

**Definitive Map Review
Parish of Chawleigh (part 2)**

Report of the Head of Highways, Capital Development and Waste

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

Recommendation: It is recommended that:

- (a) a Modification Order be made to modify the Definitive Map and Statement by adding a bridleway along Cloepark Lane between points A – B – C as shown on drawing number HCW/PROW/14/18a (Proposal 1); and**
- (b) no Modification Order be made to modify the Definitive Map and Statement by adding a Restricted Byway along Back Lane between points C – D as shown on drawing number HCW/PROW/14/25a (Proposal 7).**

1. Introduction

This second report examines further proposals arising from the Definitive Map Review in the parish of Chawleigh. Proposals 2 and 5 were previously considered at the Public Rights of Way Committee in June 2014 and proposals 3 (Footpath No 12) and 4 (Footpath No 14) will be presented at the Public Rights of Way Committee in February 2015. Proposal 6 concerned a proposed extinguishment via a Public Path Order and will be considered under delegated powers.

2. Background

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

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

Other changes were noted in the previous report.

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

3. Proposals

Please refer to the appendix to this report.

4. Consultations

General consultations have been carried out with the following results in respect of Suggestions 1 and/or 7 only.

| | | |
|------------------------------------|---|---------------------------------------|
| County Councillor Margaret Squires | - | no response to suggestions 1 and/or 7 |
| Mid Devon District Council | - | no response to suggestions 1 and/or 7 |
| Chawleigh Parish Council | - | support suggestions |
| Chulmleigh Parish Council | - | no response to suggestions 1 and/or 7 |
| British Horse Society | - | no response to suggestions 1 and/or 7 |
| Country Landowners' Association | - | no response to suggestions 1 and/or 7 |
| National Farmers' Union | - | no response to suggestions 1 and/or 7 |
| Ramblers' Association | - | no objections to suggestions |
| Trail Riders' Fellowship | - | no response to suggestions 1 and/or 7 |
| Devon Green Lanes Group | - | no response to suggestions 1 and/or 7 |

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

5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

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

9. Conclusion

It is recommended that a Modification order be made in respect of Proposal 1 but that no Modification Order be made in respect of Proposal 7.

10. Reasons for Recommendations

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

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Electoral Division: Newton St Cyres & Sandford

Local Government Act 1972: List of Background Papers

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| Background Paper | Date | File Ref. |
|-------------------------|--------------|---------------|
| DMR/Correspondence File | 1998 to date | DMR/Chawleigh |

tw071014pra
sc/cr/DMR parish of Chawleigh part 2
04 041114

A. Basis of Claim

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

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

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

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

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

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

1. **Proposal 1: Proposed addition of a bridleway along Cloepark Lane from Southcott Cross to the west end of the county road known as Fiddlecott Lane from GR SS 7077 1169 to SS 7130 1168.**

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement to add a Public Bridleway along Cloepark Lane between points A – B – C as shown on drawing number HCW/PROW/14/18a.

1.1 Background

- 1.1.1 The omission of Cloepark Lane from the Definitive Map had been raised by the parish council a number of times over the years and does appear to have been proposed for inclusion in the initial parish submissions of 1950. Some user evidence forms were completed in 1998 with a further two forms received in 2005, when the status of the lane was queried by a member of the public. The route was accordingly included as a proposal for change when the current Definitive Map Review commenced.

1.2 Description of the Route

- 1.2.1 The route starts at Point A at Southcott Cross (previously known as Smithington Cross in the early 20th century) and proceeds eastwards along Cloepark Lane (also known locally as Bluebell Lane) for approximately 550 metres to the end of the maintained section of county road known as Fiddlecott Lane, running west to east. The county road section of Fiddlecott Lane continues east to Box's Corner from point C whilst the other part continues southwards as a farm access track to Fiddlecott Lane. Footpath No. 5, Chawleigh runs along the section of lane going to the farm and then proceeds northwards across a field from point C towards Chawleigh.
- 1.2.2 The lane has an unimproved surface of earth and grass and does get muddy in winter when used by agricultural or other vehicles. The width of the lane is much wider than the usual green lane as can be seen in the photographs of the route that are included in the backing papers.

1.3 Consultation Responses

- 1.3.1 Chawleigh Parish Council have advised that they are in support of the changes put forward. The Crediton Footpaths Officer for the Ramblers Association advised that they would not have any objections to the proposed changes as laid out in the schedule.

1.4 Documentary Evidence

1.4.1 Ordnance Survey and Other Maps

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

1.4.2 Cassini Historic Maps 1809 – 1919 Sheet 180 Barnstaple & Ilfracombe

These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.

1.4.3 Old Series 1809

The route and the continuation into the west to east section of Fiddlecott Lane is shown as defined lane in a similar manner to neighbouring lanes that are now county roads. A triangle of roads/lanes is shown at the west end at Southcott Cross.

1.4.4 Revised New Series 1899-1900

Cloepark Lane is shown as a defined double hedge lane as an unmetalled road and the section of Fiddlecott lane at the east end is shown as a wider lane indicating a third class road.

