

**Definitive Map Review  
Parish of Chawleigh (part 1)**

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) a Modification Order be made to modify the Definitive Map and Statement by adding a bridleway along Stone Barton Lane between points A – B – C as shown on drawing number HCW/PROW/14/19a (Proposal 2); and**
- (b) no Modification Order be made to modify Footpath No. 18, Chawleigh on the Definitive Map and Statement but that the path's north east spur remains as currently recorded between points A – B as shown on drawing number HCW/PROW/14/22a (Proposal 5).**

**1. Introduction**

This report examines two proposals arising from the Definitive Map Review in the parish of Chawleigh.

**2. Background**

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 23 paths submitted by the parish council which included 5 bridleways, described as 'wheal paths' and 18 footpaths. Footpath No 16 was considered to be private and Nos 11 & 13 were deleted after objections were made to their inclusion in the draft map. A total of 5 bridleways and 15 footpaths were recorded on the Definitive Map and Statement with a relevant date of 25 February 1958 for the Crediton Rural District Council.

In response to the review of the Definitive Map, under s. 33 of the 1949 Act, which commenced in 1968, the Parish Council held a parish meeting in January 1969 and after considering the definitive map queried the omission of Cloe Park Lane. The parish clerk also advised that a diversion was necessary to Footpath No. 23, that none of the bridleways can be considered a byway open to all traffic; Footpath No. 15 was used by the postman and that they were worried by the closure of Footpaths No 11 & 13 and have been in touch with Wembworthy Parish Clerk. In October 1970 the landowner wrote requesting the deletion of Footpath Nos 19 and 20 in vicinity of Burridge Farm, the footpaths were subsequently diverted.

The County Council's Limited Special Review of RUPPs (Roads Used as Public Paths) did not affect Chawleigh Parish.

The following Orders have been made and confirmed:

Crediton Rural District Council Footpaths No 19 & 20 (part) Chawleigh Public Path Diversion Order 1972

Devon County Council Footpath No.18 Chawleigh Public Path Diversion Order 1978

Mid Devon District Council Footpath No. 23 Chawleigh Public Path Diversion Order 1980

Mid Devon District Council Footpath No. 10 Chawleigh Public Path Diversion Order 1988

Mid Devon District Council Footpath No. 8 Chawleigh Public Path Diversion Order 1990

Mid Devon District Council Footpath No. 5 Chawleigh Public Path Diversion Order 1993

Mid Devon District Council Bridleway No. 1 Chawleigh Public Path Diversion Order 1995

Devon County Council Footpath No 18 Chawleigh Definitive Map Modification Order 1998

Mid Devon District Council Bridleway No. 2 Chawleigh Public Path Diversion Order 2000

Mid Devon District Council Footpath No. 3 Chawleigh Public Path Diversion Order 2009

Mid Devon District Council Bridleway No. 9 Chawleigh Public Path Diversion Order 2009

Mid Devon District Council Bridleway No. 7 Chawleigh Public Path Diversion Order 2009

Legal Event Modification Orders will be made for these changes under delegated powers in due course.

A Definitive Map review was initially opened in Chawleigh January 1998 but the review did not progress further other than the Definitive Map Modification Order for Footpath No. 18 Chawleigh. The current review began with a parish meeting held on 2 September 2013 and the consultation map of seven suggestions for change was published at the end of February 2014.

### **3. Proposals**

Please refer to the appendix to this report.

### **4. Consultations**

General consultations have been carried out with the following results in respect of Suggestions 2 and 5 only.

County Councillor Margaret Squires	-	no response to suggestions 2 and/or 5
Mid Devon District Council	-	no response to suggestions 2 and/or 5
Chawleigh Parish Council	-	support suggestions
Chulmleigh Parish Council	-	no response to suggestions 2 and/or 5
British Horse Society	-	no response to suggestions 2 and/or 5
Country Landowners' Association	-	no response to suggestions 2 and/or 5
National Farmers' Union	-	no response to suggestions 2 and/or 5
Ramblers' Association	-	no objections to suggestions
Trail Riders' Fellowship	-	no response to suggestions 2 and/or 5
Devon Green Lanes Group	-	no response to suggestions 2 and/or 5

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.

## 9. Conclusion

It is recommended that:

- (a) a Modification Order be made to modify the Definitive Map and Statement to add a Public Bridleway along Stone Barton Lane between points A – B – C as shown on drawing number HCW/PROW/14/19a;
- (b) no Modification Order be made to modify Footpath No. 18, Chawleigh on the Definitive Map and Statement but that the path's north east spur remains as currently recorded between points A – B as shown on drawing number HCW/PROW/14/22a.

## 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 Mid Devon district area.

David Whitton  
Head of Highways, Capital Development and Waste

### **Electoral Division: Newton St Cyres & Sandford**

Local Government Act 1972: List of Background Papers

Contact for enquiries: Tania Weeks

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

tw140514pra  
sc/cr/DMR Parish of Chawleigh part 1  
05 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.

1. **Proposal 2: Proposed addition of a bridleway along Stone Barton Lane (continuation of Bridleway No. 6 Chulmleigh) from the parish boundary at Marstone to the county road at Stone Mill Wood from GR SS 7166 1381 to SS 7197 1349.**

**Recommendation:** It is recommended that a Modification Order be made to modify the Definitive Map and Statement to add a Public Bridleway along Stone Barton Lane between points A – B – C as shown on drawing number HCW/PROW/14/19a.

## 1.1 Background

- 1.1.1 The apparent omission of the continuation of Bridleway No. 6, Chulmleigh across the parish and district boundary to the county road in Chawleigh has been noticed on a number of occasions since the omission was raised by the County Council in 1968 and the Parish Council agreed that it should be added. It was again raised by the Parish Council in 1970 and 1976. In 1977 Mid Devon District Council raised the question of adding the bridleway via a creation agreement which was supported by the Parish Council.

