

**Schedule 14 Application
Addition of a restricted byway in the parish of Berrynarbor**

Report of the Head of Highways, Capital Development and Waste

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

Recommendation: It is recommended that no Modification Order be made in respect of Schedule 14 application, for the addition of a Restricted Byway from the Sterridge Valley county road, along an old track past The Woodlands to re-join the county road near Venture Cottage. The route is shown between points A – B – C on drawing no. HTM/PROW/15/21.

1. Summary

The report examines an application made in February 2014 under Schedule 14 of the Wildlife and Countryside Act 1981, to add a Restricted Byway to the Definitive Map and Statement for Berrynarbor in North Devon District area. The application was made following the completion of the Definitive Map Review in the parish and is supplemental to the report HCW/13/67 of 20 November 2013, which considered evidence in relation to the proposed addition of a footpath over the claimed route (Proposal 3). It was resolved that no Modification Order be made (minute ref: PR/9(b)).

This subsequent application is now being determined in line with report HCW/14/15 of 25 February 2014, which considered the final proposals arising out of the Definitive Map Review for the parish of Berrynarbor. The report stated that should any further valid claim be made in the next six months it would seem reasonable for it to be determined promptly rather than deferred in accordance with Definitive Map Review Policies.

The evidence provided in relation to the application is discussed in the appendix to this report. It is considered that the evidence provided is not sufficient to show that a public right of way subsists or is reasonably alleged to subsist over the claimed route and it is, therefore, recommended that no Order be made to add it to the Definitive Map and Statement.

2. Proposal

The Schedule 14 Application to add a restricted byway is discussed in the Appendix to this report.

3. Consultations

Public consultations were carried out. The application was advertised around the parish, in the community shop and notices were placed at the end of the route.

The responses were as follows:

County Councillor Andrea Davis	-	no comment
North Devon District Council	-	no comment
Berrynarbor Parish Council	-	commented

British Horse Society	-	no comment
Byways and Bridleways Trust	-	no comment
Country Land & Business Association	-	no comment
Open Spaces Society	-	no comment
Ramblers' Association	-	no comment
Trail Riders' Fellowship	-	no comment

4. 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.

5. Legal Considerations

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

6. Risk Management Considerations

No risks have been identified.

7. 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 in the preparation of the report.

8. Conclusion

It is recommended that no Modification Order be made in respect of this Schedule 14 application, for the addition of a Restricted Byway from the Sterridge Valley county road, along an old track past The Woodlands to re-join the county road near Venture Cottage, as shown between points A – B – C on drawing no. HTM/PROW/15/21.

9. Reasons for Recommendations

To undertake the County Council's statutory duty under the Wildlife and Countryside Act 1981 to determine the Schedule 14 application and to keep the Definitive Map and Statement under continuous review.

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Electoral Division: Combe Martin Rural

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence files	2012 – date	AS/DMR/BERRYNARBOR

as200515pra
sc/cr/sch14 addition restricted byway berrynarbor
04 120615

1. Basis of Claim

The Wildlife and Countryside Act 1981, Section 53 (2) (b) enables the surveying authority to make an order to modify the Definitive Map. The procedure is set out under WCA 1981 Schedule 15.

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

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

Highway Act 1980 Section 31(6) States a landowner may deposit with the county council, a map and statement that indicates what way (if any) over the land he admits to having dedicated as highways, for a period of years. To the effect that *no additional way over the land* delineated on the said map has been dedicated as a highway since the date of the deposit. This is in law sufficient evidence to negate the intention of the owner or his successors in title to dedicate any such additional way as a highway.

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

(i) that 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.

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.

Schedule 14 Application for the addition of a Restricted Byway from the Sterridge Valley county road, along an old track past The Woodlands to re-join the county road near Venture Cottage. The route is shown between points A – B – C on drawing no. HTM/PROW/15/21.

Recommendation: It is recommended that no Modification Order be made in respect of the Schedule 14 application.

1. Background

- 1.1 Following the committee meeting on 25 February 2014, a Schedule Application was received for the route, which had previously been considered in the report HCW/13/67 of 20 November 2013 as Proposal 3 arising from the Berrynarbor Parish Review. It was resolved that no Modification Order be made (minute ref: PR/9(b)). The application relies on evidence previously considered by the committee and additional historical evidence. All available evidence is considered together.

2. Description of Route

- 2.1 The route commences at point A on the Sterridge Valley road, also known as Sterries Valley, just south of Footpath No.16. It proceeds in a generally south, south west direction, steeply uphill on a privately installed concrete surface, to point B. It then turns south and proceeds steeply downhill in a narrow overgrown lane; it is bisected by the private access to Woodlands House, at point B. It is then just discernible where it crosses a dilapidated culvert, turning south, south easterly through a rough garden area, then steeply up onto a narrow cut through bedrock, between old properties to re-join the Sterridge Valley road at point C.
- 2.2 The central section was impassable on the day of the first site visit. Subsequent clearance has taken place.
- 2.3 The claimed route forms the shape of an archery bow; the county road forming the 'string of the bow' - (nb. used as shorthand throughout.)

3. Documentary Evidence

3.1 Ordnance Survey Mapping

- 3.1.1 Ordnance Survey 1804 Surveyors drawings and 1st Edition 1 inch to the mile, 1809 mapping: The background history of these drawings is given by the British Library. From the Board of Ordnance headquarters in the Tower of London, engineers and draftsmen set out to produce military maps by a system of triangulation.
- 3.1.2 Preliminary drawings were made at scales from six inches to the mile, for areas of particular military significance, down to two inches to the mile elsewhere. From these, copies of the drawings were prepared at the reduced scale of one inch to the mile and from these copper plates were engraved for printing and publishing.
- 3.1.3 Being significantly larger in scale, the preliminary drawings show much more detail than the printed maps. Together, they present a picture of Regency England and Wales unparalleled in its accuracy. The indication of land relief and attention to communication routes on this plan conform to the military and cartographic standards employed by the West Country survey. The south of England was the area most vulnerable to invasion, especially during the Napoleonic conflicts between 1793 and

1815. Accurate mapping of the Devonshire coastline was, therefore, of great military significance.

- 3.1.4 The 1804 Surveyor drawings for the whole area around Berrynarbor were produced at two inches to the 1 mile. This survey was a topographical survey showing the lie of the land. Its purpose was to record everything that the surveyor saw making no differentiation between public and private roads or land, just recording topographical features of the ground.
- 3.1.5 The road network around Berrynarbor parish was very different to today's network, and many routes shown on this map are not public highways. Only parts of the road through the Sterridge valley are similar to today's road network. The shown route from the north of the parish through to Berrynarbor is on a completely different line from the road a modern traveller would take from Berry Down to Berrynarbor.
- 3.1.6 The original ridge road passed through Hemster farm, Smiths Farm, Ruggaton Farm and into the Berrynarbor village. There was a loop west from Ruggaton steeply down into the bottom of the Sterridge Valley, which then looped sharply up away from the stream and probably along the claimed route and on to Berrynarbor.
- 3.1.7 On these drawings and published map there is no continuation of the road south along the Sterridge valley beyond the claimed route and no link with Smiths Farm.
- 3.1.8 1886-7 1st Edition OS map 25" to 1 mile, published 1891: This map shows the line of the claimed route, a dashed line depicting a change of surface at the south end. It shows that a new section of road has been built bypassing the original lane. There appear to be trees growing within the section of the old lane. These maps carried the OS disclaimer that the OS did not claim to show the status of any way shown.
- 3.1.9 1904-1906 2nd Edition OS map 25" to 1 mile: The claimed route is shown as a minor lane on this map with a section open to the land north of Venture Cottage. The county road, 'the string of the bow', is clearly shown as the more major route.
- 3.1.10 The claimed route is shown on subsequent OS maps as a minor lane.

