of the parishes and have been combined where appropriate for a proposal, as shown on each of the maps.

Seven other proposals out of a total of 16 put forward in general consultations for the whole parish have been considered in reports to previous meetings of the Committee. Remaining proposals will be considered in a further report to a subsequent Committee meeting.

## 2. Introduction – Review and Consultations

The current Review was started in September 2012, followed by a consultation in March 2013 on applications to record routes in the Knowle grounds as public footpaths ahead of a wider consultation on all of the proposals for routes in other parts of the parish. A report specifically on the Knowle applications was presented to the Committee in June 2013, the consequences of which are followed up in a separate agenda item at this meeting. A report on six other proposals was considered by the Committee in November 2013.

Wider general public consultations for the 15 other proposals took place between August and October 2013. The proposals for the applications to record routes as Byways Open to All Traffic in several parts of Sidmouth and the two adjoining parishes received a considerable public response particularly with objections to those in Proposal 4 relating to Mutter's Moor.

Other responses to the overall consultations were as follows:

County Councillor Stuart Hughes	- responded in connection with Proposal 4;
County Councillor Claire Wright	- responded in connection with Proposals 4 & 5;
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.

## 3. Conclusion

The recommendation is not to make Modification Orders in respect of Proposals 4, 5 and 15 for the upgrade of existing recorded bridleways to Byways Open to All Traffic or in respect of Proposal 16 for adding a Byway Open to All Traffic, as the evidence is considered insufficient to meet the requirements of the legislation. Details concerning the recommendations are discussed in the Appendix to this report.

There are no other recommendations to make for this report concerning any further modifications. The remaining proposals with other unrecorded routes and claims in the parish, for some of which user evidence has been submitted, will be considered in a subsequent report to the Committee.

## 4. 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 existing public rights of way budgets.

## **5. Sustainability Considerations**

There are no implications.

## **6. Carbon Impact Considerations**

There are no implications.

## **7. Equality Considerations**

There are no considerations.

## **8. Legal Considerations**

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

## **9. Risk Management Consideration**

There are no implications.

## **10. Public Health Impact**

There are no implications.

## **11. 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.

## **12. Reasons for Recommendation/Alternative Options Considered**

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

David Whitton  
Head of Highways, Capital Development and Waste

## **Electoral Divisions: Sidmouth Sidford; Ottery St. Mary Rural and Budleigh**

Local Government Act 1972: List of Background Papers

Contact for enquiries: Nick Steenman-Clark

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

ns230114pra  
sc/cr/DMR parish of Sidmouth part 3

04 120214

## **Background to the Proposals**

### **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 (5) enables any person to apply to the surveying authority for an order to modify the Definitive Map. The procedure is set out under WCA 1981 Schedule 14.

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 relates; and
- (ii) a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description

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.

**Proposal 4: Schedule 14 applications – claimed upgrade of Bridleways 19 & 21, Sidmouth and Bridleways 23 & 24, Otterton on Mutter’s Moor to Byways Open to All Traffic, points P–Q–R–S and T–U shown on drawing number HTM/PROW/13/30**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 4 for the upgrade of the recorded bridleways on Mutter’s Moor.

**1. Background and Description of the Routes**

The two applications for this proposal relate to four recorded bridleways crossing the Mutter’s Moor area on hills to the west of Sidmouth, two in Sidmouth parish and two in the adjoining parish of Otterton. They make up two continuous bridleway routes that run generally southwards across Mutter’s Moor from an unsurfaced road crossing the hills from Sidmouth towards the River Otter and Newton Poppleford, Mutter’s Moor Road. Both routes end on the minor road leading from Otterton towards Sidmouth near the top of Peak Hill to the west of the town.

Bridleway No. 19 starts from Mutter’s Moor Road at Salter’s Cross (point P), near Bulverton Hill and follows an unsurfaced track running south southwestwards through Otterton Plantation alongside the boundary with Otterton parish. The track crosses the parish boundary to continue as Bridleway No. 24, Otterton around the edge of Mutter’s Moor and turns northeastwards running alongside fields to near the parish boundary at the top of Seven Stones Lane (point R). It continues as Bridleway No. 23, Otterton running southwards along Seven Stones Lane between fields, through a gate and ending at a gate leading onto Peak Hill Road (point S).

Bridleway No. 21, Sidmouth starts from further along Mutter’s Moor Road (point T) and runs southwestwards along a track crossing the north end of Sidmouth Golf Course at Bulverton Bottom, then through Mutter’s Moor Plantation, at first parallel with Bridleway No. 19. The track continues south southeastwards alongside forestry plantations on the eastern edge of Mutter’s Moor passing junctions with other recorded bridleways and footpaths in Sidmouth. It runs into a carpark through a locked barrier preventing vehicular access, with a gap for access on foot and horseback and ends at the open entrance to the carpark from Peak Hill Road (point U).

Mutter’s Moor is an area of lowland heath, parts of which are open heathland with surrounding areas of forestry and enclosed pasture fields. It has no designated statutory conservation status, but is within the East Devon Area of Outstanding Natural Beauty (AONB) and is a County Wildlife Site. It is managed for its geological interest as Pebblebed Heath and associated heathland vegetation, with RSPB involvement as the breeding ground for heathland bird species.

**2. The Definitive Map process and Maintainable Highways Records**

Bridleway No.19 was surveyed by Sidmouth Urban District Council in 1956 and proposed initially to be a footpath. It was included on the Draft and Provisional Maps as a bridleway because of use on horseback, which was its status when recorded on the Definitive Map. Bridleway 21 was proposed as a bridleway, but recorded on the Draft and Provisional Maps with the status of a Road Used as a Public Path (RUPP), because of uncertainty then as to whether the route was considered to have public vehicular rights. It was recorded on the Definitive Map as a RUPP but reclassified later as a bridleway, which is considered further below.

Bridleways No. 23 and 24 were not included originally by Otterton Parish Council in their 1956 survey. They were both added later as a continuation of Bridleway No. 19 in Sidmouth

after discussions and consideration of user evidence, for inclusion on the Draft and Provisional Maps to be recorded as bridleways on the Definitive Map.

None of the routes are shown on earlier records of maintainable highways to suggest that they were considered to have higher status than bridleway with public vehicular rights. Bridleway 21 was shown on one later version, perhaps from its original recording as a RUPP and before the procedure for its re-classification had been completed. None of the routes, including Bridleway 21, are shown on the current records of maintainable highways, the List of Streets, compiled from later and more recent records.

### **3. Documentary Evidence**

Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806–7 and 1<sup>st</sup> edition 1"/mile map 1809 and later; Greenwood 1827

Early historical maps at smaller scales, particularly the Ordnance Survey drawings and 1<sup>st</sup> edition map, show only the route of Bridleway 21 (T–U) with the lines of other routes crossing Mutter's Moor onto Peak Hill. Some of those are recorded now as public footpaths or bridleways, but the lines of the other recorded bridleways on the routes are not shown. Greenwood's later map, believed to have been mainly copied from earlier Ordnance Survey map editions, shows the routes in the same way.

Later 19<sup>th</sup> century historical mapping: Sidmouth Tithe Map 1839 & Apportionment 1841; Otterton Tithe Map 1844 & Apportionment 1843; Ordnance Survey 25"/mile late 1880s

Later maps at larger scales show only parts of the routes in more detail, some connecting with the network of routes later recorded as public roads. No part of Bridleway 21 is shown on the Tithe Maps for Sidmouth parish in 1839 or Otterton parish in 1844 running along the eastern edge of Mutter's Moor, then the boundary between the two parishes. No parts of Bridleway 19, now in Sidmouth Parish and Bridleway 24 in Otterton are shown along the western and southern edges of Mutter's Moor.

Most of Seven Stones Lane on the route of Bridleway 23 in Otterton (R–S) is shown running from Peak Hill Road onto Mutter's Moor, but with no continuation of any other routes shown crossing the open land of the moor. It is coloured in the same way as all roads, but they were not labelled or identified in the Apportionment as public and included those which were obviously public as well as others more likely to have been private tracks for access to fields and some not now existing. Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose. It does not, therefore, provide strong supporting evidence for the existence of higher rights, or even record the physical existence of connected and continuous tracks on the whole of the bridleway routes at that time.

The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1888 shows the whole route of Bridleway 21 running along the parish boundary with double-dashed lines, indicating that it was an unenclosed track on the edge of Mutter's Moor. The lines of several other routes are shown in the same way crossing the open land, some of which are now recorded as other public footpaths and bridleways. No tracks are shown on the whole connected route now recorded as Bridleways 19 and 23, although others are shown nearby crossing the open land and continuing to the south, with part (Q–R) shown labelled 'F.P.' for footpath.

Seven Stones Lane is recorded in the same way, but within an enclosed lane and named with its own land parcel number and acreage. It is shown leading from Peak Hill Road onto the open land of Mutter's Moor, with the lines of tracks shown continuing in several directions across the open land, including to connect with Bridleway 23 and Bridleways 19 and 21, as well as onto other routes not now recorded as public bridleways or footpaths.

Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records; Bartholomew's mapping and later Ordnance Survey maps  
The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the routes in the same way as in the 1<sup>st</sup> edition map. The same later maps were used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation, although none are available for most of the area of the bridleway routes on Mutter's Moor. Only parts of the recorded bridleways starting from Muttersmoor Road, including Nos. 19 and 21, are shown not excluded from the hereditament or assessment area of land to suggest whether they may have been considered as public roads at the time. Any deduction for Public Right of Way or User in that hereditament would only indicate that routes crossing Mutter's Moor may have been considered to have public rights, but with no indication then of status and recorded later mainly as bridleways.

