

**Definitive Map Review  
Parish of Bere Ferrers – Part 3**

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 Modification Orders be made to modify the Definitive Map and Statement by:

- (a) adding a restricted byway (Proposal 4) between points G – H as shown on drawing number HCW/PROW/14/65;
- (b) adding a restricted byway (Proposal 9) between points U – V – X as shown on drawing number HCW/PROW/14/70a;
- (c) upgrading Footpath No. 71, Bere Ferrers to a public bridleway (Proposal 12) between points AA – AB as shown on drawing number HCW/PROW/14/73.

**1. Introduction**

This report examines three proposals arising from the Definitive Map Review in the parish of Bere Ferrers.

**2. Background**

This is the third report for the Definitive Map Review in Bere Ferrers parish. The background to the Parish Review was set out in the Committee report HCW/15/13 from the February 2015 meeting. Two previous reports have dealt with nine other proposals, with three further proposals for diversions and extinguishment being dealt with under delegated powers.

**3. Proposals**

Please refer to the appendix to this report.

**4. Consultations**

General consultations have been carried out with the following results:

County Councillor Phillip Sanders	– no specific comments on the proposals
West Devon Borough Council	– comments included in the appendix
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 Modification Orders be made in respect of Proposals 4, 9, and 12. 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.

David Whitton  
Head of Highways, Capital Development and Waste

## **Electoral Divisions: Yelverton Rural**

Local Government Act 1972: List of Background Papers

Contact for enquiries: Caroline Gatrell

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Tel No: 01392 383000

Background Paper

Date

File Ref.

DMR/BERE FERRERS

cg261015prw  
sc/cr/DMR parish bere ferrers part 3  
04 131115

**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.

Section 67 of the Natural Environment and Rural Communities Act 2006 (NERC) extinguishes certain rights of way for mechanically propelled vehicles except for the circumstances set out in sub-sections 2 to 8. The main exceptions are that:

- (a) it is a way whose main use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles;
- (b) it was shown on the List of Streets;
- (c) it was expressly created for mechanically propelled vehicles;
- (d) it was created by the construction of a road intended to be used by such vehicles;
- (e) it was created by virtue of use by such vehicles before 1 December 1930.

**1 Proposal 4: Proposed addition of a bridleway along the Pigs Lane between the county road south of Whitsam Cross and the county road at Cotts, as shown between points G – H on plan HCW/PROW/14/65.**

**Recommendation: That a Modification Order be made to add a restricted byway between points G – H.**

**1.1 Background**

1.1.1 This is a proposal put forward by local horse riders during the current review.

**1.2 Description of the Route**

1.2.1 The route starts at the junction with the county road approximately 300 metres south of Whitsam Cross at the northern most extent of Furzehill Mine at point G. It passes along an enclosed stoney lane to meet the county road at Cotts, opposite the former quarry approximately 40 metres northwest of Footpath No.71 at point H.

**1.3 Documentary Evidence**

1.3.1 Plan of Beer Ferris Manor, 1737. This plan was commissioned by the Lord of the Manor, Lord Hobart of Bickling, Norfolk and produced by the surveyor James Corbridge at a scale of 4 chains to 1 inch (80.46 metres to 1 inch).

1.3.2 No enclosed lane is physically shown throughout but the proposal route follows what is shown on the map as one of the parish's major silver/lead mining lodes and there are features suggestive of a route and its original purpose with splays at either end, but not the depiction of the entire route.

1.3.3 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.

1.3.4 No lane feature is shown though there is a variation in the width of the currently recorded highway which maybe suggestive of the route at its northern end.

1.3.5 Surveyors of Highways Accounts, 1655-1843. Prior to the formation of district highway boards (1862 & 1864) and the later rural district councils (1894) the responsibility for the maintenance of public highways generally belonged to the parish and was discharged by elected surveyors of highways. Relevant Acts of 1766, 1773 and 1835 included the provision for the use of locally available materials and there was a statutory requirement upon parishioners to fulfil a fixed annual labour commitment. The final responsibility for maintenance lay with the local Surveyor of Highways who was obliged to keep a detailed account of public monies expended.

1.3.6 In 1792, 1796-7, 1803-4 maintenance was carried out on Furshill (Furzehill) Lane. Again in 1841 stones were drawn from Church Hill Lane to Furshill Lane.

1.3.7 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".

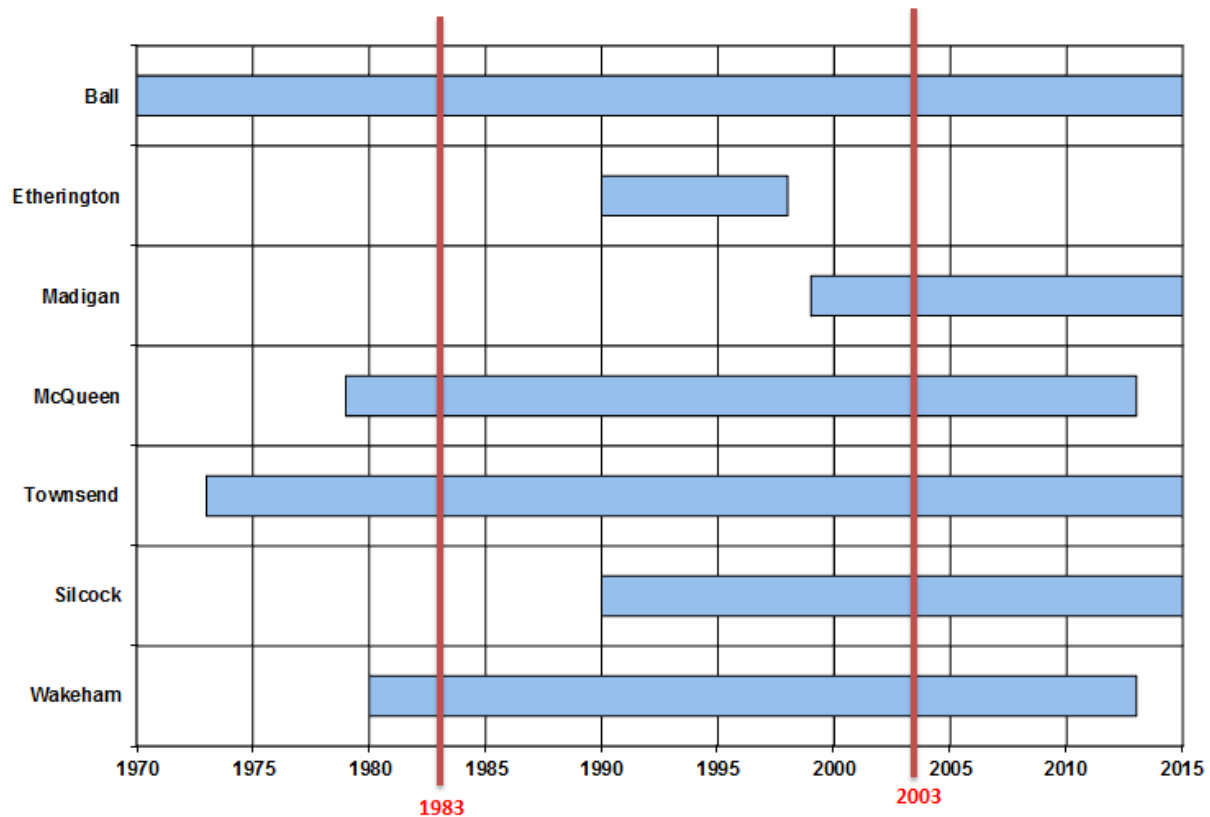
- 1.3.8 On the 1<sup>st</sup> Edition 25", the proposal route is numbered 472, with a solid parcel line across its north end and a dashed line across the southern end, and mine buildings and shaft shown adjacent to it towards the southern end. Authorities on Ordnance Survey mapping state that the convention is that solid lines depicted across a route are parcel boundary lines but which could also indicate a structure such as a gate. There is an access into 515, (a parcel of land adjacent and to the east of the route,) from 472. The 2<sup>nd</sup> edition is similar to the 1<sup>st</sup>, though the mine buildings are no longer shown adjacent to the proposal route and its northern extent is now marked by dashed line indicating a change in surface rather than a solid parcel line. Post War mapping still has the access into 515 from 472, and modern mapping shows stables built in former waste land adjacent to route at the north west corner of 515, which now contains an agricultural building.
- 1.3.9 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. 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. Routes which are not numbered are usually included under the general heading of '*public roads and waste*'.
- 1.3.10 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.
- 1.3.11 The proposal route is split into three parts which were all owned by the Earl of Mount Edgumbe. The northern part was plot 1403 named Lower Honey Bags which was arable and coppice; though the proposal route is shown as is a double dashed unenclosed track with a broken bracing symbol either side. The middle part was included in plot 1381, '*Waste adjoining, coppice and scoil*', and only shown by a single line dashed track, enclosed on its western side. Scoil is the debris/rubbish from mining in front of the solid rock. The southern part was included in plot 1535 named Wallen Bags which was arable and coppice, with the proposal route again shown as a double dashed track.
- 1.3.12 Map of the Manor of Bere Ferrers, 1876. The map was commissioned by the Viscount Valletort, though it appears to have considerable resemblance to the parish Tithe Map. It has no key. All roads are coloured including the proposal route, which is shown generally as a double dashed route except for the middle section which is enclosed on the west side. Plots 1403 and 1381 from the Tithe Map are not numbered, but 1535 is.
- 1.3.13 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.

- 1.3.14 The proposal route is shown totally excluded.
- 1.3.15 Mount Edgcumbe Estate Sale, 1921. Sales documents were compiled when a public auction took place. They were drawn up by the landowner or their agent. The public roads will have been excluded from such sales. It is also likely that if a lot has an easement or public right of way over it, it is likely to be detailed in the particulars. Sales particulars should be treated with some caution. The art of embellishment in advertising is not a newly acquired skill.
- 1.3.16 Under this sale of land belonging to the Earl of Mount Edgcumbe, the proposal route is shown coloured in the same manner as the parish highway network. Lot 231 adjacent to the route could only be accessed from it and the sale particulars make no mention of any easement or private right of way for this lot.
- 1.3.17 Bartholomew's maps, 1920s. These maps were designed for *tourists and cyclists* with the roads classified for *driving and cycling purposes*. They were used by and influenced by the Cyclists Touring Club founded in 1878 which had the classification of First Class roads, Secondary roads which were in good condition, Indifferent roads that were passable for cyclists and other uncoloured roads that were considered inferior and not to be recommended. Additionally, Footpaths and Bridleways were marked on the maps as a pecked line symbol. Cyclists were confined to public carriage roads until 1968. The small scale does not permit all existing routes to be shown, omitting some more minor routes. The purpose of these maps was to guide the traveller along the routes most suitable for their mode of transport.
- 1.3.18 Maps dating from 1923 and 1927 show the proposal route. It is depicted as an Inferior Road and not to be recommended, which is the lowest category the maps show. The majority of those roads shown in the parish are included in that category.
- 1.3.19 Bere Ferrers Parish Council minutes, 1894-2009. The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.
- 1.3.20 In 1999 under urgent business of the Chairman, it was reported by Mr Wager, one of the Parish Councillors, that the lane from Cotts to Pudding Lane had adjacent to it a mineshaft and that the fencing for this had been torn down in order for someone to dump rubbish. Pudding Lane is believed to be the lane which runs north – south just to the east of Whitsam. However in this locality the only mine shafts are those belonging to the former Furzehill Mine which run along the proposal route.
- 1.3.21 Aerial Photography, 1946 onwards. The proposal route is visible and has similar characteristics to the rest of the parish highway network particularly pre-tarmacadam.
- 1.3.22 Handover Records, circa 1947. These records are considered to be a positive indication of what the highway authority believe the status of roads included to be, and are conclusive evidence of a highway authority's acceptance of maintenance responsibility, a commitment not normally undertaken lightly. Such records were for internal use and did not purport to be a record of rights. The lack of a road's inclusion does not necessarily suggest it could not have been a public highway.
- 1.3.23 The north end of the proposal route is included within the public highway area.

- 1.3.24 List of Streets, circa 1970s onwards. The north end of the proposal route is partly included within the public highway area.
- 1.3.25 Mining History, 1956 onwards. This is a collection of books and articles published on the mining history of Devon with references to the Tamar Valley. Furzehill Mine was located on the east silver-lead lode in the parish of Bere Ferrers and had six shafts along the alignment of the proposal route and Footpath No. 71. It was also known as the Whitsam Down Mine.
- 1.3.26 Section 31(6) deposit, 2003. A deposit was made the Agent to the Earl of Mount Edgcumbe in 2003 which lapsed in 2013. No declaration was subsequently filed to make the deposit formal. There is also no deposit for the Edgcumbe Estate before this time.
- 1.3.27 A Walking Tour of the Bere Alston Silver Lead Mines, 2007. Furzehill Mine also known as Whitsam Down Mine ran for about ½ mile along the Bere Ferrers eastern lode from just south of Whitsam Cross to Gullytown.
- 1.3.28 Land Registry, 2014. The land crossed by the proposal route is registered to the Earl of Mount Edgcumbe Estate. Adjacent to the route are stables and land used for keeping several horses leased from the Estate.
- 1.3.29 Route photographs, 2013-14. The photographs show that the lane is very well used by vehicles, horse riders, cyclists, and walkers.

#### **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. Although it contained no evidence, it acknowledged the route's historic mining heritage.
- 1.4.2 Two user evidence forms were initially submitted in support of the proposal route by the local horse riding group, with an additional five received after the informal consultation, giving a total of seven.
- 1.4.3 Seven members of the public have used the proposal route on horse and three with horse drawn carriages, with one on foot continuously since 1962. This use has been regular and unhindered. They have never seen any notices against public use nor have they ever been challenged. If ridden with a horse, users have generally also used the route in conjunction with Proposal 12. They have also never sought permission, and one user believed the landowner was aware of the public's use as she saw and talked to other local people when using the route. Another thought the lane was public as it was locally known to be used by such. One user identifies Pudding Hill/Lane as the road south from Whitsam Cross.



