

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 : 22 February 2019
Please ask for : Wendy Simpson, 01392 384383

Email: wendy.simpson@devon.gov.uk

PUBLIC RIGHTS OF WAY COMMITTEE

Monday, 4th March, 2019

A meeting of the Public Rights of Way Committee is to be held on the above date at **1.00 pm** in the Committee Suite - County Hall to consider the following matters.

P NORREY
Chief Executive

A G E N D A

PART I - OPEN COMMITTEE

- 1 Apologies
- 2 Minutes
Minutes of the Committee meeting held on 15 November 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 1 - 10)
Draft minutes of the meeting held on 24 January 2019, attached.

DEFINITIVE MAP REVIEWS

- 5 Parish Review: Definitive Map Review - Parish of Parracombe (Pages 11 - 30)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/19/16) and background papers.

Electoral Divisions(s): Combe Martin Rural

- 6 Parish Review: Definitive Map Review 2017-2019 - Parish of Lympstone (Pages 31 - 48)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/19/17) and background papers.
Electoral Divisions(s): Exmouth
- 7 Parish Review: Definitive Map Review 2018-2019 - Parish of Clayhanger - Borden Gate Parish Council (Pages 49 - 52)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/18) and background papers.
Electoral Divisions(s): Willand & Uffculme
- 8 Parish Review: Definitive Map Review 2018-2019 - Parish of Huntsham - Borden Gate Parish Council (Pages 53 - 56)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/19/19)
Electoral Divisions(s): Willand & Uffculme
- 9 Parish Review: Definitive Map Review 2017-2019 - Parish of Sampford Peverell (Pages 57 - 62)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/19/20), attached.
Electoral Divisions(s): Willand & Uffculme

MATTERS FOR INFORMATION

- 10 Public Inquiry, Informal Hearing and Written Representation Decisions; Directions and High Court Appeals (Pages 63 - 68)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/19/21), attached.
Electoral Divisions(s): Feniton & Honiton; South Brent & Yealmpton; Whimble & Blackdown
- 11 Modification Orders (Pages 69 - 70)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/22), attached.
Electoral Divisions(s): Feniton & Honiton
- 12 Public Path Orders (Pages 71 - 76)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/23), attached.
Electoral Divisions(s): Creedy, Taw & Mid Exe; Okehampton Rural; Sidmouth; Yelverton Rural

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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Agenda Item 4

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Minutes of the Fifty-Second meeting
of the Devon Countryside Access Forum
held at The Kenn Centre, Exeter Road, Kennford, Exeter EX6 7UE
Thursday, 24 January 2019

Attendance

Forum members

Andrew Baker
Sean Comber
Jo Hooper
Linda Lee
Charlie Lloyd

Sue Pudduck
Councillor Philip Sanders
Sarah Slade (Chair)
Maggie Watson

Devon County Council Officers and others present

Helen Clayton, Senior Officer, Public Rights of Way, DCC
Ros Mills, Public Rights of Way Manager, DCC
Richard Walton, South West Coast Path National Trail Officer
Hilary Winter, Forum Officer

1. Apologies

Apologies were received from Simon Clist, Chris Cole, Sean Comber, John Daw, Gordon Guest and Sophie Pritchard.

2. Declaration of interests

No interests were declared.

3. Minutes of the meeting held on 9 October 2018

Minutes of the previous meeting, held on 9 October, were agreed and signed.

4. Matters arising

4.1 Exe Estuary Partnership Dog Walking Code (4.1 09.10.18)

An email had been received from the Exe Estuary Officer thanking the DCAF for its feedback and guidance on the Dog Walking Code. The Officer had taken on board the DCAF's useful suggestions for further distribution of the code.

Agenda Item 4

It was confirmed there were no current links between the Exe Estuary Management Partnership and the Forestry Commission and any contact names would be appreciated.

The Exe Estuary Officer said that signing to dog available areas is being looked into by the Devon Loves Dogs project and she will ensure the importance of this is highlighted. It was not included in detail in the signage review.

The signage review had been completed and will guide signage updating by a variety of organisations. It was not possible to achieve common themed signage due to the range of organisations involved, although the DCAF suggestion was appreciated.

4.2 Coastal access progress reports (16. 09.10.18)

An email from the Lead Adviser (Coastal Access – Devon, Cornwall and Exmoor), Natural England, was brought to the meeting.

The Cremyll to Kingswear report will be published this summer (and not in the spring as previously noted).

Natural England had not received any specific concerns to date about roll-back provisions, although there are issues being raised by landowners relating to both the route itself and the coastal margin. In terms of the estuaries, Natural England had identified an Alternative Route for the Yealm Estuary, mostly using existing public rights of way and highways, and discussions are ongoing as to how the ferry service on the Avon Estuary could be improved.

5. Public questions

5.1 Highway Code

Members agreed to write to the Department of Transport to support the inclusion of horse riders as vulnerable users in the forthcoming review of the Highway Code. It was suggested and agreed that carriage drivers should be included.

Action: Forum Officer to circulate draft to members.

6. Correspondence log

Attention was drawn to item 8 on the Correspondence Log. The Marine Management Organisation had arranged workshops to facilitate responses to iteration 3 of the south west marine planning area. Much of the plan was peripheral to the DCAF's remit but access elements were included in the 'Social' theme of the plan. Sue Pudduck expressed interest in attending and would feedback to members to allow a response by close of the engagement period on 29 March 2019.

Action: Forum Officer to forward workshop details to Sue Pudduck.

7. Reports from meetings attended by DCAF members

7.1 Regional Local Access Forum 2026 Training Day

Chris Cole, Councillor Tony Inch, Sue Pudduck and Hilary Winter had attended the event led by Phil Wadey and Sarah Bucks.

Sue Pudduck reported that it had been a very interesting day. Workshop leaders recommended research to ensure paths were recorded on the Definitive Map. Examples of case studies, use of different historical documents and the value of evidence sharing were included.

Helen Clayton, Senior Officer, Public Rights of Way explained that there was a duty for surveying authorities to keep the map under continuous review. Most authorities relied on applications being made. Devon County Council is more proactive and carries out the review on a parish by parish basis looking for anomalies and investigating claims, and deals with applications as part of that process. There was now more awareness and DCC is starting to receive enquiries on claims not picked up under the review.

The National Environment and Rural Communities (NERC) Act 2006 restricted rights for motor vehicles. Applications were put in for Byways Open to All Traffic by the Trail Riders Fellowship prior to the Act, but the retrospective cut-off was 2005. Any claim would now be a restricted byway, unless it met one of several exceptions. The cut-off date of 2026 for historical claims does not affect restricted byways.

Helen Clayton stated that DCC had a target of January 2020 to finish its parish by parish review. Applications would still be picked up after that date. Parish progress was itemised on the public rights of way website.

The 2026 cut-off date is likely to include a host of saving provisions, to be set out in regulations with the implementation of the Deregulation Act 2015. Different types of evidence carry different weight. In answer to a question, it was confirmed use of the term FP on an historic map did not necessarily indicate a public right of way; historic Ordnance Survey maps show physical features on the ground, but not whether they were considered public or private.

7.2 Parish Paths Partnership annual volunteer events

Andrew Baker, Sue Pudduck and Sarah Slade had attended P3 'walk and talk' events in Shobrooke, Hope Cove and Croyde respectively. Feedback was very positive and members had viewed several interesting issues such as installation of dog friendly gates and dealing with surface maintenance. It was an opportunity for cross-parish discussions and the chance to meet dog walkers, landowners, councillors and parishioners. It was agreed the new format worked well.

Agenda Item 4

8. Minutes of the Public Rights of Way Committee meeting held on 15 November 2018

Minutes of the Public Rights of Way Committee were noted. Minutes of the DCAF meetings were on the agenda for the ProW Committee, held three times a year, and generated interest amongst councillors. The ProW Committee agenda mainly focussed on its legal role.

9. Public Rights of Way update

Ros Mills, Public Rights of Way Manager, reported on the following items:

- 1) Work for the financial year is being completed. Wardens are delivering maintenance work on the public rights of way network and cycle/multi-use trails.
- 2) Linear cracks on the Exe Estuary Trail are being investigated by the DCC Materials Laboratory. There was a rolling programme of surface improvements on the off-road cycle/multi-use network.
- 3) There will be a cut in the revenue budget for 2019/20 but an increase in capital, mainly due to additional Government money for drainage and surfacing to highways, of which public rights of way are part. Devon's tourism economy is significant and the wardens work with landowners to manage the network and ensure it is accessible for visitors and locals alike.
- 4) The Enforcement Protocol, on which the DCAF had an input, will be going to the Public Rights of Way Committee in July.

A discussion took place on a new walking/cycling bridge built near Barnstaple through the development planning process that currently had no exits to footways or public rights of way. DCC is looking into securing a permissive route to a nearby footpath. There was a fatality on the A road nearby when someone crossed from a minor road to a public right of way. Once development takes place the bridge will connect.

It was noted that many public rights of way end at A roads which were not so busy in the past. It is difficult to do improvements retrospectively. DCC has, however, a widening scheme for the North Devon Link Road and the Public Rights of Way team had persuaded the Council to include a bridge to link existing public rights of way and this would be going for planning permission.

This raised the importance of discussions at an early stage in the process and ensuring different levels of local government and DCC liaise to investigate opportunities. It was noted this would tie in with the Rights of Way Improvement Plan.

It was agreed to look at the DCAF planning position statement in the first instance to see whether it could be adapted to include road proposals.

Action: Chair and Forum Officer to review planning statement.

Helen Clayton, Senior Officer, Public Rights of Way reported on the following:

- a) The next PRow Committee would be on 4 March and five parish reviews were on the agenda.
- b) A Public Inquiry held at Ugborough in October confirmed a Definitive Map Modification Order to add a bridleway based on user evidence. This is through a recreation ground (Filham Park) owned by Ivybridge Town Council. A diversion had to be resolved as the defined route is through a cricket ground and a pond, constructed after the route had been established.
- c) P3 surveys were being undertaken.
- d) Public Rights of Way digital information is now on the digitised List of Streets with a disclaimer that the information is not the Definitive Map. This can be viewed in County Hall or by contacting Land Charges. Internally the information is useful to confirm that PRow are highways maintainable at public expense.
- e) The Pegasus Trail is progressing and new sections are planned.

10. **Presentation by Richard Walton, South West Coast Path National Trail Officer**

Richard Walton, National Trail Officer for the South West Coast Path, was welcomed to the meeting. The role is now hosted by the South West Coast Path Association.

Mr Walton outlined some key facts about the SWCP.

1. The SWCP is one of 16 National Trails in England and Wales, designated under the National Parks and Access to the Countryside Act 1949, and had its origin in old coastguard paths.
2. It connects 1 National Park, 5 Areas of Outstanding Natural Beauty, 1 Biosphere, 2 World Heritage Sites, 1 Global Geopark and 10 National Nature Reserves, as well as other designated conservation sites.
3. 220 miles of the SWCP are in Devon, out of 630 miles.
4. The highest point is Great Hangman in North Devon at 1043 feet.
5. Approximately 9 million visits are made to the SWCP, excluding daily residents' use.
6. Path users expend more than £500m
7. In excess of 11,000 full-time jobs are sustained by income from walkers.

In budget terms, the SWCP requires an annual budget of £721,000 of which Natural England provides £464,000 and local authorities, the National Trust and the South West Coast Path Association provide the remainder. Day-to-day management and maintenance, carried out by local authorities and the National Trust, costs approximately £624,000. The National Trust own 1/3 of the SWCP area. It costs about £1000/mile to look after the SWCP. 5-10% of the path furniture needs to be replaced annually.

The Delivery Group which meets biannually includes the main financial stakeholders and the National Trust. Mr Walton said he is trying to achieve more engagement with a wider group of stakeholders, including the Devon Countryside Access Forum, through informal, regular contact, regular liaison, one to one meetings and newsletters. There are several Area Liaison Groups made up of volunteers, managers and rangers and these are very effective in determining work priorities and seeking additional investment.

Agenda Item 4

The South West Coast Path Association has a role in campaigning and fundraising. The path has seen a 40-50% cut in budget over the last 10 years and local funding has addressed some of this impact.

Data from 2014/15 demonstrated the most important factors when deciding where to walk were: attractive views and scenery (98%), clear signposting (88%), away from roads (86%), information panels along the route (82%), destinations and distance on signs (81%), not overgrown (81%) and stiles, gates, steps easy to use (79%). The SWCPA hopes to get up-to-date data.

The SWCPA aimed to achieve good accessibility where possible and provide useful website information on gradients and surfacing. For example, work had been done with the National Trust at Bolberry Down. Walks were branded to include day walks, circular walks and grades of difficulty. Work is undertaken with Countryside Mobility to promote and extend opportunities for trampers which can deal with gradients of 1 in 4.

Current projects include Explore South Devon, a £41,721 project including a LEADER grant of £33,376.80. This aims to promote 19 circular walks and provide better on-site information boards, supported by improved mobile and website information. The App needs improving to provide the right level of content.

An application had been made to the Rural Development Programme for England to deliver improvements at 14 sites across Devon, plus other locations, and a decision will be known shortly. This will make them easier to use all year round.

£100,000 of legacy money had been put into the capital programme and will be used to draw down other monies.

Challenges for the SWCP are coastal erosion and the impact of climate change which increases susceptibility to cliff falls. This is a big challenge and some temporary diversions are being sought. The designation of the England Coast Path, with its area-based zones and spreading room, will help with realignment associated with coastal erosion.

The England Coast Path and the SWCP will co-exist. There may be some examples where there are slightly different routes such as in Plymouth where the England Coast Path will use the ferry route. None are known of in the Devon local authority area. This may mean some funding issues. The SWCP branding is likely to be retained with some element of dual branding.

Questions were raised by Forum members in the following areas.

- 1) Can Apps assist in the provision of information, for example location of toilets?

Mr Walton said a lot of work was taking place with parish and community groups, focussed around information provision. There was the opportunity through the SWCPA to get funding and seek improvement of toilets.

Generally, the SWCPA was branching out in terms of its funding requests and looking also at social mobility. The SWCPA was involved in Connecting

Actively to Nature (over 55s) and well as educational provision and working with primary schools.

- 2) Could website improvements include accessible toilets, transport links and parking information?

Mr Walton said that constant review and improvement is needed on the website. A lot of information was embedded and not necessarily easy to draw out.

- 3) No mention had been made of health reasons as an opportunity for funding?

Mr Walton cited Connecting Actively to Nature as an example. The local authorities had added public health responsibilities and active lifestyles are key factors to link in.

- 4) Would the Acorn brand continue?

Mr Walton confirmed the Acorn was the branding for the National Trails and this would be the same for the England Coast Path. There may be some subtle local branding for the SWCP.

- 5) What are you looking for from the DCAF?

Mr Walton stated that he would appreciate regular dialogue and direct sharing of information. He is trying to work out what works best and the synergies.

Mr Walton was asked to feed back to the Forum Officer with progress on ideas. It was agreed it would be helpful if the DCAF was included as a key partner to invite to any workshops.

11. DCAF Greenspace position statement

Members considered a draft greenspace position statement, intended to supplement the existing planning position statement.

It was noted that districts had already adopted or were about to adopt Local Plans and it was difficult for local authorities to impose conditions on developers that were not embedded in the Plan, although it might be possible to include elements in Supplementary Planning Documents. It was agreed the statement could be circulated to local authorities and to officers with greenspace responsibilities.

It was not known whether Dartmoor Access Forum was preparing a similar statement but the DCAF work could be shared.

A discussion took place on the defined greenspaces and whether the specific provision for children and teenagers should be included in the list of more general types of greenspace. It was noted that these were Government definitions and it was agreed the needs of that group should be retained.

It was agreed to put in full weblinks rather than hyperlinks and amend a sentence stating 'unused to accessing greenspace' to 'unfamiliar with accessing greenspace.'

It was agreed to adopt the position statement, subject to minor amendments, and publish and circulate.

Action: Forum Officer to finalise position statement.

Agenda Item 4

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

12.1 Cycling and Walking Investment Strategy safety review: proposals for new cycling offences

The response was noted and approved. The Government had recently published its comments.

12.2 Areas of Outstanding Natural Beauty Position Statement

The response was noted and approved.

12.3 Emerging Exeter Vision for 2040

The response was noted and approved.

12.4 Protected Landscapes Review

The response was noted and approved.

13. Current consultations

13.1 Hemyock Common

Natural England had a responsibility to review long term directions on access land and the one for Hemyock Common had come up for review. The DCAF had supported the original direction in 2013. The purpose of the consultation was to consider whether there was a need for the direction to continue, originally put in place to allow the Gun Club to continue uninterrupted clay pigeon shooting on specified and approved days each year. The Gun Club was an established user of the land.

A discussion took place and several different views were expressed. A five-year restriction was considered to be a long exclusion and it was questioned whether one group of people should have a right in principle to exclude others from exercising their right to use access land. In practice, if the Gun Club manage the land others may get the benefit of any improvements to access.

It was noted that the District Council is reviewing noise levels as part of concerns raised by near neighbours. It was agreed this would be determined under different legislation and should not influence the DCAF response.

The consultation included two different timings for restrictions on a limited number of days each year. This still provided opportunity for access users to use the Common at other times. It was agreed clarification would be helpful on the different timings.

The Gun Club had an agreement with the Parish Council, as landowners, but the terms of that agreement were not known. It was thought that the Parish Council should be aware of and respond to local views.

Sharing access land for different purposes was acknowledged, for example army use on Dartmoor, and the balance to be struck between different users.

It was recommended that access users should be signposted to other space that could be available locally when access on Hemyock Common is restricted.

It was noted that the Gun Club manage the land on behalf of the Parish Council and assist in improving access.

After debate and a vote, it was agreed that a continuation of the direction should be supported.

Action: Forum Officer to circulate draft to members.

