

**Definitive Map Review
Parish of Combe Martin - Part 2**

Report of the Head of Highways, Capital Development and Waste

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

Recommendation: It is recommended that Modification Orders be made to modify the Definitive Map and Statement by:

- (a) upgrading Footpath No. 16, Combe Martin to a bridleway between points A-B-C-D as shown on drawing number HMT/PROW/14/58(Proposal 9);
- (b) upgrading Footpath No. 17, Combe Martin to a bridleway between points E-B-C-F as shown on drawing number HMT/PROW/14/58 (Proposals 10 and 11);
- (c) upgrading Footpath No. 18 to a bridleway between points G-F-H drawing number HMT/PROW/14/58 (Proposal 12).

1. Introduction

This report examines Proposals 9, 10 and 11 of 24 proposals arising from the Definitive Map Review in the parish of Combe Martin.

2. Background

The Background for the parish was set out in Committee report HTM/13/14 February 2013.

3. Proposals

For Proposal 11 please refer to the appendix to this report.

4. Consultations

General consultations have been carried out with the following results:

County Councillor Andrea Davis	-	no objections to these proposals
North Devon District Council	-	no comment
Combe Martin Parish Council	-	supports proposals
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

Specific responses are detailed in the appendix to this report and included in the background papers.

5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

Equality, environmental impact or public health implications have, where appropriate under the provisions of the relevant legislation, been taken into account in the preparation of the report.

9. Conclusion

It is recommended that modification orders be made in respect of Proposals 9, 10, 11 and 12. Details concerning the recommendations are discussed in the Appendix to this report.

10. Reasons for Recommendations

To undertake the County Council's statutory duty under the Wildlife and Countryside Act 1981 to keep the Definitive Map and Statement under continuous review and to progress the parish by parish review in the Torridge district area.

David Whitton
Head of Highways, Capital Development and Waste

Electoral Division: Combe Martin Rural

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence Files	2011- date	AS/DMR/COMBE MARTIN

as150514pra
sc/cr/DMR Parish of Combe Martin Part 2
03 050614

A. Basis of Claim

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.

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 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.

The Wildlife and Countryside Act 1981, Section 53(3)(c) enables the Definitive Map to be modified if the County Council discovers evidence which, when considered with all other relevant evidence available to it, shows 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.
- (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.
- (iii) 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.

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.

Section 69 of the Natural Environment and Rural Communities Act 2006 (NERC) amended the Highways Act 1980, to clarify that a Schedule 14 application for a Definitive Map Modification Order is, of itself, sufficient to bring a right of way into question for the purposes of Section 31(2) of the Highways Act 1980, from the date that it was made.

1. **Proposal 9: To upgrade Footpath No. 16 to a bridleway, between points C – D as shown on drawing number HMT/PROW/14/58.**

Recommendation: It is recommended that a modification order be made in respect of Proposal 9 to upgrade Footpath No. 16 to a public bridleway.

1.1 Background

- 1.1.1 Proposal 9, was put forward by the Parish Council and members of the public as a result of the Definitive Map Review meeting in Coombe Martin. This is the second part of the Parish Review for Coombe Martin, for the background and introduction please see the previous report HTM/13/14.

1.2 Description of the Route

- 1.2.1 Proposal 9, commences at point A on the plan, at Netherton Cross. The route runs in a generally north south direction in a continuous lane that has three sections. It is firstly named as Pentice Lane A-B (pentice is an old mining term for a rock pillar at the bottom of a shaft this ties in with the mining history of Coombe Martin) and then it wiggles easterly then southerly onto part of Watery Lane B-C, and then onto part of Corner Lane C-D. Pentice Lane has a mostly stone and earth surface, Watery Lane is wet in places with a stone and mud surface and the section of Corner Lane on this proposal has a stoned and then sealed surface to point D. It is bounded by steep cut banks and hedges, except in the town where it is bounded by houses.

