

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 November 2018
Please ask for : Wendy Simpson, 01392 384383

Email: wendy.simpson@devon.gov.uk

PUBLIC RIGHTS OF WAY COMMITTEE

Thursday, 15th November, 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 (Pages 1 - 4)
Minutes of the Committee meeting held on 5 July 2018 (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 5 - 16)
Draft minutes of the meeting held on 9 October 2018, attached.

DEFINITIVE MAP REVIEWS

- 5 Parish Review: Definitive Map Review - Parish of Kentisbury (Pages 17 - 44)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/18/75) attached, and background papers.

Electoral Divisions(s): Combe Martin Rural

- 6 Parish Review: Definitive Map Review - Parish of Sampford Peverell (Pages 45 - 76)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/18/76) attached,
and background papers.

Electoral Divisions(s): Tiverton East; Willand & Uffculme

- 7 Parish Review: Definitive Map Review - Parish of Upplowman (Pages 77 - 98)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/18/77) attached,
and background papers.

Electoral Divisions(s): Tiverton East; Willand & Uffculme

MATTERS FOR INFORMATION

- 8 Public Inquiry, Informal Hearing and Written Representation Decisions; Directions and High Court Appeals (Pages 99 - 104)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/18/78),
attached.

Electoral Divisions(s): Ilfracombe; Newton Abbot South; Whimble & Blackdown

- 9 Modification Orders (Pages 105 - 108)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/18/79),
attached.

Electoral Divisions(s): Salcombe; Willand & Uffculme

- 10 Public Path Orders (Pages 109 - 112)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/18/80),
attached.


Electoral Divisions(s): Axminster; Whimble & Blackdown; Willand & Uffculme

- 11 Future meetings
4 March, 4 July, 12 November 2019 and 5 March 2020

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

Nil

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Membership
Councillors P Sanders (Chair), T Inch, J Brook, I Chubb, P Colthorpe, A Dewhirst, L Hellyer, M Shaw and C Whitton
Declaration of Interests
Members are reminded that they must declare any interest they may have in any item to be considered at this meeting, prior to any discussion taking place on that item.
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PUBLIC RIGHTS OF WAY COMMITTEE

5 July 2018

Present: -

Councillors P Sanders (Chair), T Inch, J Brook, P Colthorpe, A Dewhirst, L Hellyer and M Shaw

Apologies: -

Councillors I Chubb and C Whitton

* 65

Minutes

RESOLVED that the minutes of the meeting held on 15 March 2018 be signed as a correct record.

* 66

Chair's Announcement

The Chair thanked the Officers for the informative and constructive training provided for Members prior to the meeting.

* 67

Devon Countryside Access Forum

The Committee received the draft minutes of the meeting held on 26 April 2018 which covered a wide range of matters including a dog walking code for the Exe Estuary and a well received presentation by the County Council's Highways Asset Manager.

* 68

Definitive Map Review 2017/18 - Parish of Eggesford

The Committee considered the Report of the Chief Officer for Highways, Infrastructure, Development and Waste (HIW/18/42) which examined the Definitive Map Review in the Parish of Eggesford in the Mid Devon District.

It was **MOVED** by Councillor Sanders, **SECONDED** by Councillor Inch, and

RESOLVED that it be noted that the Definitive Map Review had been completed in the Parish of Eggesford and no modifications were required to be made.

* 69

Definitive Map Review 2017/18 - Parish of Feniton

The Committee considered the Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/18/43) which examined the Definitive Map Review in the Parish of Feniton in the East Devon District.

It was **MOVED** by Councillor Sanders, **SECONDED** by Councillor Inch, and

RESOLVED that it be noted that the Definitive Map Review had been completed in the Parish of Feniton and no modifications were required to be made.

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PUBLIC RIGHTS OF WAY COMMITTEE
5/07/18

* **70** **Definitive Map Review 2018 - Parish of Shaugh Prior**

The Committee considered the Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/18/44) which examined the Definitive Map Review in the Parish of Shaugh Prior in the South Hams District.

It was **MOVED** by Councillor Sanders, **SECONDED** by Councillor Inch, and

RESOLVED that it be noted that the Definitive Map Review had been completed in the Parish of Shaugh Prior and no modifications were required to be made.

* **71** **Definitive Map Review - Parish of Combe Martin North Devon - Part 6**

The Committee considered the Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/18/45) which examined the last proposal from the 25 that had arisen from the Definitive Map Review in the Parish of Combe Martin in the North Devon District.

It was **MOVED** by Councillor Brook, **SECONDED** by Councillor Shaw, and

RESOLVED that a Modification Order not be made in respect of Proposal 25, between points A-B-C-D and C-E as shown on drawing number HIW/PROW/18/25 in the Report.

* **72** **Addition of a public footpath from the County road opposite Broadmoor Farm to the County road south of Watergate Bridge in the Parish of Chittlehampton**

The Committee considered the Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/18/46) which examined a Schedule 14 Application made in December 2017 by a resident of Chittlehampton for the addition of a public footpath in the Parish.

The Chair reported on written representations from Mr and Mrs Sherwood in support of a Modification Order.

It was **MOVED** by Councillor Brook, **SECONDED** by Councillor Dewhirst, and

RESOLVED that a Modification Order not be made in respect of the application.

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

The Committee received the Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/18/47) on decisions and directions received from the Secretary of State.

* **74** **Modification Orders**

The Committee received the Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/18/48) on a Modification Order confirmed as unopposed under delegated powers, namely:-

Footpath No. 15, Parkham Definitive Map Modification Order 2018.

* 75

Public Path Orders

The Committee received the Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/18/49) on Public Path Orders made and confirmed under delegated powers, namely:

Diversion Orders

- (i) Footpath No. 11, Welcombe Public Path Diversion & Definitive Map and Statement Modification Order 2018;
- (ii) Footpath No. 8, Burrington Public Path Diversion & Definitive Map and Statement Modification Order 2017;
- (iii) Footpath Nos. 7 & 19, Okehampton Public Path Diversion & Definitive Map and Statement Modification Order 2017; and
- (iv) Footpath No. 8, Parkham Public Path Diversion & Definitive Map and Statement Modification Order 2017

***DENOTES DELEGATED MATTER WITH POWER TO ACT**

The Meeting started at 2.15 pm and finished at 3.00 pm

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Agenda Item 4

Devon Countryside Access Forum
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Minutes of the Fifty-First meeting
of the Devon Countryside Access Forum
held at The Kenn Centre, Exeter Road, Kennford EX6 7UE
Tuesday, 9 October 2018

Attendance

Forum members

Chris Cole (Vice-Chair)
Gordon Guest
Jo Hooper
Councillor Tony Inch

Charlie Lloyd
Sarah Slade (Chair)
Maggie Watson

Devon County Council Officers and others present

Tom Green, Public Rights of Way Officer (Definitive Map Review), DCC
Ros Mills, Public Rights of Way Manager, DCC
Hilary Winter, Forum Officer, DCC

1. Apologies

Apologies were received from Andrew Baker, Simon Clist, Sean Comber, John Daw, Linda Lee, Sophie Pritchard, Sue Pudduck and Cllr Philip Sanders.

Members noted with regret the resignations of Christine Ingram and Mark Simpson and the Chair expressed grateful thanks for their contribution. Christine Ingram had been on the DCAF since the outset and, as a horse rider, had been instrumental in providing evidence and support for multi-use trails. Mark Simpson had represented land management views on access for the past seven years.

Tom Green, recently appointed Definitive Map Review officer, was welcomed to the meeting.

2. Declaration of interests

There were no declarations of interest.

3. Minutes of the meeting held on April 26, 2018

Minutes of the previous meeting, held on 26 April, were approved and signed.

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4. Matters arising

4.1 Exe Estuary Partnership Dog Walking Code (12.3 26.04.18)

Members received a printed copy of the Exe Estuary Partnership Dog Walking Code. It was agreed this was much clearer than the earlier draft and should provide good practice for other sensitive wildlife areas. It was confirmed the printed codes had been distributed via wardens, officers, the Patrol Boat and some local clubs and businesses. A workshop at the recent Exe Estuary Stakeholder Forum had discussed further distribution including via libraries, dispensers, accommodation providers/pubs/cafes, retail stores, groups and clubs and use of social media/apps and QR codes. Veterinary practices were suggested as a further distribution point, if not raised at the workshop.

Action: Forum Officer to send an email welcoming the leaflet and to suggest vet practices.

Ros Mills agreed to check links from the Public Rights of Way website and suggested a news item on the website and through the ADEPT public rights of way group (The Association of Directors of Environment, Economy, Planning and Transport).

Action: Ros Mills to publicise dog walking code.

It was agreed consistency was needed to reinforce the messages.

It was noted that there had also been a review of signage around the estuary, funded by Natural England and the South East Devon Habitat Regulations Partnership. There had been a subsequent update and rationalisation of signage. The Exe Estuary Trail signage had been funded by Devon County Council and undertaken by the Exe Estuary Management Partnership.

It was suggested and agreed that it would be sensible to have common themes on the signage and to ensure signposting to dog available areas. A link to the Forestry Commission would also be helpful to ensure consistency in the messages received by the public.

Action: Forum Officer to write to the Exe Estuary Officer

It was agreed it was difficult to enforce the code and education was important. Dawlish Warden had on-site rangers. There was an ongoing issue with a minority of dog owners.

Dog walkers were a key access group and brought money into the economy.

5. Public questions

There were no public questions.

6. Correspondence log

The correspondence log was noted. The Chair drew attention to a few items. Number 8 related to copy correspondence from the British Horse Society County Access Officer referring to complaints about horse-riding on Exmouth beach and subsequent press coverage. The Town Council was investigating. A Public Spaces Protection Order could be applied for and this would be a legal consultation process. It was not thought there had been a PSPO for horses elsewhere and members agreed mediation might be the solution.

Number 9 noted the response to the Landscape Character Assessment for the East Devon and Blackdown Hills AONBs. Public rights of way had a small impact, but a few key aspects were flagged up in the survey.

Number 17 referred to a village green application in Ermington. This was a legal process associated with proof of evidence that a significant number of inhabitants in the locality or neighbourhood had used the area as of right for lawful sports and pastimes over a period of at least twenty years and continued to do so.

Cllr Inch said that the Local Plan, item 20, should be signed off by North Devon and Torridge District Councils at the end of October.

7. Report from Training Day held at Haldon Forest Park

Members had enjoyed the Training Day at Haldon Forest Park and it was agreed it had been most useful and interesting. It was noted the Forestry Commission had subsequently obtained planning permission for additional car parking and a new visitor centre.

The lack of public transport to Haldon was discussed. This had been overlooked in the initial bid to Sport England and remained a problem, particularly for teenagers and those without transport. People were reliant on cars to enjoy the many activities. Stover Country Park, although much smaller, received a similar number of visitors, perhaps due to better transport links and more level ground. Haldon was geographically remote, due to topography, but the Forestry Commission had made the best use of its resources. It was felt, to some extent, that activities were structured with signs for children as the educational target – the success of the Gruffalo and Highway Rat campaigns were noted - and that creating one's own adventure and exploring the woodland off-path was becoming more alien for young people and families.

It was agreed the lack of public transport could be fed into wider strategic plans for the Exeter area. A shuttle bus, provided through s106 contributions from developers, could be one solution.

Action: Forum Officer to look at relevant plan consultations and report back.

Lessons about public transport could be learnt from Haldon. Locations close to urban areas for people to enjoy were needed. The new SANGS (Suitable Alternative Natural Greenspace) park at Dawlish did not permit cycling and it was agreed safe

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cycling areas were also needed. (With SANGS sites dog walkers were the key focus to offset impacts on nature conservation areas).

8. Launch of the National Land Access Centre

Sarah Slade, in her CLA capacity, had sat on a working group updating the British Standard for Gaps, Gates and Stiles. She had recently attended the launch of the National Access Centre, a place where the variety of standard compliant gates and structures could be showcased. It was a resource people and groups could use and had Natural England backing. There were no livestock there. Yellow marking was included on the new structures to improve visibility.

The motorcycle inhibitor shown in one of the photographs would deter the casual motorbike user.

9. Disability access update

Gordon Guest reported on progress with disability issues.

Dawlish Warren nature reserve

A DCAF working group previously visited the reserve and discussed mobility scooter access. Some gates had subsequently been improved which was welcomed. One additional gate into the nature reserve needed further work. The financial constraints in improving structures were recognised.

Dawlish Countryside Park

A DCAF working group visited the park and met with site rangers. A number of issues were identified. Gordon had made a return visit and seen work in progress. A further visit was planned with disabled persons who cannot walk to see whether gate adaptations are satisfactory.

Jetty Marsh Nature Reserve, Newton Abbot

Gordon had met the Ranger to discuss changes to a motorcycle inhibitor to make the reserve more accessible. The old canal path and quayside were generally accessible, but some path improvement work was identified.

Dartmoor National Park

The 2018 Dartmoor Walking Festival had 80 walks, 9 of which were mobility scooter walks. In preparation for this, Dartmoor National Park Authority had made some repairs to the gate and path at Haytor Quarry, rebuilt the path at Princetown (behind the fire station), and ramped the bridge edges on the old tramway to make these routes scooter accessible. This demonstrated that small inexpensive improvements can make a big difference to access. A recurring issue is the lack of wheelchair accessible toilets for non-walking scooter users throughout Devon and discussions needed to take place with pubs and camping sites.

Culm Valley Trail, Clyst St George

Gordon had met with Simon Bates from East Devon District Council and had looked at the on-road part of the site and suitability for disability users. This was considered satisfactory. The Bishop's Palace section will need more work. Gate design and the DCAF chart of scooter sizes was discussed.

Killerton to Broadclyst

An earlier report on the route had been sent to the National Trust. This will eventually form part of the Culm Valley Trail. Gordon reported that some surface improvements had been made to the path and gates were mostly easy to use. Many of the kissing gates, log barriers and other barriers on the Killerton Estate had been removed or improved. Killerton now has a Countryside Mobility Trumper, which can be used on three separate routes.

Budleigh Salterton

The DCAF had walked the river footpath. None of the gate accessibility issues had been resolved.

Ros Mills, DCC, said the path from White Bridge to Budleigh Salterton was currently closed due to flooding. This was on Clinton Devon Estates land and was an Environment Agency matter. The Council was working closely with Clinton Devon Estates and would create a cul-de-sac route to a bird hide in the interim. She apologised that improvements on the southern section had not taken place. The northern section to Otterton could not be made accessible due to bridge location and design at the road end at Otterton. Gordon said that a route part way would still be welcome.

10. Update on actions following presentation from the Highway Asset Manager

Ros Mills, DCC, confirmed that categories of highway were not available on a public facing website. Although mentioned in committee reports, the categories were not explicit. The categories were being reviewed in accordance with best practice and consultation with parishes. It was agreed that public accessibility to this information would be useful.

Safe verge passage was in hand where public rights of way linked to key recreational routes nearby. It was not possible to put in place for all rights of way. Parish Councils had a key role in identifying and ensuring some verges offered safe refuge.

A meeting had taken place with representatives from the Trail Riders Fellowship, including Chris Cole. Two pilot routes had been proposed, one in South Hams and one in East Devon, to trial the methodology. The objective was to use volunteers to improve signage so that roads unsuitable for motor vehicles were better signed and showed that use by recreational access users was still permitted. DCC would provide the signs and the TRF would use volunteers to put these up and give in-ground posts extended life.

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Steve Gardner, DCC, would be the main lead on the TRF project. A process had been drafted by the TRF and safeguards needed to be approved and established, alongside communication with the Neighbourhood Teams. Further information would be available for the next meeting.

Action: Ros Mills to update DCAF at the next meeting on the road category review and the TRF project.

Maggie Watson reported that the potholes highlighted at the last meeting had subsequently been re-surfaced very well.

11. Public Rights of Way update

Ros Mills provided a Public Rights of Way update:

1. The next PRoW Committee meeting would be held on 15 November.
2. A Public Inquiry was being held in Ugborough on 11 October.
3. The PRoW team was dealing with a large number of complex planning applications. The DCAF was thanked for developing its planning position statement.
4. The Technical Officer had reduced her working time by two days and a new member of staff, Steve Trick, had been appointed. He would be invited to the next DCAF meeting. PRoW was looking at better ways of managing the network through a GIS based inventory software system to pull all the records together in one place – legal, maintenance and enforcement. A demonstration would be provided at the next meeting. It must integrate with other DCC systems. It was hoped to include data from the Country Parks to help manage those assets.
5. Dartmoor National Park was now using a CAMS (Countryside Access Management System) mapping tool. This had a good public facing reporting system.
6. PRoW had a standstill budget. DCC was under financial pressure due to overspend. Highways had a £2m cut. Finances in 2019/20 were looking tough and the aspiration was to manage the PRoW network in line with best practice asset management tools in a sustainable way.
7. Closures of paths at Budleigh Salterton had been actioned and publicised on the website following erosion along the river.
8. The new British Standard for Gaps, Gates and Stiles was in place and DCC would wait to see if there were any challenges. New stock complied with the revised BS, which only applied to new fixtures.
9. The dry weather may have caused or contributed to cracking of the surface along the Exe Estuary Trail; the Grand Western Canal also has issues that have become apparent after the dry summer. This was a concern and a maintenance cost.
10. The road at Slapton was scheduled for re-opening on 26 October. Match funding was being sought to reinstate the associated South West Coast Path damage, hopefully during 2018.
11. Further work was being done on extending the Pegasus Way along the former railway line between Thorndon Cross and Halwill. Acquiring sections of the line was a long process. Not all the route would be off-road.

12. DCC Planning, Transport and Environment had provided a schedule of cycle and multi-use trail projects and progress throughout the County.
13. Conversations were ongoing about the England Coast Path and in particular some missing sections. Some Planning Inquiries were likely on the Lyme Regis to Kingswear stretch.

In answer to a question about the mapping, Ros Mills confirmed that there were three types of mapping, each for different purposes:

- The Definitive Map and Statement;
- The List of Streets, held by Land Charges, which is a list of all maintainable highways; and
- The National Street Gazetteer which contains all public or private routes.

The aim is to have a mapping system in PRow which will assist with the future legal Consolidation of the Definitive Map and Statement.

12. Minutes of the Public Rights of Way Committee held on 5 July 2018

Minutes of the Public Rights of Way Committee were noted. The meeting had been preceded by a training session.

13. Presentation by Roger English, South Devon AONB Manager

Roger English introduced himself as Manager of the South Devon Area Of Outstanding Natural Beauty. There are forty-six AONBs in the UK, fourteen in the South West. Devon has two National Parks and five AONBs, 35% of the land cover. AONBs are covered under the same law as the local access forums, the Countryside and Rights of Way Act 2000, but under part 4.

The statutory management plan of an AONB carries weight in the planning process although the AONB is not a planning authority. The AONB works jointly with local authorities.

The current consultation on the Management Plans is open to stakeholder groups and the contribution of the DCAF would be valued.

South Devon is a coastal AONB with additional areas up the Avonwick and Dart estuaries, nearly as far as Totnes. It did not quite satisfy the grade to be designated as a National Park. The AONB is impacted by the growth of Plymouth, Torbay and Sherford. Some parts of the South Hams, not in the AONB, are seen as being of similar landscape value which can be confusing. The AONB works across a wider scale on some aspects, for example; with the National Park on river catchments; with fishing interests on access and egress points; heritage coast policies extend off-shore for 2-3 miles; and some farms have land parcels which extend from the coast to the National Park.

The South Devon AONB was designated in August 1960. It has no specific citation or list of damaging operations. Its clear purpose is the conservation and enhancement of natural beauty. The AONB has to deliver given around health and well-being, land management and quiet recreation to achieve its purpose.

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The expectation is that the Management Plans, now in their fourth iteration, will have a light touch review. One question is where access and recreation will fit in with Post Brexit agriculture. Some tweaks around the edges are anticipated.

There are some key areas of work AONBs should focus on collectively or individually. Initially the five AONB documents were very different but now try to share a common layout. South Devon has the most complicated landscape. The Management Plans are now shorter, with additional information included as annexes.

The access, recreation and tourism theme includes some generic words and phrases but has a local flavour. The DCAF position statement was useful in past reviews.

The key statutory body is Natural England which carries out assessments. It identified access, recreation and the economy as policies which could have an effect. Money from developers has been used to fund information boards along the Yealm Estuary. The AONB aims to spot recreational impacts and try to achieve these within the delivery plan.

Stripping back the Management Plan chapters to one or two key objectives is challenging but sets the framework for initiatives and campaigning.

The events and activities programme is a well visited part of the website and on social media.

Proactive projects include the realignment of the South West Coast Path at Strete. The South West Outdoor Festival had just taken place, in partnership with the National Trust, to get people involved and inspired by the landscape. The idea is that the festival will grow and be taken to different locations. The AONB is involved with Connecting Actively to Nature, focussing on the over 55s, grandparents and grandchildren and WI groups.

The Protected Landscapes Review is currently taking place, with a review panel chaired by Julian Glover. Lord Cameron of Dillington is the most local member. He has met with members of the National Association of AONBs and the call for evidence is likely to be launched at the end of October. It is an important opportunity to represent individual interests and those of organisations such as the DCAF. The review is not seeking to diminish the extent of protected landscapes or to cut funding but to put them on a sounder footing. The review is also exploring how places can put a case for designation. The South Devon AONB is working up its own response.

A discussion took place.

In answer to a question about whether achieving sustainability alongside the promotion of recreational assets could be self-defeating, Roger said that the AONB worked with landowners and other land managers to direct pressure to other areas and to improve the coastal infrastructure where required. South Milton was a success story and had become too popular. Promotional material had been taken to other areas.

The improving technology of mobility scooters was raised. The importance of accessible gates and removing barriers to improve accessibility were mentioned, along with wheelchair accessible toilets.

An example was raised of a planning application in the North Devon Coast AONB which had been approved by the Secretary of State, despite opposition, and which had led to light pollution. Roger said this was the type of example to raise in the Review.

Roger confirmed that aspects of climate change were included in the section on natural resources which looked at mitigation and collaborative work. Concern was expressed about the landscape being devoid of wildlife and that there should be planning for wildlife/conservation alongside protection for specialist species. Roger said this was an area of work that the Review Panel and Defra are keen on. A number of tests and trials for the Environmental Land Management Scheme had been carried out at a landscape scale. A facilitation group in the Avon Valley was achieving good results. All AONB partnerships in Devon also had a level of engagement with the Devon Wildlife Trust.

The Devon AONBs would be meeting in November and it was agreed there was scope for the DCAF to feed in its views.

14. Areas of Outstanding Natural Beauty position statement

Members agreed with the Chair's suggestion that a working group be convened to discuss this in detail.

Action: Forum Officer to circulate Doodle poll.

15. Green space position statement

It was agreed to discuss the greenspace position statement alongside the AONB position statement at a working group meeting. Gordon Guest, Charlie Lloyd, Sarah Slade and Maggie Watson expressed interest in attending.

16. Coastal access progress reports from Natural England

The updates from Natural England were welcomed. Some points were vague due to continuing discussions with landowners. There are likely to be some compromises and solutions that can be discussed.

It was not known whether roll-back proposals are causing concerns. This was more likely to be the case at later stages, following erosion.

In South Devon the bulk of spreading room and coastal margin was in place but estuaries remained the main focus. Access to spreading room reduced insurance liability although it was acknowledged that insurers did not always understand the implications.

Along the south Devon coast, the South West Coast Path crossed the estuaries low down. It was likely an alternative route would be put in on the River Yealm for times

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when the ferry is not operating. An alternative route had fewer complications for landowners, as coastal margin is not included, and more flexibility for Natural England as an alternative path did not have to be routed so close to the estuary. Improving ferry services was one option and some local authorities elsewhere had contributed to a winter service. Ferries on request required more organisation. It was agreed that the coast path brings economic benefits.

It was agreed, subject to approval from the whole Forum, that Natural England should be asked to explore alternative routes along the estuaries.

It was agreed to ask Natural England whether there were any particular issues on either stretch of coast that were being raised by landowners.

Action: Forum Officer to draft a letter to Natural England and circulate to members.

16.1 North Devon - Combe Martin to Marsland Mouth

The report from Natural England was noted.

16.2 South Devon - Cremyll to Kingswear

The report was noted.

17. To note and approve responses to consultations and any feedback

17.1 Health and harmony: the future for food, farming and the environment in a Green Brexit. Defra

The response was noted and approved.

17.2 Cycling and Walking Investment Strategy Safety Review

The response was noted and approved.

17.3 Children's health and physical activity. ukactive

The response was noted and approved.

17.4 Stover Country Park. Heritage Lottery bid

The bid support letter was noted and approved.

17.5 Local Plan Review - Issues Consultation. Teignbridge District Council

The response was noted and approved.

17.6 Clyst St Mary multi-use trail - 18/1893/FUL. East Devon District Council

The response was noted and approved.

18. Current consultations

18.1 New cycling offences: causing death or serious injury when cycling. Department for Transport

Members discussed the current consultation from the Department for Transport on creating new cycling offences. Initially some members had thought that widening the legislation might be useful as it would be easier to prosecute if there were specific offences. However, on reflection, members had reservations. There were a number of matters that had not been addressed in the proposals and in particular the law off highway and the range of places that could be included in the term 'public place'. The Forestry Commission, for example, held public liability insurance. The consultation did not cover other dangerous users using other modes of transport. The burden of proof would always be difficult, particularly in rural areas. Members thought it important to encourage cycling and asked whether other legislation, such as Public Spaces Protection Orders, could tackle some persistent problems. Education and increasing awareness of cycling safely around pedestrians were also raised.

Members agreed they had concerns about extending the legislation. There were other ways in which issues around cycling could be tackled. There were concerns about the difficulty in defining public place. It was noted the UK does not have personal liability insurance unlike some other European countries.

Action: Forum Officer to circulate draft response.

19. South West Coast Path stakeholder meeting

A letter from the Chairman of the South West Coast Path Association, Ken Carter, had been received in June about involvement with stakeholders. A follow-up email from the new National Trail Officer, Richard Walton, had confirmed that he intends to use a combination of newsletters and informal meetings to engage with stakeholders. Larger, more formal meetings are only envisaged when there are significant strategic matters to discuss. He had offered to give a presentation to a future DCAF meeting on the management of the South West Coast Path, or to meet nominated members to discuss.

It was agreed to invite Richard Walton to the January meeting.

Action: Forum Officer to contact Richard Walton.

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20. Training Day on 2026

The Regional LAF training day on 2026, led by Phil Wadey and Sarah Bucks, would be held at Ruishton Village Hall on 29 November. Chris Cole, Cllr Tony Inch, Sue Pudduck and Cllr Philip Sanders had expressed interest in attending.

Action: Forum Officer to complete attendee form and forward agenda, when available.

21. Any other business

There was no other business.

22. Date of next meeting

The next meeting would be on Thursday, 24 January 2019, venue to be arranged.

HIW/18/75

Public Rights of Way Committee
15 November 2018

Definitive Map Review Parish of Kentisbury

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) a Modification Order be made to modify the Definitive Map and Statement by adding a restricted byway to the Definitive Map and Statement between points A – B – C – D, as shown on drawing number HCW/PROW/17/34 (Proposal 1); and that**
- (b) no Modification Order be made in respect of Proposal 2.**

1. Introduction

This report examines the two proposals arising from the Definitive Map Review in Kentisbury.

2. Background

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 12 footpaths and 3 bridleways, which were recorded on the Definitive Map and Statement with a relevant date of 1 September 1957.

The review of the Definitive Map, under s.33 of the 1949 Act, which commenced in the late 1960s but was never completed, produced several proposals for changes to the Definitive Map at that time, of which Proposal 2 of this report is the only one which is considered to have a valid case for further investigation during the current review. The Limited Special Review of RUPP's, carried out in the 1970s, did not affect the parish.

No previous orders and agreements have been made and confirmed in the parish.

The current Review was started in 2011 with informal consultation on the 2 proposals carried out in 2017 for modification of the Definitive Map and Statement.

This is the parish report for the Definitive Map Review in the parish of Kentisbury.

3. Proposals

Please refer to Appendix I to this report.

4. Consultations

General consultations have been carried out with the following results:

County Councillor Andrea Davis – no comment

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North Devon Council	– no comment
Kentisbury & Trentishoe Parish Council	– comments included on specific proposals
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 objection
Trail Riders' Fellowship	– no comment

Specific responses are detailed in Appendix I 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 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 modify the Definitive Map and Statement by adding to them a restricted byway between points A – B – C – D along Preston/Parsonage Lane between Preston Gate and the A39, east of Kentisbury Ford, but that no Modification Order be made in respect of Proposal 2.