## 1.5 Landowner Evidence

- 1.5.1 The Eighth Earl of Mount Edgcumbe has owned the proposal route since 1987 though it is acknowledged that the Mount Edgcumbe Estate is a very long standing owner in the parish. The Estate made a Section 31(6) deposit in 2003 but did not make the declaration to complete the process to confirm no intention to dedicate additional rights. There is no deposit prior to 2003. No landowner evidence form has been completed in relation to the proposal, with the Earl's Agent relying on the deposit.
- 1.5.2 Mrs Poynton of Robinswood, Bere Alston, has owned the land on the west side of the proposal for the last 6 years. She is aware that the owner of the stable on the route uses it but assumed the lane was private access, as there is no indication it is a public route.
- 1.5.3 No other representations were made by any other landowners or tenants, including the owner of a small stable yard along the proposal route.

## 1.6 Discussion – Statute and Common Law

- 1.6.1 Statute – Section 31 Highways Act 1980. There is no specific date when the public's right to use the route was challenged, or taken as a calling into question for consideration of the claim for presumed dedication under statute law. It could be held that the Section 31(6) deposit by the Earl of Mount Edgcumbe's Agent may qualify. If considered sufficient, then the twenty year period to be considered is 1983-2003.
- 1.6.2 Five user evidence forms were received in support of the proposal with three users riding and driving the route with horses since 1962, and occasionally on foot on a regular basis, with the two other users starting in 1990. They never saw any notices against the public's use of the proposal route, nor were they ever challenged.



- 1.6.3 A claim for a right of way may also exist at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.
- 1.6.4 Common Law. On consideration of the proposal at common law, the historical documentary evidence demonstrates the route's origins as part of the silver - lead and later tin - copper mining industry in the parish. By the time of the 1842 Tithe Map, a track is shown along the proposal's alignment which is annotated as Furzehill Mine on the large scale Ordnance Survey mapping, though according to the local parish mining history the mine was disused by this time. This route is shown excluded on the Finance Act records in the same manner as other recorded public highways in the parish. The entries made in the Surveyors of Highways Accounts during the 1790s, 1800s and 1840s also suggest that the proposal route was considered a public highway. The Highways Surveyors appointed by the Vestry would only devote time and effort if they and their parishioners believed a route was a public highway for which they were responsible.
- 1.6.5 In the past, public highways were generally named after places they went to or past, or purpose. The route runs along the main part of Furzehill Mine. The route is also coloured in the same manner as other recorded public highways in the 1921 Edgcumbe estate sale, although this carries less weight. On both the Handover Records of 1947 and the List of Streets of 1974 onwards the north end of the proposal is included as part of the public highway.
- 1.6.6 The Earl of Mount Edgcumbe claims ownership of the proposal route, though only the freehold mineral rights are registered. A Section 31(6) deposit was made in 2003, so user evidence prior to this date is that which is considered.
- 1.6.7 Seven users gave supporting evidence of unrestricted use on foot, horseback and carriage dating back to 1962, and who continue to use the route unrestricted, without challenge, obstruction or notices. The Parish Council supports the proposal.

## **1.7 Conclusion**

- 1.7.1 The documentary evidence demonstrates that the proposal route has existed since the late 18<sup>th</sup> century having come into existence through the silver lead mining industry in the parish. It has been open and available since that time, and appears to have been the subject of public maintenance and treated as part of the parish highway network. This is confirmed by the user evidence detailing use with horse and horse drawn carriages since at least 1962 which has not been called into question or challenged. The evidence when taken as a whole is considered sufficient to show that a public right of way not shown in the Definitive Map and Statement subsists or is reasonably alleged to subsist.
- 1.7.2 In the consideration of the route as a parish highway used by vehicles, the NERC Act 2006 must be taken into account, as set out in Part A of this report. The route does not meet any of the exceptions listed in the legislation and consequently cannot be recorded as a byway open to all traffic. The highest status that can be considered is restricted byway.
- 1.7.3 It is therefore recommended that a Modification Order be made to add a restricted byway between points G and H. If there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

## **2 Proposal 9: Proposed resolution of anomaly affecting Footpath No. 55 at South Hooe, as shown between points V – U on plan HCW/PROW/14/70.**

**Recommendation: That a Modification Order should be made to add a restricted byway between points U – V – X, on plan HCW/PROW/14/70a, in respect of Proposal 9.**

### **2.1 Background**

- 2.1.1 The proposal was initially put forward by the Parish Council as part of an earlier but incomplete review to record a footpath between Footpath No. 55 by South Hooe Cottage and the county road, UCR 175, at the 'Hooe junction'. For clarity this refers to the junction where the road splits to South Hooe and North Hooe.
- 2.1.2 In 2008 the issue of the lack of connection of Footpath No. 55 with a public highway at South Hooe was raised by the Ramblers and it was discovered there was an anomaly in the roads records concerning the routes to South Hooe and North Hooe. The status of the lane between the Hooe junction and South Hooe was investigated, which in turn led to the recording of the western spur of Footpath No. 55, Bere Ferrers between Hanging Cliff Wood and South Hooe, being disputed as well as the section of road. A report was to be taken to the Public Rights of Way Committee meeting of February 2009. However the County Solicitor advised that it be deferred so that both the status of the road and the linking of Footpath No. 55 could be investigated and dealt with as part of the Definitive Map Review.
- 2.1.3 The current owners of South Hooe Cottage believe that the lane between the Hooe junction and South Hooe is private and consider that the western spur of Footpath No. 55 was recorded in error on the Definitive Map and Statement.

### **2.2 Description of the Route**

- 2.2.1 The proposal route starts at the western end of Footpath No. 55 by South Hooe Cottage, at the entrance to South Hooe, at point V and runs generally east north eastwards along a metalled road to the county road Y1801 (formerly UCR 175) at the Hooe junction, with the roads to North Hooe and Hewton at point U.

### **2.3 Documentary Evidence – Commercial and Estate Maps**

- 2.3.1 Plan of Beer Ferris Manor, late 1600's Pre-1800 maps, plans, and sketches can be useful and of value in determining the location or status of a way despite lacking the mathematical accuracy and trigonometry of later ones. This plan appears to show the position of minerals workings in the parish. It does not show highways but does identify the peninsula area of North and South Hooe as 'the waren'.
- 2.3.2 Plan of Beer Ferris Manor, 1737. This later plan was commissioned by the Lord of the Manor, Lord Hobart of Bickling, Norfolk and produced by the surveyor James Corbridge at a scale of 4 chains to 1 inch (80.46 metres to 1 inch). It shows the manor's tenants and property boundaries. Public/private rights of way are not shown only roads existing at that time. The proposal route is shown partially unenclosed, open and available to South Hooe in a similar manner to other recorded public highways. It shows the demarcation of property ownership including South Hooe to S Kirret and North Hooe to John Ford. There is a ferry crossing from North Hooe known as 'Hooe Passage'.

- 2.3.3 Board of Ordnance Survey, 1784. In response to overseas military threats and the possibility of a Napoleonic War, 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. Rights of way are not shown due to the nature of the map's purpose. The proposal route is shown open and available to South Hooe.
- 2.3.4 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. The Instructions to Surveyors set out the parameters under which the surveys were to be carried out. 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".
- 2.3.5 On the 25" 1<sup>st</sup> Edition of 1884, the proposal route is shown with a solid line which appears to be an extension of the parcel boundary line of 495 just after the Hooe junction with the lane unenclosed on the southern side for the latter two thirds of the route to where the South Hooe Cottage is situated. A further solid line is shown a short distance south of the junction with Footpath No. 55 and point V. A solid line represents a parcel boundary and may also represent a feature such as a gate. The lane to North Hooe is shown open ended towards Hewton until the parcel line at the entrance to the farmyard, known as North Hooe Gate. The spur up to the Hooe junction from Hanging Cliff wood is not shown.
- 2.3.6 The 2<sup>nd</sup> Edition of 1907 shows the same features as the 1<sup>st</sup> Edition except that the lane to South Hooe is shown enclosed on both sides and the spur up the Hooe junction from Hanging Cliff Wood is shown.
- 2.3.7 The Post War A Edition of 1953 shows the same features as the 2<sup>nd</sup> Edition except that there is no parcel line across South Hooe Lane just after Hooe junction.
- 2.3.8 Greenwood's Map, 1827. These well-made maps were produced using surveyors and a triangulation system, and are considered to be reasonably accurate. The proposal route is shown as a cross road. Rights of way are generally not shown as the map is too small scale.
- 2.3.9 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, limiting the possibility of errors. Their immediate purpose was to record the official record of boundaries of all tithe areas. 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. Routes which are not numbered are usually included under the general heading of public roads and waste.
- 2.3.10 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. A route is shown along the proposal alignment as open and available. It is shown as being crossed by a mining leat ending with a solid line at the entrance to South Hooe a short distance south of point V. The solid line is likely to be a parcel area boundary line but may also represent another feature such as a gate. The proposal route is not numbered and appears to be included in the 'Public Roads and Waste', as is the road to North Hooe.

The plot 1329 on the south side of the lane is called Warren Hill. Footpaths and other rights of way are not shown and no roads are shown coloured.

- 2.3.11 Tamar Silver Mines plan, 1843. Estate plans were usually compiled by professional surveyors and likely to be reasonably accurate, though they would not necessarily include public rights of way.
- 2.3.12 The plan shows the North Hooe and South Hooe mines and their immediate area. The plots of land are numbered and listed in the attached schedule, but the roads are not unless they are crossing the plots of land. The lane to South Hooe is shown only enclosed on the northern side with a solid line across the proposal route approximately 70 metres north of South Hooe Farm House a short distance south of point V, which may indicate a plot boundary or a gate. The lane to North Hooe is fully enclosed along its length to the entrance to the farm, where there is a solid line. There is another solid line at the other side of the farm yard to Hooe Passage Road and the ferry. Plots 24, 25 and 26 are known as Werrin Hill, with 24 and 26 part of South Hooe occupied by John Johns and 25 belonging to the mines. Land on the north side of South Hooe Lane belongs to North Hooe occupied by John Johns. Footpath Nos. 55 and 59 on the Definitive Map are not shown.
- 2.3.13 Map of the Manor of Bere Ferrers, 1876. The map was commissioned by the Viscount Valletort.
- 2.3.14 It appears to be very similar to the parish tithe map with the same numbering, which it appears to be based on. It has no key. All roads are coloured. A route is shown along the proposal alignment, open and available. It is shown as being crossed by a mining leat ending with a solid line at the entrance to South Hooe a short distance south of point V. It is not numbered. Rights of way are not shown.
- 2.3.15 Bartholomew's maps, 1920s. These maps were designed for *tourists and cyclists* with the roads classified for *driving and cycling purposes*. They were used by and influenced by the Cyclists Touring Club founded in 1878 which had the classification of First Class roads, Secondary roads which were in good condition, Indifferent roads that were passable for cyclists and other uncoloured roads that were considered inferior and not to be recommended. Additionally, Footpaths and Bridleways were marked on the maps as a pecked line symbol. Cyclists were confined to public carriage roads until 1968. The small scale does not permit all existing routes to be shown, omitting some more minor routes. The purpose of these maps was to guide the traveller along the routes most suitable for their mode of transport.
- 2.3.16 Maps dating from 1923 and 1927 show North Hooe Road but not that to South Hooe, although South Hooe itself is shown. The route to North Hooe is depicted as an Inferior Road and not to be recommended, which is the lowest category the maps show. The majority of those roads shown in the parish are included in that category. Its inclusion may have been due to the former ferry crossing at the end of Hooe passage Road.

## **2.4 Documentary Evidence – Highways Records**

- 2.4.1 Bere Ferrers Surveyors of Highways Accounts, 1655-1843. Prior to the formation of district highway boards (1862 & 1864) and the later rural district councils (1894) the responsibility for the maintenance of public highways generally belonged to the parish and was discharged by elected surveyors of highways. Relevant Acts of 1766, 1773 and 1835 included the provision for the use of locally available materials and there was a statutory requirement upon parishioners to fulfil a fixed annual labour commitment.

The final responsibility for maintenance lay with the local Surveyor of Highways who was obliged to keep a detailed account of public monies expended.

- 2.4.2 The Account Books give a varying amount of detail depending on the different Surveyors and their particular record keeping. The majority are very detailed, giving information on dates of work and where, type of labour used, tasks performed, names of the men employed and where, along with their rate of pay and how much in total they earned for each piece of work. They were also only concerned with roads and not footpaths and bridleways.
- 2.4.3 In 1801, 1814 and 1833 there are references to the repair of the Warren/Werrin Road including the bringing and rising of stone.
- 2.4.4 In 1801 and 1840 North Hooe Road was repaired, and in 1840 and 1846 Hooe Passage Road beyond North Hooe was repaired.
- 2.4.5 Southern Hooe/Souther Hole/Southern Hole/South Hoe/South Hoo/South Hooe Lane/Road was the subject of detailed repairs during 1832-3, 1838-43, and 1846. Besides general repairs, this particularly included the collection and preparation of mine rubble, taking out/drawing/rising/breaking stone, and the cleaning and repairing of the drains. This was done using contract work, teamwork, and day labour.
- 2.4.6 The works carried out during 1832 lasted for 8 weeks on the South/Southern Hole highway. In 1838 rubble was transported between 'South Hoo to Beer Town' (Bere Ferrers village), and in the following year, mine rubbish rubble was collected and prepared at South Hoo/Hoe.
- 2.4.7 Surveyors of Highways Returns, 1837-56. These records are the summaries of the Surveyors of Highways Accounts which had to be completed by the Surveyors in post and returned to the Magistrates when the above Highways Accounts were passed. These are consistent with the detailed accounts, though the returns make infrequent reference to specific highways repaired.
- 2.4.8 Quarter Session Order Books & other records, 1841 onwards. Quarter Session records may provide conclusive evidence of the stopping up or diversion of highways and presentments for non-repair of highways. They are conclusive evidence of those matters the Court actually decide upon, though not in regard to other matters.
- 2.4.9 There are no references to the proposal route, or any other roads in Bere Ferrers parish.
- 2.4.10 Handover Records, circa 1947. These records are considered to be a positive indication of what the highway authority believe the status of roads included to be, and are conclusive evidence of a highway authority's acceptance of maintenance responsibility, a commitment not normally undertaken lightly. The lack of a road's inclusion does not necessarily suggest it could not have been a public highway. However such records were for internal use and did not purport to be a record of rights.
- 2.4.11 The lane to North Hooe is coloured as an unclassified county road from the Hooe junction through North Hooe to the former ferry at the end of Hooe Passage Road. The lane to South Hooe has been coloured in a similar manner but then almost totally erased at a later date.

