

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

Report of the Head of Highways, Capital Development and Waste

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

**Recommendation: It is recommended that:**

- (a) Proposal 1; it is recommended that no order be made to add a bridleway as shown on drawing number HTM/PROW/13/68;**
- (b) Proposal 2; it is recommended that a Modification Order be made to upgrade Footpath No 13 to a bridleway as shown on drawing number HTM/PROW/13/69; and**
- (c) Proposal 3; it is recommended that no order be made to add a footpath as shown on drawing number HTM/PROW/13/70.**

**1. Summary**

The report examines the first three of six proposals arising out of the Definitive Map Review in the parish of Berrynarbor in North Devon District.

**2. Background/Introduction**

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

The review of the Definitive Map, under s. 33 of the 1949 Act, which commenced in the 1970s, but was never completed, produced no proposals for change to the map in the parish.

The Limited Special Review of Roads Used as Public Paths (RUPP's), also carried out in the 1970s, did not affect this parish.

The following Agreements and Order have been made:

Devon County Council (Part Footpath No. 1, Berrynarbor) Extinguishment & Creation Order 1979.

Devon County Council (Footpath No. 26, Berrynarbor) Creation Order 1980.

Devon County Council (Footpath No. 27, Berrynarbor) Dedication Order 1988.

Devon County Council (Footpath No. 7, Berrynarbor) Diversion Order 1992.

Devon County Council (Footpath No. 7, Berrynarbor) Diversion Order 1995.

Devon County Council (Footpath No 13, Berrynarbor) Highway Stopped-up as unnecessary with reservation of a footpath.

Boundary change from Ilfracombe (Footpath No 125) creation Order 1977

Legal Event Modification Orders will be made for these amendments in due course.

### **3. Consultations**

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

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

The responses were as follows:

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

The first three of these six valid proposals are considered as: Proposals 1, 2, and 3 in this report. The other proposals will be the subject of future reports.

### **4. Conclusion**

- It is recommended that Proposal 1 is not added to the definitive map, between Oxenpark Lane and the Sterridge Valley as shown on drawing number HTM/PROW/13/68.
- It is recommended for Proposal 2 that a Modification Order is made to upgrade Footpath No 13 to a Bridleway as shown on drawing number HTM/PROW/13/69.
- It is recommended that Proposal 3 is not added to the definitive map as a footpath over land in the Sterridge valley as shown on drawing number HTM/PROW/13/70.

### **5. Financial Considerations**

There are no implications other than the normal costs associated with making the Order which will be met out of the general Rights of Way budget.

### **6. Sustainability Considerations**

The conversion of the footpath No. 13 to a bridleway will enable more sustainable modes of transport to use the route, ie cycling and horse riding.

### **7. Carbon Impact Considerations**

The conversion of the footpath No. 13 to a bridleway will enable more sustainable modes of transport to use the route, ie cycling and horse riding.

### **8. Equality Considerations**

Where any structures may be required on rights of way, the policy of gap, gate, kissing gate, stile will be followed to improve the accessibility of the network.

## 9. Legal Considerations

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

## 10. Risk Management Considerations

There are no implications.

## 11. Public Health Impact

The conversion of footpath No. 13 to a bridleway will enable increased physical activity, typically through cycling and horse-riding.

## 12. Options/Alternatives

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

## 13. Reasons for Recommendation/Alternate Options Considered

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

David Whitton  
Head of Highways, Capital Development and Waste

### **Electoral Division: Combe Martin Rural**

Local Government Act 1972: List of Background Papers

Contact for enquiries: Alison Smith

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

Tel No: (01392) 383370

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

as300513pra  
as/dmr Berrynarbor  
04 hq 060613

## Background to the Proposals

### 1. Basis of Claim

The Wildlife and Countryside Act 1981, Section 53 (5) enables any person to apply to the surveying authority for an order to modify the Definitive Map. The procedure is set out under WCA 1981 Schedule 14.

Common Law presumes that at some time in the past the landowner dedicated the way to the public either expressly, the evidence of the dedication having since been lost, or by implication, by making no objection to the use of the way by the public.

The Highways Act 1980, Section 31 (1) states that where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

The Highways Act 1980, Section 32 states that a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan, or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

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

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

- (i) that a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.
- (ii) that 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; or
- (iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

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

**Proposal 1: To add a bridleway from Oxenpark Lane east via Woolscott Farm to the Sterridge Valley Road.**

The route is shown between points A – B—C on drawing No HTM/PROW/13/68.

