

**Definitive Map Review
Parish of Ivybridge**

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 public footpath between Footpath No.3, Ivybridge and the publicly maintainable footways to Trehill and Ash Grove Ivybridge, points D – E shown on drawing number HWC/PROW/15/ 153a (Proposal 1);**
- (b) No Modification Order be made in respect of the claimed addition of a footpath from Bridge Park to Sandy Lane and Exeter Road, Ivybridge shown on drawing number HCW/PROW/15/153 (Proposal 2).**

1. Introduction

This report examines two proposals arising from the Definitive Map Review for the parish of Ivybridge, in the district of the South Hams.

2. Background

The original survey under s.27 of the National Parks and Access to the Countryside Act 1949 revealed 5 paths submitted by the Ivybridge Parish Council in the Plympton Rural District with the relevant date of 11 October 1954.

The review of the Definitive Map under s.3. of the 1949 Act, commencing in the 1970s but was never completed produced two proposals. Both of these are now recorded on the Definitive Map.

The Limited Special Review of Roads Used as Public Paths (RUPPS) carried out in the 1970s did not affect this parish.

The following orders and agreements have been made and confirmed:

Schedule 2, London to Penzance Trunk Road Side Roads Order 1971 at Factory Bridge produced a new path Fp.No.10;
Devon County Council (Footpath No.3, Ivybridge) Public Path Diversion Order 1970;
South Hams District Council (Footpath No.3, Ivybridge) Public Path Diversion Order 1981;
South Hams District Council (Footpath No.3, Ivybridge) Public Path Diversion Order 1983;
South Hams Parishes Order 1985 (Boundary Change) Footpath No 4 transferred to Cornwall;
South Hams Parishes Order 1985 (Boundary Change) Footpath No.5 transferred to Cornwall;
South Hams District Council (Footpath No.3 Ivybridge) Public Path Diversion Order 1988 Brook Road;

Devon County Council & Ivybridge Town Council Creation Agreement Long Timber Wood December 1989 (paths moved along with boundary change);
Devon County Council Definitive Map and Statement (Bridleway No.11, Ivybridge) Definitive Map Modification Order 1997;
Devon County Council (Footpath No.60 Ivybridge) Public Path Creation Agreement 16 May 2012.

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

The current Review started with a public meeting in the Ivybridge Town Hall 23 April 2013, followed by consultations in 22 October 2014 on two proposed footpaths and one Schedule 14 Application for a bridleway. The Schedule 14 Application under the Wildlife & Countryside Act 1981, will be the subject of a subsequent report in due course.

3. Proposals

Please refer to the Appendix to this report.

4. Consultations

General consultations have been carried out with the following results:

County Councillor Roger Croad	-	no comment;
Ivybridge Town Council	-	support proposal 1 & 2
South Hams District Cllr A Barber	-	personal comment
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	-	no comment.

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

5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

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

9. Conclusion

It is recommended that a Modification Order be made in respect of Proposal 1, as the evidence is considered sufficient to meet the requirements of the legislation but that no Modification Order be made to add a footpath in respect of Proposal 2 as it does not meet the required tests.

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.

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 South Hams District area.

David Whitton
Head of Highways, Capital Development and Waste

Electoral Division: Ivybridge

Local Government Act 1972: List of Background Papers

Contact for enquiries: Emily Spurway

Room No: ABG Lucombe House

Tel No: (01392) 382833

Background Paper	Date	File Ref.
Correspondence File	2013 to date	ES/DMR/IVY

es300115prow
sc/cr/DMR Ivybridge
03 160215

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: Unrecorded route – missing public footpath link between Footpath No.3, Ivybridge and the publicly maintainable linking footways to Trehill and Ash Grove, point D – E as shown on drawing no. HCW/PROW/15/153a

Recommendation: It is recommended that a Modification Order be made in respect of Proposal 1 for the addition of a public footpath along the missing link between Footpath No.3, Ivybridge to Ash Grove and Trehill Road.

1.1 Background

1.1.1 A missing link between Footpath No.3 Ivybridge and Ash Grove/Trehill Road was identified some time before the review process for Ivybridge began. The link forms a spur from Footpath No.3 to join the publicly maintainable footways to Trehill and Ash Grove. The footpath is about 100 metres in length and is already in frequent use. The path runs in a generally northerly direction from Footpath No.3 from the rear of no 2. Blackett Close Ivybridge, to join the footway leading to Ash Grove and Trehill Road.

1.2 The Definitive Map process and Maintainable Highways Records

1.2.1 Proposal 1 was included in the consultation for the current review, on the basis of its identification as a path and that it is in regular and frequent use by the public.

1.3 Documentary Evidence

1.3.1 Ordnance Survey Mapping: 1880s 1st Edition mapping 25 inch to a mile shows the linking path as a double hedged feature.

1.3.2 OS 2nd Edition 1904 – 06 25 inch to a mile shows this as the same double hedged feature.

1.3.3 OS A Edition 2500 1953
This later map shows the path as a definite link with the adjacent path which is the current Fp no.3 Ivybridge.

1.3.4 The County Council's register of Highways Maintained at Public Expense (HMPE) shows the northern section of the missing link joining the HMPE to Ash Grove and Trehill Road

1.3.5 Aerial photography
Earlier RAF aerial photography from 1946–9 shows the route as an established hedged lane, the same as Footpath No.3, Ivybridge. Later Ordnance Survey aerial photography shows the line of the path outlined by mature trees.

1.4 User Evidence

1.4.1 No evidence has been submitted by way of User Evidence forms

1.4.2 South Hams District Councillor Tony Barber, submitted in a personal capacity, comments and information in an email response to the informal consultation in October 2014. He stated that "This relatively narrow, unsurfaced track has been in existence for many years but it was probably only with the construction of Trehill Road and Ash Grove that it had a public purpose", he goes on to add; "This is an unsurfaced but passable footway that lies between hedge boundaries between two housing developments and it may be difficult to establish ownership for this reason. It

provides a convenient link between the area to the west & north served by Footpath 3, notably in allowing access to Trehill Road. I have used it at various times over the last ten years or more”.