3.2 Inclosure Award Berry Down Berrynarbor 1809

- 3.2.1 In 1809 an Act of Parliament was sought and granted for the inclosure of Berry Down. Prior to this Act it was an area of Common with specific commoners' rights to use the area. This Act gave the landowners permission to inclose the common and divide it into small fields, to make better agricultural use of the ground. It also gave the permission to lay out the public and private roads over the area to be inclosed.
- 3.2.2 In this Inclosure Award, Joseph Davie Bassett esq. was named the Lord of the Manor of Berrynarbor and as such was entitled to the soil of the said common, commonable land, trees and Royalties there to belong. Also Powell Edwards Clerk had rectory rights on the common and the parish church Berrynarbor and, as such, he was entitled to Tithe both great and small. Sir Thomas Ackland and others had common rights as did the Feofees, and as such shares of the inclosures were allotted to each.
- 3.2.3 The Inclosure Act was advertised on the church door and at church services as well as in the Exeter Flying Post:

The Award and its map "do set out and appoint several Public Carriage Roads and other Roads and Ways in over and upon the said Common."

- 3.2.4 The Act laid out, four Public Roads: Barnstaple to Berrynarbor, running north south through the inclosure; Combe Martin Road in the east of the inclosure; East Down Road in the south; and Ilfracombe Road running west to east from Hemster Gate to the Barnstaple to Berrynarbor Road.
- 3.2.5 The Commissioners diverted and re-aligned the Ilfracombe Road from Hempster Gate to the Barnstaple-Berrynarbor Road. This new road alignment was to be made (and other roads repaired) using stone and gravel from pits on the Estate of Berrynarbor. The commissioners were empowered to sell some of the inclosures and use the money for the making of hedges and roads. The new roads through this newly inclosed land were not publicly funded in 1809.
- 3.2.6 The Inclosure Award also set out five Private Road and Ways, including Pieces Way. The line of this private road appears to follow the same line as the lane shown on post-dated maps as the line of the new road put into the new Smythen Farm and much later adopted as a county road.
- 3.2.7 The other Private Roads laid out in the Act are not public today.

3.3 Greenwood's Map 1827

- 3.3.1 Greenwood's map shows the road from Berrynarbor through Bowden Smithson and Hempster to Berry Down as a through route. This map appears to label Ruggaton in a completely different place to the Ordnance Survey mapping. The lines of the roads do not appear to be as accurate as the OS mapping, they are straightened and stylised. It is possible that the application route is shown but not accurately. There is no track shown continuing down the Sterridge Valley but a z-bend shown on the route up to Bowden Lane.

3.4 Tithe Map 1840

- 3.4.1 The purpose of the Tithe Map was to commute the tithes previously paid in kind, to a monetary form for the upkeep of the Rector and Church. The maps had to be paid for by the landowners and varied in quality. The topographical information these maps provide is incidental to the purpose for which they were produced and the tracks and roads were shown because this land was unproductive and therefore was un-titheable. The Tithe map does not claim to show public or private roads and was paid for by the Bassett estate.
- 3.4.2 The 1840 Tithe map postdates the Inclosure Award by thirty years. The map shows the roads on Berry Down as laid out in the Award. It also shows tracks and roads in the parish in a similar layout to the 1809 OS map, thus showing a network of roads and tracks that varies considerably from that of the maintained highways network of today.
- 3.4.3 The application route is shown as a defined unproductive lane throughout its length in a similar manner to other public and private lanes in the parish. The line of the 'string of the bow' had not been built.

3.4.4 The tithe map does not distinguish between roads which were public or private. Historically some the roads in Berrynarbor, as shown by the Inclosure Act were Public Roads and others were Private. Therefore, apart from its topographical information, this Tithe Map adds little weight to the evidence of a public route.

3.5 Quarter Sessions 1831

3.5.1 The Quarter Session minutes do not pertain to the Schedule 14 application route. However, it gives an indication that there was a process to evoke to divert a highway.

3.5.2 In this example, Magistrates gave permission for the Reverend Samuel Thomas to divert a highway around the site of a proposed new rectory between Parsonage lane and a stile in Ruggaton lane. It gave permission that the highway “may be diverted and turned so as to make the same nearer and more commodious to the public.” The plan with the document marks new lane points and has pointers to Ruggaton and south to Rowes.

3.5.3 The new lane was to be built by the landowner and is a short section of lane 40 yards long close to Berrynarbor village centre for the public to use. Ruggaton Lane was mentioned. This is not currently a county road or public right of way although it was the original line of the lane from the north into Berrynarbor. The Sterridge valley road is referred to as ‘To Rowes’ a farm north of the application route. The diversion is about one kilometre to the north of the application site and the document is silent on the application route itself.

3.6 Estate Map – Map of Land in the Parishes of Ilfracombe, East Down and Berrynarbor Devon, Property of AD Bassett Esq 1854

3.6.1 This is a detailed large scale map of the Berrynarbor Estate produced for the landowner of the estate Mr AD Bassett Esq. It shows the extensive land and property and farms he owned around the parish. The application route is shown, as is the lane up to Middle Cockhill and along Sterridge valley to the mill. There is no link to the Smythen Farm lane. The steep loop up to Ruggaton is shown. The lane to Ruggaton and Bowden along the ridge through to the original Smythen Farm and on through Hempster to the Ilfracombe road are also shown as on the Inclosure award. This map therefore shows roads that are not public today as well as some that were later adopted.

3.6.2 It is noted that Smythen Farm (also variously known as Smithen Farm and Smiths Farm) is still in its original position in 1854. The track on the estate map is shown to the newly inclosed land of Berry Down and stops at the edge of the inclosure known as The Pieces.

3.6.3 The map also shows some small holdings and dwellings in private ownership. The printed map has a post-date annotation in pencil showing the line of a prospective Tunnel (possibly a suggested but not built route of the Barnstaple to Ilfracombe railway). There are also pencil notes on plots numbers and the line of the new road (the string of the bow) is also pencilled in. It is not known by whom these marks were made.

3.7 Turnpike Roads

3.7.1 The minor roads in Berrynarbor were not Turnpiked, therefore the application route was not Turnpiked either.

3.8 Parish Council Minutes from 1894

- 3.8.1 From the inception of Parish Councils in 1894, they have kept detailed minute books that were audited by an independent auditor and kept in a way so as to prevent tampering with the contents. The Parish minutes often provide contemporaneous accounts of what happened in the parish. From 1896 Parish Councils had powers to improve roads and make them parish roads repairable by the inhabitants at large.
- 3.8.2 Berrynarbor Parish Council can be seen to have been diligent in their duties and kept excellent minute books of their quarterly meetings, dating from their first meeting on 4 December 1894. Some extracts of these minutes follow that show the Councils involvement of the taking over of the Sterridge Valley road into the public domain.
- 3.8.3 May 2nd 1896: A Special meeting of this Parish Council for the purpose of considering the Local Government (Highway) Bill now before Parliament. The object of the said Bill is to transfer the maintenance of highways in every rural parish, to the Parish Council.
- 3.8.4 After reading the Bill and considerable discussion the Parish Council unanimously resolved to support it. Parish Council members each signed a petition and the clerk was instructed to send it to the Member of Parliament for his support. They concluded that if this Bill becomes law it "would be of a great benefit to this parish". Mr Bassett was the chairman of the Parish Council.
- 3.8.5 July 10th 1897: The Council moved the following resolution, that "this Council ask the District Council [Barnstaple or Barnstaple District Council] to improve the corners in the road by Sterries Bridge", which is south of the claimed route. Another road by Old Rectory gate was also asked to be improved.
- 3.8.6 October 9th 1897: The principal business of this meeting was "this question of improving the corners in the road by Sterries Bridge **and the taking over the road through Sterries Valley by the parish**, in reference to the improvement of the corners". This included the current county road, or 'string of the bow', as the Watermouth Estate had already bypassed the application route
- 3.8.7 The Clerk read the following letter from the District Council.