13.2 Fire Beacon Hill management options consultation

Chris Cole and the Forum Officer had attended a consultation event at Fire Beacon Hill. Comments from Chris Cole were shared. These mentioned that the car park area would benefit from being enlarged; any new gates and replacement of existing ones should, if practical, be suitable for all users including people with restricted mobility; and that limited fencing/grazing areas should not conflict too much with public access.

It was agreed there was scope to improve access generally and that the DCAF position statement on disability access should be submitted with the response.

Although the car park at the southern end was small, members decided not to recommend it should be enlarged due to the nature conservation aspirations for the site.

It was agreed that the RSPB should be encouraged to work with the Woodland Trust and Forestry Commission to manage the whole area and, where possible, improve access. Partnership working should be encouraged. Temporary electric fencing was not seen to deter access if on a rotation basis. Any permanent fencing would require an application to the Planning Inspectorate.

It was agreed that precise vegetation management prescriptions were outside the remit of the Forum but it would be helpful if any management changes were communicated to the public.

Action: Forum Officer to circulate draft.

Agenda Item 4

14. Dates of meetings 2018/2019

Dates of forthcoming meetings were agreed:

Thursday, 25 April 2019 10.00 a.m.

Thursday, 19 September 2019 10.00 a.m.

Thursday, 23 January 2020 10.00 a.m.

Several venues were suggested and would be investigated.

15. Any other business

Local Nature Partnership

Maggie Watson expressed interest in attending a Devon Local Nature Partnership Conference if one was planned for 2019.

Action: Forum Officer to contact the Devon LNP.

Devon Countryside Access Forum membership

The Forum Officer said that the recruitment process for Forum membership was currently taking place. She expressed thanks and appreciation to Sarah Slade, Chair; Simon Clist, Gordon Guest and Linda Lee who would come to the end of their three-year term at the end of March. Retiring members could reapply for membership.

HIW/19/16

Public Rights of Way Committee
4 March 2019

Definitive Map Review Parishes of Parracombe

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:

Modification Orders be made to modify the Definitive Map and Statement by:

- (i) adding a restricted byway between points G – H as shown on drawing number HCW/PROW/18/28a (Proposal 2) to resolve an anomaly affecting Bridleway No. 5 so that it meets a public highway at both ends, and that further investigation be made regarding the status of Bridleway No 5 in the light of the evidence set out in this report;**
- (ii) deleting a public bridleway between points J – L and adding a public bridleway between points J – K – L as shown on drawing number HCW/PROW/18/27a (Proposal 3) to resolve an error in the recording of Footpath No. 9 north of West Bodley.**

1. Introduction

This report examines two of the three current proposals arising from the Definitive Map Review in Parracombe.

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 1st 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 a number of proposals for change to the Definitive Map at that time, which have been picked up in the current Review. The Limited Special Review of RUPP's, carried out in the 1970s, did not affect the parish.

The following order has been made and confirmed in the parish:

Devon County Council (Footpath No. 10, Parracombe) Public Path Diversion Order 2011

A Legal Event Modification Order will be made for this change under delegated powers in due course.

The current Review was started in 2017 with informal consultation on a number of proposals carried out in 2018 for modification of the Definitive Map and Statement. Two are dealt with in the appendix to this report, whilst the remaining one (Proposal 1) will be the subject of a diversion order under delegated powers.

Agenda Item 5

3. Proposals

Please refer to the appendix to this report.

4. Consultations

General consultations have been carried out with the following results:

County Councillor Andrea Davis	– no comment
North Devon Council	– no comment
Exmoor National Park Authority	– comments included
Parracombe Parish Council	– no comment
British Horse Society	– no comment
Byways & Bridleways Trust	– no comment
Country Landowners' Association	– no comment
Devon Green Lanes Group	– no comment
National Farmers' Union	– no comment
Open Spaces Society	– no comment
Ramblers'	– no comment
Trail Riders' Fellowship	– no comment
Cycle UK	– no comment

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

5. Financial Considerations

Financial implications are not a relevant consideration to be taken into account under the 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 a restricted byway between points G – H as shown on drawing number HCW/PROW/18/28a (Proposal 2) and deleting a public bridleway between points J – L and adding a public bridleway between points J – K – L as shown on drawing number HCW/PROW/18/27a (Proposal 3).

It is also recommended that further investigation be made regarding the status of Bridleway No. 5 in light of evidence set out in this report.

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

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Tel No: 01392 383240

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

cg180119pra
sc/cr/DMR Parracombe
03 200219

Agenda Item 5

Appendix I To HIW/19/16

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;

Agenda Item 5

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

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

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

Agenda Item 5

1. **Proposal 2: Proposed extension of Bridleway No. 5 along Stony Lane to meet the county road over Parracombe Common, as shown between points G – H on plan HIW/PROW/18/28a.**

Recommendation: That a Modification Order be made in respect of Proposal 2, to modify the Definitive Map and Statement by adding to them a restricted byway between points G – H along Stony Lane, between Bridleway No. 5 and the county road known as the Chapman Burrows Road, as shown on drawing no. HIW/PROW/18/28a, and that further investigation be made regarding the status of Bridleway No 5 in the light of the evidence set out in this report.

1.1 Background

- 1.1.1 On examination of our records, it was discovered that there was an anomaly affecting Bridleway No. 5, where it did not continue to meet the minor county road, known as the Chapman Burrows Road over Parracombe Common.
- 1.1.2 Consequently, Devon County Council proposed this should be investigated as part of the Review, and the anomaly resolved, by establishing the correct legal status of the unrecorded section.

1.2 Description of the Route

- 1.2.1 The proposal route starts at point G at the end of Bridleway No. 5 on Stony Lane and runs north eastwards along the lane past the Parracombe Pleasure Ground to meet the county road over Parracombe Common known as Chapman Burrows Road at point H.

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 A route is shown on a similar alignment to Bridleway No. 5 and the proposal route.

1.3.2 Parracombe Tithe Map and Apportionment, 1838-9

- 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 Parracombe tithe map is a second class map, surveyed at a scale of 3 chains to 1" by an unknown surveyor 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 not shown. However, Bridleway No. 5 is shown between points A – B – C – D – E – F where it met Parracombe Common which was unenclosed at that time. The remainder is coloured sienna, with the section between A – B – C included in hereditament 90 – *'The Green'* owned by William Dovell and occupied by Charles Dovell, and the section between C – D – E – F unnumbered.

1.3.3 Ordnance Survey mapping, 1804 onwards

1.3.3.1 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'*.

1.3.3.2 A route is shown on a similar alignment to Bridleway No. 5 and the proposal route on the 1804 Old Series 1" to 1 mile as a through route to Woolhanger, Thornworthy, and beyond to Lynton and Lynmouth.

1.3.3.3 On the later 1st Edition 25" scale mapping of 1889 and subsequent mapping, Bridleway No. 5 and the proposal route are shown as a continuous enclosed through route.

1.3.4 Parracombe Common Inclosure Award, 1862

1.3.4.1 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.

1.3.4.2 The Award states that certain *'public roads and ways'* were to be *'discontinued and stopped up'* including *'a certain public turf road track or occupation way leading from a certain farm called Bartons in the said parish of Parracombe and extending from a certain lane called Stoney Lane to the said common or down and passing thence through 2 certain fields or closes of land called the New Grounds part and parcel of a certain farm called Holworthy in the aforesaid parish of Parracombe'*. This is the historical alignment of Bridleway No. 5 and the proposal route.

1.3.4.3 The Award further states that certain *'public carriage roads or highways'* were *'set out and appointed'*, including *'one other public carriage road or highway of the width of 20 feet to be called the Barton Road commencing at the point marked G [point H on proposal plan] and numbered 26 on the said map and extending thence from east to west adjoining old inclosures to and terminating at the point marked H [point F on proposal plan] on the said map adjoining a certain lane called Stoney Lane'*. This describes the proposal route (points H – G on proposal

Agenda Item 5

plan) and part of Bridleway No. 5 (points G – F on proposal plan) with Stoney Lane being the remainder of what is now Bridleway No. 5. On such a route, under the Inclosure Award, all subjects enjoyed an equal right of vehicular passage.

- 1.3.4.4 The Award also set and appointed to *'the Churchwardens and Overseers of the Poor of the said parish of Parracombe all that part or parcel of land numbered 25 on the said map containing 2 acres to be held by them and their successors in trust as a place of exercise and recreation for the inhabitants of the said parish and neighbourhood'*. This is the area on the southwest corner of point H adjacent to the proposal route, shown as 'Please Ground on the current OS base mapping.

1.3.5 Parracombe Parish Council Minutes, 1894 onwards

- 1.3.5.1 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 Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.
- 1.3.5.2 There are numerous references to Bridleway No. 5, but these are regarding the section A – B between Churchtown and the *'New Road'*, now the A39 Parracombe Bypass, which the Parish Council repeatedly requested to be taken over as a county road.

1.3.6 Barnstaple Rural District Council Minutes, 1893-1974

- 1.3.6.1 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.
- 1.3.6.2 There are numerous references to Bridleway No. 5, but these are regarding the section A – B between Churchtown and the *'New Road'*, now the A39 Parracombe Bypass, which the Parish and Rural District Councils repeatedly requested to be taken over as a county road, which received the support of the District Council.

1.3.7 Ordnance Survey Name Books, 1903

- 1.3.7.1 These Ordnance Survey records were produced in conjunction with the Ordnance Survey mapping and contain information on named routes may be found in the relevant Object Name Books, which provided details of the authorities for named features. Such records can provide supporting evidence of the existence and status of routes.
- 1.3.7.2 The section of Bridleway No. 5 known as Stony Lane is described as a '3rd class road extending from Barton Lane to junction of road 29 chains south east of Brakebrook'.

1.3.8 Finance Act, 1909-10

- 1.3.8.1 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.

- 1.3.8.2 Bridleway No. 5 is included within hereditaments 46 and 80. The proposal route and a short section of the currently recorded bridleway between points F – G – H are excluded from the adjacent hereditaments 73 and 125.

1.3.9 Bartholomew's maps, 1900s onwards

- 1.3.9.1 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 which had the classification of First Class roads, 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 were 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.
- 1.3.9.2 Bridleway No. 5 is shown on the Bartholomew's maps from 1903 onwards as an '*Inferior road*', not to be recommended to cyclists, similar to much of the highway network in the area.

1.3.10 Handover Roads records, 1929-47

- 1.3.10.1 No part of the proposal route or Bridleway No. 5 is included.

1.3.11 Aerial Photography, 1946 onwards

- 1.3.11.1 The aerial photography shows the proposal route as a natural extension of Bridleway No. 5.

1.3.12 Definitive Map Parish Survey, 1950s

- 1.3.12.1 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.
- 1.3.12.2 Mr TJ Barrow on behalf of the Parish Council surveyed the route as paths 5 (part) and 6. He described the route as a 'lane and cart track from Churchtown Bridge crossing Parracombe New Road' and 'lane leading from Barton Lane via The Ark and Stony Lane to [the] Chapman Burrows Road'.
- 1.3.12.3 The Parish Survey appears to show some indecision regarding the extent of public vehicular highway in relation to Bridleway No. 5 and the proposal route. The Parish Survey map shows that the Parish Council considered that the county road extended from point H to point F. The County Surveyor later annotated the map to show Bridleway No. 5 starting at point G and the section H – G as '*C.R.*', which is the abbreviation for '*county road*'. Bridleway No. 5 was subsequently recorded on the Definitive Map as starting at point G.

Agenda Item 5

1.3.13 Definitive Map and Statement, 1957

- 1.3.13.1 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.
- 1.3.13.2 The Definitive Statement for Parracombe Bridleway No. 5 is described as running from *‘Churchtown old railway bridge and along a private accommodation road (not repairable by the inhabitants at large) south of St. Peter’s Church to County road A.38, continuing eastwards along a private accommodation road (not repairable by the inhabitants at large), Barton Lane, then generally north-eastwards along another private accommodation road (not repairable by the inhabitants at large), Stony Lane, passing Ark Cottage to join the end of an Unclassified County road 450 yards north-east of Ark Cottage’*. This description corresponds with the line as shown on the Definitive Map, the Bridleway terminating at point G.

1.3.14 List of Streets, 1970s onwards

- 1.3.14.1 No part of the proposal route or Bridleway No. 5 is included.

1.3.15 Land Registry, 2018

- 1.3.15.1 The whole of Bridleway No. 5 and its continuation, the proposal route, is unregistered.

1.4 User Evidence

- 1.4.1 No user evidence has been received for the proposal.

1.5 Landowner Evidence

- 1.5.1 No responses were received from adjacent landowners.

1.6 Rebuttal Evidence

- 1.6.1 No rebuttal evidence has been received.

1.7 Discussion

- 1.7.1 Statute – Section 31 Highways Act 1980. The Definitive Map and Statement is conclusive evidence of the information it contains, that Bridleway No. 5 exists. There does not appear to be a specific date on which the public’s right to use the proposal route, which is a continuation of Bridleway No. 5 has been called into question. Consequently, the proposal cannot be considered under statute law.
- 1.7.2 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 1804. It is shown in a similar manner to other recorded public highways.

- 1.7.4 The Ordnance Survey and Cary's mapping shows a route has existed on an alignment similar to Bridleway No. 5 and the proposal route since 1804, which continued onto Woolhanger, Thornworthy, and Lynton/Lynmouth. However, the Ordnance Survey mapping is not evidence of a right of right, only the existence of features on the ground at the time of the relevant survey.
- 1.7.5 Under the Parracombe Down Inclosure Award of 1862 enacted through Parliament, this ancient route, a '*public turf road*' was '*discontinued and stopped up*', and a new route, '*a public carriage road*' was set out and awarded. On such a route, all subjects enjoyed an equal right of vehicular passage. The public carriage road includes part of Bridleway No. 5, between points F – G, and the proposal route between points G – H. Having been enacted by Parliament, the Award is conclusive evidence regarding their public status.
- 1.7.6 The Ordnance Survey Name Book subsequently describes Bridleway No. 5, known as Stoney Lane, as a '*3rd class road*', and Bartholomew's map dating from 1903 indicates it had a reputation as a road open and available to the public, albeit not recommended.
- 1.7.7 However, it clear from the Parish Survey that in more modern times, there is some confusion as to the extent of county road along Stony Lane, as to whether it is F – G – H or G – H.
- 1.7.8 The proposal route was considered a county road by the County Council in the 1950s, which may be the reason why it was not included in the Definitive Map Parish Survey in 1950. However, it is not included on either the Handover Roads Records of the same period, or on the modern List of Streets. This conflicts with the evidence of the Inclosure Award.
- 1.7.9 Whilst there are numerous references to Bridleway No. 5 in the Parracombe Parish Council and Barnstaple Rural District minutes, these are focussed on requests for taking over the section of Bridleway No. 5 through Churchtown Green and part of Barton Lane between points A – B as a county road.
- 1.7.10 Express dedication is considered to have taken place under the Inclosure Award in 1862, and there is no evidence of such rights having been stopped-up. Consequently, the legal maxim '*once a highway, always a highway*' applies. The evidence when considered as a whole supports access for the public to the proposal route, as a continuation of Bridleway No. 5, though of the higher status of restricted byway.
- 1.7.11 In such a situation, the principle set out in the case of *Eyre v New Forest Highway Board* of 1892 may apply; that where a section of uncertain status exists, it can be presumed that its status is that of the highways linked to it. However, to investigate this further will require further consultation with landowners and the public as part of the Definitive Map Review.

1.8 Conclusion

- 1.8.1 On consideration of all the available evidence the documentary evidence demonstrates that the route along Stony Lane between points G – H has existed since at least 1862 and over the historic, pre-Inclosure Award route, since at least 1804. It has been open and available and appears to have been considered public since at least that time.

Agenda Item 5

- 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 so long as the highway existed or until the liability was taken away or transferred by statute. The public nature of the proposal route G – H and its continuation along Stony Lane, currently recorded as Bridleway No. 5, between points F – G was confirmed in the 1862 Inclosure Award.
- 1.8.3 There has been no evidence of public use by mechanically-propelled vehicles, and therefore the exceptions under the Natural Environment and Rural Communities Act 2006 do not need to be considered. Consequently, any unrecorded rights for mechanically propelled vehicles are extinguished. Therefore, the highest status the proposal route could be considered to be is a restricted byway.
- 1.8.4 The historical 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 between points G – H. It demonstrates that the proposal route was considered an all-purpose public highway and is considered sufficient to demonstrate that 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 G – H. It also suggests that Bridleway No. 5 may carry higher rights.
- 1.8.6 It is therefore recommended that a Modification Order should be made to add a restricted byway between points G – H to the Definitive Map and Statement, as shown on drawing no. HIW/PROW/18/28a. If there are no objections, or if such objections are subsequently withdrawn, that it be confirmed. It is also recommended that further investigation be made regarding the status of Bridleway No 5 in the light of the evidence set out in this report.

2. **Proposal 3: Proposed clarification of the alignment of Bridleway No. 9 north of West Bodley, as shown between points J – L and J – K – L on plan HIW/PROW/18/27a.**

Recommendation: That a Modification Order be made in respect of Proposal 3, to modify the Definitive Map and Statement by deleting a public bridleway between points J – L and adding a public bridleway between points J – K – L, as shown on drawing no. HIW/PROW/18/27a.

2.1 **Background**

- 2.1.1 On examination of our records, it was discovered that there is an anomaly affecting Bridleway No. 9 north of West Bodley, as there is a difference between the definitive and used alignments.
- 2.1.2 Consequently, Devon County Council proposed this should be investigated as part of the Review, and the anomaly resolved.

2.2 **Description of the Routes**

- 2.2.1 The definitive alignment starts at point J on a track north of West Bodley and runs north westwards through an area which is overgrown and filled in with waste material to the track at point L.
- 2.2.2 The currently used alignment starts at point J and runs northwards to point K where it bends and continues west south westwards to point L.

2.3 **Documentary Evidence**

2.3.1 **Cary's map, 1821**

- 2.3.1.1 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.
- 2.3.1.2 Bridleway No. 9, known as Newberry Lane, is shown as a cross-road.

2.3.2 **Parracombe Tithe Map and Apportionment, 1838-9**

- 2.3.2.1 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*'.
- 2.3.2.2 The Parracombe tithe map is a second class map, surveyed at a scale of 3 chains to 1" by an unknown surveyor 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

Agenda Item 5

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.

- 2.3.2.3 Both the definitive and used alignment are included in an area coloured sienna and recorded as lot 1018, which are the parish 'roads'.

2.3.3 Ordnance Survey mapping, 1804 onwards

- 2.3.3.1 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'*.
- 2.3.3.2 A route is shown as a cross road on the 1804 Drawings 2" to 1 mile along a similar alignment to Bridleway No. 9, Newberry Lane, but this is too small a scale to be of assistance with regard to the proposal.
- 2.3.3.3 On the later and larger scale 25" mapping dating from 1889, a track is shown on a similar alignment to the used alignment of Bridleway No. 9 north of West Bodley. A pecked line indicates a change of surface from the track, and trees in the location of the definitive alignment.
- 2.3.3.4 The 6" scale mapping was derived from the 25" scale and subject to the Ordnance Survey's standards of generalisation, meaning that it showed less detail than the 25". This mapping doesn't distinguish change of surface and shows an area which covers the extent of both the definitive and used alignments, although a tree symbol is again shown in the location of the definitive alignment. This mapping was used for the 1950 Parish Survey and the Definitive Map.

2.3.4 Parracombe 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 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.
- 2.3.4.2 There are few references to Bridleway No. 9 none of which relate to the anomaly.

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 through the appointed Surveyor historically, which they had a responsibility to maintain. The records for 1898-99 have not survived.
- 2.3.5.2 There are few references to Bridleway No. 9 none of which relate to the anomaly.

2.3.6 Ordnance Survey Name Books, 1903

- 2.3.6.1 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.

2.3.6.2 Bridleway No. 9 runs along the route known as 'Newberry Lane...a 3rd class road extending from the junction of Bodley Lane (a minor county road) and Pound Lane (Footpath No. 10) to South Down'.

2.3.7 Finance Act, 1909-10

2.3.7.1 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.

2.3.7.2 Both the definitive and used alignments are included in an area excluded from any hereditaments, along with the continuations of Bridleway No. 9.

2.3.8 Bartholomew's maps, 1900s onwards

2.3.8.1 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 which had the classification of First Class roads, 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 were 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.

2.3.8.2 Bridleway No. 9 is shown on the Bartholomew's maps from 1903 onwards as an '*Inferior road*', not to be recommended to cyclists. However, the mapping is too small scale to be of assistance with regard to the proposal anomaly.

2.3.9 Aerial Photography, 1946 onwards

2.3.9.1 The aerial photography is of little assistance regarding the proposal anomaly due to the wooded nature of Bridleway No. 9 near Bodley.

2.3.10 Definitive Map Parish Survey, 1950s

2.3.10.1 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.

2.3.10.2 Mr TJ Barrow on behalf of the Parish Council surveyed the route as a '*lane leading from Bodley to [the] Killington road bridge*'. There is no indication regarding the alignment north of West Bodley.

Agenda Item 5

2.3.11 Definitive Map and Statement, 1957

2.3.11.1 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.

2.3.11.2 The Definitive Statement for Parracombe Bridleway No. 9 is described as running from *‘the end of the Unclassified County road at Bodley, then generally in a northerly direction along a private accommodation road (not repairable by the inhabitants at large), Newberry Lane, which turns north-north-east at 300 yards due west of Higher Bodley, then along Beacon Down Quarry road, a private accommodation road (not repairable by the inhabitants at large) to join the Unclassified County road immediately west of Killington old railway bridge’*. This does not provide any assistance with regards to the alignment north of West Bodley.

2.3.12 Land Registry, 2018

2.3.12.1 The definitive and used alignments of Bridleway No. 9 are both part of Newberry Lane, which is unregistered.

2.4 User Evidence

2.4.1 No user evidence has been received for the proposal.

2.5 Landowner Evidence

2.5.1 No responses were received from adjacent landowners.

2.6 Rebuttal Evidence

2.6.1 No rebuttal evidence has been received.

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 Bridleway No. 9 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.

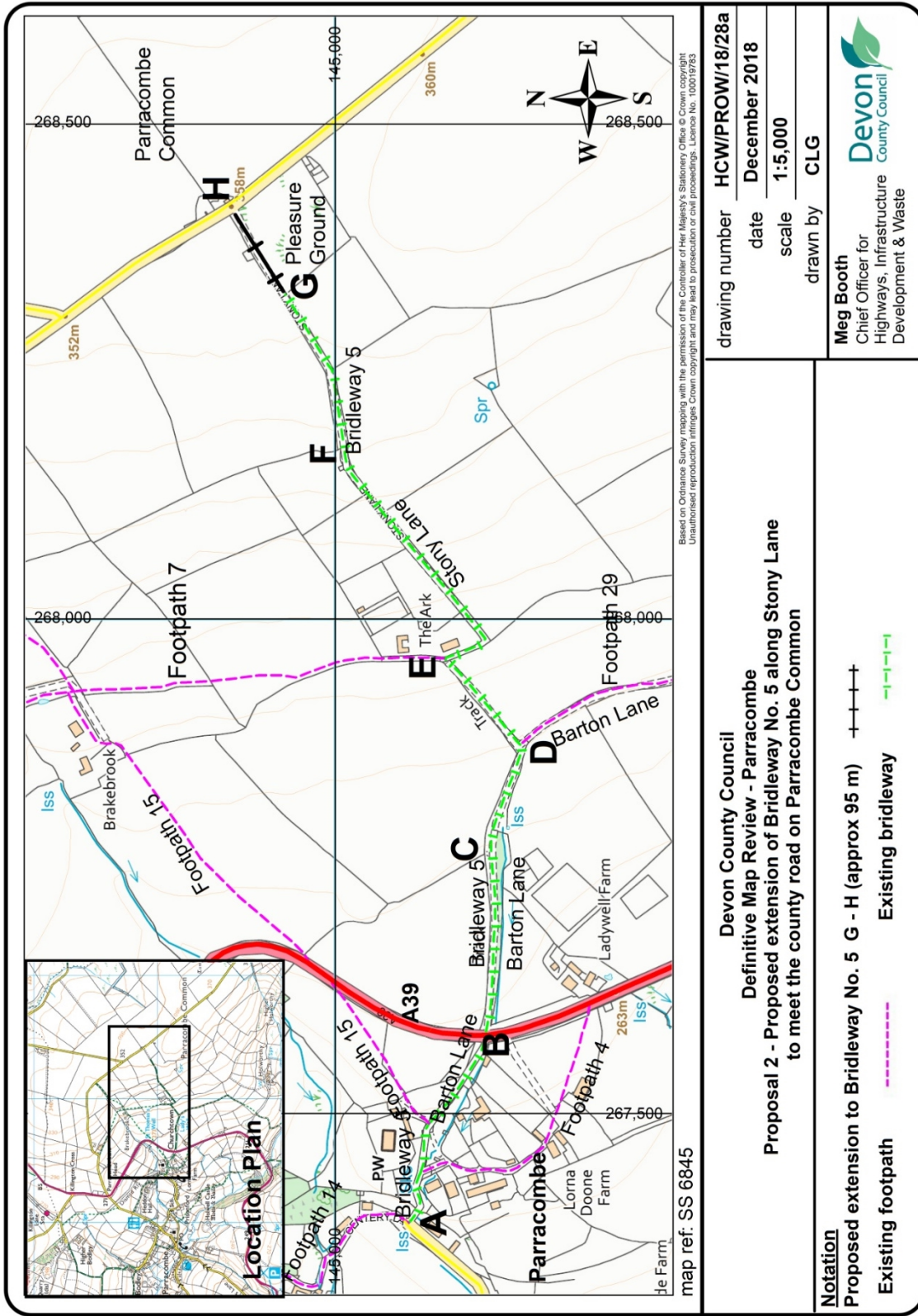
2.7.3 Common Law. On consideration of the proposal at common law, the historical documentary evidence demonstrates the proposal route’s physical existence and availability since at least 1804. It is shown in a similar manner to other recorded public highways.

- 2.7.4 Bridleway No. 9 known as Newberry Lane, is shown on the small-scale mapping of the Ordnance Survey dated 1804 and Cary dated 1821, though such mapping is too small a scale to be of assistance in relation to the proposal.
- 2.7.5 Dating from 1889, the 25" Ordnance Survey mapping was created from an original survey, and shows a track following a similar alignment to the used alignment of the proposal. There is no route shown on the alignment recorded on the Definitive Map. The area now crossed by the Definitive Line is shown as being distinct from the track and with tree cover. However, it was 6" mapping that was used for the 1950 Parish Survey. This was not an original survey and was derived from the 25" mapping. Consequently, 6" mapping was subject to the Ordnance Survey's generalisation standards, which meant that it showed less detail and did not distinguish between changes in surfaces, i.e. between a track and its verges. The 6" mapping, which was used for the 1950 Parish Survey and the Definitive Map, does however also show a tree, or trees, on the definitive alignment
- 2.7.6 The earliest large-scale mapping is that of the 1839 Tithe Map, which shows an open area of highway land which could include both the definitive and used alignments, though does not show the routes themselves.
- 2.7.7 The Ordnance Survey Name Books and Bartholomew's maps both refer to Bridleway No. 9, Newberry Lane, but do not provide any assistance regarding the alignment near West Bodley.

2.8 Conclusion

- 2.8.1 On consideration of all the available evidence the documentary evidence demonstrates that the Bridleway No. 9, Newberry Lane, has existed since at least 1804, and has been considered as a parish road at some time in the past. However, there is insufficient evidence to demonstrate that the public right of way has rights higher than that of bridleway.
- 2.8.2 With regard to the alignment, the documentary evidence, in particular the large-scale Ordnance Survey mapping, demonstrates that an error occurred in the recording of the bridleway on the Definitive Map in relation to its alignment north of West Bodley, due to the insufficient detail on the 6" mapping used.
- 2.8.3 The route photographs show how well-used the alignment J – K – L is, whilst demonstrating that there is no trace of the existence of the alignment shown on the Definitive Map between points J – L, which is covered with trees and vegetation. This is consistent with the historical map evidence.
- 2.8.4 Consequently, the evidence is considered to be sufficient under Common Law to demonstrate that a public highway of bridleway status does not exist between points J – L, but does exist between points J – K – L.
- 2.8.5 It is therefore recommended that a Modification Order should be made to vary the particulars of Parracombe Bridleway No. 9 along Newberry lane, by deleting the section between points J – L and adding the section between points J – K – L to the Definitive Map and Statement, as shown on drawing no. HIW/PROW/18/27a. If there are no objections, or if such objections are subsequently withdrawn, that it be confirmed.

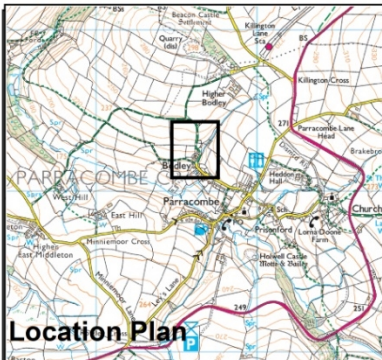
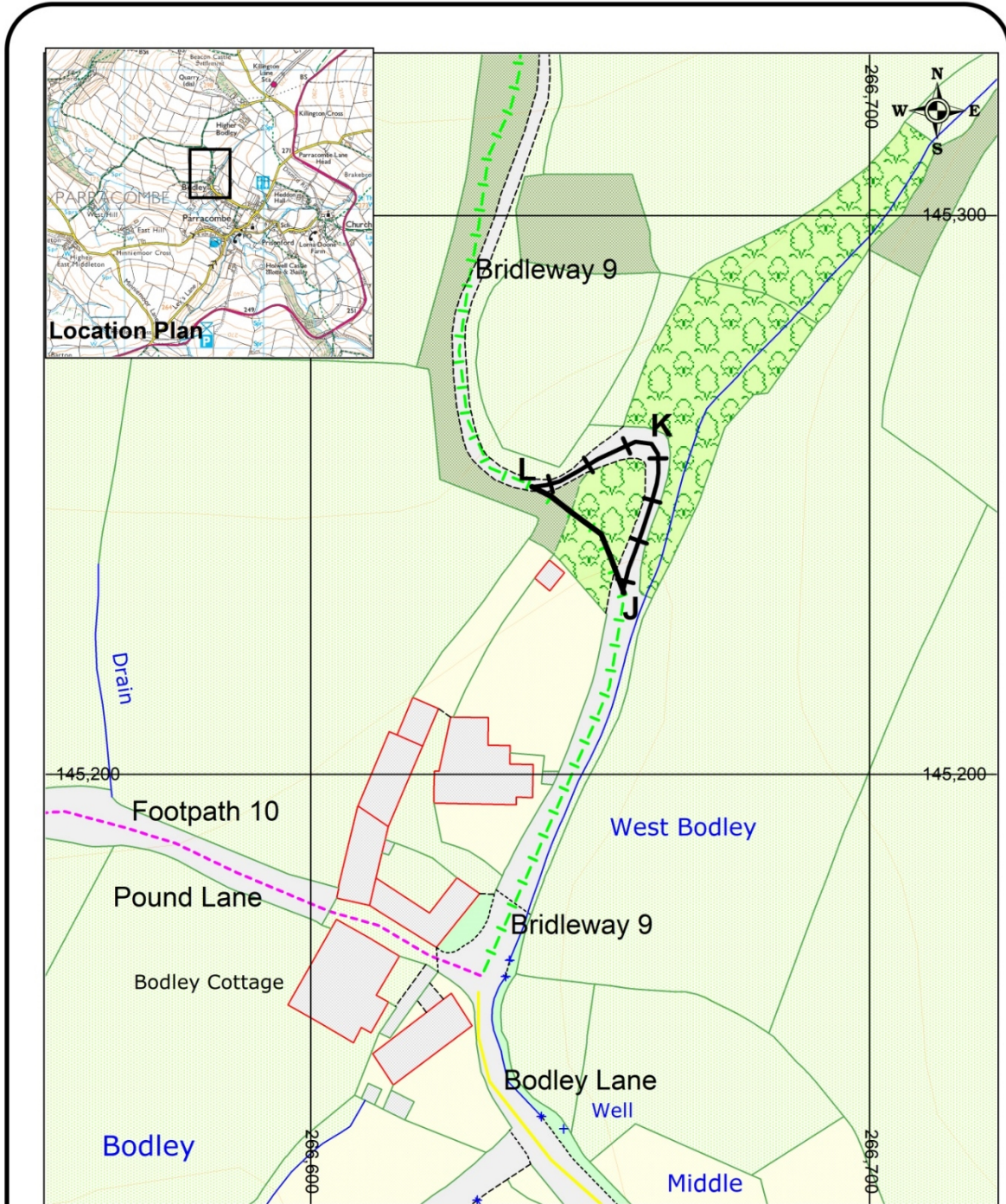
Agenda Item 5



drawing number	HCW/PROW/18/28a
date	December 2018
scale	1:5,000
drawn by	CLG

Meg Booth
 Chief Officer for
 Highways, Infrastructure
 Development & Waste





map ref: SS 4566

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Devon County Council
Definitive Map Review - Parracombe
Proposal 3: Proposed clarification of alignment of
Bridleway No. 9 at West Bodley

drawing number HIW/PROW/18/27a
 date June 2018
 scale 1:1,000
 drawn by CLG

Notation

- Bridleway definitive alignment J - L (27m) ———
- Bridleway used alignment J - K - L (52m) + + + +
- Existing footpath - - - - -
- Existing bridleway - - | - - | - - | - - | - - |

Meg Booth
 Chief Officer for
 Highways, Infrastructure
 Development & Waste



HIW/19/17

Public Rights of Way Committee
4 March 2019

Definitive Map Review 2017- 2019 Parish of Lympstone

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

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

Recommendation: It is recommended that:

- (a) Modification Orders be made to modify the Definitive Map and Statement by:**
 - (i) Adding a footpath between points A - B as shown on drawing number HIW/PROW/19/01 (Proposal 1);**
 - (ii) Adding a bridleway and upgrading part of Footpath No. 1 to a bridleway between points C - D - E as shown on drawing number HIW/PROW/19/02 (Proposal 2); and that**
- (b) No Modification Order be made in respect of Proposal 3 but that Members note that it is already recorded as highway maintainable at public expense.**

1. Introduction

This report examines three proposals arising from the Definitive Map Review in the Parish of Lympstone, in East Devon District.

2. Background

The original survey, under s. 27 of the National Parks and Access to the Countryside Act 1949, revealed twenty footpaths and five bridleways in Lympstone, which were recorded on the Definitive Map and Statement, St Thomas Rural District with the relevant date of 1 June 1957.

The review of the Definitive Map, under s. 33 of the 1949 Act, which commenced in the 1970s, but was never completed, produced no proposals for change to the map in the parishes.

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 have been made and confirmed:

St Thomas Rural District Council Footpath No. 1 Diversion Order 1962

St Thomas Rural District Council Footpath No. 8 Creation and Diversion Order 1978

Devon County Council Footpath No. 7 Diversion Order 1997

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

The current Review began in July 2017 with a public meeting held in the Lympstone Village hall, which was well attended by members of the public and parish councillors.

3. Proposals

Please refer to the appendix to this report.

Agenda Item 6

4. Consultations

Public consultations for Lympstone Parish were carried out during August, September and October 2018. The review was advertised around the parish with notices placed in local notice boards, on the village hall notice board, at each end of the proposals and in the local press.

The responses were as follows:

County Councillor R Scott	- no comment on proposals
County Councillor J Trail	- no comment on proposals
East Devon District Council	- no comment
Lympstone Parish Council	- comments included on Proposal 2
British Horse Society	- no comment
Byways and Bridleways Trust	- no comment
Country Land & Business Association	- no comment
Open Spaces Society	- no comment
Ramblers' Association	- no comment
Trail Riders' Fellowship	- no comment
Cycle UK	- 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 recommendations 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 Modification Orders be made in respect of Proposals 1 and 2, but that no Order be made in respect of Proposal 3 but that Members note that it is already recorded as highway maintainable at public expense.

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

10. Reasons for Recommendations

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

Agenda Item 6

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Exmouth

Local Government Act 1972: List of Background Papers

Contact for enquiries: Alison Smith

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

Tel No: (01392) 383370

Background Paper	Date	File Ref.
Correspondence files	2017 - date	AS/DMR/LYMPSTONE

as310119pra
sc/cr/DMR Lympstone
03 200219

Agenda Item 6

Appendix I To HIW/19/17

A. Basis of Claim

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

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

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

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

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

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

1. **Proposal 1: Proposed addition of a footpath from Brookside to the Strand, as shown between points A – B on drawing number HIW/PROW/19/01.**

Recommendation: That a Modification Order be made in respect of Proposal 1 to modify the Definitive Map and Statement by adding to them a public footpath between points A – B, as shown on drawing number HIW/PROW/19/01.

1.1 Background

- 1.1.1 A public meeting was held in July 2017 at Lympstone Village Hall with local people, parish councillors and the local County Councillors.
- 1.1.2 The proposal was put forward by members of the public as the result of the Definitive Map Review meeting.

1.2 Description of the Route

- 1.2.1 Proposal 1 commences at point A on the plan, from existing Footpath No. 17 at Brookside, and runs in a northerly direction, over a short and narrow alleyway between houses in the heart of Lympstone Village to reach the county road, The Strand, at point B. There is a no cycling sign at the Strand end of the path.

1.3 Documentary Evidence

1.3.1 Ordnance Survey Mapping

The small-scale maps are not detailed enough to show the route.

- 1.3.2 There is no historical documentary evidence for this route. However, the houses and buildings on each side of this path, defining the route, are over a hundred years old and the way has provided access to these properties as a through route.

1.4 User Evidence

- 1.4.1 In early 2017, this route came to the attention of Devon County Council's Public Rights of Way team when a small bin-store was erected adjacent to one of the houses on the alley-way by the householder. A request was made by the Parish Council's footpath representative to the Public Rights of Way team, asking if this bin store was allowed on a public right of way. The Definitive Map was checked, and it was discovered that this route was not recorded as a public right of way. The Parish Council was advised that a claim could be considered as part of the Parish Definitive Map Review if sufficient evidence put forward.
- 1.4.2 Four people have completed user evidence forms giving evidence of use since 1951 up to the current time. They state that the route has not been blocked during this time. The individuals who have completed the user evidence forms appear to represent only a small proportion of the public who walk this along path. People have been regularly observed by the County Council PROW Officer when on site.
- 1.4.3 The evidence forms are included in full in the backing papers and the evidence is summarised as follows:
- 1.4.4 Mr Acca has walked the route since 1951 as part of his daily life in Lympstone. In his earlier years he states that he used it on a bicycle when doing a paper round. He says it has always been a public right of way and he has never been stopped from using the path.

Agenda Item 6

- 1.4.5 Mrs Brunt has walked the path since 2007, 3 to 4 times a week and she believes it has been used for many years by the public. She has never been stopped or challenged.
- 1.4.6 Mr Down has walked the route since January 1990, 300 to 400 times a year from the car park into Lympstone, to the surgery and just when out for a walk. He says it is used continuously by residents and visitors. He says there were two posts to stop cars at the Strand end.
- 1.4.7 Mr Exelby has walked the route since 1974 to the present day, more than 200 times each year on the way to the shops, doctors and visiting the village, he says it has always been there and people have used it. There were two posts at the Strand end to stop cars.

1.5 Land Owners Evidence

- 1.5.1 The land crossed by the route is not registered with the District Land Registry. Residents of each house adjoining the route were consulted on the proposal and notices were placed at each end of the path route.
- 1.5.2 No letters of objection, or comment, have been received from the adjacent owners or occupiers following consultation.

1.6 Discussion

- 1.6.1 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. 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 considered at common law.
- 1.6.2 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.
- 1.6.3 Although limited user evidence has been received, the path appears to have been used and accepted by the public at large as a public footpath, in the same way as the neighbouring alleyway which is recorded as Footpath No. 17. The Parish Council has also considered it to be a public right of way. There is no evidence that Proposal 1 has ever been blocked and no one has been stopped from using it. No objections have been raised to proposed footpath.

1.7 Conclusion

- 1.7.1 The evidence is considered sufficient to show that a public footpath subsists, or is reasonably alleged to subsist, over the proposed route. It is therefore recommended that a Modification Order be made to add a footpath between points A – B as shown on drawing number HIW/PROW/19/01 and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

- 2** **Proposal 2:** Proposed addition of a bridleway from Longbrook Lane to Footpath No.1 and upgrade a section of Footpath No.1 to Stone Lane, as shown between points C – D – E on drawing number HIW/PROW/19/02.

Recommendation: It is recommended that a Modification Order be made in respect of Proposal 2 to modify the Definitive Map and Statement by adding to them a bridleway between points C and D and upgrading to bridleway part of Footpath No.1 between points D and E, as shown on drawing number HIW/PROW/19/02.

2.1 **Background**

- 2.1.1 The proposal was put forward by members of the public after a new kissing gate was installed near Point D, which coincided with Parish Review starting in Lympstone in 2017.

2.2 **Description of the Route**

- 2.2.1 Proposal 2 commences at point C on the plan. It starts at the minor county road Longbrook Lane and runs over a short section of unrecorded stoned lane to join Footpath No. 1 at point D. The claimed path follows the line of FP No. 1, up the track and over the culvert of the mill leat overflow, known locally as the waterfall, to the new kissing gate and then in a generally north-westerly direction along a rough stone and mud track to skirt a building through the ford to join the minor county road Stone Lane. (Footpath No. 1 was diverted from its original, cross field, line in 1962, to its current route near the river.)

- 2.2.2 The route of the claimed bridleway (the route of FP No. 1) was blocked to horse riders by the new kissing gate that was installed in 2017.

- 2.2.3 During research into Proposal 2, another route has been discovered that is used by some riders, between the county roads; Longbrook Lane and Stone Lane. It is a track/ford in the stream directly between points D and E, parallel to Footpath No. 1, the claimed route. It is a hardened stone ford that is still used by some vehicles through to Stone Lane. The route marked ford on the plan.

2.3 **Documentary Evidence**

2.3.1 **Ordnance Survey Mapping**

- 2.3.1.1 The 1801 Ordnance Survey Surveyors Drawing 2” to mile, clearly show the historical layout of the lanes in the parish of Lympstone. This map shows a lane linking Longbrook Lane point C to Stone Lane point E. The small cross field paths are not shown on this scale map.

- 2.3.1.2 1906 1 to 6” map clearly shows the lane from Longbrook Lane to Stone Lane and the Ford is marked.

- 2.3.1.3 All later editions of OS mapping show the route in the same way. On modern mapping the stream is coloured and shares the line of the track.

2.3.2 **Tithe Map 1841**

- 2.3.2.1 The Tithe Map shows clearly shows a lane that continues from Longbrook Lane to Stone lane. The Longbrook stream appears to follow the same course as the lane. The section of road between the two county roads is tinted in the same way as other

Agenda Item 6

roads in the parish. The original, cross field, line of FP No.1 is shown across the field by a dashed line on the Tithe Map.

2.3.3 Sales Particulars, 1935,

- 2.3.3.1 The Mill was sold with the surrounding land, (the original line of FP No.1 was shown on the sale plan). The land was sold with the maintenance of the outfall from the brick culvert (the waterfall) and it was subject to such rights as exist for the Mill Owners to use, repair and clean the leat. The Mill was bought by J Brooks for £1,510. The lane from Longbrook Lane to Stone Lane (C – D – E) was not subject to this sale.

2.3.4 Highway Handover Book (1930's)

Proposal 2 is not shown as having been considered highway maintainable at public expense at this time.

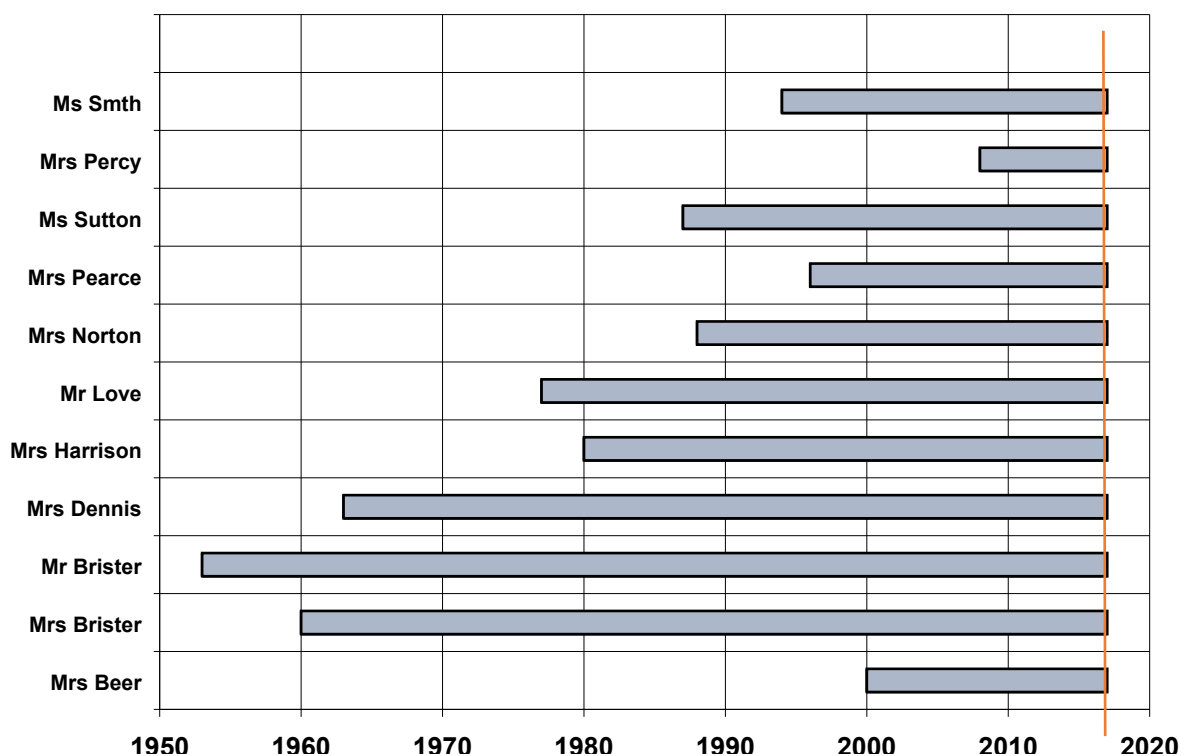
2.4 User Evidence

- 2.4.1 In September 2017, this route came to the attention of the Public Right of Way team, after a kissing gate was erected by the landowners on Footpath No. 1 at point D. This prevented horses, pushchairs and bicycles accessing the path as well as people in wheelchairs.
- 2.4.2 Thirteen users have given evidence of use from 1960 to September 2017. The evidence forms, and letters are included in full in the backing papers and the evidence is summarised in alphabetical order as follows:
- 2.4.3 Mrs Beer has ridden the route 50 times a year, she said believed it was a public bridleway because of historic use, custom and practice. She said, a couple of years ago it was diverted for a while when a tree fell across the route. She had not been prevented from riding it until the gate was erected.
- 2.4.4 Mrs Brister started using the route in 1960 and continued until 2017 on foot, bicycle, horse and with a pram. Until the new gate there was no stiles, gates or notices. It provided a safe traffic free route avoiding the narrow lanes.
- 2.4.5 Mr Brister has used the route on foot and cycle from 1953 to 2017. He states that a large amount of people use it.
- 2.4.6 Mrs Dennis has used the route on horseback in the 1960's and then again from 2000 onwards, about 24 times a year. She rode it as a child and then as an adult. She never had any problems and has ridden with other riders. She says it links with the only other bridleway.
- 2.4.7 Mrs Harrison has ridden a horse and bicycle and walked the route since 1980, she has not seen notices and there were no gates or stiles. She says many villagers used this route. She gives more detail in an email, she said the stream/ford between D and E has been used by horses, but only really for a couple of months in the summer when the water is low and its safe enough, the hedges do overgrow and make the ford quite difficult.
- 2.4.8 Mr Love rode the route on a horse from 1977 and in recent years has also walked the route, he continues to do so most days.
- 2.4.9 Mrs Norton has ridden and walked the route since 1988, on an almost daily basis, there was never any signs, nor was she turned off the route.

Agenda Item 6

- 2.4.10 Mrs Pearce has ridden and walked the route since 1996 two to three times a week. She says “This is a popular pathway/bridleway/cycle path used by many people. It is very pretty and pleasant and is an extension of the pathway that exits at Town Dairy on Longmeadow Road”.
- 2.4.11 Ms Sutton has written a statement to say “Since 1987 to September 2017 I have regularly ridden down the stream or on the path above the stream, as have numerous children on their ponies throughout the years. This path is now not accessible to horse/pony riders due to the metal gate. Lympstone has only one bridle path. The path referred to runs adjacent to a small grass field which has been fenced off over the years, but I have never had any indication that horses/ponies are not welcome on the path. Perhaps you could advise me why this gate has been erected.”
- 2.4.12 Mrs Percy wrote to the council in August 2018, giving her evidence of use in the letter. She said that since 2008 she has ridden along the route C to D then has used the route in the stream between point D and E. She had not ridden on the higher footpath between D and E. She had not been stopped or challenged before the notices went up in August 2018.
- 2.4.13 Ms Smith gave her evidence in an email. She has always lived in Lympstone and has ridden the route almost continually since 1994, on her horse, until the gate was installed. Before she rode her horses there, she has seen other riders using it. The installation of the gate came as a surprise, she adds.
- 2.4.14 Mrs Letcher completed a user evidence form stating that she has walked the route since 2000 and had seen riders use the brook. (Not included in the chart as she is a walker)
- 2.4.15 Mr Wilson has walked the route since 2002. He states that, until the recent gate, there were no notices or gates. He adds that pedestrians and cyclists would be an inherently bad mix from a health and safety point. (Not included in the chart as he is a walker.)

2.5 User Evidence Chart



Agenda Item 6

2.6 Landowner Evidence

- 2.6.1 Landowners and adjoining landowners were consulted as part of the informal consultation process and notices also posted on site. Site visits have been held with the landowners and adjoining landowners. The following responses were received:
- 2.6.2 The Goddard's. The land from point D to point E is owned by Mrs Goddard. The Mill and the surrounding fields were bought by Mrs Goddard and her late husband in 1963.
- 2.6.3 Mrs Goddard has completed a Landowner Evidence Form, and a more detailed statement. She says, the claimed route is just a footpath and used daily by the public as such.
- 2.6.4 Mrs Goddard says that before she and her husband bought the Mill in 1963 there was a gate at point D by the Waterfall/overflow. She attaches a photo of a cutting from a book showing the gate above the waterfall that predated their ownership. Since their ownership she says that there has been a gate, around that area, in one form or another for most of the time she has lived at the Mill.
- 2.6.5 Before the 1980s the footpath was not separated from the field by a fence, and a farmer used to rent the Goddard's land to keep his cattle. There was a five-bar gate near the waterfall to keep the cattle from straying. When that farm closed in early 1980's, they put a sign on the gate, that said 'please close the gate'. In the end, she said the Goddard's left it open. The gate fell into disuse and it remained open. Later they fenced the field from the path to contain the dog walkers to prevent dog fouling.
- 2.6.6 They had never required pedestrians to ask permission as it was a public footpath. She says, "On the occasions we have been aware of ridden horses or bicycles along the path and we have asked them to desist." She says "Until my husband died in 2015, he could quite often be found working in the shed (near point E). He would stop any riders of horses and bicycles and remind them that the path was only for pedestrians. After his death, there being no 'policeman', the path was abused by riders, and more frequently by bicyclists. As a result, we felt obliged to reinstate the gate at the top of the hill by the overflow/waterfall in 2017."
- 2.6.7 Mrs Goddard goes on to say "In the winter and when it is very wet, this footpath becomes precarious. Were it to be used by riders and cyclist, it would make it even more treacherous. We have had complaints about this by walkers. In all the time we have been here the authorities have not undertaken improvements to the surface of this footpath. Indeed, all the work has been undertaken by me."
- 2.6.8 Mrs Goddard, her son and daughter are strongly opposed to the route C – E being recorded as a bridleway.
- 2.6.9 **Mr & Mrs Tyrrell**, own the field on the north side of the claimed route between points E and D. The strongly object for the following reasons:
- 2.6.10 "Many children use it a safe route to school without the need to negotiate the traffic along the narrow lanes. Elderly people use it for the same reasons. Dog walkers use it. A large number of children play in and around the waterfall and stream. The tranquil setting also is ideal to just admire the peace and quiet. Artist and photographers cannot resist the calm and beauty especially at the waterfall end. I could go on but think you have the point."
- 2.6.11 "To think that all this would be under threat to allow horses to gallop up and down this footpath would in my opinion be a health and safety nightmare for DCC. The footpath would be churned up especially in winter and it would be extremely dangerous to walk."

I do notice that the horse riders around the village use the roads very successfully as I do not think car drivers want to collide with a ton of horse meat.”

- 2.6.12 “Unfortunately I am one of a number of pedestrians that are constantly being brushed as we seem to be invisible to car drivers in their hurry and have found that the footpaths are a much safer alternative. Lympstone hardly has any footpaths alongside the roads and now the safe footpaths seen to be under threat.”
- 2.6.13 “As I understand this footpath is over private land why does someone else think it’s their right to use it as a bridle path which no doubt will become a cycle path as well. I would urge you to refuse this application if for no other reason to let us have ONE safe route from the top to the bottom and back of our village.”
- 2.6.14 There is no evidence that Mr Tyrrell has stopped or turned riders away or erected any signs to tell riders it was not a bridleway.

2.7 Lympstone Parish Council Comments

- 2.7 Lympstone Parish Council have sent an extract from their parish council meeting minutes, to show the discussion that took place about the proposal.
- 2.7.1 Minutes from meeting 3/9/18. Proposal 2, members of the public spoke at the meeting giving their views on Proposal 2. These views ranged from support of the proposal because there is evidence it has been used by horses for many years, to others saying horses had always used the brook instead of the footpath line, others saying it provides a safe route for horses. Some wanting to know who would maintain the route if it got muddier because of horse use, and others who were opposed to the bridleway.
- 2.7.2 Parish Councillor Atkins read a statement he had written, as follows:
- 2.7.3 “In 1940s’and 50’s there was only a footpath from the waterfall to the mill from a kissing gate at the waterfall. At the time of major floods (1960ish) Major Goddard decided to open up the pathway to the waterfall, to enable access for his car. The footpath was diverted. It appeared that horse riders, cyclist etc decided that this allowed them the opportunity to ride up through this track way. This appears unchallenged by the landowners. It is worth pointing out that the bed of the brook is the county road. The Wares use it to traverse to fields in their ownership. I rode a cart horse and tractor and trailers up the said waterway and walked cows up and down it. My daughter rode her horses up the field without challenge, nor did she seek permission to so traverse the field and nobody required the style or gate to be replaced! Had I been aware that my daughter was using that private land, I would have reprimanded her and banned her from so using the footpath.”

2.8 Other consultation responses

- 2.8.1 Fifteen letters and emails have also been received from members of the local community opposed to the proposed bridleway addition/upgrade. These are included in full in the backing papers.
- 2.8.2 Grounds of objection include issues such as suitability and safety. In particular, they raise concerns about erosion of the path in the winter and use by cyclists, as the Exe Estuary Trail goes right through the centre of the village. Several also question the need for a bridleway and others are concerned by the effect on the landowner(s).
- 2.8.3 Several appear to acknowledge use by horse riders and cyclists, of both the proposal route and the stream bed. One comments that it is only since the installation of the kissing gate that it has become useable again for walkers.

Agenda Item 6

2.9 Discussion

- 2.9.1 Statute (Section 31 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 called into question.
- 2.9.2 The use by horse riders was called into question by the installation of a new kissing gate at point D in 2017, which prevented their use. Prior to 1963 there is evidence of a kissing gate in the same location. The relevant 20 year period is between 1997 and 2017.
- 2.9.3 The proposed bridleway addition/upgrade is supported by eleven statements of use on horseback, giving evidence back to the 1960s. The start of the use on horseback would appear to coincide with the Goddards' ownership of the property and the replacement of an old kissing gate (seen in a photograph) with a five-bar gate. This allowed better access both for the farmer, who ran stock in the field, and provided the Goddard's with an alternative route in case of flooding rendering the stream bed track impassable.
- 2.9.4 The horse riders have all used the route on foot as well as on their horses. None of the riders have asked permission from the Goddards to use the route and none had reported seeing any notices to dissuade them not to use the route on horseback. None of the users report having been stopped or told it was not a bridleway by Mr Goddard or Mr Tyrell. Most of the riders have used the path during the relevant period 1997-2017.
- 2.9.5 Three of the riders have said they have also used the ford between points D – E. One of these riders comments she has ridden the ford route when the stream was low and safe and one had only used this lower route and not the proposal route. Some of the people who write in objection to the bridleway have seen riders using the ford route. For example, Mr Atkins said he thought the ford route was the continuation of the 'county road'. He has used the ford with horse and cart and with a vehicle but acknowledges that his daughter used the route of Proposal 2. (The Ford is not recorded as a county road).
- 2.9.6 Mr & Mrs Goddard have not made a Section 31(6) deposit to protect their land from rights of way claims. Mrs Goddard states that her husband has told horse riders he saw that it was not a bridleway. However, those riders that have given evidence of their use state that they have not been challenged. The Goddard's have not erected signs to say this is not a bridleway.
- 2.9.7 Whilst there are local objections to the proposal, these are largely concerned with damage to the surface of the route by horse riders, making it difficult for walkers, and also of conflict between users, particularly cyclists. Although understandable concerns, these are not factors that can be taken into consideration under the provisions of section 53 of the Wildlife and Countryside Act 1981 when determining, on the basis of the available evidence, whether the claimed rights have been established. The route is currently recorded and maintained as a footpath. If the route were to be upgraded to bridleway status, issues concerning surface maintenance may need to be addressed under the Council's other duties.

2.10 Conclusion

- 2.10.1 While there is some conflicting evidence, the evidence taken as a whole is considered sufficient to show that a bridleway subsists, or can be reasonably alleged to subsist, over the route of Proposal 2. It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement by adding to them a bridleway between points C – D and upgrading to bridleway part of Footpath No.1 between points D – E, as shown on drawing number HIW/PROW/19/02, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

Agenda Item 6

- 3 **Proposal 3**: Proposed addition of a footpath from The Strand, over a lane known as Harefield Buildings Road with a spur to the Peters Clock Tower. As shown between points F-G-H on drawing number HIW/PROW/19/03.

Recommendation: That no Modification Order be made in respect of Proposal 3.

3.1 **Background**

- 3.1.1 The proposal was put forward by members of the public and the Parish Council following the Definitive Map Review meeting held in the parish.

3.2 **Description of the Route**

- 3.2.1 Proposal 3 commences at point F on the plan, from The Strand. It runs north along Harefield Building Road to point G with a spur west to the Peters Clock Tower and the foreshore, at point H. It provides the only vehicular access to a number of properties.

3.3 **Documentary Evidence**

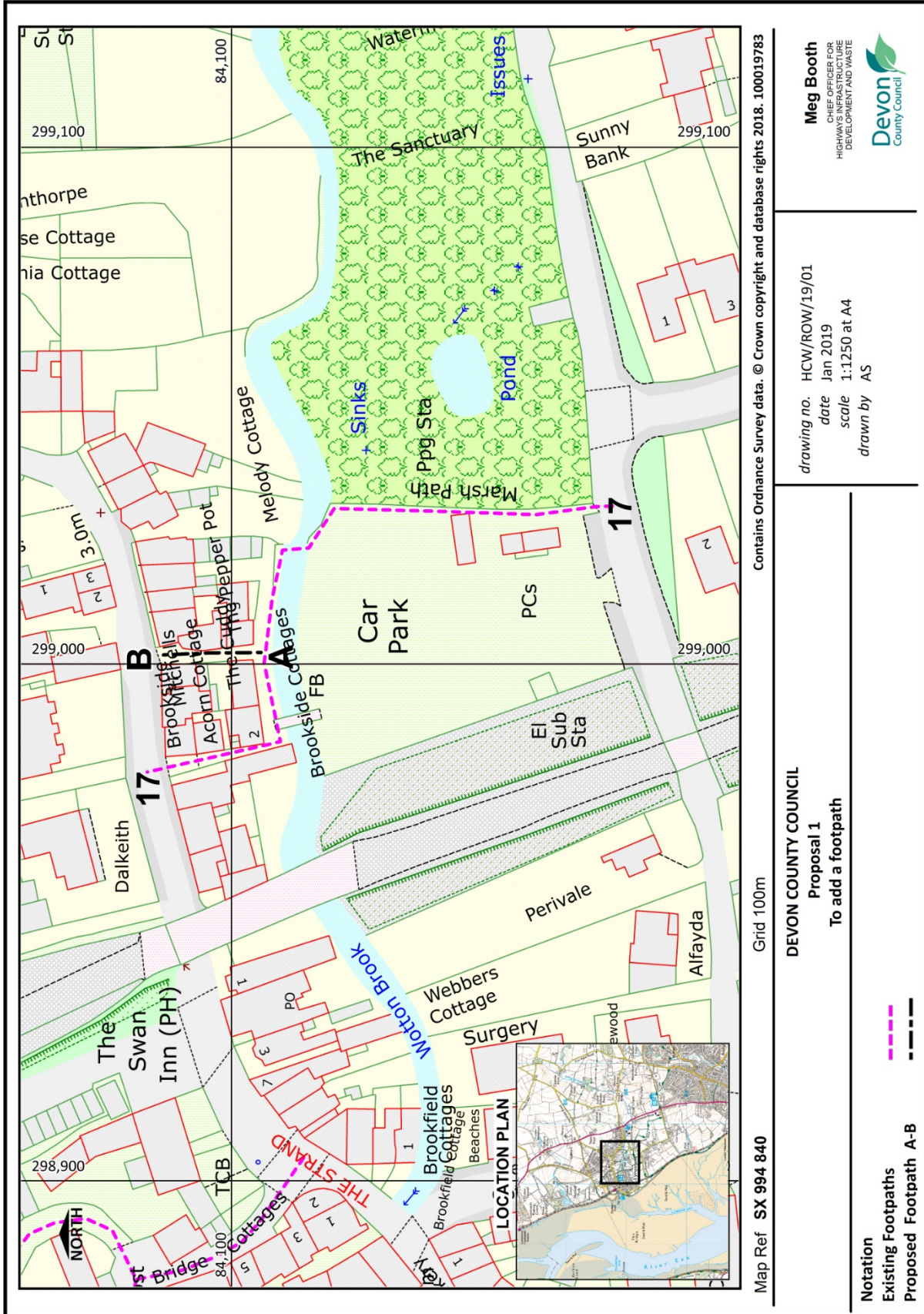
- 3.3.1 On 5th June 1959 the County Roads Committee deleted this proposed footpath from the Parish survey for the Original Definitive Map because the Roads Committee considered it to be a County Road.

3.6 **Discussion**

- 3.6.1 Following review of the County Council highway records it has been confirmed that the route of Proposal 3 is recorded on the List of Streets as a Highway Maintainable at Public Expense and is regarded as an all-purpose highway. It is therefore not required to be shown on the Definitive Map and Statement.

3.7 **Conclusion**

- 3.7.1 It is therefore recommended that no Modification Order be made in respect of Proposal 3, but that Members note that it is already recorded as highway maintainable at public expense.



Map Ref **SX 994 840** Grid 100m Contains Ordnance Survey data. © Crown copyright and database rights 2018. 100019783

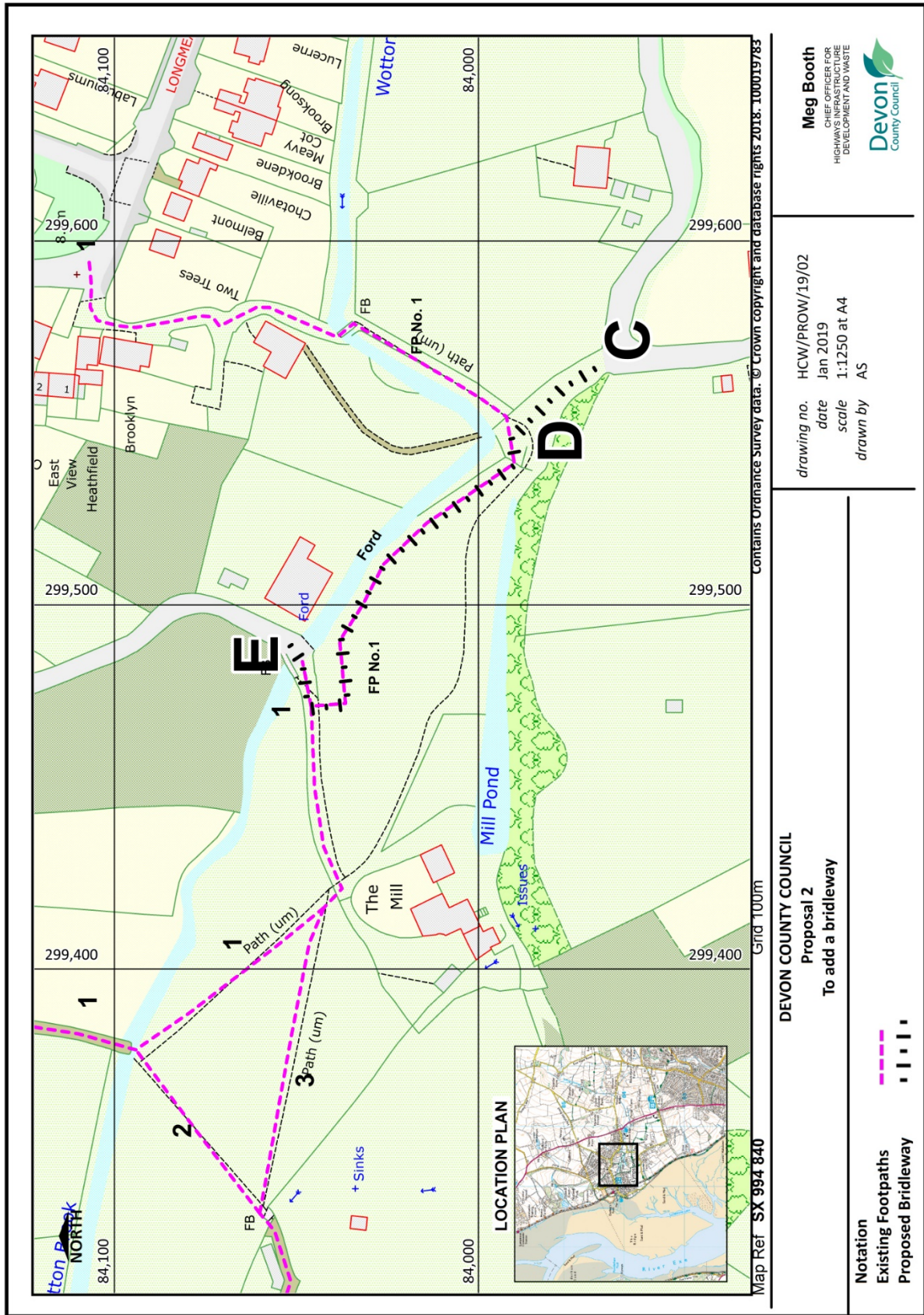
DEVON COUNTY COUNCIL
Proposal 1
To add a footpath

Meg Booth
 CHIEF OFFICER FOR
 HIGHWAYS INFRASTRUCTURE
 DEVELOPMENT AND WASTE

drawing no. HCW/ROW/19/01
 date Jan 2019
 scale 1:1250 at A4
 drawn by AS

Notation
 Existing Footpaths
 Proposed Footpath A-B

Agenda Item 6



DEVON COUNTY COUNCIL
Proposal 2
To add a bridleway

Notation
--- Existing Footpaths
--- Proposed Bridleway

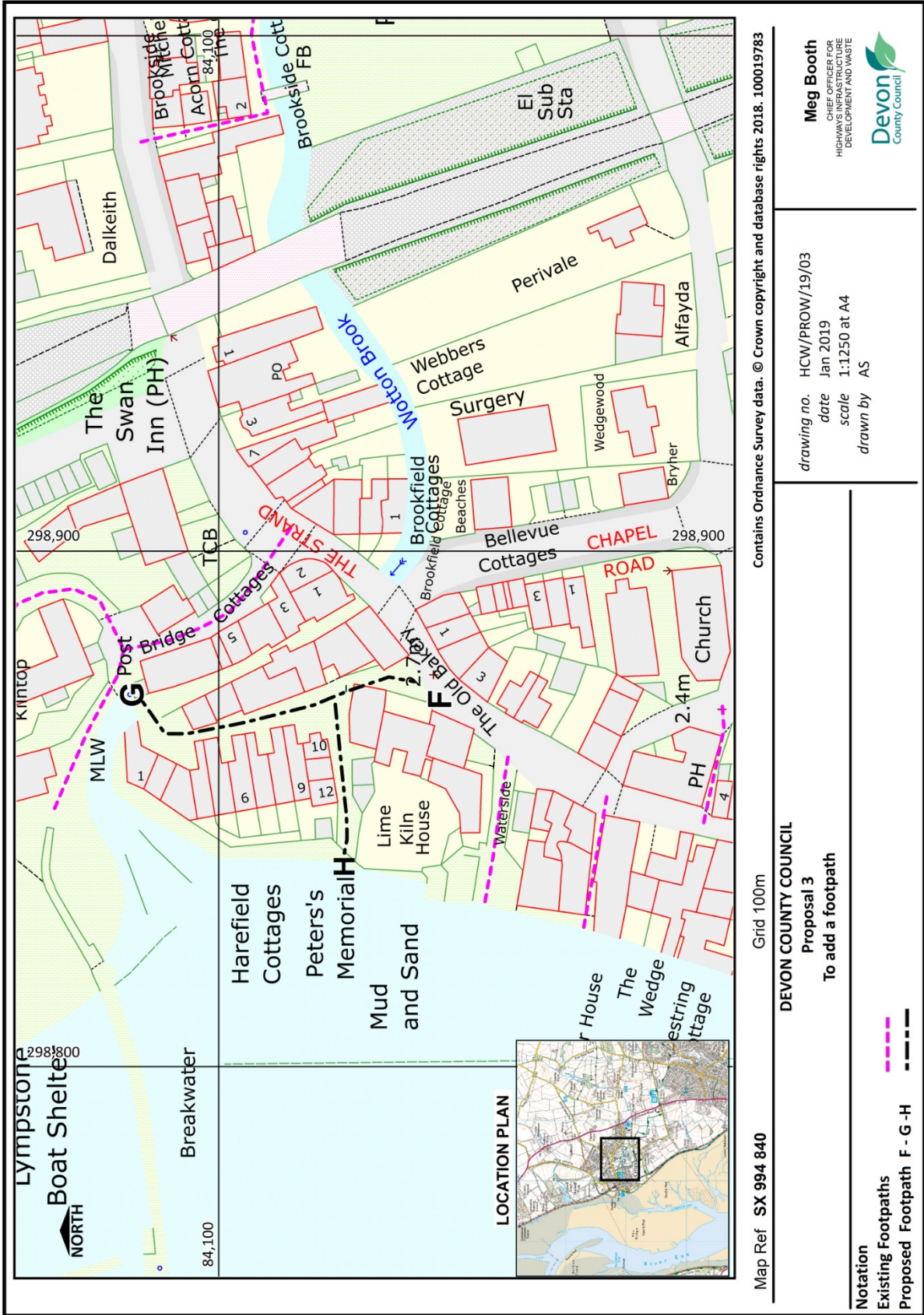
Map Ref SX 994 840
Grid 100m

drawing no. HCW/PROW/19/02
date Jan 2019
scale 1:1250 at A4
drawn by AS

Meg Booth
CHIEF OFFICER FOR
HIGHWAYS INFRASTRUCTURE
DEVELOPMENT AND WASTE

Devon
County Council

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Meg Booth
 CHIEF OFFICER FOR
 HIGHWAYS INFRASTRUCTURE
 DEVELOPMENT AND WASTE

drawing no. HCW/PROW/19/03
 date Jan 2019
 scale 1:1250 at A4
 drawn by AS

DEVON COUNTY COUNCIL
 Proposal 3
 To add a footpath

Notation
 Existing Footpaths
 Proposed Footpath F - G - H

HIW/19/18

Public Rights of Way Committee
4 March 2019

**Definitive Map Review 2018 - 2019
Parish of Clayhanger – Borden Gate Parish Council**

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 it be noted that the Definitive Map Review has been completed in the parish of Clayhanger and no modifications are required to be made.

1. Introduction

The report examines the Definitive Map Review in the parish of Clayhanger, in Mid Devon District, one of the three parishes now within Borden Gate Parish Council. Separate reports will be presented for Huntsham at this meeting and Hockworthy at a subsequent meeting.

2. Background

The original parish survey submission, under s. 27 of the National Parks and Access to the Countryside Act 1949 was submitted by Mr F Hill as Chairman of Clayhanger Parish Meeting. However, rather than complete individual forms for each path, Mr Hill advised that 'where paths are still wanted and useful to the public, I've put yes across maps'. Another comment on the survey form was 'All the paths claimed have been used by the General Public, undisputed, for 20 years or more'.

A total of nineteen paths were marked on the map submitted by the parish as public rights of way. At a meeting with Tiverton Rural District Council and the Chairman of the Parish Meeting in October 1957, ten of these paths were omitted, withdrawn, considered private, not claimed/required or combined with another path to leave nine paths to be included on the draft definitive map as public footpaths. In the absence of any objections to their inclusion on the draft or provisional definitive maps, the nine public footpaths were subsequently recorded on the Definitive Map and Statement for Clayhanger in Tiverton Rural District Council with the relevant date of 9th June 1964.

During the Devon County Council uncompleted reviews of 1968 and 1977, Clayhanger parish made no proposals for changes to the Definitive Map.

The following Order has been made and confirmed in the Parish.

Devon County Council Public Path Diversion Order 2007 Footpath Nos. 2 and 7, Clayhanger.

Legal Event Modification Orders will be made for this change under delegated powers in due course.

Agenda Item 7

The Definitive Map Review commenced in July 2018 with a public meeting for all three parishes, held in the village hall at Huntsham, prior to the meeting of Borden Gate Parish Council, which was well attended by parishioners and councillors.

3. Proposals

A proposal for Clayhanger for Footpaths No. 7 and 12 was made by a landowner requesting the diversion of parts of the footpaths. This has been investigated further with the landowner concerned. If subsequently required, the necessary Public Path Diversion Order will be made under delegated powers. No other proposals for change were made by the Clayhanger parish councillors or the Borden Gate Parish Council.

No responses were received from any other parishioners or members of the public with any other proposals for consideration under the Definitive Map Review.

In the absence of any valid proposals or claims for change, the definitive map review consultation map for Clayhanger was published with no proposals for change to the Definitive Map in the parish.

4. Consultations

Public consultation for the Definitive Map Review in the parish was carried out in November 2018 to January 2019. The review was advertised in the Bampton newsletter which also covers Clayhanger parish, on the parish noticeboard and in a local newspaper.

The responses were as follows:

County Councillor R Radford	-	no comment
Mid Devon District Council	-	no comment
Borden Gate Parish Council	-	see above
British Horse Society	-	no comment
Devon Green Lanes Group	-	no comment
Ramblers' Association	-	no comment
Trail Riders' Fellowship	-	no comment
Country Landowners Association	-	no comment
National Farmers' Association	-	no comment
Cycle UK	-	no comment

No proposals were received during the two month period of consultation with the Parish Council, public or local user group representatives.

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.

Agenda Item 7

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 members note that the Definitive Map Review has been completed in the parish of Clayhanger and no modifications are required to be made. Should any valid claim with sufficient evidence be made in the next six months, it would seem reasonable for it to be determined promptly rather than be deferred.

10. Reasons for Recommendation

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

Meg Booth

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

Electoral Division: Willand & Uffculme

Local Government Act 1972: List of Background Papers

Contact for enquiries: Tania Weeks

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

Tel No: (01392) 382833

Background Paper	Date	File Ref.
Correspondence files	2018 - date	TW/DMR/Borden Gate-Clayhanger

tw170119pra
sc/cr/DMR Parish of Clayhanger – Borden Gate Parish Council
03 200219

HIW/19/19

Public Rights of Way Committee
4 March 2019

Definitive Map Review 2018 - 2019 Parish of Huntsham – Borden Gate Parish Council

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 it be noted that the Definitive Map Review has been completed in the parish of Huntsham and no modifications are required to be made.

1. Introduction

The report examines the Definitive Map Review in the parish of Huntsham, in Mid Devon District, one of the three parishes now within Borden Gate Parish Council. Separate reports will be presented for Clayhanger at this meeting and Hockworthy at a subsequent meeting.

2. Background

The original parish survey, under s. 27 of the National Parks and Access to the Countryside Act 1949, was undertaken by the Chairman of the Parish Meeting, Sir G Acland Troyte in September 1950. A total of six public rights of way were proposed in Huntsham. Following a meeting with Tiverton Rural District Council and the Chairman of the Parish Meeting in October 1957 two footpaths, two carriage ways used as bridleway (CRB) and one road used as a public path (RUPP) were agreed to be included on the draft definitive map. The sixth route was withdrawn as no continuation was claimed in the adjoining Tiverton parish. These five routes of two footpaths, two bridleways and a RUPP were subsequently recorded on the Definitive Map and Statement for Huntsham in Tiverton Rural District Council with the relevant date of 9th June 1964.

The Limited Special Review of Roads Used as Public Paths (RUPPS), carried out in the 1970s, resulted in it being decided that RUPP No. 1, which ran along the parish boundary with Bampton, was actually within Bampton parish. Accordingly, RUPP No. 1 Huntsham was re classified and re numbered as Bridleway No. 25, Bampton.

During the Devon County Council uncompleted review of 1977, Huntsham parish proposed that the lane along which Footpath No. 2 ran should be a public accommodation road, as should be the road from Dog Down Cross to Burnt Plantation (then Bridleway No. 25 Bampton). They stated that these routes had been used by the public for over 50 years.

In 1988 a Definitive Map Modification Order was made to upgrade the two bridleways in the parish to Byways Open to All Traffic (BOATs) and this was confirmed following a public inquiry. Devon County Council Definitive Map Modification Order 1988 Byways Open to All Traffic Nos. 4 and 5, Huntsham.

The Definitive Map Review commenced in July 2018 with a public meeting for all three parishes, held in the village hall at Huntsham, prior to the meeting of Borden Gate Parish

Agenda Item 8

Council, which was well attended by parishioners and councillors. The route previously claimed by Huntsham parish in the 1977 review was raised at the meeting. The Borden Gate Parish Council and public attending were asked whether they wanted this route to be considered as a proposal for change under the current review and that if they did, evidence would be required to support the upgrading.

3. Proposals

The parish councillors representing Huntsham parish subsequently confirmed that they did not have any proposals for change. The decision was subsequently reported to the Borden Gate Parish Council meeting in November 2018 and agreed.

No responses were received from any other parishioners or members of the public with any other proposals for consideration under the definitive map review.

In the absence of any valid proposals or claims for change, the definitive map review consultation map for Huntsham was published with no proposals for change to the Definitive Map in the parish.

4. Consultations

Public consultation for the Definitive Map Review in the parish was carried out in November 2018 to January 2019. The review was advertised in the Bampton newsletter which also covers Huntsham parish, on the parish noticeboard and in a local newspaper.

The responses were as follows:

County Councillor R Radford	-	no comment
Mid Devon District Council	-	no comment
Borden Gate Parish Council	-	see above
British Horse Society	-	no comment
Devon Green Lanes Group	-	no comment
Ramblers' Association	-	no comment
Trail Riders' Fellowship	-	no comment
Country Landowners Association	-	no comment
National Farmers' Association	-	no comment
Cycle UK	-	no comment

No proposals were received during the two month period of consultation with the Parish Council, public or local user group representatives.

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 members note that the Definitive Map Review has been completed in the parish of Huntsham and no modifications are required to be made. Should any valid claim with sufficient evidence be made in the next six months, it would seem reasonable for it to be determined promptly rather than be deferred.

10. Reasons for Recommendation

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

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

Electoral Division: Willand & Uffculme

Local Government Act 1972: List of Background Papers

Contact for enquiries: Tania Weeks

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

Tel No: (01392) 382833

Background Paper	Date	File Ref.
Correspondence files	2018 - date	TW/DMR/Borden Gate-Huntsham

tw170119pra
sc/cr/ DMR Parish of Huntsham Borden Gate Parish Council
02 200219

HIW/19/20

Public Rights of Way Committee
4 March 2019

Definitive Map Review 2017-2019 Parish of Sampford Peverell

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 Members note that the route shown on drawing number HIW/PROW/18/017 is already a public footpath following the North Devon Link Road (M5 Sampford Peverell – Tiverton (Bolham Road) Side Roads) Order 1981. The footpath, now numbered Footpath No. 21, Sampford Peverell, will be added to the Definitive Map by Legal Event Order under delegated powers in due course.

1. Introduction

The report examines the second of the three proposals for change arising out of the Definitive Map Review in the Parish of Sampford Peverell in Mid Devon. A report of the first and third proposals was presented at the Devon Public Rights of Way Committee Meeting on 15 November 2018.

2. Background

The Background for the Definitive Map Review in the parish of Sampford Peverell was set out in Committee report HIW/18/76 of 15 November 2018. The Sampford Peverell Definitive Map Review consultation map was published in May 2018 with three proposals for change and proposals 1 and 3 were considered in the November 2018 Public Rights of Way Committee report.

3. Proposal

Proposal 2 was proposed for inclusion by the Parish Council and was for the addition of a public footpath from Leonard Moor Bridge on Station Road to the A361, North Devon Link Road, from points E to F on the drawing number HIW/PROW/18/017. The route follows Station Road south eastwards for a short distance before bearing east north eastwards along a fenced/hedged lane for a length of approximately 90 metres to the highway verge of the A361. The land was unregistered but was confirmed as not being within the ownership of Network Rail, who do own the two fishing ponds to the south of the path.

A review of the historic mapping revealed that the path was initially the route of the A373 public highway from the A38 to Tiverton and the main road into Sampford Peverell village. After crossing the railway line over a bridge, the road would turn sharply downhill and there are various references in the Parish Council minutes requesting better signage and noting accidents that had occurred on this section of the road. In the mid-late 1960s a new section of road to replace this section of the A373 was constructed from point F running westwards to join Station Road north westwards of point E. The original section of road then became a lay-by for the A373.

Agenda Item 9

When the A361 North Devon Link Road was constructed in the 1980s, a new slip road was built to connect with an alternative existing road into Sampford Peverell north west of the present A373 at that time. The original section of the A373 road and the later improvement were then made redundant and the later section of road was removed and land returned to private ownership and farm land. The original section of road remained and is now the path as it is today and in the ownership of Devon County Council.

Various Side Roads and Slip Roads Orders were made in connection with the construction of the North Devon Link Road and a plan attached to the North Devon Link Road (M5 Sampford Peverell – Tiverton (Bolham Road) Side Roads) Order of 1977 showed the section of the proposal route along the lane and the eastern end of the later section of the A373 to be stopped up. Subsequently the North Devon Link Road (M5 Sampford Peverell – Tiverton (Bolham Road) Side Roads) Order 1981 included a list of modifications. Modification 1 included stopping up the entire length of the newer section of the A373; the new footpath and turning head proposed in the draft Order was not to be provided. A new footpath will instead be provided nearby along the stopped-up portion of the A373 lay-by (the original road prior to the mid-late 1960s – the proposal route).

This Order therefore stopped up the vehicular highway rights on the old A373 but with the creation of a footpath along that section. The Orders relating to the North Devon Link Road included changes to other roads and public rights of way and changes to the public footpaths that were affected have been noted in our records and recorded on the Definitive Map. It however, appears that the proposal route was not numbered as a parish footpath nor added to the Definitive Map of Public Rights of Way as a public footpath. The route was also not recorded on the National Street Gazetteer but the Neighbourhood Highway Officer has advised they have maintained the route, by trimming hedges and considered it to be a Devon County Council footpath.

As proposal 2 has already been created as a public footpath, it is not necessary for an evidential Modification Order to be made to add the route as a public footpath. The route has been allocated a parish footpath number and will be added to the Definitive Map by Legal Event Modification Order under delegated powers in due course. It will also now be added to the Council's digitised working copy of the Definitive Map.

Following publication of the proposal a number of user evidence forms were received from cyclists who used the route as a safer way to access Sampford Peverell from the M5 junction 27 roundabout. Use of a public footpath on a bicycle is a trespass against the landowner although it is not considered that Devon County Council (the landowner) would wish to take any action to prevent such use. Higher rights for cyclists could legally be provided by way of upgrading to a bridleway under a Section 25 Agreement of the Highways Act 1980 or to a cycle track under the Cycle Tracks Act 1984. Either of these could be undertaken by delegated authority. Alternatively, with the permission of the landowner cycling can remain as a permissive use of the footpath. The proposed new leisure/retail development at junction 27 of the M5 proposes to include a pedestrian and cycle bridge link to Tiverton Parkway station and this could be an alternative route if constructed.

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
Country Landowners' Association	-	no comment
National Farmers' Union	-	no comment
British Horse Society	-	no comment
Ramblers' Association	-	response received – supported
Trail Riders' Fellowship	-	no comment
Devon Green Lanes Group	-	no comment
Cycle UK	-	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 Members note that the route shown on drawing number HIW/PROW/18/017 is already a public footpath following the North Devon Link Road (M5 Sampford Peverell – Tiverton (Bolham Road) Side Roads) Order 1981. The footpath now numbered Footpath No. 21, Sampford Peverell will be added to the Definitive Map. Consideration will be given on the best way to provide for continued use of the route by cyclists under delegated powers.

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

Agenda Item 9

10. Reasons for Recommendations

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

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Willand & Uffculme

Local Government Act 1972: List of Background Papers

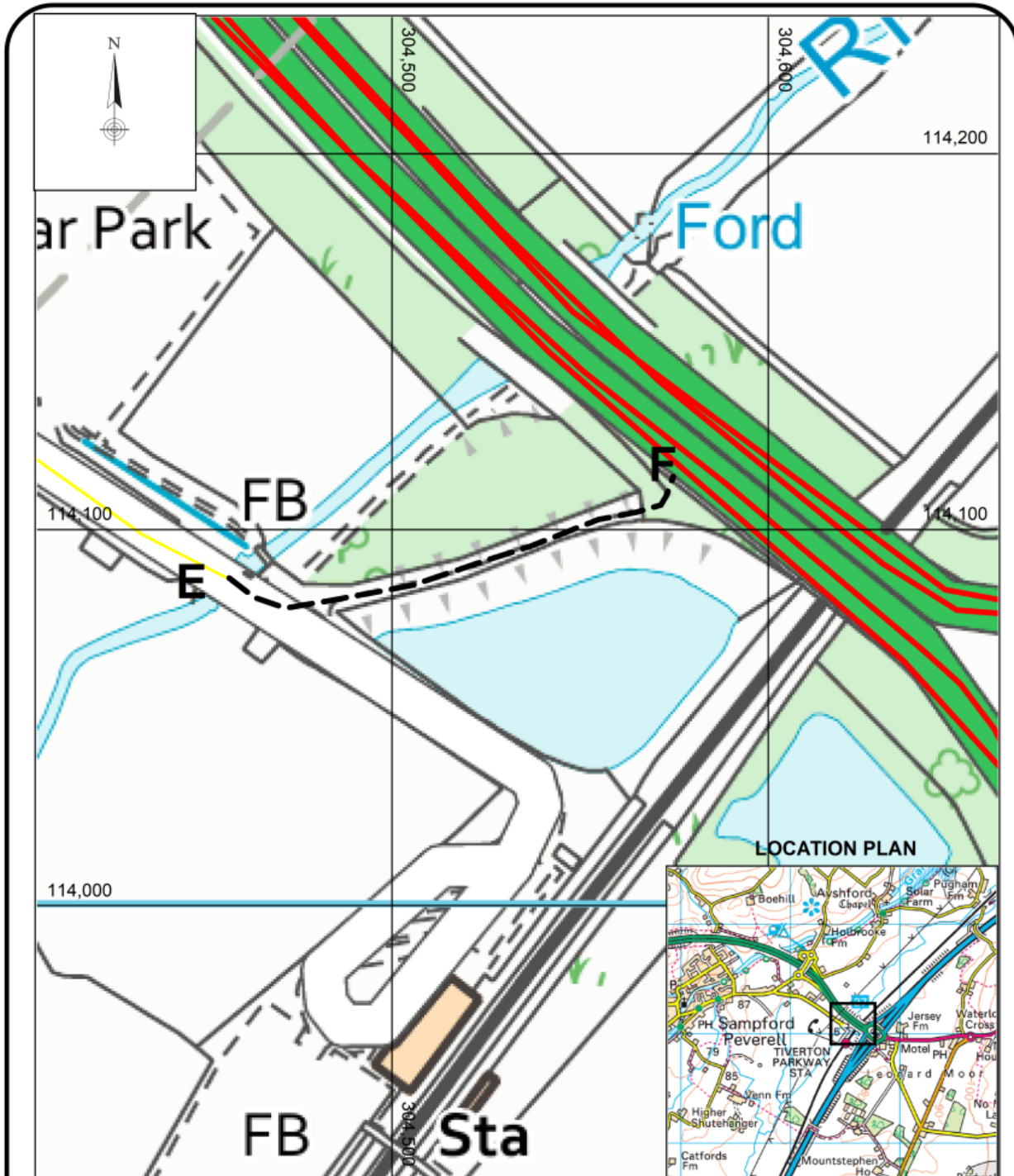
Contact for enquiries: Tania Weeks

Room No: ABG Lucombe House, County Hall, Exeter

Tel No: 01392 382833

Background Paper	Date	File Ref.
DMR/Correspondence File	2017 to date	DMR/Sampfords Peverell

tw230119pra
sc/cr/DMR Parish of Sampfords Peverell
03 200219



Map Ref ST 04 14 Grid 100m

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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - SAMPFORD PEVERELL
PROPOSAL NO 2
ADDITION OF PUBLIC FOOTPATH
STATION ROAD TO A361**

drawing number HIW/PROW/18/017
date April 2018
scale 1:1,500 at A4
drawn by TW

Notation

Addition of Public Footpath E - F (130 metres approx) **---**

Meg Booth
CHIEF OFFICER HIGHWAYS,
INFRASTRUCTURE DEVELOPMENT AND WASTE



HIW/19/21

Public Rights of Way Committee
4 March 2019

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 16, 17, 18, 19 & 20, Combe Raleigh and No. 5, Awliscombe) Definitive Map Modification Order 2016 – the County Council having been directed to make the Order following a successful schedule 14 appeal.	The Order was confirmed 4 th December 2018 with modifications proposed by interim decision dated 26 th October 2017. Confirmed as Devon County Council (Restricted Byway No. 20, Combe Raleigh) Definitive Map Modification Order 2016 . Not confirmed in respect of the other Order routes. For more information see The Planning Inspectorate's Order Decision .
(ii) Devon County Council (Bridleway No. 6, Ugborough) Definitive Map Modification Order 2016	The Order was confirmed 18 th January 2019 following a local public inquiry held on 11 th October 2018. For more information see The Planning Inspectorate's Order Decision .
(iii) Schedule 14 Application to add a footpath between the villages of Weston and Buckerell via Deer Park – appeal by the applicant against Devon County Council's decision not to make an Order.	An Appeal against the County Council's decision was dismissed by the Secretary of State on 12 th November 2018. For more information see The Planning Inspectorate's Appeal Decision .

Agenda Item 10

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Divisions: Whimble & Blackdown; South Brent & Yealmpton; and Feniton & Honiton

Local Government Act 1972: List of Background Papers

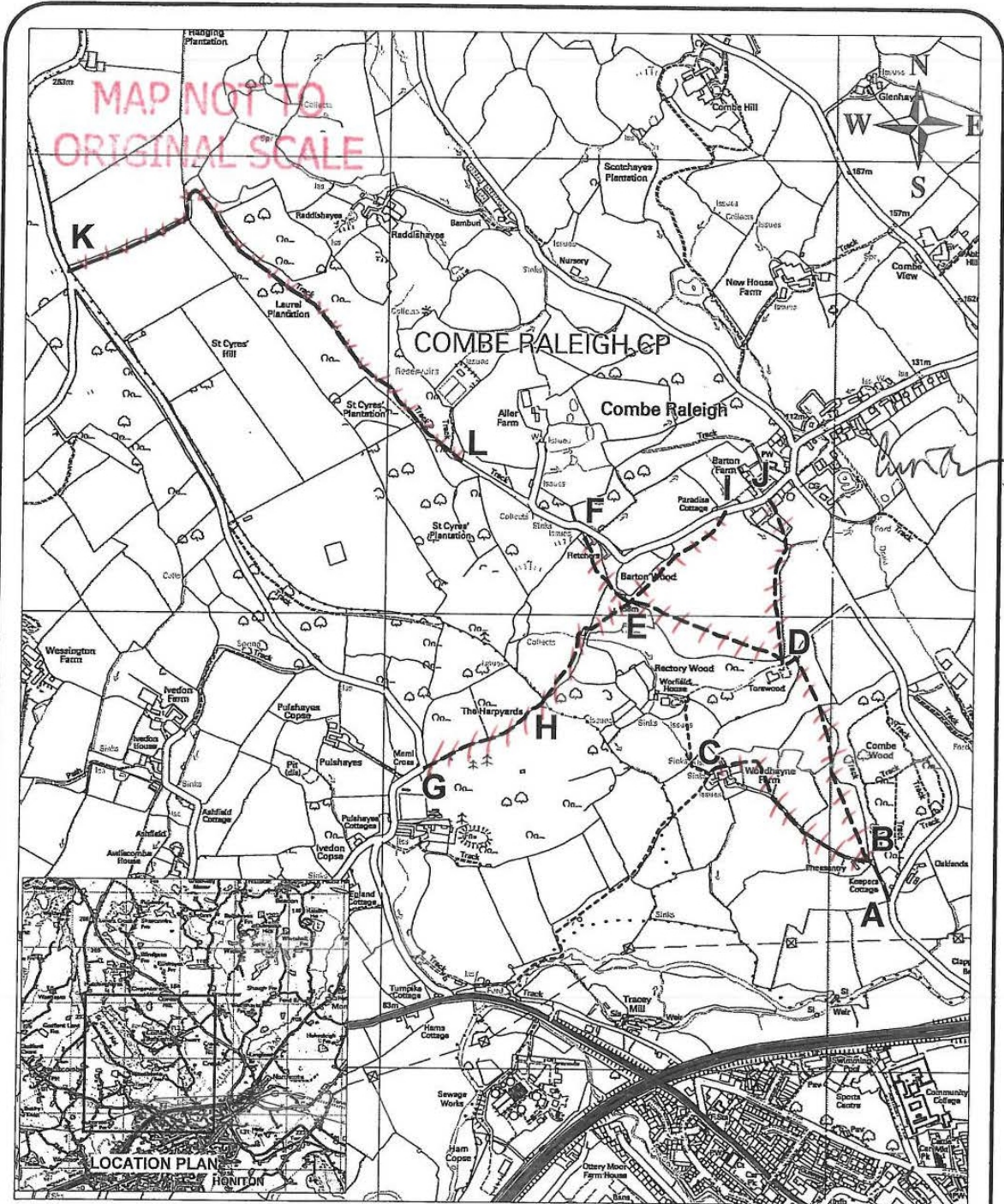
Contact for enquiries: Helen Clayton

Room No: ABG Lucombe House, Exeter

Tel No: 01392 383000

Background Paper	Date	File Ref.
None		



hc290119pra
sc/cr/Public Inquiry Informal Hearing High Court appeals
02 200219



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DEVON COUNTY COUNCIL
Revised B-5
(Footpath Nos. 16, 17, 18, 19 and 20, Combe Raleigh and No. 5, Awliscombe)
Definitive Map Modification Order 2016

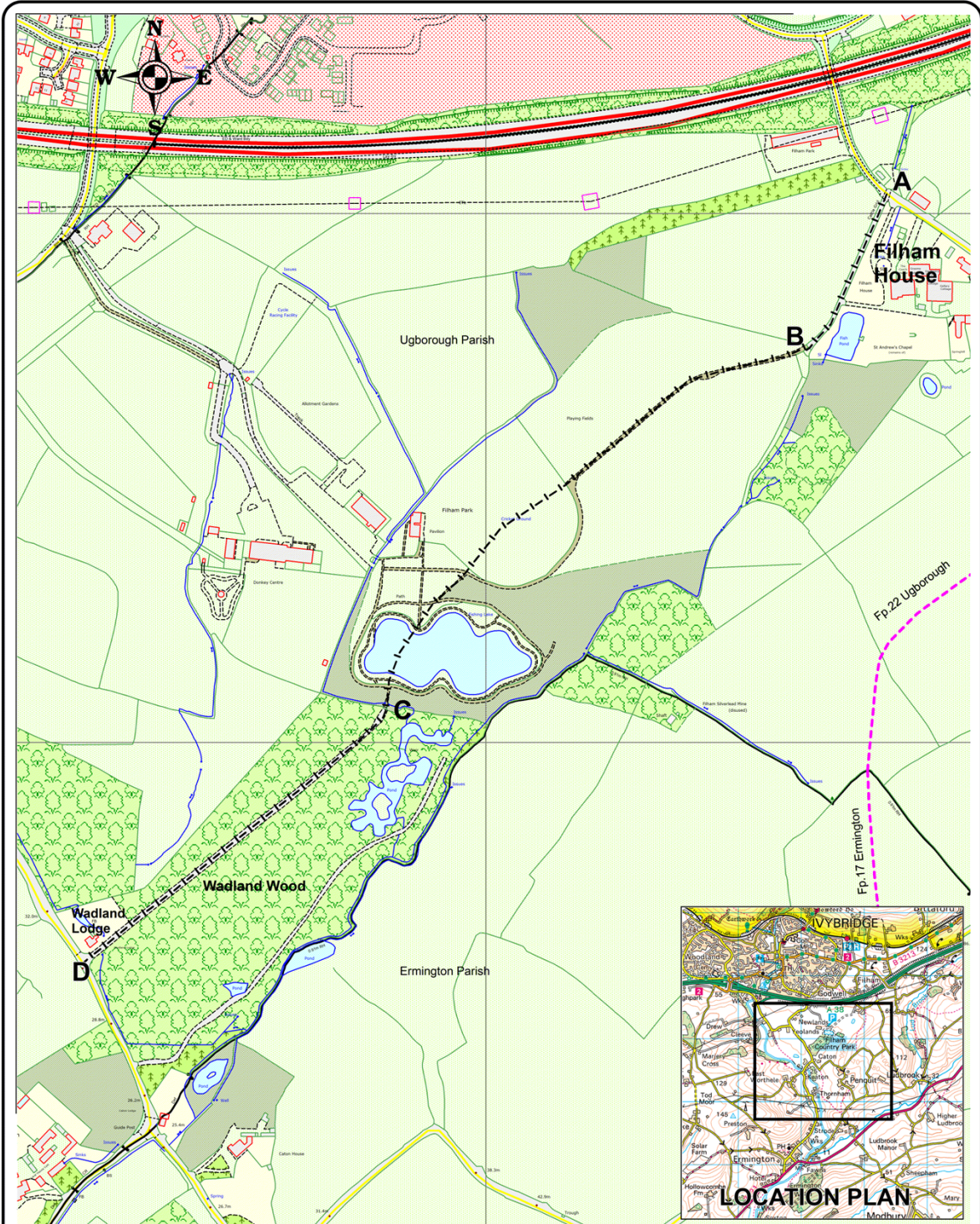
drawing number **HCW/PROW/16/19**
 date **Apr 2016**
 scale **1:12,500**
 drawn by **NSC**

Notation *Revised B-5*
Footpaths to be added 
 (Combe Raleigh: No. 16 A-B-C; No. 17 B-D-E-F;
 No. 18 H-E-I; No. 19 D-J; No. 20 K-L
 Awliscombe: No. 5 G-H)
Existing footpaths 

David Whitton
 HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE



Agenda Item 10



map ref: SX 6454

500m grid

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Devon County Council
Definitive Map Modification Order 2016
Bridleway No.6, Ugborough

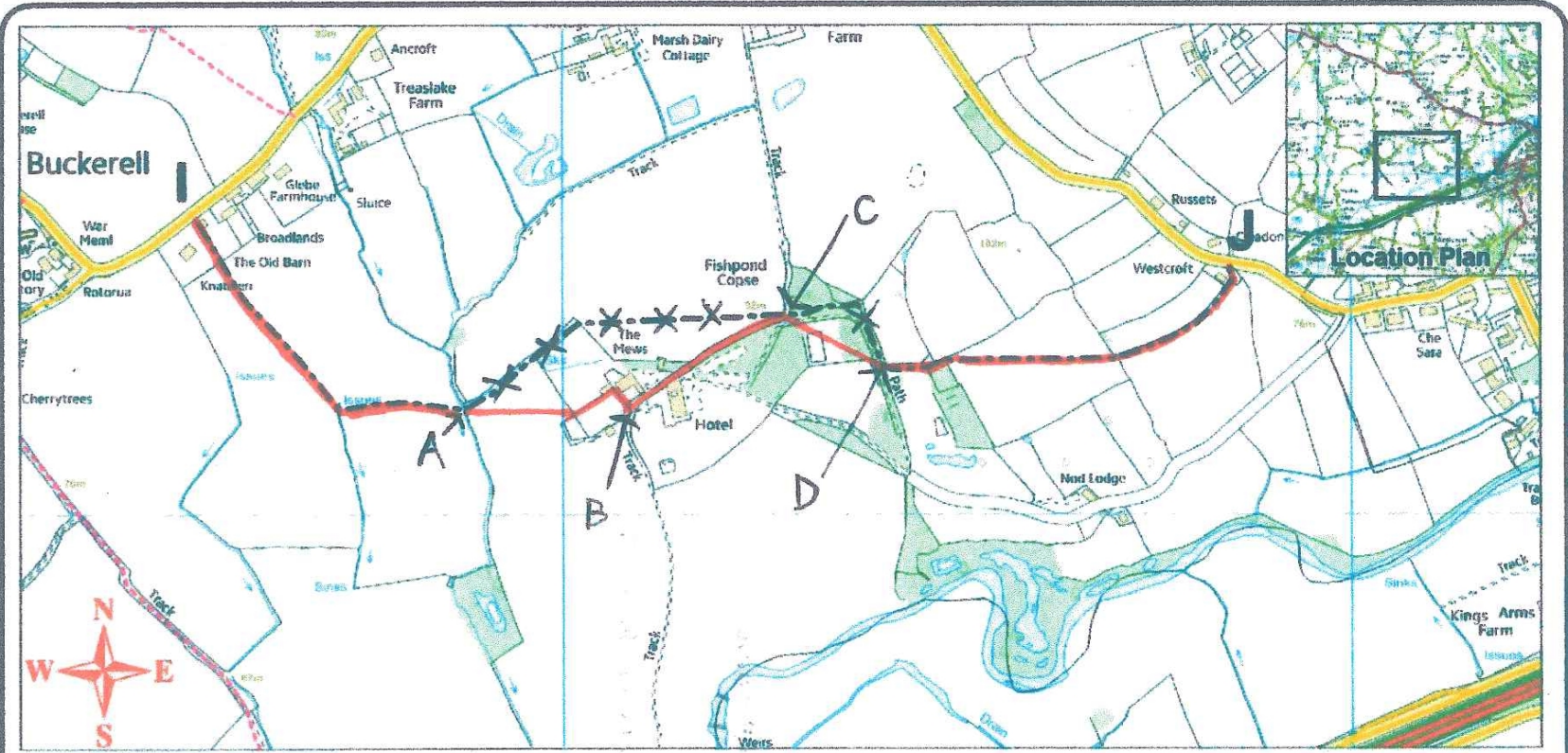
drawing number **HCW/PROW/16/14**
 date **July 2016**
 scale **1 : 3,500 (at A3 only)**
 drawn by **ES**

Notation

Bridleway No.6, Ugborough **A - B - C - D** ——— 1090m approx
 Existing public footpaths ———

David Whitton
 HEAD OF HIGHWAYS, INFRASTRUCTURE DEVELOPMENT





map ref: SY 1200-1400/1299-1499

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RAMBLERS' Schedule 14 application

DEVON COUNTY COUNCIL
Definitive Map Review, Buckerell parish
Internal Consultations, Proposal 3
Claimed public footpath

drawing number HIW/PROW/17/023
 date Apr 2017
 scale 1:7500
 drawn by NSC

Amended Dec 2017 by Rosemary Kimbell

Notation

Claimed footpath (1,600 metres) via A-B-C-D 
 Existing footpaths 

Meg Booth
 ACTING HEAD OF HIGHWAYS, INFRASTRUCTURE DEVELOPMENT AND WASTE



HIW/19/22

Public Rights of Way Committee
4 March 2019

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 Order has been confirmed as unopposed under delegated powers. Plan is attached in the appendix to this report.

- (i) Byway Open to All Traffic No. 21 and Footpath No. 15, Buckerell Definitive Map Modification Order 2018

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Feniton & Honiton

Local Government Act 1972: List of Background Papers

Contact for enquiries: Helen Clayton

Room No: ABG Lucombe House, County Hall, Exeter

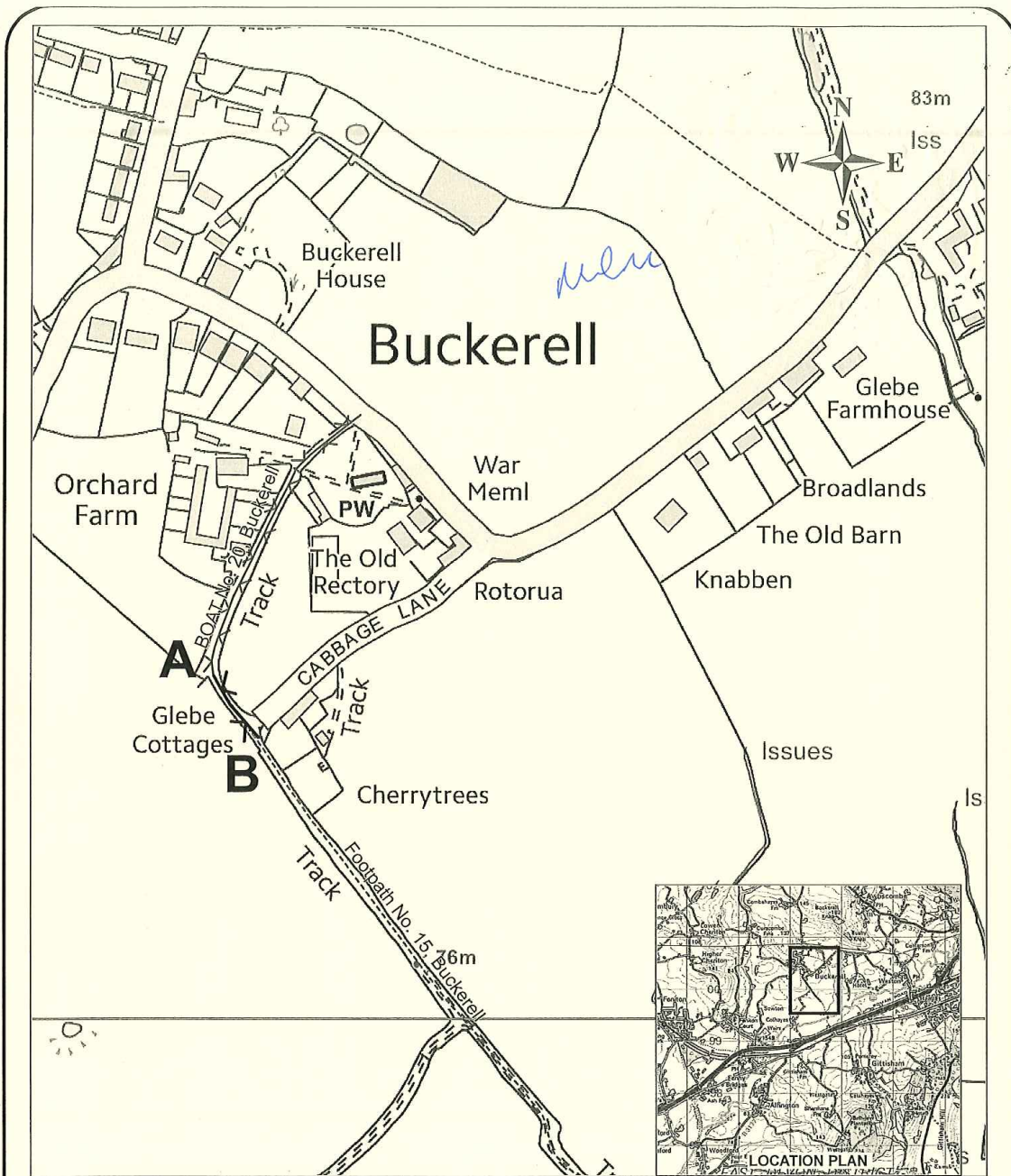
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Background Paper	Date	File Ref.
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None

hc290119pra
sc/cr/Modification Orders
02 200219

Agenda Item 11






map ref ST 1200/SY 1299

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DEVON COUNTY COUNCIL
(BYWAY OPEN TO ALL TRAFFIC No. 21 and
FOOTPATH No. 15, BUCKERELL)
DEFINITIVE MAP MODIFICATION ORDER 2018

drawing number HIW/PROW/18/009
 date Feb 2018
 scale 1: 3,500
 drawn by NSC

Notation

Byway Open to All Traffic No. 21, Buckerell A - B (55m) 
 Existing Footpath 
 Existing Byway Open to All Traffic 



Meg Booth
 HEAD OF HIGHWAYS, INFRASTRUCTURE DEVELOPMENT AND WASTE

HIW/19/23

Public Rights of Way Committee
4 March 2019

Public Path Orders

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

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

Recommendation: It is recommended that the report be noted.

1. Summary

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

(a) Diversion Orders

- (i) Footpath No. 6, Coldridge Public Path Diversion & Definitive Map and Statement Modification Order 2018
- (ii) Footpath No. 7, Okehampton Public Path Diversion & Definitive Map and Statement Modification Order 2018
- (iii) Footpath No. 93, Bere Ferrers Public Path Diversion & Definitive Map and Statement Modification Order 2017
- (iv) Footpath No. 60, Sidmouth Public Path Diversion & Definitive Map and Statement Modification Order 2018

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Divisions: Creedy, Taw & Mid Exe; Okehampton Rural; Yelverton Rural; and Sidmouth

Local Government Act 1972: List of Background Papers

Contact for enquiries: Helen Clayton

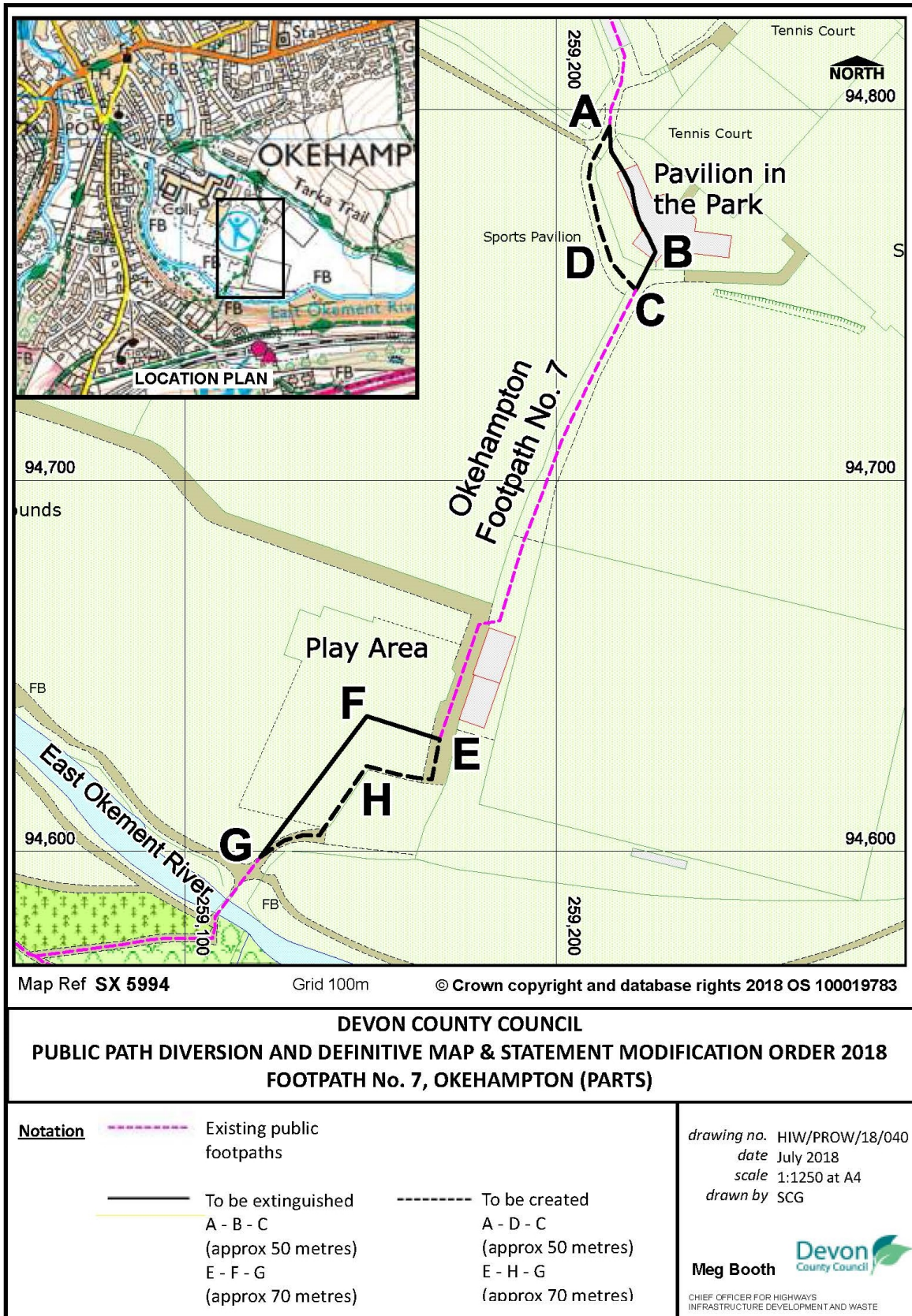
Room No: ABG Lucombe House, Exeter

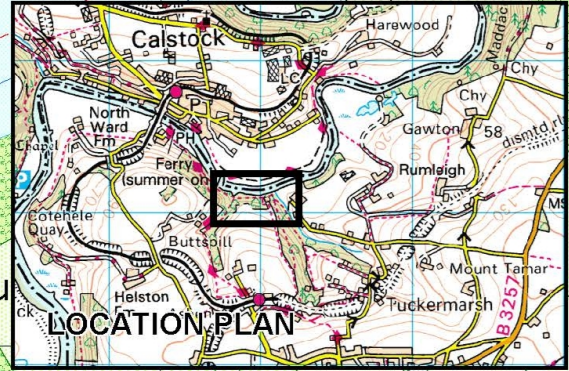
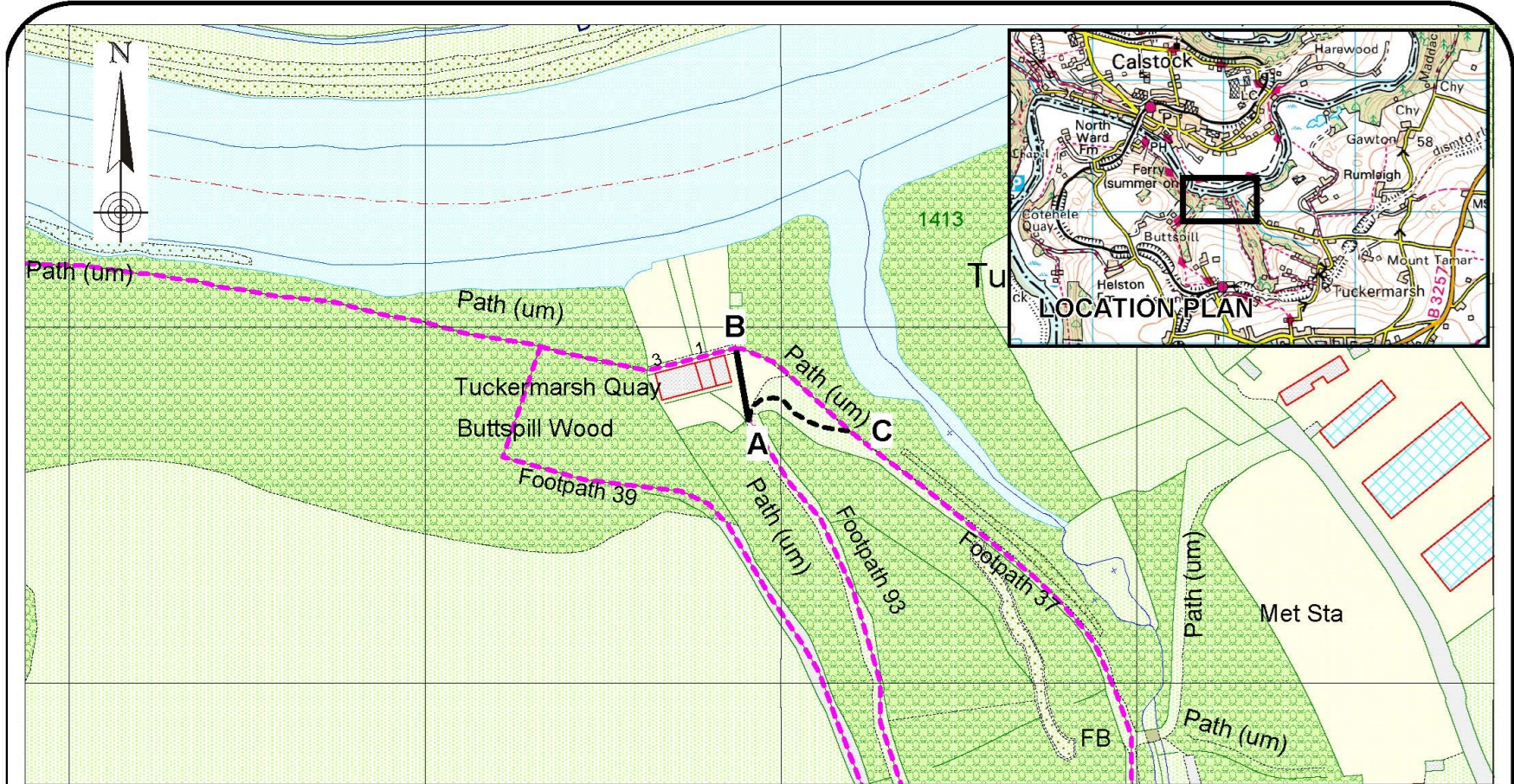
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Background Paper	Date	File Ref.
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None

hc290119pra
sc/cr/Public Path Orders
02 200219





map ref: SX 4468

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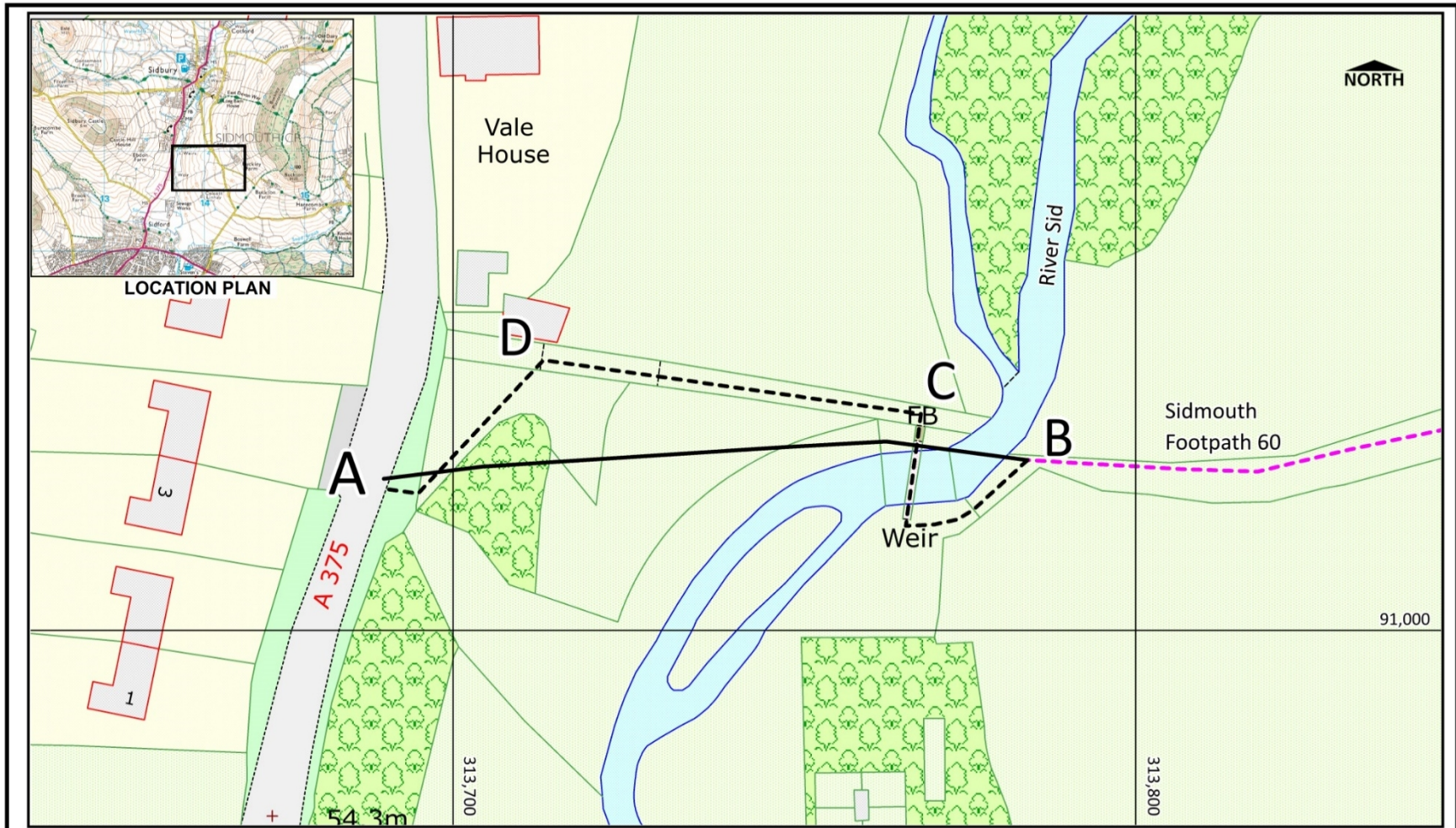
**DEVON COUNTY COUNCIL
FOOTPATH NO. 93, BERE FERRERS
PUBLIC PATH DIVERSION AND DEFINITIVE MAP AND
STATEMENT MODIFICATION ORDER 2017**

drawing number	HCW/PROW/16/70
date	November 2017
scale	1:1,500 (at A4 only)
drawn by	PG

<u>Notation</u>	To be extinguished	To be created
Footpath No.93	A - B (20m) 	A - C (30m)

Meg Booth
Head of Highways, Infrastructure Development and Waste





Map Ref SY1391

Grid 100m


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**DEVON COUNTY COUNCIL
PUBLIC PATH DIVERSION AND DEFINITIVE MAP & STATEMENT MODIFICATION ORDER 2018
FOOTPATH NO. 60, SIDMOUTH**

drawing no. HIW/PROW/17/060
date Oct 2017 updated Oct 2018
scale 1:750 at A4
drawn by BM

Meg Booth
CHIEF OFFICER FOR
HIGHWAYS INFRASTRUCTURE
DEVELOPMENT AND WASTE

Notation

To be extinguished A - B (approx 95 metres) 
To be created A - D - C - B (approx 125 metres) 