- 1.4.3 An email response by Mr Dunton of Ivybridge, to this proposal says, “Proposal 1 is already a usable and useful path. I support the proposal”.
- 1.4.4 In their meeting of 3 November 2014, Ivybridge Town Council considered the County Council’s informal consultation letter of 22 October 2014. At this meeting under minute reference 14/119 the Town Council resolved, “To welcome the proposals outlined as Ash Grove and Charlton Terrace”.
- 1.4.5 In addition a nominal amount of money has been spent by the Rights of Way Warden, without prejudice, in surface repairs to this path in Spring 2013.

1.5 Landowner and Rebuttal Evidence

- 1.5.1 There is no known landowner for this path and no one has come forward during the informal consultation claiming any ownership. There is no evidence of any actions to prevent use by the public passing and re-passing the link from footpath No.3 to Ash Grove or Trehill.

1.6 Discussion

1.6.1 Statute (Section 31, Highways Act 1980)

There has been no challenge to the use of this unrecorded missing link as a public footpath and no event for calling its use by the public into question, such as notices, or any obstruction to prevent use. No user evidence has been submitted in connection with any informal claim connected to 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.

- 1.6.2 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 the landowners lack of intention to dedicate. However, with no event such as these to call the route into question, it can only be considered in relation to a test under common law.

1.6.3 Common Law

Historical mapping shows that a track has physically existed along this route since the 1880s. Later Ordnance Survey mapping and aerial photography show the whole route has existed on its current line since then and up to the present. They show that the lane has been open as part of the original lane for Footpath No.3, Ivybridge and that no barrier was placed across to prevent the public from accessing it.

- 1.6.4 In considering the evidence that the public have used the unrecorded missing link on foot, in conjunction with the historical mapping and evidence of reputation of public use, dedication at common law for a status of footpath can be inferred.
- 1.6.5 The evidence supports the proposal that it should be recorded as a public footpath, suggesting that any landowner in the past has acquiesced to its use by the public and took no action to deter them. Evidence shows that the public have accepted that dedication and have used it on foot to connect two public highways and continue to use it openly and freely to the present.

- 1.6.6 From this assessment it can be inferred from evidence of use and reputation as a footpath by the public, in conjunction with historical mapping evidence and occasional public money spent on its maintenance, it is considered sufficient to support recording the route of the missing link as a public footpath.

1.7 Conclusion

As there has not been any calling into question of the public's use of the route, the existence of a right of way cannot therefore be considered under section 31 of the Highways Act 1980.

However, giving consideration under common law, it is sufficient to make an Order on the basis that there has been an acceptance of use by the public and an acquiescence of a landowner at some time in the past to demonstrate that a public right of way on foot subsists or can be reasonably alleged to subsist over 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 and Statement, as an extension of Footpath No. 3 and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

2. **Proposal 2: Unrecorded route – Bridge Park via garages to Sandy Lane and Exeter Road, points A - B - C as shown on drawing number HCW/PROW/15/153**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 2.

2.1 Background

2.1.1 This route starts on the private road, Bridge Park between numbers 34 & 35 Bridge Park. It passes in a southerly direction over a set of steps and a piece of land that gives access to rented garages. The route goes across the western side of the forecourt adjacent to the western boundary, exits onto Sandy Lane, also a private road, and continues south along a lane, not maintainable at public expense to join Exeter Road opposite Trehill Lodge.

2.1.2 The route was put forward due to a gate and fencing being placed across the route in April 2012. The gate has been locked intermittently. The steps are made of concrete and the area in front of the garages is rough unmade up ground.

2.1.3 The route from Bridge Park across the forecourt to Exeter Road is approximately 100 metres.

2.2 The Definitive Map process and Maintainable Highways Records

2.2.1 The route was put forward as proposal 2 as part of the Definitive Map Review process and it is not recorded on any maintainable highways records.

2.3 Documentary Evidence

2.3.1 Ordnance Survey 2nd Edition 1904 -05 25 inch - 1 mile
This map shows Charlton Terrace and the lane that runs south from Sandy Lane to Exeter Road B – C

- 2.3.2 Ordnance Survey 'A' edition larger-scale 2500 mapping from 1953
This map shows Charlton Terrace extended to the Bridge Park development and the Bowling Green. The plots to the south are undeveloped.
- 2.3.3 Aerial photography
Earlier RAF aerial photography from 1946 – 9 shows a large open space opposite the original houses in Bridge Park.
- 2.3.4 Google Street view of 2009 show the steps in Bridge Park and the garage area.

2.4 User Evidence

- 2.4.1 In May 2012 South Hams District Councillor Tony Barber emailed the public rights of way email box, regarding the land with a row of garages upon it located between the unadopted Sandy Lane and the unadopted but surfaced Bridge Park. He writes:

“There is vehicular access to the land from its SW corner and pedestrian access via the NW corner by a set of steps. This land has always been open to pedestrians, including school students, who use it for access from Exeter Road to Bridge Park and onwards (including to the Community College) There has never been any indication to my knowledge that it is not a *de facto* public right of way”.

He continues, “Recently, notices have been erected at both access points indicating that (a) access is for garage tenants only (b) that there is no public access. A gate has also been erected at the top of the steps on the N W access. I have known this site as having free access across it for at least 25 years but a recent conversation with a long term resident indicates no restriction over more than 50 years and no doubt we could show this to be considerably longer”.