- 1.4.5 Popular Edition 1919
Cloepark Lane is shown by a double line close together representing a minor road. Fiddlecott lane is shown as a Road under 14' wide (indifferent or bad winding road).
- 1.4.6 OS 1st Edition 25" to a mile 1880-1890 & 2nd Edition 1910
On both editions the route is shown as a defined and named lane running from west to east. Southcott Cross is called Smithington Cross, the land to the south of Cloepark Lane called Smithington Moor and there are a total of five separate fields bordering the northern side of the lane. Cloepark Lane appears to be included within compartment number 800, area 2.051 acres that also includes Fiddlecott Lane on both editions.
- The first edition shows a double pecked track within Cloepark Lane but there is no pecked line at either end of the lane at the junction with the now county roads to indicate a change in surface. In the second edition there is a pecked line at the west end indicating a change in surface.
- 1.4.7 OS 1 inch to a mile maps of 1946, 1960 & 1965 Okehampton Sheet 175
On the 1946 edition Back Lane is shown as a narrow defined lane, representing a 'Minor Road in towns, Drives and Unmetalled Roads', with nothing across either end to indicate a gate across the route as there is across the north end of Fiddlecott Lane leading from Fiddlecott Farm at point C. On the later OS editions Cloepark Lane is depicted as a defined lane at the same width as Fiddlecott Lane equivalent to 'Minor Roads in towns, Drives and Unmetalled Roads'. On the 1965 edition the public rights of way as recorded on the Definitive Map are included and the key amended to 'Minor Road in towns, Drive or Track (unmetalled)'.
- 1.4.8 OS Post War Mapping 1:2:500 scale 1974
In 1974 the lane continues to be shown as a defined and named doubled hedged lane with a pecked line across the west end. The lane is still included in the compartment including Fiddlecott lane and there is now four fields bordering the northern hedge boundary.
- 1.4.9 Tithe Maps and Apportionments
Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring can indicate carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown.
- 1.4.10 Chawleigh Tithe Map 1839 & Apportionment 1849
On the Chawleigh Tithe map all roads are uncoloured and some are numbered. Cloepark Lane is shown in the manner of neighbouring roads and is not numbered or included in an apportionment. The field numbers of the land north and south of the lane on the map are very faint and it is difficult to identify the occupiers but it appears that the land north and south of the lane was in the ownership of the Hon Newton Fellowes. Smithington was occupied by John Vicary and part of Toatworthy by John Woolaway. Fiddlecott was owned by Amelia Northcote and part occupied by herself and part by Matthew Wreford.
- 1.4.11 OS Object Name Book 1904 (PRO reference OS35/1711)
The OS Name Book listed names of objects and features such as houses, rivers, farms, lanes, woods etc that were to be printed on the large scale OS maps. There was also a description of the nature/location of the feature. The spellings/definitions were typically authorised by the owner/owner's agent or occupier where a feature

(say a farmhouse or gentleman's residence) was privately owned and by the district surveyor/overseer or someone in a public position where they were considered to be public.

1.4.12 Cloepark Lane is described as 'applies to an ~~occupation~~ lane extending from Smithington Cross to Fiddlecott Lane'. The name was initially signed for by Mr Gardner District Surveyor, Chittlehampton, South Molton but the entry was subsequently amended in red ink by W Wilkes when the words 'an occupation' were crossed out and the entry was re-signed by Mr L E Sharland District Surveyor, Copplestone. The same amendment, crossing out 'an occupation' and re-signing by Mr Sharland was completed on the entry for Fiddlecott Lane.

1.4.13 The entry for Duckham Lane, described as an occupation lane was also signed for by Mr Gardner. The description of the lane has been left as an occupation lane but in red ink the entry was re-signed by Mr Saunders as owner of Nutson, Chawleigh. At the rear of the book in the list of names signed for by Mr F E Sharland includes Cloepark Lane and Fiddlecott lane but Duckham Lane has been crossed out.

1.4.14 Finance Act Plans and Field Books 1910

The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.

1.4.15 Cloepark Lane is shown as being excluded from any hereditament. There are three hereditaments which adjoin the lane, numbers 139, 141 and 182 and none of these make any reference to the lane. The section of Fiddlecott Lane which continues south to Fiddlecott Farm as the farm access track is shown as being wholly included within the hereditament number 35 for Fiddlecott Farm.

1.4.16 Hereditament number 139 Toatworthy was owned by was J Bartle and occupier W Way; number 141 pasture land, owner Thomas Snell, occupier George Way; number 182 Tetley Farm, owner and occupier Henry Reed and number 35 Fiddlecott owned by R May of Copplestone and occupied by W Underhill.

1.4.17 Estate Sale Plan for Earl of Portsmouth 1908 (DHC Ref 62/9/Z/Box/2/55)

The catalogue for the 1908 auction of some 2,700 acres of land and woodlands by the Earl of Portsmouth included the land to the north and south of Cloepark Lane. On the plan Cloepark Lane is coloured orange in the same manner as the county roads and the same as the section of Fiddlecott Lane continuing eastwards to Box's Corner. The section of Fiddlecott lane running southwards to Fiddlecott Farm is not coloured.

1.4.18 Estate Sale Plan for Earl of Portsmouth 1911(NDRO Ref 2239 B-7/139)

The plan in the records is in relation of Lots number 1-7 Chenson, East and West Hill, Foxes Cover, Chenson Cover & Cottages. Cloepark Lane and the land either side was not included in this sale but land to the south west of Southcott/Smithington Cross was. The plan records the west end of Cloepark Lane as part of the cross roads at Smithington Cross (now known as Southcott Cross) and as a road/lane

proceeding eastwards in a similar manner to the western branch, the county road leading to Southcott Farm.

1.4.19 Estate Sale Plan for Earl of Portsmouth 1913 (DHC Ref 1182M/Z/3)

A catalogue for the auction of various lots to be sold in 1913 included a lot to the north and west of Smithington Cross. The plan shows the road to the south of the lot coloured and all four roads radiating from Smithington/Southcott Cross are coloured in the same way including Cloepark Lane.

1.4.20 Parish Survey under National Parks and Access to the Countryside Act 1949

Cloepark Lane was initially included on the parish survey form for path number 4 and described as a wheel path from Smithington Cross (now Southcott Cross) via Box's Corner onto Chawleigh – Tiverton Road branch off at Langdown to Leigh Lane at end at Coopers Cross. The path had been surveyed in September 1950 and was stated as being required in the future.

1.4.21 The district Surveyor, Mr A Pearce, walked the route in February 1951 and described it as a Public Bridleway and 'Starts at Southcott Cross or Smithington Cross on the map, unc road by old lane to Fiddlecott to unc road, through the uncl road to B3042 on to Langdown Cottages, through the lane to Coopers Cross Class III 621'. Mr Pearce commented 'Very soft through the lanes Close Park Lane and Leigh Lane. Public is using the fields'.

1.4.22 On the map completed by the parish council the County Surveyor has subsequently annotated Cloepark Lane as '? Public Accom Rd', Fiddlecott Lane as 'uncl', the section from Box's Corner to Longdown Cottages as 'B3042' and Leigh Lane as 'FO or BR grass'. The County Surveyor had also made a number of comments on the survey form in faint pencil which is difficult to read. The comments are understood to include under number 2) Is Cloepark Lane a Public Accommodation Road mainly used by vehicles as a highway and not as a footpath by the public generally and under 4) It appears that the last numbered length of FP NO 4 is onlybe marked on the Draft Map, confirmation required from the Divisional Surveyor. The CS recommendation was to 'Include as BR in Draft Map'

1.4.23 The County Council's note on the surveyor's comments were 'Certain portions appear to be unclassified Roads. Remainder should be marked CRB'. The instructions that were issued to the Rural District councils regarding their surveys of the routes and footpaths proposed by the parishes stated that Public Accommodation Roads must not be included on the Definitive Map.

