

**Definitive Map Review 2014
Parish of Sheldon**

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) no Modification Order be made in respect of the claimed upgrade of Bridleway No. 10, Sheldon on Church Lane to Byway Open to All Traffic, points A–B shown on drawing number HTM/PROW/14/105 (Proposal 1); and that**
- (b) a Modification Order be made to modify the Definitive Map and Statement by adding a footpath between Footpaths 2 & 3, Sheldon on Landcroft Lane, points C–D shown on drawing number HTM/PROW/14/107 (Proposal 2).**

1. Summary

The report examines the Definitive Map Review for the parish of Sheldon, in the district of East Devon. It involves two proposals, from an application for the claimed upgrade of a recorded bridleway to Byway Open to All Traffic (BOAT) and an unrecorded missing link between two recorded footpaths. No other amendments are required in the process to complete the review in the parish.

2. Introduction

The original survey by Sheldon Parish Meeting in 1950 under s.27 of the National Parks and Access to the Countryside Act of 1949 produced a map and details of nine footpaths submitted to the County Council. Comments were added on behalf of Honiton Rural District Council and a tenth route was added as a Road Used as a Public Path (RUPP) by the Parish Meeting in 1956, with all of those routes recorded at the Draft Map stage in 1957. Six of the footpath routes surveyed were withdrawn or omitted, particularly in the area of woodlands on the southeast adjoining the parish of Dunkeswell, with no continuations across the parish boundary into the area of the Second World War airfield built in 1941.

It left three footpath routes and the RUPP to be recorded in consultations for the Provisional Map, which were then recorded on the original Definitive Map, considered to have existed from the relevant date of 1 September 1957. The reviews of the Definitive Map under s.33 of the 1949 Act, which commenced in the 1960s and 1970s but were never completed, produced no suggestions from the Parish Meeting. The Limited Special Review for the reclassification of RUPPs in the whole county, carried out in the early 1970s, resulted in the one route recorded with that status in the parish being reclassified as a bridleway.

No Public Path Orders have been made in the parish for alterations to the existing recorded footpaths and bridleway or the creation of new routes to require the making of any Legal Event Modification Order for recording on a new revised Definitive Map.

One other bridleway has been recorded in Sheldon more recently by a Modification Order from the review process in the adjoining parish of Kentisbeare, for a route continuing across

the parish boundary. As a result, the current number of recorded public rights of way in the parish is three footpaths and two bridleways. Investigation of a formal application made on behalf of the Trail Riders' Fellowship (TRF) in 2005 and a section of an unrecorded missing footpath link identified previously were deferred to be included as the proposals in the current review process.

3. Background

The current Review was started with a public meeting in May 2014, followed by consultations in September 2014 on the two proposals.

4. Proposals

Please refer to the Appendix to this report.

5. Consultations

General consultations have been carried out with the following results:

County Councillor Paul Diviani	-	no comment;
East Devon District Council	-	no comment;
Blackdown Hills AONB	-	do not support Proposal 1 and support Proposal 2;
Sheldon Parish Meeting	-	do not support Proposal 1 and support Proposal 2 as a regularly used footpath;
Country Land and Business Association	-	no comment;
National Farmers' Union	-	no comment;
ACU/TRF	-	no comment;
British Horse Society	-	no comment;
Cyclists' Touring Club	-	no comment;
Ramblers	-	support Proposal 1 as restricted byway and Proposal 2 as used by members.

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

6. 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.

7. Legal Considerations

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

8. Risk Management Considerations

No risks have been identified.

9. 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.

10. Conclusion

It is recommended that no Modification Order be made in respect of Proposal 1, as the evidence is considered insufficient to meet the requirements of the legislation and that a Modification Order be made to add a footpath link in respect of Proposal 2. Details concerning the recommendations are discussed in the Appendix to this report.

There are no recommendations to make concerning any other modifications. 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.

11. 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.

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.

David Whitton
Head of Highways, Capital Development and Waste

Electoral Division: Honiton St Paul's

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	2014 to date	NSC/DMR/SHEL

ns101014pra
sc/cr/DMR Parish Sheldon
05 031114

A. Basis of Claims

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

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

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

- (i) a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates; and
- (ii) a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description

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

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

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

1. **Proposal 1: Schedule 14 application – claimed upgrade of Bridleway No. 10, Sheldon on Church Lane to byway, points A–B shown on drawing number HTM/PROW/14/105**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 1 for the claimed upgrade of the recorded bridleway on Church Lane to byway.

1.1 Background

1.1.1 The application for this proposal is one of a large number made by the Trail Riders' Fellowship (TRF) between 2005 and 2006 to record routes in all parts of the county as Byways Open to All Traffic (BOATs), ahead of the Natural Environment and Rural

Communities Act 2006 coming into effect. The Act prevented routes being recorded as BOATs except in particular circumstances where evidence is sufficient and meets the specific requirements of limited exceptions.