1.3 Documentary Evidence

- 1.3.1 Ordnance Survey Mapping: 1804 Ordnance Survey Drawings at the scale of 2" to 1 mile, clearly show the route as a through road from Netherton Cross down to Coombe Martin High Street. The route appears to be a historical route into the village from the north.
- 1.3.2 1880s 1st Edition OS map 25" to 1 mile. The lane is marked as Pentice Lane part of Watery Lane and Corner Lane and is clearly shown as a defined lane on this map over its entire length.
- 1.3.3 1904-1906 2nd Edition OS map 25" to 1 mile. The route is shown as a defined lane on this map over its entire length, and again annotated as above.
- 1.3.4 It is shown on all subsequent OS maps as a defined lane as above in 2.3.3.
- 1.3.5 Tithe Map 1845: The route is clearly shown as a defined lane throughout its length in the same manner to other lanes in the parish.
- 1.3.6 Original Definitive Map Survey: In 1955 the County Surveyor wrote to Coombe Martin Parish Council as it appeared they had not undertaken a survey of their rights of way. The parish subsequently returned the survey with a brief description of each route and a beautifully annotated map. However, the map had no key and no indication was given if the routes were footpaths, bridleways or road used as public paths. The District Surveyor queried the routes requesting clarification if they were accommodation roads, but no answer was provided.
- 1.3.7 When the survey was examined by the County Surveyor the description for the route was amended given the lowest status of Public Footpath No. 16. In 1957 the County

Surveyor again wrote to the parish enclosing his list of detailed descriptions of paths and saying “unless I hear from you to the contrary I will take it that this list meets with the approval of your Council.” No response was forthcoming from Combe Martin Parish Council and therefore the route of Proposal 9 was recorded as Public Footpath No. 16.

1.4 User Evidence

There are many riders in the Combe Martin area and each has their own preferred riding route around the parish. Many have used Proposal 9 as part of a circuit.

- 1.4.1 Thirteen user evidence forms have identified Proposal 9 as part of recreational routes around this area. 5 from horse riders, 5 from individuals who ride and walk, 1 who walks and rides his bicycle and 2 walkers. Others have included Proposal 9 as part of a longer circuit they use. Some of users think of the route as a Byway Open to All Traffic or Restricted Byway.
- 1.4.2 The earliest recorded use on horseback is from Mr E Dovell, a long-time resident of Combe Martin, who started to use Proposal 9 in 1950. He has used it on foot, horseback about 300 times a year. He has continued to ride it and has never been stopped or challenged and has seen the adjoining landowners and other users when using the route.
- 1.4.3 The other user’s record riding, walking, cycling and occasionally driving the route from the 1960s through to the present day at least weekly and variations in between up to 300 times a year, without let or hindrance.
- 1.4.4 None of the users have asked for or been given permission to use the route, believing it to be at least a public bridleway. No users reported being stopped or turned back and none have seen any signs saying that might have said it was not a public right of way. Proposal 9 is recorded as FP No. 16 therefore use on foot is by right.

1.5 Landowner Evidence

- 1.5.1 During the consultation period letters were sent to all adjoining houses and farms, and notices and maps placed at each end of the route. No one claims ownership of the lane. One response was received from a house holder who is worried about pedestrians meeting and passing horse riders in the narrow part of Pentice Lane.

1.6 Rebuttal Evidence

- 1.6.1 There is no rebuttal evidence for this proposed upgrading from a footpath to a bridleway.

1.7 Discussion

- 1.7.1 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.**”

- 1.7.2 Proposal 9, has been shown on historic maps as a through route for over 200 years in the same way as other highways in the parish it appears to have been one of the routes into the parish when traveling from the north.
- 1.7.3 Use of the route on horseback, and bicycle has been without challenge, interruption, force, secrecy or permission and the route does not appear to have any registered owners. Use on foot is by right.
- 1.7.4 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 the landowner dedicated the way to the public either expressly, the evidence of the dedication having since been lost, or by implication, by making no objection to the use of the way by the public.
- 1.7.5 The historic mapping evidence, coupled with the user evidence from twelve local horse riders (three of the users only walking the route which is presently recorded as a footpath) and the lack of any rebuttal evidence demonstrates that the Common Law test is satisfied and an Order should be made to upgrade Footpath No. 16 to a bridleway.