Some maps at smaller scales from the earlier 20<sup>th</sup> century, particularly by Ordnance Survey, are too small to show the bridleway routes in any detail. Bartholomew's map editions from the 1920s show only the line of Bridleway 21 crossing Mutter's Moor with thin double solid lines as a narrow uncoloured track. It is not shown in the same way as most roads are indicated in the key, including those described as "inferior roads and not recommended" said to be passable by cyclists, for editions of the maps intended for use by cyclists with details of roads revised by the Cyclists' Touring Club.

Later Ordnance Survey 'A' edition larger-scale mapping from 1954/8, around the time that the Definitive Map was drawn up, shows most of the tracks on the lines of the routes at those dates apart from Bridleway 19. They are shown with double dashed lines as unenclosed tracks crossing Mutter's Moor in the same way as in earlier editions, with other routes not now recorded as public. Some of them are labelled as 'Track' or 'F.P.' for footpath. The parish boundary is shown to have been changed onto its current line before that date, with the carpark also created on Peak Hill by then. The Ordnance Survey 'B' edition mapping from 1968/77 shows the lines of the routes in the same way, with some changes to the lines of other tracks crossing Mutter's Moor.

The showing of the routes on early and later maps records their physical existence at those times and until more recently. They do not indicate on their own or support the existence of public rights of way with a higher status, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way" and may be presumed to apply to earlier and other commercial maps as well.

#### Aerial photography

Earlier RAF aerial photography from 1946–9 shows the whole line of Bridleway 21 as a clear worn track along the eastern edge of Mutter's Moor, with the lines of other tracks crossing the open land before the growth of vegetation and more recent forestry plantations, some of which are not recorded as public rights of way. Bridleway 23 on Seven Stones Lane is shown as an enclosed track leading onto Mutter's Moor, with tracks continuing across the open land. The line of a track is shown continuing around the edge of the open land on the route of Bridleway 23, with other tracks crossing it in that area, continuing as part of Bridleway 19 beyond the parish boundary but not on the whole route as far as Muttersmoor Road.

More recent aerial photography between 1999–2000 and 2007 shows most of the lines of the bridleway routes in the same way as mainly clear worn tracks, but more wooded in parts and with the line of the continuation of the track for Bridleway 19 more clearly worn through the forestry plantations alongside the parish boundary.

#### **4. Definitive Map Reviews and Consultations**

From its original recording as a RUPP, Bridleway 21 was included in the wider process for the reclassification of all recorded RUPPs in the whole county by a Limited Special Review in the early 1970s under the Countryside Act of 1968. In that process, those routes could be considered for reclassifying as either bridleways, footpaths or Byways Open to All Traffic depending on evidence available, including any of use by the public in vehicles.

There were public consultations on the process and Draft Revised Maps and Statements were published, in which the route was proposed to be reclassified as a bridleway. After objections from the representative of a motorcyclists' group, an Inspector was appointed to hold a local public inquiry. Representations had been received from Sidmouth Urban District Council in support of reclassifying the route as a bridleway and from the landowners objecting to it being recorded as a Byway Open to All Traffic allowing use by the public in motor vehicles. As a result of that process, the route was reclassified as a bridleway with another one in the parish considered in a further proposal in this report below.

There have been no previous suggestions that the recorded bridleway routes should be upgraded in earlier review processes that were started but not completed. The bridleway upgrades were included in the consultations in 2013 on the basis of the applications submitted in 2005 and 2006. The responses included objections by the Town and Parish Councils affected to the possibility of the applications leading to routes being recorded to allow public use by motorised vehicles, with an objection on the same basis from the agent on behalf of the owners, Clinton Devon Estates. Other specific objections were received on behalf of the East Devon AONB, the RSPB and from a large number of local residents more widely following publicity for a campaign to increase responses in objection to the proposed upgrading of the bridleways. However, most of them are mainly on grounds that cannot be taken into account for the consideration of evidence in the review process including nature conservation, landscape, amenity and safety.

#### **5. User Evidence**

Nine user evidence forms were submitted with the application for Bridleway 21, with one completed on behalf of two people so that they relate to use by 10 people. Ten forms were submitted in connection with Bridleways 19, 23 and 24 relating to use by 10 people as well. Of all those users, four had completed forms only for Bridleway 21, three had completed forms only for Bridleways 23 and 24 and six had completed forms relating to both applications.

Six of the Bridleway 21 users reported that they had used it on a motorcycle only, identified by two of them as trail bikes with one of them said to be 'quiet'. Two indicated only that they had used it with a vehicle, presumed to be a motorcycle. Seven users reported that they had also used Bridleways 19, 23 and 24 on a motorcycle only, identified by one of them as a trial bike and another as a 'quiet' trail bike. One did not specify how he had used the routes.

All of the users had used the routes believing them to be Byways Open to All Traffic, mainly from local reputation or public opinion as a clear track shown on old maps and as an 'ex-RUPP'. Most of the use on Bridleway 21 was reported to have been between 10 and 30 years up to 2005. One specified having used it for just under 10 years and one for just over 30 years. For Bridleways 19, 23 and 24, most of the use was also between 10 and 30 years up to 2005.

The frequency of use for both applications was from between about only once or twice a year up to 10 times a year, or less than once a month. Nearly all of the users said that their use had been for pleasure or leisure, mainly as part of a longer circular ride or tour and for



general trail riding as part of a group but without specifying where they were going to or from, said by two to be 'random'.

None of them said that they had been stopped or turned back when using the routes or were told that they could not use them, with nearly all believing that the owner was aware of their use because of tyre marks on a clear track from regular use by motorcyclists. None said that they had been given permission to use the routes or were tenants and had worked for the owner, although one did indicate having a private right to use them. None said that there were any obstructions on the routes such as stiles or locked gates. Most indicated that they had not seen any signs or notices saying that they should not use them, but two reported seeing notices saying 'no motor vehicles' said to have been in 1995. Nearly all of them said that they did not know who owned the land crossed by the routes, with only two indicating that they knew it was owned by Clinton Devon Estates.

## **6. Landowner and Rebuttal Evidence**

The Estates Surveyor for Clinton Devon Estates provided a completed evidence form on behalf of the landowner with additional information considered relevant for their strong objection to the claims. They had owned the land for over 200 years, with the routes known from regular use by the public as bridleways and permission for other use had only been given for an annual charity car rally.

The estate had made a Section 31(6) deposit under the Highways Act 1980 to prevent the acquisition of any other public rights. Their commons wardens, estate tenants and employees had regularly stopped unauthorised use of the routes by the public in vehicles and told them that there was no public vehicular access. Signs put up to say that public vehicular access was not allowed had been partly defaced, with barriers erected at several access points from roads for restricting access by vehicles.

Further information was provided, indicating that the only use in vehicles allowed was by their estate staff, including commons wardens and forestry teams, with additional use by the Royal Marines for training exercises allowed by permission. There was also reference to concerns about the effects of unregulated vehicular use on ecological and archaeological or historical aspects of the land. The tenant of land adjoining Bridleway 23 on Seven Stones Lane completed a landowner evidence form with additional information about gates on the route.

## **7. Discussion – Statute and Common Law**

### **Statute (Section 31, Highways Act 1980)**

The applications for the routes to be upgraded were not made in response to any specific event acting as a significant challenge to their use. They were not submitted as the result of any specific action taken by a landowner to obstruct or prevent access to them other than on foot and horseback from a particular date, but were made in advance of new legislation. There is, therefore, no evidence of any significant actions by a landowner having called into question use of the routes other than as bridleways at a specific time for consideration under statute law.

Schedule 14 applications could provide the date of an event that can be taken to have called the public's right to use a route into question, particularly if there are no significant previous events or actions that may have led to the applications being made, or any others even earlier. As there has been no such event or action in this case, the period for consideration under statute is the 20 years from November 1985 and February 1986 to the dates of the applications in November 2005 to February 2006.

Considering evidence of use by the public during that period to support the claimed upgrades, there are forms relating to use on motorcycles by 10 people for each of the routes. Technically, it is a criminal offence under Section 34 of the Road Traffic Act 1988 to drive a motorised vehicle on land not forming part of the road, or on a route not recorded with vehicular rights without specific lawful authority. The only basis for its possible consideration is if there was any significant supporting evidence from which an earlier dedication of a route as a vehicular highway can be presumed or inferred. That could be particularly from stronger historical documentary and map evidence sources, such as an inclosure award.

In this case, there is no such evidence with only the earlier 19<sup>th</sup> century Ordnance Survey, Tithe and other maps, along with some later maps showing parts of the routes as having existed physically on the ground since then. No dedication to a status higher than bridleway can be inferred from that evidence, with nothing more significant to support any claim that use with motorised vehicles can be interpreted as legal for consideration of whether public vehicular rights have been acquired.

The evidence of use is, therefore, considered insufficient to support upgrading the recorded bridleway routes to Byways Open to All Traffic by a statutory presumption of dedication from use by the public. There is no need to consider whether there were actions taken by the landowners during that period to provide evidence of any lack of intention to dedicate the routes with a status higher than bridleway. However, there is evidence of the landowners' statutory Highways Act Section 31(6) deposit and information from the landowners and users that motorcyclists had previously been stopped or turned back and told that they should not use the routes, within those 20 years including by putting up barriers and erecting notices to prevent vehicular use.

