

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 : 26 June 2019  
Please ask for : Wendy Simpson, 01392 384383

Email: wendy.simpson@devon.gov.uk

## **PUBLIC RIGHTS OF WAY COMMITTEE**

Thursday, 4th July, 2019

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

P NORREY  
Chief Executive

## **A G E N D A**

### **PART I - OPEN COMMITTEE**

- 1 Apologies
- 2 Minutes  
Minutes of the Committee meeting held on 4 March 2019 (previously circulated).
- 3 Items Requiring Urgent Attention  
Items which in the opinion of the Chairman should be considered at the meeting as matters of urgency.
- 4 Devon Countryside Access Forum (Pages 1 - 10)  
Draft minutes of the meeting held on 25 April 2019, attached.

### **DEFINITIVE MAP REVIEWS**

- 5 Parish Review: Definitive Map Review - Parish of Plymtree (Pages 11 - 14)  
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/19/54), attached.

*Electoral Divisions(s): Whimble & Blackdown*

6 Parish Review: Definitive Map Review 2017-2019 - Parish of Lympstone (Part 2) (Pages 15 - 38)

Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/19/55), attached.

*Electoral Divisions(s): Exmouth*

7 Parish Review: Definitive Map Review - Parish of Wembury (Pages 39 - 62)

Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/19/56), attached.

*Electoral Divisions(s): Bickleigh & Wembury*

8 Parish Review: Definitive Map Review - Parish of Trentishoe (Pages 63 - 80)

Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/19/57), attached.

*Electoral Divisions(s): Combe Martin Rural*

9 Parish Review: Definitive Map Review 2018-2019 - Parish of Bampton (Part 1) (Pages 81 - 120)

Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/19/58), attached.

*Electoral Divisions(s): Tiverton West*

#### **MATTERS FOR INFORMATION**

10 Public Inquiry, Informal Hearing and Written Representation Decisions; Directions and High Court Appeals (Pages 121 - 124)

Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/19/59), attached.

*Electoral Divisions(s): Whimble & Blackdown*

11 Modification Orders (Pages 125 - 126)

Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/19/60), attached.

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

12 Public Path Orders (Pages 127 - 134)

Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/19/61), attached.

*Electoral Divisions(s): Chulmleigh & Landkey; Combe Martin Rural; Creedy, Taw & Mid Exe; Hatherleigh & Chagford; Tiverton East; Torrington Rural*

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

Nil

**Membership**  
Councillors P Sanders (Chair), T Inch, J Brook, I Chubb, P Colthorpe, A Dewhirst, L Hellyer, M Shaw and H Ackland

**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.

**Access to Information**  
Any person wishing to inspect any minutes, reports or lists of background papers relating to any item on this agenda should contact Wendy Simpson on 01392 384383.  
Agenda and minutes of the Committee are published on the Council's Website and can also be accessed via the Modern.Gov app, available from the usual stores.

**Public Participation**  
Any member of the public resident in the administrative area of the County of Devon may make a presentation on any proposed public footpath order being considered by the Committee. Any request to make a presentation must be made to the Chief Executive's Directorate, County Hall, Exeter by 12 noon on the fourth working day before the relevant meeting. The name of the person making the presentation will be recorded in the minutes. For further information please contact Wendy Simpson on 01392 384383.

**Webcasting, Recording or Reporting of Meetings and Proceedings**  
The proceedings of this meeting may be recorded for broadcasting live on the internet via the 'Democracy Centre' on the County Council's website. The whole of the meeting may be broadcast apart from any confidential items which may need to be considered in the absence of the press and public. For more information go to: <http://www.devoncc.public-i.tv/core/>

In addition, anyone wishing to film part or all of the proceedings may do so unless the press and public are excluded for that part of the meeting or there is good reason not to do so, as directed by the Chair. Any filming must be done as unobtrusively as possible from a single fixed position without the use of any additional lighting; focusing only on those actively participating in the meeting and having regard also to the wishes of any member of the public present who may not wish to be filmed. As a matter of courtesy, anyone wishing to film proceedings is asked to advise the Chair or the Democratic Services Officer in attendance so that all those present may be made aware that is happening.

Members of the public may also use Facebook and Twitter or other forms of social media to report on proceedings at this meeting. An open, publicly available Wi-Fi network (i.e. DCC) is normally available for meetings held in the Committee Suite at County Hall. For information on Wi-Fi availability at other locations, please contact the Officer identified above.

**Emergencies**  
In the event of the fire alarm sounding leave the building immediately by the nearest available exit, following the fire exit signs. If doors fail to unlock press the Green break glass next to the door. Do not stop to collect personal belongings, do not use the lifts, do not re-enter the building until told to do so.

**Mobile Phones**  
Please switch off all mobile phones before entering the Committee Room or Council Chamber

**If you need a copy of this Agenda and/or a Report in another format (e.g. large print, audio tape, Braille or other languages), please contact the Information Centre on 01392 380101 or email to: [centre@devon.gov.uk](mailto:centre@devon.gov.uk) or write to the Democratic and Scrutiny Secretariat at County Hall, Exeter, EX2 4QD.**

 Induction loop system available

## **NOTES FOR VISITORS**

All visitors to County Hall, including visitors to the Committee Suite and the Coaver Club conference and meeting rooms are requested to report to Main Reception on arrival. If visitors have any specific requirements or needs they should contact County Hall reception on 01392 382504 beforehand. Further information about how to get here can be found at: <https://new.devon.gov.uk/help/visiting-county-hall/>. Please note that visitor car parking on campus is limited and space cannot be guaranteed. Where possible, we encourage visitors to travel to County Hall by other means.

**SatNav** – Postcode EX2 4QD

### **Walking and Cycling Facilities**

County Hall is a pleasant twenty minute walk from Exeter City Centre. Exeter is also one of six National Cycle demonstration towns and has an excellent network of dedicated cycle routes – a map can be found at: <https://new.devon.gov.uk/travel/cycle/>. Cycle stands are outside County Hall Main Reception and Lucombe House

### **Access to County Hall and Public Transport Links**

Bus Services K, J, T and S operate from the High Street to County Hall (Topsham Road). To return to the High Street use Services K, J, T and R. Local Services to and from Dawlish, Teignmouth, Newton Abbot, Exmouth, Plymouth and Torbay all stop in Barrack Road which is a 5 minute walk from County Hall. Park and Ride Services operate from Sowton, Marsh Barton and Honiton Road with bus services direct to the High Street.

The nearest mainline railway stations are Exeter Central (5 minutes from the High Street) and St David's and St Thomas's both of which have regular bus services to the High Street. Bus Service H (which runs from St David's Station to the High Street) continues and stops in Wonford Road (at the top of Matford Lane shown on the map) a 2/3 minute walk from County Hall, en route to the RD&E Hospital (approximately a 10 minutes walk from County Hall, through Gras Lawn on Barrack Road).

### **Car Sharing**

Carsharing allows people to benefit from the convenience of the car, whilst alleviating the associated problems of congestion and pollution. For more information see: <https://liftshare.com/uk/community/devon>.

### **Car Parking and Security**

There is a pay and display car park, exclusively for the use of visitors, entered via Topsham Road. Current charges are: Up to 30 minutes – free; 1 hour - £1.10; 2 hours - £2.20; 4 hours - £4.40; 8 hours - £7. Please note that County Hall reception staff are not able to provide change for the parking meters.

As indicated above, parking cannot be guaranteed and visitors should allow themselves enough time to find alternative parking if necessary. Public car parking can be found at the Cathedral Quay or Magdalen Road Car Parks (approx. 20 minutes walk). There are two disabled parking bays within the visitor car park. Additional disabled parking bays are available in the staff car park. These can be accessed via the intercom at the entrance barrier to the staff car park.



**NB**   Denotes bus stops

### **Fire/Emergency Instructions**

In the event of a fire or other emergency please note the following instructions. If you discover a fire, immediately inform the nearest member of staff and/or operate the nearest fire alarm. On hearing a fire alarm leave the building by the nearest available exit. The County Hall Stewardesses will help direct you. Do not stop to collect personal belongings and do not use the lifts. Assemble either on the cobbled car parking area adjacent to the administrative buildings or in the car park behind Bellair, as shown on the site map above. Please remain at the assembly point until you receive further instructions. Do not re-enter the building without being told to do so.

### **First Aid**

Contact Main Reception (extension 2504) for a trained first aider.

# Agenda Item 4

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

Tel: 07837 171000  
01392 382084

[devoncaf@devon.gov.uk](mailto:devoncaf@devon.gov.uk)

[www.devon.gov.uk/dcaf](http://www.devon.gov.uk/dcaf)



Minutes of the Fifty-Third meeting  
of the Devon Countryside Access Forum  
held at the Devon Rural Hub, Amory Building, Cheriton Bishop, EX6 6JH  
Thursday, 25 April 2019

## **Attendance**

### *Forum members*

|                         |                     |
|-------------------------|---------------------|
| Andrew Baker            | Gordon Guest        |
| Simon Clist             | Charlie Lloyd       |
| Chris Cole (Vice-Chair) | Sue Pudduck         |
| Sean Comber             | Tino Savvas         |
| John Daw                | Sarah Slade (Chair) |
| Tim Felton              | Maggie Watson       |

### *Devon County Council Officers and others present*

John Baker, Warden, Public Rights of Way, DCC  
Helen Clayton, Senior Officer, Public Rights of Way, DCC  
Ros Mills, Manager, Public Rights of Way, DCC  
Hilary Winter, Forum Officer, DCC

## **1. Apologies**

Apologies were received from Jo Hooper, Councillor Tony Inch, Councillor Philip Sanders and Bryan Smith.

## **2. Membership**

Sophie Pritchard had resigned. The Chair noted that it was difficult for young people, particularly students, to commit to the Forum. In the interim, Ros Mills, DCC, said that the Selection Panel had suggested one of the DCC apprentices could be on the Forum and discussions were taking place with the line manager of an apprentice in the transport planning team. This was agreed but members recommended efforts should be made to target groups with a view to encouraging other young people to apply next year. The importance of mentoring young members was raised and noted.

*Action: DCC and Forum Officer to action.*

The Chair paid tribute to Linda Lee for her contribution over the past three years and for raising the profile of carriage driving.

# Agenda Item 4

## 3. **Welcome to new members**

Tim Felton and Tino Savvas were welcomed. Bryan Smith, new member, had given apologies.

## 4. **Declaration of interests**

There were no declarations of interest.

## 5. **Election of Chair and Vice Chair**

No nominations had been received for Chair and Vice Chair. The existing Chair and Vice Chair had agreed to continue in post. Sarah Slade was elected as Chair, proposed by Sue Pudduck and seconded by Andrew Baker. Chris Cole was elected as Vice Chair, proposed by Maggie Watson and seconded by John Daw.

## 6. **Minutes of the meeting held on 24 January 2019**

Minutes of the meeting held on 24 January were agreed and signed.

## 7. **Matters arising**

### 7.1 **Planning Position Statement (9. 24.01.19)**

Following discussion at the last meeting, it was proposed to amend the Planning Position Statement and add a further statement - "scrutinise safety implications where any new roads affect an existing public right of way, liaising at the earliest opportunity with all relevant authorities to design in improvements." This was agreed.

*Action: Forum Officer to edit position statement and republish.*

### 7.2 **Greenspace Position Statement (11. 24.01.19)**

The Greenspace Position Statement had been finalised and was on the website. The Forum Officer had contacted Natural England to check on the Accessible Natural Greenspace Standard, used in the position statement. Natural England had let a contract for a Green Infrastructure Standards project with a view to developing draft guidance and a framework of GI standards. The new guidelines would be tested in a number of communities, in association with local authorities. The DCAF position statement may need to be amended in future once these new standards are published.

### 7.3 **Local Nature Partnership (15. 24.01.19)**

The Local Nature Partnership Conference in 2019, held in March, focussed on outdoor learning for the primary school sector. Members will be advised of any relevant LNP activities which arise during the year. The Local Nature

Partnership's Naturally Healthy work includes promoting 'Naturally Healthy Month' in May.

## **8. Public Questions**

There were no public questions.

## **9. Correspondence log**

Attention was drawn to the response from Bigbury Neighbourhood Plan Steering Group. This stated that horse-riders would be included as vulnerable road users and improved opportunities for cyclists and horse-riders will be considered as part of the neighbourhood plan.

Items 10, 11 and 12 referred to current surveys being conducted by Exeter City Council, Teignbridge District Council and the Forestry Commission which members might wish to complete as individuals.

## **10. Meetings attended by DCAF members**

### **10.1 Marine Management Organisation workshop**

Sue Pudduck had attended the Marine Management Organisation SW Marine Plan workshop on the SW Plan and a brief response to the consultation had subsequently been sent. Representatives from a wide range of interests were present. Following earlier work in the South East, the Marine Management Organisation is keen to engage with many organisations and identify gaps in knowledge.

Sue was thanked for attending.

### **10.2 East Devon Pebblebed Heaths - car parking strategy**

Gordon Guest had attended the workshop at the East Devon Pebblebed Heaths and the accompanying agenda paper outlined the content of the day and the challenges of competing demands and increased use of the heaths. He had subsequently arranged a visit for wheelchair/mobility scooter users on 7 June so that access issues could be discussed with the Pebblebed Heaths Site Manager. Details would be sent to DCAF members should anyone wish to attend.

Gordon was thanked for his involvement and for setting the visit up.

*Action: Gordon Guest and Forum Officer.*

## **11. Minutes of the Public Rights of Way Committee meeting held on 4 March 2019**

Minutes of the Public Rights of Way Committee were noted.

# Agenda Item 4

## 12. Public rights of way update

Ros Mills, Public Rights of Way Manager, reported that targets had been met for the year end. The Public Rights of Way Warden and Legal and Development teams had done an excellent job and work programmes were in place.

Key strategic matters for the future were:

1. Improvements to the IT and GIS systems to assist inspections and to keep a digital legal library of records affecting each route. This would enable Orders to be attached to the definitive line which would be more efficient.
2. A programme of re-surfacing for recreational and multi-use trails. These are re-surfaced on an ad-hoc basis when funds allow. The aim is to have a five-year rolling programme in place, with advice from Highway Asset Team colleagues. It will be important to identify costs and commit funding, increasingly important with the likely growth agenda and increased use of such routes. Installation of routes attracts capital funding to ensure green infrastructure and planning targets are met, however ongoing maintenance is an issue.
3. The Country Parks as important recreational assets.
  - Stover Country Park is re-submitting its Heritage Lottery Fund bid to improve the park in its historic house and garden setting. It is hoped the DCAF will send a new letter of support and a request will be sent shortly.
  - The Grand Western Canal has dealt with badger encroachment and part of the towpath has been underpinned using a grid system. This has alleviated the problem in the short term, but it will be a future issue.

Both country parks have issues with dogs. The parks are working to retain their Green Flag Awards.

### 4. Budgets

The revenue budget for 2019/20 had been cut slightly but capital had been increased by just over £200,000. DCC as an authority recognised the benefit of a well-managed access network.

Gordon Guest offered to update the chart of scooter sizes and capacity to assist DCC in planning for disability access.

*Action: Gordon Guest*

The importance of wheelchair accessible toilets on recreational trails was raised. These encouraged disabled people to be more active and promoted tourism. Ros Mills confirmed that historically the Environment Team was involved in business liaison and promotion for any route but now fewer staff were involved in delivery. The Public Rights of Way team was not involved in negotiation or liaison.

Ros Mills, DCC, reported that issues had arisen on the Exe Estuary due to its increasing popularity. A DCC working group was being set up to look at soft messaging and ways of mitigating conflict between different groups. The Exe Estuary is not a public right of way so legislation could not be applied. Two members of the DCAF, Sarah Slade and Gordon Guest, had been asked to participate and provide advice alongside members of the Exe Estuary Forum.



Concerns about cycling speed were not specific to the Exe Estuary trail. It was noted that electric bikes were a new factor.

A discussion took place about the need to persuade businesses of the benefit of offering disabled toilets. Disabled visitors often had other people with them. There were 2.35m Blue Badge holders in England at the end of March 2018. Technology developments meant that disabled users could explore over longer distances.

At the previous meeting, Richard Walton SWCP National Trail Officer, had mentioned the possibility of funding through the South West Coast Path Association for toilet improvements. It was noted that associations or trusts could take on a role in improving facilities. Businesses and parish organisations could have a role too. Potentially, it was also something that could be asked of developers if they are seeking permission to access a trail, for example the Tarka Trail. Historically, during the planning process, opportunities may have been missed to use s106.

It was suggested that making Sustainable Accessible Natural Green Space (SANGS) sites multi-use could displace people from sensitive wildlife sites, particularly if linked to the existing public rights of way network. It was noted there will be consultation on the Greater Exeter Strategic Plan later in the year and this may cover SANGS sites and areas for quiet enjoyment such as dog walking. A complementary document will focus on the sensitivities of different sites in terms of flooding, ecology and historic interest.

The Chair suggested, and it was agreed, that a working group to look at some of the issues affecting trails would be useful, exploring increased use, the differences between functional and recreational use, and the associated facilities that could be provided. It was agreed later in the meeting to make this the key focus of the forthcoming training day to be followed up by a working group.

Helen Clayton, Senior Officer Public Rights of Way, confirmed that the Definitive Map Review was 82% complete with a further 7% in progress. The next Public Rights of Way Committee would be held in July.

The Ramblers had appealed a Planning Inspectorate decision not to confirm a footpath in Luppitt. The Planning Inspectorate decision had been quashed and the case will have to be determined again.

The Parish Paths Partnership (P3) surveys were all in and grants had been sent out.

It was hoped to consider public rights of way matters at an early stage in the development of the Greater Exeter Strategic Plan.

## **13. Presentation by John Baker, Public Rights of Way Warden, Devon County Council**

John Baker, Public Rights of Way warden, gave a presentation.

He confirmed that his duty was to protect Devon's rights of way and he did this by:

# Agenda Item 4

- Supporting landowners,
- informing the public,
- liaising with Parish Councils (P3) and district councils, and
- cooperating with the Police and dog wardens.

The legal rationale for wardens' work was embodied in the Highways Act 1980, s130

- It is the duty of the Highway Authority to assert and protect the rights of the public to the use and enjoyment of any highway...
- It is the duty of a Highway Authority to prevent, as far as possible, the stopping up or obstruction of the highway...

Devon County Council had 5000km of footpaths, bridleways, byways open to all traffic and restricted byways. In addition, there were 560km of unsurfaced roads and 225km of off-road trails.

A map showing the warden areas for the County was displayed. The wardens carried out work on off-road trails and unsurfaced roads in the National Park areas. The National Park rangers dealt with public rights of way on an agency basis.

Wardens inspected public rights of way on a three-yearly cycle, ensuring they were signed at the road, free from obstruction and clearly waymarked. Ease of use was also assessed using condition criteria and 97% of the public rights of way in Devon met the criteria. In addition, off-road trails and the South West Coast Path were inspected annually. Wardens also responded to reports from the public and recorded findings. A number of legal and technical publications informed warden work.

Wardens were responsible for maintenance. This included signs and waymarking; vegetation; stiles and gates; surfaces – including bridges and boardwalks; removing obstructions and working with approved contractors. Wardens made increasing use of technology, for example What's App to share photos with contractors.

Interesting photographs illustrated 'before' and 'after' shots of maintenance work. Gates were authorised where there were forestry or stock control issues although it was acknowledged this could impact on use by buggies and scooters.

The Enforcement Protocol worked through goodwill and cooperation with the public and landowners. This worked most of the time. The occasional enforcement notice was also effective most of the time. Prosecution was rarely used in Devon as this was unnecessarily stressful, time consuming and expensive. It was important to ascertain why a landowner had obstructed a path and what could be done to resolve issues.

Wardens were proactive in seeking improvements and making a difference. Stiles were upgraded to gates with landowner permission and this had been easier with improved self-closing gates. Surfaces were upgraded, signs were improved and diversions (paid for by landowners) were secured. Diversions went out to formal consultation.

The wardens' improvement schedule was usually reliant on capital bids and budget allocations. For example, improvements had been made to the SWCP surface and, on the Tarka Trail, a least restrictive option had been put in place with manoeuvring space and easy to use latches. In Iddesleigh, a diversion was planned to remove one bridge crossing and take a footpath away from a farmyard.

The Strava app showed the level of use and a map was displayed which indicated use of public rights of way and recreational trails in Hatherleigh over the last two months. Higher use was indicated by a lighter colour. The whole network was well-used especially the off-road trails.

A number of questions were asked.

*What are the maintenance priorities?*

John responded that it was based in priority order of Health and Safety issues; high usage paths such as cycle/multi-use trails, promoted routes and village/town centres.

*How do wardens work with groups, for example South West Riders?*

SW Riders report problems in a constructive way. They have identified diversions and also recognise the need to identify priorities. For example, improving bridleway access across Hollow Moor would be disproportionately expensive meaning less budget for other routes. John would be attending their AGM. North Devon Ramblers reports problems. He had not had so much contact with the Trail Riders' Fellowship.

*Is it possible to go around obstructions or deal with them?*

The public can make a reasonable route around an obstruction but not remove the obstruction itself. It is best to report obstructions to the public rights of way team to avoid the risk of causing criminal damage. Wardens had to notify landowners of their intentions with regard to obstructions.

*Is there any say on amenity value?*

Not as such. An improvement to surface may be needed to ensure access can continue.

*What is liaison like with the roads team?*

Public Rights of Way can raise an objection to a proposal and the roads team (Highway Development Control Officers) may defer to that advice. The Public Rights of Way team has a good relationship with the Highway Development Control Officers who may refer matters to the PROW Team. John mentioned he had worked with highways colleagues to improve surfaces for horses.

The Chair thanked John and the warden team for all their work. It emphasised the value of goodwill and working with people.

## **14. Responses to consultations and any feedback**

### **14.1 Highway Code**

The DCAF response was noted and approved. The Department of Transport

# Agenda Item 4

reply made no reference to carriage driving but it was agreed there was no point in a further response.

## **14.2 Hemyock Common - Review of Direction to restrict access**

The DCAF response was noted and approved. Natural England had subsequently determined to continue the direction and members noted the decision papers.

## **14.3 Fire Beacon Hill**

The DCAF response was noted and approved. The RSPB had just produced a summary report following the initial feedback and further consultation on proposals would take place.

## **14.4 Marine Management Organisation SW Plan**

The DCAF response was noted and approved.

## **14.5 East Devon Forest Plan**

The DCAF response was noted and approved.

## **14.6 The Cranbrook Plan 2013-2031 - Development Plan Document**

The DCAF response was noted and approved.

## **15. Current consultations**

There were no current consultations.

## **16. Work Plan 2019-2020**

Members were content with the draft Work Plan. It was agreed to add a working group on trails to report by December. The presentation at the September meeting could be related to this theme. The Exe Estuary Trail working group convened by DCC would meet during May/June.

## **17. Annual Report**

Members were content with the Annual Report. The Chair had drafted her comments. Photographs and visual content would be added to the final version before publication. Gordon Guest commented that he was now working proactively with a wheelchair group on Dartmoor, through links with the DCAF.

*Action: Forum Officer*

## **18. Training day**

Following the discussion on multi-use trails and issues associated with increased use and lack of facilities, it was agreed the Training Day could usefully focus on these matters. Wednesday, 19 June was suggested and agreed with visits to the Granite Way.

*Action: Forum Officer to finalise programme in discussion with the Chair and Public Rights of Way team.*

## **19. Any other business**

Gordon Guest said that following his meeting with Simon Bates, (Green Infrastructure Project Manager, East Devon District Council), additional money had been secured for improved drop kerbs at Killerton/Broadclyst.

## **20. Date of next meeting**

The next meeting will be on Thursday, 19 September 2019.

# Agenda Item 4

HIW/19/54

Public Rights of Way Committee  
4 July 2019

## **Definitive Map Review Parish of Plymtree**

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 Plymtree and no modifications are required.

### **1. Introduction**

The report examines the Definitive Map Review in the parish of Plymtree in East Devon District.

### **2. Background**

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 6 footpaths, which were recorded on the Definitive Map and Statement with a relevant date of 5 November 1957.

The reviews of the Definitive Map, under s. 33 of the 1949 Act, which commenced in the 1970s but were never completed, produced no proposals for change to the map in the parish of Plymtree at that time.

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:

Highways Act 1959, Magistrates' Court, Petty Sessional Division of Cullompton, s.108  
Stopping-up Order 1968 (Footpath No. 10, Plymtree);  
Devon County Council (Footpath No. 8, Plymtree and Footpath No. 8, Clyst Hydon) Public  
Path Diversion Order 1998

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

The current review began in October 2018 with a public meeting held in the Vestry Rooms, Plymtree, which was advertised in the parish, in the local press and online.

### **3. Proposals**

No valid proposals arising out of this or previous reviews.

# Agenda Item 5

## 4. Consultations

Public consultation for the Definitive Map Review in the parish was carried out from February - May 2019 with no proposals received for any changes to the Definitive Map. The review was advertised in the parish, in a local newspaper and on the County Council's website.

The responses were as follows:

|                                |   |            |
|--------------------------------|---|------------|
| County Councillor I Chubb      | - | no comment |
| East Devon District Council    | - | no comment |
| Plymtree Parish Council        | - | no comment |
| British Horse Society          | - | no comment |
| Devon Green Lanes Group        | - | no comment |
| Ramblers'                      | - | no comment |
| Trail Riders' Fellowship/ACU   | - | no comment |
| Country Landowners Association | - | no comment |
| National Farmers' Association  | - | no comment |
| Cycling 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 there are no proposals for modifying the Definitive Map in the parish of Plymtree. 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 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 5

Meg Booth  
Chief Officer for Highways, Infrastructure Development and Waste

## **Electoral Division: Whimble & Blackdown**

Local Government Act 1972: List of Background Papers

Contact for enquiries: Thomas Green

Room No: ABG Lucombe House

Tel No: 01392 383000

| Background Paper    | Date         | File Ref.              |
|---------------------|--------------|------------------------|
| Correspondence file | 2017 to date | DMR/EastDevon/Plymtree |

tg290519pra  
sc/cr/DRM Plymtree  
02 210619



HIW/19/55

Public Rights of Way Committee  
4 March 2019

## **Definitive Map Review 2017- 2019 Parish of Lympstone (Part 2)**

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

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

**Recommendation: It is recommended that:**

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

- (i) adding to them a bridleway between points C and D and upgrading to bridleway part of Footpath No.1, Lympstone between points D-E-F-G as shown on drawing number HIW/PROW/19/02; and
- (ii) adding to them a bridleway between points D-H-G, as shown on drawing number HIW/PROW/19/02.

### **1. Introduction**

This report examines the last proposal from the three that arose from the Definitive Map Review in the Parish of Lympstone, in East Devon District.

### **2. Background**

The Background for the Definitive Map Review in the parish of Lympstone was set out in Committee report HIW/19/17 of 4 March 2019.

### **3. Proposal 2**

Please refer to the appendix to this report.

### **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                      |

# Agenda Item 6

## 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 2.

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.

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 |

## **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.

# Agenda Item 6

- 1 **Proposal 2:** Proposed addition of a bridleway along a section of unrecorded lane, between points C-D from Longbrook Lane to Footpath No.1, and upgrade a section of Footpath No.1, Lympstone to a bridleway from point D via E-F-G, and adding a bridleway along Watery Lane between points D-H-G, as shown on drawing number HIW/PROW/19/02.

**Recommendation:** It is recommended that a Modification Order be made 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, Lympstone between points D-E-F-G, and by adding a bridleway along Watery Lane between points D-H-G, as shown on drawing number HIW/PROW/19/02.

## 1.1 Background

- 1.1.1 The proposal was put forward by members of the public after a kissing gate was installed near Point E in September 2017, which coincided with Parish Review starting in Lympstone. Consideration of this proposal was deferred by the Public Right of Way Committee on 4 March 2019, to allow further clarification of points raised in public participation.

## 1.2 Description of the Route

- 1.2.1 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 bridleway then follows the line of FP No. 1, up the track and over the Mill leat's overflow culvert at point E, which is known locally as the waterfall, to a metal kissing gate at point E. Then in a generally north-westerly direction along a rough stone and mud track above the Wotton Brook. It skirts a large shed at point F then passes across the ford to join the minor county road, Stone Lane, at point G. In the report this route is referred to as the Upper route.
- 1.2.2 To give the background, Footpath No. 1 was diverted from its original, cross field, line in 1962, to its current route above the Wotton Brook E-F-G.
- 1.2.3 The route of the claimed bridleway E-F-G was blocked to horse riders by the installation of a metal kissing gate at point E in mid-September 2017.
- 1.2.4 During research into Proposal 2, evidence for another route has been discovered. This route has also been used by some riders. It follows the same unrecorded lane as Proposal 2 between Longbrook Lane point C and D, then it uses the long ford in the Wotton Brook, known locally as Watery Lane, running parallel to Footpath No. 1, via point H to join Stone Lane at point G. It has a stone surface over which the stream flows. This route is used by some vehicles and horses. It is annotated Watery Lane on the plan and referred to as the Lower route and Watery Lane in the body of the report.

## 1.3 Documentary Evidence

### 1.3.1 Ordnance Survey Mapping

- 1.3.1.1 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 directly between Longbrook Lane, point C, via point H, to Stone Lane, point G; the Lower route, Watery Lane. The small cross field paths are not shown on this scale of mapping therefore the Upper route is not shown.

1.3.1.2 1906 1 to 6" OS map again clearly shows the lane from Longbrook Lane, point C, to Stone Lane point G, via Watery Lane point H. The Wotton Brook between points D-G appears to be less prominent on the map than Watery Lane. On this map the Mill leat appears to take most of the water out of the Wotton Brook further up the stream, discharging it back into the brook to the west of point G. leaving the lane almost dry.

1.3.1.3 All later editions of OS mapping have shown the route in the same way as above. Until the current mapping on which the committee plan is based. This mapping lacks the detail of the older maps, the colouring of the stream sharing the line of Watery Lane D-H-G. The mill leat is hardly visible, the leat is no longer the dominant water feature. The mill is no longer a working mill and it does not draw much water through its leat. The brook appears undefined along its whole length flowing over the lane, hence the local name of Watery Lane.

### **1.3.2 Tithe Map 1841**

1.3.2.1 The Tithe Map clearly shows a lane that continues from Longbrook Lane, point C, to point D, and Watery Lane is shown as the link between points D-H-G. This lane is coloured in the same way as the other roads in the parish.

1.3.2.2 On the Tithe Map the original cross-field line of Footpath No. 1 is shown as a dashed line leading directly to the mill.

1.3.2.3 The Tithe Map does not show Wotton Brook between points D-H-G, it shows a lane, the brook is shown reappearing west of point G. The Mill leat is more strongly coloured than the Wotton Brook, depicting the leat taking more water than the brook.

1.3.2.4 The Tithe Map was drawn in 1841 when The Mill was a working watermill, using a water wheel to drive the machinery. The Mill would have needed a constant flow of water to refill the mill pond, to keep the wheel turning.

### **1.3.3 Sales Particulars from 1935,**

1.3.3.1 In 1935 the Mill was sold with the surrounding fields, (the original line of FP No.1 was shown on the sale plan). The Mill and land were sold with the maintenance responsibility for 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. Watery Lane from Longbrook Lane C-D-H-G was not included in this sale.

### **1.3.4 Highway Handover Book (1930's)**

1.3.4.1 The line of C-D-H-G is not shown as having been considered highway maintainable at public expense at this time.

### **1.3.5 Definitive Map and Statement 1950s**

1.3.5.1 The inclusion of a public right of way on the Definitive Map and Statement is conclusive evidence of its existence as shown. However, this does not preclude

# Agenda Item 6

that other rights, which are not currently recorded, may exist. The fact that a way is shown as a footpath does not therefore prevent presumption of dedication as a bridleway arising from later use. Thus, the definitive map is conclusive until proved otherwise.

- 1.3.5.2 Footpath No. 1, Lypstone was put forward for inclusion on the Definitive Map and Statement by the parish council, following their survey of paths in the parish, in September 1950.
- 1.3.5.3 It was recorded on the Definitive Map and Statement, having been described by the Devon Rights of Way Advisory Committee, in June 1953.
- 1.3.5.4 The Definitive Statement for Footpath No. 1, Lypstone describes the route as starting *80 yds west of the junction of the Unclassified County Road, Strawberry Hill, with County Road 224, Station Road and proceeds along the Private Accommodation Road (not repairable by the inhabitants at large) turning south eastwards past its junction with Paths Nos. 2 and 3 thence eastwards along the private Accommodation Road by the Corn Mill and south eastwards along the boundary of field Ord. No.145 over another Private Accommodation Road (not repairable by the inhabitants at large) turning northwards across field Ord. No.137 over footbridge and along a Private Accommodation Road to join County Road 224, Mill Lane. (Stiles, Kissing gates, steps and footbridge on route).*
- 1.3.5.5 In 1962 St Thomas Rural District Council made a Diversion Order for part of Footpath No. 1, realigning the mid-section of the path that crossed OS field number 4802, Mill Meadow to its current line from the Mill to Stone Lane and then along the north eastern boundary of the same field (the proposal route).

## **1.3.6 Old Photograph**

- 1.3.6.1 An old photograph, titled the Water Fall, has been produced. From its style and the collection, circa early 1900s. The photograph has been taken from a point approximating to point D, with the cameraman looking north-westwards along Watery Lane. This photo shows a small wooden pedestrian gate at the top of the slope over the overflow culvert, (the waterfall being dry in this photograph). Watery Lane, the Lower route, has a stoned surface with wheel tracks along the lane. The photograph shows Watery Lane as a dry track, with a few pot holes with puddles and a little trickle of water.

## **1.4 User Evidence**

- 1.4.1 In September 2017 a kissing gate, which had been supplied some time before by the Public Right of Way Warden, was erected by Mr Tyrrell, a neighbouring landowner, on Footpath No. 1 at point E on the Upper route. This gate has prevented horses, people with pushchairs, and bicycles accessing this section of the path since that time.
- 1.4.2 In order to clarify points raised in the evidence, some users have been interviewed. During interviewing it has become clear that riders have ridden the Upper route between points C-D-E-F-G, with a few riders using the Lower route known locally as Watery Lane C-D-H-G. Since the gate (as mentioned above) was erected more riders have used the Lower route through necessity rather than by choice.



# Agenda Item 6

- 1.4.3 Eighteen riders have given evidence of use on horseback from 1964 to September 2017. The evidence forms, interview forms and letters are included in full in the backing papers and the evidence is summarised in alphabetical order as follows:
- 1.4.4 Mrs Beer, JP, has ridden the Upper route (C-D-E-F-G) in both directions from Longbrook Lane and from Stone Lane since 1970, about once a week or 50 times a year. When she was between the age of 11 and 14 she rode a shared pony. Since she was 14, she had her own ponies and horses and exercised horses for other people. She believed it was a public bridleway because of historical use, custom and practice. She said, a few years ago it was diverted for a while when a tree fell across the route during the storms. She had never been prevented from riding it until the metal kissing gate was erected. She had never asked or been given permission to use the route as a bridleway. She used to speak to Major Goddard, the landowner, if she saw him, when she was riding the route. He never challenged her or said it was not a bridleway. As a young girl she clearly remembers falling off a pony on the route. In the late 1970's she recalls that the Bainbridge's kept a horse in the mill field and the field was fenced off from the route. The route has never been gated, to her knowledge. The only gate was into the pony paddock, but this was not on the route of the claimed bridleway. She states that she has never been stopped or challenged. She states that there were never any notices on the route.
- 1.4.4 Mrs Brister used the Upper route from 1960 on foot and bicycle and started to ride the Upper route on her pony in 1968 once a week until 1972. She often rode it with a friend. Since 1972 she had ridden it less. She rode the route without the hindrance of a gate. She says that the metal kissing gate has blocked access to pushchairs, horses and bikes. There were no gates, stiles, or notices on the route. She saw and spoke to Major Goddard and she was never stopped, not even when on her pony. She comments that it provided a safe traffic free route avoiding the narrow lanes to exercise ponies.
- 1.4.5 Mr Brister has used the Upper route on foot and cycle since 1953 to 2017. He states that a large amount of people used it. As a teenager in the late 1960s he used to cycle along the route as a short cut from Stone Lane to Longbrook Lane when he was delivering meat.
- 1.4.6 Ms Connal has ridden the Upper route, once a week between 1980 and 1984, returning to the area and riding the Upper route again between 2014 and 2017 once a week, until the installation of the metal kissing gate. She rode it in both directions. She has ridden in a group of up to four horses. Until the new gate she states there has never been any gates on the route. The only gate was into the paddock and there has always been a fence of sorts, between the paddock and the route. Since the installation of the new kissing gate she has ridden the Lower route.
- 1.4.7 Ms Connal has given an account of two incidents, the full details of which are available in the backing papers. On 3<sup>rd</sup> October 2016, she had ridden the route and came across a truck in the ford, at point G, with a man in the stream. He shouted at her, got into his truck and drove into the works yard on Stone Lane, at that point she realised it was Mr Tyrell. She continued on her ride up Stone Lane.
- 1.4.8 Two weeks later, in October 2016, Ms Connal reports riding the Upper route. She says she had crossed the ford at point G and was heading up Stone Lane, a

# Agenda Item 6

county road, when Mr Tyrrell shouted and said she wasn't allowed to use the path, that it was his land and horses were not allowed. She said she asked if he could prove the land was his, but he continued to shout, so she removed herself and the horse from the situation and continued up Stone Lane. She records this incident took place on Stone Lane a county road, and that it was witnessed by a dog walker. Ms Connal also states that she reported the incident to the Police.