**1. Recommendation: It is recommended that Proposal 1 is not added to the definitive map.**

**2. Description of Route**

The route starts at point A on Oxenpark Lane then follows the access lane to Woolscott Farm in a generally south easterly direction to Woolscott Farm, point B. It crosses a grassed area through a locked field gate, where it turns and follows a track northeast before entering woodland and another locked field gate, and looping north then southeast through the woods to a permanent barrier across the track, before zig zaging to join the Sterridge Valley road at point C.

It has a rough stone surface to the farm then has a rutted stone and mud surface through the woods before it zig zags in a sunken lane with a bedrock surface.

**3. Documentary Evidence**

Ordinance Survey Mapping

1804 Surveyor drawings at 2" to 1 mile show the route to Woolscott Farm. It then shows a different line from the farm to the Sterridge Valley road.

1886-7 1<sup>st</sup> Edition OS map 25" to 1 mile, published 1891, shows the route.

1904-1906 2<sup>nd</sup> Edition OS map 25" to 1 mile shows the route.

It is shown on subsequent OS maps.

Tithe Map 1845.

Only shows line of the route to Woolscott Farm not beyond.

**4. User Evidence**

Eighteen user evidence forms have been submitted. All of the users have been riding horses and most users have completed maps showing the route that has been used.

There is some variation on these maps as to the route the riders have been using. Examples of the use made of the route follows:

The earliest recorded use on horseback is from Mrs Mortimer a farmer from Ilfracombe, who started to ride the route in 1968. She said she rode the route until 2009 when a railing fence replaced the gate and No Public Access signs went up. There was a change of ownership at this time. She said the route had been diverted when new owners bought the property. The previous owners had waved and opened gates for her.

Mr Challacombe, a local farmer, has used the route on horseback since 1970 for pleasure and business. He says that the route was diverted when there was a change in ownership, and there were gates along the way. He shows the new route on his map but used the original route prior to the construction of the new track.

Mr M Challacombe (son of the above) said” I have ridden along this track for many years and have never been prevented from doing so until 2000.”

Fifteen other users have been riding the track frequently, some 30 times a year, with no difficulty until the change of ownership in late 1999, when Mr Sanders bought the woodland from Mr Latham. At this change of ownership the riders have said signs were erected stating ‘No Public Access’ and the gate in the woodland changed to a fixed barrier.

A large proportion of the riders have used the original track to Woolscott Farm, until Mrs Latham created the new track to the north of the hedge, she did this when she sold Woolscott Farm House and track, but kept the land. Most of the riders appear to have thought the route had been diverted onto the new track and continued to use it until Mr Sanders erected ‘No Access’ signs, locked gates and erected a barrier.

## 5. Landowners

### Chronology of landownership:

The Huxtable family had owned and farmed Woolscott Farm from 1936 - 1996. They sold the farm and surrounding land to Mrs Latham in 1996.

In 1996 Mrs Latham sold off Woolscott Farm house and farm track. She constructed the new access track 1999 to the north of the hedge to gain access to the fields.

Mr & Mrs Savage & Mr & Mrs Ross bought Woolscott Barton (the farm house and small amount of surrounding land), from Mrs Latham in 1996.

Mrs Latham sold woodland to Mr Sanders 1999.

Ministry of Agriculture Fisheries and Food (MAFF) owned the southerly section of woodland from 1960 to 1989.

Mr Boxall bought the southerly section of woodland in 1989 from MAFF (Proposal 1 zigzags through the woodland through to reach the Sterridge Valley road).

### Land owners evidence:

Mr Huxtable owned the land from 1939 – 1995 he always believed the way was not public. He writes “I was always aware that people used the track and this was never a problem.”

Mrs Latham has owned the land for 17 years and constructed the new field access track in 1999 for their heavy machinery. One person had asked permission to walk for health purposes. Mr Sanders erected signs on the boundary of the property and kept the gates locked on the new track.

Mr & Mrs Savage & Mr & Mrs Ross bought Woolscott Barton in 1996. They turned away some riders from Keypitts from their land in 1999/2000, and it has not been used since. Between 2000 & 2007 there was a sign at the end of the lane saying “No Access without permission” a new sign 2007 read “Private No Access”.

Mr Boxall bought the southerly section of woodland from MAFF in 1989. *In 1994 he made a deposit using Section 31(6) of the Highway Act 1980.* This had the effect of securing his land to future right of way claims, as no additional rights of way over the land can then be claimed.