Accordingly Bridleway No 4 was included on the draft definitive map for Chawleigh as a bridleway along Leigh Lane only and being just the eastern end of the original route proposed by the parish which included Cloepark Lane. The statement for Bridleway No 4, Chawleigh read Starts from Chawleigh – Tiverton Road (B3042) at Langdown Cottages, along Leigh Lane – a private accommodation Road not repairable by the inhabitants at large) until it joins the County Road (No621) at Cooper's Cross. Unlike public accommodation roads, rights of way going along private accommodation roads were included on the definitive map.

1.2.24 Devon County Uncompleted Reviews of 1968, 1977 & 1998

Following a Parish meeting on 28 January 1969 and in response to the letter from the County Council of 26 June 1968; the parish clerk forwarded a letter and map on which she advised that she had pencilled in the two omissions found. Her letter stated that 'there are queries over the omission off Cloepark lane connecting footpath 8 with Fiddlecott Lane. The letter has been annotated 'Add' at the county council.

- 1.4.25 In August 1970 the County Council wrote to the clerk advising that they 'have not dealt with the omission of Cloepark Lane. It seems that this must have been an accidental omission and should be included as a bridleway. If your council agree can you please ascertain if the landowners agree and if not I will send you evidence forms for completion'.
- 1.4.26 The clerk responded that at the parish council meeting on 1 October the councillors agreed the omission of Cloepark Lane must have been accidental and should be included as a bridleway. The County Council subsequently asked if the landowners were in agreement and the clerk responded in January 1971 that it was discussed at the previous evening's meeting and generally accepted that they do not know who actually owns the lane.
- 1.4.26 In May 1971 a County Council officer wrote, having recently walked Cloepark Lane and noting from the first edition OS maps that the lane was part of a track leading right across the parish from Eggesford Station to Burrige Moor Cross. The lane will be included as a bridleway. Unfortunately the review was subsequently restricted to the Limited Special Review of RUPPs (Roads Used as Public Paths) and Cloepark Lane was not added to the definitive map at that time.
- 1.4.27 In August 1976 the County Engineer wrote advising that Cloepark Lane will be included in the forthcoming review. Unfortunately the 1977 review was also abandoned and the lane was not added to the definitive map.
- 1.4.28 The 1998 review opened with a public meeting on 22 January 1998 and in January the clerk forwarded evidence forms and copy correspondence in respect of Cloepark Lane, which was used by everyone summertime, walking, cycling, horse riding and tractors etc. This review did not progress further apart from the Modification of the southern end of Footpath No. 18, Chawleigh.
- 1.4.29 A telephone call was received in March 2004 from a local landowner and rider enquiring about the status of various routes in Chawleigh which included Cloepark Lane.
- 1.4.30 Parish Council Correspondence
In August 1976 the parish clerk wrote advising that Mr Hill (parish councillor) is seeing the farmers who own fields alongside Cloepark Lane, the lane being used regularly now and we will try and find out their ideas before signposting.
- 1.4.31 Parish Council Minutes 1894 –
The parish council minutes are held by the clerk and over the years include several references to Cloepark Lane.
In 1899 the matter of repairing Cloepark Lane was allowed to stand over. In January 1969 an enquiry was made about Cloepark Lane connecting Smithington Cross and Fiddlecott Lane and ten months later the Clerk was instructed to write and ask for Cloepark Lane to be included as a bridleway as this had been omitted in error.
- 1.4.32 Only three months later the minutes reported that the Clerk was asked to write to the County Council and inform them Cloepark Lane leads from Council property to Council property, and is of no use to anyone. In June 1974 two letters were received about obstructed footpaths. It was decided to walk the paths and Mr Tucker to walk Bluebell Lane. In January 1975 Mr Hill brought up about Cloepark Lane on Mr Western's behalf for cleaning purposes. The Clerk was told to advise him of the landowners, three of which Mr Reed and Mr & Mrs Rogers offered to help clean the path, when at the meeting.

- 1.4.33 In September 1976 a letter was read from the County Engineer concerning various 'left offs' from the Definitive Map including Cloepark Lane. It seems that years ago this lane was used by wheeled vehicles and in January 1977 either the clerk or the Chairman are to get in touch with Mr Blake re the possibility of erecting signposts each end of Cloepark Lane but the Council wanted assurance that the adoption of the lane would not be detrimental to anyone who uses it as a thoroughfare or to gain access to the adjoining fields.
- 1.4.34 In 1977 Tiverton District Council forwarded copy letters sent to the three persons who adjoin Cloepark Lane. As there was one objection, the matter has been dropped.
- 1.4.35 Chawleigh Vestry Minutes
The Vestry minutes from 1845 to 1901 do not refer to Cloepark Lane.
- 1.4.36 Aerial Photography
On the 1946, 1999-2000, 2006-2007 and 2011 aerial photography Cloepark Lane is shown as a defined and clearly visible lane throughout its length with the hedges cut regularly throughout the periods of the photography and no indication of any gates or other obstructions across the route.
- 1.4.37 Land Registry
Cloepark Lane is not registered with HM Land Registry. The land on either side of the lane is registered and is currently owned by individuals within two families.