- 1.4.10 Mrs Dennis has used the Upper route on horseback from 1964 to 1970 as a young person, then since 2000 when she moved back to the area, about 24 times a year without hindrance. She has ridden with other riders. She says it links with the only other bridleway in the parish. She remembers Major Goddard working in his shed and they exchanged greeting as she passed, he never told her it was not a bridleway or stopped her. Sometimes there were cattle in the mill paddock, which was fenced from the bridleway. She states that there were never any gates or notices on the route, which she says was muddy at times.
- 1.4.11 Mrs Harrison has ridden a horse and bicycle and walked the Upper route since 1977. She has had ridden the Upper route about twice a week as it was her standard ride. She only used the route Lower stream route on odd occasions before the new kissing gate was installed. She gives more detail in an email and interview. She recalls the week this kissing gate was installed because she made a Facebook post about on 13<sup>th</sup> September 2017. She has said there were no notices gates or stiles. She was very sure that there were no gates as she remembers pushing her pushchair loaded up with horse hay each day from her home to her stable, (which was in the field that is now owned by Mr Tyrrell between points H-G containing his works yard). She used to regularly chat with Major Goddard when he was working on his boats, he used to chat and pat her pony, he never told her it was not a bridleway or asked her not to ride. She said the stream/ford between D-H-G has been used by horses, but only on the odd occasion in the summer when the water is low and its safe enough and the hedges overgrow and make Watery Lane quite difficult. She has enclosed a photograph of her son on their horse when riding the route in 1996.
- 1.4.12 Mrs Johnson has ridden and walked the Upper route since 1986 about 30 times a year. There were no stiles, gates or notices on the route until the metal kissing gate was installed.
- 1.4.13 Ms Lee-Smith has ridden the upper route frequently from 1970 until the kissing gate was installed in September 2017. It has always been a bridleway used by many horse riders. She states that there have never been any gates, notices or stiles and she has not been stopped from using the route.
- 1.4.14 Mr Love rode the Upper route on a horse from 1977 and in recent years has also walked the route which he continues to do so most days. He was never stopped or challenged when on a horse.
- 1.4.15 Mr McLennan-Wiggin, started to use the Upper route in 1986, he has since walked, cycled and ridden it on average once a week. He says the route has been used without restriction for many years, the only gate has appeared in the last 18 months. He adds "As a family we have used the path in question on foot, cycle and equestrian over many years and know other horse owners who have also used the path from either direction."
- 1.4.16 Mrs Norton has walked the Upper route since she was a small child and has ridden it since 1986 when she started to ride. She rode twice a week up to

2000, at which point she started to train for endurance riding, so between 2000 and 2011 she rode it 5 times a week. Since 2011 has gone back to riding it twice a week, until the kissing gate in September 2017. She now has to ride the Lower route in the stream. She says that there were never any signs and that she used to stop and talk to Mr Goddard quite frequently as he was often working on boats in his shed. She reports that he never told her not to ride the route, and that she has not been challenged by anyone else. On several occasions when riding, she says she met Mrs Goddard driving in Stone Lane and she pulled the horse in the gateway of the orchard field, that is now the entrance to Mr Tyrrells yard, smiled and waved and was acknowledged by Mrs Goddard. She says Mr Tyrrell never stopped or turned her away. She adds that the Lower route is far too dangerous (to ride) in wet weather as the stream runs fast.

1.4.17 Mrs Pearce has ridden and walked the Upper route, and ridden the Lower route, since 1996, two to three times a week, to 2017. Her use being split about 50% of her journeys on the upper route and 50% on the lower route, depending on the weather and who she was with. She has always kept her horses in Lympstone parish. 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". Since the metal kissing gate was installed in September 2017, she has had to use the Lower route all the time. She has ridden the route with other riders and currently her granddaughter. She says there has never been any gate across the path; the only gate was into the paddock. The path has never been blocked, nor have there been any notices to say it was not a bridleway, only an electric fence warning notice on the paddock fence. She reports that there have been no obstructions on the route, except an accidental obstruction when a tree fell onto the route in the storms. She saw Mr Tyrrell clearing this, she has seen him on other occasions as well and says she has never been challenged by him or anyone else. She remembers in the early days of using the route, Captain Smyth of Sowden Farm riding through the mill route every morning to buy his paper in the village.

1.4.18 Mrs Percy wrote, completed a user evidence form and has been interviewed. She said that since 2006 she has ridden along the lane between points C to D and thought of it as part of the road network. Then she used the Lower route along the brook, between point D-H-G, sometimes 6 times a year, some years less as her horse is now further from the village and the roads are difficult. She had not ridden on the Upper path. She has ridden with other riders. She is not related to any other riders. She had not been stopped or challenged before the informal consultation notices went up in August 2018, when she and a friend were riding together. She says they were about to ride down the route from Longbrook Lane point D, when a car stopped, and an aggressive man started shouting at her, about horse riders. She says he claimed to be the owner and as he was so aggressive, they turned back. Previously when riding the route, she has spoken to people and never been stopped or challenged. She added it is good to take horses through the stream and it was a bit of off-road riding, she used it mainly on Sundays when the roads were quieter.

1.4.19 Mrs Robinson has ridden the Upper route since 1996 until the gate was installed September 2017 about twice a week and has walked and cycled the route as a child. She reports that there have never been any other gates, stiles or notices.

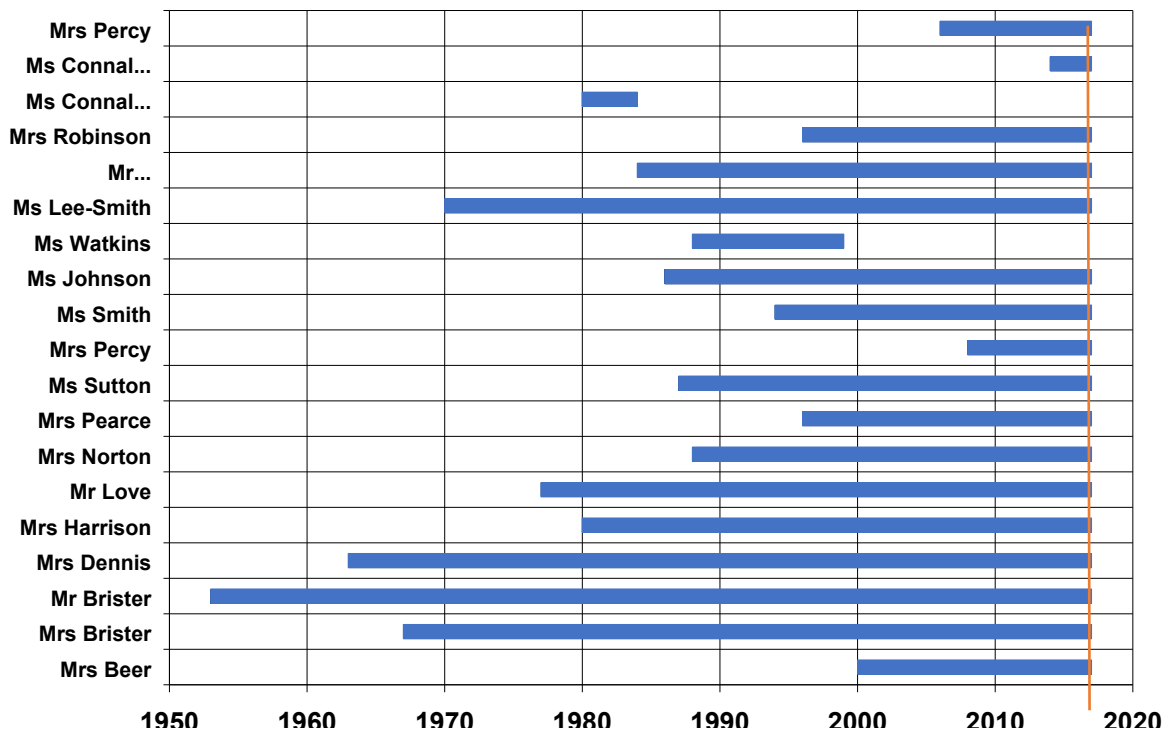
# Agenda Item 6

- 1.4.20 Miss Smith has always lived in Lymphstone and has ridden the Upper route since 1994 until the new kissing gate was installed in Sept 2017. She rode it most weeks as part of a circular ride in either direction. She says she often saw the owner working in his shed and he never told her she should not be riding the route and used to say hello as rode she passed. As a child she also walked and cycled along the route. However, her use since 1994 has been on a horse. She recalls that a tree come down a few years ago blocking the route for a short while but it was cleared away quite quickly. She was never challenged or stopped. She is not related to any other riders in the area. She adds, 'the installation of the gate came as a surprise.'
- 1.4.21 Ms Sutton has written the following statement: "Since 1987 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 new metal gate. Lymphstone 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". She clarifies that there was always a rather rickety fence between the paddock and the path, and this fence had a gate in it to access the paddock. She states that there has never been any sort of gate on the path.
- 1.4.22 When interviewed, Ms Sutton said she rode the Upper route once or twice a week, and since the kissing gate about once a month in on the Lower route in the brook. She has ridden the route while accompanying young riders and says, 'there was never anything to make me think I could not use the route on a horse.' She has not been challenged by Mr Tyrrell but has seen him. She did not know Major Goddard. In the last 5 years she has ridden the Lower route in the brook more than the Upper route, as she has a smaller horse who doesn't mind the water, but she does not ride it in bad weather. Previously her large horse was not keen on water, so she always used the Upper path more. If she was walking beside young riders, she said they would go through the stream on the Lower route, while she walked the Upper route.
- 1.4.23 Mrs Zervou has used the Upper route since 2016 when she moved her horse into a yard in the parish. She rode there 3 to 4 time a week, often meeting Ms Connal. She has ridden the Lower route through the brook since the kissing gate was installed. She was shown the route by a local rider when she first came to the yard. She says there not a gate until the kissing gate, nor any signs or notices. She met Mr Tyrrell on Stone Lane in Feb/March 2017 when she was long reigning her pony (walking behind a pony in training). She says Mr Tyrrell was washing a tractor in the stream. She asked him if she could pass, but he shouted at her and said she could not come through as it was his road, and how would she like it if he rode past her house. Because she did not want to frighten her young pony, she turned around in Stone lane and retraced her steps. She has used the Lower route since the kissing gate was erected.
- 1.4.24 Ms Watkins has ridden the Upper route between 1988 and 1999 over 100 times per year, to exercise her horse on a circular ride, she says there were no gates, sites or signs on the route and the Upper route was used by lots of people on foot and horse. Sometimes she rode through the Lower route.
- 1.4.25 Some walkers have filled in User Evidence Forms (UEF). However, as they had walked the Upper route which is currently recorded as a footpath, their evidence

does not add anything to the use of the route as a bridleway and therefore this evidence is not included. The walkers did not use the Lower route.

- 1.4.26 Mrs Letcher gave anecdotal evidence for horse use, in her UEF as she had seen riders using the brook (the Lower route) since 2000 when she was walking the Upper route.

## 1.5 User Evidence Chart



## 1.6 Landowner Evidence

- 1.6.1 Landowners and adjoining landowners were consulted as part of the informal consultation process and notices also posted on site. Site visits and interviews have been held with Mrs Goddard who was accompanied by one of her sons and her daughter, and Mr Tyrrell, who was accompanied by Mr Atkins, a parish councillor.
- 1.6.2 During the Rights of Way Committee meeting in March 2019, Mr Goddard speaking on behalf of his mother and family, raised some further points. Following this meeting a letter was sent to Mrs Goddard asking for clarification of these points. Those being, the vandalism of a gate and its position, and the position and content of any notices and when they were removed. A letter also was sent to Mr Tyrrell asking for details of the incident with Ms Connal that was referred to during committee, and the actions he had taken to stop horse riders on his property.
- 1.6.3 In response to these questions, Mrs Goddard and four other members of the Goddard family, an employee of the Goddards and their tenant have all written. Mr Tyrrell has also written, as have some others. Their comments and objections are summarised below. All the correspondence can be seen in full the backing papers.

# Agenda Item 6

- 1.6.4 For clarification Mrs Goddard owns the land to the southwest of points E-F-G. The Mill and the surrounding fields were bought by Mrs Goddard and her late husband, Major Goddard in 1963.
- 1.6.5 Prior to the March 2019 committee, Mrs Goddard completed a Landowner Evidence Form, and a detailed statement. She says the claimed route is just a footpath and used daily by the public as such.
- 1.6.6 Mrs Goddard says that before she and her husband bought the Mill in 1963 there was a gate at point E by the Waterfall/overflow. She attaches a photo of a cutting from a book showing what appears to be a wooden pedestrian 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.
- 1.6.7 Mrs Goddard stated that, before the 1980s, the footpath was not separated from the field by a fence, and a farmer used to rent the Goddards' 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 1980s, the Goddards put a sign on the gate, that said 'please close the gate', then it fell into disuse and remained open. Later the Goddards fenced the field from the path to contain the dog walkers to prevent dog fouling the field.
- 1.6.8 The Goddards 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."
- 1.6.9 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."
- 1.6.10 Mrs Goddard, her son and daughter are strongly opposed to the route C-D-E-F-G being recorded as a bridleway.
- 1.6.11 Post the March 2019 committee, Mrs Goddard writes in answer to the questions about the gates and notices saying; "I remember boys from the village swinging on the metal gate by the waterfall and in doing so breaking it, in 2006. There were other occasions both before and when the gate was damaged. My husband complained about these incidents and on at least one occasion, Max or one of my sons were asked to assist with repairs."
- 1.6.12 She goes on to say "Before the kissing gate by the waterfall fell into disrepair, I don't recall there being any signs. I imagine it wasn't necessarily as only those on foot could gain access. After the wooden gate was put in, there was a sign right next to it which pointed in the direction of the footpath." Later her husband installed the metal gate, moving its location so it could be seen from the shed, to

act as a deterrent to those who damaged the wooden gate. This metal gate had a sign on it saying, 'Please shut the gate'. John Orchard kept cattle and horses in the field by the shed and in front of the Mill for many years. To stop the cattle from straying he kept the gate closed and fenced the route from the path, he put up notices to ask walkers to keep to the path. Mrs Lynn Moxley kept her horses in the field by the shed, she also put signs up asking walkers to keep to the footpath and not to feed them.

- 1.6.13 Mrs Goddard also said "My husband used to spend almost every day of the week from 1997, the year in which Exeter Maritime Museum closed, until a year or so before his death in 2015, in his shed by the ford. This was where he looked after his boats and turned bowls on the lathe. I recall him commenting on how difficult it was unless he was actually outside the shed, to stop bicycles and horses from using the footpath. Part of the problem was his poor hearing for which he had a disability allowance from the Army." She says "There is a history of vandalism and abuse up and down this footpath which goes on for more than 20 years. Even now, with the new kissing gate we have seen bicycle tyre marks on the footpath coming down from the waterfall. Even when there is someone there at all times the occasional cyclist is going to use it."
- 1.6.14 Post March 2019 committee Mr S Goddard writes, in answer to the questions about vandalising of the gate and the signs. In 2005 he went to stay with his parents for 3 months before starting another job. During that time, he worked on the property. He says "one of my tasks was to repair the gate that stood at the top of the hill by the waterfall, and to replace the sign fixed to it. The gate was of metal, its predecessor being of wood. The problem was one of the uprights had become loose, which meant digging a hole around it. We then used some concrete to secure it. The sign was made of wood and hung from the gate. I think it said something like 'Please shut the gate'. It wasn't very secure, but the message was clear. The metal gate and wooden one that preceded it, so replacing the kissing gate, were chosen to allow a vehicle through. The great drawback was they were always being left open in spite of the signs. My father spent a lot of time in his shed... occasionally, he used to complain about the difficulty of catching bicyclists or horseback riders, as he called them, using the footpath. It didn't happen very often but if he was going to catch them on his land, he had less than a minute to do so. That assumed he could hear them, which would have been difficult if he was using machinery."
- 1.6.15 "The saga of the gates, the signs and the efforts to stop the occasional bicyclist or rider was a long-standing issue at home, which was never really resolved. Unless you were on that part of the footpath, there was little chance of catching them."
- 1.6.16 In a recent email Mr S Goddard adds some additional points saying; "Long before my mother bought The Mill in 1963 and ever since then, Watton Brook from between points D-H-G has been used by horse riders, farm animals and even vehicles. The attached photo, taken approximately from Longbrook Lane shows this very clearly. The photo is titled Watery Lane, and this stretch of the brook is still referred to by the same name today and continues to be used in the same way. The fact that it called Watery Lane confirms its use as a highway."
- 1.6.17 He enclosed a second photo of a horse going up Watton Brook/Watery Lane taken in March 2019. He says that this attests to the evidence that DCC already has for use of this route on horseback and with other animals. He says to regularise the use of Watery Lane by animals and horse riders, it might be a

# Agenda Item 6

good idea to signpost it, either as an unmetalled road or as a bridleway from point C-D-H-G.

- 1.6.18 He says “As we own the land to the south of Watery Lane/Wotton Brook, we have cut back the foliage to make it easier for those on horseback to continue using it. If Watery Lane can be signposted in this way, then the chances of riders and walker with dogs and children meeting on FP No.1 would be greatly minimised.” He goes on to say the Mill Leat overflow culvert, that FP No.1, runs across is not very strong. They family have already had to reinforce the banks to prevent a breach and were it to become a bridleway, use with heavy horses would run the risk of weakening it. If a breach was to occur it would wash away the footpath, cut off the supply of water to the mill and the cost of rectification could run into thousands of pounds. He concludes the historic route used by horses was Watery Lane, and they still use it today, with a parallel and separate is the route of Footpath No.1 and they should be signed posted accordingly.
- 1.6.19 Post March 2019, Miss T Goddard writes, “In the last 20 years I can remember asking people, a couple and numerous children to get off their bikes when riding down the footpath from the waterfall. I once saw father and son on their bikes and when I asked them to get off their bikes the father was abusive.”
- 1.6.20 She goes on to say, “I also remember my father repairing the gate by the waterfall and replacing signs that had disappeared. I come and go from the mill every day and I must say that apart from the above, I have very seldom seen either horses using Watery Lane or bikes use the footpath and yet we are being led to believe by the evidence we have seen that this is a regular occurrence.”
- 1.6.21 Post March 2019, Mr T Goddard wrote he lives abroad returning to his parents once or twice a year for several weeks in succession. He says, “During these visits it is customary for me to assist with various jobs involving fields, the stream the driveway and boundaries.” He says the area around the waterfall and sluice gate were particularly prone to vandalism. “My father who worked in the green shed adjacent to the path often had to put up with abuse from young teenaged boys on bicycles and on occasion motorcycle scramblers, using the footpath and the field more as a jump or ramp, with complete disregard for others. Many walkers would stop and chat and draw attention to new incidents or ask if he could discourage such behaviour.”
- 1.6.22 His father would ask the offending parties to desist and would be ignored and so he put in the gate and a sign at the top of the path by the waterfall in order to stop the damaging ‘traffic’ that was churning up the area. He remembers having to replace a lost padlock on the wooden gate on one occasion and to repair the wire fencing when the stands were cut.
- 1.6.23 He says “It has been a constant source of concern and cost to my parents a) because of petty vandalism and b) because they feel responsible to the people that use the path for simple recreational purposes who are affected by the consequences of the vandalism and misuse. To open this path up to use by horses would be asking for trouble. The horses would turn the gradients either side of the waterfall into a treacherous muddy mess in the winter and it simply would become impassable for all but the very able bodied and horse riders.”
- 1.6.24 Post March 2019, Mr A Goddard writes to say “I have been visiting my parents regularly over the last 25 years in that time I have never seen horses using the footpath in question. There were horses kept in small field alongside the



# Agenda Item 6

footpath to graze the grass, but this is all that I remember. My recollection is that over the years, there have been a variety of gates either side of the bridge over the leat overflow. I recall a wooden gate early on - perhaps overlapping with the earlier with the early years of the 1997 to 2017 period, and then in the middle years, a metal gate.”

1.6.25 He goes on to say “My father commented often on the people and traffic up and down the path, he was friendly with a number of regular walkers but was willing to challenge horse riders as he was concerned about the damage they did to the path and knew they had no right of way. I remember seeing notices on the side of the green shed and hanging on the fence around the field saying, ‘Footpath only’.”

1.6.26 And adds “As my parents have aged it has become more difficult for them to police the use of the footpath and the tendency has been for notices to be removed and vandalised. At their age it is unreasonable to expect them to be as vigilant as they were and to make changes now would seem to be taking advantage of them as at their age. Given that the footpath has, to my knowledge, never been maintained by the Council, and a bridlepath on such a steep slope would require much more maintenance if it were not to become impassable as a footpath, I cannot see that it is tenable to make what is already dangerous footpath and even more dangerous bridlepath.”

1.6.27 Post March 2019, Mr Meadows has written saying, “I have been Mrs Goddard’s gardener for 22 years. I remember when I first started there were signs saying no horse riding, I can’t remember when they disappeared. They weren’t replaced because Major Goddard use to keep the peace with his workshop been near the footpath. The Major has now deceased and no-one is keeping an eye on the footpath. I have noticed there are more mountain bikers coming through and have been causing a hazard to dog walkers and families with children. This is why you need a swing gate. There is still access for horse riders and mountain bikes down the brook.”

1.6.28 Post March 2019, Mr Orchard has written to Mrs Goddard and she has forwarded his letter to be included. He says; “I can confirm that I grazed your fields with cattle at least between 1996 and 2014. It may have been longer, but I have not found my earlier animal movement book. During that period, I used to park my car at the junction of Longbrook Lane with Stone Lane and climb the steep bank to gain access to the footpath through your field. This would have been done in daily in order to check the cattle.”

1.6.29 He adds, “During that period, I have never seen any horse riders attempt to use the footpath, rather than Stone Lane below. I recall riders hesitating at the ford, questioning whether the bridleway continued along the stretch of the Stone Way below the footpath, over which the Wotton Brook flowed. I accept that it may be unusual for a bridleway to continue along the river bed, but I imagine that it would be easier for a horse to get its feet wet than to make the horse climb and descend the steep bank at the Longbrook Lane end of Stone Lane.”

1.6.30 Post March 2019, Mr J Avery, who owns the fields to the northwest of the Goddards’ land has written saying “I own land in Lympstone, next to the footpath (For reference the land he owns is next to FP No. 2). The path that runs across the field in front of the Mill and then goes past a boatshed by the ford and up to the waterfall by the old mill pond. I know because I’ve walked the path for more than 20 years. I don’t know how many times I have told cyclists not to use this

# Agenda Item 6

footpath. When I see them I always tell them this is a footpath and they should stop using it. Some of them are polite and some get angry, but I don't care. I'm so fed up with them breaking the law and no one doing anything serious to stop them.”

- 1.6.31 He also says that he when Major Goddard was alive “I used to have a good moan with him when he was working in his boat shed”. He also said Major Goddard had a problem with people vandalising the gate by the waterfall, chucking the signs saying public footpath or please shut the gate into the bushes. Mr Avery doesn't think that upgrading the footpath to bridleway is a good idea, because it is narrow and could be dangerous with horses and cyclists using it as well. He does not want to encourage horses to use the footpath across the field in front of The Mill and then on past his property.
- 1.6.32 Mr & Mrs Tyrrell, own two fields, one that bounds the route to the east of points C-D and separate field north east of points H-G, that contains his workshop and works yard.
- 1.6.33 In Mr Tyrrell's correspondence prior to the March 2019 committee he said; “I ran a very successful horticultural business with a store at the bottom of Stone Lane. The thought of encouraging more horses down this very narrow single track road would be a real problem with vehicles, trailers, and machinery going to and fro my store. we have monitored the horse movements (by CCTV) and have found just 5 horses have been using this route this last month. The gate that was replaced in the mill was supplied by DCC”.
- 1.6.34 He also commented that to allow horses to use the footpath would be a health and safety nightmare, commenting that children and elderly people use it as a safe off-road route.
- 1.6.35 Post 22<sup>nd</sup> March 2019 committee, Mr Tyrrell wrote a detailed letter, which is available in full the backing papers, adding to and clarifying his previous correspondence. In this he details an incident that took place between himself and Ms Connal on the 3<sup>rd</sup> October 2016. He says, “I was on the Mill side of the stream when a rider came across the ford into the Mill land and as usual, when I can, I confronted the rider and told her again that this was a footpath and not a bridle path. I have to say that I have not seen her since this incident.” He also reports that he reported the incident to the Police.
- 1.6.36 He goes on to say, that since 2003 a work colleague of his, has witnessed him telling horse riders and anyone on a bike that this is a footpath, not a cycle path or bridle path (and in many cases, he says he has received verbal abuse in return.) He uses the footpath more than once a day as he owns land bounding it.
- 1.6.37 He also says “On many occasions the signage that has been put up by Mr Goddard informing people that it is not a bridle path have been torn down almost as soon as they were erected. In fact, the footpath signage that DCC erected near Mr Goddard's store has been removed. The fencing along the FP No. 1 is always getting cut, more so in recent years making it difficult to keep animals in and dogs and horses out.”
- 1.6.38 After the March Committee Mr Edworthy wrote, saying that he has lived in Lympstone since 1962 and used to own a field on the other side of the ford. He says “I clearly recall there used to be a small gate at the top of the footpath by

the waterfall. The owner of the Mill, David Goddard, decided to try to make this route a means of escape by vehicle when the water in the stream was too high to use the ford". Mr Goddard widened the footpath and replaced the small gate with a five bar gate, even so he was still unable to get through safely with a car because of the construction of the leat and the drop down to the Watton Brook. A gate remained until it was vandalised and disappeared.

- 1.6.39 He says, "In the last 20 and more years I have told riders I met on this footpath that they were not allowed to use it for the simple reason that it is for pedestrians!" He says he has also spoken to bicycle riders and said they were not allowed and has spoken to the local council about this. He notes the lack of a footpath sign on this path.
- 1.6.40 Post the March Committee, Mr Cole has written, saying that he has walked the footpath for 27 years. "The top gate which was in place was erected for the safety of school children and the general public this gate and part of the fencing was vandalized and removed about 15 years ago and was never replaced. Six years ago, the footpath was vandalised again due to the frequent use of motorcycles then we had the arrival of the first horses turning the whole of the footpaths into a quagmire, it appeared that these people had no respect for the environment children and any public who wish to use them in safety." He says when the steel kissing gate was erected the problems dissipated and when he was using the footpath he has not encountered any horse riders, motorcyclists or cyclists.
- 1.6.41 After March 2019 committee, Mr R Harrison has written and says; "I write to express my concern about turning our footpath across the Mill field in Lymptstone into a bridleway. I find this idea most odd as the overhanging branches of many of the trees would create a hazard to any rider, be it horse or bicycle. Also, the path runs very close to the mill leat, any damage to the clay banks could cause a breach and the path would be lost. There is an adjacent path within the Wotton Brook, for riders to follow. Please have a little sympathy for us walkers and dog walkers who don't wish to see horses ruining our path."

## **1.7 Lymptstone Parish Council Comments**

- 1.7.1 Lymptstone Parish Council have sent an extract from their parish council meeting minutes, to show the discussion that took place about the proposal.
- 1.7.2 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.
- 1.7.3 Parish Councillor Atkins read a statement he had written, as follows:
- 1.7.4 "In 1940s and 50s 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

# Agenda Item 6

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 stile 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.”

## **1.8 Other consultation responses**

- 1.8.1 Sixteen 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.
- 1.8.2 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 another bridleway, believing Watery Lane, the Lower route, to already be a bridleway and others are concerned by the effect on the landowner(s).
- 1.8.3 Post the March Committee, Mr Wilson written saying he 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.
- 1.8.4 Several of the people which have written, acknowledge use by horse riders and cyclists, of both the Upper and Lower route. Saying the horse use has made the Upper route muddy, but since the installation of the kissing gate that it has become useable again for walkers.

## **1.9 Discussion**

- 1.9.1 The evidence from both users and the landowners has been given genuinely but differs in content. This evidence cannot be tested in this committee report, only presented. Should the committee decide to make any Order, and if objections were received, the evidence would be tested by an inspector at a local public inquiry, by cross examination. At which point, questions can be asked of both sides and all parties can hear the answers and ask further questions, before the inspector makes their decision based on the evidence placed before them, to confirm an Order or not.

It has been stated by the landowners that the riders in Lympstone are related to each other however this does not appear to be the case, only Mrs Beer and Mrs Brister are sisters.

### **The Upper route**

- 1.9.2 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.

- 1.9.3 Gates and interruption of use  
Gates are permitted on public rights of way for stock control purposes. The landowner and her family and employees detail a series of replacement gates, which they say were installed on the upper route near the waterfall. Mrs Goddard said the gates were damaged by village boys swinging on them and then the gates disappeared in 2006. The exact location of these has been difficult to ascertain, and it has not been clear if these were gates wholly on the line of the claimed Upper route or if they gave access to the adjacent paddock. Mr T Goddard remembers having to replace a lost padlock on a wooden gate and repair the wire fencing. Mr S Goddard and Mr Edworthy both refer to gates that could be used by vehicles.
- 1.9.4 None of the riders recall any gates on the route prior to September 2017, until the pedestrian gate was installed. The only gate they recall was into the adjacent paddock, which appears to correspond with Mr T Goddard's description above.  
If, however there was a gate, it neither prevented nor impeded use of the route by horse riders. Until the metal kissing gate was installed at point E in September 2017, and this structure had just that effect, and stopped the use of the route by horse riders.
- 1.9.5 Therefore, the action that brought the obstruction of the route to the attention of the wider population of horse riders, was the installation of the metal kissing gate at point E in September 2017. It had the effect of bring the use of the claimed upper route by horse riders into question, making the relevant 20 year period of use between 1997 and 2017.
- 1.9.6 Analysis of user evidence  
The analysis of the user evidence shows; there were 18 horse riders, of which 17 used the Upper route, (1 rider has exclusively ridden the Lower route, one rider having ridden the Lower route for 1/2 of her journeys and the one other rider has only ridden the Lower route on about a 1/4 of her journeys, the other one on occasions.)
- 1.9.7 Between 1995 and 2017, eleven riders were frequently using the Upper route, the other riders giving a spread of evidence back to the 1970s and Mrs Dennis to 1964 when she started to ride.
- 1.9.8 Many riders have commented that the Lower route was too dangerous and difficult to ride.
- 1.9.9 None of the riders have asked permission from the Goddards to use the Upper 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 Major Goddard or Mrs Goddard, sole the landowners during the relevant period. Two riders report being challenged by Mr Tyrell, one in October 2016 and the other in February 2017.
- 1.9.10 Challenge  
The evidence of Ms Connal and Mr Tyrrell, shows differing accounts of two incidents within a fortnight in October 2016, when Mr Tyrrell challenged Ms Connal when she was riding. They both acknowledge that this challenge took place, but the location and dates differ in each account. Ms Connal recording it took place on the county road, Stone Lane, near Mr Tyrrell's work yard. She records that she turned her horse and left by Stone Lane. While Mr Tyrrell's

# Agenda Item 6

account recorded the location of the challenge as across the ford and on the Mill land, neither of which are owned by Mr Tyrrell.

- 1.9.11 However, both of the people involved record this as a challenge to Ms Connal's use of the Upper route on horseback in October 2016. What has to be considered is; if this challenge was for the purpose of stopping the whole community of horse riders from using this path. The action took place between two people, other riders were not present and were not aware of the incident. No overt public action seems to have been taken to tell other riders that this route was not therefore to be used as a bridleway from that date.
- 1.9.12 The Planning Inspectorate (PINs) guidance says: For a landowner to benefit from the proviso to s31(1) there must be 'sufficient evidence' that there was no intention to dedicate. The evidence must be inconsistent with an intention to dedicate, it must be contemporaneous, and it must have been brought to the attention of those people concerned with using the way. Although s31 ss (3), (5) and (6) specify actions which will be regarded as "sufficient evidence", they are not exhaustive; s31 (2) speaks of the right being brought into question by notice "or otherwise".
- 1.9.13 The question is whether the challenge was sufficient to show lack of intention to dedicate the route by the landowners to horse riders in general, and whether it cuts into the period of 20 years use.
- 1.9.14 It does not appear that the challenge was overt and brought to the attention of other users, and it is unclear if Mr Tyrrell was acting as the landowner's agent or in his own right. Only the owner or their agent can show lack of intention to dedicate. There is no evidence to show Mr Tyrrell is the owner of either the Mill land or Stone Lane, a County Road, (the two sites at which the reported challenge took place) or that he was acting as the owner's agent. Mr Tyrrell's challenge is therefore not considered sufficient to show a lack of intention to dedicate on behalf of the landowners during the relevant period 1997 to 2017.
- 1.9.15 It does not appear that any other riders were challenged in September 2016. No one else recorded being challenged whilst using the route (Mrs Zervou was challenged on Stone Lane, the county road in February 2017). In August 2018, after the rights of way officer put up the informal consultation site notices, Mrs Percy was challenged as she read this notice.
- 1/9/16 If after hearing the evidence, an Inspector felt that the challenge of one rider by Mr Tyrrell, in September 2016, had brought the route into question, then the relevant period of use, would be between 1996 to 2016. (To recap the evidence shows that between 1995 and 2017, eleven riders were frequently using the Upper route, therefore covering this twenty year period.)
- 1.9.17 Many of the riders record that they met and spoke to Major Goddard over the years as they rode past his workshop at point F. They report he was affable and spoke to them and they passed the time of day with him. None record him challenging their use in any way. Unfortunately, this can no longer be verified as Major Goddard has died. However, the individual accounts of these meetings with the landowner over the years, by many different, unrelated, riders, gives a picture of the landowner's knowledge that the route was being used by horses, and that no direct challenge was made to that use.

# Agenda Item 6

- 1.9.18 This differs with the family interpretation of what happened. Mrs Goddard and her family, employee, and tenant, provide a different account, saying Major Goddard would and did challenge people riding the route.
- 1.9.20 The PINs guidance say; “Intention to dedicate” was considered in Godmanchester, which is the authoritative case dealing with the proviso to HA80 s31. In his leading judgement, Lord Hoffmann approved the obiter dicta of Denning LJ (as he then was) in *Fairey v Southampton County Council* [1956] who held “in order for there to be ‘sufficient evidence there was no intention’ to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large – the people who use the path...that he had no intention to dedicate”.
- 1.9.21 Lord Hoffmann held that “upon the true construction of section 31(1), ‘intention’ means what the relevant audience, namely the users of the way, would reasonably have understood the owner’s intention to be. The test is ... objective: not what the owner subjectively intended nor what particular users of the way subjectively assumed, but whether a reasonable user would have understood that the owner was intending, as Lord Blackburn put it in *Mann v Brodie* (1885), to ‘disabuse’ [him]’ of the notion that the way was a public highway”.
- 1.9.22 Notices  
For a Notice to serve as being an overt act for this purpose and successfully disabuse the public at large of the notion that the route is not a public right of way, or to tell a class of user they could not use a route. The Notice must be clearly and specifically worded to disabuse the public of their notion they can use the route. An example of such a notice might be, ‘No Public Right of Way’ or ‘Public Footpath Only. No horses and Bicycles allowed’.
- 1.9.23 The landowners presented evidence of a notice, they detailed that said; ‘Shut the gate’. This notice nearly gave an instruction to a user who had gone through the gate, rather was an explicit sign banning the use of horses on the Upper route. It is commonplace to ask people to close gates. This notice would not have would have conferred to riders, that the landowner was barring horses from the route. None of the riders have seen any notices to say the route was not a bridleway.
- 1.9.24 Section 31(6) deposit  
Mr & Mrs Goddard have not made a Section 31(6) deposit to protect their land from rights of way claims.
- 1.9.25 Other Objections  
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.

# Agenda Item 6

## 1.10 The Lower Route

- 1.10.1 In light of the user evidence it is also necessary to determine is if there is sufficient evidence to record a bridleway on the Lower route Watery Lane.
- 1.10.2 Common Law presumes that at some time in the past the landowner has 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.
- 1.10.3 On the Tithe Map the lane known as Watery Lane, the Lower route, appears coloured in the same way as other routes which are now public highways in the Parish of Lympstone. The earliest Ordnance Survey mapping of 1801, shows the route of Watery Lane as a through route in the same way as other roads in the parish. It has therefore been recorded as being in existence for at least 200 years.
- 1.10.4 The Old Photograph clearly show Watery Lane, the Lower route, free from obstruction, over growth and water with what looks to be wheel tracks along it.
- 1.10.5 In the most recent correspondence from Mr S Goddard, he appears to believe this route is an ancient highway called Watery Lane and that it should be signposted as either an unmetalled road or bridleway. The Goddards have recently had the hedges trimmed along this route to make it more available to riders.
- 1.10.6 The User Evidence shows that modern horse riders have continued used the Lower route between points D-H-G. One rider has solely used the Lower route, three other riders have occasionally used the Lower route. One of these riders had commented, she has ridden the ford route when the stream was low and safe. The use of the Lower route by riders, has not been brought into question. It seems to have been excepted by the landowners that riders continue to exercise their historical right to use the Lower route. Riders have used this route, instead of the Upper route, since the metal kissing gate was installed.
- 1.10.7 Some of the people who wrote in objection to the bridleway on the Upper route, have seen riders using the Lower route. Mr Atkins the Parish Councillor, said he thought the Lower route was the continuation of the County Road. He has used the Lower route with horse and cart and with a vehicle, but acknowledges that his daughter used the Upper route. (The Lower route is not recorded as a county road).
- 1.10.8 It would therefore appear that there is sufficient evidence that the Lower route should be recorded as at least a bridleway under common law, being an ancient highway, that at some time in the past the landowner had 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.

