

## **Definitive Map Review 2006–16: Parish of Combe Raleigh – part 2, with parts of Luppitt parish**

Report of the Head of Highways, Capital Development and Waste

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

**Recommendation:** It is recommended that no Modification Orders be made in respect of Proposals 7–11 for the applications to record claimed public footpaths in Combe Raleigh parish, and that no modification orders be made in respect of Proposals 9–14 from applications for claims in adjoining parts of Luppitt parish.

### **1. Summary**

The report examines eight proposals in connection with the Definitive Map Review for the parish of Combe Raleigh and adjoining parts of Luppitt parish. The proposals are from Schedule 14 applications made by the Ramblers in 2008 to add claimed routes as public footpaths.

### **2. Introduction – Review and Consultations**

The current review was started in April 2006 and general consultations on a total of 16 applications for the whole of Combe Raleigh parish took place in July 2014. Seven of the proposals numbered 1-6a from eight of the applications put forward in the consultations were considered in a report to a previous meeting of the Committee, with a decision not to make Orders for any of those claimed routes. Appeals against that decision in respect of five of those claimed routes were made to the Secretary of State, which have been allowed with directions to make Orders recording them as footpaths. This report is for the remaining proposals in Combe Raleigh to complete the review in the parish.

The proposals in this report relate to five further applications claiming routes as public footpaths in Combe Raleigh, with three of them crossing the parish boundary into adjoining parts of Luppitt which were duplicated by applications made in that parish for the same routes. The routes of three of the claims connect with those of two other applications in nearby parts of Luppitt parish to form networks, which are also included for consideration in this report.

Responses to the overall consultations were as follows:

County Councillor Paul Diviani	-	does not support any of the proposals;
East Devon District Council/AONB	-	no comment;
Combe Raleigh and Luppitt Parish Councils	-	do not support any of the proposals;
Country Land and Business Association	-	no comment;
National Farmers' Union	-	no comment;
ACU/TRF	-	no comment;
British Horse Society	-	no comment;
Cyclists' Touring Club	-	no comment;
Ramblers	-	support all proposals from their own applications.

Specific responses, including from the owners of the land affected, are detailed in the Appendix to this report and included in the background papers.

### **3. Proposals**

Please refer to the Appendix to this report. The proposal numbers correspond generally to those used by the Ramblers for their individual applications.

### **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 preparing 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.

### **8. Conclusion**

It is recommended that no Modification Orders be made in respect of the applications for Proposals 7–11 in Combe Raleigh parish and Proposals 9–14 in Luppitt parish, as the evidence is considered insufficient to meet the requirements of the legislation. Details concerning the recommendations are discussed in the Appendix to this report.

There are no recommendations to make concerning any other modifications in Combe Raleigh parish. Should any further valid claim with sufficient evidence be made within the next six months for Combe Raleigh, it would seem reasonable for it to be determined promptly rather than deferred. Proposals from applications for routes in other parts of Luppitt will be included in further reports to the committee on the review process for that parish.

### **9. 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, to progress the parish-by-parish review in the East Devon district area and to determine Schedule 14 applications.

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**Electoral Division: Honiton St Paul's**

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence File	2000 to date	NSC/DMR/COMBER

nsc170216pra  
ddm/CR/DMR Parish of Combe Raleigh  
05 040316

## **A. Basis of Claims**

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

The Wildlife and Countryside Act 1981, Section 53 (5) enables any person to apply to the surveying authority for an order to modify the Definitive Map. The procedure is set out under WCA 1981 Schedule 14.

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 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; and

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.

Common Law presumes that a public right of way subsists if, at some time in the past, the landowner dedicated the way to the public. That can be either expressly, with evidence of the dedication having since been lost, or by implication in having not objected to the use of the way by the public, the landowner is presumed to have acquiesced, with the public having accepted that dedication by continuing to use it.

## **B. Introduction: Background to all applications**

Twelve formal applications under Schedule 14 of the Wildlife and Countryside Act 1981 were submitted in April 2008 on behalf of the Ramblers. They were for routes in the parish of Combe Raleigh not currently recorded as public rights of way claimed for recording as public footpaths. They included three routes crossing the parish boundary to the east which were duplicated in the 24 applications submitted at the same time for claimed routes in the adjoining parish of Luppitt and connected with other routes in that parish. Another was for a claimed route crossing into the adjoining parish of Awliscombe to the west. A separate formal application had been submitted previously in 2005 on behalf of the TRF to record one of the Ramblers' claimed routes in Combe Raleigh as a Byway Open to All Traffic.

The Ramblers had served notice of their applications on those believed to be the owners of the land affected at that time. They certified having served that notice and submitted copies of all the evidence in support of their claims with the applications, which were mainly copies of historical maps with other historical documentary material. Most of those were included with individual applications and other evidence common to all of the applications, mainly historical maps, was submitted at that time in a separate appendix. Further supporting evidence in the form of copies from other historical maps and documents was submitted a year later.

### **Historical documentary evidence common to all applications**

Most of the documents providing evidence relating to all of the applications submitted in a separate appendix are historical maps. They were mainly produced by the Ordnance Survey at a range of scales between 1"/mile and 2<sup>1</sup>/<sub>2</sub>"/mile from 1809 to 2006, with one by Bartholomew at 1<sup>1</sup>/<sub>2</sub>"/mile from 1960. Copies of the legends to the maps were also supplied, most of which included the standard disclaimer that the representation on the map of a road, track or footpath is no evidence of a right of way. Other historical maps and documents submitted later were also related to all of the applications.

The individual applications indicated which of the maps, if not all of them, was intended to be included with the evidence supporting the claim for that particular route, although with no interpretation of its significance as to whether or not it was shown, or how it was depicted. Other historical documents common to several of the applications are discussed in the individual sections for each proposal below.

### **User evidence**

No direct evidence of current or recent use by the public on any of the claimed routes was submitted in support of the applications. There is, therefore, no need to consider statutory dedication of any of the claimed routes as public footpaths under Section 31 of the Highways Act 1980 from 20 years' use of them by the public up to the date of the applications. There is no date other than the applications for any calling into question and also, therefore, no need to consider any evidence of actions by the landowners to show lack of intention to dedicate during that specific 20 year period.

The only statutory element is consideration of the historic maps and documentary evidence in accordance with Section 32 of the Highways Act. That is in relation to a test of whether an intention by the landowners to dedicate the routes as public footpaths at some time in the past can be inferred under common law. It would require sufficient evidence from which it can be inferred that there was use by the public of the claimed routes in the past, with the landowners acquiescing to that use and taking no actions to prevent it, with acceptance by the public in continuing to use them.

- 1 Proposal 7: Schedule 14 applications – claimed addition of footpath between Tower View Farm and junction with Luppitt claims 12 and 14, part of Luppitt network; Luppitt Proposal 13: claimed addition of footpath between minor road, Old Mill Combe Raleigh and junction with Luppitt claims 12 and 14, points O–P–Q shown on drawing number HTM/PROW/14/82**

Recommendation: It is recommended that no Modification Order be made in respect of Combe Raleigh Proposal 7/Luppitt Proposal 13 for the claimed addition of a footpath.

#### **1.1 Description**

- 1.1.1 The claimed route is the same for both of these applications. It starts on a section of minor road leading from a crossroad junction to Mill House Nursery and Tower View Farm (point O), continuing from the end of the road passing the farm buildings and the

end of the claimed footpath in Proposal 11 (point P). It continues along a track through a field to the parish boundary on the River Luv (or Love, also known as Luppitt Brook), a tributary of the River Otter, into Luppitt parish. From there it follows the edges of fields and woodland onto the end of a track at the junction with the routes of two other claimed footpaths for Proposals 12 and 14 in Luppitt (point Q).

## 1.2 The Definitive Map process

- 1.2.1 Part of the claimed route was added in 1956 as an extra footpath numbered 15 onto the earlier wider survey of 14 paths on behalf of Combe Raleigh Parish Meeting in 1950 to put forward for recording as public rights of way on the Definitive Map. It was described as running from the end of the length of unclassified road to a footbridge across the river on the parish boundary, from where it was said to continue as Footpath No. 37 in Luppitt parish. That path was included in the equivalent survey by Luppitt Parish Council in 1951, continuing on a different route but connected with a path continuing on this claimed route and with others nearby. None of those routes as surveyed went on to be recorded as public rights of way and some are also the subject of other claims in Proposals 12 and 14 in this report.

## 1.3 Documentary Evidence

- 1.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827  
Early historical maps at smaller scales, particularly the Ordnance Survey drawings for the 1<sup>st</sup> edition map, show the section of the road on the start of the claimed route leading from the crossroads to the mill and farm buildings as a track continuing across the parish boundary into Luppitt. It is shown turning to follow the route of the path surveyed as No. 37, passing around Woodhayes Farm on part of the route of Proposal 14 and continuing onto part of the route of Proposal 12 to the road near Shaugh Farm, point T.
- 1.3.2 The track is shown in the same way as some of those recorded now as public roads, but also including others that are not recorded now as public or no longer existing. It is shown on the 1<sup>st</sup> edition map in the same way leading to Woodhayes, but with no continuation towards point T. It is also shown in the same way on Greenwood's later map, which is believed to have been mainly copied from earlier Ordnance Survey map editions without comprehensive or accurate surveys.
- 1.3.3 Later 19<sup>th</sup> century historical mapping: Combe Raleigh Tithe Map 1841 & Apportionment 1840; Luppitt Tithe Map 1842 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s  
Later maps at larger scales show parts of the claimed route in more detail. The start of it is shown on the Tithe Map for Combe Raleigh parish dated 1841 as the road leading to the former site of the mill and farm. Roads were not labelled or identified in the Apportionment as public. They included those which are now recorded as public, as well as others more likely then to have been private tracks for access only to fields or properties and some not now existing.
- 1.3.4 No continuation of a track or path is shown from the mill leat to or across the river on the parish boundary into Luppitt. The Tithe Map for Luppitt parish dated 1842 does not show the continuation of any track or path on the claimed route or those shown on earlier maps. It does record the existence then of gates in the field boundaries on parts of the line of the claimed route. However, they are also shown on the lines of other tracks and in the boundaries of other fields throughout the parish without showing tracks or paths indicating where access can be interpreted as being provided only for agricultural uses of the land.

- 1.3.5 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose. The Tithe Map records do not, therefore, provide strong supporting evidence that the continuation of the claimed route may have been considered then to be public. They show only the start of the route's physical existence as part of the road network at that time, but with no continuation further on the claimed route in both parishes.
- 1.3.6 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows the start of the claimed route, with a section of the road leading from the crossroads to the buildings of Combe Raleigh Mill and Collins's Dairy. A later version shows that section of the road coloured in to suggest that it was a public road, recorded now as maintainable highway. The road ends at the mill leat and is shown closed with a line suggesting a gate into land alongside it leading to the river.
- 1.3.7 No continuation as a track is shown in the field, although with a bridge across the river and parish boundary leading onto a track, which is shown with double-dashed lines as unenclosed continuing in Luppitt parish on part of the claimed route. The track is shown turning to continue through fields to Woodhayes Farm, as in the earlier small-scale maps. No line of a path is shown continuing on the claimed route in the fields beyond the track, with no corresponding gates indicated where indicated on the earlier Tithe Map for that section, except in the fields adjoining point Q.
- 1.3.8 The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century shows the road to the mill and continuing to Woodhayes not coloured, as with other roads. It is at too small a scale to show any continuation on the claimed route and does not indicate the line of any other tracks or paths nearby.
- 1.3.9 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records  
The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map. Copies of the same later maps used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation were submitted with the additional material for all of the applications. The map shows the claimed route to have been included in the defined hereditament, or assessment area of land, for Woodhayes Farm with a total area of just over 213 acres. No part of it is shown excluded to suggest that it may have been considered then to be a public road.
- 1.3.10 A copy of the Field Book for that hereditament with details of the assessment for the farm was included with the Luppitt application. It records a total deduction of £50 in respect of Public Rights of Way or User affecting the value of the land. Details of 'Charges, Easements and Restrictions' affecting the value of the land refer to those as 'Right of Way' with several Ordnance Survey field numbers, none of which are crossed by this claimed route. It suggests that the route was not considered to carry any form of right of way that may have been considered then to be public.
- 1.3.11 Highways records  
Copies from older and more recent highways records were submitted with the applications, relating to the extent of the section of road in Combe Raleigh parish. They indicate that the road has always been recorded as a cul-de-sac leading to the farm and mill buildings, where its end is marked by a County Council boundary stone. That corresponds generally to what is indicated by earlier maps with older and current records, including from the details in a submitted copy of a Honiton District Highways Board list of old Parish roads.

1.3.12 It shows that part of the claimed route from point O to near point P already has public rights from being recorded as a public road, but the applications do not appear to claim that the continuation of the route was considered to be a public road. However, a copy from Honiton Rural District Council records was also submitted referring to repairs of Woodhayes Bridge, Combe Raleigh in 1920 with a photograph of the bridge over the river on the parish boundary. There is no indication that the repairs may have been connected with the bridge being considered then to be on the claimed route as a public road, which is not supported by any of the other records.