- 2.4.2 In September 2012 Ivybridge Town Council sent an email to the public rights way team email box to say that two local residents had called in to say that the route from Bridge Park – Sandy Lane leading to Exeter Road had been cordoned off so no one can pass through and queried what could be done about the matter.
- 2.4.3 A reply was sent via email to Ivybridge Town Council about the process of claiming unrecorded rights either by way of a formal application under Schedule 14 of the Wildlife & Countryside Act 1981 or during the parish review if evidence of use was submitted.
- 2.4.4 To date ten User Evidence Forms (UEF) plus accompanying letters and two email responses have been submitted as evidence in relation to the alleged un-recorded rights over this route.
- 2.4.5 Six of the twelve users have used the route for over forty years, starting from 1964 – 2008 and 1970 – 2012, 1971 – 2013.
- 2.4.6 Mrs J Willcocks states she has lived in Bridge Park since 1964 and has used the route fifty times a year to go to the shops or catch a bus. She has used it in both directions and says she thinks it is public, “because it was in use when we moved here”. She says the gate and notices were put up in the autumn of 2012. The notices said, “Private land no public access use of garage tenants only”. In addition to this, she mentions that a chain was placed over the entrance from Sandy Lane, also in autumn 2012. This user says she has not been given permission to use the route and she thought the owners knew that people used the path as they lived next to it and would have seen people using it. In addition, she adds, “I stopped using the

path in 2008 because I fell over in Sandy Lane. Now Sandy Lane is tarmaced I would use it again”.

- 2.4.7 Mr & Mrs Mutton say on their evidence form that they moved into Bridge Park in 1972. They have used the route once a week every year going on foot from Exeter Road to Bridge Park until 2012 and no one had ever complained. They state that in 2012 a restriction was imposed and a gate was put up. In response to the question 6 c. Have there to your knowledge ever been on the path any Notices? They say, “Date of siting unknown at Sandy Lane in bank – saying Private Property”

Mr & Mrs Mutton say that they did not have permission to use the route and had never been stopped prior to 2012. They state on their form; “Path was used by anyone since 1972 when we moved in to Ivybridge/Bridge Park”, they also add; “Since 1972 the path has been used by Bridge Park residents & members of the bowling club with no one to my knowledge being restricted. Being a rough piece of ground, damage would be difficult or impossible”. In the letter attached to their UEF, they say, “We have lived here for over 40 years & have always had access to the pathway between 34 & 35 Bridge Park. It has now been blocked off with a padlock & no one is allowed to use other than the garage owners. I understand that after usage for 20 years it becomes public”.

- 2.4.8 Two more users from 11 Bridge Park say that they have been residents of Bridge Park since 1970, for more than 40 years and have used the route from Bridge Park to Exeter Road numerous times on foot. They add that they had always used the path with no obstruction and mention that they have seen a no parking notice. In 1980 they rented a garage there from Blight and Scoble (developers). In reply to Q 8.b. Say whether the owners or occupier ever gave you instruction as to the use of the way by the public and, if so, what those instructions were, they replied, “No one ever said anything”.

In response to Q10. Have you ever been stopped or turned back when using the route? They state, “No”

In reply to Q10 c. Do you believe the owner or occupier was aware the public were using it? They say, “Yes”, “It was known by the rent collector that lived at Bridge Park”. They state that they had not seen any notices.

As additional information they add, “It has always been used as a short cut for Exeter Road and if Bridge Park Hill was covered in ice or snow a safer route”.

- 2.4.9 A further UEF from a resident of No.29 Bridge Park, says she has used the path since 1971, “when needed” going to the post box and to catch the bus. In response to Q3. Why do you think the path is public? She replies, “Blight & Scoble made the access for the residents of Bridge Park before the garages were built to access Exeter Road”.

- 2.4.10 She also mentions that a gate was put up at the top of the steps and approximately six months ago (from April 2013); a notice was appeared stating it was private land with access for garage owners only.

This user adds in a covering letter: “We understand that the majority of houses along Bridge Park, private road, were built in the 1930s. Blight & Scoble gave the then residents’ access across the vegetable garden and tennis courts access to Exeter Road. Since then five other properties have been built by Blight & Scoble in Bridge Park, garages and a car park put on the spare ground. The steps leading from

Bridge Park private road were built after the 1970s to give access to the garages and for the residents to safely get to the garages and Exeter Road”.

In addition this user writes, “We arrived in Bridge Park in 1971 having purchased the land from Blight & Scoble to have our house built and have used the steps and car park to get to Exeter Road since then, if we needed to do so. Therefore the residents of Bridge Park, private road, have been using the right of way since the 1930s to get to Exeter Road”.

- 2.4.11 Two more users give evidence of use over the route since coming to 22 Bridge Park in 1988. Both residents have submitted user evidence forms in April 2013 and sent email responses to the informal consultation carried out in October 2014.

Both users have used the path over the past 25 years frequently, 100 - 150 times a year going into Ivybridge town centre for shopping and visiting friends.

One of the users said a gate was erected and a notice saying, “private property, for garage users only”. He also adds that the gate was initially locked, but not presently, (UEF dated April 2013) and a chain was put across the entrance to the garages from Sandy Lane. This user has not obtained permission to use the path and was challenged in March 2013 for using the route by the owners. He recalls seeing a “Broken/dilapidated sign which is barely legible” on the route but does not mention its location. In response to the informal consultation in October 2014, this user adds:

“I have lived at my current address of Bridge Park, Ivybridge since 1988, a period of over 26 years. Throughout this time, until the recent erection of fencing and a locked gate, there has been free access through the land where the garages are located. Residents of Bridge Park have regularly used this as a route down to Exeter Road. For elderly residents it has provided a gentler, less steep and severe route from Exeter Road to Bridge Park than the only alternative, which is the steep Charlton Terrace. There has never been a sign displayed to suggest there was a problem with the use of the route through the garages”.

The other user who has lived at 22 Bridge Park since 1988, state that the route has been used as a public path all the time she has been living there. She also mentions that the owners put up a gate in the past six months, (UEF completed in April 2013). This echoes the comments made above about signs being recently put up saying; “Private property for garage users only”. This individual has not had permission to use the path nor has the landowner challenged her for doing so.

- 2.4.12 Another resident from No.26 Bridge Park says she has used the path since arriving in 1996 and has used it 50 times a year going to the shops in Ivybridge. In response to Q.3 on the evidence form, Why do you think the path is public? She replies: “When I moved into Bridge Park my neighbours told me it was an alternative path to using Charlton Terrace”.