1.5 User Evidence

- 1.5.1 A total of six user evidence forms were forwarded by the Parish council in 1998 following the opening of the 1998 review and a further two forms were received in 2005 following a telephone enquiry regarding the status of Cloepark lane. Forms were received from the following persons in 1998.
- 1.5.2 Mr W Andrews from Chawleigh and a retired farm worker reports using the lane since the early 1950s for driving sheep and cattle from Southcott Farm to fields at Boxes Corner. He considered the lane to be public and has used it both for pleasure and work on foot. The owner is not known.
- 1.5.3 Mr R Reed of Maryland had also used the lane for the last fifty years for moving stock on foot from Toatley Farm to Fiddlecott Lane. He believes the way to be public and advises that the owner is not known.
- 1.5.4 Mr E J Saunders of Chawleigh also believes the way to be public with regular use by horse and foot. He has used the way since 1946 for pleasure and work by foot, horseback and tractor travelling from Southcott Cross to Fiddlecott. Mr Saunders answered Yes to the question 'have you ever been stopped or turned back when using the way, or do you know of anyone else having been prevented from using it' but does not give any dates or particulars.
- 1.5.5 Mr D Slade of Southcott Farm considered the way to be public due to constant use as a bridleway and he had used the lane since 1970 for work on foot, horseback and with vehicle. The owner is not known.
- 1.5.6 Mr S Stapleton of Chawleigh has used the lane all his life (*then aged 32 in 1998*) on foot as part of a circular walk from Chawleigh with family several times a year. He had also cycled sometimes in summer. He believes the way to be public as access to all landowners who owned fields along route – through road. Mr Stapleton has answered Yes to the question 'Have you ever enjoyed a private right along the route

in question?' but has answered No to the question 'Have you ever obtained permission to use the route?' Under any further particulars he has added 'Quiet for children cycling, walking. Seeing the Bluebells (hence name also Bluebell lane)'.

- 1.5.7 Mrs A Stentiford believed the way to be public as always used it as a public bridleway for over forty years on foot and horse for work and pleasure. Owner not known.
- 1.5.8 All six of the above users have answered No to the question 'Has anyone told you that the route was not public'. The two forms received in 2005 were from:
- 1.5.9 Mrs C Chandler who believes the way to be a bridleway and public due to anecdote and assumption. She has often used the route from 1988 to present (2005 when forms completed) for pleasure on horseback on a circular ride from Chenson Farm. During 2004 there were cut branches blocking the way for a few months but there were no gates or other obstructions. She had never been stopped or obtained permission to use the route. Under other information Mrs Chandler comments 'We understood this to be a green lane for general public use. The lane has always been called Bluebell lane as far as we are aware'.
- 1.5.10 Mrs S Slade of Southcott Farm believes the way to be a bridleway and public due to unchallenged continual access and use. She has used the lane frequently since 1987 for pleasure on foot and horseback. There have been no obstructions apart from partial obstruction of part of lane due to hedge laying and trimming works in winter 2003/2004. Mrs Slade has never been stopped or received permission to use the route and believes the owner/occupier was aware the public was using the path as frequent use by many different people. The lane is used by herself and children, mainly on horseback; used frequently in summer, less so in winter as parts can be wet although passable on a horse.
- 1.5.11 No further user evidence has been received during the current review although evidence of recent horse use was observed along the lane in August 2013 and March 2014.

1.6 Landowner Evidence

- 1.6.1 All of the landowners and adjoining occupiers were contacted and informed of the proposal.
- 1.6.2 Mr Woodman of Tatworthy Farm and his son own all the land south of the lane and either own or rent all the land north of the lane. They have owned land adjacent to the lane since 1928 and consider the lane to be an access route. Occasional walkers and horse riders have been observed. They have not required people to ask permission but have stopped horse riders in the 1970s and 1980s and have told users that the lane was not a public right of way. Mr Woodman advised that he has maintained the lane since 1970, when he cleared it as it was impassable. He objects to the lane being turned into a bridle path unless the County Council erect gates at either end and maintain them; and he has no responsibility or liability for them.
- 1.6.3 No response was received from Mrs Reed of Maryland who owns one of the fields on the north side of the lane.

1.7 Rebuttal Evidence

- 1.7.1 No rebuttal evidence has been received.

1.8 Discussion

- 1.8.1 A claim for a public right of way can arise through use by the public under section 31 of the Highways Act 1980, if twenty years use can be shown after the public's use of the route is called into question. A claim for a right of way may also exist at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.
- 1.8.2 Cloepark Lane appears to have been in existence by the early 1800s and probably earlier as it is depicted on the One inch OS Survey first edition of 1809. The route is shown as a defined lane on the OS maps over the years as an unmetalled or minor road or track. The maps over the years show no gates across the lane and the lane remains un gated today. The aerial photography indicates that the hedges were kept trimmed and the lane appeared unobstructed and available for use.
- 1.8.3 The lane is not included within a Tithe apportionment of the adjoining land and the Finance Act plan excludes Cloepark Lane, in a similar way to how county roads are shown, from any hereditaments and the lane remains unregistered today.
- 1.8.4 In the entry in the OS Name Book of 1904, the word occupation was deleted from the description for Cloepark Lane and the entry was signed for by the District Surveyor as was the entry for Fiddlecote Lane, a county road. This would indicate that as the district surveyor was signing for the lane, it was not considered to be privately owned.
- 1.8.5 The estate sales catalogue for the sale of parts of the Earl of Portsmouth estate from 1908 to 1913 exclude Cloepark Lane from being included within the estate land which adjoins the lane. Cloepark lane is shown coloured orange in the same manner as local county roads.
- 1.8.6 Cloepark Lane was not included within the adjoining landholdings and does not appear to be privately owned. The Earl of Portsmouth and previously the Honourable Newton Fellowes would have presumably known their own land and the three separate sale plans all show Cloepark Lane in the same manner as county roads of today.
- 1.8.7 The addition of the route as a bridleway is supported by the parish council who have asked for its inclusion since 1950 when it was included as part of Path number 4 running from Southcote Cross to the east end of Leigh Lane. Part of this route ran along the unclassified county road known as Fiddlecote Lane and the B3042 and it also appeared that as Cloepark Lane was considered to be a Public Accommodation Road at that time by the County Council. It was only Leigh Lane, the east end of the route, which was recorded as Bridleway No. 4, Chawleigh on the Definitive Map.
- 1.8.8 Attempts to add the bridleway during the reviews were considered in 1968, 1977 and 1998 but did not proceed. When the omission was again requested by the parish in 1998 some user evidence was forwarded in support of the addition of the route.
- 1.8.9 A total of eight user evidence forms were received, two of the users refer to use for work particularly in respect of driving livestock. However, they could have been using the lane as a through route to land at either end of Cloepark Lane rather than only to land adjoining the lane itself. Two of the initial six user forms collected by the parish council refer to use in a vehicle (although these gentleman are understood to be local

farmers) but otherwise use is on foot, horseback or bicycle. None of the users refer to having permission to use the lane and the majority of use is considered to be as of right. The only obstructions appear to be temporary for hedge laying and trimming as in 2003/2004.