- 2.4.12 UCR Mileage Register, circa 1950s-70s. This register was used in conjunction with the Handover Records once all delegated highways had been returned to the County Council. The relevant entry is for UCR 175. The original entry notes that the highway went to South Hooe. However this was altered at an unknown date, to North Hooe, with 'at gateway' also added, though the mileage entered was not altered. Measurement of UCR 175 is consistent with the route to South Hooe. There are no remarks regarding the alteration of the entry.
- 2.4.13 List of Streets, 1970s onwards. This is the County Council's register of highways maintainable at public expense. The lane from Hooe junction to South Hooe is not included in this record. The lane from Hooe junction to the gate to North Hooe is included as a county road.

## **2.5 Documentary Evidence – Local Authority records**

- 2.5.1 Bere Ferrers Vestry minutes, 1824-1936. These minutes are a public record of the perception of the Parish Council and also probably represent the perception of parishioners, they may carry significant evidential weight.
- 2.5.2 In the Vestry minutes Mr John Jasper of 'South Hoe' is appointed as a parish officer. This demonstrates the variation in the spelling of parish place names.
- 2.5.3 Bere Ferrers Parish Council minutes and records, 1894-present. The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.
- 2.5.4 January 1897. A letter was received from the Rural District Council regarding parish roads it thought should be discontinued. The list included North Hooe Road beyond North Hooe Gate. The Parish Council stated that "*this roads leads to north Hooe Farm, there is also a ferry on the banks of the Tamar which is greatly used and the road leads to it.*" They resolved that the road should not be discontinued.
- 2.5.5 October 1929. It was reported that the "*right of way from Holes Hole to South Hooe*" had been blocked at the Holes Hole End (Footpath Nos. 54 and 55), so it was agreed that Lord Mount Edgcumbe's Agent would be spoken with.
- 2.5.6 February 1931. It was reported that nothing had been done to the path at South Hooe (Footpath No. 55) and it was decided that the Clerk would write again to the Lord Mount Edgcumbe's Agent on the matter.
- 2.5.7 February – May 1932. The path between Hole's Hole and South Hooe (Footpath No. 55) across Lord Edgcumbe's property was reported as being in a dangerous state, as the railing by a cliff had broken away. The Clerk would write to the Agent. He met with Lord Edgcumbe who did not think anything could be done. Messers Holloway and Sherrell were to view the location and report. By May Mr Sherrell reported that nothing had been done and he thought the situation was getting worse, so it was resolved that the Clerk write to the Agent again.
- 2.5.8 1933. It was reported that the Lord Mount Edgcumbe's agent had given instructions to tenants to stop certain footpaths in the parish. This only affected the footpath between Hewton to Wattons (Footpath No. 49).

- 2.5.9 1935. Mr Holloway complained about the serious and dangerous state of the path from Hole's Hole to South Hooe (Footpath No. 55). The Clerk was instructed to write to the Agent asking if they would repair it. However the Edgcumbe Estate could not see its way to do any work, so a site meeting was arranged and the Estate written to again.
- 2.5.10 September 1938. A letter was received from Mr Sherrell about the bad state of the roads around South Hooe and the district. He asked that the Council could take some action so that the roads could be repaired. His complaints were forwarded to the Rural District Council as the relevant highway authority.
- 2.5.11 December 1944. The Clerk was instructed to draw the attention of Mr Stenlake, the District Surveyor, to the very bad state of the roads to Birch Farm and South Hooe.
- 2.5.12 1950. The circular was read from the Rural District Council that the liability for preserving traditional and existing rights of way rested with the Parish Council, which was to take action where they were obstructed or diverted. Any difficulties were to be reported to the District Council. Several meetings on the subject were convened. Copies of the Open Spaces and Footpaths Preservation Society memorandum was purchased for every Parish Council member, so that 'every member of the Council would be conversant with the survey of public rights of way. The Survey was carried out between July and December 1950. Member of the Parish Council also consulted the copy of the Tithe Map held at the Rectory, from which they obtained useful information. The Council's report on the survey was read and approved.
- 2.5.13 1951. All paths had been plotted on the map by February and a detailed report written on each path. Several paths which had not been included in the initial survey were added to the list being claimed. The Parish Council also invited the Earl of Mount Edgcumbe's agent to view the rights of way map and schedule. Following the viewing the Estate's agent wrote to formally object to certain paths listed by the Council.
- 2.5.14 September 1971. In the Parish Council public rights of way maintenance survey, Footpath No. 55 was noted as running between Footpath No. 54 and the unclassified county road at South Hooe. That year it had suffered some subsidence and overgrowth, besides a short section being ploughed up near where it met the then unclassified county road by South Hooe Farm.
- 2.5.15 January 1972. There was correspondence between the Parish Council and the Edgcumbe Estate regarding the footpath alignment through Hanging Cliff Wood.
- 2.5.16 November 1976. Footpath Nos. 54 and 55 were affected by a landslip and so a site visit was convened.
- 2.5.17 September 1977. There was an issue with an obstruction on Footpath No. 54, and the Clerk was instructed to write to the Divisional Surveyor to expedite the matter.
- 2.5.18 1978. In response to the Definitive Map Review, the Parish Council proposed that the alignment of Footpath No. 55 was incorrectly shown through Hanging Cliff Wood and that Footpath No. 54 needed a diversion due to cliff erosion. However by 1979 nothing had happened regarding the diversion.
- 2.5.19 February 1980. An obstruction was reported on Footpath No. 55, and it was arranged that Councillors would meet to walk the footpath and report.
- 2.5.20 1981. Erosion was again reported on Footpath No. 55.

- 2.5.21 1983-4. As part of the parish maintenance survey of public rights of way, it was noted that there were no signposts and the path through Hanging Cliff Wood was not easy to follow.
- 2.5.22 November 1985. It was reported that there were two signs on Footpath No. 55 incorporated in the fence and that the Warden was dealing with the situation.
- 2.5.23 1988-90. The Parish Council decided to simplify Footpath No. 55 which had 3 ends and midway junction. To do this, they resolved to record the section between the split and South Hooe Mine Cottage as Footpath No. 56 (55). Mr Stamm who owned land approaching South Hooe would get a gate but sought assistance erecting it and also a stile to be situated next to the gate.
- 2.5.24 February 1990. It was reported that the Footpath 56 (55) gate was still obstructed by wire netting at South Hooe at the cottage at the end of the path.
- 2.5.25 September 1991. It an issue was again reported on Footpath No. 55 by Mine Cottage at South Hooe and so it was resolved that a report would be prepared for the next meeting. The following month it was noted that Footpath No. 54 was missing a signpost.
- 2.5.26 November 1993. It was noted that there was a public footpath up the drive to/from South Hooe and there was no reason why the footpath should not be continued. The Parish Council resolved to take up with Land Registry as to who owns the road to South Hooe, as the County Council stated it was an unclassified county road.
- 2.5.27 January 1995. It was reported that signs on Footpath No. 54 had gone missing. It was also reported that Mr Stamm's gate had still not been erected. It was believed that he had made a gap in the wrong location and so one of the Councillors would visit. By November 1995 it was arranged that Mr Scoffin would arrange for a team to erect the gate. It was also reported that the road between the Hooe junction and Hewton was reported in a bad state.
- 2.5.28 January 1996. It was noted that a fence was down on Footpath No. 56 (55), as well as suffering erosion. There were also still issues regarding Mr Stamm's gate and a meeting was organised with the warden and Mr Stamm to try and find out who owned the road to South Hooe. Following the meeting, the P3 (Parish Paths Partnership) County Council Officer was to make enquiries regarding the status of the road at South Hooe.
- 2.5.29 July 1996. Along Footpath 54 an old well had subsided and had to be filled in, which required a temporary closure.
- 2.5.30 October 1996. The Parish Council carried out a Parish Footpath Questionnaire which described Footpath No. 55 as a quiet walk with good views which could be made into a circular loop via the lane.
- 2.5.31 April 1997. After discussions with Mr Palmes at South Hooe, it was reported that he bought the road to his property and it was on his deeds. Work on Mr Stamm's gate was also underway.
- 2.5.32 1998. Several trees were reported down at both ends of Footpath Nos. 55/56 (55) which were quickly removed. Also, the former well adjacent to Footpath No. 54 was revisited. Flooding was reported on the road from Hewton Nurseries to South Hooe



Farm. In November it was reported that there was confusion on Footpath No. 56 (55). The Parish Council resolved to speak to the warden regarding Mr Stamm and his gate.

- 2.5.33 July 1999. Mr Stamm had still not erected his gate as agreed and he was given one month's notice to erect it, otherwise the Council would do the work and recharge Mr Stamm.
- 2.5.34 September – December 1999. Mr Smith reported problems at Hooe Lane which was very bad with mud.
- 2.5.35 2000. There were problems again with the gate which after many years had finally been erected on Footpath No. 55, as it was wired up. At the same time Mr Dugmore at South Hooe Mine sent a letter to the Parish Council regarding the signing of Footpath No. 55; the matter was being dealt with by the warden.
- 2.5.36 Later that year an update was requested on the private lane from Footpath No. 55/56 (55). The Clerk informed the Parish Council's Footpath Committee that Mr Stamm had sold that piece of land. The Clerk was to speak to the warden.
- 2.5.37 2001. The Parish Council hoped that the Right to Roam bill might help with access in the matter of Footpath No. 55/56 (55).
- 2.5.38 March 2003. The Parish Council discussed their path maintenance and in particular that the width of the path through Hanging Cliff Wood had been improved.
- 2.5.39 2005. Wire fencing was again reported on Footpath No. 55, but on inspection it had gone.
- 2.5.40 2006. Further maintenance was required on Footpath No. 55 through Hanging Cliff Wood due to a collapse caused by an uprooted tree. The footpath was repaired and strengthened on the edge with wooden planking. It was also reported that there was a tree down in Hanging Cliff Wood at the South Hooe end near the stile.
- 2.5.41 2009. Footpath No. 55/56 (55) required a new finger post and the removal of a fallen tree. It also suffered a landslide which required a temporary diversion. When inspected the footpath was okay.
- 2.5.42 Tavistock Rural District Council minutes, 1906-1973. As the minutes are a public record of the perception of the Council elected by the local community at that time, they probably also represent the perception of local residents. Therefore they may carry significant evidential weight.
- 2.5.43 In 1912 the District Council resolved to contact the Earl of Mount Edgcumbe's Agent, Mr Ward, enquiring whether he would consent to a piece of new road at North Hooe Farm being made as a substitute for the existing one leading to the ferry.
- 2.5.44 The Agent thought that the Earl would not object to the exchange of roads at North Hooe Farm but asked for a plan of the Council's proposals.

## **2.6 Documentary Evidence – Definitive Map**

- 2.6.1 Definitive Map Parish Survey records, 1950s. The compilation process set out in the National Parks and Access to the Countryside Act 1949 involved a substantial amount of work and such records are considered a valuable source of information. The rights of way included in the process had to pass through a draft, provisional and definitive

stages with repeated public consultations. The map had to be prepared in a prescribed form.

- 2.6.2 The Parish Survey was carried out by Colonel CB Spencer and Mr A Brown, who were Councillors on the Bere Ferrers Parish Council in 1950. They walked the rights of way and recorded those around the Hooe peninsula in the following way. As part of the process the survey map was annotated by the County Council to show county roads, including the proposal route from the Hooe junction to South Hooe, but not the roads to North Hooe or Hooe Passage.
- 2.6.3 Footpath No. 54. It ran from Hole's Hole to junction of two footpaths in Hanging Cliff Wood (54). It was noted by the County Surveyor to see the form for path 59 and that it should continue to the county road.
- 2.6.4 Footpath No. 55. It started at the junction of two footpaths west of Hewton to the junction of two footpaths northeast of South Hooe Mine (55).
- 2.6.5 Footpath No. 56. It ran from the junction of two footpaths northeast of South Hooe Mine to highway leading to North Hooe Farm (55). This was to be combined with paths 55 and 57.
- 2.6.6 Footpath No. 57. It was recorded as starting at the junction of two footpaths northeast of South Hooe Mine to South Hooe Farm (55). The County Surveyor annotated the survey form to note that paths 55 and 56 were to be combined with 57.
- 2.6.7 Footpath No. 58. It started at North Hooe Farm to junction with bridleway east of North Hooe Mine. The County Surveyor has noted on the survey form that this route was a cul de sac and a miner's path, and consequently was to be omitted.
- 2.6.8 Footpath No. 59. It ran from the junction with the bridleway (59) east of North Hooe Mine to junction with two footpaths west of Hewton (parish survey path 56). It was noted to stop the footpath at the road and to include the remainder with 54 (55).
- 2.6.9 Definitive Map and Statement, 1958. These records are conclusive evidence of the information they contain and that the public rights of way existed on the relevant date.
- 2.6.10 Footpath No. 54 is described in the Definitive Statement as ending at its western end on *"the unclassified county road west of the entrance to Hewton"*.
- 2.6.11 Footpath No. 55 is described in the Definitive Statement as having one branch meeting the *"unclassified county road opposite the entrance to North Hooe"*, with another branch meeting the *"unclassified county road by the entrance to South Hooe Farm"*.
- 2.6.12 Footpath No. 59 is described in the Definitive Statement as starting at the *"unclassified county road approximately 250 yards west of the entrance to Hewton"*.
- 2.6.13 Definitive Map Review records, 1970s. The Bere Ferrers Parish Council put forward a number of recommendations as part of the 1978 Review, which was not completed. One of the proposals was for a new entry of a footpath running between the western end of Footpath No. 55 at South Hooe, point V, and UCR 175 and the midpoint spur of Footpath No. 55, at point U. On the form the Parish Council described the reason for the proposal was because the Statement referred to Footpath No. 55 ending at the unclassified county road at South Hooe, but nothing was recorded. They had been informed that on the copy held at Tavistock there was a pencilled correction 'private'. The road was apparently not included on the copy of the Roads Map held at Treverbyn

House, Plympton.