This deposit is sufficient evidence of the negative intention of the owner or his successors in title to dedicate any such additional way as a highway.

In September 2009 Mr Boxall received a letter from a group of riders asking for permission to ride through the route, he refused this.

Mr Sanders bought the woodland from Mrs Latham in September 1999. In early 2000 he erected "No Public Access" signs and locked the gates into woodland and he changed a gate to a permanent fixed barrier in the woodland between his land and Mr Boxalls.

These actions called the route into question.

In September 2009 Mr Sanders also received a letter from a group of riders asking for permission to ride through the route, he also refused this.

## **6. Discussion**

The Proposal 1 was brought into question in early 2000 by the locking of gates and the erection of a barrier and the "No Public Access" notices. The riders acknowledge these actions in their user evidence forms.

The Highways Act 1980, Section 31 (1) states that where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

Proposal 1 was blocked and the public's rights called into question. The evidence of use in the 20 years prior to 2000 was examined. This is known as 'the relevant period', and is thus between 1980 and 2000.

Originally the users were riding the track through Woolscott farm. The new track to the north of the hedge was built in 1999, and they diverted their use on to the new track for a short while.

Under HA section 31(1) the user evidence, as discussed in section 4, would have been sufficient to give rise to the dedication of a public bridleway over Proposal 1, between 1980 and 2000 when the route was called into question.

However the deposit under HA section 31(6) made by Mr Boxall in 1994, breaks that period and interrupts the public ability to acquire the right to use the route. This section of the Highways Act is sufficient to negate the intention of the owner to dedicate any such highway.

Therefore the deposit made using HA Section 31(6) is sufficient to show the negative intention of the landowner not to dedicate the bridleway claimed as Proposal 1.

## **7. Conclusion**

It is concluded that there is insufficient evidence to justify a modification order for Proposal 1.

## **Proposal 2: To upgrade Footpath No 13 the Old Coast Road to a Bridleway.**

The route is shown between points D – E - F on drawing No HTM/PROW/13/69.

**1. Recommendation: It is recommended that a Modification Order is made to upgrade Footpath No 13 to a Bridleway.**

### **2. Description of Route**

The route commences at point D on A399 south of The Sawmill and follows the Old Coast Road north east to point E, and then generally easterly before turning south easterly to the junction of Barton Hill, point F. It has a hardened surface for most of its length.

### **3. Documentary Evidence**

#### Ordinance Survey Mapping

1804 Surveyor drawings at 2" to 1 mile, the Coast Road had not been built.

1886-7 1<sup>st</sup> Edition OS map 25" to 1 mile, published 1891, shows the line of Proposal 2, the Coast Road.

1904-1906 2<sup>nd</sup> Edition OS map 25" to 1 mile shows the line of the Coast Road.

It is shown on subsequent OS maps as a road.

#### Tithe Map 1845.

Does not show line of the route as the road had not yet been built.

#### Road Committee Books.

In 1921 the County Council carried out a road deviation scheme at Berrynarbor, building the new inland road which is the line of the A399 today.

#### Quarter Sessions January 1923

At this Quarter Session the Old Coast Road (Proposal 2) was stopped up with "the reservation of a right of footway to the public over the road." (A right of way on foot)

### **4. User Evidence**

Six user evidence forms have been submitted, five from horse riders and one from a walker, (this route is already recorded as a public footpath, therefore use on foot does not add any weight to the evidence).

The earliest recorded use on horseback is from a Mr Dovell, a long-time resident of Combe Martin, who started to ride the route in 1950. He has continued to ride it at least 30 times a year for pleasure and has never been stopped.

Other user's record riding the route from the 1960s through to the present day without let or hindrance, between 10 and 30 times a year.

None of the users have asked for or been given permission to use the route, believing it to be a public bridleway. No users reported being stopped or turned back or challenged.



## 5. Landowner Evidence

During the consultation period letters were sent to all adjoining properties and farms, and notices and maps placed at each end of the route. No responses were received and no one claims ownership of the Old Coast Road, the surface of which as an old highway is still vested with the county council. There is no rebuttal evidence for the proposed upgrading.

## 6. Discussion

The Wildlife and Countryside Act 1981, S 56 (1) states “The Definitive Map and statement shall be conclusive evidence as to the particulars contained therein to the following extent, namely (a) where the map shows a footpath, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had there over a right of way on foot, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than that right.”

Proposal 2 was built as the Coast Road in the mid-18<sup>th</sup> Century as the main road between Ilfracombe and Combe Martin.

