

**Definitive Map Review
Parish of Clayhidon (part 1)**

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 from the county road north of Hartsmoor Farm to the county boundary as a continuation of the western end of the Bakers Farm public footpath in Somerset between points A and B as shown on drawing number HCW/PROW/15/18 (Proposal 4); and**
- (b) No Modification Order be made to modify the Definitive Map and Statement by upgrading Footpath No. 14, Clayhidon to a Public Bridleway between points A – B – C – D - E as shown on drawing number HCW/PROW/15/13 (Proposal 1).**

1. Introduction

This first report for Clayhidon parish examines two proposals arising from the Definitive Map Review in the parish of Clayhidon. Proposals 2, 3, 5 & 6 will be considered at a subsequent committee meeting.

2. Background

The original parish survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed fifty one paths submitted by the parish council which included bridleways and footpaths. A total of eleven routes were subsequently deleted; as five were withdrawn as no continuations claimed in adjoining parishes, four were considered to be private paths, one was included with Footpath No. 16 and two more were withdrawn as one was a cul-de-sac and one no longer required. In conclusion a total of 3 bridleways and 37 footpaths were recorded on the Definitive Map and Statement with a relevant date of 9 June 1964 for the Tiverton Rural District Council.

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

The following Orders have been made and confirmed:

Mid Devon District Council Footpath No 34 Clayhidon Public Path Diversion Order 1989
Mid Devon District Council Footpath No 11 Clayhidon Public Path Diversion Order 1997
Mid Devon District Council Footpath No 28 Clayhidon Public Path Diversion Order 2000
Devon County Council Footpath No 29 Clayhidon Public Path Diversion Order 2003
Devon County Council Footpath No 8 Clayhidon Public Path Diversion Order 2006
Devon County Council Footpath No 20 Clayhidon Public Path Diversion Order 2007
Devon County Council Footpath No 33 Clayhidon Public Path Diversion Order 2007
Devon County Council Footpaths No 28 & 31 Clayhidon Definitive Map Modification Order 2013

A Definitive Map Review opening meeting was held in Clayhidon in May 2013 and two Definitive Map Modification Orders to correct anomalies on Footpaths No. 28 & 31, Clayhidon were reported to Committee in June 2013, published in 2013 and confirmed in March 2014. A consultation map of six suggestions for change was published in July 2014.

3. Proposals

Please refer to the appendix to this report.

4. Consultations

General consultations have been carried out with the following results

County Councillor R Radford	-	no response to proposals
Mid Devon District Council	-	no response to proposals
Clayhidon Parish Council	-	response to all proposals
British Horse Society	-	no response to proposals
Country Landowners' Association	-	no response to proposals
National Farmers' Union	-	no response to proposals
Ramblers' Association	-	no objections to all proposals
Trail Riders' Fellowship	-	no response to proposals
Devon Green Lanes Group	-	no response to proposals
Somerset County Council	-	response in respect of proposal 4
Somerset Ramblers' Association	-	response in respect of proposal 4

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

5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

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

9. Conclusion

It is recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a Public Footpath from the county road north of Hartsmoor Farm to the county boundary as a continuation of the western end of the Bakers Farm public footpath in Somerset between points A and B as shown on drawing number HCW/PROW/15/18 (Proposal 4) and No Modification Order be made to modify the Definitive Map and Statement by upgrading Footpath No. 14, Clayhidon to a bridleway between points A – B – C – D - E as shown on drawing number HCW/PROW/15/13 (Proposal 1).

10. Reasons for Recommendations

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

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Electoral Division: Willand & Uffculme

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
DMR/Correspondence File	1999 to date	DMR/Clayhidon

tw180515pra
sc/cr/DMR parish clayhidon
04 120615

A. Basis of Claims

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

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

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

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

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

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

1. Proposal 1: Proposed upgrading of Footpath No. 14, Clayhidon to a bridleway

Recommendation: It is recommended that no Modification Order be made to upgrade Footpath No. 14, Clayhidon to a Public Bridleway between points A - B - C - D - E as shown on drawing number HCW/PROW/15/13 (Proposal 1).

1.1 Background

- 1.1.1 In 1981 a letter was received by Devon County Council from Mr P Purvis of Kingsmead, Clayhidon advising that the right of way from Merry Harriers to Garlandhayes in Clayhidon was wrongly shown on the Definitive Map as a public footpath when in fact it had been a Byway/Bridleway for at least 40 years. Mr Purvis enclosed four completed evidence forms from local residents and landowners with longstanding knowledge of the right of way.
- 1.1.2 Mr Purvis advised that he understood the new Countryside Act would provide a much simpler method for changing and rectifying the Definitive Map and could he be informed as to when the alteration could be expected. Mr Gash, on behalf of the County Council, replied in September 1981 that the Wildlife and Countryside Bill was not yet enacted and when it was the County Council would have to decide whether it had sufficient resources to begin a priority programme for the Review of particular paths. He felt that there were many other paths in Devon whose status were more fiercely disputed than this one at Clayhidon.
- 1.1.3 No action was taken in respect of the request and no formal Schedule 14 application was received from Mr Purvis. The letter and user forms have remained on file for the upgrading to be considered as part of the Definitive Map Review when it reached Clayhidon.

1.2 Description of the Route

- 1.2.1 The route starts at point A on the county road between Forches Corner and Wiltown Cross and after crossing a stile (although there is a gap by the side and rails block a gap that is wide enough for vehicles), proceeds south west through a coniferous plantation and woodland of Kingsmead Caravan Site. The path passes through a kissing gate, across a grass paddock, over a stile (at point B) and along a track before bearing off southwards through a small copse (boggy in places) to a stile into a grass field.
- 1.2.2 The path continues south south westwards across three pasture fields passing through two field gates to the foot bridge and pedestrian gate (at point C) and then proceeds across two further fields, through a pedestrian and a field gate to the yard at Ringdown House. The route continues across the yard, through two more gates and past Ringdown House to join the track known as Ringdown Lane at point D at Garlandhayes.
- 1.2.3 From point D the footpath follows the partly surfaced track southwards before turning north westwards and proceeding up a narrow hedged lane to point E at the junction of the county roads known as Wiltown Lane, Garlandhayes Lane and Applehayes Lane.
- 1.2.4 The majority of the surface is earth and grass with some improved sections where the path passes along tracks and through the yard at Ringdown House. The total length of the route is approximately 1430 metres. Photographs of the route are included in the backing papers.

1.3 Documentary Evidence

1.3.1 Ordnance Survey and Other Maps

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

1.3.2 Cassini Historic Maps 1809 – 1919 Sheet 181 Minehead & Brendon Hills

These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919. The key of the 1919 edition does refer to Bridle & Footpaths in the key shown by a pecked line.

1.3.3 None of the three editions show any reference to the path apart from the section of lane between points D and E on the latter two editions. On the earliest 1809 edition some names are spelt differently with Wilton Cleave, Wheel Town and Gantys Cleave and Ringdown Lane is shown continuing as a defined lane (although on a different alignment) across the county boundary into Somerset across Ringdown Common.