## 2.7 Documentary Evidence – Other Sources

- 2.7.1 Viscount Valletort Mining Grant, 1836. The inclusion of a specific reference to a public right of way within land being conveyed is of some evidential value, though such documents essentially deal with private rights of property and not prepared with a view to defining public rights. Therefore, the lack of a route's inclusion is not conclusive evidence that public rights do not exist.
- 2.7.2 The grant was made between the Viscount Valletort and Messers Grant, Johnson, and Wilkinson for mining rights on land known as South Hooe, North Hooe, and Hewton on a lode which ran north – south across the peninsula. The grant refers to a "*carriage road or path from Hewton to South Hooe Farm House*". On one of the plans attached to the grant is a plan of the mining levels which also identifies the "*supposed place of the lode perpendicular to the carriage road from South Hooe Farm to Hewton*". This is therefore evidence of the physical existence of a way that was suitable for wheeled traffic, although it is not evidence of status.
- 2.7.3 Kelly's Directory, 1870. In this gazetteer, North Hooe is spelt "North Hool" farmed by George Borley. John Johns the farmer is also mentioned (South Hooe) but not the farm by name.
- 2.7.4 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.
- 2.7.5 A Form 4 was completed by landowners and the information copied into Field Books before valuers went into the field and inspect and assess the hereditaments. Information from the Field Books and notes was then transferred into the Valuation Books. The Form 4 records have generally not survived.
- 2.7.6 The proposal route is shown included within hereditament 260. The Field Books list South Hooe Farm as hereditament 260 occupied by Mr J Sherrell, described as including mine waste and marsh, while North Hooe was 81 and occupied by Mr J Down. South Hooe Cottage is hereditament 568 and occupied by Mr J Hutchings. There are no deductions for public right of way or user or easements for any of these hereditaments.
- 2.7.7 In the Valuation Books the main differences with the Field Books is that there is a deduction for 'public right of way or user' of £25 through South Hooe Mine, hereditament 57. Also conversely, hereditament 568, South Hooe Cottage, does not have an easement through hereditament 260, South Hooe, to reach the Hooe junction along the proposal route.
- 2.7.8 The Map used is inconsistent in its depiction of the road towards North Hooe, which is covered by two mapping sheets. It is shown included on one and excluded on the other.
- 2.7.9 Mount Edgcumbe Estate Sale, 1921. Sales documents were compiled when a public auction took place. They were drawn up by the landowner or their agent. The public

roads will have been excluded from such sales. It is also likely that if a lot has an easement or public right of way over it, it is likely to be detailed in the particulars. Sales particulars should be treated with some caution. The art of embellishment in advertising is not a newly acquired skill.

- 2.7.10 The roads considered public appear to be coloured brown. The road to North Hooe is shown brown, while the road to South Hooe is included in lot 236 of the sale, South Hooe Farm, occupied by Mr J Sherrell. North Hooe Farm was occupied by Mr J Down. Hooe Passage Road on the far side of North Hooe is included in the sale. A right of way was retained by the vendor to access land not included in the sale.
- 2.7.11 Aerial photography, 1946-9 to 2006-7. The photography shows the open and available physical existence of the proposal route, though it is not evidence of status.
- 2.7.12 Mining History, 1956 onwards. This is a collection of books and articles published on the mining history of Devon with references to the Tamar Valley.
- 2.7.13 It demonstrates the importance of the silver lead mines of Bere Ferrers parish and in particular those on the west lode of Tamar Consols/Tamar Silver Mines. This comprised of the mines at North Hooe and South Hooe, the latter of which had been mined since 1290 as a Royal Silver Mine, and which between the 1830s and 1860s employed over 1,000 people over 40 years. The mine is known to have been restarted in 1784 and 1809, with its most successful continuous period 1835-1886. At this time, it employed over 200 miners when owned by Mr Johnson, also owner of the Weir Quay Smelting Works. It was a very productive mine. North Hooe is known to have been restarted in 1842 and 1886 but it was never as successful as South Hooe.
- 2.7.14 A Walking Tour of the Bere Alston Silver Lead Mines, 2007. This series of articles details a walking tour of the various silver mines in Bere Ferrers parish.
- 2.7.15 *"Where the road forks (Hooe junction) both lanes (to North Hooe and South Hooe) claim to be private but the left hand one is a public footpath. Follow it to the end where the footpath turns sharply left off the road back towards the riverbank. The path runs through several gardens."*
- 2.7.16 *"Immediately above this landing stage (at South Hooe) is a short run of cottages in front of which the public footpath runs. The footpath exits from the garden of the cottages (South Hooe Mine) through a tall wooden gate beside which is an engine house."*
- 2.7.17 Route Photographs, 2008-14. Site photographs of the proposal route show notices at the Hooe junction – *"North Hooe No Through Road"* and *"Private Road to S Hooe Mine, S Hooe Cottage, SH Farmhouse, Oak Barn, Farm yard"*. Since 2008 two additional small signs have appeared stating - *"Private No public right of way"*. Both routes are tarmacked.
- 2.7.18 On the approach to the proposal route along Footpath No. 55 there is a sign attached to a pedestrian gate where the footpath enters the curtilage of South Hooe Cottage *"Public Footpath ends in 30m at junction with private farm road"*. Footpath No. 55 is not currently signed from the road at South Hooe.
- 2.7.19 Land Registry, 2014. South Hooe Road was registered to the Palmes and included with South Hooe in 2000. North Hooe which includes Hooe Passage Road was registered to Ms P Rowe in 2007. It does not include North Hooe Road. Land crossed by the western spur of Footpath No. 55 is registered to Mrs Dugmore at South Hooe

Mine, the Williams' family of Bere Alston, and Dr Barnes at South Hooe Cottage (2001) – land on north side (2000). The alignment of the footpath co-exists with a private right of way with or without vehicles beside South Hooe Cottage.

2.7.20 Cornish Mining by Cornwall Council, 2014. This is a website on the mining of the Tamar area. It has a map which shows the Bere Ferrers mines and other mining related features. This includes the mines' smallholdings. For North Hooe these were based at the mine, while at South Hooe they were right on the end of the peninsula beyond South Hooe Mine and Farm.

2.7.21 Parish Walking Guide, 2000 onwards. This describes Footpath No. 55 as No. 56 as running to "the road" at South Hooe. It also describes Footpath No. 59 as running between "Lockeridge Bridge to the lane to South Hooe".

## **2.8 Consultation Responses**

2.8.1 Bere Ferrers Parish Council supports the resolution of the anomaly affecting Footpath No. 55. One of the Councillors recalls the late owner of the lane permitting the public to walk up the lane at one point. A supporting representation was also received from a member of the public, though it contained no evidence.

2.8.2 West Devon Borough Council understands that the lane is private and as such, do not think it could be designated as a public footpath.

## **2.9 User Evidence**

2.9.1 A letter from a user was received in March 2008, recalling an incident when walkers met a landowner who discouraged use of Footpath No. 55 and the road from South Hooe, by challenging users, removing County Council signage to disguise the footpath, and blocking the public footpath with a fixed fence panel. This reason given for these actions was that the footpath disturbed the challenger's father in law.

## **2.10 Landowner and Rebuttal Evidence**

2.10.1 The late Mr Palmes of South Hooe owned the lane for 37 years and his wife continues the ownership. He stated that he required people to ask permission and always indicated it was a private road and that there was no right of way, but had not completed a Section 31(6) deposit. He recalled challenging people occasionally and told people the lane was not public. Notices were erected by him and he recalls notices before 1978.

2.10.2 Mrs Dugmore of South Hooe Mine has lived there for 39 years and believes everyone knows the lane is private. As Footpath No. 55 is a cul de sac route she says she allows walkers to return to the county road at the Hooe junction across her land. She believes that Footpath No. 55 is not safe where it crosses her land because of the former mine workings there and with a landslip people have deviated after the footpath splits in Hanging Cliff Wood which she has not given permission for, but is apparently well used. There have also been a number of landslips in the area. With the footpath passing so close to the house, the public are '*apparently embarrassed*' and generally turn back. Mrs Dugmore also states that her neighbour has proof that the footpath was wrongly mapped when possibly South Hooe Mine and the Count House (South Hooe Cottage) were unoccupied.

2.10.3 Mr Williams of Bere Alston has owned land on the south side of the lane for 11 years before which it was owned by his grandfather since 1958. He has never seen people

using the lane, challenged users or given permission. He recalls there used to be a gate on Footpath No. 55 near point V which was not locked. He considers the lane to be private and that there is a 'private road' sign at point U.

- 2.10.4 Miss Williams of Abingdon is the sister of Mr Williams and has owned the land on the south side of the lane in conjunction with him and their mother. Their grandfather purchased it from the Mount Edgcumbe Estate and have understood the lane is owned by South Hooe Farm and before that the Mount Edgcumbe Estate. If she encounters walkers on Footpath No. 55 she informs them that it's a cul de sac and they must retrace their steps. She states that she has never given permission to the public to use the lane as it is not her land. She recalls a gate at the end of Footpath No. 55 near point V for vehicle access.
- 2.10.5 Mrs Williams of Bere Alston is the mother of Miss Williams and Mr Williams. Her recollections are consistent with those of her children.
- 2.10.6 Dr Barnes of South Hooe Cottage has lived there for 15 years. He has believed the lane to South Hooe not to be public for 19 years and that the evidence supports this. He has been aware of the public using the lane from the end of Footpath No. 55 very occasionally. It is his belief that the recording of the spur of Footpath No. 55 to South Hooe was recorded on the Definitive Map and Statement in error. Dr Barnes states that he has required the public to seek permission to use the lane and has always explained that it is a private farm road. He has challenged people and told them the lane is not public but allowed them to continue permissively. Signs have been erected for at least 30 years saying the lane to South Hooe is private. He also states that the evidence shows that there is a public highway to and through North Hooe to Hooe Passage from where a ferry formerly ran. He also submits that the references to '*South Hooe Road*' refer only to the section between Hewton and the Hooe junction.
- 2.10.7 Dr Barnes has submitted six statements in rebuttal from witnesses regarding the lane to South Hooe.
- 2.10.8 Mr Dunster of Westcombe Farm, Dartington worked at South Hooe Farm in 1954-5 and recalls the lane down to South Hooe Farm as private. He states that the road from Hewton to the road split for North and South Hooe was known as South Hooe Road.
- 2.10.9 Mr Wager of Gullytown Cottages, Bere Ferrers believes the lane to South Hooe is private, with the only public road going to North Hooe.
- 2.10.10 Mr Evely of Duchy Cottages, Stoke Climsland worked for the Dingles, a local contractor, between 1958-70 and carried out maintenance of the lane to South Hooe he thinks in the 1960s.
- 2.10.11 Mr Budge who is a local resident does not believe that Footpath No. 55 exists and that it was only a private path for residents at South Hooe Mine. He states that the road from Hewton to the road split for North and South Hooe was known as South Hooe Road.
- 2.10.12 Mr S Sherrell of Hole Farm, Bere Ferrers has always known the lane to be private and can remember it being privately maintained during the 1960s. He also recalls that the 'bit of the road from Hewton to the South Hooe entrance has always been called the '*South Hooe Road or South Hooe Farm Road*'.
- 2.10.13 Mr Spry of Tavistock recalls the lane to South Hooe Farm from the road split was private and had a gate across at some point though not where. He does not think it

has ever been part of the public road system.