She stated that a gate was erected on the Bridge Park end of the path in the Autumn of 2012 when the current owner purchased the garage site. She adds that a notice was, “Attached to the gate Autumn 2012 Private Land, no public access, use of garage tenants only”. In addition to this, she mentions that the padlock on the gate was recently removed and the chain was put across the access from Sandy Lane entrance in Autumn 2012.

In response to the informal consultation in October 2014, this resident sent in a letter of support for the proposal, which is included in the backing papers. She adds, “I

have lived in Bridge Park since 1996 and when I first moved in my neighbours advised me that the path down the steps and beside the garages was an alternative walking access to Exeter Road and the shops. My next-door neighbours had lived here since shortly after the houses were built in the 1930s and always used the route to come back from the bus stop or the shops in Ivybridge as the top half of Charlton Terrace is very steep. I and my friends used this route regularly from 1996 until Autumn of 2012 when the new owner put a padlocked gate at the top of the steps at the Bridge Park end of the path preventing access”.

2.4.13 The tenth User Evidence form is from No. 27 Bridge Park. She completed an evidence form in April 2012, plus a covering letter, and states that she has frequently used the path since 1995 – 2012, between 156 – 260 times a year, going to the shops, doctors and work. She also mentions that there were notices but, “not before the gate was there in Autumn 2012”. She states that she has not been given permission to use the path nor stopped or turned back by the landowners. In her accompanying letter she adds, “I know that this has been a public access route for over 20 years and my understanding is that the owners of the land cannot therefore close off our access”.

2.4.14 In reply to the informal consultation notice, Mr J Cann of Ivybridge sent an email, 5 November, and said, “I used this route for 18 years to reach the Bowls Club (as did many members) until it was completely blocked off last year. It was a short cut avoiding the steep climb up Charlton Terrace. (It is still a climb using what was always considered a PROW but slightly less arduous than Charlton Terrace for those getting on in years) I would like to see this path accepted as a PROW”.

In an additional email he adds, “There were a couple of signs put on the boundary hedge around the same time as the notices etc being put up stating it was private property and a low chain was put across the entrance. It was a few months after this that the fence was erected along with the gate. The gate initially was locked – this was attached later. I have not, and to the best of my knowledge, no one else from the club have met the owners. One resident did say that the land had changed hands around the time of the notices etc. being put up but I have no confirmation of this. Further to my last reply, I have used the path from 2000 when I moved to the top end of Ivybridge but it was in regular use by others well before the time I joined the club in 1996. Other residents of Bridge Park state that they had used the path for many years before that”.

2.4.15 District Councillor Tony Barber replied to the informal consultation via email and makes a response in a personal capacity and not as a representative of South Hams District Council. He states, “I would add, as personal comments & information: Proposal 2 addition of a public footpath from Bridge Park to Sandy Lane via garage forecourts. We live in proximity to this and in a sense may have a “non-pecuniary interest””. This area formed a convenient short cut between Bridge Park and the back lane now called “Sandy Lane” at the back of the properties in Exeter Road and hence down to Exeter Road itself. As such, local residents including some of the older people from Bridge Park for who it provided an easier route to Exeter Road rather than the steep top section of Charlton Terrace used it. It was in use from before 1983 when we moved to our current address and since then there have been no barriers to dissuade pedestrians from using it until the present owner took over”.

2.5 Landowner Evidence

2.5.1 The current landowners of the site with the garages, crossed by the proposed footpath are Ms Jo Shearn, 35 Bridge Park, Ivybridge and Mrs P Forsbury of

Ivybridge. They purchased the plot in August 2012. Prior to their ownership, the land was owned by Mr A Head from 2000 – 2012.

2.5.2 Mr Head submitted a Landowner Evidence form in December 2014. On the form he stated that he did not think there was a public right of way across the land and there had never been any reference to one in various planning submissions for the garage site. On his evidence form, Mr Head says he has been aware of people using the route and describes it as, “occasionally on foot taking a short cut”. Mr Head also says he has not required people to ask permission to use the route, but said he had visited the nearby Bowling Club to inform them not to use the land. He says on his form, “I visited the nearby bowling green and informed them not to use the land for access or parking. Tenants of garages permitted to use for access”.

2.5.3 Mr Head adds to this saying, “A local resident complained a vehicle was blocking the way through the land, she was told there was no right of way and this was accepted. Date unknown”. Mr Head said a large sign has been on site from before 2000, saying “Private Property no Trespassing or Dumping of rubbish”, he said the notices had not been defaced or destroyed. He indicates the location of them at point A on the informal consultation plan, on Bridge Park. He also says the gates at the top of the steps at the northwestern corner were not locked.

In response to Q.10, Have you ever obstructed the way? Mr Head says, “Vehicle parked at the bottom of step in north west corner”. In addition to this, Mr Head adds, “When the gate and fence was erected at the northern end of the site and chain at the southern end no one contacted me to have them removed”.

2.5.4 In an email to clarify some points, Mr Head said, “I do not recall when I went to the Bowling Club to ask the members not to use the land for access or parking but this would have been more than 7 years ago”.

In relation to the signs on the route Mr Head says, “I did not refresh or replace the sign in the 12 years of my ownership but the gate and fence at the northern boundary was erected in April 2012”.

2.5.5 Mrs P.A. Forsbury has owned No.35 Bridge Park since 1997 and the adjacent garage area since August 2012. She completed a Landowner Evidence form in November 2014 and does not consider the route to be public. She states on her form that she has seen school children walking through on occasion, visitors to the Bowling Club and youths, all of whom she said have been challenged. In response to Q.4 on the landowner form, have you ever required people to ask permission before using the way? Mrs P. Forsbury replies, “Yes. Garage users have permission – this is withdrawn when no longer required – friends and the occasional workmen”.

