

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

Report of the Head of Highways, Capital Development and Waste

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

Recommendation: It is recommended that:

- (a) a Modification Order be made to modify the Definitive Map by adding a restricted byway along Nick Reeds Lane between the points A – B – C as shown on drawing number HCW/PROW/15/44 (Proposal 2).**
- (b) no Modification Order be made to modify the Definitive Map and Statement by downgrading Bridleway No. 38 to a Public Footpath (Schedule 14 Application) between the points A – B – C – D – E – F as shown on drawing number HCW/PROW/15/51 (Proposal 5).**

1. Introduction

This second report for Clayhidon parish examines two proposals arising from the Definitive Map Review in the parish of Clayhidon. Proposals 1 and 4 were considered at the previous committee in June 2015. Proposals 2 & 5 are considered in this report and proposals 3 & 6 will be considered at the next meeting.

2. Background

The background to the review in Clayhidon parish is as discussed in the previous report of 24 June 2015.

2. Proposals

Please refer to the appendix to this report.

Consultations

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

County Councillor R Radford	-	no response to proposals
Mid Devon District Council	-	no response to proposals
Clayhidon Parish Council	-	response to all proposals
British Horse Society	-	response to some proposals
Country Landowners' Association	-	no response to proposals
National Farmers' Union	-	no response to proposals
Ramblers' Association	-	no objections to all proposals

Trail Riders' Fellowship	-	no response to proposals
Devon Green Lanes Group	-	no response to proposals

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

3. 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.

4. Legal Considerations

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

5. Risk Management Considerations

No risks have been identified.

6. Equality, Environmental Impact and Public Health Considerations

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

7. Conclusion

It is recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a restricted byway between the points A – B - C as shown on drawing number HCW/PROW/15/44 (Proposal 2) and that no Modification Order be made to modify the Definitive Map and Statement by downgrading Bridleway No. 38, Clayhidon to a bridleway between the points A – B – C – D – E - F as shown on drawing number HCW/PROW/15/51 (Proposal 5).

8. Reasons for Recommendations

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

David Whitton
Head of Highways, Capital Development and Waste

Electoral Division: Willand & Uffculme

Local Government Act 1972: List of Background Papers

Contact for enquiries: Tania Weeks

Room No: ABG Lucombe House

Tel No: 01392 382833

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

tw231015prw
sc/cr/DMR parish clayhidon part 2
04 171115

A. Basis of Claims

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

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

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

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

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

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

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 2: Proposed addition of a public bridleway along Nick Reeds Lane between points A – B – C as shown on drawing number HCW/PROW/15/44.

Recommendation: It is recommended that a Modification Order be made to add a restricted byway between points A – B – C as shown on drawing number HCW/PROW/15/44.

1.1 Background

1.1.1 Following the opening of the Definitive Map Review with a parish public meeting in May 2013, a local walker contacted the parish path partnership (P3) representative after walking Nick Reed's lane in August that year to ask about the status of the lane. A user evidence form was received from a further user in October 2013 and the route was included as a proposal for change on the consultation map as the addition of a public bridleway.

1.2 Description of the Route

1.2.1 The route starts at point A at the east of the county road known as Gray's Hill, south west of Honeyhill Plantation and proceeds south south eastwards downhill along a defined hedged lane. The path continues down the lane to point B, where there are two field gates into the fields either side then turns more south eastwards and continues along the lane to point C and the junction with the county road running between Rosemary Lane Cross and Gladhayes Bridge, west of Bromfields.

1.2.2 The surface of the lane is earth and grass with a patch of green sand south of point B. The total length of the route is approximately 300 metres. Photographs of the route are included in the backing papers.

1.3 Documentary Evidence

1.3.1 Ordnance Survey and Other Maps

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

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

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

1.3.3 On the Old Series of 1809 the lane is shown as a defined lane and in a similar manner to the connecting and adjoining roads/lanes. In the edition of 1899-1900 the route is shown as an uncoloured defined lane which would appear to correspond to an unmetalled road. The county roads which Nick Reed's Lane joins are both coloured as Metalled Roads – Second Class. In 1919, the lane is still shown as a defined lane and similar to the county road at the north end, representing Roads under 14' wide.

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

Both editions show Nick Reed's Lane as a defined hedged lane with hedgerow trees (shown on the 1st edition). On both editions the lane has its own compartment number 375 and a stated area of 0.499 acres. There is a solid line across the north end of the lane on the first edition, although this appears to a continuation of the bold

line along the south side of Gray's Hill rather than a gate across the lane at point A. On the second edition of 1904-06 there is a pecked line across the north end of the lane at point A, as there is at point C on both editions. This is understood to represent a change in surface between the lane and county road.

1.3.5 OS 1 inch to a mile Maps of 1946 & 1965 Sheet 164 Minehead & 1960 Sheet 176 Exeter

On the 1946 edition the lane is not shown. Although prior to the Definitive Map being compiled, a dashed line on the map represents Footpaths & Bridlepaths and the routes of Footpaths Nos 21 & 22, Clayhidon are shown on the map. On the 1960 edition Nick Reed's lane and the south end of Footpath No. 22, Clayhidon are both shown by a pecked line described as Footpaths and Tracks. On the 1966 edition public rights of way were shown as recorded on the Definitive Map and separately differentiated as Footpath, Bridleway or Road used as public path. Footpaths Nos 21 & 22 are shown by a red dotted line representing their public footpath status as recorded on the Definitive Map. Nick Reed's Lane is still shown on the map by a black pecked line, representing 'Path'.

1.3.6 OS Post War Mapping 1:2:500 scale 1964

The route is shown as a defined lane called Nick Reed's Lane and with its own compartment number 4545 and increased area of 0.54 acres. There are pecked lines across both ends of the lane, considered to represent a change in surface between that of the lane and the county roads.

1.3.7 Tithe Maps and Apportionments

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

1.3.8 Clayhidon Tithe Map & Apportionment 1840

The roads on the Clayhidon Tithe Map are not coloured. Nick Reed's Lane is shown as a defined lane similar to the lanes that are county roads today. The lane is shown open at both ends where it joins the current county roads. The lane is not individually numbered. The alignment at the north end is shown differently with the top section of the lane running along the west hedge of field 772 and meeting Gray's Hill opposite the junction of Footpath No.22, Clayhidon. The route of the lane now lies along what would have been the eastern hedge of field numbered 772. The land on the west side of the lane appears to fall under the holdings of Gladhayes Lane, owned and occupied by John and James Reed, whereas the land on the east side lies under the holding of Broomfields, owned and occupied by Thomas Blackmore.

1.3.9 Clayhidon Parish Surveyors Account Books 1836-1864 (DHC Ref 74B/AH/64)

These account books kept by the parish surveyors in the 19th century include some references to labour and materials used on Nick Reed's Lane. In February 1862 an entry reads 5 days spreading stone Cott & Nack Reed Lane; then in June 1862 Mr W Blackmore 30 loads of stone Neck Reeds Lane and in December 1862 load of stones Nack Reeds Lane

1.3.10 Clayhidon Highway Minute Book 1890 -1895 (DHC Ref 1061a/PS157)

The minutes recorded in this book make some reference to Nick Reed's Lane. In October and December 1890 it was reported stones lodged and cracked and stones

cracked not spread respectively at Nick Reed's Lane. In the following February it was reported Stones spread on various lanes/roads including Nick Reed's Lane.