In 1995 the possibility of completing a creation agreement was investigated, but did not proceed, as part of the route was not registered/included on the deeds for Stone Barton. The missing link was again raised in the 1998 review and some user evidence forms submitted, but this parish review was restricted to resolving an anomaly on the south end of Footpath No. 18, Chawleigh. The current review opened in 2013 and the addition of a bridleway from the parish and district boundary to the county road was included as one of the suggestions for change in Chawleigh.

## 1.2 Description of the Route

- 1.2.1 The route starts at Point A by Marstone and at the boundary with Chulmleigh Parish Council and North Devon District Council and the south east end of Bridleway No. 6, Chulmleigh. It proceeds south east for 300 metres along a concrete track with a hedged bank on the north east side of the lane and a post and wire fence on the south west side to point B. From point B the route continues along the concreted track, hedged on both sides, for a further 120 metres to point C and the junction with the county road at Stone Mill Cross at Point C.
- 1.2.2 Photographs of the route are included in the backing papers and a bridleway sign post is erected at point C at the junction with the county road.

## 1.3 Consultation Responses

- 1.3.1 Chawleigh Parish Council had advised that they were in support of the changes put forward but no response was received from Chulmleigh Parish Council. The Crediton Footpaths Officer for the Ramblers Association advised that they would not have any objections to the proposed changes as laid out in the schedule.

## 1.4 Documentary Evidence

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

- 1.4.2 **Cassini Historic Maps 1809 – 1919 Barnstaple & Ilfracombe**  
These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.
- 1.4.3 **Old Series 1809**  
The route is shown as an unmetalled road, unfenced on both sides, in a similar manner to neighbouring lanes that are now county roads. The road layout is different in that the lane extends further south east than the existing point C and meets the county road at a Y junction.
- 1.4.4 **Revised New Series 1899-1900**  
The road layout in the vicinity is now as existing with point C meeting a third class road at point C. The section from points A to B is fenced with the section from B to C unfenced on one side.
- 1.4.5 **Popular Edition 1919**  
The route is shown a defined lane, part still unfenced, uncoloured but with the width of a road under 14' wide. The key advises that private roads are uncoloured (it is not known if this refers to maintenance rather than ownership).
- 1.4.6 **OS 1st Edition 25" to a mile 1880-1890 & 2<sup>nd</sup> Edition 1910**  
On both editions the section of the route between points B and C is shown as a defined lane, part of compartment number 1234, area 0.16 acre. The section between points A and B runs along a headland track on the north east side of the field number 1072. Gates appear to be shown at points A and B.
- 1.4.7 **OS 1 inch to a mile maps of 1946, 1957-58 Okehampton**  
On both editions the route is shown as a Minor Roads in towns, Drives and Unmetalled Roads with the southwest side unfenced between points A and B.
- 1.4.8 **OS Post War Mapping 1:2:500 scale 1974**  
In 1974 the section between points A and B appears to remain as a headland track through a field although a gate only appears to be shown at point B. The section between points B and C is shown as a defined lane in a similar manner to the county roads to which it connects.
- 1.4.9 **Tithe Maps and Apportionments**  
Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring can indicate carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown.
- 1.4.10 **Chawleigh Tithe Map 1848**  
The map indicates that the route from the parish boundary was a headland track to Stone Bridge Cottage that crossed through field number 719, described as Moor Park in the apportionment part of the property of Stone Barton and Woodhouse, owned by the Hon Newton Fellowes and occupied by George Webber. Stone Bridge was occupied by Andrew Coombe and John Wolaway with the same owner. No roads are tinted on the map but a number of roads in the parish have been given the same number, 1560, including the road from Chawleigh village towards

Stone Bridge. Number 1560 is listed at the end of the apportionment and described as Roads and Rivers.

- 1.4.11 Sometime between 1848 and 1880 (OS 1<sup>st</sup> edition large scale maps) the alignment of the section between points B and C moved eastwards, the layout of the county road having also changed since 1848.
- 1.4.12 Finance Act Plans and Field Books 1910  
The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.
- 1.4.13 On the plan it appears that the colouring depicting the hereditaments continues across the lane on the Stone Barton side at point B but is broken on the other side under the hereditament for Stone Mill Farm. The field book for Stone Mill Farm, number 143 in Chawleigh, makes no reference to the section of lane between points B and C.
- 1.4.14 Parish Survey under National Parks and Access to the Countryside Act 1949  
The survey form for Bridleway No. 6, Chulmleigh by Chulmleigh Parish Council advises that the path was walked on 21 October 1950 by Mr H T Cook. The grounds for believing the path to be public were stated as 'Useful to the general public and has long been used by the public as a public right of way to Stone Barton'. The survey form states submitted to councillors and approved, Fred Whethercott, Clerk in April 1952. The description describes the path going along the semi-metalled farm road to the Parish boundary.
- 1.4.15 Notes on the form, believed to have been added by the County Council state 'BW Extension not included in Chawleigh, would leave, definitely a R of W'.
- 1.4.16 The continuation from the parish and district boundary was not claimed by Chawleigh and it would appear that although this was noticed, it was not followed up the County Council or by the South Molton Rural District Council.
- 1.4.17 Devon County Uncompleted Reviews of 1968, 1977 & 1998  
Following a Parish meeting on 28 January 1969 and in response to the letter from the County Council of 26 June 1968; the parish clerk forwarded a letter and map on which she advised that she had pencilled in the two omissions found. These did not include the extension to Bridleway No. 6, Chulmleigh. The County Council responded in November 1969 and raised the discrepancy of Bridleway No. 6, Chulmleigh not continuing into Chawleigh parish.
- 1.4.18 In December 1969 the clerk replied and advised that after speaking to her Chairman she agrees that it should be added as was shown by the broken green line on the map sent. The County Council asked for confirmation that the owner of Stone Barton was agreeable to Bridleway No. 6 to be extended to join the county road in Chawleigh.