In 1921, when the new inland road was built as part of a road deviation scheme to become the line of the A399 today, the old coast road was left with footpath rights.

Use of the route on horseback has been without challenge, interruption, force, secrecy or permission and the route is still vested with the county council.

As there has been no calling into question of use by horse riders, the proposed upgrading has to be considered under Common Law which presumes that at some time in the past since the stopping up, the landowner dedicated the way to the public either expressly, the evidence of dedication having since been lost, or by implication, by making no objection to the use of the way by the public.

The historic mapping evidence, coupled with the user evidence from five local horse riders and the lack of any rebuttal evidence would appear to demonstrate that the Common Law test is satisfied and an order should be made to upgrade Footpath No. 13 to a bridleway.

## 7. Conclusion

It is concluded that on the balance of probabilities there is sufficient evidence to justify a Modification Order being made to upgrade Footpath No. 13 to a public bridleway.

### **Proposal 3: To add a footpath from Sterridge Valley county road, along an old track past Woodlands to re-join the county road near Venture Cottage.**

The route is shown between points G - H – I on drawing no. HTM/PROW/13/70.

**1. Recommendation: It is recommended that Proposal 3 is not added to the definitive map.**

#### **2. Description of Route**

The route commences at point G on the Sterridge Valley road just south of Footpath No.16. It proceeds in a generally south, south west direction, steeply uphill to point H, then turns south in an old lane before turning south, south easterly to re-join the Sterridge Valley road at point I, near Venture Cottage. (In a bow shape, the county road forming the string of the

bow.) The route has a concrete surface then a mud and stone surface before turning to bed rock.

### **3. Documentary Evidence**

#### Ordinance Survey Mapping

1804 Surveyor drawings at 2" to 1 mile, shows the route as a defined lane over its entire length. (At this date the new county road, the string of the bow, is not shown.)

1886-7 1<sup>st</sup> Edition OS map 25" to 1 mile, published 1891. Shows the original line of the lane and that the new county road (the string of the bow) has been built).

1904-1906 2<sup>nd</sup> Edition OS map 25" to 1 mile. The route is shown as a minor lane on this map. The County road, (the string of the bow), is clearly shown as the more major route.

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

Tithe Map 1845. The route is shown as a defined lane throughout its length in a similar manner to other lanes in the parish. The county road (string of the bow) had not yet been built.

#### Watermouth and UMBERLEIGH Estates Steward Accounts 1894 – 1906

Show in 1898 the Watermouth Estate paid a donation of "£5.0.0" towards altering 'Road at Sterridge'. In the same year the Estate paid another amount of "£8.0.0" to the District Council, as the "amount agreed on their taking over Sterridge Road".

#### Parish Council Minutes

Road by Woodlands,(route of Proposal 3). On 6 March 1930 Berrynarbor Parish Council wrote to the Mr Smith (owner of Woodlands), 'pointing out that the same is an occupation road and that Parish Council have no control over same'.

Therefore Proposal 3 was not the responsibility of the parish council in 1930 and the parish were not spending public money on the route, and they knew it did not have any public rights along it.

#### Original Definitive Map Survey 1950

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

### **4. User Evidence**

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

Mrs J Alcock owner of Woodlands House that adjoins the claim, has occasionally walked the route between 1988 and 2013. She comments that: "This narrow, overgrown track only links properties around Knockers Hole. Probably important a hundred years ago and not really suitable today for general public use." She then outlines a neighbourly dispute about land boundaries.

Mrs L Bowden has known of the lane since childhood. She has walked, and picked blackberries and sloes as a child, has used it several times a year by car or on foot visiting Woodlands. (The vehicular access to Woodlands crosses the line of the claim.) She notes that recently the current owners have fenced off the lane and stored piles of logs there.

Mr G Sanders, claims the route is a byway open to all traffic he has driven parts of it to access properties, and used it on foot, from the early to mid to 1960's to 1999 when he bought the adjoining woodland and has since has only used it for business purposes. A wire fence and log pile has obstructed the route recently.

He is in dispute about land boundaries.

## **5. Landowner Evidence**

Part of the route of Proposal 3 has no registered owner, and there is pending Land Registration for another section of the route.

The owners of Venture Cottage, Mr & Mrs Reynolds, have adverse possession of the land adjoining the garden of their cottage, and have a claim pending with the Land Registry. They bought the property in 2007. They blocked the southern section of the route with a fence and log pile in early 2012, and therefore brought the route into question. Until last year they had not seen the public using the claimed route.