1.3.11 Finance Act Plans and Field Books 1910

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

1.3.12 Nick Reed's Lane is excluded from the adjoining hereditaments. There is no colouring within or across the ends of the lane and the lane appears similarly to the county roads around. The land to the west of the lane falls into hereditament number 42, Gladhayes Farm whilst the east side is under hereditament number 1, Bromfields.

1.3.13 Hereditament number 1 was Palmers, owned and occupied by J Blackmore. Notes on page one of the field book entry refer to two footpaths across farm and right of way through two fields by adjoining occupier (with a separate allowances made for the easement £20 and right of way £70) but make no reference to Nick Reed's Lane.

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

The parish survey map for the vicinity of Nick Reed's Lane shows the addition of Footpaths Nos. 21 and 22, Clayhidon but there is no annotation or colouring on the lane itself. The survey forms for the two footpaths were signed by the parish clerk in October 1950. Descriptions of the path routes are listed on seven sheets headed 'List of Public Rights of Way in the Parish of Clayhidon agreed with the Clerk to the Parish Council on 16th December 1957'. The description for Footpath No. 22 includes reference to Nick Reed's Lane (..and continues in a northerly direction to cross the Unclassified County road, Gray's Hill, near the junction with Nick Reed's Lane..) but there is no additional information on what the status of Nick Reed's Lane was perceived to be at that time.

1.3.15 Devon County Uncompleted Reviews of 1968 & 1977

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

1.3.16 Following a public meeting held on 6 April 1978 for the general county wide review of the Definitive Map started in 1977, the clerk for Clayhidon Parish Council wrote to advise that it had been proposed, seconded and adopted by the meeting that the map supplied by the County Council be accepted as a true record of the Footpaths and Bridleways in the parish without any alteration being made (apart from clerical errors noticed in respect of Footpaths No. 23 and No. 28).

1.3.17 Clayhidon Parish Council Minutes

The Parish Council minutes are available from inception of the Council in 1894 and retained by the current clerk. In January 1936 it was proposed and seconded that a committee make a map of the footpaths and rights of way in the parish. A meeting of seven councillors and the clerk was held on 23 January 1936 but there were no further details of whether maps were prepared in later minutes.

1.3.18 In August 1958 the Draft Map and Statement with reference to PROW was again considered and the clerk stated that since it had been deposited for inspection, no objection had been received. In August 1963 the clerk confirmed that footpath Map and Statements had been open for inspection at his house 18 June to 16 July, no one asked to inspect and now returned to Devon County Council.

1.3.19 In March 1965, under the heading of Footpaths, the status of Nick Reed's Lane was discussed. The Chairman said that this was, as far as he knew, a private accommodation road. It was now almost impassable.

1.3.19 Aerial Photography

On the 1946 aerial photography the lane can be clearly seen between the two hedges with the hedgerow trees on either side. In the later photographs of 1999-2000 and 2006-2007 the hedgerow trees are in leaf and the lane can only be seen by the line of trees, the width of which indicates the double hedge bank that is present.

1.3.20 Land Registry

Nick Reed's lane and the land either side is not registered with Land Registry.

1.4 User Evidence

1.4.1 Five user evidence forms have been received from members of the public who have used Nick Reed's lane and these have been considered together with an email advising use of the lane. When the officer walked the lane in August 2015, there was evidence of recent use by a horse riding the lane in the uphill direction (points C – A) towards Gray's Lane.

1.4.2 On being aware of the review Mr Holway emailed the parish P3 co-ordinator in August 2013 advising that he had walked Nick Reed's Lane that morning and asked about its status. On being asked if he had used the lane much, Mr Holway advised by email that they first walked the lane twenty years ago. At that time they had had to cut the brambles back at the Gray's Lane end but it is now much better used by walkers and also motor bike tracks are evidence of its use

1.4.3 Mr B Clowney completed a user evidence form and considers the lane to have the status of a bridleway. He had used the lane from 1980 to 2000, frequently for pleasure on foot but accompanying children on horseback. The only obstruction was natural overgrowth. He had never being stopped or turned back or obtained permission to use the route. Under additional information he advised that the lane was regularly used by people on hacks from the Heazle Equestrian Centre in Clayhidon.

1.4.4 Mr C Brake considered the lane to have the status of a byway open to all traffic and considered the lane to be public, as open at both ends and no signs to the contrary. He has used the lane from 1972 to the present time for hundreds of times over the forty years and sometimes 2 – 3 times a day on horseback for both pleasure hacking and with escorted groups from a riding stables. Under obstructions he mentions sometimes overgrown and also the wet patch half way. He has never being stopped,

told it was not public or obtained permission to use the route. Under other information he says that riding the lane allows you to miss the built up Rosemary Lane area and it is one of the few places you can have a little off road canter.

- 1.4.5 Mrs Law considers the lane to have the status of a bridleway and believes it to be public as no evidence to the contrary. She has used the lane from 1999 to present day once a year on a circular route from home for pleasure, on foot and horseback. Under obstructions she refers to overgrown and very muddy (greensand). She has not being turned back, stopped or obtained permission to use the lane. Under other information she advised that she uses the lane for walking and riding. The greensand $\frac{3}{4}$ way up is very dangerous and makes the path difficult for walking and impossible for riding which is a shame as there is very little 'off road' riding around Clayhidon.
- 1.4.6 Mrs Howland considers the lane to be a byway open to all traffic and has used the lane on horseback 10 to 15 times a year between 1990 and 2000. Her brothers had used the lane on motorbikes. She referred to posts engraved bridlepath at either end that she believes were knocked by tractors hedge cutting in 2000. She has not being turned back, stopped or obtained permission to use the lane or referred to any obstructions part from being overgrown.
- 1.4.7 Mrs Dymond considers the lane a bridleway and public because everybody used it. She had used the lane 20 – 30 times a year from 1974 to 1984 on horseback. She has not being turned back, stopped or obtained permission to use the lane. Under other information she has stated the surface was quite stony which made cantering difficult; was sometimes overgrown.
- 1.4.8 Mrs N Shakeshaft completed a user form but had not completed section 2 regarding her use and subsequently confirmed by email that although she was advised several years ago that it had been used as a bridleway she couldn't ride her horse along the path as it was too overgrown and there is often rope or baler twine across the Gray's Lane end.
- 1.4.9 Verbal evidence of use was also received from a local parishioner at Ringdown who advised that when riding the lane she had met a family on bicycles with a trailer, which frightened her horse.

1.5 Landowner Evidence

- 1.5.1 The two adjoining occupiers, one each side of the lane were contacted and informed of the proposal.
- 1.5.2 Mr Bendle, the landowner on the west side of the lane telephoned in October 2014 to advise that he did not return a completed form as he didn't really have much to say. The lane is very overgrown and he has not driven up the lane in a tractor for several years although he has a gateway into his field about half way up. He thinks it would cost a lot of money to put the lane right and that money would be better spent on the roads at present.
- 1.5.3 No response was received from Mr Blackmore, the owner of the land on the east side of the lane.

1.6 Rebuttal Evidence

No rebuttal evidence has been received.