1.3.13 Later Ordnance Survey mapping and Bartholomew's maps

Maps at smaller scales from the earlier 20<sup>th</sup> century, particularly by Ordnance Survey and Bartholomew's map editions from 1910 to the later 1940s, are too small to show the claimed route in any detail. Their keys included dashed lines to show footpaths and bridleways, but also with the standard disclaimer. They show the length of road leading to the claimed route in the same way as on earlier small-scale editions, continuing as a track leading to Woodhayes Farm only, with no indication of a path on the rest of the route as claimed. None of them show the lines of other paths on the connecting claimed routes in the area.

1.3.14 Later Ordnance Survey 'A' edition larger-scale mapping from 1960, around the time that the Definitive Map was being drawn up, does not show the line of any track continuing from the end of the road across the bridge and beyond into Luppitt parish on the claimed route. A track is shown leading from the claimed route to Woodhayes Farm, labelled 'Cart Track', as in earlier maps, with part of a track beyond from the farm leading on to the continuation of the claimed route to point Q. It does not show the lines of other paths on the connecting claimed routes in the area.

1.3.15 The showing of the road and access track on parts of the claimed route on early and later maps records its physical existence at those times until more recently and up to the present. They do not indicate on their own or support the existence of public rights of way, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889 and by other editions, which may be presumed to apply to earlier and other commercial maps as well.

1.3.16 Definitive Map records

Copies of records from the process of recording public rights of way on the Definitive Map for Combe Raleigh and Luppitt parishes were submitted with the applications. They include a County Council notice from August 1959 of proposed modifications to the Draft Map for Honiton Rural District proposing to add or delete paths in various parishes, with several for Luppitt parish involving this and other claimed routes.

1.3.17 Those included Footpath 33 in the Parish Council's 1951 survey, noted then to be omitted as not required. The modification proposed adding it as a footpath:

"... from northern corner of O.S. 1407 along north western boundary of O.S. 1394, into Knappy Woodlands, into south western corner of O.S 1377 and along south eastern boundary thereof to its junction with boundary of O.S. 1388, along north western boundary of O.S. 1388 to crossing of path 34 across O.S. 1378 and 1344 to south of Dumpdon Hill and north westwards to Higher Wick."

1.3.18 It was a continuation on this claimed route from the end of the section remaining of Footpath 37, proposed on the notice to be partly deleted from the "Northern corner of O.S. 1407 to Shaugh Farm, via Woodhayes". The continuation beyond point Q across the claimed route of Luppitt Proposal 14 is part of the claimed route in Luppitt Proposal 12. Some of the proposed additions went forward through the further Provisional and Definitive Map stages to be recorded as public footpaths, apart from Footpaths 33 and



34. The deletion of the whole of Footpath 37, including the section on this claimed route and its continuation in Combe Raleigh on the footpath surveyed in 1950 as No. 15, were agreed in a decision by the County Roads Committee in June 1959 following an objection by the then owner of Woodhayes Farm.

#### 1.3.19 Aerial photography

Earlier RAF aerial photography from 1946–9 shows the section of road on the start of the claimed route, with indications of worn tracks on some parts of its continuation connecting to field access and tracks to Woodhayes Farm on the lines of other routes.

1.3.20 More recent aerial photography between 1999–2000 and 2007 shows the surfaced roads and access tracks more clearly and some worn tracks from access to fields on parts of the claimed route in the same way up to more recently. There is no worn line shown in fields on other parts of the route to indicate a continuous track or path along the whole claimed route.

### 1.4 **Definitive Map Reviews and Consultations**

1.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes that were started but not completed. The claimed footpath was included in the consultations in July 2014 on the basis of the applications submitted in 2008. The responses included objections on behalf of Combe Raleigh Parish Meeting and Luppitt Parish Council, by the affected landowners and the local County Councillor, with support only from the Ramblers as the applicants.

### 1.5 **User Evidence**

1.5.1 No evidence of claimed use was submitted in support of the applications for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

### 1.6 **Landowner and Rebuttal Evidence**

1.6.1 The owners of an adjoining property and land on the continuation of the claimed route from the end of the maintainable highway extending into Luppitt parish completed landowner evidence forms. Both of them indicated that the claimed route crossed or adjoined their land or property and neither believed it to be public. Neither of them had seen, or been aware of, the public using the route or had required people to ask permission when using it and had not turned back or stopped anyone from using it.

1.6.2 Neither of them had obstructed the claimed route or put up notices to say that it was not public and had not made a Section 31 deposit to show lack of intention to dedicate. One referred to a gate on it that was not usable although not locked and indicated that the route shown had never been used in his memory, either on his property or beyond into Luppitt parish.

1.6.3 In additional information, the owner of Woodhayes Farm provided further details, including from the procedures for the Parish Council survey in 1950 resulting in the claimed route not being recorded on the Definitive Map. It included copies of correspondence with the owner of the farm at that time reporting that no evidence of public use had been produced.

## 1.7 Discussion

- 1.7.1 As discussed in the background to all applications (part B, above), no evidence of use has been submitted to support the claimed addition, so that there is none during any 20-year period to consider whether a statutory presumption of dedication has arisen from use by the public.
- 1.7.2 Considering the application in relation to common law requires taking into account the historic maps and other historical documentary evidence submitted and discovered, but without being able to consider any evidence of claimed actual use by the public. Earlier historical mapping shows that the section of road on the start of the route as claimed has existed on the ground since at least the early 19<sup>th</sup> century, although continuing in Luppitt parish then as a track onto another route and not on the line of the claimed footpath.
- 1.7.3 Later mapping with aerial photography and other records show only that it has continued to exist as a public road on part of its current line at the start of the claimed route more recently and up to the present, but recorded as a cul-de-sac. There is no support for its continuation into Luppitt parish being considered then to be public, either as a road or footpath, with no line of any path shown continuing to point Q.
- 1.7.4 The larger-scale Tithe Maps from the first half of the 19<sup>th</sup> century do not provide any support for the claim that the route was considered to be public beyond the end of the section of road at that time, with no continuation shown in Luppitt parish. The later Finance Act records do not indicate that it may have been considered to carry public rights in the early 20<sup>th</sup> century, with deductions for Public Rights of Way or User in the assessment process relating to fields crossed by other routes.
- 1.7.5 Its addition in 1956 to the Combe Raleigh survey in 1950 could suggest that it may have had the reputation then of being public. However, it was deleted by the County Roads Committee in 1959 with its continuation as part of the path included by Luppitt Parish Council in 1951, following the Draft map stage. The determination to add its continuation on the line of Footpath No. 33, with No. 34, was revoked by the Committee in March 1960 with a decision to delete them both from the Draft Map. As a result, no parts of the claimed route went forward to be recorded at the later Provisional stage Map after modifications leading to the Definitive Map.
- 1.7.6 No other more significant historic maps or references in historical documentary material have been submitted or discovered to add more substantial weight to any suggestion that the route had the reputation of being a public footpath in the past, or more recently. In particular, no claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Combe Raleigh Parish Meeting or Luppitt Parish Council.
- 1.7.7 Considering the historical evidence, but without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath, or an inference that it had the reputation of being available and used by the public. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted any dedication and used it at any time in the past on foot, or have continued to use it on that basis. The evidence that it may have been considered to have a higher status as a continuation of the public road is also insufficient.

## 1.8 Conclusion

- 1.8.1 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the applications for Combe Raleigh Proposal 7/Luppitt Proposal 13.

## 2 **Proposal 8: Schedule 14 applications – claimed addition of footpath between Dunkeswell–Honiton road near Combe House and Lower Shelvin, part of Luppitt network; Luppitt Proposal 9: claimed footpath between minor road, Lower Shelvin Farm and minor road Woodbine Lodge (Combe Raleigh), points V–W–X shown on drawing number HTM/PROW/14/83**

Recommendation: It is recommended that no Modification Order be made in respect of Combe Raleigh Proposal 8/Luppitt Proposal 9 for the claimed addition of a footpath.

### 2.1 Description

- 2.1.1 The claimed route for these two applications also duplicated in both parishes starts at the entrance of an access track leading to Ellishayes Farm from the Honiton to Dunkeswell road (point V), following the track and through the farm buildings. It continues beyond the farm through woodland and across fields to a stream on the parish boundary with Luppitt (point W). From there it crosses fields in Luppitt parish to join the route of the claimed footpath in Luppitt Proposal 11 onto the end of a cul-de-sac minor road leading to Lower Shelvin Farm (point X).

### 2.2 The Definitive Map process

- 2.2.1 The part of the claimed route in Combe Raleigh was included in the survey of paths on behalf of the Parish Meeting in 1950 to put forward for recording as public rights of way on the Definitive Map. It was surveyed as path No. 12 continuing north beyond Ellishayes to the Luppitt parish boundary, but was not included on the Draft and Provisional Maps or recorded on the Definitive Map. Its continuation was surveyed by Luppitt Parish Council in 1951 as path No. 40 running from the end of the road at Lower Shelvin through fields to the parish boundary. It was also not included on the Draft and Provisional Map or recorded on the Definitive Map.

### 2.3 Documentary Evidence

- 2.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827  
The maps show the track leading to Ellishayes on part of this claimed route, but with no continuation further to the parish boundary or beyond into Luppitt parish up to the road at Lower Shelvin, as at smaller scales they do not usually show the lines of footpaths. The track is shown in the same way as some of those recorded now as public roads, but also including others that are not recorded now as public or no longer existing. It is shown on the 1<sup>st</sup> edition map in the same way and also on Greenwood's later map, believed to have been mainly copied from earlier Ordnance Survey map editions.

2.3.2 Later 19<sup>th</sup> century historical mapping: Combe Raleigh Tithe Map 1841 & Apportionment 1840; Luppitt Tithe Map 1842 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

Later maps at larger scales show parts of the claimed route in more detail. The start of it is shown on the Tithe Map for Combe Raleigh parish dated 1841 as an enclosed track leading from the road towards Ellishayes. It continues to the farm with double-dashed lines as an unenclosed track.

2.3.3 Both sections are shown coloured in the same way as all roads or tracks, as are the yards around the farm buildings with tracks leading into adjoining fields. Roads were not labelled or identified in the Apportionment as public. They included those which are now recorded as public, as well as others more likely then to have been private tracks for access only to fields or properties and some not now existing. No line of any track or path is shown continuing from Ellishayes through the fields north of the farm buildings to or across the stream on the parish boundary into Luppitt. There is no reference to any path in the Apportionment or in the names of the fields on the claimed route.

2.3.4 The Tithe Map for Luppitt parish dated 1842 does not show the continuation of any track or path on the claimed route, initially across land indicated as "Not Titheable". There is again no reference to any path in the Apportionment or the names of the fields, but the map does record the existence then of gates in the field boundaries on parts of the line of the route. However, they are also shown on the lines of other tracks and in the boundaries of fields without showing tracks or paths throughout the parish. They indicate where access can be interpreted as being provided only for agricultural uses of the land. A gate is shown at the end of the route onto the end of the road near Lower Shelvin, which is shown uncoloured in the same way as all roads and tracks in the parish.

2.3.5 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, although the lines of paths appear to be shown crossing some fields in other parts of Luppitt parish. The Tithe Map records do not, therefore, provide strong supporting evidence that the claimed route may have been considered then to be public. They show only part of the route's physical existence as a track leading from the road network to the farm at that time, but with no continuation further across fields in both parishes.

2.3.6 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows the start of the claimed route as a short section of enclosed track from the road near Woodbine Lodge, continuing with double-dashed lines as an unenclosed track or path across a field, not labelled 'F.P.', leading to Ellishayes. It continues beyond the farm buildings, shown in the same way, crossing fields and over the parish boundary then crossing fields in Luppitt to connect with other paths leading to the end of the road near Lower Shelvin at point W.

2.3.7 The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century shows only the track to Ellishayes and the road ending at Lower Shelvin. It is at too small a scale to show any continuation of a path on the claimed route connecting them across the parish boundary and does not indicate the line of any other connecting tracks or paths.

2.3.8 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map, but labelled 'F.P.' on some sections. Copies of the same later maps used for the 1910 Finance Act survey show this claimed route to have been included in the hereditaments, or assessment areas of

land, for Ellishayes in Combe Raleigh with a total area of over 150 acres and Lower Shelvin in Luppitt with a total area of nearly 400 acres.