## 1.11 Conclusion

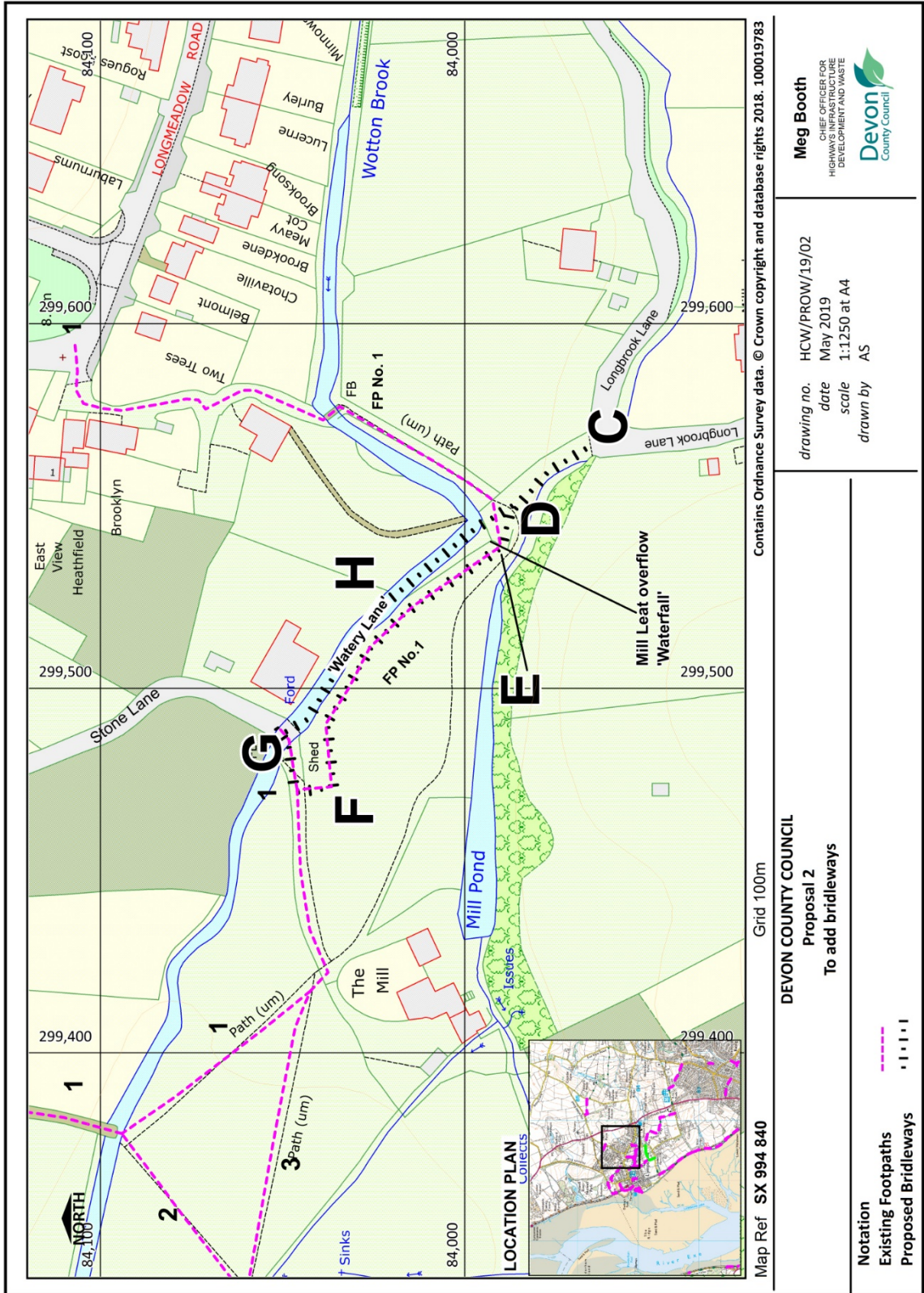
- 1.11.1 Proposal 2, while there is conflicting evidence for this route, that cannot be cross questioned in this forum, the evidence when taken as a whole, is considered sufficient to show that a bridleway subsists, or can be reasonably alleged to



subsist, on the balance of probabilities, over the Upper 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 that part of Footpath No.1 between points D-E-F-G, 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.

- 1.11.2 Evidence also suggests Watery Lane, the Lower route, appears to be an ancient highway. Accepted at common law that, at some time in the past the landowner had 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. 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 D-H-G 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



HIW/19/56

Public Rights of Way Committee  
4 July 2019

## **Definitive Map Review Parish of Wembury**

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

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

**Recommendation: It is recommended that no Modification Orders be made in respect of Proposals 1 and 2.**

### **1. Introduction**

The report examines two proposals arising from Schedule 14 Applications made prior to the Definitive Map Review for the parish of Wembury.

### **2. Background**

The original parish survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 31 footpaths and 2 bridleways, which were recorded on the Definitive Map and Statement with a relevant date of 9<sup>th</sup> March 1962.

The reviews of the Definitive Map, under s. 33 of the 1949 Act, which commenced in the 1970s, produced 5 User Evidence Forms, one of which is relevant to Proposal 1 in the parish of Wembury.

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 and agreements have been made and confirmed:

Devon County Council (Footpath No. 6 Wembury) Public Path Diversion Order 1988;  
Ministry of Defence Act 1842 Public Path Diversion Order (Footpath No.31 Wembury) HMS Cambridge 1992  
Devon County Council (Footpath No. 32 Wembury Public Path Variation Order 1993 (Renney Lentney)  
Devon County Council (Footpath Nos 36 & 37 Wembury) Definitive Map Modification Order 1993;  
Devon County Council (Footpath No 24 Wembury & Footpath No.2, Brixton) Public Path Diversion Order 1995  
Devon County Council (Footpath No.4 Wembury) Public Path Diversion 1998;  
Devon County Council (Footpath Nos 2, 3 & 6 Wembury) Public Path Extinguishment Order 2001;  
Devon County Council (Footpath No.38, Wembury) Public Path Creation Agreement 2004;  
South Hams District Council (Footpath No.24, Wembury) TCP Act 1971 S210 Diversion Order 1990;  
Devon County Council (Footpath No.39, Wembury) Public Path Creation Agreement 2007  
Legal Event Modification Orders will be made for these changes under delegated powers in due course.

# Agenda Item 7

The current review began in November 2018 with a public meeting held in Wembury War Memorial Hall, and an informal consultation on the 2 proposals, carried out in April 2019.

## 3. Proposals

Please refer to the Appendix to this report.

## 4. Consultations

Informal public consultations were carried out in April 2019 with the following comments returned:

|                                |   |  |
|--------------------------------|---|--|
| County Councillor John Hart    | - | representation as an adjacent landowner of proposal 1                |
| South Hams District Council    | - | no comment   |
| Wembury Parish Council         | - | object to proposal 1, no comment on proposal 2                       |
| British Horse Society          | - | no comment   |
| Devon Green Lanes Group        | - | no comment   |
| South West Coast Path Assoc    | - | possible conflict on proposal 1, support amenity value on proposal 2 |
| Ramblers'                      | - | no comment   |
| Trail Riders' Fellowship/ACU   | - | no comment   |
| Country Landowners Association | - | no comment   |
| National Farmers' Association  | - | no comment   |
| Cycling 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 have been taken into account in the preparation of the report.

## 7. Risk Management Considerations

No risks have been identified.

## 8. Equality, Environmental Impact and Public Health Considerations

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

## 9. Conclusion

It is recommended that no Orders be made in respect of Proposals 1 and 2.

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

Meg Booth  
Chief Officer for Highways, Infrastructure Development and Waste

### **Electoral Division: Bickleigh & Wembury**

Local Government Act 1972: List of Background Papers

Contact for enquiries: Emily Spurway

Room No: ABG Lucombe House

Tel No: 01392 383000

| Background Paper    | Date         | File Ref.   |
|---------------------|--------------|-------------|
| Correspondence file | 2018 to date | DMR/Wembury |

es310519pra  
sc/cr/DMR Wembury  
03 210619

# Agenda Item 7

## Appendix I To HIW/19/56

### 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 7

- (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 7

## **1 Proposal 1: Schedule 14 Application made by the Trail Riders Fellowship to upgrade Footpath No1. Wembury (part) to a Byway Open to All Traffic between points A – B as shown on plan HIW/PROW/19/19**

**Recommendation: It is recommended that no Modification Order be made in respect of Proposal 1**

### **1.1 Background**

- 1.1.1 Proposal 1 is an application under Schedule 14 of the Wildlife & Countryside Act 1981 to upgrade Footpath No.1, Wembury (Bovisand Lane) to a Byway Open to All Traffic (BOAT). The application was submitted by the Trail Riders Fellowship in November 2005.
- 1.1.2 This was one of a number of Schedule 14 applications made by local representatives of the Trail Riders Fellowship in 2005 prior to the NERC Act (Natural Environment & Rural Communities Act) that came into force in May 2006. The NERC Act would restrict the way that rights for motorised vehicles in the countryside could be created or recorded. A right for motor vehicles was preserved under NERC if a Schedule 14 Application had been made prior to 20th January 2005, that is compliant with the regulations for Schedule 14 applications under the Wildlife & Countryside Act 1981, or the surveying authority has made a determination of an application for a BOAT before 2 May 2006.
- 1.1.3 This application was made after 20th January 2005 and also was not fully compliant with the regulations as notice of the application had not been served on the landowners. It is not therefore a qualifying application for the specific NERC Act exemption referred to above. However, as an application had been made the proposal was included in the parish review as made, for the upgrading of a recorded footpath to a BOAT. As there are limited other exemptions in which vehicle rights may be preserved it would be likely that, subject to sufficient evidence, the route could only be upgraded to a restricted byway.
- 1.1.4 The application contained a Form A, giving notice to Devon County Council that the Trail Riders Fellowship (TRF) were applying to modify the Definitive Map and Statement. Their application was supported by the following evidence:
- 1) Finance Act 1910 Plan
  - 2) Greenwoods Map of Roads 1825
  - 3) Judgement summary of Ayre v. New Forest Highways Board 1892, which supports the contention that a road known to be public prior to 1835 would still be public today in the absence of a stopping up order.
  - 4) The statement that the route is invariably depicted on commercial maps as a minor road or track. (none were supplied with the application)
  - 5) One User Evidence form from a motorcyclist.
- 1.1.5 During the survey of rights of way to produce the definitive map in the 1950s, Bovisand Lane was in the parish of Plymstock in the Plympton St Mary Rural District. In February 1953, Bovisand Lane was recorded as Footpath No.12, Plymstock.
- 1.1.6 Due to boundary changes, Bovisand Lane is now in the parish of Wembury and part of Devon County Council's network of rights of way, recorded as Footpath No. 1, Wembury.



## 1.2 Description of the Route

- 1.2.1 Proposal 1 starts at the county road at the corner with Little Lane and continues into a hedged lane, known as Bovisand Lane. There is a gate across the top of the lane, which is openable, but walkers pass through a gap between the gate and the hedge. The route follows a hedged lane between fields in a south westerly direction with a small stream running along the southern hedge. The route runs to the north of Bovisand Lodge and across the private drive to Bovisand Lodge Holiday Park. Here, the route is a more open track and continues south westwards and there is a gate across the track. The gate is clearly marked "Footpath" and there is also a wooden way-marker post with a yellow arrow pointing along the route to the sea. This section of path is fenced to the south and hedged on the north boundary. The footpath joins Footpath No.16 Wembury, part of the South West Coast Path.

## 1.3 Documentary Evidence

### 1.3.1 Ordnance Survey and other maps

#### 1.3.1.1 The Ordnance Survey 1<sup>st</sup> Edition 25" to 1 mile, 1880 – 1890

Shows the entire length of Boveysand Lane from Little Lane to the landing stage in Bovisand Bay. The map shows the lane as gated just west of its junction with Little Lane and a line which indicates a gate or barrier across it just west of the drive to Bovisand Lodge. A boundary stone for the War Department No.32 can be seen adjacent to the barrier. The B.S. WD can be seen to continue north around Bovisand Cottage and the reservoir.

#### 1.3.1.2 The Ordnance Survey 2<sup>nd</sup> Edition 1904 - 6 25" to 1 mile

This map also shows the line of Bovisand Lane as a hedged Lane to Bovisand Lodge and then continues as a more open track to the landing stage on Bovisand Bay. The route is gated just west of its junction with Little Lane and a similar gate or barrier just west of Bovisand Lodge. The War Department boundary stones have been extended west to the coastline, B.S WD No.34.

#### 1.3.1.3 OS A Edition 1950s 2500 to 1 mile

Shows the length of Bovisand Lane, indicating a gate off its junction with Little Lane a barrier west of the drive to Bovisand Lodge and has the War Department boundary stones.

#### 1.3.1.4 Finance Act 1910

Map put forward by the Trail Riders Fellowship shows that the lane was excluded from any land holdings for its length. Unable to locate the Field Books for any further information about the land.

#### 1.3.1.5 Greenwoods Map 1825

This map shows a route from Staddiscombe through to Bovisand Lodge, with a lesser track towards the coast line.

### 1.3.2 Definitive Map and Statement

- 1.3.2.1 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.

# Agenda Item 7

1.3.2.2 The description written for the footpath in February 1953, by Plympton Rural District, describes it as “Footpath No.12, along a private accommodation road (not repairable by the inhabitants at large) known as Bovisand Lane, through iron gate and continues to landing stage at Bovisand”. The path was described as well defined, but in poor condition and obstructed at one point by timber. Walked 24<sup>th</sup> February 1953 by A.D Surcombe.

## 1.3.3 Land Registry

1.3.3.1 Bovisand Lane is not registered to any land holding until Bovisand Lodge.

1.3.3.2 Title number DN 399529 relates to the land on the north side of Bovisand Lane at its junction with Little Lane. The parcel of land belongs to Court Gates Farm, Staddiscombe. The register describes the private rights for the purchasers and their heirs for access along the lane and rights for water. The register states “Together with the full rights and liberty for the Purchasers his heirs and assigns the owners occupiers of the said premises hereinbefore described in common with all other persons who have or may inafter have the like right with or without horses cattle sheep and other animals carts and wagons and other vehicles to pass and repass over and along the private road or lane leading from its junction of the road from the village of Staddiscombe and Little Lane shewn on plan No.1 to the sea shore which private road or lane is known and hereinafter referred to as “Boveysand Lane”.....”

1.3.3.3 Title no. DN660681 indicates that the western extent of the footpath is registered to Mr J Fraser. The register also mentions that a conveyance of the land in this title and other land dated 29<sup>th</sup> September 1970 made between the Secretary of State for Defence and John Rodney Bastard contains restrictive covenants. The register is silent on those restrictions.

## 1.4 **User Evidence**

1.4.1 There are 3 User evidence forms relating to Bovisand Lane. One from the parish file from the mid 1970s although the form is not dated, one submitted from the Trail Riders as part of their application, and one from the current parish review.

1.4.2 Mrs Thompson said she has used the lane from Bovisand Beach, passed Bovisand Lodge and via Bovisand Lane to Little Lane and Hooe Lane. She does not specifically say she used the path on horseback, but says she has used it from 1955 – 1977 “innumerable” times for “hacking and therapeutic recreation”. Mrs Thompson said she used the path as part of a circular route from New Baston - Wembury, sometimes to shop or post letters or visit friends. She said she has never been stopped or told the way was not public. She adds “we have treated the way with respect, making certain gates found closed are reclosed & fastened properly”

1.4.3 The User Evidence from submitted by the Trail Riders Fellowship is from Elizabeth Millett in November 2005. She said she has used the route Bovisand Lane twice in 1999 from Bovisand to Brixton for pleasure on a motor bike. She says the gates were not locked and thought the route to be public due to its name, size of track, location and discussion with locals.

1.4.4 The third User Evidence form was submitted in response to the current parish review in Wembury. Zoe Rogers acknowledges the route as a footpath and has ridden it on horseback from 2011 to date. She says she has ridden the same route Bovisand Lane to Bovisand Beach. Mrs Rogers said there are no stiles gates or notices on the

route and wishes it to use the route officially and preserve it for future generations of horse riders.

## 1.5 Landowner Evidence

- 1.5.1 Mr P McBean has completed a landowner evidence form on behalf of the family farm, Yolland View in Down Thomas. They own land adjacent to the southern side of Bovisand Lane and have regarded it as a footpath for 20 years. They have seen people walking the route and state "This is a quiet, pretty green lane and should remain so". Mr McBean says there are gates, but they are not locked.
- 1.5.2 Mr & Mrs Hendy of Court Gates, Staddiscombe own land to the north of Bovisand Lane, adjacent to Little Lane. They say that the route is a footpath with use for horse riding and they have seen people using the route for 50 years. They have never given anyone permission to use the route and state that there is a gate at point A, but it allows access to the lane.
- 1.5.3 In a letter of the 6<sup>th</sup> May 2019, Wendy Veale writes "Myself and my Uncle are owners of Manor Farm adjoining this footpath and do not wish to see it open to motor vehicles but remain as a footpath". She adds " My family have farmed at Manor Farm since 1912 and my understanding is for at least the last one hundred years that path has solely been a footpath under the ownership of Kitley Estate. Both Manor Farm and Court Gates have rights of access for farming and indeed my late father used to access the land via tractor until such time the lane got too unsafe to travel down". Ms Veale concludes her letter stating "The footpath is a popular walking route for walkers including families and young children travelling down to the beach all of whom would be put at risk if motor vehicles were permitted. The footpath offers one of the few areas where there is no traffic, wildlife remains undisturbed and people can enjoy the quietness of the countryside".
- 1.5.4 Mr J Fraser owns the land crossed by the footpath to the west of Bovisand Lodge drive. He believes the route to be a footpath and is aware that it is used more frequently in the summer months. He has not given anyone permission to use the path, nor has he turned anyone back. He adds that to his knowledge, there have always been gates top and bottom of the route.
- 1.5.5 The landowners of Bovisand Lodge Estate have submitted evidence against the proposal to upgrade the footpath. In their letter of the 9<sup>th</sup> May 2019, the Hart Family state " It is an historic footpath and we would object for the following reasons..... The footpath is heavily used by families walking with young children and prams heading to the beach, dog walkers cyclists and even horse riders; all of whom would be put in a dangerous situation if vehicles were suddenly allowed to drive down this footpath. Horses very occasionally use the footpath, which they are not supposed to and I would mention that a horse was destroyed a number of years ago after it was seriously injured on the footpath". They add "Footpath 1 crosses 2 junctions – into our Holiday Park and a private house. There are also 2 gates along Footpath 1 to walk around. The gate at the top end of Footpath 1 is a notorious area for fly tipping. Opening up this footpath will just exacerbate this problem further down the footpath, making it more difficult for South Hams Council to clean up".
- 1.5.6 In the accompanying Landowner Evidence Form completed on the 8<sup>th</sup> May 2019, Mr Hart says that he has known the route to be a public footpath for 60 years. They have seen walkers using the path daily plus the occasional horse. They have not required people to ask for permission to use the route, however they have stopped motorcycles as and when they have seen them and told horse rider and motorcyclists

# Agenda Item 7

that the route is a footpath. In addition, in 1967 the family erected a gate at the lower end of the path in consultation with the MOD and Wembury Parish Council. The lower end of the path was in the ownership of the MOD and the gate was supported by the Wembury Parish Council to prevent vehicles from driving down to the beach. Mr Hart says that there has been a gate at the top of the lane for as long as he can remember, and the lower gate was erected in 1967. In addition, Mr Hart mentions that the MOD sold the land, to the west of Bovisand Lodge, with the footpath over it circa 1970 – 71.

- 1.5.7 Additional information from the Hart family includes a letter from Wembury Parish Council relating to the placing of the gate, west of Bovisand Lodge drive, to prevent vehicles driving down to the beach. The letter is dated 7<sup>th</sup> October 1968 and the third paragraph says “The Council has no objection to your closing the gate that crosses the path leading down to the beach, which would have the effect of stopping vehicles using the path. We understand from Councillor Squire there is a small gate alongside or at least ample room for pedestrians to pass which is all that really concerns us”.
- 1.5.8 An extract from the Conveyancing Deeds, 16 December 1912, for Bovisand Lodge was submitted with the Hart family’s representations. The conveyance sets out that Bovisand Lodge continues to have private rights , as attached to the land, over the private road or lane known as “Boveysand Lane leading from the junction of the road from the village of Staddiscombe and Little Lane to the seashore. In addition, the conveyance sets out access rights for Court Gates Farm and Manor Farm, with or without vehicles, to pass and re-pass over and along Boveysand Lane from their farms to and from the seashore or any intermediary point”. The conveyance also states that these two farms could collect and cart away sand and seaweed for its use on the said farms, and also the right to repair Boveysand Lane but without being under any obligation to execute such repairs.
- 1.5.9 The War Department, now the Ministry of Defence, seems to have owned the lane to the west of Bovisand Lodge as the Hart Family mentioned up to the early 1970s. This can be seen from the WD Boundary Stones placed on the ground and mapped on the Ordnance Survey Maps from 1880, plus details from Land Registry.

## **1.6 Rebuttal Evidenced**

- 1.6.1 Landowner evidence from the Hart Family reports that use of the footpath by horse riders and motorcyclist has been challenged as the route is recorded as a public footpath. A gate was erected by the family at the lower end of the footpath, west of Bovisand Lodge entrance, in 1967 to prevent vehicles driving down to the beach. The gate was erected with the agreement of the Wembury Parish Council and the Ministry of Defence.
- 1.6.2 Mr McBean and Mr Fraser as adjacent landowners are also clear that the status of the lane is a footpath.
- 1.6.3 Wembury Parish Council have submitted an objection to the change of designation for Footpath No.1 Wembury. The email from the parish clerk 8<sup>th</sup> May 2019 states that “The council are objecting to the proposed upgrading of Footpath No.1 (part) to a Byway Open to all Traffic. The council feel that this would be a negative development..... At the end of the path there is nowhere for the vehicles to exit and nowhere to turn without crossing the SW Coastal Path, turning would be dangerous to beach users too. To upgrade the footpath to a byway open to all traffic would

benefit a small minority at the risk of endangering the larger volume of other users of this path and beach”.

- 1.6.4 The South West Coast Path Association submitted that this proposal would have a detrimental effect on the footpath.
- 1.6.5 Dr Paul Naylor wrote, as chair, on behalf of the Wembury Marine Conservation Area Advisory Group stating that they strongly object to the proposal.
- 1.6.6 Thirty other representations have been made from local residents in and around Wembury stating how strongly they object to Proposal. 1.
- 1.6.7 Mr & Mrs Ellis stated that they hoped there would be some improvements to the footpath; “We hope this might be considered for the safety of all walkers and ramblers and to stop horse riders using this path as a bridleway”.
- 1.6.8 Mrs Margaret Ward – Edwards states in her email that “The idea of changing the use of this lane is utterly absurd, not to mention incredibly dangerous”.
- 1.6.9 A member of the Wembury Local History Society submitted a response saying; “In this beautiful area we do not need traffic drawing closer and closer to the coast and coastal paths need to be reserved for walkers and quiet observation”.
- 1.6.10 A resident who has lived in Down Thomas for thirty years says “ I write to register my absolute objection to the proposal to upgrade the footpath to allow vehicles access to Bovisand beach. I have lived in Down Thomas now for some thirty years and have used this footpath regularly and I find the prospect of having to compete with vehicular traffic/motorbikes totally abhorrent. It MUST NOT be allowed to happen!!”.

## **1.7 Discussion**

### Statute (Section 31 Highways Act 1980)

- 1.7.1 Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public ‘as of right’ and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.
- 1.7.2 For the purposes of Section 31 of the Highways Act 1980, a Schedule 14 application is considered to be a calling into question, in this case relating to the status of the path.
- 1.7.3 This application was made after 20th January 2005 and was not compliant with the regulations as notice of the application had not been served on the landowners. It is not therefore a qualifying application for the specific NERC Act exemption. However, as the application had been made, the proposal was included in the parish review, for the upgrading of a recorded footpath to a BOAT. As there are limited other exemptions in which vehicular rights may be preserved it would be only possible, subject to sufficient evidence, for the route to be upgraded to a restricted byway.
- 1.7.4 The path already exists as a public footpath, therefore there is no need to prove its physical existence. The current statement says that the route has been gated at its junction with Little Lane and a gate/ barrier at the south western end adjacent to

# Agenda Item 7

Bovisand Lodge. The lane is not registered with land registry until Bovisand Lodge. However, it is clear from adjacent landowner land registry deeds that Court Gates and Manor Farm enjoy private rights along the full length of the lane to the landing stage in the bay. Bovisand Lodge also has private rights along the lane.

- 1.7.5 Although they do not provide rebuttal evidence, there are a substantial number of local people who are very against the notion of upgrading the current footpath.
- 1.7.6 It is clear from the early Ordnance Survey maps that the War Department or Ministry of Defence (MOD) had marked its land boundary very clearly. The south western end of the lane falls clearly in the War Department land and would be considered as belonging to the Crown. This would negate the contention that the route would be known as a public road prior to 1835 as Crown Land is outside the application of s31 of the Highways Act 1980.
- 1.7.7 Representations about safety and suitability, although pertinent are not factors that can be taken into consideration when establishing public rights of way. The three User Evidence Forms do not constitute sufficient evidence of use over a long enough period to give rise to any presumption of dedication as either a bridleway, a restricted byway or a byway open to all traffic.
- 1.7.8 To that end, there is insufficient User Evidence in the 20 years up to 2005 for the existence of higher rights to be considered under s31 of the Highways Act.

## Common Law

- 1.7.9 A claim for a right of way may also be considered under common law. At common law, evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence - documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.
- 1.7.10 The route is already recorded on the Definitive Map and Statement as a public footpath. This has been the case since the local surveys in the 1950s. In order to be successful in claiming higher rights than those recorded, it must be demonstrated that there has been acceptance of use of the route as a bridleway or byway and the acquiescence of that use by the landowners to allow the public to use it as such and therefore for higher rights to become established.
- 1.7.11 The indications from the 1880-89 and 1904-06 Ordnance Survey map show that Bovisand Lane has been gated at the top, near the junction with Little Lane. This has been echoed in the landowner evidence.
- 1.7.12 The erection of a gate to the west of Bovisand Lodge by the owners in 1967, supported by the Parish Council and the MOD, is further evidence that the use by motor vehicles and to some extent horse riders was not tolerated or accepted by the landowners. Indeed, the landowners are clear that they regard the route as a footpath and at the very most recognise that horse riders use the lane. The landowners at Bovisand Lodge have challenged motorcycles and horse riders using the lane stating that it is a public footpath.
- 1.7.13 One adjacent landowner acknowledges use of the footpath by horse riders and it is suggested that some of the riders are known to them. Only three User Evidence Forms have been submitted in support of claiming higher rights along the footpath.

Two from local horse riders and one motor cyclist giving evidence of use twice in 1999.

- 1.7.14 This falls short of sufficient use of the route as a byway open to all traffic or a bridleway to give rise to the presumption that any higher rights have been acquired. Equally, there is clear lack of acceptance of that use by the landowners involved and in fact some use by horses and bicycles is tolerated and therefore their use could be with an implied permission. Therefore, the claim cannot succeed under common law.

## **1.8 Conclusion**

- 1.8.1 In the absence of sufficient user evidence, conclusive documentary evidence or a combination of both, it is therefore recommended that no Order is made in respect of Proposal 1.

## **2. Proposal 2 – Schedule 14 Application for the addition of public footpaths through Fort Bovisand, Wembury, from the Coast Guard Cottages, into Fort Bovisand to Bovisand Pier, with two spurs, as shown between points C – E – F – D, E – G and F – H as shown on plan No. HIW/PROW/19/20**

**Recommendation: It is recommended that no Modification Order be made in respect of Proposal 2.**

## **2.1 Background**

- 2.1.1 A Schedule 14 Application was made in July 1993 by Mr Robert L McVicar to add a public footpath from Bovisand car park to Fort Bovisand Pier. This application was apparently not served on the landowner, the Ministry of Defence, nor the Lessee, Plymouth Ocean Projects. To that end Mr Mc Vicar was asked to serve notice on the interested parties and submit the application again to Devon County Council. This was done on the 10<sup>th</sup> June 1998.
- 2.1.2 Fort Bovisand lower gun emplacements were built to defend the entrance to Plymouth Sound in around 1859. Prior to this, around 1816, a stone jetty and slip were built to enable small boats to carry fresh water out to sailing warships anchored in Plymouth Sound. The small harbour was completed in 1824 still supplying fresh drinking water from the nearby reservoir.
- 2.1.3 The earliest gun batteries were situated higher up the coastal slope and this is known as Staddon Point Battery, built around 1845 and is above Fort Bovisand. In 1859, the Royal Commission on the Defence of the United Kingdom recommended that armoured defences should be constructed to protect Plymouth Sound. Fort Bovisand was built on the cliff line between Bovisand Beach and Plymouth Sound. It consisted of a single storey of 23 granite casements and underground passages for storing ammunition. Construction took place between 1861 – 1869 using Dartmoor granite. Originally there were twenty-three 25 ton guns at Fort Bovisand. By the 1890s new guns that were smaller and quicker to load and fire were introduced. During World War I searchlights were installed along with additional troops due to fears of submarine attacks and through World War II, 115 personnel were based at Fort Bovisand, along with six searchlights.
- 2.1.4 In 1956, Fort Bovisand and Staddon Point Battery were decommissioned and remained unused until the 1970s when Fort Bovisand was leased by the MOD to a commercial diving school and a scuba diving centre. Over the intervening years,

# Agenda Item 7

various diving and development enterprises have come and gone and the Fort is currently on a 99-year lease to Fort Bovisand Ltd for development. Discovery Divers are also operating from Fort Bovisand.

## **2.2 Description of Routes**

2.2.1 The claimed footpath starts from the metalled road west of Coastguard Cottages and continues west curving around the Fort Bovisand gun encasements and then north to flat parking or turning area and along the jetty to the pier. This route is shown by the line C – E – F – D on plan HIW/PROW/19/20. The claimed route has two additional spurs, E – G and F – H to the beach.

## **2.3 Documentary Evidence**

### 2.3.1 Ordnance Survey

2.3.1.1 The Ordnance Survey 1<sup>st</sup> Edition 25" to 1 mile, 1880 – 1890 and 2<sup>nd</sup> Edition 1904 – 6, 25" to 1 mile and 1950s 1:2500 edition maps do not show Fort Bovisand. The military lands were blanked out, along with other defence installations, for security reasons.

### 2.3.2 RAF Aerial Photography 1946-49

2.3.2.1 A route is clearly visible from Coastguard Cottages to the jetty, harbour wall and the beach.

### 2.3.4 Land Registry

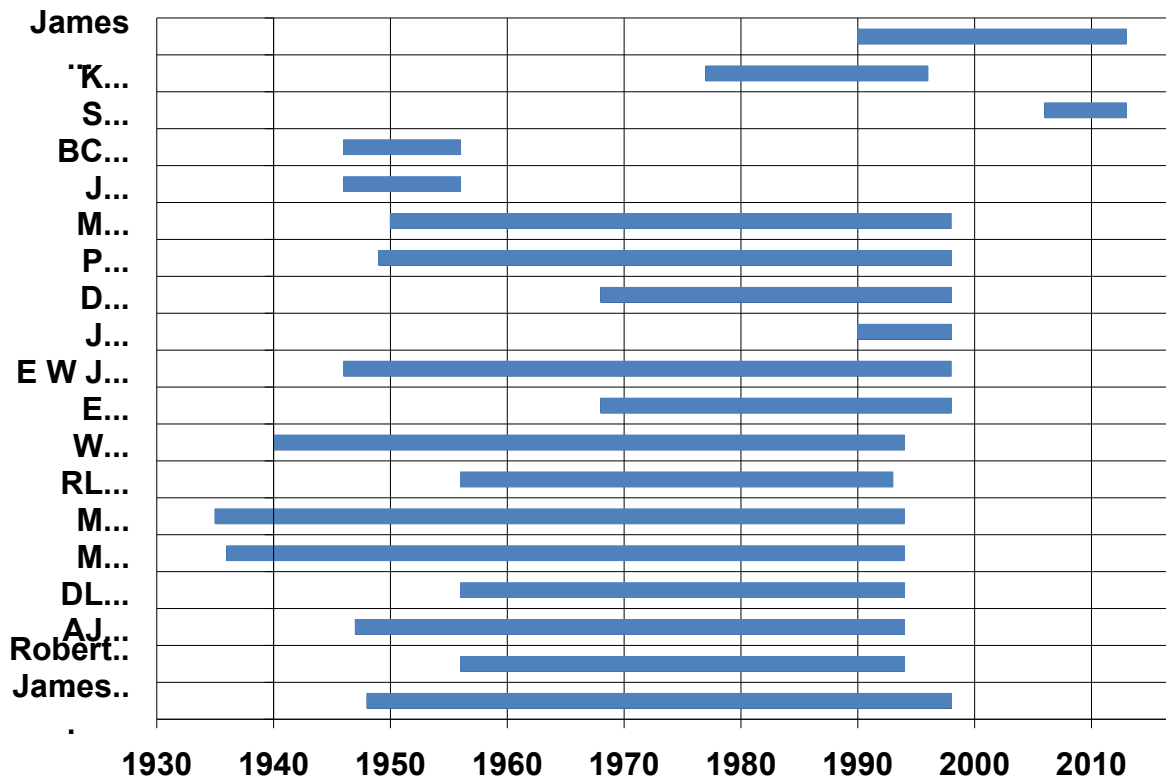
2.3.4.1 Land Registry details relating to Fort Bovisand state the land is on a 99-year lease from January 1991 with the lease dated 24<sup>th</sup> July 1996. The lease on the 24<sup>th</sup> July 1996 was held by Plymouth Ocean Projects Ltd and the freeholder of Fort Bovisand, the Ministry of Defence.

## **2.4 User Evidence**

2.4.1 In total twenty-two people have submitted evidence of walking into Fort Bovisand. Fifteen User Evidence Forms (UEFs) relating to 16 people have been submitted with the Schedule 14 Application, 1998. Following the informal consultation for the parish review in Wembury, 3 more UEFs have been put forward plus 3 written representations in support of the routes.

2.4.2 A User Evidence Chart shows the use demonstrated by the 19 UEFs:





- 2.4.3 The 15 UEFs that were submitted with the application show long standing use of the claimed footpaths from as early as 1936.
- 2.4.4 Mrs B Smith states “The Fort was in use during the war years, people living in the Coastguard Cottages had permits to use the road, and family visiting had to show their identity cards & permits, but all were allowed down to the Fort by permission of the Com: Office to entertainments etc, for the benefit of the troops.”
- 2.4.5 Mrs Smith goes on to add; “The pleasure boats operating from Plymouth from between & after the 1<sup>st</sup> World War & until just before the 2<sup>nd</sup> World War brought hundreds of people during the long summer months to enjoy days on the beaches but was stopped in 1939 & started again 1946 when a small fee per boat was paid to the MOD. Also, fishing was allowed at all times from the pier at 1/- a year”.
- 2.4.6 Mr Shaddick has used the route to the pier between 1936-39 and then from 1946 to 1998 going by Red Star bus from Down Thomas. In 1997 he was stopped by an employee of the diving centre. Mr Shaddick also mentions that he saw notices of “no road”, “No thoroughfare” when visiting the café at the Fort.
- 2.4.7 Mr P Booth has also used the route between 1936-39 and from 1949 to 1998. He said he was going to and from Plymouth and the local caravan park. He said he thought the route was public, subject to WD approval (War Department) he continues that he has never been challenged by anyone and to the best of his knowledge he has always believed it to be crown property.
- 2.4.8 R.M.McVicar lived locally and said he has used the path to Fort Bovisand Pier all his life from 1956, for walks, fishing without any challenge being made. He was aware that boats came from Plymouth bring passengers and landed at the pier. He adds that he knew in later years that the boat owners from Plymouth had to pay a fee to the MOD for landing at the pier. He said his family were never charged to bring their

# Agenda Item 7

own small boat to the pier or the slipway on the beach. Mr McVicar adds in 1992 the dog was refused entry.

- 2.4.9 Mr Bryan has provided more recent user evidence from 1990 – 1998. He has walked from Bovisand Park Chalets to Fort Bovisand up to 10 times a year. He says that the gate wasn't locked until 1997 and that was when he was stopped and asked for money to go in the Fort.
- 2.4.10 In response to the informal consultation in April, more recent evidence has been collected.
- 2.4.11 K Hannaford said she lived at Fort Bovisand from 1977 to 2001, as her father was Director of Plymouth Ocean Projects. He retired in the early 2000s. She says that during that time, members of the public were free and unrestricted to walk down to the Fort and onto the jetty to admire the view and the historical Napoleonic Fort. She mentions that the gate was shut at Christmas when the offices were closed. She mentions that access to the Fort was restricted due to the entrance road being affected by landslides after bad weather in the early 1990s.
- 2.4.12 S Whiting has walked a route from Bovisand Court to Bovisand Pier since 2006 and only recently has the route been obstructed by gates. She adds the "route has always been open to the public who have used it for business and pleasure".
- 2.4.13 A local resident James Hart has used the route since 1990 frequently from Bovisand to the pier. He worked at the Fort between 1991 – 94, and he says that many people have fished from the rocks and there was always open access and the facilities were open to the public - pub and shops. He mentions that recently with the change in ownership, the gates are locked, and notices have been placed on the gates.
- 2.4.14 Jon Fraser adds; "I have always known point C,D,E & F to be public on foot. I walked the route daily from 1987 onwards with my mother when living in Coastguard Cottages. I always believed fishing from the pier was not allowed, but ok from the rocks. I was never stopped..... I have noticed that in recent years occasionally the huge gates have been locked, I assumed due to the eroding cliffs".
- 2.4.15 Margaret Ward-Edwards emailed in reply to the informal consultation saying "I have always been under the impression that there was a right of way for walkers to access the quay at Bovisand Fort. When I was a young girl a boat used to bring the public across from Plymouth to enjoy Bovisand Beach but when I questioned the erection of gates I was told the use of the path was at the discretion of the owner". She added "I was under the impression that the MOD leased Fort Bovisand with the understanding that the footpath would always be accessible to walkers". In addition, M Ward – Edwards sent in 2 photos of an interpretation panel placed on the road in Fort Bovisand by the South Hams District Council as part of the AONB information for the site and 1 of the metal gates placed across the path, (photos in backing papers).
- 2.4.16 Another local resident of 40 years says she has regularly walked along the coast path and down to the harbour at Fort Bovisand, spending time to admire the view before continuing. She adds " For some considerable time now there have been rather threatening gates across the entrance with security cameras noting ones every move.....At first I thought this was just a temporary safety issue whilst diggers etc were on the site but this has gone on far too long". This local walker sums up the mood of local residents and states; "It is incredible to me that someone can buy a property and at a stroke stop the public from accessing an area that for generations

they have been free to enjoy. In my humble opinion it is ones moral and civic duty on purchasing such a place to ensure public access”.

- 2.4.17 Fourteen of the twenty–two people supplying evidence of use of the route state that the land at Fort Bovisand is owned by the MoD/War Department or the Crown.