1.8 Conclusion

- 1.8.1 It is therefore recommended that on the balance of probabilities there is sufficient evidence to justify a Modification Order being made to upgrade Footpath No. 16, to a public bridleway. And if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

2. Proposals 10 & 11 combined: these proposals are to upgrade Footpath No.17 to a bridleway, from A399 by the Baptist Chapel along Chapel Lane to Watery Lane then onto Corner Lane to the junction of Badgaver Lane north of Knappdown Farm, between point E-B & C-F as shown on drawing No. HMT/PROW/14/58.

Recommendation: It is recommended that a Modification Order be made to upgrade Footpath No. 17 to a public bridleway.

2.1 Background

- 2.1.1 Proposals 10 & 11 were again put forward by the Parish Council and members of the public as a result of the Definitive Map Review meeting in Coombe Martin.

2.2 Description of the Route

- 2.2.1 Proposals 10 & 11, currently recorded as Footpath No. 17, commences at point E on the plan, from A399 by the Baptist Chapel along Chapel Lane proceeds north-eastwards turning eastwards on to a Private Accommodation Road (not repairable by the inhabitants at large), Watery Lane, to its junction with Footpath No.16. point B Re-starts at point C 137 meters south-west and continues eastwards along a Private Accommodation Road (not repairable by the inhabitants at large), Corner Lane, past Knap Down Cottage and Knap Down Silver Lead Mine to its junction with Footpath No:18 on the Private Accommodation Road (not repairable by the inhabitants at large), Badgaver Lane, Point F.

It is hedged for its length and has a hard stone and earth surface.

2.3 Documentary Evidence

- 2.3.1 Ordnance Survey Mapping. The 1804 Ordnance Survey Drawings at the scale of 2" to 1 mile show the lanes as a through road from Knap Down into Combe Martin High Street. Corner Lane in particular appears to be one of the main historical routes into the village from the north. Watery Lane is shown, Chapel Lane is not.
- 2.3.2 1880s 1st Edition OS map 25" to 1 mile. Corner Lane is annotated from the High Street and again on mid-stretch and shown as a defined lane. Watery Lane and Chapel Lane are shown defined lanes. A short section between Chapel Lane and Watery Lane is marked as FP.
- 2.3.3 1904-1906 2nd Edition OS map 25" to 1 mile. The Proposal 10 and 11 are shown as defined lanes for their entire length on this map, and annotated as Chapel Lane, Watery Lane and Corner Lane.
- 2.3.4 They are shown on all subsequent OS maps as defined lanes and annotated as above.
- 2.3.5 Tithe Map 1845. Corner Lane and Watery Lane are clearly shown as defined lanes throughout their length in the same manner to other lanes in the parish.
- 2.3.6 Original Definitive Map Survey. In 1955 the County Surveyor wrote to Combe Martin Parish Council as it appeared they had not undertaken a survey of their rights of way. The parish subsequently returned the survey with a brief description of each route and a beautifully annotated map. However, the map had no key and no indication was given if the routes were footpaths, bridleways or road used as public paths. The District Surveyor queried the routes requesting clarification if they were accommodation roads, but no answer was provided.
- 2.3.7 When the survey was examined by the County Surveyor the description for the Corner Lane route was amended and given the lowest status of Public Footpath No. 17. In 1957 the County Surveyor again wrote to the parish enclosing his list of detailed descriptions of paths and saying "unless I hear from you to the contrary I will take it that this list meets with the approval of your Council." No response was forthcoming and therefore the route of Proposal 10 & 11 was recorded as Public Footpath No. 17.

2.4 User Evidence

There are many riders in the Combe Martin area and each has their own preferred riding route around the parish. Many have used Proposal 10 & 11 as part of a circuit.

- 2.4.1 Eighteen user evidence forms have identified Proposals 10 & 11 as part of recreational routes around this area. 5 from horse riders, 5 from individuals who rider and walk, 5 others from people who have ridden horses, walked and used a vehicle (only on the section called Corner Lane) and bicycle and 3 people who have walked FP No. 17 by right, because it is already recorded as a public footpath.
- 2.4.2 The earliest recorded use on horseback is from Mr Richards, a long-time resident of Combe Martin, who started to use the routes in 1960. He has used them on foot, horse and bicycle as had his family before him. He has continued to ride the routes and has never been stopped or challenged and has seen the adjoining landowners and other users when using the routes.