Mrs Forsbury continues, “From 1997 onwards my late husband stopped anyone he saw mainly school children & youths. Complaints were made to previous landowners regarding anti social behaviour on the land”. Mrs Forsbury adds that on several occasions that she and her late husband had told people that the route was not public.

In reply to Q.8. Have you ever erected notices or signs stating that the way was not public? Mrs Forsbury replies, “There have always been signs on the area for as long as I can recall and way prior to 1997”. With regards to gates along the way she states; “The existing gate was replaced in June/July 2013 and secured. There has been a chain and posts for many years”. These are marked on the plan accompanying Mrs Forsbury’s landowner form. In response to Q.10. Have you ever

obstructed the way? Mrs Forsbury replies, "No. I have never considered there to be a way to obstruct".

2.5.6 Ms Jo Shearn has lived at no.35 Bridge Park since 2006 and is joint owner of the adjacent land with her mother Mrs P. A. Forsbury since 2012. She does not consider the claimed route to be a public right of way. She completed a Landowner Evidence form in November 2014.

2.5.7 In reply to Q.3. Have you seen, or been aware of, members of the public using the way? She says, "Yes" "On odd occasions school children, garage users, my friends and family and a resident of Bridge Park". Ms Shearn goes on to add, "permission is automatically given to garage users but withdrawn once they no longer use a garage. I have been asked for permission by a resident of Exeter Road for short term access which was given".

2.5.8 Question 6. on the landowner evidence form asks: Have you, or someone on your behalf, ever turned back or stopped anyone from using the way? Ms Shearn replies, "Yes. The earliest date I can recall is 2010 but not for using the way, for dumping a car with no tax. I have stopped the odd schoolchild, youth and a resident of Bridge Park. I cannot give exact dates".

Question 7. asks; "Have you, or someone on your behalf, ever told anyone using the way that it was not public? Ms Shearn goes on to say, "The occupants of 35 Bridge Park have on occasion since 1997 mentioned this and the previous owner of the garages and I have as above".

2.5.9 In response to Q8. Have you ever erected notices or signs stating that the way was not public? She says "No". This comment is clarified in an email: "There has been a large sign since way before 1997, I could not tell you exactly when but for many years prior to 1997 and new ones were put there before we purchased the land I am unsure of the exact date".

Question 9 asks: Have there, to your knowledge, ever been on the way any stiles or gates? Ms Shearn said "Yes" and adds, "There was a gate in place when we purchased which was renewed and locked in mid 2013. There has been a chain and posts for many years". On her accompanying plan, Ms Shearn marks the gate on Bridge Park and the posts and chain on the entrance from Sandy Lane. In addition, Ms Shearn also mentions that Bridge Park is a private road, maintained by them and the residents of Bridge Park and similarly Sandy Lane is private and resurfaced by Exeter Road residents, herself and No.34 Bridge Park. At the end of her landowner evidence form Ms Shearn adds that, "I have never obstructed the way, garage users who reside in Bridge Park have a key to the gate".

2.5.10 In support of her Landowner Evidence Form, Ms Shearn has submitted additional information about her knowledge and ownership of the land adjoining No.35 Bridge Park. Ms Shearn adds, "I purchased the land and garages over which the proposed right of way crosses in August 2012, this was done to allow the possibility of extending the current property I live in along with the garden to accommodate my mother in her later years. I have discussed these plans with a local Architect. It also affords me the ability to keep the area maintained on a regular basis thus assisting to deter loitering, anti-social behaviour and dumping of rubbish allowing my family to enjoy the area. Any right of way through the adjoining land will hugely impact on my family any future plans I may wish to take forward not to mention any financial implication of owning a plot which then has a right of way put through it which was in no way anticipated prior to its purchase. I have lived in the adjoining property at 35

Bridge Park since 2006 and have on occasions over the years reminded people it is private land with no right of way this has generally been school children when I have seen them in the garages. Since owning the land I have spoken to everyone I have seen and been able to speak to in the garages that is not a garage user (a limited number of school children less than 3) one person who I am aware is a resident of Bridge Park.....and a group of teenage boys hanging around”.

2.5.11 “The previous owners were absentee owners and therefore had limited occasions on which to witness people loitering, parking or walking through the area. I am however aware from verbal conversations with one of the previous owners that he had visited the Bowling Club in Bridge Park to remind them it was not an area for them to use when visiting the bowling green. He also informed me of another incident when a lady who was a resident of Bridge Park had telephoned him to say that there was a car at the bottom of the steps. She was reminded that she had no right to use the steps and land unless she was using a garage, the steps were put in place in order for people to access the garages”.

2.5.12 In addition Ms Shearn adds some more information about notices and the gate; “some of the user evidence forms appear to state that the gate and chain were erected in Autumn 2012. This is not the case, the previous owners erected some posts and a chain, I believe as stated above, sometime prior to 2004 and subsequently fence posts along the northern boundary a gate and additional signage at either end of the site. There has always been a sign in place saying private property, no trespassing and no dumping of rubbish (somewhat dilapidated in recent times) and the previous owner erected additional signs stating “private property no public access, access for garages tenants only”. No approach has ever made to the previous owners regarding the introduction of the posts, chain gate or additional signage. Since taking over the land and garages I have spent significant time and money removing rubbish accumulated over many years from youths gathering and generally keeping the area cut back and maintained on a regular basis this in itself has upset a local resident who has been extremely abusive to a person I employed to carry out maintenance on the area. He did however subsequently apologise to me”.

“The publically maintained highway from Bridge Park to Ivybridge and beyond is Charlton Terrace which has street lighting, has no steps is no further distance and runs parallel to the land in question. This is the route I see on a daily basis people using on foot and by car from the private road area of Bridge Park. There are some concrete steps at the northern end of the area in question, which were put there several years ago, to allow access to people using the garages. I have been told this by several local people on more than one occasion and have also seen sight of a statutory declaration to this effect”.