## **2.5 Landowner Evidence**

- 2.5.1 The Freehold of the site is vested in the Ministry of Defence.
- 2.5.2 Fort Bovisand Ltd are the Lessees of Fort Bovisand pursuant of a lease dated 24<sup>th</sup> July 1996. The term of the lease is 99 years from the 1<sup>st</sup> January 1991.
- 2.5.3 Charsley Harrison LLP Solicitors, are acting on behalf of Fort Bovisand Ltd. In their letter of the 24<sup>th</sup> April 2019 to Devon County Council they state: “Our client objects in the strongest manner to the making of an additional public footpath at Fort Bovisand”.
- 2.5.4 In paragraph 2. Of their letter of the 24<sup>th</sup> April 2019 they say: “The routes in the Notice refer to C – E – F – D, C – F – H and C – E – G as shown on the plan attached to your letter. These routes do not exist as public footpaths or any other means of public way. In addition they add; “In the course of our client’s planning application for development of the site, our client offered permissive routes C – E – F – D and the permissive route reinstating the South West Coast Path Link down the recovered path internal to the site and the upper Fort access road to the harbour area. These are permissive ways through (not public rights of way). There is no route to G – this is a private car park for the proposed apartment buildings”.
- 2.5.5 Paragraph 3. States “The site has generally been secured by a locked gate since a licensee vacated part of the site in 2013. The gate has been opened for safety/emergency access only when diving activities are in force but outside these times the gate is kept secure to deter casual entrance. Any person who has entered the site (by whatever means) has been promptly informed that it is not a public path”.
- 2.5.6 Charsley Harrison Solicitors completed a Landowner Evidence Form on behalf of Fort Bovisand Ltd in March 2019. They say that they have turned people back and all casual visitors have been challenged. Divers are authorised to have access, but all other access is prevented by palisade fencing, gates, which are locked at all times and notices stating private property and no right of way.
- 2.5.7 The Ministry of Defence have owned Freehold of Fort Bovisand since 2<sup>nd</sup> December 1815. In their letter of the 9<sup>th</sup> May 2019, the Defence Infrastructure Organisation state “ MOD has no records indicating that public footpaths have been established within the Fort Bovisand estate. During the 1970s part of the site was converted to provide a diving school, various similar enterprises have followed and to achieve access, their customers have been invited onto the site”. They add “ No public footpath or right of way has provided opportunity for walk up business operated from the site. Gates and signage installed at the entrance to Fort Bovisand (OS GR SX 4892,5069) make clear that the site is private property”.
- 2.5.8 Their letter concludes by stating “The Ministry of Defence, as landowner, has no record that suggests that a public right of way does now or ever has existed across or within the Fort Bovisand site”.
- 2.5.9 In a letter of the 14<sup>th</sup> August 1992 from the MOD Parliamentary Under Secretary of State for Defence for the Armed Forces to Gary Streeter MP, it says “ May I make it

# Agenda Item 7

clear, first of all, that no right of public access exists over the site, and no rights have ever been granted to the public or individuals to exercise their dogs, or to fish from the rocks and quay. However, members of the public have been allowed to walk from the public highway down to the quay/harbour area”.

- 2.5.10 A letter dated April 1970 from the Treasury Solicitor’s Department to the solicitors of Plymouth Ocean projects, encloses a Head of Terms for the lease and licence between them and the Secretary of State for Defence. In the Head of Terms of the Lease point 11 states “The Lessor reserves the right to resume possession of the whole or any part of the premises at any time without payment or compensation if required for Service or other Government purpose on giving three months previous notice in writing or immediately without notice or compensation in the event of an emergency of which the Lessor shall be the sole judge”.
- 2.5.11 Under the Terms of the Licence point 2 states “ The licence is to be subject to the use of the pier and harbour for all forms of training by the Services and to the use as an embarkation point for pleasure craft with right of access for pedestrians from the pier at Bovisand Beach. The reservation for training purposes may on occasion involve complete withdrawal by the Licensee from the area of the licence during the period of the training exercise”.

## **2.6 Rebuttal Evidence**

- 2.6.1 MOD Bye-laws are in place over the area relating to Fort Bovisand and have been since 15 November 1935. Statutory Rules and Orders No. 1222 of 1935 for Plymouth & Devonport Garrisons, Military Lands, Bye-laws “Made by His Majesty’s Principal Secretary of State for the War Department under the provisions of the Military Lands Acts, 1892 to 1903, for regulating the use of certain War Department Lands in the City of Plymouth and in the Parishes of Wembury, Plymstock, Egg Buckland and St Budeaux in the County of Devon..... as set out in the Schedule hereto, for the purposes to which they are appropriated, and for prohibiting all intrusion on such lands and all obstruction of the use thereof”.
- 2.6.2 Under section 1 of Offences, the bye-laws prohibit the carrying out of any commercial business on the lands, including “buying, selling or trafficking” unless in possession of a Pass issued by the Officer Commanding Troops, Plymouth Garrison.
- 2.6.3 Under section 14 of Offences, “No person shall enter or be upon the said War Department lands for the purpose of pursuing or killing game or other animals or of fishing in any water within the lands, or digging for bait on the War Department foreshore without the authority of the Officer Commanding Troops, Plymouth Garrison”
- 2.6.4 Section 16 of Offences, “No person shall ride a horse or a bicycle or drive any motor – car or other vehicle upon any footpath by the side of any road maintained by the War Department and situated on the said War Department lands”. Section 17 and 18 are explicit that no taxi cab or vehicle shall enter the lands without a pass issued under the authority of the Officer Commanding Troops, Plymouth Garrison”
- 2.6.5 Point 19 states that “subject to the restrictions in Bye-laws 16,17,& 18”, the public may ride any horse or bicycle or drive a vehicle, under 30 cwt, on the land when it is not being used for any military purpose. However, anyone must leave when requested by any military personnel, or be in contravention of the Bye-laws.

- 2.6.6 Statutory Rules and Orders No.363 of 1935 relates to Plymouth Defences Bye-laws dated 1<sup>st</sup> January 1935. This Byelaw states “Made by His Majesty’s Principal Secretary of State for the War Department, under the provisions of the Military Lands Acts, 1892 to 1903, with the consent of the Board of Trade, the County Council of Cornwall and the Corporation of Plymouth for regulating firing from Bovisand, Watchouse, Picklecombe, Penlee, Renney and Drakes Island Batteries, in the above named Defences”
- 2.6.7 Section 1 General Prohibition: 1 – (a) During such time as notice is given by the hoisting of signals in a manner hereinafter provided in Bye-law No.3 that firing is taking place from the Bovisand, Watchouse, Picklecombe, Penlee, Renney and Drakes Island Batteries, or any one or more of them, all intrusion on the War Department property at any of the said Batteries affected by the said Notice (hereinafter called the land areas) and the foreshore and sea abutting thereon (hereinafter called the sea areas) within the limits set out in the Schedule hereto, and all obstruction of the use thereof, is prohibited”.
- 2.6.8 Section 2. Offences During Firing : While notice of firing is taking place in any of the firing areas mentioned in Bye-law No.1 is given by the hoisting of the signals as provided in Bye-law No.3, then in respect of the land area or areas and sea area or areas included herein and affected by the said Notice:-
- (i) No person shall enter or remain within the land area or sea area, nor bring, take or suffer to remain therein any vehicle, animal, vessel, aircraft or thing, except as provided in Bye-law No.7.
  - (ii) No vessel shall be employed in fishing in the area
  - (iii) No pleasure boat shall continue to cruise in the sea area
  - (iv) No vessel shall anchor or remain anchored in or ground on the sea area
  - (v) No aircraft shall alight on, remain in or travel upon the sea area
  - (vi) In the event of any vessel or aircraft being from any cause within the sea area the Master or Pilot or other person in charge thereof shall use his utmost endeavours to pass out of the sea area without loss of time.
- 2.6.9 These Bye-laws are still in place and valid today.
- 2.6.10 The Ministry of Defence state that deposits under S34 Highways Act 1959 in 1977, 1979 and 1983 were made saying that there were no public rights of way across their land, including Fort Bovisand. With an amendment in statute, further deposits were made under S31(6) of the Highways Act 1980 in October 1989, September 1995, September 2001 and February 2011.

## **2.7 Discussion**

### Statute (Section 31 Highways Act 1980)

- 2.7.1 Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public ‘as of right’ and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.
- 2.7.2 Land Registry details show that the Ministry of Defence (MOD) are the owners of the Freehold for the Fort and the Staddon Garrison buildings above. Information from the MOD states they have owned the land associated with Fort Bovisand since 2<sup>nd</sup> December 1815. The Fort was vacated by the MOD in 1956 and since then

# Agenda Item 7

various diving schools and other enterprises have operated from the site under a lease from the Ministry of Defence/Secretary of State for Defence.

2.7.3 The Ministry of Defence/Secretary of State for Defence act as agents for the Crown and the Fort Bovisand land is therefore considered as Crown Land.

2.7.4 The Highways Act 1980 and its predecessors do not bind the Crown. Therefore, any claim for a right of way across land which is, or was at the relevant time, Crown land cannot rely on the 20-year user provisions in section 31 of the 1980 Act.

## Common Law

2.7.5 A claim for a right of way may also exist common law and claims under common law can apply to the Crown.

2.7.6 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 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.

2.7.7 Dedication may be inferred if the use is 'as of right', high frequency, notorious and unchallenged by the landowner, in this case the Crown. It must be demonstrated that there has been an acceptance of use of a route by the public and the acquiescence of that use by the landowner to allow a public right of way to come into being.

2.7.8 In consideration of whether use was 'as of right', the user evidence is clear that the passenger boats bringing visitors from Plymouth, and vice versa, paid a fee to the Ministry of Defence to alight at Fort Bovisand Pier. It must also be considered that that passengers themselves were charged a fee for the boat trip to and from Plymouth and Bovisand Fort.

2.7.9 In addition, some of the walkers have mentioned being asked to pay a fee to come into the Fort and several walkers visited to use the café and bar that once existed there.

2.7.10 The evidence is also clear that during the WW2, all access to the Fort was denied unless identity cards and passes were shown.

2.7.11 Since then, various diving schools and other enterprises have operated from the site and, to achieve access, their customers have been invited onto the land.

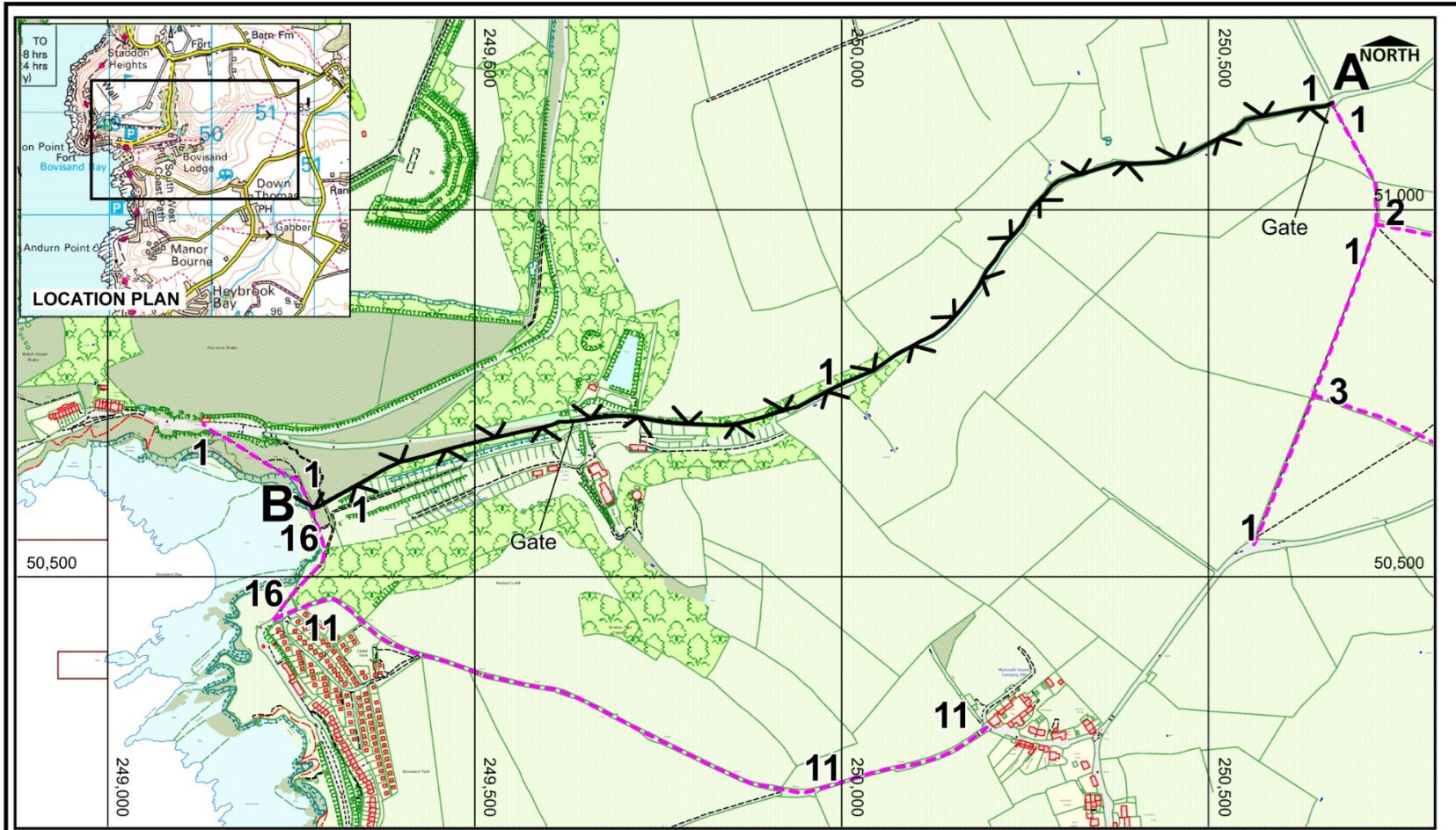
2.7.12 The Bye-laws put in place in 1935 for the Plymouth & Devonport Garrisons and Plymouth Defences, including Fort Bovisand, are still in force today.

2.7.13 These Bye-laws are clear about what is prohibited on the MOD land at these locations, including fishing. Business activities on the lands, which would likely include use by passenger boats, also required authorisation. Although these Bye-laws are silent on the act of walking on the land, they are clear that their purpose is to prohibit intrusion on the named lands and to regulate access. It is also clear that when anyone is challenged and asked to leave, they must do immediately or be in contravention of the Bye-laws and may be arrested. It can therefore be implied that activities which are not clearly prohibited are therefore with the permission of the MOD.

- 2.7.14 Therefore, although the use of the area by the public is well known and longstanding, it is clear that the use has been with *precario*, i.e. permission and is not therefore 'as of right'.
- 2.7.15 As mentioned above, whilst the use of Fort Bovisand land has been notorious over the years, and used by many people, the access to the land has been controlled and highly regulated by the Principal Secretary of State for the War Department then the Ministry of Defence. Provisions were made under the Military Lands Acts, 1892 to 1903 and the Bye-laws Statutory Rules and Orders No.1222 and No.363 of 1935.
- 2.7.16 The Bye-laws are still in force today and should there be a military need, the Fort could be required to be vacated at any time. The current Lessees, Fort Bovisand Ltd state that the freehold of the site is vested in the Ministry of Defence. As Lessees, Fort Bovisand Ltd and their predecessors do not have the capacity to dedicate any public rights of way across Fort Bovisand Land. However, it is noted that in their letter of the 24<sup>th</sup> April 2019, Fort Bovisand Ltd has, as part of their full planning permission, agreed to establish a permissive route through the site to the pier and one joining the South West Coast Path above the site.
- 2.7.17 The evidence contained in the appendix demonstrates that at no time since the Ministry of Defence and their departments purchased the land in December 1815, have they acquiesced or implied access to the public to use lands at Fort Bovisand. To the contrary, access has been very well controlled and legislated.
- 2.7.18 Therefore the evidence shows a complete lack of implied or express dedication to any public rights across the land at Fort Bovisand and that a claim under common law cannot be successful.

## **2.8 Conclusion**

- 2.8.1 Despite the well-known nature of access at Fort Bovisand, and the public feeling for the claimed routes, the evidence in respect of the landowners actions is incontrovertible. At no time can it be implied or inferred that they dedicated a highway at any point in their ownership of the Fort Bovisand Lands. Therefore, the test under common law fails.
- 2.8.2 It is therefore recommended that no Order is made in respect of Proposal 2.



Map Ref **SX 492506**

Grid 500m

© Crown copyright and database rights 2019 OS 100019783

**DEVON COUNTY COUNCIL**  
**Definitive Map Review- Informal Consultation**  
**Wembury, Proposal 1**

**Notation**

Proposal 1: Schedule 14 Application Footpath No.1 (part) Wembury  
 Proposed upgrading to BOAT A - B (1.5km approx)  
 Existing footpaths

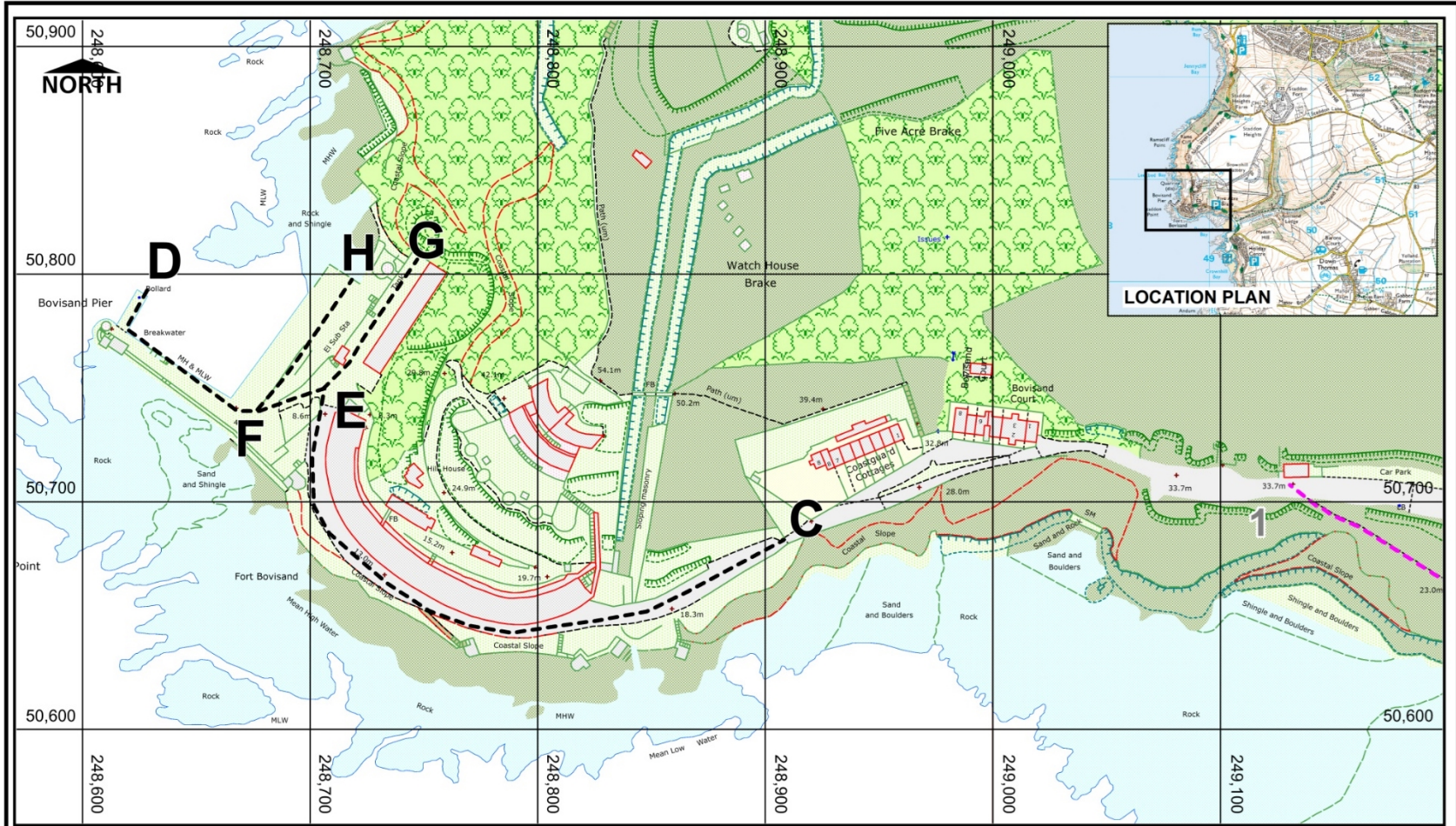


drawing no. HIW/PROW/19/19  
 date Mar 2019  
 scale 1:7000 at A4  
 drawn by ES/HC

**Meg Booth**  
 CHIEF OFFICER FOR  
 HIGHWAYS INFRASTRUCTURE  
 DEVELOPMENT AND WASTE







Map Ref **SX 486507** Grid 100m © Crown copyright and database rights 2019 OS 100019783

**DEVON COUNTY COUNCIL**  
**Definitive Map review - Informal Consultation**  
**Wembury, Proposal 2**

**Notation**  
 Proposal 2: Schedule 14 Application Fort Bovisand  
 Proposed Public Footpath C - E - F - D & E - G & F - H  
 Existing footpaths



*drawing no.* HIW/PROW/19/20  
*date* Mar 2019  
*scale* 1:2,250 at A4  
*drawn by* ES/HC

**Meg Booth**  
 CHIEF OFFICER FOR  
 HIGHWAYS INFRASTRUCTURE  
 DEVELOPMENT AND WASTE



HIW/19/57

Public Rights of Way Committee  
4 July 2019

## **Definitive Map Review Parishes of Trentishoe**

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 no Modification Orders be made in respect of Proposals 4 and 5.**

### **1. Introduction**

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

### **2. Background**

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 12 footpaths and 3 bridleways, which were recorded on the Definitive Map and Statement with a relevant date of 1<sup>st</sup> 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. The Limited Special Review of RUPP's, carried out in the 1970s, did not affect the parish.

No previous orders and agreements have been made and confirmed in the parish: The current Review was started in 2011. A joint informal consultation with Kentisbury parish was carried out on a number of proposals in 2017 for modification of the Definitive Map and Statement.

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

### **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                              |
| Kentisbury & Trentishoe Parish Council | – comments included on specific proposals |
| British Horse Society                  | – no comment                              |
| Byways & Bridleways Trust              | – no comment                              |
| Country Landowners' Association        | – no comment                              |
| Devon Green Lanes Group                | – no comment                              |
| National Farmers' Union                | – no comment                              |

# Agenda Item 8

|                          |              |
|--------------------------|--------------|
| 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 no Modification Orders be made to modify the Definitive Map and Statement in respect of Proposals 4 and 5.

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

## **10. Reasons for Recommendations**

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

Meg Booth  
Chief Officer for Highways, Infrastructure Development and Waste

**Electoral Division: Combe Martin Rural**

# Agenda Item 8

## Local Government Act 1972: List of Background Papers

Contact for enquiries: Caroline Gatrell

Room No: ABG Lucombe House

Tel No: 01392 383240

| Background Paper     | Date    | File Ref.      |
|----------------------|---------|----------------|
| Correspondence Files | Current | DMR/TRENTISHOE |

cg280519pra  
sc/cr/DMR Trentishoe  
03 210619

# Agenda Item 8

## Appendix I To HIW/19/57

### 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.

**1. Proposal 4: Proposed upgrade of Footpath No. 7 to bridleway, as shown between points P – Y – X – R – S on plan HCW/PROW/17/36.**

**Recommendation: That no Modification Order be made in respect of Proposal 4.**

**1.1 Background**

1.1.1 The proposal route was included in the consultation with the support of the Parish Meeting, following up on its proposal from the uncompleted 1978 review.

**1.2 Description of the Route**

1.2.1 The proposal route starts at the county road east of the hamlet of Dean at point P. It proceeds eastwards and turning north eastwards then northwards along Footpath No. 7, Dean Wood Lane, to point Y, through Dean Wood and past Higher Cott near point X to meet Footpath No. 9 at point R. It continues northwards to meet uOCR 301 at point S, northeast of Woodend Cottage.

**1.3 Documentary Evidence**

**1.3.1 Ordnance Survey Draft Drawings, 1804**

1.3.1.1 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'*.

1.3.1.2 Part of the proposal route is shown on Sheet 31 on the 1804 Draft Drawings 2" to 1 mile mapping between points P – Y – X – R.

**1.3.2 Cary's Map, 1821**

1.3.2.1 Besides the Ordnance Survey, Cary was the leading map publisher in the 19<sup>th</sup> 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.

1.3.2.2 Part of the proposal route is shown for a short distance northward from the county road at Dean, point P along what is known as Dean Wood Lane to point Y. It is not shown from where the route enters Dean Wood.

**1.3.3 Greenwood's Map, 1827**

1.3.3.1 These well-made maps were produced using surveyors and a triangulation system and are considered to be reasonably accurate.

1.3.3.2 Most of the proposal route is shown between the county road at Dean, point P and point R via points Y (Dean Wood Lane) and X at Cot, now Higher Cott, and the junction with Footpath No. 9 in Mill Wood.

**1.3.4 Trentishoe Tithe Map and Apportionment, 1841-2**

1.3.4.1 Tithe Maps were drawn up under statutory procedures laid down by the Tithe

# Agenda Item 8

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

1.3.4.2 The Trentishoe tithe map is a second class map, surveyed at a scale of 3 chains to 1" by G. P. Williams, 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.

1.3.4.3 The proposal route is shown as a coloured road between the county road east of Dean and Cott/Higher Cott, points P and X, via point Y (Dean Wood Lane).

## **1.3.5 Ordnance Survey mapping, 1809 onwards**

1.3.5.1 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*'.

1.3.5.2 The proposal route is shown on the 1809 Old Series 1" to 1 mile mapping between the county road at Dean, point P and the junction of the route with Footpath No. 9, point R, via points Y (Dean Wood Lane) and X at Cot, now Higher Cott.

1.3.5.3 On the later 1<sup>st</sup> Edition 25" scale mapping of 1889, the whole of the proposal route is shown as a partially enclosed lane, sometimes open to the surrounding woodland.

1.3.5.4 The 2<sup>nd</sup> Edition of 1904 and Post War A Edition of 1975 shows the whole of the proposal route in a similar manner as the 1<sup>st</sup> Edition.

## **1.3.6 Trentishoe Vestry minutes, 1862-94**

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

1.3.6.2 The Vestry appears to have only met twice a year and its surviving records give little information on the business transacted, except the appointment of officers. There is no information regarding any of the parish highways.



## **1.3.7 British Newspaper Archive, 1824 onwards**

1.3.7.1 This is a digital database of scans of newspapers across the country. It includes local newspapers such as the Exeter Flying Post and the North Devon Journal, except for the years 1825-6 which have not survived. The newspapers included reports on the proceedings of the Magistrates Petty Sessions, Quarter Sessions and Assizes, along with those of the various district Highway Boards and Vestry's.

1.3.7.2 There are no references to the proposal route.

## **1.3.8 Trentishoe Parish Meeting Minutes, 1894-1979**

1.3.8.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain. Trentishoe had a Parish Meeting as it was too small to have a Parish Council until 1979 when it joined with Kentisbury Parish Council.

1.3.8.2 It has not been possible to discover any of the Parish Meeting records.

## **1.3.9 Barnstaple Rural District Council Minutes, 1893-1974**

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

1.3.9.2 There are no references to the proposal route.

## **1.3.10 Ordnance Survey Name Books, 1903**

1.3.10.1 These Ordnance Survey records contain information on named routes may be found in the relevant Object Name Books, which provided details of the authorities for named features.

1.3.10.2 Part of the proposal route known as '*Dean Wood Lane*' northwards from point P is described as '*a lane extending from the district road a short distance east of Dean to [the] south end of Dean Wood*' at point Y. The entry was confirmed by the District Surveyor.

## **1.3.11 Bartholomew's 2" to 1 mile mapping, 1903**

1.3.11.1 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 half-inch 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.

# Agenda Item 8

1.3.11.2 The whole of the proposal route between points P – Y – X – R is shown as a passable indifferent road. Such roads were considered '*inferior and not to be recommended to cyclists*'. Most of the roads in Trentishoe parish were included in this category.

## **1.3.12 Finance Act, 1909-10**

1.3.12.1 The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.

1.3.12.2 The whole of the proposal route is included within hereditaments: 1 – Middle Dean and 5 – Mill Wood, owned by Captain Chichester from Hampshire, 3 – Higher Dean, owned by Colonel E St John Griffiths, again from Hampshire, and 22 – Lower Dean, owned by Mr JR Reed. There are no deductions for Public Right of Way or User.

## **1.3.13 Aerial Photography, 1946 onwards**

1.3.13.1 The proposal route is visible where it runs along Dean Wood Lane, a distance of approximately 300 metres north eastwards from the county road at point P to point Y, while the remainder is obscured by the woodland.

## **1.3.14 Definitive Map Parish Survey, 1950s**

1.3.14.1 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.

1.3.14.2 The proposal route is included in the Parish Survey as Footpath 7. It was described as a '*CRF*' (carriageway mainly used as a footpath) with 3 field gates by the Parish Meeting representative, Mr CH Bray. The description was expanded by the County Surveyor, who gave it the status of '*footpath*'.

## **1.3.15 Definitive Map records, 1970s**

1.3.15.1 In response to the incomplete Definitive Review of the 1970s, the Trentishoe Parish Meeting representative, Mr JB Candy, proposed several amendments to the Definitive Map and Statement including the changing the status of Footpath No. 7 to bridleway. He stated that '*always in the past this had been known and used as a bridleway*'. It was added by Mr Duddon that '*the route and use as described...would be agreeable to the National Park Authority, and also desirable from a policy point of view*'.

## **1.3.16 Definitive Map and Statement, 1957**

1.3.16.1 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.

1.3.16.2 The Definitive Statement for Trentishoe Footpath No. 7 is described as running from *'its junction with the unclassified county road 225 yards due east of Dean continuing along a private accommodation road (not repairable by the inhabitants at large), Dean Wood Lane, in a north-easterly direction then northwards through Dean Wood passing Higher Cott on the right, through Mill Wood to join the unclassified county road 70 yards south of Trentishoe Mill'*.

## **1.3.17 Kentisbury and Trentishoe Parish Council Minutes, 1979 onwards**

1.3.17.1 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. Trentishoe had a Parish Meeting as it was too small to have a Parish Council until 1979 when it joined with Kentisbury Parish Council.

1.3.17.2 There are no references to the proposal route.

## **1.3.18 Route Photographs, 2017**

1.3.18.1 Site photographs of the proposal route between points P – Y – X – R – S show that it is open and available.

1.3.18.2 It appears that there has been a pedestrian gate adjacent to the field gate at the northern boundary of Higher Cott/Cott, but is no longer in situ, as is a field gate at the southern boundary. There are currently 'no horse riding' waymarks at the boundaries, but it is not known how long these have been in situ. From here northwards, there is evidence of 2 and 4 wheel vehicular use, but it is not known whether this has been public or private.

1.3.18.3 Additionally, next to the dilapidated field gate at point S is a stile.

1.3.18.4 At the time of the site visit, there were no signs of equestrian use.

## **1.3.19 Land Registry, 2017**

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

## **1.4 User Evidence**

1.4.1 No user evidence has been received in support of the proposal.

## **1.5 Landowner Evidence**

1.5.1 Two landowners responded to the informal consultation regarding the proposal route.

1.5.2 Mr and Mrs Eames of Lower Dean Farm have owned land adjacent to the proposal route for 19 years and believe it to be a bridleway. They have seen members of the public using the route, but have not detailed how they were using it. They have not erected any notices or stopped people using the route.

1.5.3 Mr and Mrs Savage of Little Swincombe Farmhouse purchased Higher Cott in 2017.

# Agenda Item 8

They acknowledge the use of the proposal by horse riders. They would support the proposal if improvements were made to the route.

## 1.6 Informal Consultation Responses

1.6.1 The Parish Council have no objection in principle, though they did feel that the surface would need to be upgraded to be suitable for horses.

1.6.2 The Ramblers have no objection to the proposal.

1.6.3 The BHS Access and Bridleways Officer for North Devon supports the proposal.

## 1.7 Discussion

1.7.1 Statute – Section 31 Highways Act 1980. There does not appear to be a specific date on which the public's right to use the proposal has been called into question. The Definitive Map and Statement is conclusive evidence of the information it contains, that Footpath No. 7 exists.

1.7.2 As there is no specific date of calling into question or user evidence, the proposal cannot be considered under statute law. However, higher rights may still be proven to exist 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 partial physical existence and availability since at least 1804 as shown on the Ordnance Survey draft drawings. The section between points P – Y – X – R is shown in a similar manner to other recorded public highways, though only the section between points P – Y was acknowledged by the District Surveyor in the Ordnance Survey Name Books.

1.7.4 On the early mapping of the Ordnance Survey Draft Drawings, Cary's and Greenwood's, between 1804 and 1827, part of the proposal route is depicted as part of the parish highway network between the points P – Y – X – R. The whole route is not shown until the Ordnance Survey 25" 1<sup>st</sup> Edition mapping of 1889, and subsequently the Bartholomew's mapping.

1.7.5 The Trentishoe Vestry met only twice a year and those records surviving give no detail on the business transacted and consequently no insight into parish affairs. Its successor, the Trentishoe Parish Meeting has no surviving records have not been discovered.

1.7.6 The representative of Trentishoe Parish Meeting, Mr Bray, surveyed the proposal route in 1950 as a CRF, a carriageway mainly used as a footpath, which appears to support the Ordnance Survey Object Name Book entry for Dean Wood Lane between points P and Y. The claimed status was amended to footpath by the County Surveyor and was agreed by the Trentishoe Parish Meeting in May 1957.

1.7.7 However, Mr Candy, the Trentishoe Parish Meeting representative in 1978 made the current proposal, to which the current joint Parish Council has no objection. He stated that the route had *'always in the past this had been known and used as a bridleway'*.

1.7.8 Current landowners believe the route to be a bridleway, and one acknowledges use by horse riders. However, no direct evidence has been received from any horse riders and therefore use of the route 'as of right' as a bridleway cannot be demonstrated.

## **1.8 Conclusion**

1.8.1 On consideration of all the available evidence the documentary evidence suggests that the route may have been considered historically as a carriageway, which has been available to the public, between the points P – Y – X – R – S. It has been open and available since that time to the public at least on foot, though it appears to have had the reputation of at least a bridleway.

1.8.2 However, the historical documentary evidence coupled with the lack of user evidence, when taken as a whole is considered insufficient to show that the proposal route has a higher status than that of a public footpath, as already shown on the Definitive Map and Statement. It suggests that the route has been available to users other than walkers, but it is considered insufficient to demonstrate on the balance of probabilities that equestrian rights exist.

1.8.3 The evidence is therefore considered to be insufficient under Common Law to demonstrate that a public highway higher than footpath status exists between points P – Y – X – R – S.

1.8.4 It is therefore recommended that no Modification Order should be made to upgrade Trentishoe Footpath No. 7 to a bridleway.

## **2. Proposal 5: Proposed addition of a bridleway and part upgrade of Footpath no. 3 to bridleway, as shown between points X – Y – Z on plan HCW/PROW/17/37.**

**Recommendation: That no Modification Order be made in respect of Proposal 5.**

### **2.1 Background**

2.1.1 The proposal route was included in the consultation with the support of the Kentisbury and Trentishoe Parish Council, following up on its proposal from the incomplete review in 1978.

### **2.2 Description of the Route**

2.2.1 The proposal route starts at the county road south of the Glass Box on the northeast side of Trentishoe at point X and proceeds south eastwards across the Down to meet Footpath No. 3, known as Ladies Mile, at point Y. It turns southwards and proceeds along Footpath No. 3 for a short distance to meet the county road at Trentishoe Manor at point Z. Trentishoe Down is both registered common and open access land.

### **2.3. Documentary Evidence**

#### **2.3.1 Trentishoe Tithe Map and Apportionment, 1841-2**

2.3.1.1 Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, limiting the possibility of

# Agenda Item 8

errors. Their immediate purpose was to record the official record of boundaries of all tithe areas. Public roads were not titheable and were sometimes coloured, indicating carriageways or driftways. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over a route shown. Such information was incidental and therefore is not good evidence of such. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not numbered are usually included under the general heading of '*public roads and waste*'.

2.3.1.2 The Trentishoe tithe map is a second class map, surveyed at a scale of 3 chains to 1" by G. P. Williams, who did a number of tithe surveys in Devon. Being second class, it is considered only to be a legal and accurate record of tithe matters. Land that was not subject to tithes was generally accepted to be either public, glebe or crown estates. In many cases public roads are coloured sienna as prescribed by Lieutenant Dawson, a military surveyor with the Ordnance Survey, to the Tithe Commissioners. The original document is held at the National Archives, with copies for the parish and diocese held locally.

2.3.1.3 The proposal route is not shown across Trentishoe Down. The land was owned by Mrs Amelia Griffiths. A county road is shown along with several footpaths/bridleways crossing the Down, one of which follows part of the alignment of Footpath No. 3.

## **2.3.2 Ordnance Survey mapping, 1809 onwards**

2.3.2.1 Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: '*The representation on this map of a road, track or footpath is no evidence of a right of way*'.

2.3.2.2 The proposal route is not shown on the 1809 Old Series 1" to 1 mile. The only route shown across Trentishoe Down is the recorded county road.

2.3.2.3 On the later 1<sup>st</sup> Edition 25" scale mapping of 1889, the southern half of the proposal across Trentishoe Down is shown as a double dashed track.

2.3.2.4 The 2<sup>nd</sup> Edition of 1904 shows the northern half of the proposal across Trentishoe Down is shown as a double dashed track.

2.3.2.5 The Post War A Edition of 1975 shows the northern half of the proposal across Trentishoe Down is shown as a double dashed track.

## **2.3.3 Trentishoe Vestry minutes, 19<sup>th</sup> century**

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

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

## **2.3.4 Trentishoe Parish Meeting Minutes, 1894-1979**

2.3.4.1 The Minutes provide information about the management of the route and the Meeting's views regarding the public highways in the parish. A public body such as a Parish Meeting 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 It has not been possible to discover any of the Parish Meeting records.

## **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. Trentishoe had a Parish Meeting as it was too small to have a Parish Council until 1979 when it joined with Kentisbury Parish Council.