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/KENTISBURY

cg151018pra
sc/cr/DMR Kentisbury
04 021118

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Appendix I To HIW/18/75

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;

- (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 (20 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, Public Accommodation and Occupation Roads

Research into Highway Board, Rural District Council and Parish Council minutes has indicated that '*ratione tenurae*' (accommodation/occupation) 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 relevant highway authority, the council could repair the highway and recover the expenses from the person liable.

In 1977, Roger Gash, County Solicitor for Devon County Council wrote to parishes in connection with the forthcoming General Review of the Definitive Map. The letter enclosed a list of highway definitions connected with the subject of public rights of way. The list defined Footpath, Bridleway, Road used as a Public Path and Byways Open to all Traffic but also proceeded to define Unclassified County Road, *Public Accommodation/Occupation Road* and Green Lane. Public Accommodation/Occupation Road was described as '*this is a very unusual sort of road and none was shown on the original Definitive Map. In Devon the term is used to describe a road over which the public has complete freedom of access but which the landowner rather than the County Council is liable to maintain.*

The definition does not state that a Public Accommodation Road is open to every type of traffic, but the phrase '*complete freedom of access*' would indicate higher rights than use as a footpath only.

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- 1 **Proposal 1: Proposed addition of a restricted byway, as shown between points A – B – C – D on plan HCW/PROW/17/34.**

Recommendation: That a Modification Order be made in respect of Proposal 1 to modify the Definitive Map and Statement by adding to them a restricted byway between points A – B – C – D along Preston/Parsonage Lane between Preston Gate and the A39, east of Kentisbury Ford, as shown on drawing no. HIW/PROW/17/34.

1.1 Background

- 1.1.1 The proposal route was included in the consultation with the support of the Parish Council, as it appeared to be a missing link between Kentisbury Footpath No. 3 and the county roads at Preston Gate and the A39 at Higher Broomhill Cottage.

1.2 Description of the Route

- 1.2.1 The proposal route starts at the county road at the cross roads known as Preston Gate at point A and proceeds south westwards along Preston/Parsonage Lane, a concrete track, to Preston Farm at point B, where it becomes a track of stone and earth. It continues south westwards before turning southwards towards point C at the entrance to the property, Beachborough (formerly the Parsonage/Rectory), from where it continues to meet the A39 opposite Higher Broomhill Cottage at point D.

1.3 Documentary Evidence

1.3.1 Cary's Map, 1821

- 1.3.1.1 Besides the Ordnance Survey, Cary was the leading map publisher in the 19th century. He maintained a high standard of maps, using actual trigonometric surveys and other up-to-date source materials, including parliamentary documents, which was reflected by his employment to survey the 9,000 miles of turnpike roads in 1794.

- 1.3.1.2 The proposal route between points A – B – C – D is shown as an enclosed uncoloured road running past the Parsonage.

1.3.2 Kentisbury Tithe Map and Apportionment, 1839-40

- 1.3.2.1 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*'.
- 1.3.2.2 The Kentisbury tithe map is a second class map, surveyed at a scale of 4 chains to 1" by G. Northcote, Barnstaple, who did a number of tithe surveys in Devon. Being second class, it is considered only to be a legal and accurate record of tithe matters. Land that was not subject to tithes was generally accepted to be either

public, glebe or crown estates. In many cases public roads are coloured sienna as prescribed by Lieutenant Dawson, a military surveyor with the Ordnance Survey, to the Tithe Commissioners. The original document is held at the National Archives, with copies for the parish and diocese held locally.

- 1.3.2.3 The proposal route is shown as a coloured road throughout, and is numbered 784 between points A – B. Between points B – C – D the route has no number and is braced to plot 75 between points C – D. Lot 784 is the parish roads and 75 is recorded as a plantation, part of the Glebe owned by the Reverend CB Sweet and occupied by the Reverend JJ Rowe. It is open ended to what are recorded county roads at either end.

1.3.3 Kentisbury Down Inclosure Award, 1848

- 1.3.3.1 Inclosure awards can be evidence of repute of highways at the time they were made. Their significance as evidence depends on the powers given to the relevant Inclosure Commissioners. Awards and maps may provide supporting evidence of other matters, such as the existence of status of a route adjacent to but outside the awarded area. Evaluation of such evidence is considered in the context of the relevant inclosure act.
- 1.3.3.2 The proposal route is depicted in the same manner as recorded public highways in the parish. The award map also bears a resemblance to the parish tithe map.

1.3.4 Lynton Railway Deposited Plan, 1887

- 1.3.4.1 Individual schemes were promoted by Special Acts. The statutory process required for the authorisation of schemes was exacting, having been set out by parliamentary standing order and the Railways Clauses Consolidation Act 1845. The book of reference and deposited plans made in the course of the process needed to be of a high standard, as they formed the basis for legislation and were in the public domain. Consequently, they were scrutinised by all relevant parties who would not unnecessarily cede ownership, rights or responsibilities, as the status of a way had an impact on the cost of the scheme.
- 1.3.4.2 The scheme was surveyed by Messers E Muir and EN Fell at a scale of 13" to 1 mile. Between miles 1 and 2, the proposed railway scheme crosses to the northern end of the proposal route between points A – B, which was within the limits of deviation of the scheme. It is shown as an occupation road owned by FEP Openshaw.

1.3.5 Lynton Railway Extensions Deposited Plan, 1892

- 1.3.5.1 The proposed railway plan shows the crossroads at Preston Gate and the top end of the proposal route for a short distance southward from point A. It is not numbered as it lies outside the limits of deviation of the proposed railway scheme. Down Lane northwards from point A at Preston Gate is shown as lot 59, a public road owned by the Ilfracombe District Highway Board.

1.3.6 Ordnance Survey mapping, 1809 onwards

- 1.3.6.1 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'*.

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1.3.6.2 The proposal route between points A – B – C – D is shown as a cross road on the 1809 Old Series 1" to 1 mile as a through route passing the 'Parson'.

1.3.6.3 On the later 1st Edition 25" scale mapping of 1889, 2nd Edition of 1904, and Post War A Edition of 1975, the route is shown as a continuous through route with a bold line on one side, with the dashed lines indicating changes in surface. There is a solid parcel line at point D, which may have been a gate as these were shown shut. It is annotated as 'Parsonage Lane'.

1.3.7 Kentisbury Vestry minutes, 19th century

1.3.7.1 Prior to the formation of District Highway Boards in the early 1860s and the later Rural District Councils (1894) the responsibility for the maintenance of public highways generally belonged to the parish and was discharged by elected Surveyors of Highways. Relevant Acts of 1766, 1773 and 1835 included the provision for the use of locally available materials and there was a statutory requirement upon parishioners to fulfil a fixed annual labour commitment. The final responsibility for maintenance lay with the local Surveyor of Highways who was obliged to keep a detailed account of public monies expended.

1.3.7.2 At a meeting on 10 June 1882, the Vestry were *'of opinion that all who use the roads should contribute towards their maintenance and cannot understand why the 33rd section of the Locomotives Amendment Act has not been adopted by Highway Boards generally. This meeting is also of opinion that roads maintained by occupiers 'ratione tenurae' (if the law would permit it) should be repaired at the cost of the district.'*

1.3.8 Kentisbury Parish Council Minutes, 1894 onwards

1.3.8.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.

1.3.8.2 10 July 1895. Mr Lerwill was requested to *'report to the District Council the bad state of Preston Road'*, the proposal route between points A – B – C – D.

1.3.8.3 29 September 1924. It was resolved that a letter should be written to the *'District Council asking them to repair the damage done'* by rainwater to Preston Lane, the proposal route.

1.3.8.4 3 November 1924. The damage to Preston Lane, the proposal route, was considered not to entirely be due to Mr Toms neglect and the District Council was to be requested to form a Committee to meet Mr Toms, and the complainant Mr Charley.

1.3.8.5 16 March 1925. The matter regarding Preston Lane, the proposal route, was *'reported satisfactory'*.

1.3.8.6 17 October 1944. *'The Rural District Council decision to seek the views of [the] Parish Council before forwarding their recommendation to the County Council'* regarding accommodation roads and unnecessary highways. Their proposals were...*'to take over Preston Lane (the proposal route A – B – C – D) as a public*

highway, [which] *'was agreed to'* and to give up Sevenash Lane, which was not agreed to.

- 1.3.8.7 14 May 1946. A letter was to be written to the *'Surveyor of [the] District Council asking that attention be given without delay to ... Preston Lane'*, the proposal route.
- 1.3.8.8 24 February 1947. *'The District Council intimation of October 1944 to take over Preston Lane and repairs at a public charge as nothing had been done and the same being in a very state of repairs'*. The District Councillor was to be asked to bring attention to the Surveyor or the Council to the matter of the proposal route.
- 1.3.8.9 20 January 1948. *'It was reported that (Preston Lane, the proposal route) was in a very bad state of repair deep ruts and pits making it dangerous to traffic'*.
- 1.3.8.10 16 March 1950. *'This road was on the County Council list to be taken over.'* The County Council was to be asked if this could be done now.
- 1.3.8.11 19 April 1950. *'Mr Lovering (the County Councillor) was bringing [Preston Lane, the proposal route] to the notice of the County Council'*.
- 1.3.8.12 21 November 1950. *'This lane (Preston Lane, the proposal route) has ... been seriously washed and damaged by the flood. A letter had been written to the Surveyor but no answer received'*.
- 1.3.8.13 17 June 1952. It was resolved that *'a letter be written Mr FJ Richards (County Council) asking him to remind the County Surveyor of the proposal to take over this road (Preston Lane the proposal route), it being in a very bad state at present it should be attended to without delay'*.
- 1.3.8.14 21 August 1952. It was resolved that *'a letter be written [to] the County Council pointing out the dangerous condition of Preston Lane (the proposal route) asking that repairs should be done, as Mr Charley [Preston Farm] was unable to get out with car or tractor'*.
- 1.3.8.15 6 October 1952. *'An answer was received from the County Surveyor stating the County Council were not prepared to take over the road (the proposal route) and repair it at the public expense as there wasn't sufficient traffic to warrant this'*.
- 1.3.8.16 30 March 1953. It was resolved that a letter should be written to the District Surveyor *'asking if there was any reason why the work on Rectory Lane damaged by the flood [had] not been completed'*. The proposal route was also known as Parsonage or Rectory Lane.
- 1.3.8.17 16 March 1959. The owner/occupier Mr Shopland of Preston Lane, the proposal route, informed the Parish Council that a grant was available for putting occupation roads in such a condition that the County Council would be prepared to take them over and maintain at the public expense.
- 1.3.8.18 14 April 1959. *'A request was made that the Devon County Council be asked to take over this road (Preston Lane, the proposal route) and maintain it. The Barnstaple Rural District Council proposed to recommend this in 1944 but nothing further [had] been done, although repeated requests [had] been made. This road [served] 3 holdings and [was] also a Public Thoroughfare. It was learned that a special grant was available for roads such as this provided the County Council*

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promised to take them over'. A letter was to be written to the County Council asking them to do this and to the County Councillor to support it.

- 1.3.8.19 28 September 1959. A *'letter was read from the County Surveyor who had again approached the Ministry, with a view of getting a grant and adoption of the road',* Preston Lane, the proposal route.
- 1.3.8.20 16 January 1961. *'Down Lane was damaged through the same course which had caused extensive damage to Preston Lane (the proposal route) and the Rectory. After considerable discussion it was agreed the District Surveyor be informed that this Council was getting tired of continually writing to him and no answer received, and nothing done and that a copy of the letter [would be] sent to our Member of Parliament'.*
- 1.3.8.21 27 February 1961. *'This matter (Preston Lane, the proposal route) could be dealt with by the Flood Relief Committee'.*
- 1.3.8.22 7 March 1962. *'The Rev Ayre reported that some improvement had been done' to Preston Lane.*
- 1.3.8.23 15 February 1965. *'The Clerk reported that Mr J Charley (Preston Farm) was worried about the state of his lane (Preston Lane, the proposal route), although it was a private road it was continually being used by heavy lorries and other vehicles. Mr Charley asked if the Parish Council could use their influence to have the surface of the lane repaired'. The Clerk was asked to write to Mr Harwood about the matter.*
- 1.3.8.24 15 March 1965. A letter was to be sent asking for *'information about the grant and the taking over the maintenance of the lane (Preston Lane, the proposal route) that was promised in 1963'.*
- 1.3.8.25 30 January 1967. A letter was received from Mr Charley stressing the *'failure of the Highways Authority to clear a number of gutters and culverts in Down Lane and at Preston Lane (the proposal route) with the result that flood water had seriously damaged the tarmac surface and washed out deep gullies at the verges'.* He asked for an inspection and attention to the damage, stressing the urgency.
- 1.3.8.26 5 September 1968. *'Mr Lewis asked if something could be done to the condition of the side of the lane (Preston Lane, the proposal route) in front of Preston Lodge... the Clerk said he would see Mr Jay the road foreman about this'.*
- 1.3.8.27 25 November 1968. The Clerk had written to Mr Jay regarding Preston Lane's condition (the proposal route) and had passed it onto Mr Hamilton.
- 1.3.8.28 10 March 1969. Mr Lerwill asked about Preston Lane, the proposal route, as the Chairman said nothing had been done and a blocked pipe in Down Lane would make matters much worse.
- 1.3.8.29 22 May 1969. A letter was written to Mr Hamilton asking if something could be done to the surface of Preston Lane, the proposal route.
- 1.3.8.30 5 September 1969. Mr Hamilton had replied to the Parish Council's letter, who did not like its tone, and the Clerk was asked to write again regarding the proposal route.

- 1.3.8.31 23 October 1969. Mr Hamilton, the Divisional Surveyor had replied again considering the damage to Preston Lane, the proposal route, to say that it was not the responsibility of his Council, and if the Parish thought differently, they should make a claim of damage, which they resolved to do.
- 1.3.8.32 9 February 1970. The Chairman stated that the damage to Preston Lane, the proposal route, was now in the hands of the County Council's insurance.
- 1.3.8.33 10 April 1975. Nothing had been done about the silted culvert at Preston House on the proposal route.
- 1.3.8.34 22 November 1979. It was resolved that the Clerk write to complain that heavy vehicles had damaged the drain at Preston Gate Cross, and that the west side of Preston Lane, the proposal route, was in a muddy state.
- 1.3.8.35 6 March 1980. The Chairman reported that nothing had been done about the bridge on Rectory Lane, the proposal route, and the Clerk was asked to write again.
- 1.3.8.36 6 June 1980. *'As nothing had been done about the state of Rectory Lane, [the] Clerk [was] to write again'*, regarding the proposal route.
- 1.3.8.37 4 September 1980. The state of Parsonage Lane, the proposal route, was again complained of. It was resolved that the Clerk write again and to the MP.
- 1.3.8.38 1 October 1980. The MP replied stating he would see what he could do regarding Rectory Lane, the proposal route, but in the meantime letters from the District and County Councils stated that *'the lane was not the responsibility of the highway authority'*. The Clerk was asked to write to the Diocesan Board of Finance stating that they were responsible and that *'those Councils should bring pressure to get the repairs done'*.
- 1.3.8.39 16 October 1980. A letter was received from *'Mr Wilson of Combe Martin complaining about the state of Rectory Lane'*, the proposal route.
- 1.3.8.40 6 November 1980. The Chairman had replied to Mr Michelmore, Solicitor to the County Council, *'requesting him to advise the appropriate Diocesan Department that it was responsible for the disrepair of over ¼ mile of the public occupation road known as Rectory Lane, where on the 9 October an accident occurred due to the state of the road to a motor car driven by a stranger, and that the car had to be towed away'*. The Diocesan Board had replied stating that *'the road belongs to nobody and is no-one's responsibility'* and refused to repair the proposal route. It was resolved that the North Devon District Council should be written to requesting *'the County Highway Authority 'to exercise the statutory obligation in the matter of getting the repairs to the road and bridge done by the Diocesan Board of Finance'*.
- 1.3.8.41 4 December 1980. The North Devon District Council had written to the Area Engineer, putting the matter of Rectory Lane, the proposal route, in his hands.
- 1.3.8.42 22 December 1980. A letter had been received from a Mr Pearson *'complaining about the condition of Rectory Lane'*, the proposal route, which was to be forwarded to the Area Engineer.
- 1.3.8.43 5 February 1981. A letter was received from North Devon District Council stating that *'the County [was] not aware that a public right of way [existed and that there*

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was '*no publicly maintainable right of way [existing] over the route*', the proposal route, and the District Council was unable to pursue the matter further. A response was to be sent repudiating the County Council's statement.

- 1.3.8.44 5 March 1981. The Divisional Surveyor wrote that the Parish's request regarding Preston Gate and Rectory Lane, the proposal route, was being looked into. Correspondence was being sent to the Area County Engineer.
- 1.3.8.45 4 June 1981. A copy of the letter received from the DAPC was forwarded to the District Council regarding the proposal route.
- 1.3.8.46 2 July 1981. A response had been received from the County Solicitor which was considered unsatisfactory and was to be forwarded to the DAPC regarding the proposal route.
- 1.3.8.47 4 February 1982. The DAPC advised the Parish Council to forward correspondence explaining the situation regarding Rectory Lane, the proposal route.
- 1.3.8.48 4 March 1982. The Clerk had written to the County Councillor but was also requested to write to the County Solicitor again regarding the proposal route.
- 1.3.8.49 6 April 1982. The Chairman explained the controversy regarding Rectory Lane, the proposal route, to the County Councillor at the Parish Council meeting, who said they would study the papers and report.
- 1.3.8.50 3 June 1982. A letter was received from the DAPC saying they had been in touch with the County Councillor, and it was agreed that there should be a joint approach between the Parish and County Councils to the Diocesan Board regarding the proposal route.
- 1.3.8.51 2 September 1982. '*As nothing had been received regarding Rectory Lane*', the proposal route, the Clerk was instructed to write to the County Councillor.
- 1.3.8.52 2 December 1982. The County Councillor wrote stating that he had received information about Rectory Lane, the proposal route.
- 1.3.8.53 6 January 1983. A letter from the County Councillor brought to light another letter. Another letter was to be written to the County Solicitor regarding the proposal route.
- 1.3.8.54 2 February 1983. The letter had been sent to the County Solicitor. A discussion was had about the matter of any expenses being incurred. It was resolved that the '*Parish Council would not be responsible for any costs*' regarding Rectory Lane, the proposal route.

1.3.9 Barnstaple Rural District Council Minutes, 1893-1974

- 1.3.9.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a District Council had powers only in relation to public highways through the appointed Surveyor historically, which they had a responsibility to maintain. The records for 1898-99 have not survived.
- 1.3.9.2 There are a number of references to the highways in Kentisbury parish in these

records, with a number specifically dealing with the proposal route between points A – B – C – D.

- 1.3.9.3 3 October 1924. A letter was read from the Parish Council *'relative to putting in repair an Occupation Road known as Preston (the proposal route)...which had been damaged by water flowing from the District Road...the Highway Surveyor stated that this was probably a recurrence of trouble experienced...before but...would look into the matter'*.
- 1.3.9.4 17 October 1924. The Surveyor, Mr Richards, made a report regarding Preston Lane, about water flowing from Mr Toms gateway *'along the District Road, and then onto Preston Lane'*, the proposal route. Mr Toms was requested to clean a water ditch in his field to prevent a recurrence.
- 1.3.9.5 14 November 1924. The Kentisbury Parish Council wrote to say that *'they were not satisfied that the damage to the above Lane (Preston Lane, the proposal route) was caused solely by water from Mr Toms' field and asking for a Committee to meet them'*.
- 1.3.9.6 25 November 1924. A *'Committee had met...they were of opinion that some damage had been done to the Lane'*. Mr Toms was requested to carry out remedial works, and *'the watercourse in Preston Lane (the proposal route) be cleaned out'*. The Committee's report was adopted.
- 1.3.9.7 7 August 1936. A request was made by Kentisbury Parish Council *'for the erection of a sign post at the top of Preston Lane (the proposal route) indicating the road to Kentisbury'*.

1.3.10 Devon County Council Main Roads Committee, 1894-1973

- 1.3.10.1 The Minutes may provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a County Council had powers only in relation to public highways, which they had a responsibility to maintain.
- 1.3.10.2 In 1944, the Council embarked on an exercise to establish which accommodation roads in the County were necessary for public use and should be taken over and maintained at public expense, and which County Roads had become unnecessary for public use. The help of the Rural District and Parish Councils was enlisted in this extensive task. A definition of accommodation roads is included at Part B of the appendix.
- 1.3.10.3 The 9th Report of the Special Sub-Committee appointed to consider accommodation roads in the county to be taken over as highways repairable by the inhabitants at large, which met at The Castle, Exeter, on 25 July 1952, was presented to the County Roads Committee at its meeting on 5 September 1952.
- 1.3.10.4 Preston Lane in Kentisbury, the proposal route A – B – C – D, was considered in the report. *'On consideration of a request from the Parish Council that this road be taken over as a highway repairable by the public, the County Surveyor reported that it was of little benefit to the general public', and therefore he 'recommended that no action be taken'*.

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1.3.11 Ordnance Survey Name Books, 1903

- 1.3.11.1 These Ordnance Survey records contain information on named routes may be found in the relevant Object Name Books, which provided details of the authorities for named features.
- 1.3.11.2 The proposal route between points A – B – C – D, Parsonage Lane, is described as '*a road extending from Preston Gate in a s.w. direction to the junction of roads south of the Rectory*', with the name authorisation coming from the District Surveyor, Mr AA Richards.

1.3.12 Finance Act, 1909-10

- 1.3.12.1 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 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.
- 1.3.12.2 The proposal route between points A – B – C – D, Parsonage Lane, is completely excluded from any hereditaments adjacent, numbered, 17 – Kentisbury Rectory and Glebe Lands, 18 – Preston Farm, 20 – Preston House, and 34 – Broomhills.

1.3.13 Bartholomew's ½" to 1 mile maps, 1920s onwards

- 1.3.13.1 These maps were designed for *tourists and cyclists* with the roads classified for *driving and cycling purposes*. They were used by and influenced by the Cyclists Touring Club founded in 1878 and had the then classifications of First Class roads, and Secondary roads which were in good condition, Indifferent roads that were passable for cyclists and other uncoloured roads that were considered inferior and not to be recommended. Additionally, footpaths and bridleways were marked on the maps as a pecked line symbol. Cyclists use was confined to public carriage roads until 1968. The small scale does not permit all existing routes to be shown, omitting some more minor routes. The purpose of these maps was to guide the traveller along the routes most suitable for their mode of transport.
- 1.3.13.2 On maps dating between 1924 and 1932 the proposal route between points A – B – C – D is depicted as being in the lowest category of 'other roads and tracks', or as an 'inferior road' and 'not to be recommended'.

1.3.14 Aerial Photography, 1946 onwards

- 1.3.14.1 The proposal route between points A – B – C – D is visible and has similar characteristics to the rest of the parish highway network particularly pre-tarmacadam.

1.3.15 Definitive Map Parish Survey, 1950s

- 1.3.15.1 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.

- 1.3.15.2 There is no reference to the proposal route between points A – B – C – D in the Parish Survey, however the entry for Footpath No. 3 is relevant. The footpath was surveyed on 22 June 1950 by Messers Holmes, Lewis, Ayre, and Pickard (Clerk), as running from Sandpark Lane to Preston Farm. It was noted that at a meeting of the Parish Council on 27 March 1957 Mr Lewis informed them that the proposal route, Parsonage Lane, was mainly used by vehicles.
- 1.3.15.3 In the list of public rights of way agree with the Parish Council in May 1957, Footpath No. 3 was described as starting from the UCR, Sandpark Lane, near Lower Sandpark and continued '*due eastwards to Parsonage Lane, a public accommodation road (not repairable by the inhabitants at large), opposite Preston Farm*'.

1.3.16 Definitive Map Review records, 1950s-80s

- 1.3.16.1 It appears that the status of the proposal route between points A – B – C – D, Parsonage/Preston Lane, has arisen on several occasions.
- 1.3.16.2 On 24 November 1954, a letter was written by the Northern Area Surveyor, Mr Jackson, to the Rev. H Ayre of the Rectory, Kentisbury. In it, the proposal route, Parsonage/Preston Lane, is described not as a county road, but an accommodation road for which the adjoining landowners were responsible, which had been damaged in the 1952 floods, but which had not been made good, as it was too late to claim.
- 1.3.16.3 A petition regarding the proposal route, Preston/Parsonage/Rectory Lane, was received by the Kentisbury and Trentishoe Parish Council in March 1980, signed by 46 local residents, that the lane was a public accommodation road which was out of repair, and which required repairs.
- 1.3.16.4 In correspondence dated 1981 and 1983 from Mr C Openshaw to the Rev. HG Ayre, Mr Openshaw states that he lived at Preston House between 1936-56, and owned it post-war. He was born and lived most of his life at the Grange nearby. Mr Openshaw agrees that the proposal route, Preston/Rectory Lane, was a through public accommodation road, which he maintained between Preston Gate and Preston House gate.
- 1.3.16.5 The Rev. HG Ayre of the Rectory, Kentisbury, made a statement in 1983, in which he detailed his and his predecessor's maintenance of the proposal route, and the increased reluctance of the Diocesan authorities to be involved in the matter, despite earlier works being instigated by them. He also states that he always ensured the lane was '*kept in a reasonable state of repair*' and had public liability cover for it.
- 1.3.16.6 Statements were also submitted in 1983 from Mr FJ Tucker of Week Cottage, Mr RG Smyth-Richards of Patchole Manor, and Mr HG Ayre (jnr) of the Rectory.
- 1.3.16.7 Mr FJ Tucker of Week Cottage stated his family were long standing parish residents and had always known the proposal route to be a public accommodation road. His father, Mr J Tucker, was employed by the late Rev. JO Openshaw to maintain that part of the lane which was his responsibility. When he left school, he worked for the late Mr Charley of Preston Farm, who was responsible for maintaining the lane from the rear entrance of the Rectory to the entrance of Preston House, from which point to Preston Gate, it was maintained by the house

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owner. Mr C Openshaw, when he lived at Preston house, maintained that part of the lane.

1.3.17 Definitive Map and Statement, 1957

- 1.3.17.1 The inclusion of a public right of way on the Definitive Map and Statement is conclusive evidence of its existence. However, this does not preclude that other rights which are currently unrecorded may exist.
- 1.3.17.2 The Definitive Statement for Kentisbury Footpath No. 3 is described as running continued 'due eastwards to Parsonage Lane, a public accommodation road (not repairable by the inhabitants at large), opposite Preston Farm'. This is the proposal route between points A – B – C – D.

1.3.18 Beachborough sale, 2000

- 1.3.18.1 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.
- 1.3.18.2 The property known as Beachborough, formerly the parish Rectory/Parsonage, changed ownership in 2000. The proposal route between points C – D is acknowledged as the access to the property, but there is no further mention of the lane.

1.3.19 Route Photographs, 2017

- 1.3.19.1 Site photographs of the proposal route between points A – B – C – D show that it is open and available.

1.3.20 Land Registry, 2017

- 1.3.20.1 Preston Farm is not registered.
- 1.3.20.2 A caution against first registration was lodged in 2000 regarding the whole of the proposal route between points A – B – C – D, by Messers Ayre on selling the former Rectory which they had purchased from the Diocese in 1987. The property is now known as Beachborough.
- 1.3.20.3 Cautions are a means of protecting an interest in an unregistered estate affecting land. A caution can protect a wide variety of interests, such as rentcharges and franchises. For each caution there is a 'caution title' – a record, under a distinguishing number, of the details of the caution and of the declaration in support and of a plan showing the extent of the land affected by the caution. A caution is not an actual registration of any estate in land. It is merely a means to trigger notification to the person who lodged the caution when an application for first registration is made. There can be more than one caution in respect of the same property.

1.4 User Evidence

- 1.4.1 No user evidence has been received for the proposal route between points A – B – C – D.

1.5 Landowner Evidence

- 1.5.1 Responses were received from 4 landowners adjacent to the proposal route between points A – B – C – D.
- 1.5.2 Messers Ayre of Grattons, Kentisbury have owned land adjacent to the proposal route for over 30 years and been tenants prior to that time. They have known the route for over 60 years, as a 'public occupation road'. They have been aware of the public using the lane on foot, with horses and with motor vehicles, though note that such use has been less since the 1980s. They recall temporary gates erected on the route near point B when the occupants of Preston Farm have been moving stock, but which were not immediately removed after the operation, but had to be moved by those subsequently wanting to pass along the lane, including walkers and horse riders.
- 1.5.3 Mr Pile of Preston Farm, Kentisbury has owned land adjacent to the proposal route for almost 50 years and believes the route to be a restricted byway. He has seen the public using the route but has not required them to seek permission or challenged them. There have been no notices or obstructions.
- 1.5.4 Mr and Mrs Clout of Beachborough, Kentisbury have lived adjacent to the route for 18 years and do not believe it to be public, though they are aware of the public using the route following satellite navigation systems. They have not required anyone using the route to seek permission and have not challenged people or told them it was not public, nor erected any notices. They have never obstructed the route.
- 1.5.5 Mr and Mrs Friend of Preston House, Kentisbury have lived adjacent to the proposal route for 3 years and believe it to be an '*unadopted lane*'. They have not seen anyone using the route or required people to seek permission to use it. The only notice they are aware of is the road sign near Preston Gate stating that the route is unsuitable for motor vehicles.
- 1.5.6 They attached a statutory declaration made by a previous owner, Mr Coleman in 1995, who had purchased the property in 1987. It stated that the lane was unadopted, but that he and those connected to him had used the lane without hindrance at all times, without permission or payment, with such rights having been exercised since Preston House was built.