- 1.1.2 This application is for the claimed upgrade to BOAT of a recorded bridleway west of the village of Sheldon. The route starts from Drift Lane, a surfaced minor county road (point A), next to the start of Footpath No. 1 and follows a hedged and wooded unsurfaced lane, known as Church Lane, running eastwards between fields. It continues from a field gate with a stone surface and vehicle tracks, passing the entrances to farm buildings and houses as a fully surfaced track nearer the village. The lane ends at a junction with the minor county road running through Sheldon village (point B), near the centre of the village to the southwest of the church.
- 1.1.3 Footpath No. 1 is recorded running from a field gate on Drift Lane running on a route parallel to Church Lane following alongside the hedge banks on the northern boundary of two adjoining fields to the south. It continues turning southeastwards to cross a field and ends on the minor county road further southwest of the village.

1.2 The Definitive Map process and Maintainable Highways Records

- 1.2.1 Bridleway No.10 was not surveyed in 1950, but was added by Sheldon Parish Meeting in 1956 as a Road Used as a Public Path (RUPP) from being considered an 'ancient' Parish Road with reference to the Tithe Map. It was recorded as a RUPP at the Draft and Provisional Map stages and then on the Definitive Map with that status, but reclassified later as a bridleway, which is considered further below.
- 1.2.2 Church Lane was not shown on earlier records of maintainable highways to suggest that it was considered then to have higher status than bridleway with public vehicular rights. It is not shown on the current records of maintainable highways, the List of Streets, compiled from later and more recent records.

1.3 Documentary Evidence

- 1.3.1 Early historical mapping – early 19th century: Ordnance Survey, Surveyors' Drawings 1802 and 1st edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827
Early historical maps at smaller scales, particularly the Ordnance Survey drawings and 1st edition map, show the route of Bridleway 10 on Church Lane connected to the network of other routes in the area. Some of those are recorded now as public roads, although including others that are not recorded now as public. It is not shown on the 1st edition map in the same way as the connecting routes, which have one thicker line to indicate turnpike or main roads. Greenwood's later map, believed to have been mainly copied from earlier Ordnance Survey map editions, shows the route connected with the road network in the same way.
- 1.3.2 Later 19th century historical mapping: Sheldon Tithe Map 1840 & Apportionment 1841; Ordnance Survey 25"/mile late 1880s
Later maps at larger scales show the route in more detail, connecting with the network of routes later recorded as public roads. Church Lane is shown on the Tithe Map for Sheldon parish in 1840 uncoloured in the same way as all roads, but they were not labelled or identified in the Apportionment as public. They included those which were obviously public as well as others more likely to have been private tracks for access to fields and some not now existing. Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose. It does not, therefore, provide strong supporting evidence for the existence of higher rights, but records the route's physical existence, connected to the road network at that time.

- 1.3.3 The Ordnance Survey 25" to a mile 1st edition map surveyed in 1887 shows the whole route of Church Lane as an enclosed wooded lane and named, connecting with open junctions to the roads at each end. Dashed lines across the junctions indicate changes in surface or land parcel boundaries, rather than suggesting any barrier such as a gate. It is not shown with one thicker line, like the connecting roads, which are now recorded as public. The line of the path now recorded as Footpath No. 1 is shown on its current route running partly alongside in adjoining fields and labelled 'F.P.'.
- 1.3.4 The Revised New Series smaller-scale map for the area from the later 19th century suggests that the route may not have been considered as part of the road network at that time, showing it as uncoloured with the connected roads coloured. The key indicates the colouring to show First and Second Class metalled roads, recorded now as public, with uncoloured routes as Third Class or unmetalled roads with an inferior surface, but including some which are not recorded now as public.
- 1.3.5 Later historical mapping, from early 20th century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records; Bartholomew's mapping and later Ordnance Survey maps
The later edition of the Ordnance Survey 2nd edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1st edition map. The same later maps were used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation, a copy of which was submitted with the application. Church Lane is shown completely excluded from the adjoining hereditaments or assessment areas of land in the same way as the connecting roads.
- 1.3.6 It could suggest that the route may have been considered to have some form of public status to be included in the public road network at the time. However, there could have been other reasons for its exclusion including uncertainties about ownership or shared use for access, with other routes excluded that are for private access to buildings and land and not recorded now as public.
- 1.3.7 Maps at smaller scales from the earlier 20th century, particularly by Ordnance Survey and Bartholomew's map editions from the 1920s, are too small to show the route in any detail. The Ordnance Survey Popular Edition surveyed and published from 1919 indicated the suitability of roads for motor traffic. It shows Church Lane uncoloured in the same way as some minor roads and private tracks, with its connecting roads identified as narrow, or 'indifferent or winding' and 'bad' roads.
- 1.3.8 Later Ordnance Survey 'A' edition larger-scale mapping from 1964, around the time that the Definitive Map was being drawn up, shows the route in the same way as on earlier maps, named and open to the connecting roads at each end. Properties are shown as having been built adjoining the eastern end nearer the village by that date, indicating that part of it may have been used then from that end for private access. That is likely to have included vehicular use, as well as for agricultural vehicles for access to other buildings and into adjoining fields through gates further along the lane.
- 1.3.9 The showing of the route on early and later maps records its physical existence at those times until more recently and up to the present. They do not indicate on their own or support the existence of public rights of way with a higher status, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way" and may be presumed to apply to earlier and other commercial maps as well.

