

**Definitive Map Review 2012–14
Parish of Sidmouth – part 4**

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) **Modification Orders be made to modify the Definitive Map and Statement by:**
- (i) **Adding a footpath between Salcombe Road and Newtown, points C–D shown on drawing number HTM/PROW/13/28 (Proposal 2);**
 - (ii) **Adding of a bridleway on Chelson Lane at Voggis Hill Farm, points X–Y shown on drawing number HTM/PROW/13/32 (Proposal 6); and**
 - (iii) **Adding a footpath from Malvern Road to Winslade Road, points K1–L1 shown on drawing number HTM/PROW/13/38 (Proposal 12); and that**
- (b) **no Modification Orders be made in respect of Proposals 7 and 11.**

1. Introduction

The report examines five proposals in connection with the Definitive Map Review for the parish of Sidmouth, to complete the review process in the parish. The proposals relate to the claimed addition of footpaths and bridleways on unrecorded routes, three in parts of the town of Sidmouth and two in other areas of the parish to the east and north of the town, as shown on each of the maps.

2. Background

The current Review was started with a public meeting in September 2012, followed by separate public consultations in March 2013 and from August to October 2013 for a total of 16 proposals. Reports have been presented to meetings of the Committee in June and November 2013 and February 2014 for 11 of the proposals.

3. Proposals

Please refer to the Appendix to this report.

4. Consultations

General consultations have been carried out with specific comments relating to these proposals as follows:

County Councillor Stuart Hughes	- no comment;
County Councillor Claire Wright	- no comment;
East Devon District Council	- no comment;
Sidmouth Town Council	- responded with comments in support of Proposals 2, 6 and 12, not supporting

	Proposal 11;
Otterton Parish Council	- no comment;
Ottery St. Mary Town Council	- no comment;
Country Land and Business Association	- no comment;
National Farmers' Union	- no comment;
ACU/TRF	- no comment;
British Horse Society	- no comment;
Ramblers	- responded in support of proposals 2, 6, 7,11 and 12.

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 have been taken into account in preparing 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 Modification Orders be made in respect of Proposals 2, 6 and 12 for the addition of two claimed footpaths and a bridleway, but not in respect of Proposals 7 and 11 for another claimed bridleway and footpath, as the evidence for both is considered insufficient to meet the requirements of the legislation. Details concerning the recommendations are discussed in the Appendix to this report.

There are no recommendations to make concerning any other modifications. Any outstanding anomalies identified as requiring amendment by diversions can be dealt with using powers under delegated authority. Should any further valid claim with sufficient evidence be made within the next six months it would seem reasonable for it to be determined promptly rather than deferred.

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 East Devon district area.

David Whitton
Head of Highways, Capital Development and Waste

Electoral Divisions: Sidmouth Sidford and Ottery St. Mary Rural

Local Government Act 1972: List of Background Papers

Contact for enquiries: Nick Steenman-Clark

Room No: ABG Lucombe House

Tel No: (01392) 382856

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

ns090514pra
sc/cr/DMR Parish of Sidmouth part 4
05 050614

A. Basis of Claims

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.

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: Addition of claimed footpath between Salcombe Road and Newtown, points C–D shown on drawing number HTM/PROW/13/28.

Recommendation: It is recommended that a Modification Order be made in respect of Proposal 2 for the claimed addition of a footpath between Salcombe Road and Newtown.

1.1 Background

- 1.1.1 User evidence forms in support of this claimed footpath route were submitted in April and May 2012. Their submission followed a public inquiry held earlier that year to determine an Order for the diversion of a recorded public footpath nearby between Holmdale and Mill Street in the same area. That footpath had been added to the Definitive Map by a Modification Order in 2010 as the result of an earlier claim and was proposed for diverting to enable development with planning permission to take place.

1.2 Description of the Route

- 1.2.1 The claimed route is in the Newtown area of Sidmouth just to the west of the River Sid. It starts at the gated entrance to a wide track from Salcombe Road (point C) running between houses, providing vehicular access to businesses in Foundry Yard and used for carparking by residents of adjoining properties. The main track ends at the entrance to a builders' yard with locked gates, near residents' garages and access to the back of houses in Barrington Mead which is also used for carparking. The route as claimed connects to the end of Newtown (point D), a narrow public road with bollards and a barrier at the end preventing vehicular access onto or from the track but with gaps at each side allowing pedestrian access.
- 1.2.2 The claimed route was not included with those surveyed originally by Sidmouth Urban District Council in 1956 for putting forward as public rights of way and it is not recorded on the Definitive Map and Statement. It is not recorded either as a public road or linking footway in earlier and later records of maintainable highways, or on the current List of Streets.
- 1.2.3 There have been no previous suggestions that the claimed route should be added in earlier review processes that were started but not completed. The claimed addition was included in the consultations in 2013 on the basis of the evidence submitted in 2012. The consultation responses included support from Sidmouth Town Council and the Ramblers.

1.3 Documentary Evidence

1.3.1 Early historical mapping

The claimed route is not shown on historical maps at smaller scales from the earlier 19th century, which are at too small a scale to show such a level of detail.

1.3.2 Later 19th century historical mapping: Sidmouth Tithe Map 1839 & Apportionment 1841; Ordnance Survey 25"/mile late 1880s

The location of the claimed route is shown in more detail on later maps at larger scales including the network of routes later recorded as public roads. The Tithe Map for Sidmouth parish in 1839 shows a mill leat continuing along the line of the route from the River Sid north of Salcombe Road, running between fields that had not been built on at that date to the mill and back into the river.

- 1.3.3 The Ordnance Survey 25" to a mile 1st edition map surveyed in 1888 shows the area having been more built up by then. The leat is shown along the line of the claimed route, running between properties on Salcombe Road alongside an access track leading to the back of houses. The leat continues further on to the site of the mill and the location of an iron foundry and beyond Mill Lane into the river. It passes the end of Newtown, then named Radway Row, which had been built by that date as a cul-de-sac ending at the leat. A line across the end of the road suggests a barrier, but not crossing the leat and with no continuation shown beyond it.

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

The later Ordnance Survey 2nd edition 25" to the mile map revised in 1903 shows the claimed route in the same way as in the 1st edition map. A later edition of that map was used as the basis for the 1910 Finance Act survey to ascertain the value of land in the area for the purpose of taxation. The whole claimed route is shown excluded from the colouring of adjoining defined hereditaments or assessment areas of land and properties in the same way as other routes, including those recorded since then

as public roads as well as other tracks not recorded now as public. It could suggest that the route may have been considered to have the same status as public roads at the time, but alternatively that its ownership was not known, or with shared ownership and other private rights of access.

- 1.3.5 Maps at smaller scales from the earlier 20th century, including by Ordnance Survey and Bartholomew, are also at too small a scale to show the route in any detail. Later Ordnance Survey 'A' edition larger-scale mapping from 1954, around the time that the Definitive Map was drawn up, shows the claimed route at that date in the same way as in earlier editions and currently. No barriers are shown across it at the Salcombe Road and Newtown ends, with access to the garages and suggesting a barrier or gate across its continuation as access to the industrial buildings. The Ordnance Survey 'B' edition mapping from 1963 shows it in the same way, with its continuation then leading to a builder's yard. The line of the former mill leat is indicated, but is known to have been filled in at some date with a surface adding it to the width of the track on the claimed route.
- 1.3.6 The showing of the route on early and later historical maps records its physical existence at those times and until more recently. They do not indicate on their own or support the existence of a public right of way, which would require other more significant supporting documentary or map evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way" and may be presumed to apply to earlier and other commercial maps as well.
- 1.3.7 Aerial photography
Earlier RAF aerial photography from 1946–9 shows the whole of the claimed route on its current line and open connecting to the end of Newtown and Barrington Mead. More recent aerial photography between 1999–2000 and 2007 shows the route in the same way as it is currently and in more detail, with indications of its use for carparking and vehicular access for its continuation to the builder's yard.

1.4 User Evidence

- 1.4.1 Evidence forms completed by 20 people were submitted in support of the addition of the claimed footpath, with accompanying maps showing the route used. Eighteen of them reported having used the route on foot only, one when running, with two indicating use also with a vehicle and one with a bicycle but only wheeling it and not riding. Two did not specify how they had used the route.
- 1.4.2 Nearly all of them had used the route believing it to be a footpath, mainly on the basis that it had always been open and used by the public without restriction or not being told otherwise. One believed that it is a restricted byway and another that it is a byway open to all traffic, perhaps in connection with use by vehicles. The main use was reported to have been in the 20 and 30 years up to 2012, with some indicating use since the 1960s and 1970s and by one person since the 1930s.
- 1.4.3 The frequency of use was said to have been from between only about three times a year up to more than 200 times a year, specified by several people as more than 300 times a year or daily. Some of them did not indicate how often they had used it, or said only that it was 'very regularly', 'several' or 'many, many, many' times. More than half of the users said that their use had been for pleasure, with some indicating that it had been for business or work as well and a few did not specify why they had used it.

- 1.4.4 Most people indicated that they were going to and from home, mainly to various destinations in other parts of Sidmouth nearby including from Salcombe Road to Newtown and other specified places in the eastern part of the town. Those included other named roads and the High Street, or to the bus stop, shops or library and further to The Byes along the east side of the river and allotments, or as far as the sea front and the beach. Some referred to using it for visiting friends' houses, or for shopping and to play tennis, with one saying that it was for 'church walks'.
- 1.4.5 None of the users said that they had been stopped or turned back when using the route or were told that they could not use it. Most of them believed that the owner was aware of its use because so many people could be seen using it regularly and nobody had stopped them. Most said that they had not been given permission to use the route or were tenants and had worked for the owner. A few indicated that they had been given permission, or used it with a private right as residents of adjoining houses in Barrington Mead which was recorded on their property deeds, probably relating to vehicular access and carparking. Where specified, the permission was said by one to have been given by Parsons Brothers, owners of the builders' yard.
- 1.4.6 None of the users indicated that there were any obstructions on the route, referring only to the vehicle barrier at the end of Newtown and the gate at the Salcombe Road end. The gate was said never to be locked, or if closed it only prevented use in vehicles and with a gap to allow access on foot. Nearly all of the users said that they had not seen any signs or notices saying that they should not use it, but some reported seeing notices saying 'Private Drive', 'No Parking. Access for authorised users only'. Most of them said that they did not know who owned the land crossed by the route. Some indicated that it was Parsons with buildings and land at the end who owned the track or some of it, although those with permission had been told as well that the land on the routes used for parking cars was not owned by anybody.