2.3.5.2 It has not been possible to discover any of the Parish Meeting records.

## **2.3.6 Finance Act, 1909-10**

2.3.6.1 The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.

2.3.6.2 The proposal route is included within hereditament 33 – Trentishoe Down, owned by Colonel Griffiths and 8 – Rhydda Bank, also owned by the Colonel. There is a deduction for rights of common worth £400 (£31,269 (2017)), but none for Public Rights of Way or User, despite the inclusion of the county road, R604 between Trentishoe Manor, formerly Rhydda Bank, and Rhydda Bank Cross.

## **2.3.7 Aerial Photography, 1946 onwards**

2.3.7.1 There is a route visible along the proposal alignment, particularly the section from point X, near the Glass Box.

## **2.3.8 Definitive Map Parish Survey, 1950s**

2.3.8.1 The compilation process set out in the National Parks and Access to the Countryside Act 1949 involved a substantial amount of work and such records are considered a valuable source of information. The rights of way included in the process had to pass through draft, provisional and definitive stages with repeated public consultations.

2.3.8.2 Part of the proposal route was included in the Parish Survey as part of Footpath No. 3 from Rhydda Bank Lane to the Main Road (through Trentishoe parish), known as Lady's Mile.

# Agenda Item 8

## **2.3.9 Definitive Map records, 1970s**

2.3.9.1 In response to the incomplete Definitive Review of the 1970s, the Trentishoe Parish Meeting representative, Mr JB Candy of Wood End Farm, proposed that a bridleway be recorded from The Glassbox on Trentishoe Down to Trentishoe Manor (formerly known as Rhydda Bank), which included upgrading a short section of Footpath No. 3.

## **2.3.10 Definitive Map and Statement, 1957**

2.3.10.1 The inclusion of a public right of way on the Definitive Map and Statement is conclusive evidence of its existence. However, this does not preclude that other rights which are currently unrecorded may exist.

2.3.10.2 The Definitive Statement for Trentishoe Footpath No. 3 describes the route as running from the *'the unclassified county road 100 yards north-east of Rhydda Bank and continues in a north-north-easterly direction along the east side of Trentishoe Down then northwards across county road 516 to join the unclassified county road 650 yards south-west of South Dean Corner. Also, a spur from south-west of Smallacombe Enclosure in a south-east by east direction to the unclassified county road at its junction with Footpath No. 5 at the south end of South Dean Oaks'*.

## **2.3.11 Kentisbury and Trentishoe Parish Council Minutes, 1979 onwards**

2.3.11.1 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. Trentishoe had a Parish Meeting as it was too small to have a Parish Council until 1979 when it joined with Kentisbury Parish Council.

2.3.11.2 There are no references to the proposal route.

## **2.3.12 Route Photographs, 2017**

2.3.12.1 Site photographs of the proposal route between points X – Y – VZ show that it is open and available.

## **2.3.13 Land Registry, 2017**

2.3.13.1 The land is registered to the National Trust who have owned Trentishoe Down since 1974.

## **2.4 User Evidence**

2.4.1 A user evidence form was received for the proposal in 1978 completed by the Parish Meeting representative, Mr Candy. His statement was taken by Mrs Pickles at a Parish Meeting. He had known the proposal route for 40 years and used it continuously since 1949 to go between Holdstone Down and Trentishoe Manor (formerly Rhydda Bank). He doesn't specify how he used it. He stated that many visitors used this route because of its scenic beauty.



## 2.5 Landowner Evidence

- 2.5.1 Only 1 landowner responded to the informal consultation regarding the proposal route.
- 2.5.2 Mr Pickles of Tattiscombe is a commoner on Trentishoe Down. He states that the National Trust has allowed walkers on the proposal route.

## 2.6 Informal Consultation Responses

- 2.6.1 The Kentisbury and Trentishoe Parish Council have no objection in principle, though they did think that as the eastern end was particularly steep, it was not suitable for horses.

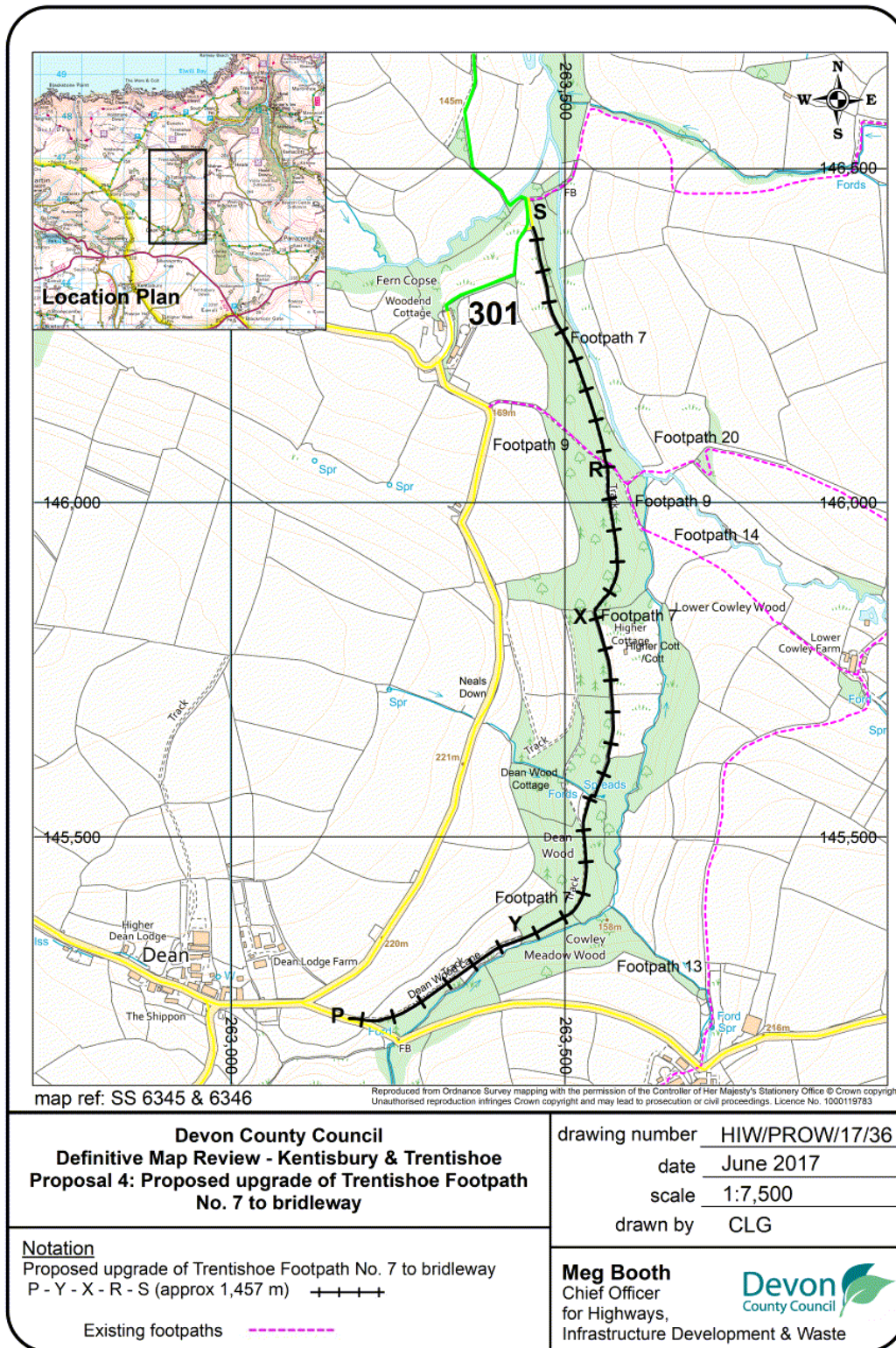
## 2.7 Discussion

- 2.7.1 Statute – Section 31 Highways Act 1980. There does not appear to be a specific date on which the public's right to use the proposal route has been called into question. The Definitive Map and Statement is conclusive evidence of the information it contains, that Footpath No. 3 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 since at least 1889 as shown on the Ordnance Survey large scale mapping.
- 2.7.4 The proposal route does not appear on any mapping until the Ordnance Survey 25" mapping, with different sections shown on different editions, though a route can be consistently seen on the aerial photography dating from the 1940s.
- 2.7.5 There are no references to the route through surviving local authority records, and no deduction for Public Right of Way or User in the Finance Act records, though there is a deduction for a Right of Common.
- 2.7.6 The user evidence received was submitted in 1978 and detail knowledge of the proposal route since 1938 and use between 1949 and 1978. No response was received from the landowner, the National Trust, who have owned Trentishoe Down since 1974. A Commoner on Trentishoe Down, Mr Pickles said he was aware of the public being allowed to use the route on foot by the current landowner. However, as Trentishoe Down is now open access land, under the Countryside and Rights of Way Act 2000, the public have a general right of access across it on foot.
- 2.7.7 The Kentisbury and Trentishoe Parish Council thought that the proposal route could be unsuitable as a bridleway approaching point Y heading eastwards because of the steepness of the terrain. However, such issues cannot be taken into consideration as to whether a public right of way and of what status exists on the proposal route.

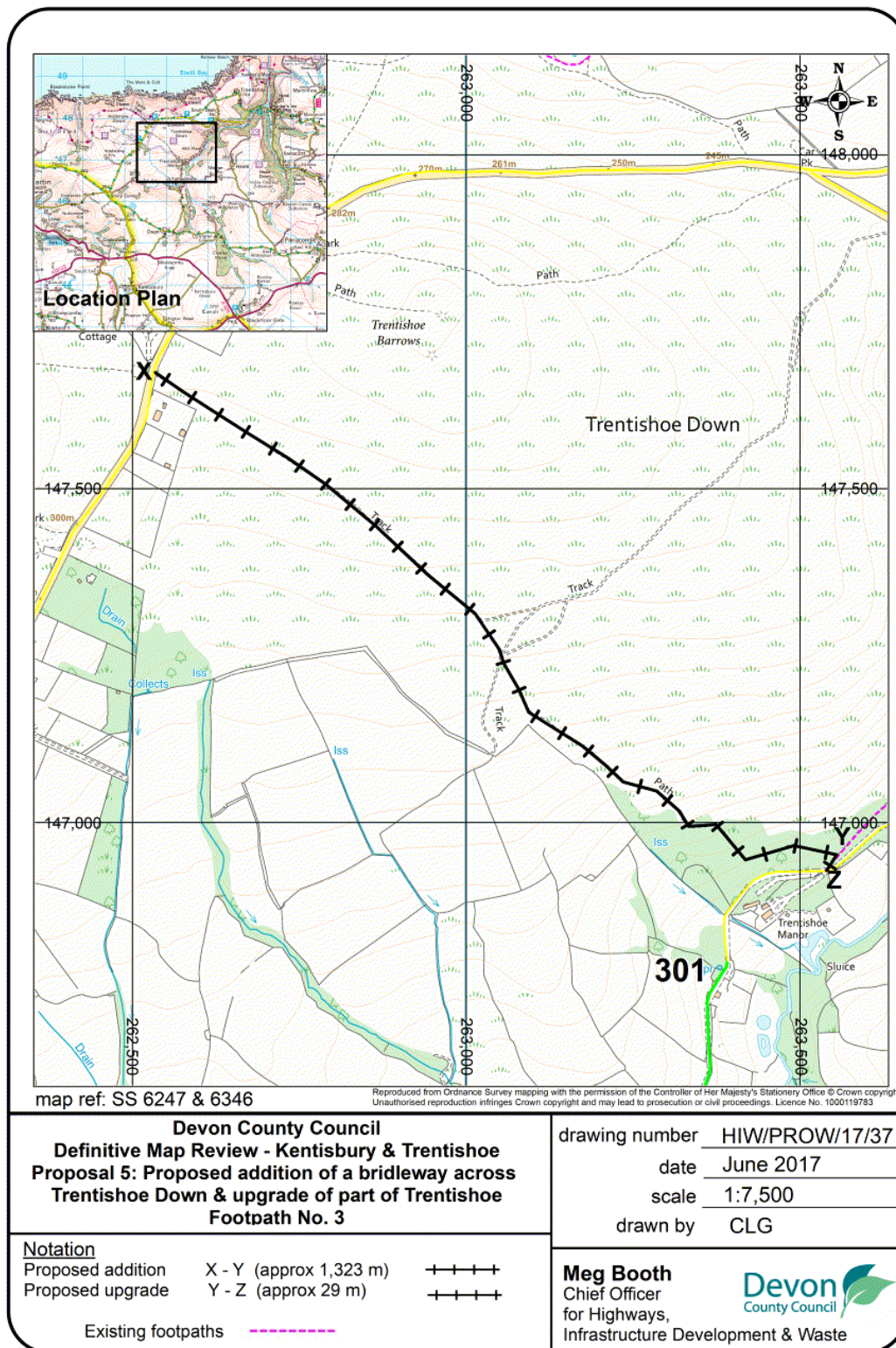
# Agenda Item 8

## **2.8 Conclusion**

- 2.8.1 On consideration of all the available evidence the documentary and user evidence demonstrates that the proposal route across Trentishoe Down between points X – Y – Z is likely to have physically existed since at least 1889. It has been open and available since that time to the public at least on foot and horse.
- 2.8.2 The historical documentary and user evidence when taken as a whole is considered insufficient to show that it is reasonably alleged that a public right of way exists or that a highway of a particular description should be shown as a highway of a different description in the Definitive Map and Statement. Though the evidence suggests that the route has been available and used in the past by walkers and horse riders, it is considered insufficient to demonstrate that equestrian rights exist.
- 2.8.3 The evidence is therefore considered to be insufficient under Common Law to demonstrate that a public right of way exists between points X – Y or higher than footpath status exists between points Y – Z.
- 2.8.4 It is therefore recommended that no Modification Order should be made to add a public right of way across Trentishoe Down or to upgrade part of Trentishoe Footpath No. 3 to a bridleway.



# Agenda Item 8



HIW/19/58

Public Rights of Way Committee  
4 July 2019

## **Definitive Map Review 2018-2019 Parish of Bampton (part 1)**

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

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

**Recommendations: It is recommended that:**

- (a) A Modification Order be made to modify the Definitive Map and Statement by: upgrading Bridleway No. 20, Bampton to a Restricted Byway (not a Byway Open to All Traffic) as shown on drawing number HIW/PROW/18/060A (Proposal 2); and**
- (b) No Modification Orders be made to modify the Definitive Map and Statement in respect of Proposals 1 and 3.**

### **1. Introduction**

The report examines the routes referred to as Proposals 1 – 3 arising out of the Definitive Map Review in the Parish of Bampton in Mid Devon. Proposals 4 and 5 will be brought to the next committee.

### **2. Background**

The original parish survey under s. 27 of the National Parks and Access to the Countryside Act, 1949 completed in the summer of 1950, initially proposed 24 routes (22 footpaths, 1 bridleway & 1 RUPP) for consideration as public rights of way. After review by Tiverton Rural District Council and Devon County Council and publication of the draft and provisional Definitive Map, 22 routes were recorded on the conclusive Definitive Map for Tiverton District Council published in June 1964.

No suggestions were made by the parish for changes to the public rights of way in the uncompleted Devon County reviews of 1968 and 1977. In the Limited Special Review of Roads Used as Public Paths (RUPPS), also carried out in the 1970s, RUPP No. 4, Bampton was re-classified as a bridleway and RUPP NO. 1, Huntsham (a neighbouring parish) was considered to have initially been recorded in the wrong parish and was re-classified as Bridleway No. 25, Bampton.

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

Mid Devon District Council Footpath No 3 Bampton Public Path Diversion Order 1979  
Mid Devon District Council Footpath No 2 Bampton Public Path Diversion Order 1992  
Mid Devon District Council Footpath No 1 Bampton Public Path Diversion Order 1992  
Devon County Council Footpath No 12 Bampton Public Path Diversion Order 2006  
Devon County Council Footpath No 7 Bampton Public Path Diversion Order 2009

# Agenda Item 9

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

The current review was opened with a parish public meeting in October 2018 held at the town council meeting. The consultation map showing 5 proposals for change was published in March 2019 and included three Schedule 14 applications made in 2005 by the Trail Riders Fellowship. The two other proposals were for the addition of bridleways along lanes connecting to a recorded bridleway

## **3. Proposals**

Please refer to the appendix to this report.

## **4. Consultations**

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

|                                 |   |  |
|---------------------------------|---|--|
| County Councillor Colthorpe     | - | no response                                    |
| Mid Devon District Council      | - | no response                                    |
| Bampton Town Council            | - | do not support proposals                       |
| Borden Gate Parish Council      | - | does not support proposal 3 (affecting parish) |
| Country Landowners' Association | - | no response                                    |
| National Farmers' Union         | - | no response                                    |
| British Horse Society           | - | no response                                    |
| Ramblers'                       | - | do not support proposals                       |
| Trail Riders' Fellowship        | - | no response                                    |
| Devon Green Lanes Group         | - | no response                                    |
| Cycle UK                        | - | no response                                    |

## **5. Financial Considerations**

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

## **6. Legal Considerations**

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

## **7. Risk Management Considerations**

No risks have been identified.

## **8. Equality, Environmental Impact and Public Health Considerations**

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

## 9. Conclusion

It is recommended that a Modification Order be made to modify the Definitive Map and Statement by upgrading Bridleway No. 20, Bampton to a Restricted Byway as shown on drawing number HIW/PROW/18/060A (Proposal 2), but that no Modification Orders be made in respect of Proposals 1 and 3.

## 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: Tiverton West

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 | 2018 to date | DMR/Bampton |

tw050619pra  
sc/cr/DMR Parish of Bampton (Part 1)  
03 210619

# Agenda Item 9

## Appendix To HIW/19/58

### A. Basis of Claim

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

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

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

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

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

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

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

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

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



# Agenda Item 9

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

# Agenda Item 9

1. **Proposal 1: Schedule 14 Application for the proposed upgrade of Bridleway No. 4, Bampton to a Byway Open to All Traffic, as shown between points A – B – C – D on drawing number HIW/PROW/18/059.**

**Recommendation: It is recommended that no Order be made in respect of Proposal 1.**

## 1.1 Background

- 1.1.1 In November 2005 the Trail Riders Fellowship submitted a Schedule 14 Application to the County Council for the upgrading of Bridleway No. 4, Bampton to a Byway Open to All Traffic (BOAT), supported by maps as documentary evidence and ten user evidence forms. This was one of a number of Schedule 14 applications made by local representatives of the Trail Riders Fellowship in 2005 prior to the NERC Act (Natural Environment & Rural Communities Act) that came into force in May 2006. The NERC Act would restrict the ways that rights of ways for motorised vehicles in the countryside could be created or recorded. A right for motor vehicles was preserved under NERC if a Schedule 14 Application had been made prior to 20<sup>th</sup> January 2005, that is compliant with the regulations for Schedule 14 applications under the Wildlife & Countryside Act 1981, or the surveying authority has made a determination of an application for a BOAT before 2 May 2006.
- 1.1.2 This application was made after 20<sup>th</sup> January 2005 and also was not fully compliant with the regulations as notice of the application had not been served on the landowners. However, as an application had been received, the claim was included in the parish review as made, for the upgrading of a recorded bridleway to a BOAT. As there are limited other exceptions in which vehicle rights may be preserved it would be likely that, subject to sufficient evidence, the route could only be upgraded to a restricted byway.

## 1.2 Description of the Route

- 1.2.1 The route starts at the bend in the county road south of Borough and Zeal Farms at point A (GR SS 9937 2204) and proceeds generally east north eastwards along a defined lane between two hedge banks, passing point B (GR SS 9837 2239). The way continues in generally the same direction, starts to go downhill and passes an entrance to Sunderleigh Farm to the north east) at point C (GR SS 9764 2258) and then continues down a steeper, deep cut section of the lane to end on the county road at Ford Mill Cross at point D (GR SS 9729 2271).
- 1.2.2 The total length of the bridleway is approximately 2250 metres with an improved stoned surface along most of the lane, with grass in the centre in some portions. There is loose stones and bedrock in the section between points C and D. The bridleway is called Wellington Lane by residents and users but is un-named on the maps viewed for this report. There are photographs of the route in the backing papers.

## 1.3 Documentary Evidence

### 1.3.1 Ordnance Survey and Other Maps

- 1.3.1.1 The Ordnance Survey and other mapping do not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.

- 1.3.1.2 Cassini Historical Maps 1809 – 1900 Sheet 191 Okehampton & North Dartmoor  
These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.
- 1.3.1.3 Old Series 1809: The bridleway is shown as a defined lane in the similar manner to the now county roads running parallel to the north and south of the route. The new Huntsham road has not been constructed and so Bridleway No. 4 would have been the road eastwards from Bampton to Huntsham or into Somerset.
- 1.3.1.4 Revised New Series 1899-1900: The route is now shown as a narrow double-sided lane with dark shading between the lines and corresponding to 'Unmetalled Roads' in the map key. The new county road (constructed by early 1858 and called the new Huntsham road in the parish minutes) to the south of the bridleway between Ford and Dowhills is now in situ, coloured orange and classed as a 'Metalled Roads; Second Class'. The new road follows the course of a stream as shown on the 1809 map and would have less of a gradient than the bridleway, particularly at the west end between points D and B.
- 1.3.1.5 Popular Edition 1919: The bridleway is shown as a solid black line along the route described as 'Minor Roads' with the connecting county roads shown with orange dashed lines 'Indifferent or Bad winding road' with the new road to the south having solid orange colouring 'Fit for ordinary traffic'.
- 1.3.1.6 Greenwood's Map of Roads 1825  
These well-made maps were produced using surveyors and a triangulation system and are considered to be reasonably accurate. They were published in 1825 at a scale of one inch to the mile and date between the 1<sup>st</sup> edition OS maps and Tithe Maps published in the mid 19<sup>th</sup> century. Roads were shown as either turn pike roads with a bold line on one side of the road or as cross roads. The bridleway is shown as a cross road and follows the current alignment although the west end of the lane is slightly eastwards of point D. The current position of point D is shown on the Tithe map and later maps. The new Huntsham road had not been constructed when this map was published.
- 1.3.1.7 OS 1st Edition 25" to a mile 1880-1890  
The route is depicted as a defined lane throughout its entire length with several mature hedgerow trees shown in the adjoining hedges. Pecked lines within the lane would indicate the difference in surfacing across the width of route at that time. The lane has six benchmarks shown along the route and its own compartment numbers of 456, 848 and 790 on the three sheets of the 25" maps, with respective areas of 0.476, 3.162 & 0.858. There is a pecked line across the east end of the lane at point A and a solid line across the west end at point D. The lane is not named on this map. This map does show the new Huntsham Road to the south of Bridleway No. 4, Bampton.
- 1.3.1.8 OS 1 inch to a mile maps of 1946, 1960 & 1965  
On the 1946 edition the route is shown as an uncoloured defined double-sided lane and corresponding to 'Roads under 14' metalling – Bad'. The new road to the south is shown coloured orange 'Roads under 14' Metalling. Good'.
- 1.3.1.9 In the 1960 edition the route is shown by a double-sided white lane (Minor Roads in towns, Drives and Unmetalled Roads) for the east end of the lane only to south of Borough Farm. The remainder of the lane is shown by a dashed line corresponding

# Agenda Item 9

to 'Footpaths and Tracks'. The 1967 edition shows public rights of way as recorded on the Definitive Map. The route is shown as a defined white lane (as in 1960) from point A to approximately a third of the way with a dashed red line along the lane. The rest of the lane is only depicted by a dashed red line, indicating a 'Public Path – Bridleway'.

## 1.3.1.10 OS Post War Mapping A Edition 2500 1970

The route is shown as a defined lane along its entire length and labelled track on the two map sheets. No bench marks are now shown along the lane. There are two compartment numbers 7628 at 3.06 acres and 6358 at 1.51 acres. Pecked lines within the route at the east end indicate a differentiation in surface across the lane and there is a pecked line across the west end of the lane at point D.

## 1.3.1.11 OS 1:25,000 maps of Great Britain – Sheet 21/60 SS92 1950

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

1.3.1.12 Minor roads, lanes and private drives/access lanes are all shown as white uncoloured roads/lanes described as 'Other Roads, Poor, or unmetalled'. The conclusive Definitive Map had not been published when this map was published. Some routes are shown as pecked and dashed lines labelled F.P. and B.R. and some as two narrow solid lines. The map contains the standard OS disclaimer 'The representation of any other roads, tracks or paths is no evidence of the existence of a right of way'.

1.3.1.13 Sheet SS92 published in 1950 shows the route as a defined uncoloured lane in the similar manner to the county roads it connects to at point A and described as 'Poor, or unmetalled Other Roads'. No lines across the route are shown along the full length of the route or at either end.

## 1.3.2 **Tithe Maps and Apportionments**

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

## 1.3.2.2 Bampton Tithe Map & Apportionment 1844

On the Bampton Tithe Map the route is shown colour washed in the manner of what are now county roads in the vicinity. The lane is not numbered. The county road (referred to as 'the new road to Huntsham' in later parish council minutes) to the south of Bridleway No. 4 does not exist in 1844. From point A the lane is shown continuing eastwards and at the parish boundary and end of the map is written 'To Wellington'. As the main route to Wellington at that time, it could be the origin of the name Wellington Lane.

## 1.3.3 Finance Act Plans and Field Books 1910

- 1.3.3.1 The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.
- 1.3.3.2 The allowance given was often on the basis of a figure such as a £1 times 25 yp. The yp refers to years purchase, a method of valuation used to convert a property's income flow (rent) into an appropriate capital sum on the basis that the capital value of a property is directly related to its income producing power. This method of valuation seems to be often used in Finance Act valuations.
- 1.3.3.3 Bridleway No. 4, Bampton extended across three map sheets of the 25" OS 2<sup>nd</sup> Edition used. The east end of the lane is included within hereditament 343, Dowhills Farm and there is no break of colouring at the junction with the county road at point A. The two fields on the north side of the lane west of point A are included in hereditament 344, Borough. From point B westwards the lane lies wholly within hereditament number 504, Sunderleigh with the land on either side of the lane. The colouring does not break across the lane at point B or point D at the junction with the county road.
- 1.3.3.4 Hereditament number 343, Dowhills Farm of 268 acres, was owned by Hugh Troyte (Huntsham Estate) and occupied by James Hewson at an annual rent of £230 per annum. The second page of the field book includes the note 'F. P. & r/o/w over lane 1/- x 24 £24'. The sum of £24 for the footpath and right of way is carried forward to the page 4 heading of 'Public Rights of Way or User'. There is a pecked line labelled F.P. across two fields going north west from the farm buildings towards point A on the 2<sup>nd</sup> Edition mapping. However, the reference to the 'right of way over lane' could apply to two different lanes that lie within the hereditament. Bridleway No. 4 being one lane and the other one the lane running south from the farm buildings (unsurfaced, unclassified county road for the first part and has no legal status for the rest of the lane), to the junction with the county road at Bampton Down Cross. The holding included land on both sides of the lane.
- 1.3.3.5 Hereditament number 344, Borough was also owned by High Troyte and occupied by James Drew. The second page of the field book refers to 'F.P. 1 r/ow 1/10- x 24 £36'. The location of the right of way is not stated although there was a track labelled F.P. across two fields east of point A. Borough Farm did not include any land south of the lane. The £36 was carried forward to the page 4 heading of 'Public Rights of User'.
- 1.3.3.6 Sunderleigh, was hereditament number 504, owned by Hugh Troyte and occupied by James John then M Webber. On page 1 of the field book under 'Fixed Charges, Easements, Common Rights and Restrictions' is written 'R/o/w from Ford Mill to top of Dowhills Shed'. Page 2 refers to 'R/o/w over Lane 1/- x 24 say £25'. The sum of £25 is carried forward to page 4 under 'Public Rights of Way or User'. The holding included land on both sides of the lane.

# Agenda Item 9

## 1.3.4 Vestry Minutes

- 1.3.4.1 Prior to the formation of District Highway Boards in the early 1860s and the later Rural District Councils (1894) the responsibility for the maintenance of public highways generally belonged to the parish and was discharged by locally elected Surveyors of Highways. Vestry minutes from 1763 to 1881 are held by the South West Heritage Centre.
- 1.3.4.2 The Notice of a vestry meeting to be held on 18th February 1858 gave notice that the meeting was to *consider and determine whether the highway hereinafter described which Charles Troyte esquire, the Reverend Peter Acland, Arthur Mills Esquire and Frances Troyte Spinster have given notice that they intend to dedicate to the use of the public one of sufficient utility to the inhabitants of the parish of Bampton to justify their being kept in repair at the expense of the parish, a certain Highway already made and extending from the Hamlet of Ford Mill in a south easterly direction by way of Pipshayne and Dowells to the boundary of the parish of Huntsham and containing in length two miles eight chains and one pole.* This description refers to the setting out of the 'new' road to Huntsham, now a county road.
- 1.3.4.3 At the Vestry meeting it was proposed, seconded and *unanimously resolved that the Highway mentioned in the notice concerning this meeting is of sufficient utility to the inhabitants of the parish to justify it being kept in repair at the expense of the parish accordingly.* This shows that the parish accepted the new road as a highway maintainable at public expense.
- 1.3.4.4 In 1859 notice was given of the meeting to be held on 17<sup>th</sup> June 1859 to *consider and determine whether it is expedient that a certain highway situate in this parish and extending from the Hamlet of Ford Mill to Zeal otherwise Borough Three Cross Way, and of the length of two thousand four hundred and forty two yards (2233 metres), and of the average width of fourteen feet and four inches, shall be stopped up the same having become and now being a useless and unnecessary Highway.* This notice relates to the 'old' road, now recorded as Bridleway No. 4, the proposal route.
- 1.3.4.5 At the Vestry meeting it was proposed and seconded that *it is deemed expedient to entirely stop up the Highway mentioned and described in the notice concerning the meeting – carried unanimously.* This shows that the parish considered that the old road (Proposal 1) should be stopped-up.

## 1.3.5 Quarter Sessions/Magistrates Petty Sessions

- 1.3.5.1 After the parish vestry meeting had decided to stop up the lane, the relevant procedures were followed through. A certificate was obtained from two Justices and the appropriate notice of the stopping up published saying that application would be made to Her Majesty's Justices of the Peace assembled at Quarter Sessions at the Castle of Exeter on 18<sup>th</sup> October 1859.
- 1.3.5.2 The notice dated 9<sup>th</sup> July 1859 signed by the four Surveyors of the Highways of the parish stated that 'such highway had become and was wholly useless and unnecessary in consequence of a more level and commodious highway leading in a parallel direction having been recently made and which recently made highway is now used by the public instead of the highway proposed to be stopped up'. The

required proofs with plan of the said highway to be stopped up will be lodged with the Clerk of the Peace on 30<sup>th</sup> September 1859.

- 1.3.5.3 The Notice was published at the ends of the lane, in the Woolmer's Exeter and Plymouth Gazette on four consecutive Saturdays between 16<sup>th</sup> July and 6<sup>th</sup> August and on the door of the parish church on four consecutive Sundays in August. The plan attached to the application is for whole length of the lane that is now known as Bridleway No. 4, Bampton.

## **1.3.6 Urban District, Parish and Town Council Meeting Minutes**

- 1.3.6.1 Bampton was an Urban District Council from 1894 to 1935 and then became a Parish Council and following local government reorganisation of 1974 it became a Town Council. The Council minute books covering the period 1935 (when Bampton became a Parish Council) to 2002 (after which the minutes are available on line) are retained within the parish. Books of draft minutes dating from 1900 to 1935 (when Bampton was an Urban District Council) are held in the South West Heritage Centre. The notes contained within the handwritten books are too vague but from February 1915 there are copies of the detailed reports on the monthly council meetings from the Tiverton Gazette and sometimes the Devon & Somerset News stuck with in the minute books. No parish minutes or draft minutes from 1894 to 1900 were found.
- 1.3.6.2 In 1901 Bampton Urban District Council published a tender notice requesting tenders to be submitted for the maintenance of the main and parish roads in the parish. No. 5 Division included as the Main Road 'The new Huntsham Road from Hukeley Bridge to Ford Mill to Dog Down Cross'. This would be the new road running parallel and south of Bridleway No. 4, Bampton constructed between the Tithe Map of 1844 and OS 1<sup>st</sup> Edition 25" map of 1880-1890. Later tender documents describe the mileage of this road as 2 miles, 6 furlongs and 8.5 chains. The tender list does not specially mention Bridleway No. 4 but it could have been included in No. 5 Division under 'All parish Highways between the New Huntsham Road (south of Bridleway No. 4) and the River Batherum (north west of the route).
- 1.3.6.3 In 1944, when the Rural District Council asked for details of any accommodation roads in the parish that the Parish Council would like to be taken over and maintained at public expense; Bridleway No. 4 was not proposed.
- 1.3.6.4 In April 1946 a letter was received from the Rural District Council Surveyor stating that he had been appointed to prepare a schedule of Public Footpaths and Rights of Way within the district together with the necessary maps and asking Bampton Parish council to forward him a list of such footpaths. In July 1947 the clerk had prepared a list of what he considered to be public footpaths and rights of way in the parish. Number 4 in the list included 'From Ford Mill via Lane to Zeal Road'. This is the route of Bridleway No. 4, Bampton.
- 1.3.6.5 In May 1950 it was resolved that the matter of charting Public Footpaths in accordance with the 'National Park and Access to the Countryside Act 1949 be deferred until the next meeting. Mr Seward agreed that he would try to obtain a copy of the local map issued by the Ramblers Association. The matter was left in the hands of a sub-committee. At a public meeting on 1<sup>st</sup> August 1950 it was resolved that all the paths named in the list (25 in total) be walked, investigated and submitted to the county council. Number four was listed as 'From Old Mill to Road above Downhills' which is the route of Bridleway No. 4, Bampton. The path was included on the draft map as a bridleway and received no objections.

# Agenda Item 9

1.3.6.6 In September 1960 it was reported that complaints had been received regarding obstruction to footpaths including Ford Mill to road above Dowhills. A copy of the final Definitive Map and accompanying statements were received by the parish in June 1964. The Parish Council wished to keep the maps. In June 1964 the clerk received a letter requesting that the parish council to carry out an inspection of all footpaths and bridleways in the parish at least once a year. The Council agreed to do this.

1.3.6.7 In the Autumn of 2001 there was some work carried out to the eastern end of the lane to reprofile the existing route and raise the level where sections of the lane were below the water table.

## **1.3.7 British Newspaper Archive (on line)**

1.3.7.1 The Tiverton Gazette is only available in the archive for the years 1860 to 1889 and does include some reports of the meetings of Bampton Local Board, as the council was called at that time. No reports relating to the route were found. The Woolmer's Devon & Exeter Gazette issues of July and August 1859 include copies of the Notice proposing to stop up Bridleway No. 4, Bampton.

## **1.3.8 Bampton Web Site – Old Routes**

1.3.8.1 On the Bampton.org.uk website there is an article titled Old Routes. The article mentions that Bampton was a crossing point for two very ancient tracks or trading routes. Possibly the oldest originated in the Bronze Age (1400-600 BC) and came from Wiltshire via Dorset, Somerset and passed the site of the Wellington Monument and entered Devon at Ashbrittle. It then went past Cudmore Farm and Ford (Point D) to Bampton and then onto North Devon.

1.3.8.2 The most direct route and in a straight line from Cudmore to Ford, prior to the construction of the new road south of Bridleway No. 4 between the 1740s and 1800s, would be westwards along the county road from Cudmore and then continuing westwards along the existing bridleway to Ford. An old map included in the article (date or source of map not stated) has this route labelled H. This is the route of Bridleway No. 4, Bampton.

1.3.8.3 The article continues to say that sections of the track still exist and the most impressive stretch in the Bampton area is the two mile long bridleway leading south-east from Ford towards Wellington. This was still the road from Bampton to Wellington until late in the 19<sup>th</sup> century. This supports the local name of the lane as Wellington Lane.

## **1.3.9 Parish Survey under National Parks & Access to the Countryside Act 1949**

1.3.9.1 Bridleway No. 4, Bampton was proposed for addition to the Definitive Map by the Parish Council in January in 1950. The route was surveyed by Messrs R Tonkin and L Burnett and described as 'No 4 F.P. to road above Dowhills, along green lane that is overgrown in places but passable throughout'. The F. P is crossed out on the form and replaced with BR. At a meeting between Tiverton Rural District Council and the parish clerk in October 1957, the route was described as from the county road north west of Dowhills, westwards along the green lane to the county road at Ford Mill and as a bridleway. There were no objections to the bridleway's inclusion on the draft or provisional definitive maps and the route has been recorded as Bridleway No. 4, Bampton since June 1964.



## **1.3.10 Devon County Council Uncompleted Reviews of 1968 & 1977**

1.3.10.1 The Parish Council in 1968 and Town Council in 1977 did not make any proposals for changes to this bridleway in these uncompleted reviews.

## **1.3.11 Aerial Photography RAF 1946-1949, 1999-2000 & 2015-2017**

1.3.11.1 On the 1946-1949 aerial photography, the route of the way can be followed from the hedges and hedgerow trees which are more substantial at the western end of the route. The surface of the lane can be seen at the eastern end and in the centre portion of the lane, where the hedges appear neatly trimmed on the northern side.

1.3.11.2 In 1999-2000 there is little difference to the photograph of some 50 years earlier. The surface of the lane is visible along the eastern half of the lane. In the most recent photo the hedges are neatly cut from south of Sunderleigh Farm eastwards with the surface of the lane generally visible along this section.

1.3.11.3 In the most recent photograph, the west end of the lane is obscured by the hedgerow trees to south of Sunderleigh Farm with the remainder of the lane with trimmed hedges and the surface of the lane is generally visible.

## **1.3.12 Land Registry**

1.3.12.1 The eastern section of the lane between points A and B is unregistered at HM Land Registry although the land to the north and south of the lane is registered. The remainder of the lane between points B and D forms the northern boundary of land registered under title number DN 433493, first registered in 1996, and owned by Mr R Cross of Huntsham Barton. The title register makes no references to any rights of way or otherwise with regard to the lane.

## **1.3.13 Planning Permission**

1.3.13.1 A planning application was made to Mid Devon District Council in 2001 for engineering works to reprofile existing public footpath near Dowhills Farm. The applicant was Bampton Town Council and the landowner was stated as Devon County Council. The application plan confirmed that the 'footpath' referred to was Bridleway No. 4, Bampton.