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

The Reynolds contacted the Public Rights of Way section to ask if an application had been made to add a public right of way over their ground. No application had been made.

They state the route of Proposal 3 was impassable with overgrowth when they bought the property in 2007, and the previous owners of the cottage also confirmed that the route was overgrown during the 18 years they owned the property.

Messers Thomas former owners of Venture Cottage, whose family were in continuous occupation of Venture Cottage from 1888 to 1971, have submitted sworn Statutory Declarations, in which they state; 'that the adjoining landowners all maintained their own section of the claimed route for their own use during his families occupation of the cottage and land. That usage of the track passed the well and side garden of Venture Cottage ceased in the mid 1930's and by the end of the 1930's the route was increasingly overgrown by bushes preventing further passage'.

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

The Reynolds brought to the county council's attention that there is a dispute with an adjoining landowner, Mr Sanders, about private right of access to boundary fences. Mr Sanders completed a user evidence form.

## **6. Discussion**

Proposal 3 was brought into question in early 2012 by the erection of a fence and the placing of a log pile on the line of the route. The parish council inquired if it was a public right of way, and were told it was not recorded as such and user evidence would have to be gathered to show the public may have acquired the rights to use the claimed route.

Proposal 3 came forward as part of the parish review, it is not supported by a formal application, and only 3 user evidence forms were submitted.

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.

Therefore as the route was blocked and the public's right brought into question, the evidence of use in the 20 years prior to 2012 was examined. This is known as 'the relevant period' and is between 1992 and 2012.

There are three user evidence forms; one from Mrs Alcock, an adjoining landowner who bought Woodlands in 1988. As an adjoining landowner it is hard to find that her evidence is given as a member of the general public, as she may have private rights to access the track.

Mrs Bowden has given historical detail about the lane and has walked it when visiting Woodlands or walking for pleasure. Her use when visiting cannot be counted as of use by the public because it was by invitation. The use she has made when walking for pleasure was previous to the period required to show public use throughout the 20 years between 2012 and 1992.

Mr Sanders has used the route since the mid 1960's, but became an adjoining landowner in 1999 and since then has only accessed the route for business. He therefore has only used the route for 7 years of the relevant period.

No further user evidence has come forward. With only 2 users and an adjoining landowner giving evidence which does not cover the full period of 20 years between 1992 and 2012, there is therefore insufficient evidence to establish a right of way on Proposal 3, as the Highways Act states the claimed route "has actually been enjoyed by the public as of right and without interruption for a full period of 20 years".

The overgrowth in the route as witnessed by the county council officer would have made traversing the route in recent years very difficult and the previous landowners have stated that it started to overgrow in in the 1930's.

#### Evaluation of the historical evidence:

Historically the route of Proposal 3 was the track through the valley, as can be seen from the Tithe Map and the surveyor drawing for the Ordnance Survey.

Between 1845 and 1880's the new road (the string of the bow) was constructed as seen on the OS mapping. From The Watermouth Estate records it can be seen that in 1898 the estate made a donation of "£5.0.0" towards altering the Road at Sterridge, and in the same year the Estate paid another "£8.0.0" to the District Council to take over Sterridge Road. Therefore the new road (the string of the bow) was adopted as a county road in the late 1880's, leaving the line of the claimed route, Proposal 3, with the Estate and its successors and not adopted as a public highway.

The Parish Council in 1930 knew that the line of Proposal 3 was not a public road. They stated that it was in fact an occupation road and they did not pay for its up keep or maintenance, a fact that the recent parish council had forgotten some 80 years later.

That occupation road status is corroborated by the sworn statutory declarations from Messers Thomas, the original landowners of Venture Cottage and long term parish residents, with contemporaneous memories of the route, that they and their neighbours in the 1930's maintained the lane themselves before it gradually grew over.