1.5 Landowner Evidence

- 1.5.1 The owners of five properties adjoining the claimed route completed landowner evidence forms. Some of the owners provided additional information relating to their knowledge of the route, with aspects of its history and views in support of and against the claim. None of them indicated that they owned any part of the route, believing that it was mainly owned by Parsons with part of it on the line of the old leat said to be disputed and should be divided between the owners on either side. Although not specified, it can be presumed that they have private rights of access along the route, including in vehicles for carparking spaces adjoining their properties or in the garages. Two had also completed user evidence forms and referred to private access rights recorded in their deeds.
- 1.5.2 Three of them believed the route to be public as a footpath, with one stating that it is not although believing that it had become one through usage. The other believed that it is not official, but reported that people had used a side entrance when the gate was closed during the previous 10 years. All of them had seen, or been aware of, the public using the route which most of them said was daily or regular and numerous, specified by one as walking and for parking cars.
- 1.5.3 None of the adjoining owners said that they had required people to ask permission when using the route, which one specified as not those on foot. Most of them had not turned back or stopped anyone from using it, although the same owner had stopped people in cars if they did not have private rights of access in vehicles but not those on foot. None of them had put up notices or signs to state that it was not public, but referring to the signs about private vehicular access on the gate at the Salcombe

Road entrance. Most of the owners referred to that gate having been locked until the last few years to prevent unauthorised vehicular access, with a gap on the east side allowing access on foot and now left open.

- 1.5.4 Three of the owners provided further information about their knowledge of the route and views on the claim, with one including additional details about historical rights of access to the mill and properties built later. Another stated that the route had been used by the public for a lot longer than the 23 years she had lived in Newtown. Two were against it being recorded formally as a public footpath, although on grounds that do not challenge the evidence of use and acknowledging that it is used by the public.

1.6 Rebuttal Evidence

- 1.6.1 No evidence was provided on behalf of Parsons Brothers who own the yard and buildings at the end of the track on the claimed route and may be its owners, although suggested to be disputed with some of the adjoining property owners. There is little or no evidence of any efforts by the owners to prevent its use by the public, except for those in vehicles and particularly for carparking, with acknowledgement of its regular use on foot.

1.7 Discussion

- 1.7.1 There has been no challenge to use of the route for this claimed addition as a footpath and no event for calling its use into question, such as any obstruction to prevent use or a formal application. User evidence was submitted in connection with an informal claim connected with the parish review process. If there had been any challenge, obstruction or application, it could be used for any investigation in accordance with the test for statutory dedication under Section 31 of the Highways Act 1980, taking into account any evidence of the landowner's lack of intention to dedicate. However, with no event or date that can be specified for calling use of the route into question, it can only be considered along with historical and other documentary evidence from which any earlier use can be inferred, in relation to a test under common law and with reference to the evidence from adjoining landowners.
- 1.7.2 Historical mapping shows that a track has existed physically on most of the route since at least early in the 20th century, with 19th century maps showing it to have been previously the line of a mill leat before the area was developed and built up. Later Ordnance Survey and other mapping with aerial photography show that the route has existed on its current line more recently since the leat was filled in and up to the present. They show that it has been open to the roads at each end particularly since the second half of the 20th century, although with some indication of barriers previously in relation to the leat.
- 1.7.3 No other more significant historical maps have been discovered to indicate specifically that the route may have had the reputation of being public in the past or more recently. It has been open and available for use by the public for more than 50 years, with evidence submitted indicating that it has been used on foot regularly during that period. The use has been sufficiently open to bring to the attention of the landowner that a public right to use it on foot was being asserted and there is no record of efforts made to prevent that use or to show that there was no intention to dedicate.
- 1.7.4 The only efforts more recently have been in relation to preventing unauthorised use in vehicles and carparking. Those included the barrier at the end of Newtown, with the closing and locking of the gate at Salcombe Road and notices. The spaces beside

the gate and at each end of the barrier have not prevented continuing use on foot and the notice relates to unauthorised vehicular use and carparking as a private drive. That cannot be taken as attempting to prevent use by the public on foot and the only evidence of people being stopped or turned back has been to prevent unauthorised use in vehicles and parking.

- 1.7.5 Considering the evidence of use submitted with historical mapping and landowner evidence, dedication at common law for a status of footpath can be inferred. The evidence supports the claim that it should be recorded as a public footpath and suggests that at some time in the past the landowner intended to dedicate the route as a public right of way and that the public have accepted dedication and have used it on that basis, on foot. Its main use has been on foot, with use in vehicles only for private access and authorised parking by adjoining property owners. There is no evidence to support the suggestion made by one landowner that public rights may subsist on a continuation of the claimed route beyond the end of Newtown and through gates to cross the builder's yard and connect with the recorded public footpath.

1.8 Conclusion

- 1.8.1 From this assessment of the user evidence submitted, in conjunction with landowner evidence and other historical map evidence discovered, it is considered sufficient to support the claim that the route should be recorded as a public footpath. From consideration under common law, it is sufficient to make an Order on the basis that a public right of way on foot subsists or can be reasonably alleged to subsist. The recommendation is, therefore, that an Order be made to add the claimed route as a footpath on the Definitive Map and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

2. Proposal 6: Addition of claimed bridleway on Chelson Lane at Voggis Hill Farm, points X–Y shown on drawing number HTM/PROW/13/32.

Recommendation: It is recommended that a Modification Order be made in respect of the claimed addition of a bridleway on Chelson Lane at Voggis Hill Farm.

2.1 Background

- 2.1.1 This route was identified in preparations for the parish review as a missing link in the network of maintainable highways, with the records of minor roads showing a gap leaving a section with no recorded public status. User evidence forms in support of a claim to record that section as a bridleway had been submitted originally in 1978 for an earlier review with more submitted in 2013 as part of the current review.

2.2 Description of the Route

- 2.2.1 The claimed route is in the Harcombe area of Sidmouth parish, in hilly countryside within the former parish of Sidbury northeast of the town of Sidmouth. It starts at the end of the tarmac surface of Chelson Lane, a minor surfaced county road, by the entrance driveway to Voggis Hill Farm (point X). It continues as an unsurfaced and hedged lane running uphill past farm buildings and between fields. The lane becomes steeper and ends at a junction with the minor surfaced county road (point Y) running from Sidford up onto Harcombe Hill west of Sidbury towards the boundary with the adjoining parish of Southleigh. The lane is part of a linking route between

other existing recorded bridleways in the area starting from the minor county roads beyond each end.

- 2.2.2 The route as claimed was not included with those surveyed originally by Sidmouth Urban District Council in 1956 for putting forward as public rights of way and it is not recorded on the Definitive Map and Statement. That section of Chelson Lane is not recorded as a public road in earlier and later records of maintainable highways, or on the current List of Streets.
- 2.2.3 It had previously been put forward as a proposal by the Parish Council to be added as a bridleway in an earlier review process that was started but not completed in 1978, with two user evidence forms in support. The claimed addition was included in the consultations in 2013 on the basis of the original proposal and the evidence submitted previously and earlier that year. The consultation responses included support from Sidmouth Town Council and the Ramblers.

2.3 Documentary Evidence

- 2.3.1 Early 19th century historical mapping: Ordnance Survey, Surveyors' Drawings 1806–7 and 1st edition 1"/mile map 1809 and later; Greenwood 1827
The claimed route is shown on historical maps at smaller scales from the earlier 19th century as a continuation of Chelson Lane in the same way as other roads and tracks in the local network around Harcombe. That includes some now recorded as public roads and as bridleways, with others that are access tracks only to properties and land which are not recorded now as public
- 2.3.2 Later 19th century historical mapping: Sidbury Tithe Map & Apportionment 1840; Ordnance Survey 25"/mile late 1880s
The claimed route is shown in more detail on later maps at larger scales included in the network of routes later recorded as public roads and bridleways. The Tithe Map for Sidbury parish in 1840 shows the whole of Chelson Lane continuing on the claimed route as an enclosed lane. It is coloured in the same way as other roads and tracks now recorded as public roads and bridleways, although with some others that are not recorded now as public.
- 2.3.3 The Ordnance Survey 25" to a mile 1st edition map surveyed in 1888 shows the claimed route continuing from Chelson Lane beyond Voggis Hill Farm, as a section of unenclosed track partly with verges within the hedged lane as it is now. It continues further uphill as a narrow hedged lane to the junction of the road from Harcombe branching off Chelson Lane that runs up to Harcombe Hill. No barriers are indicated across it, suggesting that its continuation from the lane and the junction with the road were open and not obstructed by gates.
- 2.3.4 Later historical mapping, from early 20th century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records and later Ordnance Survey maps
The later Ordnance Survey 2nd edition 25" to the mile map revised in 1903 shows the claimed route in the same way as in the 1st edition map. Those later maps were used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation. The whole claimed route is shown excluded from the colouring of adjoining defined hereditaments or assessment areas of land and properties in the same way as other routes, including those recorded since then as public roads as well as other tracks not recorded now as public. It suggests that the route may have been considered to have the same status as other public roads at the time, although it could have been excluded as its ownership was not known, or with shared ownership and other private rights of access.