- 2.3.9 Copies of the Field Books for those hereditaments with details of the assessments for the farms were included with the applications. For Ellishayes a total deduction of £50 is recorded in respect of a fixed charge for Public Rights of Way or User affecting the value of the land. Details of 'Charges, Easements and Restrictions' affecting the value of the land refer to those as 'R[ight] of Way' through several fields with Ordnance Survey numbers on the claimed route: 175, 171, 75 and 158 leading to and beyond the farm buildings up to the parish boundary.
- 2.3.10 For Lower Shelvin a total deduction of £50 for Public Rights of Way or User is recorded, with details referring to Ordnance Survey field numbers on the claimed route: 1281, 1280 and 1207 leading from the parish boundary to the end of the road. They suggest that the route was considered to carry some form of right of way at the time, although without any specific reference to it as a 'public footpath'.
- 2.3.11 Combe Raleigh Parish Meeting minutes – lists of public footpaths, 1913 and 1934; Luppitt Parish Council minutes – repairs, 1914–15 and 1924  
Lists of what were considered to be public footpaths in Combe Raleigh parish in 1913 and 1934 included the path numbered 10 in 1913 and 8 in 1934. It was described in both lists as: "From road by Woodbine Cottage across field through Ellishayes Barton over three fields to stream leading to road by Shelvin Farm", which is the route as claimed. Although referring to the path continuing across the stream on the parish boundary into Luppitt parish, there is no record of any equivalent list of paths produced by Luppitt Parish Council in those years.
- 2.3.12 Notes of references in Luppitt Parish Council minutes to the repair of a footbridge between Shelvin and Ellishayes were submitted for this claimed route. They indicate that the footbridge was reported by the owner of Shelvin to have been washed away in April 1914, with a request for it to be replaced. That was agreed to, with arrangements for an estimate of the work required that was paid for in February 1915. Minutes from November 1924 report that the footbridge had been removed again by floods, with arrangements made for its repair and payment for the works drawn from a precept for the expenses.
- 2.3.13 Later Ordnance Survey mapping and Bartholomew's maps  
Most smaller scale maps from the earlier 20<sup>th</sup> century are at too small a scale to show the whole claimed route in any detail. Most of them show the access track to Ellishayes on the start of the claimed route only, with only some later editions from the 1930s to 1960 showing the continuation of a path with a dashed line and subject to the general disclaimer.
- 2.3.14 The later Ordnance Survey 'A' edition larger-scale mapping from 1960, shows the access to Ellishayes on the claimed route in the same way as in earlier editions. No continuation is shown as a path from the farm buildings crossing into Luppitt parish to the end of the road at Lower Shelvin. The showing of parts of the route on some early and later maps records its physical existence at those times until more recently and up to the present. They do not indicate on their own or support the existence of public rights of way, in accordance with the Ordnance Survey disclaimer.
- 2.3.15 Highways records  
Copies from more recent highways records were submitted with the applications, relating to the extent of the section of road in Luppitt parish ending at Lower Shelvin. They show that the road is recorded as a cul-de-sac maintainable highway ending at a gateway near the entrance to the driveway leading to the farm buildings, which is

marked by a County Council boundary stone. They correspond to what is indicated on earlier versions of the maps with older highways records and were perhaps submitted in support of showing that the route as claimed was a connection between two public roads.

#### 2.3.16 Aerial photography

Earlier and later aerial photography between 1946–9 and 2007 shows only the access to Ellishayes as a surfaced track up to more recently. There are no worn lines of any path or track on the continuation of the claimed route leading from the farm buildings across the fields into Luppitt parish onto tracks leading to Lower Shelvin at the end of the public road.

### **2.4 Definitive Map Reviews and Consultations**

2.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes. The claim was included in the consultations in July 2014 on the same basis as the applications for other proposals, with responses in objection by the Parish Meeting and Parish Council, the landowners affected and in support only from the applicants.

### **2.5 User Evidence**

2.5.1 As with Proposal 7/Luppitt Proposal 13, no user evidence was submitted in support of these applications for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

### **2.6 Landowner and Rebuttal Evidence**

2.6.1 The owners of land at Ellishayes and Lower Shelvin on the claimed route completed landowner evidence forms. The owners of Lower Shelvin had previously sent comments in correspondence after receiving notice of the application in 2008. The owners of both farms indicated that the claimed route crossed their land and they did not believe it to be public.

2.6.2 The owner of Ellishayes had not seen, or been aware of, the public using the route or had required people to ask permission when using it and had not turned back or stopped anyone from using it. The owners of Lower Shelvin reported having told one person attempting to use the route from point X about 20 years ago that it was not public, but without knowing whether they had proceeded further.

2.6.3 None of the owners had obstructed the claimed route or put up notices to say that it was not public and had not made a Section 31 deposit to show lack of intention to dedicate. The owners of Lower Shelvin indicated the presence of gates at various points on the route that were not locked, but indicated that there had not been a bridge over the stream at point W in their lifetime since the 1950s. In additional information they referred to the Luppitt Parish Council minutes in the 1950s when decisions were made not to record routes in the parish as public footpaths, in support of their consideration that there was no adequate reason for any changes now.

### **2.7 Discussion**

2.7.1 As with Proposal 7/Luppitt Proposal 13, no evidence of use has been submitted to support the claimed addition, so that there is none during any 20-year period to consider whether a statutory presumption of dedication has arisen from use by the public.

- 2.7.2 Most of the historic maps and other historical documentary evidence for this application are the same as for Proposal 7/Luppitt Proposal 13, with some differences in detail and there is also no evidence of claimed use for an inference of dedication under the common law test. Earlier historical mapping shows that the section of track to Ellishayes on the start of the claimed route has existed on the ground since at least the early 19<sup>th</sup> century, with the public road at Lower Shelvin at the end of the route.
- 2.7.3 The larger-scale Tithe Maps from the first half of the 19<sup>th</sup> century do not show any continuation on the rest of the claimed route beyond Ellishayes across fields towards Luppitt parish, or beyond to the end of the road at Lower Shelvin. It is shown on later maps until the early 20<sup>th</sup> century as a path crossing fields to Ellishayes and beyond into Luppitt parish, parts of which are labelled 'F.P', to the end of the road at Lower Shelvin. However, they do not provide any support for the claim that the route may have been considered to be public at those time.
- 2.7.4 The later Finance Act records suggest that the route may have been considered then to carry public rights with deductions in the assessment process for the fields crossed by it in both parishes, but without referring to it as a 'public' right of way or footpath. As with Proposal 7/Luppitt Proposal 13, there is no evidence for how that was determined as the basis from which any earlier presumed dedication by the landowner or the extent of any use then by the wider public could be inferred.
- 2.7.5 Later mapping with aerial photography and other records show only that it has continued to exist as a track on part of its current line at the start of the claimed route more recently and up to the present, but leading only to Ellishayes. There is no support for its continuation and crossing into Luppitt parish being considered then to be a public footpath.
- 2.7.6 Although inclusion of the section in Combe Raleigh by the Parish Meeting in the 1913 and 1934 lists of what were considered to be public footpaths in the parish suggested that it may have had the reputation then of being public, it was not as part of any statutory basis for recording public rights of way at those times. There is no evidence for the basis of that belief, either from reference to use by the public or from landowners to add weight for any inference of an earlier dedication. It is significant that there were no equivalent lists compiled at the same dates by Luppitt Parish Council supporting the inclusion of the parts of the claimed route from these applications in that parish.
- 2.7.7 The reference in Luppitt Parish Council minutes to the repair of a footbridge between Shelvin and Ellishayes can be presumed to be across the stream on the parish boundary on this claimed route, although no bridge has been shown on any historical maps from before and around that time or later. It could add further weight to evidence for its reputation at those dates of being public, but was said to have been reported originally by the owner of Shelvin. The repairs may have been considered by the Parish Council to have been for the more limited benefit of just the residents and workers at that farm only rather than more widely for all residents of the parish and the public.
- 2.7.8 This route was included in Combe Raleigh Parish Meeting's survey some decades later in the procedures for recording public rights of way on a statutory basis for the first time. The grounds for believing it to be public were that it was shown as a footpath on the Ordnance Survey map and with reference to being shown on a map prepared by the Rural District Council under the 1932 Act. It does refer to having been used by the public for over 20 years and stating that it should be maintained as a public right of way, although it did not then go on to be included on the Draft and Provisional Maps in the procedures leading to the Definitive Map.

- 2.7.9 Its continuation was included by Luppitt Parish Council in its 1951 survey, on the basis of the records in old Minute Books and with reference to being partly shown on the Rural District Council 1932 Act map, but with no reference to known use by the public for any previous period of time. It was suggested to be omitted and was also not included at the Draft and Provisional map stages for recording on the Definitive Map.
- 2.7.10 No other more significant historic maps or references in historical documentary material have been submitted or discovered to add more substantial weight to any suggestion that the route had the reputation of being a public footpath in the past, or more recently. In particular, no claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Combe Raleigh Parish Meeting or Luppitt Parish Council.
- 2.7.11 Considering the historical evidence, but without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath for an inference that it had the reputation of being available and used by the public for any previous period of time. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted any dedication and used it at any time in the past on foot, or have continued to use it on that basis.
- 2.7.12 The only direct reference to use by the public is in the 1950 survey by Combe Raleigh Parish Meeting relating to part of the claimed route. It is not considered sufficient on its own and particularly without any equivalent reference to public use in Luppitt Parish Council's survey the following year relating to the continuation of the route across the parish boundary. Highway records submitted with the application in that parish are not considered to support a suggestion that any parts of the claimed route beyond Lower Shelvin may have had a higher status as a public road.

## **2.8 Conclusion**

- 2.8.1 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the applications for Combe Raleigh Proposal 8/Luppitt Proposal 13.

## **3 Proposal 9: Schedule 14 applications – claimed addition of footpath between main road near Carpenter's Hill and Greenway Lane near Greenway Manor, part of Luppitt network; Luppitt Proposal 10: claimed footpath between Greenway Lane and minor road (Combe Raleigh), points Y–Z–A1 shown on drawing number HTM/PROW/14/83**

Recommendation: It is recommended that no Modification Order be made in respect of Combe Raleigh Proposal 9/Luppitt Proposal 10 for the claimed addition of a footpath.

### **3.1 Description**

- 3.1.1 The claimed route for these applications starts from north west of Proposal 8 on the Honiton to Dunkeswell road, at Carpenter's Hill (point Y), running from a field gate across fields to Windgate Farm. It passes between the farm buildings and along part of the minor cul-de-sac public road leading from the Honiton to Dunkeswell road towards



Allerbeare Farm. Turning off the road at a field gate, it crosses fields to the stream on the parish boundary, onto a track at the end of the claimed route in Luppitt Proposal 11, near Lake Cottage (point Z).

- 3.1.2 It continues along the track leading towards Shapcombe Farm, turning off to pass the farm buildings onto a track beyond leading to Pulshays Farm. From a field gate further along the track, it continues across fields and through woodland, passing the buildings of Yarde Farm then crossing fields to end at woodland alongside Greenway Lane (point A1).

## **3.2 The Definitive Map process**

- 3.2.1 Parts of this route were included in the survey of paths on behalf of the Parish Meeting in 1950 to put forward for recording as public rights of way on the Definitive Map. It was surveyed as path No. 13, but not included on the Draft and Provisional Maps or recorded on the Definitive Map.
- 3.2.2 Parts of the continuation of the route in Luppitt parish were included in the corresponding survey of paths by the Parish Council in 1951, but not from point Z, at the junction with the claimed route of Luppitt Proposal 11, to beyond Pulshays. The rest of the claimed route from there to Yarde Farm was surveyed as path No. 45 and beyond to Greenway Lane as path No. 48, neither of which were included on the Draft and Provisional Maps or recorded on the Definitive Map.

## **3.3 Documentary Evidence**

- 3.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827  
Parts of this claimed route, leading to Windgate and from Pulshays to Yarde and Greenway Lane, are not shown on earlier maps at smaller scales, which do not usually show the lines of footpaths. Some sections leading to Lake and Pulshays are shown as tracks, partly on what is now the minor public road to Allerbeare continuing on what is now a private farm access track.
- 3.3.2 Later 19<sup>th</sup> century historical mapping: Combe Raleigh Tithe Map 1841 & Apportionment 1840; Luppitt Tithe Map 1842 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s  
Later maps at larger scales show parts of the claimed route in more detail. No line of any path is shown on the Tithe Map for Combe Raleigh parish dated 1841 at the start of it crossing fields from the road towards Windgate Farm. The minor road it follows beyond the farm buildings is shown in the same way as other roads, but no line of any path is shown crossing fields alongside it to the parish boundary with Luppitt. There is no reference to any path in the Apportionment or in the names of the fields on the claimed route.
- 3.3.3 The Tithe Map for Luppitt parish dated 1842 does not show the continuation of any track or path on the claimed route, initially across fields alongside the land indicated as "Not Titheable". There is again no reference to any path in the Apportionment or the names of the fields, but the map does record the existence then of gates in the field boundaries on some parts of the line of the route. However, they are also shown on the lines of other tracks and in the boundaries of fields without showing tracks or paths throughout the parish. They indicate where access can be interpreted as being provided only for agricultural uses of the land.