- 1.4.19 In a telephone conversation between Mr Farrant of the County Council and Mrs Chappell, outgoing Chairman of the parish council, in May 1970, Mrs Chappell said there would be no difficulty about extension of Bridleway No. 6 from Chulmleigh. In July 1970 the clerk, after discussion at the parish council the night before, wrote advising that it is a public bridleway from the road going towards Stone Barton. The previous owners, the Pickard family, were well aware of the public bridleway. The County Council, in a letter of July 1970, advised that the bridleway will be added to the map at the Review. Unfortunately the review was subsequently restricted to the Limited Special Review of RUPPs (Roads Used as Public Paths) only.
- 1.4.20 In November 1976 the clerk wrote to Tiverton District Council advising that her chairman Mr G Hill had spoken to the current owner, Mr Webber, who had given verbal permission to fix a bridleway post. Tiverton District Council advised the parish council in February 1977 that they had received a satisfactory reply from Mr Webber at Stone Barton regarding a creation agreement extension to Bridleway No. 6, Chulmleigh. In May 1978 they suggested that the addition be completed via the review but understood that Mr Webber would not object to the bridleway being used.
- 1.4.21 Mr Faulkner, the Countryside Access Officer based in North Devon was working on various circular walks in the Chulmleigh and Chawleigh area in 1995 and noticed that Bridleway No. 6, Chulmleigh appeared to terminate at the parish boundary. Mr Faulkner then contacted the owners of Stone Barton and their solicitors with a view to undertaking a Creation Agreement for the missing link and a diversion of Bridleway No. 6, Chulmleigh around the house. The solicitors confirmed that their clients owned the section of lane between points A and B but that the section from points B to C had not been registered as belonging to them. However, when the property was purchased the vendors solicitors thought that it belonged to their clients. The previous owner had concreted the whole length of the lane from the Stone Barton to the county road in around 1973. Due to the section not been registered the creation agreement did not proceed and the matter was to be left for the forth coming review in Chawleigh parish.
- 1.4.22 The apparent omission was again raised by the County Council when the 1998 review opened and the Parish Clerk forwarded some user evidence forms and advised 'We are asking for the connection as stated in all the correspondence'.
- 1.4.23 Vestry Minutes - The Vestry minutes of October 1845 to October 1849 refer to the creation of a new road from Stone Bridge Houses to communicate with the new road in Stone Mill Wood and later the stopping up of an old road leading from the house near Stone Bridge to Stone Mill House. This would indicate that the road layout was hanged in the 1840s and the road shown on the Tithe Map stopped up in 1851.
- 1.4.24 Estate Sale Map circa early 20<sup>th</sup> Century (ref NDRO B703/158a-b) - Stone Barton, referred to as Stone, was a number of holdings included on a plan of holdings for sale in the parish of Chulmleigh. The map (held at the North Devon Record Office) has become separated from the sale catalogue but is believed to date from the early 20<sup>th</sup> century. The plan shows the section of the route between points A and B coloured brown and included with the holding of lot 23, Stone Barton. The section between points B and C was not included within this estate.
- 1.4.25 Aerial Photography - On the 1946, 1999-2000 and 2006-2007 aerial photography the route is shown as a defined and clearly visible track along its length.



- 1.4.26 Land Registry - The section of lane between point A on the parish boundary and point B is included in the title for Stone Barton, Chulmleigh. The title for Stone Barton includes clauses relating to the contribution by properties adjacent to the lane to pay towards the maintenance of the roadway.
- 1.4.27 The title for Stone Bridge Cottage refers to a conveyance of January 1971 which applied to the land shown blue on the plan and which contained the clause referring to "the full and free right and liberty....for the Purchasers ... at all times hereafter and for all purposes...to go pass and repass over and along the portion of the entrance road to Stone Barton Farm... which lies between the entrance to Stone Bridge Cottage and leading to the county road". The land shown blue on the current registered plan is the access track leading to the cottage but the description would appear to apply to the section of the route between points B and C.
- 1.4.28 The section between points B and C is currently unregistered.

## **1.5 User Evidence**

- 1.5.1 After the parish review was opened in the 1998 review, seven user evidence forms were received in respect of use of the route from Stone Barton Farm to the road at Stone Mill. Six of these were collected by the Parish Council Chairman. The users refer to use since the late 1950s although several have been unspecific with regard to dates of use, using terms such as 'riding many years', 'the last 40 years' and 'all my life'. The frequency of use is also vague on some forms with users stating 'when necessary', 'various' and 'depends on weather'. One advised 'at least 12' and another had used the route three times in 1991. Four had used the route on foot and the others on horseback. Where stated, the users have considered the route to be a bridleway and comments made include "good walk", 'it's a lovely bridle and foot path' and 'a wonderful amenity for horse riders and walkers alike'. None of the users refer to being stopped, turned back or having permission and most believed that the landowner/s were aware of the public using the route.
- 1.5.2 As only three users had included specific dates on their forms, a spread sheet of the period of use has not been completed. No user evidence forms have been received during the current review although Mr Woodhead from Chulmleigh advised by email that he supported the addition and had from time to time walked the bridle path through Stone Barton beyond the parish boundary to the county road.

## **1.6 Landowner Evidence**

- 1.6.1 All of the landowners and adjoining occupiers were contacted and informed of the proposal.
- 1.6.2 Stone Barton has been in the ownership of the late Mr & Mrs Moon since 1989 and the part of the lane between points A and B for twenty five years. Executors of the estate advise that they believed the route to be a bridleway and have seen or being aware of walkers and horse riders periodically. They have never required people to ask permission, stopped or turned back people or told them that it was not public. They have no objection to this suggestion.
- 1.6.3 Ms A Harding of Stone Bridge Cottage has owned the cottage since 1970 and land to the west of the lane between points B and C since 1998. She believes the way to be a public bridleway and road access and has seen occasional walkers. The original gateway to Stone Barton was removed and not replaced but was not

locked. Her deeds from 1970, state that her purchase included rights to cross and recross the lane, which was not described as a public bridleway.