- 2.3.5 Maps at smaller scales from the earlier 20th century, including by Ordnance Survey and Bartholomew, are at too small a scale to show the route in any detail. Later Ordnance Survey 'A' edition larger-scale mapping from 1957, around the time that the Definitive Map was drawn up, shows the claimed route at that date in the same way as in earlier editions and currently. It suggests that the claimed route was considered as a continuation of Chelson Lane from south of Harcombe to and beyond the junction where the road is named and beyond where it continues to Harcombe Hill.
- 2.3.6 The showing of the claimed route on early and later maps records its physical existence at those times and until more recently. They do not indicate on their own or support the existence of a public right of way, which would require other more significant supporting documentary or map evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way" and may be presumed to apply to earlier and other commercial maps as well.
- 2.3.7 Aerial photography
Earlier RAF aerial photography from 1946–9 is not complete for the area, but shows the whole of the claimed route on its current line. It is shown open and continuing from the surfaced end of Chelson Lane as an unsurfaced hedged track up to the junction with the surfaced road. It suggests that the section of Chelson Lane running to Voggis Hill Farm had been superseded as a through route in favour of the road continuing in a straight line to the east of Harcombe and passing the junction with the claimed route towards Harcombe Hill.
- 2.3.8 Maintainable highways records
Earlier records from the 1960s support that view, showing the section of Chelson Lane from Harcombe to Voggis Hill Farm and its continuation on the claimed route uncoloured to indicate that it was not considered then to be maintainable as a public road. Later records from the early 1970s and the current record of maintainable highways, the List of Streets compiled after 1974, show the section to Voggis Hill Farm coloured in as a maintainable minor public road. A note on the List of Streets dated 1983 shows the authority for confirmation of that record. Its continuation on the claimed route is not coloured in to show that it has not been considered maintainable as a public road, although that colouring appears to have been amended at some time.
- 2.3.9 Recent aerial photography between 1999–2000 and 2007 shows the route in the same way as it is currently. The unsurfaced and hedged lane is shown continuing from the surfaced section of Chelson Lane to the junction with the surfaced road, which is obscured by more recent tree growth and woodland.

2.4 User Evidence

- 2.4.1 Nine evidence forms completed by eight people were submitted in support of the addition of the claimed bridleway, with one of the users having completed forms in 1978 and in 2012. Most of them reported having used the route on horseback and although not specified on the earlier forms it can be implied from the use indicated as 'hacking'. Half of them had also used the route on foot as well as on horseback, with one indicating use only on foot. None reported having used it in a vehicle.
- 2.4.2 Most of the people used the route believing it to be a restricted byway, or bridleway, where specified mainly on the basis that it was between bridleways or footpaths and frequently used without problems or queries. The main use was reported to have

been since the 1970s up to 2012, with two people indicating earlier use, one of them since the 1940s or 1950s.

- 2.4.3 The frequency of use was said to have been from between only about three or five times a year up to 12 times a year, or once a month and specified by one as 20 times a year or up to twice a month. Four of the users reported only that it was 'frequently', 'numerous' or 'too many to count'. Nearly all of them said that their use had been for pleasure, specified by two as for hacking and by one as walking a dog. None of the forms had accompanying maps showing the route used, but most of the users said that they were going to or from named places nearby. Those included Sidford, Harcombe and Chelson and others in the area of Harcombe Hill woodlands and Mincombe connected by a network of bridleways further north in that part of the parish.
- 2.4.4 None of the users said that they had been stopped or turned back when using the route or were told that they could not use it. Most of them believed that the owner was aware of its use as some reported having spoken to or been seen by the farm owner who acknowledged them or waved and never raised objections to them using it. None of them had been given permission to use the route or were tenants and had worked for the owner, or had a private right to use it.
- 2.4.5 None reported that there were any obstructions on the route such as stiles or gates, with only the two earlier users indicating that it had been blocked by rubble reported in 1978. None of the users said that they had seen any signs or notices saying that they should not use it. Nearly all of them said that they did not know who owned the land crossed by the route, with the two earlier users giving the name of the believed owner at that time. In other information, some of the users said that it was a good route to Harcombe woods and well used by the public, as a safe off-road alternative route for riders and walkers to avoid traffic on Chelson Lane, particularly heavy vehicles and tractors.

2.5 Landowner Evidence

- 2.5.1 The owners of the two properties at Voggis Hill Farm adjoining the claimed route completed landowner evidence forms. They did not indicate that they owned any part of the route, believing it to be public as an unmade road or unmaintained public highway. They had seen, or been aware of, the public using the route daily with walkers, horses and bicycles, or tractors and other vehicles only for access to the farm.
- 2.5.2 None said that they had required people to ask permission when using the route, but one reported having turned back or stopped people using it in cars. They had not put up notices or signs to state that it was not public and one had only obstructed it briefly when working on repairs or hedges. In further information, they said that the lane was open and used by walkers and horseriders, including from the farm, but was rough and not suitable for use by cars, repaired only for private access by tractors and 4X4 vehicles.

2.6 Rebuttal Evidence

- 2.6.1 No evidence was provided of any efforts by the owners to prevent use of the claimed route by the public, except in cars to prevent them getting stuck, with acknowledgement of its regular use by horseriders and walkers.

2.7 Discussion

- 2.7.1 There has been no challenge to use of the route for this claimed addition as a bridleway and no event for calling its use into question, such as an obstruction or a formal application. User evidence was submitted in connection with an informal claim connected with the current parish review, although the earlier evidence forms refer to blocking of the route by rubble. That may have prompted its submission then supporting the Parish Council's proposal for the earlier uncompleted review process in 1978. However, there is no further record to indicate that it may have remained as an obstruction or was intended to prevent use of the route by the public.
- 2.7.2 The evidence of use could be used for investigation in accordance with the test for statutory dedication under Section 31 of the Highways Act 1980, taking account of any evidence of the landowner's lack of intention to dedicate. However, with no event or date that can be specified for calling use of the route into question, it can be considered along with historical and other documentary evidence from which any earlier use can be inferred, in relation to a test under common law and with reference to the evidence from adjoining landowners.
- 2.7.3 Historical mapping shows that a track has existed physically on the whole claimed route since at least the first half of the 19th century. Later Ordnance Survey and other mapping with aerial photography show that the route has existed on its current line up to the present with no major alterations. They show that it has been open to the roads at each end with no obstruction and available for use by the public since then.
- 2.7.4 No other more significant historical maps have been discovered to indicate specifically that the route may have had the reputation of being public in the past or more recently. The only indication is from the earlier records of maintainable highways with the claimed route appearing to have been included initially when Chelson Lane was added but removed later for the current record, the List of Streets. That may have led to the views of the adjoining farm property owners that it was an unmade public road and not maintained.
- 2.7.5 It has been open and available for use by the public for over 150 years, with evidence submitted indicating that it has been used on horseback and foot for at least 50 years and more regularly since the 1970s. The use has been overt and although not substantial, is considered to be representative of the public in a lightly-populated rural area. It was sufficient to bring to the attention of the landowner that a public right to use it as a bridleway was being asserted and there is no evidence of significant efforts made to prevent that use or to show that there was no intention to dedicate.
- 2.7.6 The only reference to any actions that may have prevented use continuing on the route was the indication that it had been blocked by rubble, reported in 1978. Without any further details, it cannot be interpreted as perhaps intended to be permanent and therefore evidence of any intention around that time to prevent use by the public on foot or horseback, rather than for other purposes or to deter public use in vehicles.
- 2.7.7 Considering the evidence of use submitted with historical mapping and landowner evidence in this case, dedication at common law for a status of bridleway can be inferred. The evidence supports the claim that it should be recorded as a public bridleway and suggests that at some time in the past the landowner intended to dedicate the route as a public right of way and that the public have accepted dedication. They have used it on that basis, on foot and horseback, with vehicular use only for private access and farm vehicles. There is no evidence to support any

suggestion that public vehicular rights may subsist for it to be considered for recording with higher status as a byway open to all traffic or as a restricted byway.

2.8 Conclusion

- 2.8.1 From this assessment of the user evidence submitted, in conjunction with landowner evidence and other historical map evidence discovered, it is considered sufficient to support the claim that the route should be recorded as a public bridleway. From consideration under common law, it is sufficient to make an Order on the basis that a public right of way on foot and horseback subsists or can be reasonably alleged to subsist. The recommendation is, therefore, that an Order be made to add the claimed route as a bridleway on the Definitive Map and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

3. Proposal 12: Addition of claimed footpath from Malvern Road to Winslade Road, points K1–L1 shown on drawing number HTM/PROW/13/38

Recommendation: It is recommended that a Modification Order be made in respect of the claimed addition of a footpath from Malvern Road to Winslade Road.

3.1 Background

- 3.1.1 This proposal is one of several unrecorded footpath routes in the town of Sidmouth identified by Sidmouth Town Council in advance of the review process being started in the parish. In preparations for the review, the route was confirmed as having no recorded status, either as a public right of way on the Definitive Map or as a linking footway in the records of maintainable highways, the List of Streets.
- 3.1.2 User evidence forms in support of claiming it as a footpath were submitted in September and October 2013 following its inclusion as an unrecorded route in consultations from August 2013.

3.2 Description of the Route

- 3.2.1 The claimed route is in a residential area of Sidmouth, just to the north of open space with The Knapp nature reserve, allotments and cemetery in the northern part of the town. It starts from a grass verge on the south side of the cul-de-sac Malvern Road (point K1) as a narrow path with a worn earth and stone track descending between the garden hedges of adjoining properties, numbers 76 and 78 Winslade Road, to end on the surfaced pavement of the road (point L1). Both ends of the path are open and connected to minor public roads with no obstructing barriers or gates.
- 3.2.2 It was not included with those routes surveyed originally by Sidmouth Urban District Council in 1956 for putting forward as public rights of way and it is not recorded on the Definitive Map and Statement. It is not recorded either as a public road or linking footway in earlier and later records of maintainable highways, or on the current List of Streets.
- 3.2.3 There had been no previous suggestions that this claimed route should be added in earlier review processes that were started but not completed. The claimed addition was included in the consultations in 2013 on the basis of its identification by Sidmouth Town Council as an unrecorded route with no public status. The consultation responses included support from Sidmouth Town Council and the Ramblers.