1.6 Rebuttal Evidence

- 1.6.1 The Parish Council supports the resolution of the missing link with Footpath No. 3, but object to the proposal for a restricted byway between points A – B – C – D '*on the grounds of safety for exit onto the A39 that the Parish Council would prefer to see it as a bridleway*'.

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1.7 Discussion

- 1.7.1 Statute – Section 31 Highways Act 1980. There does not appear to be a specific date on which the public's right to use the proposal route known as Preston/Parsonage/ Rectory Lane, between points A – B – C – D has been called into question. The Definitive Map and Statement is conclusive evidence of the information it contains, that Footpath No. 3 exists. The public have continued to use the lane in conjunction with the public footpath. The Kentisbury Parish Council since its inception in 1894 has at no time suggested that Footpath No. 3 was not public nor was it disputed when surveyed for the Definitive Map in 1950. The Parish Council supports the resolution of the anomaly, although would prefer to see it recorded as a bridleway.
- 1.7.2 As there is no specific date of calling into question or user evidence, the proposal cannot be considered under statute law. However, the proposal route may still be proven to exist as a public right of way at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.
- 1.7.3 Common Law. On consideration of the proposal at common law, the historical documentary evidence demonstrates the proposal route's physical existence and availability since at least 1809 as shown on the early Ordnance Survey and Cary's 1821 mapping. It is shown in a similar manner to other recorded public highways.
- 1.7.4 At the time of the 1840 Tithe Map, the proposal route is included partly in the acreage of '*parish roads*' and partly included within the acreage for an adjacent plantation. A requirement of the Highways Acts of 1773 and 1835 which were contemporary with the Vestry records was that all '*common highways*' (public) had to be named in order for indictment for disrepair, the names usually reflecting places they either went to, passed or were used for, e.g. Parsonage Lane, Preston Lane. As private roads were not liable in this way, they did not need to be named. A named highway may therefore carry some inference of public status, including those which were repairable '*ratione tenurae*', sometimes later referred to as 'public accommodation or occupation roads', by adjacent landowners and occupiers, a common occurrence in this part of North Devon.
- 1.7.5 The frequent references in the Kentisbury Parish Council records between 1895 and 1983, demonstrate their regard for the public highway network and in particular, the proposal route, known as Preston/Parsonage Lane. It was considered to be a 'public accommodation road' over which the public had full access, but which were maintained by adjacent landowners and occupiers. The records later document the agreement of the Barnstaple Rural District Council for the proposal route to be taken over, but which was postponed due to prioritisation and funding.
- 1.7.6 However, it appears that when the proposal route was submitted to the County Council to be taken over, the Council adopted a somewhat different view. Despite serving 3 properties and a public footpath, the proposal route was considered of little benefit to the general public as a vehicular road in 1952 by the County Surveyor. However, it is unlikely that the Surveyor envisaged that the public should lose their rights. The Finance Act records are also considered consistent with the route's public reputation, with the proposal route being totally excluded from hereditaments.

- 1.7.7 In 1950 the Parish Council recorded Footpath No. 3 as part of their Parish Survey for the compilation of the Definitive Map as ending at the '*public accommodation road*' opposite Preston Farm, which was carried over to the footpath's Definitive Statement, as agreed with the Parish Council in 1957. The proposal route itself was not included on the Definitive Map because its use was considered to be mainly vehicular. The Parish Council and Definitive Map Review records demonstrate the route's public and vehicular reputation right up to modern times, which is corroborated by the Bartholomew's Maps of the 1920s.
- 1.7.8 The classification '*public accommodation road*' has no legal standing but use of the term in Devon infers that the public may have had full use of the proposal route known as Preston/Parsonage Lane. This must be considered with all the other available evidence.
- 1.7.9 Evidence from landowners adjacent to the proposal route for between 3 and 60 years and seen use of it by the public on foot, with horse, and motorised vehicles. Some consider it to be a restricted byway. They have never challenged such use or told users that the route was not public. There is no evidence of any obstructions or notices, except the modern '*unsuitable for motor vehicles*' sign. In the sale of Beachborough in 2000, (the former rectory/parsonage), the proposal route was not included.
- 1.7.10 The Land Registry information also appears to reflect the public reputation of the proposal route.
- 1.7.11 The Kentisbury and Trentishoe Parish Council support the proposal and the resolution of the anomaly, though would prefer the status of bridleway to restricted byway. The difference between these designations is whether or not non-mechanically propelled vehicles can use the route.

1.8 Conclusion

- 1.8.1 On consideration of all the available evidence the documentary evidence demonstrates that the proposal route between Preston Gate and the A39 between points A – B – C – D has existed since at least 1809. It has been open and available, and considered public since at least that time.
- 1.8.2 At Common Law, all highways existing prior to the Highways Act of 1835 were automatically repairable '*prima facie*' by the parish unless the responsibility could be proven as lying elsewhere. This liability remained as long as the highway existed or until the liability was taken away or transferred by statute, such as '*ratione tenure*'. The records of the Vestry, Parish Council, and Rural District Council demonstrate that the repair liability for many public highways in Kentisbury and North Devon generally were '*ratione tenure*', by the adjacent occupiers to the highways. This did at one time include the proposal route, Preston/Parsonage Lane, before it was suggested by the Parish and subsequently, the Rural District Council, that it be taken over and maintained by the relevant highway authority in the 1940s. The legal presumption, '*once a highway always a highway*' applies.
- 1.8.3 There is some suggestion of the proposal route having been used with motor vehicles by the public. Vehicle use must be prior to 1930 to be legal and satisfy any of the exceptions under the Natural Environment and Rural Communities Act *NERC) 2006 to protect vehicular rights from extinguishment. However, the limited vehicle evidence is not sufficient to satisfy any of the exceptions set out in

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the legislation. Consequently, any unrecorded rights for mechanically propelled vehicles are, as such, extinguished. Therefore, the highest status the route could now be considered to have is that of a restricted byway.

- 1.8.4 The documentary evidence when taken as a whole is considered sufficient to show that a public right of way not shown in the Definitive Map and Statement subsists or is reasonably alleged to subsist. It demonstrates that the proposal route, known as Preston/Parsonage Lane, was considered historically an all-purpose public highway, maintained by the adjacent landowners and occupiers, accepted to be taken over and maintained by the relevant highway authority by both the Parish and former Rural District Councils. The evidence is considered sufficient to demonstrate that historic vehicular rights exist and consequently to record the route as a restricted byway.
- 1.8.5 The evidence is therefore considered to be sufficient under Common Law to demonstrate that a public highway of restricted byway status exists between points A – B – C – D.
- 1.8.6 It is therefore recommended that a Modification Order should be made to add a restricted byway between points A – B – C – D to the Definitive Map and Statement, as shown on drawing no. HIW/PROW/17/34. If there are no objections, or if such objections are subsequently withdrawn, that it be confirmed.

2 Proposal 2: Proposed upgrade of Footpath No. 8 to bridleway, as shown between points E – F – G – H on plan HCW/PROW/17/35.

Recommendation: That no Modification Order be made in respect of Proposal 2.

2.1 Background

- 2.1.1 The proposal to upgrade Footpath No. 8 to bridleway was included in the consultation with the support of the Parish Council, as following up on its proposal from the uncompleted review of 1978.

2.2 Description of the Route

- 2.2.1 The proposal route starts at the county road at West Kentisbury at point E and proceeds through the former West Kentisbury Farm, to a stile at point F. It continues across a field to a stile and footbridge at point G and through Ley Wood to the county road, Ley Lane, B3229, at point H.

2.3 Documentary Evidence

2.3.1 Kentisbury Tithe Map and Apportionment, 1839-40

- 2.3.1.1 Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, limiting the possibility of errors. Their immediate purpose was to record the official record of boundaries of all tithe areas. Public roads were not titheable and were sometimes coloured, indicating carriageways or driftways. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over a route shown. Such information was incidental and therefore is not good evidence of such. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not numbered are usually

included under the general heading of '*public roads and waste*'.

2.3.1.2 The Kentisbury tithe map is a second class map, surveyed at a scale of 4 chains to 1" by G. Northcote, Barnstaple, who did a number of tithe surveys in Devon. Being second class, it is considered only to be a legal and accurate record of tithe matters. Land that was not subject to tithes was generally accepted to be either public, glebe or crown estates. In many cases public roads are coloured sienna as prescribed by Lieutenant Dawson, a military surveyor with the Ordnance Survey, to the Tithe Commissioners. The original document is held at the National Archives, with copies for the parish and diocese held locally.

2.3.1.3 The proposal route is shown as a coloured road and a continuation of the county road through Kentisbury Town between points E – F. No route is shown between points F – G – H. The section F – G passes through lot 14, West Meadow, West Kentisbury, owned by John Nott Esquire and occupied by Richard Toms. The section G – H passes through lot 534, Coppice, Ley Estate, owned and occupied by James Richards.

2.3.2 Ordnance Survey mapping, 1809 onwards

2.3.2.1 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*'.

2.3.2.2 The proposal route is not shown on the 1809 Old Series 1" to 1 mile.

2.3.2.3 On the later 1st Edition 25" scale mapping of 1889, the section E – F is shown as a continuation of the county road from Kentisbury Town. Between points F – G – H, a double dashed track is depicted crossing a ford at point G.

2.3.2.4 The 2nd Edition of 1904 shows almost the same as the 1st Edition except that a footbridge is now depicted at point G.

2.3.2.5 The Post War A Edition of 1975 depicts the section E – F as previously, whilst the remainder of the route between points F – G – H is not shown.

2.3.3 Kentisbury Vestry minutes, 19th century

2.3.3.1 Prior to the formation of District Highway Boards in the early 1860s and the later Rural District Councils (1894) the responsibility for the maintenance of public highways generally belonged to the parish and was discharged by elected Surveyors of Highways. Relevant Acts of 1766, 1773 and 1835 included the provision for the use of locally available materials and there was a statutory requirement upon parishioners to fulfil a fixed annual labour commitment. The final responsibility for maintenance lay with the local Surveyor of Highways who was obliged to keep a detailed account of public monies expended.

2.3.3.2 These records give little information on individual routes in the parish, and there is no mention of the proposal route.

2.3.4 Kentisbury Parish Council Minutes, 1894 onwards

2.3.4.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as

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a Parish Council had powers only in relation to public highways, which they had a responsibility to maintain.

- 2.3.4.2 11 June 1923. *'A petition was presented to the meeting protesting against the action of Mr R Jones of West Kentisbury removing a gate and walling up the entrance', (at point F) who 'objected to the right of way'. A resident, Mr Rees stated he has used the path for 65 years and his children for 20 years. It was resolved to refer the matter to the District Council.*
- 2.3.4.3 30 June 1923. *'A Parish Meeting was called by Messers J Causey and J Bowden re [the] footpath on West Kentisbury Farm' and the petition read. Mr Jones stated that he had erected notices and challenged those he considered 'trespassing', including Mr Ashton. 'Mr Causey thought the path would cost the parish about £50 if it were declared a public path'. 'Mr Harris put to the meeting the question of 'Is there a right of way across West Kentisbury?' [and] the show of hands decided there was not'. A letter was sent to the District Council informing them of the Parish's decision regarding the proposal route between points E – F – G – H.*
- 2.3.4.4 15 April 1946. With regard to the footpath at West Kentisbury Farm, it was resolved at the meeting *'that enquiries be made as to whether this is a public footpath?'*
- 2.3.4.5 14 May 1946. Regarding the matter of the footpath at West Kentisbury Farm, it was resolved *'that the Church Council make enquiries if they are responsible for the maintenance of church paths'.*

2.3.5 Barnstaple Rural District Council Minutes, 1893-1974

- 2.3.5.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a District Council had powers only in relation to public highways, which they had a responsibility to maintain. The records for 1898-99 have not survived.
- 2.3.5.2 There are a number of references to the highways in Kentisbury parish in these records, with a number specifically dealing with the proposal route between points E – F – G – H.
- 2.3.5.3 15 June 1923. *'Letters were read from the Kentisbury Parish Council and the inhabitants of Kentisbury, drawing attention to the fact that the footpath (the proposal route) across part of West Kentisbury Farm had been stopped up by the removal of a gate and the walling up of the gateway.' 'It was resolved that the Clerk take the necessary steps for the re-opening of the footpath'.*
- 2.3.5.4 29 June 1923. The Clerk had received a letter from the landowner's solicitor asking for the matter regarding the proposal route to stand over until they were able to meet with their client.
- 2.3.5.5 13 July 1923. *'A letter was read from the Clerk to the Kentisbury Parish Council stating that a Parish Meeting had decided, by a show of hands, 'that there was no right of way over West Kentisbury Farm'. Another letter was read from the landowner's solicitors stating that as there was another footpath nearby and having seen their client's evidence, which was inconsistent with a claimed public footpath, they were unable to advise their client to remove the obstruction at point F on the proposal route. However, they were willing to reach an amicable arrangement with the Council.*

- 2.3.5.6 27 July 1923. The Clerk reported upon the evidence he had obtained and submitted 32 letters in support regarding the proposal route. It was resolved he should write to the solicitors communicating the purport of the evidence, and that as the Council considered it was ample, that they would proceed unless the obstruction was removed’.
- 2.3.5.7 24 August 1923. The landowner had informed his solicitor *‘that those who used the path [had] now made an entrance elsewhere’*. The matter regarding the proposal route was deferred until the next meeting.
- 2.3.5.8 7 September 1923. *‘The Clerk reported that he had had an interview [with the solicitor and the landowner] was willing to allow the footpath to be used as hitherto; he was also willing to put stepping stones on each side of the wall he had erected at the entrance to keep cattle from straying, the gates to be occasionally fastened’*. The matter was left with the Clerk to ‘settle the matter on the best possible terms’ regarding the proposal route.
- 2.3.5.9 21 September 1923. *‘It was reported that some sort of stile had been placed where the wall had been erected (on the proposal route), but that it was not entirely satisfactory’*.
- 2.3.5.10 5 October 1923. The landowner had now *‘put 2 posts and 3 rails across the gap in the fence, and he was bound to do something to keep the cattle in, as the ‘stopping’ put in the gap was removed every night’*. The Clerk was to write to the landowner asking him to place the necessary steps to the stile on the proposal route.
- 2.3.5.11 19 October 1923. The steps had now been attached to the stile. A Sub-Committee was to view and report.
- 2.3.5.12 2 November 1923. The Sub-Committee reported *‘that a right of way had been acquired by use’*. The stile *‘was a very awkward one’* on the proposal route and the landowner was requested to remove it and install a kissing gate, failing which he should meet with the Committee *‘with a view to settling the whole affair’*.
- 2.3.5.13 16 November 1923. Following their meeting, the landowner had ‘agreed to at once take the ground down to its original level, to erect an ordinary gate which would shut itself, and to place inside the gate a post to prevent it being opened more than is sufficient’ on the proposal route.
- 2.3.5.14 30 November 1923. The arrangements were confirmed with the landowner and his solicitor regarding the proposal route.

2.3.6 Finance Act, 1909-10

- 2.3.6.1 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 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.

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- 2.3.6.2 The proposal route is included within hereditament 44 between points E – F – G and hereditament 27 between points G – H. There are no deductions for *‘public right of way or user’*.

2.3.7 Aerial Photography, 1946 onwards

- 2.3.7.1 The proposal route is mainly visible between points E – F and with difficulty between points F – G – H. The section E – F has similar characteristics to the rest of the parish highway network particularly before the use of tarmacadam.

2.3.8 Definitive Map Parish Survey, 1950s

- 2.3.8.1 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.

- 2.3.8.2 The proposal route is included in the Parish Survey as footpath 8. It was noted that it was overgrown, with a new footbridge required at point G, and new rails and steps required at the fence at point F. The continuation of the county road between points E – F was considered to be a private accommodation road.

2.3.9 Definitive Map records, 1970s

- 2.3.9.1 In response to the incomplete Definitive Review of the 1970s, the Kentisbury and Trentishoe Parish Council proposed that Footpath No. 8 should be upgraded to bridleway between points E – F – G – H.

2.3.10 Definitive Map and Statement, 1957

- 2.3.10.1 The inclusion of a public right of way on the Definitive Map and Statement is conclusive evidence of its existence. However, this does not preclude that other rights which are currently unrecorded may exist.
- 2.3.10.2 The Definitive Statement for Kentisbury Footpath No. 8 is described as running from the *‘county road B3229 at Ley Wood and continues eastwards along a private accommodation road (not repairable by the inhabitants at large) through West Kentisbury to the end of the short length of unclassified road’*.

2.3.11 Route Photographs, 2017

- 2.3.11.1 Site photographs of the route between points E – F – G – H show that it is open and available, but only to walkers.

2.3.12 Land Registry, 2017

- 2.3.12.1 The land is registered to 3 different owners. There is no information relevant to the proposal route.

2.4 User Evidence

- 2.4.1 A user evidence form was received for the proposal in 1978 with the Parish Council's claim, though it is not clear how the route was used, and there appears to be some confusion between Footpath No. 8 and Bridleway No. 4.

2.5 Landowner Evidence

- 2.5.1 Only 1 landowner responded to the informal consultation regarding the proposal route.
- 2.5.2 Mr Dunn of Valley View, Kentisbury has owned land crossed by the proposal route for 20 years between points F – G and believes it to be a footpath. He has seen the public using the route over the years. There are currently 2 stiles and a footbridge on the route.

2.6 Rebuttal Evidence

- 2.6.1 The Parish Council had no specific comment on this proposal.

2.7 Discussion

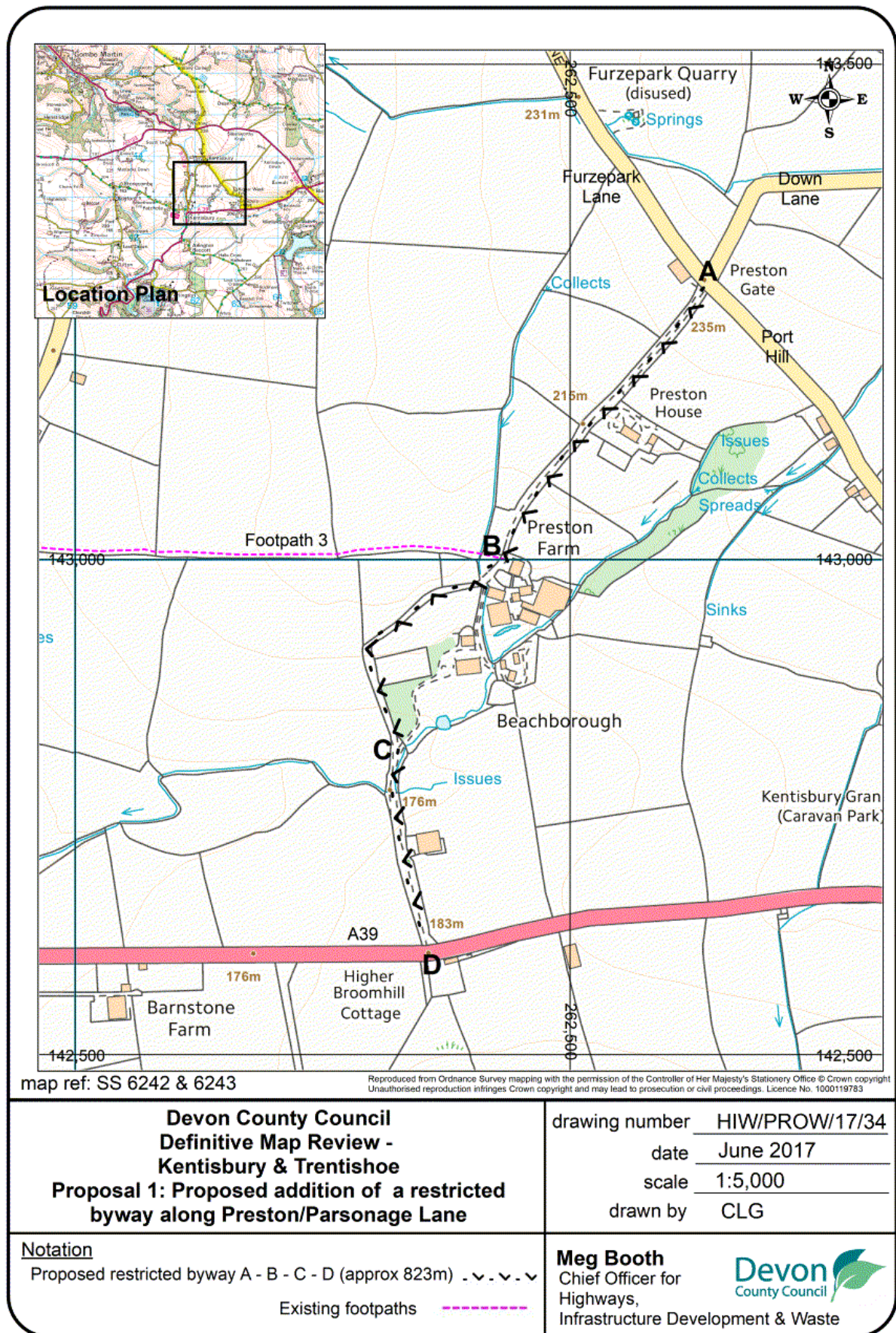
- 2.7.1 Statute – Section 31 Highways Act 1980. There does not appear to be a specific date on which the public's right to use the proposal route has been called into question. The Definitive Map and Statement is conclusive evidence of the information it contains, that Footpath No. 8 exists.
- 2.7.2 As there is no specific date of calling into question or user evidence, the proposal cannot be considered under statute law. However, the proposal route may still be proven to exist as a public right of way at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.
- 2.7.3 Common Law. On consideration of the proposal at common law, the historical documentary evidence demonstrates the proposal route's physical existence and availability since at least 1889 as shown on the Ordnance Survey large scale mapping. The section between points E – F is shown in a similar manner to other recorded public highways.
- 2.7.4 At the time of the 1840 Tithe Map, the proposal route is included partly in the acreage of '*parish roads*' between points E – F. However, it was a requirement of the Highways Acts of 1773 and 1835 which were contemporary with the Vestry records was that all '*common highways*' (public) had to be named in order for indictment for disrepair, the names usually reflecting places they either went to, passed or were used for, e.g. Parsonage Lane. As private roads were not liable in this way, they did not need to be named. A named highway may therefore carry some inference of public status. The proposal route is not named.
- 2.7.5 It appears from the historical mapping, particularly that of the Ordnance Survey that the proposal route may have been able to carry more than foot traffic, being depicted in 1889 as a double dashed track through the field and wood with a ford at point G. However, later mapping indicates a footbridge at the same location.

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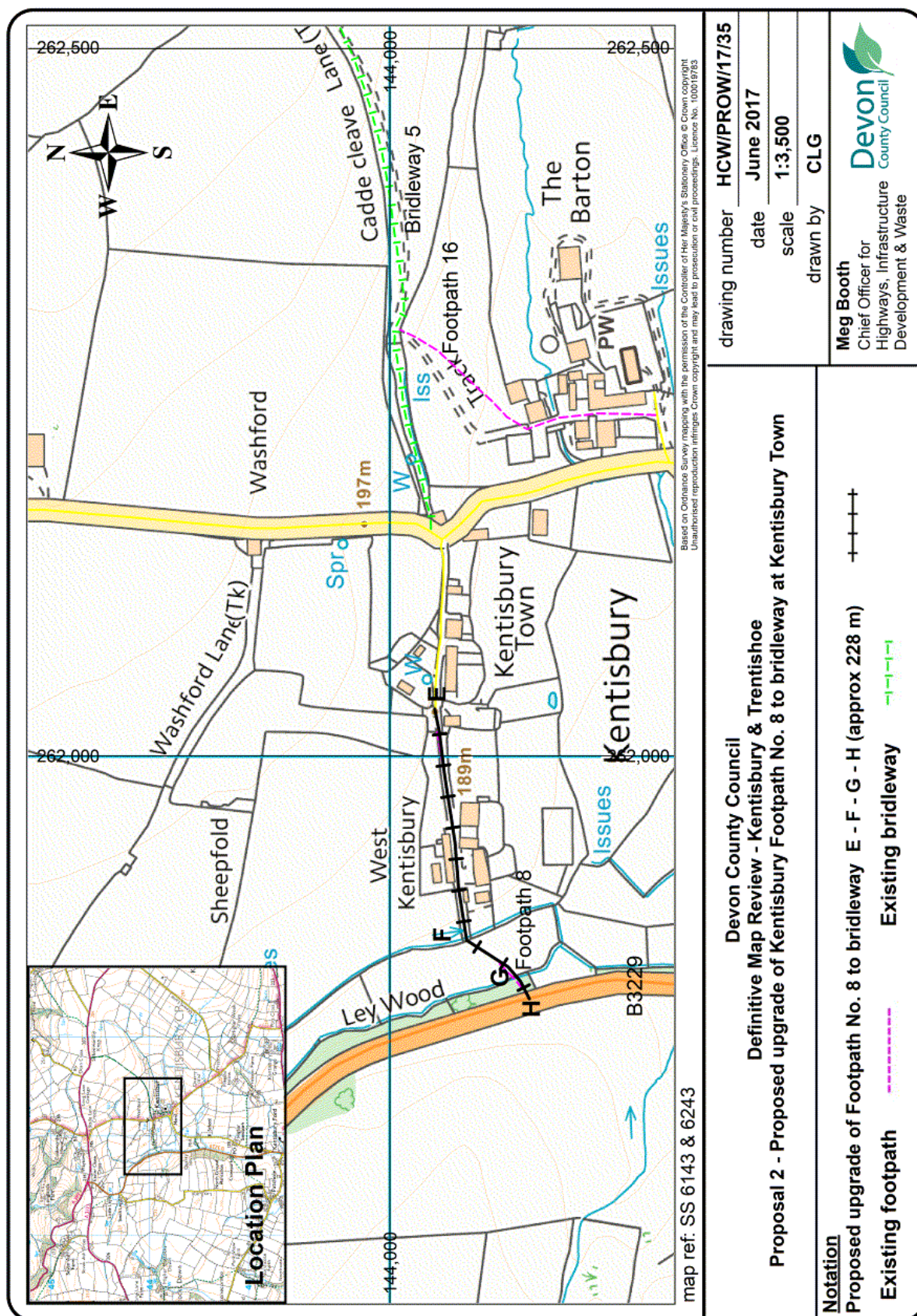
- 2.7.6 The references in the Kentisbury Parish Council records indicate their regard for the public highway network, including the proposal route in 1923 and 1946, which demonstrate the route's historic availability to more than just walkers. However, disputes regarding the right of way created obstructions on the route which may have prevented other users.
- 2.7.7 Affected landowners have known the proposal route for at least 20 years and seen use of it by the public on foot only. They are not aware of other types of users attempting to use the route. The Kentisbury and Trentishoe Parish Council had no comment on the proposal.

2.8 Conclusion

- 2.8.1 On consideration of all the available evidence the documentary evidence demonstrates that the route at West Kentisbury between points E – F – G – H has existed since at least 1889. It has been open and available since that time to the public at least on foot.
- 2.8.2 The historical documentary and user evidence when taken as a whole is considered insufficient to show that the proposal route has a higher status than that of a public footpath on the Definitive Map and Statement. It suggests that the route was available at times in the past to users other than walkers but is considered insufficient to demonstrate that equestrian rights exist and consequently to record the route as a bridleway.
- 2.8.3 The evidence is therefore considered to be insufficient under Common Law to demonstrate that a public highway higher than footpath status exists between points E – F – G – H.
- 2.8.4 It is therefore recommended that no Modification Order should be made to upgrade Kentisbury Footpath No. 8 to a bridleway.



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HIW/18/76

Public Rights of Way Committee
15 November 2018

Definitive Map Review 2017-2018 Parish of Sampford Peverell

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.

