

**Definitive Map Review
Parish of Bere Ferrers – Part 2**

Report of the Head of Highways, Capital Development and Waste

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

Recommendation: It is recommended that no Modification Orders be made in respect of Proposals 2, 5, 7 and 11.

1. Introduction

This is the second report arising from the Definitive Map Review in the parish of Bere Ferrers and examines four proposals.

2. Background

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 30 footpaths and 3 bridleways, which were recorded on the Definitive Map and Statement with a relevant date of 1 May 1958.

The review of the Definitive Map, under s.33 of the 1949 Act, which commenced in the late 1960s but was never completed, produced a number of proposals for change to the Definitive Map at that time. The Limited Special Review of RUPP's, carried out in the 1970s, did not affect the parish.

The following orders and agreements have been made and confirmed:

Devon County Council (Footpath No. 77, Bere Ferrers) Public Path Extinguishment Order 1965;

Devon County Council (Footpath No. 2, Bere Ferrers) Public Path Diversion Order 1972;

UCR 182 Magistrates Court Stopping Up Order 1974 with reservation of bridleway rights (Bridleway No. 94);

UCR 163 (part) Magistrates Court Stopping Up Order 1974 with reservation of bridleway rights (Bridleway No. 95);

UCR 174 Magistrates Court Stopping Up Order 1974 with reservation of footpath rights (Footpath No. 96); and

UCR 183 (part) Magistrates Court Stopping Up Order 1974 with reservation of bridleway rights (Bridleway No. 97);

Devon County Council (Footpath No. 59, Bere Ferrers) Public Path Diversion Order 1978;

Devon County Council (Footpath No. 54, Bere Ferrers) Public Path Diversion Order 1979;

Devon County Council (Footpath No. 83, Bere Ferrers) Public Path Diversion Order 1983;

Devon County Council (Footpath No. 85, Bere Ferrers) Public Path Diversion Order 1983;

Devon County Council (Footpath No. 27, Bere Ferrers) Public Path Diversion Order 1990;

Devon County Council (Footpath No. 39, Bere Ferrers) Public Path Diversion Order 1991;

Devon County Council (Footpath No. 6, Bere Ferrers) Public Path Diversion Order 1994;

Devon County Council (Footpath No. 51, Bere Ferrers) Public Path Diversion Order 1995;

Devon County Council (Footpath No. 23, Bere Ferrers) Public Path Diversion Order 1996;

Devon County Council (Footpath No. 27, Bere Ferrers) Public Path Diversion Order 1996;
Devon County Council (Footpath No. 83, Bere Ferrers) Public Path Diversion Order 1999;
Devon County Council (Footpath No. 4, Bere Ferrers) Public Path Diversion Order 2004;
Devon County Council (Footpath No. 20, Bere Ferrers) Public Path Diversion Order 2008;
Devon County Council (Footpath No. 83, Bere Ferrers) Public Path Diversion Order 2008;
Devon County Council (Footpath No. 27, Bere Ferrers) Public Path Diversion Order 2008;
Devon County Council (Footpath No. 85, Bere Ferrers) Public Path Diversion Order 2008;
Devon County Council (Footpath No. 89, Bere Ferrers) Public Path Diversion Order 2009;
Devon County Council (Footpath No. 55, Bere Ferrers) Public Path Diversion Order 2010;
and
Devon County Council (Footpath No. 37, Bere Ferrers) Public Path Diversion & Definitive
Map & Statement Modification Order 2011.

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

The current review began with an opening public meeting held in March 2013 in the parish. Three proposals arose from previous reviews with an additional four proposal from initial consultations, along with a number of diversions to resolve historical anomalies, which are being dealt with under delegated powers. Five proposals have been dealt with in a part 1 report to this committee on 25 February 2015.

3. Proposals

Please refer to the appendix to this report.

4. Consultations

General consultations have been carried out with the following results:

County Councillor	– no specific comments on the proposals
West Devon Borough Council	– no comment
Bere Ferrers Parish Council	– comments included in the appendix
British Horse Society	– no comment
Byways & Bridleways Trust	– no comment
Country Landowners' Association	– no comment
Devon Green Lanes Group	– no comment
National Farmers' Union	– no comment
Open Spaces Society	– no comment
Ramblers'	– no comment
Trail Riders' Fellowship	– 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(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 have been taken into account.

9. Conclusion

It is recommended that no Modification Orders be made in respect of Proposals 2, 5, 7 and 11, as the evidence is considered insufficient to meet the requirements of the legislation. Details concerning the recommendations are discussed in the Appendix to this report. 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 West Devon area.

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Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
		DMR/BERE FERRERS

cg190515pra
sc/cr/DMR parish bere ferrers part 2
03 120615

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.

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.

1 Proposal 2: Proposed addition of a footpath between the county road and the foreshore just north of Weir Quay, as shown between points C – D on plan HCW/PROW/14/63.

Recommendation: That no Modification Order be made to add a footpath between the points C – D, but if further evidence is forthcoming the matter can be reconsidered.

1.1 Background

1.1.1 This is a proposal put forward by the Bere Ferrers Parish Council during an earlier but incomplete review.

1.2 Description of the Route

1.2.1 The route starts at the junction with the county road to the north of Weir Quay at point C. It passes along a short concrete slipway to the foreshore at point D.

1.3 Documentary Evidence

1.3.1 Ordnance Survey mapping, 1809-1953. Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way".

1.3.2 No route can be seen, though this may be due to the mapping scales not being large enough to show small features.

1.3.3 Tithe Map, 1842. Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, limiting the possibility of errors. Their immediate purpose was to record the official record of boundaries of all tithe areas. Roads were sometimes coloured and the colouring generally indicates carriageways or driftways. Public roads were not titheable and were sometimes coloured, indicating carriageways or driftways. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over a route shown. Such information was incidental and therefore is not good evidence of such. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible.

1.3.4 The Bere Ferrers tithe map is second class and is therefore only evidence of facts with direct relevance to tithe commutation. The original document is held at the National Archives, with copies for the parish and diocese held locally.

1.3.5 There is an extensive yard area which is not numbered, adjacent to the river.

1.3.6 Finance Act, 1909-10. 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 route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.

- 1.3.7 The area which includes the proposal is shown totally excluded and part of the highway network.
- 1.3.8 Bere Ferrers Parish Council minutes, 1894-2009. The minutes demonstrate the situation which caused the Parish Council to claim the proposal as an addition to the Definitive Map, with 2 other routes in the area. It was reported that during 1977 and 1978 parts of the foreshore between Hole's Hole, Cleave and Clamoak were being fenced off, and the Parish Council were keen to preserve the public's access to it.
- 1.3.9 Tavistock Rural District Council records, 1906-1973. In March 1912 it was reported that an obstruction had been created on the Hole's Hole slipway. A site meeting was convened and by the following month the obstruction had been removed.
- 1.3.10 Handover Records, circa 1947. These records detail highways maintainable at public expense by the former Tavistock Rural District Council under delegated powers from the County Council. The proposal route is included within the public highway area.
- 1.3.11 List of Streets, circa 1970s onwards. The proposal route is not included within the public highway area.
- 1.3.12 Land Registry, 2014. The land crossed by the route is not registered. The registered section refers to the landowners of the remaining part. There is no mention of the proposal route.
- 1.3.13 Definitive Map Review records, 1970s. The route was recommended for inclusion in the Definitive Map by the Parish Council in 1978, as it had been repaired by the County Council in 1969.