## **1.4 Trails Riders Fellowship Schedule 14 Application**

1.4.1 The application made by the Trail Riders Fellowship included reference to documentary evidence in support of their claim. This included the Tithe Map where they advised that the route is depicted in the same way as other roads that are public today; Greenwoods Map where the route is shown as a cross road; shown as a road on Blacks 1886 Guide to Devonshire and on the 1<sup>st</sup> Series OS map. The application also made reference to the judge's summing up in the case *Eyre v New Forest Highway Board 1892* which supports the contention that a road known to be public prior to 1835 would still be public to this day in the absence of a stopping up order even if it had never been publicly maintained at all since then.

1.4.2 The current Devon representative of the TRF was advised that the application was being considered as part of the Definitive map Review in Bampton but no response has been received.

# Agenda Item 9

## 1.5 User Evidence

- 1.5.1 Ten user evidence forms were received with the Schedule 14 Application completed in 2005 and covering a period in excess of 20 years. However, any user evidence dating from 1964 or later, when the route was recorded as a public bridleway, would be unlawful use unless with the permission of the landowner. Following the passing of the Natural Environment & Rural Communities Act in 2006, motor vehicle user evidence can no longer be used as evidence to support the creation or upgrading of a public right of way to a byway open to all traffic.
- 1.5.2 No other user evidence forms have been received in respect of the proposal.

## 1.6 Landowner Evidence

- 1.6.1 The landowners/occupiers who owned land crossed by or adjacent to Bridleway No. 4, Bampton were contacted individually and advised of the proposal. They were invited to submit their comments and information by way of a completed landowner evidence form or otherwise.
- 1.6.2 Mr Graham of Sunderleigh Farm to the north east of point C telephoned and returned a landowner evidence form with additional information. Mr Graham has owned the farm for 19 years and has observed frequent use of the bridleway by horse riders and walkers. He commented that as one of the few paths for riders and walkers without motor traffic, it would be a great loss of a valued public amenity if the status was changed to a BOAT. The lane has a profusion of wild flowers especially in Springtime that could be damaged by motorised traffic.
- 1.6.3 No responses were received from the other four landowners contacted in respect of this route.

## 1.7 Rebuttal Evidence

- 1.7.1 Eleven local residents, most of whom advised that they rode, cycled or walked the lane, contacted the County Council following publication of the proposal to upgrade the bridleway to a byway open to all traffic. All the responses were against the proposal and the comments made included those referring to the danger of horses and walkers meeting vehicles along the lane, making the lane muddier to the detriment of walkers, causing damage to the flora and fauna along the lane, noise and disturbance to the tranquil nature of the lane.
- 1.7.2 None of the consultation responses included any evidence of use of the lane by vehicles except for Mrs Newton who referred to meeting two trail bikes along the bridleway on an occasion during the 38 years she had ridden and walked this route. Mr Wielkopolski advised that his mother recounted stories of enjoying the peace and quiet of the bridleway when riding in the 1950s. Copies of the letters and emails received are in the backing papers.

## 1.8 Discussion

### **Statute (Section 31 Highways Act 1980)**

- 1.8.1 Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant

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

- 1.8.2 A Schedule 14 application for the upgrading of Bridleway No. 4, Bampton to a Byway Open to All Traffic was made by the Trial Riders Fellowship in 2005. The TRF had included documentary and user evidence in support of their claim. The application made by the TRF in 2005 could be considered sufficient to be the required calling into question under section 31 of the Highways Act 1980 for the upgrading. However, as any user evidence dating from 1964 or later, when the route was recorded as a public bridleway, would be unlawful use, unless with the permission of the landowner; the user evidence submitted in 2005 is insufficient to allow the upgrading to be considered under Section 31.

## **Common Law**

- 1.8.3 A claim for a right of way or for upgrading an existing public right of way may also be considered under common law. At Common Law, evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway of the higher status and that the public has accepted the dedication.
- 1.8.4 Greenwoods map 1825, the Tithe Map 1844 and 1<sup>st</sup> Edition 1" OS map 1809 all show the lane in a similar manner to the surrounding lanes that are today county roads. The new road to Huntsham was constructed by the local landowners of the Huntsham Estate in the mid-1850s and prior to this Bridleway No. 4, Bampton would have been the main route from Bampton to Huntsham and also further eastwards, including to Wellington in Somerset. The lane is called Wellington Lane locally but not named as such on any maps.
- 1.8.5 Bampton vestry committee agreed to take over the new road as maintainable at public expense, as it was 'of sufficient utility to the inhabitants of the parish', in February 1958. At the vestry meeting of the following June it was resolved that the old road, Bridleway No. 4, Bampton, be stopped up as it was now 'a useless and unnecessary highway'. Presumably the parish did not wish to maintain both roads and the relevant notice and plan were prepared and published in July and August, prior an application to stop up the road being made to the Devon Quarter Session in October 1859.
- 1.8.6 On the 1910 Finance Act plans the lane is included within the adjacent hereditaments and the colouring does not break when crossing the lane or at either end. This would indicate that the route was not considered to be a public road at that time as it was included within the hereditaments. Following the stopping up of the old road in 1859 it would appear that the route was still used by the local landowners and members of the public although any maintenance would presumably have become the responsibility of the adjacent landowners. In the hereditament for Dowhills and Sunderleigh, the field books refer to a 'right of way over lane' for which an allowance for 'Public Rights of Way or User' is given. This could refer to Bridleway No. 4, Bampton particularly with relation to Sunderleigh and would indicate that the lane was considered to be a public right of way at that time. The status of the right of way is not stated in the field books but they do refer to right of way rather than just a foot path.
- 1.8.7 The route was initially proposed as a public right of way when the parish prepared a list for the District Council Surveyor in 1947. In the 1950 Parish surveys the route

# Agenda Item 9

was proposed as a footpath. Following a meeting with the Tiverton Rural District Council it was amended to a bridleway. There were no objections to its inclusion in the draft or provisional Definitive Maps as a bridleway and the route has been recorded as a bridleway since 1964.

- 1.8.8 The eastern end of the lane remains unregistered with HM Land Registry as would be expected for a public highway but the western end is registered, as would be expected for a public right of way crossing private land as opposed to public highway. In the planning application of 2001 for works to the eastern end of the lane, the landowner was stated as being Devon County Council.
- 1.8.9 The user evidence received from the TRF with the application dating from 1964 is not valid and no other user evidence has been received. Only one landowner responded to the consultation and advised that they would not wish to see the bridleway upgraded to a byway open to all traffic (BOAT). A number of local residents wrote letters or sent emails making objections to the proposed upgrading to a BOAT as they would not want motorised vehicles using the lane, although most of their objections are not valid considerations when determining what rights subsist along the lane under current legislation.

## 1.9 Conclusion

- 9.1 In the absence of sufficient, lawful, user evidence the existence of higher rights cannot be considered under section 31 of the Highways Act 1980. Under common law the documentary evidence indicates that the lane was originally used as an all purpose highway. However, those highway rights were stopped up in 1859, after the new Huntsham road was constructed. The route was still considered to be a public right of way of some description at the time of the Finance Act 1910 records, and also by the parish council in 1947 at the time of compilation of the Definitive Map. The route has been recorded as Bridleway No. 4, Bampton on the Definitive Map since 1964.
- 1.9.2 In the absence of evidence to show that any higher rights, apart from those as a public bridleway, have been acquired following the stopping up order, it is therefore recommended that no Order be made to modify the Definitive Map and Statement in respect of Proposal 1.

## 2 Proposal 2: Schedule 14 Application for the upgrading of Bridleway No. 20, Bampton to a Byway Open to All Traffic (BOAT)

**Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement by upgrading Bridleway No. 20, Bampton to a Restricted Byway E – F – G, as shown on drawing number HIW/PROW/18/060A.**

### 2.1 Background

- 2.1.1 In November 2005 the Trail Riders Fellowship submitted a Schedule 14 Application to the County Council for the upgrading of Bridleway No. 20, Bampton (also known as Ridgeway Lane) to a Byway Open to All Traffic (BOAT), supported by documentary evidence and twelve user evidence forms. This was one of several Schedule 14 applications made by local representatives of the Trail Riders Fellowship in 2005 prior to the NERC Act (Natural Environment & Rural Communities Act) that came into force in May 2006. The NERC Act would restrict

the ways that rights of ways for motorised vehicles in the countryside could be created or recorded. A right for motor vehicles was preserved under NERC if a Schedule 14 Application had been made prior to 20<sup>th</sup> January 2005, that is compliant with the regulations for Schedule 14 applications under the Wildlife & Countryside Act 1981, or the surveying authority has made a determination of an application for a BOAT before 2 May 2006.

- 2.1.2 This application was made after 20<sup>th</sup> January 2005 and was also not fully compliant with the regulations as notice of the application had not been served on the landowners. However, as an application had been received the claim was included in the parish review as made, for the upgrading of a recorded bridleway to a BOAT. As there are limited other exceptions in which vehicle rights may be preserved it would be likely that, subject to sufficient evidence, the route could only be upgraded to a restricted byway.

## **2.2 Description of the Route**

- 2.2.1 The route starts at the county road north of Ford Mill Farm and Ford Mill Cross at point E (GR SS 9731 2280) and proceeds northwards and then turns sharply eastwards before continuing east north east wards uphill along a defined lane between two hedge banks. The lane then bears northwards passing point F (GR SS 9778 2316) and continues downhill northwards to the end of the unsurfaced unclassified county road at point G (GR SS 9784 2351), south of Dipford Farm.
- 2.2.2 The total length of the bridleway is approximately 1020 metres with a mud and grass surface although with some evidence of a previously improved surface in some sections. There is a highway 'no motor vehicles sign' at point E together with a bridleway finger post. The bridleway is called Ridgeway Lane on the OS 25" 1<sup>st</sup> Edition map and subsequent OS maps. There are photographs of the route in the backing papers.

## **2.3 Documentary Evidence**

### **2.3.1 Ordnance Survey and Other Maps**

- 2.3.1.1 The Ordnance Survey and other mapping do not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.
- 2.3.1.2 Cassini Historical Maps 1809 – 1900 Sheet 191 Okehampton & North Dartmoor  
These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.
- 2.3.1.3 Old Series 1809: The bridleway is shown as a defined lane along the current alignment except for a kink in the lane between points F and G and in the similar manner to the now county roads in the vicinity of the route.
- 2.3.1.4 Revised New Series 1899-1900: The route is now shown as a narrow double-sided lane with dark shading between the lines and along the present-day alignment. The depiction corresponds to 'Unmetalled Roads' in the map key.
- 2.3.1.5 Popular Edition 1919: The bridleway is shown as a solid black line along the route described as 'Minor Roads' with the connecting county roads shown with orange dashed lines or as white lanes, described as 'Indifferent or Bad winding roads'.

# Agenda Item 9

## 2.3.1.6 Greenwood's Map of Roads 1825

These well-made maps were produced using surveyors and a triangulation system and are considered to be reasonably accurate. They were published in 1825 at a scale of one inch to the mile and date between the 1<sup>st</sup> edition OS maps and Tithe Maps published in the mid 19<sup>th</sup> century. Roads were shown as either turn pike roads with a bold line on one side of the road or as cross roads. The bridleway is shown as a cross road and follows a similar alignment to the 1809 OS map with a kink north of point F.

## 2.3.1.7 OS 1st Edition 25" to a mile 1880-1890

The route is depicted as a defined lane throughout its entire length with several mature hedgerow trees shown in the adjoining hedges. The lane is annotated Ridgeway Lane and has its own compartment number of 749 with an area of 1.893 acres. Pecked lines within the lane would indicate the difference in surfacing across the width of route at that time. There is no indication on this map to indicate the junction between the bridleway and the unclassified county road.

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

On the 1946 edition the route is shown as an uncoloured defined double-sided narrow lane and corresponding to 'Minor Roads in towns, Drives and Unmetalled Roads'.

2.3.1.9 In the 1960 edition the route is shown by a double-sided white lane (Minor Roads in towns, Drives and Unmetalled Roads) for the length of the lane. The 1967 edition shows public rights of way as recorded on the Definitive Map. The route is only shown by the symbol for a RUPP 'Road used as a Public Path' as the lane was recorded on the Definitive Map at that time.

## 2.3.1.10 OS Post War Mapping A Edition 2500 1970

The route is shown as a defined lane along its entire length and named Ridgeway Lane on the two separate map sheets that the route covered. There are two separate compartment numbers 5589 at 0.72 acres and 7829 1.15 acres.

## 2.3.1.11 OS 1:25,000 maps of Great Britain – Sheet 21/60 SS92 1950

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

2.3.1.12 Minor roads, lanes and private drives/access lanes are all shown as white uncoloured roads/lanes described as 'Other Roads, Poor, or unmetalled'. The conclusive Definitive Map had not been published when this map was published. Some routes are shown as pecked and dashed lines labelled F.P. and B.R. and some as two narrow solid lines. The map contains the standard OS disclaimer 'The representation of any other roads, tracks or paths is no evidence of the existence of a right of way'.

2.3.1.13 Sheet SS92 published in 1950 shows the route as a defined uncoloured lane in the similar manner to minor county roads in the vicinity and described as 'Poor, or unmetalled Other Roads'. The lane is named as Ridgeway Lane. No lines across the route are shown along the full length of the route or at either end.

## 2.3.2 Tithe Maps and Apportionments

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

### 2.3.2.2 Bampton Tithe Map & Apportionment 1844

On the Bampton Tithe Map the route is shown colour washed in the manner of what are now county roads in the vicinity. The lane is not numbered and is also on the current alignment by this date.

## 2.3.3 OS Name Books Early 20<sup>th</sup> Century

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

### 2.3.3.2 OS Name Book 1903 Bampton Kew Ref OS 35/1649

Ridgeway Lane is described 'A road from Ford to Shillingford Corn Mill' with the change to Corn Mill written in red ink and signed for by Mr M G Ridler, District Surveyor, Bampton.

## 2.3.4 Finance Act Plans and Field Books 1910

2.3.4.1 The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.

2.3.4.2 The allowance given was often on the basis of a figure such as a £1 times 25 yp. The yp refers to years purchase, a method of valuation used to convert a property's income flow (rent) into an appropriate capital sum on the basis that the capital value of a property is directly related to its income producing power. This method of valuation seems to be often used in Finance Act valuations.

2.3.4.3 Bridleway No. 20 is all within one sheet of the plans and is excluded from the two different hereditaments either side of the lane at its southern end. The land south of the lane is in hereditament number 288, Ford Farm, whilst the land to the north and on both sides of the lane for the remainder of the route is hereditament number 282,

# Agenda Item 9

Dipford & Middle Barn Farm. There is one field situated just to the north east of point G with a separate hereditament number of 44 with the Dipford holding and accessed from the end of the now unclassified county road at point G.

2.3.4.4 The colouring for Dipford breaks across the lane, south of point F and appears to be broken at the county road at Dipford, but the colouring is very faint and difficult to see. Under hereditament 288 Ford Farm, owner Mr William Charles Rowcliffe and occupier John Cottrell/Mr Broom, there is no reference to any rights of way and no allowance for Public Rights of Way or User in the field book. Hereditament number 282 is Dipford & Middle Barn Farm, owned by Mr Rowcliffe and occupied by Saul Webber. There is again no reference in the field book to any rights of way or any allowance for Public Rights of Way in the field book.

## **2.3.5 Vestry Minutes**

2.3.5.1 Prior to the formation of District Highway Boards in the early 1860s and the later Rural District Councils (1894) the responsibility for the maintenance of public highways generally belonged to the parish and was discharged by locally elected Surveyors of Highways. Vestry minutes from 1763 to 1846 are held by the South West Heritage Centre.

2.3.5.2 On the 30<sup>th</sup> April 1844 Mr Rowcliffe (Ford and Dipford Farms were both owned by W C Rowcliffe of London in the Finance Act field book) had published a notice in the parish for the stopping up of certain roads leading through his lands from Bampton to Shillingford village and the byway of Dipford Farm House to Ford Mill (the route of Bridleway No. 20). The proposed stopping up was discussed at the Vestry meeting on 23<sup>rd</sup> May 1844 and it was resolved that this meeting agrees to the said proposal. Further resolved that Bampton surveyor to request two Justices of the Peace from Cullompton to view said highways.

## **2.3.6 Quarter Sessions/Magistrates Petty Sessions**

2.3.6.1 There is no evidence that the proposed stopping up was ever presented to Quarter Sessions and therefore it would appear that the way was not stopped up.

## **2.3.7 Urban District, Parish and Town Council Meeting Minutes**

2.3.7.1 Bampton was an Urban District Council from 1894 to 1935 and then became a Parish Council and following local government reorganisation of 1974 it became a Town Council. The Council minute books covering the period 1935 (when Bampton became a Parish Council) to 2002 (after which the minutes are available on line) are retained within the parish. Books of draft minutes dating from 1900 to 1935 (when Bampton was an Urban District Council) are held in the South West Heritage Centre. The notes contained within the handwritten books are too vague but from February 1915 there are copies of the detailed reports on the monthly council meetings from the Tiverton Gazette and sometimes the Devon & Somerset News stuck with in the minute books. No parish minutes or draft minutes from 1894 to 1900 were found.

2.3.7.2 In 1901 Bampton Urban District Council published a tender notice requesting tenders to be submitted for the maintenance of the main and parish roads in the parish. The tender list does not specifically mention the lane from Ford Mill to Dipford but it could have been included in No. 5 Division under 'All parish Highways between the New Huntsham Road (south of Bridleway No. 20) and the River Batherum (north and west of the route). In December 1921 and November 1931



there are references regarding repairing the culvert at Dipford but this would be located on the section of the lane that is unclassified county road.

- 2.3.7.3 At the meeting on 11<sup>th</sup> March 1924 Mr Moore (a councillor) gave notice to move at the next meeting that *the road from Dipford Farm to Ford Mills should cease to be a bye road*. At the annual parish meeting on the 27<sup>th</sup> March 1924 Mr Moore moved a resolution that the Council should apply for an order to stop maintaining the road through Dipford Court. Mr Moore said that at the last meeting complaints were made that labour and material were wasted on this land and *as the public made very little use, if any, of this road, it appeared a waste of money for the Council to maintain same* – Mr F T Seward seconded the motion.
- 2.3.7.4 Mr Penwarden asked the Council not to be in a hurry in arriving at a definite decision. He thought they should take a comprehensive view of the whole parish as he considered there were other roads that could be brought under the same category and many miles could be taken off. Mr Moore agreed that all the roads should be considered and after discussion it was agreed that the surveyor should present the next meeting a statement showing the whole of such roads in the parish and their mileage.
- 2.3.7.5 A list of seven roads was presented at the next meeting by the Surveyor which included ‘Dipford Road, from Doddiscombe road to Chapel Close (13 chains 50 lengths’ (270 metres). This length corresponds to the part of the unclassified county road that Bridleway No. 20 joins at Dipford from the road junction north of Dipford to where the old Chapel is shown on the OS 1880-1890 25” map. At the May meeting the surveyor confirmed the amount spent on the proposed roads. Mr Seward observed that the Council did not intend to close the roads, as was thought by some people, all they proposed was to cease to maintain them. Farmers, who were big ratepayers, had told the Chairman that it was the most unfair suggestion the Council had discussed. If the Council ceased to maintain certain of the roads it would mean that they would be virtually closed. After being proposed and seconded the report was allowed to lay on the table.
- 2.3.7.6 At the meeting on 11<sup>th</sup> June 1929 the clerk reported that all classified and unclassified roads were to be placed under the control of Devon County Council after 31<sup>st</sup> March 1930. A list of Accommodation roads to be taken over by Devon County Council was prepared by the Parish Council in 1944. This did not include the route of Bridleway No. 20, Bampton. There were no roads in the parish that were considered unnecessary to the public.
- 2.3.7.7 In April 1946 a letter was received from the Rural District Council Surveyor stating that he had been appointed to prepare a schedule of Public Footpaths and Rights of Way within the district together with the necessary maps and asking Bampton Parish council to forward him a list of such footpaths. In July 1947 the clerk had prepared a list of what he considered to be public footpaths and rights of way in the parish. This initial list of 17 routes did not include Bridleway No. 20, Bampton.
- 2.3.7.8 In May 1950 it was resolved that the matter of charting Public Footpaths in accordance with the ‘National Park and Access to the Countryside Act 1949’ be deferred until the next meeting. Mr Seward agreed that he would try to obtain a copy of the local map issued by the Ramblers’ Association. The matter was left in the hands of a sub-committee.
- 2.3.7.9 At a public meeting on 1<sup>st</sup> August 1950 it was resolved that all the paths named in the list (25 in total) be walked, investigated and submitted to the county council.

# Agenda Item 9

Number 20 was listed as 'From Dipford Farm along Ridgeway Lane to near Ford Mill' which is the route of Bridleway No. 20, Bampton. The path was included on the draft map as a RUPP (road used as a public footpath) and received no objections. A copy of the final Definitive Map and accompanying statements were received by the parish in June 1964. The Parish Council wished to keep the maps.

2.3.7.10 A public meeting was arranged for April 1971 to discuss the re-designation of byways as requested in a letter from the County Council. At the Parish Council meeting in February 1972 it was resolved that the Council objects to Public Path No. 20 being made a footpath. No public meeting appears to have been held with regard to the 1977 review and no proposals for changes were made by the Town Council.

2.3.7.11 At the meeting of the Town Council on 2<sup>nd</sup> July 1996 correspondence was received from the Devon County Council Divisional Surveyor regarding an application from Mrs Arthur of Dipford Farm, Shillingford to erect a gate on the bridleway in Ridgeway Lane to prevent livestock straying onto trafficked roads. All in favour, clerk to send letter to confirm.

## **2.3.8 British Newspaper Archive (on line)**

2.3.8.1 The Tiverton Gazette is only available in the archive for the years 1860 to 1889 and does include some reports of the meetings of Bampton Local Board, as the council was called at that time. No reports relating to the route were found.

## **2.3.9 Parish Survey under National Parks & Access to the Countryside Act 1949**

2.3.9.1 Path No. 20, Bampton was included on the survey forms as 'No 20 F.P.' and described as 'No 20 F.P. to Ford Mill Path starts at Dipford Farm and continues along green lane to Fordmill, lane is somewhat overgrown but is still passable. Not dedicated but used throughout living memory.' The route was surveyed by Messrs A J Seward and L J Burnett in Autumn 1950. At a meeting between Tiverton Rural District Council and the parish clerk in October 1957, the route was amended to a R.U.P.P. and described as 'From Shillingford to Ford via Ridgeway Lane Starts at the southern end of an U.C. County Road near Dipford and follows the green lane to end at the County Road C.446 at Ford'. There were no objections to the lane's inclusion on the draft or provisional definitive maps as a RUPP and the route was recorded as RUPP No. 20, Bampton on the Tiverton Rural District Council Definitive Map in June 1964.

## **2.3.10 Devon County Council Reviews of 1968, 1971 & 1977**

2.3.10.1 No proposals for any changes were made by the Parish Council in the 1968 review. In 1971 the County Council commenced a Limited Special Review of the Definitive Map, under the Countryside Act 1968, which required all RUPPs to be reclassified as either a byway open to all traffic, bridleway or footpath. The County Council wrote to the parish in March 1971 and received the reply that at a Parish Public Meeting it was proposed and seconded that the parish RUPPs remain designated as the map states. The County Council wrote again in December 1971 asking which of the designations of a byway open to all traffic, a bridleway or a footpath should be applied to the right of way. The parish council responded that the council classed Footpath number 20 as a footpath.

2.3.10.2 The County Council then contacted the County Surveyor and asked whether he agreed with the recommendation that RUPP No. 20 should be re-designated as a footpath. The Surveyor replied that he had no objections. The County Council then wrote to the Parish Council in March 1972 to advise that the County Roads Committee will be recommended to approve the designation as a footpath.

2.3.10.3 However, in February 1974 Bampton Parish Council wrote to the Secretary of State for the Environment in London to strongly object to the re-designation of Footpath No. 20. 'Their grounds for objection are that they feel it should be classified as a bridleway as the roads are very dangerous for riders and especially children riders. Bridleways can be used by foot people, horses, cyclists and tractors possibly, but not motor vehicles. Therefore, to classify it as a Footpath would be of great detriment to the surrounding community.'

2.3.10.4 The County Council replied to the Department of the Environment advising that the Parish Council had themselves decided it should be a footpath. *So far as the County Council are concerned, there is no objection to the path being classified as a bridleway.* RUPP No. 20 was accordingly re-designated as Bridleway No. 20, Bampton.

2.3.10.5 In September 1977, in response to an enquiry from the County Council regarding maintenance on RUPP No. 1 Bampton, the Divisional Surveyor for Tiverton advised that during the past ten years or so, he has not maintained Bampton No. 20. No proposals for change were made by the then Town Council in the course of the 1977 uncompleted review.

## **2.3.11 Aerial Photography RAF 1946-1949, 1999-2000 & 2015-2017**

2.3.11.1 On the 1946-1949 aerial photography, the route of the way can be followed from the lane's hedges and with more substantial trees visible at the southern end of the route. The surface of the lane can be seen more in the centre of the lane and at the northern end where the hedges appear neatly trimmed.

2.3.11.2 In 1999-2000 the hedgerow trees and hedges have grown particularly in the southern section. The surface of the lane is barely visible. In the most recent photograph, there is little change to the lane with the surface only visible for part of the route south of point F and south east of the buildings at Middle Barn.

## **2.3.12 Land Registry**

2.3.12.1 Ridgeway Lane is unregistered with HM Land Registry except for a short section north of point E through the small copse which is included in the title number for Dipford Farm. The register title does make any reference to any rights of way for access across the holding.

## **2.4 Trails Riders Fellowship Schedule 14 Application**

2.4.1 The application made by the Trail Riders Fellowship included reference to documentary evidence in support of their claim. This included the Tithe Map where they advised that the route is depicted in the same way as other roads that are public today; Greenwoods Map where the route is shown as a cross road, shown as a road on Blacks 1886 Guide to Devonshire and the Finance Act where the lane is excluded at the southern end. The application also made reference to the judge's summing up in the case *Eyre v New Forest Highway Board 1892*. They say this

# Agenda Item 9

supports the contention that a road known to be public prior to 1835 would still be public to this day in the absence of a stopping up order even if it had never been publicly maintained at all since then and also that there is little point in a cul-de-sac road unless it leads to a place of special interest. Hence there must be a presumption that the higher status prevails over the whole length of the route.

- 2.4.2 The current Devon representative of the TRF was advised that the application was being considered as part of the Definitive map Review in Bampton, but no response has been received.

## **2.5 User Evidence**

- 2.5.1 Twelve user evidence forms were received with the Schedule 14 Application and covered a period in excess of 20 years together with a record sheet for a run that included using the lane in May 1991. However, any user evidence dating from the mid-1970s or later, when the route was re-designated as a public bridleway, would be unlawful use unless with the permission of the landowner. Following the passing of the Natural Environment & Rural Communities Act in 2006, motor vehicle user evidence can no longer be used as evidence to support the creation or upgrading of a public right of way to a byway open to all traffic.

- 2.5.2 No other user evidence forms have been received in respect of the proposal.

## **2.6 Landowner Evidence**

- 2.6.1 The two landowners/occupiers who owned land crossed by or adjacent to Bridleway No. 20, Bampton were contacted individually and advised of the proposal. They were invited to submit their comments and information by way of a completed landowner evidence form or otherwise.

- 2.6.2 Miss Arthur of Dipford Farm responded and advised that they have considered the lane to be a bridleway for forty five years. Under other information and in a covering letter Miss Arthur advises that the lane is very narrow in places and not suitable for motorcycles and four wheeled vehicles. People are walking and riding horses up and down the lane about three times a week. Many of the walkers are elderly and horse riders like the bridleway as it is safe and quiet. As farmers they must cross the bridleway in places to access their fields and move livestock around the farm.

- 2.6.3 No response was received from the other landowner contacted in respect of this route.

## **2.7 Rebuttal Evidence**

- 2.7.1 Nine local residents, most of whom advised that they rode, cycled or walked the lane, contacted the County Council following publication of the proposal to upgrade the bridleway to a byway open to all traffic. All the responses were against the proposal and the comments made included those referring to the danger of horses and walkers meeting vehicles along the lane, making the lane muddier to the detriment of walkers, causing damage to the flora and fauna along the lane, noise and disturbance to the tranquil nature of the lane. None of the consultation responses included any evidence of use of the lane by vehicles. Copies of the letters and emails received are in the backing papers.

## 2.8 Discussion

### Statute (Section 31 Highways Act 1980)

- 2.8.1 Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.
- 2.8.2 A Schedule 14 application for the upgrading of Bridleway No. 20, Bampton to a Byway Open to All Traffic was made by the Trial Riders Fellowship in 2005. The TRF had included documentary and user evidence in support of their claim. The application made by the TRF in 2005 could be considered sufficient to be the required calling into question under section 31 of the Highways Act 1980 for the upgrading. However, as any user evidence dating from the mid-1970s or later, after the route was recorded as a public bridleway, would be unlawful use, unless with the permission of the landowner; the user evidence submitted in 2005 is insufficient to allow the upgrading to be considered under Section 31.

### Common Law

- 2.8.3 A claim for a right of way or for upgrading an existing public right of way may also be considered under common law. At Common Law, evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway of the higher status and that the public has accepted the dedication.
- 2.8.4 The route was initially proposed as a public right of way when the parish prepared a list for the District Council Surveyor in 1947. In the 1950 across county Parish surveys the route was proposed as a footpath. Following a meeting with the Tiverton Rural District Council it was amended to a 'road used as a public path' (RUPP). In the initial parish survey of 1950, parish councils were asked to mark routes as footpaths, bridle paths, carriage roads used as a footpath or carriage roads used as a bridleway. The two carriage road designations were amended to the single 'road used as a public path' (RUPP) and these three types of public right of way were recorded on the Definitive Map. There were no objections to Ridgeway lane's inclusion in the draft or provisional Definitive Maps as a RUPP. The route has been recorded as a RUPP since 1964 (when the route could legally have been used by motorised vehicles) and a bridleway since the 1970s (when use by motorised vehicles became unlawful unless with the permission of the landowner).
- 2.8.5 Greenwoods map 1825, the Tithe Map 1844 and 1<sup>st</sup> Edition 1" OS map 1809 all show the lane in a similar manner to the surrounding lanes that are today county roads. The OS Name Book describes Ridgeway Lane as 'a road' signed for by the District Surveyor. The lane is considered to be excluded from the adjoining hereditaments in the Finance Act 1910 plans as the colouring breaks across the lane and therefore considered to be public at that time. These records all indicate that the lane was a parish highway.
- 2.8.6 Further evidence of this is provided by the reference in the vestry minutes of 1844 when the landowner of Dipford and Ford Farms at that time wished to stop up Ridgeway Lane as a bye road. Although the vestry agreed to this, there is no

# Agenda Item 9

evidence of the stopping up been taken to Quarter Sessions or taking place. This absence of a stopping up order is further confirmed as in 1924, Mr Moore, a member of the Bampton Urban District Council, proposed that the lane should cease to be a bye road (indicating that it was still considered a public road at that time). The Council then considered applying to stop up a number of roads in the parish but after consideration decided against it and no further action was taken.

- 2.8.7 The current HM Land Registry records support the lane being considered public as it is not included in the adjoining registered land apart from a small section at the southern end of the route.
- 2.8.8 The evidence of use by motor vehicles received from the TRF with their application is not valid and no other user evidence has been received. One landowner responded to the consultation and advised that they would not wish to see the bridleway upgraded to a byway open to all traffic (BOAT). A number of local residents wrote letters or sent emails making objections to the proposed upgrading to a BOAT as they would not want motorised vehicles using the lane, although most of their objections are not valid considerations when determining what rights subsist along the lane under current legislation.
- 2.8.9 The recording of the route as a RUPP in the 1950s is considered to accurately describe the lane at that time. An old parish carriage road that was (probably due to a lack of maintenance by the surveying authority of the time) unused by ordinary motorised traffic and so mainly used by walkers and riders. When the RUPPs were re-designated in the 1970s, it appears that the history of the route or other historic or documentary evidence was not considered and the parish council was merely asked what status they felt the lane should be. The parish initially said a footpath but changed this to a bridleway as they considered the roads dangerous for horse riders. On the basis of the evidence discovered, Ridgeway Lane perhaps ought to have been re-designated as a BOAT. The NERC Act of 2006 subsequently extinguished any unrecorded rights for mechanically-propelled vehicles, except in very limited circumstances.

## **2.9 Conclusion**

- 2.9.1 In the absence of sufficient user evidence the existence of higher rights cannot be considered under section 31 of the Highways Act 1980. At common law the available evidence is considered to show that Ridgeway Lane was an all-purpose parish highway and therefore that higher rights than those of a bridleway can be reasonably alleged to subsist.
- 2.9.2 The NERC Act 2006 prevents the lane being recorded as a Byway Open to All Traffic as none of the exemptions to extinguishment of rights for mechanically-propelled vehicles are considered to apply. It is therefore recommended that an Order be made to modify the Definitive Map and Statement for the upgrading of Bridleway No. 20, Bampton to a Restricted Byway as shown on drawing number HIW/PROW/18/060A.

## **3 Proposal 3: Schedule 14 Application for the proposed upgrade of Bridleway No. 25, Bampton to a Byway Open to All Traffic, as shown between points R – S – T on drawing number HIW/PROW/18/061**

**Recommendation: It is recommended that no Order be made in respect of Proposal 3.**

### **3.1 Background**

3.1.1 In November 2005 the Trail Riders Fellowship submitted a Schedule 14 Application to the County Council for the upgrading of Bridleway No. 25, Bampton to a Byway Open to All Traffic (BOAT), supported by documentary evidence and twelve user evidence forms. This was one of several Schedule 14 applications made by local representatives of the Trail Riders Fellowship in 2005 prior to the NERC Act (Natural Environment & Rural Communities Act) that came into force in May 2006. The NERC Act would restrict the ways that rights of ways for motorised vehicles in the countryside could be created or recorded. A right for motor vehicles was preserved under NERC if a Schedule 14 Application had been made prior to 20<sup>th</sup> January 2005, that is compliant with the regulations for Schedule 14 applications under the Wildlife & Countryside Act 1981, or the surveying authority has made a determination of an application for a BOAT before 2 May 2006.

3.1.2 This application was made after 20<sup>th</sup> January 2005 and was also not fully compliant with the regulations as notice of the application had not been served on the landowners. However, as an application had been received the claim was included in the parish review as made, for the upgrading of a recorded bridleway to a BOAT. As there are limited other exceptions in which vehicle rights may be preserved it would be likely that, subject to sufficient evidence, the route could only be upgraded to a restricted byway.

### **3.2 Description of the Route**

3.2.1 The route starts at the junction of county roads at Dog Down Cross county road at point R (GR ST 0059 2139) and proceeds west south westwards along a defined lane bordered with hedge banks and an improved partly stoned surface. The route continues passing the farmstead Huntsham Barton to Bampton Down Cross at point S (SS 9947 2109), the junction of Bridleway No. 25, Bampton, the county road southwards to Huntsham known as Bampton Down Road and green lane leading northwards to Dowhills and Giffords Farms. The lane continues in the same direction, although wider at this point, to the junction of the unclassified roads numbers 301 and 302 at the woods known as Burnt Plantation at point T (SS 9822 2071).

3.2.2 The total length of the bridleway is approximately 2480 metres with an improved surface in some sections, particularly between Dog Down Cross and Huntsham Barton and between Bampton Down Cross and east of Mason's Moor. The remainder of the surface is of grass, mud and stone in parts. The lane was initially claimed by Huntsham parish in the 1950s parish surveys of public rights of way and transferred to Bampton parish during the Limited Special Review of the early 1970s. There are photographs of the route in the backing papers.

3.2.3 Nowadays, it would be considered that the route lies in both the parishes of Bampton and Huntsham (Borden Gate Parish Council), as the boundary runs along

# Agenda Item 9

the length of the lane, and the public right of way would be considered to extend across the whole width of the lane.

## 3.3 Documentary Evidence

### 3.3.1 Ordnance Survey and other maps

- 3.3.1.1 The Ordnance Survey and other mapping do not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.
- 3.3.1.2 Cassini Historical Maps 1809 – 1900 Sheet 191 Okehampton & North Dartmoor  
These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.
- 3.3.1.3 Old Series 1809: The bridleway is shown as a defined lane along the current alignment in the similar manner to the now county roads for the section westwards from Bampton Down Cross to point T. The pecked line on the northern side of the lane indicates that it was unfenced on that side. The section of route eastwards from Bampton Down Cross to point R, is shown by pecked lines on both sides and is on a more north western alignment than at present. The present location of the east end of the route at Dog Down Cross (point R) being south of Cudmore Farm. There are no buildings shown at Huntsham Barton
- 3.3.1.4 Revised New Series 1899-1900: The route is now shown as a double-sided lane with pale orange colouring between the lines and along the present-day alignment. The depiction corresponds to 'Metalled Roads: Second Class' in the map key. The parish boundary is shown along the route and Huntsham Barton is shown. The changes to the road layout at Cudmore Farm, north of point R and the 'new road to Huntsham' referred to in proposal 1 are shown.
- 3.3.1.5 Popular Edition 1919: The bridleway is shown as a double-sided lane along the existing route but no longer coloured and described as 'Roads under 14' wide, Indifferent or Bad winding road' with the connecting county road Bampton Down Road to the south shown in the same manner.
- 3.3.1.6 Greenwood's Map of Roads 1825  
These well-made maps were produced using surveyors and a triangulation system and are considered to be reasonably accurate. They were published in 1825 at a scale of one inch to the mile and date between the 1<sup>st</sup> edition OS maps and Tithe Maps published in the mid19<sup>th</sup> century. Roads were shown as either turn pike roads with a bold line on one side of the road or as cross roads. The lane is not clearly shown on this map as the boundary of the hundred as well as the parish runs along the route. The western end of the route does appear to be shown alongside the wood/copse east of point T with the route shown then bearing northwards towards Whitenhay.
- 3.3.1.7 OS 1st Edition 25" to a mile 1880-1890  
The route is depicted as a defined lane throughout its entire length with several mature hedgerow trees shown in the adjoining hedges and extended across three map sheets when published. The lane has its own compartment number of 515 with an area of 1.976 acres for the section between points R and S; a number of 952 area 0.905 acres for the section west of point S and 1749 area 1.333 acres for the section east of point T. Pecked lines within the lane would indicate the difference in



surfacing across the width of route at that time. There are no lines across the route at either end or along the lane. The parish boundary is shown by a wide spaced dotted line along the southern edge of the route with the annotation '3ft R.H.'; indicating the boundary lies 3 feet from the root of hedge. This would indicate that most of the route would fall into Bampton as the parish on the northern side of the lane. The road northwards from the route to Whitenhay is no longer shown.