Barnstaple 5 October 1897

Sir

Improvements of the Roads in Berrynarbor. "Adverting [referring to] to the Resolution passed by your Council 10th July last, as to the dangerous state of the Roads by Sterries Bridge and the Old Rectory Gate, Berrynarbor, the matter was referred to a committee who have now made their report, in which they recommend that the necessary work should be carried out at a cost not exceeding 18 (pounds). The District Council is prepared to carry out the necessary works to make the proposed improvement provided the District to be benefitted thereby will contribute one half of the work thereof." Yours truly, WH Tollen Clerk.

- 3.8.8 After considerable discussion it was resolved that a small committee be formed from the members to collect subscriptions and assist in carrying out the work. Committee appointed 5 members including CH Basset [Chairman] and Thomas Richards. The clerk was directed to inform the District Council.

- 3.8.9 At the same meeting of October 9th 1897 the clerk read correspondence forwarded by the District Council with a plan (for the consideration of the Berrynarbor Parish Council) which had taken place between the District Council and Messer's Pitt Tuckers & Son, agent to Mrs Basset [owner of Watermouth Estate] in "reference to the taking over the road through Sterries Valley and Smithen, and the road commencing from the church and ending to and adjoining the High Road at the head of the farm called Chichesters occupied by Mr Richards, and asked the opinion of this parish council thereon."
- 3.8.10 After debate it was resolved that Parish Council approves of the Parish taking over the roads as shown on this plan, and would ask Rural District Council to carry it into effect, and see that the roads meet their requirements.
- 3.8.11 A second resolution was suggested "That the portion of road between the new Smithen Farm house and the old one be made wider." At a vote this resolution was lost.
- 3.8.12 January 8th 1898: The committee appointed to assist in the improvement of the corners at Sterries Bridge presented their report and was accepted by the Council. "The Council expressed satisfaction with the improvement of the corners and also the manner in which the work had been carried out, and thanked those who had contributed towards half of the cost."
- 3.8.13 "In reference to the taking over of the Smithern Road by the parish" [The continuation of the road between Smithern and the Ilfracombe road, not the claimed route], the Chairman informed the Council that the Magistrates appointed to inspect the road had given their decision against them, and would not sanction the taking over of the road by the parish. The Council "expressed indignation at the Magistrates decision as they considered this road would be of benefit to the parish." Mr Thomas Richards moved and Samuel Bowden seconded the following resolution. That the Parish Council express their regret that the Magistrates have refused to sanction the taking over of the Smithern Road by the parish and would ask the District Council to invite the Magistrates to re consider their decision."
- 3.8.14 March 26th 1898 "**(The question of the Sterridge Road** [including the current county road, 'the string of the bow'] ending on the Highway leading to Berry Down and also the road leading near the Church to Chichesters Farm, having arisen out the minutes of the previous meeting), **the Chairman said he was pleased to announce that the matter was settled, and that in future the above named roads, Would be parish roads.**" A letter of thanks was sent to the Rector thanking him for granting the land necessary for the improvement of the corners near Sterries Bridge.
- 3.8.15 The next reference in the Parish Council's minute books is 6th March 1930: Road by The Woodlands. The Parish Council resolved that a letter be written to Mr GD Smith about Road by The Woodlands "pointing out that the same is an occupation road and that Parish Council have no control over same".
- 3.8.16 The road by Woodlands is considered to relate to the claimed route of the Schedule 14 application the bow shaped part. The Parish Council clarify to Mr Smith that the claimed line was not the responsibility of the Parish Council and the parish were not spending public money on this route they described as an occupation road i.e. for the occupants.

3.8.17 Summary of Parish Council minute book entries: These books show Berrynarbor Parish Council gathered public and private subscriptions to help meet the cost of bringing the whole Sterridge valley road, from Berry Down Via the new Smiths Farm and Sterries Corners and Bridge and along the Sterridge Valley, up to a good standard before it could be adopted as a public road. Before the road building exercise between the old Smythen Farm and the Sterries bridge this road was a no through road had previously been a cul de sac private road repaired and maintained by the estate.

3.8.18 The Sterridge Valley Road including the 'string of the bow' became a highway maintainable at public expense as public road for the first time in March 1898. This public road did not include the application route. It can be seen that in 1930 the Parish Council are quite clear that they considered the application route to be an occupation road and they had no control over it.

3.9 Mrs Basset Watermouth and Umberleigh Estates Steward Accounts 1894 to 1906

3.9.1 In the Stewards account books it can be seen that the Estate document the details of what was spent on each farm within the holding and what it spent on repairing the roads in its holding.

3.9.2 May 1895 Smithen; Labourers preparing Road to Delbridge, horse labor, Harding Smith, £10.15.8.

3.9.3 May 1896 Smithen; Labourers preparing road. Forman breaking Stones, Delbridge labor. £6.17.10.

3.9.4 May 1896 Roads and Drives Labour, Horse labor Blasting Powder. £20.0.11.

3.9.5 November 1896 Roads; Labours, 3 people for Drawing Stones, Blasting powder. £11.6.2.

3.9.6 Smithen and Sterridge Road. Masons, carpenters, labours, Gas Tar, Horse Labor, Lime from Kiln. £82.15.3.

3.9.7 May 1897 Smithen Road, Masons and labourers fencing, carpenter, Horse Labor, Gas Tar, powder and fuses. £149.2.1.

3.9.8 November 1897 Smithen and Sterridge Roads Carpenter, Labourers, Horse Labor, Lime from Kiln. £78.6.0.

3.9.9 May 1898 Roads; Labourers £2.19.0. Bray donation towards altering Road at Sterridge £5.0.0. Horse labor £6.0.0. Barum District Council amount agreed on their taking over Sterridge Road £8.0.0.

3.9.10 Smithen Road Labourers, ripping stones, horse labor, plants, carpenter. £83.13.7.

3.9.11 Nov 1899 Roads and Drives. Masons, carpenters, labourers, horse labor. £14.3.9.

3.9.12 June 1900 Roads and Drives Masons, labourers, Horse labor. £31.17.9.

3.9.13 November 1900 Roads and Drives Carpenter, labourers, horse labor £16.13.5.

- 3.9.14 November 1901 Roads and Drives Carpenter, labourers £14.9.7.
- 3.9.15 November 1903 Roads and Drives Labourers, horse labor and fencing £40.6.10.
- 3.9.16 November 1904 Roads and Drives Labourers, carts £20.18.6.
- 3.9.17 May 1905 Roads and Drives Labours £8.14
- 3.9.18 Nov 1905 May Roads and Drives Labours, powder £22.0.0.
- 3.9.19 May 1906 Roads and Drives Labours, £9.10.4.
- 3.9.20 Nov 1906 Roads and Drives Cart, Labours, dynamite £33.7.8.
- 3.9.21 These records show that the Watermouth Estate spent large sums of money each year on making and maintaining their roads and lanes, paying for the labour and materials. They also show that prior to 1898 the Watermouth Estate owned The Sterridge Road and maintained it to serve one of their mills and many farms. It demonstrates that the Estate was making a link between its own Smithern Farm and Sterries road for the estates benefit, prior to the making up and taking over of the road by the Parish council in 1898.
- 3.9.22 The current county road, the 'string of the bow', bypassed the original line (the claimed route), whilst in the ownership of the Estate to follow a new alignment over estate fields, as seen on OS mapping. This occurred before it was made a public highway, when the Parish Council considered that it would be an asset to the public. It was therefore clearly documented that the current county road was to be maintainable at public expense from 1898.
- 3.9.23 The Estate Map identifies some land adjoining the claimed route as belonging to Mr Gammon, rather than the Estate.

3.10 Finance Act Plans and Field Books 1910

- 3.10.1 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.
- 3.10.2 The Finance Act map is based on large scale, 1890s OS base mapping, which has the OS convention of a darker boundary on the south or east side of primary routes, including the current county road, 'the string of the bow'. The overlay shows lanes in the parish are variously shown coloured and uncoloured. Smithern Lane (a highway maintainable at public expense since 1898) is shown uncoloured for some distance, and then the coloured boundary crosses the road at the corner by the old Smythen Farm. The application route is uncoloured and bounded by different coloured plots and the current county road also uncoloured. Over the length of the already public road the colouring is inconsistent and provides little weight of evidence when the

road is looked at over its length. It is therefore inconclusive with respect to public status of roads shown.