### **Common Law**

Considering the applications in relation to common law requires taking into account the historical and other documentary evidence submitted and discovered, but without being able to consider the evidence of illegal use. Historical mapping shows that tracks have existed physically on parts of the routes from at least the first half of the 19<sup>th</sup> century and on some of the routes since after the later 19<sup>th</sup> century. Later Ordnance Survey and other mapping with aerial photography show that the routes have continued to exist on their current lines more recently up to the present.

The Tithe Map on its own is not significant in showing parts of the routes in the same way as others now recorded as public roads, which also included others that have never been recorded as public and are private tracks for access to land. Finance Act records are not complete and are therefore also not significant, with several routes that are now recorded as public bridleways and footpaths crossing the land. The whole range of historical mapping shows that there were many routes crossing the open land of Mutter's Moor at different periods along lines that changed, but not indicating that they were considered to be part of the public road network.

No other more significant historical maps or references in historical documentary material have been submitted or discovered to indicate more specifically that the routes may have had the reputation of being public roads in the past or more recently. In particular, there is no indication of any additional public expenditure on them or responsibility for their maintenance other than as bridleways. The only suggestion of possible vehicular rights is the original recording of Bridleway 21 as a RUPP from uncertainty about vehicular use. It is the only one of the routes that has been shown on the past records of maintainable highways to suggest that it may have been considered as a public road more recently, but only perhaps from before its re-classification as a bridleway. That, on its own, does not provide a sufficient basis for upgrading the recorded route.

Considering the historical mapping and landowner evidence, with the evidence of use, dedication at common law for the status of Byway Open to All Traffic cannot be inferred. The evidence does not support the claim that there is any historical basis to the route being considered as a public highway, or having the reputation of being available for use by the public in vehicles apart from the original recording of Bridleway 21 as a RUPP. There is no evidence to suggest that the landowner intended to dedicate the route as a public highway, or that the public accepted any dedication higher than that of bridleway and have used it on that basis. Its main use has been on foot and horseback in accordance with its recorded status as a bridleway, with private use only in vehicles for agriculture, maintenance and forestry as well as for military exercises by agreement with the landowners.

## **8. Conclusion**

It is in the light of this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, that it is insufficient to support the claims that the routes now recorded as bridleways ought to be recorded with a higher status. From consideration under statute and common law there is, therefore, insufficient basis for making an Order in respect of the applications and, accordingly, the recommendation is that no Order be made to upgrade the recorded bridleways on the routes P–Q–R–S and T–U to Byways Open to All Traffic.

### **Proposal 5: Schedule 14 application – claimed upgrade of Bridleway 156, Sidmouth on East Hill to Byway Open to All Traffic, points V–W shown on drawing number HTM/PROW/13/31**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 5 for the upgrade of the recorded bridleway on East Hill.

## **1. Background and Description of the Route**

The application for this proposal relates to the recorded Bridleway No. 156, Sidmouth running along the start of the East Hill ridge at the northernmost point of Sidmouth parish, overlooking the town of Ottery St. Mary. The route starts from the end of an unsurfaced road leading into woodlands on Westgate Hill (point V) that connects with other bridleways on tracks recorded in Ottery St. Mary continuing into Gittisham parish to the north.

The bridleway runs southwards along a track known as Muddy Lane through woodlands on the top of East Hill to end on a road junction at Chineway Head (point W) with its continuation as the surfaced road along to top of East Hill Strips and Chineway Hill going down to Ottery St. Mary. The track has locked 'horse friendly' vehicle barrier gates at both ends, that are designed to allow access by horseriders over a lowered middle section.

## **2. The Definitive Map process and Maintainable Highways Records**

Bridleway No.156 was surveyed by Sidmouth Urban District Council in 1956 and included on the Draft and Provisional Maps as a bridleway, which was its status when recorded on the Definitive Map. It was not recorded as a RUPP and is not shown on earlier records of maintainable highways to suggest that it may have been considered to have higher status than bridleway with public vehicular rights. It is not shown on the current records of maintainable highways, the List of Streets, compiled from later and more recent records.

### 3. Historical Maps and Aerial Photography Evidence

Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806–7 and 1<sup>st</sup> edition 1"/mile map 1809 and later; Greenwood 1827

The same range of earlier historical maps at smaller scales as in Proposal 4, particularly the Ordnance Survey drawings and 1<sup>st</sup> edition map with Greenwood's later map, show the route of Bridleway 156 connected with the lines of other routes in the area, some of which are recorded now as public roads or bridleways.

Later 19<sup>th</sup> century historical mapping: Sidbury Tithe Map & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

Later maps at larger scales show the route in more detail connecting with the network of others later recorded as public roads and bridleways. Bridleway 156 is shown on the Tithe Map for Sidbury parish in 1840 as an enclosed track, coloured in the same way as all roads, running beside woodlands along the parish boundary with Ottery St. Mary.

The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887–8 shows the whole route as an enclosed track with double solid lines, named as Muddy Lane, running along the parish boundary. It connects the lines of unenclosed tracks from Gittisham crossing open land to the north on Westgate Hill with the junction of the road to Ottery St. Mary on Chineway Hill and continuing as an unenclosed track towards East Hill.

Later historical mapping, early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records; Bartholomew's mapping and later Ordnance Survey maps

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map. On the same later maps used for the 1910 Finance Act survey the route is shown excluded from the hereditament or assessment areas of land in the same way as other routes, including those recorded since then as public roads. It could suggest that it may have been considered to have the same status as public roads at the time, but alternatively that it was a route known to have public rights that were recorded later as a bridleway.

Some maps at smaller scales from the earlier 20<sup>th</sup> century, particularly by Ordnance Survey, are too small to show the route in any detail. Some editions, with Bartholomew's maps, show the line of the route with thin double solid lines as a narrow uncoloured track. However, other routes are shown in the same way that are not now recorded as public roads or bridleways but are private tracks for access to farms or onto land. Later Ordnance Survey 'A' edition larger-scale mapping from 1959, around the time that the Definitive Map was drawn up, shows the line of the route at that date in the same way as in earlier editions.

The showing of the route on early and later maps records its physical existence at those times and until more recently. They do not indicate on their own or support the existence of a public right of way with a higher status, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889.

Aerial photography

Earlier RAF aerial photography from 1946–9 shows the whole line of Bridleway 156 as a wooded enclosed track alongside the forestry plantations, before the growth of vegetation on adjoining land and forestry plantations. More recent aerial photography between 1999–2000 and 2007 does not show the line of the routes clearly due to the growth of vegetation and trees on the adjoining land with woodland and forestry plantations alongside the parish boundary.

#### **4. Definitive Map Reviews and Consultations**

There have been no previous suggestions that the recorded bridleway should be upgraded in earlier review processes that were started but not completed. The claimed upgrade was included in the consultations in 2013 on the basis of the application submitted in 2006. The responses included a strong objection by Ottery St. Mary Parish Council to the possibility of the application leading to the route being recorded to allow public use by motorised vehicles. No responses were received from any landowner or more widely from local residents.

#### **5. User Evidence**

Six user evidence forms were submitted with the application for Bridleway 156, with one completed on behalf of two people so that they relate to use by seven people. Five of them reported that they had used the route on a motorcycle only, identified by one as a 'quiet' trail bike, with again two indicating only that they had used it with a vehicle.

All of the users had used the route sometimes in a group and believing it to be a Byway Open to All Traffic, mainly from old maps and local reputation or public opinion, with two saying that it 'always has been'. Most of the use was reported to have been within the 20 years up to 2006. The frequency of use was from between about only once or twice a year up to 10 times a year, or less than once a month. Nearly all of the users said that their use had been for pleasure or leisure, mainly as part of a longer circular ride or tour without specifying where they were going to or from, said by two to be 'random'.

None of them said that they had been stopped or turned back when using the route or were told that they could not use it, with all believing that the owner was aware of its use because of motorcycle tyre marks or from usage and observation. None said that they had been given permission to use the routes or were tenants and had worked for the owner with a private right. Most of them reported that there were obstructions on the routes, with logs across the end at the junction with Chineway Hill from about 1995 and the vehicle barrier gates from about 2000. Most indicated that they had not seen any signs or notices saying that they should not use the route, with one referring to notices saying 'not suitable for motor vehicles'. None of them indicated that they knew who owned the land crossed by the route.

#### **6. Landowner and Rebuttal Evidence**

No evidence was received in the consultations from any owner of land on or adjoining the recorded bridleway to provide information about any actions taken against unauthorised vehicular use of the route. A Section 31(6) deposit of a map and statement on behalf of the owners of the Combe Estate in Gittisham covering the area was made in 1993, showing a lack of intention to dedicate any public rights of way other than those recorded then, which was renewed by a statutory declaration in 2002.

#### **7. Discussion – Statute and Common Law**

##### **Statute (Section 31, Highways Act 1980)**

This application was another of those made in advance of new legislation and not in response to any event acting as a significant challenge to use. It did not result from any specific action taken by a landowner to obstruct or prevent access to it other than on foot and horseback from a particular date. There is no clear evidence of any significant actions by a landowner having called into question use of the route other than as a bridleway at a specific time for consideration under statute law. The reported actions of placing logs and vehicle barriers across the route are not considered sufficient to provide specific dates.

