

Phil Norrey
Chief Executive

To: The Chair and Members of the
Public Rights of Way
Committee

County Hall
Topsham Road
Exeter
Devon
EX2 4QD

(See below)

Your ref :
Our ref :

Date : 7 March 2018
Please ask for : Wendy Simpson, 01392 384383

Email: wendy.simpson@devon.gov.uk

PUBLIC RIGHTS OF WAY COMMITTEE

Thursday, 15th March, 2018

A meeting of the Public Rights of Way Committee is to be held on the above date at 2.15 pm in the Committee Suite - County Hall to consider the following matters.

P NORREY
Chief Executive

A G E N D A

PART I - OPEN COMMITTEE

- 1 Apologies
- 2 Minutes
Minutes of the Committee meeting held on 9 November 2017 (previously circulated).
- 3 Items Requiring Urgent Attention
Items which in the opinion of the Chairman should be considered at the meeting as matters of urgency.
- 4 Devon Countryside Access Forum (Pages 1 - 10)
Draft minutes of the meeting held on 25 January 2018, attached.

DEFINITIVE MAP REVIEWS

- 5 Parish Review: Definitive Map Review 2016-2018 - Parish of Coldridge (Pages 11 - 28)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/18/10) attached, and background papers.

Electoral Divisions(s): Creedy, Taw & Mid Exe

- 6 Parish Review: Definitive Map Review - Parish of Bittadon (Part 2) (Pages 29 - 36)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/18/11) attached, and background papers.

Electoral Divisions(s): Combe Martin Rural

- 7 Parish Review: Definitive Map Review 2016-2018 - Parish of Buckerell Part 2, with part of Gittisham Parish (Pages 37 - 50)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/18/12) attached, and background papers.

Electoral Divisions(s): Feniton & Honiton

- 8 Parish Review: Definitive Map Review 2016-2018 - Parish of Gittisham (Pages 51 - 64)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/18/13) attached, and background papers.

Electoral Divisions(s): Feniton & Honiton

- 9 Parish Review: Definitive Map Review 2016-2018 - Combe Martin, North Devon (Pages 65 - 84)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/18/14) attached, and background papers.

Electoral Divisions(s): Combe Martin Rural

MATTERS FOR INFORMATION

- 10 Public Inquiry, Informal Hearing and Written Representation Decisions; Directions and High Court Appeals (Pages 85 - 88)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/18/15), attached.

Electoral Divisions(s): Creedy, Taw & Mid Exe; Whimble & Blackdown

- 11 Public Path Orders (Pages 89 - 92)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/18/16), attached.


Electoral Divisions(s): Salcombe

- 12 Future meeting dates
5 July 2018, 15 November 2018 and 7 March 2019.

PART II - ITEMS WHICH MAY BE TAKEN IN THE ABSENCE OF THE PRESS AND PUBLIC

None

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Councillors P Sanders (Chair), T Inch (Vice-Chair), J Brook, I Chubb, P Colthorpe, A Dewhirst, R Edgell, M Shaw and C Whitton
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Agenda Item 4

Devon Countryside Access Forum
Lucombe House
County Hall
Topsham Road
EXETER EX2 4QD

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www.devon.gov.uk/dcaf

Minutes of the Forty-Ninth meeting
of the Devon Countryside Access Forum
held at County Hall, Topsham Road, Exeter EX2 4QD
Thursday, 25 January 2018

Attendance

Forum members

Simon Clist	Chris Ingram
Sean Comber	Sue Pudduck
John Daw	Councillor Philip Sanders
Gordon Guest	Sarah Slade (Chair)
Jo Hooper	Maggie Watson

Devon County Council Officers and others present

Lloyd Batten, DCC apprentice
Helen Clayton, Senior Officer, Public Rights of Way, DCC
Ros Mills, Manager, Public Rights of Way, DCC
Hilary Winter, Forum Officer

1. Apologies and resignations

Apologies had been received from Mark Bullock, Chris Cole, Andrew Cox, Linda Lee and Mark Simpson.

The resignations of Mark Bullock and Andrew Cox were noted.

2. Declarations of interest

No interests were declared.

3. Minutes of the Forty-Eighth meeting held on 12 October 2017

Minutes of the meeting held on 12 October 2017 were approved and signed.

4. Matters arising

4.1 Minor road network (4.3 12.10.17)

An email response from DCC had been received stating that a review of the minor road network had not started due to competing demands. It was intended to make it a high priority with an internal consultation in April. No major impact on public rights of way was anticipated.

Concern was expressed at the rapid deterioration of the minor road network and the danger to cyclists, and young people in particular, due to the scale and depth of potholes. Any incremental decline would inevitably become a maintenance issue for the Public Rights of Way team if minor roads became unsurfaced, unclassified County roads. It was noted potholes could be reported and tracked on the DCC website.

It was agreed it would be useful to invite the relevant officer from DCC's Highway Asset Group to the April meeting, to discuss the impact on users of minor roads and on the connectivity to the Public Rights of Way network.

Action: Forum Officer to invite DCC Officer.

4.2 Disability access position statement (7.1 12.10.17)

The position statement is on the DCAF website and would be a useful document to raise awareness. The Chair thanked everyone who contributed.

4.3 Explore Devon website (7.2 12.10.17)

Chris Ingram reported that she had looked at the Explore Devon website which included excellent information on how to ride, accessible beaches and road safety. It was geared primarily to tourists. Improvements could include a link to the Public Rights of Way website; an explanation of multi-use and where riders can go; and codes of conduct. Parking of horse-boxes was a major issue.

It would be useful to see better links to available riding areas on Forestry Commission and National Trust land. The Forum Officer had written to several organisations but had received a limited response. Some dealt with web information on a site by site basis.

Ros Mills, DCC, and the Forum Officer had attended a meeting with DCC Officers involved with Explore Devon. DCC would have to ensure any information was accurate before it went on the website due to liability concerns. User groups could provide more useful detail and weblinks were an option to provide such information. The same concern about accuracy applied to photo sites. Ensuring information remained accurate was a major consideration but electronic media ought to be the way forward. Time constraints in inputting details were acknowledged.

It was agreed P3 parishes may like to talk to landowners and check details of where horse box parking could be accommodated. It was acknowledged however that such provision should not impact on the management of adjacent land.

Linking to the PRow website did present some challenges, for example bridleway routes on Hollow Moor and Whiteleigh Meadow were not easy or

were seasonal. A caveat to cover this could be considered.

It was noted that some user groups, such as the Trail Riders' Fellowship, had up-to-date line mapping and encouraged responsible usage.

It was agreed the Forum Officer would liaise with Ros Mills, DCC, about contacts in the Forestry Commission and National Trust.

Chris Ingram agreed to look at the wording of the Explore Devon website.

Action: Chris Ingram to follow up. Forum Officer and Ros Mills to discuss further links with the Forestry Commission and the National Trust

4.4 Trail principles (7.2 12.10.17)

The revised version was approved, subject to typographical correction. The principles would be sent to Ros Mills, Public Rights of Way Manager.

Action: Forum Officer to forward to Ros Mills, DCC.

Ros Mills, DCC, confirmed that carriage driving was not currently promoted within the SW region on multi-use trails. However, several authorities had responded saying that if there was a demand for it they would no doubt consider it, provided the path was able to accommodate carriage drivers with regard to surfacing; widths; laybys; turning bays; land owner agreement and other factors.

4.5 Parish Paths Partnership (P3) workshops (9. 12.10.17)

No one from the Forum had been available to attend the P3 workshops but these had been very successful with positive feedback. The days were a mixture of case studies, networking and a walk.

4.6 Verges (15. 12.10.17)

The letter from the Forum was noted and approved. The response from DCC was discussed.

Although it had been a DCC decision to save money, it was noted that the Weeds Act 1959 was still in place and there was a concern that moving material around the countryside was spreading various types of weed. There appeared to be a general disregard for the value of verges for recreational access. Dumping on verges may render them unusable for walking or as a safe refuge and encourages fly tipping. The importance of supplying evidence, preferably photographic, where incidents had been identified was raised.

It was agreed a representative of the Highway Asset Management Group, DCC, could also discuss this issue and it would be useful to invite Skanska,

new highway contractors, too.

Action: Forum Officer to include this matter in the invitation to attend the next meeting.

5. Correspondence log

Attention was drawn to item 11. The BHS Officer for Dartmoor had expressed concerns about the use of smooth tarmac, particularly on hills, which made roads more difficult and slippery for horses to use. A top dressing was preferable. It was agreed this was also an issue in Devon where SMA (stone mastic asphalt) had been put on. However, Highway Management had top dressed some areas and are aware of, and have experience of, the problem.

This was an additional area to discuss with the proposed speaker at the next meeting.

Action: Forum Officer.

Attention was drawn to the recommendation under number 12 and it was resolved to send a letter advising that a safe crossing is designed across the main A road, linking the proposed multi-use trail and West Down. Planning permission for the trail section had been approved by the Development Management Committee on 24 January.

Action: Forum Officer to send a letter to DCC.

6. Public questions

No public questions had been received.

7. DCAF member attendance at events/meetings

7.1 DCAF working group - Dawlish Suitable Alternative Natural Greenspace

Sarah Slade, Chris Cole, Simon Clist, Gordon Guest and the Forum Officer had been on a very interesting site visit to the Dawlish SANGS, accompanied by ranger staff from Teignbridge District Council. It was impressive that the three district council areas had got together to form the South East Devon Habitat Regulations Executive Committee and deliver SANGS sites. The new Country Park was very accessible.

The recommendations made in the letter to Teignbridge District Council were approved. A positive response had been received from the Senior Ranger outlining some changes that could be made to improve accessibility.

The DCAF noted that the purpose of a SANGS site is primarily to accommodate dog walkers and discourage dog walking on more sensitive and designated wildlife sites. Therefore, its suggestion of incorporating cycling routes was seen as difficult to achieve and likely to generate conflict.

The Chair thanked everyone who made comments.

7.2 DCAF working group - England Coast Path

A small working group had met and produced initial draft comments. The draft was agreed and would be sent to Natural England. It was noted that an easy access route parallel to the South West Coast Path at Selworthy Beacon, Somerset, had been provided on National Trust land.

Action: Gordon Guest agreed to provide photos to accompany the report. Forum Officer to submit response to Natural England.

8. Minutes of the Public Rights of Way Committee held on 9 November 2017

Minutes of the Public Rights of Way Committee were noted.

9. Public Rights of Way proposed budget reduction 2018-2019 - impact assessment.

Ros Mills, Public Rights of Way Manager, spoke about agenda paper 9; an impact scenario for a potential budget cut of £50,000 to the Public Rights of Way revenue budget. The revenue budget amounted currently to £627,000 to maintain just under 5000 km of public rights of way (including bridges); 560 km of uUCRs and 225 km of off-road cycle routes. In addition, allocations of funding were made to the National Parks; 25% match funding for the South West Coast Path; a contribution to East Devon District Council to maintain the coast path; and the P3 scheme. No reduction in the capital budget was proposed.

There were statutory duties involved in maintaining the public rights of way network and lack of maintenance could result in legal challenge. Community engagement through P3 is seen as very important and it was not proposed to reduce that commitment, a view supported by members.

Ros Mills suggested that a reduction in the maintenance of uUCRS could be one way of dealing with the budget cut but might not achieve the proposed amount. Otherwise there could be reductions across the board or for particular types of route or spend. Currently the spend per person (resident of Devon) on public rights of way maintenance in Devon is £0.93, amounting to £125/km. The positive economic impact of the PRow network and access was significant, as evidenced from closures during foot and mouth. The fifty or so small contractors who do work on public rights of way were part of the wider economic effect.

Ros Mills confirmed there was no money from Public Health or Sustrans for maintenance, despite the evident health and well-being benefits of public rights of way. The Local Nature Partnership, of which Public Health is a member, had commissioned much useful work on the health benefits of access to countryside/green space. The South West Coast Path Association carried out successful fundraising to assist with capital schemes. A quarter of staff in Public Rights of Way were lost in 2012 but levels have been protected for the past few years.

Members expressed reservations about even cuts across the board as this could result in poor standards overall and increased complaints.

It was agreed it would be useful to ascertain the views of young people on this matter and suggested avenues were the Youth Parliament; British Trust for Conservation Volunteers; DoE and Ten Tors participants; and the National Citizenship Scheme. It was recognised there was a shift in how younger people use public rights of way and other trails with more organised and activity based use. There was a need to increase awareness and find out whether people do value PRow. Use of social media and incorporation of information into the National Curriculum were also suggested.

It was noted that Parish Councils had the opportunity to put money on the precept and it was acknowledged that some already do. Public rights of way could be considered part of their responsibility as custodians for the future.

Ros Mills asked members to use post-it notes to crystallise ideas. Members duly undertook this task and put forward a variety of proposals for consideration. These fell under several main themes:

- Reducing a particular budget heading, or budget for a type of route, would be preferable to cuts across the board;
- Route functionality and use should be identified to prioritise those routes in greater demand. PRow mapping would assist in this task;
- There was the potential to increase partnerships with landowners, user groups, communities, parish/town councils and others to ensure continued maintenance, either through funding/sponsorship of work, employment of a dedicated 'warden' or use of volunteers;
- Signs and waymarking could be prioritised. (Signing and waymarking is a legal duty).
- Expert services of the Public Rights of Way team could possibly be sold to other authorities;
- Novel ways of fundraising should be explored, for example donation boxes, crowdfunding, card type payments etc.;
- Raising awareness of who provides and maintains paths.

Action: Ros Mills to consider the budget cut implications in the light of DCAF comments and report back at the next meeting.

10. Public Rights of Way update

Helen Clayton and Ros Mills, DCC, provided an update.

Wardens were particularly busy. In north Devon some rights of way had been affected by the recent extreme rainfall. Wardens were involved in the coastal mapping exercise. Training undertaken included CDM (construction design manual) and 4 x 4 vehicle use. Inspections were behind schedule.

Natural England had proposed a reduction in funding for the South West Coast Path for 2018/19 of 50%. It was noted that if additional DCC money is spent to bridge this funding gap on the SWCP this would have an impact elsewhere on the network. It was also noted that if no extra resource is put in then DCC would maintain the route to standard public rights of way criteria. Members expressed concern at the potential reduction in funding for a National Trail and resolved to send a letter to Natural England, the Secretary of State and MPs.

Action: Forum Officer to circulate draft letter to members.

The Definitive Map Review team is working on reports for the next Public Rights of Way Committee meeting on 15 March. A Public Inquiry would be held in Berrynarbor on 10/11 April. DCC was neutral and had been directed to make an Order.

The Parish Paths Partnership events had been successful and provided opportunities for networking. Highway colleagues had attended. P3 parishes were currently submitting yearly returns.

DCC had agreed the next section of the Pegasus Trail could be constructed by the landowner.

Section 31(6) deposits were being scanned by a DCC apprentice and will go on the interactive map. Section 31(6) records were now a standard search enquiry for conveyancing and this work will improve the on-line information.

The Public Rights of Way section continued to be involved in many planning applications.

The Chair thanked the Public Rights of Way staff for their hard work.

11. To note and approve responses to consultations

11.1 Cranbrook Development Plan: Preferred approach. East Devon District Council.

The response was noted and approved.

11.2 Sidmouth - Alma Bridge replacement. Devon County Council.

The letter was noted and approved.

12. Current consultations

12.1 Dog walking code, Exe Estuary Partnership

A consultation on the draft Dog Walking Code for the Exe Estuary had been launched. Following discussion, several points emerged to be included in the response.

- There seemed to be a fair balance between areas where dogs were excluded and other areas. Wardens were frequently out on site at Dawlish Warden to explain restrictions.
- The map was useful to plan a walk.
- Some people continued to ignore beach restrictions.
- Some concern was expressed about the design of the leaflet and suitability for people with visual impairment/colour blindness.

- The Environment Agency should be added to the organisations to contact in the event of pollution.
- To ensure conformity with national guidance it would be preferable if the section on 'Walkies' referred to effective rather than close control.
- It would be useful to include the statement from the national guidance about not approaching people, cyclists etc. uninvited.
- Devon and Cornwall police website had a section on how to be safe around dogs.
- 'Want to know more' could be smaller with 'Walkies' a more prominent section.
- Regular worming of dogs should be added.

Action: Members were asked to provide any further comments and the Forum Officer would circulate a draft response.

13. Invitations to meetings

13.1 Exe Estuary Partnership Winter Forum - 6 February 2018

No-one present at the meeting offered to attend. The invitation would be sent to members who had given apologies.

Action: Forum Officer.

13.2 Understanding the Health and Wellbeing Value of the Pebblebed Heaths - 28 February 2018

Sarah Slade and Gordon Guest agreed to attend. A further place was available.

Action: Members to advise Forum Officer if they wished to attend.

13.3 Devon Local Nature Partnership - 16 March 2018

Maggie Watson expressed interest in attending and details would be forwarded.

Action: Forum Officer.

14. Dates and venues for meetings 2018/19

Meeting dates for 2018/19 were agreed as Thursday, 25 April; Thursday, 11 October and Thursday, 24 January. Due to parking difficulties at County Hall, other venues would be explored.

A Training Day would be held in the week commencing 18 June, on the theme of health and well-being.

15. Any other business

1. *Rights of Way*

A book had been received from Natural England entitled 'Rights of Way – Restoring the Record', 2nd edition, by Sarah Bucks and Phil Wadey. A letter from Pippa Langford, (Principal Specialist (Commons and Public Rights of Way), Natural England), encouraged local access forums to share their work on the Definitive Map process on Huddle, the local access forum national website. She thanked members of LAFs for the time they give. The book is available to borrow from the Forum Officer.

DCC is in the process of completing its Definitive Map Review on a parish by parish basis and is in a reasonable position to meet the 2026 deadline.

2. *Environment Plan*

The Twenty-Five Year Environment Plan had been published by Defra. It included a brief mention of recreational access and public rights of way. It included new ways in which people use access, the importance of encouraging young people to connect to the environment, and mental health and well-being.

3. *British Standard for Gaps, Gates and Stiles*

The revised version of the British Standard was awaited following submission of comments and additional work by the expert committee. This will apply to all new gaps, gates and stiles and enable the Equality Act to be taken into account.

4. *Suitable Alternative Natural Green Space (SANGS)*

Simon Clist raised concern about maintenance of SANGS after the initial funding period. Continued funding to ensure sustainability was important. This was primarily a remit for the district rather than County Council. Gordon Guest confirmed there was an ongoing discussion in Cullompton about the funding for green infrastructure associated with 8000 new homes.

Funds needed to be provided in perpetuity to ensure no net loss of biodiversity and, whilst there was recognition of this in some parts of the construction industry, it was not so across the whole industry.

Helen Clayton, DCC, said a lot of development schemes do not specify routes dedicated as public rights of way. Often recreational access proposals are area based. If public rights of way are involved, DCC would ask for a commuted sum for future maintenance.

It was noted all aspects should be agreed at an early stage, at Outline Planning Permission, and this could control the future management. Development offered more Council Tax for authorities. Ways of securing local funding, possibly through the Parish Council precept, were raised.

This would be an agenda item or presentation at a future meeting.

5. *Recreational access improvements*

Sean Comber, Trail Riders' Fellowship, raised the importance of improvement

work being carried out on public rights of way and unsurfaced unclassified county roads by voluntary groups, such as the Trail Riders' Fellowship, working with DCC. Funding from the organisation and working with communities, landowners and DCC staff gave the opportunity to help with budget cuts and deliver projects. It was noted many people have useful skills and some people involved with P3 had health and safety accreditation.

Ros Mills, DCC, confirmed that P3 volunteers inspected against set criteria designed for the scheme.

DRAFT

HIW/18/10

Public Rights of Way Committee
15 March 2018

Definitive Map Review 2016-2018 Parish of Coldridge

Report of the Chief Officer for Highways, Infrastructure 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 Order be made to modify the Definitive Map and Statement for the addition of a Byway Open to All Traffic A – B – C – D – E as shown on drawing number HIW/PROW/17/026 (Proposal 1).

1. Introduction

The report examines the route referred to as Proposal 1 arising out of the Definitive Map Review in the Parish of Coldridge in Mid Devon.

2. Background

The original parish survey under s. 27 of the National Parks and Access to the Countryside Act, 1949 completed in September 1950, initially proposed 15 footpaths for consideration as public rights of way. A further 5 paths were subsequently submitted by the parish council in November 1952. After review and inspection by Crediton Rural District Council and Devon County Council, 20 routes were published on the draft definitive map in February 1954. The route of Bridleway No. 12, Coldridge was amended for the provisional map and 20 public rights of way (14 footpaths and 6 bridleways) were recorded on the conclusive Definitive Map for Crediton Rural District Council published on 25 February 1958. An additional Footpath No. 23, Coldridge was added to the Definitive Map by way of a Creation Agreement in 2009.

The reviews of the Definitive Map under s.33 of the 1949 Act, which commenced in the 1960s and 1970s but were never completed, produced suggestions on behalf of the Parish Council in 1970 and 1977 proposing the deletion of Bridleway No. 8, part of Bridleway No. 9, Footpath No. 4 and part of Footpath No. 16 and the downgrading of Bridleway No. 7 to a footpath. The reasons for the deletions at that time were given as “paths not used”. These are not valid grounds for a Definitive Map Modification Order for deletion of a public right of way, which can only be made on the basis that a path was never a public right of way and was added to the Definitive Map by mistake. No additional supporting evidence was submitted and the proposed deletions were not followed up and they are not considered valid proposals for consideration under the current parish-by-parish Definitive Map Review.

The Limited Special Review of Roads Used as Public Paths (RUPPS), also carried out in the 1970s, did not affect this parish.

The following Orders affecting the Definitive Map for Coldridge have been made and confirmed since 1958:

Mid Devon District Council Bridleway No 8, Coldridge Public Path Diversion Order 1979
Devon County Council Footpaths Nos 17 & 19 Coldridge Public Path Diversion Order 1992

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Devon County Council Bridleway No 12 Coldridge Public Path Diversion Order 1993
Devon County Council Footpath No 15 Coldridge Public Path Diversion Order 1993
Mid Devon District Council Bridleway No 10 Coldridge Public Path Diversion Order 2000
Devon County Council Bridleway Nos 8 & 9 Coldridge Public Path Diversion Order 2007
Devon County Council Bridleway Nos 10 & 11 Coldridge Public Path Diversion Order 2008
Devon County Council Bridleway No 9 Coldridge Public Path Diversion Order 2009
Devon County Council Footpath No 23 Coldridge Public Path Creation Agreement 2009

Legal Event Modification Orders will be made for these changes under delegated powers in due course.

A previous Definitive Map review was initially opened in Coldridge in 1998 with a parish meeting but not progressed further at that time. The review was re-opened with a parish public meeting in April 2017 held as a separate meeting to the bi-monthly parish council meeting. The consultation map of 2 proposals for change was published in November 2017 and included this Schedule 14 application made in 2005 by the Trail Riders Fellowship. A second proposal, regarding the description of Footpath No. 16, Coldridge, the southern end of which actually lies in Nymet Rowland parish, will be dealt with as an administrative procedure.

3. Proposals

Please refer to the appendix to this report.

4. Consultations

General consultations have been carried out with the following results in respect of the suggestions considered in this report:

County Councillor Margaret Squires	-	no response
Mid Devon District Council	-	no response
Coldridge Parish Meeting	-	response received
Bondleigh Parish Council	-	response received
Country Landowners' Association	-	no response
National Farmers' Union	-	no response
British Horse Society	-	no response
Ramblers' Association	-	response received
Trail Riders' Fellowship	-	no response
Devon Green Lanes Group	-	no response

5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

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

9. Conclusion

It is recommended that no Order be made to modify the Definitive Map and Statement for the addition of a Byway Open to All Traffic A – B – C – D – E as shown on drawing number HIW/PROW/17/026 (Proposal 1).

Should any further valid claim with sufficient evidence be made within the next six months it would seem reasonable for it to be determined promptly rather than be deferred.

10. Reasons for Recommendations

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

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Newton St Cyres & Sandford

Local Government Act 1972: List of Background Papers

Contact for enquiries: Tania Weeks

Room No: ABG Lucombe House, County Hall, Exeter

Tel No: 01392 382833

Background Paper	Date	File Ref.
DMR/Correspondence File	1997 to date	DMR/Coldridge

tw140218pra
sc/cr/DMR Parish of Coldridge
04 280218

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Appendix I To HIW/18/10

A. Basis of Claim

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

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

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

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

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

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

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.

Section 69 of the Natural Environment and Rural Communities Act 2006 (NERC) amended the Highways Act 1980, to clarify that a Schedule 14 application for a Definitive Map Modification Order is, of itself, sufficient to bring a right of way into question for the purposes of Section 31(2) of the Highways Act 1980, from the date that it was made.