2.5.13 The additional information continues: “In the past there have been cars parked, cars dumped containing rubbish and abandoned items such as mattresses directly in from of the windows of our home. Criminal damage (which was reported to the police) anti-social behaviour, littering and even most recently a neighbour was witnessed by myself urinating on the land and throwing a cigarette butt I did not however challenge him at this time as it was dark and my children were asleep in bed. Everything we have done subsequent to purchasing the adjoining land has been done to improve the surrounding area and make it more pleasant and easily maintainable space for my family to enjoy. I hope this evidence will assist in my being able to continue doing so”.

2.5.14 Ms Shearn has submitted a timeline of events with her additional comments and the full letter can be seen in the backing papers.

2.5.15 A third Landowner Evidence Form has been submitted by Mr P Shearn, completed in December 2014, although he no longer lives in Bridge Park, giving evidence of the route for seven years. He says he was aware of use of the route by “garage users with permission, occasional school child and one local resident”.

In response to Q.4, Have you ever required people to ask permission before using the way? Mr Shearn replied, “I am aware that garage users have permission provided their tenancy is current. Also a local resident has been granted permission”.

2.5.16 In response to Q6. Have you or has someone on your behalf, ever turned back or stopped anyone from using the way? He replies, “Yes”, “I am aware that anyone seen using the way has been challenged by myself and previous occupants”. In addition, Mr Shearn says that if anyone was seen using the route they were told it was not public.

He also adds that though he was aware of notices on site, he has not put up any himself. On the plan attached to his form, he indicates a gate and signs at point A and post, chains and signs at point B. He continues by adding that the way has been obstructed, “By continued use of existing locked gate and post & chain”. In the further information he adds, “I am aware that there have been signs in place for many years to indicate that this is not a public right of way”.

2.6 Discussion

2.6.1 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.

2.6.2 Thus 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.

2.6.3 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.

2.6.4 The use of this proposed route by the local residents was firmly challenged by the erection of the additional fencing and large gate at the top of the steps, point A on the plan, on Bridge Park in the Autumn of 2012. Mr T Head (2000 -2012) erected a smaller gate and post & rail type fence in April 2012 prior to the sale of the garage area. Mrs P Forsbury and Ms Shearn purchased the plot in August 2012 having lived adjacent to it since 1997 and 2006 respectively.

2.6.5 The 2nd Edition Ordnance Survey (OS) mapping of 1904 -06, show only the original section of Charlton Terrace being built and fields where Bridge Park is now. Subsequent OS mapping from the A Edition 2500 series of 1953 shows the crescent

of Bridge Park and the terrace to the north, plus the Bowling Green. This map also shows the fields to the south including all the bungalow plots and the garage area, as undeveloped.

- 2.6.6 The User Evidence and the Landowner Evidence conflict with each other with regards to the dates of signs and the posts and chain at the Sandy Lane end of the route. However, what is clear is that the action of placing a gate at Bridge Park in April 2012, even if it was unlocked at the time and signs across the path calls the route into question as to whether the public have acquired the right to pass and repass over it. Therefore this gives a twenty year period from 1992 – 2012.
- 2.6.7 The User evidence suggests that Blight and Scoble builders throughout the 1960s, 70s and 80s, developed the remaining land. One user said in her evidence that Blight and Scoble allowed residents to go across the vegetable plot and tennis courts to Exeter Road. Blight and Scoble built more properties in Bridge Park, the garages and a car park on the spare ground. As a User stated, “The steps leading from Bridge Park private road were built after the 1970s to give access to the garages and for residents to safely get to the garages and Exeter Road”.
- 2.6.8 One User gave evidence that they had rented a garage in 1980 and another resident of Bridge Park on behalf of Blight & Scoble collected the rent. This suggests that the clear purpose of the steps was for the tenants of the garages to gain access from Bridge Park on foot and drive out through Sandy Lane, not to provide general public access to Sandy Lane or Exeter Road.
- 2.6.9 Early use of the land in 1960s & 70s, prior to the steps, appears to be by way of implied permission from Blight and Scoble to residents who have purchased houses or land from them.
- 2.6.10 It is usual for a public right of way to run from one publicly maintainable highway to another, or, from a public highway to a point of local interest such as a view point. This is not the case here. The path was originally claimed between Sandy Lane and Bridge Park, both privately maintained roads. Even if considered from Exeter Road via the garage plot to Bridge Park, there is no viewpoint or site of local interest.
- 2.6.11 The Bowling Club at the end of Bridge Park cannot be considered a viewpoint or particularly a point of local interest. The Bowling Club will have a private right of access along Bridge Park for its members. From No. 14 Bridge Park the residents privately maintain the road.
- 2.6.12 Section 31 of the Highways Act applies only to use “by the public as of right” and not “by right”.
- 2.6.13 Of the 12 Users, 8 live along the private road to the east of point A, on the accompanying plan, and have private rights of access along this road. There is no evidence that these users have used the route going from one public highway to another. They all return to their private homes on the privately maintained section of Bridge Park.
- 2.6.14 Of the 4 remaining Users, 3, Mr & Mrs Devlin, 11 Bridge Park and Cllr Barber have used the claimed route from B – A and turned left along Bridge Park to connect with the public highway towards the crescent of Bridge Park. However, Mr Devlin rented a garage in 1980 and had a private right of access to the garages by using this claimed route.