1.7 Consultation Responses and other Correspondence

- 1.7.1 Clayhidon Parish Council made the following comment having discussed the proposal. This joins two roads with no dwellings involved. Not a good surface for horses and work required to upgrade and maintain. Suitable for change.
- 1.7.2 Mr Mumford, the local Ramblers Footpath Representative, responded that the suggestion is acceptable from a walker's point of view.
- 1.7.3 Mr J Burrige, a local resident from Clayhidon wrote objecting to the proposals for change in the parish numbered 1 – 3, 5 & 6. His objection is based on the additional cost of the upgrades during a period of financial austerity although he advises that he is not familiar with the routes. He writes that Devon County Council needs to concentrate on its statutory duty to maintain the network it already has rather than upgrade its network and burden itself with future maintenance liabilities that evidence shows it cannot afford to maintain.
- 1.7.4 Mr G Langford, a former Parish Council chairman and previous P3 Coordinator for the parish, responded and in respect of Nick Reed's Lane advised as follows. Nick Reed's Lane had been an unofficial footpath for living memory but never recorded as such. Making it a bridleway might be overkill, as it is quite steep and has a very uneven surface.
- 1.7.5 The local British Horse Society representative advised of entries referring to Nick Reed's Lane in the local 19th century highway records referred to above.

1.8 Discussion – Statute and Common Law

1.8.1 Statute (Section 31 Highways Act 1980)

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

- 1.8.2 The evidence forms received refer to use of the route by members of the public 'as of right' (without force, permission or secrecy) from 1972 to 2015 which is in excess of the twenty years required under section 31 claims. However, none of the users refer to their use of the route being called into question during their use which is a requirement to enable a valid claim to be considered under section 31 of the Highways Act 1980 (the occasional cord/rope across the end of the lane mentioned by a potential user) is considered to be a temporary measure, used when livestock is being driven along the road pass the end of the lane). The proposal will not therefore be considered under statute.

1.8.3 Common Law

A claim for a right of way may also exist at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication of a public right of way 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, usually at some time in the past and that the public has accepted the dedication.

- 1.8.4 The historic mapping records the existence of the lane since the early 19th century and although this shows the lane was available to the public, the maps do not provide any details of status. In the Clayhidon Tithe Map the roads are not coloured and Nick Reed's Lane appears in a similar manner to the adjoining and neighbouring lanes that are county roads today and would appear to have been available to wheeled traffic as well as walkers and horse riders. In the Finance Act 1910 plan the lane is excluded from the adjoining hereditaments. This could be because the lane was considered to be public and public roads were excluded from hereditaments or it could be because the two different landowners on either side only considered the boundary of their land to extend to their field hedge and not across the lane.
- 1.8.5 The entries in the Parish Surveyors Account Books and in the Highway Minute Book of 1862 and 1890 record parish money being spent on the lane (Nick Reed Lane is believed to refer to Nick Reed's Lane). This would not be done unless it was considered that the lane was used by the public and formed part of the local highway network. This would support the lane being of higher status than a bridleway as it was generally wheeled vehicles that needed roads to be kept in a reasonable condition.
- 1.8.6 No map or list of rights of way referred to at the parish meeting in 1932 appears to remain. The lane was not included in the list of paths surveyed by members of the parish council in 1950. They were aware of the lane, as it was referred to in the description for the nearby Footpath No. 22, Clayhidon. Clayhidon Parish Council like other parishes in Mid Devon appear to have only proposed paths for inclusion in their survey that crossed fields and enclosed land and did not include any of the lanes in the parish that were not county roads. The list of paths to be included for the parish was agreed with the parish clerk in 1957 and did not include Nick Reed's Lane. The draft and provisional Definitive Maps were held by the parish clerk for public consultation in August 1958 and August 1963 and it would appear that no objections or representations to the omission of Nick Reed's Lane were made.
- 1.8.7 In 1965 the status of the lane was questioned at a Parish Council meeting although it is not known why and the chairman advised that he thought the lane was a private accommodation road. The parish held public meetings with regard to the County Council reviews of 1968 and 1977 and the lane was not raised. The lack of references to the lane by or in the parish could indicate that the lane was not used by the public but could also mean that if it was it being used there was no problems in doing so and so nothing needed to be reported. Public rights of way can run over private accommodation roads and the current Parish Council support the lane becoming a bridleway.
- 1.8.8 The user evidence forms received refer to use of the lane on horseback from 1972 to the present day and on foot from 1980 to present, with use of the lane by at least two users throughout this period. Their use is considered to have been 'as of right', without force, secrecy or permission. Some users have mentioned obstructions of overgrowth, green sand and the rope across the north end of the lane, although the latter is understood to be in place when cattle are being moved along the road to prevent the livestock entering the lane. These do not appear to have prevented use by most of the users and a drier, higher path at the side of the patch of green sand that had been used by a horse, was noticed at the time of inspection.
- 1.8.9 The two adjoining landowners were contacted and no objections were received to the proposal of a bridleway. Mr Bendle (west side landowner) telephoned and advised that he didn't use the lane in his tractor anymore and thought that the cost of putting the lane right would be better spent on the local roads.

- 1.8.10 A local resident and the parish council have to some extent, have commented on the proposals with a view to the costs to implement the proposed changes and suggested that such expense would be unjustified in the current period of financial austerity. However, questions of expense are like questions of suitability and are not valid considerations when determining the status or existence of public rights of way under the provisions of the Wildlife and Countryside Act 1981, which is based solely on the available evidence. Any money spent on the route would be taken from the limited specific public rights of way budget for the county and would not be funding diverted from the local roads.
- 1.8.11 Although the lane was proposed in the consultation as a bridleway, the documentary evidence and in particular the surveyors' of highways minutes and accounts would support the lane being of higher status. Following the passing of the Natural Environment and Rural Communities Act in 2006, the route cannot be recorded as a byway open to all traffic; only as a restricted byway which could be used by walkers, horse riders, cyclists and non motorised vehicles such as a pony and trap.

1.9 Conclusion

- 1.9.1 Overall the documentary evidence is considered sufficient to show that a restricted byway subsists or can be reasonably alleged to subsist at common law, having being dedicated at common law at some time prior to the early/mid 19th century. Such subsistence is also supported by the user evidence which shows acceptance of the dedication by the public.
- 1.9.2 It is therefore recommended that a Modification Order be made to add a restricted byway to the Definitive Map along Nick Reed's Lane between the points A – B – C as shown on drawing number HCW/PROW/15/44 and if no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

2 Proposal 5 – Schedule 14 Application received for the downgrading of Bridleway No. 38, Clayhidon to a public footpath between points A – B – C – D – E – F as shown on drawing number HCW/PROW/15/51.

Recommendation: It is recommended that no Modification Order be made to modify the Definitive Map and Statement by downgrading Bridleway No. 38 to a Public Footpath between points A – B – C – D – E – F as shown on drawing number HCW/PROW/15/51.