- 3.3.4 The claimed route runs along part of what is shown as a track between Shapcombe to and beyond Pulshays, with no line of a path shown where it turns off to cross fields to Yarde Farm and through fields beyond to Greenway Lane.
- 3.3.5 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, although the lines of paths appear to be shown crossing some fields in other parts of Luppitt parish. The Tithe Map records do not, therefore, provide strong supporting evidence that the claimed route may have been considered then to be public. They show only the physical existence of a road and a track between farm buildings on parts of the route at that time, but with no linking paths across fields connecting them in both parishes.
- 3.3.6 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows the start of the claimed route leading from the road as an unenclosed track or path, with double-dashed lines labelled 'F.P.', across fields to the yard and buildings of Windgate Farm. It is shown in the same way continuing from further along the road passing the farm buildings towards Allerbeare, crossing fields and back onto the road near Lake Cottage then to the end of a section of track leading towards Shapcombe crossed by the stream on the parish boundary, point Z.
- 3.3.7 Its continuation in Luppitt parish is shown as an unenclosed path labelled 'F.P.' crossing fields to connect with an enclosed track leading from Shapcombe to Pulshays and further on as access to fields. Beyond the farm buildings, it follows the continuing enclosed track and turns off before the end as an unenclosed path labelled 'F.P.' running across fields to Yarde Farm. From there, it turns past the farm buildings crossing fields to end on the road, Greenway Lane, point A1. Some of the field, lane and road boundaries on the claimed route then are at points marked on the Tithe Map more than 40 years earlier as having gates, but others are not.
- 3.3.8 The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century shows only the roads passing Windgate Farm to Allerbeare and the tracks from Shapcombe to Pulshays and Yarde Farm on parts of the claimed route. It is at too small a scale to show any lines of paths from the roads at each end connecting them across the parish boundary.
- 3.3.9 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records  
The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map, labelled 'F.P.' on some sections and with a footbridge at the stream on the parish boundary at point Z. The same later maps used for the 1910 Finance Act survey show this claimed route to have been included in the hereditaments, or assessment areas of land, for Ellishayes and Windgate Farms in Combe Raleigh with total areas of just over 160 and 150 acres, respectively. In Luppitt, it was included in the hereditaments for: Lower Shelvin, including Pulshays; Higher Shelvin, including Yarde; and Greenway, with total areas of nearly 400, more than 120 and over 180 acres, respectively.
- 3.3.10 Copies of the Field Books for those hereditaments with details of the assessments for the farms were included with the applications. For Ellishayes, as in the previous proposal, details of deductions do not include the Ordnance Survey number of the field crossed by the start of this route from point Y. For its continuation in Windgate, a total deduction of £50 is recorded in respect of a fixed charge for Public Rights of Way or User affecting the value of the land. Details of 'Charges, Easements and Restrictions' affecting the value of the land appear to refer to those as 'R[ight] of Way' through several fields with Ordnance Survey numbers 80, 66, 62 and 65 on the claimed route leading to and beyond the farm buildings.

- 3.3.11 The number 62 is the land parcel number for what is now recorded as the minor road passing Windgate to Allerbeare. It is not shown on the map as excluded in the same way as other public roads, but there is no reference in details for the deductions to the numbers of the fields alongside crossed by sections of the path on that part of the claimed route.
- 3.3.12 The details for Lower Shelvin, as also in the previous proposal, do not include the Ordnance Survey field numbers on the continuation of the claimed route into Luppitt parish passing Pulshays towards Yarde. For Higher Shelvin, including Yarde, a total deduction of £50 for Public Rights of Way or User is recorded, with details referring to Ordnance Survey field numbers on the claimed route as 831, 830 and 947. The next field, number 949, crossed for the end of the route to Greenway Lane is included in the Field Book details of a deduction of £50 for Greenway, with those for several other routes crossing the land. They indicate that parts of this claimed route were considered to carry some form of right of way at the time, although without any specific reference to it as a 'public footpath' and with some parts not included.
- 3.3.13 Combe Raleigh Parish Meeting minutes – lists of public footpaths, 1913 and 1934; Luppitt Parish Council minutes – repairs, 1914–15 and 1924  
Lists of what were considered to be public footpaths in Combe Raleigh parish in 1913 and 1934 included the path numbered 11 in 1913 and 9 in 1934. It was described in the 1913 list as: "From main road above Woodbine across two field[s] through Wingate now barton to Lane to Alle[r]beare & to stream leading to Pulshayes", which is the part the route as claimed in Combe Raleigh parish. In 1934, it was shortened to: "From main road above Woodbine across two fields to Wingate", without referring to any continuation to the parish boundary. There was no reference to the path continuing across the stream on the parish boundary into Luppitt and there is no record of any equivalent list of paths produced by Luppitt Parish Council in those years.
- 3.3.14 A transcript of selected extracts from Combe Raleigh Parish Meeting minutes was submitted with the Combe Raleigh application for this claimed route, with notes from references to the provision of a footbridge over the stream at Allerbeare for access on foot to Pulshays and Shapcombe. They indicate that it was proposed in March 1912 to "improve the footway through the water", but leaving the question of a footbridge in abeyance. It was raised again in March 1915 referring to the necessity for something to be done.
- 3.3.15 Photographed copies of those minutes were also submitted, which show that the 1915 entry continues:  
"After discussion it was not considered clear that it is a public footpath, and that therefore the Parish meeting should not too readily undertake the responsibility. Mr James, Mr Blackburn & Mr Arbery were appointed to enquire & to, if possible, arrange that something should be done before next autumn to make the footpath better in time of flood."
- 3.3.16 An entry later that same month reported the balance of money in hand from the voluntary halfpenny rate for minor repairs to the state of footpaths and also that footbridges had been placed over water by Allerbeare leading to Pulshays. It was indicated that they had been paid for by two named people who, as added in a memorandum to the minutes for the previous meeting, were specifically noted to be the two owners of land joining at the streams in that location.
- 3.3.17 So, although the minutes were submitted in support of the claim, they show that Combe Raleigh Parish Meeting were not clear at that time about the route being a public footpath and the footbridges on it were provided and paid for by the adjoining landowners and not by the Parish Meeting. A later reference to the footbridges in

minutes from 1936 noted that no action would be taken “until complaints are received in writing from those concerned”. There were no details of any problems that there may have been and no copies of later minutes were submitted to indicate that any further actions were taken by the Parish Meeting. It suggests that there was not considered to be any continuing responsibility for maintenance and repair or replacement of the footbridges.

### 3.3.18 Later Ordnance Survey mapping and Bartholomew’s maps

Most smaller scale maps from the earlier 20<sup>th</sup> century are at too small a scale to show the whole claimed route in any detail. Most of them show only the road passing Windgate Farm and continuing to Allerbeare, with the access tracks to Pulshays and Yarde Farm on parts of the claimed route. Only the later edition from 1948 shows the sections of paths connecting them with a dashed line marked ‘F.P.’ and subject to the general disclaimer.

3.3.19 The later Ordnance Survey ‘A’ edition larger-scale mapping from 1960/4, also shows only the road and access tracks on parts of the claimed route with no sections of paths connecting them on the rest of the route. The showing of parts of the route on some early and later maps records their physical existence at those times. They do not indicate on their own or support the existence of public rights of way, in accordance with the Ordnance Survey disclaimer.

### 3.3.20 Aerial photography

Earlier and later aerial photography between 1946–9 and 2007 shows only the surfaced road and access tracks on parts of the claimed route. There are mainly no worn lines of any path or track shown connecting them on the rest of the route, with the only one at Windgate suggesting earlier farm access across fields to adjoining land and not continuing on the route as claimed.

## 3.4 **Definitive Map Reviews and Consultations**

3.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes. The claim was included in the consultations in July 2014 on the same basis as the applications for the previous proposals, with the same responses in objection and support only from the applicants.

## 3.5 **User Evidence**

3.5.1 As with previous proposals, no user evidence was submitted in support of this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

## 3.6 **Landowner and Rebuttal Evidence**

3.6.1 The owners of land and properties on or adjoining most sections of the claimed route completed landowner evidence forms. They included the owners of Lower Shelvin for part of the route and for the previous proposal who had sent earlier comments after receiving notice of the application in 2008. All of the owners indicated that the claimed route crossed their land or adjoined their properties and they did not believe it to be public.

3.6.2 None of them had not seen, or been aware of, the public using the route or had required people to ask permission when using it. None had obstructed the claimed route or put up notices to say that it was not public and had not made a Section 31 deposit to show lack of intention to dedicate. The owners of Lower Shelvin indicated the presence of gates at points on the route that were not locked and where access between fields was

no possible. In additional information they referred to the Luppitt Parish Council minutes in the 1950s with decisions not to record routes in the parish as public footpaths.

- 3.6.3 Some of them referred to the knowledge of previous owners that the claimed route had never been used and the results of searches from purchasing land or properties more recently that did not indicate any public right of way. Properties on the route are no longer part of working farms at Windgate, Pulshays and Yarde Farm. In objecting to the claim, some of their owners also referred to changes in the layout of buildings and land from developments and extensions in relation to the line of the route as claimed and the potential effects on their privacy and security, as well as the safety of anyone using it.

### **3.7 Discussion**

- 3.7.1 As with previous proposals, no evidence of use has been submitted to support the claimed addition, so that there is none during any 20-year period to consider whether a statutory presumption of dedication has arisen from use by the public.
- 3.7.2 Most of the historic maps and other historical documentary evidence for this application are the same as for previous proposals, with some differences in detail and there is also no evidence of claimed use for an inference of dedication under the common law test. Earlier historical mapping shows that the sections of road and tracks on parts of the claimed route have existed on the ground since at least the early 19<sup>th</sup> century with the public roads at the start and end of the route.
- 3.7.3 The larger-scale Tithe Maps from the first half of the 19<sup>th</sup> century do not show any sections of path connecting them on the claimed route across fields and into Luppitt parish. They are shown on some of the later maps up to the early 20<sup>th</sup> century as paths crossing fields and into Luppitt parish, parts of which are labelled 'F.P', to Greenway Lane, but only on one later small-scale edition. However, they do not provide any support for the claim that the route may have been considered to be public at those times.
- 3.7.4 The later Finance Act records suggest that parts, but not all, of the route may have been considered then to carry public rights with deductions in the assessment process for the fields crossed by it in both parishes and without referring to them as 'public' rights of way or footpaths. As with previous proposals, there is no evidence for how that was determined as the basis from which any earlier presumed dedication by the landowner or the extent of any use then by the wider public could be inferred.
- 3.7.5 Later mapping with aerial photography and other records show only that parts of it have continued to exist as sections of tracks and public road on parts of its current line more recently and up to the present. There is no support for it as one continuous route crossing into Luppitt parish that could be considered then as a public footpath.
- 3.7.6 As with Proposal 8/Luppitt Proposal 13, although the inclusion of the section in Combe Raleigh by the Parish Meeting in the 1913 and 1934 lists of what were considered to be public footpaths in the parish suggested that it may have had the reputation then of being public, it was not as part of any statutory basis for recording public rights of way at those times. There is no evidence for the basis of that belief, either from reference to use by the public or from landowners to add weight for any inference of an earlier dedication. It is significant that there were no equivalent lists compiled at the same dates by Luppitt Parish Council supporting the inclusion of the parts of the claimed route from these applications in that parish.

- 3.7.7 The extracts of references in Combe Raleigh Parish Meeting minutes to the provision of footbridges over the stream at Allerbeare leading to Pulshays can be presumed to be at the parish boundary on this claimed route. Although submitted to add further weight to evidence for its reputation at that time of being public, closer examination in detail shows that the track on the route was not considered then by the Parish Meeting to be a public footpath. They did not accept responsibility and the footbridges were paid for by the owners of adjoining land. That was presumably for the more limited benefit of just the residents and farm workers at Allerbeare, Pulshays and Shapcombe rather than more widely for the general public.
- 3.7.8 Parts of the route to the road at Lake Cottage, including a section of the road itself, were included in Combe Raleigh Parish Meeting's survey some decades later in the procedures for recording public rights of way on a statutory basis for the first time. As with other routes, the grounds for believing it to be public were that it was shown as a footpath on the Ordnance Survey map and with reference to being shown on a map prepared by the Rural District Council under the 1932 Act. It was not on the basis of having been used by the public and noted specifically in this case as being "Private used by reason of residence", with a note that it should be maintained as public crossed out. A comment by the County Council referred to there being "No evidence whatsoever of this path being used" and the route did not then go on to be included on the Draft and Provisional Maps in the procedures leading to the Definitive Map.
- 3.7.9 Part of its continuation was included by Luppitt Parish Council in their 1951 survey, as the first part of a route to Shapcombe and not on the claimed route to Pulshays but continuing from a track beyond it as one path to Yarde Farm and another beyond it to Greenway Lane. For all of them, that was again on the basis of being shown on old Ordnance Survey maps and the Rural District Council 1932 Act map, but with no reference to known use by the public for any previous period of time. They were all suggested to be omitted or not required and were also not included at the Draft and Provisional map stages for recording on the Definitive Map.
- 3.7.10 No other more significant historic maps or references in historical documentary material have been submitted or discovered to add more substantial weight to any suggestion that the route had the reputation of being a public footpath in the past, or more recently. In particular, no claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Combe Raleigh Parish Meeting or Luppitt Parish Council.
- 3.7.11 Considering the historical evidence, but without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath for an inference that it had the reputation of being available and used by the public. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted any dedication and used it at any time in the past on foot, or have continued to use it on that basis. There is some clear evidence against the route in Combe Raleigh being considered public, by the Parish Meeting in 1915 and by Luppitt Parish Council in its 1951 survey.

### **3.8 Conclusion**

- 3.8.1 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for

making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the applications for Proposal 9/Luppitt Proposal 10.

#### **4 Proposal 10: Schedule 14 application – claimed addition of footpath between main road near Langford Bridge and Honiton–Luppitt road, points A2–A3 shown on drawing number HTM/PROW/14/82**

Recommendation: It is recommended that no Modification Order be made in respect of Combe Raleigh Proposal 10 for the claimed addition of a footpath.