2.4.3 The other users of Proposals 10 & 11, record riding, cycling, walking (by right) and occasionally driving along Proposal 11 (Corner Lane) from the 1960s through to the present day without let or hindrance, some on an almost daily basis others weekly and some on a monthly basis.

2.4.4 It is currently recorded as Public Footpath No. 17. However none of the users claiming higher rights, have asked for or been given permission to use the route, believing it to be at least a public bridleway. No users reported being stopped or turned back and none have seen any signs saying that might have said it was not a public right of way.

2.5 Landowner Evidence

2.5.1 During the consultation period letters were sent to all adjoining houses and farms, and notices and maps placed at each end of the route. No responses were received and no one claims ownership of the lane.

2.6 Rebuttal Evidence

2.6.1 There is no rebuttal evidence for this proposed upgrading from a footpath to a bridleway.

2.7 Discussion

2.7.1 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.**”

2.7.2 Corner Lane (part of FP 17) and Watery Lane; have been shown on historic maps as through routes for over 200 years in the same way as other highways in the parish. Corner Lane appears to have been one of the routes into the parish when traveling from the north east that predates the current County Road network. It can be seen from the mapping that prior to 1904 Chapel Lane and Watery Lane had been developed had joined together as a continuous lane.

2.7.3 Use of FP No. 17 on foot is by right. Use of Proposal 10 & 11 on horseback, bicycle and with occasional vehicles, has been without challenge, interruption, force, secrecy or permission and the route does not appear to have any registered owners.

2.7.4 As there has been no calling into question of the horse riding use, the proposed upgrading has to be considered under Common Law, which 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.

2.7.5 The historic mapping evidence, coupled with the user evidence from fifteen local horse riders (three of the users only walking FP 17) and the lack of any rebuttal evidence demonstrates that the Common Law test is satisfied and an Order should be made to upgrade Footpath No. 17 to a bridleway.

2.8 Conclusion

- 2.8.1 It is therefore recommended that on the balance of probabilities there is sufficient evidence to justify a Modification Order being made to upgrade Footpath No.17 to a public bridleway. And if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

3 Proposal 12: this proposal is to upgrade Footpath No.18 to a bridleway, from Vellacott Lane via Badgaver Lane to A399. Between points G-F-H as shown on drawing No. HMT/PROW/14/58.

Recommendation: It is recommended that a Modification Order be made to upgrade Footpath No. 18 to a public bridleway.

3.1 Background

- 3.1.1 Proposal 12 was put forward by the Parish Council and members of the public as a result of the Definitive Map Review meeting in Coombe Martin. This is the second part of the Parish Review for Combe Martin, for the background and introduction please see the previous report HTM/13/14.

3.2 Description of the Route

- 3.2.1 Proposal 12, currently recorded as Footpath No. 18, it commences at point G on the plan, from the Unclassified County Road Vellacott Lane nearly opposite Girt Lane and proceeds southwards along a Private Accommodation Road (not repairable by the inhabitants at large), Badgaver Lane turning westwards along the Private Accommodation Road (not repairable by the inhabitants at large), Skirhead Lane and south-westwards to join the A 399, in Combe Martin, by Ackland Cottages, point H.

It is hedged for its length and has a hard stone and earth surface.

3.3 Documentary Evidence

- 3.3.1 Ordnance Survey Mapping. 1880s 1st Edition OS map 25" to 1 mile. Badgaver Lane is annotated on the northerly section and Skirhead is marked on the east west section of the route. It is a defined lane for its length
- 3.3.3 1904-1906 2nd Edition OS map 25" to 1 mile. The Proposal 12 is shown as defined lanes for the entire length on this map, and annotated as Badgaver and Skirhead lanes.
- 3.3.4 They are shown on all subsequent OS maps as defined lanes and annotated as above.
- 3.3.5 Tithe Map 1845. Badgaver Lane and Skirhead Lane are clearly shown as defined lanes throughout their length in the same manner to other lanes in the parish.
- 3.3.6 Original Definitive Map Survey. In 1955 the County Surveyor wrote to Combe Martin Parish Council as it appeared they had not undertaken a survey of their rights of way. The parish subsequently returned the survey with a brief description of each route and a beautifully annotated map. However, the map had no key and no indication was given if the routes were footpaths, bridleways or road used as public paths. The

District Surveyor queried the routes requesting clarification if they were accommodation roads, but no answer was provided.