2.1 Background

- 2.1.1 In March 1992 a letter was received by Devon County Council from Mr Quarman at Mid Devon District Council. Mr Quarman had been in correspondence with Mr S Sanders of Gotleigh Farm. Mr Quarman advised that the gate at the Smeatharpe end (point F) had been locked for over forty years, with a stile affixed to the gate. Mr Sanders had advised that this route was only a church path/school path and prior to 1950 the section from Smeatharpe to Gotleigh Farm was the only entrance to the farm. Mr Quarman concluded in asking if the appropriate modification order could be put in train to correct the error.
- 2.1.2 In January 1995 following a site visit by a county council officer, Mr W Sanders was asked to forward the appropriate Schedule 14 application form. The application made by E, W, D & S Sanders trading as W H Sanders & Son together with supporting letters was received in early February 1995. In May that year notification

of the application was sent to the Parish Council, Mid Devon District Council and local representatives of the BHS and RA asking for any information and/or comments they may wish to give/make. Responses were received from the BHS and RA but no further action appears to have been taken and the application has remained on file, pending the start of the county wide parish by parish review in Clayhidon.

- 2.1.3 The Schedule 14 Application for the downgrading of Bridleway No. 38, Clayhidon was accordingly included as a proposal for change in the Definitive Map Review in Clayhidon parish as proposal 5.

2.2 Description of the Route

2.2.1 The route starts at the county road east of Middleton Barton (point A) and proceeds south east along the access driveway to Valentine's Farm passing the junction with the east end of Footpath No. 41, Clayhidon (point B). At the farm entrance the bridleway meets the south end of Footpath No. 40, Clayhidon (point C) and then goes east and then south around the farm buildings across a grass field and into a lane continuing south then south eastwards to a gate into Gotleigh Moor at point D. The bridleway continues generally east south eastwards over a ford and across the moor to a paddock area with handling pens (point E). The way then crosses a pasture field to the county road north west of Bloomers Farm (point F) and the parish boundary with Upottery. The section between points D and E across Gotleigh Moor is across Open Access land.

2.2.2 The route has a surface of concrete and grass along the access drive to Valentine's Farm, some stone/concrete past the farm buildings and of earth/grass/vegetation with the occasional bit of stone along the remainder of the route and a total length of about 1,850 metres. The width of the bridleway, where defined by hedges/fences is estimated to be 2.5 - 3 metres. Photographs of the route are included in the backing papers.

2.3 Documentary Evidence

2.3.1 Ordnance Survey and Other Maps

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

2.3.2 Cassini Historic Maps 1809 – 1919 Sheet 192 Exeter & Sidmouth

Please refer to paragraph 1.3.2 for details of these maps.

2.3.3 The 1809 edition shows Middleton, west of point A and Smith Harp at point F, but no reference to Valentines or Gotleigh Farms or any indication of a track or path along the route of the bridleway. A holding named Hole is shown west of the route. In 1899 Valentine's Farm is shown together with Gatley Moor, Hole has gone and a double pecked line, with a section with solid lines just south west of Valentine's, is shown along the current route of the bridleway and in a manner of Unmetalled roads, fenced and unfenced in the key. The buildings of the original site of Gotleigh Farm appear to be shown. Smith Harp is now Smeatharpe.

2.3.4 In the 1919 edition Gotleigh Moor is shown at the current spelling together with Valentine's Farm and buildings at the old Gotleigh Farm site. A pecked and part solid line track/route is shown along the route of Bridleway No. 38, Clayhidon.

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

A pecked line is shown along the headland of the first field and then as a double pecked line to Valentine's Farm which follows the route of the driveway today. Narrower double pecked lines are also shown approaching the farm from the north and west on the current lines of Footpaths No. 40 and 41, with these lines annotated 'F.P.'.

2.3.6 The double pecked lines continue around the farm buildings and across the field into the lane leading to 'Gatley' Farm. At the end of the lane the pecked lines continue in a general south eastwards direction on the route of the presently recorded bridleway across Gatley Moor and the field to Smeatharpe. There are double pecked lines running southwards from the Moor and labelled 'F.P.' but there are no annotations on the pecked lines that follow the currently recorded route of Bridleway No. 38, Clayhidon.

2.3.7 On the second edition Gatley is now Gotleigh Farm and a pecked line or defined lane is shown along the route of the bridleway from Middleton Barton to Smeatharpe. The pecked lines, now Footpaths No 40 and 41 are still labelled 'F.P.' but the path coming south from the moor is not labelled in this edition. The presence of pecked lines on the map would indicate that a path or track was visible on the ground to the surveyors.

2.3.8 OS 1 inch to a mile maps of 1946 & 1966 Sheet 164 Minehead & 1960 Exeter

The 1946 edition shows a track to and through Valentine's Farm to the edge of Gotleigh Moor (point D) but nothing across the moor to Smeatharpe. Although understood to be constructed in 1943, the airfield is not shown on this map. On the 1960 edition the airfield is now shown together with a track to Valentine's Farm only. No buildings are shown at the site of the original Gotleigh Farm. On the 1966 edition public rights of way recorded on the Definitive Map are included and a bridleway is shown by the red dashed line for the length of the recorded route together with the two public footpaths connecting with the bridleway at Valentine's Farm. A building is now shown at the site of the original Gotleigh Farm.

2.3.9 OS Post War 1:2,500 A Edition 1963

On this edition although some buildings are still shown at the old location of Gotleigh Farm, the farm name is now located at the buildings south of the moor and on the northern edge of the airfield. A pecked line track or enclosed lane runs along the length of the bridleway route. At two places this is annotated 'C.T.' for cart track, which again indicates that there was a visible path/track at the time of the survey.

2.3.10 Tithe Maps and Apportionments

Please refer to paragraph 1.3.7 for a summary of Tithe Maps. The roads on the Clayhidon Tithe Map are not coloured.

2.3.11 Clayhidon Tithe Map & Apportionment 1840

On the Tithe Map the section of county road south of Middleton Barton, between Middleton Mill and Trood's Cottage has not been constructed although a double pecked line, indicating a track is shown roughly along the present day route. The bridleway starts along this section of track where a gate is shown into field number 1555. No evidence of a track or path is shown across the fields 1555 or 1576, although a gate is again shown leading into the area (number 1586) north west of the farm buildings at Valentine's Farm. There is no evidence of a track or path across the field (1585) south of the farm before the route enters a hedged lane which could

be included within 1597, which includes the site of the original Gotley/Gatley (Gotleigh Farm) where the remains of stone building can still be seen (north west of point D).

2.3.12 The route follows the lane which continues as a headland path before entering the large field 1620, Gotleigh Moor. A double pecked line is shown across this field on the same lines at the current bridleway, together with another track heading southwards towards the western side of the current Gotleigh Farm. A gate is shown on the boundary into the next moor field 1604 but no further tracks or gates are shown as the way crosses field numbers 1604, 1611, 1610 and 1609 to the road at Smeatharpe.

2.3.13 The Tithe Apportionment records that field numbers crossed by the way from 1555 (Eight Acres) to 1585 (Little Mead) were part of Valentine's Farm owned by Joseph Burrow and occupied by Robert Manley. Field numbers 1597 (garden), 1626 (Lower Courtledge) and 1599 (Cosways Mead), fields 1620 (Little Moor), 1604 (Great Moor) and 1611 (Sleep Plot) were part of Gotley Farm owned by William Tucker and occupied by Thomas Pring. The last two fields 1609 (Hither Lay Piece) and 1610 (Three Acres) are part of Smeatharpe also owned by William Tucker and occupied by William Ewins. None of the state of cultivation entries makes any reference to a public bridleway or footpath.