- 1.6.4 Mr R J Webber of Stone Barton Farm does not own land adjoining the way and made no further comments.
- 1.6.5 Mr A Westaway of Philham Farm has owned land adjoining the route for thirteen years but has believed the way to be a bridleway for thirty years. He has been aware of walkers and riders monthly.
- 1.6.6 Mr & Mrs D Galloway of Marstone, by point A, advised that the route does not cross or adjoin their land and is a private road which they use to drive to their farm. No further comments were made.
- 1.6.7 No response was received from Mrs P Webber of Littlestone, although it is understood that Mrs Webber is related to Mr R J Webber.

## **1.7 Rebuttal Evidence**

- 1.7.1 No rebuttal evidence has been received.

## **1.8 Other Correspondence Received**

- 1.8.1 In 2001 a resident from Chulmleigh parish who was writing a Footpath Guide for the parish wrote to the County Council requesting the extension of Bridleway No. 6, Chulmleigh. He advised that the general public have used the path for many years, he thought without special permission. Making it a through path would be a great advantage as it would be on of their most attractive paths.

## **1.9 Discussion**

- 1.9.1 A claim for a public right of way can arise through use by the public under section 31 of the Highways Act 1980, if twenty years use can be shown after the public's use of the route is called into question. A claim for a right of way may also exist at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.
- 1.9.2 The route from Stone Barton to the county road appears to have been in existence since the end of the 18<sup>th</sup> century although the route had changed between the 1840s and the end of that century. The route is shown as a defined lane but with the section between points A and B as a headland track prior to the route being fenced.
- 1.9.3 The finance act plan appears to depict the section A to B as being within the hereditament for Stone Barton but the break in colouring on the south east side at point B is indicative of that section of the lane not being considered with the holding and excluded.
- 1.9.4 The estate sales catalogue for the sale of Stone Barton and current land registry information indicate that the section from points A to B was owned by Stone Barton but the ownership of the section from points B to C is unclear.

- 1.9.5 Bridleway No. 6, Chulmleigh was proposed by Chulmleigh Parish Council in 1950 as one of their public rights of way to be recorded on the definitive map and although the lack of a continuation in Chawleigh was noticed, the omission was not followed up in the 1950s.
- 1.9.6 The discrepancy was referred to Chawleigh Parish Council in the uncompleted review in 1969 and the parish council agreed the missing link should be added. In 1970 the parish council chairman spoke to the County Council and advised that the previous owners were well aware of the public bridleway. The parish council advised in 1976 that the current owner had given permission for a bridleway post to be fixed.
- 1.9.7 Attempts to add the section by way of a Creation Agreement were considered in 1977 and 1995 but did not proceed and the matter was to be left to the definitive map review. The review initially opened in 1998 and the omission was again requested by the parish who forwarded some user evidence in support of the route.
- 1.9.8 The user evidence forms received in 1998 record use since the 1950s on foot and horseback and the forms indicate their use was 'as of right'. Although no user evidence was received since the current review started, the landowner evidence forms received refer to use by walkers and riders and it appears that use has continued to the present day.
- 1.9.9 The adjacent landowner at point A considered the route to be a private road used to drive to their farm, but three other landowners/adjacent landowners, including the owner of the section A to B, advised that they believed the route to be a bridleway.
- 1.9.10 There would appear to be no logical reason for Bridleway No. 6, Chulmleigh to end at the parish/district boundary as it would not be a place of public interest and the omission of the continuation into Chawleigh would appear to be an oversight. The addition of the route as a bridleway is supported by the parish council who have asked for its inclusion since 1969.
- 1.9.11 Although there is no one piece of evidence that provides conclusive evidence of dedication of the lane as a public right of way, the dedication of the route as a public right of way at some time in the past appears to have been accepted by the adjacent landowners and the public. The latter have shown acceptance of the dedication through their use of the lane over many years.

## **1.10 Conclusion**

- 1.10.1 There has not been any calling into question of the public's use of the route as a continuation of Bridleway No. 6, Chulmleigh into Chawleigh parish and the existence or otherwise of a right of way cannot therefore be considered under section 31 of the Highways Act 1980. However, it is considered that the documentary evidence when taken as a whole supports implied dedication of the lane as a public right of way many years ago. There is also sufficient evidence of acceptance by the public as indicated by the user evidence to show that a right of way, namely a public bridleway, on the basis of the documentary and user evidence, can be reasonably alleged to subsist at common law.
- 1.10.2 It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement to add a Public Bridleway along Stone Barton Lane between points A – B – C as shown on drawing number HTM/PROW/14/19a and if

there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

**2. Proposal 5: The Possible Addition/Deletion of Footpath No. 18, Chawleigh to clarify whether the north east spur is correctly recorded from GR SS 7052 1352 to SS 7115 1369.**

**Recommendation:** It is recommended that no Modification Order be made to modify Footpath No. 18, Chawleigh on the Definitive Map and Statement and that the path spur remains as currently recorded between points A – B as shown on drawing number HCW/PROW/14/22a.

**2.1 Background**

2.1.1 Footpath No. 18, Chawleigh was recorded on the Definitive Map and Statement for Crediton Rural District Council in 1958. The southern end of the footpath starts at the county road by Hollow Tree Cross and proceeds northwards through Woodhouse Wood. One branch of the path which runs in a north easterly direction is described as proceeding through Chawleigh Barton Wood and rough moorland to footbridge over Little River Dart to Great Wood Moor. The river is the parish boundary and this section of the footpath is the north east spur as shown on the plan from points A to B.

2.1.2 The other part of the footpath continues from Chawleigh Barton Wood to Park Mill Weir on Little River Dart at the parish boundary where it continues as Footpath No. 13, Chulmleigh.