- 2.10.14 Dr Barnes also submitted copies of documents to support his view that the western spur of Footpath No. 55 was recorded in error and that the lane to South Hooe is private. These are:-
- 2.10.15 Mount Edgcumbe Estate sale, 1921. See section on Documentary Evidence at paragraph 2.7.9-10 above. Dr Barnes states that this shows a public road going to North Hooe but not to South Hooe, the public road stopping at the Hooe junction. A right of way for all purposes was retained by the Mount Edgcumbe Estate over the road between the Hooe junction and South Hooe to reach retained property, as it still owned South Hooe Mine.
- 2.10.16 Land Registry extract, circa 2008. See section on Documentary Evidence at paragraph 2.7.19 above. Dr Barnes states that these documents show the continued private nature of the proposal route.
- 2.10.17 Extract of the parish newsletter, 2010 and 2014. See section on Documentary Evidence at paragraph 2.7.21 above. Dr Barnes states these extracts from the parish walking guide is further evidence that the road between the Hooe junction and Hewton is called the 'South Hooe Road'.
- 2.10.18 North Hooe deed, 1921. The deed is based on the sale catalogue of the Earl of Mount Edgcumbe's Estate from earlier in the year, dealt with at paragraph 2.7.9-10. It shows Hooe Passage Road between North Hooe and the former ferry as plot 286, a lane. Dr Barnes submits that this shows that the lane to North Hooe was not private but that Hooe Passage Road and the road to South Hooe were as they were included in the 1921 Mount Edgcumbe sale.
- 2.10.19 Land Registry SIM map, circa post war Ordnance Survey mapping. This map appears to relate to the South Hooe Holding once owned by Mr Stamm and now by his family, the Williams. It identifies "Hoe Passage" as being on the north side of North Hooe. Dr Barnes states that it shows no clear path past South Hooe Mine and submits that there has been a mix up of mine paths.
- 2.10.20 Dr Barnes also submitted the following information and his interpretation of the evidence to support his view that the western spur of Footpath No. 55 was recorded in error and that the lane to South Hooe is private.
- 2.10.21 Plan of Beer Ferris Manor, 1737. Dr Barnes believes that this map shows that that the road to South Hooe is shown as a minor track in comparison to that to North Hooe.
- 2.10.22 Bere Ferrers Surveyors of Highways Accounts, 1655-1843. Dr Barnes believes that there is no evidence that these refer to the road between the Hooe junction and South Hooe. He suggests that the description '*Southern Hole/South Hooe Road*' etc could refer to either the section between Hewton and the Hooe junction or that between the Hooe junction and South Hooe.
- 2.10.23 Bere Ferrers Tithe Map, 1842. Dr Barnes states that though a path is partially shown on a similar alignment of Footpath No. 55 there is no continuation on either end and thinks that the map has been mis-interpreted in support of the footpath's existence.
- 2.10.24 Ordnance Survey mapping, 1809 onwards. Dr Barnes states that the early large scale maps show only a track to South Hooe and an uninterrupted road to North

Hooe, and that the 1:2,500 only shows the road to North Hooe.

- 2.10.25 Bere Ferrers Parish Council minutes, 1894 onwards. Dr Barnes states that because there appears to be no further action after the 1897 reference to proposed stopping up of North Hooe Road that this implies it continued to be maintained. If the road to South Hooe had been public, he says that it would have been included, but that because it was not, it was private. He also believes that the references to poor condition of roads to and around South Hooe do not mean they went right down to South Hooe itself but only to the Hooe junction.
- 2.10.26 Definitive Map Parish Survey records, 1950s. Dr Barnes states that 'just about all available paths' were added to the Definitive Map, though a number were wholly or partially removed. He submits that Mount Edgcumbe and Bere Ferrers documents were lost in fires in Totnes at the agent's office and in Bere Alston.
- 2.10.27 UCR Mileage Register, 1950s-70s. Dr Barnes submits that there are only two options to explain the alteration of these records; that it was either a clerical error based on reference to the road from Hewton as South Hooe Road, supported by the reference to the Treverbyn House records, or that the roads to North Hooe and South Hooe swapped back and forth as being publicly and privately maintained.
- 2.10.28 Definitive Map and Statement, 1958. It is Dr Barnes' conclusion that the anomaly of the proposal route exists because of a mistake made at the time the Definitive Map and Statement were originally compiled in the 1950s, by Council officers being given incorrect information.
- 2.10.29 Definitive Map Review, 1978. Dr Barnes states that these refer to the highways error and its 'correction' and that the road to South Hooe is private. He believes that the compilers thought the road was public but had made efforts to ascertain whether this was the case or not. He also states that such previous reviews identified but did not investigate the problem.
- 2.10.30 He believes that there are four main reasons why there are problems with the western spur of Footpath No. 55 being public. Firstly, he believes that it appears to have no public purpose. Secondly, the Tithe Map does not show the section of the footpath above South Hooe Mine, only that part through the mine workings. Thirdly, the purpose of the higher section was to access the daffodil fields after mining had ceased and the quarry at the northeast corner off Hanging Cliff Wood. The large scale he believes shows the upper and lower parts of the footpath connected by the mine paths, which proposes does not suggest a defined through route. The path through Hanging Cliff Wood to the former ferry at Hooe Passage on the north side of North Hooe he considers to be a genuine footpath. Fourthly, he considers it strange that Footpath No. 55 attracted no objections when it was recorded on the Definitive map and Statement passing so close to the house at South Hooe Mine.

## **2.11 Discussion**

- 2.11.1 In view of the disputed continuation to Footpath No. 55 along the proposal route U – V and the contention by an affected landowner that the western spur of Footpath No. 55 was recorded in error, it is necessary to start by considering the public footpath and its inclusion on the Definitive Map, and whether that is an error.
- 2.11.2 Footpath No. 55. Under Section 56 of the Wildlife and Countryside Act 1981 the depiction of a path on the Definitive Map and Statement is conclusive evidence that at the relevant date a public right of way existed over that path unless proven



otherwise.

- 2.11.3 The evidence needed to remove a public right of way from the Definitive Map and Statement has to fulfil particular requirements. The evidence must be new, and not a re-examination of evidence existing at the time the Definitive Map was surveyed, of sufficient substance to displace the presumption that the Definitive Map is correct, and it must also be cogent. All three conditions must be met and assessed in that order. All the available relevant evidence must be considered on the balance of probabilities.
- 2.11.4 Much of the documentary mapping evidence does not show Footpath No. 55; often because the scale was inappropriate to be able to show footpaths or that they had a minimal impact and therefore were not included. The purpose for which such documents were created is very pertinent. The Finance Act records do show that South Hoo Mine recorded a deduction for a Public Right of Way or User of £25 which is positive evidence that a public right of way existed over the western spur of Footpath No. 55. Neither hereditament on either side recorded a similar deduction. However, the lack of a deduction does not imply the absence of such a right; it only shows that the landowner chose not to seek a discount.
- 2.11.5 As part of the original Definitive Map process the County Council annotated the survey map with the county roads in the parish, consistent with those which had been handed back to them in 1947 by the Tavistock Rural District Council. This included the proposal route U – V between the Hooe junction and Footpath No. 55, and extended to the entrance to South Hooe at point X. The District Council had maintained all roads in their district except main roads since 1929 under delegated powers from the County Council. Prior to that, they had been relevant highway authority since 1894.
- 2.11.6 Dr Barnes of South Hooe Cottage submits that the western spur of Footpath No. 55 to South Hooe was wrongly designated and was only an occupational path. Colonel Spencer and Mr Brown were long standing local residents and members of the Bere Ferrers Parish Council, and surveyed Footpath No. 55, which was an amalgamation of paths 55-57 in their Survey. The Parish Council minutes demonstrate their thoroughness and diligence through the survey process, purchasing copies of guidance for every Councillor so they could be conversant with the process. There were objections to a number of paths in the parish by landowners including the Mount Edcumbe Estate, though none related to Footpath No. 55.
- 2.11.7 The public rights of way claimed by the Parish Council were checked by the Surveyors of the Tavistock Rural District Council and the County Council, and were duly published on the draft, provisional and definitive maps. These maps with their schedules of public rights of way went through a comprehensive, thorough and well publicised process which ran between 1950 and 1967 in the Tavistock Rural District, as demonstrated by the Parish Survey, Definitive Map records, and Parish Council minutes.
- 2.11.8 Dr Barnes makes the point that landowners around South Hooe were possibly either absent or unaware regarding the compilation of the Definitive Map process during 1950s and 1960s, and so could not object to Footpath No. 55 to South Hooe. However, Halsbury's Laws of England states that *'where there is satisfactory evidence of user by the public, dedication may be inferred even though there is no evidence to show who was the owner at the time or that he had the capacity to dedicate.* The Councils' Surveyors were however satisfied following their investigations regarding the public nature of the footpath.

- 2.11.9 Since 1950 the Parish Council have been consistent in their position regarding Footpath No. 55, that it is a public right of way and correctly recorded, and continue to assert this position. They would only devote time and effort if they and their parishioners believed it was a public highway for which they were responsible. The information in the 1950 Parish Survey was checked by both the Rural District Council and County Council Surveyors, and the list of paths was agreed with the Parish Council in 1958, whose living memory went back into the late 19<sup>th</sup> century. Due to the time which has elapsed since the Definitive Map and Statement were compiled, the legal presumption of regularity must be invoked; that all was done that should have been done.
- 2.11.10 Dr Barnes suggests a public right of way exists to the former ferry at Hooe Passage on the far side of North Hooe, though one is not currently recorded. One was claimed (path 58) by the Parish Council in their 1950 Parish Survey but was omitted from the Definitive Map after being checked by the relevant Surveyors, as it was considered to be a cul de sac path, as the path was considered to only be a miner's path and the road to North Hooe appears not to have been considered a county road at that time. There was no objection to its omission from the Draft Map or subsequently, and no further evidence has been submitted in support of the existence of that path as a public right of way.
- 2.11.11 Several of the witness statements submitted in rebuttal suggest that the western spur of Footpath No. 55 was not a public footpath. Their reasoning was that it did not go anywhere except to access the daffodil slopes in Hanging Cliff Wood and South Hooe Mine. Dr Barnes asserts that local knowledge demonstrates that while tenants at South Hooe Mine may have worked at South Hooe and walked to work, there is no evidence of any public use.
- 2.11.12 Dr Barnes further suggests that the 1970s Definitive Map Review did not investigate the proposal route anomaly despite being aware of it. However, the Review was halted by central government as it could not be completed before the advent of new legislation – the Wildlife and Countryside Act 1981 – and therefore it was reduced to a Limited Review dealing only with the reclassification of '*Roads used as public paths*' (RUPP's). Consequently, such investigation was not possible at that time.
- 2.11.13 Since the mid-1980s, there have been a number of obstructions and notices reported by members of the public along Footpath No. 55 at South Hooe Cottage and South Hooe Mine, which have been removed accordingly.
- 2.11.14 With regards to the three requirements for demonstrating a right of way has been recorded in error. There is no 'new' evidence. Much of the existing evidence relating to Footpath No. 55 was known at the time the Definitive Map was surveyed and compiled. None of the evidence is of sufficient substance to displace the presumption that the Definitive Map is correct. Neither is it cogent.
- 2.11.15 Consequently it is considered that on the balance of probabilities that the evidence does not meet the requirements for removal of a public right of way from the Definitive Map and Statement on the basis that it was recorded in error. Therefore it is concluded that Footpath No. 55 should remain on the Definitive Map and Statement.
- 2.11.16 Proposal 9 – Status of road between points U – V. In considering the evidence it is necessary to consider the evidential facts in the context of the whole of the documents in which they are contained. Section 32 of the Highways Act 1980

indicates how documents should be evaluated as a whole and how the weight should be given to the facts derived from them. Once the evidence sources have been assessed individually, they are comparatively assessed as required by the balance of probabilities test.

- 2.11.17 Statute – Section 31 Highways Act 1980. There does not appear to be a specific date on which the public's right to use the proposal route has been called into question. The Definitive Map and Statement is conclusive evidence of the information it contains, that Footpath No. 55 exists. Therefore obstructions and challenges on Footpath No. 55 cannot call into question the public's rights. Despite the periodic issues on Footpath No. 55 and notices at the Hooe junction, the public have continued to use the lane in conjunction with the public footpath. The Bere Ferrers Parish Council since its inception in 1894 has at no time suggested that the western spur of Footpath No. 55 to South Hooe was not public nor was it disputed when surveyed for the Definitive Map in 1950. The Parish Council continues to support the resolution of the anomaly. The signs against public use have only been erected at point U since the anomaly came to light.
- 2.11.18 As there is no specific date of calling into question or user evidence, the proposal cannot be considered under statute law. However, the proposal route may still be proven to exist as a public right of way at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.
- 2.11.19 Common Law. On consideration of the proposal at common law, the historical documentary evidence demonstrates the proposal route's physical existence and availability since at least 1737. It is shown in a similar to other recorded public highways, though two thirds of it is depicted as only being hedged on the southern side at various times.
- 2.11.20 At the time of the 1842 Tithe Map, the proposal route is included in the acreage of '*public roads and waste*' which is consistent with the references for '*Southern Hooe/Souther Hole/Southern Hole/South Hoe/South Hoo/South Hooe Lane/Road*' in the contemporaneous Surveyors of Highways Accounts between 1832 and 1846. There are references to North Hooe Road and Hooe Passage Road, though these are much fewer.
- 2.11.21 A requirement of the Highways Acts of 1773 and 1835 which were contemporary with the Surveyors of Highways Accounts was that all '*common highways*' (public) had to be named in order for indictment for disrepair, the names usually reflecting places they either went to, passed or were used for, e.g. Hooe Passage Road, North Hooe Road, South Hooe Road. As private roads were not liable in this way, they did not need to be named. A named highway may therefore carry some inference of public status. They would only devote time and effort if they and their parishioners believed it was a public highway for which they were responsible.
- 2.11.22 Such records had to be submitted to and passed by the local Magistrates with their Highways Returns by the Parish Surveyors. If any roads included in these records were to be stopped up or declared non-maintainable, it had to be done through the Quarter Sessions. There are no references in the Quarter Session records regarding these roads in Bere Ferrers parish.
- 2.11.23 It is submitted in rebuttal that the '*South Hooe Road*' is only that section between

Hewton and the Hooe junction. However this conflicts with what is accepted for the North Hooe and Hooe Passage roads, that they went to North Hooe and Hooe Passage, and what is shown on Ordnance Survey maps for other routes in the parish. It is therefore likely that the South Hooe Road, the proposal route, did and does go to South Hooe.