2.3.14 Finance Act Plans and Field Books 1910

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

2.3.15 Bridleway No 38, Clayhidon fell within two hereditaments. Valentine's Farm, number 103, included the section from point A to the first section of lane running southwards from point C at the farm buildings and number 106, Gotleigh Farm was the land crossed for the remainder of the route.

2.3.16 Hereditament 103 comprised 107 acres and was owned by R Barrough of Ilminster and occupied by G Rowe since 1907 on a yearly tenancy at £125 annual rent. Page two of the field book records R of way through 1422, 1484, 1460 and 1478 with an allowance of £3 x 22 say = £65 which is carried forward to the deductions on page four for Public Rights of Way. The field numbers stated refer to the four fields (including the compartment including the farm house and buildings crossed by Bridleway No. 38 on the land belonging to Valentine's Farm between points A and the entrance to the section of lane south of point C.

2.3.17 Hereditament 106 comprised 164 acres and appears to be managed by R Snell for owner C Tucker of Horrabridge and was occupied by W Sanders, also on a yearly tenancy at £60 rent. Page two of the field book comments 'House, buildings and land – buildings are totally inadequate to the area of land and situate in a most inconvenient position – large part of farm in poor common land. Several Rights of way over the land which restricts the tenant from full use of land that he cannot have a bull or ram on the land (? two words unclear) his sheep or bullocks. An allowance of £5 x 22 = say £100 is given for the R of Way and carried forward to page four deductions for Public Rights of Way.

2.3.18 Parish Council Minutes

The Parish Council minutes from 1894 are held by the parish Clerk. In the minutes there are several references to the bridleway. The first reference to a footpath at Gotleigh was in 1901 and in January 1916 and again in October 1916 it was proposed that a footbridge be put at Gotleigh, the latter one with 3 inch oak plank and

handrail for 30 foot. In April 1921 the footbridge at Gotleigh was repaired and in 1944 a new footbridge was erected at Gotleigh Moor. A footbridge along the current route of Bridleway No. 38, Clayhidon is not shown on the OS 25" 1st or 2nd editions or on the Post War A edition of 1963, although the area known as Gotleigh Moor is noted.

- 2.3.19 Also in 1922 a complaint was received re the hedge in Gotleigh lane and resolved to write to Mr Sanders requesting him to have said hedge pared. In January 1936 a meeting was to be held for the purpose of making a map of the footpaths and rights of way in the parish. In August 1958 the Draft Map and Statement with reference to PROW was again considered and the clerk stated that since it had been deposited for inspection, no objection had been received. In August 1963 the clerk confirmed that footpath Map and Statements had been open for inspection at his house 18th June to 16th July, no one asked to inspect and now returned to Devon County Council.
- 2.3.20 In August 1975 it was reported that a bridleway sign had been erected at Valentine's Farm and in November that year that the obstacles on Bridleway No. 38 had now been removed. In November 1982 an objection had been made by Mr Sanders in regard to the bridleway which crossed his land as it did not show on his deeds. The DCC solicitor was contacted and bridleway confirmed as registered.
- 2.3.21 In September 1983 it was reported that the gate at entry to Bridleway No. 38 had been knocked down and Air Commodore W-B had visited and confirmed Mr Sanders intended to replace with a stile. In March 1984 a discussion was held on the bridleway which had been obstructed by a padlock on the gate. It was noted that it had been confirmed to Mr Sanders that it was a registered bridleway. The Chairman agreed to contact Mr Sanders to get the padlock removed. In September 1984 Mr Blackmore, the chairman, stated that he had spoken to Mr Sanders who was going to erect a metal gate on the footpath which could be opened without difficulty as required. Mr Sanders had also informed Mr Blackmore that a handrail was missing from the bridge. In March 1985 it was reported that a gate had now been hung by Mr Sanders and steps had been put also between rungs to help in climbing over.
- 2.3.22 In May 1992 a complaint had been made that No 38 Bridleway was being blocked by Mr Sanders. This was taken up by the planning department. In September 1996 Mrs Bulley (DCC Councillor) stated that the bridleway across Mr Sander's land at Gotleigh was now open but that an appeal on this had been made.
- 2.3.23 Parish Survey under National Parks and Access to the Countryside Act 1949
The path was surveyed by and the survey form for Path No 38 was signed by J W Ayres and J N Sanders on 21st September 1950. The form indicated that the path was unlikely to be disputed and that the path was required in future. The path was described as Middleton Road to Valentines Farm to Gotleigh Farm through Gotleigh Moor to Smeatharpe with the route described as 'Path from Middleton Barton, enter white gate through grass field, the path is on the wheel track, through gate to ploughed field to Valentines Farm. Pass farm house through gate into grass field into a narrow lane past Gotleigh Farm, crossing a ford by a bridge through Gotleigh Moor, into a grass field and then a gate to Smeatharpe.'
- 2.3.24 Under remarks, the clerk Mr Braddick noted that footbridge maintained by Parish Council. There are pencil annotations on the form of 'BR' and CR' which are understood to have been added later by the Rural District Council. On the map sheets completed by the parish council to accompany the survey forms, all the routes

proposed were marked in green with no apparent differentiation between those subsequently recorded as bridleways as opposed to footpaths.

- 2.3.25 Path 39 was initially included in the parish survey running southwards from the junction with path number 38 on Gotleigh Moor to the Kings Arms at Smeatharpe described as 'Spur Path to Kings Arms' and noted that the spur path has been cut by a barb wire fence on the drome. It would appear that the barb wire fence was at the edge of the air field (airdrome) constructed in 1943 and the path was omitted from being included in the draft definitive map as considered a private path. The route would have corresponded with the 'F.P.' shown on the OS 1st Edition 25" Map but this 'F.P.' annotation was omitted from the 2nd Edition 25" map.
- 2.3.26 On the typed sheet headed 'List of Public Rights of Way in the Parish of Clayhidon agreed with the Clerk to the Parish Council on 16th December 1957' the description reads 'From Southey Moor Road to Smeatharpe – Starts at the Southey Moor road, an unclassified county road, west of Ferny Piece Copse and follows the north-eastern boundary of two fields, thence turning south and south-easterly to Valentine's Farm, passing the eastern side of the farmhouse, and continues along a lane passing Gotleigh Farm and over Gotleigh Moor and across one field, to join the 3rd class county road opposite Bloomers at Smeatharpe on the Rural District boundary. B.R. 48 NW & SW. The B.R. at the end of the description is understood to be that the route was to be designated a bridleway with the other numbers and letters referring to the map sheets that the route ran over.
- 2.3.27 It is understood that the route was designated a bridleway on both the draft and provisional Definitive Maps for Clayhidon and that no objections or representations were received to its inclusion as such. The Definitive Map and Statement for the Tiverton Rural District Council area was published in 1964.
- 2.3.28 Devon County Uncompleted Reviews of 1968 & 1977
In June 1971 during the Limited Special Review (re-designation of Roads used as Public Paths) ongoing in the County (arising out of the general 1968 review), the Parish Clerk advised the County Council that, "at a meeting on 26th May 1971, the Clayhidon Parish Council resolved that the bridlepath No. 5 from Clayhidon Church to the Wellington road through the land of Glebe Farm be re-designated a footpath. No other variations are proposed in this parish."
- 2.3.29 Following a public meeting held on the 6th April 1978 for the general review of the Definitive Map, the clerk for Clayhidon Parish Council wrote to advise that it had been proposed, seconded and adopted by the meeting that the map supplied by the County Council be accepted as a true record of the Footpaths and Bridleways in the parish without any alteration being made (apart from clerical errors noticed in respect of number 23 and Footpath 28).
- 2.3.30 Aerial Photography 1946, 1999-2000 and 2006-2007
In the 1946-1949 aerial photograph the site of the airfield (understood to have been constructed in 1943 for use in 1944 by American troops involved in the D-day landings) can be seen, south of the bridleway. Gotleigh Farm would appear to be located adjacent to the bridleway at this time and has not relocated to the edge of the airfield. The stone/concrete driveway to Valentine's farm is visible as is the lane running from south of Valentine's to Gotleigh Moor. A track does appear visible across Gotleigh Moor and the field leading to the county road although if this was the main access to Gotleigh Farm at that time this would not be surprising.