1.3.10 Aerial photography

Earlier RAF aerial photography from 1946–9 shows Church Lane as a hedged and wooded lane, mainly unsurfaced and connected to the roads at each end that have improved surfaces for vehicular use as public roads. The properties at the eastern end are shown to have been built by that date, with the indication of an improved surface for access to them, as well as its use for agricultural access to adjoining fields further westwards towards Drift Lane.

1.3.11 More recent aerial photography between 1999–2000 and 2007 shows the route in the same way up to more recently. They show indications of an improved surface from the eastern end for access to the buildings and adjoining farmland further along, with the section continuing to Drift Lane remaining with its current unimproved surface and no access to adjoining fields.

1.4 **Definitive Map Reviews and Consultations**

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

1.4.2 There were public consultations on the process and Draft Revised Maps and Statements were published, in which the route was proposed to be reclassified as a bridleway. Sheldon Parish Meeting had responded with the view that it should be recorded as a bridleway but retaining all existing vehicular rights, which was clarified as referring to private vehicular rights. There was no objection and as a result of that process the route was reclassified as a bridleway.

1.4.3 There have been no previous suggestions that its recorded bridleway status should be considered for upgrading in earlier review processes that were started but not completed. The claimed bridleway upgrade was included in the consultations in September 2014 on the basis of the application submitted in 2005. The responses included no support by the Parish Meeting for the possibility of it resulting in the route being recorded to allow public use by motorised vehicles. Other specific comments on the proposed upgrading of the bridleway were received from adjoining property owners and local residents. However, some aspects are mainly on grounds that cannot be taken into account for the consideration of evidence in the review process, including concerns about suitability and safety.

1.5 **User Evidence**

1.5.1 Three user evidence forms were submitted with the application relating to Bridleway No. 10, with one completed on behalf of two people so that they relate to use by a total of four people. Three of them reported having used it in a vehicle, specified by one as a motorcycle.

1.5.2 All of the users had used the route believing it to be a Byway Open to All Traffic, on the basis that it always had been, or from local knowledge and maps showing it as a RUPP. Most of the use was reported to have been between 10 and 12 years up to 2005, with only one indicating use for just over 20 years since 1984 although said to have been with other TRF members and in groups of up to 10 riders.

- 1.5.3 The frequency of use was specified as from between about only once or twice a year up to 6 times a year, or about once every two months. All of the users indicated that their use had been for pleasure, without specifying where they were going to or from and said by one to be 'random'.
- 1.5.4 None reported having been stopped or turned back when using the route or told that they could not use it. All of them believed that the owner was aware of its use, said by one to be from motorcycle tread patterns left on the surface. None said that they had been given permission to use the route or were tenants and had worked for the owner. None had seen any obstructions on the route such as stiles or locked gates, or any notices saying that they should not use it. None of them indicated whether they knew who owned the land crossed by the route.

1.6 Landowner and Rebuttal Evidence

- 1.6.1 The owners of the fields on both sides adjoining Church Lane completed a landowner evidence form. Although referring to Footpath No. 1 adjoining the lane, they provided further additional information relating to the claimed upgrade of the recorded bridleway to byway from family ownership of the farm since 1947, when it was just a track used by horses and walkers.
- 1.6.2 Referring to three sections on the route, the bottom end was said to have been improved over recent years by loads of stone to allow use by agricultural vehicles and deliveries by lorry. The middle section is used only by agricultural vehicles and by stock to reach adjoining fields, also by horses and walkers, with the top end used only by horses and walkers. They do not consider the bridleway to be suitable for use by any more traffic, because of its effects on horses, farm animals and wildlife.
- 1.6.3 One of the owners of other adjoining properties also provided evidence relating to his knowledge and use of the route. He referred to its main use by walkers and horseriders, with access by vehicles into his own and other properties or farm buildings and fields. Any other occasional vehicular use, particularly on motorcycles, was considered to be dangerous and the route was believed to be suitable only for use by the public as a bridleway.

1.7 Discussion – Statute and Common Law

1.7.1 Statute (Section 31, Highways Act 1980)

- The application for the route to be upgraded was not made in response to any specific event acting as a significant challenge to its use, particularly in vehicles. It was not submitted as the result of any specific action taken by a landowner to obstruct or prevent access to the route other than on foot and horseback from a particular date, but was made in advance of the effects of new legislation. There is, therefore, no evidence of any significant actions by a landowner having called into question use of the route other than as a bridleway at a specific time for consideration under statute law.
- 1.7.2 Schedule 14 applications provide the date of an event that can be taken to have called the public's right to use a route into question, particularly if there are no significant previous events or actions that may have led to the applications being made, or any others even earlier. As there has been no such event or action in this case, the period for consideration under statute is the 20 years from November 1985 to the date of the application in November 2005.
- 1.7.3 Considering evidence of use by the public during that period to support the claimed upgrade, there are forms relating to use of the route in vehicles or on motorcycles by only four people. In addition to being insufficient evidence of such use it is also, technically, a

criminal offence under Section 34 of the Road Traffic Act 1988 to drive a motorised vehicle on land not forming part of the road, or on a route not recorded with vehicular rights without specific lawful authority. The only basis for its possible consideration is if there was any significant supporting evidence from which an earlier dedication of a route as a vehicular highway can be presumed or inferred. That could be particularly from stronger historical documentary and map evidence sources, such as an inclosure award.