1.3.4 OS 1st Edition 25" to a mile 1880-1890 & 2nd Edition 1904-06

Both editions show a double pecked line along the recorded route of Footpath No. 14, Clayhidon with no changes made to the route. At two places on both editions the letters 'F.P.' are shown next to the line, one between points A and B and the second between points B and C. The footbridge 'F.B.' in Wiltown Valley, at point C, is not shown on the 1st edition mapping but is shown on the second edition. The Parish Council minutes refer to the footbridge being erected in 1899.

1.3.5 OS 1 inch to a mile Maps of 1946 & 1965 Sheet 164 Minehead

On the 1946 edition a dashed line, representing 'Footpaths & Bridlepaths' is shown substantially along the line of the recorded Footpath No. 14 although on a slightly different line south west of point B. 1946 was prior to the Definitive Map being compiled but on the 1966 edition public rights of way were shown as recorded on the Definitive Map and separately differentiated as Footpath, Bridleway or Road used as public path. Footpath No. 14 is shown by a line of dots representing a footpath.

1.3.6 OS Post War Mapping 1:2:500 scale 1965

The route of the footpath is shown on this map as on the earlier editions by a double pecked line, with the word 'path' instead of the initials FP in two places along the line. The footbridge is shown by 'F.B.' at point C.

1.3.7 Tithe Maps and Apportionments

Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring can indicate carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown.

1.3.8 Clayhidon Tithe Map & Apportionment 1840

The roads on the Clayhidon Tithe Map are not coloured. There are no lines or other marks on the map which could indicate the line of Footpath No. 14, Clayhidon. In the apportionment for the fields/apportionments crossed by the footpath, under the State of Cultivation heading no reference is made to footpath or right of way. This parish

Tithe Map does however, appear to show the location of gates on field boundaries with the roads and between fields, indicated by a picture of a small gate on the boundary.

- 1.3.9 The route of Footpath No. 14 would appear to pass through apportionment numbers 5, 11, 20, 35, 43, 41, 86, 93, 91, 100, 114, 105 and 106a. These apportionment numbers are part of the holdings known as Forches Common, Wiltown, Wiltown Turbery, Wiltown Valley, Buttles, Brown Heath, Little Garlandhayes and Ringdown Lane. No apportionment number is given to the lane between points D and E.
- 1.3.10 Gates on the Tithe Map appear to be shown at point A, where the footpath leaves the road, possibly at point B and at the field boundaries where the path passes from apportionment 86 to 93, from 114 to 105 and from 105 to 106a. No gates are shown at the field boundaries between the apportionments 5 and 11, 20 to 35, 35 to 43, 43 to 41, 41 to 86, 91 to 100 (believed to be point C at the stream crossing) and 100 to 114.
- 1.3.11 Finance Act Plans and Field Books 1910
The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.
- 1.3.12 The land crossed by Footpath No. 14, Clayhidon falls under five hereditaments with a further seven adjoining the section of lane at the south western end that is not included within any hereditaments.
- 1.3.13 The first section of the path running south west from point A is in hereditament number 62, described as Forges, furze brake and rough pasture 13 acres, owned by Mr Brimley, Churchstanton and occupied by T G Lee. The comments on page 1 state 'Path across corner of one field' and on page 2 R of Way £5. The sum of £5 is carried forward to the item for Public Rights of Way or User on page 4 of the field book.
- 1.3.14 The path then continues into hereditament number 61, Forches Fields; wooden shed, agricultural land of 25 acres owned by Blagdon Hill Pitmaster and occupied by A Govier. No reference to or allowance for any right of way is made in the field book.
- 1.3.15 Continuing westwards the path enters hereditament number 460 at point B, Garden Jacobs City: land of 2 acres owned by the Parish Council and void at the time the field book was completed. No reference to or allowance for any right of way is made in the field book.
- 1.3.16 After leaving the parish council land the path continues south west across three fields part of hereditament number 30 Wiltown Valley; 52 acres House, Buildings and land, owned by Hunters? Executors and occupied now by Arthur Chard. The notes on page 2 state R of Way 217, 216 & 215. These compartment numbers correspond to

the fields crossed by Footpath No. 14 and a sum of £20 is allowed for the right of way and carried forward to the item for Public Rights of Way or user on page 4.

- 1.3.17 The path then crosses the stream at point C and three fields which are part of hereditament 453 Lower? Garlandhayes; 23 acres Building and land, owned by Thomas Lake and occupied by Mr J Leigh. The notes on page 2 state R of Way thro 230, 220 and 221, which are the fields crossed by the path and an allowance of £10 is given and carried forward to the item for Public Rights of Way or User on page 4.
- 1.3.18 After leaving field number 230 the path enters a defined track as shown on the OS 25" 2nd edition mapping. The first section of the track is in the same colour and appears to be included within hereditament 453 (to point D) but the rest of the track is excluded from the adjoining hereditaments as is the section of track, named as Ringdown Lane. Ringdown Lane (a separate spur of Footpath No. 14, Clayhidon) proceeds south eastwards to a ford across a stream and the county boundary with Somerset.
- 1.3.19 The field book for hereditament number 24, a cottage and garden that was situated next to the current Ringdown House and the footpath at point D, includes a note on page 1 'Footpath through it'. No allowance was made for any right of way though on page 2 or 4. Hereditaments number 34 and 35; house and garden and house, garden and orchard lie to the west of point D, north west of the lane. No reference to a footpath or right of way is included in the field book for these properties.
- 1.3.20 Parish Survey under National Parks and Access to the Countryside Act 1949
Footpath No. 14, Clayhidon was initially included on the parish survey form as path number 15 then changed to number 14. The path survey was carried out by Mr J W Vincent and John Edwards on 25 September 1950 and signed by the clerk on 27 October 1950. In response to the question whether likely to be disputed the answer was No and whether required in future, answer Yes. On the second page of the form in response to the question Who has repaired path in the past?, is added 'Footbridge placed by Parish Council'.
- 1.3.21 A general description of the path was given on the form as follows 'This path commences in Somerset. From the stream which forms the Devon/Somerset County boundary enter lane and advance through gate to Ringdown Cottage and here turn right through gate in grassland. Carry on over second grass field until you reach a stile – over this, through more pasture land and another stile. From here go over foot bridge into more grassland – then through gate past Wiltown Valley Farm – through gate over pasture land to a stile. Here bear left through Turbery – then righthanded through gate leading to rough woodland and continue to gate which goes through rough pasture land then another gate which leads onto the Wiltown – Forches road. No major obstacle encountered'
- 1.3.22 The above description (the reverse to the route described in paragraph 1.2) includes the spur of Footpath No. 14 leading to the county boundary and then north eastwards to point A; but does not include the section from Ringdown Cottage (point D) along the track and lane to the county road at Garlandhayes (point E). The section from point D to point E was also not included on the map completed by the parish council as part of the survey. The section of path along Ringdown lane from the county boundary has been drawn leaving Ringdown Lane before point D and proceeding to the east of Ringdown Cottage. This would appear to be through the garden as is described in the Finance Act field book for that hereditament.