2.3.31 On the later photographs the new farmhouse appears visible in the current location of Gotleigh Farm, south of Gotleigh Moor and close to airfield buildings previously stood. A track is visible along the line of the bridleway from point F at Smeatharpe to the west side of Gotleigh Moor.

2.3.31 HM Land Registry

Valentine's Farm is not registered. The area of land crossed by the bridleway from north west of point D to point E is now registered in the name of the Gotleigh Moor Management Ltd (owned since June 2006) and the field crossed by the bridleway between points E and F is owned by Mr W Sanders. Under the register for Gotleigh Moor there is reference to a Conveyance between William Sanders and Secretary of State for Air dated 6th March 1950, which would indicate when the site of the current Gotleigh Farm was released by the Government.

2.4 User Evidence

2.4.1 No user evidence forms have been received. It is however understood that horse riders as well as walkers do use the bridleway and are reported as having been seen by the landowner of Gotleigh Moor. The bridleway would form part of a circular route when used with the bridleway in Upton parish and Somerset which runs on a parallel line, north east to Bridleway No. 38, Clayhidon, across the adjacent Southey Moor.

2.5 Landowner Evidence

2.5.1 The Schedule 14 Application was made by E J Sanders, W F Sanders, D W Sanders and S F Sanders in the name of W H Sanders and Sons on the 31st January 1995. The application requested the downgrading to a footpath of the bridleway from Valentine's Farm entrance to Smeatharpe (through Gotleigh Moor). In 1995 all the land crossed by the route was owned by either Messrs Adams at Valentines (on whom the appropriate notice was served) or the Sanders family at Gotleigh Farm.

2.5.2 The 1995 application was supported by letters as follows:-
Mr P J Adams wrote on behalf of Adams Brothers at Valentines. He stated that we have owned the above farm since 1950 and it was certainly not purchased with a bridleway, footpath only.

2.5.3 T Spiller of Uffculme wrote with reference to the footpath through Gotleigh Farm, Smeatharpe and states 'I was born at Gotleigh Farm in 1920 and lived there until I was 28 and have been a constant visitor since then, in all these years I have never known this footpath to have been used as a bridleway'.

2.5.4 Mrs Joy Thomas, nee Sanders had written from Sale in Manchester and advised that she was the daughter of the late William H Sanders who farmed at Gotleigh Farm until his death. Mrs Thomas advises that she was born at Gotleigh Farm in 1922 and lived there until the house burnt down in 1942. During that time she never saw the footpath that runs through Gotleigh Farm used other than by pedestrians and never used as a bridleway for horses.

2.5.5 The Sanders family were written to in respect of the parish review and the consideration of their schedule 14 application made some years ago. Mr W F Sanders completed a landowner evidence form. Mr Sanders still owns the field crossed by the bridleway (between points E and F) at the Smeatharpe end although since making the application in 1995 the land at Gotleigh Moor and Gotleigh Farm were sold by the Sanders family in 2006. Mr Sanders has believed the way to be a

public footpath only, for 72 years and has been aware of people walking. He is not aware that any gates were ever locked. Under further information he has commented 'I wish the public would not leave the road gate open at Smeatharpe'.

- 2.5.6 Adams Brothers of Valentine's Farm also completed a landowner evidence form. They own the section of the bridleway from points A to between points C and D and have done so for 64 years. They believe the way to be a public way for walking and had seen people walking weekly. They were not aware of any locked gates.
- 2.5.7 Mr Whitely responded of Gotleigh Moor Management LLP responded and confirmed their ownership of the Gotleigh Moor section of the route, between points C and D to point E since 2006. They had understood the way to be a bridleway since purchase and although they do not live there they have seen people and horse riders. They have no objection to downgrading to footpath.

2.6 Consultation Responses and Other Correspondence

- 2.6.1 Clayhidon Parish Council discussed the proposal and made the following comment 'Hard track to Valentine's Farm, but then poor track to Gotleigh moor, this is a practical change as having a poor surface for any use'.
- 2.6.2 The local Ramblers Association Representative advised that after discussion with fellow officers, they found all proposals acceptable from a walker's point of view.
- 2.6.3 Mr Burridge, a local resident, wrote and commented on the proposals for change. He advised that he wished to register his objection to the suggested changes 1, 2, 3, 5 and 6 based on the additional costs of the upgrades in a period of financial austerity. He is not familiar with all the routes.
- 2.6.4 Mr G Langford, a previous parish path partnership (P3) coordinator for Clayhidon and past Parish Council Chairman at the time of starting the P3 scheme and Definitive Map Review process and commented in respect of Bridleway No. 38 that 'this was one of those old routes that had been maintained as a bridleway. It is only recently that owners of adjacent land have wished to bring about a downgrading. There was no evidence available to us then of there being particular issues to support such a downgrading'.

2.7 Discussion

- 2.7.1 Under section 56 of the Wildlife and Countryside Act 1981 the depiction of a way on the Definitive Map and Statement is conclusive evidence that at the relevant date, a public right of way existed over the way unless proven otherwise. A public right of way can be downgraded, from its current recorded status on the definitive map, if there is evidence to show that a mistake was made, at the time the path or way was added to the definitive map and that the path or way should be recorded at an alternative status.
- 2.7.3 The case for the downgrading is made by the applicant and the evidence needs to be substantial to override the presumption that all the correct procedures were followed when the Definitive Map was prepared. It is for the applicant to submit sufficient evidence to override the 'presumption of regularity'.
- 2.7.4 The applicant had submitted three letters in support of the application in 1995, one from the adjoining landowners at Valentine's Farm who had farmed there since 1950