Again, taking the application as providing the date of an event that can be taken to have called the public's right to use a route into question, the period for consideration under statute is the 20 years from February 1986 to the date of the application in February 2006. Evidence of use by the public during that period to support the claimed upgrade is forms relating to use on motorcycles by seven people. Again, that is taken to be a criminal offence with the only basis for its possible consideration if there was any other significant supporting evidence from which an earlier dedication of a route as a vehicular highway can be presumed or inferred.

In this case also, there is no such stronger historical documentary or map evidence, such as an inclosure award, with only the earlier 19<sup>th</sup> century Ordnance Survey, Tithe and other maps, along with some later maps showing the route as having existed physically on the ground since then. Again, no dedication of a status higher than bridleway can be inferred from that evidence to support any claim that use with motorised vehicles can be interpreted as legal for consideration of whether public vehicular rights have been acquired.

The evidence of use is also, therefore, considered insufficient in this case to support upgrading the recorded bridleway route to Byway Open to All Traffic by a statutory presumption of dedication from use by the public. There is no need to consider whether there were actions taken by the landowners during that period to provide evidence of any lack of intention to dedicate the route with a status higher than bridleway. However, there is evidence that the landowners made the required statutory deposit and declaration within those 20 years as clear evidence of such a lack of intention to dedicate, perhaps along with the obstructions, barriers and notices intended to prevent vehicular use.

### **Common Law**

Considering this application in relation to common law with historical and other documentary evidence, but again without being able to consider the evidence of illegal use, historical mapping shows that a track has existed physically on this route from at least the first half of the 19<sup>th</sup> century. Later Ordnance Survey and other mapping with aerial photography show that the route has continued to exist on its current line more recently up to the present.

The Tithe Map on its own is not significant in showing the route in the same way as others now recorded as public roads, which also included others that have never been recorded as public and are private access to land. Finance Act records are not significant in showing it as excluded from adjoining land, which may have been due to the existence of public rights at that time that led to it being recorded since then only as a bridleway with no consideration that it may have had higher rights, including in vehicles.

No other more significant historical maps or references in historical documentary material have been submitted or discovered to indicate more specifically that the routes may have had the reputation of being public roads in the past or more recently. In particular, there is no indication of any additional public expenditure on them or responsibility for their maintenance other than as bridleways.

Considering the historical mapping and landowner evidence, with the evidence of use, dedication at common law for the status of Byway Open to All Traffic cannot be inferred. The evidence does not support the claim that there is any historical basis to the route being considered as a public highway, or having the reputation of being available for use by the public in vehicles. There is clear evidence to suggest that the landowners did not intend to dedicate the route to be available for use other than on foot and horseback, or that the public accepted any dedication higher than that of bridleway and have used it on that basis. Its main use has been on foot and horseback in accordance with its recorded status as a bridleway, with private use intended only in vehicles for agriculture or forestry.

## 8. Conclusion

It is in the light of this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, that it is insufficient to support the claim that the route now recorded as a bridleway ought to be recorded with a higher status. From consideration under statute and common law there is, therefore, insufficient basis for making an Order in respect of the application and, accordingly, the recommendation is that no Order be made to upgrade the recorded bridleway on the route V–W to Byway Open to All Traffic.

**Proposal 15: Schedule 14 application – claimed upgrade of Bridleway 39, Sidmouth & Bridleway 83, Ottery St. Mary across Beacon Hill/Harpford Common to Byways Open to All Traffic, points Q1–R1 shown on drawing number HTM/PROW/13/87**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 15 for the upgrade of the recorded bridleways on Beacon Hill/Harpford Common.

### 1. Background and Description of the Routes

The application for this proposal relates to recorded bridleways in Sidmouth and Ottery St. Mary parishes, on tracks running onto and across open registered common land of Harpford Common and Beacon Hill. Bridleway No. 39, Sidmouth starts at the road north of Sidmouth, Fire Beacon Lane, leading from Bowd below East Hill towards Ottery St. Mary (point Q1). It runs northwards along a track through a gate and between fields, passing a junction with another recorded bridleway and footpath, turning northwestwards up through woodlands and then northeastwards onto the open lands of Harpford Common. Parts of the common are maintained by the RSPB as the habitat for nesting birds.

The track crosses the open common passing junctions with other tracks, including one claimed as a bridleway and another recorded as a footpath, to the parish boundary on Beacon Hill, where there is a bridleway gate. It continues as the recorded Bridleway No. 83, Ottery St. Mary on a track running through woodlands to end at the unsurfaced county road, Core Hill Road, near Hollow Head Cross (point R1) at the southern end of the roads running along the East Hill ridge from above the town of Ottery St. Mary.

### 2. The Definitive Map process and Maintainable Highways Records

Bridleway No. 39 was proposed initially to be a bridleway from the survey by Sidmouth Urban District Council in 1956. It was recorded on the Draft and Provisional Maps with the status of a Road Used as a Public Path (RUPP), because of uncertainty then as to whether the route was considered to have public vehicular rights. It was recorded as a RUPP on the Definitive Map, but re-classified later as a bridleway, which is considered further below.

Bridleway No. 83 was surveyed by Ottery St. Mary Urban District Council in 1956 as a footpath but also recorded on the Draft and Provisional Maps as a RUPP. It was recorded with that status on the Definitive Map, but re-classified later as a bridleway, which is also considered further below.

Neither of the routes is shown on earlier records of maintainable highways to suggest that they were considered then to have higher status than bridleway with public vehicular rights. They are not shown on the current records of maintainable highways, the List of Streets, compiled from later and more recent records.

### 3. Documentary Evidence

#### Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806–7 and 1<sup>st</sup> edition 1"/mile map 1809 and later; Greenwood 1827

The same range of earlier historical maps at smaller scales as in the previous proposals, particularly the Ordnance Survey drawings and 1<sup>st</sup> edition map with Greenwood's later map, show the route of both bridledways connected with the lines of other routes in the area, some of which are recorded now as public roads or bridledways. Both routes are shown with double solid lines as enclosed tracks leading from the roads on both sides of Harpford Common and Beacon Hill and with dashed lines as unenclosed tracks crossing the open common land.

#### Later 19<sup>th</sup> century historical mapping: Harpford Tithe Map & Apportionment 1839; Ottery St. Mary Tithe Map 1843; Ordnance Survey 25"/mile late 1880s

Later maps at larger scales show the routes in more detail connecting with the network of routes later recorded as public roads and bridledways. The route of Bridleway 39, then in Harpford parish, is shown on the Tithe Map for Harpford as an enclosed track, coloured in the same way as all other roads and tracks, leading from Fire Beacon Lane between fields to the edge of Beacon Hill. It is closed off, suggesting a gate, then continues as an unenclosed track across the open common land to a gate at the parish boundary with Ottery St. Mary.

The Tithe Map for Ottery St. Mary Parish shows Bridleway 83 continuing as an enclosed track, also coloured in the same way as roads and other tracks in the parish. It is shown running alongside forestry plantations past the junction with Core Hill Road to connect with other tracks and the road continuing along East Hill. The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1888 shows Bridleway 39 as an enclosed track leading from the road and unenclosed crossing the open land of Harpford Common onto Beacon Hill. From the parish boundary, Bridleway 83 is shown as an enclosed track running to the junction with other roads and tracks at Hollow Head Cross.

#### Later historical mapping, early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records; Bartholomew's mapping and later Ordnance Survey maps

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the routes in the same way as in the 1<sup>st</sup> edition map. On the same later maps used for the 1910 Finance Act survey the parts of the routes leading to Harpford Common and Beacon Hill are shown excluded from the hereditaments or assessment areas of land in the same way as other routes, including those recorded since then as public roads. It could suggest that it may have been considered to have the same status as public roads at the time, but alternatively that they were routes with public rights recorded later as bridledways.

The section of Bridleway 39 crossing the open land is not excluded, but any deduction for Public Right of Way or User in that hereditament would only indicate that the route crossing Harpford Common may have been considered to have public rights, but with no indication then of status and recorded later as a bridledway. Other routes across the land are also recorded now as public footpaths, or claimed as a bridledway.

Some maps at smaller scales from the earlier 20<sup>th</sup> century, particularly by Ordnance Survey, are too small to show the routes in any detail. Some editions, with Bartholomew's maps, show the line of the routes with thin double solid lines as narrow uncoloured tracks. However, other routes are shown in the same way that are not now recorded as public roads or bridledways but are private access to farms or onto land.

Later Ordnance Survey 'A' edition larger-scale mapping from 1959, around the time that the Definitive Map was drawn up, shows the line of the routes at that date in the same way as in earlier editions. It is labelled as 'Track' on the enclosed sections leading to Harpford



Common and 'F.P' as a footpath across the open land with other routes, one now recorded as a public footpath and another claimed as a bridleway.

The showing of the routes on early and later maps records their physical existence at those times and until more recently. They do not indicate on their own or support the existence of a public right of way with a higher status, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way" and may be presumed to apply to earlier and other commercial maps as well.

#### Aerial photography

Earlier RAF aerial photography from 1946–9 shows the parts of the routes leading to Harpford Common as wooded enclosed tracks, with the worn line of the track of Bridleway 39 shown clearly crossing the open land. More recent aerial photography between 1999–2000 and 2007 shows the enclosed lines of the routes on the tracks leading to the common less clearly due to the growth of vegetation and trees on adjoining land with woodland and forestry plantations. The worn line of the unenclosed route crossing the open land is shown more clearly, with other routes including the lines of recorded footpaths and other areas cleared under common land management.