- 1.3.23 The survey map has been annotated in pencil in two places relating to Footpath No. 14. At the north east end adjacent to the county road is written 'Suggest Incorrect line 7-4-55' and next to the lane at the south west end of the path, by the lane running south east from point E, is written the number '14'. It is believed that these pencil annotations were made by the County Council. A list of Public Rights of Way in the Parish of Clayhidon agreed with the Clerk to the Parish Council on 16th December 1957 includes number 14 'From Ringdown Common to Garlandhayes'. The description of the path is written as 'Starts at the stream which forms the Devon/Somerset County boundary, Footpath No.6/13, and continues along Ringdown Lane, a private accommodation road (not repairable) to Ringdown Cottage. Here the path divides, one part continuing westerly along Ringdown Lane, to end at the Unclassified County road at Garlandhayes, and the other section turning northwards and following roughly parallel to the County boundary past Wiltown Valley Farm and on to the 3rd Class County road by the quarry 300 yards south of the Merry Harriers Inn'. This description of the route is the Definitive Map Statement for Footpath No. 14, Clayhidon.
- 1.3.24 No change was made to the line of the path at the north east end but on the Definitive Map the section along the track and lane has been added between points D and E. It is understood that the path was shown on the draft and provisional Definitive Maps published in 1958 and 1963 respectively as it is today and it is understood that there were not any objections or representations to the route or its status at that time. The final Definitive Map for Tiverton Rural District Council was published on 9th June 1964.
- 1.3.25 Devon County Uncompleted Reviews of 1968 & 1977
In June 1971 during the Limited Special Review (re-designation of Roads used as Public Paths) was ongoing in the County (arising out of the general 1968 review), the Parish Clerk advised the County Council; that at a meeting on 26 May 1971, the Clayhidon Parish Council resolved that the bridlepath No. 5 from Clayhidon Church to the Wellington road through the land of Glebe Farm be re-designated a footpath. No other variations are proposed in this parish.
- 1.3.26 Following a public meeting held on 6 April 1978 for the general review of the Definitive Map, the clerk for Clayhidon Parish Council wrote to advise that it had been proposed, seconded and adopted by the meeting that the map supplied by the County Council be accepted as a true record of the Footpaths and Bridleways in the parish without any alteration being made (apart from clerical errors noticed in respect of number 23 and Footpath 28).
- 1.3.27 Parish, District and County Council Correspondence
In November 1961 the Borough of Taunton Waterworks Department wrote to ask if Clayhidon Parish Footpath No. 14 was classed as a footpath, bridle path or wheel track. The Deputy County Surveyor replied that the public right of way referred to is classed as a Footpath.
- 1.3.28 In April 1980, agents Allen-James & Partners of Langport wrote to the County Council, acting on behalf of the owners of land over which Footpath No. 14 passed. They advised that they had had correspondence with the Mid Devon District Council over an obstruction to the right of way by a third party. Their clients informed them that the right is a Bridle Path although this is not the entry on the Definitive Map. Their clients view is supported by considerable local opinion and they understand you have forms available which can be completed to establish the correct status of the right of way or the Definitive Map.

- 1.3.29 Mr Gash of the County Council replied enclosing forms which were generally used for collecting evidence in support of new paths but which were considered sufficiently adapted for their purpose.
- 1.3.30 In September 1981 a letter and four completed forms were received from Mr Purvis at Kingsmead as referred to in paragraph 1.1 Background.
- 1.3.31 The Clayhidon Vestry Minutes and Parish Council Minutes
The Parish Council minutes are available from inception of the Council in 1894 and retained by the current clerk. There are several references over the years to rights of way in the parish. In October 1900 the clerk was instructed to say in answer a query that the council was not liable for the repair of stiles in footpaths and in August 1901 it was resolved that an enquirer be informed that the council have no jurisdiction over gates or stiles across footways.
- 1.3.32 There are many references relating to Footpath No. 14 and details of these are included in the backing papers.
- 1.3.33 The first reference is in April 1899 when it was resolved that a footbridge be erected in Wiltown Valley and that a committee be appointed to carry the same into effect. In August it was reported that the bridge was completed and £2-2-6 was paid for it. Further references relating to the repair, replacement and painting of the Wiltown Valley footbridge are found in 1912, 1933, 1960, 1961 and 1962 but no mention is made of the route having a different status.
- 1.3.34 References to obstructions or wire across the path including at Ringdown Lane end and on the Forestry Commission land were recorded in 1903, 1910, 1949, 1961, 1966 and 1968. During the times that the route was discussed there was again no reference to the path having any other status than that of a footpath apart from Mr Govier's claim to vehicular rights across the Forestry Commission land in the 1960s. In 1968 it was reported that field gates had been erected on the Forestry Commission boundaries with the county road and neighbouring land owner.
- 1.3.35 In August 1975 it was reported that the parish footpath signs had all been erected with no comments reported that the route had been signed incorrectly.
- 1.3.36 Aerial Photography
On the 1946 and 1999 aerial photography there is some indication of a visible track along the line of the footpath in the field south of Wiltown Valley Farm between points B and C, but this could just be due to the contours of the land as no track appears on the 2006 or 2011 aerial photography. On the 1946 photography there is evidence of a track along the section north east of point B but this not visible or hidden by the trees in later years.
- 1.3.37 Land Registry
The land crossed by the route of Footpath No. 14, Clayhidon is owned/occupied by seven different owners, with part of the north eastern end of the path being unregistered. At the south west end, the track/lane crossed by the footpath is not registered and is adjoined by a further three or four landowner's property. None of the registers viewed made any reference to a public right of way, which would be expected as title registers usually only record private rights of way or easements that are specific to that title.

1.4 User Evidence

- 1.4.1 With his letter to the County Council in 1981, Mr Purvis enclosed 'four completed statement forms from local residents and landowners with long knowledge of the right of way'. The format of the form used, titled 'Claim for Public Right of Way to be Included on Map' and questions asked were slightly different to the user evidence forms used today and no maps of the routes used were attached to the forms submitted.
- 1.4.2 Mr P and Mrs B Govier of Wiltown Farm, Clayhidon completed separate forms. It is understood that both Mr & Mrs Govier are now deceased. Mrs B Govier refers to the right of way claimed as a bridleway running from Merry Harriers to Garlandhayes. She has known the way to be public for 40 years. She has used the route frequently from 1939 to 1981 to get vehicular access to land. Mrs Govier refers to unlocked gates on forestry land. She was an occupier of the land crossed by the way for some of the time but later not. Under further particulars she advises that public footpath, bridleway and also vehicular access to land in that area (Jacobs City).
- 1.4.3 Mr Govier did not specify the status of the right of way described as running from Merry Harriers to Garlandhayes but has regarded it as public for 30 years. He has used the way frequently from 1950 – 1981 to access own land both from east and west but did not specify by what means. He referred to two locked gates on Forestry Commission land and confirms he was occupier of some of the land until 1979. In further particulars Mr Govier states 'Public footpath & Bridlepath for whole length but vehicular way from Merry Harriers to Jacobs City (former Haylet)'.
- 1.4.4 Mr M Procter was the licensee at the Merry Harriers when he completed his form and describes the right of way from near Merry Harriers to Garlandhayes as a Bridleway/Byway. He has regarded the way as public for 14 years and used the way from 1967 to 1981 frequently for riding. There were unlocked Forestry Commission gates. Under further particulars he wrote 'Have used it personally and have knowledge of many other persons using it'.
- 1.4.5 Mrs M Wilde lived at Trull, in Somerset and had known the way from Merry Harriers Inn to Garlandhayes, referred to as a bridleway, for 7 years from 1971 to 1978. She had used the route 6 times a year going Kingsmead to Green Trees for personal visiting. She has referred to gates and 1 notice; each end of Forestry Commission & Public Right of Way. No further information is stated.
- 1.4.6 A letter requesting a map for completion of the route used and details of any use after 1981 was sent to Mr Procter and Mrs Wilde at their last known addresses but no response was received.