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

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

Proposal 1 – Addition of a Byway Open to All Traffic from Taw Bridge to Gulliver Lane

This is a Schedule 14 Application for the addition of a Byway Open to All Traffic from the north end of Millsome Lane at Taw Bridge, running southwards then south westwards and south south westwards along Millsome and Titterton Lanes and the north west end of Gulliver Lane to the end of the unsurfaced unclassified county road, also Gulliver Lane (GR SS 6739 0652 to SS 6678 0527).

Recommendation: It is recommended that no Order be made to modify the Definitive Map and Statement for the addition of a Byway Open to All Traffic A – B – C – D – E as shown on drawing number HIW/PROW/17/026 (Proposal 1).

1. Background

- 1.1 In November 2005 the Trail Riders Fellowship submitted a Schedule 14 Application to the County Council for the addition of the route to the Definitive Map as a byway open to all traffic (BOAT), supported by map and documentary evidence and a user evidence form. This was one of a number of Schedule 14 applications made by local representatives of the Trail Riders Fellowship in 2005 prior to the NERC Act (Natural Environment & Rural Communities Act) that came into force in May 2006. The NERC Act would restrict the ways that rights of ways for motorised vehicles in the countryside could be created or recorded. A right for motor vehicles was preserved under NERC if a Schedule 14 Application had been made prior to 20 January 2005, that is compliant with the regulations for Schedule 14 applications under the Wildlife & Countryside Act 1981, or the surveying authority has made a determination of an application for a BOAT before 2 May 2006.
- 1.2 This application was made after 20 January 2005 and also was not compliant with the regulations as notice of the application had not been served on the landowners. However, as an application had been received the proposal was included in the parish review as made, for the addition of a BOAT. As there are limited exemptions in which vehicle rights may be preserved it would be likely that the route could only be recorded as a restricted byway.
- 1.3 The application was also jointly made with one for the addition of Half Farthing Lane in Bondleigh parish, which continues from point E southwards to the county road at Marepark Gates. As this section lies wholly within Bondleigh parish, in which the Definitive Map Review has been completed; this application will be determined when the review has been completed across the county.

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2. Description of the Route

- 2.1 The route starts at the county road (B3220) at Taw Bridge at point A (GR SS 6739 0652) at the north end of Millsome Lane and proceeds generally southwards along the lane, a stoned track, between two hedge banks with ditches at the base of the hedge banks. The route continues along this track and then turns ninety degrees right (SS 6740 0601) and proceeds south westwards along the double hedged Millsome Lane to Millsome Farm and point B (SS 6690 0584).
- 2.2 After passing the farm buildings the route continues south westwards along a narrower doubled hedged section of lane downhill towards the end of Millsome Lane at the stream at point C (SS 6682 0572). The route then turns south south westwards and follows a track through a large arable field; the hedges on both sides of the old Titterton Lane having been removed (believed to be in the 1950s based on the OS maps). The southern end of Titterton Lane, originally passed between the buildings at Titterton, just north of point D. Following the removal of the lane's hedges, the route now passes just to the west of the original lane. At the south end of the old Titterton Lane at point D (SS 6675 0529) the route turns south eastwards and continues to meet the north-west end of the double hedged Gulliver Lane (which is the parish boundary with Bondleigh and an unsurfaced unclassified county road) and the junction with the north end of Half Farthing Lane (recorded as Footpath No. 1, Bondleigh) at point E (SS 6678 0527). The surface throughout the route varies between an improved stoned track to Millsome Farm and earth and grass in the final south-eastern end of the route along Gulliver Lane. The total length of the route is approximately 1,700 metres.

3. Consultations

- 3.1 Coldridge Parish Council advised that they are not supportive of the proposal for the addition of a Byway Open to All Traffic along Millsome and Titterton Lanes. As far as they are aware there has never been a right of way along these lanes and a BOAT will not be of benefit to anyone in the parish. The Parish Clerk also advised that no parishioners contacted him nor any of the Parish Council about the Definitive Map Review during the consultation period.
- 3.2 The local representative of the Ramblers Association advised that they would support the addition of more off road walking routes to the network. The route would create a link to other footpaths in the area but they do not have any evidence to support this addition.
- 3.3 The secretary of Bondleigh Parish Meeting advised that they have no comments to make with regard to the proposal.

4 Documentary Evidence

4.1 Ordnance Survey and Other Maps

- 4.1.1 The Ordnance Survey and other mapping do not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.
- 4.1.2 Cassini Historical Maps 1809 – 1900 Sheet 191 Okehampton & North Dartmoor
These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.

- 4.1.3 Old Series 1809: A defined lane is shown as running between Taw Bridge (point A) and the north end of Gulliver Lane (point E), with the eastern side of the section between Taw Bridge and Millsome (Mallson on this map) showed as a pecked line indicating unfenced. This section of lane between Taw Bridge and Millsome is also shown as a straight line and in a position closer to the River Taw than the present day, and claimed, route which runs southwards and then turns sharply to proceed west to Millsome. Buildings are shown at Millsome and at Titterton (called Tilbern) just north of point D. Titterton Lane is also on a slightly different alignment to the current route (as claimed) at Titterton.
- 4.1.4 Revised New Series 1899-1900: The route is now shown as a defined lane with solid lines on both sides all the way along and in the current position of Millsome Lane, although still on the original at Titterton. It is shown as a continuation of Gulliver Lane and depicted as a Metalled Road Third Class from the key. There is a clear distinction as shown on the map between Millsome and Titterton Lanes (the claimed route) and Half Farthing Lane which continues southwards from the south end of the claimed route and is shown as an unmetalled road. Millsome and Titterton have their current spellings with buildings shown at both locations. The route passes between the buildings at Titterton.
- 4.1.5 Popular Edition 1919: The route is recorded as double sided defined lanes for its full length, as per previous edition, and continuing along Gulliver Lane (the current county road), which is shown as the same status. The parish boundary with Bondleigh is also now shown along Gulliver Lane. The lanes are uncoloured and appears to correspond to Roads under 14' wide – 'Indifferent or bad winding road', as opposed to a Minor Road as Half Farthing Lane is shown. The key advises that private roads are uncoloured (but it is not known if this refers to maintenance or ownership). Millsome (now shown as Milson) and Titterton are recorded with buildings.
- 4.1.6 Greenwood's Map of Roads 1825
These well-made maps were produced using surveyors and a triangulation system, and are considered to be reasonably accurate. This sheet appeared in 1825 at a scale of one inch to the mile, and includes a route shown along Millsome (Maltson) and Titterton (Tiltern) Lanes, as a "cross-road", unfenced on a section on the east side of Millsome lane, for the claimed route and with the northern section of Millsome Lane on the same (straight line between Millsome Farm and the B3220) alignment as on the Cassini Map of 1809, which is slightly different to the current, claimed alignment, and Titterton Lane also on its original alignment.
- 4.1.7 OS 1st Edition 25" to a mile 1880-1890
The route is depicted as a defined lane throughout its entire length with several mature hedgerow trees shown in the vicinity of the buildings at Millsome (called Milson on this edition). The route including both Millsome and Titterton Lanes has a single compartment number of 245 with an area of 2.618. There is a line across the northern end of the route at point A and a second line across at point D, the junction with the unrecorded section of Gulliver Lane. The lines could refer to the presence of gates. Gulliver Lane is shown as continuing westwards of point D. There are some buildings shown at Titterton just north of point D.

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4.1.8 OS 1 inch to a mile maps of 1946, 1960 & 1965

On the 1946 edition the claimed route is shown uncoloured in the current location between Millsome and Taw Bridge and as a defined double-sided lane leading into Gulliver Lane and corresponding to 'Roads under 14' metalling – bad'. Millsome and Titterton are annotated on the map and the parish boundary is shown along Gulliver Lane.

- 4.1.9 In the 1960 edition the route is only shown as a defined double sided lane until just past Millsome (A – C), and Titterton Lane (C – D) is not shown and neither are any buildings at Titterton or the name Titterton. On the 1967 edition the route is shown as in 1960, as a defined white lane which is Roads under 14ft of Metalling Untarred to Minor Roads in towns, Drives and Unmetalled Roads or as Roads. No reference is made to the road being private or otherwise.

4.1.10 OS Post War Mapping A Edition 2500 1956

The claimed route is depicted as a defined double hedged lane throughout the length of the route, although still on the original alignment at Titterton, to the east of the current track. No compartment number is shown although the adjacent fields have the same numbers and number 245 is not shown on the map. There are lines across the route at points A and D also south west of the buildings at Millsome (now called Millsome).

4.1.11 OS 1:25,000 maps of Great Britain – Sheet 21/60 SS60 1950

The 1:25,000 'Provisional edition' or 'First Series', was Ordnance Survey's first civilian map series at this medium scale, the forerunner of the modern *Explorer* and *Outdoor Leisure* maps and published in limited colour between 1937-1961. By 1956 it covered 80% of Great Britain, everywhere apart from the Scottish Highlands and Islands. The series is useful for showing rural and urban areas in much greater detail than the standard one-inch to the mile (1:63,360) maps.

- 4.1.12 Minor roads, lanes and private drives/access lanes are all shown as white uncoloured roads/lanes described as 'Other Roads, Poor, or unmetalled'. Public rights of way are not recorded on this series. Routes are shown as pecked lines and two narrow solid lines, labelled F.P. on the map and described as Footpaths only (no mention of Bridleways, RUPPs or ORPAs) in the key. The map contains the standard OS disclaimer 'The representation of any other roads, tracks or paths is no evidence of the existence of a right of way'.

- 4.1.13 Sheet 21/60 SS60 published in 1950 shows the route as a defined uncoloured lane throughout from Taw Bridge to Gulliver Lane. Buildings are shown at Millsome Farm and what appears to be one building at Titterton. No lines across the route appear to be shown along the full length of the route.

4.2 **Tithe Maps and Apportionments**

- 4.2.1 Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring can indicate carriageways or driftways. Public roads were not tithe able. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not included within an individual apportionment are usually included under the general heading of '*public roads and waste*'.

4.2.2 Coldridge Tithe Map & Apportionment 1844

The northern section of Millsome Lane from Taw Bridge to shortly before the 90 degree turn south westwards is not shown on the map apart from what appears to be the first bit of the lane at Taw Bridge. The section of lane that is shown from just north of the bend to Millsome Farm appears as it is shown on later mapping. This section of lane is numbered 693 as is the yard at Millsome (Milson) Farm and the south west end of Millsome Lane between points B and C. Number 693 is included under the holding of Millsome and described as 'Courtlage etc'.

4.2.3 Titterton Lane, between points C and D, appears as it is shown on its original alignment, as shown on later maps before removal of the hedges, and has the apportionment number 708 which includes the yard at Titterton. At the farmyard the route is shown entering the yard on the eastern side of the buildings and leaving the yard on the western side. The number 708, included in the holding of Titterton, is also described as 'Courtlage etc'. Gulliver Lane and routes that are now county roads are numbered 1214. In the apportionment, number 1214 is listed at the end and described as 'Parish Roads'. The turnpike road is numbered 1213 and described at Turnpike Roads.

4.2.4 The holdings of Milson (138 acres) and Titterton (71 acres) appear to have been farmed as one holding as both were occupied by Robert Luxton and owned by Lord Egremont. Lord Egremont was the second largest landowner in the parish after the Hon Newton Fellowes (Eggesford Estate).

4.2.5 Bondleigh Tithe Map & Apportionment 1842

On the Bondleigh Tithe Map Gulliver Lane is coloured yellow as are routes that are county roads today, as well as other lanes and access tracks. The parish boundary is shown by a pecked line following the south western boundary of Gulliver Lane and indicating that the lane lies in Coldridge rather than Bondleigh parish. A break in the northern boundary of Gulliver Lane can be seen where Titterton Lane joins Gulliver Lane (point D).

4.3 **OS Name Books Early 20th Century**

4.3.1 The OS name books gave the definitions of features, houses, rivers, places, lanes printed on the large scale (6" and 25") OS maps first published in the late 19th century. The definitions were typically authorised by the owner where an object (say a farmhouse or gentleman's residence) was privately owned and by the district overseer/surveyor or someone in a public position where they were in public ownership.

4.3.2 OS Name Book 1904 Winkleigh & Coldridge Kew Ref OS 35/1740

Millsome Lane is described 'applies to a lane extending from Millsome to near Taw Bridge' and signed for by Mr L E Sharland, District Surveyor, Copplestone. The spelling of the name was changed from Milson Lane and the entry was initially signed for by Mr Fairchild, District Surveyor, Torrington before it appears it was realised that the lane was in Coldridge and not Bondleigh parish.

4.3.3 Titterton Lane is described 'applies to a lane extending from Millsome to Bondleigh'. The name was initially also signed for by Mr Fairchild but this was crossed out and replaced by Mr A Horne, agent Orchard Wyndham, Williton, Taunton. Millsome and Titterton Farms were part of the Orchard Wyndham estate at that time. Mr Horne had also signed for the names Millsome Castle, Millsome and Millsome Quarry.

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- 4.3.4 In the summary sheets at the end of the book, Mr Sharland has signed for Millsome Lane only and Mr Horne for Millsome and Millsome Castle.

4.3.5 OS Name Book 1904 Bondleigh Kew Ref OS 35/1741

In this book Titterton Lane is described 'A road extending from Titterton to Milson' and signed for by Mr A Horne, Agent. Mr Horne has also signed for Titterton 'a cottage situate 24 chains E of Cholhouse'. Gulliver Lane, the current county road, is described 'A road extending from Titterton to Titterton Cross' and signed for by Mr F E Sharland, R D surveyor as above. Titterton Cross is described as the junction of three roads situate xx chains w of Skinnersland and signed for by Mr Sharland.

4.4 Finance Act Plans and Field Books 1910

- 4.4.1 The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.
- 4.4.2 The allowance given was often on the basis of a figure such as a £1 times 25 yp. The yp refers to years purchase, a method of valuation used to convert a property's income flow (rent) into an appropriate capital sum on the basis that the capital value of a property is directly related to its income producing power. This method of valuation seems to be often used in Finance Act valuations.
- 4.4.3 All of Millsome Lane and the northern portion of Titterton Lane are included within hereditament number 105 Millsome with the southern end lying within or adjacent to hereditament number 36 Clapper Down. The colouring for hereditament number 36 breaks in two places where it crosses Titterton lane at and just north of the Titterton buildings. At the southern end of Titterton Lane the hereditaments numbered 8 and 59 adjoin the eastern boundary of the lane but the lane is not included within those two hereditaments.
- 4.4.4 Hereditament number 105, Millsome a holding of 171 acres was owned by William Wyndham and occupied by J and F Stone on a yearly tenancy from Lady Day 1907 at annual rent of £220. The field book entry for Charges, Easements and Restrictions includes Rights of Way £20 but no compartment numbers or other information is provided. The £20 is carried on to the sub heading Public Rights of Way or User. The 25" OS 2nd Edition mapping used for the Finance Act Plans shows pecked lines labelled 'F.P.' but it is not known whether the £20 allowance is for any of these.
- 4.4.5 Hereditament number 36, Clapper Down Farm a holding of 154 acres was also owned by W Wyndham and occupied by W Hooper on a yearly tenancy from 1900 at an annual rent of £92. The holding had a Right of Common. Under Charges, Easements and Restrictions is stated Footpath £1 x 25 = £25, but no compartment numbers or other information is provided. Under the Particulars, description and notes made on inspection is the comment 'Expensive Farm. Roads to keep up' but no additional information is provided regarding which road this refers to.

4.5 Bondleigh Estate Sale Catalogue 1915 (SHC Ref DD\WY/140/1)

- 4.5.1 Both Millsome and Titterton Farm were part of the Lord Egremont/Wyndham estates and the holdings were part of his Bondleigh estate in Devon. The Bondleigh estate, including eleven farms and other property, was sold at auction in June 1915 and included at Lot 4 – Millsome & Tawbridge Farm, Lot 6 – Clapperdown Farm which included Titterton and Lot 3 – Skinnersland Farm with land adjoining the east side of Titterton Lane.
- 4.5.2 The catalogue states that Millsome and Taw Bridge was tenanted by Messrs Joseph and Frank Stone. The schedule lists the field numbers on Ordnance map, field names or description for that number, cultivation and area. Ordnance number 238 is described as Road (in hand) at an area of 2 rods and 8 perches. The Ordnance numbers correspond to the numbers on the OS 1st Edition 25" to a mile mapping of 1880-1890 and number 238 is the lane heading north west from the farm buildings at Millsome. Millsome and Titterton Lanes have their own ordnance numbers but these are not listed on the schedule.
- 4.5.3 On the plan accompanying the sale catalogue, Millsome and Taw Bridge as Lot 4 is coloured washed pink and the colouring extends across and includes all of Millsome Lane from the now B3220 and extending to and including the northern section of Titterton Lane. The ordnance numbers for the two lanes are not shown on the plan. The county road, B3220, is uncoloured.
- 4.5.4 The southern end of Titterton Lane adjoins Lot 6 – Clapperdown Farm, tenanted by William Hooper. Titterton Lane is numbered 213 and this is not listed in the lot schedule. On the plan the southern end of Titterton Lane is uncoloured as is the unclassified county road known as Gulliver Lane. The land to the west of the section of this lane is part of Clapperdown Farm and the land to the east is part of Millsome, part Clapper Down, part land belonging to a Mr H Luxton not part of the estate and part by Lot number 3 - Skinnersland Farm.

4.6 Parish Council Meeting Minutes 1945 – 2011

- 4.6.1 The Parish Council minute books covering the period 1945 to 2011 (after which the minutes were electronically made) are retained within the parish. The minute book/s dating from the inauguration of the parish council in 1894 and any vestry minutes were not available.
- 4.6.2 From the 1945 minutes onwards there are regular references to public rights of way within the parish which shows an awareness of the rights of way within the parish and that the parish council took the appropriate action when required regarding damaged or missing bridges or obstructions and spent parish funds on such works. Parish Meetings were held when required by Devon County Council in connection with the original parish survey of 1950 and subsequent reviews.
- 4.6.3 In November 1971 the Parish Council was contacted about a proposal for a Dartmoor to Exmoor bridleway. The clerk advised she would identify the suggested path with the maps of the footpaths and bridleways and write to the owners of the land for their observations. At the next meeting the clerk reported that Mr Heywood and Mr Bailey had objected but Mr Beer and Mr Hichens had been agreeable. Mr Bragg had written to say that he thought the path from Milson to Titterton was on Mr Netherway's property. The clerk was then asked to write to Mr Netherway.

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- 4.6.4 There was no further reference to the Dartmoor Exmoor bridleway until March 1974 when Mr Quick asked if the Parish Council had ever heard the outcome of the proposed Exmoor-Dartmoor pathway. The clerk was asked to acquire a map showing all footpaths, bridle paths and unclassified roads in this area.
- 4.6.5 In January 2004 an entry in the minutes under Highway Matters referred to problems at Millsome Lane. A highway officer was named in the minutes and enquiries with him confirmed that the works relating to the clearing out of gullies and ditches at the junction of Millsome Lane and the B3220. Millsome Lane was considered private but it did have channels down the edge leading to gullies. Work was done to stop the water coming out the lane onto the B3220.

4.7 British Newspaper Archive

- 4.7.1 In the Western Times of 24th December 1906, Millsome and Tawbridge with 196 acres were to be let in 1907. The farm was described as being within a ring fence, intersected by good roads. In 1929, Taw Bridge and Millsome of 205 acres were again available to let from Lady Day.

4.8 Parish Survey under National Parks & Access to the Countryside Act 1949

- 4.8.1 The Parish Council survey of their public rights of way to be considered for inclusion on the Definitive map was undertaken in 1950 and the lanes were not included as a proposal.

4.9 Devon County Council Uncompleted Reviews of 1968, 1977 & 1998

- 4.9.1 The Parish Council did not propose Millsome or Titterton Lanes as a public right of way in the previous reviews of the Definitive Map in the parish.

4.10 Aerial Photography RAF 1946-1949, 1999-2000 & 2006-2007

- 4.10.1 On the 1946-1949 aerial photography, the northern section of the route along Millsome Lane is visible as a doubled hedged lane with the hedges trimmed and the surface of the lane visible to point B. The surface of Millsome Lane running south west from Millsome Farm is not visible due to the presence of mature hedgerow trees. This also the same for the southern section along Titterton Lane where there are large trees along the hedge banks/boundaries. The surface of Gulliver Lane is also visible between the trimmed hedgerow banks between points D and E.
- 4.10.2 In 1999-2000 Millsome Lane is clearly visible as a hedged lane but with no hedgerow trees. The eleven separate fields adjoining the lane in 1946 have reduced to six following the removal of hedges. The section of Millsome Lane between points B and C is now clearly visible as the hedge bank trees have gone and the boundary hedges are trimmed. A track is now visible running parallel along the north-west side of this section of Millsome Lane and this track leads into the track across a large arable field along the line of the original Titterton Lane between points C and D; where the original hedge banks and trees have been removed on both sides of the lane. The track at the southernmost end of Titterton Lane, near D, is now located to the west of the old buildings of Titterton Farm and the original route. The surface of Gulliver Lane is not visible due to the presence of the hedgerow vegetation.
- 4.10.3 There is no real change to the route as depicted on the 2006-2007 photography from that of 1999-2000 apart from the section of Millsome Lane between points B and C being less visible.

4.11 Land Registry

- 4.11.1 The northern section of the route from point A to about half way between points C and D is registered to title no DN203037, described as land and buildings lying to the south of Taw Bridge Toll House in the ownership of T and B Dennis. The title register contains a right, from the change in ownership of 1986, which allows the owners/occupiers of the field to the west of the northern section of Millsome Lane and their successors in title, the right of way at all times and for all purposes with or without vehicles and animals over and along that part of Millsome Lane that is shown coloured (blue) on the plan. The owners/occupiers of this field are also given the right to open a gateway or gateways from the said field onto Millsome Lane. The part of the lane coloured blue is the northernmost section of Millsome Lane, south of point A, for the length of the boundary with Taw Bridge Toll House land to the west of the lane.
- 4.11.2 Taw Bridge Toll House appears to have been first registered in 1994 under title number DN345618. The register includes 'A right of way at all times and for all purposes with or without vehicles and animals (in common with others having the like right) over and along that part of Millsome Lane which is shown coloured yellow on the said plan'. The section coloured yellow is the northernmost section of Millsome Lane, south of point A, for the length of the boundary with Taw Bridge Toll House land and is the same stretch of lane coloured blue on the plan under the title for DN203037.
- 4.11.3 The remainder of the land crossed by the route (from about half way between points C and D to point E) is not registered at HM Land Registry.

4.12 Planning Applications

- 4.12.1 Permitted development permission was received in 2016 for the conversion of the farm buildings at Millsome into three dwelling houses. The planning application made to Mid Devon District Council under the Transport and Highways section states that 'the site benefits from an existing access onto the public highway onto an unclassified road of a width and alignment common to rural areas and providing access to the B3220'. The planning officer report described the buildings as being 'accessed down a long private lane known as Millsome Lane, formed of hard core and stone and easily accessed by car'.

5. User Evidence

- 5.1 One user evidence form was received with the Schedule 14 application, from Mr Padley of Exeter a motor cycle user, completed in December 2005. Mr Padley considered the route to be a byway open to all traffic and had used the route between 1981 and 1996, various times a year for pleasure riding on a trails motorcycle. He considered the route to be public based on map evidence and had not obtained permission to use the route or ever been stopped or turned back.
- 5.2 No other user evidence forms were received in respect of the proposal.

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6. Landowner Evidence

- 6.1 Those landowners and occupiers who owned land crossed by or adjacent to the proposal route were contacted individually and advised of the proposal. They were invited to submit their comments and information by way of a completed landowner evidence form or otherwise.
- 6.2 Mr & Mrs Bird have owned Taw Bridge Toll House, which borders the B3220 to the north and the north end of Millsome Lane to the east, south west of point A since 1997. They do not consider Millsome Lane to be public and have not seen or being aware of members of the public using the lane. They have a private access along the lane to access the rear of their property. They would be very concerned at the noise that would be made by motorbikes using the property close to their property. In their view Millsome lane is private land for the use of the farmer and his vehicles.
- 6.3 Mr Knapman and Ms Lowndes have owned the field to the south and west of the Taw Bridge Toll House, which lies between the River Taw and the west side of Millsome Lane since 1986. During this time the field has been let to Mr Dennis of Taw Bridge Farm who also purchased the 187 acres of land running south of the B3220 towards Millsome Farm in 1986. The land has only been visited by Mr Knapman from time to time but from discussions with the tenants and his recollection of the farm there has never been a public right of way between points A and C on the plan. He also recalls a gate across the entrance to the lane at Taw Bridge although unlocked. The fishing on both sides of the River Taw is let to Crediton Fly Fishing Club who were notified of the proposal by Mr Knapman. No response was received from the fishing club.
- 6.4 Mr T Dennis has owned land crossed by the proposal since 1940. He has never considered the way to be public. A member of the public was seen on a motorbike in 2015 and turned back. They have had to keep a fence at the top end of Titterton Lane to stop the neighbour's sheep going into their arable fields. Mr Denis's son and daughter in law also wrote to express concerns at the thought of motor cycles passing by the barns they were in the course of converting at Millsome Farm. They also raised concerns about farm security and use of the lane by large agricultural vehicles with minimal passing places.
- 6.5 Mr Bragg of Bankland Farm has owned the field to the east of the south end of Titterton Lane, near point D, for fifty years. He believes the way may be public, maybe footpath and bridleway. He has only observed use by farmer getting from farm to farm and does not see the point of it as the public roads need repairing anyway.
- 6.6 Mr & Mrs Hosegood own the field which borders the north-eastern side of Gulliver lane between points D and E. No response or comments were received.