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

On the 1946 edition the route is shown as an uncoloured defined double-sided lane and corresponding to 'Roads Under 14 feet of Metalling Bad (not classified by M of T)'. The parish boundary is shown along the lane and the 'new road to Huntsham' is shown as a road over 14 feet of metalling.

3.3.1.9 In the 1960 edition the route is shown by a double-sided white lane (Roads under 14ft of Metalling Untarred) for the length of the lane and in a similar manner to Bampton Down Road south of point S. The 1967 edition shows the route in a similar manner to the 1960 edition and as a defined double-sided lane. Public rights of way as recorded on the Definitive Map are shown on this edition and the lane has the symbol for a RUPP 'Road used as a Public Path' as the lane was recorded on the Definitive Map as a RUPP by that time.

### 3.3.1.10 OS Post War Mapping A Edition 2500 1970

The route is shown as a defined uncoloured lane along its entire length on the three separate map sheets that the route covered and labelled 'Track' on the western side of Bampton Down Cross. The three compartment numbers being 3329 0.99 acres, 0006 1.37 acres and 5388 1.57 acres. The parish boundary is shown along the southern side of the lane with the annotation 0.91m RH.

### 3.3.1.11 OS 1:25,000 maps of Great Britain – Sheet SS92 1950 & ST02 1961

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

3.3.1.12 Minor roads, lanes and private drives/access lanes are all shown as white uncoloured roads/lanes described as 'Other Roads, Poor, or unmetalled'. The conclusive Definitive Map had not been published when this map was published. Some routes are shown as pecked and dashed lines labelled F.P. and B.R. and some as two narrow solid lines. The map contains the standard OS disclaimer 'The representation of any other roads, tracks or paths is no evidence of the existence of a right of way'.

3.3.1.13 Sheet SS92 published in 1950 shows the route as a defined uncoloured lane in the similar manner to the minor county roads of Bampton Down Road and Burnt Plantation, and described as 'Poor, or unmetalled Other Roads'. No lines across the route are shown along the full length of the route or at either end. This map does show a dashed line labelled B.R. running north of the route from west of Week Common and then parallel to Bridleway No. 25 to Bampton Down Cross.

## 3.3.2 **Tithe Maps and Apportionments**

3.3.2.1 Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have

# Agenda Item 9

limited the possibility of errors. Roads were sometimes coloured and colouring can indicate carriageways or driftways. Public roads were not tithe able. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not included within an individual apportionment are usually included under the general heading of '*public roads and waste*'.

## 3.3.2.2 Bampton Tithe Map 1842 & Huntsham Tithe Map 1841

The route is not shown on the Bampton Tithe Map except for the far western section bordering the woods/copse east of point T. This section is colour washed in the similar manner of county roads. On the Huntsham Tithe Map the route is only shown for the western end of the route from midway between points S and T to point T. The lane is colour washed in the manner of what are now county roads. The sections included on both maps are not numbered. As the lane was on the parish boundary and would not have been titheable it is understandable that it was not included in full on the maps.

## 3.3.3 **Finance Act Plans and Field Books 1910**

3.3.3.1 The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.

3.3.3.2 The allowance given was often on the basis of a figure such as a £1 times 25 yp. The yp refers to years purchase, a method of valuation used to convert a property's income flow (rent) into an appropriate capital sum on the basis that the capital value of a property is directly related to its income producing power. This method of valuation seems to be often used in Finance Act valuations.

3.3.3.3 The lane is excluded from hereditaments where there are different holdings on either side of the bridleway but the colouring also breaks across the lane in the hereditament number 4, for Huntsham Barton; which has land on both sides of the lane between points R and S. The whole lane lies in hereditament number 4, Huntsham Barton in Huntsham parish and adjacent to numbers 330, 343 – Dowhills, 360 – Coppice and Plantations and 361 – Bampton Down in Bampton parish.

3.3.3.4 Hereditament number 360 includes coppice and plantations situate at Venman's, Hunthills, Burrow and Zeal Ball owned and occupied by Hugh Troyte including 'a plantation of fair larch on Bampton Down'. There is no reference to any rights of way over the land included in the hereditament. Hereditament number 361, Bampton Down described as agricultural land, 23 acres owned by Hugh Troyte, amended to be occupied by Mr Webber. On the first page under 'Fixed Charges, easements, Common Rights and Restrictions' is written 'a road adjoining Bampton Down'. Page two of field book refers to 'Enclosure of Rough pasture Ord 430 of 23.732 acres' with R/o/w 10/- x 20 £10 included under the heading for Charges.

The sum of £10 was carried forward to page four under 'Public Rights of Way or User'.

- 3.3.3.5 Hereditament number 4 Huntsham is for Huntsham Barton. The first page of the field book had not been copied but the second page refers to 'F.P. across 4 fields 4/- x 20 say £100'. This value of £100 is carried forward to the item for Public Rights of Way and User on page 4. No allowance appears to have been made for the lane running through the farm.

### **3.3.4 Bampton Road Tender Notice April 1901**

- 3.3.4.1 The list of roads, in the tender notice published by Bampton Urban District Council in 1901 for the upkeep of the Bampton parish main and other roads, included within No. 4 Division 'The Sparkhayne Road by Gifford's Farm to Bampton Down' and in No. 5 Division 'The Road from Dowell's Farm to Bampton Down'. These routes both lead southwards to Bampton Down Cross but did not seem to include the route of Bridleway No. 25, Bampton running east to west across Bampton Down. This would indicate that the route was not maintained by Bampton at that time.

- 3.3.4.2 No equivalent roads records for Huntsham have been discovered.

### **3.3.5 Urban District, Parish and Town Council Meeting Minutes**

- 3.3.5.1 Bampton was an Urban District Council from 1894 to 1935 and then became a Parish Council and following local government reorganisation of 1974 it became a Town Council. The Council minute books covering the period 1935 (when Bampton became a Parish Council) to 2002 (after which the minutes are available on line) are retained within the parish. Books of draft minutes dating from 1900 to 1935 (when Bampton was an Urban District Council) are held in the South West Heritage Centre. The notes contained within the handwritten books are too vague but from February 1915 there are copies of the detailed reports on the monthly council meetings from the Tiverton Gazette and sometimes the Devon & Somerset News stuck with in the minute books. No parish minutes or draft minutes from 1894 to 1900 were found.

- 3.3.5.2 In April 1946 a letter was received from the Rural District Council Surveyor stating that he had been appointed to prepare a schedule of Public Footpaths and Rights of Way within the district together with the necessary maps and asking Bampton Parish council to forward him a list of such footpaths. In July 1947 the clerk had prepared a list of what he considered to be public footpaths and rights of way in the parish. This list included at number 12 the route described as 'From Bampton Down Cottage to Wick Common and Bampton Down to Bampton Down Cross'. This would include part of the west end of Bridleway No. 25, Bampton and would appear to describe the route of the bridleway shown on the OS 1:25,000 map of 1950.

- 3.3.5.3 Number 13 included in the list was described as 'From last named (Bampton Down Cross) (meaning number 12 as above) through Burnt Plantation to boundary of parish'. The description would seem to include the west end of Bridleway No. 25 from point S at Bampton Down Cross to point T at the boundary of Burnt Plantation.

- 3.3.5.4 In May 1950 it was resolved that the matter of charting Public Footpaths in accordance with the 'National Park and Access to the Countryside Act 1949 be deferred until the next meeting. Mr Seward agreed that he would try to obtain a copy of the local map issued by the Ramblers Association. The matter was left in the hands of a sub-committee.

# Agenda Item 9

- 3.3.5.5 At a public meeting on 1<sup>st</sup> August 1950 it was resolved that all the paths named in the list (25 in total) be walked, investigated and submitted to the county council. Numbers 24 and 25 of this new list included numbers 12 and 13 as previously described above.
- 3.3.5.6 The path was subsequently included on the draft map as a RUPP No 1 Huntsham (road used as a public footpath) on the Huntsham Definitive Map and not in Bampton parish. A copy of the final Definitive Map and accompanying statements for Bampton Parish were received by the parish council in June 1964. The Parish Council wished to keep the maps.
- 3.3.5.7 At the Bampton Town Council meeting in December 1972 it was decided to designate a footpath verging the Huntsham Parish as a byway open to all traffic. No public meeting appears to have been held in Bampton with regard to the 1977 review and no proposals for changes were made by the Town Council.

## **3.3.6 Parish Survey under National Parks & Access to the Countryside Act 1949**

- 3.3.6.1 Although initially included in the list of public rights of way made by Bampton parish to be walked, investigated and submitted to the County Council in 1950 for inclusion on the new map of Public Rights of Way, no survey forms were in fact submitted by Bampton parish for paths numbered 24 and 25. A path numbered 24 was included in the list of paths agreed between Tiverton Rural District Council and Bampton Parish Council but this referred to a footpath 'From Cudmore Farm to Hern's Farm' which continued in the adjoining parish of Clayhanger. This footpath is currently record as Footpath No. 24, Bampton and Footpath No. 17, Clayhanger. The original proposal number 24 and 12 for the route shown as a bridleway on the OS 25" 1<sup>st</sup> and 2<sup>nd</sup> edition from Bampton Down Cottage across Week Common to Bampton Down (the east end running north of and parallel to the current Bridleway No. 25) was not claimed by Bampton Parish Council.
- 3.3.6.2 Bridleway No. 25 was included in Huntsham's submission as Path No 1 and described as 'From Dog Down Cross to public road at point 914 Burnt Plantation. Metalled surface. Passable for cars but surface very bad between Huntsham Barton and Bampton Down Cross. Bad patches after this. Chiefly used for farm traffic but from Bampton Down Cross west used by cars to some extent and whole length of the road used by people riding and on foot'. Under Grounds for believing to be public was written 'Has always been used as public road'. The path had been repaired in the past by some patching by owner and occupiers of adjoining land. The survey was carried out by Sir Gilbert Acland Troyte, Chairman of the Parish Meeting and form completed 4<sup>th</sup> September 1950.
- 3.3.6.3 At a meeting on the 22<sup>nd</sup> October 1957 between the Tiverton Rural District Council representative and Chairman of the Huntsham Parish Meeting, agreed Path No. 1 as a Road Used as a Public Path (RUPP), described as 'Starts from Dogdown Cross on the Class III County Road (No. 30) and follows the road used as a public path, in a westerly direction past the north side of Huntsham Barton across Bampton Down Cross and continuing to the U.C. County Road at the south east corner of Burnt Plantation, by the Tiverton Borough boundary'.
- 3.3.6.4 There were no objections to the lane's inclusion on the draft or provisional definitive maps as a RUPP and the route was recorded as RUPP No. 1, Huntsham on the Tiverton Rural District Council Definitive Map in June 1964.

## **3.3.7 Devon County Council Reviews of 1968, 1971 & 1977**

- 3.3.7.1 No proposals for any changes to the route were made by Bampton or Huntsham Parish Council in the 1968 review. As a RUPP, the route was to be re-designated in the Limited Special Review of 1971. In April and July 1972, the County Council wrote to the Clerk to the Tiverton Rural District Council to request their assistance with arranging a parish meeting in Huntsham to discuss what designation should apply to RUPP No. 1, Huntsham.
- 3.3.7.2 In the summer of 1972 Sir Ferguson Davie, Chairman of Huntsham Parish Meeting wrote a response to a letter previously received saying 'It is much regretted that answer was not sent sooner but with the postal strike your letter was not received until the middle of March. However, a meeting has now been held and the result is as follows. The Public path indicated by the broken green line from Dog Down Cross to Burnt Plantation is only suitable as a bridleway. This road is used for farm vehicles but is quite unsuitable for general traffic – it is only a rough road with many potholes etc, and as far as is known has never been used other than for farm vehicles'.
- 3.3.7.3 In September 1972, the County Council's roads department wrote to the Clerk of the Council referring to their letter of the 25<sup>th</sup> August 1972. The letter was headed 'Limited Special Review R.U.P.P. No. 1 Huntsham' and the writer (believed to be the County Surveyor's Footpath Assistant) replied that 'this road is actually situated within the parish of Bampton, although not claimed by Bampton in the survey of 1950. The parish boundary follows the southern edge of the road and I am of the opinion that the road was not claimed by Bampton because it is an old public road, used more by vehicles than pedestrians. In the circumstances therefore, the opinion of Bampton Parish Council will need to be obtained. As this is a tree lined metalled road, with a surface and width suitable for use as a by-way, and as a designation to a bridleway leaves the road open to permission to plough, I would recommend that the R.U.P.P. be re-designated as a by-way'.
- 3.3.7.2 Bampton Parish Council were written to in November 1972 and replied in December 1972 advising 'My Council have discussed this bridleway and are fully in agreement that it should be designated as a byway open to all traffic'. In September 1977 in response to a letter/memo from the County Secretary, the Divisional Surveyor for Tiverton, Mr J Owen-Jones, replied advising that 'during the past 10 years or so, which is when the foreman for the area was appointed, no maintenance has been carried out on RUPP No. 1 in Bampton but I know that hunt followers in their cars regularly use it'.
- 3.3.7.3 Although Bampton parish had requested that the RUPP be re-designated as a Byway it appears that the lane was only designated as a bridleway, in accordance with the Huntsham parish meeting request and became Bridleway No. 25, Bampton.
- 3.3.7.4 In the County Council's subsequently uncompleted review of 1977, Huntsham Parish (now part of Borden Gate Parish Council) proposed that Footpath No. 2, Huntsham should be marked as a Public Accommodation Road as this lane has been used by the public for over 50 years. On the same form was also added 'Also the same for the Road marked with Green Broken Lines from Dog Down Cross to Burnt Plantation, this Road also has been used by the Public for over 50 years' – the proposal route.
- 3.3.7.5 A definition of a 'Public Accommodation Road was included in the information sent by Devon County Council to the Parishes regarding the 1977 review and stated that

# Agenda Item 9

it was 'a very unusual sort of road and none was shown on the Definitive Map. In Devon the term is used to describe a road over which the public has complete freedom of access but which the landowner rather than the county council is liable to maintain'. A Planning Inspectorate Inspector considered that the term 'complete freedom of access' would include use by vehicles. The definition of a Byway Open to All Traffic in Section 66(1) of the Wildlife & Countryside Act 1981 is that of "a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used". This description could similarly be considered to apply to 'a public accommodation road'.

## **3.3.8 Aerial Photography RAF 1946-1949, 1999-2000 & 2015-2017**

- 3.3.8.1 On the 1946-1949 aerial photography (which is unusually blurred for this area), the route of the way can be followed from the lane's hedges and with hedgerow trees visible along the route. The hedges are neatly trimmed and the surface of the lane can be seen along the length of the route as a lighter colour, indicative of a stoned/metalled surface.
- 3.3.8.2 In 1999-2000, the hedgerow trees have grown and are more numerous although where visible the hedges are neatly trimmed, particularly at the eastern end of the route. The surface of the lane is visible along most of the route as a lighter colour as except where obscured by trees. In the most recent photograph, there is little change to the lane with the surface visible for most of the route and trimmed hedges particularly from between points S and T to point R at Dog Down Cross.

## **3.3.9 Land Registry**

- 3.3.9.1 The bridleway is wholly included in land registered at HM Land Registry. The fields and woods adjacent to the route including the adjacent sections of the lane are registered to the Trustees of Huntsham estate. A section of the lane west of point S is registered under its own title number and described as 'Track at Bampton Down'. The lane was first registered in October 2007. There is no reference to any rights of way on the registered title for this section of the track or on any of the other titles through which the lane passes. Unusually the unsurfaced unclassified county road at Burnt Plantation is also registered under its own title number, described as 'Track at Burnt Plantation'. The title number would indicate this was also first registered in 2007.

## **3.4 Trails Riders Fellowship Schedule 14 Application**

- 3.4.1 The application made by the Trail Riders Fellowship (TRF) included reference to documentary evidence in support of their claim. This included Greenwoods Map where the route is shown as a cross road, it is also shown as a road on Blacks 1886 Guide to Devonshire and on the Finance Act plans, the lane is totally excluded. The application also made reference to the judge's summing up in the case *Eyre v New Forest Highway Board* 1892. They say this supports the contention that a road known to be public prior to 1835 would still be public to this day in the absence of a stopping up order even if it had never been publicly maintained at all since then.
- 3.4.2 The application also makes reference to research and a subsequent report published in 2005 by Independent Consultants employed by the TRF. The report has a clear conclusion on page 59, supported to references to legislation, that RUPPs are highways which are not public paths but which are used mainly as if they were bridleways or footpaths. The TRF maintain that the vehicular rights have

not been removed as confirmed in Regina (Kind) v Secretary for State for DEFRA June 2005. Their research has not found any legal event, such as stopping up, that would have removed vehicular rights for the claimed Byway as 'Once a highway, always a highway'. The current Devon representative of the TRF was advised that the application was been considered as part of the Definitive map Review in Bampton, but no response has been received.

## **3.5 User Evidence**

- 3.5.1 Ten user evidence forms were received with the Schedule 14 Application and covered a period in excess of 20 years. However, any user evidence dating from the mid-1970s or later, when the route was re-designated as a public bridleway, would be unlawful use unless with the permission of the landowner. Following the passing of the Natural Environment & Rural Communities Act in 2006, motor vehicle user evidence can no longer be used as evidence to support the creation or upgrading of a public right of way to a byway open to all traffic.
- 3.5.2 No other user evidence forms have been received in respect of the proposal.

## **3.6 Landowner Evidence**

- 3.6.1 The major landowners, the Trustees of Huntsham Estate, who own the land crossed by or adjacent to Bridleway No. 25, Bampton and occupier of the agricultural land, were contacted and advised of the proposal. They were invited to submit their comments and information by way of a completed landowner evidence form or otherwise. No response was received from the landowners or occupiers in respect of this route.

## **3.7 Rebuttal Evidence**

- 3.7.1 Eight local residents, most of whom advised that they rode, cycled or walked the lane, contacted the County Council following publication of the proposal to upgrade the bridleway to a byway open to all traffic. All the responses were against the proposal and the comments made included those referring to the danger of horses and walkers meeting vehicles along the lane, making the lane muddier to the detriment of walkers, causing damage to the flora and fauna along the lane, noise and disturbance to the tranquil nature of the lane. One rider commented that as it is wider and straighter, meeting other users on Bridleway No. 25 is such an issue as everyone has time to react safely and pass wide enough for the issue not to be intimidating. The surface of this track is firmer and not so affected by erosion.
- 3.7.2 None of the consultation responses included any evidence of use of the lane by vehicles. Copies of the letters and emails received are in the backing papers.

## **3.8 Discussion**

### **Statute (Section 31 Highways Act 1980)**

- 3.8.1 Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.

# Agenda Item 9

- 3.8.2 The application made by the TRF in 2005 could be considered sufficient to be the required calling into question under section 31 of the Highways Act 1980 for the upgrading. However, as any user evidence dating from the mid-1970s or later, after the route was recorded as a public bridleway, would be unlawful use (unless with the permission of the landowner), the user evidence submitted in 2005 is insufficient to allow the upgrading to be considered under Section 31.

## **Common Law**

- 3.8.3 A claim for a right of way or for upgrading an existing public right of way may also be considered under common law. At Common Law, evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway of the higher status and that the public has accepted the dedication.
- 3.8.4 Part of the route was initially proposed as a public right of way when Bampton parish prepared a list for the District Council Surveyor in 1947 but it was not subsequently submitted as part of the parish survey. In the 1950 countywide parish surveys the route was proposed by Huntsham Parish Meeting. Following a meeting with the Tiverton Rural District Council representative the path was to be a 'road used as a public path' (RUPP). In the initial parish survey of 1950, parish councils were asked to mark routes as footpaths, bridle paths, carriage roads used as a footpath or carriage roads used as a bridleway. The two carriage road designations were amended to the single 'road used as a public path' (RUPP) and these three types of public right of way were recorded on the Definitive Map. There were no objections to the route's inclusion in the draft or provisional Definitive Maps as a RUPP. The route has been recorded as a RUPP since 1964 (when the route could legally have been used by motorised vehicles) and a bridleway since the 1970s (when use by motorised vehicles became unlawful unless with the permission of the landowner).
- 3.8.5 Greenwoods map 1825, the Tithe Map 1844, 1<sup>st</sup> Edition 1" OS map 1809 and OS maps of the first half of the twentieth century all depict the lane in the manner of a road. The lane is excluded from the adjoining hereditaments in the Finance Act 1910 plans as the colouring breaks across the lane and is therefore considered to be public at that time. These records all indicate that the lane had the reputation of being a parish road at that time but do not include any information regarding maintenance of the lane. The Huntsham parish survey form of 1950 stated regarding repairs 'Some patching done by owner and occupiers of adjoining land'. This indicates that the route was not maintained at public expense. Land Registry records show the lane to be registered to the estate whereas a public highway would not normally be included in adjacent land holdings.
- 3.8.6 The user evidence received from the TRF with the application is not valid and no other user evidence has been received. A number of local residents wrote letters or sent emails making objections to the proposed upgrading to a BOAT as they would not want motorised vehicles using the lane, although most of their objections are not valid considerations when determining what rights subsist along the lane under current legislation.
- 3.8.7 The recording of the route as a RUPP in the 1950s is considered to describe the reputation of the lane at that time. An old parish carriage road that was (probably due to a lack of maintenance by the highway authority of the time) unused by ordinary motorised traffic, and so mainly used by walkers and riders. When the RUPPs were re-designated in the 1970s, it appears that the history of the route or

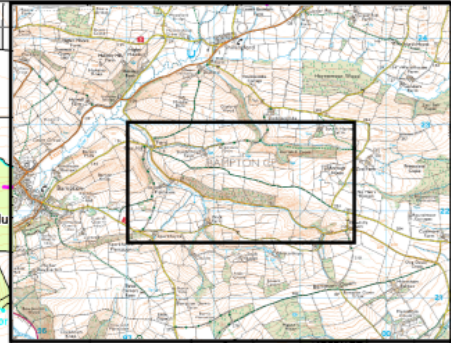
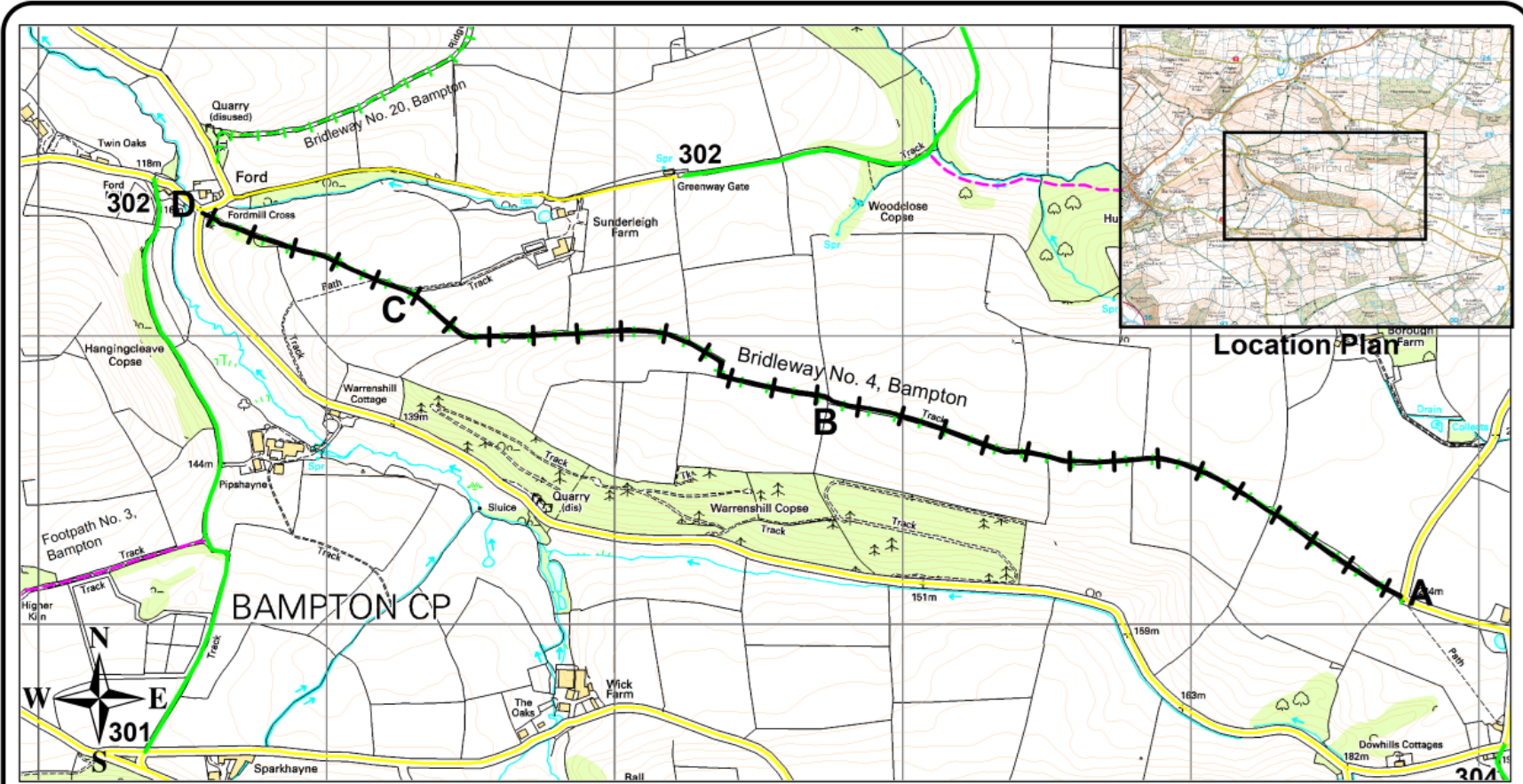


other historic or documentary evidence was not considered, although suitability was taken into account at that time. The relevant parish council was asked by Devon County Council at that time what status they felt the lane should be. Huntsham Parish Meeting advised that they considered the RUPP should be re-designated as a bridleway as it was only used by farm traffic, although this contradicts the 1950 survey form and local Council surveyor. It was then decided that the route actually fell in Bampton parish and Bampton Parish Council advised that they wished the RUPP to be re-designated a Byway Open to All Traffic.

- 3.8.8 The route known as RUPP No. 1, Huntsham was subsequently re-designated as Bridleway No. 25, Bampton, rather than as a BOAT, by Devon County Council, in the Limited Special Review in the 1970s although the reason for this is unknown. Suitability was a consideration at that time and there is nothing to indicate that the correct procedures were not followed. In the County wide 1977 uncompleted review Huntsham Parish proposed that the route should be a Public Accommodation Road although by this date it had been decided that the route lies in Bampton parish.

### **3.9 Conclusion**

- 3.9.1 In the absence of sufficient user evidence, the existence of higher rights cannot be considered under section 31 of the Highways Act 1980. At common law, whilst there is some evidence which suggests that the route may have had a reputation of having higher status than that of bridleway in the past, when taken as a whole, the available evidence is considered insufficient to show that public vehicular rights subsist.
- 3.9.2 It is therefore recommended that no Order be made in respect of Proposal 3.



Location Plan

Map Ref SS 9722 9822 9922 500m grid

Contains Ordnance Survey data. © Crown copyright and database rights 2018. 100019783

**DEVON COUNTY COUNCIL  
DEFINITIVE MAP REVIEW - BAMPTON  
PROPOSAL NO 1 SCH 14 PROPOSED UPGRADING OF BRIDLEWAY NO. 4, BAMPTON  
TO BYWAY OPEN TO ALL TRAFFIC**

|                |                 |
|----------------|-----------------|
| drawing number | HIW/PROW/18/059 |
| date           | Nov 2018        |
| scale          | 1:10,000        |
| drawn by       | TW              |

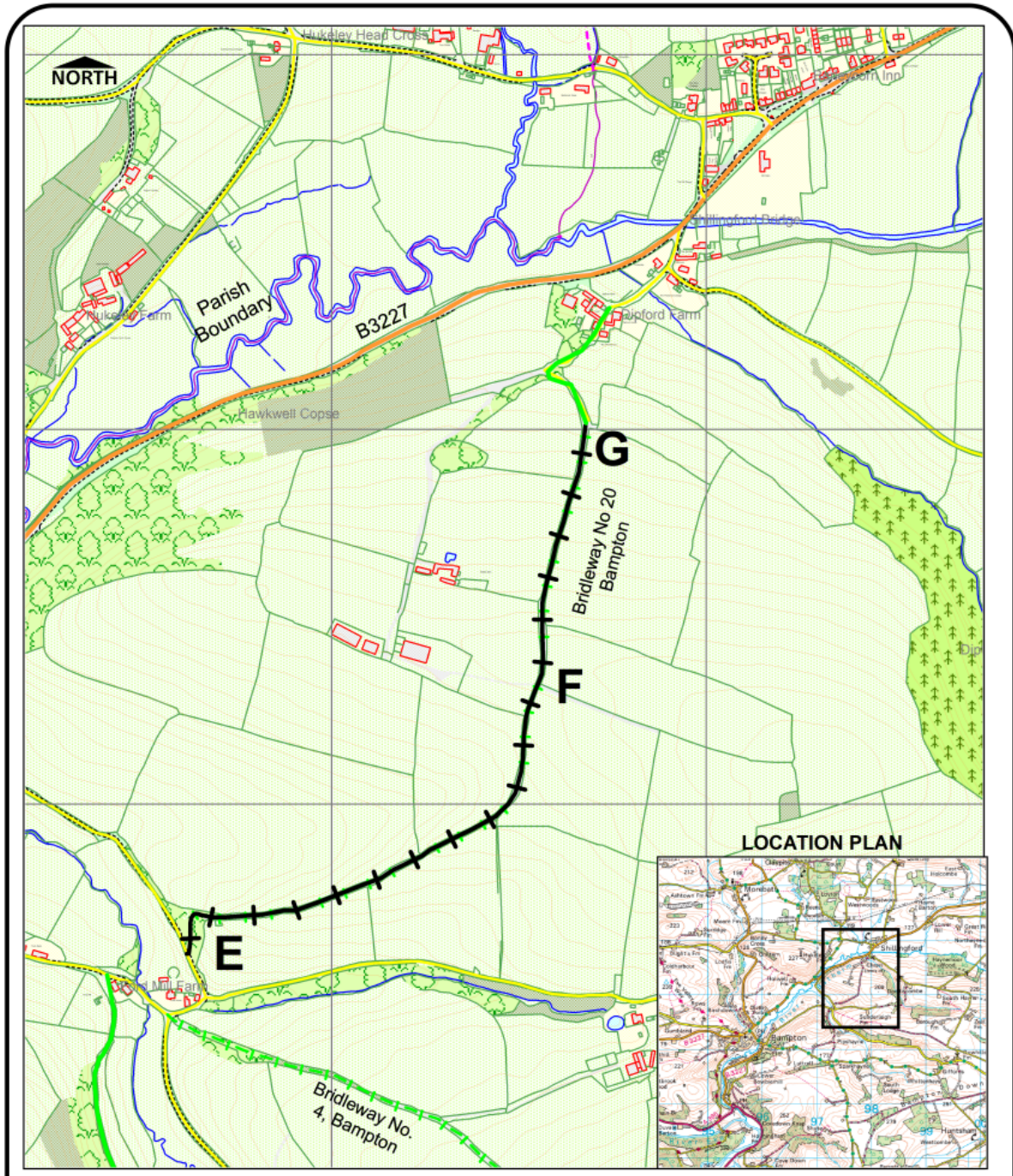
**Notation**

Proposed upgrade of Bridleway No. 4 to BOAT A - B - C - D (approx 2250m) + + + +

Existing footpath Existing bridleway Unsurfaced County Road

**Meg Booth**  
Chief Officer for  
Highways, Infrastructure  
Development & Waste









Map Ref SS 9722 9723 500m grid

Contains Ordnance Survey data. © Crown copyright and database rights 2018. 100019783

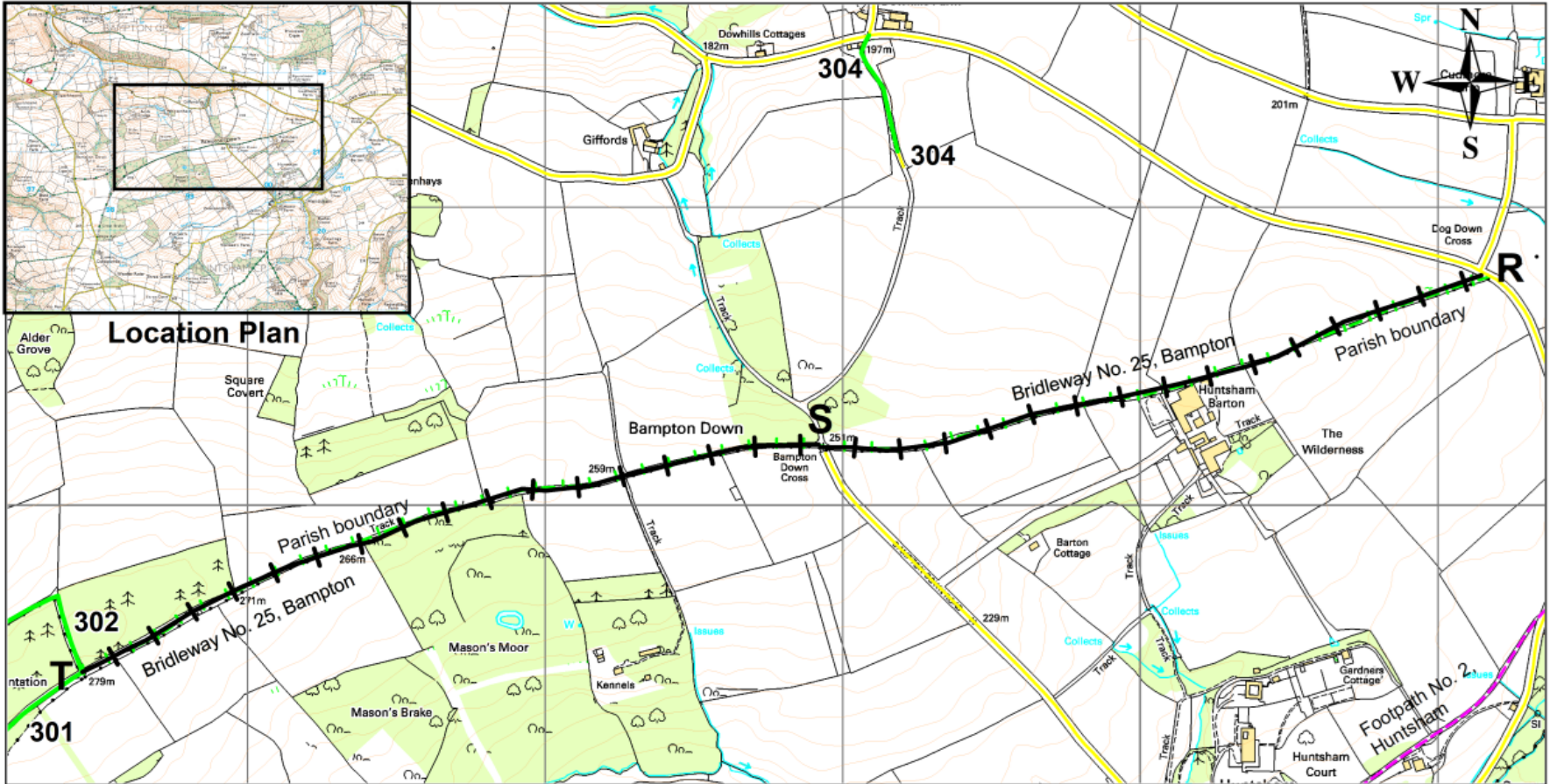
**DEVON COUNTY COUNCIL  
DEFINITIVE MAP REVIEW - BAMPTON  
PROPOSAL NO 2  
PROPOSED UPGRADING OF  
BRIDLEWAY NO. 20, BAMPTON TO  
RESTRICTED BYWAY**

drawing number HIW/PROW/18/060A  
date Nov 2018 & May 2019  
scale 1:7,500 at A4  
drawn by TW

**Notation**  
Upgrading to Restricted Byway E - F - G (1020 metres approx)   
Existing Public Footpath  & Bridleway   
Unsurfaced County Road 

**Meg Booth**  
CHIEF OFFICER HIGHWAYS,  
INFRASTRUCTURE DEVELOPMENT AND WASTE





Map Ref SS 9921 9820 ST 0021 500m grid

Contains Ordnance Survey data. © Crown copyright and database rights 2018. 100019783

**DEVON COUNTY COUNCIL  
DEFINITIVE MAP REVIEW - BAMPTON  
PROPOSAL NO 3 SCH 14 PROPOSED UPGRADING OF BRIDLEWAY NO. 25, BAMPTON  
TO BYWAY OPEN TO ALL TRAFFIC**

drawing number HIW/PROW/18/061

date Dec 2018

scale 1:10,000 at A4

drawn by TW

**Notation**

Proposed upgrade of Bridleway No. 25 to a BOAT R - S - T (approx 2470m)    + + + + +  
Existing footpath    - - - - -    Unsurfaced County Road    ————

**Meg Booth**

Chief Officer for  
Highways, Infrastructure  
Development & Waste



HIW/19/59

Public Rights of Way Committee  
4 July 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 decision has been received from the Secretary of State. The plans are attached in the appendix to this report.