1.5 Landowner Evidence

- 1.5.1 All of the landowners and adjoining occupiers were contacted and informed of the proposal.
- 1.5.2 No completed landowner form was received from Tristan Purvis but he had spoken to the officer, who had also met Ms Hoare whilst inspecting the footpath. Mr Purvis confirmed that the evidence had been collected by his father. Ms Hoare had advised that they only considered the first part of the route to be a bridleway and when it was pointed out that a public right of way goes from county road/public right of way to another county road/public right of way advised that they were considering offering a

permissive bridleway across their field (after passing point B) to re-join the road at point G on the plan.

- 1.5.3 Mr Hutchings occupies the area of land to the east of the county road between points E and F. He did not complete a landowner form but telephoned to advise that the path only adjoins his land. The lane (running south east from point E) is all grown in and washed out at the bottom and no good for horses. It would cost a lot of money to sort out which would be better spent on the roads.
- 1.5.4 Mr P Lumb has owned Woodhayes since 2001 and the footpath crosses his land north west of point B. He believes the route to be a footpath and most of the users are from Kingsmead Caravan Site, crossing from one part of the site to the other. The access points onto his land are a stile and a kissing gate. The OS map from 1904 clearly shows the route to be a footpath.
- 1.5.5 Mr G Robinson has owned Springfield Farm at Garlandhayes, west of point D, for over 40 years. He believes the way to be a footpath and has seen occasional ramblers. In a covering letter Mr Robinson advises that walkers using the footpath currently use his private drive to join the county road at point F, rather than using the eroded and overgrown section of lane, running south east from point E. They would not dream of using this lane on horses and would not allow horses to use their private drive to point F as walkers currently do. There has never been a bridleway anywhere near this location, mainly they imagine due to the totally unfit terrain. Has the path been surveyed to establish need and suitability? They also have the added concern that any upgrade would be used by motorbikes, quad bikes, etc which would be totally unacceptable.
- 1.5.6 Mr N Salter responded on behalf of the Forestry Commission who have leased Forches Woodland, crossed by the north east end of the footpath between points A and B, since 1960. In the last 25-30 years they are aware of irregular pedestrian access but are not aware of use ever by horses or riders. In 1992/93 the area land Agent was involved in stopping an adjacent landowner using it as a vehicular right of way. There are stiles/rails/small gaps.
- 1.5.7 Mrs Seddon of Ringdown House was met whilst the officer was walking the path. She advised that the path passes through her field and yard (north east of point D) and next to her house. In the eighteen years they have lived there she has never seen any horse riders using the footpath although she does see more walkers than there were ten years ago. A landowner evidence form was subsequently received confirming the information given verbally. Mrs Seddon also advised that they may be selling their property in a few years and the presence of a bridleway would make the property difficult to sell as the existing footpath in effect runs through their front garden, in front of the stables and across the fields where they keep their livestock.
- 1.5.8 Mr W Smith has owned Valley Farm since 2001. The path passes through his property between points B and C. He considers the route to be a public footpath and has seen occasional walkers and fun runners. He has never seen any horse riders, cyclists or motor vehicles. There are two stiles and two field gates on the section of path across his land. The route is shown as a footpath on the 1904 OS map.
- 1.5.9 No responses were received from Mr Spiller or from Mr Hitchen, who own the fields either side of point C or from the owner at Lower Garlandhayes Cottage, which is currently for sale.

1.6 Consultation Responses and other Correspondence

- 1.6.1 Clayhidon Parish Council made the following comment having discussed the proposal. Attention is drawn to the track at the Garlandhayes end to be used, as this site is a badger site, but not known if still in use. Not all the property owners are in favour of this upgrade. Would be useable but a cost to do this.
- 1.6.2 Mr Mumford, the local Ramblers Footpath Representative, responded that the suggestion is acceptable from a walker's point of view.
- 1.6.3 Mr John Burrige from Clayhidon wrote objecting to the proposals for change in the parish numbered 1 – 3, 5 & 6. His objection is based on the additional cost of the upgrades during a period of financial austerity. His knowledge of the route of Footpath No. 14 would lead him to believe that there is likely to be a significant cost in upgrading or replacing gates and bridges to make them suitable for bridleway use and at least one area would need significant drainage work to make it passable to horses.

1.7 Discussion – Statute and Common Law

1.7.1 Statute (Section 31 Highways Act 1980)

A claim for a public right of way can arise under statute through use by the public under section 31 of the Highways Act 1980, if twenty years use can be shown after the public's use of the route is called into question. A public right of way can also be upgraded if there is sufficient evidence of use to support presumed dedication of the higher status since the right of way was first recorded.

- 1.7.2 The question of the status of Footpath No. 14, Clayhidon was first raised by Mr Purvis in 1981; apparently after he became aware that under the proposed Wildlife & Countryside Act 1981 an individual would be able to apply to have the Definitive Map changed. Although no formal Schedule 14 application was received, four evidence forms in support of his claim were received in 1981. No maps or plans accompanied the forms but it is understood that the forms were referring to Footpath No.14, Clayhidon and the north east end in particular.
- 1.7.3 The four evidence forms cover use from 1939 to 1981, in excess of the twenty years required under section 31 claims but none of the users refer to their use of the route being called into question. It is also noted that Mr & Mrs Govier owned land accessed by the route for part of their period of use and it is probable that they may have been able to claim private rights of access. Mr Govier advised that he considered the route to be a vehicular way from Merry Harriers to Jacobs City. The parish minutes of January 1962 refer to Mr Govier claiming vehicular rights over the Forestry Commission track and in 1968 it was minuted that after wiring up the footpath the Forestry Commission then erected two field gates at either end of their land.
- 1.7.4 Mr Procter advised that he had used the route for 14 years prior to 1981 for riding and refers to other people using it but does not say whether this was on foot or horseback. Mrs Wilde refers to using the route for personal visiting and it is believed her use refers to the north east end of the route rather than the whole length. As a visitor Mrs Wilde would have the benefit of the private rights of the person she is visiting.

1.7.5 If using private rights of access the use cannot be considered 'as of right' (without permission, force or secrecy) and it would appear that only Mr Procter's evidence could be considered valid evidence of use. The evidence is therefore insufficient to support a claim for upgrading of the footpath by section 31 of the Highways Act 1980.