7. Rebuttal Evidence

- 7.1 Apart from the comments received from the landowners, no other rebuttal evidence was received.

8. Discussion

Statute (Section 31 Highways Act 1980)

- 8.1 Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years,

it 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 relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.

- 8.2 A Schedule 14 application for the addition of the proposed route as a Byway Open to All Traffic was made by the Trial Riders Fellowship in 2005. The TRF had included documentary evidence and one user evidence form in support of their claim. Whilst the application made by the TRF in 2005 could be considered sufficient to be the required calling into question under section 31 of the Highways Act 1980, the absence of any further user evidence during the required twenty-year period, means that the existence or not of public rights of way cannot be considered under statute.

Common Law

- 8.3 A claim for a right of way may also be consider under common law. At Common Law, evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.
- 8.4 The documentary map evidence records the existence of a route between Taw Bridge and Gulliver Lane since at least the early 1800s as shown on the early 1" to a mile OS maps, although the lanes are not shown on the current alignment until the late 19th century for Millsome Lane and later in the 20th century for Titterton Lane in the vicinity of the old Titterton buildings, north of point D. Millsome and Titterton Lanes are depicted on these early maps in the manner of a minor highway and at a similar status to Gulliver Lane, now recorded as an unsurfaced unclassified county road. By the OS 1" map of 1960, the hedged Titterton Lane has gone, although it was still shown as a lane on the Post War mapping of 1956. All OS maps contain the standard disclaimer. The maps show the physical existence of the lanes and give an indication of how they were viewed in connection with the local road network. The maps do not however, provide evidence as to whether the lanes were publically maintainable at that time.
- 8.5 The Coldridge Tithe map of 1844 has included the lanes within the curtilages of Millsome and Titterton farm buildings and they have not been allocated a separate number or described separately in the apportionment. Gulliver Lane is numbered with the same number as other routes in the parish and called 'parish roads' in the apportionment.
- 8.6 In the OS Name Book of 1904 for Coldridge, the name and spelling of Millsome lane is signed for by the local district surveyor indicating that the lane was considered to be part of the local highway network under his jurisdiction. Titterton Lane was initially signed for by a district surveyor but then crossed out and signed for by the local agent Mr Horne, indicating the lane/land was considered privately owned by the Wyndham estate. In the Bondleigh book of 1904, Titterton Lane is again signed for by the local agent Mr Horne. Gulliver Lane was signed for by Mr Sharland, district surveyor.

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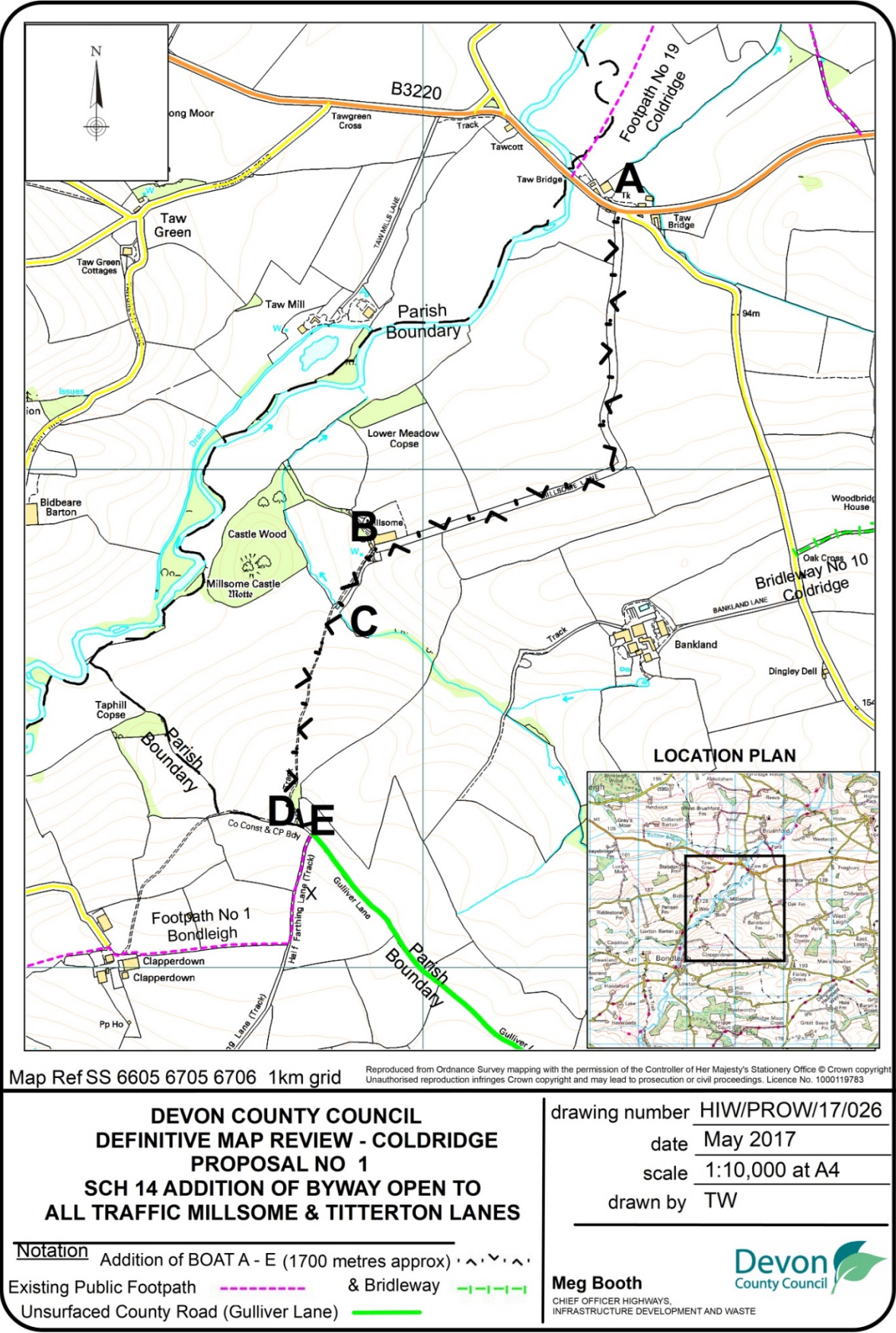
- 8.7 In the Finance Act plans of 1910, the whole of Millsome Lane and north end of Titterton lanes are included within the hereditament 105, Millsome and Taw Bridge. The southern end of Titterton Lane falls with hereditament number 36, Clapper Down Farm and the colouring breaking at two places along the lane could indicate that the lane was excluded from the holding and considered public. Both hereditaments included an allowance for Public Rights of Way or user of £20 and £25 respectively but no information was given as to any compartment numbers. Both hereditaments have pecked lines on the OS 25" base mapping labelled 'F.P.' and the allowance is considered more likely to refer to a cross field path rather than to the lanes. The field book entry for Clapper Down Farm noted 'Expensive Farm. Roads to keep up' but there was no additional information provided to indicate which road this refers to or what type of road such as whether the access to the farm, public or accommodation or for whose benefit. A road considered public would usually be kept in order by the district surveyor if part of the local highway network unless a 'ratione tenure' route.
- 8.8 Both Millsome/Taw Bridge and Clapper Down/Titterton Farms were sold with other farms/houses within the Bondleigh Estate in 1915. In the sale catalogue the compartment numbers for Millsome and Titterton lanes were not listed in the farm schedules. On the sale plan, the whole of Millsome lane and northern section of Titterton Lane were included within the colourwash for the farm indicating that they formed part of the holding. The southern end of Titterton Lane is left uncoloured (as is Gulliver Lane) with the land to the west being part of Clapper Down Farm and that to the east bordered by four different holdings, Millsome, Clapper Down, a Mr Luxton and Skinnersland Farm.
- 8.9 The Coldridge Parish Minute Books (as available) record that the parish council were active with regarding to maintaining the parishes public rights of way. The only references to the proposal route were in 1971 when it appears that the lanes were considered to be part of the proposed Dartmoor – Exmoor bridleway. It is believed that a possible route had been plotted on the map and parish councils contacted for their opinion. It is not known if the proposers had any evidence to support the lanes being public or whether they were just noted as green lanes on the map that provided a link from Bondleigh parish north to Brushford parish through Coldridge. The project subsequently became the Two Moors footpath and the eventual route chosen did not pass through Coldridge parish.
- 8.10 In 2004 highway works were undertaken by Devon County Council to the ditches/gullies at the north end of Millsome Lane but these were in respect to the prevention of flooding on the B3220 at Taw Bridge.
- 8.11 The lanes were not proposed for inclusion as public rights of way in 1950 or in any of the subsequent uncompleted reviews. The Parish Council minutes confirm that parish public meetings had been held in 1950 and for the later reviews. The Parish council have advised that they had not been contacted by anyone regarding the proposal during the current review consultation period.
- 8.12 The whole of Millsome lane and the northern two thirds of Titterton lane are registered to the title for Millsome & Taw Bridge Farms. This title includes the right for the owners of the field to the west of the lane to the right of way at all times and for all purposes along a section of Millsome Lane to access their field.

- 8.13 The title for Taw Bridge Toll House, situate on the B3220 also includes 'a right of way at all times and for all purposes' along the northernmost section of Millsome Lane. If Millsome lane was considered public it would not have been necessary to record these private rights of way on the title records at Land Registry.
- 8.14 One user evidence form was submitted with the TRF Schedule 14 application and no further user evidence forms were received to support the lanes being used by the public as a public right of way.
- 8.15 The major landowner and most of the other adjacent landowners did not consider the lanes to be public and no use by the public had been observed apart from a motorcycle user in 2015 who was turned back. The Parish Council do not support the route becoming a public right of way and as far as they are aware, the route has never being public.

9. Conclusion

- 9.1 In the absence of sufficient user evidence the existence of a public right of way is not considered under section 31 of the Highways Act 1980. Under common law the documentary evidence supports the physical existence of the lanes but sources are contradictory with regard to the route having any public status. Therefore, when taken as a whole, the documentary evidence is considered insufficient to show that a public right of way can be alleged to subsist.
- 9.2 It is therefore recommended that no Modification Order be made to modify the Definitive Map and Statement for the addition of a Byway Open to All Traffic A – B – C – D – E as shown on drawing number HIW/PROW/17/026.

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HIW/18/11

Public Rights of Way Committee
15 March 2018

Definitive Map Review Parish of Bittadon (Part 2)

Report of the Chief Officer for Highways, Infrastructure Development and Waste

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

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a footpath between points AA – AB as shown on drawing number HIW/PROW/17/53 (Proposal 4).

1. Introduction

This report examines an anomaly which has come to light during the current Review in the parish of Bittadon.

2. Background

The background to the current Review was set out in a previous report to the Committee at its meeting of 6 July 2017.

3. Proposals

Please refer to the Appendix to this report.

4. Consultations

General consultations have been carried out with the following results:

County Councillor Andrea Davis	– no comment
North Devon Council	– no comment
Bittadon Parish Meeting	– no comment
British Horse Society	– no comment
Byways & Bridleways Trust	– no comment
Country Landowners' Association	– no comment
Devon Green Lanes Group	– no comment
National Farmers' Union	– no comment
Open Spaces Society	– no comment
Ramblers'	– no comment
Trail Riders' Fellowship	– no comment

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

5. Financial Considerations

Financial implications are not a relevant consideration to be taken into account under the provisions of the Wildlife and Countryside Act 1981. The Authority's costs associated with

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Modification Orders, including Schedule 14 appeals, the making of Orders and subsequent determinations, are met from the general public rights of way budget in fulfilling our statutory duties.

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

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

9. Conclusion

It is recommended that a Modification Order be made to add a footpath in respect of Proposal 4, between points AA – AB as shown on drawing number HIW/PROW/17/53. There are no further proposals for modifying the Definitive Map for the parish of Bittadon.

Should any further valid claim with sufficient evidence be made within the next six months it would seem reasonable for it to be determined promptly rather than deferred.

10. Reasons for Recommendations

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

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Combe Martin Rural

Local Government Act 1972: List of Background Papers

Contact for enquiries: Caroline Gatrell

Room No: ABG Lucombe House

Tel No: 01392 383240

Background Paper	Date	File Ref.
Correspondence Files	Current	DMR/BITTADON

cg170118pra
sc/cr/DMR Bittadon
02 280118

Appendix I To HIW/18/11

A. Basis of Claim

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

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

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

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

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

The Wildlife and Countryside Act 1981, Section 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 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.

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

- (a) it is a way whose main use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles;
- (b) it was shown on the List of Streets;
- (c) it was expressly created for mechanically propelled vehicles;

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- (d) it was created by the construction of a road intended to be used by such vehicles;
- (e) it was created by virtue of use by such vehicles before 1 December 1930.

Extinguishment of rights for mechanically propelled vehicles also does not apply if, before the relevant date (20th January 2005), an application was made under section 53(5) of the Wildlife and Countryside Act 1981, or such an application was determined by a surveying authority, for an order to modify the definitive map and statement as to show a BOAT.

The judgement in the case of *R. (on the application of Winchester College) v Hampshire County Council (2008)* however, found that for such exceptions to be relevant the application must fully comply with the requirements of paragraph 1 of Schedule 14 to Wildlife and Countryside Act 1981. It is appropriate therefore firstly to determine whether or not the claimed vehicular rights subsist and, secondly, whether or not any exceptions apply; if vehicular rights subsist but the exceptions are not engaged then the appropriate status is restricted byway. Such claims may also be considered for a lower status.

B. Definition of *Ratione tenurae* Roads

Research into Highway Board, Rural District Council and Parish Council minutes has indicated that '*ratione tenurae*' roads were, from the late 19th century types of road expected to be used by the public, but with the adjacent landowners/occupiers of the road/lane being responsible for the maintenance of the roads.

Section 25(2) of the Local Government Act 1894 enacted that if a person liable to repair a highway '*ratione tenurae*' failed to do so, after being requested by the district council, the council could repair the highway and recover the expenses from the person liable.

1 Proposal 4: Proposed extension of Bittadon Footpath No. 4, by the addition of a footpath as shown between points AA – AB on plan EEC/PROW/17/53.

Recommendation: That a Modification Order be made to add a footpath between points AA – AB.

1.1 Background

- 1.1.1 The proposal was discovered during the course of the Definitive Map Review as an anomaly in the public highway network which required resolution.

1.2 Description of the Route

- 1.2.1 The route starts at Footpath No. 3 on the south side of St Peter's Church, Bittadon at point AA and proceeds along a concrete track to the junction with the county road and Bittadon Footpath No. 1 at point AB, on the west side of the church.

1.3 Documentary Evidence

- 1.3.1 Ordnance Survey mapping, 1809-1962. Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way".
- 1.3.2 The proposal route between points AA – AB is shown on the 1st Edition large scale 25" Ordnance Survey mapping of 1889 as open and available, a seamless continuation of the county road from the main road, the B3230.
- 1.3.3 Bittadon Tithe Map and Apportionment, 1839-40. Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, limiting the possibility of errors. Their immediate purpose was to record the official record of boundaries of all tithe areas. Public roads were not titheable and were sometimes coloured, indicating carriageways or driftways. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over a route shown. Such information was incidental and therefore is not good evidence of such. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not numbered are usually included under the general heading of '*public roads and waste*'.
- 1.3.4 The Bittadon tithe map was surveyed by Charles Cooper of Alverdiscott, Bideford, matters. The original document is held at the National Archives, with copies for the parish and diocese held locally.
- 1.3.5 The proposal route, along with Bittadon Footpath No. 1 and most of Footpath No. 3, is included within lot 165, a road included within Bittadon Barton. The county road with which they connect is included within lot 160, also part of Bittadon Barton.
- 1.3.6 Finance Act, 1909-10. The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the

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purpose of reducing tax liability. If a route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.

- 1.3.7 The proposal route appears to be excluded between points AA and AB, with the red boundary line of hereditament 1 stopping on either side of it.
- 1.3.8 The Field Book entry for hereditament 1 in Bittadon parish refers to an easement for a footpath between farms. It also refers to a public footpath over Ordnance Survey number 153 at Narracott. There is no deduction for either right of way, nor what is now recorded as Marwood Footpath No. 19 or Bittadon Footpath Nos. 1 and 3.
- 1.3.9 Bittadon, Marwood & West Down Freehold Estate Sale, 1918. Sales documents were compiled when a public auction took place. They were drawn up by the landowner or their agent. The public roads will have been excluded from such sales. It is also likely that if a lot has an easement or public right of way over it, it is likely to be detailed in the particulars. Sales particulars should be treated with some caution. The art of embellishment in advertising is not a newly acquired skill.
- 1.3.10 The proposal route, between points AA – AB, is surrounded by lot 2 of the sale but is not included within the sale.
- 1.3.11 Definitive Map Parish Surveys, 1950s. The compilation process set out in the National Parks and Access to the Countryside Act 1949 involved a substantial amount of work and such records are considered a valuable source of information. The rights of way included in the process had to pass through draft, provisional and definitive stages with repeated public consultations.
- 1.3.12 The path 3 is described as running from Bittadon Church to East Stowford Barton at point AA. This was amended by the County Surveyor so as to start from the county road at Bittadon, point AB, and include the proposal route.
- 1.3.13 Definitive Map and Statement, 1957. The Statement describes Bittadon Footpath No. 3 including the proposal route as starting at point AB *'at the Unclassified County Road at Bittadon proceeding north-eastwards along a Private Accommodation Road (not repairable by the inhabitants at large)'*.
- 1.3.14 Bittadon Barton sale, 1993. Sales particulars should be treated with special caution, as the art of embellishment in advertising is not a newly acquired skill. Nevertheless, if a public right of way were admitted, a convincing reason for disregarding the entry would need to be provided before it could be entirely discounted.
- 1.3.15 The proposal route was not included in the sale.
- 1.3.16 Route Photographs, 2009 and 2014. Site photographs of the proposal route show that it is open and available.
- 1.3.17 Land Registry, 2016. The proposal route between points AA and AB is registered to Bittadon Barton.

1.4 Landowner Evidence

- 1.4.1 No response was received from the landowners at Bittadon Barton.

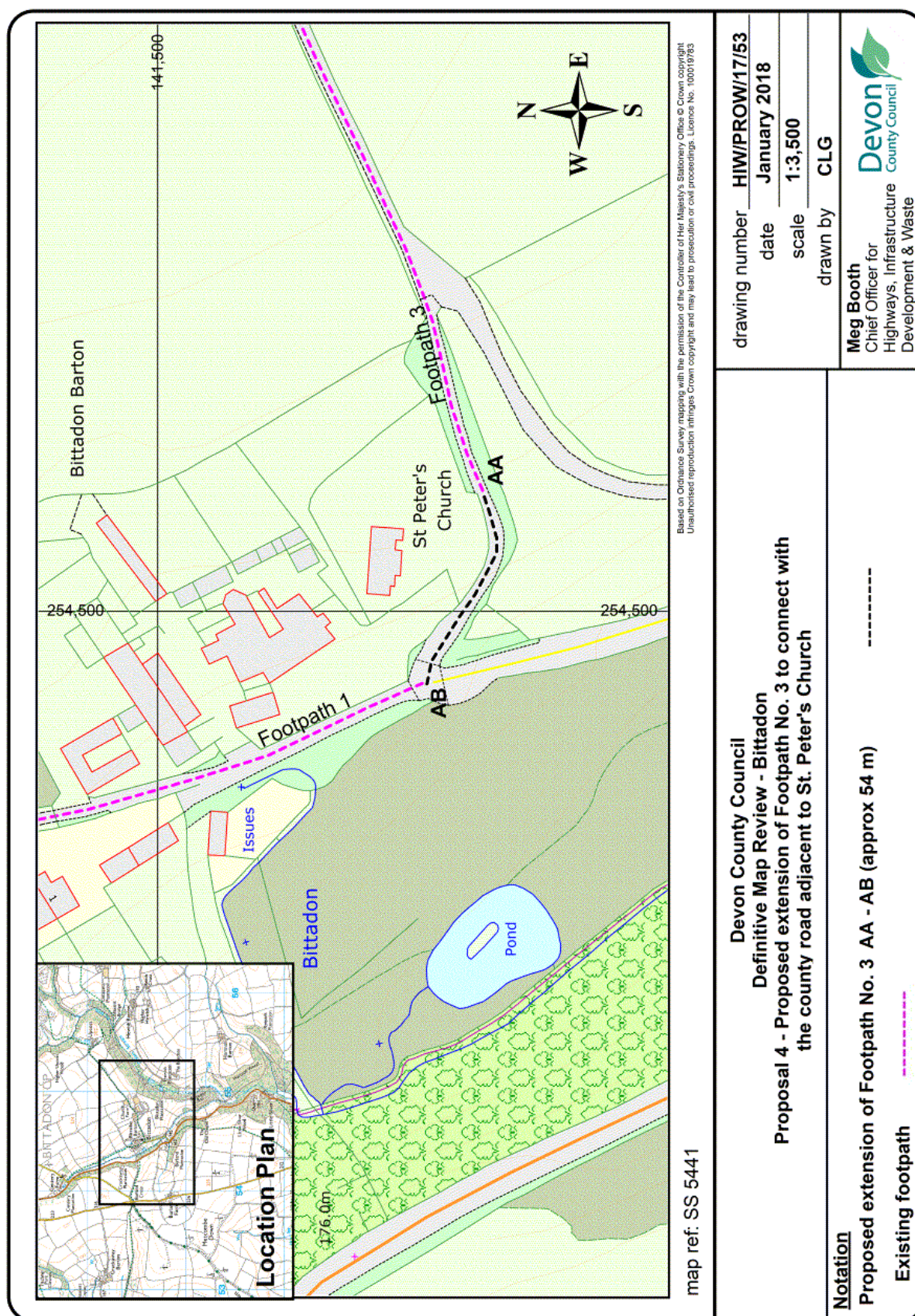
1.5 Discussion

- 1.5.1 The historical highway records demonstrate that a path has physically existed since at least 1899 along the alignment of Footpath No. 3 to meet Footpath No. 1 and the county road on the west side of St Peter's Church, Bittadon, between points AA – AB.

1.6 Conclusion

- 1.6.1 It is therefore recommended that a Modification Order be made to extend Footpath No. 3 to meet the county road by St Peter's Church by adding a footpath between points AA – AB, as shown on drawing number HIW/PROW/17/53, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

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Public Rights of Way Committee
15 March 2018

Definitive Map Review 2016–18

Parish of Buckerell part 2, with part of Gittisham parish

Report of the Chief Officer for Highways, Infrastructure Development and Waste

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

Recommendation: It is recommended that no Modification Order be made in respect of:

- **Proposal 1 in Buckerell, for the claimed addition of footpaths from the parish boundary on the River Otter, passing Colhayes to Footpath No. 15 and the end of Byway Open to All Traffic (BOAT) No. 20, Orchard Lane in Buckerell, between points B–C–D and C–E shown on drawing number HIW/PROW/17/021; with**
- **Proposal 1 in Gittisham, the claimed addition of a footpath from old A30 to the parish boundary between points A–B shown on drawing number HIW/PROW/17/021.**

1. Summary

This report examines the last of three proposals arising out of the Definitive Map Review in the parish of Buckerell in East Devon district. It concerns a claim to add connected footpaths in the parish of Buckerell, as a continuation of a proposal in the adjoining parish of Gittisham.

2. Introduction – Background and Review

The current Review was started with a public meeting in November 2016. There was further correspondence with Buckerell Parish Council, including for informal consultations, when no other valid proposals were put forward to add to those from claims made in 1992.