- 2.6.15 The fourth User Mr J Cann has used the path on his way to the Bowling Club, which will have a private right of access along Bridge Park.
- 2.6.16 In an additional email from Mr Head, a previous landowner, he stated that he visited the Bowling Club more than 7 years ago; to ask the members not use the land for access or parking. In addition, he stated on his Landowner Evidence form that he placed a large sign on the garage site from before 2000 saying "Private Property, No Trespassing or Dumping Rubbish". He also clarified that he did not refurbish the sign in the twelve years of his ownership. The sign is still on site but the bottom has been broken off leaving the text "Private Property No Dumping No Parking Trespassers Will....." and described by as user as "dilapidated". However, it is still on site.
- 2.6.17 The sign on Sandy Lane and the fact that Mr Head made an overt effort to visit the Bowling Club indicates that he was aware that people were using the path across the garage forecourt and to some extent, perhaps, tolerated its use.
- 2.6.18 In the evidence provided by Mrs P Forsbury, one of the current landowners, she says that from 1997, when they purchased the property, her late husband, "stopped anyone he saw, mainly school children & youths. Complaints were made to previous landowners regarding anti-social behaviour on the land". Ms Shearn, landowner, said the earliest she can recall stopping someone on the route was in 2010. However, she said this was for dumping a car. She said she has stopped the occasional schoolchildren, youths and a resident of Bridge Park but cannot recall when. When Ms Shearn and her mother purchased the garage site, they replaced the gate and erected a more substantial fence along the northern boundary of the garages.
- 2.6.19 Although the family have attempted to speak to people on the adjacent site, it relates predominantly to anti-social behaviour or dumping of rubbish. Prior to August 2012, Ms Shearn & Mrs P Forsbury were not the landowners and therefore did not have the capacity or legal authority to challenge the perceived status of the route.
- 2.6.20 The reputation of this route seems to be that of a short cut for the properties in Bridge Park. Not all the property owners in Bridge Park have submitted User Evidence forms. Some of the User Evidence discusses the desirability and suitability of this path over the lack of suitability of Charlton Terrace to Exeter Road. These are not considerations that can be taken into account with regards to claiming a path under this section of rights of way law. No evidence has been provided to suggest that this path has been used as part of a longer route continuing further than Bridge Park.
- 2.6.21 The question turns to the user evidence and the "public" nature of their use.
- 2.6.22 Case Law as tested by *Poole v Huskinson* (1843) says that "there may be dedication to the public for a limited purpose ... but there cannot be a dedication to a limited part of the public".
- 2.6.23 Therefore, of the twelve User Evidence forms, only three can demonstrate use from one public highway to another and this is not considered sufficient evidence to establish a public right of way, with use "as of right". There was an initial implied permission from Blight & Scoble to purchasers of their houses to use this claimed route as a short cut to their homes. There is implied permission for tenants of the rented garages to use this section of path as well.

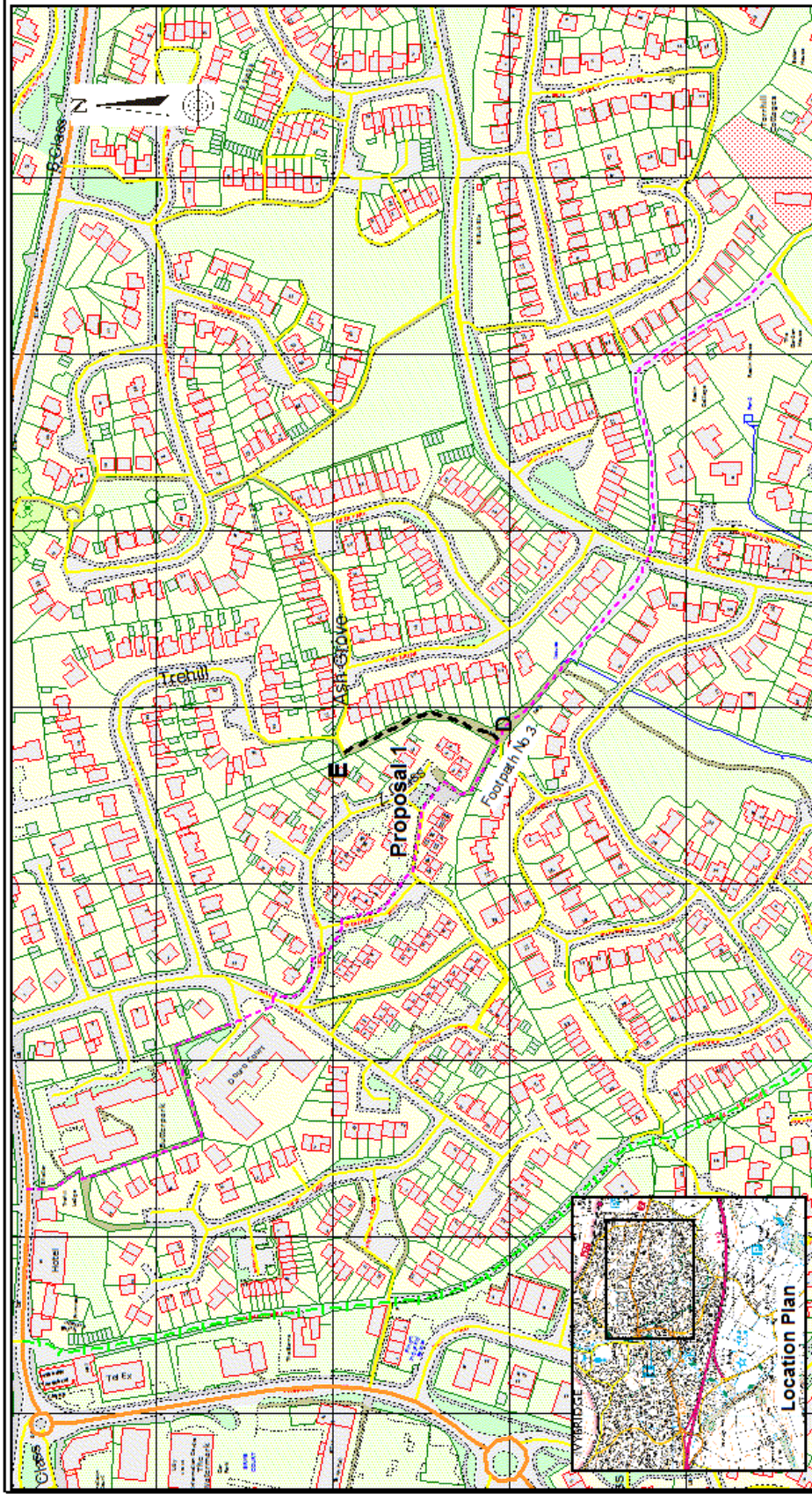
2.6.24 Therefore the history of the development of land and the use of the claimed path, suggests these people have a private right to do so, and were not exercising a public right of way.