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

1.7.5 The evidence of use is, therefore, considered insufficient to support upgrading the recorded bridleway route to Byway Open to All Traffic by a statutory presumption of dedication from use by the public. There is no need to consider whether there were actions taken by the landowners during the 20 year period to provide evidence of any lack of intention to dedicate the routes with a status higher than bridleway, although no such evidence has been submitted.

1.7.6 **Common Law**

Considering the application in relation to common law requires taking into account the historical and other documentary evidence submitted and discovered, but without being able to consider the evidence of illegal use. Historical mapping shows that Church Lane has existed physically on the route since at least the first half of the 19th century and later recorded as Bridleway No. 10. Later Ordnance Survey and other mapping with aerial photography show that the route has continued to exist on its current line more recently up to the present.

1.7.7 The Tithe Map on its own is not significant in showing the route in the same way as others now recorded as public roads, which also included others that have never been recorded as public and are now private tracks for access only to land or properties. Although shown excluded on later Finance Act maps to suggest that it might have been considered then as included in the public road network, that may have been for other reasons relating to ownership and other routes are shown excluded which are not now recorded as public roads. Other mapping suggests that Church Lane has been regarded since the 19th century as a minor lane not as part of the public road network and with a poor surface that had remained mainly unimproved for any vehicular use, particularly from Drift Lane at the western end.

1.7.8 This is supported by remarks on the Parish Meeting's survey notes in 1950 for Footpath No. 1, suggesting that the path had probably arisen on a route through the fields adjoining Church Lane due to the lane's poor condition making it impassable for use on foot. Any improvements from the eastern end nearer the village have been made for private access to the adjoining houses after they had been built by then. That included private use for vehicles and also for vehicular access to farm buildings and fields alongside other parts of the route towards the western end, as indicated by the owners of adjoining land and properties.

1.7.9 No other more significant historical maps or references in historical documentary material have been submitted or discovered to indicate more specifically that the route may have had the reputation of being a public road in the past or more recently. In particular, there is no indication of any additional public expenditure on it or responsibility for its maintenance other than as a bridleway. The only suggestion of possible vehicular rights

is the original recording of Bridleway 10 as a RUPP, perhaps because of local uncertainty then about its use in vehicles. However, references to vehicular use at the time of the reclassification was clarified with the Parish Meeting to mean private use in vehicles, specifically for access to adjoining properties and land, rather than public use. On its own, it does not provide sufficient evidence as a basis for upgrading the recorded route.

- 1.7.10 Considering the historical mapping evidence, in relation to the evidence of all use, dedication at common law for the status of Byway Open to All Traffic cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to Church Lane being considered as a public highway, or having the reputation of being available for use by the public in vehicles apart from its original recording as a RUPP. There is no evidence to suggest that the landowner intended to dedicate the route as a public highway, or that the public accepted any dedication higher than that of bridleway and have used it on that basis. Its main use has been on foot and horseback in accordance with its recorded status as a bridleway, with private use in vehicles on part of it only for access to adjoining properties, farm buildings and land.

1.8 Conclusion

- 1.8.1 It is in the light of this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, that it is insufficient to support the claim that the route now recorded as a bridleway on Church Lane ought to be recorded with a higher status. From consideration under statute and common law there is, therefore, insufficient basis for making an Order in respect of the application. Accordingly, the recommendation is that no Order be made to upgrade the recorded Bridleway No. 10 to Byway Open to All Traffic or as a Restricted Byway, with no need to consider whether exceptions under the Natural Environment and Rural Communities Act 2006 apply.

2. Proposal 2: Unrecorded route – missing footpath link between Footpaths 2 & 3 on Landcroft Lane, points C–D shown on drawing number HTM/PROW/14/107

Recommendation: It is recommended that a Modification Order be made in respect of Proposal 2 for the addition of a footpath on the missing link between Footpath No. 2 and Footpath No. 3 along the connecting section of Landcroft Lane.

2.1 Background

- 2.1.1 A missing link between the end of the recorded Footpath No. 2 (point C) and the start of Footpath No. 3 (point D) in Sheldon was identified some time before the review process was due to reach the parishes in this area of East Devon district. Its investigation has been held over to be followed up as part of the current review in the parish. The link between the footpaths with no recorded public status is for about 100 metres along an unsurfaced section of a track, known as Landcroft Lane.
- 2.1.2 Landcroft Lane runs generally east to west connecting the surfaced minor county road running around Sheldon Hill north of the village. It has an improved surface at each end, providing vehicular access from the east to Lower Northcott Farm and Higher Northcott Farm with Sheldon Riding Centre and from the west to properties and poultry houses. Between those sections, including points C–D, the lane is narrower with a rough stone surface, used for vehicular access including by agricultural vehicles for access to fields and becoming too narrow for vehicles beyond point D.