They are following on from an earlier report in connection with improvements proposed for the A30 in the area that had been presented to a meeting of the Public Rights of Way Sub-Committee in September 1992. It included the investigation of historical evidence for several routes of paths in parts of Gittisham and Buckerell parishes, some of them crossing the existing A30 and the line of the new road as proposed. Claims were made then that the routes, which were not recorded on the Definitive Map, could be affected by alterations with the construction of the line of a new road in the area as proposed with a bypass for Honiton. It was claimed that the path routes in both parishes should be investigated for recording as public rights of way in advance of the alterations. A copy of that report is included in the background papers for this report.

The recommendation in the report noted that the proposed alterations to the A30 in the area of both parishes did not appear to affect any potentially valid claims for additions to the Definitive Map. The conclusions from investigation then of the historical evidence for the routes were that for several of them, some crossing the old A30 and the proposed line of the new road, it was not considered to provide the basis for valid proposals or claims. Three of the routes claimed were considered at that time to have a prima facie case for further investigation as part of the review for Buckerell and Gittisham parishes. One of those claims

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was considered in the first part of a report into the current review process for the parish to a previous Committee meeting and the other is considered in a separate report on the review process for Gittisham parish, which is also ongoing.

The proposals in this report relate to the remaining routes claimed as public footpaths in parts of Buckerell, continuing across the parish boundary from the second of the two routes claimed in Gittisham.

3. Proposals

Please refer to the Appendix to this report.

4. Consultations

General consultations on the applications were carried out in May 2017 with the following results:

County Councillor Philip Twiss	-	supports Proposal 2, but not the claims for the other proposals;
East Devon District Council	-	no comment;
Buckerell Parish Council	-	support the landowner's views on Proposal 2 in their parish, but not the claims for the other proposals;
Gittisham Parish Council	-	do not support Proposals 1 and 2 in their parish;
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	-	no view on Proposal 2 in Buckerell and support all of the other proposals from their own claims.

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

5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

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

9. Conclusion

It is recommended that no Modification Orders be made in respect of both Proposals numbered 1 in Buckerell and in Gittisham parishes, 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 Buckerell parish. However, should any further valid claim with sufficient evidence be made within the next six months it would seem reasonable for it to be determined promptly rather than deferred.

10. Reasons for Recommendations

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

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Feniton & Honiton

Local Government Act 1972: List of Background Papers

Contact for enquiries: Nick Steenman-Clark

Room No: ABG Lucombe House

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Background Paper	Date	File Ref.
Correspondence File	2008 to date	NSC/DMR/GITT

ns070218pra
sc/cr/DMR Parish of Buckerell part 2, with part of Gittisham parish
02 280218

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Appendix I To HIW/18/12

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 (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.

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.

1. **Proposals 1 Buckerell and Gittisham:** Claimed addition of a footpath from the Buckerell/Gittisham parish boundary on the River Otter, passing Colhayes to Footpath No. 15 and the end of Byway Open to All Traffic (BOAT) No. 20, Orchard Lane in Buckerell, points B–C–D and another section between points C–E; with Proposal 1 Gittisham, a claimed footpath from the old A30 to the parish boundary, points A–B shown on drawing number HIW/PROW/17/021

Recommendation: It is recommended that no Modification Order be made in respect of Buckerell Proposal 1 and Gittisham Proposal 1 for the claimed addition of footpaths from the old A30 in Gittisham parish, passing Colhayes to Footpath No. 15 and the end of Byway Open to All Traffic (BOAT) No. 20 in Buckerell.

1.1 Description

- 1.1.1 The claimed paths start in Gittisham from the old line of the A30 road, now on the verge between a diverted section of it and the new A30 trunk road approaching the Honiton bypass, opposite the entrance of the access track for Colhayes Farm (point A). It follows the access track to the farm between fields towards the River Otter, which is the parish boundary with Buckerell. It crosses the river at point B, on a line away from the bridge on the current track, continuing in Buckerell parish to re-join the track crossing fields leading to Colhayes and then turns still following the track passing the farm buildings (point C). The main claimed route continues northeastwards along the track, turning between fields, to a junction with the line of the track recorded as Footpath No. 15 (point D).
- 1.1.2 The line of the other claimed route continues from the track near Colhayes (point C), generally northwards. It crosses the field north of the Colhayes buildings and continues through fields to join the same track of Footpath No. 15 near Buckerell village, at its junction with the end of Byway Open to All Traffic (BOAT) No. 20, Orchard's Lane (point E). (This is at the start of the section of Footpath No. 15 proposed to be upgraded to BOAT from a decision made in 1992, as referred to in the first part of the report on the review process for this parish to the previous meeting of the Committee on 9 November 2017.)

1.2 The Definitive Map process

1.2.1 Gittisham parish

The first part of these routes as claimed was included in the original survey on behalf of Gittisham Parish Council in October 1950 for six paths put forward for recording as public rights of way on the Definitive Map. It was numbered 6 and was described as leading from the Honiton–Exeter road to Colhayes Farm and Buckerell, indicating that it had always been a right of way, shown on the map from A–B.

- 1.2.2 It was noted as being assumed then that its continuation in Buckerell would be claimed in that parish, but also specifying that it was only a private right of way in Buckerell. Other notes from 1956 indicate that no evidence of public use had been supplied by Gittisham Parish Council and letters from the County Surveyor had produced no results, so the path was to be omitted. It did not go on to be included at the Draft and Provisional map stages for recording on the Definitive Map

1.2.3 Buckerell parish

Other parts of the paths as claimed were included in the survey by Buckerell Parish Meeting in May 1951, also numbered as 6 in this parish, crossing the fields from Colhayes to Footpath No. 15 (C–E), but not on the track leading to it further southeast

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(C – D). The path was said to be shown on maps, but no grounds were given for believing it to be public. It was noted more specifically to be a private path then and not used by the public.

- 1.2.4 The section from the River Otter and the Gittisham parish boundary (B–near C) was numbered 19 and described as being from Colhayes to the river. No grounds were given for believing the path to be public and it was again said then to have always been a private path. Neither of the paths were included at the Draft and Provisional map stages for recording on the Definitive Map.

1.3 Documentary Evidence

- 1.3.1 Copies of historical maps and other historical documentary evidence were submitted in support of the Ramblers' repeat of the informal claim in February 2017 following the consultations. They are included with the background papers and are considered for this report in conjunction with other evidence available and discovered.

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

Parts of these claimed routes are shown on earlier maps as enclosed tracks, one leading from the line of the old A30 road to the River Otter and the parish boundary, (A–B) continuing beyond it in Buckerell parish towards Colhayes. A track is shown continuing further on the route from near Colhayes around the fields to join the track from the river now recorded as Footpath No. 15 to the north east (C–D). No line of any other track or path is shown crossing the fields north of Colhayes to join the continuation of that track nearer to Buckerell village (C–E) on any of the earlier maps at smaller scales, which do not usually show the lines of footpaths.

- 1.3.3 Later 19th century historical mapping: Buckerell Tithe Map 1845 & Apportionment 1842; Gittisham Tithe Map 1838 & Apportionment 1839; Ordnance Survey 25"/mile late 1880s

Some later maps at larger scales show parts of the claimed routes in more detail. The Tithe Map for Gittisham parish dated 1838 shows the first section from the old A30 road as part an enclosed track (A towards B) leading round back to the road. A continuation is shown as an unenclosed track from a gate running through a narrow field, then through another gate and leading towards the river (to B). The Tithe Map for Buckerell parish dated 1845 does not show the line of any track or path crossing the field from the river towards Colhayes (A–B towards C). An enclosed track is shown running between the fields on the claimed route to join the track now recorded as Footpath No. 15 (C–D), but no line of any path or track is shown crossing the fields north of Colhayes (C–E), as in the earlier small-scale maps.

- 1.3.4 The only reference to a path is in the Buckerell Tithe Apportionment with the name of one pasture field on the route to the north of Colhayes (C–E), which is given as 'Churchpath' and may refer to what may have been considered its status at that time. Tithe Maps do not usually show footpaths and bridleways, so the older records do not help to provide any clear evidence that the routes may have been considered as public footpaths when they were compiled.
- 1.3.5 The Ordnance Survey 25" to a mile 1st edition map surveyed in 1887 shows the start of the route in Gittisham as a section of enclosed track, with double solid lines and its own parcel number with acreage, providing access to fields from the old A30 road. It continues as two unenclosed tracks or paths together shown with double-dashed lines, not labelled 'F.P.', leading from the end of the track through the narrow field towards the River Otter and the parish boundary. Approaching the river, it is shown

splitting with one path leading to a footbridge, labelled 'F.B.' and the other leading to what is labelled as 'Ford' on the route as claimed (point B).

- 1.3.6 Beyond the river in Buckerell parish, it is shown merging from the footbridge and ford into one path, shown with double-dashed lines and not labelled 'F.P.', continuing alongside a field edge to the yard and buildings of Colhayes. The continuation of the claimed route is shown as an enclosed track running between the fields to join the track now recorded as Footpath No. 15, as in the earlier small-scale maps (C–D).
- 1.3.7 The other line of the route claimed is shown with double-dashed lines and labelled 'F.P.' crossing fields to the north of Colhayes (C–E). Below Orchard's Farm in Buckerell village it is linked to the lines of other paths crossing the same field, shown in the same way, including the section of Footpath No.15 extinguished more recently from the end of Orchard's Lane to the road leading from the village towards Feniton. The Revised New Series smaller-scale map for the area from the later 19th century shows the lines of the tracks and paths on the route as claimed, with the paths shown as single dashed lines, indicated in the key as 'Footpaths'.
- 1.3.8 Later historical mapping, from early 20th century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records
The later edition of the Ordnance Survey 2nd edition 25" to the mile map revised in 1903 shows the claimed routes in the same way as in the 1st edition map. Those later editions of the maps were used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation. Copies of the maps were submitted with this claim. They show the claimed routes to have been included in parts of, or excluded from, three defined and numbered hereditaments, or assessment areas of land. Those were for: Gittisham Farm (26), in Gittisham parish only; Colhayes (95), in Gittisham and Buckerell and; Orchards Farm (84) in Buckerell parish only.
- 1.3.9 The section of the enclosed track leading from the old A30 in Gittisham is included in hereditament 26. In Buckerell, both the track leading from Colhayes (C–D) and the track it joins now recorded as Footpath No. 15 are shown excluded from the adjoining hereditaments. It could suggest that those excluded sections of track may have been considered then as public, in the same way as roads, but their exclusion may have been for some other reason, perhaps due to shared private access rights and not included with ownership of the land. That may have been the case particularly for access to and across the River Otter, where fields were separated from the main land holding.
- 1.3.10 Copies of the Field Books for those hereditaments with details of the assessments for the farms were also included with the claim. They record some deductions in respect of Public Rights of Way or User affecting the value of the land crossed by parts of the routes as claimed, but not on other parts, particularly for those following parts of the enclosed tracks. No such deductions are recorded for any part of Gittisham Farm, although for this claim the route is only along part of the track from the old road, which also will have provided private access to two outlying fields nearer the river separated from fields in other hereditaments.
- 1.3.11 The Field Books for Colhayes and Orchard's Farm do record deductions for Public Rights of Way or User. For Colhayes, 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: 226, 320, 361 and 55 leading to and beyond the farm buildings

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from across the river and the parish boundary. A separate deduction is also recorded for a numbered field, which the map shows to be west of Buckerell village and in another landowner's hereditament without any apparent connection with Colhayes.

- 1.3.12 For Orchard's Farm, there is a note of a 'public path through two fields'. 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: 183, 181, 211 and 210, north of Colhayes to the end of the track recorded now as Footpath No. 15 (point E). However, there are also several other paths shown on the map and labelled 'F.P.' crossing the last field nearest to Orchard's Farm, including one recorded later as the continuation of Footpath No. 15 leading to the road that was extinguished in 1989 (northwest of point E). Those paths connected with others shown in the same way crossing other fields between Orchard's Farm and the nearby Avenhayes Dairy on the road leading out of Buckerell village towards Feniton. They paths were not put forward for recording as public and are not recorded now as public footpaths, or included in this claim.
- 1.3.13 Other details show that there were private rights of way or access for the owners or occupiers of adjoining land, with deductions recorded in the Field Book for Orchard's Farm as 'Easements', but they are not for any of the fields on the claimed routes. The Finance Act records indicate, therefore, that parts of the routes in two of the three hereditaments were considered to carry some form of right of way at the time, although with only one specific reference to them as a 'public path'.
- 1.3.14 Later Ordnance Survey mapping, with Bartholomew's and other maps
Several smaller scale maps from the earlier 20th century, particularly Ordnance Survey and Bartholomew's map editions up to 1946 and 1960, show the line of tracks and paths on the routes as claimed, with the paths shown as dashed lines and not marked 'F.P.'. From those and other map evidence submitted, the Ramblers have suggested that the enclosed tracks marked on the claimed routes show that they were considered at those times to be public roads, including on the line of what is recorded now as Footpath No. 15.
- 1.3.15 Later Ordnance Survey 'A' edition larger-scale mapping of the area from 1959-61, around the time that the Definitive Map was being drawn up, shows the lines of the tracks and paths on the routes claimed as recorded in the earlier editions. The paths are mainly labelled 'F.P.', as previously, but as a 'Track' running through the field in Gittisham leading to the river and parish boundary with the ford and footbridge, also marked with a weir. The showing of some parts of the routes on early and later maps records their 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, or as evidence that parts of it may have been a public road, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way" and may be presumed to apply to earlier and other commercial maps as well.
- 1.3.16 Aerial photography
Earlier aerial photography from 1946-9 shows the lines of tracks on the main route as claimed, with worn lines in places crossing two of the fields north of Colhayes between gates on the other route, perhaps from use by farm vehicles. Later aerial photography between 1999-2000 and 2006-7 shows the access track leading from the old A30 to the River Otter and across it by a bridge and a ford, continuing to the Colhayes Farm buildings and then beyond between the fields to the junction with the Footpath No. 15 track. It does not show the clear worn lines of any path or track on

the other part of the claimed route crossing the fields north of Colhayes to that track further on near Buckerell village, although indicating where field boundaries had changed.

1.4 Parish Council minutes

- 1.4.1 Copies of Buckerell and Gittisham parish minutes from between 1933 and 1973 were submitted in support of the claim. The Ramblers claim that references to one or two paths from Buckerell to Colhayes in connection with the 1932 Rights of Way Act meant that one or both of them were acknowledged then as being public. Later references in 1950, before the survey for the Definitive Map, record a view that the path to Colhayes was one of those in the parish not recognised then as public. There was a suggestion that it should be included in the parish list, although it was said to have been recognised by the Rural District Council that it was a 'service' path, with private rights of access only and not public.
- 1.4.2 In Gittisham, as part of their parish survey, the minutes record that there were discussions about whether the start of the claimed route from the old A30 should be recorded as public. Although assuming that its continuation in Buckerell parish would be included in their survey, no evidence of public use was supplied when requested, despite indicating some local knowledge of it as a path, although not referring to as a public footpath. Later discussions in 1957 about repairing the footbridge over the River Otter include references to the claimed route as an alternative footpath, although in 1959 it was noted specifically that the path though Colhayes was not to be recorded.
- 1.4.3 Later Buckerell parish minutes in 1965 record complaints by the tenant of Colhayes that the only access to the road in Buckerell at times of flooding using the track was blocked. It appears mainly to have been initiated as a dispute between adjoining landowners and their tenants about private vehicular access, probably for farm vehicles. Although referring to other named people's knowledge of its use for vehicular traffic, it does not indicate that the use was by the wider public and in vehicles other than just for farming. Further discussions in 1973 about replacement of the River Otter footbridge across the River Otter at the end of Footpath No. 15 onto footpath No. 2 in Gittisham, refer to the suggestion that the recorded public footpath crossing it could be diverted onto the claimed route to Colhayes crossing the privately-owned bridge on it, but which was rejected in favour of the public footbridge being rebuilt.

1.5 Definitive Map Reviews and Consultations

- 1.5.1 There have been no previous suggestions put forward that these routes should be considered for recording as public rights of way from consultations with Parish Councils in earlier review processes that were started but not completed. Gittisham parish indicated in 1978 that the rights of way shown then on the map were all correct and Buckerell's main concerns were with replacing the footbridge across the River Otter at the end of Footpath No. 15 onto footpath No. 2 in Gittisham.

1.6 User Evidence

- 1.6.1 No supporting evidence of claimed use was submitted with this claim for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

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1.7 Landowner Evidence

- 1.7.1 The owners of the land crossed by the routes of the footpaths as claimed did not complete landowner evidence forms in response to the consultations on this proposal. A solicitor acting on behalf of a group of the landowners affected submitted a letter in response after seeing details of the evidence supporting the claims. He indicated that his clients opposed the claims strongly and intended to fight them as far as they have to be fought.
- 1.7.2 The starting point for his views was the County Council report in 1992, for which the assessment of the evidence concluded generally against the claims then for both of the Colhayes paths. He considered that the only piece of evidence possibly supporting footpath status from the conclusion then was that from the Finance Act, although without having seen details of which fields were involved or the precise routes of the footpaths from the base Ordnance Survey maps. He believed that the process was mainly an exercise in valuation and taxation, which had been discussed in a court case, *Maltbridge*, in 1998 with its weight limited and viewed as corroborative, with other cogent evidence needed for it to support on that basis.
- 1.7.3 That evidence would not come from being shown on old maps, which will have only shown the routes as paths but with no indication of status although used, which is not evidence of use by the general public. He reported that 19th century railway evidence had indicated that the southern approach to Colhayes was a private accommodation road and not a public right of way. They were not claimed in the 1950s and despite various opportunities were not thought then to be public routes.
- 1.7.4 He indicated that there is no evidence that the public have used them and there has been no public maintenance, particularly of the bridge crossing the River Otter and the ford next to it being just about useable at low water. The southern access was never the main entrance to Colhayes, but it was previously the north-eastern track on the claimed route from Buckerell, with the private bridge over the river built later for use as the current access track from the south. He believed that the public could not have had access over the bridge without the County Council having full responsibility for maintenance, including all use by farm vehicles, or putting in a new footbridge.

1.8 Discussion – Statute and Common Law

- 1.8.1 **Statute (Section 31, Highways Act 1980)**
There has been no formal application to record these claimed routes as public footpaths, with no challenge to their use and no event for calling any use of them by the public into question such as notices, or any obstruction to prevent their use. No user evidence has been submitted for investigating in connection with any previous claims connected with the parish review process and none has come forward as part of the current review, including after the consultations.
- 1.8.2 If there had been any formal application, challenge or obstruction, it could be used for investigating in accordance with the test for statutory dedication under Section 31 of the Highways Act 1980, taking into account any evidence of use and of the landowner's lack of intention to dedicate. However, with no evidence of use submitted to support the claimed additions or later, there is none during any 20-year period before the date of the Ramblers' letter with the informal claim, if that did provide a date for calling their use into question, to consider whether any statutory presumption of dedication has arisen from use by the public.

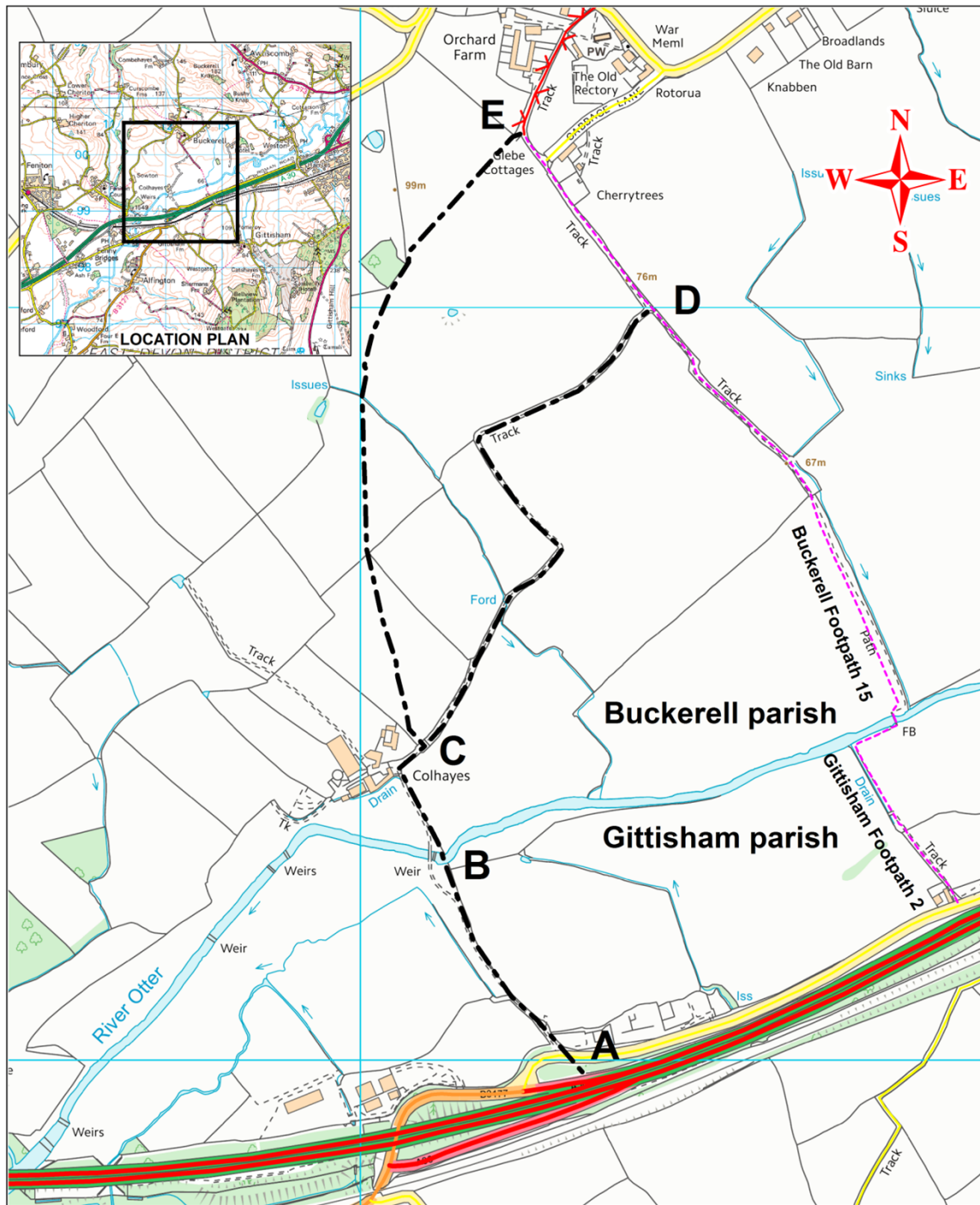
- 1.8.3 With no event or date that can be specified for calling use of the routes into question, no formal application and no evidence of use submitted, it can only be considered in relation to a test under common law. That involves historical and documentary evidence submitted with the claim, with other evidence from which any earlier use could be inferred and with reference to landowner evidence.
- 1.8.4 **Common Law**
Considering this informal claim in relation to common law requires taking into account the historical documentary evidence submitted and other historic maps and evidence discovered, but without being able to consider any evidence of claimed actual use by the public. Historical mapping shows that parts of the tracks to and beyond Colhayes on the start of the claimed routes and the continuation on one of the routes have existed physically since at least the early 19th century. The paths crossing fields north of Colhayes on the other part of the routes claimed were not shown on earlier small-scale maps, but were shown on later larger scale maps and some at smaller scales more recently. None of that mapping on its own can be taken as evidence indicating that the tracks were considered then to be public roads, rather that private access to farm buildings and fields, particularly for farm vehicles.
- 1.8.5 The Tithe Maps from the first half of the 19th century on their own do not provide any support for the claim that the routes were considered to be public at those times. They are not significant in showing the route in the same way as others now recorded as public roads, which also included others that have never been recorded as public and are now private tracks for access only to land or properties.
- 1.8.6 The later Finance Act records show parts of the claimed routes on tracks mainly excluded from the hereditament areas, in the same way as other routes now recorded as public roads. Although it could suggest that they might have been considered then as included in the public road network, it may have been for other reasons relating to ownership and other routes are shown excluded which are not now recorded as public roads. The deductions for other sections of the claimed routes not on tracks could suggest that some parts of them may have been considered to carry public rights in the early 20th century, although without referring to them as for 'public' rights of way or footpaths for the deductions in the assessment process.
- 1.8.7 There is no more specific evidence to show how that was determined as the basis from which any earlier dedication by the landowner could be inferred, or the extent to which there may have been acceptance and use then by the wider public rather than by a more limited number of people in the locality. Later Ordnance Survey and other mapping with aerial photography show only that the tracks continued to exist on their current line more recently up to the present, with some showing the continuation of paths crossing fields on other parts of the routes as claimed, although subject to the usual disclaimer.
- 1.8.8 The references to parts of the routes being recorded by the Rural District Council under the 1932 Act as what may have been considered as public footpaths in the parishes soon after that date could suggest that they may have had the reputation then of being public. However, those were not from any statutory process for recording public rights of way at that time and are only reported by the parishes in other records. There is no reference to any more significant evidence indicating the basis then for that belief, relating either to the extent of any use by the public or the views and intentions of landowners to add more substantial weight for any inference of an earlier dedication.