### **4. Definitive Map Reviews and Consultations**

As with Proposal 4, from their original recording as RUPPs both of these routes were also included in the process for the reclassification of all recorded RUPPs in the whole county to be considered for reclassifying as either bridleways, footpaths or Byways Open to All Traffic. After consultations on the process the status for the routes proposed by both Urban District Councils was also bridleway and included in the published Draft Revised Maps and Statement. As a result of the process, they were also reclassified as bridleways with the other routes in both parishes.

There have been no previous suggestions that the recorded bridleway routes should be upgraded in earlier review processes that were started but not completed. The claimed upgrades were included in the consultations in 2013 on the basis of the application submitted in 2005. The responses included objections particularly from both Town Councils affected, with Sidmouth Town Council as the owners of Harpford Common, concerned local residents and the RSPB, opposed to the possibility of the applications leading to routes being recorded to allow public use by motorised vehicles.

### **5. User Evidence**

Six user evidence forms were submitted with the application for Bridleways 39 and 83 relating to use by six people. All of the users reported that they had used the routes on a motorcycle only, identified by two of them as trail bikes with one of them said again to be 'quiet'. All of them had used the routes sometimes in a group and believing them to be Byways Open to All Traffic, mainly from old maps and local knowledge, reputation or public opinion and again as an 'ex-RUPP'.

The main use was reported to have been within the 20 years up to 2005. The frequency of use was from between about only once or twice a year up to 10 times a year, or less than once a month. Nearly all of the users said that their use had been for pleasure or leisure, mainly as part of a longer circular route or ride, without specifying where they were going to or from and said by one to be a 'tour'.

None of them said that they had been stopped or turned back when using the routes or were told that they could not use them, with most believing that the owner was aware of their use because of motorcycle tyre marks or from usage. None said that they had been given permission to use the routes or were tenants and had worked for the owner with a private right. Some of them indicated that there were no obstructions on the routes, including gates, but several reported that there were gates. Those were said to be at both ends and not locked, or not always locked with the path going around. All indicated that they had not seen any signs or notices saying that they should not use the routes. None of them indicated that they knew who owned the land crossed by the route.

## **6. Landowner and Rebuttal Evidence**

The open land of Harpford Common is owned by Sidmouth Town Council, with parts of the surrounding woodlands owed by the Woodland Trust. No evidence was received in the consultations from them as landowners to provide information about any actions taken against unauthorised vehicular use of the route. The response from Sidmouth Town Council did not include any evidence relating to their ownership of the land.

## **7. Discussion – Statute and Common Law**

### **Statute (Section 31, Highways Act 1980)**

This application was another of those made in advance of new legislation and not in response to any event acting as a significant challenge to use of the recorded routes. It did not result from any specific action taken by a landowner to obstruct or prevent access to them other than on foot and horseback from a particular date. There is no clear evidence of any significant actions by a landowner having called into question use other than as a bridleway at a specific time for consideration under statute law.

Again, taking the application as providing the date of an event that can be taken to have called the public's right to use a route into question, the period for consideration under statute is the 20 years from November 1985 to the date of the application in November 2005. Evidence of use by the public during that period to support the claimed upgrade is forms relating to use on motorcycles by only six people. Again, that is taken to be a criminal offence with the only basis for its possible consideration if there was any other significant supporting evidence from which an earlier dedication of a route as a vehicular highway can be presumed or inferred.

In this case also, there is again no such stronger historical documentary or map evidence, such as an inclosure award, with only the earlier 19<sup>th</sup> century Ordnance Survey, Tithe and other maps, along with some later maps showing the route as having existed physically on the ground since then. Again, no dedication to a status higher than bridleway can be inferred from that evidence to support any claim that use with motorised vehicles can be interpreted as legal for consideration of whether public vehicular rights have been acquired.

The evidence of use is also, therefore, considered insufficient to support upgrading the recorded bridleway route to Byway Open to All Traffic by a statutory presumption of dedication from use by the public. There is no need to consider whether there were actions taken by the landowners during that period to provide evidence of any lack of intention to dedicate the route with a status higher than bridleway.

### **Common Law**

Considering this application in relation to common law with historical and other documentary evidence, but again without being able to consider the evidence of illegal use, historical mapping shows that a track has existed physically on this route from at least the first half of

the 19<sup>th</sup> century. Later Ordnance Survey and other mapping with aerial photography show that the route has continued to exist on its current line more recently up to the present.

The Tithe Maps on their own are not significant in showing the routes in the same way as others now recorded as public roads, which also included others that have never been recorded as public and are private access to land. Finance Act records are not significant in showing parts of the routes as excluded from adjoining land, rather than included. That may have been due to the existence of public rights at that time that led to them being recorded since then only as bridleways with no consideration that they may have had higher rights, including in vehicles, other than being recorded later as RUPPs.

No other more significant historical maps or references in historical documentary material have been submitted or discovered to indicate more specifically that the routes may have had the reputation of being public roads in the past or more recently. In particular, there is no indication of any additional public expenditure on them or responsibility for their maintenance other than as bridleways. The only suggestion of possible vehicular rights is the original recording of both bridleways as RUPPs from uncertainty about vehicular use which, on its own, does not provide a sufficient basis for upgrading the recorded routes.

Considering the historical mapping and landowner evidence, with the evidence of use, dedication at common law for the status of Byway Open to All Traffic cannot be inferred. The evidence does not support the claim that there is any historical basis to the route being considered as a public highway, or having the reputation of being available for use by the public in vehicles apart from the original recording of both bridleways as RUPPs. There is no evidence to suggest that the landowner intended to dedicate the routes as public highways, or that the public accepted any dedication higher than that of bridleway and have used them on that basis. Their main use has been on foot and horseback in accordance with their recorded status as bridleways, with private use only in vehicles for agriculture, maintenance and forestry.

## **8. Conclusion**

It is in the light of this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, that it is insufficient to support the claim that the routes now recorded as bridleways ought to be recorded with a higher status. From consideration under statute and common law there is, therefore, insufficient basis for making an Order in respect of the application and, accordingly, the recommendation is that no Order be made to upgrade the recorded bridleways on the route Q1–R1 to Byways Open to All Traffic.

### **Proposal 16: Schedule 14 application – claimed addition of Byway Open to All Traffic, track at Fire Beacon Lane, points S1–T1 shown on drawing number HTM/PROW/13/88**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 16 for the addition of a Byway Open to All Traffic on the track at Fire Beacon Lane.

## **1. Background and Description of the Route**

The application for this proposal relates to a narrow and enclosed wooded track with no recorded status running from Fire Beacon Lane, south of Proposal 15, near Bowd to the north of Sidmouth. The claimed track starts from near a bend in Fire Beacon Lane at the junction with Saltways Lane, a private farm access track with a recorded footpath (point T1). The track runs southwards between the gardens of two properties and fields to end on the wide verge of the A3052 road to Lyme Regis where it now follows part of the former railway line to Sidmouth (point S1). It is opposite the remaining structures of the Lyme Road Bridge,

which carried the railway over the former line of the road, part of which now remains as a layby alongside the line of the current road following its diversion after the railway line was closed.

## **2. The Definitive Map process and Maintainable Highways Records**

The track on the claimed route was not included by Sidmouth Urban District Council in their 1956 survey to be considered for recording as a public right of way with any status. It was not included on the Draft or Provisional Maps and is not recorded as a public right of way on the Definitive Map. It is not shown on earlier records of maintainable highways to suggest that it may have been considered to be a public road and it is not shown on the current records of maintainable highways, the List of Streets, compiled from later and more recent records.

## **3. Historical Maps and Aerial Photography Evidence**

### Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806–7 and 1<sup>st</sup> edition 1"/mile map 1809 and later; Greenwood 1827

The same range of earlier historical maps at smaller scales as in all of the previous proposals, particularly the Ordnance Survey drawings and 1<sup>st</sup> edition map with Greenwood's later map, show the track connected with the lines of other routes in the area recorded now as public roads before the railway line was built.

### Later 19<sup>th</sup> century historical mapping: Harpford Tithe Map & Apportionment 1839; Railway plans 1846–71; Ordnance Survey 25"/mile late 1880s

Later maps at larger scales show the claimed route in more detail connecting with the network of routes later recorded as public roads in relation to the line of the railway before and after it was built. It is shown on the Tithe Map for Harpford parish in 1839 before the railway was built as an enclosed track running from the junction with Wallicks Lane and Hill Lane, now Fire Beacon Lane, between fields to the turnpike road from Exeter to Lyme Regis. It is coloured in the same way as other roads and named as 'Saltway Lane'. Roads were not labelled or identified in the Apportionment as public and included those which were obviously public as well as others more likely to have been private tracks for access to fields and some not now existing.

Deposited plans with sections and books of reference were prepared between 1846 and 1871 for a railway line proposed to be built as a branch to Sidmouth from extending the main Great Western line from London into Devon towards Exeter. They show the layout of land and roads in the Bowd area that would be affected by its construction. A railway line to Exeter from Dorset had been proposed from 1845, but earlier plans of the route for a branch to Sidmouth from Feniton on the extended main line show the claimed route just outside the limits of the land affected in that area without any details indicating its status then.