1.7.6 Common 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. A public right of way can also be upgraded if there is evidence to show that the way has been incorrectly recorded at the time the path was added to the definitive map or if there is sufficient evidence of use to support the inference of dedication of the higher status since the right of way was first recorded.

1.7.7 It is possible that a mistake was made in the initial recording of the public right of way on the Definitive Map, or a public bridleway could subsist at common law if supported by evidence. The Cassini maps reproduction do not show any reference to the path apart from the section of lane between points D and E on the two latter editions. The OS 1st and 2nd edition 25" of 1880 and 1904 both show a pecked line along the present recorded route of Footpath No. 14, Clayhidon, annotated 'F.P.'. The OS Instructions to Field Examiners issued in 1905 state on page 19 paragraph 96 Footpaths that '*Except in gardens, or where the omission is not likely to mislead, the initials F.P. should be inserted to foot-paths, with the object of avoiding the chance of their being mistaken on the plans for roads traversable by horses or wheeled traffic*'. This would indicate that the whole route would not have been passable by horses at the end of the 19th century.

1.7.8 The second edition of 1904 notes the location of a foot bridge at point C and the parish minutes confirm that a bridge was erected on the Wiltown Valley footpath in 1899. Throughout the minutes there are regular references regarding the repair and maintenance of this foot bridge in 1912, 1933, 1960, 1961 and 1962 and at these times there are no references to the route being anything over than a footpath. Other references to the route are found in 1903, 1910, 1949, 1961, 1962, 1964, 1966 and 1968 and again there is no reference to the route having a higher status apart from the Forestry Commission land in the 1960s which referred to private vehicular rights. In 1944 the Parish Council proposed that a section of lane as far as Ringdown Cottage (point D) be taken over but this would only be a short section of the footpath (Points E or F to D) and the lane gave access to three dwellings at that time.

1.7.9 The Clayhidon Tithe Map shows gateways and, of the thirteen holdings that Footpath No. 14 appears to pass through, there are gates shown at three boundaries. The Finance Act field book for three of the hereditaments through which the route passes refer to '*Path across corner of field*' and in two mentions of '*R of Way*' and have allowances of £5, £20 & £10 granted for public rights of way or user. These allowances are considered to reflect the amounts usually allowed for a footpath rather than the amounts for a bridleway. The field book entry for the cottage and garden at the site of Ringdown House today notes '*Footpath through it*' but no allowance was given. The Tithe and Finance Act records are considered to support the current status of footpath rather than that of a bridleway.

1.7.10 The parish survey was carried out by members of the parish council and local residents. Their description of the route, completed in September 1950, includes references to three stiles and a footbridge which would indicate the route would not

have been useable by horse riders at that time. The status of a footpath was accepted by the County Council and the route appeared on the draft and provisional Definitive Maps with no representations made to its inclusion or status.

- 1.7.11 Apart from Mr Purvis at Kingsmead, all the other landowners consider the route to be a footpath only and report seeing walkers but never any horse riders. Several comment on the presence of stiles, general unsuitability of the route for horses and being recorded as a footpath on the old OS maps. Some landowners and a local resident commented that the expense of upgrading the footpath would be unjustified in the current period of financial austerity; however, questions of suitability and expense are not valid considerations when determining evidence of status under the provisions of the Wildlife and Countryside Act 1981.
- 1.7.12 The documentary evidence is considered insufficient to show that a public bridleway has been dedicated at common law and there is also insufficient user evidence to support such dedication and acceptance by the public.

1.8 Conclusion

- 1.8.1 The available evidence when taken as a whole is considered insufficient on the balance of probabilities to support the upgrading of Footpath No. 14, Clayhidon to a public bridleway under statute or at common law.
- 1.8.2 It is therefore recommended that no Modification Order be made to upgrade Footpath No. 14, Clayhidon to a Public Bridleway between points A – B – C – D - E as shown on drawing number HCW/PROW/15/13 (Proposal 1).

2. Proposal 4: Addition of Public Footpath as a continuation to join Bakers Farm footpath in Somerset.

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a Public Footpath from the county road north of Hartsmoor Farm to the county boundary as a continuation of the western end of the Bakers Farm public footpath in Somerset between points A and B as shown on drawing number HCW/PROW/15/18 (Proposal 4).

2.1 Background

- 2.1.1 It has been noticed for some time that the continuation of the west end of Footpath No T6/30 in Churchstanton parish in Somerset, was missing from the Definitive Map and Statement for Clayhidon. In 2010 and 2011 Devon and Somerset Ramblers' representatives wrote to Devon County Council to point out the continuation to the county road in Devon was missing from the definitive map. The recorded section of public footpath stops at a field gate on the Somerset/Devon county boundary and the short section of footpath from the county boundary to the Devon county road north of Hartsmoor Farm is not legally recorded.
- 2.1.2 The anomaly was accordingly included as a proposal for change in the Definitive map Review in Clayhidon parish.

2.2 Description of the Route

- 2.2.1 The route starts at the county road running between Hartsmoor Bridge and Smythes Cross, north of Hartsmoor Farm at point A and proceeds east through a field gate set

back from the edge of the highway. The path follows the field headland, along an old lane, the remains of the hedge bank being partially retained on the south side for the first section and then bears north eastwards and eastwards, continuing along the headland, to a field gate at the Devon/Somerset county boundary at point B. The path then continues eastwards in Somerset as public footpath number T 6/30, passing Baker's Farm, Cliveland and Clivehayes to the county road west of Oatens Farm.

- 2.2.2 The route has a surface of earth and grass with some stone in the section closest to the road and a length of about 120 metres. The width of the old lane is estimated to be about 2.5 metres. Photographs of the route are included in the backing papers.

2.3 Documentary Evidence

2.3.1 Ordnance Survey and Other Maps

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

2.3.2 Cassini Historic Maps 1809 – 1919 Sheet 181 Minehead & Brendon Hills

Please refer to paragraph 1.3.2 for details of these maps.

- 2.3.3 Bakers, then Baker's Farm, is named on all three editions. A lane is shown going west from the farm on the 1809 edition but not continuing to the county road. In the latter two editions a track/lane is shown from the farm to the county boundary and onto the county road. In the 1899-1900 edition the depiction would appear to correspond to 'Unmetalled Roads' and in 1919 to 'Minor Roads'

2.3.4 OS 1st Edition 25" to a mile 1880-1890 & 2nd Edition 1904-06

On the first and second editions a defined lane, with solid lines both sides is shown for the majority of the track from the road to the county boundary. The lane is included in the same compartment number (987) as the field (then four separate paddocks/orchard) through which the route now passes to the south east. A building/structure appears to be shown south of the route at point B. Both maps show a track, unfenced on one side continuing eastwards from point B towards Baker's Farm.

2.3.5 OS 1 inch to a mile maps of 1946 & 1966 Sheet 164 Minehead

The 1946 edition shows a lane from Baker's Farm to the county road, pecked in parts indicating unfenced/hedged in part. On the 1966 edition the lane is shown from the farm to the road with solid lines, corresponding to 'Minor Road in towns, Drive or Track (unmetalled)'. Public rights of way recorded on the Definitive Map are shown on this edition and a Footpath is shown by the red dotted line from Baker's Farm but then stopping at the county boundary.