2.2 The Definitive Map process and Maintainable Highways Records

- 2.2.1 The Statement for Footpath No. 2 records it as starting at the minor road in the village of Sheldon by the church, running northwards through the churchyard then through several fields and along a section of an access track to end on Landcroft Lane southwest of Higher Northcott Farm. Footpath No. 3 is recorded as starting from further north on the continuation of Landcroft Lane, running northwards from a bend in the lane through fields to the parish boundary. From there, it continues through woodland on Sheldon Hill as Footpath No. 45 in Hemyock parish to end on the minor road below the hill.
- 2.2.2 Landcroft Lane on the link between the recorded footpaths is described in both Statements as a 'Public Accommodation Road (not repairable by the inhabitants at large)'. That description can be contrasted with the section of the track on Footpath No. 2 leading to it described in the Statement as a 'Private' Accommodation Road, the significance of which is discussed further below.
- 2.2.3 Both footpaths were included with those surveyed originally by Sheldon Parish Meeting in 1950 for putting forward as public rights of way, leading to them being recorded on the Definitive Map and Statement. The survey for Footpath No. 2 describes it as recorded in the Statement, ending where the section of track joins Landcroft Lane at Northcott.
- 2.2.4 However, the first version of what was drafted as the Statement describes it as continuing onto Landcroft Lane, identified as a 'Private Accommodation Road ...' and turning eastwards to join the minor road at Lower Northcott. That appears to have been superseded by the identification of Landcroft Lane as a 'Public Accommodation Road ...', so that it was amended to describe it as ending on Landcroft Lane 70 yards southwest of Lower Northcott.
- 2.2.5 The survey for Footpath No. 3 describes it as starting at Northcott and running a short way along Landcroft Lane, then continuing northwards through the fields. The description that became the Statement, however, describes it as starting from Landcroft Lane as a 'Public Accommodation Road ...' further on, 80 yards west of Higher Northcott and continuing through the fields. There is, therefore, a discrepancy between the descriptions of both footpaths in the surveys and as amended for recording in the Statements, which relates to changes in what was considered to be the status of Landcroft Lane on the connection between them.
- 2.2.6 Landcroft Lane is not recorded on the current List of Streets as publicly maintainable highway. However, a short section of it at the eastern end was shown as maintainable highway on earlier records as a spur from the minor road leading to the Lower Northcott Farm buildings. It may have been that the first version proposed as the Statement for Footpath No. 2 intended it to continue eastwards along Landcroft Lane to join the end of the section considered then to be public highway. That seems to have changed with the identification of its status as not publicly maintainable, either for that short eastern section or its whole length. It was not reflected in the amendments to the descriptions in the Statements, so that neither included the provision of a recorded link connecting the two footpaths for use by the public on foot.
- 2.2.7 There have been no previous suggestions that the missing link should be considered in earlier review processes that were started but not completed. It was included in the consultations for the current review on the basis of its identification since then. The responses included support from Sheldon Parish Meeting and the Ramblers with additional information provided and other details from the owner of land adjoining part of Landcroft Lane.

2.3 Documentary Evidence

2.3.1 Early historical mapping – early 19th century: Ordnance Survey, Surveyors' Drawings 1802 and 1st edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827

Early historical maps at smaller scales, particularly the Ordnance Survey drawings and 1st edition map, show the route of Landcroft Lane connected at each end to the routes recorded now as public roads. It is not shown on the 1st edition map in the same way as the connecting routes, which have one thicker line to indicate turnpike or main roads. The section of track on part of the route now recorded as Footpath No. 2 is also shown as having existed then providing access to land. Greenwood's later map, believed to have been mainly copied from earlier Ordnance Survey map editions, shows the route connected with the road network in the same way.

2.3.2 Later 19th century historical mapping: Sheldon Tithe Map 1840 & Apportionment 1841: Ordnance Survey 25"/mile late 1880s

Later maps at larger scales show the route in more detail, connecting with the roads at each end. Landcroft Lane is shown on the Tithe Map for Sheldon parish in 1840 uncoloured in the same way as all roads, but they were not labelled or identified in the Apportionment as public. They included those which were obviously public as well as others more likely to have been private tracks for access to fields, such as the track on the route of Footpath No. 2 and some not now existing. Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, but it does indicate a path on the line of Footpath No. 3. It does not, therefore, provide strong supporting evidence that Landcroft Lane was considered to be some form of public road, but records its physical existence, connected to the road network at that time.

2.3.3 The Ordnance Survey 25" to a mile 1st edition map surveyed in 1887 shows the whole route of Landcroft Lane as an enclosed wooded lane and named, connecting with open junctions to the roads at each end. Dashed lines across the junctions indicate changes in surface or land parcel boundaries, rather than suggesting any barrier such as a gate. It is, however, shown with one thicker line, like the connecting roads, which are now recorded as public. The line of the track recorded now as part of Footpath No. 2 is shown on its current route continuing into fields and labelled 'F.P.', in the same way as the line of Footpath No. 3.

2.3.4 The Revised New Series smaller-scale map for the area from the later 19th century suggests that Landcroft Lane may not have been considered as part of the road network at that time, although showing it as uncoloured in the same way as the connecting roads. The key indicates that they were Third Class or unmetalled roads with an inferior surface, but also including some other routes that are not recorded now as public.