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- 1.8.9 Other references to parts of the claimed routes in the Parish minutes are not consistent in showing any clear evidence that all of them as claimed together were considered to be public rights of way in both parishes, with conflicting views recorded and some appearing to be about private rights of access. They do not add any significant weight to evidence for their reputation of being public at those times, earlier or later, particularly from not going forward in the procedures for recording public rights of way on a statutory basis, although with parts being included initially in the Parish surveys. There was also no objection from the Parish Council or from anyone else to the routes being omitted at any of the stages in the procedures leading up to them not being recorded on the Definitive Map.
- 1.8.10 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 routes had the reputation of being public footpaths in the past, or more recently. In particular, no claims for their addition or evidence relating to their past use have been made as part of the procedures for any earlier review procedures since then, in both parishes.
- 1.8.11 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 routes being considered as public footpaths, or an inference that they had the reputation of being available and used by the wider public. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the routes as public footpaths, or that the public may have accepted any dedication and used them at any time in the past on foot, or have continued to use them on that basis.

1.9 Conclusion

- 1.9.1 From this assessment of the evidence submitted with the claim as made and as considered previously in 1992, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support any claim that public rights can be reasonably alleged to subsist on the routes 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 routes in respect of the informal claim made for the Proposals numbered 1 in Buckerell and Gittisham parishes.



map ref SY 1100-1200/1199-1299/
1198-1298

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DEVON COUNTY COUNCIL

Definitive Map Review, Gittisham & Buckerell
parishes

Informal Consultations, Proposal 1 Gittisham &
Proposal 1 Buckerell:
Claimed footpaths - A30 to Buckerell

Notation

Claimed footpaths, A-B-C-D; C-E

Existing footpaths

drawing number HIW/PROW/17/021

date Apr 2017

scale 1: 7, 500

drawn by NSC



Meg Booth

ACTING HEAD OF HIGHWAYS, INFRASTRUCTURE DEVELOPMENT AND WASTE

HIW/18/13

Public Rights of Way Committee
15 March 2018

Definitive Map Review 2016–18 Parish of Gittisham

Report of the Chief Officer for Highways, Infrastructure Development and Waste

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

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 2 to add a public footpath between the minor road Hayne Lane at Hayne Farm to the minor road Parsonage Lane at Goldcombe Farm, points C–D shown on drawing number HIW/PROW/17/024.

1. Summary

This report examines the second of two proposals arising out of the Definitive Map Review in the parish of Gittisham in East Devon district. It concerns a claim to add a footpath based on its omission from the Parish Council's survey in 1950 for the Definitive Map and additional historical evidence submitted with an informal claim. The first proposal for a claimed footpath in Gittisham, with its continuation across the parish boundary into Buckerell, is considered separately in the second part of a report on the review process for Buckerell parish.

2. Introduction

The original survey by Gittisham Parish Council in October 1950 under s.27 of the National Parks and Access to the Countryside Act of 1949 produced a map and details of six footpaths submitted to the County Council. Comments were added on behalf of Honiton Rural District Council in December 1950. Two of the routes surveyed continued across the parish boundary into Buckerell, with one not put forward for the Draft Map as its continuation was said to be a private right of way in that parish. Another was considered to be a bridleway, recorded in two parts, with continuations into other adjoining parishes, Sidmouth and Ottery St. Mary. An additional footpath, numbered seven, was identified three years later and noted then to have been omitted in the original survey in 1950 due to an oversight.

Four footpaths and the two sections of bridleway, but not the additional path, were recorded for consultations at the Draft Map stage in 1957 and included on the Provisional Map. All of those six routes were recorded on the Definitive Map, considered as having existed from the relevant date of 1st September 1957. The reviews of the Definitive Map under s.33 of the 1949 Act, which commenced in the 1960s and 1970s but were never completed, produced no suggestions by or on behalf of the Parish Council. In 1978, it was noted that they considered all of the paths to be correct as shown on the map.

A report in connection with improvements proposed for the A30 in the area was presented to a meeting of the Public Rights of Way Sub-Committee in September 1992. It included the investigation of historical evidence for several routes of paths in parts of Gittisham and Buckerell parishes, some of them crossing the existing A30 and the line of the new road as proposed. Claims had been made that the path routes, which were not recorded on the Definitive Map, could be affected by alterations with the construction of the line of a new road

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in the area as proposed then with a bypass for Honiton. It was claimed that the path routes in both parishes should be investigated for recording as public rights of way in advance of the alterations. A copy of that report is included in the background papers for this report.

The recommendation in the report noted that the proposed alterations to the A30 in the area of both parishes did not appear to affect any potentially valid claims for additions to the Definitive Map. The conclusions from investigation of the historical evidence for the routes were that for several of them, some crossing the old A30 and the proposed line of the new road, it was not considered to provide the basis for valid proposals or claims. Three of the routes claimed were considered then to have a prima facie case for further investigation as part of the review for Buckerell and Gittisham parishes. Two of them have been considered in other reports for Buckerell parish, with the third included in the Appendix to this report as Proposal 2 in Gittisham.

The following additional Orders from a stopping-up and diversions to footpaths in Gittisham have been made and will require the making of a Legal Event Modification Order for recording on a revised Definitive Map in due course:

- (a) Highways Act 1959 s. 108, Magistrates' Court Stopping-up Order, part of Landscore Lane, reserving a bridleway 1977 (numbered 6 in Gittisham, also affecting Ottery St. Mary);
- (b) Highways Act 1980, Devon County Council (Footpath No. 2, Gittisham), Public Path Diversion Order 1992; and
- (c) Highways Act 1980, Devon County Council (Footpath No.5, Gittisham), Public Path Diversion Order 1994.

The current number of recorded public rights of way in the parish is four footpaths with three bridleways, one numbered as in two parts. Some of the informal claims made originally on behalf of the Ramblers in 1992, as repeated in February 2017 and including a route crossing from Gittisham into parts of the adjoining parish of Buckerell, have been picked up for further consideration as proposals in the current review process for both parishes.

3. Background

The current Review was started with a public meeting in December 2016. There was further correspondence with the Parish Council, including the informal consultations, when no further valid proposals were put forward to add to those from the claims made in 1992.

4. Proposals

Please refer to the Appendix to this report.

5. Consultations

General consultations on the applications were carried out in May 2017 with the following results:

County Councillor Philip Twiss	-	does not support the claims for any of the proposals;
East Devon District Council	-	no comment;
Gittisham Parish Council	-	do not support the claims for 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 both proposals from their own claims.

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

6. 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.

7. Legal Considerations

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

8. Risk Management Considerations

No risks have been identified.

9. 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.

10. Conclusion

It is recommended that no Modification Order be made in respect of Proposal 2 in Gittisham parish, as the evidence is considered not sufficient to meet the requirements of the legislation. Details concerning the recommendation are discussed in the Appendix to this report. The remaining proposal for the other route claimed originally in 1992, Proposal 1 in Gittisham continuing across the parish boundary into adjoining parts of Buckerell, is included in a second report to complete the review process in Buckerell parish.

There are no recommendations to make concerning any other modifications in Gittisham parish. However, should any further valid claim with sufficient evidence be made within the next six months it would seem reasonable for it to be determined promptly rather than deferred.

11. Reasons for Recommendations

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

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Feniton & Honiton

Agenda Item 8

Local Government Act 1972: List of Background Papers

Contact for enquiries: Nick Steenman-Clark

Room No: ABG Lucombe House

Tel No: (01392) 382856

Background Paper	Date	File Ref.
Correspondence File	2005 to date	NSC/DMR/GITT

ns070218pra
sc/cr/DMR Parish of Gittisham
02 280218

Appendix I To HIW/18/13

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 (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.

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.

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1. **Proposal 2: Claimed addition of footpath between minor road Hayne Lane at Hayne Farm to minor road Parsonage Lane at Goldcombe Farm, points C–D shown on drawing number HIW/PROW/17/024.**

Recommendation: It is recommended that no Modification Order be made in respect of Gittisham Proposal 2 for the claimed addition of the footpath.

1.1 Description

- 1.1.1 The route for this claim starts at the surfaced entrance track to Hayne Farm from the minor road, Hayne Layne, leading from Weston village in Buckerell parish towards Gittisham Hill (point C). It runs along the access track between the farm buildings, continuing along an unsurfaced track beyond the farm through fields then turning generally southwards to continue further across fields. It runs around the buildings of Goldcombe Farm and through a gateway to end on the minor road, Parsonage Lane, running from Gittisham Hill to Gittisham village (point D).

1.2 The Definitive Map process

1.2.1 Parish Survey

This route was not included in the original survey on behalf of Gittisham Parish Council in October 1950 for six paths to put forward for recording as public rights of way on the Definitive Map. A survey sheet for it as a path numbered 7 was partly completed later, but not dated, with a note that the Chairman of the Parish Council had stated that:

“... this path is required and was omitted due to an oversight. The R[ural] D[istrict] C[ouncil] confirm this. The path has been pencilled in on the map.” There were no other notes, with none on the grounds for believing it to be public, or any comments on behalf of Honiton Rural District Council, which were added on the survey forms for the other paths. Comments by the County Council indicated that it was a public footpath, with a description added by the Divisional Surveyor, signed and dated by him in November 1953.

- 1.2.2 The map used for the Gittisham Parish Council’s survey shows the line of the path numbered 7 drawn in pencil on the route of the path as described by the County Surveyor. It includes notes and initials for the gates and fences on the route from that description, in pen as with the other paths surveyed originally. Subsequently only the six paths in the original survey were put forward, for the Draft and Provisional map stages, without this additional seventh path, which led to all of those six being recorded on the Definitive Map but not the claimed route.

1.3 Documentary Evidence

1.3.1 Early historical mapping – early 19th century: Ordnance Survey, Surveyors’ Drawings 1806-7 and 1st edition 1”/mile map 1809 and later (Old Series); Greenwood’s map 1827

No lines of any tracks at Hayne or Goldcombe Farms, or paths on any parts of this claimed route crossing the land between them, are shown on any of the earlier maps at smaller scales, which do not usually show the lines of footpaths.

1.3.2 Early 19th century documents – Gittisham Court Leet presentments 1803–19

Copies from Gittisham Court Leet presentments from the early 19th century were submitted with the claim. Extracts were transcribed of reports that a bridge in a field called Ten Acres was out of repair in 1803, a bridge between two Closes called Jarvis Park and Ten Acres was said to be dangerous and out of repair in 1811 and in 1819

a rail was wanted at the bottom of Long Meadow 'in the footpath to Honiton'. They were noted as being liable for repair by the landowner, then Thomas Marker.

- 1.3.3 The Ramblers claim that they can only relate to a footpath identified by Ordnance Survey for its later maps as passing along the claimed route between Hayne Farm and Goldcombe Farm, from the field names as identified in the Tithe Map. However, later records and maps suggest that such a route towards Honiton may have been via Hodges Lane before the railway line was built and, without being identified specifically as a 'public' footpath it may have been related to other rights of access. Courts Leet were also used for other more general functions, such as to resolve other issues from any problems or disputes between tenants and the lord of the manor, including about manorial and common rights. They are likely to have included those connected with a range of tenants' rights, such as access to land for farming, separately from what might have been considered as any responsibility for rights of way and roads used by the wider public at that time.
- 1.3.4 Later 19th century historical mapping: Buckerell Tithe Map 1845 & Apportionment 1842; Gittisham Tithe Map 1838 & Apportionment 1839; Ordnance Survey 25"/mile late 1880s
Some later maps at larger scales show parts of the route in more detail. The Tithe Map for Gittisham dated 1838 shows areas of land around Hayne Farm to have been detached parts of Buckerell parish then, which are now in Gittisham. The Tithe Map for Buckerell parish dated 1845 shows only a short entrance track to the Hayne Farm yard and buildings from Hayne Lane, but no lines of any path crossing the fields beyond. There is no reference to any path in the Apportionment or in the names of the fields on that part of the route.
- 1.3.5 The Gittisham Tithe map does not show any line of a path crossing the fields on the rest of the claimed route to Goldcombe. One of the fields on the route is named in the Apportionment as 'Path Halden', which is also written on the map as with the names of other fields, although without showing any line of a path crossing it. Tithe Maps do not usually show footpaths and bridleways, so the older records do not help to provide any evidence showing which line of a path on the route may have existed at that time to be recorded on later maps and considered for claiming now as a public footpath.
- 1.3.6 The Ordnance Survey 25" to a mile 1st edition map surveyed in 1887 shows the line of a path with double-dashed lines from the yard at Hayne Farm labelled 'F.P.' leading into the adjoining field. It is shown there splitting into two paths crossing the field, with one turning north-west into a field adjoining the railway to join Hodges Lane, leading from the old A30 road and under the railway line, to the buildings at Hodges and beyond into fields. The other path is shown in the same way on the line of the route as claimed, turning to continue across fields to the boundary of the yard and buildings of Goldcombe Farm on Parsonage Lane.
- 1.3.7 It is shown connected with two other paths linking to fields, one leading back into a field at the end of Hodges Lane and the other into fields nearer Goldcombe Farm. The Revised New Series smaller-scale map for the area from the later 19th century does not show the lines of any paths on the route as claimed, but shows the line of the track on Hodges Lane.
- 1.3.8 Later historical mapping, from early 20th century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records
The later edition of the Ordnance Survey 2nd edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1st edition map. Copies of the same

Agenda Item 8

later maps were used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation. Copies from those maps were submitted in support of this claim. They show the claimed route to have been included in parts of three defined and numbered hereditaments, or assessment areas of land. Those were for: Hayne Farm (25); Glebe land (88) and; Goldcombe Farm (84).

- 1.3.9 Copies of the Field Books for those hereditaments with details of the assessments for the farms and land were also submitted with the claim. They record some deductions in respect of Public Rights of Way or User affecting the value of the land crossed by two fields on part of the route as claimed, but not on other parts. One also has deductions relating to other fields nearby with paths shown crossing them, or tracks leading to other fields. No such deductions are recorded for any Goldcombe Farm fields towards the end of the claimed route or for the Glebe land in the middle, although referring to a footpath and 'Right of Way' through the field with the Ordnance Survey number 289 crossed by the path on the route.
- 1.3.10 The Field Book for Hayne Farm does record deductions for Public Rights of Way or User, with a total deduction of £50 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 'Right of Way' through several fields or on a track, with Ordnance Survey numbers 151, 189 and 191. Only one of those fields is on the claimed route (189), with the other numbers for Hodges Lane and the field at its end beyond the Hodges buildings with a path shown connecting to the path on the claimed route. It is significant that there are no deductions for any of the fields on the route near or next to Hayne Farm, or for the yard itself with the farm buildings adjoining Hayne Lane.
- 1.3.11 A separate charge is also recorded for a 'Right of Way for Occupier of Ref. No. 89 thro: Ord. No. 200'. That is for a numbered track from the road south of Hayne Farm, shown on earlier maps as the former site of 'Highe Hayne', leading to the two fields of a smaller hereditament. That will have been for private rights of access by the owner of that land and is recorded as a separate deduction for 'Easements', although referred to in the same terms as the other deduction, only as a 'Right of Way'.
- 1.3.12 Hodges Lane is not shown on the map excluded from the Hayne Farm hereditament and the deductions could refer to other rights for using it as access to other fields at its end or near and beyond those on the claimed route. The same details of charges for Hayne Farm are written in the Field Book for Goldcombe Farm but crossed out, perhaps to correct a mistaken entry for the wrong tenanted farm in the same ownership.
- 1.3.13 The overall Finance Act Assessment (or 'Domesday') Book for Gittisham does not record details of any deductions, including for Public Rights of Way or User or Easements, for any of the hereditaments in the whole parish and appears not to have been completed fully. Some of the Finance Act records show, therefore, that only two fields in the middle of the claimed route were considered to carry some form of right of way at the time, but not others on the route, although with no specific reference to it as a 'public' footpath. That may have been in connection with other rights as part of another route for access to land on other parts of the estate nearby in the same ownership with different tenants.
- 1.3.14 Later Ordnance Survey mapping and Bartholomew's maps
Smaller scale maps from the earlier 20th century, particularly Ordnance Survey and Bartholomew's map editions, do not show the line of any path on this claimed route. Later Ordnance Survey 'A' edition larger-scale mapping from 1958-60, around the

time that the Definitive Map was being drawn up, shows the line of an unenclosed track on the route leading from the Hayne Farm yard, labelled 'Track'. It continues on the claimed route labelled 'F.P.' as in earlier editions, connected to Hodges Lane and crossing another track from Rapshayes Farm to the southeast into another field, then as a path onto a track leading to the yard of Goldcombe Farm.

1.3.15 Aerial photography

Earlier aerial photography from 1946–9 shows the worn track leading from Hayne Farm into fields on part of the claimed route, connecting to other tracks leading to Hodges Lane, probably from use by farm vehicles. Other fields on the route beyond it do not show any worn track that might indicate use on foot, particularly where shown as having been cropped. The worn track leading from Goldcombe Farm on the rest of the route is shown, probably from farm vehicles using it for agricultural access to those and other adjoining fields, including from the road through the field next to the farm buildings.

- 1.3.16 Later aerial photography between 1999–2000 and 2006–7 shows the tracks from Hayne Farm and Goldcombe Farm on parts of the route, continuing to other adjoining fields used for vehicular access. Hodges Lane is shown as cut off from the old A30 road by the line of the new trunk road leading into the Honiton bypass. No worn lines of any paths or other tracks are shown crossing the fields connecting the farms to suggest that there may have been any continuous route on the ground between them which might have been available for use on foot, or used on foot at those times.

1.4 **Definitive Map Reviews and Consultations**

- 1.4.1 There have been no previous suggestions put forward that this route should be considered for adding in earlier review processes that were started but not completed. The proposal for addition of the footpath was included in the consultations on the basis of the informal claim submitted by the Ramblers. The responses included views from or on behalf of the landowners affected objecting to its addition and from Gittisham Parish Council, who did not support it.
- 1.4.2 There was also a response from two residents of Gittisham parish in support of the proposals in the parish, particularly for this claimed route. They did not refer to having ever used the claimed route, but said that it would be an ideal mid-length circular walk to avoid sections on the very busy, narrow and bendy sections of the A375 Sidmouth road. It would be of great benefit to the residents of Gittisham vale in the Heathfield area of Honiton east of Hayne Lane and including the 300-home development to the west of it on other parts of Hayne Farm's land in fields immediately to the north of the route, as well as to villagers.
- 1.4.3 Factors such as whether the route would be beneficial to the area cannot be taken into account under the provisions of the Wildlife and Countryside Act. It would be up to the developers and planners to suggest any additional access links as part of that development, which could involve other land crossed by parts of the claimed route but would need to be with the agreement of the landowner.

1.5 **User Evidence**

- 1.5.1 No supporting evidence of claimed use was submitted with this claim for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

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1.6 Landowner Evidence

- 1.6.1 The agent acting for the main owners of land crossed by the route of the claimed footpath completed a landowner evidence form in response to the consultations on this proposal. It was submitted by the solicitors acting on behalf of the landowners in response after seeing details of the evidence supporting the claim, with a letter outlining detailed challenges to the evidence in objecting to the proposed addition. The agent indicated that the claimed route crossed land owned by Trustees of the Combe Estate or Glebe land held by them under lease. He had believed that the route was not public since he started managing the estate in 1999 and had not seen or been aware of the public using it. He had not required people to ask permission when using it and nobody had sought permission.
- 1.6.2 He had not turned back or stopped anyone from using the claimed route, as he had not seen anyone trying to use it. He had not obstructed it and had not put up notices to say that it was not public. He indicated that the estate had made a Section 31 deposit to show lack of intention to dedicate. He reported that there were gates on the route and other obstructions, highlighting that Hayne Farm is a working farm and the claimed route will have been obstructed from time to time throughout the period of his knowledge by farm operations. For additional information, he referred to the letter written by the solicitors on behalf of the Trustees of the estate.
- 1.6.3 The letter outlined the factual background, with details of the Trustees of the Combe Estate as freehold owners and leaseholders of the land, indicating that those are registered with Land Registry. It also outlined the legal framework for the authority's responsibility to keep the Definitive Map under review and consideration of evidence for making changes in relation to such claims. It referred to the legal tests and their interpretation by the Courts, citing the relevant case law in applying those tests to the evidence put forward in support of this claim.
- 1.6.4 Comments on the documentary evidence are in the categories as it was submitted by the Ramblers in the claim and included in the above consideration for this report. It was noted specifically that there was no evidence of use for the claimed route and therefore no period for time for any requisite use as a public way.
- 1.6.5 The comments are detailed in consideration of each category of the evidence from Tithe Maps, Court Leet presentments, Ordnance Survey maps, Finance Record plan and Field Book entries, with Parish Council comments, referring to relevant case law for interpretation of the Tithe and Finance Act maps. Overall, they submit that the evidence submitted for the Ramblers' claim was considered to be lacking and does not meet the relevant threshold to justify making a Modification Order.
- 1.6.6 The owners of Goldcombe Farm did not complete landowner evidence forms, but wrote letters to say that they vigorously opposed the claimed footpath. They suggested that should there be a need for a footpath, it should perhaps be parallel with the railway line on the south side, along the northern boundary of the Hayne Farm land.

1.7 Discussion – Statute and Common Law

1.7.1 Statute (Section 31, Highways Act 1980)

There has been no formal application to record this claimed route as a public footpath, with no challenge to its use and no event for calling any use of it by the public into question such as notices, or any obstruction to prevent its use. No evidence of any use has been submitted for investigating in support of any previous

claims connected with the parish review process and none has come forward as part of the current review, including after the consultations.

- 1.7.2 If there had been any formal application, challenge or obstruction, it could be used for investigating in accordance with the test for statutory dedication under Section 31 of the Highways Act 1980, taking into account any evidence of use and of the landowner's lack of intention to dedicate. However, with no evidence of any earlier or current use submitted to support the claimed addition, there is none during any 20-year period before the date of the Ramblers' letter with the informal claim, if that did provide a date for calling its use into question, to consider whether any statutory presumption of dedication has arisen from use by the public.
- 1.7.3 With no event or date that can be specified for calling use of the route into question, no formal application and no evidence of use submitted, it can only be considered in relation to a test under common law. That involves historical and documentary evidence submitted with the claim, with other evidence from which any earlier use could be inferred and with reference to landowner evidence.
- 1.7.4 **Common Law**
Considering this informal claim in relation to common law requires taking into account the historical documentary evidence submitted and other historic maps and evidence discovered, but without being able to consider any evidence of claimed actual use by the public. Historical mapping shows that paths and some parts of tracks between Hayne Farm and Goldcombe Farm on the claimed route have existed physically since only at least the later 19th century. The paths crossing fields on the route claimed were not shown on earlier small-scale maps, but were shown on later larger scale maps and also not at smaller scales more recently. None of that mapping on its own can be taken as evidence indicating that the paths or tracks were considered at those times to be public rights of way or roads, rather than private access between farm buildings and fields then, particularly for agricultural vehicles.
- 1.7.5 The Tithe Maps from the first half of the 19th century do not show any parts of the route as a path and on their own do not provide any support that any tracks shown were considered to be public at those times, either as public roads, or footpaths. They also included others that have never been recorded as public and are now private tracks for access only to land or properties, including Hodges Lane. The extracts from Gittisham Court Leet presentments from the earlier 19th century are not specific enough to show that they can be identified as being on parts of the whole route as claimed. In addition, they may have been related to the lord of the manor's responsibilities for tenants' other manorial rights and access to land rather than for any wider public rights.
- 1.7.6 The later Finance Act records include deductions for only two fields crossed by paths shown on the maps for a small part of the claimed route. It could suggest that part of it may have been considered to carry public rights in the early 20th century, although without referring to them as for 'public' rights of way or footpaths for the deductions in the assessment process and, significantly, not for the whole of the route as claimed. There were also similar deductions for other paths and part of Hodges Lane in the area shown on the maps, but which were not considered later for recording as public footpaths or included as part of this claim.
- 1.7.7 There is no more specific evidence to show how those limited deductions were determined as the basis from which any earlier dedication by the landowner could be inferred, or the extent to which there may have been acceptance and use then by the wider public rather than perhaps by a more limited number of people in the locality.