3.10.3 The Finance Act plan identifies the Woodlands House occupied by H Dickinson on a tenancy agreement from Mr Pugsley. Knackers Hole was tenanted and owned by the Estate.

3.11 Barnstaple Rural District Council Highway Handover Map dating from 1930's

3.11.1 This map shows the string of the bow as the publicly maintained highway. The application route is not shown as a publicly maintained highway.

3.12 Original Definitive Map of Rights of Way Survey 1950

3.12.1 Berrynarbor Parish Council did not claim the application route as a right of way.

3.13 Way Leave Agreements

3.13.1 Way Leave Agreements and payment are in existence with the owners of Venture Cottage and their neighbours, for the electricity poles on the claimed route. These agreements allow for placing poles in private land by arrangement with the landowner and contractual agreements for accessing to the poles with given notice by the electricity board and its successors.

4. User Evidence

4.1 No further use evidence has been adduced to support the Schedule 14 application. However, the user evidence that was presented with the original claim as part of the parish Review (Report no. HCW/13/67) is considered here. Three user evidence forms have been submitted from walkers, two of those are adjoining landowners.

4.2 Mrs J Alcock, owner of Woodlands House, which adjoins the claimed route, has occasionally used the route to lead a horse to a field while going from Woodlands House to Pixie Dean Meadow. She has used the route between 1988 and 2013. She says it had been obstructed recently by a neighbour claiming ownership. She says she owns some of the route.

4.3 She adds that: "This narrow, overgrown track only links properties around Knockers Hole. Probably important a hundred years ago and not really suitable today for general public use, but if neighbours can claim ownership of path near them, I wish to claim land alongside my boundary being the path."

4.4 Mrs L Bowden has known of the lane since childhood. She has walked, and picked blackberries and sloes as a child and used the Sterridge valley route to visit friends at Woolacott for a change. "In the late 1960's - 1970's we were friends of the Pringle family who lived at Woodlands House. This part of the valley became our children's exploring area and playground. Even at this time parts of the lane were becoming difficult to pass for lack of hedge maintenance."

4.5 Mrs Bowden has crossed the way by car when visiting Woodlands. (The vehicular access to Woodlands crosses the line of the claim.) She comments, "It is an ancient, original "Road" through the valley." Land Registry shows it is not owned by the cottages there. It was bypassed before the 1899 map was produced by a new road from Lower Rows to Knocker's Hole. The only notices were house names. It has

been obstructed by the new owners of Venture Cottage who have fenced off the lane and stored piles of logs there.

- 4.6 Mrs Bowden has submitted a further letter in which she says that she knew "Lower Cockhill Lane was an ancient parish road, which was the main route through this part of the valley since ancient times."
- 4.7 Mr G Sanders is the applicant for this application. He believes the route to be a byway open to all traffic. On his user evidence form he states that he was going from Lower Rows to Woolscott between mid-1960's and 1999, when he bought the adjoining woodland and has since has only used it for business purposes. He has "traversed this track on numerous occasions". In a letter of 18 October 2013 he explains "I own the land that surrounds Knockers Hole, edged blue and together with my predecessors, James, Ivan and William Huxtable have hitherto exercised the public right of way, with or without vehicles to inspect and maintain the boundary which borders the red road", (the south south-easterly third of the claimed route, between the stream south of Woodlands drive and point I.) In answer to were there any other obstructions, he says, "wire fence and log pile to south of Venture Cottage, placed recently". He has been stopped from using the route by the fence and log pile.

5. Historical Landowner information

- 5.1 The Bassett Family appear to have owned the manors of Berrynarbor and Umlerleigh since about 1558. They had a seat at Heanton Punchardon and one at Watermouth Castle. The Watermouth Estate passed through the female heir of the family twice and was held until 1920 when some of the estate lands were sold off. The Castle remained with the family until 1945.
- 5.2 From the historical estate records, as seen above, the Bassett's owned many of the roads in the parish, except those laid out by statute, i.e. the Turnpike roads to the north and south of the parish. It can be seen from their account books and maps the vast areas of land and property owned by them and tenanted. The majority of the farms in the parish, the two mills and common lands were held by them. They paid labourers to maintain their roads.
- 5.3 In 1898 the Bassett's contributed to the fund for the taking over of the road. Mr CH Bassett was Parish Council Chairman, and was on the Parish Council committee set up to look at the adoption of some private of roads in the parish. Especially to bring the Sterridge Road on the line of the 'string of the bow' and the area around Sterries Bridge to the required standard prior to adoption as a Parish Road.
- 5.4 Mr CH Bassett knew the Bassett estate had privately owned and maintained this road. However he was instrumental in its adoption as a Parish Road in 1898, because as he had said in the parish minutes in 1896 when the Bill was going through parliament it would be a great benefit to this parish if the Parish Council could have management of the parishes' roads.

6. Landowner Evidence

- 6.1 The properties that are registered with The Land Registry adjacent to the application show their boundaries up to but not including the track. The track itself is currently unregistered.

- 6.2 Mr & Mrs Reynolds are the owners of Venture Cottage. They have requested that the evidence they submitted in relation to the previous proposal (considered during the parish review) be included for consideration in relation to the current Schedule 14 application. They have also added or commented on documentary evidence. Their evidence and letters are included in full in the backing papers.
- 6.3 They supplied a full copy of the Finance Act map for the parish and copies of the field books. The entries on these maps and books have been discussed in section 3.10 above. However, Mr and Mrs Reynolds comment that the Bassett's were the predominant landowners in 1910, and presumably the estate steward would have confirmed the accuracy or otherwise of the entries. They state that it is clear from the field books that some public rights of way were identified on the first pages of the field Books but not all were transferred for to the final summary record for tax relief.
- 6.4 They refer to the Estate Map of 1854, which shows Woodlands Cottage and Woodlands House were owned by Mr Gammon. The 1871 census establishes the Pugsley family in occupation of Woodlands Cottage (formally Lower Cockhill), in later census the Pugsleys are residents of Ventus or Knapp Headhole (Venture Cottage, Knackershole), some of these Pugsleys as tenants of the Watermouth Estate until they purchased the property in 1898 for £700. The 1910 field book entries for hereditaments 165,166 and 167 showed Mr Pugsley continued to be the owner. They state that most importantly records show that from the date of purchase in 1898, after the construction of the county road and until at least the point of the 1910 Finance Act survey, Mr Pugsley had undertaken expenditure of £560 on the house and approaches.
- 6.5 Mrs Reynolds has carried out historical research and refers to Watermouth Estate documents, auction documents and the Berrynarbor Parish Council minute books of March 6th 1930, in which it says "*Road by the Woodlands. It was voted and carried that a letter be written to Mr GD Smith pointing out that same track is an occupation road and that Parish Council has no control over the same.*" She therefore concludes that the modern Parish Council's recent claim that this is an old parish road had no grounding, as can be seen from historical parish council minutes.
- 6.6 They have provided evidence that the current driveway to Woodlands was constructed in the 1930s by the property owner, and that Mr Thomas senior helped with the construction of that access drive. Evidence is provided in a sworn statement from Mr Thomas (at section 7 below), who is considered to have a very clear recollection and direct personal knowledge of Venture cottage and the surrounding area.
- 6.7 At the Estate sale, Phillip Jones (long term sitting tenant of the estate since 1888) purchased lot 83, Venture Cottage and Venture Gardens no.85, which were described "situated adjoining the road" (Mrs Thomas, Mr Jones's sister, then bought the property from her parents estate when they died, Mr Thomas who made the sworn statement is her son.)
- 6.8 Mr and Mrs Reynolds add that the plot no 15 on the 1910 Finance Act map, belonged to Watermouth Estate, who sold it as lot no. 84 described it as "situated adjoining the road being all that field of excellent meadow or building site."
- 6.9 They say there are anomalies on the Land Registry in that the access to Woodlands [that Mr Thomas helped build] has been used as the drive to Woodlands since 1930s, but remains unregistered with Land Registry, in exactly the same manner as

the access now subject to the application. Although Mr & Mrs Reynolds, landowners of the land immediately adjoining, have a conveyed right of access over this drive.