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

The later edition of the Ordnance Survey 2nd edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1st edition map. The same later maps used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation do not provide information for the area of Landcroft Lane to indicate whether or not it was excluded for that process.

2.3.6 Maps at smaller scales from the earlier 20th century, particularly by Ordnance Survey and Bartholomew's map editions from the 1920s, are too small to show the route in any detail. The Ordnance Survey Popular Edition surveyed and published from 1919 indicated the suitability of roads for motor traffic and shows Landcroft Lane uncoloured in the same way as the connecting minor roads. They are identified in the key as narrow or

'indifferent or winding' and 'bad' roads, although also in the same way as other private access tracks.

2.3.7 Later Ordnance Survey 'A' edition larger-scale mapping from 1964, around the time that the Definitive Map was being drawn up, shows Landcroft Lane in the same way as on earlier maps, named and open to the connecting roads at each end. The showing of the route on early and later maps records its physical existence at those times until more recently and up to the present. They do not indicate on their own or support the existence of public rights of way, or as evidence that it was a public road, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way" and may be presumed to apply to earlier and other commercial maps as well.

2.3.8 Aerial photography

Earlier RAF aerial photography from 1946–9 shows Landcroft Lane as a hedged and wooded lane, mainly unsurfaced and connected to the roads at each end with improved surfaces for vehicular use from the roads. More recent aerial photography between 1999–2000 and 2007 shows the route in the same way up to more recently. They show the improved surface from each end for access to farm buildings and fields, with the middle section remaining with its current unimproved surface and providing access to adjoining fields.

2.4 User Evidence

2.4.1 No evidence has been submitted of any use by the public on the missing link along the section of Landcroft Lane between the recorded public footpaths. However, use of it on foot can be inferred from other sources, including historical records with the procedures for drawing up the Definitive Map and its reputation of being a public route used on foot to connect the two footpaths. That can be supplemented by more recent information from responses to the consultation, particularly on behalf of the Parish Meeting and the Ramblers and by the owners of adjoining land.

2.5 Landowner and Rebuttal Evidence

2.5.1 The owner of Higher Northcott Farm with land adjoining the middle section of Landcroft Lane, part of Footpath No. 2 and crossed by Footpath No. 3 completed a landowner evidence form. He believed the missing link on the lane to be public as a footpath and had seen, or been aware of, walkers using the route regularly during the five years that the land had been in his ownership.

2.5.2 He said that he had not required people to ask permission when using the route and had not turned back or stopped anyone from using it. He had not put up notices or signs to state that it was not public, or obstructed its use. As the owner of the land on both sides, it can be presumed that he owns that part of the lane itself, so there is no evidence of any actions by the owner to prevent its use by the public between the two recorded footpaths, particularly on foot.

2.6 Discussion – Statute and Common Law

2.6.1 Statute (Section 31, Highways Act 1980)

There has been no challenge to use of this unrecorded missing link as a footpath and no event for calling its use by the public into question such as notices, or any obstruction to prevent use or a formal application to record it as a public right of way. No user evidence has been submitted in connection with any informal claim connected with the parish review process, previously or currently. It was identified as a missing link in the parish

footpath network some time before the current review, but had not been put forward for investigating in any earlier review process.

2.6.2 If there had been any challenge, obstruction or formal application, it could be used for investigating in accordance with the test for statutory dedication under Section 31 of the Highways Act 1980, taking into account any evidence of use and 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 and no evidence of use submitted, it can only be considered in relation to a test under common law. That involves historical and documentary evidence, with other evidence from which any earlier use can be inferred and with reference to landowner evidence.

2.6.3 **Common Law**

Historical mapping shows that a track has existed physically on Landcroft Lane, including the missing link between the footpaths, since at least early in the 19th century. Later Ordnance Survey and other mapping with aerial photography show that the whole route has existed on its current line since then and up to the present. They show that the lane has been open to the roads at each end, with no indication of any barriers such as gates preventing its use, particularly on the section of the missing link.

2.6.4 No other more significant historical maps or evidence have been discovered to indicate specifically that Landcroft Lane may have had the reputation of being part of the public road network in the past or more recently, apart from for a short section at the eastern end. The lane has been open and used mainly for private access, including in vehicles to properties, farm buildings and adjoining fields, with parts of it also used by horseriders in connection with the Sheldon Riding Centre. There is no evidence suggesting that the public have used the whole of the lane, but indicating that only the missing link has been used by the public on foot regularly between the recorded footpaths in the past and more recently, continuing up to the present.