Plans from 1846, 1853 and 1861–2 for earlier unsuccessful versions of proposed schemes for the branch line that did not proceed and from 1871 for the scheme that was eventually built show the route with more details. The line proposed for two schemes in 1846 involved the construction of a tunnel in the immediate area without affecting the lines of the claimed route and the turnpike road. The claimed route was identified in the Book of Reference for one as a 'Road from Turnpike Road to Crosshill', owned by the 'Waywardens of the Parish' and for the other as a 'Parish Road', owned by named Surveyors of Highways and occupied by 'The Public'. Sections for the proposed line show the tunnel and the roads involved labelled as either 'Turnpike Road' and just 'Road', or all just as 'Public Road'.

Plans for the 1853 proposed scheme show the line as the same but without a tunnel or any proposed alteration of the roads, also identifying the claimed route as a Parish Road owned

by a named Surveyor of Highways. The plans for the 1861–2 scheme show the railway line proposed to affect the end of the claimed route directly near its junction with the turnpike road, although without details of any proposed alterations or crossings. The route is identified again as a Parish Road, owned by a named 'Surveyor of the Highways of the Parish of Harpford'.

The plans from 1871 for the railway that was built eventually and opened in 1874 show it on a slightly different line but directly affecting the claimed route and proposing a diversion of the turnpike road. The route is again identified as a Parish Road, owned by 'The District Highway Board of Ottery'. It is shown in the sections as a 'Road to be diverted' with the turnpike. Taken together, the railway plans suggest that the claimed route was considered to be included in the local public road network as a Parish Road, although that does not give any indication of its status and whether it was used by the wider public and in vehicles.

The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1888 shows the claimed route after the building of the railway. It is shown with double solid lines as an enclosed wooded track diverted from near its previous junction with the turnpike road to run alongside the boundary of the railway line and onto the road beyond where that had been diverted to run under a railway bridge. The section alongside the railway embankment is shown with double dashed lines as an unenclosed track leading towards the access to fields from the road probably with a gate.

Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records; later Ordnance Survey maps

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map. On the same later maps used for the 1910 Finance Act survey the claimed route is shown excluded from the hereditament or assessment areas of land in the same way as other routes, including those recorded since then as public roads. It could suggest that it may have been considered to have the same status as public roads at the time, or alternatively that it was a route with other public rights or shared ownership and private rights but not recorded later as a public road or public right of way with a lower status.

Smaller scale maps from the earlier 20<sup>th</sup> century, particularly by Ordnance Survey and others, are too small to show the claimed route. Later Ordnance Survey 'A' edition larger-scale mapping from between 1954-9, around the time that the Definitive Map was drawn up, shows the line of the claimed route and its continuing track alongside the railway line onto the diverted road beyond the railway bridge near to the field access in the same way as in earlier editions. 'B' edition mapping from 1972, incomplete for the area of the claimed route, does not show its continuation as a track alongside the former railway line, by then disused, towards the field access with the line of the Lyme Regis road before its more recent diversion onto part of the disused railway track.

As with all of the other proposals, the showing of the route on early and later maps records its physical existence at those times and until more recently. They do not indicate on their own or support the existence of a public road or right of way, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way" and may be presumed to apply to earlier and other commercial maps as well. In this case, there is evidence that is slightly more significant with the railway plans recording the claimed route as a Parish Road suggesting that it was considered then to be a road with some form of public status.

### Aerial photography

Earlier RAF aerial photography from 1946–9 shows the claimed route as a wooded enclosed track, continuing as the clear line of a worn track alongside the railway line to the road beyond the railway bridge. More recent aerial photography between 1999–2000 and 2007 does not show the line of the claimed route clearly due to the growth of vegetation and trees, or the line of any continuation on the wooded verge of the Lyme Regis road that had been diverted by then.

## **4. Definitive Map Reviews and Consultations**

There have been no previous suggestions that the route in earlier review processes that were started but not completed that the route should be recorded as a public right of way. The claimed addition was included in the consultations in 2013 on the basis of the application submitted in 2006. The responses included an objection by Sidmouth Parish Council to the possibility of the application leading to the route being recorded to allow public use by motorised vehicles with concerns from adjoining landowners and by local residents.

## **5. User Evidence**

Eight user evidence forms were submitted with the application for the claimed route relating to use by eight people. Most of them reported that they had used the route on a motorcycle only, identified again by one as a 'quiet' trail motorcycle, with two indicating that they had also used it in a 4x4 vehicle. All of the users had used the route sometimes in a group and believing it to be a Byway Open to All Traffic, mainly from being shown on old maps and reputation or public accepted knowledge and in common use by others.

Most of the use was reported to have been within the 20 years up to 2006. The frequency of use was from between about only once or twice a year up to 12 times a year, or once a month. All of the users said that their use had been for pleasure and for one occasionally for work, mainly as part of a longer circular ride or scenic tour, said by one to be around East Devon and specified by others as from Exeter or Tipton St. John to Sidmouth.

None of them said that they had been stopped or turned back when using the route or were told that they could not use it, with some believing that the owner was aware of its use because of motorcycle tyre marks and from obvious signs that it had always been used as a public route. None said that they had been given permission to use the route or were tenants and had worked for the owner with a private right. Most of them reported that there were no obstructions on the route and they had not seen any signs or notices saying that they should not use it. None of them indicated that they knew who owned the land crossed by the route.

## **6. Landowner and Rebuttal Evidence**

The two owners of properties and land adjoining the claimed route on both sides completed landowner evidence forms. One of them did not believe that the track was public from nearly 50 years of ownership and the other had believed since 1964 that it is a public footpath or bridleway from seeing or having been aware of people using it occasionally on foot or horseback but not mentioning vehicular use. Neither of them indicated that their ownership includes the track itself and they had never turned anyone back or stopped them from using it, or told them that it was not public. They had not put up notices or signs stating that the track was not public or obstructed it and said that there had never been any gates or stiles.

In additional information, one said that it had been used by walkers for many years, but was not wide enough for vehicles and leads directly onto the busy A3052 road which is very

dangerous. He added that his field adjoining the track is occupied by horses that would be disturbed, agitated and possibly 'spooked' by noisy vehicles using it.

## **7. Discussion – Statute and Common Law**

### **Statute (Section 31, Highways Act 1980)**

This application was another of those made in advance of new legislation and not in response to any event acting as a significant challenge to use of the claimed route. It did not result from any specific action taken by a landowner to obstruct or prevent access to it from a particular date. There is no clear evidence of any significant actions by a landowner having called into question use of the route at a specific time for consideration under statute law.

Again, taking the application as providing the date of an event that can be taken to have called the public's right to use a route into question, the period for consideration under statute is the 20 years from February 1986 to the date of the application in February 2006. Evidence of use by the public during that period to support the claimed addition is forms relating to use on motorcycles by eight people. Again, that is taken to be a criminal offence from use of a route not recorded with any public rights and the only basis for its possible consideration is if there was any other significant supporting evidence from which an earlier dedication of a route as a vehicular highway can be presumed or inferred.

In this case also, there is no such stronger historical documentary or map evidence, such as an inclosure award, with only the earlier 19<sup>th</sup> century Ordnance Survey, Tithe and other maps, along with some later maps showing the route as having existed physically on the ground since then. The only additional evidence for this case is the reference to it as a 'Parish Road' in railway plans around the middle of the 19<sup>th</sup> century, said to be public and owned by the Waywardens or Highway Surveyors and Highway Board. It is not considered significant on its own to infer dedication as a public highway to support any claim that more recent use with motorised vehicles can be interpreted as legal for consideration of whether public vehicular rights have been acquired.

The evidence of use is, therefore, considered insufficient to support adding the route as a Byway Open to All Traffic by a statutory presumption of dedication from use by the public. There is no need to consider whether there were actions taken by the landowners during that period to provide evidence of any lack of intention to dedicate the route as a public right of way.

### **Common Law**

Considering the application in relation to common law with historical and other documentary evidence, but again without being able to consider the evidence of illegal use, historical mapping shows that a track has existed physically mainly on this route from at least the first half of the 19<sup>th</sup> century until alterations with the building of the railway. Later Ordnance Survey and other mapping with aerial photography show that the route has continued to exist on that line until the more recent diversions of the road after the railway line was closed.