#### Modification Orders

| Order/Schedule 14 Application   | Decision  |
|---|---|
| Devon County Council (Footpaths Nos 60 and 61, Luppitt) Definitive Map Modification Order 2017 AND Devon County Council (Footpath No. 62, Luppitt) Definitive Map Modification Order 2017 - the County Council having been directed to make the orders following a successful schedule 14 appeal. | The Planning Inspectorate's <a href="#">Decision of 17 September 2018</a> , to not confirm the orders, as reported to Committee in November 2018, has been quashed in the High Court on appeal by the Ramblers' (applicant). The orders will be re-determined by The Planning Inspectorate at a local public inquiry in due course. |

Meg Booth  
Chief Officer for Highways, Infrastructure Development and Waste

### Electoral Division: Whimble & Blackdown

Local Government Act 1972: List of Background Papers

Contact for enquiries: Helen Clayton

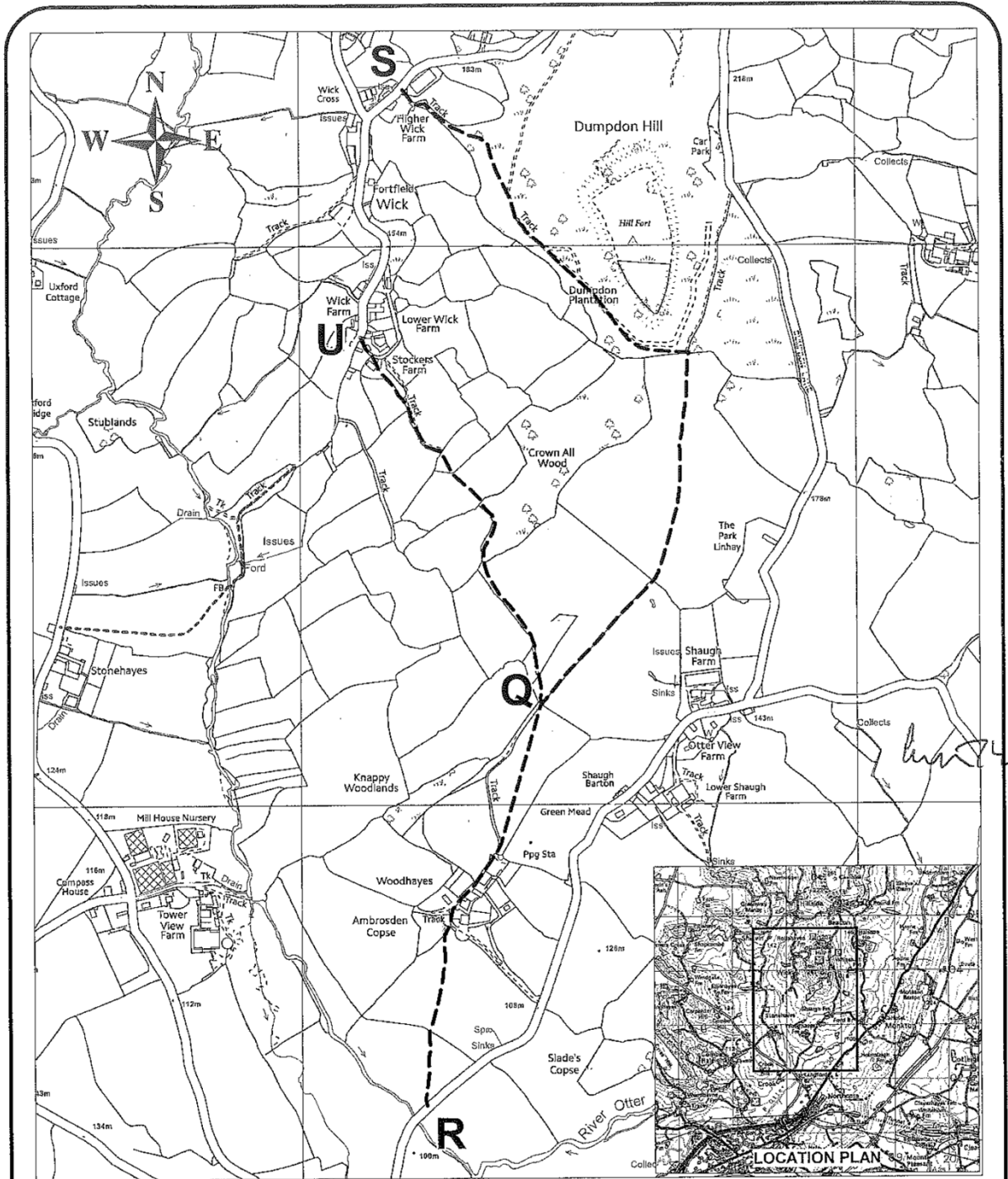
Room No: ABG Lucombe House, Exeter

Tel No: 01392 383000

| Background Paper | Date | File Ref. |
|------------------|------|-----------|
| None             |      |           |

hc050619pra  
sc/cr/Public Inquiry Informal Hearing High Court appeals  
02 210619



# Agenda Item 10




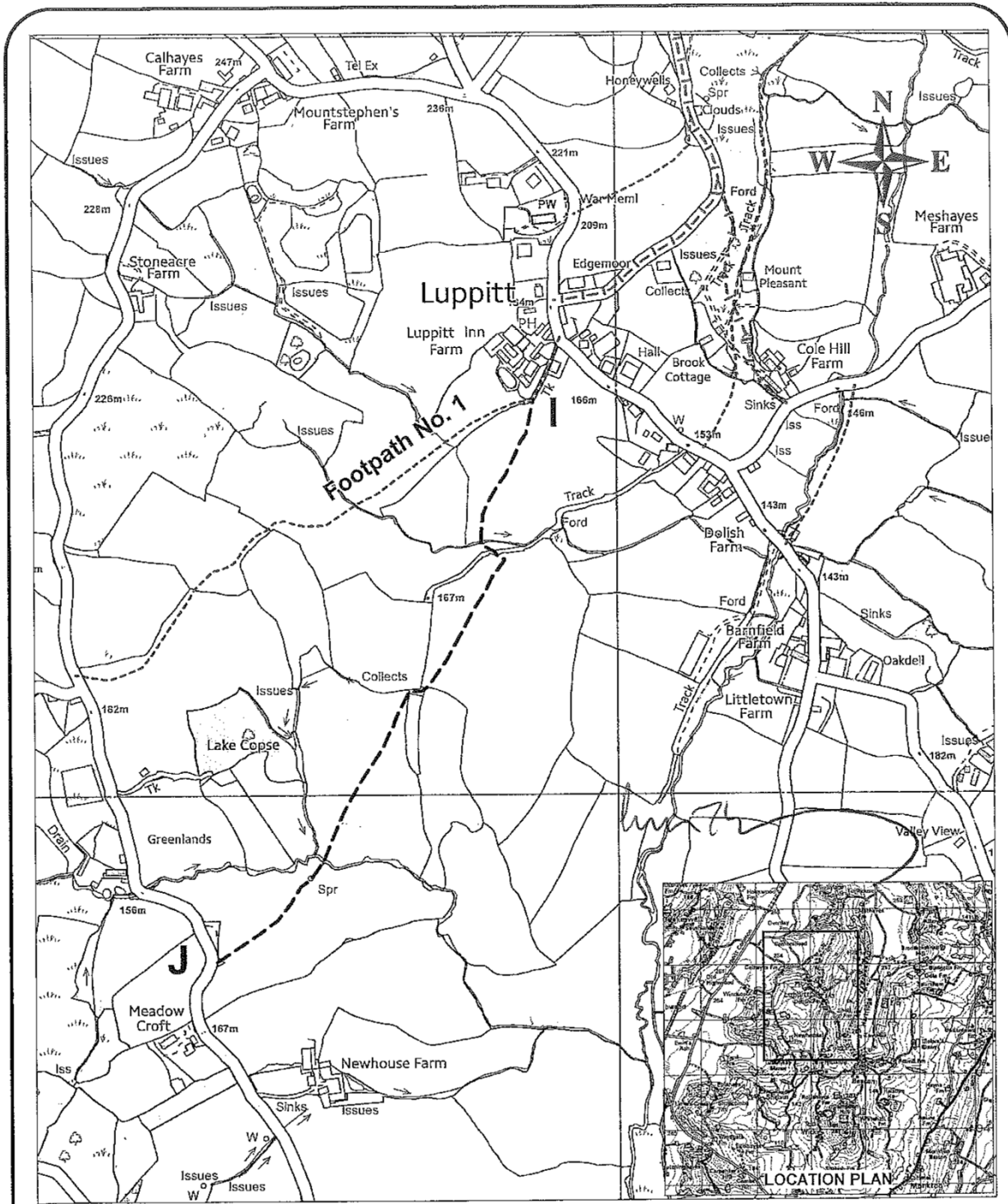
map ref ST1602-04/1702-04/1802-04 Reproduced from Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown copyright  
 Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Licence No. 1000119783

**DEVON COUNTY COUNCIL**  
**(Footpath Nos. 60 & 61, Luppitt)**  
**Definitive Map Modification Order 2017**

drawing number HIW/PROW/17/02  
 date Jan 2017  
 scale 1:10,000  
 drawn by NSC

Notation Footpaths to be added (Luppitt No. 60 R-Q-S; Luppitt No. 61 U-Q)   
 Existing footpath 

**David Whitton**   
 HEAD OF HIGHWAYS,  
 INFRASTRUCTURE DEVELOPMENT AND WASTE



map ref ST1605- 06/1705-06

Reproduced from Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown copyright  
 Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Licence No. 100019783

|   |  |   |
|---|--|---|
| <b>DEVON COUNTY COUNCIL</b><br><b>(Footpath No. 62, Luppitt)</b><br><b>Definitive Map Modification Order 2017</b> |  | drawing number <b>HIW/PROW/17/05</b><br>date <b>Jan 2017</b><br>scale <b>1:7,500</b><br>drawn by <b>NSC</b> |
| <b>Notation</b>   | Footpath to be added<br>(Luppitt No. 62, I-J)<br>Existing footpaths<br>Existing bridleways | David Whitton<br>HEAD OF HIGHWAYS,<br>INFRASTRUCTURE DEVELOPMENT AND WASTE                                  |







HIW/19/60

Public Rights of Way Committee  
4 July 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) Bridleway No. 20, Sampford Peverell & No. 26, Uplowman Definitive Map Modification Order 2019

Meg Booth  
Chief Officer for Highways, Infrastructure Development and Waste

## Electoral Divisions: Willand & Uffculme; and Tiverton East

Local Government Act 1972: List of Background Papers

Contact for enquiries: Helen Clayton

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

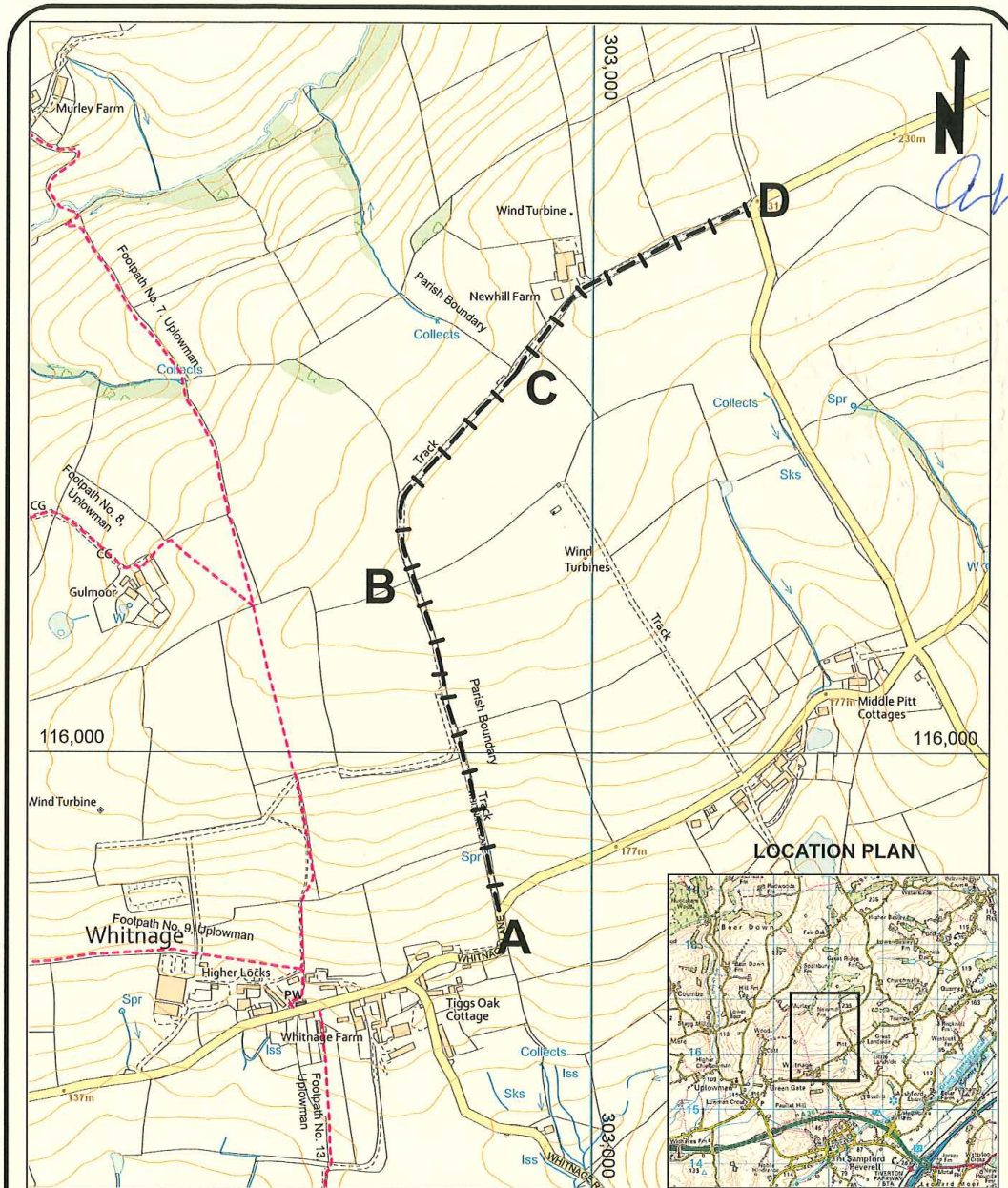
Tel No: 01392 383000

| Background Paper | Date | File Ref. |
|------------------|------|-----------|
|------------------|------|-----------|

None

hc170619pra  
sc/cr/Modification Orders  
02 210619

# Agenda Item 11



Map Ref ST 0215 0216 0316 Grid 1km

© Crown copyright and database rights 2018 OS 100019783

**DEVON COUNTY COUNCIL  
DEFINITIVE MAP MODIFICATION ORDER 2019  
BRIDLEWAY NO. 20, SAMPFORD PEVERELL  
& NO. 26, UPLOWMAN**

|                |                 |
|----------------|-----------------|
| drawing number | HIW/PROW/18/066 |
| date           | Dec 2018        |
| scale          | 1:7,500 at A4   |
| drawn by       | TW              |

**Notation**

Addition of Public Bridleway A - D (1180 metres approx) **- - - -**

Existing Public Footpaths **- - - - -**

**Meg Booth**  
CHIEF OFFICER HIGHWAYS,  
INFRASTRUCTURE DEVELOPMENT AND WASTE



HIW/19/61

Public Rights of Way Committee  
4 July 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 Nos. 1a, 5 & 6, Dowland & Footpath No. 5, Iddesleigh Public Path Diversion & Definitive Map & Statement Modification Order 2018
- (ii) Footpath No. 11, Uplowman Public Path Diversion & Definitive Map & Statement Modification Order 2018
- (iii) Footpath Nos. 11 & 12, Washford Pyne & Footpath No. 4, Woolfardisworthy Public Path Diversion & Definitive Map & Statement Modification Order 2016
- (iv) Footpath Nos. 3 & 4, Bittadon Public Path Diversion & Definitive Map and Statement Modification Order 2019
- (v) Bridleway No. 6, Chulmleigh Public Path Diversion & Definitive Map & Statement Modification Order 2019

#### (b) Extinguishment Orders

- (i) Footpath No. 20, Mortehoe Public Path Extinguishment & Definitive Map & Statement Modification Order 2019

#### (c) Creation Orders/Agreements

- (i) Footpath No. 30, Mortehoe Public Path Creation & Definitive Map & Statement Modification Order 2019

Meg Booth  
Chief Officer for Highways, Infrastructure Development and Waste

**Electoral Divisions: Torrington Rural; Tiverton East; Hatherleigh & Chagford; Creedy, Taw & Mid Exe; Combe Martin Rural; and Chulmleigh & Landkey**

# Agenda Item 12

Local Government Act 1972: List of Background Papers

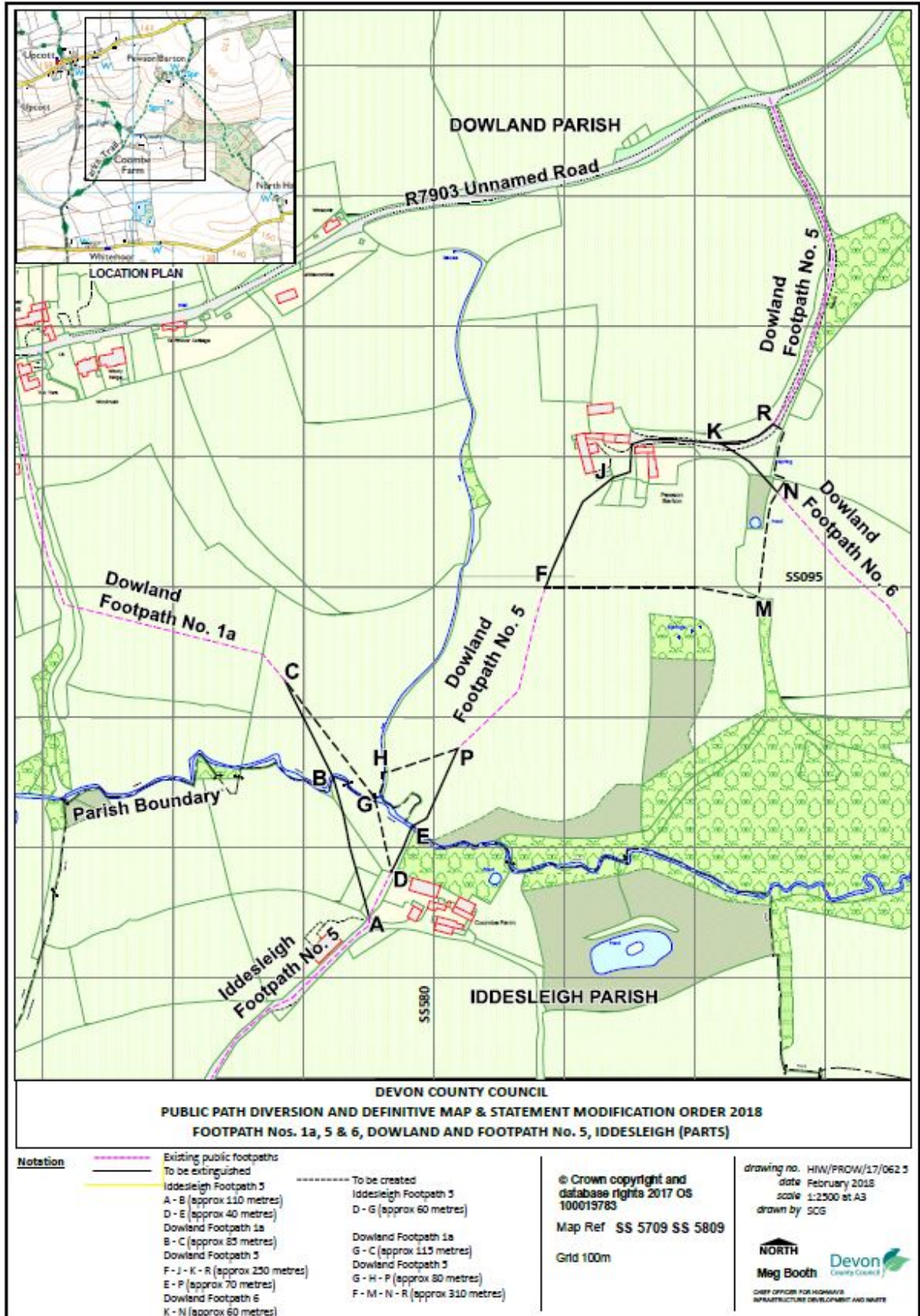
Contact for enquiries: Helen Clayton

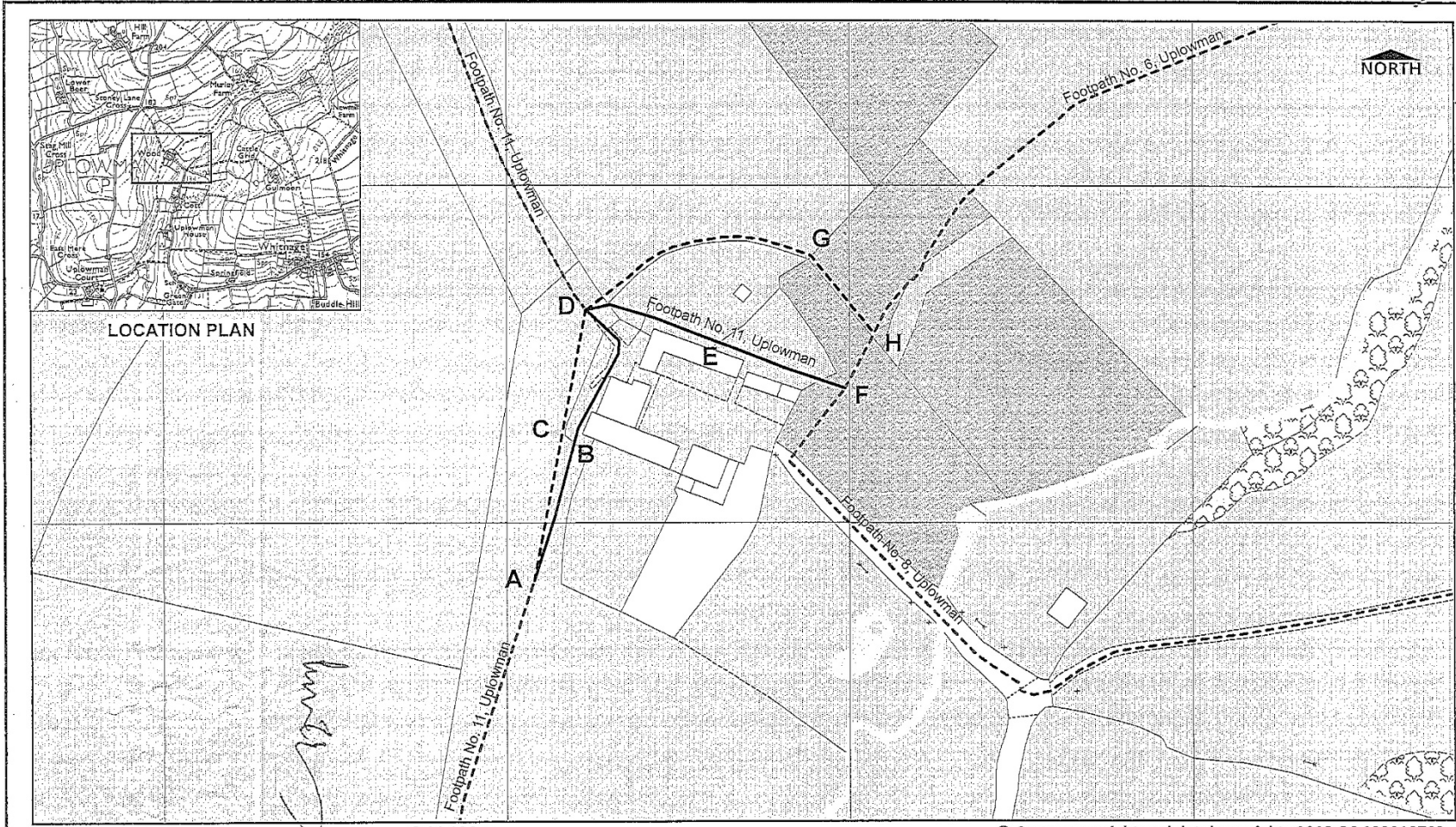
Room No: ABG Lucombe House, Exeter

Tel No: 01392 383000

| Background Paper | Date | File Ref. |
|------------------|------|-----------|
| None             |      |           |

hc290519pra  
sc/cr/Public Path Orders  
02 210619





Map Ref ST 0116

Grid 100m

© Crown copyright and database rights 2018 OS 100019783

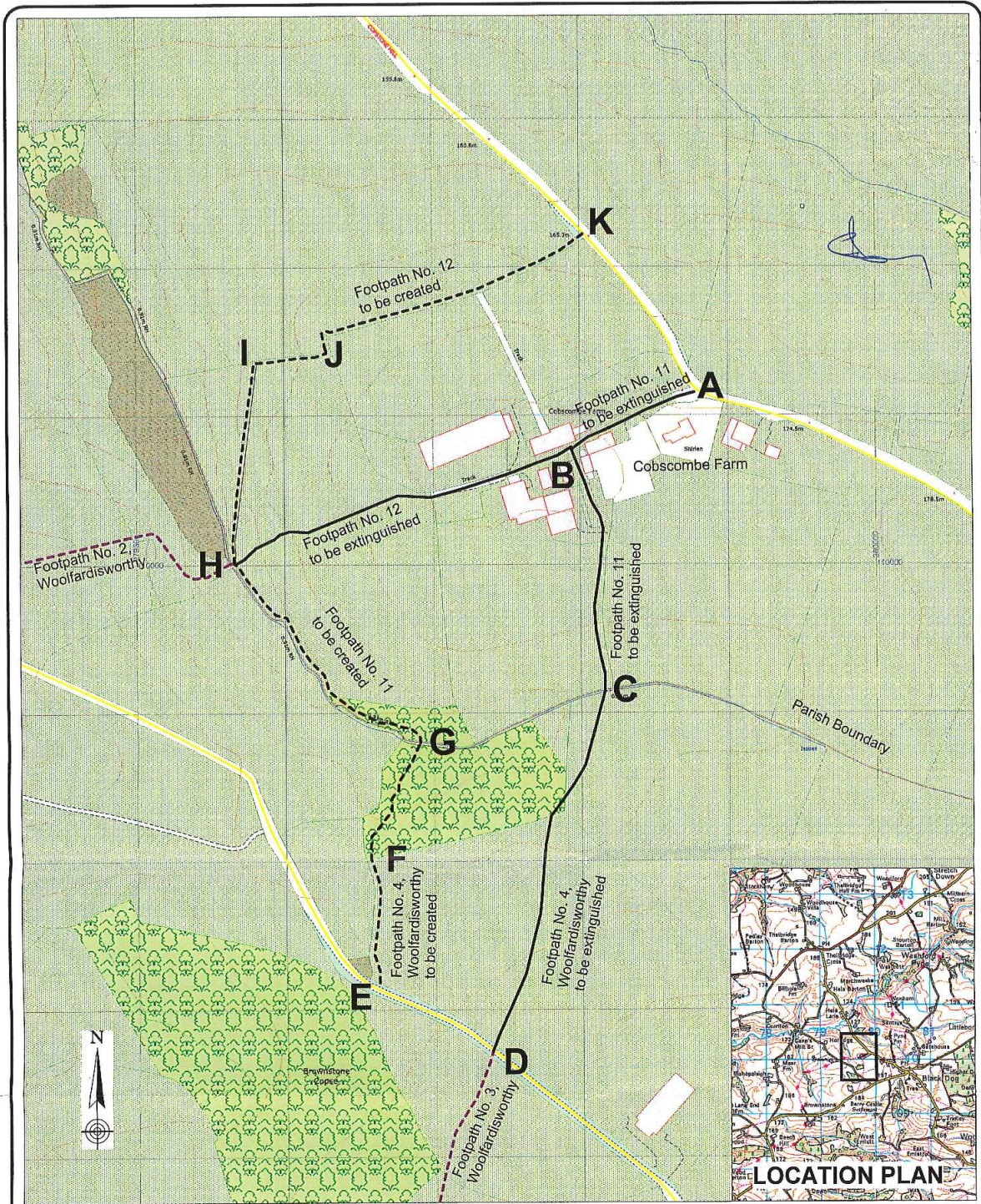
**DEVON COUNTY COUNCIL**  
**FOOTPATH NO. 11, UPLOWMAN**  
**PUBLIC PATH DIVERSION AND DEFINITIVE MAP & STATEMENT MODIFICATION ORDER 2018**

drawing no. HIW/PROW/18/047  
 date AUG 2018  
 scale 1: 1,500 at A4  
 drawn by TW

**Meg Booth**  
 CHIEF OFFICER FOR  
 HIGHWAYS INFRASTRUCTURE  
 DEVELOPMENT AND WASTE



|                 |  |  |
|-----------------|--|--|
| <b>Notation</b> | To be extinguished A - B - D (approx 90 metres) & D - E - F (approx 80 metres) |  |
|                 | To be created A - C - D (approx 81 metres) & D - G - H (approx 102 metres)     |  |
|                 | Existing Public Footpath   |  |



map ref SS7909 & SS7910

Based on Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Offices © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Licence No. 100019783

**DEVON COUNTY COUNCIL  
PUBLIC PATH DIVERSION AND DEFINITIVE  
MAP & STATEMENT MODIFICATION ORDER 2016  
FOOTPATH NOS. 11 & 12, WASHFORD PYNE &  
FOOTPATH NO. 4, WOOLFARDISWORTHY**

drawing number HCW/PROW/16/17

date April 2016

scale 1 : 2,500 (at A3 only)

Drawn By TW

**Notation**

Footpath No. 11, Washford Pyne  
Footpath No 12, Washford Pyne  
Footpath No. 4, Woolfardisworthy

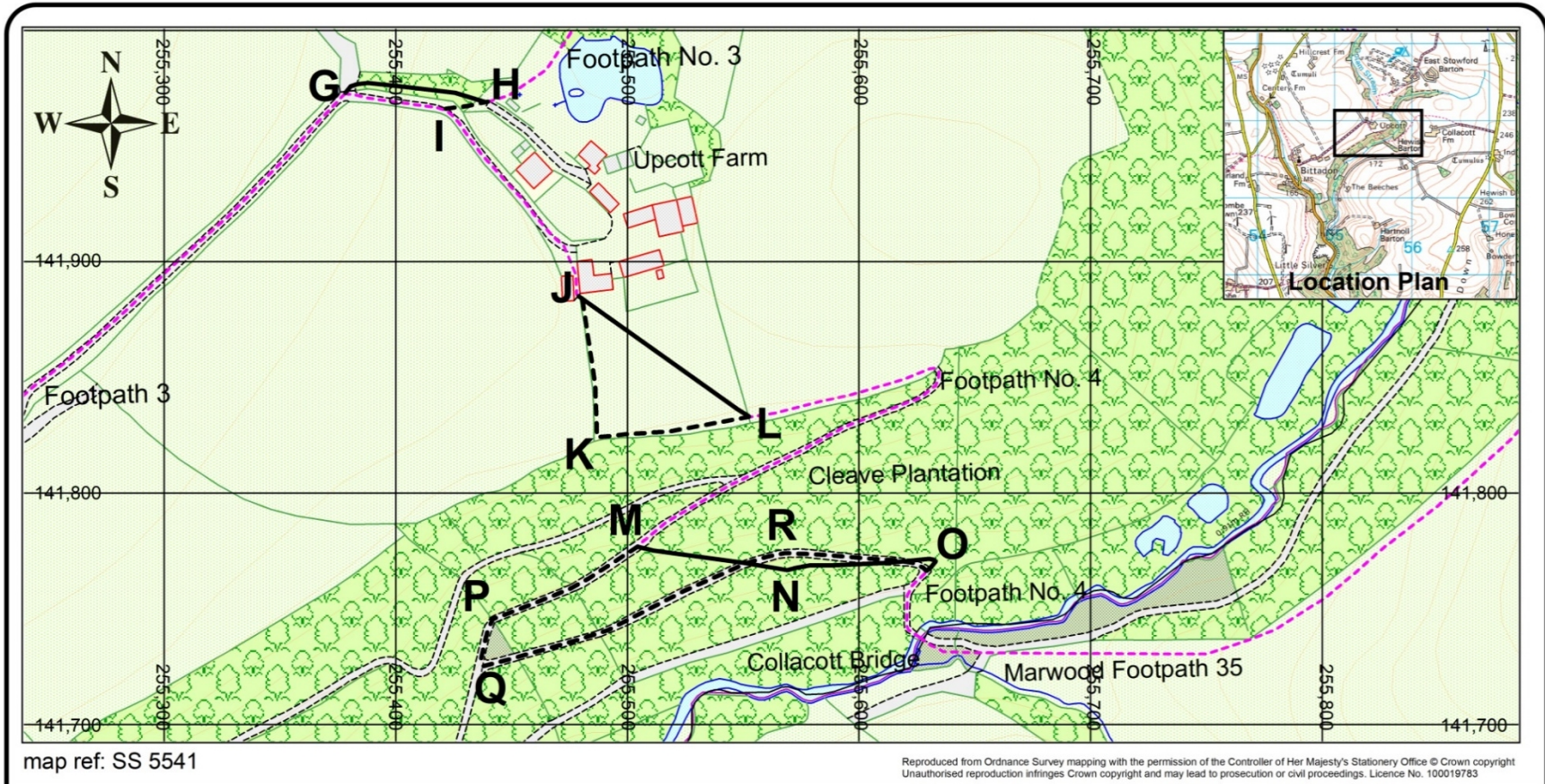
To be Extinguished

A - B - C (approx 265m)  
B - H (approx 245m)  
C - D (approx 260m)

To be Created

G - H (approx 185m)  
H - I - J - K (approx 385m)  
E - F - G (approx 175m)

**David Whitton**  
 HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE



map ref: SS 5541

Reproduced from Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown copyright  
 Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Licence No. 100019783

**Devon County Council  
 (Footpath Nos. 3 & 4, Bittadon)  
 Public Path Diversion &  
 Definitive Map & Statement Modification Order 2019**

drawing number HIW/PROW/18/44

date July 2018

scale 1:2500

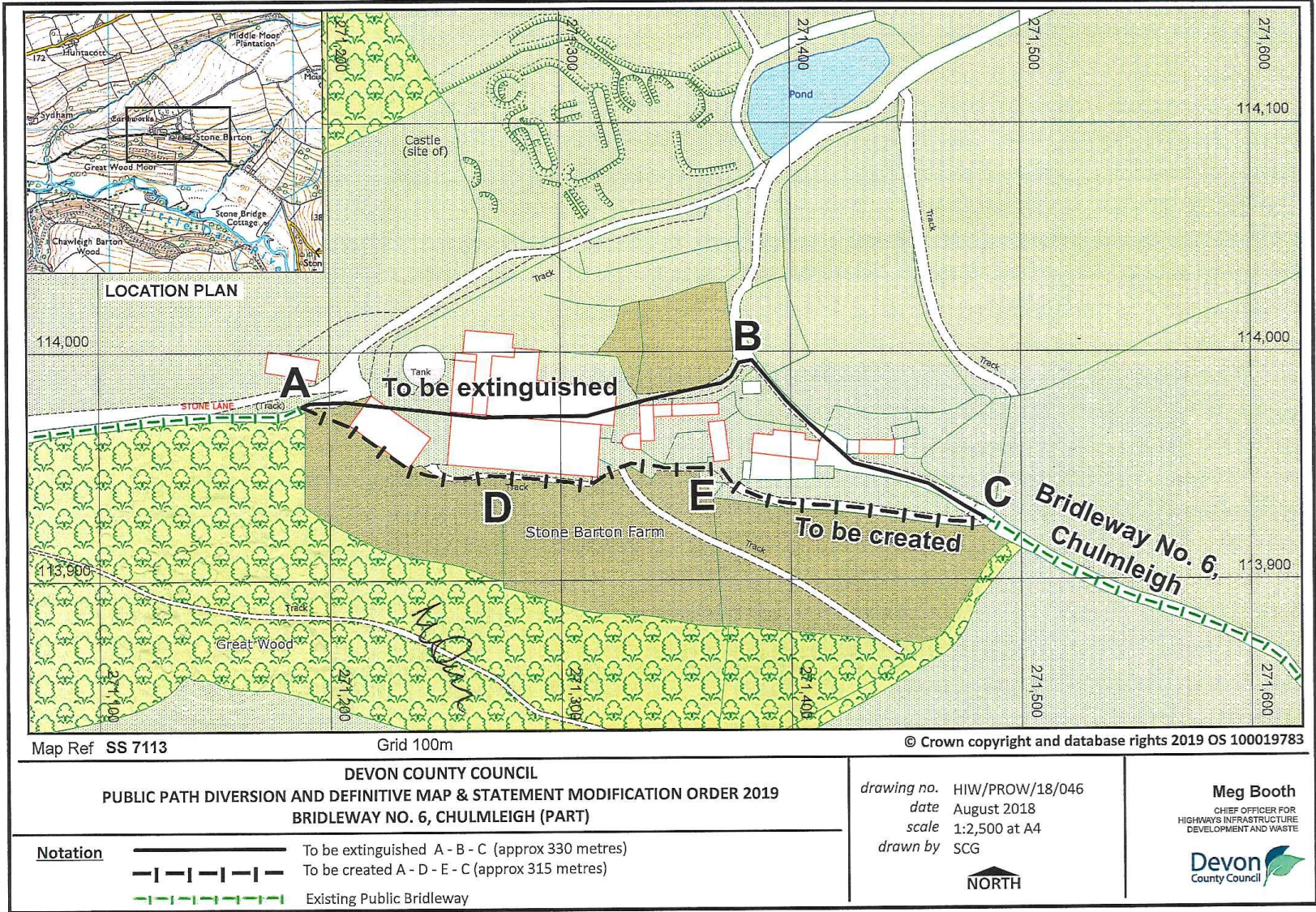
drawn by CLG

| Notation     | To be extinguished | To be created    | Existing footpath             |
|--------------|--------------------|------------------|-------------------------------|
| G-H (63m)    | ————               | I-H (19m)        | -----                         |
| J-L (91m)    | =====              | J-K-L (126m)     | -----                         |
| M-N-O (136m) | =====              | M-P-Q-R-O (294m) | -----                         |
|              |                    |                  | ----- Existing footpath ----- |

**Meg Booth**  
 Chief Officer for  
 Highways, Infrastructure  
 Development & Waste







# Agenda Item 12