- 3.3.7 When the survey was examined by the County Surveyor the description for the Corner Lane route was amended and given the lowest status of Public Footpath No. 18. In 1957 the County Surveyor again wrote to the parish enclosing his list of detailed descriptions of paths and saying “unless I hear from you to the contrary I will take it that this list meets with the approval of your Council.” No response was forthcoming and therefore the route of Proposal 12 was recorded as Public Footpath No. 18.

3.4 User Evidence

There are many riders in the Combe Martin area and each has their own preferred riding route around the parish. Many have used Proposal 12 as part of a circuit.

- 3.4.1 Fourteen user evidence forms have identified Proposal 12 as part of recreational routes around this area. Eleven from horse riders, some of those also have walked and driven the route on occasions and 3 people who have walked FP No. 17 by right, because it is already recorded as a public footpath.
- 3.4.2 The earliest recorded use on horseback is from Mr Dovell, a long-time resident of Combe Martin, who started to use the routes in 1950. He has used it on foot, horseback. He has continued to ride the routes and has never been stopped or challenged and has seen the adjoining landowners and other users when using the routes.
- 3.4.3 The other users of Proposal 12, record riding, cycling, walking (by right) and occasionally driving from the 1960s through to the present day without let or hindrance, some on an almost daily basis others weekly and some on a monthly basis.
- 3.4.4 It is currently recorded as Public Footpath No. 18. However none of the users claiming higher rights, have asked for or been given permission to use the route, believing it to be at least a public bridleway. No users reported being stopped or turned back and none have seen any signs saying that might have said it was not a public right of way.

3.5 Landowner Evidence

- 3.5.1 During the consultation period letters were sent to all adjoining houses and farms, and notices and maps placed at each end of the route. No responses were received and no one claims ownership of the lane.

3.6 Rebuttal Evidence

- 3.6.1 There is no rebuttal evidence for this proposed upgrading from a footpath to a bridleway.