- 1.8.10 Messrs Woodman either own or rent all the land adjoining the lane. They are aware that the lane is not owned by the adjacent fields and considered it to be an 'accessional' route for access. Since their ownership they have regularly cleared the lane to make it available for use and have not required people to ask permission but have stopped some and told them it was not a public right of way. If the lane is recorded as a bridleway they would like the county council to erect gates at either end of the lane.
- 1.8.11 The documentary evidence considered is believed to indicate that Cloepark Lane is a public right of way. Although there is no one piece of evidence that provides conclusive evidence of dedication of the lane as a public right of way, the dedication of the route appears to have taken place at some time in the past and the public have shown acceptance of the dedication through their use of the lane over many years. The recorded vehicle use is understood to be by agricultural vehicles and the route has been referred to as a bridleway by the parish since 1950 when first proposed. The user evidence is considered to support the status of a bridleway.

1.9 Conclusion

- 1.9.1 There has not been any calling into question of the public's use of the route and the existence or otherwise of a right of way cannot therefore be considered under section 31 of the Highways Act 1980. However, it is considered that the documentary evidence when taken as a whole supports implied dedication of the lane as a public right of way many years ago. There is also sufficient evidence of acceptance by the public as indicated by the user evidence to show that a right of way, namely a public bridleway, on the basis of the documentary and user evidence, can be reasonably alleged to subsist at common law.
- 1.9.2 It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement to add a Public Bridleway along Cloepark Lane between points A – B – C as shown on drawing number HTM/PROW/14/18a and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

2 Proposal 7: Proposed addition of a restricted byway running northwards along Back Lane from the county road running between Stonemill Cross and Leigh Bridge to the bend in the county road known as Dockworthy Cross from GR SS 7219 1300 to GR SS 7216 1332.

Recommendation: It is recommended that no Modification Order be made to add a Restricted Byway between points C - D as shown on drawing number HCW/PROW/14/25a. However, it is recommended that the adjacent landowners be contacted to ascertain whether they would be prepared to enter into a Creation Agreement under the Highways Act 1980 to dedicate the lane as a restricted byway. Vehicle use by an adjoining landowner/occupier or someone using the lane with their permission would still be allowed but a restricted byway could not be used by members of the public in motorised vehicles without the adjoining landowners' permission.

2.1 Background

- 2.1.1 The status of Back Lane was raised by a local horse rider who used the route in August 2005 and enquired as to whether the lane was an unclassified county road as it was not recorded as a public right of way. The lane currently has no recorded status and after an inspection indicated that the lane appeared to be used by horses and walkers in addition to vehicles, it was decided to include the lane as a proposal when the Definitive Map review reached Chawleigh.

2.2 Description of the Route

- 2.2.1 The route starts on the county road between Stonemill Cross and Leigh Bridge and proceeds northwards and gently uphill along the green lane known as Back Lane to the bend in the county road at Dockworthy Cross. The surface of the lane is earth/grass in the centre with some stone on either side.
- 2.2.2 Photographs of the lane are included in the backing papers.

2.3 Consultation Responses

- 2.3.1 Chawleigh Parish Council have advised that they are in support of the changes put forward. The Crediton Footpaths Officer for the Ramblers Association advised that they would not have any objections to the proposed changes as laid out in the schedule. Chulmleigh Parish Council did not pass any comments.

2.4 Documentary Evidence

2.4.1 Ordnance Survey and Other Maps

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

2.4.2 Cassini Historic Maps 1809 – 1919 Okehampton & North Dartmoor

These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.

2.4.3 Old Series 1809

In the early 1800s the location of the roads/lanes around Stonemill was different to those of today and there has been realignment of several local roads including the road from Chawleigh village. It would appear that Back lane was the southern end of the road from Stone Mill northwards to Stone Moor Cross, before realignment of the road from Stone Mill to Stone Barton.

2.4.4 Revised New Series 1899-1900

The road alignment is now as it is today. Back Lane is shown as a defined double hedge lane as a metalled road, third class. The adjoining county roads are shown coloured, Metalled roads, second class.

2.4.5 Popular Edition 1919

Back Lane is shown by a double line close together representing a minor road. The adjoining county roads are recorded as Roads under 14' wide.

- 2.4.6 OS 1st Edition 25" to a mile 1880-1890 & 2nd Edition 1910
On both editions Back Lane is shown as a defined and named lane running south from Dockworthy Cross. The pecked line across the ends of the lane is considered to represent a change in surface rather than a gate or other obstruction across the lane. The lane has compartment number 1028 area 0.342 acres.
- 2.4.7 OS 1 inch to a mile maps of 1946, 1960 & 1965 Sheet 175 Okehampton
Back Lane is shown as a defined uncoloured lane on all three editions, corresponding to an Unmetalled road in the 1946 and 1960 editions and Track (unmetalled) in 1965.
- 2.4.8 OS Post War Mapping 1:2:500 scale 1974
In 1974 Back Lane is shown as a defined and named lane although also noted as track. The lane has a separate compartment number of 1616 and area of 0.38 acres. There are pecked lines across both ends as in the OS 1st and 2nd 25" edition mapping.
- 2.4.9 Tithe Maps and Apportionments
Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring can indicate carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown.
- 2.4.10 The Tithe Map shows Back Lane uncoloured or numbered in a similar manner to the adjoining roads. The road layout is similar to the OS map 1809 with Back Lane continuing northwards to Dockworthy and before the realignment of the roads in that area in the mid to late 19th century. The land either side of the lane was part of Stonemill owned by the Hon Newton Fellowes and occupied by William Phillips.
- 2.4.11 OS Boundary Sketch Map 1886 (PRO Reference OS 27/1157)
The OS sketch map of the parishes of Chawleigh, Lapford & Nymet Rowland shows Back Lane as a defined lane and in a similar manner to the adjoining and neighbouring lanes that are now county roads. The road between Dockworthy Cross and Stone Mill is a different layout as the road is shown going from Dockworthy Cross (point D) south west and then east to Stone Mill rather than as present where it goes north west and then south. The route of 1886 would have had a steeper gradient.
- 2.4.12 The OS Object Name Books (1903-1904 (PRO reference OS 35/1709)
The OS name books gave the definitions of features such as houses, rivers, places, lanes printed on the large scale OS maps. The definitions were typically authorised by the owner where an object (say a farmhouse or gentleman's residence) was privately owned and by the district overseer/surveyor or someone in a public position where they were in public ownership.
- 2.4.13 Back Lane is described as 'applies to a portion of road extending from Dockworthy Cross junction to about 16 chains S. E of Stone Mill Bridge'. The entry on the page and in the summary list at the back is signed for by Mr Gardner, District Surveyor Chulmleigh. Dockworthy Cross is described as 'applies to a junction of roads about 14 chains N. E of Stone Mill Bridge' and also signed for by Mr Gardner, District Surveyor.