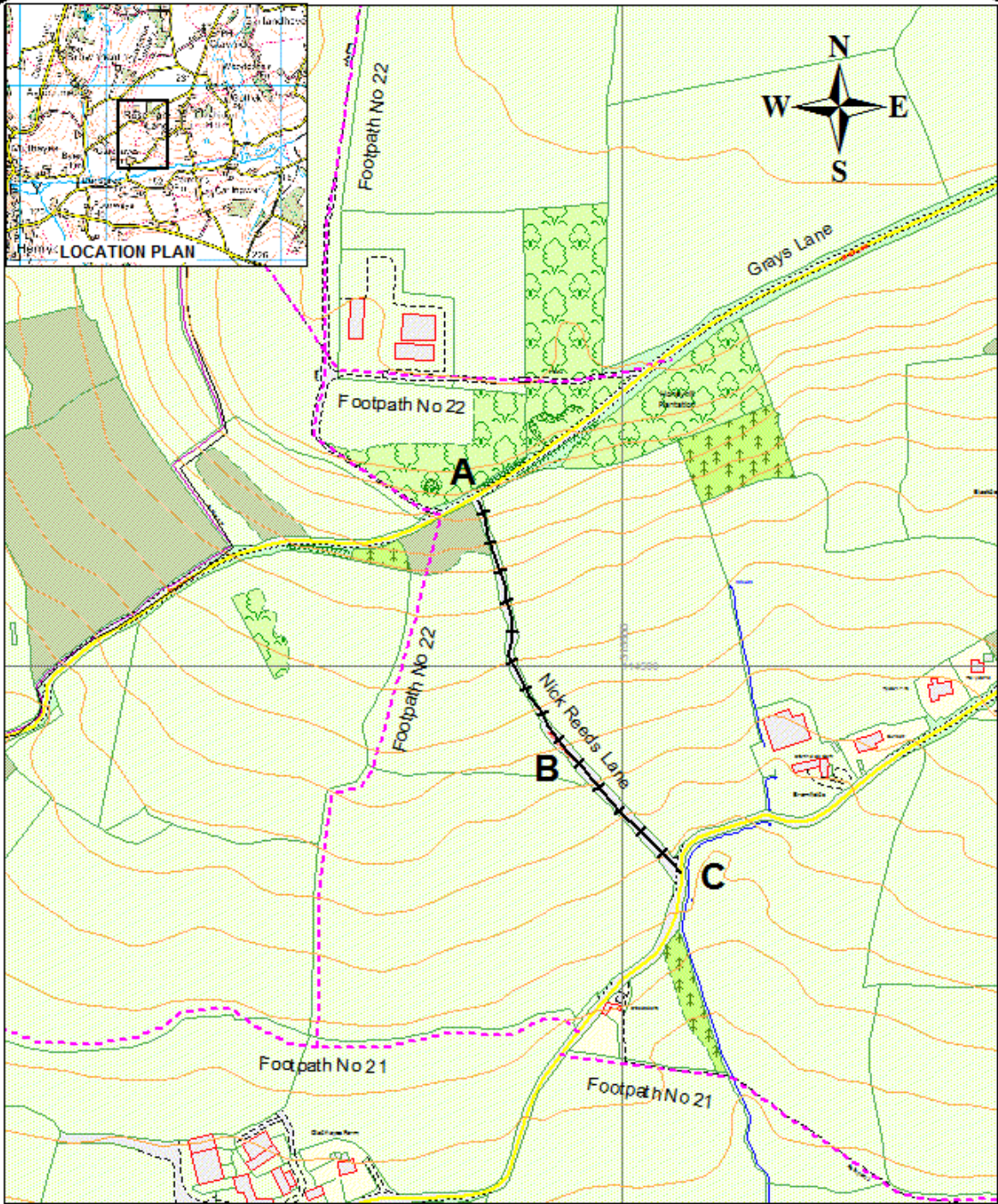
and two from relatives who were born at Gotleigh Farm in 1920 and 1922 and lived at the farm until the 1940s.

- 2.7.5 Messrs Adams from Valentine's Farm advised that the farm was not purchased with a bridleway only a footpath. Public rights of way are not usually shown on property deeds as easements or private rights of way and sales particulars often do not refer to them either. In 1950 the Definitive Map had not been created and so the bridleway would not have been shown on an OS map of the area apart from in the manner it was shown on the large scale maps (double pecked line) and presumably the only way of knowing whether there was any public rights of way across the farm you were thinking of buying would have been to check with the locals and the parish council. The parish minutes refer to a meeting being held in January 1936 to make a map of footpaths and rights of way in the parish, but it is not known what was recorded on this map in respect of Bridleway No. 38, Clayhidon.
- 2.7.6 Mrs Spiller and Mrs Thomas, who were both born at Gotleigh Farm confirmed that she only knew the route to be used as a footpath not a bridleway and had never seen the footpath used other than by pedestrians and never used for horses. Mr Sanders was contacted when his application was to be included in the proposals for Clayhidon Definitive Map Review. No additional evidence was received apart from a completed landowner evidence form which confirmed that he now owned just the field at the Smeatharpe end of the bridleway as Gotleigh Moor land was sold in 2006. He commented that the public leave the road gate open at Smeatharpe.
- 2.7.7 The first reference to a public right of way at Gotleigh in the parish council minutes is in the early 1900s and a footbridge is recorded as being erected in 1916, repaired in 1921 and replaced in 1944. There is no reference to a footbridge on the route of the bridleway on the large scale OS mapping of the time, but it is considered possible it was at the ford at point D. A footbridge is for pedestrians but the reference to a foot bridge would not mean that the route was only a footpath as horses could walk through the stream and the lack of a footbridge would not prevent use by horses. A ford is shown on the post war map of 1963 but not on earlier OS editions. The footbridge was still in position in the mid-1980s as Mr Sanders reported that the handrail was missing. At the present time the ford crossing is shallow enough for pedestrians and no footbridge exists on that part of the bridleway.
- 2.7.8 The parish survey of public rights of way for inclusion on the definitive map was undertaken in this part of the parish by J Ayres and J W Sanders in September 1950. The survey form did not stipulate that the path was a footpath or bridleway. The description of the route referred to 'crossing a ford by a bridge' but did not refer to any stiles that would have made the route unsuitable for horses. The description of the route, designated a bridleway, was agreed with the parish clerk in December 1957 and is understood to have been included on the draft and provisional definitive maps of the parish as a public bridleway. At the parish council meetings in August 1958 and August 1963, the clerk confirmed that the relevant definitive maps had been held on deposit at his house. In relation to the draft map no objection had been received and in relation to the provisional map no one had asked to inspect. These minutes confirm that the required procedures were complied with and that landowners or other interested parties had the opportunity to inspect the draft and provisional maps in the parish and could make objections if they wished to do so.
- 2.7.9 The parish council held parish meetings to discuss the County Council's Definitive Map reviews of 1968 and 1977 and no changes were proposed to the status of the bridleway.