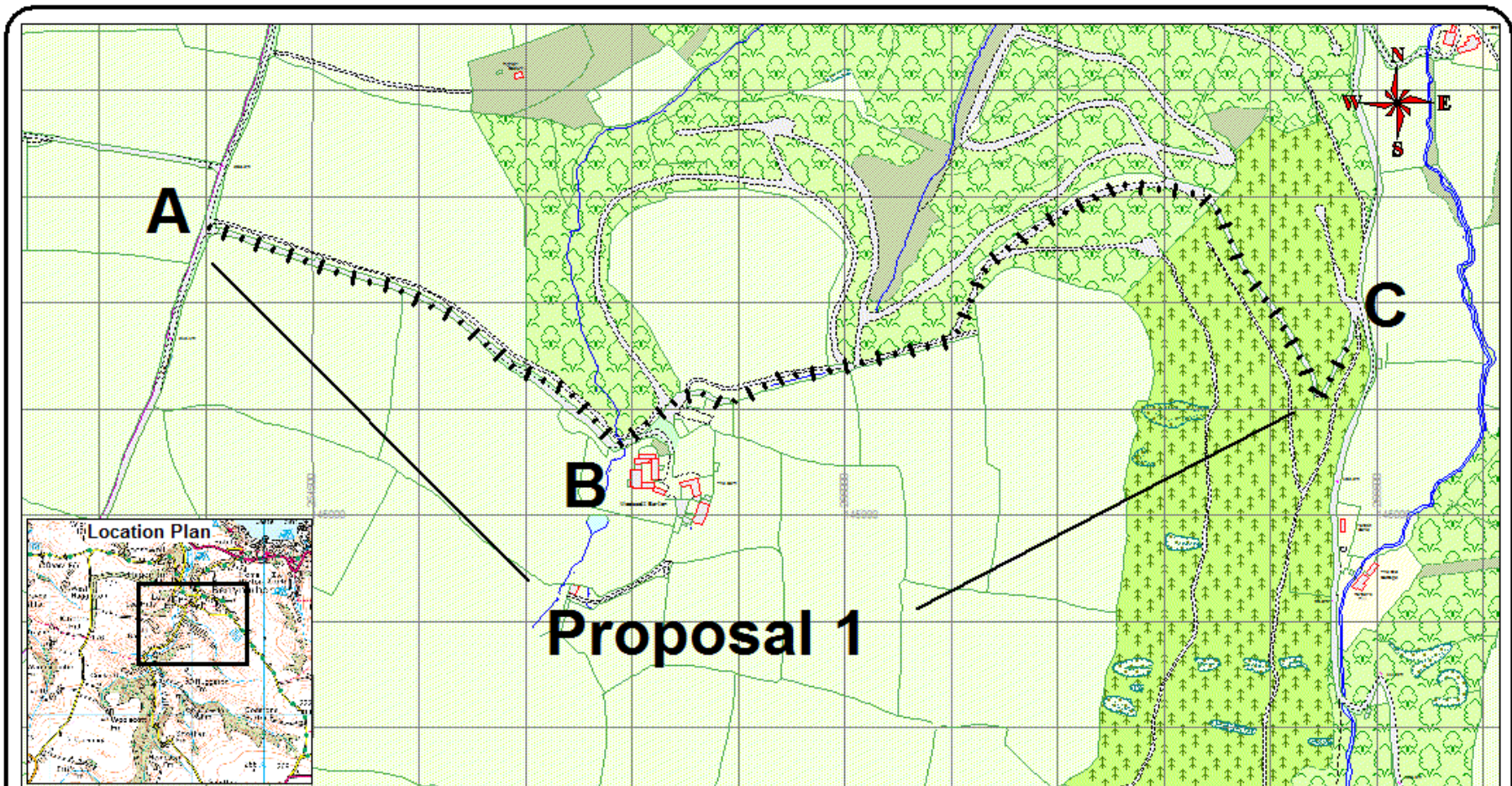
It is apparent from the historical records that the route of Proposal 3 was not adopted as a county road, and the 'string of the bow' was adopted instead. Therefore there would be insufficient evidence at common law to add this route as a public right of way.

However as Proposal 3 has been called into question by the landowner, the Highways Act 1980, Section 31(1) test has to be applied for the relevant period of the twenty years before it was closed. There is insufficient user evidence to show Proposal 3 has actually been enjoyed by the public as of right and without interruption for a full period of 20 years.