- 2.11.24 An 1836 mining grant by the Viscount Valletort refers to a '*carriage road from South Hooe to Hewton*', and though it does not clarify whether it is public or private, it does treat it as a single entity.
- 2.11.25 The consistency continues with the 1843 Tamar Silver Mines plan which shows both the roads from the Hooe junction to North Hooe and South Hooe as open and available, and not included in the list of plots. The Tithe map though officially second class was considered of a good enough quality to be used by the Viscount Valletort for his plan of the Beer Ferris Manor in 1876.
- 2.11.26 Additionally, the Bere Ferrers Parish Council records demonstrate a consistency with how they regard the roads to North Hooe and the proposal route to South Hooe. They considered both to be public roads until relatively modern times and that they should be maintained by the relevant highway authority. On being informed in 1978 that the proposal route was a private road, the Parish Council continued to assert the route's existence as a public highway.
- 2.11.27 Dr Barnes suggests that if the proposal route was a public road in the 1970s it would have been included in the round of stopping up unnecessary roads in the parish at that time, but as it was not it was clearly private. The roads considered for stopping up were those that Devon County Council thought could be discontinued to reduce maintenance liability as they did not serve any properties. It was therefore not necessarily an exhaustive list of all possible roads, and the absence of the proposal route in question is not evidence that the road was not considered public.
- 2.11.28 It is also submitted in rebuttal that only a track is shown to South Hooe as it is shown partially unenclosed, and that the road to North Hooe is uninterrupted as it does not have a parcel line after the Hooe junction. While such lines may indicate a physical feature such as a gate, it is considered most likely to only be a parcel boundary line, compared to that a short distance south of point V, which is considered more likely to represent a gate at the farm entrance. The mapping shows the physical existence and availability of both roads to North Hooe and South Hooe depicted in line with the Instructions to Surveyors. Ordnance Survey mapping only shows the existence of features at the time of the relevant surveys and carries a disclaimer that it is not evidence of private or public rights of way.
- 2.11.29 Little can also be deduced from the Finance Act records as they are inconsistent with regards to the inclusion and exclusion of the roads to North Hooe and South Hooe. It is interesting to note that neither South Hooe Mine nor South Hooe Cottage have an easement recorded for access to their properties. However, this situation was rectified by the time of the Mount Edgcumbe Estate sale in 1921. The North Hooe deed based on the sale of that time also includes Hooe Passage Road which had previously been considered as a parish road and which had had public money spent on it. No evidence has been found that it was ever stopped up or declared non-maintainable.
- 2.11.30 These property records are inconsistent with the position of the Bere Ferrers Parish Council and the 19<sup>th</sup> century Surveyors of Highways Accounts which appear to record the proposal route, North Hooe Road and Hooe Passage Road as parish roads.

There is no stopping up order or declaration of non-maintainable public highway for any of these routes.

- 2.11.31 In 1950 the Parish Council recorded Footpath No. 55 as part of their Parish Survey for the compilation of the Definitive Map as ending at the *'unclassified county road'* at the entrance to South Hooe. They also claimed a footpath, number 58, which ran from Footpath No. 59 past North Hooe Mine to Hooe Passage and into North Hooe.
- 2.11.32 As part of the process the County Council annotated the survey map with the county roads in the parish which had been handed back to them in 1947 by the Tavistock Rural District Council. Once the survey was completed by the Parish Council, the survey information was checked by the Surveyors of both the former Rural District Council and County Council, who noted that the claimed path 58 was a cul de sac and should be omitted, as the road to North Hooe was not recorded at that time as publicly maintainable. The Schedule of public rights of way which included Footpath No. 55 was agreed with the Bere Ferrers Parish Council in 1958, as ending at the unclassified county road at South Hooe. The relatively modern UCR classification has no legal standing but may infer that the public may have full use of the route, but this must be considered with all the other available evidence.
- 2.11.33 Dr Barnes submits that an error was made by the Highways Department concerning the status of the road to South Hooe which led to the recording of part of Footpath No. 55 on the Definitive Map in error. However, the Rural District Council had maintained all roads in their district except main roads under delegated powers between 1929 and 1947, and prior to that as the relevant highway authority since its creation in 1894, when it took over highways duties from the Tavistock Highway Board. The public rights of way schedule for the parish set out by the County Surveyor, whose responsibility also included publicly maintainable roads, was agreed with the Parish Council in 1958. It is clear that the compilers of the Definitive Map believed the road to be public highway, and it therefore seemed reasonable to the Parish Council to claim it as a footpath at the Review.
- 2.11.34 Sometime between 1958 and 1974, when the current List of Streets was created, an alteration was made to the public highways records – Handover Roads records and the UCR Mileage Register – which removed the proposal route to South Hooe and substituted the road to North Hooe, while retaining the mileage to South Hooe. Dr Barnes suggests that this was merely the correction of a clerical error. There is however no evidence as to why this occurred. The current List of Streets reflects this alteration. There is no stopping up or declaration of non-publicly maintainable highway at Quarter Sessions.
- 2.11.35 Witness statements mention that from the mid-1950s they knew the lane to South Hooe from Hooe junction (the proposal route) as private and maintained as such. One states that the road between Hooe junction and South Hooe was tarmacked in 1963 by Dingles, a roads contractor, presuming this was a private contract. Dingles were known to carry out private and public contracts. Another witness refers to a gate but was unable to locate it.
- 2.11.36 Dr Barnes states that in 1978 North Hooe Road was considered for being stopped up; however there is no evidence of this has been discovered and it is unclear what relevance this has. Several parish roads (UCR's) were considered for stopping up in 1974, with most completing the process while others, having been objected to, were dropped. The roads in the Hooe peninsula area were not considered for the exercise.

- 2.11.37 The incomplete Definitive Map Review of the 1970s also reflects the informal alteration to the highways records, but also demonstrates that until informed of this the Parish Council believed that the proposal route to South Hooe was an unclassified county road. Even after being informed of the alteration they still considered it a public highway and at least a footpath. The records referred to at Treverbyn House would only have been records of what was being maintained at the time, not what was actually maintainable.
- 2.11.38 Much weight is placed on the witness statements referring to the section of road between Hewton and the Hooe junction as the '*South Hooe road*' and Parish Footpath Guide reference to Footpath No. 59 ending on the '*South Hooe road*'. This is a modern description to aid local walkers but is perhaps a little inaccurate as the road goes to both North Hooe and South Hooe. It also has no legal basis. Also it cannot be applied retrospectively, particularly in the context of the other evidence. It also shows the influence of the modern contention that the proposal route is private. Members of the modern Parish Council refer to this road as the 'Hooe Road', which may be considered a little more accurate. The Definitive Statement for Footpath No. 59 refers to the footpath starting on the county road '*west of Hewton*'.
- 2.11.39 The Land Registry information also reflects the modern situation regarding North Hooe Road, Hooe Passage Road, and the proposal route to South Hooe.
- 2.11.40 Bere Ferrers Parish Council continues to support their 1978 proposal and the resolution of the anomaly. West Devon Borough Council believes that the proposal route is considered private, that it is not possible to also record it as a public right of way. However, this viewpoint is not correct, as the majority of public rights of way cross private land. It appears that the public continue to use the route, despite periodic challenges by relevant landowners.

## **2.12 Conclusion**

- 2.12.1 On consideration of all the available evidence, on the balance of probabilities, there is no new, sufficient or cogent evidence to demonstrate that the western spur of Footpath No. 55 to South Hooe was recorded on the Definitive Map and Statement in error.
- 2.12.2 With regard to the proposal route U – V, the documentary evidence demonstrates that it has physically existed since at least the early 1700s. It shows that the route has existed and been physically available since that time, and actually extended to point X approximately 10 metres south of point V and the junction with Footpath No. 55. It suggests that the route has been the subject of public maintenance and was treated as part of the parish highway network, at least until the mid 20<sup>th</sup> century. Whilst there is evidence that the route has latterly been considered to be a private road, included within land holdings and not maintained at public expense, there is no evidence of a stopping up order or declaration of non-maintainable highway at public expense. The legal presumption, '*once a highway always a highway*' applies. The parish history demonstrates that Bere Ferrers parish was a hive of activity in the mining and later market gardening industries, and that North Hooe and South Hooe were long running key areas of these industries. The public interest in the area's mining history records the public's use of the proposal route as a footpath in modern times to link with Footpath No. 55 at South Hooe.
- 2.12.3 The evidence when taken as a whole is considered sufficient to show that a public right of way not shown in the Definitive Map and Statement subsists or is reasonably alleged to subsist.

- 2.12.4 In consideration of whether vehicular rights subsist, the NERC Act 2006 must be taken into account. The proposal route does not meet any of the exceptions and consequently any unrecorded mechanically propelled vehicle rights are extinguished. The highest status that can be considered is restricted byway.
- 2.12.5 Consequently, it is recommended that a Modification Order be made to add the route as shown on drawing number HCW/PROW/14/70a between points U – V – X to the Definitive Map and Statement as a public restricted byway. If there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

**3 Proposal 12: Proposed upgrade Footpath No. 71 to bridleway, as shown between points AA – AB on plan HCW/PROW/14/73.**

**Recommendation: That a Modification Order should be made to upgrade the public footpath to bridleway between points AA – AB in respect of Proposal 12.**

**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 with the county road north west of Cotts at point AA and proceeds in a southerly direction along a track through Furzehill Mine and past Birch Mine to join the county road approximately 75 metres northeast of Gullytown at point AB.

**3.3 Documentary Evidence**

- 3.3.1 Plan of Beer Ferris Manor, 1737. Pre-1800 maps, plans, and sketches can be useful and of value in determining the location or status of a way despite lacking the mathematical accuracy and trigonometry of later ones.
- 3.3.2 This plan was commissioned by the Lord of the Manor, Lord Hobart of Bickling, Norfolk and produced by the surveyor James Corbridge at a scale of 4 chains to 1 inch (80.46 metres to 1 inch).
- 3.3.3 The map shows the alignment of one of the Bere Ferrers silver mining lodes crossing the tenement of 'Lower Burch' and across the corner of Gullatown along the alignment of the proposal route, though no actual route is shown.
- 3.3.4 Board of Ordnance Survey, 1784. In response to overseas military threats and the possibility of a Napoleonic War, 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.
- 3.3.5 The start at point AA at Cotts is shown as is a short section approaching point AB at Gullytown between two sections of woodland. The remainder of the proposal route is not shown in its entirety though the route's eastern boundary is.
- 3.3.6 Bere Ferrers Surveyors of Highways Accounts, 1655-1843. Prior to the formation of district highway boards (1862 & 1864) and the later rural district councils (1894) the responsibility for the maintenance of public highways generally belonged to the parish

and was discharged by elected surveyors of highways. Relevant Acts of 1766, 1773 and 1835 included the provision for the use of locally available materials and there was a statutory requirement upon parishioners to fulfil a fixed annual labour commitment. The final responsibility for maintenance lay with the local Surveyor of Highways who was obliged to keep a detailed account of public monies expended.

- 3.3.7 The Account Books give a varying amount of detail depending on the different Surveyors and their particular record keeping. The majority are very detailed, giving information on dates of work and where, type of labour used, tasks performed, names of the men employed and where along with their rate of pay and how much in total they earned for each piece of work.
- 3.3.8 May 1838. The road at the back of Coats (Cotts) was worked on by William Jordan with two horses.
- 3.3.9 1840. Stone was taken from Birch Mine to Cots Road and Beer Main.
- 3.3.10 1841. Men were employed breaking stone in Birch Mine.
- 3.3.11 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".
- 3.3.12 This shows the characteristics of the physical existence of the proposal route between points AA and AB from at least 1884, open and available to the rest of the parish highway network.
- 3.3.13 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.
- 3.3.14 The proposal route is shown as a defined track as part of plot 1541 Birch Mine, buildings etc, part of North Birch, owned by the Earl of Mount Edgcumbe and occupied by Richard Rowe. It is not titheable.
- 3.3.15 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.
- 3.3.16 The proposal route is shown as on the tithe map but is not numbered.
- 3.3.17 Bere Ferrers Parish Council records, 1894-present. These minutes are a public record of the perception of the Parish Council and also probably represent the perception of parishioners, they may carry significant evidential weight.
- 3.3.18 In July 1997 it was noted that Footpath No. 71 between Cotts and Gullytown was being used as a bridleway, and that this had been happening for some time.