3.3 Documentary Evidence

3.3.1 Later mapping and aerial photography

The route is not shown on earlier Ordnance Survey maps, as that residential area of Sidmouth was not developed until during the first half of the 20th century. Earlier aerial photography from 1946–9 shows that most of the properties had been built along both roads by then, with the line of the route shown as a gap between the houses and gardens.

Later Ordnance Survey mapping editions between 1953 and 1991 show the line of the route as a narrow path in the gap left between the boundaries of the two houses and gardens, with changes in the layout for the properties built in the area. More recent aerial photography between 1999–2000 and 2007 shows the route as having remained in the same way as it is currently without any major alteration and not appearing to have been closed off or obstructed.

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

3.4 User Evidence

- 3.4.1 Eight user evidence forms were submitted in support of the addition of the claimed footpath, with one completed on behalf of two people so that they represent use by nine people. All of them reported having used the route on foot, with one indicating use on a bicycle as well.

- 3.4.2 Most of the people used the route believing it to be a footpath, on the basis that it did not belong to the adjoining houses, it was open to the public and kept clear to be used by many people and was useful as a shortcut. One indicated that it was mentioned on their house deeds. The main use was reported to have been during the 20 years up to 2013, with two people indicating that they had used it since the 1980s.

- 3.4.3 The frequency of use was said to have been from between about 25–30 times a year, about twice a month, up to more than 50 times a year, or weekly, to over 200 and more than 300 times and daily or ‘most days’. One reported only that she used the route ‘frequently’, but referring to her son’s use of it daily on his paper round. Nearly all of them said that their use had been for pleasure, with some referring to using it for business and work as well, or commuting. Most of the users said that they were going to Winslade Road from home including to get to and from other parts of Sidmouth nearby or further away. Those were specified as to school, an allotment or town generally and the beach.

- 3.4.4 None of the users said that they had been stopped or turned back when using the route or were told that they could not use it. Although most of them did not believe that the owner was aware of its use, that may have been because of a belief that there was no owner or it was not owned by the owners of the adjoining properties. None of them had been given permission to use the route or were tenants and had worked for the owner, with one specifying a right to use it recorded in their house deeds.

- 3.4.5 None reported that there were any obstructions on the route such as stiles or gates, any signs or notices saying that they should not use it. Most of them said that they did not know who owned the land crossed by the route. In other information, some of the users reported how well used the route was as a shortcut and having heard from family members, other residents and older neighbours that it had always been open and used by the public. One reported that an adjoining property owner speaks to them when using it without saying that they should not use it.
- 3.4.6 Some of them referred to having heard about its former use in connection with access to and from the orchards of Arcott House nearby, including for taking apples to the railway station. They also knew of other residents nearby who used the route regularly. Three people indicated that they had a private right to use it recorded in their house deeds, said to date back to when the land was sold in 1935 before the houses in Malvern Road were built.

3.5 Landowner Evidence

- 3.5.1 The owners of the one property adjoining the claimed route completed a landowner evidence form and did not indicate that they owned any part of the route. Although not believing it to be public, they had seen or were aware of the public using the route most days as a shortcut to Malvern Road. They had not required people to ask permission when using the route and had not put up notices or signs to state that it was not public, or obstructed it. One of the users reported that it was this owner who had spoken when using the route without saying not to use it.
- 3.5.2 In other information, the owners said that they believed the route to have been left for workmen to use when the houses at the top of end of Malvern Road were being built.

3.6 Rebuttal Evidence

- 3.6.1 No evidence has been provided of any efforts by the owner to prevent use of the claimed route by the public, with acknowledgement of its regular use by people using it as a shortcut.

3.7 Discussion

- 3.7.1 There has also been no challenge to use of this route as a claimed footpath and no event for calling its use into question, such as an obstruction or a formal application. User evidence was submitted following its inclusion in consultations for the current parish review as an unrecorded path. Again, it could be used for investigation in accordance with the test for statutory dedication under Section 31 of the Highways Act 1980, taking account of any evidence of the landowner's lack of intention to dedicate. However, again with no event or date that can be specified for calling use of the route into question, it can be considered along with historical and other documentary evidence from which any earlier use can be inferred, in relation to a test under common law and with reference to the evidence from adjoining landowners.
- 3.7.2 Historical mapping shows that a track has existed physically on the whole claimed route since sometime in the first half of the 20th century from the building of houses with residential development of the area. Later Ordnance Survey mapping with aerial photography show that the route has existed on its current line up to the present with no major alterations. They show that it has been open to the public roads at each end with no obstruction and available for use by the public since then.

- 3.7.3 No other more significant historical maps have been discovered to indicate specifically that the route may have had the reputation of being public in the past or more recently. It has been open and available for use by the public for over 50 years, with evidence submitted indicating that it has been used on foot for at least 30 years and more regularly since the 1990s. The use has been overt, although the evidence could be considered as minimal or not substantial for an urban area and also including some use based on private rights.
- 3.7.4 However, it can be said to be representative of the public in the locality, with evidence of use by six people and reported wider regular use by other people who have not supplied evidence. It can be considered as sufficient to have brought to the attention of the landowner that a public right to use the route as a footpath was being asserted and there is no evidence of any efforts made to prevent that use or to show that there was no intention to dedicate.
- 3.7.5 Considering the evidence of use submitted with historical mapping and landowner evidence in this case, dedication at common law for a status of footpath can be inferred. The evidence supports the claim that it should be recorded as a public footpath from an inference that at some time in the past the landowner intended to dedicate the route as a public right of way, with the public having accepted dedication and have continued to use it on that basis, on foot.

3.8 Conclusion

- 3.8.1 From this assessment of the user evidence submitted, in conjunction with landowner evidence and other historical map evidence discovered, it is considered sufficient to support the claim that the route should be recorded as a public footpath. From consideration under common law, it is sufficient to make an Order on the basis that a public right of way on foot subsists or can be reasonably alleged to subsist. The recommendation is, therefore, that an Order be made to add the claimed route as a footpath on the Definitive Map and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

4 Proposal 7: Addition of claimed bridleway across Harpford Common on Beacon Hill from Core Hill Road to Bridleway No. 39, points Z–A1 shown on drawing number HTM/PROW/13/33

Recommendation: It is recommended that no Modification Order be made in respect of the claimed addition of a bridleway across Harpford Common on Beacon Hill from Core Hill Road to Bridleway No. 39.

4.1 Background

- 4.1.1 In 1993, Sidmouth Town Council discussed the possibility of entering into a dedication agreement with the County Council to create a footpath across their land. The route that they wanted to dedicate was across land in its ownership on Beacon Hill, registered as part of Harpford Common near the western boundary with Ottery St. Mary parish. The Town Council clarified that they wished to dedicate the route as a bridleway, but the area of land was not directly accessible from a recorded public route beyond its eastern edge.
- 4.1.2 It required a linking section of about 10 metres to connect with Core Hill Road, an unsurfaced county road continuing northwards passing the common from the end of a surfaced section of the road alongside Core Hill from just beyond the northern edge

of the town of Sidmouth. The link crosses land owned by the Woodland Trust, a charitable body, who were not willing to enter into a dedication agreement and required the payment of compensation for their legal costs, which neither the County Council nor the Town Council were prepared to meet.

- 4.1.3 As a result, no progress was made to reach a legal agreement and the Town Council made a formal Schedule 14 application for the route in 1998 supported by user evidence forms. The application as completed was to upgrade the recorded Footpath No. 38 to bridleway rather than adding a bridleway on the claimed route, and therefore was considered not to be valid and no subsequent corrected application was submitted.

4.2 Description of the Route

- 4.2.1 The claimed route starts from Core Hill Road about halfway between the start of two recorded footpaths at a gap in a wood bank (point Z), following a track through woodland continuing out onto the open land of Harpford Common. It follows around the edge of the open common and near the worn line of another unrecorded path, with which it merges to continue along a wider track. It ends on the recorded Bridleway No. 39 (point A1) that runs northwards along a track crossing the open land onto Beacon Hill to the parish boundary with Ottery St. Mary. The open land is managed by the RSPB and East Devon District Council as Fire Beacon Hill local nature reserve.

- 4.2.2 The route was not included with those surveyed originally by Sidmouth Urban District Council in 1956 for putting forward as public rights of way and it is not recorded on the Definitive Map and Statement. It is not recorded either as a public road in earlier and later records of maintainable highways, or on the current List of Streets.

- 4.2.3 There have been no previous suggestions that the claimed route should be added in earlier review processes that were started but not completed. The claimed addition was included in the consultations in 2013 on the basis of the evidence submitted in support of the application in 1998. The responses included support from Sidmouth Town Council and the Ramblers.

4.3 Documentary Evidence

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

Historical maps at smaller scales from the earlier 19th century do not show a track on the line of the claimed route. Core Hill Road and Bridleway 39 are shown in the same way as some other routes now recorded as either public roads or as bridleways, but with others that are access tracks only to properties and land which are not recorded now as public.

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

The claimed route is not shown on later maps at larger scales. The Tithe Map for Sidbury parish in 1840 shows the line of unenclosed tracks later recorded as Bridleway No. 39 and Footpath No. 38 crossing the open land of Beacon Hill, connecting with others in the area now recorded as public roads. The continuation of Core Hill Road is not shown, either within or beyond the boundary with Sidmouth parish.