2.3.6 OS Post War 1:2500 A Edition 1964

On this edition a lane is shown as on the earlier OS 25" maps. The structure south of point B has gone although there are now some small buildings either side of the road at point A. The field south/south east of the lane is now two fields, with the lane included with the larger one. The track, unfenced on one side, continues eastwards from point B towards Baker's Farm. At three places along the track, once in the lane between points A and B and twice on the section to the farm is annotated the letters 'CT', for Cart Track. This would indicate that the route was present on the ground and would have been available to walkers.

2.3.7 Tithe Maps and Apportionments

Please refer to paragraph 1.3.7 for a summary of Tithe Maps.

2.3.8 Clayhidon Tithe Map & Apportionment 1840

The roads on the Clayhidon Tithe Map are not coloured. Unfortunately the map is damaged around the place of point A, but part of the field through which the route passes can be seen. The field is numbered 1017, part of Lilycombe, owned and occupied by John Carter and described as Moor. The building or structure by point B is shown and numbered 1017a but there is no entry for this number in the Tithe apportionment for Clayhidon.

2.3.9 Finance Act Plans and Field Books 1910

Please refer to paragraph 1.3.11 for a summary for Finance Act plans and field books.

2.3.10 The route is believed to have passed through hereditament number 126, Harts Farm, occupied by Mr J Irish and owned by Mr F Spicer of Chard. There is no reference in the field book to rights of way in this hereditament. In reference to the section of the footpath in Somerset, the field book entry for Clivehayes Farm refers to the existence of public rights of way in plot numbers 1315 and 1324, which are the fields crossed by the public footpath leading to Baker's Farm. No deductions for public rights of way were however, made in the valuation for Clivehayes.

2.3.11 Parish Council Minutes

The Parish Council minutes from 1894 are held by the Clerk. There are no references to the link to the Baker's Farm footpath were found in the period 1894 to 1976.

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

The section of lane was not marked on the parish map and no survey form was completed for the path. On the survey map, a pencil note has been made saying 'No 24 Inc W' with an arrow pointing to the lane. It is understood that the pencil annotations were made at the County Council offices following receipt of the survey forms and maps from the parishes. Another route, some 2km to the north west, was number 24 in the parish survey and subsequently recorded as Public Footpath No. 24, Clayhidon from Searles to Boll Hayes Corner and the meaning of the pencil annotation on the map is unclear.

2.3.13 The Inspector's Decision (refer paragraph 2.3.14 below) refers to the path in Churchstanton being surveyed by Miss Wellesley on behalf of the Parish Council in April 1952. A record card was completed and the paths were drawn in pencil on an OS 6-inch map and numbered. The record cards and map appear to have been submitted to Somerset County Council in October 1953. The record card stated 'F.P. From Bakers Farm to Clevehayes difficult to follow as the path seems to have

disappeared'. The Definitive Map statement for Footpath T 6/30 states 'starts at County road on south side of Cleve farm and runs westwards passing south side of Clivehayes farm to south end of Baker's lane, continuous along south side of Baker's farm and thence to County boundary due west of Baker's farm'.

2.3.14 Information from Somerset County Council

After receipt of a Schedule 14 application; Somerset County Council made a Definitive Map Modification Order in 2007 for the deletion of part of footpath T 6/30 from the curtilage of Clivehayes and the addition of part of the footpath through the fields south of Clivehayes. The Order received objections and was determined by The Planning Inspectorate, following a hearing, in June 2008. Two brothers, Messrs Mitchell of Baker's Farm, had completed a statement that was submitted with the Schedule 14 application. The two brothers had moved to Baker's Farm in 1948 and stated that they often used a recognised footpath (eastwards from Baker's Farm) past Clivehayes.

2.3.15 The Order was confirmed with modifications, but at no time during the hearing or in the Inspector's report was the existence of the public footpath, running generally westwards from the county road at Cleve Farm to the county boundary west of Baker's Farm, challenged or questioned. The Order was made to clarify the route of the footpath by Clivehayes Farm and not the existence of the footpath.

2.3.16 Devon County Uncompleted Reviews of 1968 & 1977

In June 1971 during the Limited Special Review (re-designation of Roads used as Public Paths) ongoing in the County (arising out of the general 1968 review), the Parish Clerk advised the County Council that, "at a meeting on 26 May 1971, the Clayhidon Parish Council resolved that the bridlepath No. 5 from Clayhidon Church to the Wellington road through the land of Glebe Farm be re-designated a footpath. No other variations are proposed in this parish."

2.3.17 Following a public meeting held on the 6th April 1978 for the general review of the Definitive Map, the clerk for Clayhidon Parish Council wrote to advise that it had been proposed, seconded and adopted by the meeting that the map supplied by the County Council be accepted as a true record of the Footpaths and Bridleways in the parish without any alteration being made (apart from clerical errors noticed in respect of number 23 and Footpath 28).

2.3.18 Aerial Photography 1946, 1999-2000, 2006-2007 and 2011

In the 1946-1949 aerial photograph the route can be seen as a hedged lane from points A to B with the route continuing along a lane in Somerset. The current one field south of the route was three paddocks at that time and there does not appear to be any building near point B.

2.3.19 By 1999-2000, the route is obscured by the large trees on the north side and there is just one field. A track is shown continuing east into Somerset from point B but the north side of the previous lane has been removed. In the later photographs, the route remains obscured by overhanging trees. The track going eastwards from point B in Somerset is not so prominent.

2.3.20 HM Land Registry

The land crossed by the route is not registered.

2.4 User Evidence

- 2.4.1 No user evidence forms have been received but it is understood that the route is used by walkers in connection with the Somerset footpath no T6/30. Representatives of both the East Devon Group and Somerset Ramblers' have confirmed that the route has been used on occasions by their members as a continuation of the Somerset footpath.

2.5 Landowner Evidence

- 2.5.1 Messrs Mitchell of Baker's Farm, the owners/occupiers of the field through which the route passes and the owner/occupier of the copse on the northern side of the route were notified of the proposal but no communication or completed landowner evidence form was received.
- 2.5.2 The area warden confirmed that at the request of Mr Mitchell the field gate at point B, on the county boundary, was replaced by Devon County Council about two to three years ago.

2.6 Rebuttal Evidence

- 2.6.1 No rebuttal evidence has been received.