2.4.14 Estate Sale Plan for Earl of Portsmouth 1908 (DHC Ref 62/9/Z/Box/2/55)

The catalogue for the 1908 auction of some 2,700 acres of land and woodlands by the Earl of Portsmouth included Lot 5, the small holding and mill known as Stone Mill. Back Lane lies entirely within the lot and is coloured orange in the same manner as the adjacent county roads.

2.4.15 Finance Act Plans and Field Books 1910

The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament. The valuation of the land/buildings was usually based on capitalisation of the rental value of the property and the same method was used for allowances for rights of ways or easements.

2.4.16 Back Lane lies within hereditament number 143 for Stone Mill and Stone Mill Farm, owned by Captain H R Gollo of Ludlow, Shropshire and occupied by James Turner. Back Lane is shown in a similar manner to the county roads that the lane connects to that also fall within the boundaries of the hereditament of Stone Mill. Top Wood hereditament number 145, lies on the east side of the lane. No reference is made in either hereditament to Back Lane or its status.

2.4.17 Vestry Minutes

The Vestry minutes of October 1845 to October 1849 refer to the creation of a new road from Stone Bridge Houses to communicate with the new road in Stone Mill Wood and later the stopping up of an old road leading from the house near Stone Bridge to Stone Mill House. This would indicate that the road layout from Dockworthy Cross to Stone Mill was changed in the later part of the 19th century.

2.4.18 Parish Survey under National Parks and Access to the Countryside Act 1949

Back Lane was not included in the initial survey of public rights of way by the parish council in 1950. Its absence was not queried by the County Council and no objection appears to have been made to its omission in the draft or provisional Definitive Maps for the Crediton Rural District Council published in 1954 and 1957.

2.4.19 Devon County Uncompleted Reviews of 1968, 1977 & 1998

The status of Back Lane and whether it should be recorded on the Definitive Map does not appear to have been raised by the Parish Council or the County Council during the uncompleted reviews.

2.4.20 Parish Council Minutes

A review of the Parish Council Minutes did not record any instances of the suggested route been raised or discussed at a meeting. A 'Back Lane' was discussed on several occasions but this was relating to the lane in the village that passed by the church and village hall and which is also known locally as Back Lane.

2.4.21 Aerial Photography

On the 1946, 1999-2000, 2006-2007 and 2011 aerial photography the lane can be clearly seen and with the hedges trimmed.

2.4.22 HM Land Registry

The lane is not registered. The land adjoining the lane on either side is registered to Mr Hopton (west side) and Mr Westaway (east side). Neither registered title makes any reference to a right of way along the lane for the landowners.

2.5 User Evidence

2.5.1 No user evidence has been received during the current review in respect of any use of the lane by the public. In 2005 a local resident and horse rider who used the lane wrote to the County Council enquiring as to whether the lane was an unclassified county road or should it be added to the Definitive Map. She added it is a very useful route for riders and would hate it to be missed off.

2.6 Landowner Evidence

2.6.1 The landowners and occupiers who own or occupy land adjoining Back Lane were contacted.

2.6.2 Mr A Westaway has owned the land on the east side of Back Lane for fourteen years. He has considered the lane to be public and to have the status of a byway open to all traffic for thirty years and during this time has been aware of the public using the lane with vehicles. He has never required people to ask permission, turned back or stopped users or told anybody that it was not public.

2.6.3 In further information Mr Westaway advises 'this lane is used more by traffic than walkers or horses. It needs to be useable by vehicles. Please leave as such'.

2.6.4 Mr Hopton has owned the land on the west side of Back Lane for eighteen years and considers the lane to be public, with the status of a restricted byway. He has been aware of the public using the way infrequently, walking or on horseback. He has never required people to ask permission, turned back or stopped users or told anybody that it was not public.

2.6.5 There is a gate along the west side hedge to allow access to their field but no gates at either end of the lane. In other information he advises 'Back Lane should be restricted to pedestrian or horse use only except for adjoining landowners to cut hedges and move stock. It should not be used as a rat run for off-roaders to race'.

2.7 Rebuttal Evidence

2.7.1 No rebuttal evidence has been received.

2.8 Other Correspondence

2.8.1 No other correspondence has been received.

2.9 Discussion

2.9.1 A claim for a public right of way can arise through use by the public under section 31 of the Highways Act 1980, if twenty years use can be shown after the public's use of the route is called into question. A claim for a right of way may also exist at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the

dedication. A public right of way can also be deleted from the map if there is evidence to show that a mistake was made, at the time the path was added to the definitive map and that the path or way was never a public right of way.

- 2.9.2 The OS and Tithe map evidence indicate that Back Lane was the route between Stone Moor Cross and Stone Mill prior to realignment of the roads in the vicinity of Stone Mill in the latter half of the 19th century. The surface is stoned at the sides of the lane and is considered to have been suitable for the traffic of the time. On the Tithe map the lane is not numbered or included in the apportionment for the adjoining land and is excluded from the adjoining hereditaments in the Finance Act plan of 1910.
- 2.9.3 In the OS boundary sketch book, which is actually a plan, Back Lane is shown in a similar manner to the adjoining and neighbouring lanes that are now county roads.
- 2.9.4 The OS Name Book of 1904 describes Back Lane as a 'portion of road' and it is signed for by Mr Gardner, District Surveyor. This would indicate that there as the district surveyor signed for the lane, it was not considered to be privately owned.
- 2.9.5 The Estate Sale of 1908 excluded Back Lane from the adjoining land which was included within one lot and coloured the lane orange in the same manner as the county roads of today. The estate did not consider that they owned this lane.
- 2.9.6 No reference is made to Back lane in the Finance Act field books and the lane is currently unregistered with no reference to any right of way being included in the titles of the adjoining land that is registered.
- 2.9.7 The lane is not referred to in either the Vestry or Parish Council minutes and Back Lane has not been proposed by the Parish Council in the initial 1950 rights of way survey or at subsequent reviews. The current Parish Council have advised that they were in support of the changes put forward. The Crediton Footpaths Officer for the Ramblers Association advised that they would not have any objections to the proposed changes.
- 2.9.8 No user evidence has been received in support of use by the public although the landowners' comments and an inspection of the lane indicate that the lane is being used by walkers and horse riders as well as vehicles. The aerial photography records the hedges been regularly trimmed and with no known obstructions the lane appears to have been available for use by the public.
- 2.9.9 The landowners on the west and east side of the lane both consider Back Lane to be public and have been aware of use by the public during their years of ownership. Mr Hopton, on the west hand side, believes that the lane should be recorded as a Restricted Byway as this would stop 4x4s who are using the lane as a rat run and not as an adjoining landowner or with a landowner's permission. Mr Westaway, on the east side, considers the lane to be A Byway Open to all Traffic and advises that the lane needs to be useable by vehicles and asks if the lane can be left as it is.
- 2.9.10 At the present time Back Lane has no recorded status as it is not on the list of streets (the legal record of highways maintainable at public expense) as an unsurfaced county road and is not a public right of way recorded on the Definitive Map. Since the Natural Environment & Rural Communities Act was passed in 2006, Byways Open to all Traffic can only be recorded on the Definitive Map in limited circumstances, and none of the exemptions that apply would be relevant on this occasional. A Restricted Byway cannot be used by motorised vehicles unless the vehicle is accessing land in the ownership or occupation or somebody with their

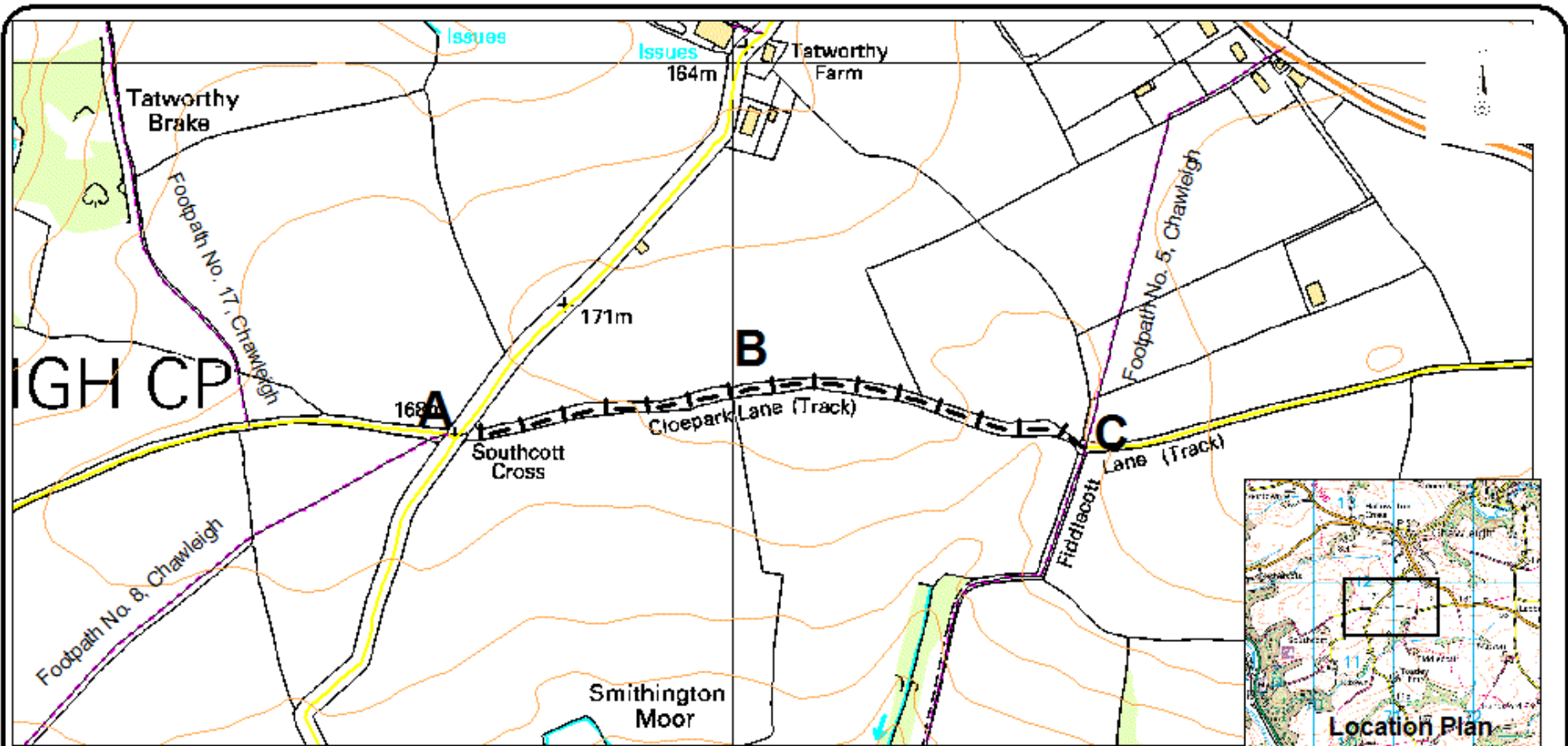
permission to do so such as delivery drivers, visitors. It is also considered reasonable that where a landowner/occupier has given a hunt permission to hunt on their land, this permission would also extend to include the landowner's private right to use public rights of way in vehicles, where necessary, to access his/her land.

2.9.11 No evidence has been discovered of public money having been spent on Back Lane; although if the lane was considered to be a public accommodation road, it was then responsibility of the adjoining landowners to maintain the road, and not the rate payers. The OS and other map evidence records the existence of the lane for over 200 years and the documentary evidence supports the lane being considered in a similar manner to a county road throughout that time. The lane appears to have been available for use by the public and their use has been observed although no evidence forms have been received. However, the evidence must be sufficient to be able to recommend that a Modification Order is made to add a public right of way to the Definitive Map and for that recommendation to be defended at a public inquiry if necessary.

2.10 Conclusion

2.10.1 In conclusion, it is considered that although the decision is finely balanced, the evidence discovered to date is insufficient to show, on the balance of probabilities, that a restricted byway has been dedicated at common law; and in the absence of sufficient user evidence, to also indicate that such dedication has been accepted by the public.

2.10.2 It is therefore recommended that no Modification Order be made between points C - D as shown on drawing number HCW/PROW/14/25a. However, it is recommended that the adjacent landowners be contacted to ascertain whether they would be prepared to enter into a Creation Agreement under the Highways Act 1980 to dedicate the lane as a restricted byway. Use by agricultural vehicles or motorised vehicles by an adjoining landowner/occupier or another motor user using the lane with their permission would still be allowed but a restricted byway could not be used by members of the public in motor vehicles in a personal or leisure capacity.



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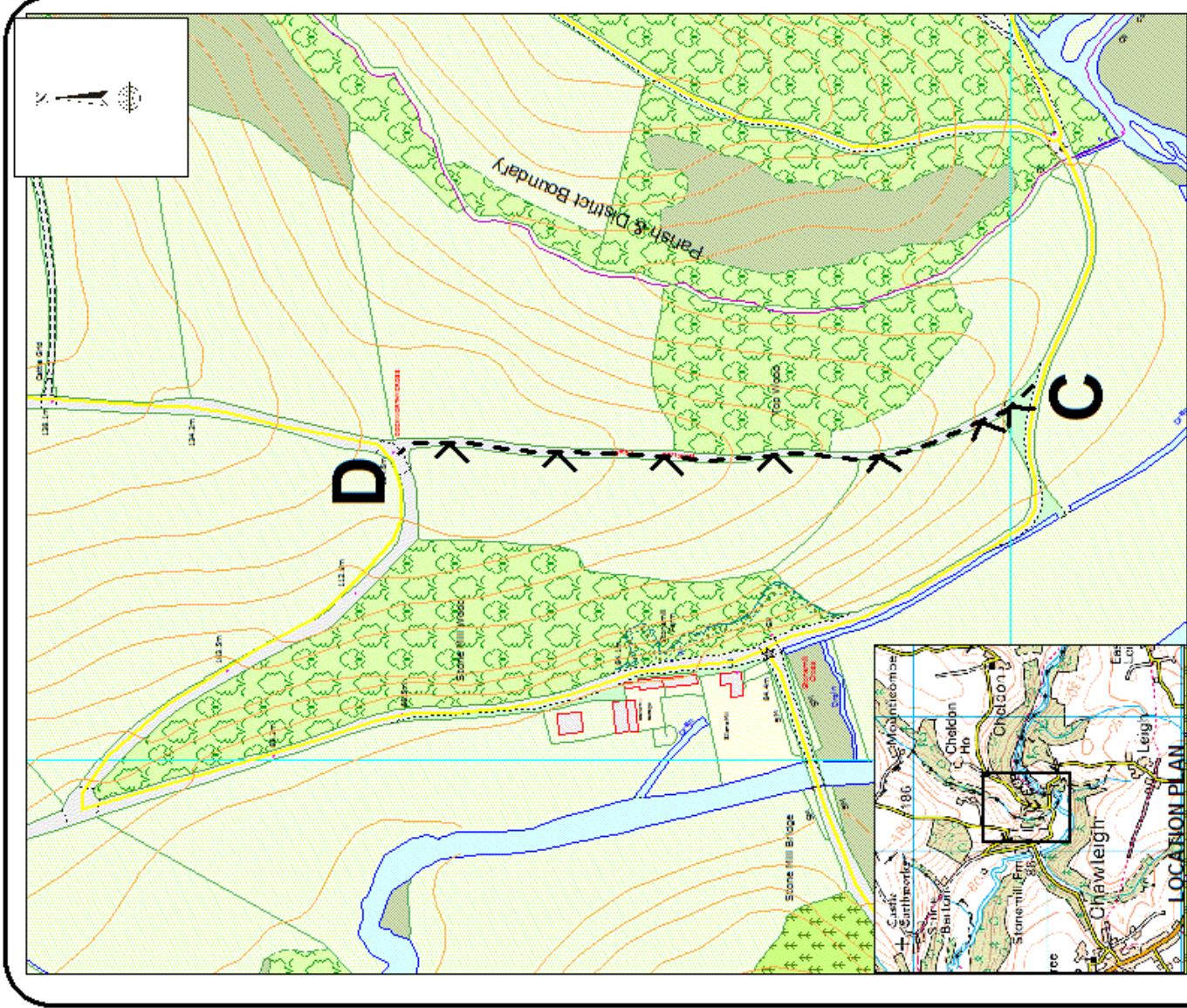
**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - CHAWLEIGH
PROPOSAL 1 - CLOEPARK LANE
ADDITION OF A PUBLIC BRIDLEWAY**

| | |
|----------------|-----------------|
| drawing number | HCW/PROW/14/18a |
| date | Feb 2014 |
| scale | 1:5,000 (at A4) |
| drawn by | TW |

| | | | |
|-----------------|---------------------------------|---------------------|---------|
| <u>Notation</u> | Addition of Bridleway A - B - C | (approx 550 metres) | - - - - |
| | Existing Public Footpaths | | ----- |

David Whitton
Head of Highways, Capital Development & Waste





Map Ref SS 7213

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DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - CHAWLEIGH
PROPOSAL NO 7 - BACK LANE
ADDITION OF RESTRICTED BYWAY

drawing number **HCW/PROW/14/25a**
 date **Sep 2014**
 scale **1:3,000 at A4**
 drawn by **TW**

Notation

Addition of Restricted Byway
 C - D (335 metres approx) **- - - - -**

David Whitton
 HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE

Devon
 County Council