## **7. Conclusion**

It is concluded that on the balance of probabilities there is insufficient evidence to justify a modification order being made for Proposal 3 to record a public footpath.





map ref: **SS5545**

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**DEVON COUNTY COUNCIL  
DEFINITIVE MAP REVIEW  
BERRYNARBOR PROPOSAL 1  
Claimed Bridleway Oxenpark Lane to Sterridge Valley**

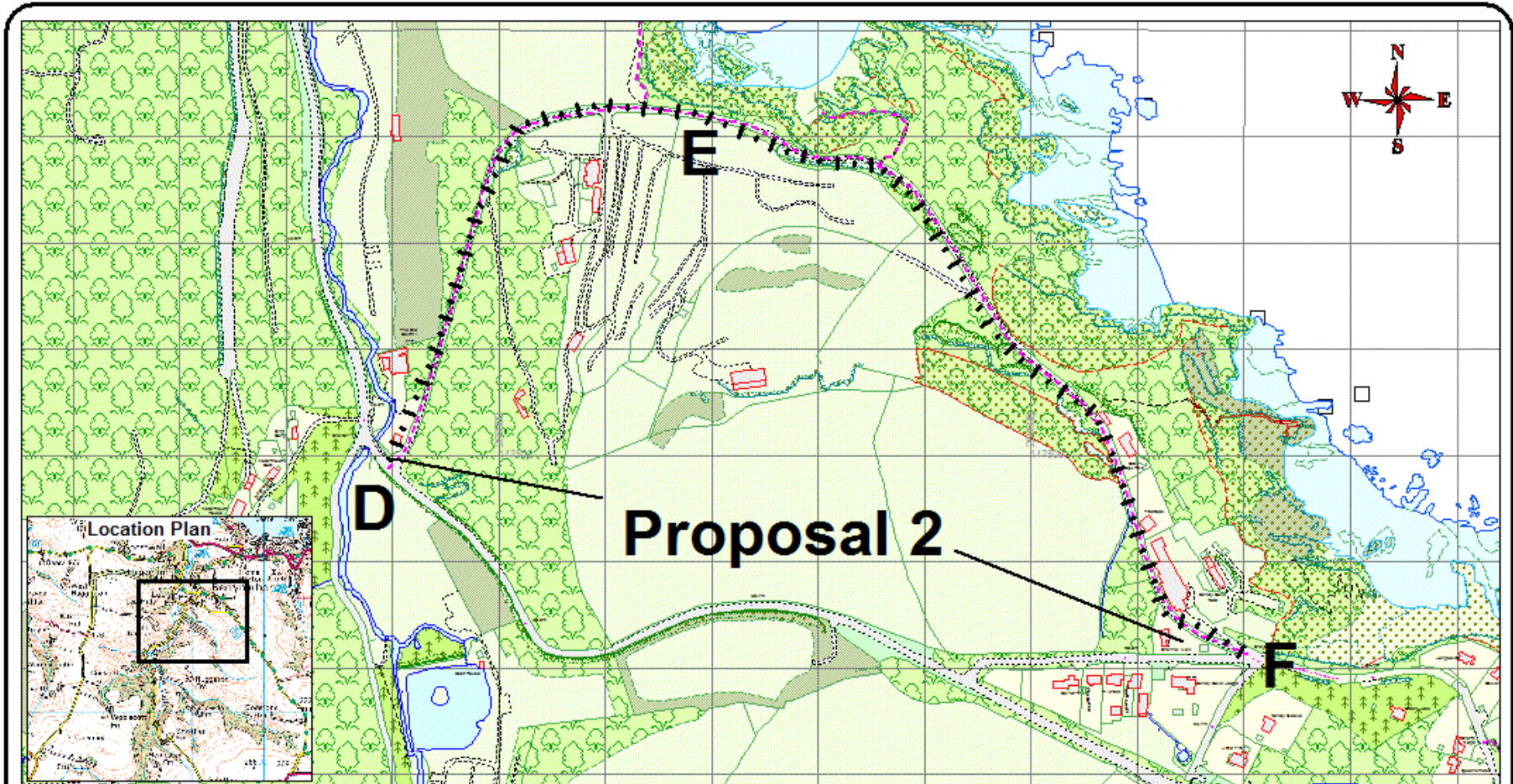
drawing number	HTM/PROW/13/68
date	May 2013
scale	1:5000 (at A4 only)
drawn by	BM/AS

**Notation**

- A-B-C
- Existing public footpath

David Whitton  
Head of Highways, Capital Development and Waste







map ref: **SS5647**

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**DEVON COUNTY COUNCIL**  
**DEFINITIVE MAP REVIEW**  
**BERRYNARBOR PROPOSAL 2**  
**Claimed Bridleway upgrading of Footpath No. 13**  
**Old Coast Road**

drawing number	HTM/PROW/13/69
date	May 2013
scale	1:5000 (at A4 only)
drawn by	BM/AS