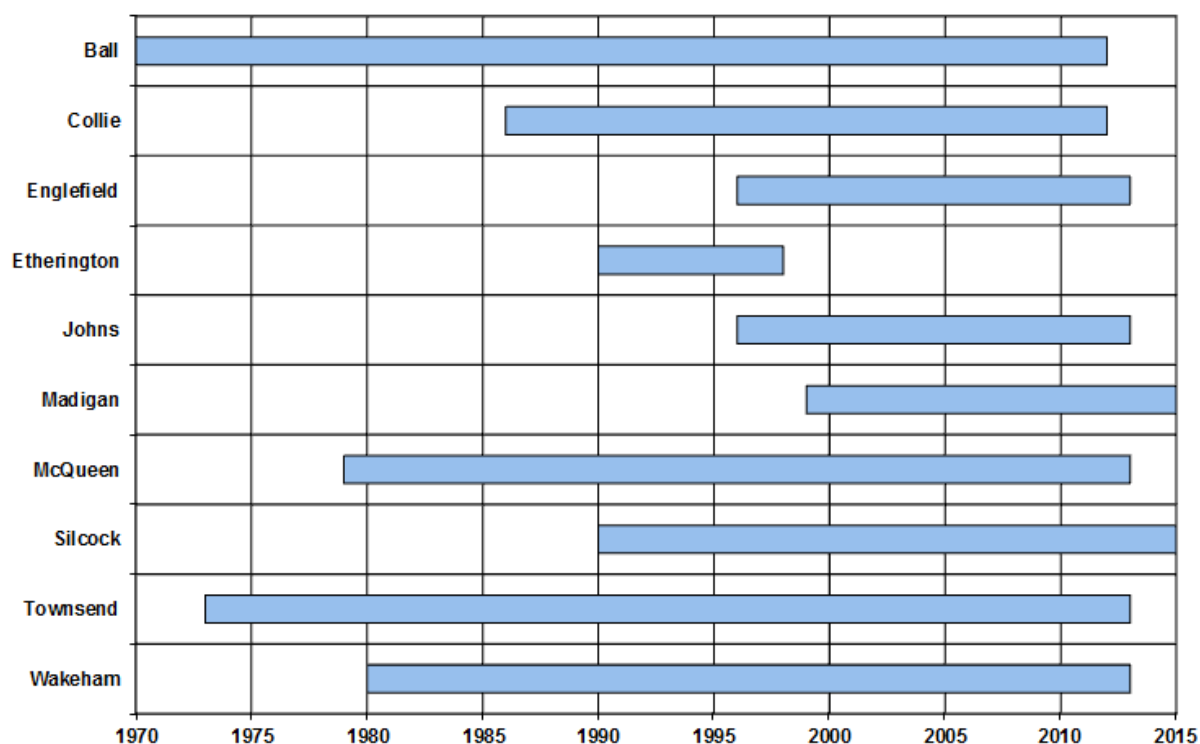
- 3.3.19 In 1998 it was recorded that Footpath No. 71 continued to be used as a bridleway, and that stables had been built on/close to Footpath No. 71 by Lucy Sergent.
- 3.3.20 In June 1999 Mr Wager asked if the Council still supplied stiles for landowners to erect as the new owner of the stables at Pengarth, Hewton, Mr Probert, wished to erect one on Footpath No. 71, as since he had cleared it, vehicles had been using it. It was resolved that one should be supplied.
- 3.3.21 In October 2003 Mr Wager reported that horse riders were using Footpath No. 71 and it was getting wet, it was also getting muddy.
- 3.3.22 In March 2006 it was reported that there was a problem of driving along the footpath.
- 3.3.23 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.
- 3.3.24 The proposal is shown totally included in hereditament 619, which includes a number of different parcels of land in the parish. The Field Books contain two entries for 618 but there is not one for 619. The Valuation Books do list hereditament 619 as Woods at Cotts & being owned and occupied by the Lord Mount Edgcumbe. The entry is dated 1914. There are no deductions.
- 3.3.25 Mount Edgcumbe Estate Sale, 1921. Sales documents were compiled when a public auction took place. They were drawn up by the landowner or their agent. The public roads will have been excluded from such sales it is also likely that if a lot has an easement or public right of way over it, it is likely to be detailed in the particulars. Sales particulars should be treated with some caution. The art of embellishment in advertising is not a newly acquired skill.
- 3.3.26 The proposal route is shown included within lot 235 – 2 enclosures of accommodation land and waste which were let out. The Ordnance Survey parcel number 432 which included the route was let to Mr Emmanuel Cole for 1 shilling per annum.
- 3.3.27 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.
- 3.3.28 Mining History, 1956-.. This is a collection of books and articles published on the mining history of Devon with references to the Tamar Valley. Birch Mine situated on the Birch lode was part of the South Tamar Consols Mine and was reasonably productive.
- 3.3.29 A Walking Tour of the Bere Alston Silver Lead Mines, 2007. Birch Mine is included in Furzehill Mine also known as Whitsam Down Mine, which ran for about ½ mile along the Bere Ferrers eastern lode from just south of Whitsam Cross to Gullytown.
- 3.3.30 Land Registry, 2014. The majority of the route crosses land registered to the owners of Pengarth which includes Mrs Ward. The remainder is registered to Mr Vanderpool at Hillside, 4 Gullytown Cottages, which is let.

3.3.31 Route Photographs, 2014. Site photographs of the proposal route show that it is open and available.

### 3.4 Supporting & User Evidence

3.4.1 Bere Ferrers Parish Council discussed the proposal and heard from a member of the public against it, but following further discussions, supports the proposal. A supporting representation was also received from a member of the public, though it contained no useful evidence.

3.4.2 Ten user evidence forms were submitted in support of the proposal as part of the parish review.



3.4.3 Member of the public have used the proposal route mainly on horse and on foot continuously since 1962. This use has been regular and unhindered. They have never seen any notices against public use nor have they ever been challenged. If ridden with a horse, users have generally also used the route in conjunction with Proposal 4. They have also never sought permission. One of the users believed the landowner was aware of the public's use as there were foot and hoof prints, while another believed the owner was aware of the equestrian use, as they had said it was ok to use it in that way. One user does not currently use the route but only because her current horse is only a driving horse.

3.4.4 In 2012 Mrs Townsend heard that a complaint had been made to the Parish Council regarding hoof prints on the route, and so the next time she saw Mrs Ward who owns the majority of the route, she checked that it was okay to use the route with horses. Mrs Ward confirmed it was and then erected a 'Horses welcome' sign.

### **3.5 Landowner and Rebuttal Evidence**

- 3.5.1 The owners of Pengarth and Gerards Equestrian Centre at Hewton own the majority of the land crossed by the proposal route. No landowner evidence form or representation has been received from them.
- 3.5.2 Mr Vanderpool owns Hillside, 4 Gullytown Cottages and the remainder of the land crossed by the proposal route. No landowner evidence form has been received from Mr Vanderpool.
- 3.5.3 Mr Foster and Ms Cade who are tenants of Hillside, 4 Gullytown Cottages did not complete a landowner evidence form but submitted letters objecting to the proposal in the informal consultation. Ms Cade believes that a change in status will increase traffic using the proposal route and result in the widening of the route used. She is aware of equestrian use and has maintenance concerns along with any impact of such use on her use of the land. Mr Foster also has safety concerns regarding the mix of users and the southern junction of the proposal route with the county road, which can be busy.
- 3.5.4 Mr and Mrs Hambley of 8, Cotts have owned property adjacent to the proposal route since 2011. They believe it is a footpath and should remain so, as they believe it is within a SSSI. They have occasionally seen dog walkers.

### **3.6 Discussion**

- 3.6.1 Statute – Section 31 Highways Act 1980. There is no event which provides a date of calling into question for consideration of the claim for presumed dedication under statute law.
- 3.6.2 A claim for a right of way may however 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.
- 3.6.3 Common Law. On consideration of the proposal at common law, the historical documentary demonstrates the route's origins as part of the parish's silver - lead and later tin - copper mining industry. The earliest Ordnance Survey mapping by the Board of Ordnance in 1784 shows the north start of the proposal route at point AA and a short eastward section to point AB. It is annotated as part of Furzehill Mine on the later large scale Ordnance Survey mapping, though according to the local parish mining history this mine was disused by this time. It is noted that Birch Mine is located on the north side of point AB.
- 3.6.4 At common law, the question of dedication is one of fact determined from the evidence, and there must be both landowner dedication and public user. The basis on which the presumption of dedication rests at common law is the combination of the fact of use by the public on horseback coupled with acquiescence by the landowner(s) in this use. It is because the landowner knew of the use and did nothing to stop it that they are presumed to have intended to dedicate the way to the public on horseback.
- 3.6.5 At the time of the 1842 Tithe Map, a track is shown along the proposal's alignment and is included in the Birch Mine property but it is not titheable. This may be reflecting the entry made in the Surveyors of Highways Accounts during 1838 regarding repairs to the road at the back of Cotts. The 1876 Viscount Valletort survey plan based on the Tithe Map shows the track un-numbered. No reference is made to the track which is

included in plot 235 - 2 enclosures of accommodation land and waste in the Mount Edgumbe Estate sale of 1921.

- 3.6.6 This route is shown included within hereditament 619, Woods and etc., on the Finance Act records. There are no easements or deductions for public or private rights of way or user.
- 3.6.7 Since 1997 there have been regular references in the Bere Ferrers Parish Council minutes to the equestrian use of the proposal route, one of the latest being in 2012 regarding a complaint about hoof prints, besides several occurrences of issues with vehicles attempting to drive the route after a landowner carried out clearance. Site photographs show that the route is open and available and well used by horse riders.
- 3.6.8 No representation has been received from the owners of Pengarth and Gerards Equestrian Centre at Hewton who own most of the route and appear to acquiesce and encourage use of the route. It is reported by the users that this landowner accepts and encourages their use of the route as a bridleway over their land, and consider it a through route to Gullytown at point AB from Cotts at point AA.
- 3.6.9 Use must also be without force, secrecy or permission. It must also be uninterrupted. Ten user evidence forms were received in support of the proposal dating from 1962 until the present time, without interruption, with a user frequency of between 4 and 50 times a year. There have been no notices or obstructions, and none of the users have been challenged or sought permission. Consequently this can be taken as evidence of an intention to dedicate.
- 3.6.10 No landowner has submitted a Section 31(6) Highways Act 1980 deposit in relation to land affected by the proposal or erected notices against use by the public's use by means other than on foot. Therefore, it is considered that the landowners have not sufficiently demonstrated a lack of intention to dedicate nor has the public's use of the route on horseback been called into question.
- 3.6.11 Representations were received from the tenants of Number 4 Gullytown Cottages who rent land crossed by the proposal route. The tenants object on regarding the effect of the proposed upgrade on their use of the land, maintenance, perceived future increase in traffic, mixing of users, and the junction with the Gullytown road. However no representation has been received from the actual landowner. With regard to suitability related issues, it should be remembered that what might be considered difficult or awkward today may have been common place in the past, and only evidence of public rights can be considered with regard to any modification of the Definitive Map.
- 3.6.12 A landowner evidence form was also received from an adjacent landowner at number 8 Cotts, who object to the proposal as the area is a SSSI. However, the land crossed by the proposal route has no statutory designation.
- 3.6.13 It is therefore considered that on the basis that there is no contradictory evidence in accordance with Section 31(1), the proposal route can be presumed to have been dedicated as a public bridleway.

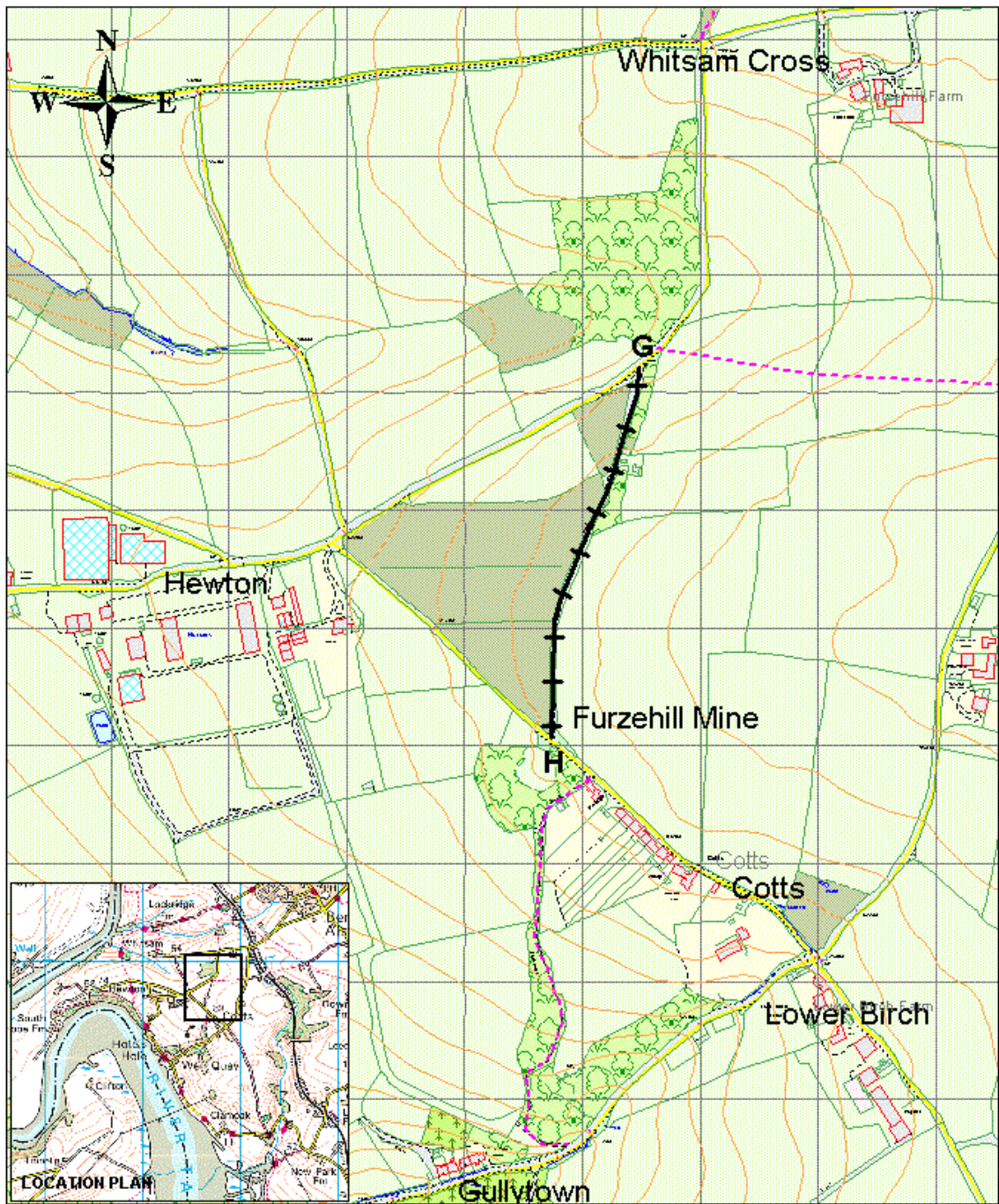
### **3.7 Conclusion**

- 3.7.1 The documentary evidence demonstrates that the proposal route has existed since at least the early 19<sup>th</sup> century having come into existence through the silver lead mining industry in the parish. It has been open and available since that time, and may have been the subject of public maintenance in the past. This is confirmed by the user

evidence detailing use with horse since at least 1962, which has not been called into question or challenged. The evidence when taken as a whole is considered sufficient to show that a public right of way not shown in the Definitive Map and Statement, namely a public bridleway, subsists or is reasonably alleged to subsist.