- 2.7.10 The parish minutes indicate that the bridleway was signed and available in 1975. In November 1982 the status was objected to by Mr Sanders, who advised that the bridleway did not show on his deeds. Devon County Council solicitor was contacted and the status was confirmed as a bridleway. There are reports of obstruction by a locked gate in 1984, resolved by the following March; of obstructions in May 1992 and of the route confirmed open by the Devon County Council local member in September 1996. Overall it would appear that the route has been available to users on horseback and pedestrians since it was included on the Definitive Map apart from some limited periods of time. It does not appear that the gate had been locked for forty years as advised to Mr Quarman at Mid Devon in 1992.
- 2.7.11 Documentary evidence is also considered to support the status of a public right of way. The double pecked lines on the large scale OS maps indicate a track was visible on the ground but as the route would have been used as the access to the original Gotleigh Farm, when coming from the north west or south east directions, a visible track would be expected. The Tithe Map shows a track or lane along part of the bridleway from point A to part way across Gotleigh Moor and three gates along the route although again at that time this would also be the main access to Gotleigh Farm. The existence of a track along the route on the 1899 and 1919 Cassini maps indicates that a track was visible on the ground but does not offer any evidence of status.
- 2.7.12 In the Finance Act field books both hereditaments crossed by the bridleway refer to a rights of way on the holdings. Under Valentine's Farm the field numbers given are the four compartments those crossed by the bridleway and an allowance for the right of way is given of £3 (2.4% of the annual rent) capitalised to £65 for the four fields. Under Gotleigh Farm which included the rest of the route, the field numbers crossed are not stated but an increased allowance of £5 (8.5% of the annual rent), capitalised to £100 is allowed for deductions. When compared to the amount allowed for rights of way on other hereditaments in Mid Devon parishes, allowances of £65 and £100 for a holding are high and would support the right of way being considered to be of higher status than just a public footpath.
- 2.7.13 The Parish Council have commented that the route has a poor track to Gotleigh Moor; this is a practical change having a poor surface. However, consideration of the current surface of a route does not constitute evidence relevant to the route's status. Mr Langford, a previous Parish Council Chairman advised that it was one of those old routes that had been maintained as a bridleway. It was only recently that the landowners have wished to bring about a downgrading. There was no evidence of there being particular issues to support a downgrading.
- 2.7.14 The County Council records, together with the Parish Council minutes, are deemed to show that all the correct procedures were followed when the route was proposed for inclusion on the Definitive Map and also when the draft and provisional maps published for public consultation. No mistake is considered to have been made when the route was added as a public bridleway.
- 2.7.15 The evidence submitted with the application indicates that the Sanders family members did not see any horse riders but this is not sufficient evidence to show that the route was only a public footpath. The Tithe map and other historic mapping support the route being available as a bridleway. The allowances given in the Finance Act records show that a public right of way was recorded across the two holdings and the amounts allowed are considered to be too high for just a public footpath.

2.8 Conclusion

- 2.8.1 The evidence submitted by the applicant is considered insufficient on the balance of probabilities to show that a mistake was made when the bridleway was added to the Definitive Map or to override the presumption of regularity. The documentary evidence reviewed is considered sufficient to support the current status of bridleway and that Bridleway No. 38, Clayhidon has been correctly recorded on the Definitive Map.
- 2.8.2 It is therefore recommended that no Modification Order be made to modify the Definitive Map and Statement by downgrading Bridleway No. 38, Clayhidon to a Public Footpath between points A – B – C – D – E – F as shown on drawing number HCW/PROW/15/51 (Proposal 5).



Map Ref ST 1514

500m grid

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**Definitive Map Review - Clayhidon
Proposal 2 - Addition of a Bridleway
along Nick Reeds Lane**

drawing number HCW/PROW/15/44

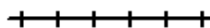
date Aug 2015

scale 1:4,000 (at A4)

drawn by TW

Notation

Proposed Addition of a Bridleway
A - B - C (approx 300m)



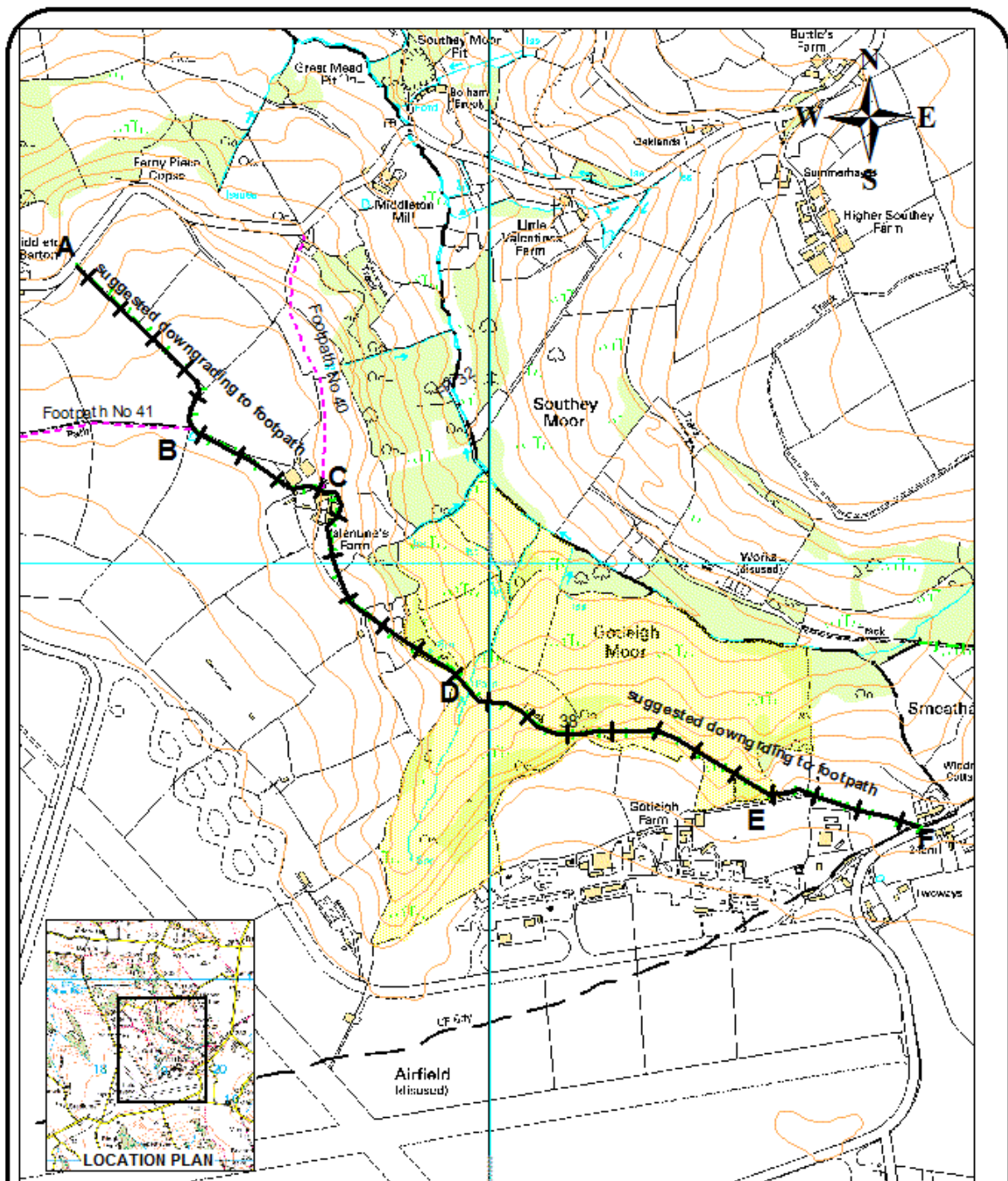
Existing public footpaths



David Whitton



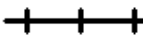

HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT
& WASTE MANAGEMENT



map ref ST 1810 1811 1910 1km grid Reproduced from Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Licence No. 1000119793

Devon County Council
Definitive Map Review - Clayhidon
Proposal 5 - Schedule 14 Application for
downgrading of Bridleway No. 38 to a footpath

drawing number HCW/PROW/15/51
 date Sept 2015
 scale 1: 9,000 (at A4)
 drawn by TW

Notation
 Bridleway No.38 Clayhidon A to F
 (Approx 1850m) 
 Existing public footpaths 

David Whitton
 HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT
 & WASTE MANAGEMENT 