2.1.3 In the 1969 review the County Council asked the Parish Council about the spur, should it be deleted or should they ask Chulmleigh Parish Council about a continuation into their parish. Chawleigh Parish Council advised that some people wished to keep the path open to the river. In 1970 Chawleigh Parish Council suggested deleting the other spur but keeping Footpath No. 18 as it is the only public path down to the river.

2.1.4 The question of the spur was raised in the 1998 review and the clerk mentioned removing this section as it doesn't go anywhere but no evidence was submitted in support of deletion.

2.1.5 This section of Footpath No. 18 was therefore included in the current review to investigate whether there was/is a continuation into Chulmleigh Parish was the section of footpath included in error or has this section being correctly recorded as it is.

**2.2 Description of the Route**

2.2.1 The spur leaves Footpath No 18 in Wood House Wood and bears eastwards through the mature trees on a small path into Chawleigh Barton Wood. It then continues along a wider more clearly marked track and turns north east to a pedestrian gate into the field. The path continues north eastwards across the field to the river and the parish boundary. There is no bridge across the river at point B. The length of the spur between points A and B is about 660 metres.

- 2.2.2 The spur was initially longer at its western end prior to the diversion of the Footpath No. 18 Chawleigh and Footpath No. 13, Chulmleigh in 1978 to facilitate construction of the new bridge over the river in a more favourable location.

## **2.3 Consultation Responses**

- 2.3.1. The Chawleigh Parish Council had advised that they were in support of the changes put forward and subsequently clarified this was for the spur to stay as it was. The Crediton Footpaths Officer for the Ramblers Association advised that they would not have any objections to the proposed changes as laid out in the schedule.

## **2.4 Documentary Evidence**

### **2.4.1 Ordnance Survey and Other Maps**

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

### **2.4.2 OS 1st Edition 25" to a mile 1880-1890 & 2<sup>nd</sup> Edition 1910**

On both editions various tracks are shown through Wood House Wood and Chawleigh Barton Wood as double pecked lines. A double pecked line continues across the field to the river labelled *F.P.* and a footbridge is shown across the river at point B. A second footbridge across the river is shown to the west and some 325 metres further west than the original junction of Footpath No 18 and Footpath No 13 at Park Mill Weir. On the first edition the weir appears to go right across the river and may have been used as a crossing point.

### **2.4.3 OS 1 inch to a mile maps of 1946, 1957-58 Okehampton**

The footpath is not shown on these small scale maps.

### **2.4.4 OS Post War Mapping 1:2:500 scale 1974**

In 1974 fewer tracks are shown with the woodland and no track is shown across the field between Chawleigh Barton Wood and the river. None of the previous two footbridges are shown across the river and the river has changed course in several places where loops have become cut off, the river has taken a more direct course and the parish boundary has changed in line with the river. Park Mill Weir is now only across part of the river.

### **2.4.5 Tithe Maps and Apportionments**

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

- 2.4.6 The field crossed by Footpath No. 18 up to the parish boundary is numbered 1557, part of Stone Barton & Woodhouse and described as Higher Barton Meadow. Chawleigh Barton Wood is numbered 1558, listed under woods that were not titheable. There is no reference on the map or in the apportionment relating to a footpath.

### **2.4.7 Finance Act Plans and Field Books 1910**

The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence

for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.

- 2.4.8 The north east spur of Footpath No. 18, Chawleigh including the section through the wood and across the field to the parish boundary was part of hereditament number 115; the other part of the path fell under hereditament number 105 Woodhouse.
- 2.4.9 Parish Survey under National Parks and Access to the Countryside Act 1949  
The survey form for Footpath No. 18, Chawleigh was completed by the parish clerk in September 1950 and commented 'Whether path likely to be disputed' No and Yes to 'Whether path required in future'. The general description read 'Start Hollow Tree Cross to Wood House through Wood House Wood over River Dart near Park Mill Weir'.
- 2.4.10 On the maps completed by the parish council to accompany the forms, the parish appeared to have written the path numbers adjacent to the proposed rights of way and next to the tracks and paths shown on the map that the path or way followed. The route of Footpath No. 18 is shown in pencil along the route to Park Mill Weir and also along the length of the spur to point B although no number '18' has been written adjacent to the spur section. It would appear that the pencil marking may have been added later.
- 2.4.11 The path to Park Mill Weir was walked by Mr Pearce of Crediton Rural District Council in February 1951 who commented 'path very soft to cottage, no gate to cover'.
- 2.4.12 The county surveyor made a number of comments on the path survey form which included path not delineated through the woods, had noted the footbridge on the map leading to Great Wood Moor and to check with Chulmleigh Parish to ascertain where the line of the footpath continues into their parish.
- 2.4.13 In February 1956 the county surveyor wrote to Chulmleigh Parish Council to ask if any public rights of way are recognised running from Stone lane, claimed by Chulmleigh as Bridleway No 6 to the two points of Footpath No 18 at the parish boundary. The clerk responded advising that they do not recognise any connecting paths to the points as suggested by Chawleigh parish Council.
- 2.4.14 The survey forms for Chulmleigh Parish Council, which fell under South Molton District Council were completed in spring 1952 having being walked the previous December by H Cook and some with R Jury. Footpath No. 13, Chulmleigh was not initially included. In June 1958 the county surveyor wrote again to Chulmleigh Parish Council advising that there were a few points that needed to be cleared up and requested a meeting. At this meeting on 9 July 1958 a list was prepared of rights of ways agreed at the meeting which included Footpath No. 13 described as a footpath from the county road at Park Mill to the parish boundary at Park Mill Weir. A note states 'Added by parish council at meeting 9 July 1958' and the description of the route refers to the path going to Park Mill Weir where it continues in Chawleigh Parish as FP No 18. Footpath No. 13, Chulmleigh appears to have

then been added to the survey map for Chulmleigh and subsequently to the definitive map for Chulmleigh and South Molton Rural District Council.