##### **4.1 Description**

4.1.1 The claimed route for this application starts at a hedge on the minor road from Honiton to Luppitt, south east of Combe Raleigh village (point A2). It crosses a field to a hedge alongside the Honiton to Dunkeswell road opposite Langdale near Langford Bridge on the River Otter, also the start of the claimed route for Proposal 11 (point A3).

##### **4.2 The Definitive Map process**

4.2.1 The claimed route was included in the survey of paths on behalf of the Parish Meeting in 1950 to put forward for recording as public rights of way on the Definitive Map. It was surveyed as path No. 8, but was reported not to be a public right of way and not included on the Draft and Provisional Maps or recorded on the Definitive Map.

##### **4.3 Documentary Evidence**

4.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827  
This claimed route is not shown on earlier maps at smaller scales, which do not usually show the lines of footpaths.

4.3.2 Later 19<sup>th</sup> century historical mapping: Combe Raleigh Tithe Map 1841 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s  
The claimed route is not shown on the Tithe Map for Combe Raleigh parish in 1841 in the field between what are now recorded as the public roads at each end. The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 does not show a path crossing the field on the claimed route. They do not provide any evidence that it may have existed as a path at those times to suggest that it may have been considered then to be a public footpath.

4.3.3 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records  
The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route with double-dashed lines labelled 'F.P.' crossing the field on the line of the route as claimed. The same later maps used as the basis for the 1910 Finance Act survey show the route to have been included in the hereditament for part of Stonehayes Farm, with those for other proposals.

4.3.4 A copy of the Field Book for that hereditament with details of the assessment for the farm was included with the application. For Stonehayes a total deduction of £40 is recorded in respect of a fixed charge for Public Rights of Way or User affecting the whole hereditament of just over 280 acres. Details of 'Charges, Easements and Restrictions' affecting the value of the land refer to those as 'R[ight] of Way' through several fields with Ordnance Survey numbers, including no. 328 crossed by the claimed

route. The deductions refer to “R[ight]s of Way” and are included with Public Rights of Way or User, but not specified as for a ‘public’ footpath or right of way. It suggests that the route was considered to carry some form of right of way at the time, although without any specific reference to it as a ‘public’ footpath.

#### 4.3.5 Later Ordnance Survey mapping and Bartholomew’s maps

Most smaller scale maps from the earlier 20<sup>th</sup> century do not show the claimed route. Only the later edition from 1948 shows it with a dashed line as a path, not marked ‘F.P.’ and subject to the general disclaimer. The later Ordnance Survey ‘A’ edition larger-scale mapping from 1960, does not show the claimed route. The showing of the route on some early and later maps records its physical existence at those times until more recently and up to the present. They do not indicate on their own or support the existence of public rights of way, in accordance with the Ordnance Survey disclaimer.

#### 4.3.6 Aerial photography

Earlier and later aerial photography between 1946–9 and 2007 does not show the worn line of any path crossing the field on the claimed route.

### 4.4 **Definitive Map Reviews and Consultations**

4.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes. The claim was included in the consultations in July 2014 on the same basis as the applications for previous proposals, with the same responses in objection and support only from the applicants.

### 4.5 **User Evidence**

4.5.1 As with previous proposals, no user evidence was submitted in support of this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

### 4.6 **Landowner and Rebuttal Evidence**

4.6.1 The owners of Langdale and the field opposite crossed by the claimed route and tenants of the land completed landowner evidence forms. All of them indicated that the route crossed the land that they owned or leased and they did not believe it to be public. None of them had seen, or been aware of, the public using the route or had required people to ask permission when using it. None had obstructed the claimed route or put up notices to say that it was not public and had not made a Section 31 deposit to show lack of intention to dedicate.

4.6.2 In additional information, the owners enclosed copies of documents relating to Combe Raleigh Parish Meeting minutes from the decisions not to record routes in the parish as public footpaths after the 1950 survey. They referred to the results of a search from buying the land that did not indicate any public right of way and also their knowledge, with that of older residents, that the claimed route had never been used. They enclosed copies of photographs showing the overgrown hedges at the access points at each end, including from within the field, which they said were the same in 1977 when they bought the land.

### 4.7 **Discussion**

4.7.1 As with previous proposals, there is no evidence of use to consider whether a statutory presumption of dedication has arisen from use by the public.



- 4.7.2 The historic maps and other historical documentary evidence for the route in this application are more limited than those for previous proposals and there is again no evidence of claimed use for an inference of dedication under the common law test. In this case, earlier historical mapping since the first half of the 19<sup>th</sup> century does not show the claimed route and it is shown on only some later maps up to 1948, some of which are labelled 'F.P.', connecting with the roads at each end.
- 4.7.3 Finance Act records from the early 20<sup>th</sup> century suggest that it may have been considered then to carry public rights with a deduction in the assessment process for it, crossing the field, but without referring to it as a 'public' right of way or footpath. As with previous proposals, there is no evidence for how that was determined as the basis from which any earlier presumed dedication by the landowner or the extent of any use by the wider public could be inferred. It was not included by Combe Raleigh Parish Meeting in the 1913 and 1934 lists of what were considered to be public footpaths in the parish, which indicates that it did not have the reputation then of being public. No references in Parish Meeting minutes to any repairs or maintenance on the route have been submitted in support of this application.
- 4.7.4 The claimed route was included in the Parish Meeting's survey later in the procedures for recording public rights of way on a statutory basis for the first time. As with other routes, the grounds for believing it to be public were only that it was shown as a footpath on the Ordnance Survey map and with reference to being shown on a map prepared by the Rural District Council under the 1932 Act. It does not refer to being based on known use by the public for any previous period of time and was considered not to be a public right of way. It was noted as a very short path of no practical use and no longer used and was suggested to be not required, so that it was not included at the Draft and Provisional map stages for recording on the Definitive Map.
- 4.7.5 As with previous proposals, no other more significant evidence from historic maps or historical documentary material has been submitted or discovered to provide a more substantial basis for consideration that the route had the reputation of being a public footpath in the past or more recently. There have been no claims for its addition with any evidence of its past use, particularly by the Parish Meeting, as part of the procedures for earlier reviews since then.
- 4.7.6 Considering the historical evidence and again without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath, or having the reputation of being available for use by the public. There is no evidence to suggest that the landowner intended to dedicate the route as a public footpath, or that the public accepted any dedication and have used it on that basis on foot.

## **4.8 Conclusion**

- 4.8.1 It is in the light of this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, that it is insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is again, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the application for Combe Raleigh Proposal 10.

## **5 Proposal 11: Schedule 14 application – claimed addition of footpath between main road near Langford Bridge and junction with Claim 7, points A3–P shown on drawing number HTM/PROW/14/82**

Recommendation: It is recommended that no Modification Order be made in respect of Combe Raleigh Proposal 11 for the claimed addition of a footpath.

### **5.1 Description**

5.1.1 The claimed route for this application starts from the hedge on the Honiton to Dunkeswell road (point A3), at the end of the claimed route of Proposal 10. It runs across the same field and continues through fields beyond alongside a stream on the parish boundary with Luppitt and running through farm buildings to end on the track on the route of Combe Raleigh Proposal 7/Luppitt Proposal 13 (point P).

### **5.2 The Definitive Map process**

5.2.1 The claimed route was included in the survey of paths on behalf of the Parish Meeting in 1950 to put forward for recording as public rights of way on the Definitive Map. It was surveyed as path No. 9, but was reported not to be public and not included on the Draft and Provisional Maps or recorded on the Definitive Map.

### **5.3 Documentary Evidence**

5.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827

This claimed route is not shown on earlier maps at smaller scales, which do not usually show the lines of footpaths.

5.3.2 Later 19<sup>th</sup> century historical mapping: Combe Raleigh Tithe Map 1841 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

The claimed route is not shown on the Tithe Map for Combe Raleigh parish in 1841 in the fields alongside the stream on the parish boundary to the farm buildings at the end of the road leading to the former site of the mill and farm, as in Combe Raleigh Proposal 7/Luppitt Proposal 13 above. The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows a path crossing the fields on most of the route claimed, labelled 'F.P.', to the Collins's Dairy buildings adjoining the end of the road. It provides some evidence that the route existed as a path at that time, but not that it may have considered then to be a public footpath.

5.3.3 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition. The same later maps used as the basis for the 1910 Finance Act survey show the route to have been included in the hereditaments for part of Stonehayes Farm, as in Combe Raleigh Proposal 7/Luppitt Proposal 13 and for Woodhayes Farm in Luppitt parish with those for the claimed routes in other previous proposals.

5.3.4 Copies of the Field Books for those two hereditaments with details of the assessments for both farms were included with this and other applications. For Stonehayes, the details of the deduction of £40 for Public Rights of Way or User related to the whole hereditament of just over 280 acres. It referred to 'R[ight] of Way' through fields, including Ordnance Survey number 328 crossed by the claimed routes for this application and for Combe Raleigh Proposal 10. For Woodhayes, details for the total

deduction of £50 for Public Rights of Way or User in the whole hereditament of just over 213 acres refer to several Ordnance Survey field numbers, none of which are for those crossed by this claimed route. It suggests that the continuation of the claimed route was not considered to carry any form of right of way crossing the fields that may have been considered then to be public.

5.3.5 The deductions for Stonehayes are included with Public Rights of Way or User, but not specified as being for a 'public' footpath or right of way. It suggests that only part of the route may have been considered to carry some form of right of way at the time, although without any referring specifically to it as a 'public' footpath.

5.3.6 Later Ordnance Survey mapping and Bartholomew's maps

Most smaller scale maps from the earlier 20<sup>th</sup> century do not show the claimed route. Only the later edition from 1948 shows it mainly with double-dashed lines as a track, not marked 'F.P.', leading to the Collins's Dairy buildings. The later Ordnance Survey 'A' edition larger-scale mapping from 1960, does not show any path or track on the line of the claimed route. The showing of the route on some early and later maps records its physical existence at those times until more recently and up to the present. They do not indicate on their own or support the existence of public rights of way, in accordance with the Ordnance Survey disclaimer.

5.3.7 Aerial photography

Earlier and later aerial photography between 1946–9 and 2007 does not show the worn line of any path or track crossing the fields on the claimed route.

## 5.4 Definitive Map Reviews and Consultations

5.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes. The claim was included in the consultations in July 2014 on the same basis as the applications for previous proposals, with the same responses in objection and support only from the applicants.

## 5.5 User Evidence

5.5.1 As with previous proposals, no user evidence was submitted in support of this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

## 5.6 Landowner and Rebuttal Evidence

5.6.1 The landowner evidence forms completed by the owners and tenants of land crossed by other claimed routes, for Combe Raleigh Proposal 7/Luppitt Proposal 13 and Combe Raleigh Proposal 10, are relevant to the application for this claim. As with the responses to those claims, all of them indicated that the route crossed the land that they owned or leased and they did not believe it to be public. None of them had seen, or been aware of, the public using the route or had required people to ask permission when using it. None had obstructed the claimed route or put up notices to say that it was not public and had not made a Section 31 deposit to show lack of intention to dedicate. The additional information submitted by the owners for Combe Raleigh Proposal 10 considered previously is relevant also to the start of this claimed route.

## **5.7 Discussion**

- 5.7.1 As with previous proposals, there is no evidence of use to consider whether a statutory presumption of dedication has arisen from use by the public.
- 5.7.2 The historic maps and other historical documentary evidence for the route in this application are also more limited than those for previous proposals and there is again no evidence of claimed use for an inference of dedication under the common law test. In this case, earlier historical mapping since the first half of the 19<sup>th</sup> century does not show the claimed route. It is shown as a track or path on only some later maps up to 1948, some of which are labelled 'F.P.', leading from the road to the dairy buildings adjoining the road and track on the claimed route for Combe Raleigh Proposal 7/Luppitt Proposal 13.
- 5.7.3 Finance Act records from the early 20<sup>th</sup> century suggest that only part of it may have been considered then to carry public rights with a deduction in the assessment process for it crossing the field at the start, although without referring to it as a 'public' right of way or footpath and not including its continuation across other fields. As with previous proposals, there is no evidence for how that was determined as the basis from which any earlier presumed dedication by the landowner or the extent of any use by the wider public could be inferred. It was also not included by Combe Raleigh Parish Meeting in the 1913 and 1934 lists of what were considered to be public footpaths in the parish, which indicates that it did not have had the reputation then of being public. No references in Parish Meeting minutes to any repairs or maintenance on the route have been submitted in support of this application.
- 5.7.4 The claimed route was included in the Parish Meeting's survey later in the procedures for recording public rights of way on a statutory basis for the first time. However, it was said not to be marked as a footpath on the Ordnance Survey map or the map prepared by the Rural District Council under the 1932 Act, referring specifically to there being no evidence that it was then a public footpath. It was noted further to be a footpath to the Dairy only, with no need to retain it as a public right of way and suggested to be not required, so that it was not included at the Draft and Provisional map stages for recording on the Definitive Map.
- 5.7.5 As with previous proposals, no other more significant evidence from historic maps or historical documentary material has been submitted or discovered to provide a more substantial basis for consideration that the route had the reputation of being a public footpath in the past or more recently. There have been no claims for its addition with any evidence of its past use, particularly by the Parish Meeting, as part of the procedures for earlier reviews since then.
- 5.7.6 Considering the historical evidence and again without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath, or having the reputation of being available for use by the public. There is no evidence to suggest that the landowner intended to dedicate the route as a public footpath, or that the public accepted any dedication and have used it on that basis on foot.