- 4.3.3 The Ordnance Survey 25" to a mile 1st edition map surveyed in 1888 shows those two routes in the same way crossing the open land of Harpford Common and Beacon Hill, with Core Hill Road shown as a track within the enclosed lane running beyond the open land to Hollow Head Cross. No track is shown on the line of the claimed route, with only part of what was later recorded as a footpath to the north of it leading into the open land.
- 4.3.4 Later historical mapping, from early 20th century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records and later Ordnance Survey maps
The later Ordnance Survey 2nd edition 25" to the mile map revised in 1903 shows other routes in the same way as in the 1st edition map, but not the claimed route. Those later maps were used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation. The routes are within part of a larger defined hereditament or assessment area of land for Harpford Common, including Beacon Hill, with other land further west in Harpford parish.
- 4.3.5 Any deduction for public right of way or user recorded for that area of land could not be interpreted as relating specifically to the claimed route, with other routes crossing it considered to carry public rights, as well as any other more general rights to use the open land more widely and relating to other land. Routes outside the land and leading to it are excluded, which have been recorded since then as public bridleways and roads although with other tracks not recorded now as public.
- 4.3.6 Maps at smaller scales from the earlier 20th century, including by Ordnance Survey and Bartholomew, are at too small a scale to show the route in any detail. Later Ordnance Survey 'A' edition larger-scale mapping from 1959, around the time that the Definitive Map was drawn up, does show the line of a track on the claimed route at that date marked 'F.P.' for footpath, with a link connecting it to Core Hill Road. The 6" to the mile editions of earlier maps used for Sidmouth Urban District Council's survey and for drawing up the Definitive Map show a track further north marked 'F.P.' on the line of the recorded Footpath No. 42. No track is shown on the route as claimed, with the 700 ft. contour shown running generally along the line of the claimed route in between those recorded as footpaths.
- 4.3.7 The showing of the claimed route on later and current maps records only its physical existence from then until more recently. They do not indicate on their own or support the existence of a public right of way, which would require other more significant supporting documentary or map evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way" and may be presumed to apply to earlier and other commercial maps as well.
- 4.3.8 Aerial photography
Earlier RAF aerial photography from 1946–9 does not show clearly any worn track on the whole of the claimed route, with part of it and the lines of other routes visible crossing the open land including the recorded bridleways and some not recorded as public. More recent aerial photography between 1999–2000 and 2007 shows most of the claimed route more clearly as a worn track on its current line, with the lines of the recorded bridleways and footpaths and other connecting tracks crossing the open land not recorded as public rights of way.

4.4 User Evidence

- 4.4.1 Evidence forms completed by seven people between May and September 1998 were submitted with the application as made. That was technically to upgrade a recorded

footpath to bridleway, rather than as intended for the addition of a bridleway, which was incorrect and made the application invalid. The forms are considered for the purposes of the review as evidence submitted or discovered, rather than as supporting a formal application.

- 4.4.2 All of the users reported having used the route on horseback, with some indicating use also on foot. They had all used the route believing it to be public, mainly on the basis that it had been well used for a long time and was the direct way onto the open common linking up with a bridleway. The main use was reported to have been since the 1970s up to 1998, with one indicating use since the 1950s. The frequency of use was said to have been from between only about three or four times a year up to more than once a week and specified by two people as more than 300 times a year or daily. All of them said that their use had been for pleasure.
- 4.4.3 None of the forms were accompanied by maps showing the route used, but most of the users indicated that they were going to and from home for rides across the common from Core Hill. They were specified as to and from places nearby in the area including Fire Beacon and Bowd, or from further south on Mutters Moor to White Cross or Pinn and the area of the Hare and Hounds inn at the north of the parish.
- 4.4.4 None of the users said that they had been stopped or turned back when using the claimed route or were told that they could not use it. Some of them believed that the owner must have been aware of its use as it was such a well-worn track with hoofprints that it was obviously used and they had never been told otherwise. None of them said that they had not been given permission to use the route or were tenants and had worked for the owner.
- 4.4.5 None of the users indicated that there were any obstructions on the route such as stiles or gates and signs or notices saying that they should not use it, with one referring only to warning notices and small diversions for tree felling and thinning. Most of them did not know who owned the land crossed by the route, with one indicating that it was owned by Sidmouth Town Council and another the Woodland Trust.

4.5 Landowner Evidence

- 4.5.1 No landowner evidence was supplied by the owners of land crossed by the route, other than information supplied by the Woodland Trust for the boundaries of their ownership in the Core Hill Wood area adjoining Core Hill Road.

4.6 Rebuttal Evidence

- 4.6.1 No information was provided on behalf of Sidmouth Town Council or the Woodland Trust for evidence of any efforts by or on behalf of either of them as landowners to prevent use of the claimed route.

4.7 Discussion

- 4.7.1 There has been no challenge to use of the route for this claimed addition and no event that can be taken to have called its use into question such as any obstruction, although a formal application was submitted in 1998. The application was made after unsuccessful attempts to get dedication agreements with the landowners for the creation of either a footpath or bridleway on the route. The application as made was to upgrade an existing footpath to bridleway, which may have been a mistake or intended to be for upgrading the recorded Footpath No. 42 to the north crossing

Harpford Common on Beacon Hill. It is not clear whether the user evidence forms supporting the application were intended to show use on horseback of that footpath or the claimed route based on the unsuccessful dedication agreement, as there were no maps accompanying the application or evidence forms indicating the line of the route claimed or used.

- 4.7.2 The user evidence submitted in connection with the application could be used for an investigation strictly in accordance with the test for statutory dedication under Section 31 of the Highways Act 1980, taking account of any evidence of the landowner's lack of intention to dedicate. However, the application was not made correctly and was considered not valid to use in the formal procedure for making a claim so that there is no event or date that can be specified for calling use of the claimed route into question. The use can be considered along with historical and other documentary evidence from which any earlier use can be inferred, in relation to a test under common law and with reference to any evidence from the landowners.
- 4.7.3 Historical mapping shows that a track has existed physically on the line of the claimed route only since after the middle of the 20th century, having not been shown on earlier maps. More recent mapping and aerial photography show that it has existed on its current line from then until the present, along with other tracks across the open common land. Some of those are recorded as public bridleways or footpaths, but others connecting them as links created and worn across the open land have no recorded public status.
- 4.7.4 As registered common land, under the CROW Act there is a right of access for the public to go anywhere on foot across all of the land, although that includes on a network of connecting linear routes, some of which have also been recorded as public footpaths and bridleways. Sidmouth Town Council have not been able to confirm whether those rights also include access on horseback, as in some commons and open land in other parts of Devon and elsewhere in the country. No other more significant historical maps have been discovered to indicate specifically that the route may have had the reputation of being public in the past or more recently, apart from having remained as an area of open land now registered as common.
- 4.7.5 The route has been open and available for use by the public for more than 50 years, with evidence submitted suggesting that it has been used on horseback and also on foot during that period. Although the user evidence forms have descriptions of the route used, it cannot be confirmed as the claimed route without being shown on accompanying maps. With recorded bridleways as well as footpaths crossing the registered common and linked by other routes not recorded as public rights of way, including permissive paths, horseriders can use a variety of routes across the open land. The use cannot be considered to have brought to the attention of the landowners that a public right to use this specific route was being asserted, or on any others where there is an existing general public right of access across the open land. Although there is no evidence that any efforts were made to prevent use of the route or to show that there was no intention to dedicate, it may not have been considered necessary because of the existing public rights of access more widely across the land including on other linear routes with permissive rights.
- 4.7.6 Considering the evidence of use submitted with historical mapping evidence and without any detailed evidence from landowners, dedication at common law for a status of bridleway on the whole claimed route cannot be inferred. The evidence does not support the claim that the route should be recorded as a public bridleway or suggest that the landowners intended to dedicate it as a public right of way or that the public have accepted dedication and have used it on that basis, mainly on horseback

as well as on foot. Use on foot in particular can be taken to have been 'by right' on the basis of public access rights as registered common land and perhaps also on horseback from permissive rights, including on the connecting link through the woodland from the public road.

4.8 Conclusion

- 4.8.1 From this assessment of the user evidence submitted, in conjunction with historical map evidence discovered, it is considered insufficient to support the claim that the route should be recorded as a public bridleway or even as a footpath. From consideration under common law, it is insufficient to make an Order on the basis that a public right of way on horseback and foot subsists or can be reasonably alleged to subsist. The recommendation is, therefore, that no Order be made to add the claimed route as a bridleway on the Definitive Map.
- 4.8.2 The possibility of formal dedication or creation of the route as a public right of way is still an option available to Sidmouth Town Council under its powers and as the main landowner, including any further negotiations required with the Woodland Trust.

5 Proposal 11: Addition of claimed footpath from Cotmaton Road to Boughmore Road along Boughmore Lane, points H1–J1 shown on drawing number HTM/PROW/13/37

Recommendation: It is recommended that no Modification Order be made in respect of the claimed addition of a footpath from Cotmaton Road to Boughmore Road along Boughmore Lane

5.1 Background

- 5.1.1 This proposal is another of several unrecorded footpath routes in the town of Sidmouth identified by Sidmouth Town Council in advance of the review process being started in the parish. In preparations for the review, it was also confirmed as having no recorded status, either as a public right of way on the Definitive Map or in the records of maintainable highways, the List of Streets.
- 5.1.2 Three user evidence forms in support of claiming it as a public right of way were submitted in September 2013, with evidence from several adjoining property owners, following its inclusion as an unrecorded route in consultations from August 2013.

5.2 Description of the Route

- 5.2.1 The claimed route is in Cotmaton, a residential area of Sidmouth near the western edge of the town and is known as Boughmore Lane. It starts on a driveway leading to properties from Cotmaton Road (point H1), with a wide grass verge used for parking a car for the adjoining property, continuing as a narrow overgrown and wooded lane with a very rough surface. The lane runs between the garden hedges and fences of adjoining properties on Cotmaton Road and Cotlands to the south and the boundary hedge of a field to the north, passing the entrances to properties further along and gates into the fields on either side with a grass surface and vehicle tracks. It widens with a tarmac surface as the driveway for other properties to end on Boughmore Road (point J1). Both ends of the route are open and connected to minor public roads with no obstructing barriers or gates.

- 5.2.2 The route was not included with those surveyed originally by Sidmouth Urban District Council in 1956 for putting forward as public rights of way and it is not recorded on the Definitive Map and Statement. It is not recorded either as a public road in earlier and later records of maintainable highways, or on the current List of Streets.
- 5.2.3 There had been no previous suggestions that this claimed route should be added in earlier review processes that were started but not completed. The claimed addition was included in the consultations in 2013 on the basis of its identification by Sidmouth Town Council as an unrecorded route with no public status. The consultation responses included support from the Ramblers, but it was not supported by Sidmouth Town Council.