3.7 Discussion

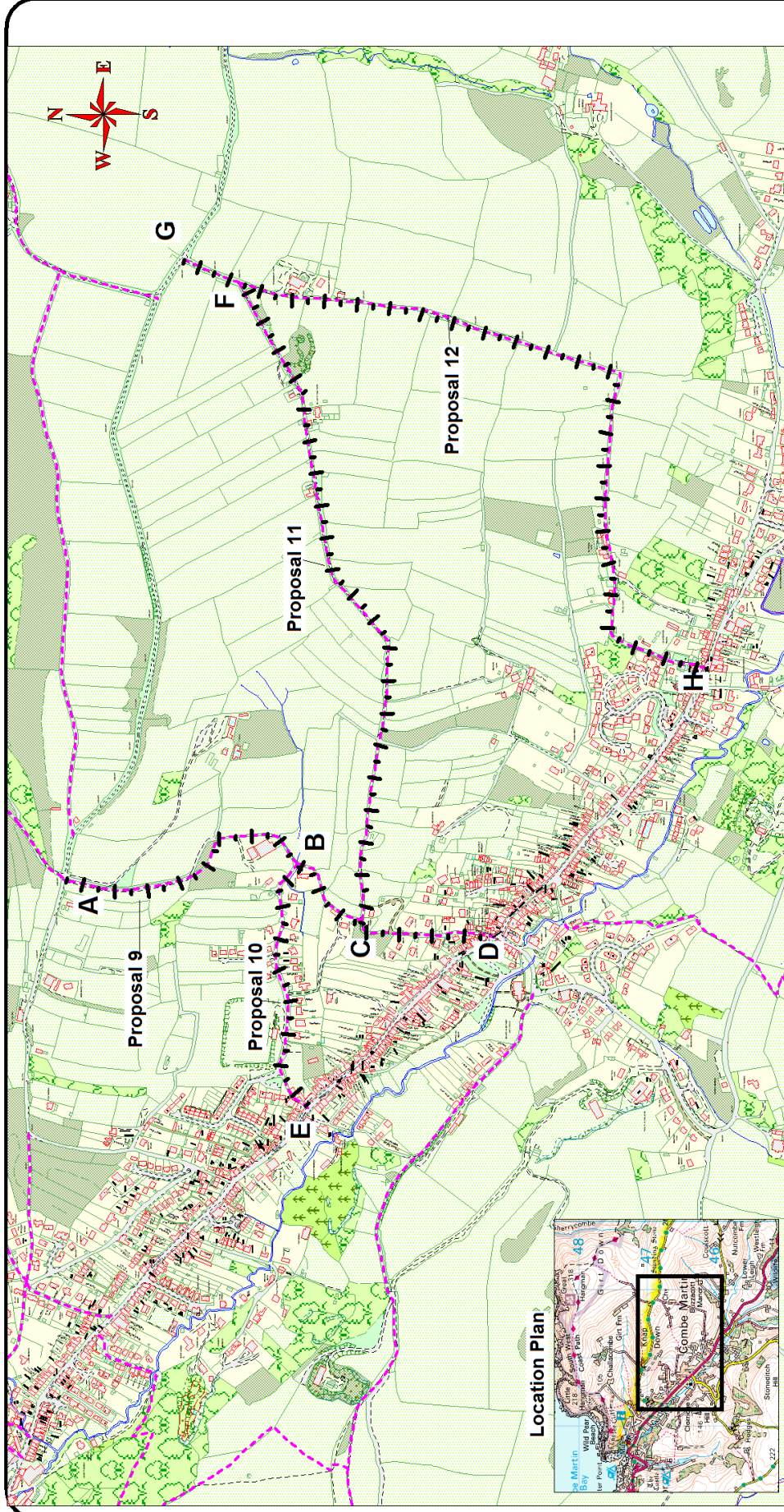
- 3.7.1 The Wildlife and Countryside Act 1981, S 56 (1) states “The Definitive Map and statement shall be conclusive evidence as to the particulars contained therein to the following extent, namely (a) where the map shows a footpath, the map shall be conclusive evidence that there was at the relevant 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.**”

- 3.7.2 Badgaver Lane and Skirhead lane have been shown on historic maps as through routes for over 200 years in the same way as other highways in the parish.
- 3.7.3 Use of FP No. 18 on foot is by right. Use of Proposal 12 on horseback, bicycle and with occasional vehicles, has been without challenge, interruption, force, secrecy or permission and the route does not appear to have any registered owners.
- 3.7.4 As there has been no calling into question of the horse riding use, the proposed upgrading has to be considered under Common Law, which 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.
- 3.7.5 The historic mapping evidence, coupled with the user evidence from eleven local horse riders (three of the users only walking FP 18) and the lack of any rebuttal evidence demonstrates that the Common Law test is satisfied and an Order should be made to upgrade Footpath No. 18 to a bridleway.

3.8 Conclusion

- 3.8.1 It is therefore recommended that on the balance of probabilities there is sufficient evidence to justify a Modification Order being made to upgrade Footpath No.18 to a public bridleway. And if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.



map ref: **SS5846** drawing number **HTM/PROW/14/58**

DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW
COMBEMARTIN PROPOSALS 9, 10 11 & 12
Claimed Bridleways