2.4.15 Both Footpaths No. 18, Chawleigh and No. 13, Chulmleigh were included on the confirmed Definitive Maps for Crediton and South Molton Rural Districts.

2.4.16 Devon County Uncompleted Reviews of 1968, 1977 & 1998

The apparent discrepancy was noticed by the County Council in the 1968 review and Chawleigh Parish Council were asked for their observations on whether the spur should be deleted or should Chulmleigh be asked if they could claim an extension into their parish. The clerk contacted Chulmleigh Parish Council who replied that the bridge (although it was not clear which bridge) was erected by the TA for access to the rifle range. Chawleigh Parish Council in March 1970 confirmed that the spur should be retained to the river, where there used to be a log bridge over the river; but that the north western spur to the Park Mill leat is superfluous now as there is no foot bridge and Chulmleigh does not want to use this old path along the mill leat. The clerk added 'We feel it is imperative for Footpath 18 to be retained as it is the only public path down to the river'.

2.4.17 By September 1979 the new bridge over the Little Dart had been erected near Park Mill Weir following diversion of the north west end of Footpath No. 18, Chawleigh and south east end of Footpath No. 13, Chulmleigh the previous year.

2.4.18 In response to the 1998 review the Parish Council suggested that the path should lead to the bridge direct and delete the spur as it didn't go anywhere and some walkers did not realise it.

2.4.19 Parish Council Minutes

A brief review of the Parish Council Minutes produced the following references.

2.4.20 Meeting 11 October 1956 Footpath No 18 – The Council decided to drop its claim for this right of way in view that the Chulmleigh Council did not claim it.

2.4.21 At the meeting on 19 January 1978 it was decided to hold the Parish Meeting with Public Meeting combined to discuss Review of Definitive Map. (No minutes for this meeting.)

2.4.22 At the meeting in July 1978 it was reported that work was being carried out on the bridge over the Little Dart.

2.4.23 Aerial Photography

On the 1946, 1999-2000 and 2006-2007 aerial photography there is no sign of any track on the line of the footpath across the field south west of point B or of any continuation into Chulmleigh Parish.

## 2.5 User Evidence

2.5.1 No user evidence has been received during the current or previous reviews in respect of any continuation of the across the river into Chulmleigh parish.

## 2.6 Landowner Evidence

2.6.1 The three landowners whose land is crossed by the north east spur of Footpath No. 18 and the landowner whose land would be affected by any proposed continuation into Chulmleigh Parish were contacted and informed of the proposal.

- 2.6.2 Mr Aldridge and the Aldridge Family Trust have owned Chawleigh Barton Wood since October 2004 and believe the way to be a public footpath. Whenever he visits he notices footprints on the path and they have only required people to ask permission during renovation of the track along which the footpath runs or stopped people during very occasional woodland renovations. In additional information supplied Mr Aldridge advises that he would like to see at least part of the section of footpath left in place. They allow people permissive access to their woods and the public footpath links to the permissive tracks and permits people to undertake a circular walk from the village centre. The footpath gives people a possibility to visit the Rifle Butts in the west end of their woodland, which were constructed in the 1920s for the Devon Territorial Army. He confirms that there is no trace of any bridge at point B but understands that in the past bridges were regularly washed away.
- 2.6.3 Mr Aldridge also enclosed information on the history of Footpath No. 18, Chawleigh, a photograph and information on a previous (Chawleigh Rifle Range Bridge) bridge across the river at the junction of the northern section of Footpath No. 18 and Footpath No. 13, Chulmleigh and on Chawleigh Rifle Range.
- 2.6.4 Mr W Simpson has owned the land and woods crossed by the sections of Footpath No. 18 south and west of point A to the parish boundary and the first 65 metres of the north east spur of the footpath for twenty five years. He advises that footpath is public; always a dead end so not used for twenty five years and has never seen anyone there. As the footpath has always been a dead end it is wasting public money which could be used for more important things.
- 2.6.5 Mr Webber has owned the field crossed by the footpath, south west of point B for twenty five years. He has never seen anyone on this field without permission. There is a hunting gate on the entrance to the field from the wood.
- 2.6.6 Stone Barton has been in the ownership of the late Mr & Mrs Moon since 1989. Any continuation of Footpath No. 18, Chawleigh would cross their land. The executors for the estate responded and advised that the footpath was only considered to be public to the parish boundary at the Little Dart River which was a natural obstruction. They have never seen anyone try to cross the river and continue the path into Chulmleigh Parish.

## **2.7 Rebuttal Evidence**

- 2.7.1 No rebuttal evidence has been received.

## **2.8 Other Correspondence**

- 2.8.1 Following his purchase of Chawleigh Barton Wood, Mr Aldridge contacted the County Council in 2004 about Footpath No. 18 and asked a number of questions about the history and use of the footpath. A summary of the history of the path and answers to his questions were sent and he was advised that the status of the spur would be considered in the forthcoming review.

## **2.9 Discussion**

- 2.9.1 A claim for a public right of way can arise through use by the public under section 31 of the Highways Act 1980, if twenty years use can be shown after the public's use of the route is called into question. A claim for a right of way may also exist at



common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication. A public right of way can also be deleted from the map if there is evidence to show that a mistake was made, at the time the path was added to the definitive map and that the path or way was never a public right of way.