- 6.10 The Reynolds' have Way-leave Agreements with Western Power for access over the claimed route to a pole on their property. They have permitted Western Powers contractor's Bawden Partnership to carry out necessary works to clear power-lines and temporarily remove their fencing while the works were carried out.
- 6.11 The Reynolds' state that they have had adverse possession of the land adjoining the garden of their cottage since they bought the property in 2007. They have physical control over the land in the section of the route from just south of Woodlands drive to the western corner of their cottage. They state that "we erected fencing across the track immediately upon our purchase of the property Venture Cottage and have intentionally obstructed, and physically prohibited access, in order to exclude the world at large from this land since". They submit that the previous owners of the property used and maintained the land, and the access to the water supply thereon for many decades, and has long since been incorporated into the garden of the property. On moving in they just continued that occupation and maintenance, fencing the land for storage in 2007. Mr Sanders was unaware of this until he was also contacted by Bawden Partnership on behalf of Western Power to carry out works on his property in 2011.
- 6.12 The action of fencing the property in 2007 therefore brought the route into question, although until 2013 they had not seen the public using the claimed route.
- 6.13 Mr and Mrs Reynolds' contend that there has been very little mention of Ruggaton Lane. They show that Ruggaton Lane is historically a named highway on high ground, the direct route out of Berrynarbor, the continuation of Bountice Lane, and further rights of way easterly from Ruggaton Farm towards the B3343. They say "it would appear that Mr Sanders and Mrs Bowden choose to specifically omit this from all of their tendered evidence regarding 'ancient recorded highways to market towns' etc. "Both appear to be only interested in the pursuit of public rights of way that do not impinge upon their own family or financial interests."
- 6.14 They go on to say it is important because, although these routes were not part of the Schedule 14 application (which is just a tiny section of the whole picture), it shows the old road from the Downs to Berrynarbor village was historically more important.
- 6.15 Mr & Mrs Reynolds were contacted by the Berrynarbor Parish Council in April 2012, because a complaint had been made to them, about a log pile and fence blocking what was said to be a public right of way. The parish council requested they cleared the log pile and fence.
- 6.16 In September 2012, a site meeting was held with the Public Rights of Way Officer. Photographs taken at that meeting show the route blocked and occupied, with Woodland Cottage utilising the area for storage of timber, parking trailers and vehicles. This was prior to a subsequent clearing of the land between Woodlands and Woodlands Cottage. Neither Mr Sanders nor Mrs Bowden, both parish councillors at the time, have ever had issue with, or taken any action regarding, the occupation of part of the claimed route by the owners and occupiers of Woodlands Cottage.
- 6.17 Mr and Mrs Reynolds state that in October 2012 the fence was stolen and the matter reported to the police, upon whose advice CCTV was installed.

- 6.18 In response to the claim, Mr & Mrs Reynolds have stated that the route was impassable with overgrowth when they bought the property in 2007, and that the previous owners of the cottage also confirm that the route was overgrown during the 18 years that they owned the property.
- 6.19 In their previous submission, Mr & Mrs Reynolds explain there is a private dispute with Mr Sanders, which has also involved Mr and Mrs Williams the former owners of property 77 Sterridge Valley. A Letter about this is included in the backing papers.
- 6.20 Mr Sanders is the applicant and adjoining landowner. He has written letters and submitted information, all of which is included in full in the backing papers. He has requested that the evidence submitted in relation to the previous claim be included for consideration in relation to the current Schedule 14 application. His evidence and letters are included in full in the backing papers.
- 6.21 Since 1999 Mr Sanders has been the owner of the woodland that adjoins a short section of the route between the stream south of Woodlands House and the cottage 77 Sterridge Road. He is the same Mr Sanders who completed a user evidence form summarised at section 4 above. He says that the route was a highway prior to 1835 and would be publicly maintained, and that mere disuse of a highway cannot deprive the public of their rights.
- 6.22 He uses the Highways Act 1835 to support his argument. He says that "Prior to coming into force of the Highways Act 1835, there were no public rights of way which were not highways and all highways were considered to be maintained by the "inhabitants at large in the parish". The 1835 Act defined the word "highways" to mean all roads; bridges (not being county bridges; carriageways; cart ways; horse ways; bridleways; footway; causeways; church ways; and pavements and provided that any highway in existence at 31 August 1835 was prima facie repairable by the highway authority, but also provided that from 1835 onwards, any road or occupation road coming into existence, only became publicly repairable if adopted under the prescribed statutory procedure. Maintenance by 'the inhabitants at large' is recognised in Section 36(b) of the 1980 Act as indicating adoption."
- 6.23 He submits that "after the 1835 Act it was possible that roads already in existence continued to be repaired by the inhabitants of the parish. The common law duty of the inhabitants was not removed until the coming into force of the Highways Act 1959, Section 38. It was therefore, very likely, on the balance of probabilities that the inhabitants of the parish continued to take responsibility for maintenance of the application route after 1835, as they would have done for many hundreds of years prior to that date. Please refer to Mr Thomas Senior's Statutory Declaration."
- 6.24 Mr Sanders says "Surveyors drawings for the Ordnance Survey of 1804 indicate the route of the application in its entire length as the only highway through the Sterridge Valley and that it would have been publicly maintained. The tithe map of 1845 confirms the same." He also says "Parish Records of the wedding of George Dallon of Knackers Hole (77 Sterridge Valley) in 1650 provides clear evidence of the existence of the building and road now the subject of the application."
- 6.25 He says Greenwoods map of 1827, shows the application route. Some roads in Berrynarbor were Turnpiked upgrading them in 1830, 1838 and 1841. He enclosed a copy of "John Moore's research of the Ilfracombe to Combe Martin Turnpike Trust, which amongst other things, confirms the route of the old road, described as 'the main road' from Ilfracombe 'following the back lane to Berrynarbor' which we are

informed in the report to the Secretary of State, was not adequately maintained by the inhabitants of Berrynarbor Parish or the Watermouth Estate.”

- 6.26 Mr Sanders states “there is no evidence to indicate that any possible Landowner has, at any time in history, expressed any intention whatsoever, of restricting public access, as of right, over the road now the subject of the current application.” And goes on to say “there can be no doubt whatsoever, that the 1910 Record of Valuation and associated map reflect precisely the status of the roads within the Berrynarbor Parish, as at 1899. Mr William Bray, being the parish clerk during the negotiations which took place in the late 1890’s between the PC, District Council and Messrs Pitts Tucker, was the person who signed off the 1910 Valuation records and maps.” About the Finance Act map, he says others derived access off the Sterridge road as well as Mr Basset. A through route indicated on the valuation map has continued to be shown on successive OS maps, including the section now the subject of the application.
- 6.27 Mr Sanders refers to the Bassett Estate records and map, where there is expenditure on Roads and Drives, and he lists the entries. He says that “a Watermouth Estate record, (compiled by Pitts Tucker dating from 1895 to 1898) clearly differentiates between the regular annual outlays on ‘Roads and Drives’ in general within the Watermouth Estate and the monies expended on Smithen and Smithen Road.
- 6.28 He says "The sale particulars of the Watermouth Estate 17th August 1920, identifies Proposal 3 as "white road" and grants no right of way to the four properties deriving their only means of access via the application route. This provides clear evidence of acceptance in 1920, that prior to the Bassett family's purchase of the manor in 1712, or at some point thereafter, the family considered the highway 'public', thereby confirming that they demonstrated no intention whatsoever, to restrict use of the highway by the public throughout their ownership." He states that the sale map shows the roads through the valley including both the string of the bow and the bow are uncoloured. Whereas Ruggaton Lane is coloured and included in the sale of Lot no.11.
- 6.29 Mr Sanders further details the Watermouth Estate sale in 1920, saying “it did not include Rights of Way or access to any lot sold here, [around the application route] but rights were granted to other plots, and the Estate map bears no Lot numbers whatsoever.” He says, “whilst the aforementioned maps do not provide definitive evidence of ownership of the road system as a whole, the Estate Map confirms that the estate did not consider the road to be their property and villagers and landowners must have travelled in and out of the parish, probably for the last thousand years: it can therefore be reasonably alleged that some if not all of the routes must have been publicly frequented highways prior to 31st August 1835. The HA 1980 refers to highways in existence before 31st August 1835, and highway being understood to mean all roads, bridges, carriageways, cart ways, horse ways, bridleways, footpaths, causeways, church ways and pavements. The only criterion applied prior to 1835 was that any of the foregoing were available for use by the Subjects of the Sovereign.”
- 6.30 Mr Sanders states that "Land Registry Certificates provide conclusive evidence of the current lack of contractual rights of access over the "white road", thereby confirming its public status." He goes on to say, “The Land Registry Titles relating to the properties boarding and or deriving access via the road in question confirm the 1920 Sale Particulars.”