Recommendations: It is recommended that:

- (a) an Order be made to modify the Definitive Map and Statement for the addition of a Public Bridleway along Whitnage Lane between points A – B – C – D as shown on drawing number HIW/PROW/18/012 (Proposal 1); and**
- (b) no Order be made to modify the Definitive Map and Statement for the addition of a Public Footpath X-Z as shown on drawing number HIW/PROW/18/018 (Proposal 3).**

1. Introduction

The report examines two of the three proposals for change arising out of the Definitive Map Review in the Parish of Sampford Peverell in Mid Devon. A report detailing the final proposal will be presented at the next committee meeting.

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 18 routes for consideration as public rights of way with path number 19 submitted in 1955. After review by Tiverton Rural District Council and Devon County Council, 10 footpaths and 1 bridleway were agreed at a meeting with the parish clerk in February 1958 and published on the draft definitive map in 15 April 1958. Representations appear to have been made to Bridleway No. 13 as this was amended to Footpath No. 13 on the Provisional Definitive Map. A total of 11 footpaths were subsequently recorded on the conclusive Definitive Map for Tiverton Rural District Council published on 9 June 1964.

Three footpaths were transferred to Uplowman parish following construction of the North Devon Link Road and subsequent parish boundary change in 1983 and there are therefore now 8 footpaths currently recorded on the Definitive Map for Sampford Peverell parish.

The Devon County Council county wide reviews of the Definitive Map under s.33 of the 1949 Act, commenced in 1968 and 1977 but were not completed. In the 1968 review Sampford Peverell Parish Council made two proposals; for the addition of Whitnage Lane (proposal 1 in this current review) and also reinstatement of Footpath No. 8 into Burlescombe parish. In the 1977 review the parish made one proposal, again for the addition of Whitnage Lane as a bridleway. The request was made jointly with Uplowman Parish Council and user forms were submitted from users in both parishes. The addition of a public bridleway along Whitnage Lane was accordingly included as proposal 1 in the current Definitive Map Review for both parishes.

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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 Sampford Peverell have been made and confirmed since 1964:

Tiverton Rural District Council Sampford Peverell Footpath No. 1, Public Path Diversion Order 1973.

Secretary of State for Transport Side Roads Order Footpath Nos. 2,4,5, & 6, Sampford Peverell Stopping Up and Creation 1977.

Secretary of State for Transport Side Roads Order Footpath No. 13, Sampford Peverell Stopping Up and Creation 1981.

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

The current Definitive Map Review was opened with a parish public meeting in September 2017 held as part of the bi-monthly parish council meeting. Two other proposals, in addition to proposal 1, were received from the Parish Council, with no other proposals or suggestions received from the public or user groups. The Definitive Map Review parish consultation map was published in May 2018 with three proposals for the addition of a bridleway and two footpaths.

3. Proposals

Please refer to Appendix I to this report.

4. Consultations

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

County Councillor R Radford	-	no comment
Mid Devon District Council	-	no comment
Sampford Peverell Parish Council	-	no comment
Uplowman Parish Council	-	does not support Proposal 1
Country Landowners' Association	-	no comment
National Farmers' Union	-	no comment
British Horse Society	-	no comment
Ramblers' Association	-	no objection
Trail Riders' Fellowship	-	no comment
Devon Green Lanes Group	-	no comment

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 an Order be made to modify the Definitive Map and Statement for the addition of a Public Bridleway along Whitnage Lane, between points A – B – C – D, as shown on drawing number HIW/PROW/18/012 (Proposal 1), but that no Order be made in respect of Proposal 3.

A report of Proposal 2 for the addition of a Public Footpath near Station Road will be presented to the next committee.

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 Divisions: Willand & Uffculme and Tiverton East

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	2017 to date	DMR/Sampford Peverell

tw171018pra
sc/cr/DMR Sampford Peverell
03 051118

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Appendix I To HIW/18/76

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.

1. Proposal 1 – Addition of a Public Bridleway along Whitnage Lane

This proposal is for the addition of a public bridleway running along Whitnage Lane from the county road on the Uplowman parish boundary with Sampford Peverell, between Whitnage and West Pitt Farm, and proceeding northwards and then north eastwards to the county road east of Newhill Farm in Sampford Peverell parish (GR ST 0288 1580 to ST 0321 1673). The proposal is included in both this and the Definitive Map Review report for the parish of Uplowman.

Recommendation: It is recommended that an Order be made to modify the Definitive Map and Statement for the addition of a Bridleway along Whitnage Lane as shown between points A – B – C – D on drawing number HIW/PROW/18/012 (Proposal 1).

1.1 Background

1.1.1 A bridleway along Whitnage Lane was claimed by both Sampford Peverell and Uplowman Parish Councils in June 1978 as one of their requested amendments to be made in the county wide review of the Definitive Map that was opened in November 1977. In December 1978 thirteen user evidence forms were submitted to Devon County Council from users of the route residing in both Uplowman and Sampford Peverell parishes. The completed forms have remained on file following abandonment of the 1977 review.

1.1.2 The route was therefore included in the current review and put on the consultation map and schedule as Proposal 1 for both Uplowman and Sampford Peverell parishes.

1.2 Description of the Route

1.2.1 The route starts at the county road between Whitnage and West Pitt Farm at point A (GR ST 0288 1580) and proceeds northwards along Whitnage Lane, which is the parish boundary between Uplowman and Sampford Peverell. The lane proceeds uphill and is sunken below the adjacent hedge banks as it continues along the lane to point B (GR ST 0276 1623) where there is a field gate to the east side and the junction with a now closed Defra permissive footpath. The route then levels out and bears north eastwards to point C (GR ST 0290 1651) from where the parish boundary turns north westwards and the lane continues north eastwards solely in Sampford Peverell Parish. The route passes the entrance to Newhill Farm and turns east north eastwards to the county road south of Lee Ditch Copse and north of Middle Pitt (also called Lethbridge Cross) at point D (GR ST 0321 1673). The route has a surface of earth and grass/vegetation between points A and the Newhill Farm entrance with an improved stone surface from the farm entrance to point D. The entire route is between hedge banks and has a total length of approximately 1180 metres.

1.3 Consultations

1.3.1 No comments were received from Sampford Peverell Parish Council. Uplowman Parish Council does not now support the proposal.

1.3.2 The local representative of the Ramblers Association advised that they have no objections to the proposal.

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1.4 Documentary Evidence

1.4.1 Ordnance Survey and Other Maps

- 1.4.1.1 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.
- 1.4.1.2 Cassini Historical Maps 1809 – 1900 Sheet 181 Minehead & Brendon Hills
These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.
- 1.4.1.3 Old Series 1809: Whitnage Lane is shown as a defined lane in a similar manner to the county roads it joins.
- 1.4.1.4 Revised New Series 1899-1900: On this edition Whitnage Lane is shown by two solid lines very close together (an unmetalled road) along the whole route with the connecting county roads shown coloured orange (Metalled Roads Second Class).
- 1.4.1.5 Popular Edition 1919: On this edition Whitnage Lane is shown by two solid lines very close together (Minor Roads) and the connecting county roads are dashed orange (Roads under 14' wide Fit for Ordinary Traffic).
- 1.4.1.6 OS 1st & 2nd Edition 25" to a mile 1880-1890 & 1904
Whitnage Lane is depicted as a defined lane throughout its entire length with several mature hedgerow trees shown along the route. The route is named Whitnage Lane and has three compartment numbers along the length of the lane, number 670 with an area of 0.429 for the southern section on map sheet XXXV.10 and number 459, area 0.684 and 99 area 1.497 on map sheet XXXV.14. There are dashed lines across the ends of the lane at points A and D, believed to indicate a change in surface between the lane and the county road. Bench marks are noted in two places, south of point B and north east of point C.
- 1.4.1.7 On the 2nd edition Whitnage Lane is shown as a defined lane, with dashed lines at points A and D and the same compartment numbers.
- 1.4.1.8 Bartholomew's Half Inch to the Mile Maps Sheet 35 North Devon 1903 & 1921
Bartholomew based their half-inch maps on more detailed Ordnance Survey mapping at one-inch to the mile and published at the half-inch scale from the 1890s to the 1970s. The maps were progressively revised and updated with new information and became Bartholomew's trade mark series. Associated mainly with recreation, the maps were popular and influential and sold well, particularly with cyclists and tourists. The suggestions for revisions by the Cyclists Touring Club were acknowledged on the maps in the heyday of rambling and cycling. The maps contained the disclaimer 'The representation of a road or footpath is no evidence of the existence of a right of way'.
- 1.4.1.9 On the 1903 edition Whitnage Lane is shown as an uncoloured lane and in the same manner as the now county road that it joins at point D. The key

advises that 'The uncoloured roads are inferior and not to be recommended for cyclists'.

- 1.4.1.10 On the 1921 map both Whitnage Lane and the county road at point D are shown as uncoloured lanes/roads although the key now says 'The uncoloured roads are inferior and not to be recommended'. This edition of the map refers to Motoring Roads and Indifferent roads as being passable for cyclists, presumably with the rise in car ownership (1,715,000 registered motor vehicles in the UK in 1926) and that the maps were now used by motorists as well as cyclists.
- 1.4.1.11 OS 1 inch to a mile maps of 1946, 1960 & 1966
On the 1946 edition Whitnage Lane is shown as an uncoloured defined lane (Unmetalled Roads) with the connecting county roads coloured orange (Roads Under 14' of Metalling Good). This map edition noted the location of gates and none are shown along the lane or at point D. Point A is obscured by the parish boundary marks.
- 1.4.1.12 In the 1960 edition Whitnage Lane is shown as a dashed line between points A and C and as a double sided defined white lane from point C to Point D. In the map key a dashed line refers to Footpaths and Tracks and a narrow white lane is Unmetalled Roads. No gates are shown at either end of the lane and there are no buildings at Newhill. The connecting county roads are coloured yellow as Roads Under 14' of Metalling, Tarred.
- 1.4.1.13 The 1966 edition shows public rights of way as recorded on the Definitive Map at that time. Whitnage Lane is again shown as a double sided defined lane throughout, as in the 1946 map (Unmetalled Roads) with the connecting county roads coloured yellow as before.
- 1.4.1.14 OS Post War Mapping A Edition 2500 1969 & 1970
The claimed route is depicted as a defined double hedged lane throughout the length of the route as on the earlier mapping. The lane is labelled Whitnage Lane (Track) and has three compartment numbers 8684 area 0.91 acres, 7917 0.70 acres and 17712.75 acres.
- 1.4.1.15 OS 1:25,000 maps of Great Britain – Sheet ST01 1961
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.
- 1.4.1.16 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'. The maps were published prior to publication of the conclusive Definitive Map for Mid Devon.

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- 1.4.1.17 This map shows Whitnage Lane as a defined uncoloured lane throughout from point A to the junction with the county road at point D, corresponding to 'Other Roads - Poor, or unmetalled'. No buildings are shown adjacent to the route as Newhill Farm has not been established. No lines are shown across the full length of the route.

1.4.2 Tithe Maps and Apportionments

- 1.4.2.1 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 titheable. 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*'.

1.4.2.2 Uplowman Tithe Map 1843 & Apportionment 1841

The Uplowman tithe map does not include any colouring or numbering on any roads or lanes whether those roads are now county roads or lanes such as Whitnage Lane or access to fields/property. The southern section of Whitnage Lane is shown on the Tithe map along the same route as it runs today as far as the junction with the Sampford Peverell parish boundary and in a similar manner to the other minor county roads in the locality. The continuation of Whitnage Lane into Sampford Peverell is labelled 'to Hockworthy'. Adjoining apportionments on the Uplowman side of Whitnage Lane are part of the holdings known as Shapettes, Lower Murley and Gullmoor.

1.4.2.3 Sampford Peverell Tithe Map 1844 and Apportionment 1844.

The Sampford Peverell tithe map does include colouring of all roads and lanes on the map whether the road/lane is now a county road or other lanes or sections of cul de sac lanes giving access to fields or property. Whitnage Lane is shown in its entirety on the Tithe map, with the southern section (points A to B) of the lane shown as being to the west of the parish boundary (coloured blue). The centre section (points B to C) is depicted with the parish boundary running along Whitnage Lane and with the northeast section (points C to D) shown coloured brown and entirely within the parish of Sampford Peverell. Adjacent holdings to Whitnage Lane in Sampford Peverell parish are listed as Lee Ditch, Lower Ridge and Middle & West Pitt.

1.4.3 Deposited Plans Tiverton Roads 1829 (SWHC Ref QS/DP/89)

- 1.4.3.1 There are various plans and a book of reference headed Maps of the intended New Roads and Deviations in the Tiverton Trust 1829, though most of the proposals do not seem to have occurred. Plan number 12 includes a proposed new section of road from Whitnage hamlet eastwards, running south of the current county road and south of Lower, Middle and Higher Pit farms. The southern end of Whitnage Lane is shown on the plan in the same manner as the road eastwards toward Pitt which is a county road today. The field on the western side of Whitnage Lane is number 26 in the book of reference, premises Above Chapel, arable with owner John Adney Esq and occupier Thomas Brice.

1.4.4 OS Name Books Early 20th Century

- 1.4.4.1 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.
- 1.4.4.2 In the OS Name Book 1903 covering Sampford Peverell, Tiverton & Uplowman parishes (Kew Ref OS 35/1689) Whitnage Lane is described 'An occupation road, extending from a junction of roads E of Whitnage to a junction of roads ½ mile N of West Pitt' and was signed for by Mr J Chave, assistant overseer, Uplowman.
- 1.4.4.3 In the summary sheets at the end of the book, Whitnage, Whitnage Lane and Uplowman Cross, amongst others, were also signed for by James Chave, assistant overseer.

1.4.5 Finance Act Plans and Field Books 1910

- 1.4.5.1 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 valuer/surveyor and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.
- 1.4.5.2 The allowance given was often on the basis of a figure such as £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.
- 1.4.5.3 On the Finance Act plan Whitnage Lane is excluded from the adjacent hereditaments. All the land on the east and south sides of the lane was included in one hereditament, number 184 and this holding also included two fields north of the lane between points C and D. The colouring across Whitnage Lane breaks in the same manner as the colouring breaks across the county road running south from point D for other land also included in the same hereditament.
- 1.4.5.4 The hereditament numbers for Uplowman are included in the field books for Sampford Peverell parish. Hereditament 184 which included Middle Pitt and West Pitt farms was 231 acres and owned by Mr Studley and occupied by T White. The field book makes reference to a public footpath through ordnance number 221, allowance £24 but there is no reference to Whitnage Lane.

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- 1.4.5.5 The other hereditament numbers adjoining Whitnage Lane are numbers 156 – Lee Ditch, 208 - Hill, 292 – Wood & Gulmoor, 295 – Whitnage & Locks, 307 - Longthorn & 325 – Hurfords. Whilst the field books make reference to public footpaths in various ordnance numbers in hereditaments numbered 307, 292 & 295 which are now recorded as Footpaths Nos. 6, 7, 8, 9, 11 & 13, Uplowman; none of the field books make any reference to Whitnage Lane.

1.4.6 Vestry Minutes

- 1.4.6.1 Uplowman vestry minutes from 1820 to 1882 are held at the South West Heritage Centre (SWHC - ref 829A/PV1)
- 1.4.6.2 There are references to the waywardens of the highways and repairs to roads and bridges within the parish but no references to Whitnage Lane.
- 1.4.6.3 Sampford Peverell vestry minutes from 1810 to 1841 are also held at the SWHC (ref 1189A/PV1). There is no specific reference to Whitnage Lane although in 1826 it was decided that it is the duty of the occupiers of the different lands to repair the footpaths in their respective lands (unless they have been hitherto repaired by the parishioners). In 1841 it was decided to let the roads either together or in parts as may be agreed by tender but no further details were included in the minutes.
- 1.4.6.4 In the SWHC there is also a handwritten agreement (ref 1198A/PV2) between Sampford Parish Council and John Baker for the repair of the highways for 7 years from Ladyday 1851. No lists or maps were included with the agreement.

1.4.7 Parish Council Meeting Minutes

- 1.4.7.1 The Uplowman Parish Council minute books covering the period 1894 to date are retained within the parish and the parish council minutes since January 2003 available on the parish council website.
- 1.4.7.2 At the Annual Parish Meeting in April 1978 and in connection with the review of 1977, it was reported that almost all footpaths had been walked. The several amendments proposed to the current definitive map included 'Whitnage Lane to Ridge Road should be shown as unclassified bridle path'. In February 1979 there is discussion regarding the letter from Mr Gash, the County Solicitor, at Devon County Council to Dr J Graves-Morris, local District Councillor, regarding Whitnage Lane. The matter was to be dealt with at a later date.
- 1.4.7.3 In January 1984 Mr White stated that Whitnage Lane was in a very poor state of repair and had become dangerous. In June 1991 under Any Other Business it was suggested that Whitnage Footpath should be designated a bridleway if possible. The current status was to be checked. In January 1992 under Matters Arising – Whitnage Footpath, the clerk reported that further information from DCC was required before a decision can be taken.
- 1.4.7.4 Under Any Other Business in March 1995, Mr White raised the question of the status of the 'green lane' in Whitnage and informed the meeting that it was being used by off road vehicles. Clerk was to check the status. In the

public participation forum prior to the parish council meeting in January 2005 there was a query concerning the clearing of 'bridal paths'. Uplowman Parish Council was to check responsibility for this. At the following meeting in March 2005, Mr White had checked the 'Whitnage Bridal path' 1 which was clear.

- 1.4.7.5 The Sampford Peverell Parish Council minute books dating from 1894 to 2002 (excluding the period June 1986 to November 1991) are held at the South West Heritage Centre (Ref 7717A/PX/1/1-6). Minutes since 2014 are available on the Parish Council web site.
- 1.4.7.6 The minutes show that matters concerning footpaths were regularly raised at the parish council meetings. In November 1934 OS maps had been obtained and a Public Footpaths Committee was formed from councillors. In February 1935 the sub-committee reported that certain pathways had been defined as marked on the OS map. A parish meeting to confirm the paths to be proposed for inclusion on the Definitive Map was held on 5th September 1950.
- 1.4.7.7 At a meeting of the Parish Council on the 15 October 1968, the Footpath Committee reported on their meeting of 26 September 1968 to review the public footpaths and make recommendations for which paths should be retained and sign posted where necessary. The path listed at number 10 was 'Whitnage to Leatheridge Cross'. The Parish Council accepted the recommendations as made to retain paths numbered 1 to 15 with the exception of number 6, which was considered private.
- 1.4.7.8 On 17 July 1970 Dr Graves-Morris was congratulated on the parish walks, great success, 45-50 walkers participating. A report on the condition of the paths used was presented at the next meeting in September. Walk 2 referred to Great Landslide farm, which in subsequent years was known to include Whitnage Lane in the walk route. In July 1972 it was reported that walks all completed in July with average of 30-40 walkers. In 1973 walk 3 – 4 July meet Richmond Close for Underdown and Landside. In summer 1975 walks to start 4 August, same arrangements as last year.
- 1.4.7.9 At the Parish Council meeting on 14 October 1977 reports were given on the footpaths walked in August and September. The report for walk a) going via Richmond Close, Underdown, Boehill, Landside, Whitnage Lane stated that 'Brambles etc either side of Whitnage Lane need trimming back'.
- 1.4.7.10 At the 14 April 1978 Parish Council meeting, Cllr Graves-Morris expressed concern that Whitnage Lane appeared to have been overlooked for the 1978 walks, possibly due to the fact that it marked a section of the boundary between Sampford Peverell and Uplowman. Cllr Bone proposed that a letter be sent to Devon County Council requesting that the hedges on either side of the lane in question be cut and maintained to enable unobstructed use of the lane by the public. At this meeting with respect to the 1977 review, it was generally agreed that the Definitive Map was otherwise correct. Clerk to return yellow and buff forms duly completed.
- 1.4.7.11 On the 21 July 1978 meeting under Matters Arising the Devon County Council Divisional Surveyor had replied stating the lane was private. Cllr Bone questioned should the council walk this particular section this year, however it was generally felt that as it had formed part of the walks on many

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previous years, council should continue to use it. At the next meeting, Cllr Graves-Morris requested the letter from Devon County Council (stating that Whitnag Lane was private). He volunteered to further personal representations on behalf of the council which was agreed. In November 1978 Cllr Graves-Morris reported that he had met Mr Gash, the lane could be a bridleway, witnesses were needed and he had given some forms to Uplowman Parish Council. Cllrs Pester, Sharland, Bone, Thomas & Wright agreed to complete forms.

- 1.4.7.12 At the meeting on 11 January 1979 Cllr Graves-Morris read the letter he had sent to Mr Gash in December and advised he had had a very good response from parishioners. It was now in hands of Devon County Council. The 1979 footpath walks were discussed on 16 March 1979, and the walk to be held on 2 July 1979 included Whitnag Lane. In 1980 walk 2 on 16 June included Whitnag Lane and at the July Parish Council meeting it was reported that all the walks had been well attended. Whitnag Lane continued to be used in one of the parish footpath walks in the 1980s and in 1984 it was reported to be fairly clear.
- 1.4.7.13 The Parish Council minute book was missing between June 1986 and November 1991 but the walks took place in 1992 (no route details for 1992) and in 1993 – 1996 Whitnag lane was included in the route for one of the parish walks.
- 1.4.7.14 A letter with reports of the parish footpath walks was sent from the parish clerk to the Devon County Council rights of way warden in September 2002. The report for the walk on 24 June describes the route from Great Landside to Whitnag by road walking pass East and West Pitt. Whitnag Lane was not walked in 2002 and no walks occurred in 2001 due to the Foot and Mouth outbreak.
- 1.4.7.15 On contacting the parish council as part of the current review to ascertain whether Whitnag Lane was still included in the current parish walks, a response was received from a previous parish councillor. Mr Lucas advised that he understood that, possibly in the mid 1980s, that Whitnag Lane was no longer designated as a public track excluding access. He was a leader on parish walks from approximately 1989 to 2000 and did not walk Whitnag Lane.

1.4.8 British Newspaper Archive

- 1.4.8.1 The auction of the Whitnag Estate on 30 November 1937 was advertised in the Exeter & Plymouth Gazette of 29 October 1937. Seven lots of land/property were listed in the advertisement but did not include any reference to Whitnag Lane. A copy of the sale catalogue has not been seen.

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

- 1.4.9.1 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 lane was not included as a proposal by either parish. Uplowman Parish Council initially proposed 25 footpaths but no bridleways or roads used as public paths

'rups'. Sampford Peverell initially proposed 18 footpaths and 1 bridleway but did not include Whitnage Lane.

1.4.10 Devon County Council Uncompleted Reviews of 1968 & 1977

- 1.4.10.1 In a letter dated 4 July 1971 (in relation to the 1968 review) the clerk to Uplowman Parish Council advised the County Council that 'after inspecting the map enclosed with the letter it was agreed to confirm the Footpaths as shown thereon, with the exception of path numbered 1 which was closed in 1965'.
- 1.4.10.2 In respect of the 1977 review Uplowman Parish Council proposed that Whitnage Lane should be shown 'as an unclassified bridlepath' in a letter to the County Council in June 1978. In November 1978 Dr J Graves-Morris of Sampford Peverell wrote to Mr Gash, County Solicitor, at the County Council saying 'As Councillor for Ward 22 of the Mid Devon District Council (Uplowman & Sampford Peverell Parish Councils) I would like to discuss with you what appears to be an omission of a footpath or bridlepath from the definitive map owing to the belief by both Parish Councils along whose boundaries it runs that it was in fact, a county owned 'green lane' (or by whatever other name it could be called). I refer to Whitnage lane running from Whitnage to Leatheridge Cross.' Dr Graves-Morris had also been a Sampford Peverell parish councillor since the 1950s.
- 1.4.10.3 It appears that Dr Graves-Morris had then spoken to Mr Gash as a further letter was received dated 12 December 1978 enclosing a number of user evidence forms and saying 'Thank you for discussing this matter with me the other week. I enclose a sheaf of Claims for public right of way from both parishes which are in my ward. I was taken aback by the overwhelming response from Uplowman which I had not expected; you will note that two of the adjoining landowners, Mr White and Mr Bent both consider it is in the ownership of Devon County Council as do two others who have both known it for sixty years.'
- 1.4.10.4 Dr Graves-Morris' letter then refers to letters dated 19 May and 19 October 1978 c.c. to the Area Engineer from the Divisional Surveyor, Mr J Owen--Jones; in which the surveyor states it is privately owned and he would not like to adopt it as a private highway. Copies of these letters are not in the parish rights of way review files. Dr Graves-Morris concludes his letter by saying 'Obviously there are legal issues to be determined'.
- 1.4.10.5 The 1977 County wide review did not progress but the letters and evidence submitted by parish councils and parish meetings has been retained on file.

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

- 1.4.11.1 On the 1946-1949 aerial photography Whitnage Lane can be seen as a clearly defined lane with hedgerow trees and the hedges trimmed sufficiently to enable the surface of the lane to be seen for the length of the lane.
- 1.4.11.2 In 1999-2000 Whitnage Lane is clearly visible as a hedged lane with some hedgerow trees. The surface of the lane is visible except for the southern section where it is obscured by the hedgerow vegetation. The house and buildings are now visible at Newhill Farm between points C and D.

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- 1.4.11.3 On the 2006-2007 photography the hedgerow trees and hedges obscure the surface of the lane between points A and B. The hedges have been neatly trimmed between points B and C, with larger hedgerow trees present between C and D. A track/path along which the Defra Countryside Stewardship permissive path ran between 2003 and 2013 can be clearly seen along the field headland east of point B.

1.4.12 Land Registry

- 1.4.12.1 Whitnage Lane is not registered at HM Land Registry as part of any of the adjoining land which is registered under nine different titles. Three of these landowners would appear to require access along Whitnage Lane to access their land.
- 1.4.12.2 In the title number DN296339 (Locks Farm) for land on the west side of Whitnage Lane between points A and B, a conveyance dated June 1990 granted the following right 'Together (so far as the present owner can grant the same) with a right at all times and for agricultural purposes over the lane leading from the public highway to field OS Numbers 7391 and 7400'. Field numbers 7391 and 7400 can be seen on the OS Post War mapping A edition and title plan and the lane referred to is considered to be Whitnage Lane.
- 1.4.12.3 The title number DN347472 (Lee Ditch Farm) for land north west of Whitnage Lane between points C and D includes in the property register includes 'Notice entered in pursuance of rule 254 of the Land Registration Rules 1925 on 27 September 1994 that the registered proprietor claims that the land in this title has the benefit of a right of way over the land tinted brown on the filed plan'. The land tinted brown is Whitnage Lane from point D to north east of Newhill Farm.
- 1.4.12.4 The land in title number DN342038 includes a block of seven fields which includes the field adjoining the north west of Whitnage Lane, between north of point B to point C. This land would appear to be landlocked without access from Whitnage Lane although the register includes a right of way from Murley Farm on the north west boundary. No reference is made to any right of way along Whitnage Lane. The land is now part of Newhill Farm.
- 1.4.12.5 The land in title number DN320068, now Newhill Farm, first registered in 1992, would also be landlocked and the title makes no reference any right of way along or to Whitnage Lane.
- 1.4.12.6 None of the other titles refer to Whitnage Lane or any rights of access along the lane.

1.4.13 Planning Applications

- 1.4.13.1 The first planning application for residential accommodation at Newhill Farm appears to be in 1982. In a planning application for a wind turbine at Newhill Farm in 2008, Whitnage Lane was described as a farm track. In a prior notification application of 2018 Whitnage Lane was not included in the ownership boundary of Newhill Farm and was again described as a farm track.

1.4.14 Permissive Footpath

- 1.4.14.1 In 2003 the landowners at West Pitt Farm entered into a ten year permissive footpath agreement with Defra through the Higher Level Countryside scheme, in which landowners were paid an annual payment per linear metre of public footpath or bridleway provided. The permissive footpath ran north north westwards from West Pitt Farm along the headland of two fields before entering a third field and turning south westwards to meet Whitnage Lane at point B. On the plan prepared by Defra of this permissive access, Whitnage lane is described as a Byway Open to All Traffic whilst on the description of the walk Whitnage Lane is described as 'an ancient green lane'. The permissive access ended in September 2013 and a sign saying 'Private – No public right of way' is now fastened on the gate leading into the field to the east at point B.