2.7 Consultation Responses and Other Correspondence

- 2.7.1 Clayhidon Parish Council discussed the proposal and made the following comment 'The use of the present track as a footpath above Hartsmoor Farm to join the footpath from Bakers Farm, Somerset is practicable benefit to walkers.'
- 2.7.2 The local Ramblers Association Representative advised that after discussion with fellow officers, they found all proposals acceptable from a walker's point of view.
- 2.7.3 Mr Burrige, a local resident, wrote and commented on the proposals for change. He advised that he supported the proposal which appears to be long standing omission to a well-established route.
- 2.7.4 Mr Earl of the Somerset Ramblers' association first wrote to Devon County Council in October 2011 concerning the unrecorded footpath in Clayhidon parish. He advised that Somerset Ramblers believe the continuation of the Somerset footpath T6/30 into Devon should be recorded as a right of way. Any previous doubts about the route were resolved some time ago at a public enquiry.
- 2.7.5 Mr Earl wrote again following publication of the consultation schedule in July 2014 in support of the proposed addition of a public footpath to join the existing Somerset footpath towards Bakers Farm. He advised that the addition will remove an anomaly and their South Somerset Group have walked the route on a number of occasions. There has never been any obstruction to the use of the short section of track in Devon and it provides a useful through route for walkers.
- 2.7.6 Mrs Kimbell of the East Devon Rambler's Group emailed in May 2010 as she understood that Clayhidon parish was under review and wished to remind Devon County Council about the anomaly at the county boundary in Clayhidon near Hartsmoor Farm.

- 2.7.7 Mr Watson also of the East Devon Group of the Ramblers' Association also wrote in October 2011 to also advise of the short unrecorded section of footpath in Clayhidon. He advised that the East Devon Ramblers' Group had walked the unrecorded and recorded parts of the footpath on several occasions during the past few years and their members have never had any problems using the western end of the path leading to the county road.
- 2.7.8 Somerset County Council have advised that they feel the addition of the footpath would provide a useful link.

2.8 Discussion – Statute and Common Law Dedication of Public Rights of way

2.8.1 Statute

A claim for a public right of way can arise under statute 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. However, in the absence of user evidence and the lack of any calling into question of the public's use of the route, the existence of a public right of way is not considered under statute in respect of this proposal.

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

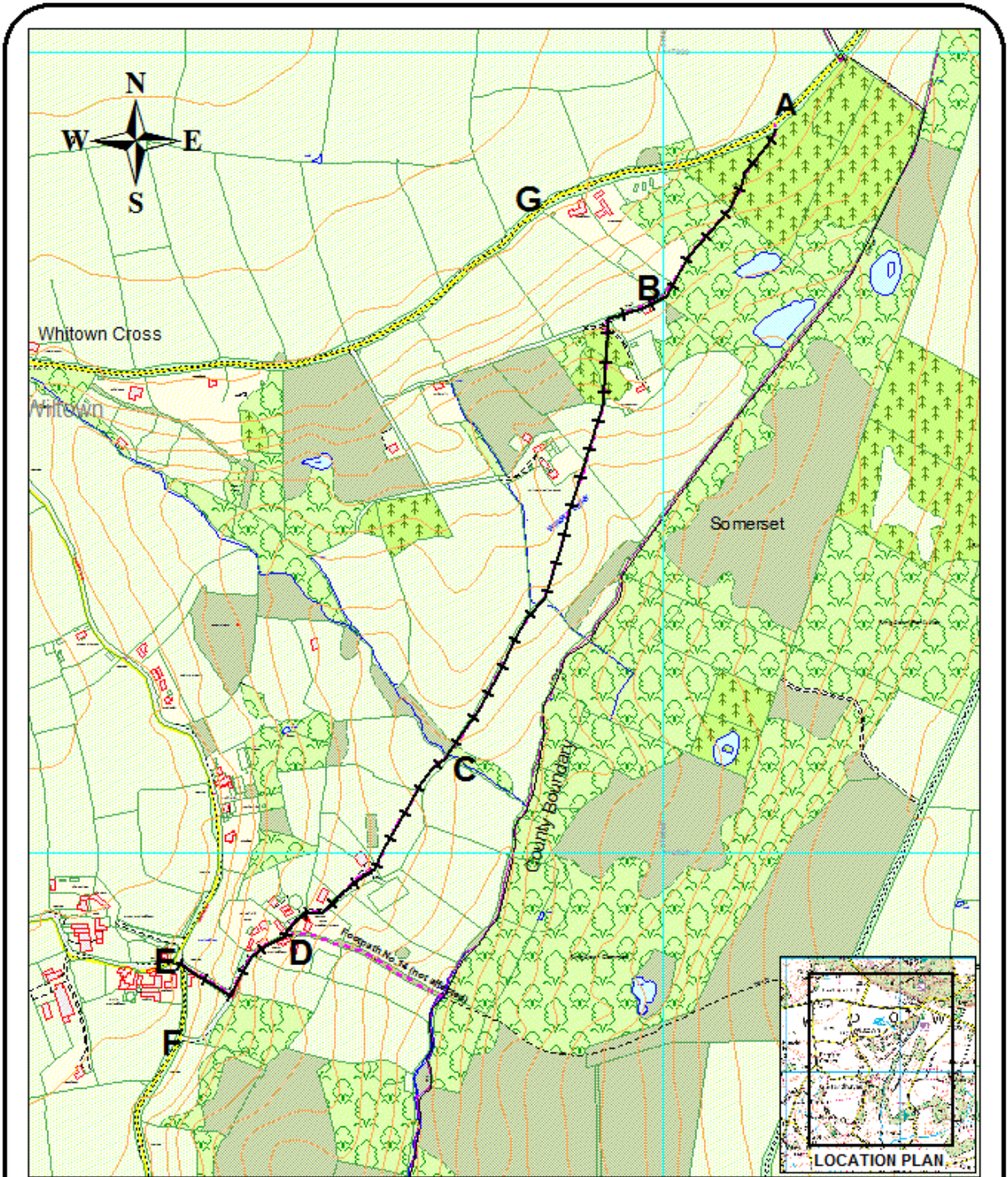
- 2.8.3 The omission of the continuation of Somerset Footpath No T 6/30, across the county boundary to the county road in Devon, from the Definitive Map of public rights of way for Clayhidon, would appear to be an anomaly; where the inclusion of this short section of footpath along the lane was overlooked by Clayhidon Parish Council when undertaking their parish survey.
- 2.8.4 Footpath No T 6/30 in Somerset was added to the Definitive Map through the parish survey, conducted by a parishioner in 1952. The Definitive Map Statement described the path from east to west and described the route of the path as 'thence to County boundary due west of Baker's farm'. As a public right of way would usually connect a county road or public right of way to another county road or public right of way, there is no reason to suppose that the path was considered to end at the county boundary and there would be no logical reason for it to do so. There is no point of interest or view point to justify the existence of a cul-de-sac footpath.
- 2.8.5 The connecting footpath was not proposed as a public footpath by Clayhidon Parish Council in their parish survey and this may have been because the short length involved (about 120 metres) was overlooked. However, in the 1950s the route ran along a defined and hedged lane (as confirmed by the 1946-49 aerial photography and old OS maps) and it may have been considered unnecessary to include in the survey as the footpath was not going through a field, farm yard etc. This seemed to be a fairly common practice in other Mid Devon parishes such as Morchard Bishop and Sandford where footpaths running over fields and through farms were included in the parish survey but green lanes (that were not county roads) and linked to footpaths were not proposed for inclusion. There are some pencil annotations on the

survey map, understood to be made at the County Council, but nothing appears to have been followed up and the Devon section of the footpath was not recorded on the Definitive Map. The omission was also overlooked by the Parish Council in the Devon County Council's subsequent county wide (uncompleted) reviews in 1968 and 1977.