- 6.31 He comments, "The highway is clearly defined by high banks and purpose built stone walls as evidenced from the photographs on file. Furthermore, the highway has been clearly defined on successive O.S. Maps since 1809."
- 6.32 He says, "Undisputable evidence therefore exists that the highway in Question has been in public ownership since at least 1899. It is therefore clear that those persons who submitted UEF to DCC at the time of the review, enjoyed public access over the highway, as of right, prior to it being brought into dispute by erecting the fence during December 2011 by a neighbouring landowner, apparently in order to attempt to acquire Possessory Title."
- 6.33 Mr Sanders submits that "A valid objection can only be submitted by 'the landowner' who can prove title prior to an application for an amendment to the Definitive Right of Way Map (i.e. 26th August 2012- Mrs Bowden and 20th October 2012- myself). Such an objection must prove that the "landowner" had clearly demonstrated no intention to dedicate and actively curtailed the use of the highway by the public, in this case over many hundreds of years. Evidence already detailed in previous correspondence confirms quite the reverse."
- 6.34 He states "I believe that the foregoing archived evidence provides overwhelming proof that a public highway subsists or is reasonably alleged to subsist."
- 6.35 He also considers that there is no evidence that the Bypass was constructed by the Watermouth Estate solely for its own use. He can find no evidence as to who paid for this, and it can most certainly be reasonable to allege, the bypass was constructed in order to improve the through route, already used by the public, in order to reach neighbouring parishes and markets. It is therefore reasonable to allege that the claimed route was used by the public since the 1804 OS map, if not for hundreds of years previous.
- 6.36 He says that the evidence of the Parish Council and District Council minutes in the mid 1890's show this, because half of the work to Sterries Bridge was paid for by public subscription. He contends that this shows that the Watermouth Estate did not own the entire road through the Sterridge Valley, as the District Council would not have subscribed half the cost for the improvements to a privately owned and restricted road.
- 6.37 He says the reference in the 1930 parish minutes (paragraph 3.8.15) is referring to the new access track to Woodlands (the east west track), rather than the application route, and that it would have been referred to as an occupation road.
- 6.38 Mr Sanders comments about the sworn Statutory Declaration from Mr Thomas, saying that Mr Thomas said the private drive linking the two highways was not built until the mid- 1930's that and use of the track beyond the well ceased after the mid 1930's. He says "It is understandable that a man of 92 years recalling events some 80 years ago could be mistaken, as there is no evidence whatsoever of a new track to Middle Cockhill, only the application track." Whether or not a minor section of the highway became overgrown in the late 1930's is also irrelevant, quoting the legal maxim "Once a highway, always a highway".
- 6.39 He says the new driveway built in 1930 to Woodlands House actually only linked the two roads and the 'bow' (the application route) remained necessary. "A reasonable assumption could be drawn that the alleged Minute of March 1930 actually referred to the new link road accessing Woodland House and as quoted as 'the road The

Woodlands which of course, without doubt, is not a public highway and is not currently being claimed as such."

- 6.40 Mr Sanders states that Land Registry hold no record in respect of the property. He details Land Registry procedure for claiming Possessory Title but says it is a public highway. He says The Highway Act 1980, S31(7) defines the landowner as the owner in relation to any land, meaning a person who is for the time being entitled to dispose of the fee simple in the land, and adds that to date no person has provided evidence of such status.

7. Rebuttal Evidence

- 7.1 The following Statutory Declarations, made under the 1835 Statutory Declaration Act were submitted in respect of this route:

7.2 Mr Phillip Thomas

Mr Thomas states; "As regards to the track at the rear of Venture cottage my knowledge is that the track lane was used and maintained by adjoining residents and their visitors as far up to Woodlands and Middle Cockhill. I recall that the maintenance of the track was undertaken by my grandfather Phillip and father William and the other resident users. The County, District or Parish Councils did not maintain the track." He says as a child and teenager he helped his parents and grandparents with the maintenance of the track.

- 7.3 He also records usage of the track beyond the well ceased after mid 1930s because a new access road was cut across the land north of Venture Cottage to Woodlands and Middle Cockhill area, by Mr D Jones for Mr Goss. He solemnly declares his Statutory Declaration.

- 7.4 Mr Phillip Thomas, son of William and Florence Thomas (nee Jones). Florence and her parents Philip and Mary Jones moved to Venture Cottage in 1888 as tenants of Watermouth Estate. In 1921 Phillip and Mary bought Venture Cottage from the Estate. They died in 1929 and Florence and William then inherited part of the property and bought out the other shares from siblings. They moved to Venture Cottage in 1929 with their son Phillip who was aged 8. Before Phillip lived permanently to the cottage, he and his mother had stayed with his grandparents in the holidays.

- 7.5 His parents remained at Venture Cottage until his father died in January 1963. His mother moved and they let out the cottage until selling it 1971.

7.6 Mr Phillip Wayne Thomas

Mr P W Thomas states; "During our stays my father and I frequently helped his parents with maintenance of the property, clearance of the track to the well and inspections for any water accumulation or wall dampness." During summer visits he and his sister explored the area. In summer 1971 Venture cottage was sold. He solemnly declares his Statutory Declaration.

- 7.7 He is the son of Phillip Ivor Thomas, and grandson of William and Florence Jones. He explains his association with Venture Cottage and the track behind. He stayed at Venture cottage with his Grandparents during summer and Christmas holidays in the 1950's until 1963.

8. Discussion – Statute and Common Law

8.1 Statute (Section 31 Highways Act 1980)

Section 31 of the Highways Act 1980 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.

- 8.1.1 Schedule 14 applications provide the date of an event that can be taken to have called the public's right to use a route into question, particularly if there are no significant previous events or actions that may have led to the applications being made, or any others even earlier. In this case, the public's use of the route was brought into question in early 2007 by the erection of a wire fence on the line of the route by Mr and Mrs Reynolds, who stated that they "intentionally obstructed, and physically prohibit access in order to exclude the world at large" from the route.
- 8.1.2 The Parish Council then contacted DCC in May 2012, to inquire if it was a public right of way. They were told it was not and that user evidence would have to be gathered to show the public have acquired the rights to use the claimed route. Proposal 3 was followed up as part of the parish review, but was not supported by a schedule 14 application at that time.
- 8.1.3 As fences were erected and the public's right to use the route brought into question, the 'relevant period' for consideration under statute is between 1987 and 2007.
- 8.1.4 The Highways Act states that a claimed route should show that it has been enjoyed by the public as of right and without interruption for a full period of 20 years. Each individual user does not have to use a way for the full period of 20 years; rather the period can be covered by several users making up that period. Three User Evidence forms were submitted with the original Proposal 3. No new user evidence has been adduced to the application.
- 8.1.5 Mrs Alcock is an adjoining landowner, who bought Woodlands House in 1988 and has always used the access track, constructed in the 1930s, to the house. She has also used part of the claimed route as a landowner to lead a horse to a field. She made no use of the track prior to moving to Woodlands, so as an adjoining landowner it is hard to find that her use of the track was as a member of the public.
- 8.1.6 Mrs Bowden, has walked parts of the claimed route when visiting The Woodlands property or sometimes when just out walking. She recalls the overgrown nature of the section near The Woodlands in 1960s and 1970s, which she observed when visiting the property.
- 8.1.7 Use by invitation cannot be counted as use by the public. Mrs Bowden also walked the route some years before the 1960s. However, this is before the relevant period and her user evidence therefore adds no weight to the evidence for statutory presumed dedication.
- 8.1.8 Mr Sanders states that he used the route since the mid-1960s. He became an adjoining landowner in 1999 and since then has only accessed the route for business. Therefore, Mr Sanders is alone in his use of the way 'as of right', and only then for 12 of the necessary 20 years of the relevant period.