1.5 User Evidence

- 1.5.1 A total of thirteen user evidence forms were submitted by Dr Graves-Morrish in December 1978 with his covering letter and the review form proposing the addition of Whitnage lane to the Definitive Map as a public bridleway. The user forms were completed by parishioners from both Uplowman and Sampford Peverell. None of the users report ever been stopped, turned back or seeing any notices, gates or obstructions on the route. At the time of these forms been completed, a map of the route referred to in the form was not requested but the description provided by the users describes Whitnage Lane.
- 1.5.2 The seven forms from Uplowman parish were all from Whitnage residents and with ages ranging from the early 40s to early 70s and completed in 1978. On these user forms 'the person taking this statement' box was completed by Mr J Vicary and Mr L J White who have both completed forms themselves.
- 1.5.3 Mr J Vicary of Whitnage advises that he used the lane five times a week for sixty years from 1968 to 1978 for business purposes going to Lee Ditch Farm. Use for business purposes is not use 'as of right'. Lee Ditch Farm was located along the lane north of point D and it would not have been necessary to use Whitnage Lane to access the farm. Mr Vicary comments 'to my knowledge it is public. I have always known Whitnage Lane as a public footpath, a bridle path and carriage way'.
- 1.5.4 Mr White still resides at the same address in Whitnage and has completed a landowner form in respect of his ownership of the field north west of point A. In his 1978 user form, Mr White stated that he had known the lane to be public and had used the lane since 1973, forty times a year for pleasure, dog & pony exercise going from Whitnage to Lee Ditch. He believed the owner to be Devon County Council.
- 1.5.5 Mr Brain from Whitnage had known the lane to be public since 1951 and had used it every day for exercising horses and dogs. The precise years of use are not stated but he had never been stopped or seen any notices.
- 1.5.6 Ms Brakespear of Whitnage had known the lane to be public all her life (62 years old in 1978) and commented that it was marked as a public road on the 1904 Ordnance Survey map and was the old main road before the Ridge--Hockworthy road was cut. She had used the route since 1918, every

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day at times for riding, driving and walking. Under ownership she stated 'I fancy the highways commission – since it is a made road – open both ends onto other county roads'. Other comments included 'As everyone in the district knows it is a public road. I have walked, ridden, not to mention driving in a land rover on this road all my life and I have lived here 61 years'.

- 1.5.7 Mr Hellier of Whitnage Farm and known or regarded the lane to be public for the last fifty nine years and has used the lane during that time, seventy times a year for business and pleasure, to inspect well from Whitnage and riding from Whitnage to Leathbridge Cross. He considered the owner to be Devon County Council.
- 1.5.8 E J Pinsent of Uplowman had known the way to be public for fifty years and had used the lane since 1928, two to three times a year as a round trip from Whitnage for walking the dog, courting etc. The lane was not considered to be in private ownership.
- 1.5.9 Mr Reichward, a schoolmaster, of Whitnage had known the way to be public and used the lane for walking for five and a half years from 1973, as a walk from Whitnage. He presumed it was public property but had no knowledge.
- 1.5.10 The six user evidence forms were from Sampford Peverell residents in their late forties to early seventies and the forms were again completed in 1978 with one in 1979. One of the forms was completed by Mr Bent, the farmer from West Pitt Farm. In 1978 Mr Bent was the landowner of most of the land on the east and south side of Whitnage Lane. He had known or regarded the lane to be public for twenty years and had used it innumerable times for business going from one end of his farm to the other. Mr Bent's use as part of his day to day farming business would not be use as of right. With regard to ownership, Mr Bent sates 'it has always been regarded as a public thoroughfare, it crosses no ones land' and in other comments 'as previously stated this road has always been regarded as a public road'. All of the Sampford Peverell residents considered the lane as a bridleway.
- 1.5.11 Mr L Bone, retired, from Sampford Peverell regarded the way public and had used the route for seven and a half years since 1971, five to six times a year for recreation.
- 1.5.12 Mr R Pargeter, schoolmaster, from Sampford Peverell regarded the way public and used the route at least once or twice a year since 1962 for recreation. He added 'on geographical and physical consideration, I have unquestionably expected this lane to be public, probably a bridleway, possibly a byway – there is no sign that it has ever been gated.'
- 1.5.13 Mr F Pester, retired, from Sampford Peverell regarded the way as public for nine years and had used the route once or twice a year from 1970 for pleasure.
- 1.5.14 Mr T Sharland, mason/bricklayer, from Sampford Peverell had known or regarded the way as public for thirty plus years. He had only walked the route once in 1975 and 1976 as part of the annual parish council led footpaths walks in the parish. Under further particulars he commented 'This track is often overgrown and very muddy, with very pleasant views'.

- 1.5.15 Mr E Thomas, company director, from Sampford Peverell had known or regarded the way as public for twenty five years. He had used the route from 1950 approximately once a year for rambles with family and as parish council. He has commented 'sometimes very overgrown' and 'as far as I can ascertain from the older villagers, this has always been a common right of way'.
- 1.5.16 No recent user evidence has been received. Evidence of recent horse use was noticed in April 2017 but it is not known if this use was by a member of the public or an adjacent landowner with private rights. The local Ramblers Association representative had walked Whitnage Lane once in the Spring of 2013. His report refers to signs of a horse having been ridden along the lane and plenty of dog paw marks. The lane was not flooded south west of Newhill.

1.6 Landowner Evidence

- 1.6.1 Those landowners and occupiers who owned land adjacent to the proposal route were all 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.
- 1.6.2 Mr & Mrs A Branton either own or occupy all the land on the east side of Whitnage Lane between points A and C and the three fields on the west side of the lane from just north of point B for 42 years. In an additional letter they advise that they understand it to be a Green Lane, not adopted by highways and available for all who wish to use it, by foot, horse, on a bike or mechanical or non-mechanical vehicle. They cannot see any advantage to designating it and are in favour of maintaining the status quo. They are not aware of members of the public using the lane.
- 1.6.3 They are not prepared to maintain the lane hedges or trees on their land that adjoin the lane as would be their landowner responsibility if the lane is designated. Their cattle cross the lane for milking (about half way between points A and B) and the field gates are closed across the lane, but not locked, for the cows to return to the fields on the east side of the lane after milking. This arrangement must continue and the lane must remain as an undesignated Green Lane. They have public footpaths across their farmland elsewhere and do not want to encourage more members of the public onto their farm.
- 1.6.4 Mr R Branton of Murley Farm had owned the field north west of point B since 1977. He has rarely seen members of the public using this way and has not stopped or turned back anyone from using the lane. Mr Branton additionally advised that when the family purchased Locks Farm in 1977, Newhill Farm did not exist. Whitnage Lane, also referred to as Primrose Lane, was and is a track not a public highway. It does not fit any of the rights of way categories.
- 1.6.5 Mr A J Disney did not return a completed plan with his landowner evidence form but owns the field to the south east of Whitnage lane between points C and D. He has considered the lane to be a bridleway for 22 years but has not been aware of the public using the way.
- 1.6.6 Mr P Netherway owns the field north of the lane just west of point D. He does not consider the lane to be public and says it should be kept as it is. It

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is used by himself and adjoining land owners only. He has told off-road/green-laners to disappear quickly.

1.6.7 Mr L J White owns the field at the southern end of the lane west of point A and was the Uplowman Parish Council Chairman for a number of years. He considers the route to be a green lane (BOAT) and has been aware of use by the public regularly/intermittently for fifty years. He has not required anyone to ask permission or stopped anyone using the lane.

1.6.8 Mr & Mrs Greenslade have owned Newhill Farm and land on the north west side of the lane between points B and C since 1992. They do not consider the lane to be public but a farm access lane. They have seen or been aware of use by 4x4s. Foot or horse very rare because of the deep pond in the track. They give permission for hunting but have not required other people to ask permission because it is so rare to see anyone. They refer to the deep pool of water between points B and C and the presence of a gate between points A and B. The section between points B to D has been maintained by themselves for the past 26 years at their cost.

1.7 Rebuttal Evidence

1.7.1 Apart from the comments received from the landowners, no other rebuttal evidence has been received.

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 A Schedule 14 application is considered to be a calling into question for the purposes of Section 31 but on this occasion no Schedule 14 application has been submitted. The proposal to add Whitnage Lane as a bridleway was made by Uplowman & Sampford Peverell Parish Councils, following the County Council's request for amendments to the Definitive Map in 1978. The user evidence submitted does cover twenty years use by the public from 1958 to 1978 but as the proposal as made would not be considered to be a calling into question under Section 31, it means that the existence or not of public rights of way cannot be considered under statute on this occasion.

Common Law

1.8.3 A claim for a right of way may also be considered 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.

- 1.8.4 The documentary map evidence records the existence of Whitnage Lane as currently, since at least the early 1800s as shown on the early 1" to a mile OS maps. On the 1" maps the lane is shown as similar in status to the adjoining county roads in 1809 but at a lower classification in 1899 and 1919. On the OS 25" maps of 1880 and 1904 the lane is shown as a defined lane, named and with its own compartment number and area stated. Dashed lines across the lane at points A and D could indicate a change in surface between the lane and adjoining county roads. The Bartholomew's maps of 1903 and 1921 show Whitnage Lane as the same status as the county road at point D.
- 1.8.5 The 1" OS maps of the 20th century continue to show the lane as an unmetalled road, footpath/track & unmetalled road and unmetalled road and Whitnage Lane is shown as an 'other road – poor or unmetalled' on the larger scale OS map of 1961. The maps show the physical existence of the lane and give an indication of it was viewed in connection with the local road network. The maps do not however, provide evidence as to status and whether the lanes were publicly maintainable at that time.
- 1.8.6 The Uplowman Tithe maps of 1841 did not include any colouring of roads/lanes within the parish. The section of Whitnage Lane within Uplowman Parish is shown and labelled 'to Hockworthy' at the parish boundary, indicating that the lane was considered a through route to Hockworthy. The Sampford Peverell Tithe map of 1844 did colour all roads /lanes on the map regardless of status. Whitnage Lane is shown on the map from points A to D and coloured brown.
- 1.8.7 Plans for the improvements of roads in the Tiverton area of 1829 show the southern end of Whitnage Lane in a similar manner to the county road going eastwards to West Pitt.
- 1.8.8 In the OS Name Book of 1904, Whitnage lane is described as an occupation road rather than as a parish road. However, the name and spelling of Whitnage Lane is signed for by the assistant overseer, indicating that the lane was considered to be part of the local highway network under his jurisdiction. The description as an occupation road is considered to support the status of at least public bridleway.
- 1.8.9 In the Finance Act plans of 1910, the whole of Whitnage Lane is excluded from the adjacent hereditaments and the colouring breaks across the lane when a hereditament includes land on both sides of the lane. Ownership of the lane was not claimed by adjacent landowners and this could indicate that the lane was considered to be public and part of the local highway network.
- 1.8.10 The Parish Council Minute Books from both parishes record regular items referring to the public rights of way in the two parishes. Whitnage Lane was not proposed for inclusion as a public right of way in either of the 1950 parish surveys but was proposed for addition as a bridleway by both parishes in the subsequently uncompleted 1977 review supported by user evidence collected from users in both parishes.
- 1.8.11 In Uplowman parish in 1991 it was again recorded that Whitnage Lane should be recorded as a bridleway. Use of the lane by off road vehicles in 1995 raised the question of the lane's status again. In 2005 a parishioner questioned the clearing of bridle paths and at the following meeting the chairman Mr White reported that the Whitnage bridle path was clear.

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- 1.8.12 In Sampford Peverell parish a list of public rights of way in the parish compiled in September 1968 included Whitnage Lane as number 10. The earliest record of the annual parish walks was in 1970 and the minutes confirm that Whitnage Lane was included in the walk to the north of the village through Boehill and Landside Farms in the 70s, 80s and 90s. Following the 1977 walk it was reported that the brambles either side of Whitnage Lane needed trimming back. On being requested to do this the Divisional Surveyor for Devon County Council advised that the lane was private. From a road surveyor's perspective it is considered that he meant private as regard to maintenance or ownership, as the lane was not a recorded as a road maintainable at public expense nor owned by the County Council; rather than meaning with regard to use of the lane. The Parish Council minutes confirm that Whitnage Lane was used in the parish walks in the 1970s, 80s and 90s.
- 1.8.13 In the 1977 uncompleted parish review it was a Parish and Mid Devon District Council Councillor who spoke to Devon County Council about adding the lane as a bridleway and collected user evidence from both parishes for the lane to be added to the Definitive map as a bridleway. There are references in the minutes of both parish councils that indicate the lane was considered to have the status of a public right of way by both parishes. Uplozman Parish Council no longer supports the proposal, although it has not submitted any grounds in opposition.
- 1.8.14 Whitnage Lane is not registered at HM Land Registry although all the adjoining land is registered under nine different title numbers. Only two of the property registers make reference to a right of way along Whitnage Lane although six of the titles could be accessed by other means. It is considered that all the adjoining landowners would have a private right of access along the lane for all purposes to access their land even if such right is not included in the title register. If the lane was considered to have bridleway status, it would be prudent for the landowner's title to record a right for all purposes, thus including vehicle use, in the deeds when land is being transferred. None of the adjoining owners have claimed any ownership of the lane.
- 1.8.15 The Defra funded permissive footpath in force between 2003 and 2013, referred to Whitnage Lane as byway open to all traffic and an ancient green lane. This implies that the landowner at that time considered the lane to be public and that this was accepted by the Defra government officer as it would have been necessary for the permissive path to connect with a public right of way or county road. Had Whitnage Lane being considered private, the landowner could have claimed an additional sum for the section from point B to point A or D.
- 1.8.16 The aerial photography from 1946 shows the lane as a defined hedged with hedges trimmed and surface of the lane generally visible. The 2006-2007 photography shows the route of the Defra permissive footpath in the field to the east of point B. A worn path could indicate that the permissive footpath was well used and users would have then probably continued their walk along Whitnage Lane.
- 1.8.17 The user evidence forms submitted in 1978 remain valid and apart from the forms submitted by adjacent landowners, the use is considered to be as of right and covers the period from 1918 to 1978. Whitnage Lane was used for

parish walks into the 1990s and there is no evidence of landowners been contacted beforehand or of the route ever been considered permissive. One form was completed by the adjacent land owner, Mr Vicary, who advised that he had always known Whitnage Lane as a public footpath, a bridle path and carriage. Another landowner, Mr Bent of West Pitt, stated in his form that it had always been regarded as a public road.

- 1.8.18 No additional user evidence forms have been submitted during the review consultation. The lane remains available to users and appears to be used by local riders and walkers. In the past limited use by 4x4s has been reported by a landowner and to Uplowman Parish Council. Current landowners Mr Branton, Mr White and Mr & Mrs Greenslade report having seen members of the public on occasions. Mr & Mrs Greenslade reported that they had stopped 4x4s using the lane. The user evidence received is considered sufficient to show acceptance of a route previously dedicated as a public right of way.
- 1.8.19 Some of the landowners' have observed infrequent use by the public. None of the landowners advise ever stopping users apart from 4x4 vehicles and some consider the lane to be a bridleway or BOAT. Other landowners describe the lane as a farm track or access lane. The major occupier considers the lane to be green lane and available for all who wish to use it but do not see any advantage to designating the lane as a public right of way and other landowners agree with this view. They are concerned about their increased maintenance responsibilities in cutting the hedges and possible interruption to the practice of opening gates across the lane to allow the cows to come and go between adjoining fields at milking times. None of the landowners claim ownership of the lane but have a right of access.
- 1.8.20 Whitnage Lane was found to be clear and available to users in April 2017. The aerial photography indicates that the adjacent hedges have been trimmed in the past. It is quite common on public rights of way to find string or gates temporarily across the route for livestock direction and this is not a problem to users or considered an obstruction.

1.9 Conclusion

- 1.9.1 In the absence of an event to be considered 'a calling into question' of the public's use of the lane, the existence of a public right of way cannot be considered under section 31 of the Highways Act 1980. At common law the documentary evidence supports the existence of public rights of way along Whitnage Lane. Together with the user evidence collected in 1978 and use of Whitnage Lane in annual parish walks, this is considered to be sufficient evidence to show that a public right of way has been dedicated at some time in the past and that such dedication has been accepted by the public. When the evidence is taken as a whole, a public bridleway, can be alleged to subsist.
- 1.9.2 It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement for the addition of a Bridleway along Whitnage Lane, between points A – B – C – D as shown on drawing number HIW/PROW/18/012, and if there are no objections to the Order, that it be confirmed.

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2. Proposal 3: The addition of a Public Footpath from the county road at Lower Town to join Footpath No. 9, Sampford Peverell.

Recommendation: It is recommended that no Modification Order be made to add a public footpath between points X and Z as shown on plan HIW/PROW/18/018.

2.1 Background

- 2.1.1 Following the opening of the Definitive Map Review in the parish, proposals for change were requested from the parishioners, either through the Parish Council or from individuals where supported by evidence. The addition of a public footpath from the country road along the lane was supported by members of the Parish Council and accordingly included as proposal 3 in the Definitive Map Review for the parish.

2.2 Description of the Route

- 2.2.1 The route starts at the county road between Ford Orchard and Turberfield House at Lower Town in the village centre at point X (GR ST 0336 1433). It then follows the lane/track southwards to point Y (GR ST 0337 1429) and then south westwards for about 94 metres to join Footpath No. 9, Sampford Peverell at point Z (GR ST 0332 1426). Footpath No. 9, Sampford Peverell starts north of point Z at the county road, west of point X and then continues southwards along the lane/track before continuing as a cross field footpath.
- 2.2.2 The lane is bordered by the wall of Turberfield House and garden on the east side and by garden fences on the west side between points X and Y and by garden fences/boundaries and field hedge on the northern and southern sides of the section Y to Z. The lane surface is of hardcore/stone with earth/grass verges.

2.3 Consultations

- 2.3.1 No comments on the proposal were received from the Parish Council after publication of the schedule of proposals. The local representative of the Ramblers Association advised that they have no objections to the proposal. They did not have any evidence in support of the proposal.

2.4 Documentary Evidence

2.4.1 Ordnance Survey and Other Maps

- 2.4.1.1 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.
- 2.4.1.2 Cassini Historical Maps 1809 – 1900 Sheet 181 Minehead & Brendon Hills
These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.
- 2.4.1.3 Old Series 1809
On this edition the route is shown as the northern end of a cul-de-sac lane. The lane is open at the junction with the county road.

- 2.4.1.4 Revised New Series 1899-1900
Some hundred years later and the lane is still shown as a defined lane of two solid lines close together with the lane continuing from its southern end as a dashed line to another lane.
- 2.4.1.5 Popular Edition 1919
In this edition the map is not so clear but the lane is shown as a defined lane continuing as a pecked line from the southern end.
- 2.4.1.6 OS 1st & 2nd Editions 25" to a mile 1880-1890 & 1910
On the first edition the route is shown as the northern end of a defined hedged lane. The lane has its own compartment number of 435 and area 0.593 acres. There appears to be a pecked line across the end of the lane at point Z, considered to refer to a change of surface.
- 2.4.1.7 The second edition is very similar to the first edition mapping. The compartment number for the lane is the same although the area is now 0.631 acres. There is a pecked line across the lane at point X.
- 2.4.1.8 OS 1 inch to a mile maps of 1946, 1960 & 1967 Sheet 164 Minehead
The 1946 and 1960 maps were published prior to the Definitive Map being compiled. On the 1946 edition the route is shown as the northern end of a defined line continuing southwards and then continuing with a solid lane on one side and a pecked line on the other, indicating that side was unfenced. The lane corresponds to a minor or unmetalled road. In 1960 the lane is only shown by a pecked line, Footpaths and Tracks. In 1966 the lane is shown as a double sided lane to just south of point Z with the red dots, depicting a public footpath, continuing southwards.
- 2.4.1.9 OS 1:25,000 maps of Great Britain Sheet ST01 1961
The route is shown as a defined uncoloured lane corresponding to fenced footpath on the key. This map predates the publication of the Definitive Map and Statement for the Tiverton Rural District Council area in June 1964. Footpaths are shown on the map by a pecked line labelled 'FP'. The north end of the current Footpath No. 9 is not shown between Lower Town county road and point Z or continuing southwards from point Z. Footpaths are shown continuing from the end of the lane. There are no properties at Ford Orchard or Afterglow and the small strip fields of the Tithe Map are still present.
- 2.4.1.10 OS Post War Mapping A Edition 2500 1970
The route is shown as a defined lane labelled 'Track' south of point Z and with its own compartment number of 3509 and area 0.36 acres. There is no line at point X and building are shown at the site of Afterglow. Fields 439, 440 and 441 south east of point Z have been combined into one with boundary markers shown for the enlarged field. A building annotated 'Garage' is shown opposite the future site of Ford Orchard as referred to in the Parish Council minutes of 1939 and 1942.
- 2.4.2 18th Century Map of the Manor of Sampford Peverell 1796**
- 2.4.2.1 The Sampford Peverell Society web site includes a map of the village dated 1796. The map shows the route as a clearly defined lane with the fields to the south as strip fields. There is a line across the junction with the road at

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point X. Each plot is labelled with a number and initials, which are presumed to be those of the occupier or owner of that plot. All plots are so annotated but the book of reference to accompany the map has not been seen.

2.4.3 Tithe Map and Apportionment 1844

2.4.3.1 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 titheable. 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*'.

2.4.3.2 Sampford Peverell Tithe Map & Apportionment 1844 shows the route as a defined lane coloured brown in the manner of the now county roads and other lanes in the parish. At point X there is no line (indicating a gate or fence) across the lane entrance. The route of Footpath No. 9, Sampford Peverell is also shown as a defined and coloured lane that runs parallel to this proposal southwards of point Z. The roads and lanes are not numbered or individually listed in the apportionment and are just included as 'Roads and Waste' at the end of the apportionment. The land to the west and north of the route is called Ford Orchard and owned and occupied by Henry Ellis. Turberfield House and the field to the east and south of the route are owned by the Trustees of Harriet Parkhouse and occupied by Selome Morse and Robert Payne respectively. Plots 72 and 75-76 south of point Z are owned and occupied by Mary Taylor and occupied by Mary Poundsford.

2.4.4 Finance Act Plans and Field Books 1910

2.4.4.1 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.

2.4.4.2 The allowance given was often on the basis of a figure such as £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 was usually used in Finance Act valuations.

2.4.4.3 On the Finance Act plan the route is not included within any of the three adjoining hereditaments between points X and Z and was not considered part of Turberfield House at that time. The lane appears to be excluded for its entire length as it proceeds southwards. The adjoining hereditaments are within separate /ownerships occupations as indicated by the different colour shading along the plot boundaries. Turberfield House is hereditament number 76 and the field book does not make any reference to the route or any public rights of way within the 3.77 acres of the property. The owner of Turberfield House is listed as Edward Pearce and occupier by D Hart Scott, the house being used as GP waiting room and surgery.

2.4.4.4 The hereditament number for Ford Orchard land is not readable. The field south of points Y to Z is number 352, called Rack Close, occupation pasture owned and occupied by J Bowden. The land is described as 'good close of meadow land, a very accommodation field' but there is no reference in the field book to any public or private rights of way along the proposed route.

2.4.5 Vestry and Parish Council Minutes

2.4.5.1 Sampford Peverell vestry minutes from 1810 to 1841 are held at the South West Heritage Centre (ref 1189A/PV1). The Sampford Peverell Parish Council minute books dating from 1894 to 2002 (excluding the period June 1986 to November 1991) are held at the SWHC (Ref 7717A/PX/1/1-6). Minutes since 2014 are available on the Parish Council web site.

2.4.5.2 At the annual Parish Meeting in April 1929, the clerk was to write to the Assistant Surveyor of Devon County Council on the condition of the footpaths in Lower Town near Turberfield House and adjacent to same. In July 1929 it was reported that the footpaths had been attended. It is thought that this is referring to the pavements (footways) rather than to a public footpath.

2.4.5.3 In January 1939 car parking outside Turberfield was raised. Mr Williams enquired by whom steps should be taken to prevent the parking of cars in the roadway leading to the public footpath by Turberfield House. After discussion it was decided that Messrs Vickery and Mr Pillar who were thought to be responsible, should be approached upon the matter.

2.4.5.4 In March 1942 there was a heading about car parking on footpath opposite Messrs Vickerys' garage. Mr Williams complained that the practice of parking cars and lorries there at night constitutes a danger to the public during black outs and the clerk was asked to interview Mr Vickery on the matter.

2.4.5.5 The route of the proposal does not appear to have been included in the list of footpaths made by the parish council in September 1968. The list included the routes at number 12 Memorial Hall – Venn Hill - Venn Farm and at number 13 Memorial Hall to Devils Track Lane. These are considered to refer to the recorded footpaths Footpath No. 9, Sampford Peverell and then Footpath No. 1, in Halberton for number 12 and Footpath No. 9, Sampford Peverell and Footpath No. 10, Sampford Peverell after crossing the road to the start of Devils Track Lane for number 13.

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

- 2.4.6.1 The route was not claimed as a public footpath by the parish council in the 1950 survey.

2.4.7 Devon County Uncompleted Reviews of 1968 and 1977

- 2.4.7.1 The route was not claimed in the Devon County Council uncompleted reviews of 1968 and 1977 and the status of the lane does not appear to have been queried with the rights of way section on previous occasions.

2.4.8 British Newspaper Archive

- 2.4.8.1 The only references found relate to the auction of cows at Turberfield in September 1870, the sale of the Turberfield house, outbuildings and orchard in 1875 and an inquest into the sudden death of Mary Case at Turberfield Dairy in December 1913.

2.4.9 Aerial Photography RAF 1946-1949, 1983, 1999-2000 & 2006-2007

- 2.4.9.1 On the 1946-1949 aerial photography the route is clearly visible with the surface of the lane the same colour as the adjacent county road through Lower Town. There is no indication of any gates across the route. The property known as Afterglow, south of the lane between points Y and Z and the houses at Ford Orchard have not been constructed and the fields south and east of the route are small strip fields as shown on the Tithe Map of 1844.
- 2.4.9.2 An aerial photograph of the village dated around 1983 is available on the Sampford Peverell Society website. The photograph shows the houses at Ford Orchard (believed constructed in the 1970s) and the bungalow Afterglow and Turberfield House. The entrance to the route a point X can be seen to be open and ungated. The garage premises opposite Ford Orchard is also visible.
- 2.4.9.3 In 1999-2000 the lane is clearly defined as previously with no gates visible. Houses at Afterglow and Ford Orchard have been constructed and the hedges removed from nearby fields to create larger fields. The garage appears to be still in operation.
- 2.4.9.4 In 2006-2007 the route remains visible as a clear lane with larger garden trees at Ford Orchard. The previous garage premises is now cleared of buildings and cars and is an area of grass and scrub.

2.4.10 Land Registry

- 2.4.10.1 HM Land Registry records show that the lane/track is not registered between points X and Z. Mr Cotton of Turberfield House has advised that he owns this section of the lane as shown in his deeds of 1920 and 1927 but the lane is not included within the registered title number DN460044 for Turberfield House. Turberfield House was first registered with land Registry in 2002.

- 2.4.10.2 The property Afterglow was first registered at Land Registry in 1992 and at the register includes a notice entered in pursuance of rule 254 of the Land Registration Rules 1925 on 17 July 192 that the registered proprietor claims that the land has the benefit of a right of way over the roadway shown coloured brown on the filed plan. The roadway coloured brown on the plan is the proposed route between points X and Z.

2.5 User Evidence

- 2.5.1 No user evidence has been received in respect of the proposal. It is understood that local people were informed of the three proposals for the Sampford Peverell Definitive Map Review at a Parish community day in the summer, but no user forms were completed at this event or subsequently received for this proposal.

2.6 Landowner Evidence

- 2.6.1 Landowner evidence forms were sent to the adjoining owners/occupiers at Turberfield House, Afterglow, numbers 1 to 3 at Ford Orchard and the field south east of point Z. Completed forms have been received from all the above except in respect of the field.
- 2.6.2 Mr Cutts of 1 Ford Orchard advised that he had resided at the property for 16 and a half years and did believe the route to be public. It was used by vehicles accessing the bungalow (Afterglow) and farm vehicles accessing barns and fields south of point Z. Approximately weekly he had been aware of the odd pedestrians, dog walkers and cyclists using the way. He had never required anyone to ask permission or stopped or turned back anyone from using the route. Mr Cutts commented that the lane is essential access for both the bungalow and for farm vehicles accessing cattle and barns daily.
- 2.6.3 Mr Stoneman has resided at 2 Ford Orchard for 43 years and believes the lane to be a right of way. He advised 'Walkers use this lane for years. We don't always see them'. He had never required anyone to ask permission or stopped or turned back anyone from using the route.
- 2.6.4 Mr MacDonald has resided at 3 Ford Orchard for 6 years and believed the route to be public. He has seen or being aware of people using the route daily. He had never required anyone to ask permission or stopped or turned back anyone from using the route.
- 2.6.5 Mr Cotton has resided at Turberfield House for 14 and a half years and advises that he owns the lane between points X and Z as shown on his title deeds in 1920 and 1927. The lane is private property and has never been a public right of way. He has been aware of or seen occasional dog walkers. If seen he advises them that it is private property and not a public right of way. Permission has not been granted to anyone other than agricultural use and access to Afterglow. Owners of properties adjoining have access for boundary maintenance and upkeep. Anytime he has seen people (very rarely) he has stopped and/or told them it is not public. He has erected signs at points X and Z stating 'Private No Public Access'. There is agricultural access only by foot or vehicle to land accessed along my private property. The lane marked XYZ is private land and has never been a public footpath nor has any permission ever been given for such use.