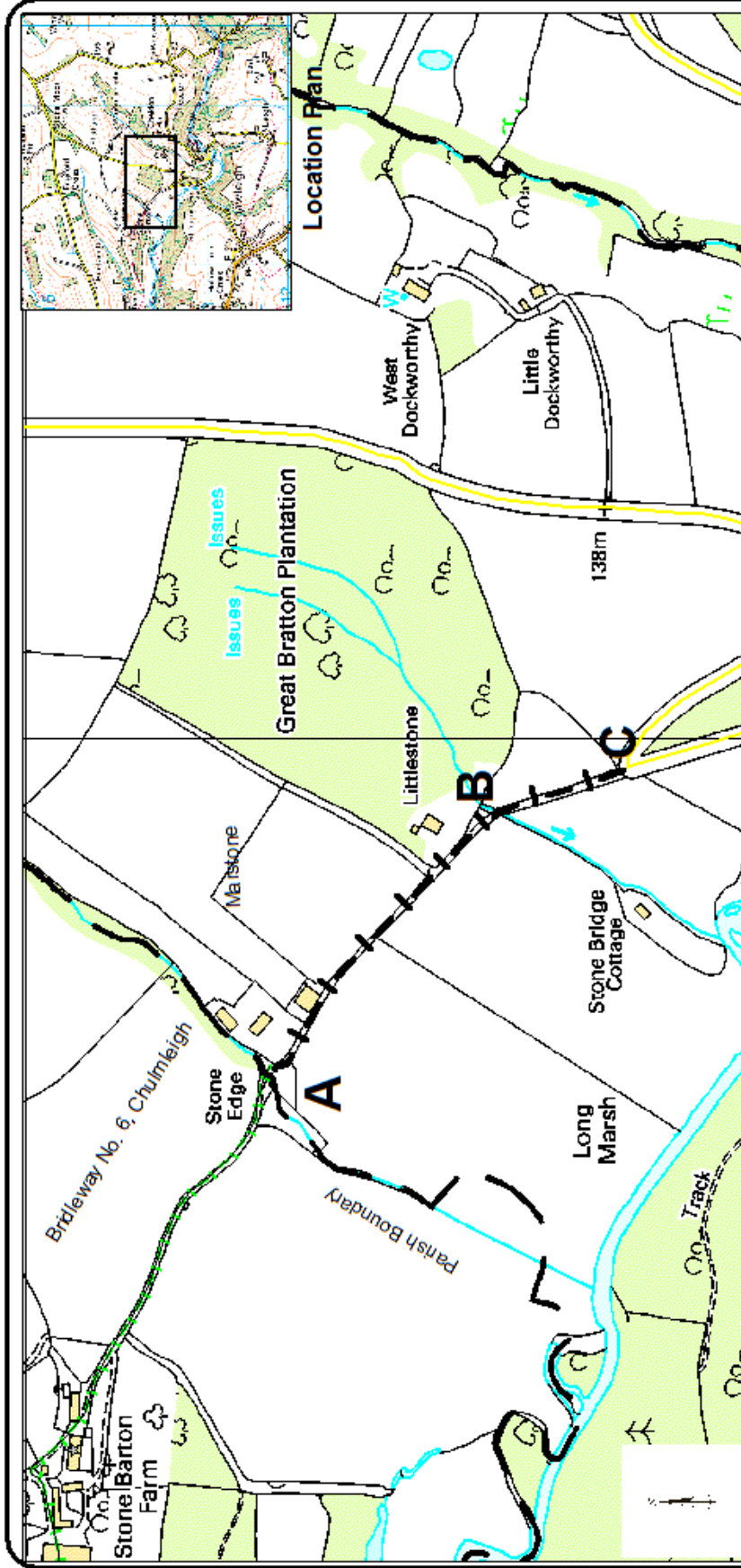
- 2.9.2 Footpath No. 18, Chawleigh was proposed for consideration by the parish council in 1950 although it is not clear if the north east spur was added initially by the parish council or at a later date. The County Surveyor had noted that the mapping showed a footbridge across the river and asked Chulmleigh Parish Council in 1956 if any public rights of way were recognised running from Stone Lane to the two points at the parish boundary. The Parish replied that none did. It appears that the footpath was subsequently added, from the county road at Park Mill to the Parish Boundary at Park Mill Weir, by Chulmleigh Parish Council at a parish council meeting on 9 July 1958 attended by a County Council officer.
- 2.9.3 The cul de sac spur of Footpath No. 18, Chawleigh was raised by the County Council in the 1968 review and the Parish Council advised the north east spur should be kept. In response to the 1998 review the Parish Council suggested that the path should just lead to the (new) bridge direct as the spur did not go anywhere.
- 2.9.4 The historic documentary and map evidence reviewed does not provide evidence to support either addition or deletion of the footpath. Although a footbridge was recorded on the OS mapping of the early 20<sup>th</sup> century, this would not be conclusive evidence to support the continuation of the path in Chulmleigh.
- 2.9.5 The landowners, Mr Webber and the Executors of Mrs Moon, have commented that they do not consider there has ever been any continuation into Chulmleigh Parish. Mr Simpson, the landowner in respect of the non-spur section of Footpath No. 18, Chawleigh and the first 65 metres of the spur, considers the path to be public but has always been a dead end and he has never seen anyone. Mr Aldridge, who owns the land crossed by the majority of the spur, has observed footprints on the path when they visit the woods. He would like to see at least part of the footpath left in place, as it enables the public to complete a circular walk from the village when using Footpath No. 18 to connect with the permissive paths through their woodland.
- 2.9.6 There is no evidence to support the continuation of the spur of Footpath No. 18, Chawleigh in Chulmleigh Parish, and Chulmleigh Parish Council when asked on a number of occasions have always said that the path does not continue into their parish. It is possible to have a cul de sac path where it leads to a point of public interest and it would appear that this is one of those paths, the river being the point of public interest. Chawleigh Parish Council advising in December 1969 that some members wish to keep the path open to river.
- 2.9.7 It is also considered that there is insufficient evidence to show that the north east spur was added to the definitive map by mistake, thereby supporting deletion of this section of the footpath from the definitive map. Although the section of footpath appears to have been added to Footpath No. 18, Chawleigh after the original section was proposed, it is understood to have been included on the draft and provisional maps circulated for public consultation prior to being confirmed on the final definitive map in 1958.