8.1.9 There is therefore insufficient user evidence to show presumed dedication under the Highways Act 1980. There is no need to consider whether there were actions taken by any landowners during the 20 year period to provide evidence of any lack of intention to dedicate the route.

8.2 Common Law

Considering the application in relation to common law requires taking into account the historical and other documentary evidence submitted and discovered.

8.2.1 Ordnance Survey drawings show the layout of the network of lanes and roads in the area in 1804. The survey was carried out for military purposes to determine the lie of the land, the layout of the settlements and network of roads in order to give a strategic advantage if the country was invaded by the French. It does not claim to show whether routes are public or private. It shows the claimed route and equally shows the ridge route from Berry Down through Hempster, Smythen, and Ruggaton to Berry Narbor.

8.2.2 Historical map evidence and Parish Council minutes of 1890s show a wholesale reorganisation of the network of lanes and tracks in the parish of Berrynarbor.

8.2.3 The 1809 Inclosure Award was an Act of Parliament, and is therefore highly rated in evidential terms. It shows the inclosure of the open common land of Berry Down into fields. Mr Bassett was the major landowner of the common. It also provides for the realignment of the main Public Road from Ilfracombe to Barnstaple. This Act laid out Public Roads and Private Roads, details of who could use the Private Roads were recorded. A Private Road, Pieces Way was laid out for the allotment holders to reach their new fields and for the owner of The Pieces to access his land. This line was later made into the access to the new Smithen Farm by the Bassett's. Therefore the evidence is strong that in 1809 this end of the road was private. Only later, in 1898, did Magistrates find that it could become a public highway. This shows that at this time, and pre 1835, there were roads in the parish that were public roads and others that were private, for the use of owners and occupiers and to be repaired at their expense.

8.2.4 This Act of Parliament clearly demonstrates that just because a lane physically existed before 1835 does not mean that it was public, contrary to Mr Sander's assertions. It is evidence that some roads in Berrynarbor in 1809 were public for all to use, and that others were private for the use of owners and occupiers. Historically, the line of a lane that follows the Sterries Valley terminated after the Watermouth Estates Mill. The historical through-route went via Ruggaton and onto the old Smithen Farm to join with Smithen Lane and the main road, as also seen on the OS drawing and the Tithe map. Very little trace of this route can be seen on modern mapping. The OS map was a topographical survey of the area; the Tithe map has incidental information of the line of lanes, as its purpose was to levy the Tithe Tax. The lanes were shown because they were unproductive land and not taxable. The acreage of roads in a parish were added up and removed from the productive land. It was not the intended purpose of the Tithe Map to show the status of the roads on it.

8.2.5 The history of the area shows the Bassett family had owned Berrynarbor and Watermouth Estate since about 1558, (already being the fourth largest landowners in the neighbouring county of Cornwall). They owned the majority of the land and farms

in the Sterridge valley and the surrounding Parishes of Berrynarbor, Umberleigh and Heanton Punchardon.

- 8.2.6 The Watermouth Estate Map of 1854 shows the network of original lanes round the parish. It was a map produced by the estate for its own purposes, and was kept in the estate office until deposit in the Records Library after the estate was broken up and sold. It shows the area prior to the changes to the road network made by the estate and all the land they owned. It shows a pencilled line of a possible tunnel and the new road 'the string of the bow'. This map cannot be said to show public highways. The Estate record show large sums of money spent annually on the maintenance, repair and building of roads in and around the parish.
- 8.2.7 The large scale realignment for the track through Sterridge valley was carried out by Watermouth Estate. The Estate built new lanes and farms. Smythen Farm (as it was historically know), was accessed through Hempster Farm from Berry Down or from the village via Ruggaton Lane. It became known as Smithen Farm and was relocated by Watermouth Estate to a new position, east of its original site. The access lane to the farm was upgraded by the estate, at its own expense, along the line of the Private Road shown as Pieces Way on the Inclosure Award. The estate account books show they bought stones, tar and labour for the project. The farm was constructed to a modern court yard design with a new range of buildings. Magistrates firstly refused to take over this private access track to Smithen as a Parish road; it was only successfully appealed because in 1898 there was a new link road built between Smithen and Sterries corners and bridge, linking the road down the Sterridge Valley.
- 8.2.8 The section of new lane to the east of the Schedule 14 application route, the 'string of the bow' was constructed and made up by the Watermouth Estate for its purposes on its own land, as was the section of new lane in the village, between Woodpark Lane and Blind lane. There are no public records of these diversions or records of public funds being spent on them. All these new lanes were made by the Watermouth Estate and then taken-over from the estate by the Parish and District Council to become Parish Roads maintainable at public expense for the first time in their history in 1898, with the exception of the application route and Blind lane (which is now a public footpath).
- 8.2.9 The road improvements and re-alignments were done by the estate and the new lines became highways maintainable at public expense in 1898. The application route remained in private ownership as occupation road. This is corroborated by the Parish Council Minutes of only 32 years later when they clearly said the application route was not a public highway but an occupation road, therefore leaving the old section in private ownership.
- 8.2.10 Mr Sanders mentioned that because the diversion of the section of road around the proposed site of a new Rectory in 1831 to make the highway more commodious to the public, was carried out at the landowner's expense, the rest of the lane would therefore have been public. However it cannot be extrapolated from this that the application route was a public highway.
- 8.2.11 The Watermouth Estate records show an increase in spending by the estate on the road in the Sterridge valley prior to its adoption by the parish. Much the same as the modern process which developers have to go through today before they hand roads over to the County Council, the roads have to be of a high standard prior to adoption.