5.3 Documentary Evidence

- 5.3.1 Early 19th century historical mapping: Ordnance Survey, Surveyors' Drawings 1806–7 and 1st edition 1"/mile map 1809 and later; Greenwood 1827
Historical maps at smaller scales from the earlier 19th century show a track on the line of Boughmore Lane, longer than the claimed route. It leads from Cotmaton Road to buildings named as Barn with no further continuation beyond it, before other roads and housing had been built with later residential development of the area.
- 5.3.2 Later 19th century historical mapping: Sidmouth Tithe Map 1839 & Apportionment 1841; Ordnance Survey 25"/mile late 1880s
Boughmore Lane is shown on later maps at larger scales. The Tithe Map for Sidmouth parish in 1839 shows it as a track leading from Cotmaton Road further to the buildings, passing two other properties and with no continuation beyond. It is shown as enclosed from the adjoining fields and in the same way as other routes now recorded as public roads, but also others leading only to properties or land.
- 5.3.3 The Ordnance Survey 25" to a mile 1st edition map surveyed in 1888 shows the route in the same way as a wooded track and named as Boughmore Lane leading only to the property, named as Boughmore and now known as Stonebarrow, with no continuation. It passes three properties, with Marino Lodge at its start from Cotmaton Road, also with Cotlands Lodge and Boughmore Cottage as the only other houses built on it by that date.
- 5.3.4 Later historical mapping, from early 20th century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records and later Ordnance Survey maps
The later Ordnance Survey 2nd edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1st edition map, with only those three properties along it but other new houses built nearby including on a new section of road with further development as a residential area. Later editions of those maps, partially revised in 1911, were used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation.
- 5.3.5 The records are not complete and part of the route is shown leading to Boughmore Road, which had been built by that date. It is excluded from the colouring of adjoining defined hereditaments or assessment areas of land and properties, in the same way as other routes, including those recorded since then as public roads as well as other tracks not recorded now as public. Although suggesting that the route may have been considered to have the same status as other public roads at the time, it was still then the access for three properties, so may have been excluded as its ownership was not known, or with shared ownership and only other private rights of access.

- 5.3.6 Maps at smaller scales from the earlier 20th century, including by Ordnance Survey and Bartholomew, are at too small a scale to show the route in any detail. Later Ordnance Survey 'A' edition larger-scale mapping from 1954, around the time that the Definitive Map was drawn up shows the area as having been developed further by that date. More houses and other roads had been built with further residential development, including on Boughmore Road connecting the end of Bickwell Valley to halfway along Boughmore Lane at the end of the claimed route.
- 5.3.7 The Ordnance Survey 'B' edition mapping from 1968 shows it in the same way, with further residential development by then, including the area of houses built in Cotlands adjoining along the south side of the claimed route. The route is shown as open at both ends, indicating that they were not obstructed by any barriers such as gates.
- 5.3.8 The showing of the claimed route on later and current maps records only its physical existence from then until more recently. They do not indicate on their own or support the existence of a public right of way, which would require other more significant supporting documentary or map evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way" and may be presumed to apply to earlier and other commercial maps as well.
- 5.3.9 Aerial photography
Earlier RAF aerial photography from 1946–9 shows the line of the claimed route as a wooded track between the fields before the Cotlands houses had been built and continuing as a track running between houses to Boughmore Road. More recent aerial photography between 1999–2000 and 2007 shows the route as it is currently, with the line of a partly wooded track connecting to a more open hedged section and surfaced at each end where it provides the access to properties.

5.4 User Evidence

- 5.4.1 Only three evidence forms relating to claimed use of the route were submitted between September and October 2013 following the consultations, one completed on behalf of two people. They provide evidence of use by only four people who live in houses on Boughmore Lane beyond the route, which does not represent sufficient use for a prima facie test of whether public rights can be considered to subsist or even be reasonably alleged to subsist. Although stating that they had used the route between the early to mid–1990s and 2008 to get to other parts of Sidmouth, particularly on the sea front or beach, other information that they all provided relating to its condition is significant as well as historical details of its origins.
- 5.4.2 They reported that a section of the lane has been allowed to become overgrown so that it is now virtually closed and during heavy rain, parts of it have been washed away and the owners of adjacent houses were also said to use it for dumping their garden rubbish. It meant that use was said to have been difficult or even dangerous for a long time, although they believed that the lane would be used if it was cleared and repaired.

5.5 Landowner Evidence

- 5.5.1 Landowner evidence forms were submitted by the owners of nine properties adjoining the claimed route. Other information provided by one of them indicated that the adjoining field to the north was owned by the National Trust. It did not provide any evidence, but was reported to have bought the field to prevent further housing development in the area and let it out for grazing to a local farmer.

- 5.5.2 Almost all of the owners of the properties did not believe the claimed route to be a public right of way, as it used to be the access only to a farm which was said to have been part of an estate sold in 1915. Most of them had never seen any members of the public using it, with some reporting occasional attempts by people who had turned back because it is too dangerous or impassable. None of them indicated that they owned any part of the route and they had not required people to ask permission when using it or had put up notices or signs to state that it was not public, or obstructed it.
- 5.5.3 Those using the more open ends of the route at Cotmaton Road and Boughmore Road for access to their properties, including in vehicles, said that they had private rights for access, including in vehicles, or permissive rights from the owners of other properties. One reported that the farmer used part of it from Boughmore Road for access to the adjoining fields for grazing animals, also with vehicles.
- 5.5.4 The owner of the property at the Cotmaton Road end reported maintaining part of that end of it for his access alongside his hedge used for parking and next to the access for his neighbours that they had surfaced. The remainder was said now to be a ditch as the result of severe flooding, including from a damaged storm drain further along the lane, that sometimes threatens his property and needs some flood protection measures. Some of the owners were concerned that opening the lane up as a public right of way, or extension of the surfacing without drainage improvements, would lead to an increased risk of flooding.

5.6 Rebuttal Evidence

- 5.6.1 No information has been provided for evidence of any efforts by the landowner to prevent use of the claimed route, although there is no substantial evidence of use by the public to rebut.

5.7 Discussion

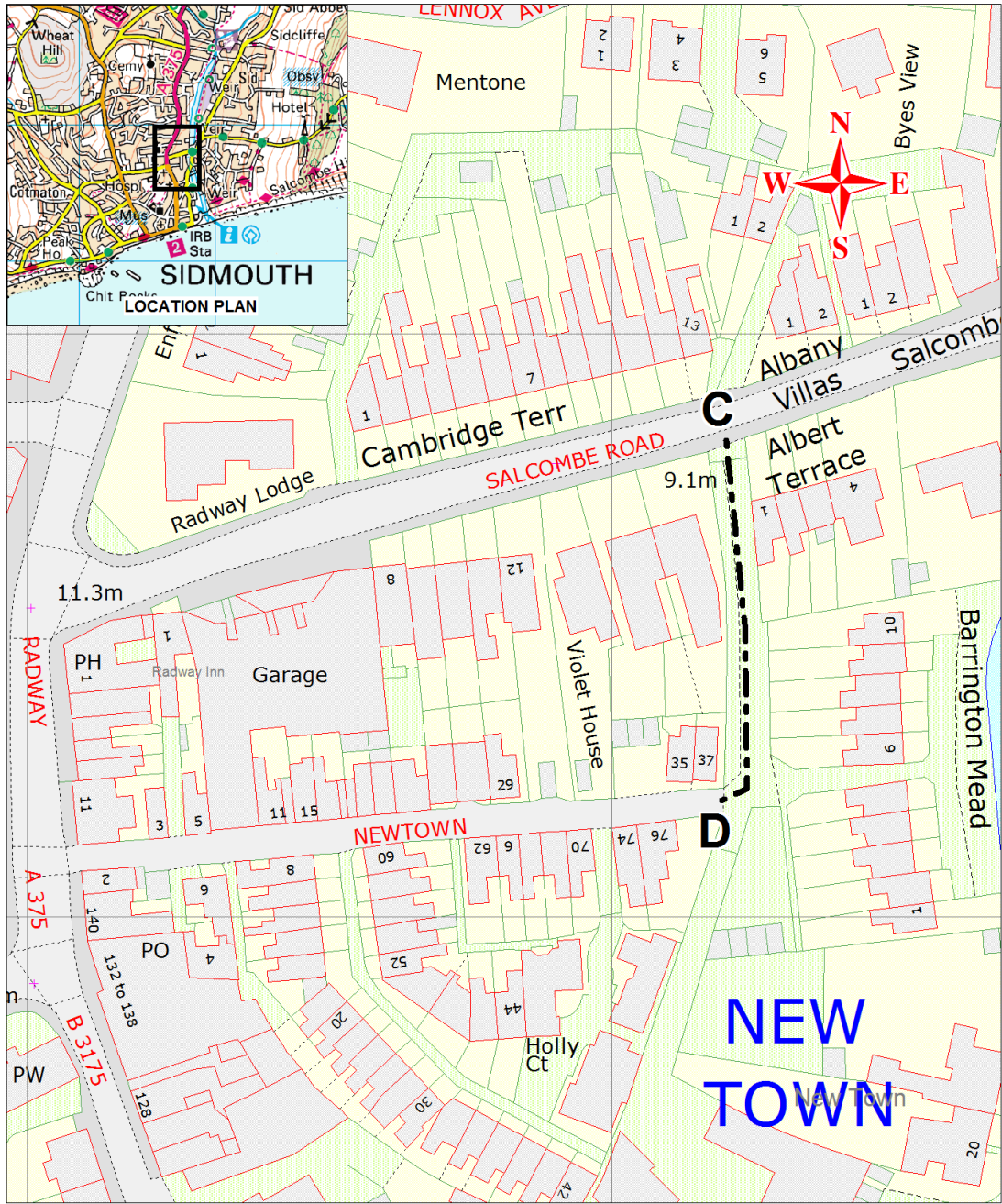
- 5.7.1 There has been no challenge to use of the route for this claimed addition as a footpath and no event for calling its use into question, such as an obstruction or a formal application. A small amount of user evidence was submitted in connection with the current parish review, which is considered insufficient for investigation, particularly for a test of statutory dedication under Section 31 of the Highways Act 1980, taking account of any evidence of the landowner's lack of intention to dedicate. It is also insufficient for considering in relation to a test under common law with reference to the evidence from adjoining landowners and with historical and other documentary evidence for an inference of any earlier dedication.
- 5.7.2 Historical mapping shows that the whole claimed route has existed physically on its current line since at least the first half of the 19th century, but as a part of a longer cul—de-sac track leading only to farm buildings. Later Ordnance Survey mapping shows that it remained part of that route until early in the first half of the 20th century, with the building of new roads and housing for residential development in the area. More recent mapping with aerial photography shows that it has remained on its current line with further housing development and up to the present.
- 5.7.3 No other more significant historical maps have been discovered to indicate specifically that the route may have had the reputation of being public in the past or more recently. Although recent maps show that it has been open to the roads at each end with no obstruction and available for use from the early 1900s, no evidence has been discovered to show that it may have had the reputation of being used by the

public since that time. Very little evidence was submitted to show any more recent or current use.

- 5.7.4 It is not considered sufficient to bring to the attention of the landowner that a public right to use the route was being asserted, even though there is no evidence of significant efforts made to prevent any use or to show that there was no intention to dedicate. Evidence from adjoining property owners indicates that the route has remained open only at both ends, which are used mainly for private access to their properties including in vehicles and from one end for farming access to fields.
- 5.7.5 They indicated that the connecting middle section has become very overgrown and obstructed, with damage from flooding and poor drainage said to have made it impassable and difficult or even dangerous to use, even on foot. That was confirmed by the few people who said that they had used it from other nearby properties, with reports that some had turned back when it was found to be impassable.
- 5.7.6 Considering the evidence of use submitted with historical mapping and landowner evidence in this case, dedication at common law as a public right of way even as a footpath cannot be inferred. The evidence does not support any claim that the route should be recorded as a public right of way from a suggestion that at some time in the past the landowner may have intended to dedicate it, with the public having accepted dedication and used it. Parts of it have been used only for private and farm access, including in vehicles. There is no evidence to support any suggestion that public rights may subsist for it to be considered for recording with any public status.

5.8 Conclusion

- 5.8.1 From this assessment of the user evidence submitted, in conjunction with historical map evidence discovered and evidence from adjoining property owners, it is considered insufficient to support any claim that the route should be recorded as a public right of way, even as a footpath. From consideration under common law, it is insufficient to make an Order on the basis that a public right of way subsists or can be reasonably alleged to subsist. The recommendation is, therefore, that no Order be made to add the claimed route as a public footpath on the Definitive Map.



map ref **SY1287**

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DEVON COUNTY COUNCIL

Definitive Map Review, Sidmouth parish
 Informal Consultations, Proposal 2:
 Claimed footpath, Salcombe Road to Newtown

drawing number	HTM/PROW/13/28
date	Mar 2013
scale	1:1000
drawn by	NSC

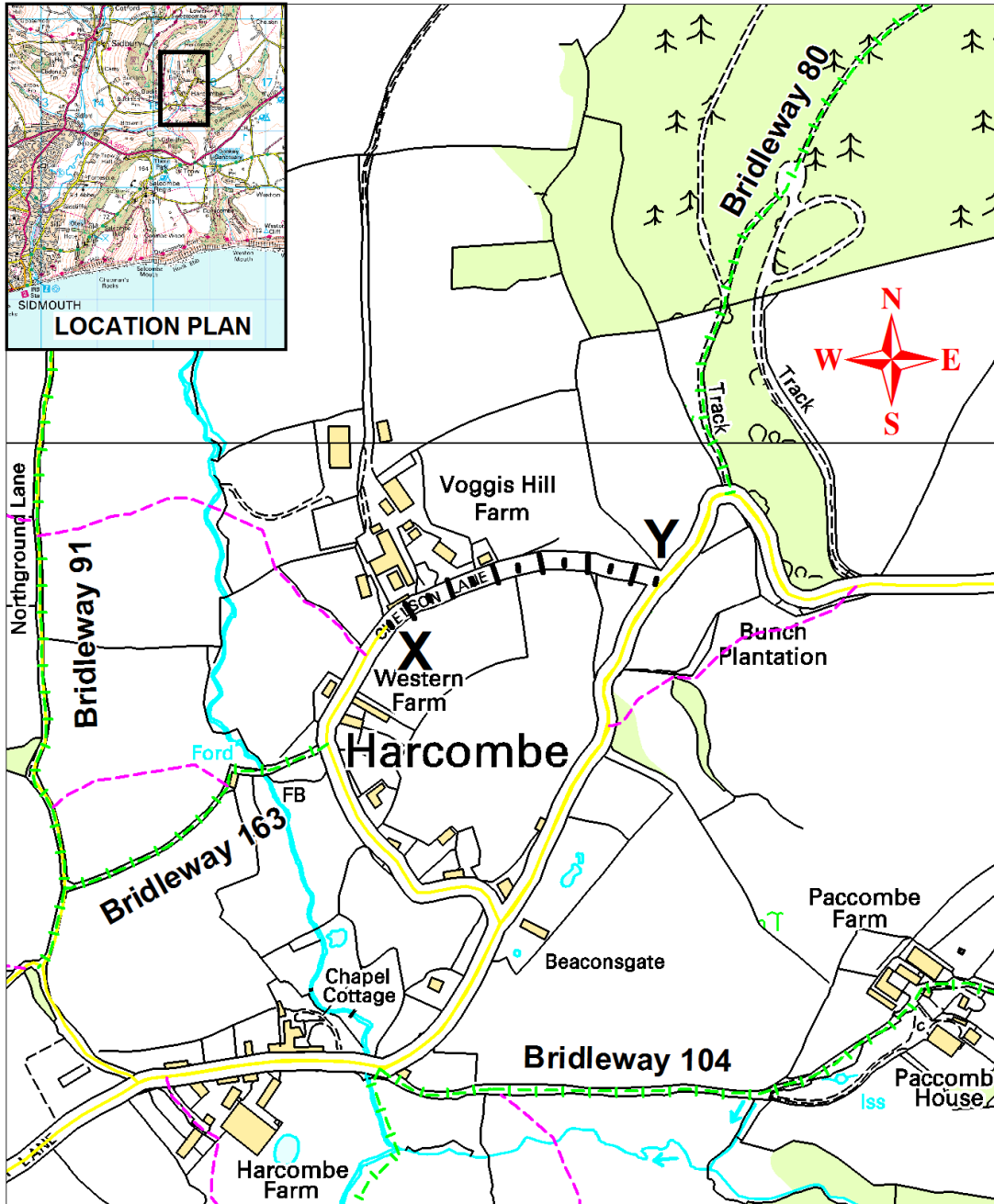
Notation

Claimed footpath C - D (65 metres) - - - - -

David Whitton

HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE





map ref SY1591/1590

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Devon County Council
 Definitive Map Review, Sidmouth parish
 Informal Consultations, Proposal 6:
 Claimed bridleway, Chelson Lane

drawing number HTM/PROW/13/32
 date Mar 2013
 scale 1:5 000
 drawn by NSC

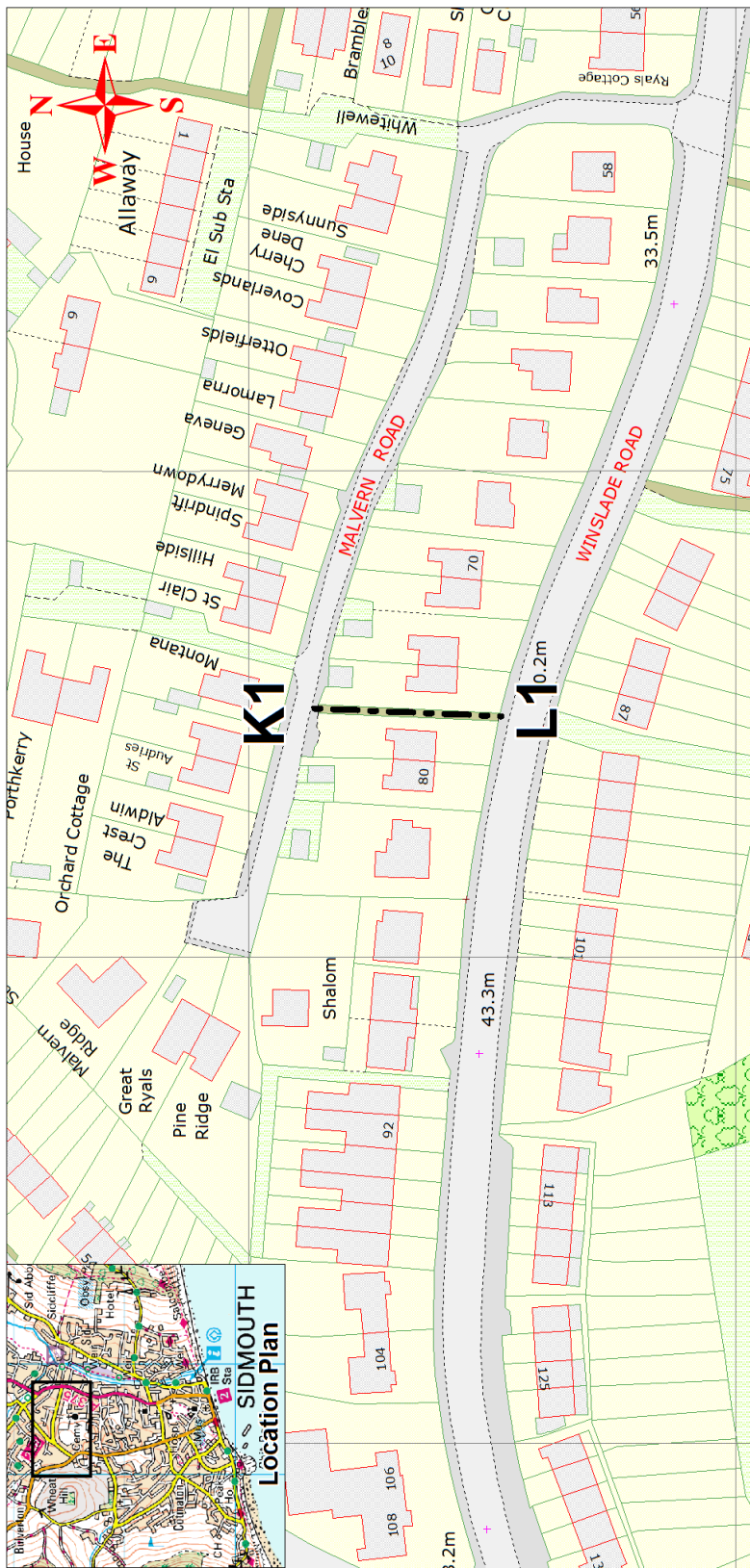
Notation

- Claimed bridleway X - Y (250 metres) ······
- Existing bridleway - - - - -
- Existing footpath - - - - -

David Whitton



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map ref: SY1288

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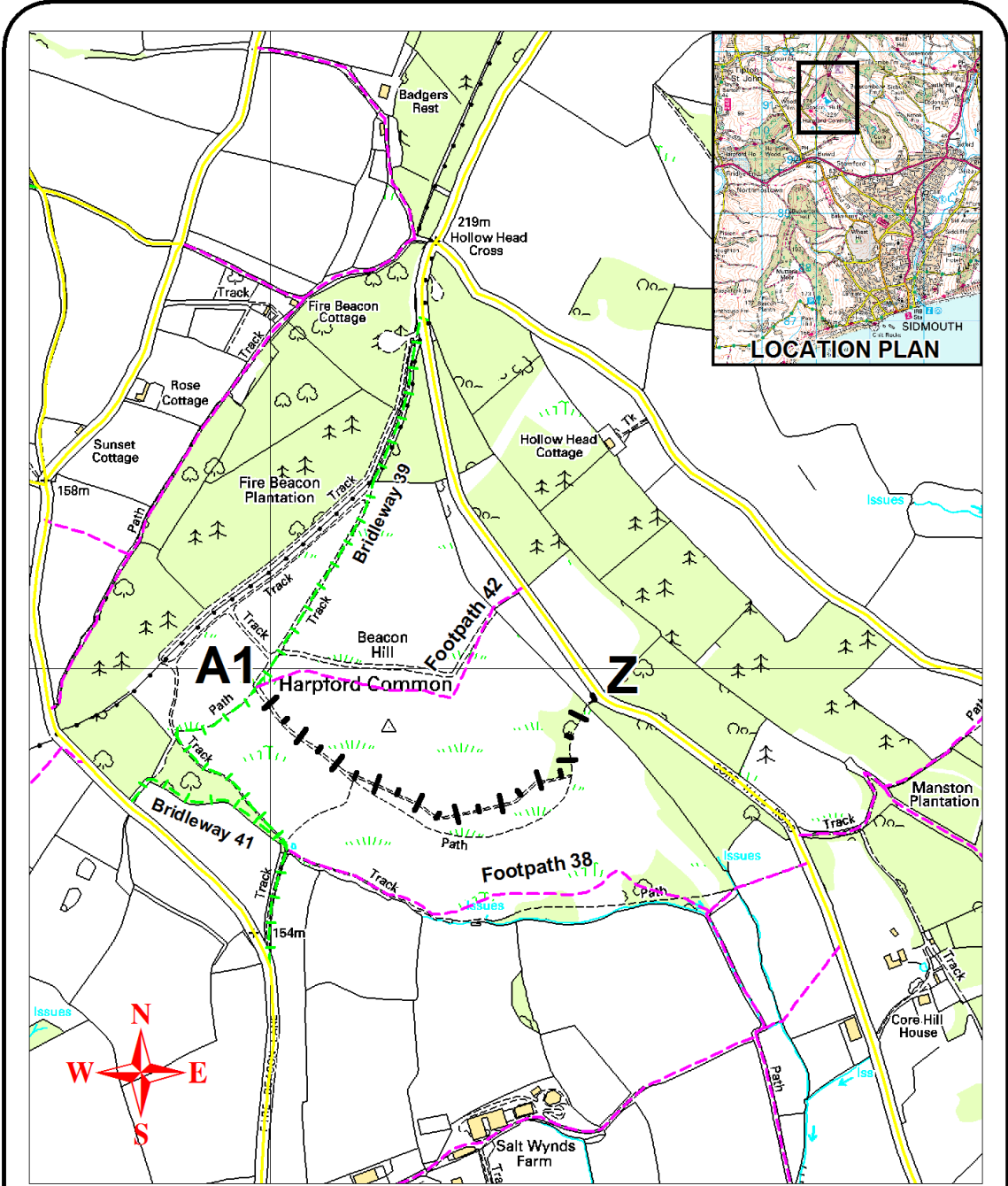
drawing number HTM/PROW/13/38
 date Mar 2013
 scale 1:2500
 drawn by NSC

DEVON COUNTY COUNCIL
Definitive Map Review, Sidmouth parish
Informal Consultations, Proposal 12:
Unrecorded route, Malvern Road to Winslade Road

Notation
 Unrecorded route, K1 - L1 (40 metres) - - - - -

David Whitton
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map ref sy1591/1590

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Devon County Council
 Definitive Map Review, Sidmouth parish
 Informal Consultations, Proposal 7:
 Claimed bridleway, Beacon Hill, Harford Common

drawing number	HTM/PROW/13/33
date	Mar 2013
scale	1:7 500
drawn by	NSC

Notation

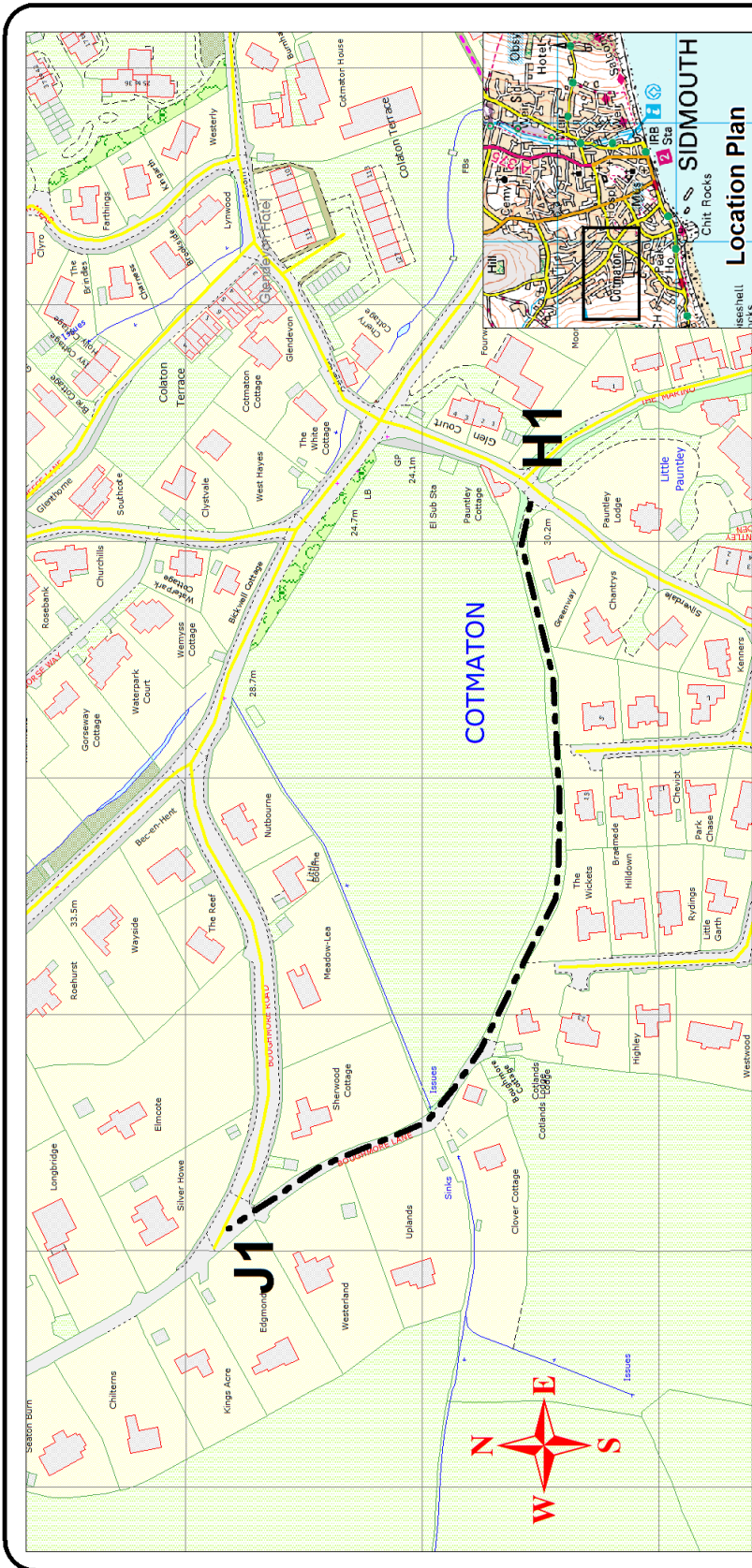
Claimed bridleway Z - A1 (600 metres) - · - · - · - · - · - · - · - · - · -

Existing bridleway - - - - -

Existing footpath - - - - -

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map ref: SY1287/1187

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DEVON COUNTY COUNCIL

**Definitive Map Review, Sidmouth parish
Informal Consultations, Proposal 11:**

Unrecorded route, Cotmaton Road to Boughmore Road - Boughmore Lane

Notation

Unrecorded route, H1 - J1 (375 metres) - - - - -

drawing number **HTM/PROW/13/37**
 date **Mar 2013**
 scale **1:2500**
 drawn by **NSC**



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