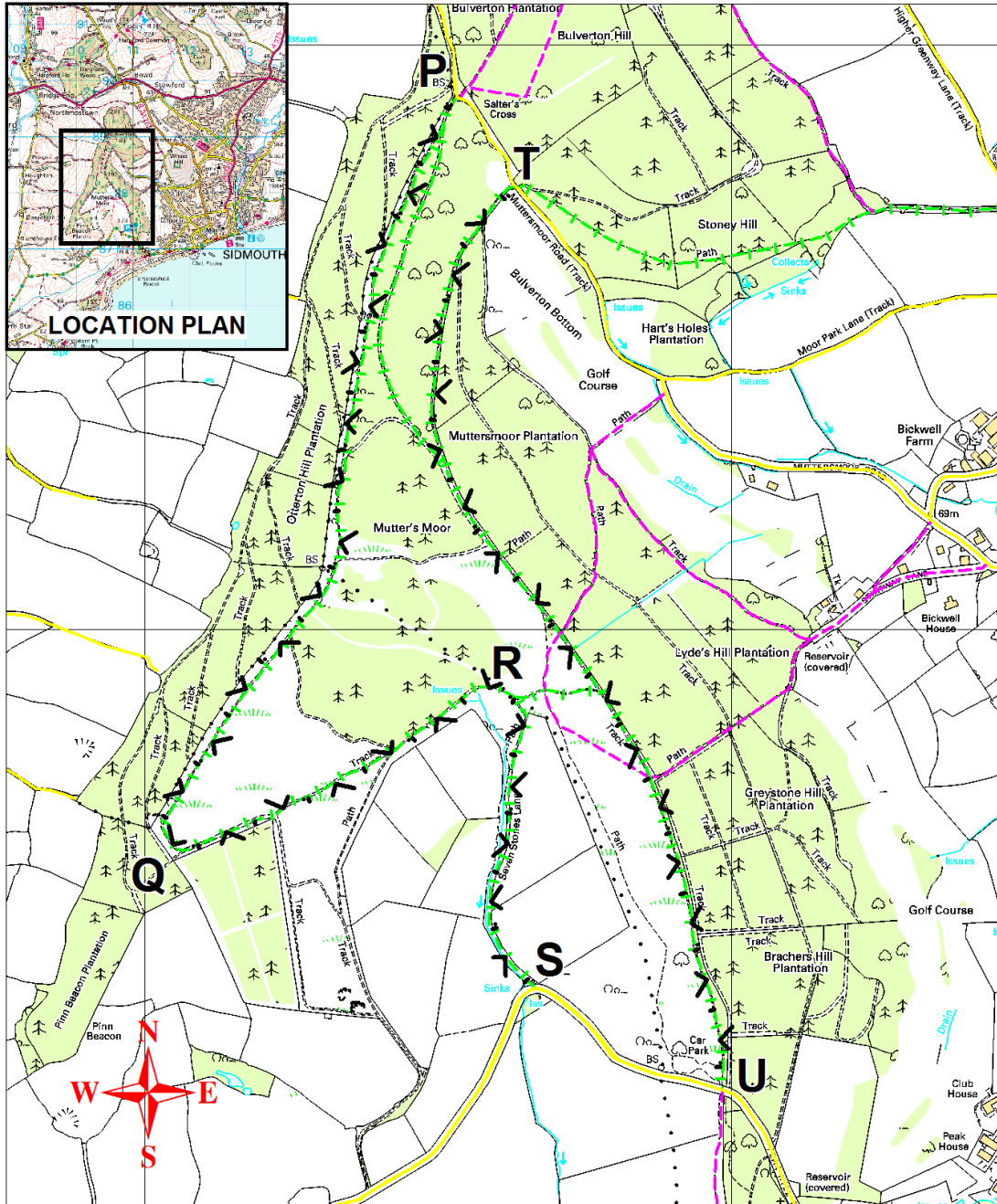
The Tithe Map on its own is not significant in showing the route in the same way as others now recorded as public roads, which also included others that have never been recorded as public and are private tracks for access to land. Finance Act records are not significant in showing it as excluded from adjoining land, which may have been due to the existence of public rights at that time, or of shared private rights for access to land with no consideration that it may have had higher rights, including in vehicles. The only other evidence suggesting that the route may have had the reputation of being a public road in the past is from the railway plans. However, although that may have been related to responsibility for local access to nearby farmland which appears to have been retained after the building of the railway as well as providing access to the railway line itself for maintenance.

Considering the historical mapping and landowner evidence, with the evidence of use, dedication at common law for the status of Byway Open to All Traffic cannot be inferred. The evidence is not considered sufficient to support the claim that there is any historical basis to the route being a public highway, or having the reputation of being available for use by the public, particularly in vehicles. There is no substantial or significant evidence to suggest that the landowners intended to dedicate the route as a public right of way, or that the public accepted any such dedication and have continued to use it on that basis.

## **8. Conclusion**

It is in the light of this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, that it is insufficient to support the claim that a public right of way subsists or is reasonable to allege to subsist with the status of Byway Open to All Traffic, or as a Restricted Byway in relation to exceptions under the Natural Environment and Rural Communities Act 2006. From consideration under statute and common law there is, therefore, insufficient basis for making an Order in respect of the application and, accordingly, the recommendation is that no Order be made to add the route S1–T1 as a Byway Open to All Traffic.





map ref SY0988/1088/1188/0987/1087/1187

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Devon County Council  
 Definitive Map Review, Sidmouth parish  
 Informal Consultations, Proposal 4:  
 Schedule 14 applications, claimed upgrade  
 of Bridleways 19/21, Sidmouth and  
 Bridleways 23/24, Otterton to Byways Open to All Traffic

drawing number HTM/PROW/13/30  
 date Mar 2013  
 scale 1:10 000  
 drawn by NSC

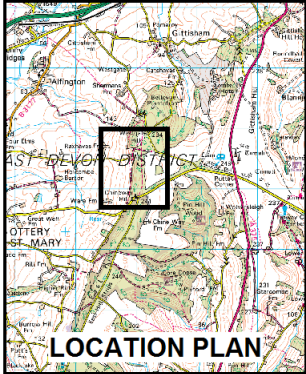
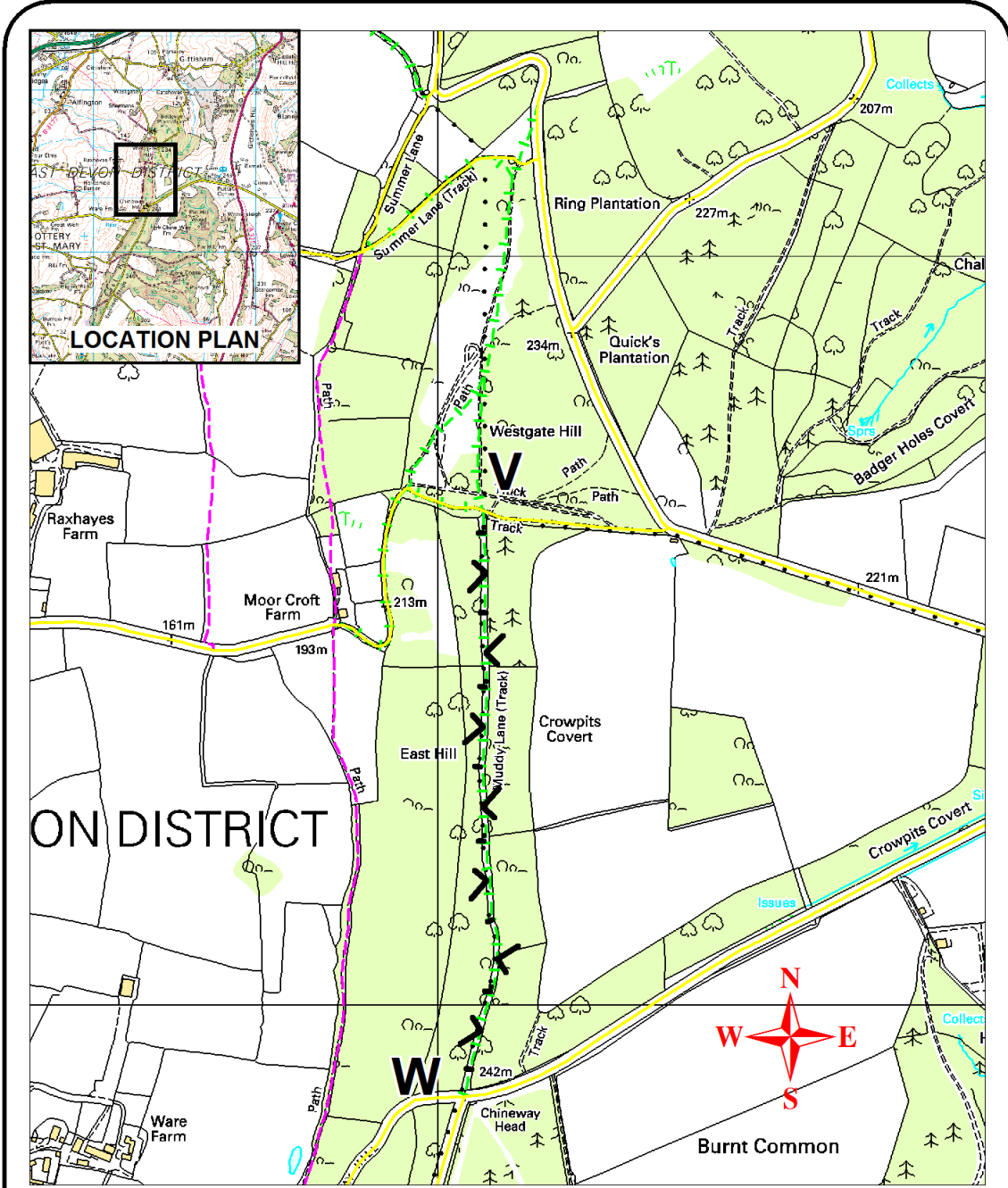
Notation

Claimed Byways Open to All Traffic   
 P - Q - R - S/T - U  
 Existing footpaths/bridleways 