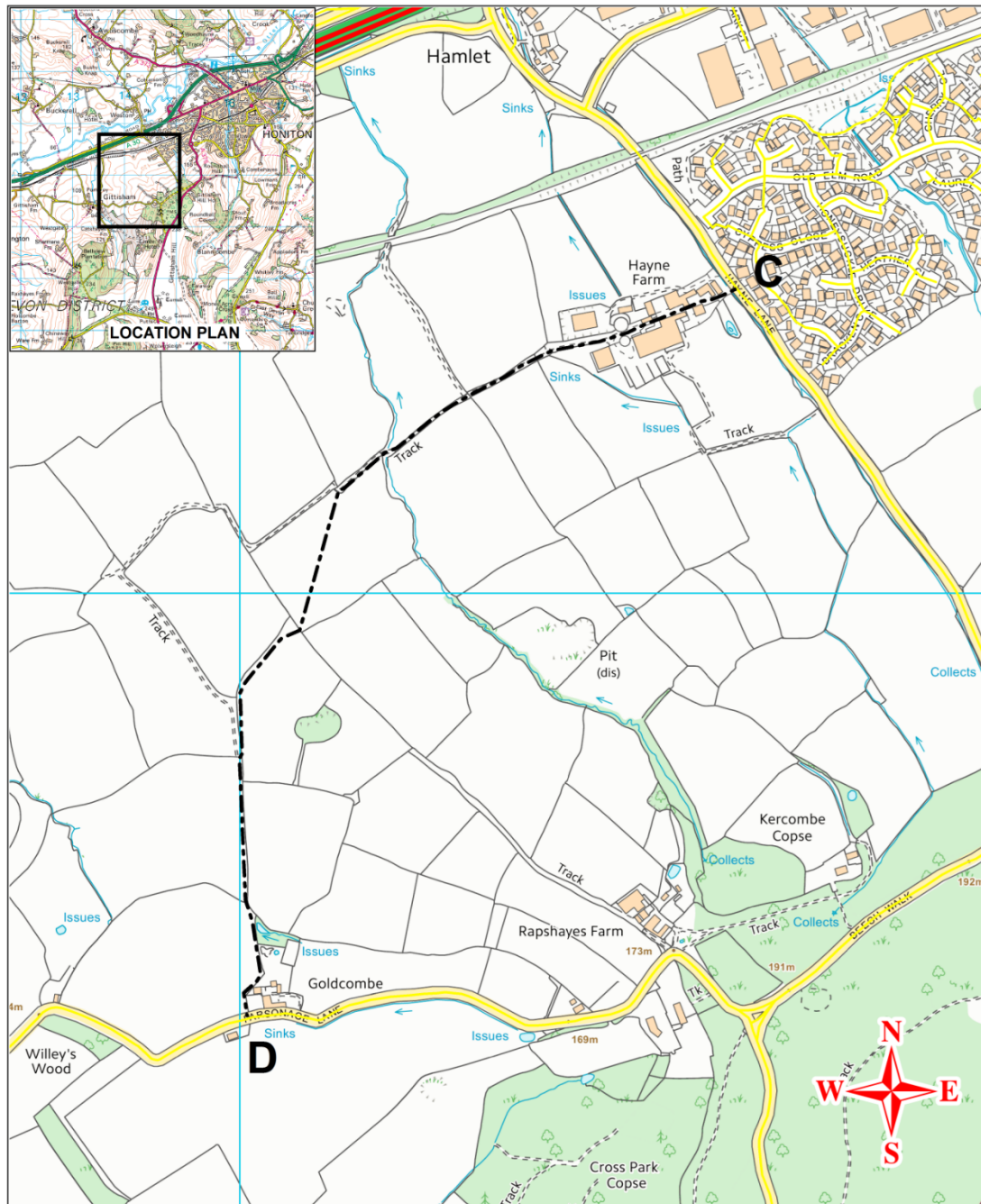
Agenda Item 8

They cannot be taken to apply to other parts of the route claimed, for which there are no specific deductions recorded. Later Ordnance Survey and other mapping with aerial photography show only that parts of the tracks continued to exist on their current lines more recently and up to the present, although subject to the usual disclaimer, with the continuation of tracks shown crossing fields onto other land from the route as claimed.

- 1.7.8 Although the claimed route was put forward for recording as a public footpath, it was three years after the Parish Council's original survey in 1950 and said to have been omitted due to an oversight. No details were given then of the grounds for believing it to be public, or any comments by the Rural District Council although noting that they confirmed later its omission by mistake. The Parish Council's record of its views in 1956 on use of the route does not indicate that any efforts were made then in support of recording the route as a public footpath, such as collecting evidence of use by the public. There was also no objection from them or from anyone else to it being omitted at any of the stages in the procedures leading up to the route not being recorded on the Definitive Map.
- 1.7.9 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 routes had the reputation of being public footpaths in the past, or more recently. No other claims for their addition with evidence relating to their past use have been made, particularly by the Parish Council, as part of the procedures for any earlier review procedures since then.
- 1.7.10 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 wider public. No significant or substantial evidence has been discovered 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 them on that basis.
- 1.7.11 Deposits were made on behalf of the owners of the Combe Estate under Section 31 (6) of the Highways Act 1980 in 1993 and repeated in 2002, with a statutory declaration. It is evidence to show a more recent lack of intention by the landowners to dedicate any public rights of way on the land, although it does not affect consideration of the historical evidence and no evidence of any use by the public since then or more recently was submitted in support of the claim.

1.8 Conclusion

- 1.8.1 From this assessment of the evidence submitted with the claim as made and as considered previously in 1992, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support any 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 informal claim made for Proposal 2 in Gittisham parish.



map ref SY 1399-1499/1398-1498

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DEVON COUNTY COUNCIL

Definitive Map Review, Gittisham parish

**Informal Consultations: Proposal 2, Gittisham
Claimed footpath - Hayne Farm to Goldcombe Farm**

Notation

Claimed footpath, C-D (1,350 metres)

drawing number HIW/PROW/17/024

date Apr 2017

scale 1: 7, 500

drawn by NSC



Meg Booth

ACTING HEAD OF HIGHWAYS, INFRASTRUCTURE DEVELOPMENT AND WASTE

HIW/18/14

Public Rights of Way Committee
15 March 2018

Definitive Map Review Parish of Combe Martin North Devon - Part 5

Report of the Chief Officer for Highways, Infrastructure 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 Modifications Orders be made to modify the Definitive Map and Statement by:

- (a) adding a Footpath between points A-B-C as shown on drawing number HIW/PROW/18/7 (Proposal 22).
- (b) adding a Restricted Byway between points D-E as shown on drawing number HIW/PROW/18/8 (Proposal 24).

1. Summary

This report examines the last two proposals from the twenty-five that arose from the Definitive Map Review in the parish of Combe Martin in North Devon district.

2. Background

The Background for the Definitive Map Review in the parish of Combe Martin was set out in Committee report HTM/13/14 February 2013.

3. Consultations

The current review began in January 2011 with a special public meeting held in the Town Hall attended by about 50 people.

Public consultations were carried out through October and November 2011 for the twenty-five valid proposals that were put forward following the parish meeting. The review and proposals were advertised around the parish, in the North Devon Journal and notices were placed at the ends of each proposal and letters sent to land and property owners.

The responses were as follows:

County Councillor Andrea Davis	-	queried individual routes
North Devon District Council	-	no comment
Combe Martin Parish Council	-	supports Proposal 22 does not support Proposal 24
British Horse Society	-	no comment
Byways and Bridleways Trust	-	no comment
Country Land & Business Association	-	no comment
Open Spaces Society	-	no comment
Ramblers' Association	-	no comment
Trail Riders' Fellowship	-	no comment

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Please refer to the appendix to this report.

4. Proposals

There were 25 proposals arising from the Definitive Map Review in the parish. Nine proposals have been the subject of previous reports to the Committee. A further three proposals (1, 2 and 7) for the addition of footpaths to the Definitive Map and Statement cross land owned by the Parish Council and will be dealt with by means of creation agreements under delegated powers and three possible diversions which will be dealt with using delegated powers and 3 proposals further by agreement with National Trust and Coastal Access.

Proposals 22 & 24 are the final group of proposals in the parish and are referred to in the Appendix to this report.

5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

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

9. Conclusion

It is recommended that Modification Orders be made the add a Footpath in respect of Proposal 22, between points A-B-C as shown on drawing number HIWPROW/18/7 and to add a Restricted Byway in respect of Proposal 24, as shown between points D-E on drawing number HIW/PROW/18/8.

Details concerning the recommendations are discussed in the Appendix to this report.

Should any further valid claim with sufficient evidence be made within the next six months it would seem reasonable for it to be determined promptly rather than deferred.

10. Reasons for Recommendations

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

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Combe Martin Rural

Local Government Act 1972: List of Background Papers

Contact for enquiries: Alison Smith

Room No: ABG Lucombe House, County Hall, Topsham Road, Exeter.

Tel No: 01392 383370

Background Paper	Date	File Ref.
Correspondence Files	2011- date	AS/DMR/COMBE MARTIN

as070218pra
sc/cr/DMR parish combe martin part 5
03 280218

A. Basis of Claim

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 (2) (b) enables the surveying authority to make an order to modify the Definitive Map. The procedure is set out under WCA 1981 Schedule 15;

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

- (i) A right of way not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates;

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.

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.

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

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

1. Proposal 22: Claimed addition of footpath between points A-B-C as shown on drawing number HIW/PROW/18/7.

Recommendation: It is recommended that a Modification Order be made to add a public footpath between points A-B-C as shown on the plan.

1.1 Background

- 1.1.1 During the course of the current Definitive Map Review, Proposal 22 was put forward by the Parish Council and members of the public following the Definitive Map Review meeting in Combe Martin. In a file dating from 1979, there was also a written request from Combe Martin Parish Council to record Adderstable to Woodlands as a public right of way, and 14 evidence forms were submitted with this request.

1.2 Description of the Route

- 1.2.1 The claimed route starts at Woodlands the A399, point A, it travels over an un-adopted road south easterly then turns through ninety degrees and continues in a south westerly direction before turning through another ninety degrees at point B and along a stone and mud track between woods and Combe Martin Beach Holiday Park. There is a fence between the track and the holiday park with pedestrian gates leading on to the track. The claimed route passes through a gate and joins the Definitive Footpath Number 2, Combe Martin at point C.
- 1.2.2 From Woodlands Road the route has a hardened surface and is used by the adjoining residents to access their properties in vehicles. After point B, the lane narrows and is steeper. This section has a rough stone and mud surface. When the officer inspected the route there was a gate at point C.

1.3 Documentary Evidence

1.3.1 Tithe Map and Apportionments 1842

The claimed route is not shown on the map as such because the A399 had not been rerouted. The main road into Combe Martin is still shown on its original alinement close to the coast. However, the apportionments show that Mr John Doodle was the owner and occupier of Field no.5. At the edge of this field was a track, (which is part of the claimed route now behind Grey Walls.) This track was detailed as waste in the apportionments. Field No.4 was arable and field No.15 named as Adders Table. This name has been corrupted to Adderstable on modern mapping.

Turnpike Trust

Barnstaple to Ilfracombe Turnpike Trust built the new alignment of the A399. Enacted in Parliament in 1865 and built between 1867-69. The claimed route starts from this road at point A, although there is no reference to the route in the setting out.

1.3.2 Ordnance Survey Mapping

1890s 1st Edition OS map 25" to 1 mile. Shows route of the Proposal 22 starting at Woodlands which at that time was just a row of 5 houses. The rest of the route is undeveloped.

1904-1906 2nd Edition OS map 25" to 1 mile, shows Proposal 22 in the same way as the previous map.

The Post War mapping shows the area fully developed and the route is clearly shown as a lane between A-B-C.

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1.3.3 All subsequent OS maps show the claimed route in the same way.

1.3.4 Highway Handover Book
Proposal 22 does not appear on this.

1.4.1 User Evidence

1.4.2 Twenty-one user evidence forms were collected by Combe Martin Parish Council to support this claim. Fourteen completed between 1978 and 1979 during an earlier uncompleted Review, (these have been held on file pending investigation) and a further seven forms collected by the Parish Council during the current review process. One user, Mr Spencer, completed an evidence form in 1978 and another for the current review. All the users identified Proposal 22 as part of the recreational routes around this area. All twenty-six users have walked the route for pleasure, to get around the village and/or dog walking.

1.4.3 User Evidence Forms collected in 1978

1.4.4 Mr Beaumont walked the claimed path between Woodlands and Adderstable, many times between 1920 and 1978 to avoid traffic. He states that there were no notices and there was an unlocked gate into the Adderstable field. He had never been challenged for turned back.

1.4.5 Mrs Boyer had walked the claimed path several times a year between 1942 and 1976 for pleasure and to keep off the main road, the route she used had never varied, there was one gate from the Adderstable field into the lane and she knew the land was owned by several different people. She was never stopped, or challenged.

1.4.6 Mrs Cowell had walked the route since she was a child, however her forms give no dates. She comments that the route had never altered and she was never challenged or stopped from using it.

1.4.7 Miss Darch had walked the path since 1954, completing her form in 1978. She reports that she used it numerous times, saying there was a gate and that she had seen a private road notice. She did not clarify this and continued to walk the path regularly.

1.4.8 Mrs Eastman, who was 50 years old in 1978, had walked the claimed route all times since she could remember. She said there was a wire fence and a gate and a private road notice but no more detail was given.

1.4.9 Mr Everett who was 74 in 1978, says he had walked the route hundreds of times since about 1955 to 1973, 3 to 4 times a week for periods of that time as it was the quickest route to the bus stop. He was a resident at Glenavon Caravan Park from 1960 to 1973. He said that the path was used by the farmer to get to fields until he made a more convenient entry via Park Lane. He also says that a notice board at Gables end saying, "Private No Public Footpath" or words to that effect. *(Note the Gables is not on the claimed route and this would appear to relate to a cut through from the campsite.)* He adds a foot note saying "since writing this I am informed that a gate has recently been fitted and secured against entry. This denies access to an attractive Public Footpath leading to Park Lane." *(Note this is not on the line of the claimed route.)*

1.4.10 M E Greenfield was 67 in in 1978, he had been walking the path several times a year between 1960 and 1976, saying it was a "very pleasant walk from one end of the village to the other". There was a gate at Adder Stable. He says he was "unmolested until Xmas 1974, a very unpleasant character came out and said if I didn't turn back he would

kick the dogs guts out and knock my bloody block off. Mr Squires informed me in no uncertain terms the road was his.” However, Mr Greenfield continued to use the path.

- 1.4.11 Miss Gregory was 59 in 1978, had used the route since 1936 for walking. There was a gate between field and path, when animals were kept in the field. She had not been stopped or turned back.
- 1.4.12 Mr Lawrence had walked the route since about 1960 to 1978 always over the same route, there was one gate at the edge of the ‘Adder Stable’ field, he had not been stopped or turned back and the gate was never locked.
- 1.4.13 Silvia Lawrence had walked the route since about 1960 there was one gate into Adder Stable field that was not locked. She was never challenged or saw any notices.
- 1.4.14 Mrs Miller had used the route since approximately 1948 walking the dog several times a year, there was one gate leading into the ‘Adder Stable’ field and she was not stopped or challenged, however said there was a notice somewhere on the route that said private.
- 1.4.15 Mr Spencer in 1978 said the route was commonly regarded as public. When he lived in that part of the village he had used it quarterly for a country walk from between 1955 and 1965. There was a gate into ‘Adder Stable’ field. He writes that within the last year (1977-1978) a new notice that said ‘Private’ was put near the gate. He says, “Steps to bar access appear to have been taken since the institution of the Footpath Review”.
- 1.4.16 Mrs Smith had walked the path our times each year summer since 1966, walking from one end of the village to the other bypassing the main street. There was a gate as ‘Adder Stable’ into the lane. She was not challenged, stopped or saw any notices.
- 1.4.17 Mrs Upton walked the route 50-60 times a year between 1968 and 1975 she says there was a gate at ‘Adder Stable’ and a new notice saying private road, she thinks the land is owned by Mr Squires or Gilbert.

1.4.18 User Evidence Forms completed in 2011

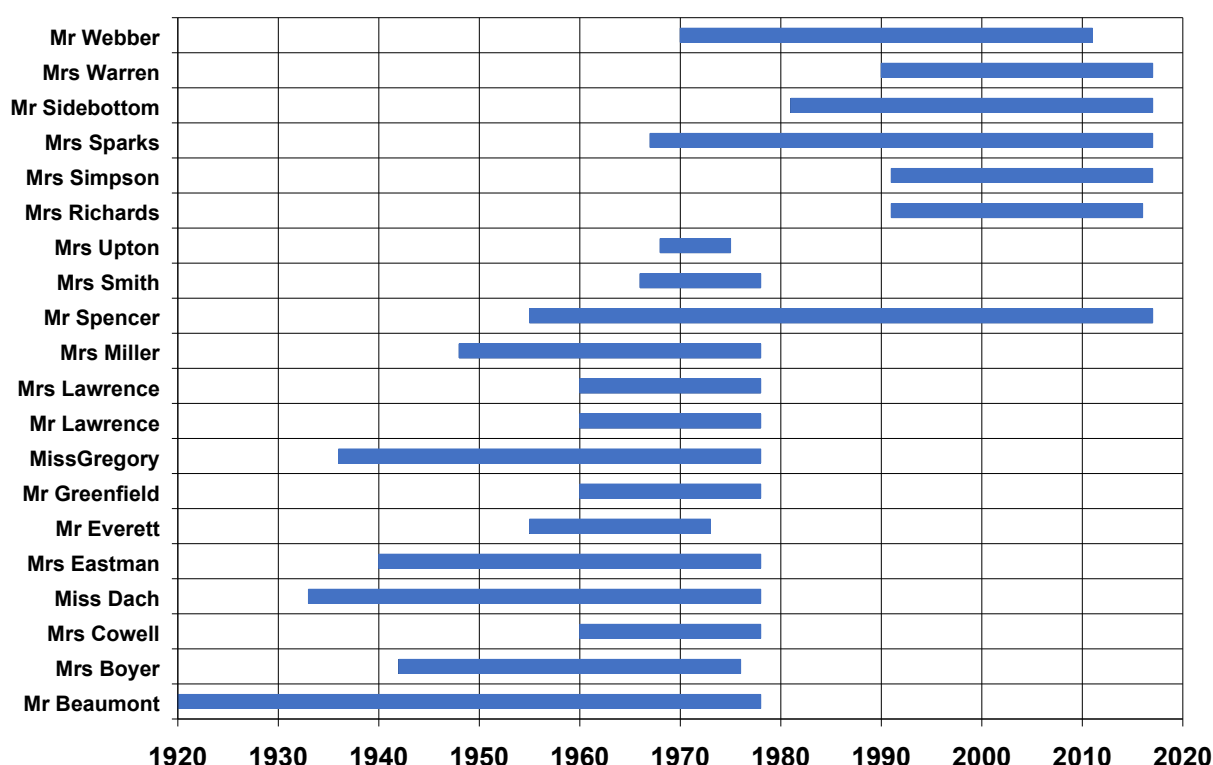
- 1.4.19 Mrs Richards had used the footpath between 1991 and 2001, 160 times a year for walking for the dogs for pleasure, she said it is frequently used by many people. There were no notices and she was never stopped.
- 1.4.20 Mrs Simpson walked the route with her dogs between 1991 and 2011 about 180 times a year, she said it has always been used and there were no notices.
- 1.4.21 Mrs Sparks has walked the footpath since 1967 at least 12 times a year. On one occasion the path was shut while they were siting caravans on the adjacent site. Other than that, she has not been stopped for challenged.
- 1.4.22 Mr Spencer, completed another user evidence form in 2011. He has continued to walk the route on average every fortnight.
- 1.4.23 Ms Sidebottom has walked the path since 1986 about 200 times a year, she says it in constant use by local walkers. There is a gate at the entrance to Adder Stable and many people regularly walk it from one end of the village to the other.
- 1.4.24 Mrs Warren has used the route for many years walking the dog about 52 times a year. The gate has never been locked.

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1.4.25 Mr Webber walked the path over 100 times a year since 1970, because he believes it has always been used by the public. The gate at 'Aderstable' has never been locked and he has not been stopped or turned back.

1.4.26 The users who have filled in forms are probably a small sample of the public who are, and have been using the route without let or hindrance. On each site visit the Officer has observed walkers freely using the route.

1.5 User Evidence Table Proposal 22 Adderstable



1.6. Adjoining property holder's evidence

1.6.1 During the public consultation, prominent notices were displayed at each end of the route and notices and letters also sent to all adjoining properties.

1.6.2 The lane from point A to B is used as shared access for numerous properties; no-one has responded giving the opinion that this route was not a public path.

1.6.3 The presumption of *ad medium filum* means that when land abuts a highway (or private right of way), the boundary of that land is presumed to extend to the middle of that right of way (or highway), unless it can be shown otherwise, and it may therefore mean that all the adjoining landowners may own the lane, and have the power to dedicate.

1.7 Rebuttal Evidence

1.7.1 There is no direct rebuttal evidence.

1.7.2 This route was initially claimed by the Combe Martin Parish Council in 1978, during a previous rights of way review. They submitted 14 user evidence forms, which have been held on file and undetermined until now. Contained within these was the evidence from Mr Greenfield who appears to have been challenged at Christmas 1974. Mr Greenfield was 74 years old when he gave his evidence and is no longer around to be asked for

further clarification. From his form it appears that he used the path from 1960 frequently, without let or hindrance, and after the challenge he continued to walk the path for a further two years (before he completed his form) without further problems. No other users, from that time have been challenged, but a few did report a new (at that time) private sign although it is now hard to establish where this was sited.

1.8 Discussion

Statute (Section 31 Highways Act 1980)

- 1.8.1 Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it 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 relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.
- 1.8.2 Proposal 22, is supported by 20 user evidence forms giving direct evidence of use on foot, back to 1920. From the spread of evidence, it can be seen walkers have been using the claimed footpath regularly from the 1920s to the present day. Some users have been contacted by telephone and they verified they are still using the path without hinderance. The PROW Officer has observed the public freely using the path on the occasions that the site has been visited. It is likely the users who completed forms are just a sample of those using it.
- 1.8.3 One user was challenged in 1974, however, because of the time elapsed it is impossible to question him to establish the facts. However, it can be seen from the contemporary user evidence the path was being frequently walked and no-one else reports being stopped or challenged. It is therefore felt unlikely that this one incident is enough to show that a landowner challenged use and called the public's use of the route into question for the purposes of considering the claim for presumed dedication under Statute.
- 1.8.4 No landowner has made the case that the route is not public, or have said they have made any challenge to those people using it.
- 1.8.5 The adjoining Caravan park has an access gate from its site onto the track, so visitors from the site are also using the path, however there is no way of capturing that data from those visitors using the path.
- 1.8.6 From the evidence forms collected in 1978, two users report a 'private notice', neither detail the position of this. The private access road from point A, is not maintained by the county council, this sign may have indicated this. It did not have the effect of stopping the public believing there was a public footpath over the route or calling their use of the route into question.
- 1.8.7 Users consistently report a gate leaving the field at Adderstale, point C, to keep stock contained. No one ever found this to be lock or obstructed.
- 1.8.8 So on balance there are no objections from landowners. The user evidence shows the public have been walking the path since 1920, and the single challenge of one walker is not sufficient to call the route into question. No other users knew of this single challenge.
- 1.8.9 The incident in 1974 is not considered to calling the public's use of the route into question. Therefore, without a date having been clearly identified as having called into question the public's right to use the way, the proposed addition cannot be considered for presumed dedication under Statute.

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Common Law

- 1.8.10 In addition to the presumption of dedication which arises under Statute, 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 either expressly, the evidence 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.
- 1.8.11 At Common Law use does not raise a presumption of an intention to dedicate, but merely evidence of such an intention. Thus, the onus of proof lies on a person claiming a way as public to show that the facts, when taken, were such that the rightful inference to be drawn from them was that there was an intention to dedicate the way as public. Each case turns on whether the facts indicated this intention. No minimum period is required to be shown.
- 1.8.12 About the meaning of the words 'as of right' the common law adopted the Roman law principle that for long usage to give rise to a presumption of dedication, the user had to be *nec vi, nec clam, nec precario*: without force, without secrecy and without permission. This is what 'as of right' means.
- 1.8.13 The facts are when taken, are of frequent use of Proposal 22 by numerous people on foot since the 1920's. The use has been without challenge, interruption, force, secrecy or permission and show rightful inference to be drawn from this use: that there was an intention to dedicate the way as public and that the public's continued use is evidence of acceptance of that dedication at Common Law.
- 1.8.14 The current adjoining property owners have made no comment or objection.
- 1.8.15 Proposal 22 is not seeking to change any rights of the public the path, only to have those rights recorded on the Definitive Map.