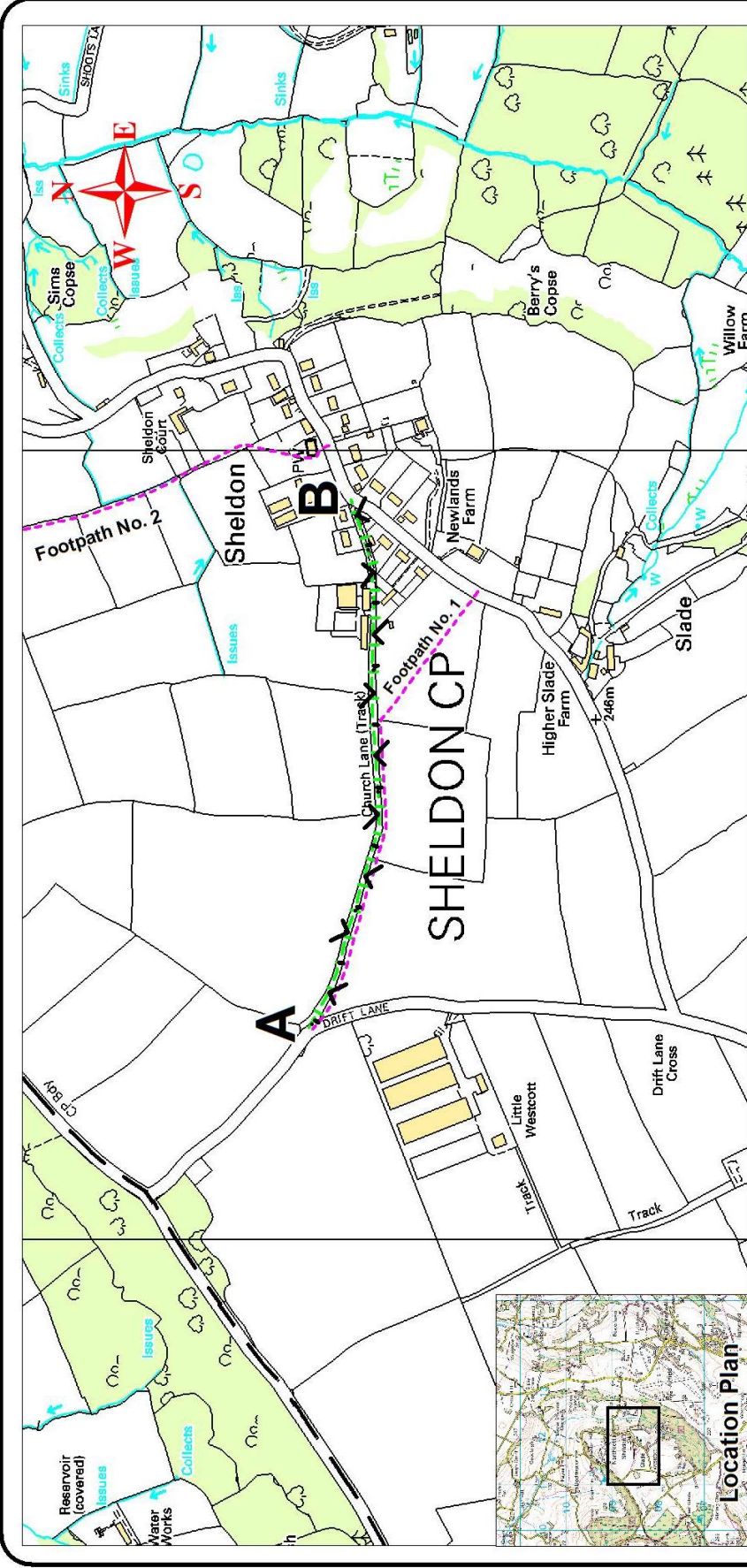
2.6.5 Such use can be inferred from its proposed inclusion in the Parish Meeting's survey in 1950 for the description of Footpath No. 3 starting at the end of Footpath No. 2 and proceeding along that part of Landcroft Lane before turning off to continue northwards through the fields, although not recorded in the Statement. In a response to the consultations, the local representative of the Ramblers reported that members of its East Devon group had walked both recorded footpaths, including the missing link on the section of the lane, during the past ten years. Although such recent use cannot be quantified, it can be considered as having been sufficiently open to bring to the attention of the landowner that a public right to use that section on foot was being asserted. That is supported by the response from the owner of adjoining land in relation to recent and current use. There is no record of any efforts made by the landowner to prevent that use, or any actions to show that there was no intention to dedicate it as a public right of way.

2.6.6 Considering evidence that the public have used the unrecorded missing link on foot, with historical mapping and landowner evidence, dedication at common law for a status of footpath can be inferred. The evidence supports the proposal that it should be recorded as a public footpath, suggesting an intention by the landowners to dedicate the route as a public right of way at some time in the past, acquiescing to its use and taking no actions to prevent it. Evidence suggests that the public accepted that dedication and have used it on foot to connect the two recorded footpaths since at least before 1950, which has continued up to the present.

2.6.7 Its use by the public on that section is likely to have been predominantly on foot only and there is no evidence to suggest that the lane should be recorded with higher status as either a bridleway or byway. The identification of Landcroft Lane as a 'Public' Accommodation Road from the time that the Definitive Map was drawn up, rather than as a 'Private' Accommodation Road, suggests that it may have been considered then to have some form of public status, but there is no evidence to indicate the nature and extent of the public's user rights. Any use of it on horseback is likely to be for private access to and from the riding centre, with use in vehicles only for private or agricultural access to buildings and adjoining fields.

2.7 Conclusion

2.7.1 From this assessment of what can be inferred for evidence of use by the public, in conjunction with other historical map evidence discovered and landowner evidence, it is considered sufficient to support recording the route of the missing link 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 on the route. The recommendation is, therefore, that an Order be made to add the proposed route of the missing link as a footpath on the Definitive Map, as part of Footpath No. 3 and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.



map ref: ST1008/1108/1208

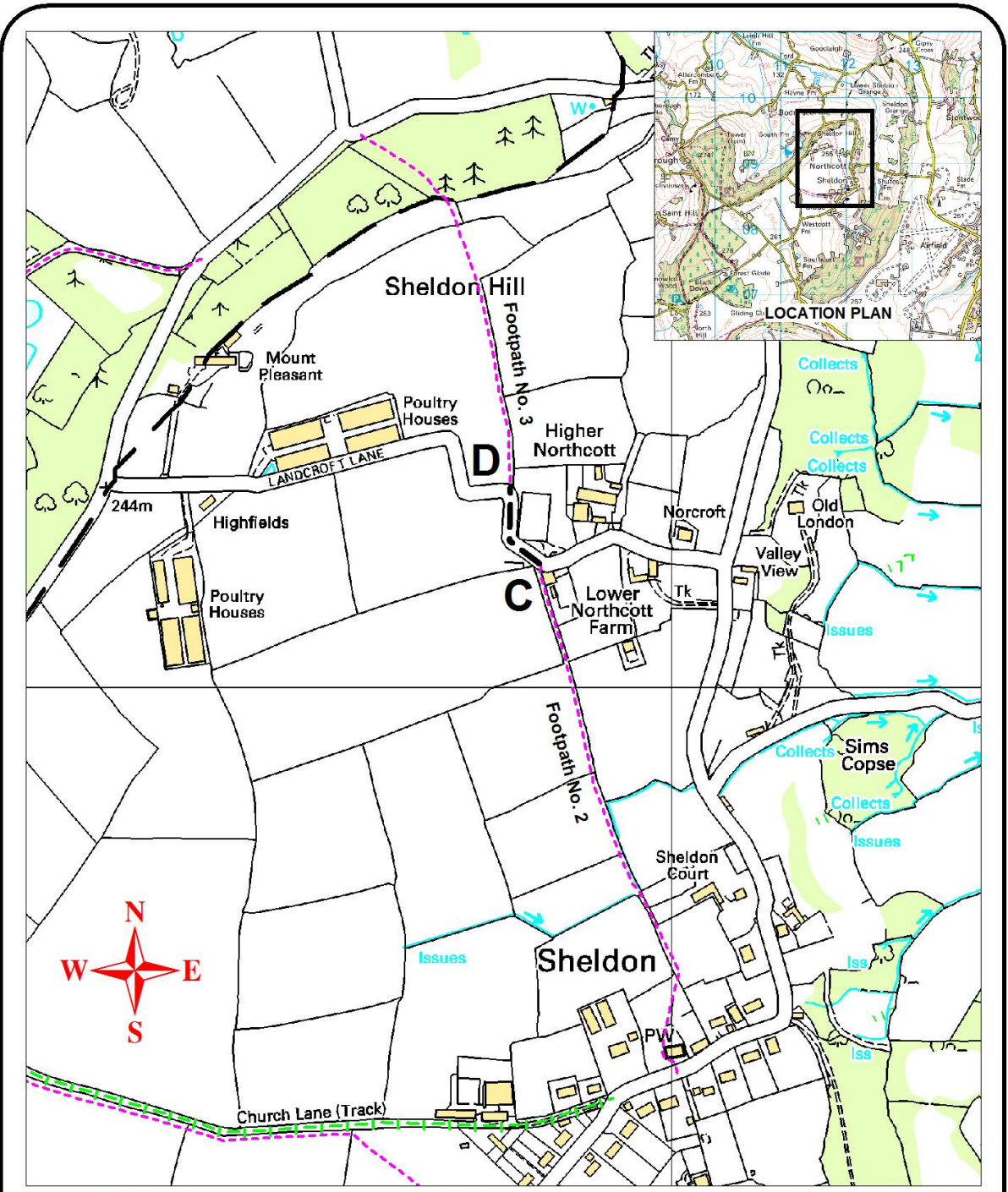
DEVON COUNTY COUNCIL
Definitive Map Review, Sheldon parish
Informal Consultations, Proposal 1:
Claimed upgrade of Bridleway No. 10 to byway

- Notation
- Claimed upgrade of bridleway A - B (690 metres)
 - Existing footpaths

drawing number HTM/PROW/14/105
 date Aug 2014
 scale 1:7500
 drawn by NSC

David Whitton
 HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE





map ref ST 1109/1209/1108/1208

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DEVON COUNTY COUNCIL
Definitive Map Review, Sheldon parish
Informal Consultations, Proposal 2:
Unrecorded route - missing link between
Footpaths 2 & 3, Landcroft Lane

drawing number HTM/PROW/14/107
 date Sept 2014
 scale 1: 6000
 drawn by NSC

Notation

Unrecorded route C - D (100 metres)	-----
Existing footpaths	-----
Existing bridleway	-----

David Whitton
 HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE