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- 2.6.6 Mr Brice has resided at Afterglow for 25 plus years from May 1993 and during that time has occasionally seen members of the public walking the route; frequent use by farm vehicles, as well as neighbours maintaining borders which adjoin the way. He had never required anyone to ask permission or stopped or turned back anyone from using the route. Mr Brice refers to the signs erected (by Mr Cotton) at points X and Z at the end of June/early July 2018 which say 'Private No Public Access'.
- 2.6.7 As additional information, he advises that when his wife and he purchased the property in 1993, the solicitors could not find any ownership of the route X to Z. As use of the lane was critical for access to Afterglow, their solicitors established evidence of 20 plus years of uninterrupted and unchallenged use of the way. The Land Registry details refer to these rights. He only uses the section Y to Z to maintain the borders of his property, as do all the neighbours whose properties border X to Z. He does not recall any one other than himself doing any structural repairs or maintenance to the route and he has paid on several occasions for repairs to the surface to keep it reasonably even and safe for him and his family to drive or walk down.

2.7 Consultation Responses

- 2.7.1 Apart from initially proposing the route for inclusion as a proposal in the Definitive Map Review no further comments have been received from the parish council.

2.8 Discussion

Statute (Section 31 Highways Act 1980)

- 2.8.1 Section 31(1) of the Highways Act 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 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.
- 2.8.2 At the time the addition of a public footpath was published as proposal 3 in the Definitive Map Review there had been nothing to challenge the public right to use the route. During the consultation period, notices were erected at either end of the route saying 'Private No Public Access'. These notices would be sufficient to be considered a challenge under Section 31 of the Highways Act. However, as insufficient user evidence has been received to show regular use by sufficient members of the public during a twenty-year period between 1998 and 2018, the existence or not of public rights of way cannot be considered under statute on this occasion.

Common Law

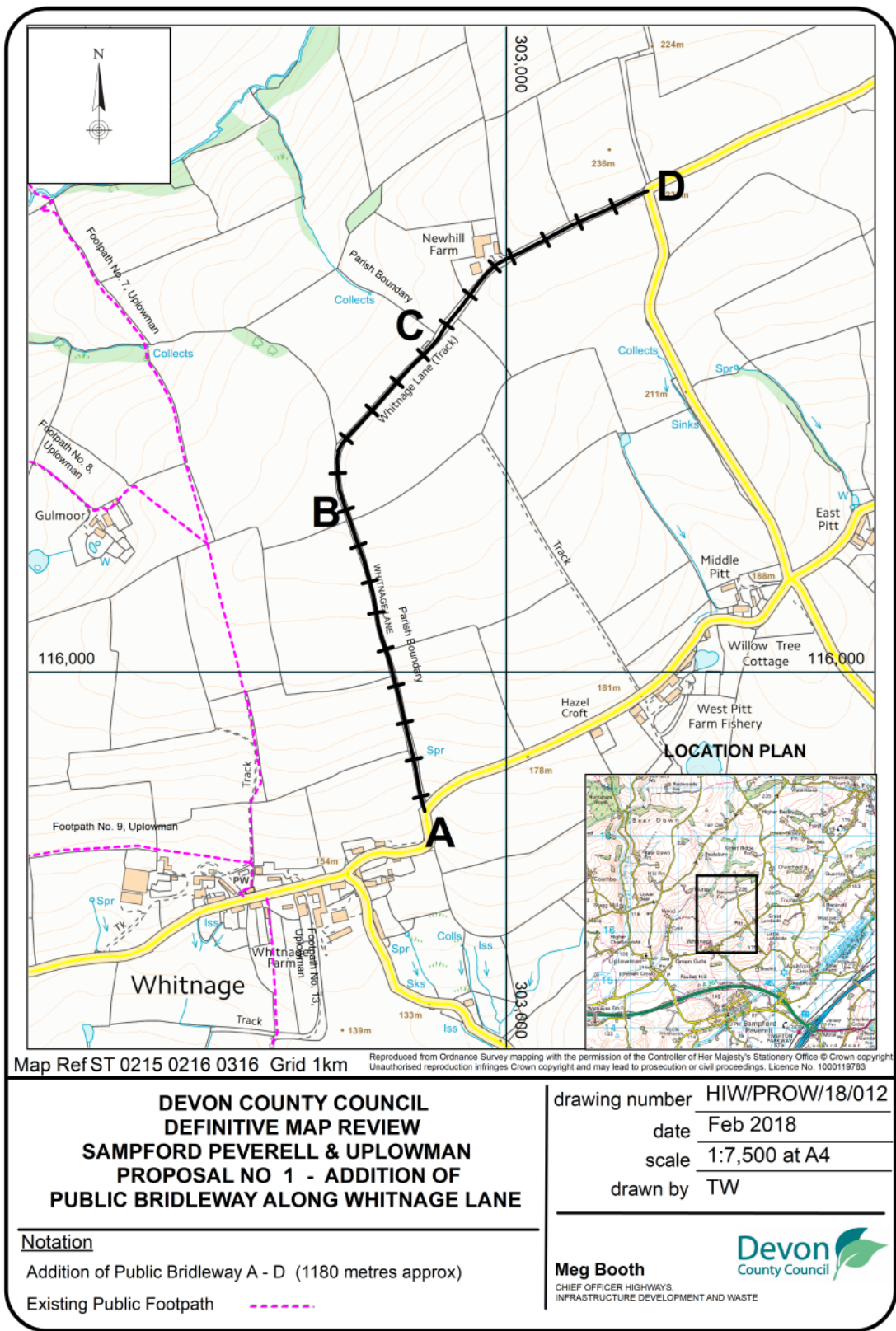
- 2.8.3 A claim for a right of way may also be considered under common law. At common law, evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary or user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.

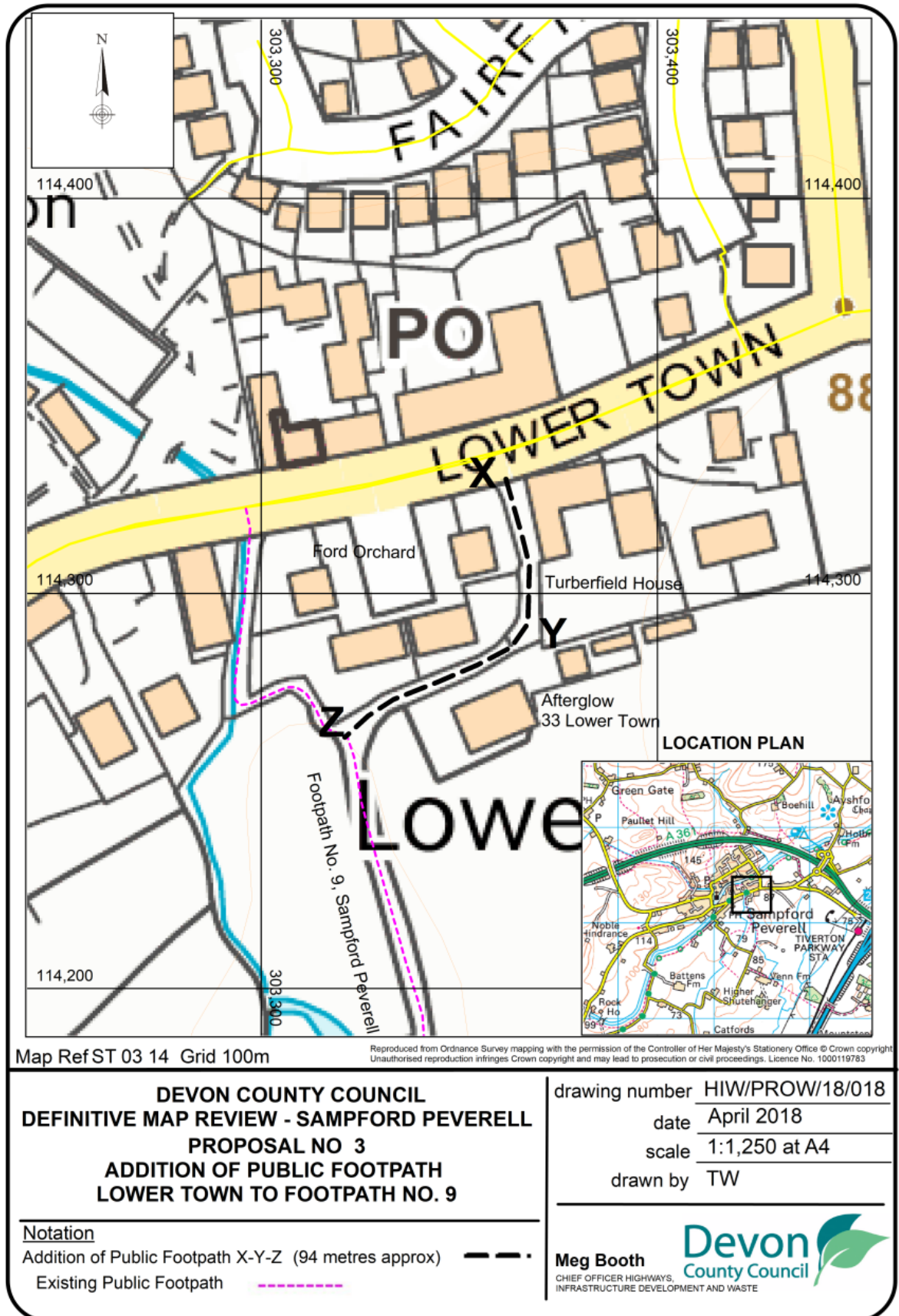
- 2.8.4 The documentary map evidence records the existence of the lane in the same alignment and as a defined lane with hedge/fence/wall boundaries since the manor of Sampford Peverell map of 1795. The OS mapping both at the 1" and 25" scales and other mapping consistently show the proposed route as a defined lane. The larger scale maps showed a pecked line across the end of lane at point X, believed to indicate a change in surface. The aerial photography from 1946 shows the lane clear and ungated.
- 2.8.5 In the Finance Act plan the lane is shown excluded from any of the adjoining hereditaments. As ownership of the lane was not claimed by any of the adjoining landowners this could indicate that the lane was considered to be public. The owners of the different fields which adjoined the lane at that time would require access along the route to access their land. This could be by using public or private rights.
- 2.8.6 At the Parish Council meetings in 1939 and 1942 the question of parking of vehicles in the roadway leading to the public footpath by Turberfield House was raised. This is deemed to refer to the proposed footpath and as the Parish Council agreed to contact those felt responsible, would indicate that the lane was used by the public to access the now recorded Footpath No..9, Sampford Peverell at that time.
- 2.8.7 The route has never been claimed by the Parish Council as a public footpath in the 1950 parish survey or 1968 or 1977 reviews but was proposed for inclusion in the current review.
- 2.8.8 The lane is not registered between points X and Z, although Mr Cotton advised that it is part of Turberfield House that is registered. In the absence of any reference to a right of access in the deeds for Afterglow, a right of access to the property was entered under rule 254 when Afterglow was sold and first registered at Land Registry in 1992.
- 2.8.9 The four landowners at Ford Orchard and Afterglow believe the lane to be public and advise seeing walkers using the route, although no user evidence has been received in support of use by the public. Mr Brice at Afterglow has maintained the lane for his own vehicular access. Mr Cotton at Turberfield House considers the lane to be private and has told members of the public so when they have been seen walking the lane and has now erected signs at points X and Z saying 'Private No Public Access'.

2.9 Conclusion

- 2.9.1 Although the recent erection of signs has called the use of the route into question, in the absence of user evidence the existence of a public right of way cannot be considered under Section 31 of the Highways Act. At common law there is some documentary evidence to support the subsistence of a public right of way along the proposed route. However, on its own, with the absence of user evidence to show acceptance by the public, the evidence overall is considered insufficient to show that a public right of way is alleged to subsist.
- 2.9.2 It is therefore recommended that no Modification Order be made to modify the Definitive Map and Statement for the addition of a Public Footpath, between points X – Y – Z as shown on drawing number HIW/PROW/18/018.

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HIW/18/77

Public Rights of Way Committee
15 November 2018

Definitive Map Review 2017-2018 Parish of Uplowman

Report of the Chief Officer 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 an Order be made to modify the Definitive Map and Statement for the addition of a Public Bridleway along Whitnage Lane between points A – B – C – D as shown on drawing number HIW/PROW/18/012 (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 Uplowman in Mid Devon. The route is also proposal 1 in the Definitive Map Review for the parish of Sampford Peverell running concurrently.

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 25 footpaths for consideration as public rights of way. After review by Tiverton Rural District Council and Devon County Council, 19 paths were agreed at a meeting with the parish clerk in December 1957 and published on the draft definitive map in 15th April 1958. All 19 footpaths were subsequently recorded on the conclusive Definitive Map for Tiverton Rural District Council published on the 9th June 1964.

In 1964 Footpath No. 1 was stopped up and Footpath No. 5 was extinguished in 1981. Three footpaths were transferred from Sampford Peverell to Uplowman following construction of the North Devon Link Road and subsequent parish boundary change. There are 20 footpaths currently recorded on the Definitive Map for Uplowman parish.

The Devon County Council county wide reviews of the Definitive Map under s.33 of the 1949 Act, commenced in 1968 and 1977 but were not completed. No proposals were made by Uplowman Parish Council in the 1968 review but in the 1977 review the parish made three proposals including the addition of Whitnage Lane as a bridleway. The request was made jointly with Sampford Peverell Parish Council and user forms were submitted from users in both parishes. The addition of a public bridleway along Whitnage lane was accordingly included as proposal 1 in the 2017 Definitive Map Review for both parishes.

The three other proposals made in 1978 were for the extinguishment of Footpath No. 5, the diversion of Footpath No. 7 and the continuation of Footpath No. 17 northwards as a bridleway. Footpath No. 5, Uplowman had been extinguished in 1977, Footpath No. 7 was diverted in 2007 and no user or other evidence was presented for the continuation of Footpath No. 17, Uplowman. The Limited Special Review of Roads Used as Public Paths (RUPPS), also carried out in the 1970s, did not affect this parish.

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The following Orders affecting the Definitive Map for Uplowman have been made and confirmed since 1964:

Tiverton Magistrates Court Highways Act 1959 Section 108 Footpath No. 1, Uplowman Stopping Up Order 1964

Tiverton District Council Footpath No. 5, Uplowman Public Path Extinguishment Order 1977
Secretary of State for Transport Side Roads Order Footpath No. 21, Uplowman Stopping Up and Creation 1977

Devon County Council Footpath Nos 7 & 9, Uplowman Public Path Diversion Order 2007

Devon County Council Footpath No 19, Uplowman Public Path Diversion Order 2007

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

The current Definitive Map Review was opened with a parish public meeting in September 2017 held as part of the bi-monthly parish council meeting. No other proposals or suggestions have been received from the parish or the public and the addition of a bridleway along Whitnage lane was the only proposal included on the Definitive Map Review parish consultation map published in May 2018.

3. Proposals

Please refer to Appendix I to this report.

4. Consultations

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

County Councillor Colin Slade	-	no comment
Mid Devon District Council	-	no comment
Uplowman Parish Council	-	does not support the proposal
Sampford Peverell Parish Council	-	no comment
Country Landowners' Association	-	no comment
National Farmers' Union	-	no comment
British Horse Society	-	no comment
Ramblers' Association	-	no objection
Trail Riders' Fellowship	-	no comment
Devon Green Lanes Group	-	no comment

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 an Order be made to modify the Definitive Map and Statement for the addition of a Public Bridleway along Whitnage Lane, between points A – B – C – D as shown on drawing number HIW/PROW/18/012 (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 Highways, Infrastructure Development and Waste

Electoral Divisions: Willand & Uffculme and Tiverton East

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	2017 to date	DMR/Uplowman

tw171018pra
sc/cr/DMR Parish of Uplowman
03 051118

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Appendix I To HIW/18/77

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.

1. Proposal 1 – Addition of a Public Bridleway along Whitnage Lane

This proposal is for the addition of a public bridleway running along Whitnage Lane from the county road on the Uplowman parish boundary with Sampford Peverell, between Whitnage and West Pitt Farm, and proceeding northwards and then north eastwards to the county road east of Newhill Farm in Sampford Peverell parish (GR ST 0288 1580 to ST 0321 1673). The proposal is included in both this and the Definitive Map Review report for the parish of Sampford Peverell.

Recommendation: It is recommended that an Order be made to modify the Definitive Map and Statement for the addition of a Bridleway along Whitnage Lane as shown between points A – B – C – D on drawing number HIW/PROW/18/012 (Proposal 1).

1.1 Background

- 1.1.1 A bridleway along Whitnage Lane was claimed by both Sampford Peverell and Uplowman Parish Councils in June 1978 as one of their requested amendments to be made in the county wide review of the Definitive Map that was opened in November 1977. In December 1978 thirteen user evidence forms were submitted to Devon County Council from users of the route residing in both Uplowman and Sampford Peverell parishes. The completed forms have remained on file following abandonment of the 1977 review.
- 1.1.2 The route was therefore included in the current review and put on the consultation map and schedule as Proposal 1 for both Uplowman and Sampford Peverell parishes.

1.2 Description of the Route

- 1.2.1 The route starts at the county road between Whitnage and West Pitt Farm at point A (GR ST 0288 1580) and proceeds northwards along Whitnage Lane, which is the parish boundary between Uplowman and Sampford Peverell. The lane proceeds uphill and is sunken below the adjacent hedge banks as it continues along the lane to point B (GR ST 0276 1623) where there is a field gate to the east side and the junction with a now closed Defra permissive footpath. The route then levels out and bears north eastwards to point C (GR ST 0290 1651) from where the parish boundary turns north westwards and the lane continues north eastwards solely in Sampford Peverell Parish. The route passes the entrance to Newhill Farm and turns east north eastwards to the county road south of Lee Ditch Copse and north of Middle Pitt (also called Lethbridge Cross) at point D (GR ST 0321 1673). The route has a surface of earth and grass/vegetation between points A and the Newhill Farm entrance with an improved stone surface from the farm entrance to point D. The entire route is between hedge banks and has a total length of approximately 1180 metres.

1.3 Consultations

- 1.3.1 Uplowman Parish Council does not now support the proposal. No comments were received from Sampford Peverell Parish Council.
- 1.3.2 The local representative of the Ramblers Association advised that they have no objections to the proposal.

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1.4 Documentary Evidence

1.4.1 Ordnance Survey and Other Maps

- 1.4.1.1 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.
- 1.4.1.2 Cassini Historical Maps 1809 – 1900 Sheet 181 Minehead & Brendon Hills
These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.
- 1.4.1.3 Old Series 1809: Whitnage Lane is shown as a defined lane in a similar manner to the county roads it joins.
- 1.4.1.4 Revised New Series 1899-1900: On this edition Whitnage Lane is shown by two solid lines very close together (an unmetalled road) along the whole route with the connecting county roads shown coloured orange (Metalled Roads Second Class).
- 1.4.1.5 Popular Edition 1919: On this edition Whitnage Lane is shown by two solid lines very close together (Minor Roads) and the connecting county roads are dashed orange (Roads under 14' wide Fit for Ordinary Traffic).
- 1.4.1.6 OS 1st & 2nd Edition 25" to a mile 1880-1890 & 1904
Whitnage Lane is depicted as a defined lane throughout its entire length with several mature hedgerow trees shown along the route. The route is named Whitnage Lane and has three compartment numbers along the length of the lane, number 670 with an area of 0.429 for the southern section on map sheet XXXV.10 and number 459, area 0.684 and 99 area 1.497 on map sheet XXXV.14. There are dashed lines across the ends of the lane at points A and D, believed to indicate a change in surface between the lane and the county road. Bench marks are noted in two places, south of point B and north east of point C.
- 1.4.1.7 On the 2nd edition Whitnage Lane is shown as a defined lane, with dashed lines at points A and D and the same compartment numbers.
- 1.4.1.8 Bartholomew's Half Inch to the Mile Maps Sheet 35 North Devon 1903 & 1921
Bartholomew based their half-inch maps on more detailed Ordnance Survey mapping at one-inch to the mile and published at the half-inch scale from the 1890s to the 1970s. The maps were progressively revised and updated with new information and became Bartholomew's trade mark series. Associated mainly with recreation, the maps were popular and influential and sold well, particularly with cyclists and tourists. The suggestions for revisions by the Cyclists Touring Club were acknowledged on the maps in the heyday of rambling and cycling. The maps contained the disclaimer 'The representation of a road or footpath is no evidence of the existence of a right of way'.
- 1.4.1.9 On the 1903 edition Whitnage Lane is shown as an uncoloured lane and in the same manner as the now county road that it joins at point D. The key advises that 'The uncoloured roads are inferior and not to be recommended for cyclists'.
- 1.4.1.10 On the 1921 map both Whitnage Lane and the county road at point D are shown as uncoloured lanes/roads although the key now says 'The uncoloured roads are inferior and not to be recommended'. This edition of the map refers to Motoring Roads and Indifferent roads as being passable for cyclists, presumably with the rise in car

ownership (1,715,000 registered motor vehicles in the UK in 1926) and that the maps were now used by motorists as well as cyclists.

1.4.1.11 OS 1 inch to a mile maps of 1946, 1960 & 1966

On the 1946 edition Whitnage Lane is shown as an uncoloured defined lane (Unmetalled Roads) with the connecting county roads coloured orange (Roads Under 14' of Metalling Good). This map edition noted the location of gates and none are shown along the lane or at point D. Point A is obscured by the parish boundary marks.

1.4.1.12 In the 1960 edition Whitnage Lane is shown as a dashed line between points A and C and as a double sided defined white lane from point C to Point D. In the map key a dashed line refers to Footpaths and Tracks and a narrow white lane is Unmetalled Roads. No gates are shown at either end of the lane and there are no buildings at Newhill. The connecting county roads are coloured yellow as Roads Under 14' of Metalling, Tarred.

1.4.1.13 The 1966 edition shows public rights of way as recorded on the Definitive Map at that time. Whitnage Lane is again shown as a double sided defined lane throughout, as in the 1946 map (Unmetalled Roads) with the connecting county roads coloured yellow as before.

1.4.1.14 OS Post War Mapping A Edition 2500 1969 & 1970

The claimed route is depicted as a defined double hedged lane throughout the length of the route as on the earlier mapping. The lane is labelled Whitnage Lane (Track) and has three compartment numbers 8684 area 0.91 acres, 7917 0.70 acres and 17712.75 acres.

1.4.1.15 OS 1:25,000 maps of Great Britain – Sheet ST01 1961

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.

1.4.1.16 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'. The maps were published prior to publication of the conclusive Definitive Map for Mid Devon.

1.4.1.17 This map shows Whitnage Lane as a defined uncoloured lane throughout from point A to the junction with the county road at point D, corresponding to 'Other Roads - Poor, or unmetalled'. No buildings are shown adjacent to the route as Newhill Farm has not been established. No lines are shown across the full length of the route.

1.4.2 **Tithe Maps and Apportionments**

1.4.2.1 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 titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed

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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*'.

1.4.2.2 Uplowman Tithe Map 1843 & Apportionment 1841

The Uplowman tithe map does not include any colouring or numbering on any roads or lanes whether those roads are now county roads or lanes such as Whitnage Lane or access to fields/property. The southern section of Whitnage Lane is shown on the Tithe map along the same route as it runs today as far as the junction with the Sampford Peverell parish boundary and in a similar manner to the other minor county roads in the locality. The continuation of Whitnage Lane into Sampford Peverell is labelled 'to Hockworthy'. Adjoining apportionments on the Uplowman side of Whitnage Lane are part of the holdings known as Shapettes, Lower Murley and Gullmoor.

1.4.2.3 Sampford Peverell Tithe Map 1844 and Apportionment 1844.

The Sampford Peverell tithe map does include colouring of all roads and lanes on the map whether the road/lane is now a county road or other lanes or sections of cul de sac lanes giving access to fields or property. Whitnage Lane is shown in its entirety on the Tithe map, with the southern section (points A to B) of the lane shown as being to the west of the parish boundary (coloured blue). The centre section (points B to C) is depicted with the parish boundary running along Whitnage Lane and with the northeast section (points C to D) shown coloured brown and entirely within the parish of Sampford Peverell. Adjacent holdings to Whitnage Lane in Sampford Peverell parish are listed as Lee Ditch, Lower Ridge and Middle & West Pitt.

1.4.3 **Deposited Plans Tiverton Roads 1829** (SWHC Ref QS/DP/89)

- 1.4.3.1 There are various plans and a book of reference headed Maps of the intended New Roads and Deviations in the Tiverton Trust 1829, though most of the proposals do not seem to have occurred. Plan number 12 includes a proposed new section of road from Whitnage hamlet eastwards, running south of the current county road and south of Lower, Middle and Higher Pitt farms. The southern end of Whitnage Lane is shown on the plan in the same manner as the road eastwards toward Pitt which is a county road today. The field on the western side of Whitnage Lane is number 26 in the book of reference, premises Above Chapel, arable with owner John Adney Esq and occupier Thomas Brice.

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

- 1.4.4.1 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.
- 1.4.4.2 In the OS Name Book 1903 covering Sampford Peverell, Tiverton & Uplowman parishes (Kew Ref OS 35/1689) Whitnage Lane is described 'An occupation road, extending from a junction of roads E of Whitnage to a junction of roads ½ mile N of West Pitt' and was signed for by Mr J Chave, assistant overseer, Uplowman.
- 1.4.4.3 In the summary sheets at the end of the book, Whitnage, Whitnage Lane and Uplowman Cross, amongst others, were also signed for by James Chave, assistant overseer.

1.4.5 Finance Act Plans and Field Books 1910

- 1.4.5.1 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 valuer/surveyor and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.
- 1.4.5.2 The allowance given was often on the basis of a figure such as £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.
- 1.4.5.3 On the Finance Act plan Whitnage Lane is excluded from the adjacent hereditaments. All the land on the east and south sides of the lane was included in one hereditament, number 184 and this holding also included two fields north of the lane between points C and D. The colouring across Whitnage Lane breaks in the same manner as the colouring breaks across the county road running south from point D for other land also included in the same hereditament.
- 1.4.5.4 The hereditament numbers for Uplowman are included in the field books for Sampford Peverell parish. Hereditament 184 which included Middle Pitt and West Pitt farms was 231 acres and owned by Mr Studley and occupied by T White. The field book makes reference to a public footpath through ordnance number 221, allowance £24 but there is no reference to Whitnage Lane.
- 1.4.5.5 The other hereditament numbers adjoining Whitnage Lane are numbers 156 – Lee Ditch, 208 - Hill, 292 – Wood & Gulmoor, 295 – Whitnage & Locks, 307 - Longthorn & 325 – Hurfords. Whilst the field books make reference to public footpaths in various ordnance numbers in hereditaments numbered 307, 292 & 295 which are now recorded as Footpaths Nos. 6, 7, 8, 9, 11 & 13, Uplowman; none of the field books make any reference to Whitnage Lane.

1.4.6 Vestry Minutes

- 1.4.6.1 Uplowman vestry minutes from 1820 to 1882 are held at the South West Heritage Centre (SWHC - ref 829A/PV1)
- 1.4.6.2 There are references to the waywardens of the highways and repairs to roads and bridges within the parish but no references to Whitnage Lane.
- 1.4.6.3 Sampford Peverell vestry minutes from 1810 to 1841 are also held at the SWHC (ref 1189A/PV1). There is no specific reference to Whitnage Lane although in 1826 it was decided that it is the duty of the occupiers of the different lands to repair the footpaths in their respective lands (unless they have been hitherto repaired by the parishioners). In 1841 it was decided to let the roads either together or in parts as may be agreed by tender but no further details were included in the minutes.

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- 1.4.6.4 In the SWHC there is also a handwritten agreement (ref 1198A/PV2) between Sampford Parish Council and John Baker for the repair of the highways for 7 years from Ladyday 1851. No lists or maps were included with the agreement.

1.4.7 Parish Council Meeting Minutes

- 1.4.7.1 The Uplozman Parish Council minute books covering the period 1894 to date are retained within the parish and the parish council minutes since January 2003 available on the parish council website.
- 1.4.7.2 At the Annual Parish Meeting in April 1978 and in connection with the review of 1977, it was reported that almost all footpaths had been walked. The several amendments proposed to the current definitive map included 'Whitnage Lane to Ridge Road should be shown as un classified bridle path'. In February 1979 there is discussion regarding the letter from Mr Gash, the County Solicitor, at Devon County Council to Dr J Graves-Morris, local District Councillor, regarding Whitnage Lane. The matter was to be dealt with at a later date.
- 1.4.7.3 In January 1984 Mr White stated that Whitnage Lane was in a very poor state of repair and had become dangerous. In June 1991 under Any Other Business it was suggested that Whitnage Footpath should be designated a bridleway if possible. The current status was to be checked. In January 1992 under Matters Arising – Whitnage Footpath, the clerk reported that further information from DCC was required before a decision can be taken.
- 1.4.7.4 Under Any Other Business in March 1995, Mr White raised the question of the status of the 'green lane' in Whitnage and informed the meeting that it was being used by off road vehicles. Clerk was to check the status. In the public participation forum prior to the parish council meeting in January 2005 there was a query concerning the clearing of 'bridal paths'. Uplozman Parish Council was to check responsibility for this. At the following meeting in March 2005, Mr White had checked the 'Whitnage Bridal path' which was clear.
- 1.4.7.5 The Sampford Peverell Parish Council minute books dating from 1894 to 2002 (excluding the period June 1986 to November 1991) are held at the South West Heritage Centre (Ref 7717A/PX/1/1-6). Minutes since 2014 are available on the Parish Council web site.
- 1.4.7.6 The minutes show that matters concerning footpaths were regularly raised at the parish council meetings. In November 1934 OS maps had been obtained and a Public Footpaths Committee was formed from councillors. In February 1935 the sub committee reported that certain pathways had been defined as marked on the OS map. A parish meeting to confirm the paths to be proposed for inclusion on the Definitive Map was held on 5th September 1950.
- 1.4.7.7 At a meeting of the Parish Council on the 15th October 1968, the Footpath Committee reported on their meeting of 26th September 1968 to review the public footpaths and make recommendations for which paths should be retained and sign posted where necessary. The path listed at number 10 was 'Whitnage to Leatheridge Cross'. The Parish Council accepted the recommendations as made to retain paths numbered 1 to 15 with the exception of number 6, which was considered private.
- 1.4.7.8 On the 17th July 1970 Dr Graves-Morris was congratulated on the parish walks, great success, 45-50 walkers participating. A report on the condition of the paths used was presented at the next meeting in September. Walk 2 referred to Great Landslide farm, which in subsequent years was known to include Whitnage Lane in the walk route. In

July 1972 it was reported that walks all completed in July with average of 30-40 walkers. In 1973 walk 3 – 4th July meet Richmond Close for Underdown and Landside. In summer 1975 walks to start 4th August, same arrangements as last year.

- 1.4.7.9 At the Parish Council meeting on 14th October 1977 reports were given on the footpaths walked in August and September. The report for walk a) going via Richmond Close, Underdown, Boehill, Landside, Whitnage Lane stated that 'Brambles etc either side of Whitnage Lane need trimming back'.
- 1.4.7.10 At the 14th April 1978 Parish Council meeting, Cllr Graves-Morris expressed concern that Whitnage Lane appeared to have been overlooked for the 1978 walks, possibly due to the fact that it marked a section of the boundary between Sampford Peverell and Uplowman. Cllr Bone proposed that a letter be sent to Devon County Council requesting that the hedges on either side of the lane in question be cut and maintained to enable unobstructed use of the lane by the public. At this meeting with respect to the 1977 review, it was generally agreed that the Definitive Map was otherwise correct. Clerk to return yellow and buff forms duly completed.
- 1.4.7.11 On the 21st July 1978 meeting under Matters Arising the Devon County Council Divisional Surveyor had replied stating the lane was private. Cllr Bone questioned should the council walk this particular section this year, however it was generally felt that as it had formed part of the walks on many previous years, the parish council should continue to use it. At the next meeting, Cllr Graves-Morris requested the letter from Devon County Council (stating that Whitnage Lane was private). He volunteered to further personal representations on behalf of the parish council which was agreed. In November 1978 Cllr Graves-Morris reported that he had met Mr Gash, the lane could be a bridleway, witnesses were needed and he had given some forms to Uplowman Parish Council. Cllrs Pester, Sharland, Bone, Thomas & Wright agreed to complete forms.
- 1.4.7.12 At the meeting on 11th January 1979 Cllr Graves-Morris read the letter he had sent to Mr Gash in December and advised he had had a very good response from parishioners. It was now in hands of Devon County Council. The 1979 footpath walks were discussed on 16th March 1979, and the walk to be held on 2nd July 1979 included Whitnage Lane. In 1980 walk 2 on the 16th June included Whitnage Lane and at the July Parish Council meeting it was reported that all the walks had been well attended. Whitnage Lane continued to be used in one of the parish footpath walks in the 1980s and in 1984 it was reported to be fairly clear.
- 1.4.7.13 The Parish Council minute book was missing between June 1986 and November 1991 but the walks took place in 1992 (no route details for 1992) and in 1993 – 1996 Whitnage lane was included in the route for one of the parish walks.
- 1.4.7.14 A letter with reports of the parish footpath walks was sent from the parish clerk to the Devon County Council rights of way warden in September 2002. The report for the walk on 24th June describes the route from Great Landside to Whitnage by road walking pass East and West Pitt. Whitnage Lane was not walked in 2002 and no walks occurred in 2001 due to the Foot and Mouth outbreak.
- 1.4.7.15 On contacting the parish council as part of the current review to ascertain whether Whitnage Lane was still included in the current parish walks, a response was received from a previous parish councillor. Mr Lucas advised that he understood that, possibly in the mid 1980s, that Whitnage Lane was no longer designated as a public track. He was a leader on parish walks from approximately 1989 to 2000 and did not walk Whitnage Lane.

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1.4.8 British Newspaper Archive

- 1.4.8.1 The auction of the Whitnage Estate on 30th November 1937 was advertised in the Exeter & Plymouth Gazette of 29th October 1937. Seven lots of land/property were listed in the advertisement but did not include any reference to Whitnage Lane. A copy of the sale catalogue has not been seen.

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

- 1.4.9.1 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 lane was not included as a proposal by either parish. Upplowman Parish Council initially proposed 25 footpaths but no bridleways or roads used as public paths 'rups'. Sampford Peverell initially proposed 18 footpaths and 1 bridleway but did not include Whitnage Lane.

1.4.10 Devon County Council Uncompleted Reviews of 1968 & 1977

- 1.4.10.1 In a letter dated 4th July 1971 (in relation to the 1968 review) the clerk to Upplowman Parish Council advised the County Council that 'after inspecting the map enclosed with the letter it was agreed to confirm the Footpaths as shown thereon, with the exception of path numbered 1 which was closed in 1965'.
- 1.4.10.2 In respect of the 1977 review Upplowman Parish Council proposed that Whitnage Lane should be shown 'as an unclassified bridlepath' in a letter to the County Council in June 1978. In November 1978 Dr J Graves-Morris of Sampford Peverell wrote to Mr Gash, County Solicitor, at the County Council saying 'As Councillor for Ward 22 of the Mid Devon District Council (Upplowman & Sampford Peverell Parish Councils) I would like to discuss with you what appears to be an omission of a footpath or bridlepath from the definitive map owing to the belief by both Parish Councils along whose boundaries it runs that it was in fact, a county owned 'green lane' (or by whatever other name it could be called). I refer to Whitnage lane running from Whitnage to Leatheridge Cross.' Dr Graves-Morris had also been a Sampford Peverell parish councillor since the 1950s.
- 1.4.10.3 It appears that Dr Graves-Morris had then spoken to Mr Gash as a further letter was received dated 12th December 1978 enclosing a number of user evidence forms and saying 'Thank you for discussing this matter with me the other week. I enclose a sheaf of Claims for public right of way from both parishes which are in my ward. I was taken aback by the overwhelming response from Upplowman which I had not expected; you will note that two of the adjoining landowners, Mr White and Mr Bent both consider it is in the ownership of Devon County Council as do two others who have both known it for sixty years.'
- 1.4.10.4 Dr Graves-Morris' letter then refers to letters dated 19th May and 19th October 1978 c.c. to the Area Engineer from the Divisional Surveyor, Mr J Owen-Jones; in which the surveyor states it is privately owned and he would not like to adopt it as a private highway. Copies of these letters are not in the parish rights of way review files. Dr Graves-Morris concludes his letter by saying 'Obviously there are legal issues to be determined'.
- 1.4.10.5 The 1977 County wide review did not progress but the letters and evidence submitted by parish councils and parish meetings has been retained on file.

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

- 1.4.11.1 On the 1946-1949 aerial photography Whitnage Lane can be seen as a clearly defined lane with hedgerow trees and the hedges trimmed sufficiently to enable the surface of the lane to be seen for the length of the lane.
- 1.4.11.2 In 1999-2000 Whitnage Lane is clearly visible as a hedged lane with some hedgerow trees. The surface of the lane is visible except for the southern section where it is obscured by the hedgerow vegetation. The house and buildings are now visible at Newhill Farm between points C and D.
- 1.4.11.3 On the 2006-2007 photography the hedgerow trees and hedges obscure the surface of the lane between points A and B. The hedges have been neatly trimmed between points B and C, with larger hedgerow trees present between C and D. A track/path along which the Defra Countryside Stewardship permissive path ran between 2003 and 2013 can be clearly seen along the field headland east of point B.

1.4.12 Land Registry

- 1.4.12.1 Whitnage Lane is not registered at HM Land Registry as part of any of the adjoining land which is registered under nine different titles. Three of these landowners would appear to require access along Whitnage Lane to access their land.
- 1.4.12.2 In the title number DN296339 (Locks Farm) for land on the west side of Whitnage Lane between points A and B, a conveyance dated June 1990 granted the following right 'Together (so far as the present owner can grant the same) with a right at all times and for agricultural purposes over the lane leading from the public highway to field OS Numbers 7391 and 7400'. Field numbers 7391 and 7400 can be seen on the OS Post War mapping A edition and title plan and the lane referred to is considered to be Whitnage Lane.
- 1.4.12.3 The title number DN347472 (Lee Ditch Farm) for land north west of Whitnage Lane between points C and D includes in the property register includes 'Notice entered in pursuance of rule 254 of the Land Registration Rules 1925 on 27 September 1994 that the registered proprietor claims that the land in this title has the benefit of a right of way over the land tinted brown on the filed plan'. The land tinted brown is Whitnage Lane from point D to north east of Newhill Farm.
- 1.4.12.4 The land in title number DN342038 includes a block of seven fields which includes the field adjoining the north west of Whitnage Lane, between north of point B to point C. This land would appear to be landlocked without access from Whitnage Lane although the register includes a right of way from Murley Farm on the north west boundary. No reference is made to any right of way along Whitnage Lane. The land is now part of Newhill Farm.
- 1.4.12.5 The land in title number DN320068, now Newhill Farm, first registered in 1992, would also be landlocked and the title makes no reference any right of way along or to Whitnage Lane.
- 1.4.12.6 None of the other titles refer to Whitnage Lane or any rights of access along the lane.

1.4.13 Planning Applications

- 1.4.13.1 The first planning application for residential accommodation at Newhill Farm appears to be in 1982. In a planning application for a wind turbine at Newhill Farm in 2008, Whitnage Lane was described as a farm track. In a prior notification application of

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2018 Whitnage Lane was not included in the ownership boundary of Newhill Farm and was again described as a farm track.

1.4.14 Permissive Footpath

- 1.4.14.1 In 2003 the landowners at West Pitt Farm entered into a ten year permissive footpath agreement with Defra through the Higher Level Countryside scheme, in which landowners were paid an annual payment per linear metre of public footpath or bridleway provided. The permissive footpath ran north north westwards from West Pitt Farm along the headland of two fields before entering a third field and turning south westwards to meet Whitnage Lane at point B. On the plan prepared by Defra of this permissive access, Whitnage lane is described as a Byway Open to All Traffic whilst on the description of the walk Whitnage Lane is described as 'an ancient green lane'. The permissive access ended in September 2013 and a sign saying 'Private – No public right of way' is now fastened on the gate leading into the field to the east at point B.

1.5 User Evidence

- 1.5.1 A total of thirteen user evidence forms were submitted by Dr Graves-Morrish in December 1978 with his covering letter and the review form proposing the addition of Whitnage lane to the Definitive Map as a public bridleway. The user forms were completed by parishioners from both Uplowman and Sampford Peverell. None of the users report ever been stopped, turned back or seeing any notices, gates or obstructions on the route. At the time of these forms been completed, a map of the route referred to in the form was not requested but the description provided by the users describes Whitnage Lane.
- 1.5.2 The seven forms from Uplowman parish were all from Whitnage residents and with ages ranging from the early 40s to early 70s and completed in 1978. On these user forms 'the person taking this statement' box was completed by Mr J Vicary and Mr L J White who have both completed forms themselves.
- 1.5.3 Mr J Vicary of Whitnage advises that he used the lane five times a week for sixty years from 1968 to 1978 for business purposes going to Lee Ditch Farm. Use for business purposes is not use 'as of right'. Lee Dich Farm was located along the lane north of point D and it would not have been necessary to use Whitnage Lane to access the farm. Mr Vicary comments 'to my knowledge it is public. I have always known Whitnage Lane as a public footpath, a bridle path and carriage way'.
- 1.5.4 Mr White still resides at the same address in Whitnage and has completed a landowner form in respect of his ownership of the field north west of point A. In his 1978 user form, Mr White stated that he had known the lane to be public and had used the lane since 1973, forty times a year for pleasure, dog & pony exercise going from Whitnage to Lee Ditch. He believed the owner to be Devon County Council.
- 1.5.5 Mr Brain from Whitnage had known the lane to be public since 1951 and had used it every day for exercising horses and dogs. The precise years of use are not stated but he had never been stopped or seen any notices.
- 1.5.6 Ms Brakespear of Whitnage had known the lane to be public all her life (62 years old in 1978) and commented that it was marked as a public road on the 1904 Ordnance Survey map and was the old main road before the Ridge-Hockworthy road was cut. She had used the route since 1918, every day at times for riding, driving and walking. Under ownership she stated 'I fancy the highways commission – since it is a made road – open both ends onto other county roads'. Other comments included 'As

everyone in the district knows it is a public road. I have walked, ridden, not to mention driving in a land rover on this road all my life and I have lived here 61 years'.

- 1.5.7 Mr Hellier of Whitnage Farm and known or regarded the lane to be public for the last fifty nine years and has used the lane during that time, seventy times a year for business and pleasure, to inspect well from Whitnage and riding from Whitnage to Leathbridge Cross. He considered the owner to be Devon County Council.
- 1.5.8 E J Pinsent of Uplowman had known the way to be public for fifty years and had used the lane since 1928, two to three times a year as a round trip from Whitnage for walking the dog, courting etc. The lane was not considered to be in private ownership.
- 1.5.9 Mr Reichward, a schoolmaster, of Whitnage had known the way to be public and used the lane for walking for five and a half years from 1973, as a walk from Whitnage. He presumed it was public property but had no knowledge.
- 1.5.10 The six user evidence forms were from Sampford Peverell residents in their late forties to early seventies and the forms were again completed in 1978 with one in 1979. One of the forms was completed by Mr Bent, the farmer from West Pitt Farm. In 1978 Mr Bent was the landowner of most of the land on the east and south side of Whitnage Lane. He had known or regarded the lane to be public for twenty years and had used it innumerable times for business going from one end of his farm to the other. Mr Bent's use as part of his day to day farming business would not be use as of right. With regard to ownership, Mr Bent states 'it has always been regarded as a public thoroughfare, it crosses no ones land' and in other comments 'as previously stated this road has always been regarded as a public road'. All of the Sampford Peverell residents considered the lane as a bridleway.
- 1.5.11 Mr L Bone, retired, from Sampford Peverell regarded the way public and had used the route for seven and a half years since 1971, five to six times a year for recreation.
- 1.5.12 Mr R Pargeter, schoolmaster, from Sampford Peverell regarded the way public and used the route at least once or twice a year since 1962 for recreation. He added 'on geographical and physical consideration, I have unquestionably expected this lane to be public, probably a bridleway, possibly a byway – there is no sign that it has ever been gated.'
- 1.5.13 Mr F Pester, retired, from Sampford Peverell regarded the way as public for nine years and had used the route once or twice a year from 1970 for pleasure.
- 1.5.14 Mr T Sharland, mason/bricklayer, from Sampford Peverell had known or regarded the way as public for thirty plus years. He had only walked the route once in 1975 and 1976 as part of the annual parish council led footpaths walks in the parish. Under further particulars he commented 'This track is often overgrown and very muddy, with very pleasant views'.
- 1.5.15 Mr E Thomas, company director, from Sampford Peverell had known or regarded the way as public for twenty five years. He had used the route from 1950 approximately once a year for rambles with family and as parish council. He has commented 'sometimes very overgrown' and 'as far as I can ascertain from the older villagers, this has always been a common right of way'.
- 1.5.16 No recent user evidence has been received. Evidence of recent horse use was noticed in April 2017 but it is not known if this use was by a member of the public or an adjacent landowner with private rights. The local Ramblers Association representative had walked Whitnage Lane once in the Spring of 2013. His report refers to signs of a

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horse having been ridden along the lane and plenty of dog paw marks. The lane was not flooded south west of Newhill.

1.6 Landowner Evidence

- 1.6.1 Those landowners and occupiers who owned land adjacent to the proposal route were all 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.
- 1.6.2 Mr & Mrs A Branton either own or occupy all the land on the east side of Whitnage Lane between points A and C and the three fields on the west side of the lane from just north of point B for 42 years. In an additional letter they advise that they understand it to be a Green Lane, not adopted by highways and available for all who wish to use it, by foot, horse, on a bike or mechanical or non-mechanical vehicle. They cannot see any advantage to designating it and are in favour of maintaining the status quo. They are not aware of members of the public using the lane.
- 1.6.3 They are not prepared to maintain the lane hedges or trees on their land that adjoin the lane as would be their landowner responsibility if the lane is designated. Their cattle cross the lane for milking (about half way between points A and B) and the field gates are closed across the lane, but not locked, for the cows to return to the fields on the east side of the lane after milking. This arrangement must continue and the lane must remain as an undesignated Green Lane. They have public footpaths across their farmland elsewhere and do not want to encourage more members of the public onto their farm.
- 1.6.4 Mr R Branton of Murley Farm had owned the field north west of point B since 1977. He has rarely seen members of the public using this way and has not stopped or turned back anyone from using the lane. Mr Branton additionally advised that when the family purchased Locks Farm in 1977, Newhill Farm did not exist. Whitnage Lane, also referred to as Primrose Lane, was and is a track not a public highway. It does not fit any of the rights of way categories.
- 1.6.5 Mr A J Disney did not return a completed plan with his landowner evidence form but owns the field to the south east of Whitnage lane between points C and D. He has considered the lane to be a bridleway for 22 years but has not been aware of the public using the way.
- 1.6.6 Mr P Netherway owns the field north of the lane just west of point D. He does not consider the lane to be public and says it should be kept as it is. It is used by himself and adjoining land owners only. He has told off-road/green-laners to disappear quickly.
- 1.6.7 Mr L J White owns the field at the southern end of the lane west of point A and was the Uplowman Parish Council Chairman for a number of years. He considers the route to be a green lane (BOAT) and has been aware of use by the public regularly/intermittently for fifty years. He has not required anyone to ask permission or stopped anyone using the lane.
- 1.6.8 Mr & Mrs Greenslade have owned Newhill Farm and land on the north west side of the lane between points B and C since 1992. They do not consider the lane to be public but a farm access lane. They have seen or been aware of use by 4x4s. Foot or horse very rare because of the deep pond in the track. They give permission for hunting but have not required other people to ask permission because it is so rare to see anyone. They refer to the deep pool of water between points B and C and the presence of a

gate between points A and B. The section between points B to D has been maintained by themselves for the past 26 years at their cost.

1.7 Rebuttal Evidence

- 1.7.1 Apart from the comments received from the landowners, no other rebuttal evidence has been received.

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 A Schedule 14 application is considered to be a calling into question for the purposes of Section 31 but on this occasion no Schedule 14 application has been submitted. The proposal to add Whitnage Lane as a bridleway was made by Uplowman & Sampford Peverell Parish Councils, following the County Council's request for amendments to the Definitive Map in 1978. The user evidence submitted does cover twenty years use by the public from 1958 to 1978 but as the proposal as made would not be considered to be a calling into question under Section 31, it means that the existence or not of public rights of way cannot be considered under statute on this occasion.

Common Law

- 1.8.3 A claim for a right of way may also be considered 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.
- 1.8.4 The documentary map evidence records the existence of Whitnage Lane as currently, since at least the early 1800s as shown on the early 1" to a mile OS maps. On the 1" maps the lane is shown as similar in status to the adjoining county roads in 1809 but at a lower classification in 1899 and 1919. On the OS 25" maps of 1880 and 1904 the lane is shown as a defined lane, named and with its own compartment number and area stated. Dashed lines across the lane at points A and D could indicate a change in surface between the lane and adjoining county roads. The Bartholomew's maps of 1903 and 1921 show Whitnage Lane as the same status as the county road at point D.
- 1.8.5 The 1" OS maps of the 20th century continue to show the lane as an unmetalled road, footpath/track & unmetalled road and unmetalled road and Whitnage Lane is shown as an 'other road – poor or unmetalled' on the larger scale OS map of 1961. The maps show the physical existence of the lane and give an indication of it was viewed in connection with the local road network. The maps do not however, provide evidence as to status and whether the lanes were publicly maintainable at that time.
- 1.8.5 The Uplowman Tithe maps of 1841 did not include any colouring of roads/lanes within the parish. The section of Whitnage Lane within Uplowman Parish is shown and labelled 'to Hockworthy' at the parish boundary, indicating that the lane was

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considered a through route to Hockworthy. The Sampford Peverell Tithe map of 1844 did colour all roads /lanes on the map regardless of status. Whitnage Lane is shown on the map from points A to D and coloured brown.

- 1.8.6 Plans for the improvements of roads in the Tiverton area of 1829 show the southern end of Whitnage Lane in a similar manner to the county road going eastwards to West Pitt.
- 1.8.7 In the OS Name Book of 1904, Whitnage lane is described as an occupation road rather than as a parish road. However, the name and spelling of Whitnage Lane is signed for by the assistant overseer, indicating that the lane was considered to be part of the local highway network under his jurisdiction. The description as an occupation road is considered to support the status of at least public bridleway.
- 1.8.8 In the Finance Act plans of 1910, the whole of Whitnage Lane is excluded from the adjacent hereditaments and the colouring breaks across the lane when a hereditament includes land on both sides of the lane. Ownership of the lane was not claimed by adjacent landowners and this could indicate that the lane was considered to be public and part of the local highway network.
- 1.8.9 The Parish Council Minute Books from both parishes record regular items referring to the public rights of way in the two parishes. Whitnage Lane was not proposed for inclusion as a public right of way in either of the 1950 parish surveys but was proposed for addition as a bridleway by both parishes in the subsequently uncompleted 1977 review supported by user evidence collected from users in both parishes.
- 1.8.10 In Uplowman parish in 1991 it was again recorded that Whitnage Lane should be recorded as a bridleway. Use of the lane by off road vehicles in 1995 raised the question of the lane's status again. In 2005 a parishioner questioned the clearing of bridle paths and at the following meeting the chairman Mr White reported that the Whitnage bridle path was clear.
- 1.8.11 In Sampford Peverell parish a list of public rights of way in the parish compiled in September 1968 included Whitnage Lane as number 10. The earliest record of the annual parish walks was in 1970 and the minutes confirm that Whitnage Lane was included in the walk to the north of the village through Boehill and Landside Farms in the 70s, 80s and 90s. Following the 1977 walk it was reported that the brambles either side of Whitnage Lane needed trimming back. On being requested to do this the Divisional Surveyor for Devon County Council advised that the lane was private. From a road surveyor's perspective it is considered that he meant private as regard to maintenance or ownership, as the lane was not a recorded as a road maintainable at public expense nor owned by the County Council; rather than meaning with regard to use of the lane. The Parish Council minutes confirm that Whitnage Lane was used in the parish walks in the 1970s, 80s and 90s.
- 1.8.12 In the 1977 uncompleted parish review it was a Parish and Mid Devon District Council Councillor who spoke to Devon County Council about adding the lane as a bridleway and collected user evidence from both parishes for the lane to be added to the Definitive map as a bridleway. There are references in the minutes of both parish councils that indicate the lane was considered to have the status of a public right of way by both parishes. Uplowman Parish Council no longer supports the proposal, although it has not submitted any grounds in opposition.
- 1.8.13 Whitnage Lane is not registered at HM Land Registry although all the adjoining land is registered under nine different title numbers. Only two of the property registers make reference to a right of way along Whitnage Lane although six of the titles could be

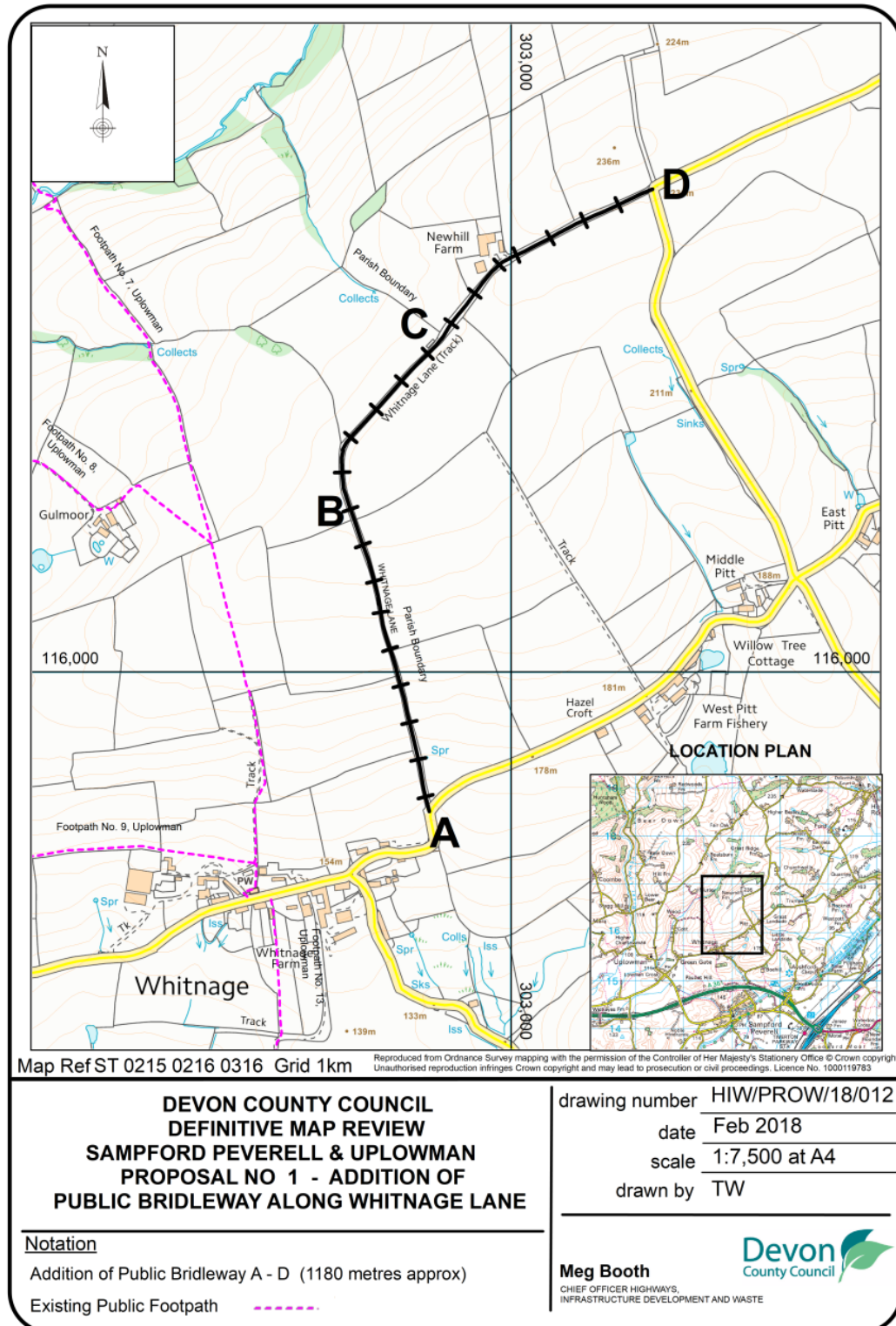
accessed by other means. It is considered that all the adjoining landowners would have a private right of access along the lane for all purposes to access their land even if such right is not included in the title register. If the lane was considered to have bridleway status, it would be prudent for the landowners title to record a right for all purposes, thus including vehicle use, in the deeds when land is being transferred. None of the adjoining owners have claimed any ownership of the lane.

- 1.8.14 The Defra funded permissive footpath in force between 2003 and 2013, referred to Whitnage Lane as byway open to all traffic and an ancient green lane. This implies that the landowner at that time considered the lane to be public and that this was accepted by the Defra government officer as it would have been necessary for the permissive path to connect with a public right of way or county road. Had Whitnage Lane being considered private, the landowner could have claimed an additional sum for the section from point B to point A or D.
- 1.8.15 The aerial photography from 1946 shows the lane as a defined hedged with hedges trimmed and surface of the lane generally visible. The 2006-2007 photography shows the route of the Defra permissive footpath in the field to the east of point B. A worn path could indicate that the permissive footpath was well used and users would have then probably continued their walk along Whitnage Lane.
- 1.8.16 The user evidence forms submitted in 1978 remain valid and apart from the forms submitted by adjacent landowners, the use is considered to be as of right and covers the period from 1918 to 1978. Whitnage Lane was used for parish walks into the 1990s and there is no evidence of landowners been contacted beforehand or of the route ever been considered permissive. One form was completed by the adjacent land owner, Mr Vicary, who advised that he had always known Whitnage Lane as a public footpath, a bridle path and carriage. Another landowner, Mr Bent of West Pitt, stated in his form that it had always been regarded as a public road.
- 1.8.17 No additional user evidence forms have been submitted during the review consultation. The lane remains available to users and appears to be used by local riders and walkers. In the past limited use by 4x4s has been reported by a landowner and to Uplowman Parish Council. Current landowners Mr Branton, Mr White and Mr & Mrs Greenslade report having seen members of the public on occasions. Mr & Mrs Greenslade reported that they had stopped 4x4s using the lane. The user evidence received is considered sufficient to show acceptance of a route previously dedicated as a public right of way.
- 1.8.18 Some of the landowners' have observed infrequent use by the public. None of the landowners advise ever stopping users apart from 4x4 vehicles and some consider the lane to be a bridleway or BOAT. Other landowners describe the lane as a farm track or access lane. The major occupier considers the lane to be green lane and available for all who wish to use it but do not see any advantage to designating the lane as a public right of way and other landowners agree with this view. They are concerned about their increased maintenance responsibilities in cutting the hedges and possible interruption to the practice of opening gates across the lane to allow the cows to come and go between adjoining fields at milking times. None of the landowners claim ownership of the lane but have a right of access.
- 1.8.19 Whitnage Lane was found to be clear and available to users in April 2017. The aerial photography indicates that the adjacent hedges have been trimmed in the past. It is quite common on public rights of way to find string or gates temporarily across the route for livestock direction and this is not a problem to users or considered an obstruction.

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1.9 Conclusion

- 1.9.1 In the absence of an event to be considered 'a calling into question' of the public's use of the lane, the existence of a public right of way cannot be considered under section 31 of the Highways Act 1980. At common law the documentary evidence supports the existence of public rights of way along Whitnage Lane. Together with the user evidence collected in 1978 and use of Whitnage Lane in annual parish walks, this is considered to be sufficient evidence to show that a public right of way has been dedicated at some time in the past and that such dedication has been accepted by the public. When the evidence is taken as a whole, a public bridleway, can be alleged to subsist.
- 1.9.2 It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement for the addition of a Bridleway along Whitnage Lane, between points A – B – C – D as shown on drawing number HIW/PROW/18/012, and if there are no objections to the Order, that it be confirmed.



HIW/18/78

Public Rights of Way Committee
15 November 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 Orders

Order/Schedule 14 Application	Decision
(i) Devon County Council (Footpaths Nos 60 and 61, Luppitt) Definitive Map Modification Order 2017 - the County Council having been directed to make the order following a successful schedule 14 appeal.	Not confirmed on 17 September 2018, following the written representations procedure. For more information see The Planning Inspectorate's Order Decision .
(ii) Schedule 14 Application to add a byway open to all traffic at Powderham Road, Newton Abbot – the applicant had asked the Secretary of State to direct the County Council to determine the application, which is their right, under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981, if the application has not been determined within twelve months of certifying to the authority that notice of the application has been served on all owners and occupiers.	The Council is directed to determine the application within 20 months of the decision date of 20 July 2018. In making her decision, the Planning Inspector appointed by the Secretary of State has taken into account the County Council's Parish Review process, which has a target date for completion of 1 January 2020. For more information see The Planning Inspectorate's Direction Decision .

Public Path Orders

Order	Decision
Devon County Council (Footpath No. 99, Ilfracombe) Public Path Extinguishment and Definitive Map and Statement Modification Order 2017.	Confirmed on 17 September 2018, following the written representations procedure. For more information see The Planning Inspectorate's Order Decision .

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Divisions: Whimble & Blackdown; Newton Abbot South; Ilfracombe

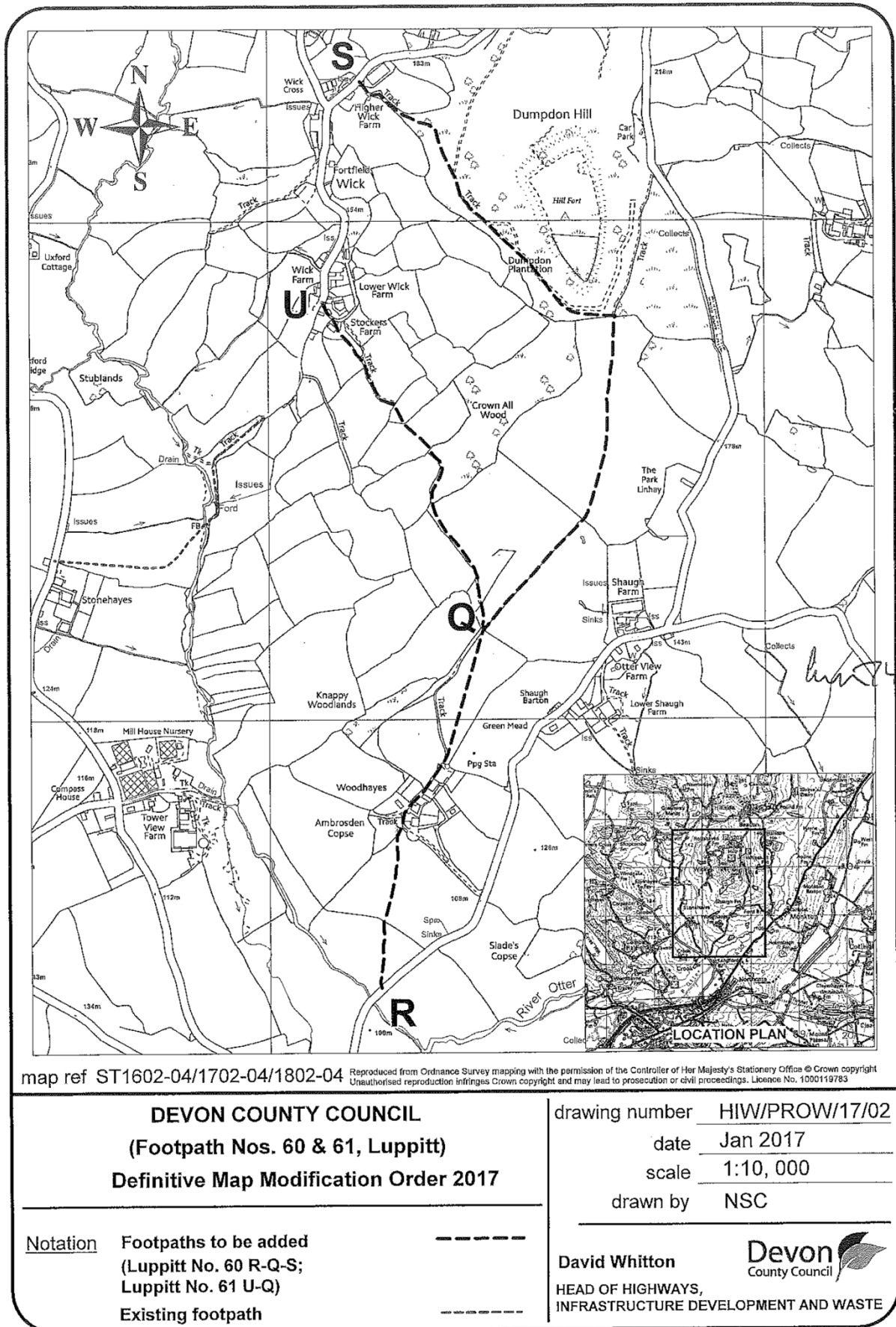
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Local Government Act 1972: List of Background Papers

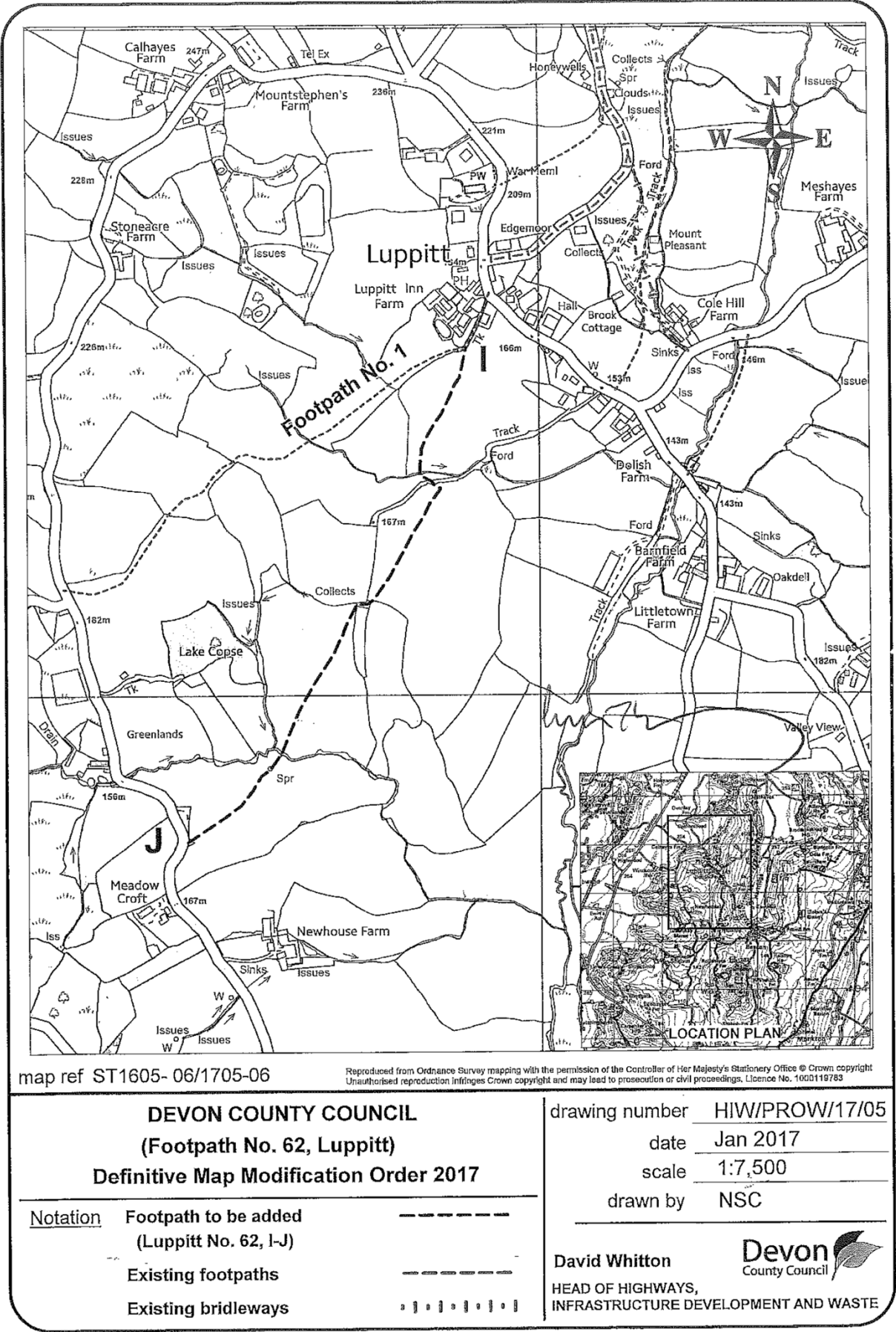
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Room No: ABG Lucombe House, Exeter
Tel No: 01392 383000

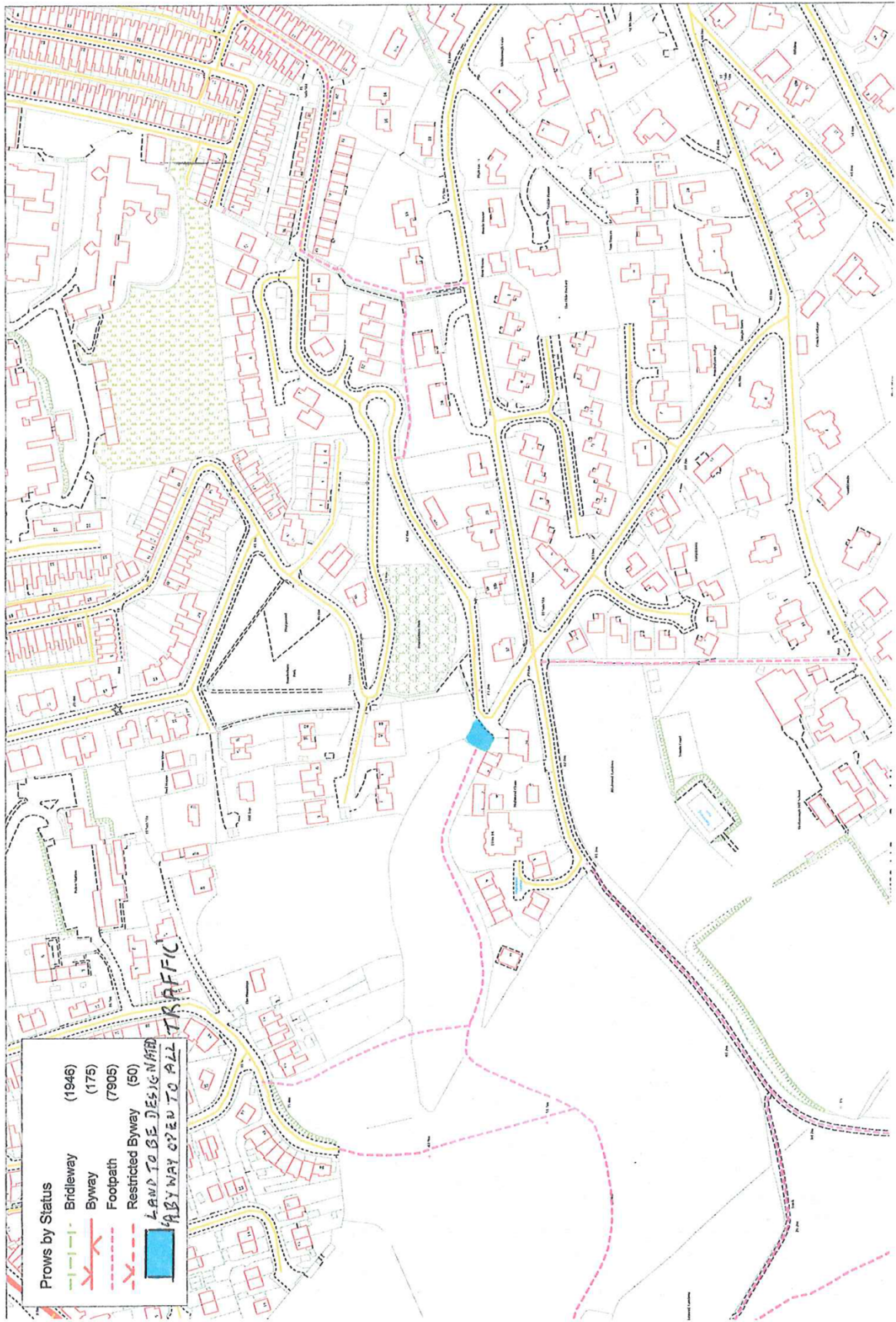
Background Paper	Date	File Ref.
None		

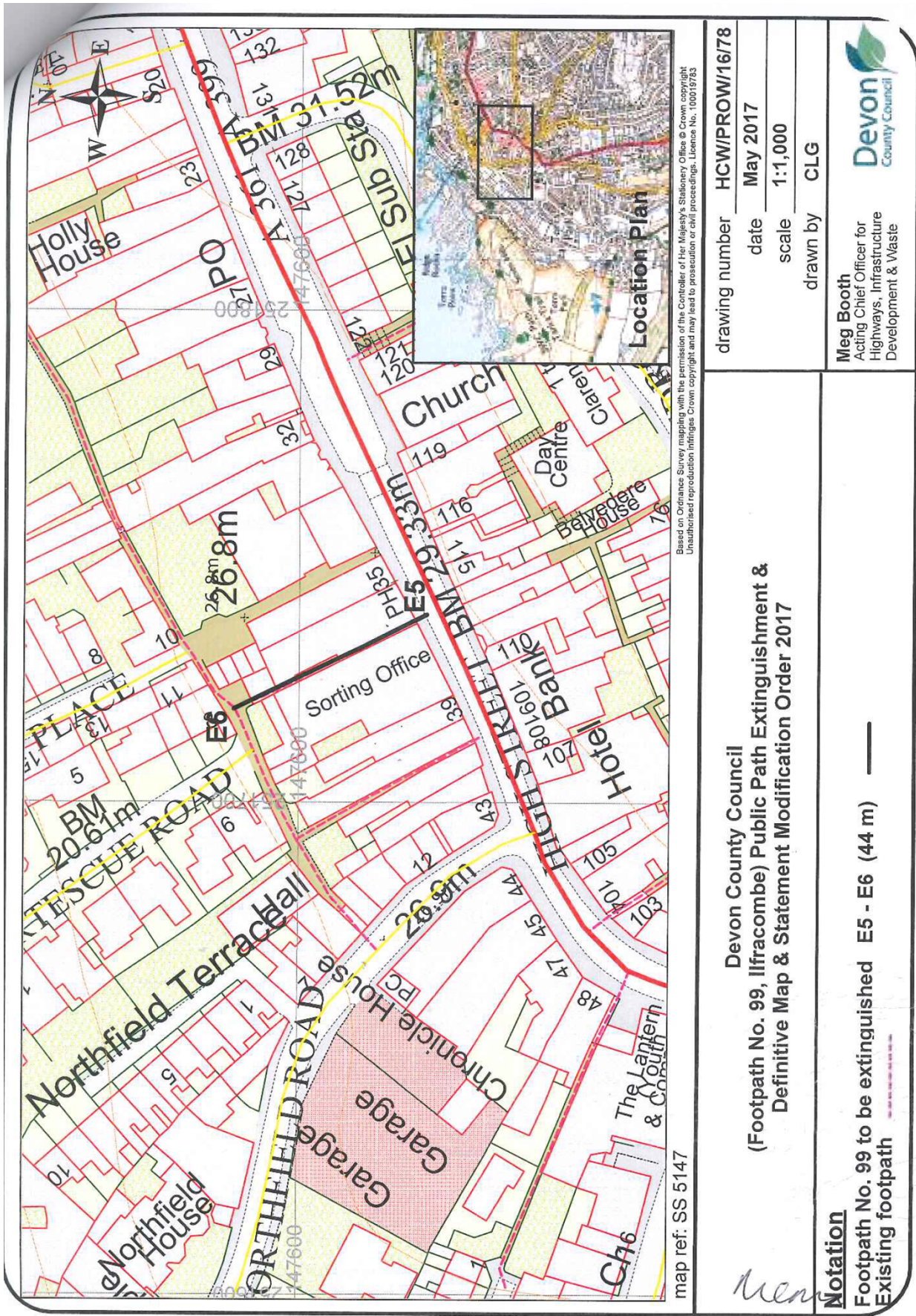
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HIW/18/79

Public Rights of Way Committee
15 November 2018

Modification 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 Modification Orders have been confirmed as unopposed under delegated powers. Plans are attached in the appendix to this report.

- (i) Footpath No. 10a, Culmstock Definitive Map Modification Order 2018
- (ii) Footpath Nos 49 & 50, Salcombe Definitive Map Modification Order 2018

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Divisions: Willand & Uffculme; and Salcombe

Local Government Act 1972: List of Background Papers

Contact for enquiries: Helen Clayton

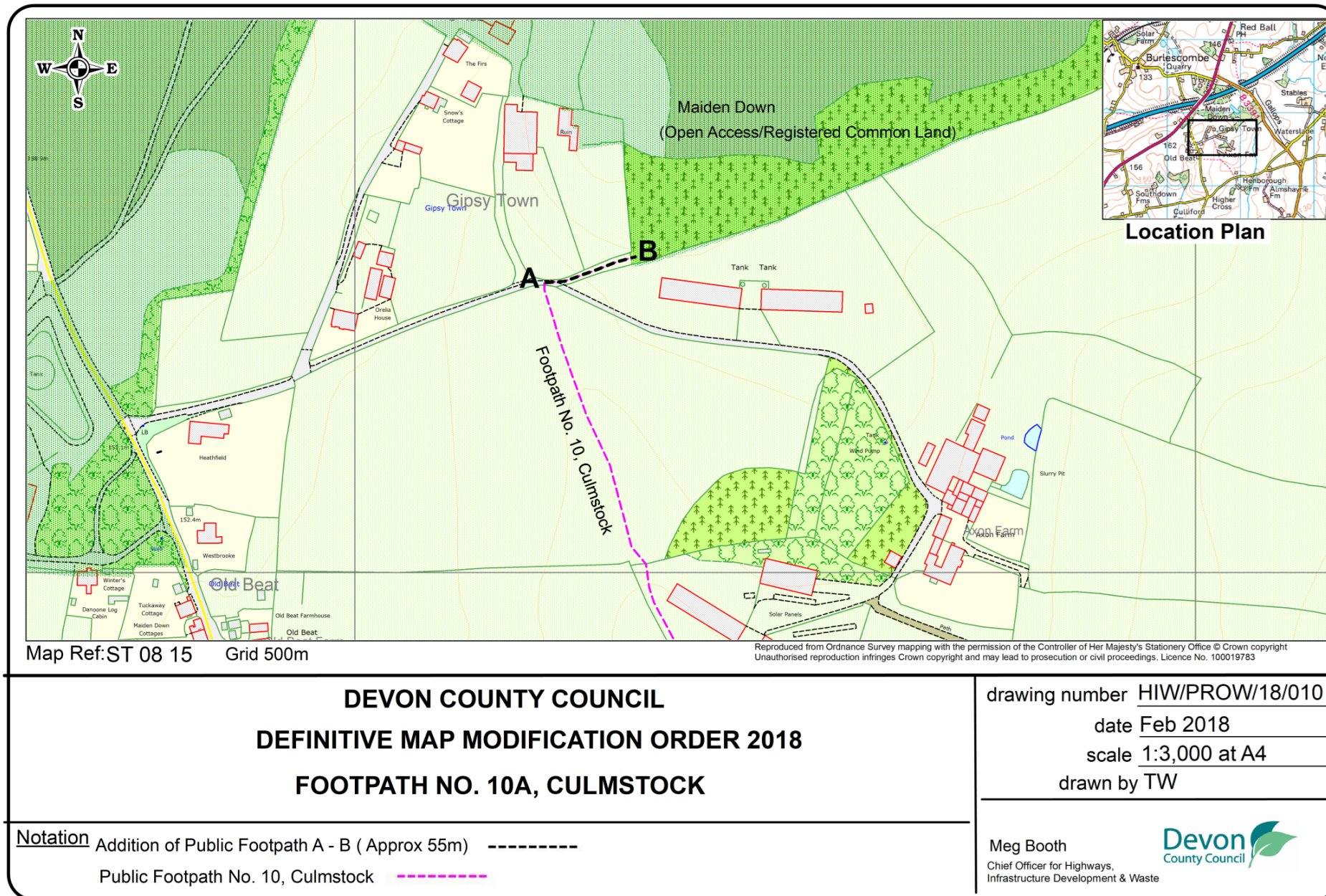
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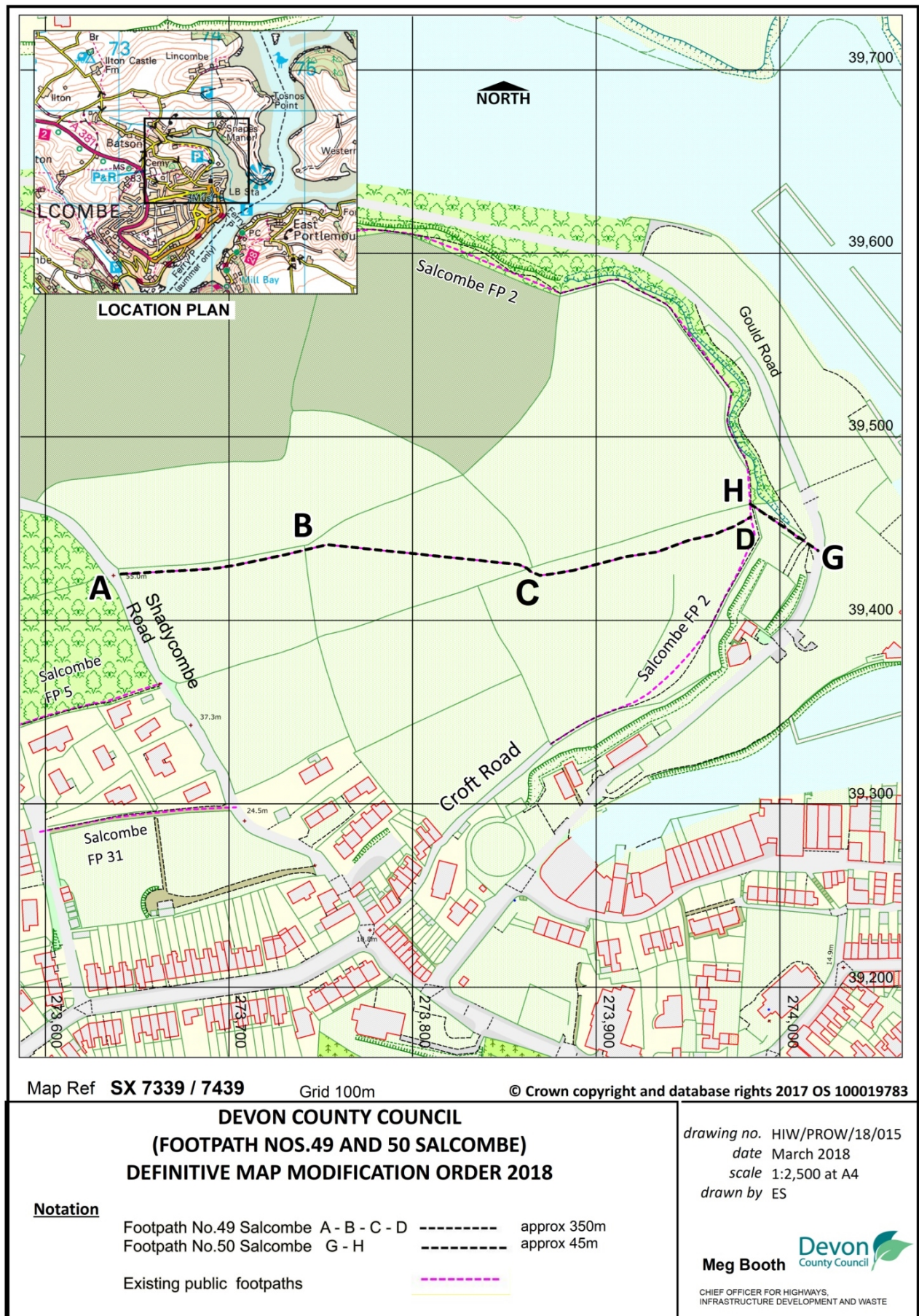
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Background Paper	Date	File Ref.
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None

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HIW/18/80

Public Rights of Way Committee
15 November 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) Bridleway No. 15, Axminster Public Path Diversion & Definitive Map and Statement Modification Order 2015.
- (ii) Footpath No. 36, Upottery & Footpath No. 7, Stockland Public Path Diversion & Definitive Map and Statement Modification Order 2018.
- (iii) Footpath No. 23, Holcombe Rogus Public Path Diversion & Definitive Map and Statement Modification Order 2017.

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Divisions: Axminster; Whimble & Blackdown; and Willand & Uffculme

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.
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None

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sc/cr/Public Path Orders
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Agenda Item 10