1.4 Supporting Evidence

- 1.4.1 Bere Ferrers Parish Council supports the proposal. A supporting representation was also received from a member of the public, though it contained no useful evidence.
- 1.4.2 One user evidence form was submitted with the original claim by the Parish Council in 1978 from a 70 year old local resident who had known the proposal route as a public right of way all his life.

1.5 Landowner Evidence

- 1.5.1 Mr Parkin of Beach Cottage owns land adjacent to the proposal for 38 years and has been a tenant of the Mount Edgcumbe Estate for the foreshore between his cottage and separate out building and land for 37 years. He believes the proposal route is public and has always been regarded as a public right of way. He has seen it used occasionally by the public to access the river. He thinks that any public footpath sign would be unnecessary.

1.6 Discussion

- 1.6.1 There is no date of calling into question for consideration of the claim for presumed dedication under statute law. 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.

- 1.6.2 The proposal route is too small to be shown on much of the documentary evidence. However, it is excluded from any hereditament on the Finance Act records and included within the area of the public highway on the Handover Records. Some mapping shows it as part of a larger quay area at Weir Quay.
- 1.6.3 Access to another part of the foreshore northwards at Hole's Hole prompted the Parish Council to claim the proposal route and 2 other routes to the foreshore in the vicinity of Weir Quay. According to their proposal form this route was repaired by the County Council in 1969, though no record can now be found of this. No other more significant historic maps or references in historical documentary material have been discovered to add more substantial weight to any suggestion that the route had the reputation of being a public right of way.
- 1.6.4 No-one claims ownership of the route and neither is it registered. An adjacent landowner has believed the proposal route to be a public right of way for the last 38 years and has seen it used occasionally by the public to access the foreshore.
- 1.6.5 One user gave supporting evidence of unrestricted use dating back to the early 1900s. Though the Parish Council suggested the proposal in 1978 and continues to support it, no further user evidence has been forthcoming.

1.7 Conclusion

- 1.7.1 Though the route would appear to be a public slipway, considering the historical evidence, but with insufficient evidence of use, dedication at common law for the status of public footpath cannot be inferred. It is therefore recommended that no Order be made to add a footpath between points C – D from the county road to the foreshore on the north side of Weir Quay as shown on plan HCW/PROW/14/63. However, if further evidence is forthcoming the matter could be reconsidered.

2 Proposal 5: Proposed upgrade of part of Footpath No. 11 and the addition of a bridleway between the county road by Maine Farm and Vinegar Hill via Newhouse Farm, as shown between points J – K – L on plan HCW/PROW/14/66.

Recommendation: That no Modification Order should be made in respect of Proposal 5.

2.1 Background

2.1.1 The proposal was put forward by local horse riders as part of the current review.

2.2 Description of the Route

2.2.1 The route starts at the junction with the county road by Maine Farm at point J and runs along the alignment of Footpath No. 11 towards Newhouse Farm. At point K just west of Newhouse Farm the claimed route leaves the footpath and runs past the south side of Newhouse Farm and through Rhodes, Blindwell, and Whittacliffe Woods to meet Vinegar Hill south of Chumland Cottages at point L.

2.3 Documentary Evidence

2.3.1 Board of Ordnance Survey, 1784. In response to overseas military threats the Government commissioned a military survey of the vulnerable south coast counties at a scale of 6" to 1 mile for important areas and 2" scale elsewhere. Critical communication routes such as roads and rivers were to be shown clearly and accurately.

2.3.2 A route is shown along the proposal alignment between Maine Farm and the east side of Newhouse, at the edge of Rhodes Wood. No routes through the woodland are shown.

2.3.3 Bere Ferrers Surveyors of Highways Accounts, 1655-1843. These accounts refer to repairs in 1809-10 on the road from New House to Lophill (Lopwell) in Whitecliff Wood, as well as later in 1840 between Newhouse and Beer Alston Down. Road material was also quarried in the New House Field/Brake. Such repairs would only have been carried out if a route was a public highway. The proposal route was partly subject to the repairs.

2.3.4 Greenwood's Map, 1827. The proposal route is shown in part as part of a cross road between Woolacombe Cross and New House and the woods. The remainder of the route through the woods is not shown, though other routes are.

2.3.5 Bere Ferrers Tithe Map, 1842. 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 the colouring generally indicates 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 route shown.

2.3.6 A feature is shown along a similar alignment as the proposal from point J at the county road by Maine Farm to the entry into Rhodes Wood on the east side of Newhouse, while nothing is shown for the remainder of the route.

- 2.3.7 Map of the Manor of Bere Ferrers, 1876. The map was commissioned by the Viscount Valletort. It has no key. All roads are coloured. The first part of the proposal is shown as such until it enters Rhodes Wood, north of point K at Newhouse. A route continues down to the river eastwards along the wood's boundary. The remainder of the proposal route is not shown.
- 2.3.8 Ordnance Survey mapping, 1809-1953. Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way".
- 2.3.9 On the 25th 1st Edition of the 1880s, the characteristics of the physical existence of the proposal route are shown between Maine Farm and the woods on the eastern side of Newhouse. From here, no route is shown, with any which are relating to mining activities. From the 2nd Edition onwards, a track is shown on the alignment of the proposal route through the woods between Newhouse and Vinegar Hill.
- 2.3.10 Finance Act, 1909-10. 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 route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.
- 2.3.11 The proposal is shown totally included within hereditaments 25,169, 189, and 193.
- 2.3.12 Bere Ferrers Estate Sale, 1921. Under this sale of land belonging to the Earl of Mount Edgumbe, the land crossed by the proposal route between points J – K (known as Newhouse Lane) was sold as part of Norton Farm, lot 53, Ordnance Survey numbers 880 (arable) and part 834 (lane). The land crossed by the remainder of the proposal route, between points K – L, was not included in the sale.
- 2.3.13 Aerial photography, 1946-9 to 2006-7. The photography shows the characteristics of the physical existence of the proposal route outside of the woodland, but is not evidence of status.
- 2.3.14 Bere Ferrers Parish Council records, 1894 – present. The Parish Council surveys all of its public rights of way annually. In the 1983-4 survey it is noted that there are no signposts for Footpath No. 11, part of the proposal route. This appears to be a regular issue with this part of the proposal route.
- 2.3.15 Section 31(6) deposit, 1995 onwards. The current owners of Newhouse have lodged a deposit, to protect their land against claims for presumed dedication based on usage, since their purchase of the land in 1995. There was no such deposit prior to 1995.
- 2.3.16 Land Registry, 2014. Land crossed by the proposal route has been registered to Mr Gardner at Newhouse and the Maristow Charitable Trust.

2.3.17 Route Photographs, 2014. Site photographs of the proposal route show that it is open and available, except at the point where it passes from Newhouse into the woods.

2.4 Supporting & User Evidence

2.4.1 The proposal has the support of the relevant District Councillor, along with other routes not claimed.

2.4.2 Bere Ferrers Parish Council declined to comment on the proposal due to the problems it had caused in the parish and they felt that the County Council would have more information on it than they.