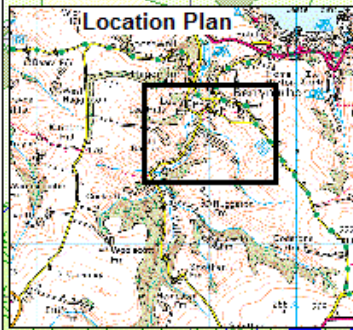
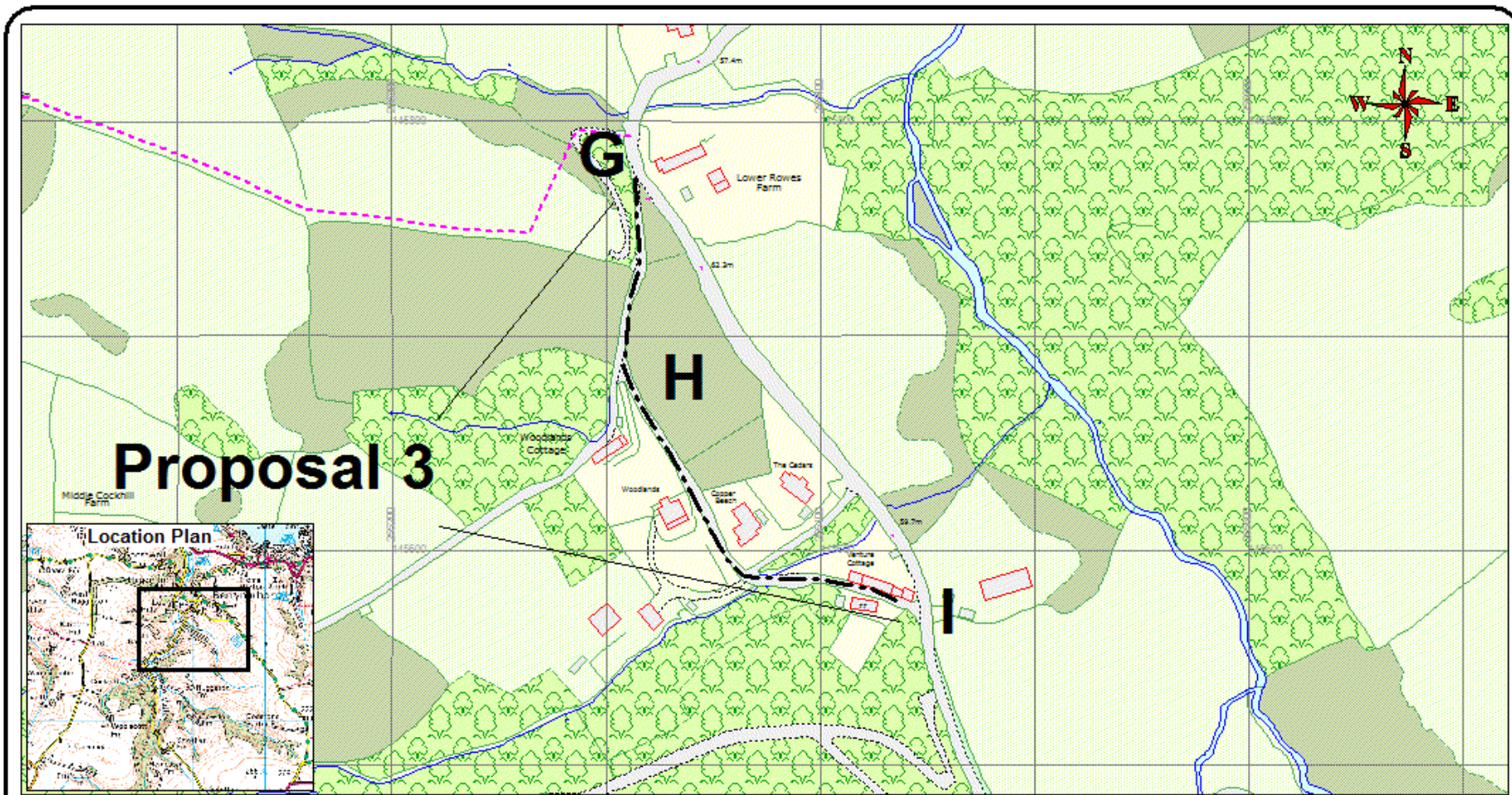
**Notation**

Existing public footpath 
  
 D - E - F 

David Whitton  
 Head of Highways, Capital Development and Waste







map ref: **SS5545**

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

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

**Notation**

G-H-I    ●●●●●●●●●●  
Existing public footpath    - - - - -

David Whitton  
Head of Highways, Capital Development and Waste