1.9 Conclusion

- 1.9.1 The evidence is considered sufficient to show that a public footpath subsists, or is reasonably alleged to subsist, over the route of Proposal 22. It is therefore recommended that a Modification Order be made to add a Public Footpath between points A-B-C as shown on drawing number **HIW/PROW/18/7** and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

2. Proposal 24 Claimed addition of a Byway Open to All Traffic (BOAT) between points A-B as shown on drawing number HIW/PROW/18/8

Recommendation: It is recommended that that a Modification Order be made to add a Restricted Byway between points D-E as shown on drawing number HIW/PROW/18/8.

2.1 Background

- 2.1.1 During the course of the current Definitive Map Review, Proposal 24, to record a Byway Open to All Traffic over the Slipway leading to Combe Martin Beach, was put forward members of the public as a result of the Definitive Map Review meeting in Combe Martin.

2.2 Description of the Route

- 2.2.1 The claimed route runs between Cross Street, Point D, and the foreshore, Point E, on the beach. This is a slipway giving access to the beach. There is a bollard on the slipway to prevent vehicle access to the beach.

2.3 Documentary Evidence

2.3.1 Combe Martin Tithe Map and Apportionments 1842

The Tithe Map shows a gap in the harbour wall where the slipway is located.

2.3.2 Ordnance Survey Mapping

1890s 1st Edition OS map 25" to 1 mile, also shows a gap in the sea wall where the slipway is.

- 2.3.3 1904-1906 2nd Edition OS map 25" to 1 mile and all subsequent OS maps the claimed route in the same way.

2.3.4 Highway Handover Book

The route does not appear on this.

2.3.5 Historical Background

Combe Martin Harbour has been a busy harbour for hundreds of years. There are references to it dating back to 994AD. Lead and silver from the mines were exported from the beach on boats, and later limestone was exported and coal brought in from Wales. Farmers also exported their produce from the beach, loading it onto boats to then be taken to Wales, Bristol and further afield. Usually the boats were unloaded at low tide and pack horses, horse and carts and later lorries moved the cargo to the shore up the slipway.

- 2.3.6 In the seventeenth century, Combe Martin was still largely cut off from the rest of the country by the hills that surround it. There were relatively few buildings and no continuous street, as we know it today. Combe Martin's inhabitants eked out a living from the soil and from working the lead and silver mines which had for long brought a measure of prosperity to the area. Until the end of the 19th century, the harbour used to be filled with coastal vessels. Most of the roads were little more than dirt tracks, so the majority of the area's goods had to be transported by sea. Horses and carts and pack ponies were used to carry goods from the ships beached in the harbour. Mining for silver was once very important here and evidence of silver mines, and limekilns. (everythingexmoor.org.uk)

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2.3.7 Another website, Ports.org.uk details “Until the end of the 19th century, the Combe Martin harbour used to be filled with coastal vessels. It was once a very prosperous harbour, exporting locally grown strawberries and hemp. There is now no evidence of a quay, except possibly at the very head of the bay, which dries out at most tides.” (ports.org.uk)

2.3.8 Old Photographs taken circa 1910, show cargo vessels on Harbour Beach Combe Martin being unloaded by horse and cart. The photograph from 1931 shows the transport of the day had progressed to motorised transport, because the ship was being unloaded by a motorised lorry. By the time the photographs were taken in 1951 the boats on the Harbour beach were smaller fishing boats, rather than large cargo vessels. The only way on and off the beach for all the vehicles (whether that was horses and carts or motorised vehicles) was via the slipway, the claimed route.

2.3.9 Court Papers 1960

In July 1960, Combe Martin Parish Council, the plaintiffs, and Mr and Mrs Alldridge and Lloyds bank, the defendants, went to court to settle who owned which parts of Combe Martin Beach above the mean high-water mark. It was settled that Combe Martin Parish Council owned the coastal slope and higher beach and the Alldridge’s and the Bank owned the beach above high water.

2.3.10 Section 3 of these Court Papers set out; “The Parties and each of them admit and acknowledge that the public have rights of access (free of charge) to the said lands coloured pink for the purpose of bathing air and exercise and rights ancillary thereto as hitherto enjoyed.” This land is to the northeast of the beach and does not cover the claimed route.

2.3.11 Conveyance 1982

A conveyance dated 24 March 1982, describes that the foreshore was sold from the Kings Estate by the Commissioners of the Crown Lands in 1925. It has subsequently been bought and held by other individuals, including the Alldridge’s, before being held by a company called Overseas Negotiations Limited. It would appear Combe Martin Parish Council may have purchased the part of the foreshore from Overseas Negotiations Limited in 1982. However, there is no map showing the land that was bought. This deed allowed for continuing access to the adjoining property for repair, maintenance etc.

2.3.12 These documents show that Combe Martin Parish Council are in the unusual position of being the owners of the foreshore of some of Combe Martin beach, but the exact extent of this ownership is hard to ascertain.

2.4 User Evidence

2.4.1 Eighteen user evidence forms have identified Proposal 24 as a claimed Byway Open to all Traffic (BOAT), users having used it on foot, horse, bicycles and in vehicles.

2.4.2 None of the users have asked for or been given permission to use the route, believing it to be public. Bollards were erected on the slipway by Combe Martin Parish Council in 1999. The user evidence is as follows:

2.4.3 Mrs Carshalton believes the slipway is a BOAT. She has used it to get to the beach on foot, bicycle and in a vehicle to launch boats and kayaks, between 1968 and 2011. She said the public had used it for many years, before a bollard was put up.

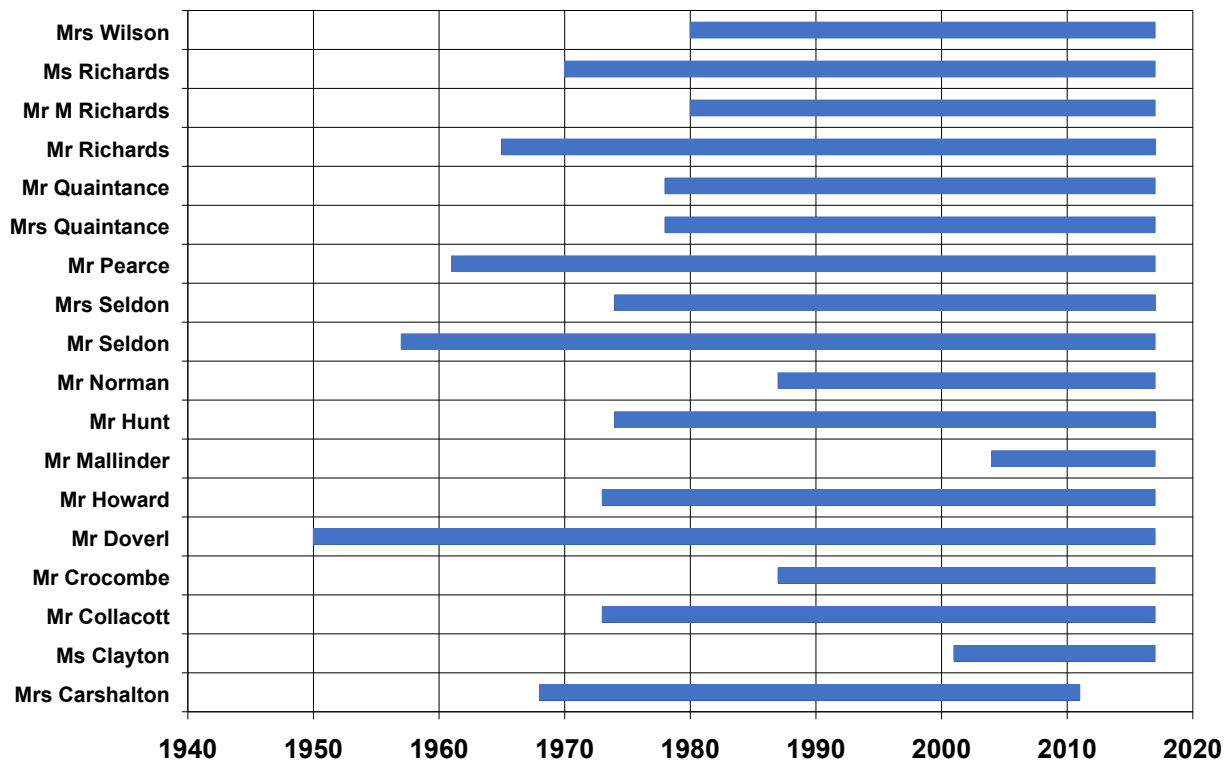
2.4.4 Ms Clayton has used the slipway on foot and horseback since 2001, and for exercising her horse on the beach.

- 2.4.5 Mr Collacott believes the route is a BOAT, and has used it since 1973 more than 50 times a year; on foot, bicycle and in a vehicle. There was a notice about the restrictions on the beach in the summer. He says the slipway was used by his Great Grandparents, and his Grandparents for access to the beach. The bollard was put up in 1999 when the Parish Council went for the Flag Award.
- 2.4.6 Mr Crocombe has used the slipway on foot and bicycle and in a vehicle to launch boats with his uncle as well as kayaks and to walk the dogs and ride bikes from 1987. He says there has been a bollard blocking vehicles since the Flag Award. He believes that the route is public, as it has always been used.
- 2.4.7 Mr Dover has used the slipway since 1950 to get on to the beach on foot and horse. He says, "I do not use the beach with the horse in the summer for obvious reasons, only the dog".
- 2.4.8 Mr Howard used the slipway since 1973 to get on to the beach on foot and in a vehicle to launch his boats and kayaks, saying it's the main access to the beach. There has been a bollard since the Flag Award.
- 2.4.9 Mr Mallinder has walked over the slipway to the beach since 2004 about 100 times a year.
- 2.4.10 Mr Munt has used the slipway in a vehicle to launch boats, on foot and on a bicycle over 30 times a year but has not driven it since the bollard.
- 2.4.11 Mr Norman has walked, cycled and driven over the slipway since 1987 at least 30 times a year. There has been a bollard since 1999. He says it has been used for 100's of years. His Grandad used to take his strawberries over the slipway to load onto the waiting boat.
- 2.4.12 Mr Pearce has used the route since the early 1960's on foot as the main access to the beach.
- 2.4.13 Mrs Seldon has used the slipway to access the beach on foot and bike. She says a bollard was put on the slipway. She has watched boats being taken onto the beach to be launched since 1974, she has also seen horses using the beach.
- 2.4.14 Mr Seldon has used the slipway to access the harbour at least 100 times a year on foot and bicycle for pleasure. He says he thinks it public because there has been access to the harbour for 100s of years. He says a bollard was put up to stop vehicular access with a notice that says "No" to everything in the summer. He says from historical information he has found the slipway and harbour was the main way everything come in and out of the village. He gives a further statement in which he says "My Grandfather and Great Grandfather took produce down to the harbour as did other farmers and growers to meet the boats to take strawberries and other produce to Wales. They also unloaded coal boats. All done with no restrictions whatsoever. Fishermen have used the slipway for access for vehicles to service their boats, parking at the top of the beach. Seaweed has been picked from the beach for as far back as I can remember using the slipway for access for transport. With the exception of a couple of years, I have lived in Combe Martin all my life, and it is only since 1999 people have had restrictions yet they have still used it. These restrictions were made by the Parish Council although the Parishioners were strongly against them." Signed Councillor Steve Seldon, Combe Martin Parish Council.

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- 2.4.15 Mr Pearce has used the slipway to access the beach on foot since 1971. A post was erected to stop vehicle access. The beach was purchased by the Parish Council several years ago and since then vehicles are only allowed on the beach for launching boats with permission.
- 2.4.16 Mrs Quaintance, has used the slipway on foot and in a vehicle since 1978 at least 6 times a year until the bollard was put up. Since then she has just used it on foot. She attached a newspaper article detailing the parish council meeting where discussions were held about the blocking of the slipway to vehicles and the un-favourable public view of the lack of access to the beach in vehicles.
- 2.4.17 Mr Quaintance has used the slipway on foot and in a vehicle from 1978 onwards as it was the main access to the beach. To illustrate the fact that the slipway was the access for all vehicles, he attaches a newspaper photograph showing the Salcombe registered ketch called Ann discharging cargo into an old Lorry at Combe Martin beach harbour. Also a second article about "Beach access row goes rumbling on", which details the differing opinions of the Parish Council and the public. It describes how the harbour of Combe Martin has been in existence since 994 BC and there has been unrestricted access for 1,100 years. It also details the Parish Council arguments for closing that access. Mr Spencer the Parish Chairman is quoted as saying "We have had vehicles and trailers driven on to the beach and left there, to the disturbance of others. Then they launch high-powered vessels which are driven close to swimmers and paddlers in the harbour." The resort has a Seaside Award Flag.
- 2.4.18 Mr Richards has walked and ridden over the slipway, since the 1960s, to access the beach on a weekly basis, in the quiet season. More recently there have been seasonal restrictions for dogs on the beach.
- 2.4.19 Mr M Richards walked the slipway weekly since 1980 to get to the beach. He says a bollard was erected to stop traffic, and in his opinion, this is wrong.
- 2.4.20 Ms Richards has walked and ridden over the slipway since 1970 at least 50 times a year. She says there has always been access. She has ridden the beach out of season or early in the morning in the summer.
- 2.4.21 Mrs Wilson has walked and ridden across the slipway on foot and horse about 50 times a year since 1980.
- 2.4.22 Other evidence in support
Mr Seldon adduces a letter sent from Mr Collacott, to Combe Martin Parish Council in September 2004. Mr Collacott was the Chairman of Combe Martin Parish for many years. He writes "My memory of the beach and access to it goes back to before the Second world war. In fact, my Father and Grandfather together with others were regularly involved in conveying coal by horse and cart from ships in the harbour to coal merchants in the village. I most certainly do not remember the access being closed. Even during the War." He goes on to say "Until proved otherwise parishioners and others, individually and collectively have a prescriptive vehicular right of way to and from the beach. He closes "It is my genuine belief, that your council, unless proved otherwise may well be in breach of the law to close this access."

2.5 User Evidence Chart Proposal 24 The Slipway



2.6 Landownership

- 2.6.1 The land holding of Combe Martin Beach and Harbour is not registered at the District Land Registry. The Court papers from 1960 attach a poor-quality map which show the area of land, on the eastern side of the beach, on which Combe Martin Parish Council and Mr & Mrs Alldridge settled their dispute. The 1982 Conveyance does not have plans attached and it is hard to ascertain without these, the exact area of land that was bought. However, Combe Martin Parish Council now maintain the beach and slipway.

2.7 Rebuttal Evidence

- 2.7.1 Combe Martin Parish Council deliberately blocked the slip way with a bollard in 1999 with the express purpose of stopping vehicular access to the beach on health and safety grounds, and to gain the Beach Flag award. The bollard remains on the slipway, blocking vehicular access. Parish Council records and press coverage show that they do not want vehicles on the beach on health and safety grounds, as they do not think beach users mix well with vehicles. They do not believe vehicles have a right to use the slipway and beach.
- 2.7.2 Combe Martin Parish Council minutes show the proceedings of an Extra-Ordinary Parish Council meeting on 20th September 2004. Sixty-nine parishioners attended. The bollards on the slipway were the topic for discussion. Parishioners gave the historical perspective that boats and vehicles had always accessed the beach and harbour over the slipway. A majority of parishioner's present expressed their views by voting in favour of unrestricted access onto Combe Martin Beach.

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- 2.7.3 The Clerk advised council members that uncontrolled access onto the beach had been identified as a safety hazard five years previous. Were an accident to happen on the beach, the Parish Council could be accused of neglecting its duty of care if councillors did not take steps to protect families and children playing on the beach, which would weaken the Council's defence in the event of an insurance claim and lay ratepayers of Combe Martin open to an unlimited financial risk.
- 2.7.4 The councillors discussed the matters raised by members of the public and expressed their concerns over the safety aspects of the issue and the need to protect beach users and bathers, especially small children. Members of the public were asked to suggest an alternative way of satisfying the Council's duty to protect families, and in particular young children, and there was no response.
- 2.7.5 The Chairman Mr Spencer proposed the first resolution: 'That access to Combe Martin Beach is controlled so that entry is permitted for those wishing to bathe, take air, exercise and ancillary rights thereto and for owners of vehicles and vessels who give evidence of third party insurance and compliance with a code of conduct.'
- 2.7.6 Councillor Hughes then also proposed the second resolution; 'That this Council should adopt the vote of the parishioners present'.
- 2.7.7 Councillor Seldon proposed the third resolution; 'That access to the beach be unrestricted by public request'.
- 2.7.8 The Parish Chairman went on to say; 'As both the second and third proposals were direct negative of the original proposal, only the chairman's proposal to control access was voted upon.' There were 8 councillors including the chairman for the motion and 3 against.
- 2.7.9 On occasions Storm Boards are erected at the top of the Slipway to prevent the sea flooding the village. These are not erected to stop access but rather to stop flooding.

2.8 Discussion

- 2.8.1 Proposal 24, the Slipway is likely to have been in existence for hundreds of years to access the Combe Martin Harbour Beach. It has been used for the day to day access by all to reach the beach and harbour. The evidence shows those journeys have been made on foot, horse, horse and cart and in motorised vehicles.
- 2.8.2 Extract taken from Nature Net Navigation Law Access to and ownership of beaches and the foreshore: Although almost all beaches allow public access, often because of the practical impossibility of preventing it. However, there is no right to cross private land to gain access to a beach. The foreshore is the area between the high-water mark and the low water mark. When the tide is in there is an absolute right to navigate through the water (although not necessarily a right to land a boat or launch one) and so it is not possible to fence off foreshore areas, as this would limit navigation. All foreshore belongs to the Crown unless it has in the past been sold or given away. (*As is the case in Combe Martin.*) This has occurred in a few places. However, there is no legal right of access to the foreshore.
- 2.8.3 The Crown Estate gives what it calls a "general permissive consent" for "non-commercial public access along the foreshore" it controls. This also implies that such permission is necessary and that other landowners might not grant it. Approximately half of the UK foreshore and around half of the tidal riverbeds are owned by the Crown and managed by The Crown Estate, in addition to virtually the entire UK seabed out to 12 nautical

miles. The Crown Estate is governed by The Crown Estate Act 1961. The Crown Estate is a landowner and not a regulatory authority. The Crown is the prima facie owner of foreshore, or land between mean high water and mean low water, by virtue of prerogative right. (Halsburys Laws Vol 12 (1), 1998 Reissue, para 242). The same applies to seabed, being land below mean low water. This, in effect, means that the Crown owns all of it unless it has in the past given it away or sold it.

- 2.8.4 Other owners of foreshore include, for example, the Duchies of Cornwall and Lancaster, Local Authorities, RSPB, National Trust, MOD and some is in the ownership of private individuals. This appears to be the case at Combe Martin, the Crown may have sold away its rights and those ultimately appear have been bought by Combe Martin Parish Council. The Parish Council now appear to control the beach including the slipway. The access to the beach has been challenged; the evidence therefore of how the slipway is being used should be examined.
- 2.8.5 Proposal 24 is supported by 18 user evidence forms, from local people using the route on horseback and foot and in vehicles. The users give direct evidence back to 1950, and indirect family evidence for more than 100 years. 10 of those users have used the route in vehicles. 15 users believe the Slipway is a Byway Open to All Traffic, because it has always been used as such.
- 2.8.6 This spread of user evidence would fit the description of a Byway Open to All Traffic, being a route that is mainly used on foot and horseback, but has been used by vehicles. However, the right to use an unrecorded way in a mechanically propelled vehicle was extinguished by the NERC Act unless one of a few exceptions to this general extinguishment applies. These are that:
- (a) *it is a way whose main use by the public during the period of 5 years ending with commencement (2006) was use for mechanically propelled vehicles;*
For this exception, to be allowed for the claimed route, the evidence would have to show the Slipway was used mainly by vehicles between 2001 and 2006, however the slipway was blocked to vehicles in 1999.
 - (b) *it was shown on the List of Streets;* the Slipway is not shown on the List of Streets.
 - (c) *it was expressly created for mechanically propelled vehicles;* the Slipway has existed for hundreds of years prior to the invention of mechanically propelled vehicles. It was an all-purpose highway being used by the traffic of the day; on foot packhorses, horse and carts and finally motor vehicles. It was therefore not expressly created for motor vehicles pre-existing these.
 - (d) *it was created by the construction of a road intended to be used by such vehicles;* the Slipway was not constructed solely for use by mechanically propelled vehicles, it pre-existed these.
 - (e) *it was created by virtue of use by such vehicles before 1 December 1930;* the public rights to use the Slipway were not created by mechanically propelled vehicles before 1 December 1930. Rather the evidence shows that the public were using non-mechanical vehicles on the Slipway long before motorised vehicles were invented, and had historically acquired the right to use the slipway.
- 2.8.7 Therefore, none of the exceptions of NERC Act can be applied to the claimed route. It could however be recorded as a Restricted Byway, if public vehicular rights are shown to subsist, which would acknowledge the public's historical rights to use the route, but excludes the public from using a motorised vehicle along the way.

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Statute

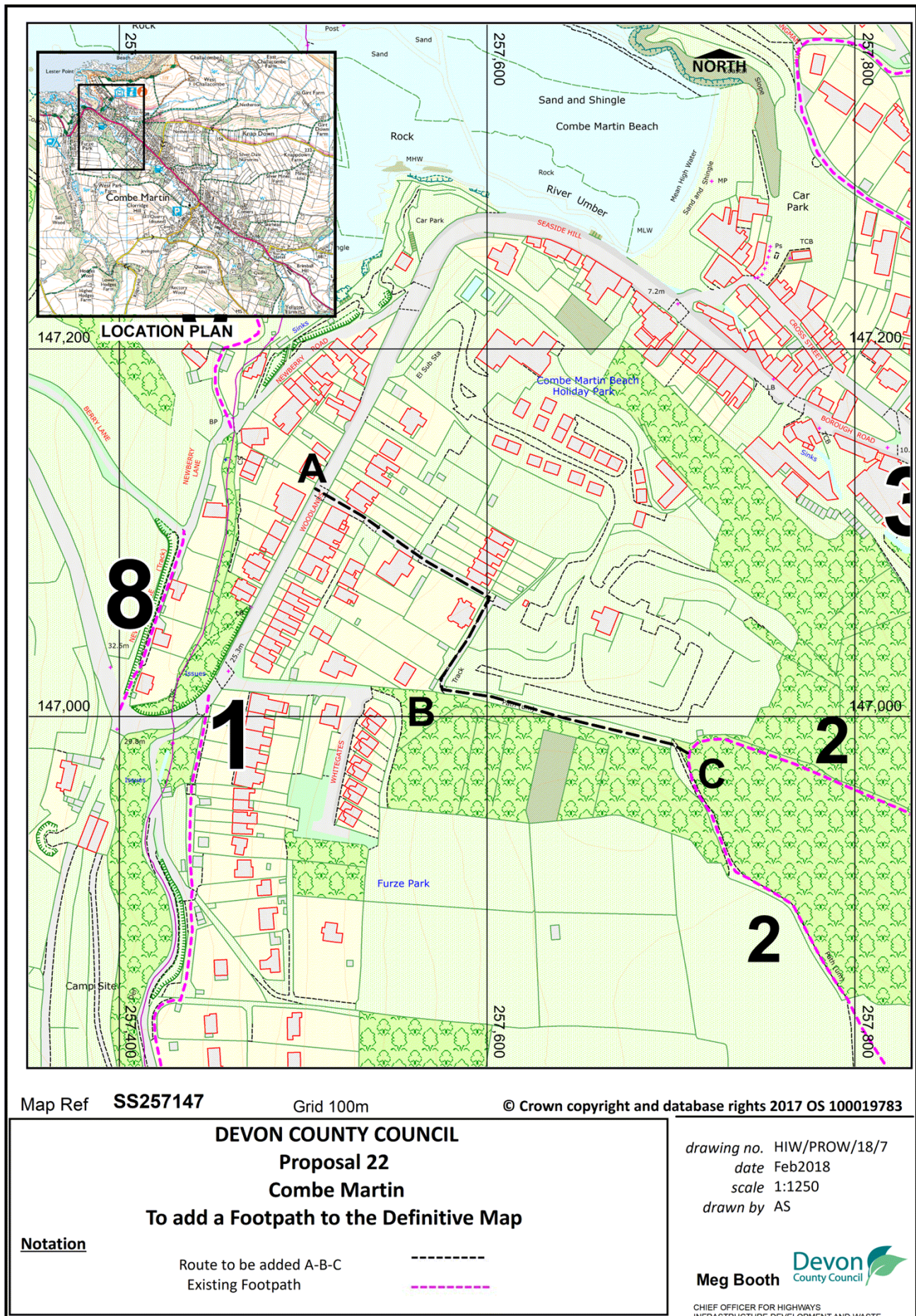
- 2.8.8 Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.
- 2.8.9 There has been a calling into question of use made of the route by motor vehicle users. Therefore, the proposed addition can be considered for presumed dedication under Statute; the relevant period of use from 1999 back to 1979.
- 2.8.10 Use during the relevant period of 1979 to 1999 for Proposal 24 is supported by 18 user evidence forms, from local people using the route on horseback and foot and in vehicles. 10 of those users have used the route in vehicles, all 18 having walked the route and 12 having also ridden over the slipway on horse and bicycle. The number and frequency of use is considered sufficient to give rise to a presumption of dedication of a public right of way, and until the Parish Council erected the bollard in 1999, there is no evidence of any lack of intention to dedicate the route by the landowner.

Common Law

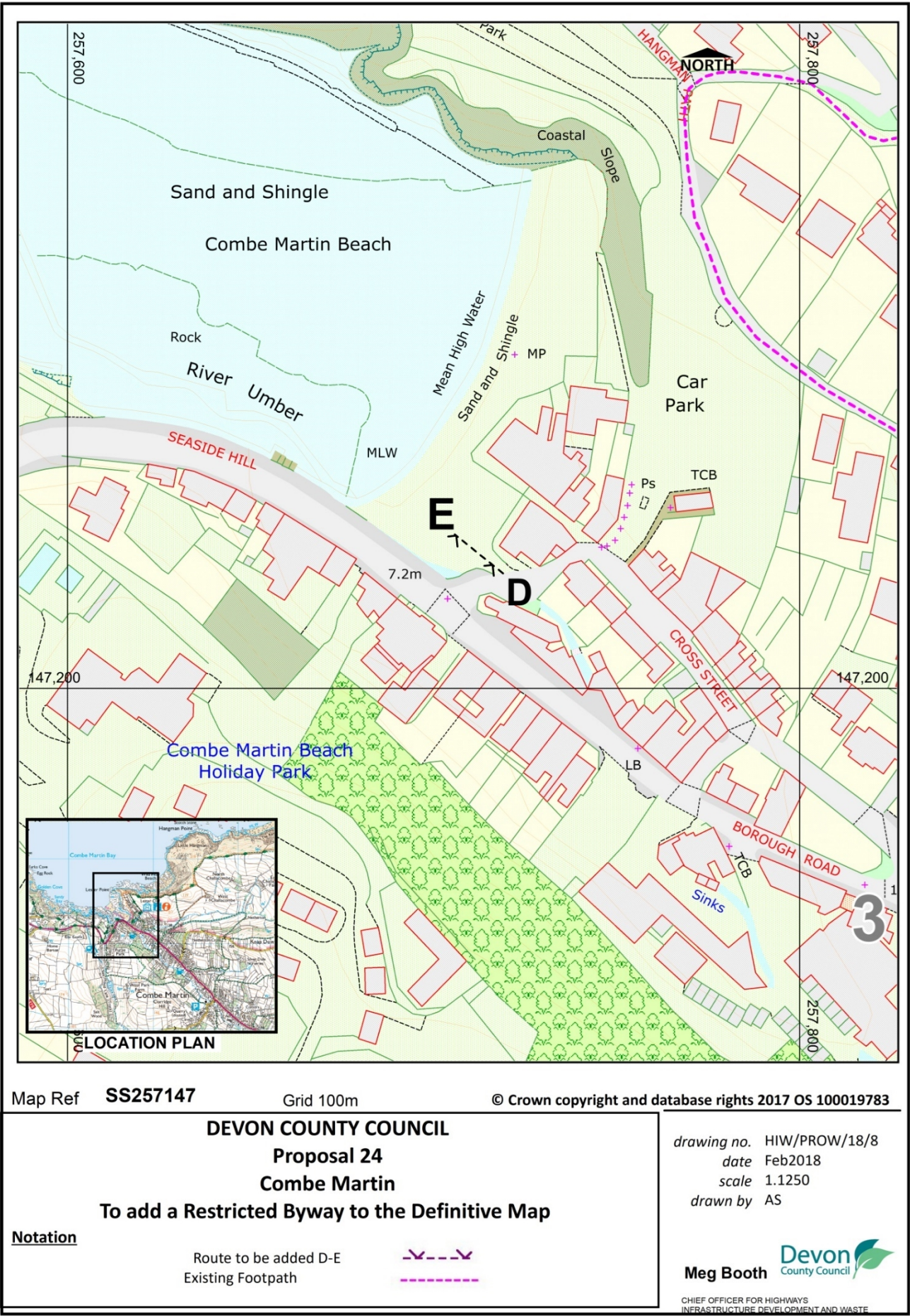
- 2.8.11 It is also possible to consider an intention to dedicate at Common Law. Common Law presumes that a public right of way subsists if, at some time in the past, the landowner dedicated the way to the public either expressly, the evidence having since been lost, or by implication. In having not 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.
- 2.7.12 The facts are, when taken as a whole, that frequent use of the slipway by numerous people over hundreds of years, on foot and horseback and in the vehicles of the day, has been without interruption, force, secrecy or permission and show rightful inference to be drawn from this use: that there was an intention to dedicate the way as public and that the public's continued use is evidence of acceptance of that dedication at Common Law.
- 2.7.13 As discussed at paragraph 2.8.6, none of the NERC Act exceptions are considered to apply in this case and consequently public rights for mechanically propelled vehicles have been extinguished. Therefore, the highest status that can be recorded is that of Restricted Byway.

2.8 Conclusion

- 2.8.1 The evidence when taken as a whole is considered sufficient to show that a Restricted Byway subsists, or is reasonably alleged to subsist, at Common Law over the proposed route. And that there is sufficient evidence to show presumed dedication under Statute. It is therefore recommended that a Modification Order be made to add a Restricted Byway between points D-E as shown on drawing number **HTM/PROW/18/8** and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.



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HIW/18/15

Public Rights of Way Committee
15 March 2018

Public Inquiry, Informal Hearing and Written Representation Decisions; Directions and High Court Appeals

Report of the Chief Officer for Highways, Infrastructure 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 the report be noted.

1. Summary

Since the last Committee the following decisions have been received from the Secretary of State. The plans are attached in the appendix to this report.

Modification Order

Order	Decision
(i) Devon County Council (Footpaths No. 21, Combe Raleigh and No.59, Luppitt) Definitive Map Modification Order 2016: made on the direction of the Secretary of State following a successful schedule 14 appeal.	Not confirmed on 6 February 2018 following the written representations procedure.
(ii) Devon County Council (Bridleway No. 14, Thelbridge and Bridleway No. 15, Washford Pyne) Definitive Map Modification Order 2012: made on the direction of the Secretary of State following a successful schedule 14 appeal.	Not confirmed on 15 February 2018 following a local public inquiry held on 13 December 2017.

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Whimble & Blackdown; and Creedy, Taw & Mid Exe

Local Government Act 1972: List of Background Papers

Contact for enquiries: Helen Clayton

Room No: ABG Lucombe House, Exeter

Tel No: 01392 383000

Background Paper

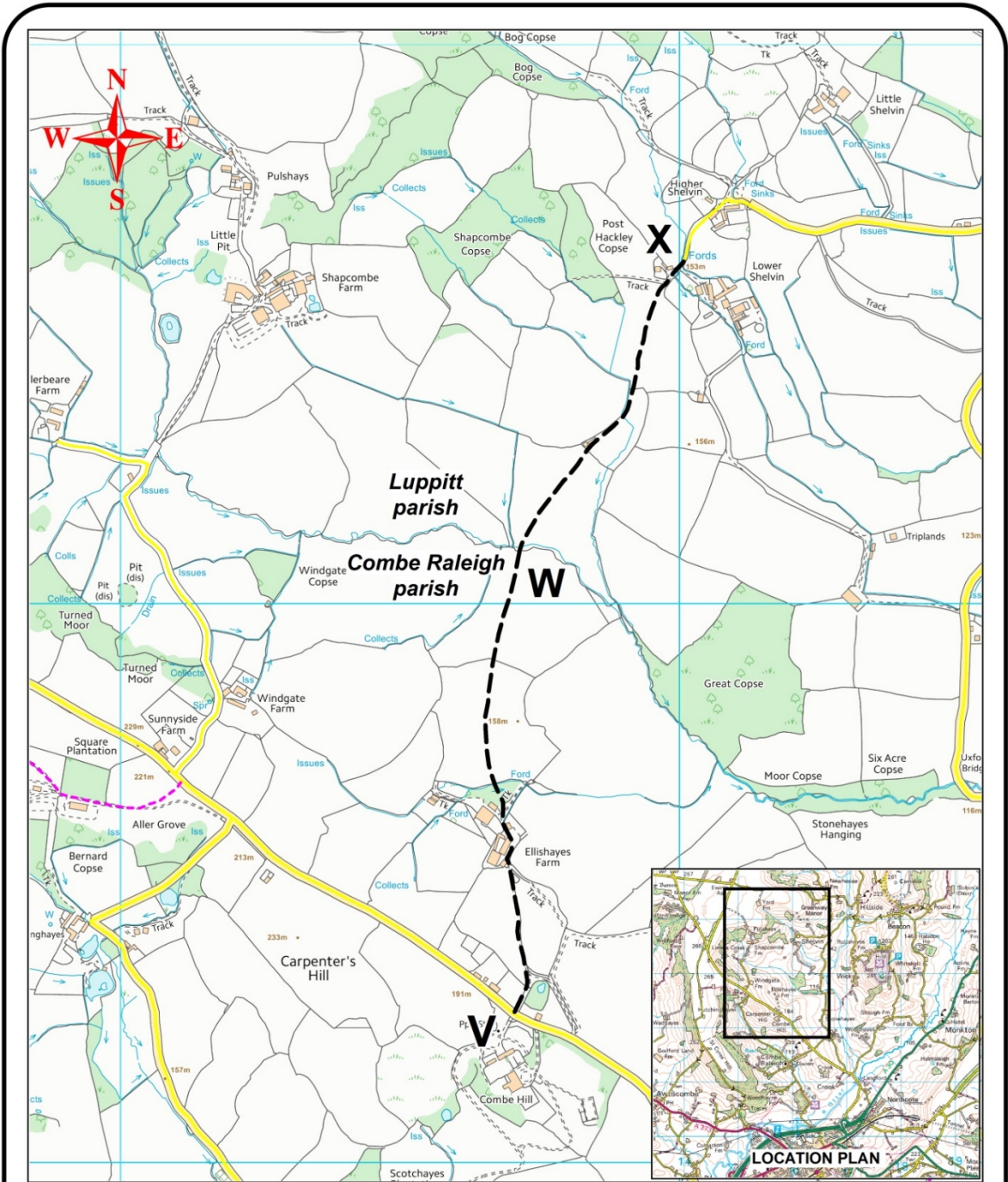
Date

File Ref.

None

hc130218pra
sc/cr/Public Inquiry Informal Hearing High Court appeals
02 280218

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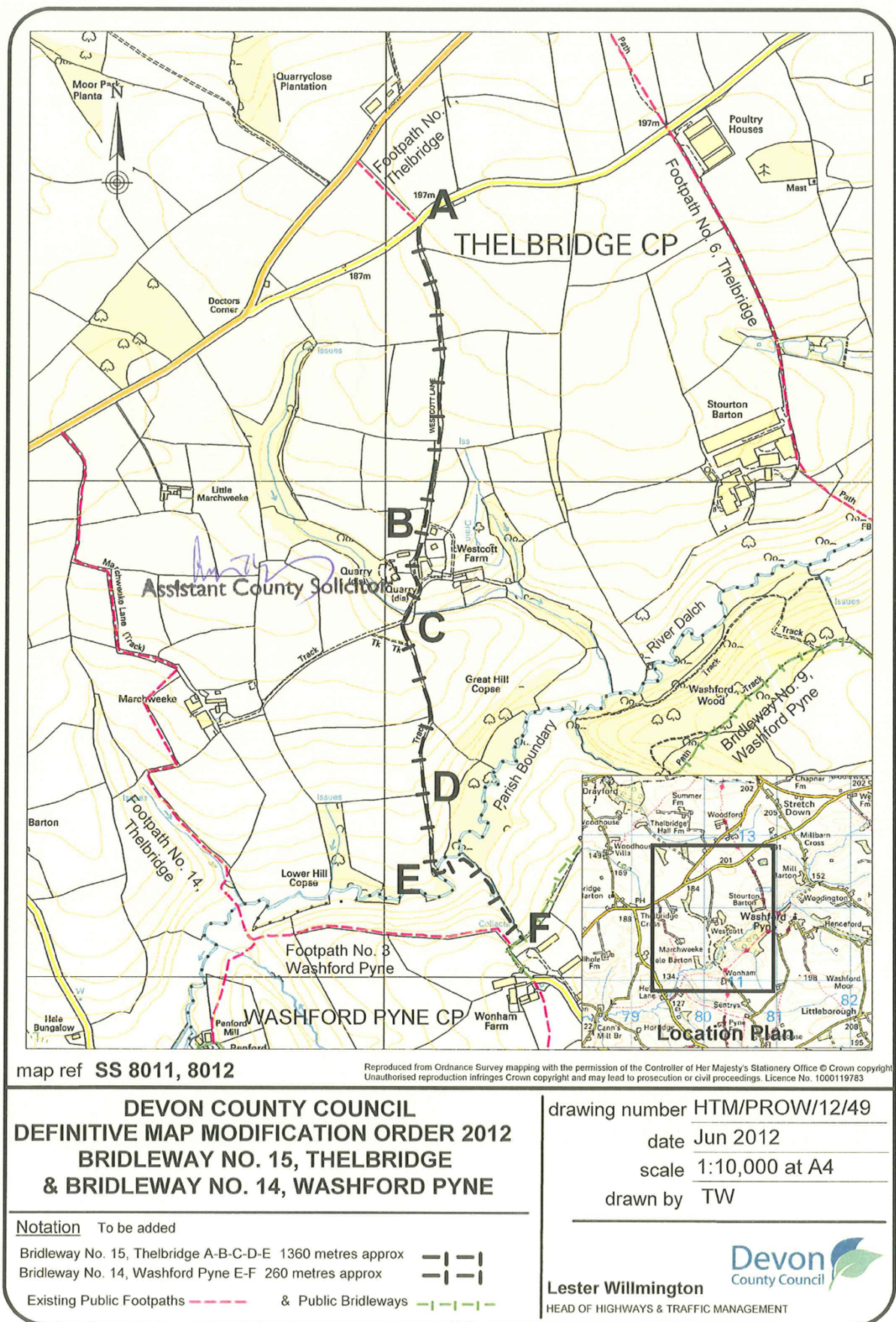
DEVON COUNTY COUNCIL
(Footpaths No. 21, Combe Raleigh
and No. 59, Luppitt)
Definitive Map Modification Order 2016

drawing number HIW/PROW/16/87
date Nov 2016
scale 1:10,000
drawn by NSC

Notation Footpaths to be added —————
 (Combe Raleigh No. 21 V-W,
 Luppitt No. 59 W-X)
 Existing footpath —————

David Whitton
HEAD OF HIGHWAYS,
INFRASTRUCTURE DEVELOPMENT AND WASTE





HIW/18/16

Public Rights of Way Committee
15 March 2018

Public Path Orders

Report of the Chief Officer for Highways, Infrastructure 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 the report be noted.

1. Summary

Since the last Committee the following Public Path Orders have been made and confirmed under delegated powers. Plans are attached in the appendix to this report.

(a) Diversion Orders

- (i) Footpath No. 11, West Alvington Public Path Diversion & Definitive Map and Statement Modification Order 2017

(b) Extinguishment Orders

- (i) Footpath No. 10, Thurlestone (Part) Public Path Extinguishment & Definitive Map and Statement Modification Order 2017

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Salcombe

Local Government Act 1972: List of Background Papers

Contact for enquiries: Helen Clayton

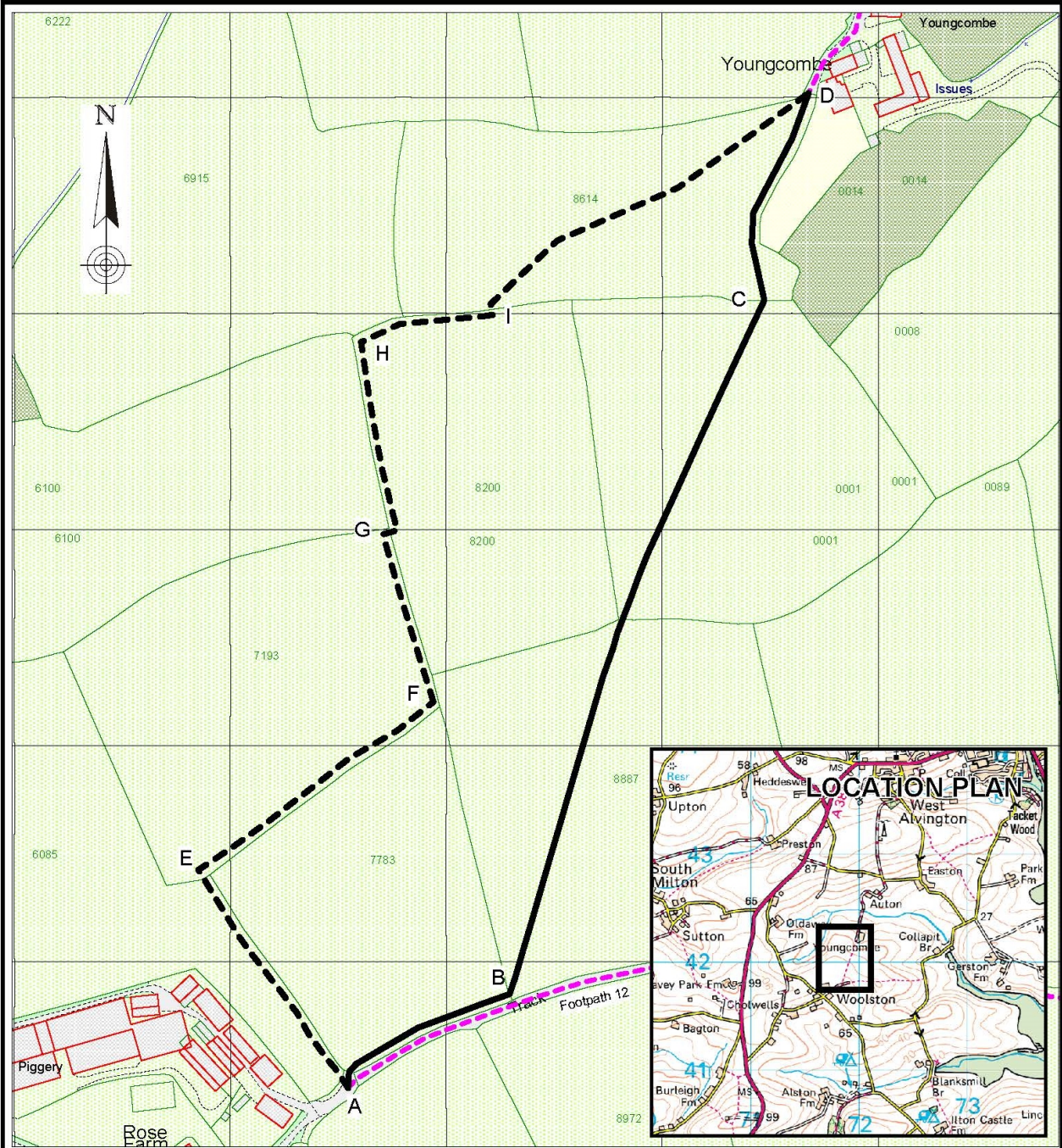
Room No: ABG Lucombe House, Exeter

Tel No: 01392 383000

Background Paper	Date	File Ref.
None		

hc130218pra
sc/cr/Public Path Orders
02 280218

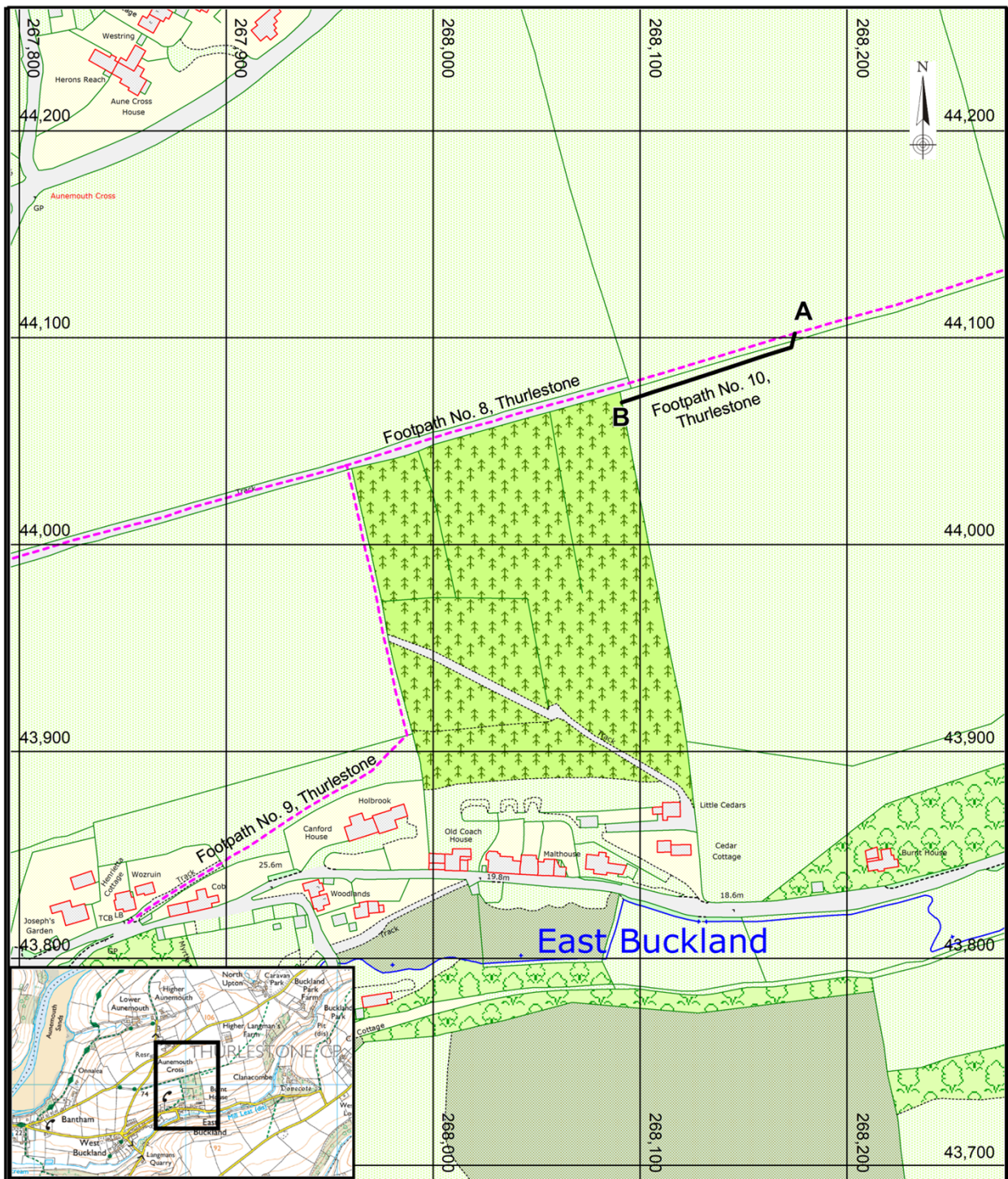
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map ref: SX7141

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DEVON COUNTY COUNCIL (FOOTPATH 11 WEST ALVINGTON) PUBLIC PATH DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2017		drawing number	HIW/PROW/16/88
		date	March 2017
		scale	1:2500 (at A4 only)
		drawn by	PG
<u>Notation</u> Footpath 11 To be extinguished A - B - C - D (540m) To be created A - E - F - G - H - I - D (680m) Existing footpaths		Meg Booth Acting Chief Officer, Highways, Infrastructure Development and Waste	



SX6844

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**DEVON COUNTY COUNCIL
FOOTPATH NO. 10, THURLESTONE (PART)
PUBLIC PATH EXTINGUISHMENT & DEFINITIVE MAP &
STATEMENT MODIFICATION ORDER 2017**

Drawing number	HIW/PROW/17/29
Date	May 2017
Scale	1:2500 (at A4)
Drawn by	HFC

Notation

To be extinguished A - B (93 metres)

Existing public footpath

Meg Booth

ACTING CHIEF OFFICER FOR HIGHWAYS,
INFRASTRUCTURE DEVELOPMENT AND WASTE

Devon
County Council