2.4.3 A total of 12 user evidence forms were received in support of this proposal from 7 horse riders and 5 walkers, with detailed use dating between 1973 and 2014, although several did not have maps attached. The walkers appear to only have used the lower part of the proposal route from point L to join a track eastward towards Lopwell Dam or another northward towards Denham Bridge. Only the horse riders have used the entire proposal route.

2.4.4 None of the users have been challenged, stopped or turned back from using the route, or recall seeing notices deterring public use. None sought permission to use the route. There was also no obstruction on the route until approximately 1993-6 when a pile of rubble was deposited in the lane on the west side of point Y. A gate at point L has been locked since late 2013.

2.4.5 The rubble obstruction is considered to act as the event when the public's use of the route was called into question. Therefore the relevant period is considered to be 1973-93. All 7 riders used the route during this period, between at least 3 and 52 times a year, with the most frequent being on at least a weekly basis, and the walkers used the lower part between points L – X also during that time.

2.5 Landowner and Rebuttal Evidence

2.5.1 Mr and Mrs Gardner. A Landowner evidence form was received from Mr Gardner from Newhouse. He has owned the property since 1995 and challenged and stopped several horse riders in the spring of 1995. He states that the proposal route has been created by the County Council as part of the Review and is misleading as other routes have been used in the woods.

2.5.2 He has seen walkers in the woods. Permission has been given for charity horse rides through Newhouse only. The lane between points J – K has always been signed as a footpath and has previously also been signed as being suitable only for agricultural vehicles. There is currently a 'no through road' sign on the open gate at point J by Maine Farm, and on the entrance gate into Newhouse at point Z is a sign 'private no public right of way'. He states that signs have been damaged and replaced. There has been a locked gate and fencing at point Y and obstructive rubble at the entrance into the woods from Newhouse, with rubble in the lane in the early 1990s.

2.5.3 Mr and Mrs Gardner made a Section 31(6) deposit in 1995 which is still valid, and they have concerns regarding security.

- 2.5.4 Mrs Piper. With her late husband she lived at Woolacombe Farm and owned Newhouse Farm between 1967-1995, and never knew a public right of way to exist through the property. She states that the access at point Y was impassable for most of the 1970s. It was damaged by persons unknown and repaired repeatedly during the 1980s and 1990s. Her late husband dumped rubble in the lane on the west side of point Y at Newhouse. During the late 1980s horse riding increased through the woods. Her husband challenged a horse rider as he didn't like horses but it appears that this was not on the proposal route and this rider has not submitted evidence relating to it.
- 2.5.5 Messers Gallup and Venning of Lower Birch Farm. They have owned land adjacent to the proposal route through Newhouse for 35 years and have never seen anyone using it on horseback and were not aware of any such use. They were aware of the rubble and fencing obstruction at point Y, and told about issues with horse riders in the 1990s.
- 2.5.6 Maristow Charitable Trust. They have owned the woodland since 1927. They believe the proposal route is not a public right of way. They are aware of periodic use by walkers, horse riders, cyclists, motorbikes and off road vehicles, which if seen are asked to leave the area. They state that the local Horsewatch Group was approached regarding permissive riding access about 10 years so they are apparently now aware that use not 'as of right'. The Trust says it has erected notices against public access, which have been repeatedly removed at point L on Vinegar Hill. Through the woodland, the proposal route has been deliberately obstructed by forestry work and fallen trees. Some such fallen trees have been subsequently cut to enable access by persons unknown. The Trust states that there has never been any intention to dedicate.
- 2.5.7 Mr and Mrs Roxburgh of Norton Farm. They owned the lane to Newhouse (points J – K approximately) 1999-2006 and still own fields adjacent to it. They were not aware of horse riders using the proposal route. Their grazing tenants have also not been aware of any use by horse riders. The Horsewatch Group's charity rides have always had permission.
- 2.5.8 Mr Blamey of Maine Farm. He has owned land adjacent to the proposal route for 28 years and does not believe it is a bridleway, only a footpath, and has not seen anyone using it on horseback.
- 2.5.9 Mrs Hopwood and Mr Piper are the children of Mrs Piper. They recall a locked gate at point Y from Newhouse into the woods and the lane at that point overgrown during the 1970s and 1980s. The gate was replaced by fencing. Charity horse rides through Newhouse were always with permission. Mr Piper is a member of the Bere Ferrers Parish Council.
- 2.5.10 Mr Smith. He has been a member of the Parish Council's Footpaths Committee for 17 years and had a vegetable garden at Newhouse Farm close to the proposal route during the 1970s. He did not see horse riders.
- 2.5.11 Mrs Olive. She has owned part of Collytown Farm since 2000 adjacent to Bridleway No. 97. She is not aware of any use by horse riders of the proposal route.

2.6 Discussion – Statute and Common Law

2.6.1 Statute (Section 31 Highways Act 1980)

For consideration of the proposal under statute, evidence has been received from 12 users in support of the proposal route covering a date range of 1973-2014: 5 walkers, 6 horse riders and 1 horse rider/walker. The period of use by the horse riders was 1973-1996, with the period for walkers being 1975-2014 but the latter only approximately between points L – X/Y. The proposal route between points J – K is already recorded as Footpath No. 11.

- 2.6.2 Their use was called into question by the landowners at the time, the Pipers, circa 1993. The Pipers of Woolacombe Farm owned Newhouse between 1967 and 1995 when it appears horse riders started to using the route, but it appears that the farm was not occupied until 1993. The lane between Newhouse and point Y was reputedly overgrown during the 1970s; however not so much that horse riders could use it. The gate at point Y was apparently damaged and reinforced with fencing and rubble obstruction but not until 1993.
- 2.6.3 It appears that the rubble obstruction prevented or hindered use of the route by horse riders and therefore is sufficient to act as the event calling their use into question, though the user evidence shows that the riders still used the route until 1996 when it became impassable.
- 2.6.4 Mr Piper challenged a horse rider in the late 1980s but they were not on the proposal route and have not submitted evidence in relation to it.
- 2.6.5 The Gardners have owned Newhouse Farm since 1995 and have a Section 31(6) deposit dating from that time. However it is after the date when use was called into question and therefore does not affect the relevant period.
- 2.6.6 The Maristow Charitable Trust has owned the woods between points Y and L since 1927 and has challenged a variety of users over the years when seen. Notices have been maintained at point L which were replaced when removed. The gate at the same location has also been occasionally locked. They have a Section 31(6) deposit for the woods between points Y – L but only since 2014. The Trust's approach to the local Horsecatch Group about 10 years ago regarding future permissive riding through the woods does not mean that permission applies to use by horse riders retrospectively. The woods have a history of shooting, though perhaps not on the commercial basis as is currently operated by the Trust with other parties.
- 2.6.7 Though adjacent landowners have not seen horse riders using the proposal route, this does not mean that it has not been used.
- 2.6.8 Though it may be considered that there is sufficient user evidence to support the proposal, for use to be as of right, it has to be without force, secrecy or permission. It is clear from the recollections from the Pipers that there was an element of force. Though the force may not have been by those who have submitted the equestrian user evidence, there has still been force and consequently dedication cannot take place.