2.6.25 The User evidence does not support a claim at Common Law and whilst 3 people may have used the route, and thought that they had the right to do so, on the balance of probabilities the burden of proof required to show that the relevant landowners did indeed intend to dedicate the route as a public right of way, has not been discharged. Thus, use of the path under Common Law cannot be established as there is no clear dedication or acquiescence by Blight & Scoble builders or Mr Head and neither is there a sufficient number of users to raise a presumption of dedication.

2.7 Conclusion

From this assessment it can be inferred from the evidence of use supplied by ten the residents of Bridge Park and two others and from the landowner representations, that there is insufficient user evidence to reasonably allege that public rights exist over the line A – B – C as shown on plan HCW/PROW/15/153.

Therefore, it is concluded that no Order should be made to change the Definitive Map and Statement with regard to this proposal.



SX 6456 100m grid

Reproduced from Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction is prohibited and may lead to prosecution or civil proceedings. Licence No. 100019183

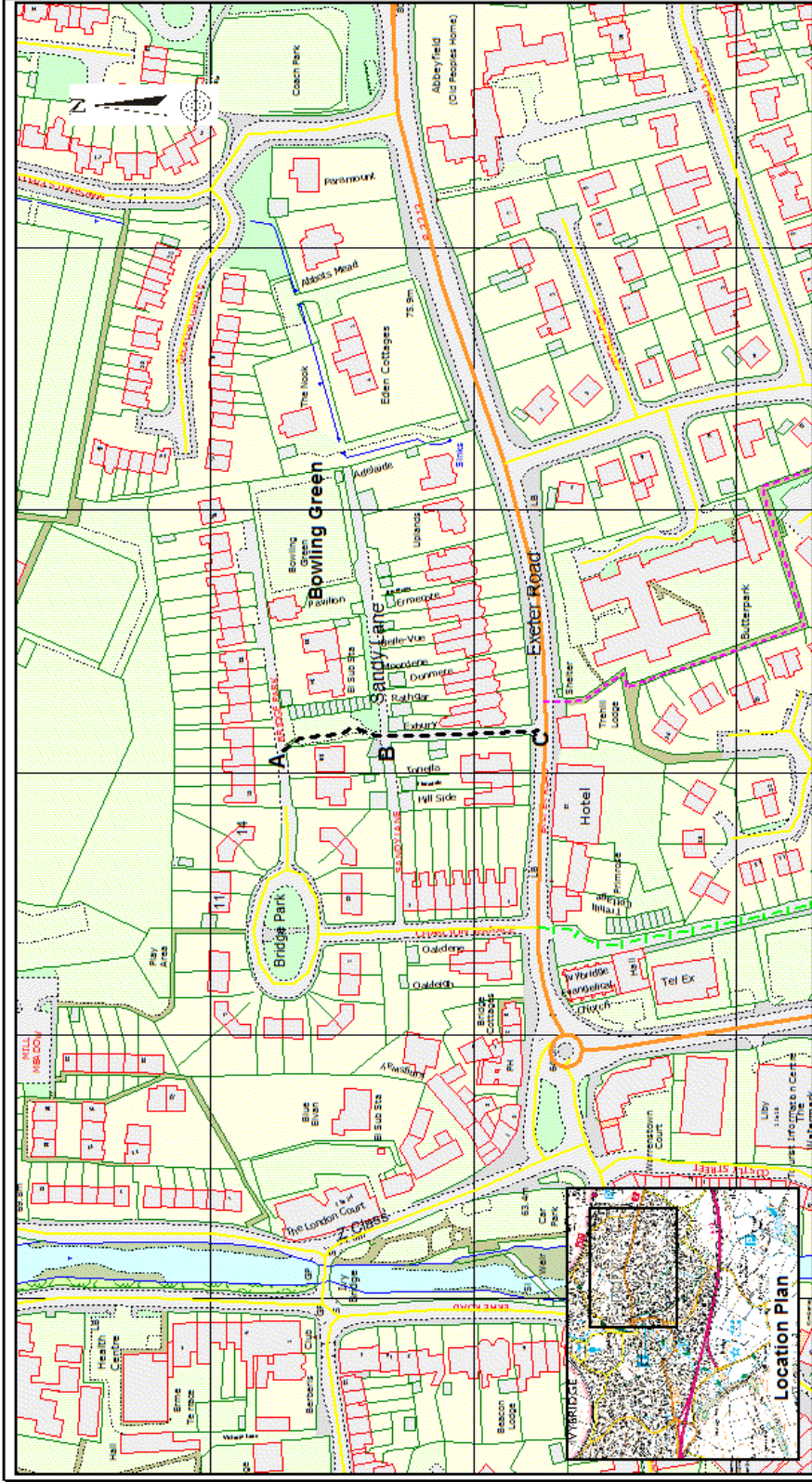
DEVON COUNTY COUNCIL
Definitive Map Review Proposal 1
Ivybridge

Drawing number HCW/PROW/15 /153a
 Date Jan 2015
 Scale 1:3000 (at A4)
 Drawn by ES

Notation Proposal 1 - footpath from Footpath No.3 Ivybridge Trehill to Ash Grove D - - - - -E 100m approx
 Existing public footpath - - - - - Existing public bridleway - - - - - HMPE

David Whitton
 HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT AND WASTE





SX 6456 100m grid

DEVON COUNTY COUNCIL
Definitive Map Review Proposal 2
Ivybridge

Drawing number HCW/PROV/15 /153
 Date Jan 2015
 Scale 1: 2000 (at A4)
 Drawn by ES

Reproduced from Ordnance Survey mapping with the permission of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Licence No. 100019762

Notation Proposal 2 - footpath - Bridge Park to Sandy Lane and Exeter Rd A - - - - B - - - - C 100m approx
 Existing public footpath - - - - Existing public bridleway - - - - HMPE

David Whitton
 HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT AND WASTE