- 3.7.2 It is therefore recommended that a Modification Order be made in respect of the proposal to upgrade Footpath No. 71 to bridleway and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.





map ref: SX 4365

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**Devon County Council**  
**Definitive Map Review - Bere Ferrers**  
**Proposal 4 - Proposed addition of brideway**  
**between the county roads near Footpath Nos. 49**  
**& 71 near Furzehill Mine**

drawing number HCW/PROW/14/65  
 date April 2014  
 scale 1:6,000  
 drawn by CLG

Notation

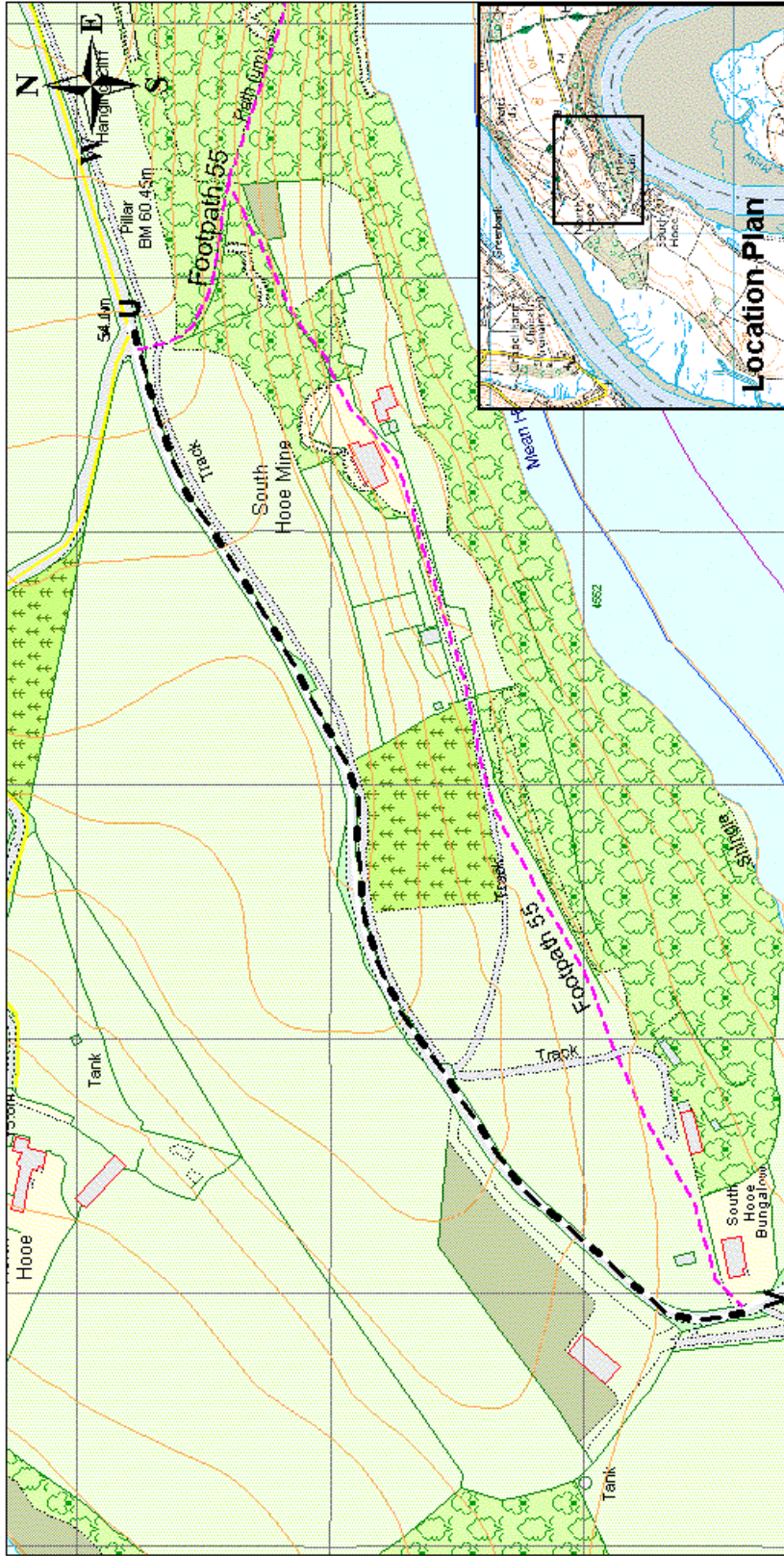
- Proposed brideway G - H (approx 330 m) **+**
- Existing footpaths **---**
- Existing brideways **-|-**

**David Whitton**

Head of Highways, Capital Development & Waste







map ref. SX 4366

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**Devon County Council**  
**Definitive Map Review - Bere Ferrers**

**Proposal 9 - Proposed resolution of anomaly affecting Footpath No. 55 at South Hooe**

**Notation**

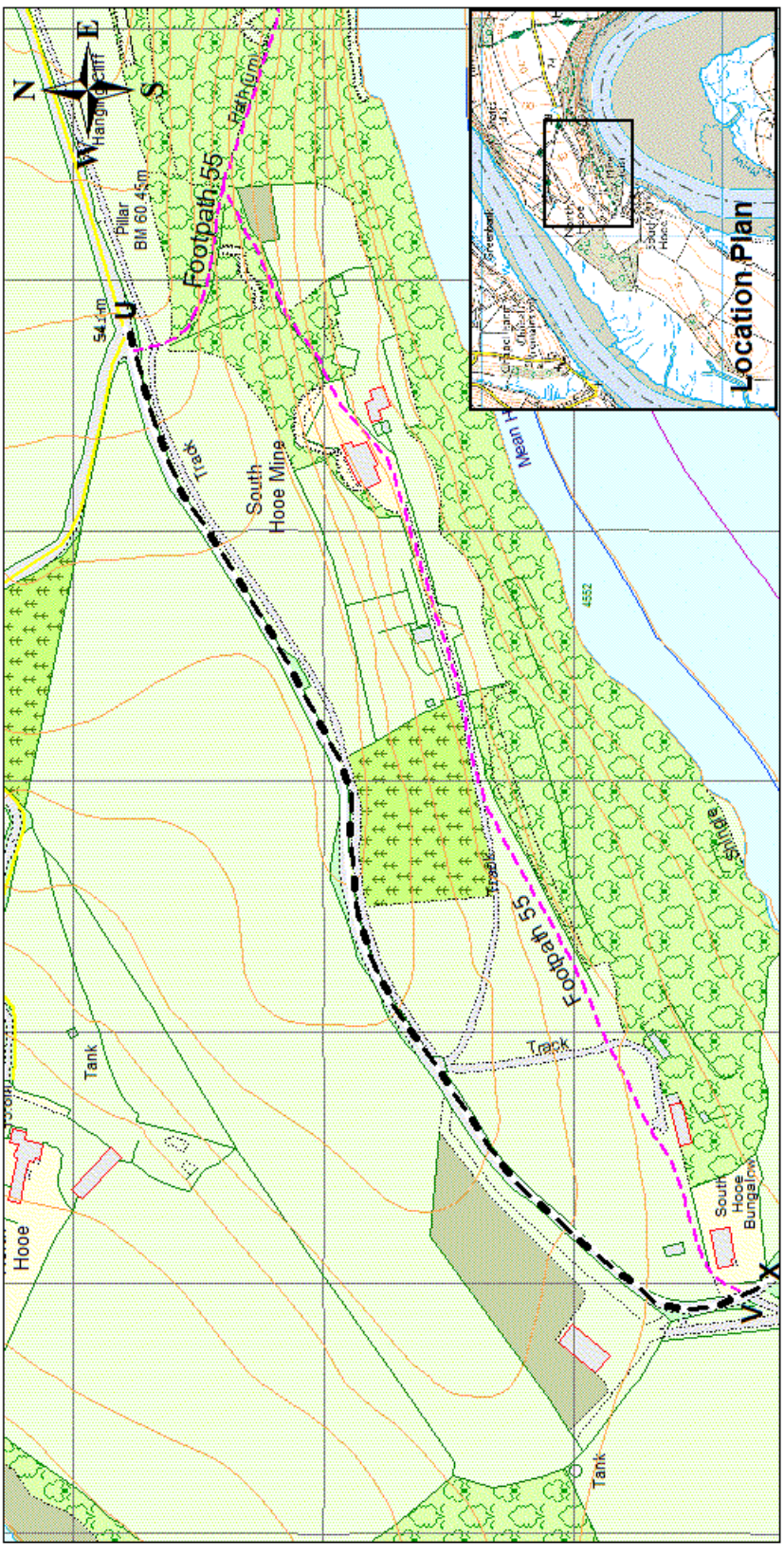
- Anomaly to be resolved U - V (approx 484 m)      - - -
- Existing footpath      - - - - -

drawing number	HCWIPROW14170
date	May 2014
scale	1:2,500
drawn by	CLG

**David Whitton**  
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**Devon**  
 County Council  
 Capital Development & Waste





map ref. SX 4265

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**drawing number** HCW/PROW/14170a  
**date** Oct 2015  
**scale** 1:2,500  
**drawn by** CLG

**Devon County Council**  
**Definitive Map Review - Bere Ferrers**  
**Proposal 9 - Proposed resolution of anomaly affecting Footpath No. 55 at South Hooe**

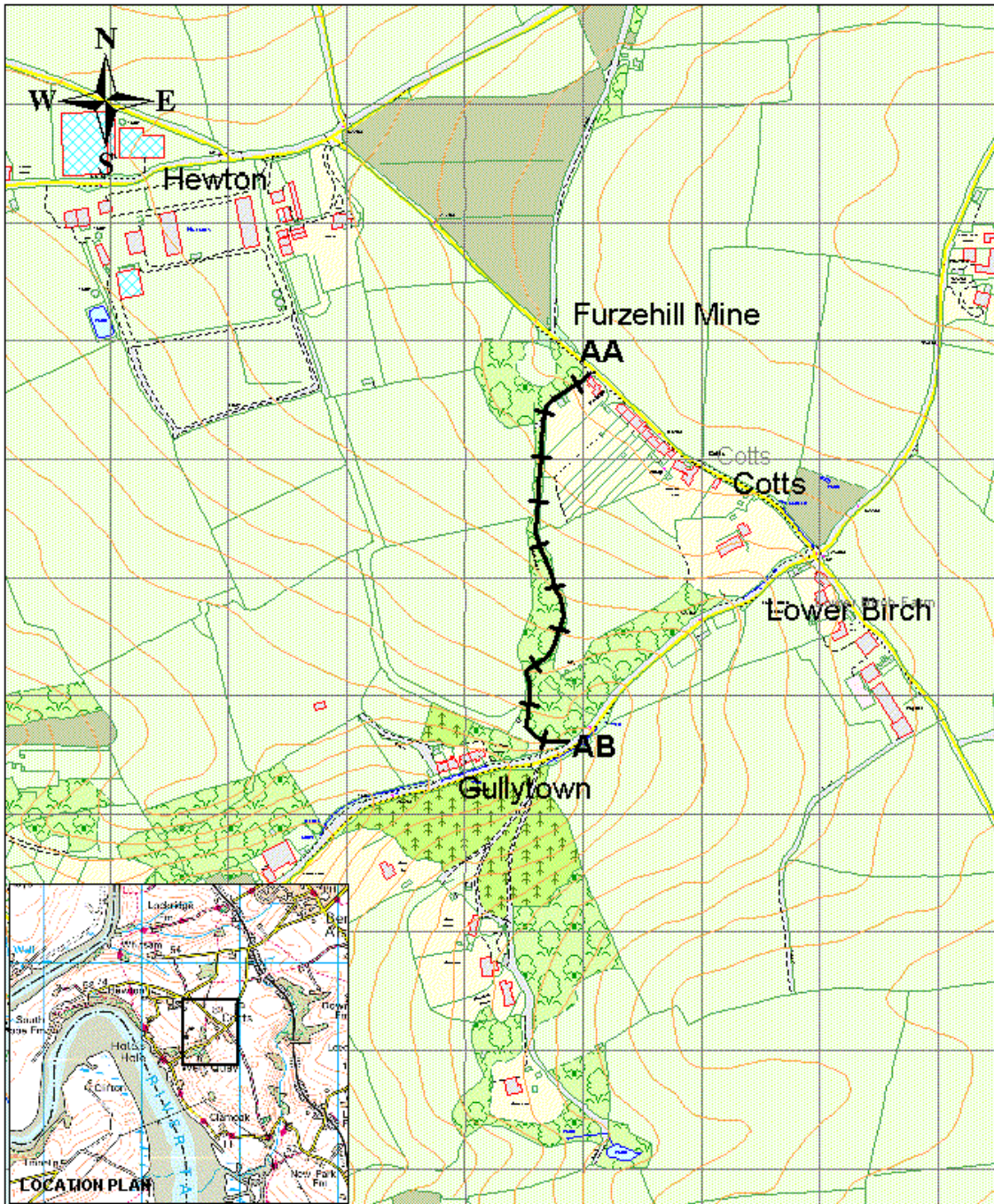
**Notation**

Proposed recommendation route: Restricted Byway U - V - X (approx 496 m)    
 Existing footpath 

**David Whitton**  
 Head of Highways, Capital Development & Waste

**Devon**  
 County Council





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**Devon County Council**  
**Definitive Map Review - Bere Ferrers**  
**Proposal 12 - Proposed upgrade of Footpath No. 71**  
**to bridleyway between Cotts & Gullytown**

drawing number HCW/PROW/14/73  
 date April 2014  
 scale 1:6,000  
 drawn by CLG

Notation

- Proposed bridleyway AA - AB (approx 378 m) **+**
- Existing footpaths **---**
- Existing bridleyways **—|—**

**David Whitton**

Head of Highways, Capital Development & Waste