- 2.8.6 The historic mapping confirms the existence of a lane along the route from points A to B since 1880 (OS 1st edition) and the lane was still visible on the 1964 post war map, with the lane annotated 'C.T.', the symbol for a cart track. There is no reference to a public footpath or right of way in the Tithe apportionment or the Finance Act field book for the section point A to point B, but again because the route runs along a defined lane a reference would not be expected. The land crossed by the route from points A to B was in the holding of Lilycombe in the Tithe apportionment rather than under Baker's Farm as it is now. In Somerset the Finance Act field book record for Clivehayes refers to public rights of way in two plot numbers, although no allowance was made.
- 2.8.7 In Somerset in 2008, a Planning Inspectorate hearing was held to ascertain the correct route of Footpath T 6/30 in the vicinity of Clivehayes. The present legal status of the footpath does not appear to have been questioned. In a supporting statement Messrs Mitchell of Baker's Farm confirmed their use of the recognised footpath eastwards from Baker's Farm. The route has been signed from the Devon county road at Point A and a few years ago Mr Mitchell requested a replacement field gate at point B which Devon County Council supplied. The Mitchell brothers moved to Baker's Farm in 1948 and it would appear from their statement to the hearing, and in the absence of any signs to the contrary, that the existence of the public footpath has always been accepted since their occupation.
- 2.8.8 No individual user evidence forms have been received but the local Ramblers' Association representatives for East Devon and Somerset Groups have confirmed use of the route by their members with no obstruction or problems using the path. It is also understood that the route has been used by individuals as of right over the years and their use has not been challenged. The route has been considered part of the local path network and signed and inspected by Devon County Council local warden.

2.9 Conclusion

- 2.9.1 The evidence when taken as a whole is considered sufficient on the balance of probabilities to support the subsistence of a public right of way, namely a Public Footpath, at common law through implied dedication at some time in the past and that use by the public shows such dedication to have been accepted.
- 2.9.2 It is therefore recommended that a Modification Order be made to modify the Definitive Map by adding a Public Footpath from the county road north of Hartsmoor Farm to the county boundary as a continuation of the western end of the Bakers Farm public footpath in Somerset between points A and B as shown on drawing number HCW/PROW/15/18 (Proposal 4).



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DEVON COUNTY COUNCIL
Definitive Map Review - Clayhidon
Proposal 1 Footpath No 14 (part)
Upgrade to Bridleway

drawing number HCW/PROW/15/13
 date Apr 2015
 scale 1: 7,000 (at A4)
 drawn by TW

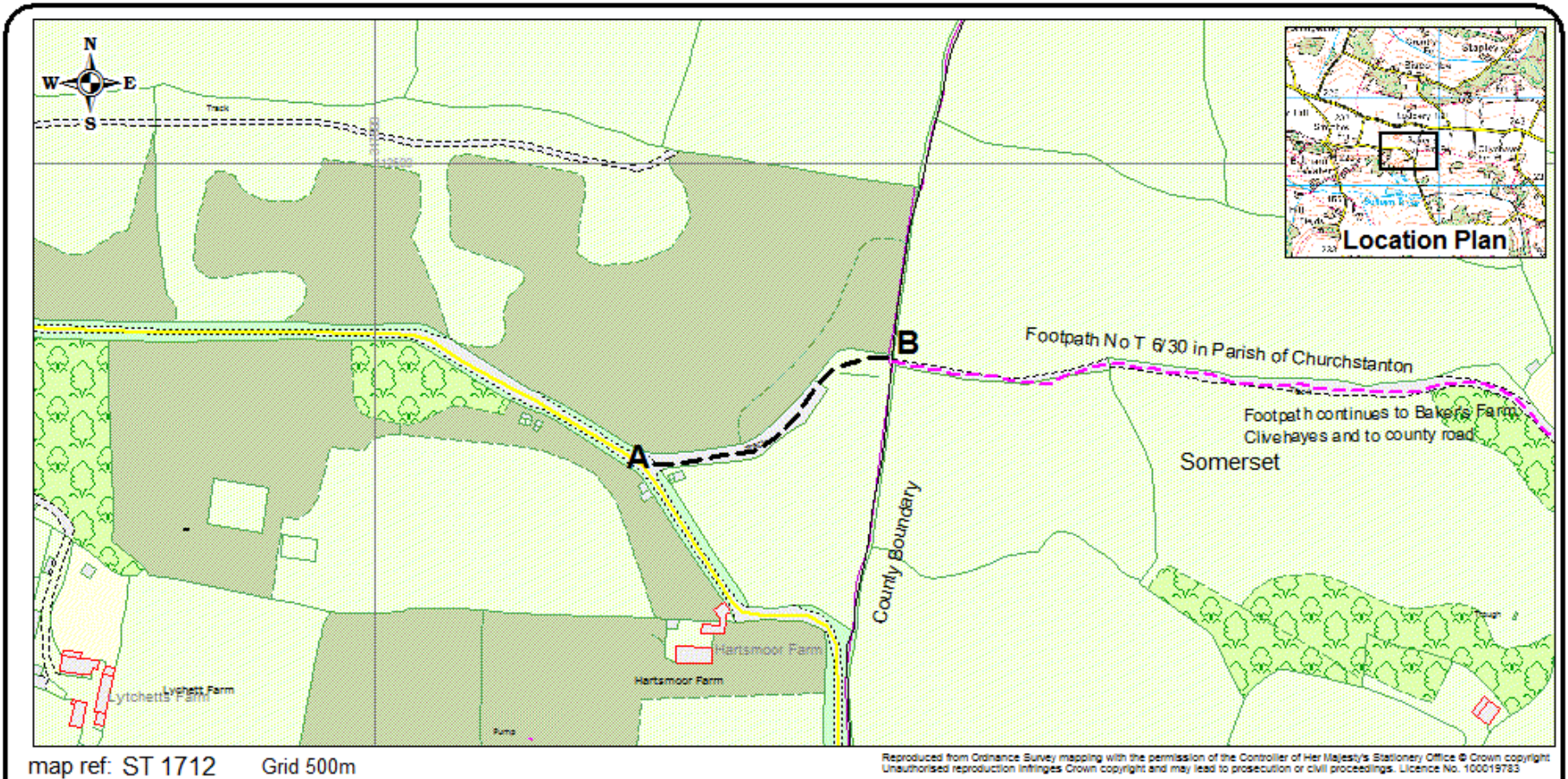
Notation

Footpath No.14, Clayhidon (part) A - B - C - D - E + + + + +
 Proposed Upgrade to Bridleway (Appx 1430 m)

Existing public footpaths - - - - -

David Whitton
 HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT
 & WASTE MANAGEMENT





DEVON COUNTY COUNCIL
Definitive Map Review - Clayhidon
Proposal 4 - Addition of Public Footpath
(continuation of Somerset Public Footpath to county road in Devon)

drawing number HCW/PROW/15/18

date May 2015

scale 1:2,500 at A4

drawn by TW

Notation Addition of Public Footpath A - B (Approx 120m) - - - - -
 Existing public footpaths - - - - -

David Whitton
 Head of Highways,
 Capital Development & Waste