## **5.8 Conclusion**

- 5.8.1 It is in the light of this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, that it is insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to

consider statutory dedication there is again, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the application for Combe Raleigh Proposal 11.

## **6 Luppitt Proposal 11: Schedule 14 application – claimed addition of footpath between minor road, Lower Shelvin Farm and minor road Lake Cottage, points Z–X shown on drawing number HTM/PROW/14/83**

Recommendation: It is recommended that no Modification Order be made in respect of Luppitt Proposal 11 for the claimed addition of a footpath.

### **6.1 Description**

6.1.1 The claimed route for this application in Luppitt connects two of the applications duplicated in both Combe Raleigh and Luppitt parishes, to form a network. It starts from the track on the claimed route of Combe Raleigh Proposal 9/Luppitt Proposal 10 (Point Z) and runs through a field gate across fields and onto a track through the buildings of Shapcombe Farm. It continues across fields beyond the farm and along a track through woodland to join the claimed route of Combe Raleigh Proposal 8/Luppitt Proposal 9 leading onto the end of the minor cul-de-sac road at Lower Shelvin Farm (point X).

### **6.2 The Definitive Map process**

6.2.1 This route was included in the survey of paths on behalf of the Parish Council in 1951 to put forward for recording as public rights of way on the Definitive Map. It was surveyed as path No. 41, but not included on the Draft and Provisional Maps or recorded on the Definitive Map.

### **6.3 Documentary Evidence**

6.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827  
This claimed route is not shown on earlier maps at smaller scales, which do not usually show the lines of footpaths. The track to Pulshays leading from the road to Allerbeare at Lake and the road to Lower Shelvin are shown at each end of the route as claimed.

6.3.2 Later 19<sup>th</sup> century historical mapping: Luppitt Tithe Map 1842 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

Later maps at larger scales show parts of the claimed route in more detail. The Tithe Map for Luppitt parish dated 1842 does not show the line of any track or path on the claimed route, initially along the boundary of land indicated as "Not Titheable" passing buildings at Shapcombe and beyond across fields and part of a woodland to the end of the road at Lower Shelvin. There is no reference to any path in the Apportionment or in the names of the fields crossed at the end of the claimed route. A gate is shown into one field at the boundary of the non-titheable land on the line of the route but not others, with a track shown passing through the woodland on another line and no gates at each end.

6.3.3 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, although it shows the lines of paths crossing some fields in other parts of Luppitt parish. The Tithe Map records do not, therefore, provide any supporting evidence that the whole claimed route may have existed at that time physically on the ground to have been considered then as public.

- 6.3.4 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 does not show the line of any path or track at the start of the claimed route from the parish boundary crossing fields to the yard and buildings of Shapcombe Farm. Beyond the farm buildings, it is shown with double-dashed lines as an unenclosed path labelled 'F.P'. It runs across fields and through woodland to join the line of the claimed route for Combe Raleigh Proposal 8/Luppitt Proposal 9 leading onto the end of the road at Lower Shelvin. The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century does not show the lines of any tracks or path on the route
- 6.3.5 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s: Finance Act 1910 map & records  
The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map, labelled 'F.P'. on the section beyond Shapcombe. The same later maps used as the basis for the 1910 Finance Act survey show this claimed route to have been included in the hereditament, or assessment area of land, for Lower Shelvin with a total area of nearly 400 acres.
- 6.3.6 A copy of the Field Book for that hereditament with details of the assessment for the farm was included with the application. Details for the total deduction of £50 for Public Rights of Way or User in the whole hereditament refer to several Ordnance Survey field numbers, none of which are for those crossed by this claimed route. It suggests that the route as claimed was not considered to carry any form of right of way crossing the fields that may have been considered then to be public.
- 6.3.7 Later Ordnance Survey mapping and Bartholomew's maps  
Most smaller scale maps from the earlier 20<sup>th</sup> century do not show the whole claimed route in any detail. Later editions from 1937 up to 1974 show a track leading to Shapcombe and continuing to Pulshays, with a path shown on the rest of the claimed route to Lower Shelvin as a dashed line labelled 'F.P.' on some sections and subject to the general disclaimer. Later editions from then until more recently show only the track to Shapcombe with a short section of unenclosed track beyond the farm at the end of the route, leading through the woodland to the road at Lower Shelvin with no connecting line of any path.
- 6.3.8 The later Ordnance Survey 'A' edition larger-scale mapping from 1960/4, also shows only the tracks on parts of the claimed route with no sections of path connecting them on the rest of the route. The showing of parts of the route on some early and later maps records their physical existence at those times. They do not indicate on their own or support the existence of public rights of way, in accordance with the Ordnance Survey disclaimer.
- 6.3.9 Aerial photography  
Earlier and later aerial photography between 1946–9 and 2007 shows only the access tracks on parts of the claimed route, with no worn lines of any path or track shown connecting them across fields on the rest of the route.
- 6.3.10 Highways records  
A copy of a map showing minor roads in the area was submitted with a photograph of the County Council boundary stone at Lower Shelvin, as included with the application for Proposal 8/Luppitt Proposal 9. As with that claim, those are not considered to indicate a higher status for any part of the claimed route beyond Lower Shelvin but are again to show that the claim is from one maintainable highway to another.

## **6.4 Definitive Map Reviews and Consultations**

6.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes. The claim was included in the consultations in July 2014 on the same basis as the applications for the previous proposals, with the same responses in objection and support only from the applicants.

## **6.5 User Evidence**

6.5.1 As with previous proposals, no user evidence was submitted in support of this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

## **6.6 Landowner and Rebuttal Evidence**

6.6.1 The landowner evidence forms completed by the owners of land with Shapcombe and Lower Shelvin Farms crossed by other claimed routes for Combe Raleigh Proposal 8/Luppitt Proposal 9, Combe Raleigh Proposal 9/Luppitt Proposal 10 and Combe Raleigh Proposal 11, are relevant to the application for this claim. As with the responses to those claims, both indicated that the route crossed the land that they owned and they did not believe it to be public. Neither had seen, or been aware of, the public using the route or had required people to ask permission when using it. They had not obstructed the claimed route or put up notices to say that it was not public and had not made a Section 31 deposit to show lack of intention to dedicate.

6.6.2 The owners of Lower Shelvin indicated the presence of gates at points on the route that were not locked. In additional information, they referred to the Luppitt Parish Council minutes in the 1950s with decisions not to record routes in the parish as public footpaths.

## **6.7 Discussion**

6.7.1 As with previous proposals, no evidence of use has been submitted to support the claimed addition, so that there is none during any 20-year period to consider whether a statutory presumption of dedication has arisen from use by the public.

6.7.2 Most of the historic maps and other historical documentary evidence for this application are the same as for previous proposals, with some differences in detail and there is also no evidence of claimed use for an inference of dedication under the common law test. Earlier historical mapping does not show any tracks or paths on the claimed route, with the public road at the end of the route shown since at least the early 19<sup>th</sup> century.

6.7.3 The larger-scale Tithe Map from the first half of the 19<sup>th</sup> century does not show any sections of path on the claimed route. Parts of it are shown on some of the later maps up to the early 20<sup>th</sup> century and up to more recently as sections of tracks connected by paths crossing fields, some of which are labelled 'F.P' on later small-scale editions. However, they do not provide any support for the claim that the route may have been considered to be public at those times.

6.7.4 The later Finance Act records suggest that the route was not considered then to carry public rights, with no deductions in the assessment process for the fields crossed by it. Later mapping with aerial photography and other records show only that parts of it have continued to exist as sections of tracks on parts of its current line more recently and up

to the present. There is no support for it as one continuous route that could have been considered then to be a public footpath.

- 6.7.5 No lists of what were considered to be public footpaths in the parish were compiled by Luppitt Parish Council equivalent to those recorded by Combe Raleigh Parish Meeting in 1913 and 1934. No references in Parish Council minutes to any repairs or maintenance on the route have been submitted in support of this application.
- 6.7.6 The route was included in Luppitt Parish Council's 1951 survey in the later procedures for recording public rights of way on a statutory basis for the first time. As with other routes, the grounds for believing it to be public were that it was shown as a footpath on the Ordnance Survey map and with reference to being shown on a map prepared by the Rural District Council under the 1932 Act. It was not on the basis of having been used by the public for any previous period of time and the route did not then go on to be included on the Draft and Provisional Maps in the procedures leading to the Definitive Map. Several other paths in the immediate area were also included in the survey on the same basis and did not go on through the stages for recording on the Definitive Map, but have not been the subject of other applications.
- 6.7.7 No other more significant historic maps or references in historical documentary material have been submitted or discovered to add more substantial weight to any suggestion that the route had the reputation of being a public footpath in the past, or more recently. In particular, no claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Luppitt Parish Council.
- 6.7.8 Considering the historical evidence, but without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath for an inference that it had the reputation of being available and used by the public. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted any dedication and used it at any time in the past on foot, or have continued to use it on that basis.

## **6.8 Conclusion**

- 6.8.1 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the applications for Luppitt Proposal 11.



## **7 Luppitt Proposal 12: Schedule 14 application – claimed addition of footpath between minor road, Higher Wick Farm and minor road, points R–Q–S shown on drawing number HTM/PROW/14/82**

Recommendation: It is recommended that no Modification Order be made in respect of Luppitt Proposal 12 for the claimed addition of a footpath.

### **7.1 Description**

7.1.1 The claimed route for this application in Luppitt parish links with one of the duplicated applications in both Combe Raleigh and Luppitt and with another claimed route in Luppitt, to form a network. It starts from a field gate on the minor road leading to Dumpdon Lane and Dumpdon Hill (point R), crossing fields and onto a track passing the buildings of Woodhayes Farm. Beyond the farm, it leaves the track and crosses a field across the end of a track at the junction of the claimed routes for Combe Raleigh Proposal 7/Luppitt Proposal 13 and Luppitt Proposal 14 (Point Q). It continues across fields and through a gate into the open land on Dumpdon Hill, which is registered as common. From there it turns to follow a track around the hill across its more wooded lower slopes, then turning off to run through woodlands onto a hedged track leading onto the hill from the minor road at Higher Wick Farm (point S).

### **7.2 The Definitive Map process**

7.2.1 Parts of this route were included in the survey of paths on behalf of the Parish Council in 1951 to put forward for recording as public rights of way on the Definitive Map with other paths surveyed separately, as for Combe Raleigh Proposal 7/Luppitt Proposal 13. Although proposed then not to be recorded as public, parts of them were included on the Draft and Provisional Maps, or proposed to be added later and then not added so that none of them were recorded on the Definitive Map.

### **7.3 Documentary Evidence**

7.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827  
Most of this claimed route is not shown on earlier maps at smaller scales, which do not usually show the lines of footpaths. Some small sections are shown as parts of tracks around the buildings at Woodhayes Farm and from the road at Higher Wick Farm leading on to the open land at Dumpdon Hill.

7.3.2 Later 19<sup>th</sup> century historical mapping: Luppitt Tithe Map 1842 & Apportionment 1840: Ordnance Survey 25"/mile late 1880s  
Some later maps at larger scales show parts of the claimed route in more detail. No line of any path is shown on the Tithe Map for Luppitt parish dated 1842 crossing from the road through fields to and beyond Woodhayes Farm across Dumpdon Hill, which was identified then as common land. As with other proposals, there is no reference to any path in the Apportionment or the names of the fields, although the map does show gates in the field boundaries on the line of the route, as in most fields throughout the parish.

7.3.3 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, although the lines of paths are shown crossing some fields in other parts of the parish. The Tithe Map records do not, therefore, provide strong supporting evidence that the whole claimed route may have existed on the ground to be considered then as public. They show only the physical existence of the roads at each end and tracks on parts of the route at that time, but with no linking paths across fields and the open land of Dumpdon Hill connecting them.

- 7.3.4 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows the claimed route as an unenclosed path with double-dashed lines from the road crossing fields onto the track passing Woodhayes Farm. It continues through fields beyond the farm buildings past the junction with paths on other claimed routes at point Q onto the track through the open land of Dumpdon Hill leading to the road at Higher Wick Farm. It is labelled 'F.P.' in some places and, as with other proposals, some of the field, lane and road boundaries on the claimed route then are at points marked on the Tithe Map more than 40 years earlier as having gates.
- 7.3.5 The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century shows only the roads at each end, with the tracks at Woodhayes Farm and around Dumpdon Hill from the road at Higher Wick on parts of the claimed route. It is at too small a scale to show any lines of paths connecting them.
- 7.3.6 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records  
The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map, labelled 'F.P.' on some sections. The same later maps used as the basis for the 1910 Finance Act survey show this claimed route to have been included in the hereditaments, or assessment areas of land, for Woodhayes Farm, as considered for Combe Raleigh Proposal 7/Luppitt Proposal 13 and crossing the open land including Dumpdon Hill.
- 7.3.7 A copy of the Field Book for Woodhayes with details of the assessment for the farm was included with this application, showing a total deduction of £50 is recorded in respect of a fixed charge for Public Rights of Way or User affecting the value of the land for over 200 acres. Details of 'Charges, Easements and Restrictions' affecting the value of the land refer to those as 'R[ight] of Way' through several fields with Ordnance Survey numbers 1378, 1389, 1408 and 1417 on parts of the claimed route leading to and beyond the farm.
- 7.3.8 Copies of the records for the open land including Dumpdon Hill, not submitted with the application, refer to it as an area of common and waste land with rights of common and 'probably many rights of way'. There is a large deduction specified for the rights of common, but none for any public rights of way or user. The deductions for parts of the route suggest that they were considered to carry some form of right of way at the time, although without any specific reference to it as a 'public footpath' and not the whole route leading to and crossing the open common land on Dumpdon Hill.
- 7.3.9 Later Ordnance Survey mapping and Bartholomew's maps  
Most smaller scale maps from the earlier 20<sup>th</sup> century are at too small a scale to show the whole claimed route in any detail. Most of them show only the tracks at Woodhayes Farm and from the road at Higher Wick Farm leading onto and around Dumpdon Hill on parts of the claimed route. Some editions from 1946–60 show the sections of paths connecting them with a dashed line marked 'F.P.'. Other later and more recent editions show only a few parts of the tracks and connecting paths on the route and subject to the general disclaimer.
- 7.3.10 The later Ordnance Survey 'A' edition larger-scale mapping from 1960/1, also shows only the access tracks on parts of the claimed route with no sections of paths connecting them on the rest of the route between the roads at each end. The showing of parts of the route on some early and later maps records their physical existence at those times. They do not indicate on their own or support the existence of public rights of way, in accordance with the Ordnance Survey disclaimer.

#### 7.3.11 Aerial photography

Earlier and later aerial photography between 1946–9 and 2007 shows only the surfaced roads at each end of the claimed route and parts of the access tracks at Woodhayes and around Dumpdon Hill when it was less wooded. There are no worn lines of any path or track shown connecting them on the rest of the route, with worn areas around gates on the route from agricultural use and the trampling of stock.

### **7.4 Definitive Map Reviews and Consultations**

7.4.1 There have been no previous suggestions that this whole claimed route should be considered for recording as a public right of way in earlier review processes, although completed user evidence forms were submitted in 1979 to support a claim earlier in the 1970s to record public rights of way on or crossing Dumpdon Hill. They were not considered for investigation as no specific individual routes were identified and it was already recorded as common, now with a public right of access on foot to open land under the Countryside and Rights of Way Act 2000. This current claim was included in the consultations in July 2014 on the same basis as the applications for the previous proposals, with the same responses in objection and support only from the applicants.

### **7.5 User Evidence**

7.5.1 As with previous proposals, no user evidence was submitted in support of this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

### **7.6 Landowner and Rebuttal Evidence**

7.6.1 The landowner evidence provided by the owner of land with Woodhayes Farm crossed by part of the claimed route for Combe Raleigh Proposal 7/Luppitt Proposal 13, is also relevant to the application for this claim as well. An evidence form was also submitted by the owner of Higher Wick Farm on the route. As with the responses to other claims, both indicated that the route crossed or adjoined the land that they owned and they did not believe it to be public. Neither had seen, or been aware of, the public using the route or had required people to ask permission when using it. They had not obstructed the claimed route or put up notices to say that it was not public and had not made a Section 31 deposit to show lack of intention to dedicate.

7.6.2 In additional information, the owner of Woodhayes Farm provided further details, including from the procedures for the Parish Council survey in 1950 resulting in the claimed route not being recorded on the Definitive Map. It included copies of correspondence with the owner of the farm at that time reporting that no evidence of public use had been produced.

7.6.3 No landowner evidence was submitted by the National Trust as owners of Dumpdon Hill, or for this proposal on behalf of the Commons Trustees relating to it as common land. However, the National Trust had made a Section 31 deposit in 1993 followed by the required statutory declarations later that year and after 20 years in 2003 to renew it until 2013. That recorded formally their lack of intention to dedicate public rights of way across the land during that period.

## 7.7 Discussion

- 7.7.1 As with previous proposals, no evidence of use has been submitted to support the claimed addition, so that there is none during any 20-year period to consider whether a statutory presumption of dedication has arisen from use by the public.
- 7.7.2 Most of the historic maps and other historical documentary evidence for this application are the same as for previous proposals, with some differences in detail and there is also no evidence of claimed use for an inference of dedication under the common law test. Earlier historical mapping shows that the sections of tracks and paths on parts of the claimed route have existed on the ground since at least the early 19<sup>th</sup> century with the public roads at the start and end of the route.
- 7.7.3 The larger-scale Tithe Maps from the first half of the 19<sup>th</sup> century do not show any sections of path connecting them on the claimed route across fields and crossing the open common land on Dumpdon Hill. They are shown on some of the later maps up to the early 20<sup>th</sup> century as paths crossing fields, parts of which are labelled 'F.P' on some later editions at larger and smaller scales. However, they do not provide any support for the claim that the route may have been considered to be public at those times.
- 7.7.4 The later Finance Act records suggest that parts of the route may have been considered then to carry public rights with deductions in the assessment process for some of the fields crossed by it, but without referring to them as 'public' rights of way or footpaths and not including other sections. As with previous proposals, there is no evidence for how that was determined as the basis from which any earlier presumed dedication by the landowner or the extent of any use then by the wider public could be inferred.
- 7.7.5 Later mapping with aerial photography and other records show only that sections of tracks have continued to exist on parts the route as claimed more recently and up to the present. There is no support for it as one continuous route leading to and crossing open land on Dumpdon Hill for it to have been considered to be a public footpath at those times.
- 7.7.6 No lists of what were considered to be public footpaths in the parish were compiled by Luppitt Parish Council equivalent to those recorded by Combe Raleigh Parish Meeting in 1913 and 1934. No references in Parish Council minutes to any repairs or maintenance on the route have been submitted in support of this application. Parts of the route were included in Luppitt Parish Council's 1951 survey in the later procedures for recording public rights of way on a statutory basis for the first time. As with other routes, the grounds for believing them to be public were that they were shown as footpaths on the Ordnance Survey map and with reference to being shown on a map prepared by the Rural District Council under the 1932 Act. It was not on the basis of having been used by the public for any previous period of time.
- 7.7.7 The route as claimed is made up from parts of the paths surveyed separately as number 33, as in Combe Raleigh Proposal 7/Luppitt Proposal 13, with numbers 35, 36 and part of 37 and a connecting link between them north of Woodhayes Farm. Although proposed not to be recorded as public, parts of them on this route were included on the Draft Map, or proposed to be added and then deleted later from the County Roads Committee decisions, as discussed for that proposal so that none of them went on to be recorded on the Definitive Map.
- 7.7.8 No other more significant historic maps or references in historical documentary material have been submitted or discovered to add more substantial weight to any suggestion that the route had the reputation of being a public footpath in the past, or more recently. In particular, no claims for its addition or evidence relating to its past use have been

made as part of the procedures for earlier reviews since then, either by or on behalf of Luppitt Parish Council, apart from the user evidence submitted relating to unspecified routes on Dumpdon Hill.

7.7.9 Considering the historical evidence, but without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath for an inference that it had the reputation of being available and used by the public. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted any dedication and used it at any time in the past on foot, or have continued to use it on that basis.

7.7.10 There is specific evidence of a lack of intention to dedicate by one of the landowners on part of the route crossing the open land of Dumpdon Hill, the National Trust. That was for over a period of more than 15 years from the Section 31 deposit in 1997 and statutory declarations, although it does not apply retrospectively to the period before then. The land has been registered common and now with a statutory right of wider public access to open land.

## **7.8 Conclusion**

7.8.1 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the application for Luppitt Proposal 12.

## **8 Luppitt Proposal 14: Schedule 14 application – claimed addition of footpath between minor road, Wick Farm and minor road Shaugh Farm, points T–Q–U shown on drawing number HTM/PROW/14/82**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 6a for the claimed addition of a footpath.

### **8.1 Description**

8.1.1 The claimed route for this application in Luppitt parish links with the routes in other proposals considered in this report as part of a network. It starts from a hedge on the minor road leading to Dumpdon Lane near Shaugh Farm north east of Woodhayes (point T), crossing fields to join the end of the track on the claimed route of Proposal 7/Luppitt Proposal 13 and Luppitt Proposal 12 (Point Q). It continues across fields and through woodland onto a track between buildings leading from the minor road at Lower Wick Farm (point U).

## 8.2 The Definitive Map process

8.2.1 Parts of this route were included in the survey of paths on behalf of the Parish Council in 1951 to put forward for recording as public rights of way on the Definitive Map with other paths surveyed separately, as for Combe Raleigh Proposal 7/Luppitt Proposal 13. Although proposed then not to be recorded as public, parts of them were included at the stages of the Draft and Provisional Maps, or added and then deleted later and none of them went on to be recorded on the Definitive Map.

## 8.3 Documentary Evidence

8.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827

Most of this claimed route is not shown on earlier maps at smaller scales, which do not usually show the lines of footpaths. Parts of tracks are shown leading from the roads at each end, but with no line of a connecting path between them.

8.3.2 Later 19<sup>th</sup> century historical mapping: Luppitt Tithe Map 1842 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

Some later maps at larger scales show parts of the claimed route in more detail. The Tithe Map for Luppitt parish dated 1842 shows the sections of track at each end, marked as 'road' leading into fields, but no line of any path across the fields and woodland connecting them. As with other proposals, there is no reference to any path in the Apportionment or the names of the fields, although the map does show gates in the field boundaries on parts of the line of the route, as in most fields throughout the parish.

8.3.3 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, although the lines of paths are shown crossing some fields in other parts of the parish. The Tithe Map records do not, therefore, provide strong supporting evidence that the whole claimed route may have existed on the ground to be considered then as public. They show only the physical existence of the roads at each end and tracks on parts of the route leading from them, but with no linking path across fields and woodland connecting them.

8.3.4 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows the start of the claimed route as an unenclosed path with double-dashed lines from the road, at Shaugh Farm, but turning to continue across a field towards Woodhayes Farm. No line of a path is shown leading to the junction with paths on other claimed routes at point Q, but another continues from there crossing fields and the woodland onto the end of the track leading from the road at Lower Wick Farm. It is labelled 'F.P'. in some places and, as with other proposals, some of the field, lane and road boundaries on the claimed route then are at points marked on the Tithe Map more than 40 years earlier as having gates.

8.3.5 The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century shows only the roads at each end and the track at Lower Wick Farm on part of the claimed route. It is at too small a scale to show any lines of paths connecting them.

8.3.6 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map, labelled 'F.P'. on some sections. The same later maps used for the 1910 Finance Act survey show this claimed route to have been included in the hereditaments, or assessment areas of land, for

Woodhayes Farm, as considered for previous proposals, with those for parts of woodland as well as parts of Stockers Farm and Wick Farm.

8.3.7 Copies of the Field Books for Woodhayes, Stockers and Wick with details of the assessment for those farms were included with this application. For Woodhayes, a total deduction of £50 is recorded in respect of a fixed charge for Public Rights of Way or User affecting the value of the land for over 200 acres. Details of 'Charges, Easements and Restrictions' affecting the value of the land refer to those as 'R[ight] of Way' through several fields with Ordnance Survey numbers, including 1378, crossed by part of this claimed route and paths on the lines of two other claimed routes.

8.3.8 For the part of Wick Farm, with a total of 50 acres, there was a deduction of £25 relating to the fields numbered 1347 and 149 on the continuation of the route. For the part of Stockers Farm with a total of 18 acres, there was a deduction of £10 relating to the fields numbered 1350 and 1308 on the remainder of the route. Those were for the field including part of the track leading from the road and a field adjoining a house alongside the road. Copies of the records for the areas of woodland, not submitted with the application, do not specify any deductions for the woodlands on the route.

8.3.9 The deductions suggest that parts of the route were considered to carry some form of right of way at the time, although without any specific reference to it as a 'public footpath' and not the whole route through the fields and woodland.

#### 8.3.10 Later Ordnance Survey mapping and Bartholomew's maps

Most smaller scale maps from the earlier 20<sup>th</sup> century are at too small a scale to show the whole claimed route in any detail. Most of them show only the track at Lower Wick Farm leading from the road, with some editions showing sections of paths or tracks on parts of the route, but only in 1948 with a dashed line marked 'F.P.' and with no link on part of the route as claimed. Other later and more recent editions show only a limited section of the route as parts of tracks and subject to the general disclaimer.

8.3.11 The later Ordnance Survey 'A' edition larger-scale mapping from 1960 also shows only the access track leading from the road at Lower Wick Farm on part of the claimed route with no sections of paths connecting it on the rest of the route across fields and woodland to the road at Shaugh Farm. The showing of parts of the route on some early and later maps records their physical existence at those times. They do not indicate on their own or support the existence of public rights of way, in accordance with the Ordnance Survey disclaimer.

#### 8.3.12 Aerial photography

Earlier and later aerial photography between 1946–9 and 2007 shows only the surfaced roads at each end of the claimed route and part of the track from Lower Wick Farm. Any worn lines of tracks across fields on some parts of the route, between and around gates, appear to be from wheeled vehicles for agricultural use and the trampling of stock.

## 8.4 **Definitive Map Reviews and Consultations**

8.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes. This claim was included in the consultations in July 2014 on the same basis as the applications for the previous proposals, with the same responses in objection and support only from the applicants.

## **8.5 User Evidence**

- 8.5.1 As with previous proposals, no user evidence was submitted in support of this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

## **8.6 Landowner and Rebuttal Evidence**

- 8.6.1 The landowner evidence provided by the owner of land with Woodhayes Farm crossed by parts of the claimed routes for previous proposals is also relevant to the application for this claim as well. Evidence forms were also submitted by the owners of Stockers Farm and Stockers Cottage on the route. As with the responses to other claims, all of them indicated that the route crossed or adjoined the land or properties that they owned and they did not believe it to be public. None of them had seen, or been aware of, the public using the route or had required people to ask permission when using it. They had not obstructed the claimed route or put up notices to say that it was not public and had not made a Section 31 deposit to show lack of intention to dedicate.
- 8.6.2 In additional information, the owner of Woodhayes Farm provided further details, including from the procedures for the Parish Council survey in 1950 resulting in the claimed route not being recorded on the Definitive Map. It included copies of correspondence with the owner of the farm at that time reporting that no evidence of public use had been produced. One of the other landowners referred also to those procedures, reporting that there was no way for people to use through the buildings and local authority searches when they purchased the farm had not revealed any public right of way.

## **8.7 Discussion**

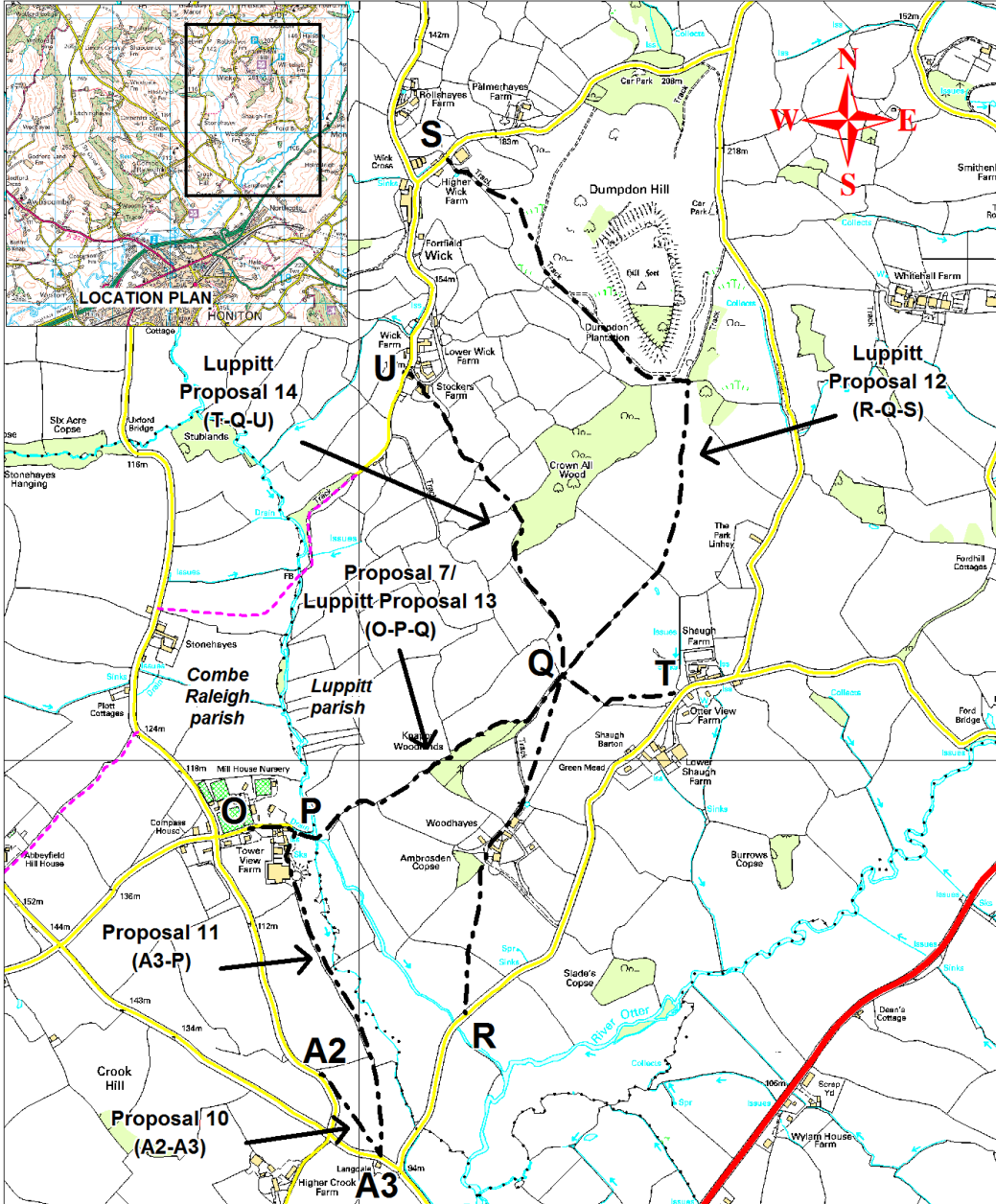
- 8.7.1 As with previous proposals, no evidence of use has been submitted to support the claimed addition, so that there is none during any 20-year period to consider whether a statutory presumption of dedication has arisen from use by the public.
- 8.7.2 Most of the historic maps and other historical documentary evidence for this application are the same as for previous proposals, with some differences in detail and there is also no evidence of claimed use for an inference of dedication under the common law test. Earlier historical mapping shows that the sections of tracks or paths on parts of the claimed route have existed on the ground since at least the early 19<sup>th</sup> century with the public roads at the start and end of the route.
- 8.7.3 The larger-scale Tithe Maps from the first half of the 19<sup>th</sup> century do not show any sections of path connecting them on the claimed route across fields and woodland. They are shown on some of the later maps up to the early 20<sup>th</sup> century as paths crossing fields, parts of which are labelled 'F.P' on some later small-scale editions but not connected on the route as claimed. However, they do not provide any support for the claim that the route may have been considered to be public at those times.
- 8.7.4 The later Finance Act records suggest that parts of the route may have been considered then to carry public rights with deductions in the assessment process for some of the fields crossed by it, but without referring to them as 'public' rights of way or footpaths and not including other sections. As with previous proposals, there is no evidence for how that was determined as the basis from which any earlier presumed dedication by the landowner or the extent of any use then by the wider public could be inferred.



- 8.7.5 Later mapping with aerial photography and other records show only that sections of track have continued to exist on parts the route as claimed more recently and up to the present. There is no support for it as one continuous route leading across fields and woodland for it to have been considered to be a public footpath at those times.
- 8.7.6 No lists of what were considered to be public footpaths in the parish were compiled by Luppitt Parish Council equivalent to those recorded by Combe Raleigh Parish Meeting in 1913 and 1934. No references in Parish Council minutes to any repairs or maintenance on the route have been submitted in support of this application. Parts of the route were included in Luppitt Parish Council's 1951 survey in the later procedures for recording public rights of way on a statutory basis for the first time. As with other routes, the grounds for believing them to be public were that they were shown as footpaths on the Ordnance Survey map, although with reference to not being shown on a map prepared by the Rural District Council under the 1932 Act. They were not all on the basis of having been used by the public for any previous period of time.
- 8.7.7 The route as claimed is made up from parts of the paths surveyed separately as numbers 34, 35 and 37, as in Combe Raleigh Proposal 7/Luppitt Proposal 13 and Luppitt Proposal 12, with another connecting link north of Woodhayes Farm added that was not shown as a path on any maps. Although proposed not to be recorded as public, some parts of paths on this route were included on the Draft Maps, or proposed to be added but deleted later, as discussed for those proposals and none of them were recorded on the Definitive Map.
- 8.7.8 No other more significant historic maps or references in historical documentary material have been submitted or discovered to add more substantial weight to any suggestion that the route had the reputation of being a public footpath in the past, or more recently. In particular, no claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Luppitt Parish Council.
- 8.7.9 Considering the historical evidence, but without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath for an inference that it had the reputation of being available and used by the public. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted any dedication and used it at any time in the past on foot, or have continued to use it on that basis.

## **8.8 Conclusion**

- 8.8.1 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the application for Luppitt Proposal 14.



map ref ST1602-04/1702-04/1802-04

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**DEVON COUNTY COUNCIL**

Definitive Map Review, Combe Raleigh parish  
 Informal Consultations, Proposals 7, 10 & 11  
 Claimed addition of footpaths

drawing number HTM/PROW/14/82  
 date Jul 2014  
 scale 1:12, 500  
 drawn by NSC

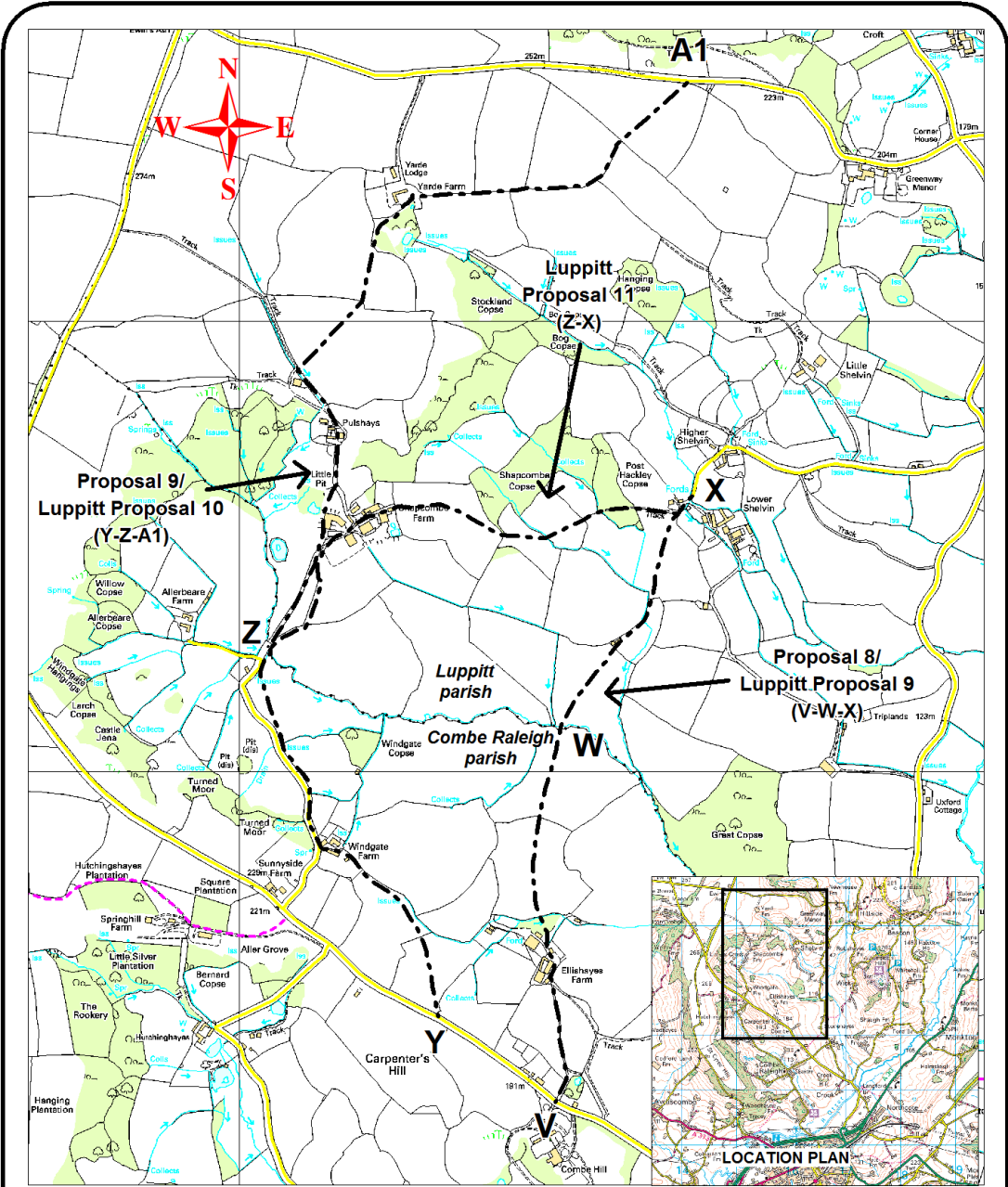
Notation

Claimed footpaths (7, 10 & 11  
 with Claims 12, 13 & 14 in Luppitt parish)   
 Existing footpaths

**David Whitton**

HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE





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**DEVON COUNTY COUNCIL**  
 Definitive Map Review, Combe Raleigh parish  
 Informal Consultations, Proposals 8 & 9  
 Claimed addition of footpaths

drawing number HTM/PROW/14/83  
 date Jul 2014  
 scale 1:12, 500  
 drawn by NSC

**Notation**  
 Claimed footpaths (8 & 9  
 with Claims 9, 10 & 11 in Luppitt parish)  
 Existing footpaths

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