2.6.9 Common Law

On consideration of the proposal at common law, the historical documentary evidence shows that part of the proposal route between points J – Y, between Main Farm and Newhouse Farm, has existed as an enclosed lane since at least 1784. The first date that the remainder of the route is recorded through Rhodes/Blindwell/Whittacliff Woods is 1906 on the 2nd Edition 25” Ordnance Survey mapping.

2.6.10 Surveyors of the Highways accounts during the early 19th century show public maintenance between points J – X, from Maine Farm through Newhouse Farm to the junction with a track down to Lopwell, but references to the proposal route are partial and limited.

2.7 Conclusion

2.7.1 It is considered that the historical documentary evidence is not sufficient to imply dedication of the proposal route by a landowner at some time in the past. Use by horse riders has not been ‘as of right’ due to the element of ‘force’ by unknown parties and walkers have only used part of the unrecorded section of the proposal. It is therefore recommended that no Modification Order be made in respect of the proposed upgrade of part of Footpath No. 11 Bere Ferrers and the addition of a bridleway between the county road by Maine Farm and Vinegar Hill via Newhouse Farm, as shown between points J – K – L on plan HCW/PROW/14/66.

3 Proposal 7: Proposed upgrade Footpath Nos. 37 and 93, as shown between points P – Q – R on plan HCW/PROW/14/68.

Recommendation: That no Modification Order should be made in respect of Proposal 7.

3.1 Background

3.1.1 The proposal was put forward by local horse riders as part of the current review.

3.2 Description of the Route

3.2.1 The route starts at the junction of Footpath No.93 and Bridleway No. 36 at the east end of New Road, east of Bere Alston Station at point P. It proceeds generally north north westwards along Footpath No. 93 down towards the cottages at Tuckermarsh Quay to meet Footpath No. 37 at point Q. From here it turns south eastwards then south south eastwards following Footpath No. 37 to meet Bridleway No. 36 at point R, northeast of Tuckermarsh Bridge.

3.3 Documentary Evidence

3.3.1 Board of Ordnance Survey, 1784. The lower half between points Q – P of Footpath No.93 is shown as a road to Tuckermarsh Quay, linking to the road near Ashing. No other part of the proposal route is shown.

3.3.2 Bere Ferrers Surveyors of Highways Accounts, 1791-1846. These accounts refer to repairs in 1794-5, 1801-2, 1837-8, 1840-1, 1843, and 1845 on the road through Tuckermarsh and Tuckermarsh Wood. Such repairs would only have been carried out if a route was a public highway. The proposal route was partly subject to the repairs most probably along the alignment of Footpath No. 37 between points Q – R, though could apply to part of Footpath No. 93 between points P1 - Q.

3.3.3 Greenwood's Map, 1827. The lower half between points P1 – Q of Footpath No.93 is shown as a road to Tuckermarsh Quay, linking to the road near Ashing. No other part of the proposal route is shown.

3.3.4 Tithe Map, 1842. 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 the colouring generally indicates 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 route shown.

3.3.5 The proposal route is shown as a defined and mainly enclosed lane between points P1 – P2 – Q1 – Q – Q2 – R. The section P – P1 is not shown. The route is shown open with the Quay area.

3.3.6 Plan of Bere Ferrers Manor, 1876. This plan was drawn up on behalf of the Lord of the Manor Viscount Valletort. It appears to be similar to the parish Tithe Map with regard to the numbering and feature colouration. Its re-use by the Lord of the Manor indicates that it was considered to be an accurate portrayal of the parish.

- 3.3.7 The proposal route is shown as a defined and mainly enclosed lane between points P1 – P2 – Q1 – Q – Q2 – R. The section P – P1 is not shown. The route is shown open but as a separate dashed feature with the Quay area, but is not coloured.
- 3.3.8 Ordnance Survey mapping, 1809-1953. Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way".
- 3.3.9 This shows the characteristics of the physical existence of part of the proposal route between points P1 and Q from at least 1809 with the whole of the proposal route since at least 1882.
- 3.3.10 Finance Act, 1909-10. 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 route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.
- 3.3.11 The proposal is shown almost totally excluded from any hereditament, except for a short section at Tuckermarsh Quay, point Q. There is no deduction for public right of way or user.
- 3.3.12 Bere Ferrers Estate Sale, 1921. Estate Maps were normally compiled by professional surveyors and are therefore likely to be reasonably accurate. However, they would not necessarily include any public rights of way which crossed the estate.
- 3.3.13 The proposal route is shown almost wholly as a parish road and not included in the sale, except partly where it passes through lot 140, either side of point Q. There it is partly shown as a parish highway, partly uncoloured, and the small remainder is not shown.
- 3.3.14 Bere Ferrers Parish Council records, 1894-present. Correspondence from 1965 demonstrates that at least part connecting routes did not have any signposts to indicate direction or status for at least 3 years. This situation again occurred in 1983 for the proposal route. In 1978 there was a complaint about the route but it turned out that it was a dispute between 2 residents at Tuckermarsh Quay. The annual survey of 1983-4 also shows there were no signposts on either Footpath No. 37 or 93.
- 3.3.15 Aerial photography, 1946-9 – 2006-7. The photography shows the characteristics of the physical existence of the proposal route with a wear pattern, but is not evidence of status.
- 3.3.16 Land Registry, 2014. The Mount Edgcumbe Estate owns the freehold mines and minerals in the area.
- 3.3.17 Route Photographs, 2014. Site photographs of the proposal route show that it is open and available, except for a wooden chicane a short distance south of point Q1.

3.4 Supporting & User Evidence

- 3.4.1 Five user evidence forms were submitted in support of the proposal as part of the parish review.
- 3.4.2 Mrs Ball rode the route between 1967 and 1992, when it appears that an obstacle was installed. She also recalls notices in the 1980s but not what they said. She believes the land crossed by the route is owned by the Mount Edgcombe Estate, but she has never sought permission.
- 3.4.3 Mrs McQueen rode the route between 1979 and 1985 approximately 30 times a year depending on the weather. She recalls being challenged by the owner of a cottage and also a stile near the Experimental Station. She never obtained permission to use the route.
- 3.4.4 Ms Reddell used the route on horseback between 1984 and 1990, approximately 4-6 times a year. She believes the land crossed by it is owned by the Edgcombe Estate. She recalls a gate halfway down the route. She was turned back in 2012 by a man who said it was not a bridleway.
- 3.4.5 Mrs Townsend used the route on horseback between 1973 and 1986 on a weekly basis. She recalls a gate installed halfway to the quay with no horse signs at Tuckermarsh Quay. She was challenged by one of the cottage inhabitants.
- 3.4.6 Mrs Walkham rode the route between 1980 and 1986 between 15 and 20 times a year. She was challenged by a Mr Miller with a shotgun who lived in one of the cottages at Tuckermarsh Quay.

3.5 Landowner and Rebuttal Evidence

- 3.5.1 A Landowner evidence form was received from Mr Derrick of 1 Tuckermarsh Quay whose land is crossed by the proposal route.
- 3.5.2 There have been private vehicular incidents along the section of Footpath No. 37 near Tuckermarsh Quay point Q – Q2 but these do not appear to have involved public use of the proposal route. He believes that to 'introduce groups of spookable horses, and mountain bikers to this challenging driving environment would be irresponsible governance'.
- 3.5.3 He also raises issues which cannot be taken into account such as wildlife and private disabled access considerations. He has completed a Section 31(6) deposit but not for land crossed by the proposal.
- 3.5.4 He submitted a petition against the proposal regarding perceived nuisance and danger which was available to sign at several locations in the parish. However this can only be considered as evidence from one source not from numerous individuals.
- 3.5.5 Ms Swift has owned 2 Tuckermarsh Quay, a holiday let, for 3 years. Her neighbour has challenged any unauthorised use on her behalf.

- 3.5.6 Mrs Mennell has owned 3 Tuckermarsh Quay since 2006. She has concerns as the route is narrow and eroding in places, making the surface unsuitable. She states that there is dog mess already and horse mess would be objectionable. She also has concerns regarding maintenance costs for the road which is the cottages' access.
- 3.5.7 The Mount Edgumbe Estate is believed to have owned the land affected by the proposal for many years, and though this is still the belief of local people, their Section 31(6) deposit of 2003 does not include this. Land Registry records the Estate's freehold interest in mines and minerals for land affected by the proposal.
- 3.5.8 Bere Ferrers Parish Council does not support the proposal due to the many representations regarding the unsuitability of sections of the proposal route.
- 3.5.9 Representations were received from 12 members of the public, some local to the parish and others not.
- 3.5.10 Mr Read and Mrs Jennings of Tuckermarsh Farm believe the upgrading of the proposal route would require improvements which would increase to motorbike use, reducing its usability as a public right of way and for access, besides general maintenance concerns including surface suitability. They also think that the residents would have to maintain damage by the public. They object to the financial cost of the proposal and damage to the area's natural beauty.
- 3.5.11 Mr and Mrs Russell of Kingston, Tuckermarsh fear the upgrade would attract motorbikes and the increased traffic would cause infrastructure damage.
- 3.5.12 Mr Marshall of Little Oaks, Rumleigh is in favour of public rights of way but though not through property such as the garden of 1 Tuckermarsh Quay.
- 3.5.13 Mr and Mrs Cawse of Bere Alston maintain part of Footpath No. 93 for private use along which they access their stables and believe the upgrade would increase their workload. They state that sections are unsuitable and increased traffic would increase the damage to the route. They also have drainage and safety concerns, and believe that access for horses would mean motorbike use as well. Additionally, they have concerns about the mixing of walkers, riders and other users.
- 3.5.14 Dr Cook of Plymouth lived at Tuckermarsh Quay during 2008-9. He believes the route's characteristics make it unsuitable for upgrading, with maintenance issues. That the upgrading to bridleway would invite motorbikes and different types of users would clash.
- 3.5.15 Mr Raine of Plymouth has the impression that the upgrading would require the route's 'reinstatement', with effects on its character and associated legal costs. He also believes that there would be conflict between users with motorbikes and cyclists speeding. Walking use would decline in numbers. That the proposal is impractical and would conflict with residents' access.
- 3.5.16 Mr Warm and Ms Johns of Plymouth state that there would be much erosion and increased difficulty of use, due to the narrowness of the proposal route in places, with a lack of suitable passing places.

3.6 Other correspondence

- 3.6.1 A member of the public, Mr Charlton, responded to the informal consultation with queries relating to suitability, enhancements and maintenance, which cannot be taken into consideration. A response was also received from West Devon Borough Council relating to safety, surface and wildlife concerns, which also cannot be taken into account.

3.7 Discussion

3.7.1 Statute

Considering the proposal under statute, five user evidence forms were received in support of the proposal covering a period between 1967 and 1990, with a user frequency of between 4 and 50 times a year. They all recall an obstacle at point P2 on the approach to Tuckermarsh Quay which was a wooden chicane against unauthorised vehicular use, and several users were challenged by one of the former residents at the Tuckermarsh Quay cottages in 1985/6, thereby bringing the public's use of the route into question. This gives a relevant date of 1985. There have been additional challenges in 2012 but after the public's use had already been called into question.

- 3.7.2 No landowner has submitted a Section 31(6) Highways Act 1980 deposit in relation to land affected by the proposal.

- 3.7.3 Landowner evidence forms were received from all three of the cottages at Tuckermarsh Quay. Mr Derrick at No. 1 has lived there for 41 years but only owned land crossed by the proposal since 2011 near point Q. He challenged both motorbike and horse riders prior to the erection of the chicane at point P2 on the approach to Tuckermarsh Quay. He also submitted a petition he organised but this has little weight as it is not representations or relevant evidence from individuals. The remaining cottage owners have only owned their properties since 2006 and 2011 respectively.

- 3.7.4 It is therefore considered that there is insufficient evidence for a presumption of dedication of the proposal route under statute.

3.7.5 Common Law

For consideration of the proposal at common law, the documentary evidence shows that at least part of the route between points P1 and Q has existed since at least 1784, with the remainder documented since at least 1842.

- 3.7.6 Part of the route through the 'Tuckermarsh Wood' area appears to have documented maintenance as a public highway since 1794. This was carried out by the parish's Surveyors of Highways employed by the Vestry to maintain the parish roads. However, it is not clear where this refers to. The Finance Act evidence is inconclusive in relation to public status. The Bere Ferrers Estate Sale of 1921 by the Earl of Mount Edgcumbe is again inconclusive, with discrepancies regarding what may have been considered public and private roads.

- 3.7.7 Consequently it is considered that the historical documentary evidence is insufficient to demonstrate that the proposal route had been dedicated as a bridleway at some time in the past.
- 3.7.8 The Bere Ferrers Parish Council does not support the proposal due to the number of representations regarding suitability. However this is an issue which is not relevant to the consideration of this proposal.
- 3.7.9 The Mount Edgcumbe Estate has registered its mines and minerals freehold interests in land affected by the proposal but has not made any specific response in relation to it.
- 3.7.10 A number of representations were received from members of the public relating to issues regarding possible motorbike use, maintenance, suitability, increased landowner burden, damage to natural beauty, safety, proposal costs, users mixing, and conflict with private access. However these are not issues which are relevant to the consideration of this proposal.

3.8 Conclusion

- 3.8.1 The available evidence when taken as a whole is considered insufficient on the balance of probabilities to support the upgrading of Footpath Nos. 37 and 39, Bere Ferrers to a public bridleway under statute or at common law.
- 3.8.2 It is therefore recommended that no Modification Order be made in respect of the proposed upgrade of Footpath Nos. 37 and 93, as shown between points P – Q – R on plan HCW/PROW/14/68.

4 Proposal 11: Proposed downgrading to footpath of Bridleway No. 69 between the county road at Weir Quay to the Quay, as shown between Y – Z on plan HCW/PROW/14/72.

Recommendation: That no Modification Order be made to alter the recorded status of Bridleway No. 69, Bere Ferrers.

4.1 Background

4.1.1 The proposal was considered due to local views regarding the route's status, both when recorded on the Definitive Map and since that date.