David Whitton



HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE



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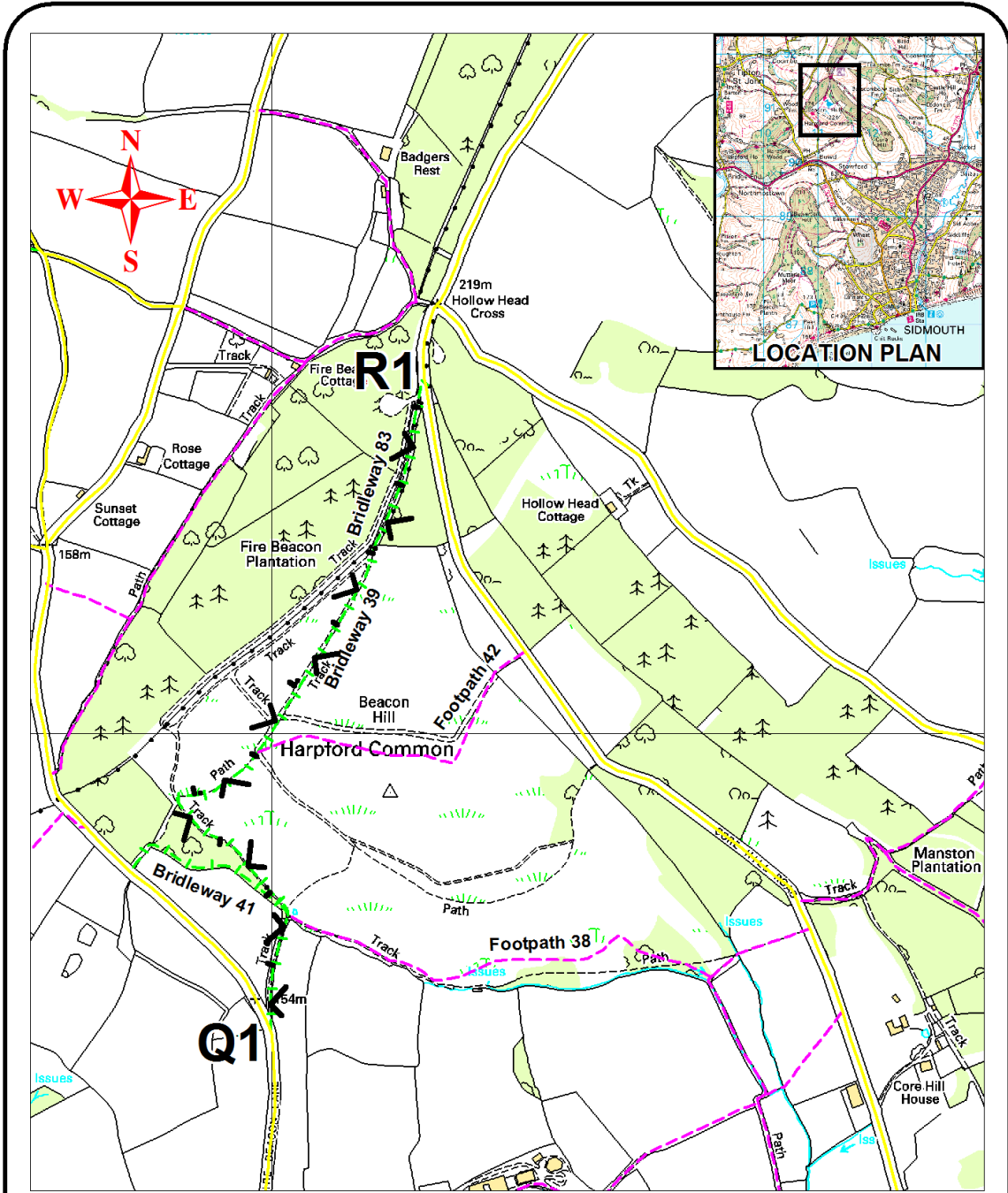
Devon County Council  
 Definitive Map Review, Sidmouth parish  
 Informal Consultations, Proposal 5:  
 Schedule 14 application, claimed upgrade  
 of Bridleway 156, Sidmouth to Byway Open to All Traffic

drawing number HTM/PROW/13/31  
 date Mar 2013  
 scale 1: 7 500  
 drawn by NSC

Notation  
 Claimed Byway Open to All Traffic    - ^ - v - ^ - v -  
 V - W (790 metres)  
 Existing footpaths/bridleways        - - - - / - - - -

**David Whitton**  
 HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE





map ref SY1591/1590

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**Devon County Council**  
**Definitive Map Review, Sidmouth parish**  
**Informal Consultations, Proposal 15:**  
**Claimed upgrade of Bridleway 39, Sidmouth and**  
**Bridleway 83, Ottery St. Mary to Byways Open to All Traffic**

drawing number HCDW/PROW/13/87  
 date Sep 2013  
 scale 1:7 500  
 drawn by NSC

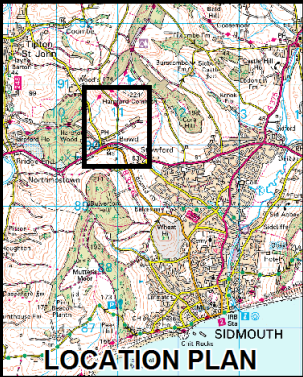
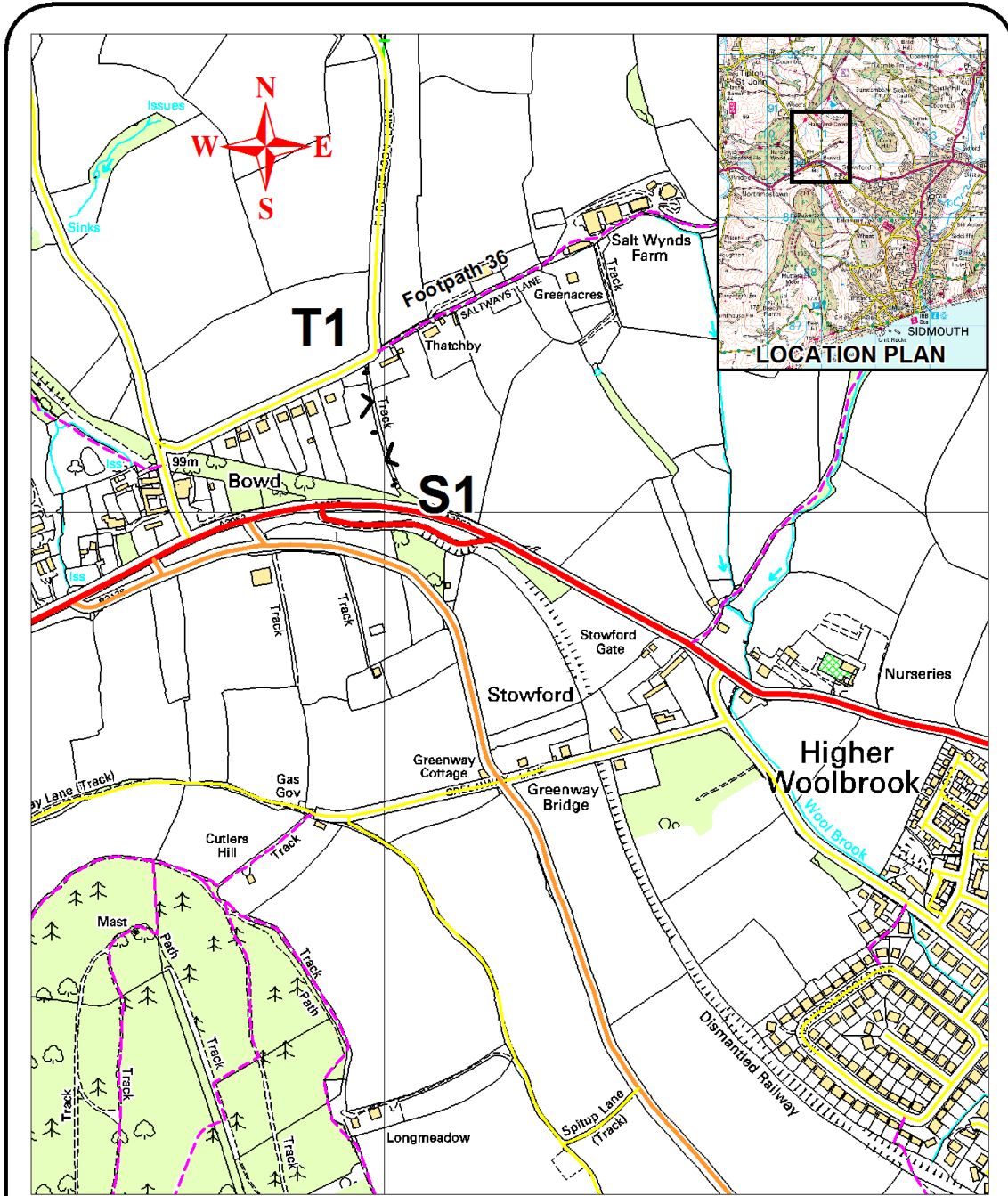
Notation

- Claimed byway Q1 - R1 (1,030 metres)
- Existing bridleway
- Existing footpath

**David Whitton**



HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE




map ref sy1591/1590

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**Devon County Council**  
**Definitive Map Review, Sidmouth parish**  
**Informal Consultations, Proposal 16:**  
**Claimed addition of Byway Open to All Traffic, track on**  
**Fire Beacon Lane**

drawing number **HCDW/PROW/13/88**  
 date **Sep 2013**  
 scale **1:7 500**  
 drawn by **NSC**

Notation  
 Claimed byway S1 - T1 (195 metres)   
 Existing footpaths 

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 HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE