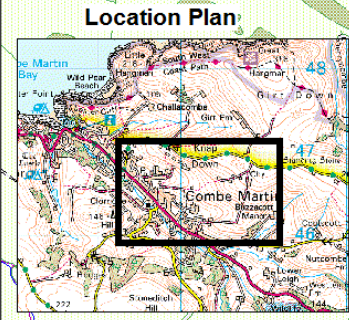
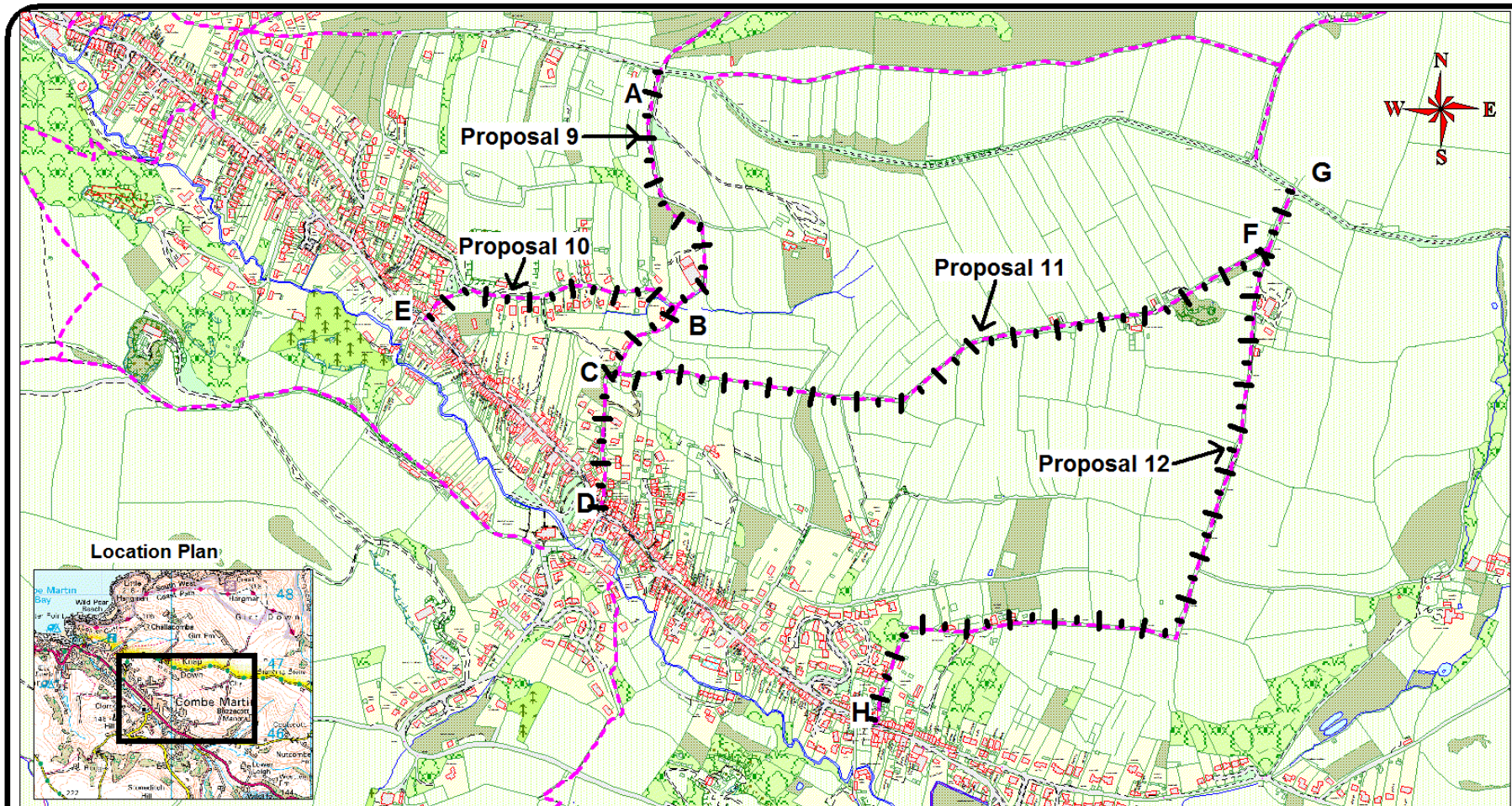
date **May 2014**
scale **1:9,000 (at A4 only)**
drawn by **AS**

Notation
CLAIMED BRIDLEWAYS - - - - -
Existing public footpath - - - - -

David Whitton
Head of Highways, Capital Development and Waste

Devon
County Council

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map ref: **SS5846**

**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW: COMBE MARTIN
PROPOSALS 9, 10, 11 & 12
Claimed Upgrades: Footpath to Bridleway**

drawing number	HTM/PROW/14/58
date	May 2014
scale	1:9,000 (at A4 only)
drawn by	AS

Notation	Existing public footpaths	Claimed Bridleways	Proposal 9: A - B - C - D	Proposal 10: E - B	Proposal 11: C - F	Proposal 12: G - F - H
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David Whitton
Head of Highways, Capital Development and Waste