4.2 Description of the Route

4.2.1 The route starts at the junction with the county road at the hamlet of Weir Quay at point Y and runs generally south westwards along a track to the historic main deep water quay at Weir Quay on the River Tamar at point Z.

4.3 Documentary Evidence

4.3.1 Bere Ferrers Surveyors of Highways, 1791-1844. These are detailed highways records kept by those employed by the relevant highway authority of that time, the Parish Vestry, to look after the public highway network. There are references to Wearquay/Weirquay, but it is unclear whether this included the proposal route to the actual quay.

4.3.2 Bere Ferrers Tithe Map, 1844. Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, limiting the possibility of errors. Their immediate purpose was to record the official record of boundaries of all tithe areas. Roads were sometimes coloured and the colouring generally indicates carriageways or driftways. Public roads were not titheable and were sometimes coloured, indicating carriageways or driftways. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over a route shown. Such information was incidental and therefore is not good evidence of such. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible.

4.3.3 The Bere Ferrers tithe map is second class and is therefore only evidence of facts with direct relevance to tithe commutation. The original document is held at the National Archives, with copies for the parish and diocese held locally.

4.3.4 The proposal is shown as a double dashed track from the county road through Weir Quay with the main quay.

4.3.5 Plan of Bere Ferrers Manor, 1876. This plan was drawn up on behalf of the Lord of the Manor Viscount Valletort. It appears to be similar to the parish Tithe Map with regard to the numbering and feature colouration. Its re-use by the Lord of the Manor indicates that it was considered to be an accurate portrayal of the parish.

4.3.6 No route is shown across the quay from the road at Weir Quay.

- 4.3.7 Ordnance Survey mapping, 1884 onwards. Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way".
- 4.3.8 The mapping demonstrates one of the origins of the proposal route, which was direct access from the former Tamar Smelting Works opposite to the quay at Weir Quay on the other side of the county road. Additional accesses to the quay formed to the north and south of the proposal route primarily serving the county road from Gullytown/Bere Alston on the south side and from an ancient non-tidal road from Hole's Hole on the north, both of which joined the proposal route part way along. By the Post War A Edition of 1953, only the proposal route remained as the access route to the quay
- 4.3.9 Finance Act records, 1909-10. 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 route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.
- 4.3.10 Weir Quay itself is owned and occupied by the Earl of Mount Edgcumbe, hereditament 594. It is described as quay and waste. The quay is in fair repair while the remainder of the land is waste. Part is used for mortar yard. There is no deduction for public right of way or user.
- 4.3.11 Mount Edgcumbe Estate records, circa 1926. The waterside property of Weir Quay at Weir Quay was included in a sale of parts of the Bere Ferrers Estate in 1926 owned by the Earl of Mount Edgcumbe. However, it was not sold until 1929 to a Mrs EA Hill. The Estate retained rights to the quay itself and a right of way to it, which was partly on the alignment of the proposal route, though left the county road at a different point.
- 4.3.12 Bere Ferrers Parish Council records, 1894-2009.
- 4.3.13 In 1926 the Earl of Mount Edgcumbe decided to sell the quay at Weir Quay as part of the Bere Ferrers Estate, however it appears it could not be sold and by 1928 he was considering destroying it if the Parish Council did not hire it, which they did do in 1929.
- 4.3.14 During 1930 the quay was damaged by winter storms and it was repaired by the Parish Council along with the Rural District Council, and a Mr Toll who had permission to dig for slag on the quay. The same year Mr Toll sought permission to dig trial pits for slag on the proposal route from the Parish Council. They stated he should ask the Rural District Council for the permission.
- 4.3.15 The waterside property known as 'Weir Quay' was eventually sold in 1929 by the Earl of Mount Edgcumbe to Mrs Hill.

- 4.3.16 A complaint received in 1934 from Mr Hill about some people's conduct when visiting his land at the quay at Weir Quay. The Council thought a prominent noticeboard would help the situation.
- 4.3.17 In 1935 the Parish Council were given notice to quit their lease of the quay which they had rented since 1929? (a lease to charge for the loading and unloading of goods and passengers at the quay), as the current landowners were selling the property. The Parish Council considered purchasing the land but preferred to pursue a claim for a right of way.
- 4.3.18 In 1936 Mr Hingston and Mr Brookes purchased the property and soon after obstructed the proposal route, with fencing, a locked gate and 'private' notices. Such obstruction continued until at least the 1950s. The Tavistock Rural District Council Clerk, Mr Sugars, visited the route in 1953 to view the situation first hand.
- 4.3.19 The landowner, Mr Hingston attempted to extinguish the proposal route in 1977 but this was refused by West Devon District Council in 1978, after consulting the Parish and County Councils. He was also reported to have an intimidating dog in his garden which was open to the route to deter public access along that section of the bridleway. The property again changed ownership in 1979 and the Council wrote to the new owners regarding the public right of way.
- 4.3.20 Tavistock Rural District Council records, 1906-73. From the records held by this former highway authority, it appears that after the Quay was sold in 1929 by the Earl of Mount Edgcumbe Estate to a Mrs EA Hill of Middlesex, with the Estate retaining rights over the roadway hatched on the plan, the half of the proposal route nearest the quay edge, the remainder using the northern alternative, as shown on the 2nd Edition 25" Ordnance Survey mapping. The Estate still retains these rights.
- 4.3.21 Though having sold the land, the Estate still retained an interest in it, and by such means rented rights to charge for the loading and unloading of goods at the Weir Quay to the Bere Ferrers Parish Council from 1929. This contract was terminated by Mr Hingston of Plymouth at Michaelmas (September) 1936.
- 4.3.22 Obstruction of the public right of way began after Mr Hingston's purchase, with further complications added by the construction of the bungalow 'Outlands' (now Weir Quay Cottage) circa 1936 which is adjacent to the proposal route. There were concerns at the time regarding the public's access from the development.
- 4.3.23 He and his co-owner Mr Brookes apparently challenged people and turned them back, only permitting easier access to boats to those who asked. They did not admit to the public right of way. It was recorded that Mr Hingston then erected 9' wide gates which were locked with the notice 'Outlands Private gardens and grounds', along with a 4' chain link fence. Locks were renewed when tampered with by the landowners.
- 4.3.24 This obstruction continued until the Definitive Map compilation in the 1950s, with notice being served on Mr Hingston in 1952 following the Parish Survey. Obstruction of the public's use had only been since his purchase. He considered that the public were not inconvenienced by his exclusion as they had access to the foreshore at either side of his land.

- 4.3.25 The Rural District Council tracked back through its minute books and recalled an extract from their Finance Committee of 31 December 1926 when it was agreed to spend £25 to re-pave the Ware Quay Road. This was done at a time when road stone was conveyed and unloaded at the Quay. Again in 1930 a contribution of £15 was made for repairs.
- 4.3.26 In enquiries made to the Bere Ferrers Parish Council by Messers Roberts and Frise on behalf of the District Council that not only did they believe that the proposal route was a footpath and bridleway but that it was also a public carriageway.
- 4.3.27 Evidence from 38 witnesses going back 65 years to 1887 was gathered in support of the route. It was recalled that the route had been used on foot and with carts for the loading and unloading of goods at Weir Quay related to the former smelting works, lead mine, limekilns, and fruit and vegetable growing, though little used in such a manner in more recent times. Other evidence gathered included the 1926 sale particulars, 1929 agreement, correspondence, and a postcard photograph prior to the District Council repairs. Photographs were organised of the gate and obstruction at that time.
- 4.3.28 Bere Ferrers Parish Survey, 1950. The parish survey shows the proposal route as an 'carriageway used as a bridleway', (CRB). It described the route as starting opposite a builder's yard at Weir Quay, through a barred gate marked 'Private' and along a roadway to the quay. It was also noted that the path was likely to be disputed, but was likely to be required in the future. Additionally, it was noted that the Tavistock Rural District Council had repaired the public right of way in the past, and it had been surface dressed periodically.
- 4.3.29 Definitive Map records, 1950s-60s. It was known that the quay 'approach road', the proposal route, had been openly used as of right for at least 40 years by the public without interruption whilst in the ownership of the Earl of Mount Edgumbe. The public had only been excluded since Mr Hingston had taken ownership of the waterside property of Weir Quay, when fencing gates and notices had been erected. Mr Hingston had built four weekend bungalows including that known as Outlands/Weir Quay Cottage, though no approval could be traced. It was known that though at the time the route had light use, it had been heavily used in the past in relation to the nearby smelting works and lime kilns on foot, with carts and mechanical vehicles. It was recommended by the County Surveyor in a memo in 1952 that the proposal route be recorded as a 'Road used as a Public Path (RUPP)' on the Draft Map, but thought that the Parish Council would be alright if kept as a footpath.
- 4.3.30 In further documentation, it is recorded that the Parish Council supported the recording of the route as a public carriageway.
- 4.3.31 Aerial Photography, 1946 onwards. The photography shows the physical existence of the route.
- 4.3.32 Land Registry, 2014. These show the area referred to in deeds etc as the approach road (proposal route) and quay at Weir Quay. It along with Weir Quay Cottage (Outlands) has been in the current ownership since 2007.

4.4 Supporting Evidence

- 4.4.1 Bere Ferrers Parish Council supports the proposal, as they have understood the route to be a footpath. A supporting representation was also received from a member of the public, though neither supplied supporting evidence.

4.5 Landowner Evidence

- 4.5.1 No Landowner evidence forms were received though a telephone call was received from one of the current landowners, who felt he couldn't complete the form. According to Mr Searl who part owns a holiday home stated that the Earl of Mount Edgumbe still owns the quay. He recalled people having ridden the route, along with walkers, who picnicked on their lawn and let dogs run around. There have been issues over the years.
- 4.5.2 The property is currently up for sale.

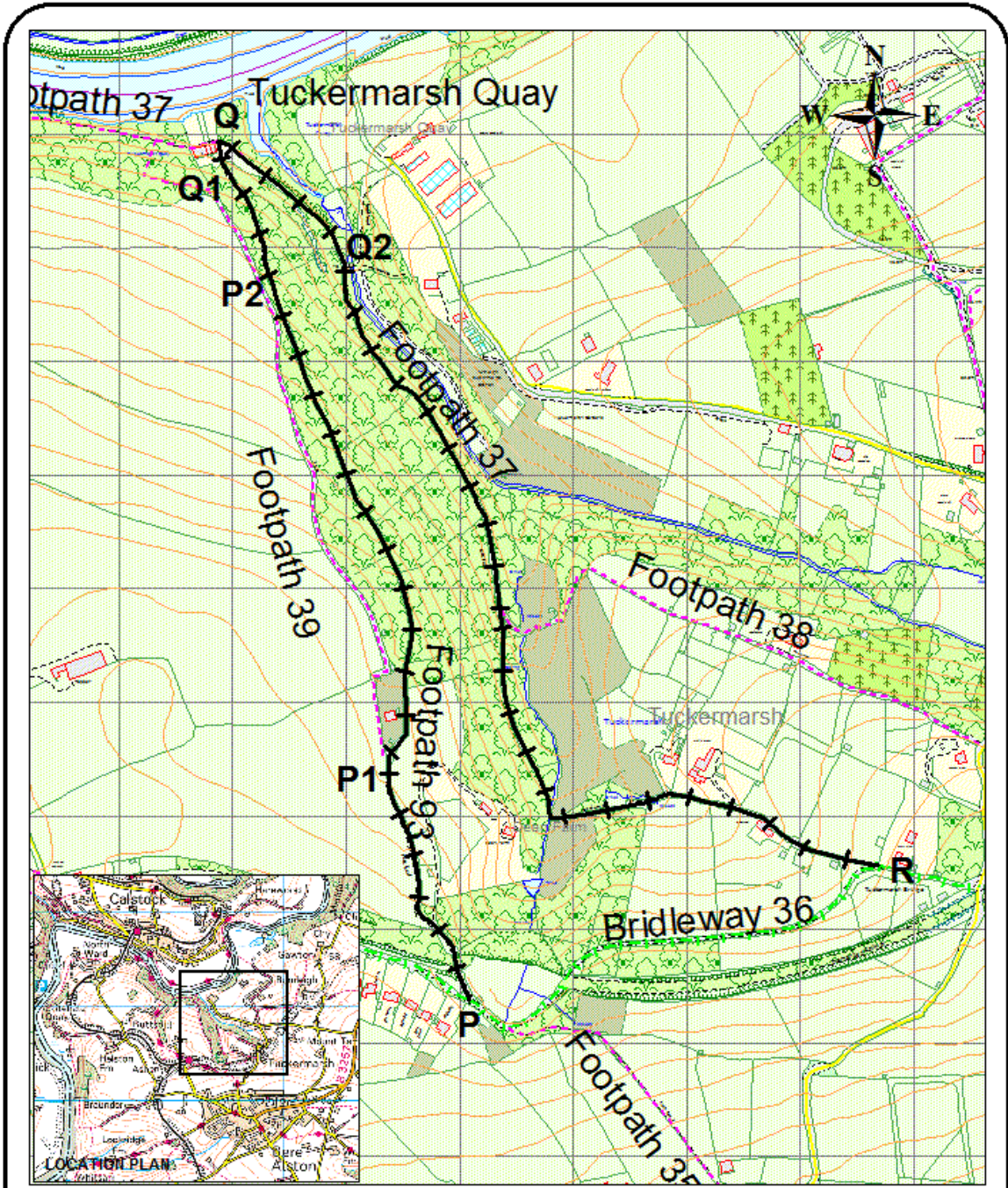
4.6 Discussion

- 4.6.1 It appears that historically the proposal route has been used on foot, with horses and by horse and cart, particularly during the River Tamar and Weir Quay's heyday during the mid-19th century, with vessels up to 400 tonnes berthing there. Despite the proposal as a Road used as a Public Path (RUPP) by the County Surveyor in 1952 which reflected the 1950 Parish Survey, the route was only recorded as a bridleway on the Definitive Map. No evidence for this alteration in the proposed status has been found.
- 4.6.2 A route appears to have been first recorded to the quay on the parish Tithe Map of 1842 with another 2 recorded either side of it by the time of the Ordnance Survey 25 1st Edition of 1884. The proposal route is the dominant route with the others joining it part way along. The Finance Act records do not show a deduction for public right of way or user.
- 4.6.3 The area and proposal route was owned until 1929 by the Mount Edgumbe Estate, and still retain a right of way to and over the quay, though this partly follows one of the alternate alignments. The Earl of Mount Edgumbe put the quay area up for sale in 1926 but it was not sold. Consequently he considered destroying it unless the Parish Council leased it for the loading/unloading of goods, which they did from 1929. That same year the Estate did sell the quay and surrounding area to Mr and Mrs Hill, who subsequently sold it in 1936 to Messers Hingston and Brookes, having given the Parish Council notice to quit the previous year.
- 4.6.4 Messers Hingston and Brookes did not acknowledge the right of way. They obstructed it and challenged the public who attempted to use it. This prompted the Parish Council to claim the route as a public right of way and gathered witness statements dating back to 1887 of use on foot and with carts. None of this evidence is known to have survived. However the landowners did not object to the route's inclusion on the Definitive Map, despite having objected to its existence since 1936.

- 4.6.5 It is believed that the bungalow 'Weir Quay Cottage' previously known as 'Outlands' was constructed in about 1978 via appeal when Mr Hingston attempted to extinguish the public right of way. This was refused based on feedback from the County and Parish Councils. The most recent landowner recalls seeing the route walked and ridden.
- 4.6.6 Bere Ferrers Parish Council supports the proposal, having previously supported its proposed recording not just as a footpath or bridleway, but as a carriageway in the 1950s.
- 4.6.7 There appears to have been an historic public right of way to the quay, the main quay in the area, which was used for the loading and unloading of goods and people. Though the commercial traffic has subsided, the evidence demonstrates that this has been an important route to the local people, as an access to the quay and the river. The proposed variation regarding its status appears to relate to the past and present use and purpose of the right of way. The proposal route appears to have been used in the manner of a restricted byway; however none of the evidence supporting this has survived. There is also no evidence to suggest the route should be downgraded from a bridleway or that an error was made when the Definitive Map and Statement was produced.

4.7 Conclusion

- 4.7.1 It is therefore recommended that there should be no alteration in the status of Bridleway No. 69 and that no Modification Order should be made in respect of the proposed downgrading to footpath of Bridleway No. 69 Bere Ferrers between the county road at Weir Quay to the Quay, as shown between Y – Z on plan HCW/PROW/14/72.



map ref: SX 4467

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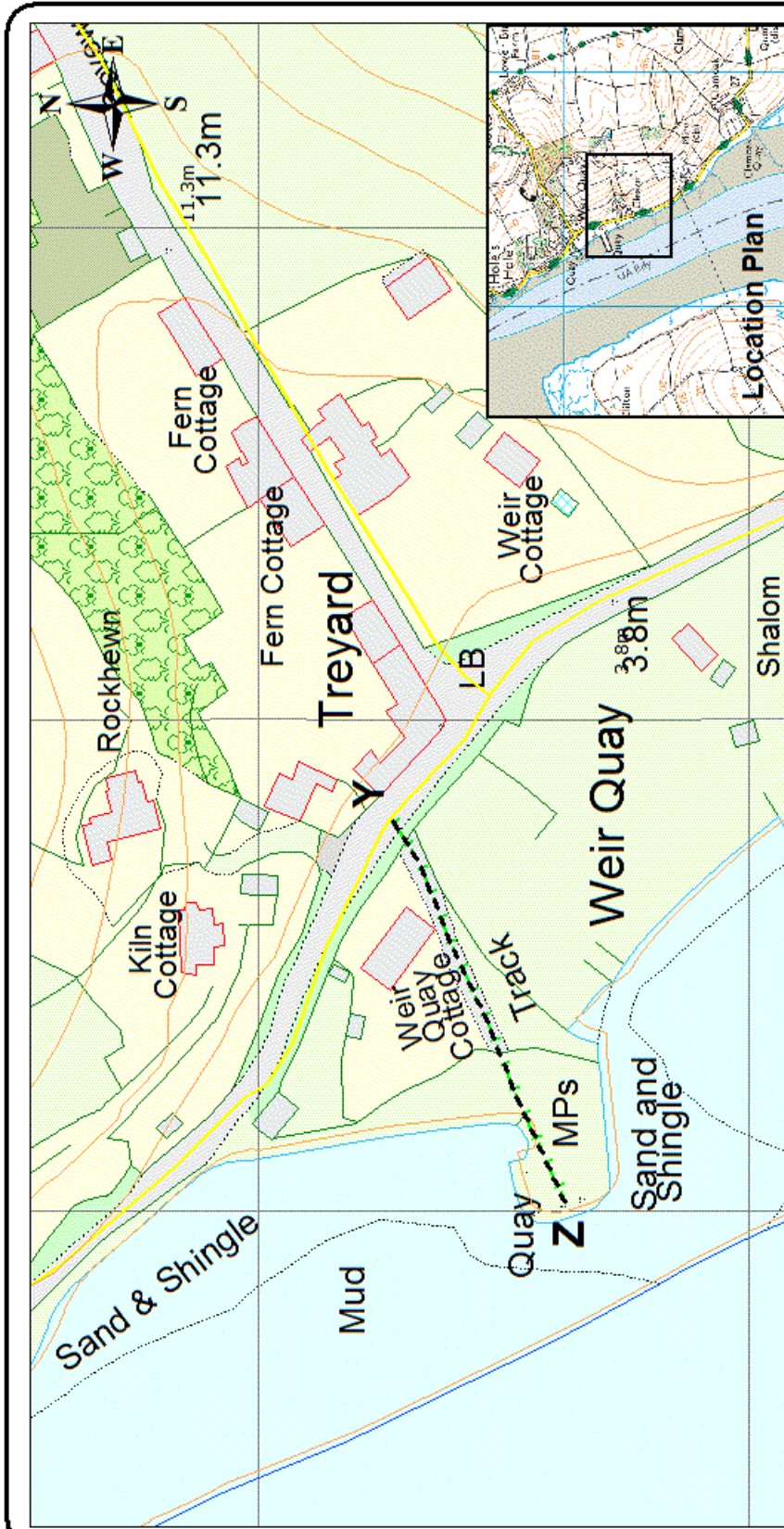
Devon County Council
Definitive Map Review - Bere Ferrers
Proposal 7 - Proposed upgrade to bridleway
of Footpath Nos. 37 & 93 between
Tuckermarsh & Tuckermarsh Quay

drawing number HCW/PROW/14/68
 date April 2014
 scale 1:7,500 (at A4 only)
 drawn by CLG

Notation
 Proposed bridleway P - Q - R (approx 1,820 m) —+—
 Existing footpaths —+—
 Existing bridleways —+—

David Whitton
 Head of Highways, Capital Development & Waste





map ref: SX 4366

drawing number **HCW/PROW/14172**

date **May 2014**

scale **1:2,500**

drawn by **CLG**

Devon County Council
Definitive Map Review - Bere Ferrers
Proposal 11 - Proposed downgrading of Bridleway No. 69 to footpath at Weir Quay

Notation

Bridleway to be downgraded **W - X (approx 87 m) - - - -**

Existing footpath **— · — · — ·**

David Whitton
 Head of Highways, Capital Development & Waste

Devon
 County Council