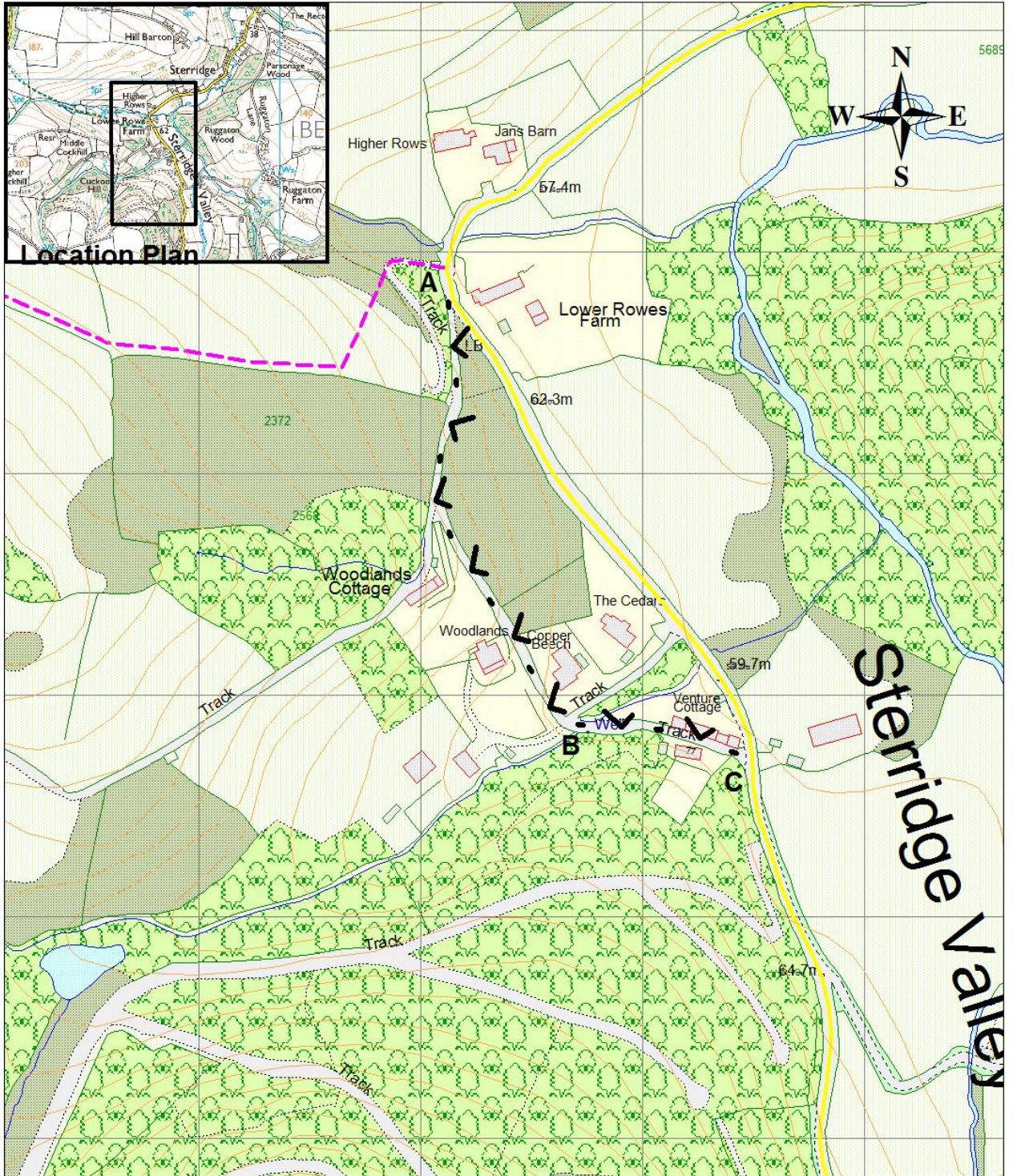
- 8.2.12 In evidential terms, Parish Council and District Minute Books have historical weight, because the evidence they present arose from formal public record of a meeting, the minutes being read and agreed in public at the next meeting and necessary corrections made before signing as true record of the events. These books were contemporaneously audited and kept safely.
- 8.2.13 The Berrynarbor Parish Council minute books are very clear in their recording of how the road through the Sterridge valley (including the line of the current road, the 'string of the bow', but excluding the route of the application) became a publicly maintained parish road for the first time in 1898, this road subsequently became a County Road.
- 8.2.14 These books detail the discussions that took place with the District Council, Parish Council and Magistrates, and explain how public subscriptions were gathered for the roads improvement prior to adoption. It would appear that the money was spent on the corners at Sterries Bridge and the new linking lane between Smithern and Sterries Bridge. The Bassett family, Watermouth Estate, account books show it was one of the contributors of money to bring the road up to the necessary standard for adoption. The Parish Council organised the collection of subscriptions and the District Council also contributed for the first time to bring this lane, and the new sections of it, up to a standard for adoption. Mr Bassett commented that it would be a great benefit for all if this lane was to be a Parish Road. It was also no doubt a benefit to him, as the estate coffers no longer had to maintain it as they had always previously done.
- 8.2.15 The handover maps from Barnstaple (Barum) District Council also show that by the 1930s the 'string of the bow' was the adopted and maintained public road. Therefore, leaving the line of the claimed route, with the estate and its successors as an occupation road, not a public highway of any description.
- 8.2.16 The reference in the Parish Council Minute books in October 1930, show the Parish Council had been approached about maintenance of the "Road by The Woodlands" and that they pointed out the same is an occupation road, which the Parish Council had no control over. The evidence shows that the new access drive to Woodlands was built in mid-1930s and it can therefore be deduced therefore that the occupation road, the Parish Council had no control over, was the application track which runs by and beside Woodlands.
- 8.2.17 Later OS mapping consistently shows the claimed route as a minor track, with the 1890's mapping showing a darkened eastern and southern boundary denoting the higher class road, the adopted public road the 'string of the bow'.
- 8.2.18 The 1910 Finance Act postdates the taking over of the 'string of the bow' as a Parish Road by 12 years. If one focuses on the small part of the Sterridge road around the application site both routes are uncoloured, with the Parish Road having a darkened easterly boundary. However, if one looks at the whole map sheets for the parish, colouring inconsistencies can be seen over the length of the parish road. The Finance Act map is therefore inconclusive and provides little weight in evidence in relation to public status.
- 8.2.19 The Statutory declarations made by the Mr P Thomas, make it quite clear that his family were maintaining the application route for their convenience and benefit, so that water did not get into the house and they had access to their well. However, other sections of the route were not being maintained by the other adjoining owners and became overgrown in the 1930s. The Parish Council minutes corroborate the evidence given by Mr Thomas and show the recollections of this old gentleman to be

true and correct, that the route of the application was an occupation road maintained by and for the residents, not by the 'inhabitants at large' as Mr Sanders has claimed.

- 8.2.20 Therefore, there is no evidence to support Mr Sander's assertions that the application route is an ancient public highway. Although the route physically existed, no evidence has been presented or found, that show maintenance at public expense prior to 1835 or since. The Inclosure Award 1809 clearly demonstrates the public and the private nature of roads in the parish of Berrynarbor at that date. No Quarter Sessions records, and no Way Wardens accounts are present to show public money was being spent on the application route and there is no recorded evidence of public user. The claimed route is in fact shown as an estate road on the 1854 Watermouth Estate Map. The 'string of the bow' as seen on OS maps had been built by 1886, by the Watermouth Estate, bypassing the claimed line of the application.
- 8.2.21 Subsequently the records of the transactions by the Parish Council, District Council and Magistrates between 1897 and 1898 show that they were all involved in bringing the new line of the road through the Sterridge Valley to Smithern Cross (including the 'string of the bow') up to a standard suitable for adoption as a parish road, maintainable by the inhabitants at large for the first time in 1898. The process to add this road was done under the prescribed statutory procedure. It was shown on the District Handover Map and subsequently became a county road, leaving the application route as an occupation road with no public rights.
- 8.2.22 The Parish Council in the 1950s did not include the application route as a Public Right of Way of any class, when they drew up their submission for the definitive map of public rights of way.
- 8.2.23 It is not enough to assert that because a road or lane physically existed on the ground pre-1835 it is therefore a public highway today. When the historical evidence is taken as a whole it clearly shows that the route was a private occupation road prior to 1835, with no evidence submitted of public use. The route was maintained by the Watermouth Estate for its own benefit. The original through-route from Berry Down did not pass along this track.
- 8.2.24 In the subsequent years the road network was developed by the estate and clear, conclusive evidence can be seen in the Parish and District Council minute books that this road was an occupation road left over after the realignment of the through-road by the estate, which was subsequently adopted by the Parish as a public road in 1898. There is therefore a lack of historical documentary evidence to show implied dedication of public rights over the application route at common law.

9. Conclusion

- 9.1 On the basis of all the available evidence, considered under statute and common law, there is insufficient evidence to show that a right of way subsists or is reasonably alleged to subsist over the route claimed by the schedule 14 application. It is therefore recommended that no Modification Order be made in respect of this Schedule 14 application, for the addition of a Restricted Byway from the Sterridge Valley county road, along an old track past The Woodlands to re-join the county road near Venture Cottage, as shown between points A – B – C on drawing no. HTM/PROW/15/21.



map ref: SS 5545

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**Devon County Council
 Definitive Map Review
 Schedule 14 Application
 Sterridge Valley Berrynarbor**

drawing number **HCW/PROW/15/21**
 date **May 2015**
 scale **1:2500**
 drawn by **AS**

Notation

Proposed Restricted Byway A-B-C 
Existing footpath 

David Whitton
 Head of Highways, Capital Development & Waste