2.9.8 The Parish Council's opinion on the spur have changed over the years from remove, leave, remove but when removal was suggested in 1998 no evidence was submitted in support. The Parish Council currently support the footpath spur being left as it is.

## **2.10 Conclusion**

2.10.1 In conclusion it is considered that there is insufficient evidence to support either the addition of a continuation of the footpath into Chulmleigh Parish or the deletion of the footpath spur on the basis that it was added to the definitive map in error and therefore the north east spur should remain as it is.

2.10.2 It is therefore recommended that no Modification Order be made to modify Footpath No. 18, Chawleigh on the Definitive Map and Statement but that the path spur remains as currently recorded between points A – B as shown on drawing number HCW/PROW/14/22a.



Map Ref. SS 7113

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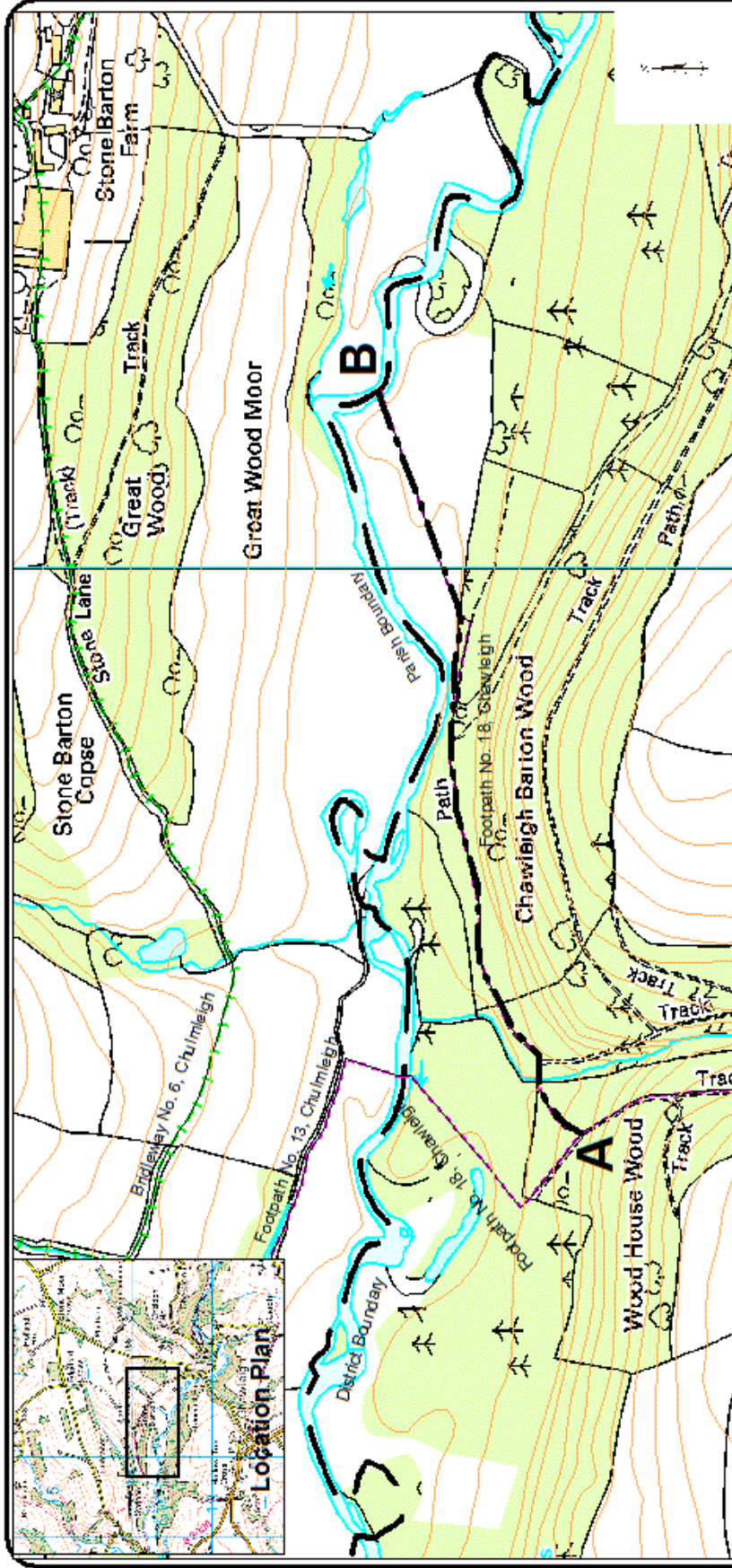
drawing number **HCW/PROW/14/19a**  
 date **Feb 2014**  
 scale **1:5,000 (at A4)**  
 drawn by **TW**

**DEVON COUNTY COUNCIL**  
**DEFINITIVE MAP REVIEW - CHAWLEIGH**  
**SUGGESTION 2 - STONE BARTON LANE**  
**ADDITION OF A PUBLIC BRIDLEWAY**

**Notation** Addition of Public Bridleway A - B - C (approx 420 metres) **-|-|-|-|-**  
 Existing Public Bridleway **-|-|-|-|-**

**David Whitton**  
 Head of Highways, Capital Development & Waste

**Devon**  
 County Council



Map Ref: SS 7013 7113

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**DEVON COUNTY COUNCIL  
DEFINITIVE MAP REVIEW - CHAWLEIGH  
SUGGESTION 5 - FOOTPATH NO 18 CHAWLEIGH  
NORTH EAST SPUR TO PARISH BOUNDARY**

drawing number **HCW/PROW/14/22a**  
date **Feb 2014**  
scale **1:5,000 (at A4)**  
drawn by **TW**

- Notation**
- Existing NE spur of FP No 18 recorded on Definitive Map A - B       Approx 660 metres
  - Existing Public Footpaths       Existing Public Bridleways

**David Whitton**  
Head of Highways, Capital Development & Waste

**Devon**  
County Council