

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 : 4 November 2019  
Please ask for : Wendy Simpson, 01392 384383

Email: wendy.simpson@devon.gov.uk

## **PUBLIC RIGHTS OF WAY COMMITTEE**

Tuesday, 12th November, 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 July 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 19 September 2019 attached.
- 5 Legal and Development - Review of the Definitive Map Statement of Priorities (Pages 11 - 16)  
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/19/85), attached.

*Electoral Divisions(s): All Divisions*

## **DEFINITIVE MAP REVIEWS**

- 6 Parish Review: Definitive Map Review 2017-2019 - Parish of Pyworthy (Pages 17 - 20)  
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/19/86),  
attached.
- Electoral Divisions(s): Holsworthy Rural*
- 7 Parish Review: Definitive Map Review 2019 - Parish of Broadhembury (Pages 21 - 54)  
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/19/87),  
attached.
- Electoral Divisions(s): Whimble & Blackdown*
- 8 Parish Review: Definitive Map Review 2017-2019 - Parish of Woodbury (Pages 55 - 66)  
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/19/88),  
attached, and background papers.
- Electoral Divisions(s): Exmouth*
- 9 Parish Review: Definitive Map Review - Parish of Wembury (Part 2) (Pages 67 - 88)  
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/19/89),  
attached, and background papers.
- Electoral Divisions(s): Bickleigh & Wembury*
- 10 Parish Review: Definitive Map Review 2018-2019 - Parish of Bampton (Part 2) (Pages 89 - 108)  
Report of the Chief Officer for Highways, Infrastructure Development and Waste  
(HIW/19/90), attached, and background papers.
- Electoral Divisions(s): Tiverton West*
- 11 Parish Review: Definitive Map Review 2019 - Parish of Oakford (Pages 109 - 122)  
Report of the Chief Officer for Highways, Infrastructure Development and Waste  
(HIW/19/91), attached, and background papers.
- Electoral Divisions(s): Tiverton West*
- 12 Parish Review: Definitive Map Review - Parish of Parracombe (Part 2) (Pages 123 - 150)  
Report of the Chief Officer for Highways, Infrastructure Development and Waste  
(HIW/19/92), attached, and background papers.
- Electoral Divisions(s): Combe Martin Rural*

## **MATTERS FOR INFORMATION**

- 13 Public Inquiry, Informal Hearing and Written Representation Decisions; Directions and High Court Appeals (Pages 151 - 154)  
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/19/93),  
attached.
- Electoral Divisions(s): Combe Martin Rural; Feniton & Honiton*

- 14      Modification Orders (Pages 155 - 160)  
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/19/94),  
attached.

*Electoral Divisions(s): Broadclyst; Combe Martin Rural*

- 15      Public Path Orders (Pages 161 - 164)  
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/19/95),  
attached.

*Electoral Divisions(s): Bickleigh & Wembury; Broadclyst*

**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).

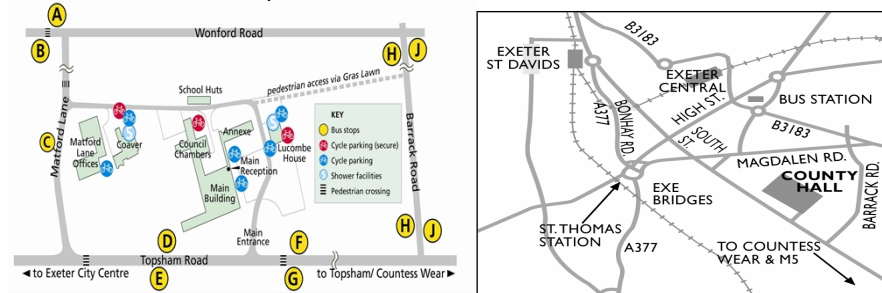
### **Car Sharing**

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-Fourth meeting  
of the Devon Countryside Access Forum  
Norman Room, The Kenn Centre, Exeter Road, Kennford, Exeter EX6 7UE  
Thursday, 19 September 2019

## **Attendance**

### *Forum members*

Andrew Baker	Sue Pudduck
Chris Cole (Vice-Chair)	Councillor Philip Sanders
Sean Comber	Tino Savvas
John Daw	Sarah Slade (Chair)
Tim Felton	Bryan Smith
Charlie Lloyd	Maggie Watson

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

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

## **1. Apologies**

Apologies were received from Jo Hooper and Gordon Guest. Councillor Tony Inch was absent. Bryan Smith was welcomed to his first meeting.

Simon Clist was elected to Mid Devon District Council in May and his appointment on the DCAF had been terminated as the legal number of councillors had been exceeded. The Chair paid tribute to Simon for his contribution.

## **2. Declarations of interest**

There were no declarations of interest.

## **3. Minutes of the meeting held on 25 April 2019**

Minutes of the meeting held on 25 April were approved and signed.

# Agenda Item 4

## 4. Matters arising

### 4.1 Membership (2. 25.04.19)

The apprentice due to join the DCAF had left DCC. The Chair led a discussion on ways to engage with young people which might be informed by research work at colleges or universities. Sue Pudduck offered to contact her networks to see what informal links could be made. Charlie Lloyd offered to assist.

Creating a social media presence on Facebook or an Instagram feed were suggested. DCC had a corporate twitter account. Other proposals put forward were developing contact with Duke of Edinburgh Award scheme participants or uniformed groups, such as the Guides, and using young people as a sounding board on particular issues. Some young people might volunteer through community service, for example with the North Devon Biosphere. It was noted the Forum would need to identify the limits of what it could achieve.

It was agreed young peoples' use of public rights of way was often peripheral and many in that age group sought more adventurous activities.

*Action: Sue Pudduck, Charlie Lloyd and other members to liaise with the Forum Officer.*

### 4.2 Annual Report (17. 25.04.19)

The Annual Report was on the DCAF website. Attention was drawn to a typographical error which would be amended.

*Action: Forum Officer*

## 5. Public questions

There were no public questions.

## 6. Correspondence log

The log was noted. Changes to the East Devon Forest Plan were highlighted. Item 5 referred to the Network Rail consultation on Parson's Tunnel (Teignmouth) and it was confirmed an initial meeting had been held between Network Rail and Devon County Council. Monthly meetings are planned to discuss and mitigate implications for public rights of way. The DCAF is likely to be consulted on further detail. The SWCP Association are also discussing the project.

Changes to the SW Marine Plan affecting access were noted.

The Neighbourhood Plan Position Statement was sent in response to draft plans, with points of amendment or clarification as required. Otterton had engaged with young people in preparing its Plan and this initiative was welcomed.

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

### **7.1 Training Day**

The Forum Officer and members of the Public Rights of Way team were thanked for an interesting day. It demonstrated how working with landowners could achieve recreational access improvements.

### **7.2 Accessibility visit to East Devon Pebblebed Heaths**

Gordon Guest and members of the Wheelchair Access Group had initiated a meeting with the Pebblebed Heaths Site Manager. Jo Hooper had attended. A range of problems were discussed including steep cross slopes; deep gulleys; earth bunds around car parks; gates that were too narrow and access requirements required around the side and rear of vehicles to get trampers/scooters out. Off-road scooters and trampers had higher capability than manual wheelchairs and shopping scooters. Improvements to access points were discussed. Gates on the Pebblebed Heaths are being replaced with 1.5m bridleway gates with long handles.

Stock grazing requirements and the Royal Marines' use of the common are part of management considerations.

Woodbury Common provided large flat areas and paths. In the long term, improvements could be made to provide short paths for manual wheelchair access and access from car parks.

Following the visit one of the earth bunds was removed.

### **7.3 Devon Local Nature Partnership Communities Conference**

Sue Pudduck had attended the Local Nature Partnership conference in Chagford. The day included many workshops with a focus on community engagement. Naturally healthy and social prescribing were included with an emphasis on supportive networks to build confidence. The key speaker was Sasha Dench who spoke on Bewick Swans and her mission to reduce hunting of the swans on their migratory path. The strong message of this was the importance of creating a story to change behaviour in a positive and imaginative way.

### **7.4 Turf cutting, Alma Bridge, Sidmouth.**

Jo Hooper and Ros Mills, PROW, had attended the turf cutting ceremony for the new Alma Bridge in Sidmouth. This is being built inland to reduce the risk of coastal erosion and will be part of the South West Coast Path. The bridge would include ramps and a viewing platform and input from the DCAF on accessibility had been taken into account.

# Agenda Item 4

## 8. Exe Estuary Trail and countywide trails

The Chair explained the Training Day had covered some aspects related to trail management and accessibility of trails.

Ros Mills, DCC, had set up a working group meeting, between DCC (Public Rights of Way Manager and the Safer Travel Officer) and two representatives from both the Exe Estuary Trail Partnership and the Devon Countryside Access Forum, with the aim of understanding the user feedback of real/perceived conflict on the Trail. Three meetings are planned with the aim of making recommendations to improve the situation on the Exe Estuary Trail and also to consider findings in the broader strategic context of the family of Trails county wide. The initial meeting had explored some issues and a further couple of meetings will be held. At the next meeting it was hoped to invite members of the public who had written in to raise problems they had experienced. The final meeting will be to agree the recommendations.

The Exe Estuary Forum Stakeholder meeting, held at Powderham Castle, was attended by Sarah Slade and Jo Hooper. Ros Mills, DCC, had given a presentation on codes of conduct and share this space. Comments on maps were being fed back in. The current perception is that problems are more evident on the Exmouth side. Issues are related to different user groups and not just cyclists. The feedback from this event will inform the working group discussions.

Ros Mills, DCC, confirmed that use is likely to increase on the westward side of the Exe as the trail is extended. The western side was physically less constrained than the east and allowed more scope for design options.

It was noted that the Camel Trail does not suffer from the same sort of issues, despite high usage, possibly due to the softer surfacing. Users had become self-policing with different user groups avoiding certain times of day. Sections of the Drake's Trail were used at high speed due to downhill stretches and the harder surface. The Strava App promoted 'personal best' times.

It was noted the Teign Estuary Trail was going ahead. This was welcomed as the current route through Bishopsteignton to Teignmouth was dangerous for cyclists/walkers.

Discussion took place on a number of issues:

### *Financing*

Financing of trails frequently meant more resilient surfaces as little budget was available for long term maintenance.

Route standards could not always be consistent. The E4 route into Exeter from Cranbrook was paid for by developers. Two bridges had been built over the motorway for walkers and cyclists, but once in Exeter it is a mixture of designated on-road space/shared footway and off-road parkland and could be seen as less safe due to existing physical constraints.

Solutions should be sustainable, not just infrastructure but associated facilities and

branding. For example, the Tarka Trail had art works but there was insufficient finance to replace or maintain these.

## *Signing*

It was agreed 'share this space' conveyed a good message but there was a need to consider how best to manage people on the route and slow people down.

On the Grand Western Canal photographic signs had been put in place on a trial basis to ask cyclists to dismount under bridges where visibility lines were poor and dog walkers, the barge horse, children and groups of users might be under the bridge. This was a site-specific solution.

## *Future trends*

Due to the growth of electric bikes a wider group of people were accessing trails, and this was likely to expand further as sales increased.

Electric bikes had a restricted speed of 15 mph but could go faster on downhill sections. Concentrations around towns will increase cycling numbers, with the emphasis on the health dimension.

The growth in number, size and power of tramper buggies is likely to present future issues. Currently electric scooters are not permitted but this use could also grow, subject to legislation.

**Future measures** to improve the situation were discussed and these were focused around the following matters.

## *Engineering Design*

- Different routes serve different functions. More thought could be given to splitting quiet enjoyment from commuting by using a change of surface or widths on certain sections to offer variety for people with different requirements
- Road commuting could be improved to allow cyclists a safer road space. It was noted the road between Exeter and Exmouth provided little room for dedicated cyclists.
- There was a need to identify potential conflict areas. These were likely to be small in number but significant at particular points. Rumble strips and other calming measures might be one solution to reduce speed, subject to health and safety considerations.
- Engineering design elements could reduce speed, such as divided tracks e.g. near Totnes, although this was not always seen as good practice.
- Car parking and the provision of toilet facilities are aspects which should be considered alongside the trail itself.
- Trails should be accessible and multi-use.

## *Codes of conduct and signage*

- Share this Space was regarded as a good message about being considerate. It raised awareness that people need to think more about other users.
- 3D imagery or signs on the ground were an option. Signs needed to have an impact and could be used where people join the route or at identified potential conflict points.

# Agenda Item 4

- It was noted that signage is effective initially but can become part of the scenery. Signage could be varied from time to time.
- Too many signs could be intrusive or have implications on the landscape, particularly on more rural routes.
- Collaboration with businesses about signs would be worth exploring.
- An awareness campaign could be funded where there are particular issues. This could include someone to liaise with users.
- Share this Space could be extended to other rights of way, e.g. byways, as people may not know which users they might encounter.
- There was no uniform signage nationally. National Cycle Network (NCN) signs implied use was solely for cyclists and could be supplemented with additional signs.

## *Evidence base and project solutions*

- Solutions needed to be proportionate. The DCC Safer Travel Team seeks evidence and has an online survey form.  
*Action: Ros Mills, DCC, to provide link. [Survey link](#)*
- The Changing Lanes project presented the opportunity to downgrade roads, in consultation with the parish council, if a property was not affected. It was noted such roads became the responsibility of the PROW team and maintenance could be onerous due to drainage and deteriorating tarmac.
- It was suggested that different options should be trialled at conflict points with publicity to explain what is happening with a feedback opportunity. This would provide a learning experience and an evidence base to inform future management. Best practice from elsewhere could inform this process.
- The Quiet Lanes project was raised and it was agreed it might be appropriate to revisit this or a similar type of project. Quiet enjoyment remained important.
- It was noted that Sustrans volunteers are out on the trails and engage with users. It was suggested that liaising with Sustrans might help to get messages across to trail users.
- Friends' groups could sometimes attract funding and it was agreed such trail groups could be useful, not only to raise funds but to raise awareness of local issues.
- Marketing and social media campaigns around soft messaging could assist alongside upfront website information.

## *Consideration of user groups*

- Young people, without access to cars but increasingly independent, were not safe on the roads.
- Some user groups required very low-key access.
- Multi-use trails should consider all user groups.

## *Legal aspects*

- Discussions had taken place nationally over extending footpaths to cycle use. (In 1968 cyclists were allowed to ride on bridleways). A landowner could give permission for use of a footpath by cyclists.
- There were a lot of issues with car drivers. In the EU they were legally more accountable.



- The message about giving cyclists sufficient width seems to have been taken on board. There remained an issue about road cyclists disliking stopping at junctions when using designated space alongside roads.
- Management of trails was often complicated by the underlying legal definition and ownership which could impact on potential solutions to issues.

It was agreed the DCAF could consider some management solutions which might assist forward planning. It could not deal with societal problems. It should identify who needs to be drawn in and how the Forum can assist DCC.

It was proposed and agreed that the DCAF should prepare a draft with actions and recommendations. This should endorse multi-use as an explicit statement and include the need for quiet recreation.

*Action: Forum Officer to circulate draft.*

## **9. To note minutes of the Public Rights of Way Committee held on 4 July 2019**

Minutes of the Public Rights of Way Committee meeting were noted. The meeting had been non-contentious.

## **10. Public Rights of Way update**

Ros Mills and Helen Clayton, DCC, reported:

- Plans for the Teign Estuary Trail were on track.
- Wardens were receiving ash-dieback training, with a particular emphasis on land owned by DCC.
- Discussions were taking place with Network Rail about the Teignmouth Parson's Tunnel resilience project.
- Money is being bid for from the Department for Transport Challenge Fund to replace boardwalks on the Exe Estuary Trail.
- Both Stover and the Grand Western Canal had been awarded Green Flag status. Stover would be submitting its revised bid to the Heritage Lottery Fund and a support letter from the DCAF was requested.  
*Action: Forum Officer*
- Approval had been received for appointment of a full-time Public Rights of Way Assistant Officer to process Public Path Orders (PPOs) and deal with temporary closures. This was income generating work. This followed the retirement of an officer in Land Charges who had previously dealt with PPOs.
- Several parish reports were being compiled through the Definitive Map Review process.
- A change of policy would be put to the next Public Rights of Way Committee to extend the County completion date for the Definitive Map Review (DMR) to 2025. The current target date is January 2020 but legal changes resulting from the Deregulation Act are not yet in force. Amending the date would provide policy back-up should an appeal against non-determination be submitted. 83-84% of the County had been completed
- In the parish of East Down a restricted byway had been confirmed based on documentary evidence.

# Agenda Item 4

- Some unopposed orders had yet to be confirmed. The DMR team had a target of eight parishes a year and had met that plus additional Schedule 14 appeals.
- P3 workshops would be held in Spring 2020 instead of late 2019.
- Building work was planned for County Hall which would impact on the location of the public rights of way team for a prolonged period from April 2020.

The Chair thanked the Public Rights of Way staff.

## 11. To note and approve responses to consultations and any feedback

No responses, other than itemised on the Correspondence Log, had been submitted since the last meeting.

## 12. Current consultations

### 12.1 Jurassic Coast World Heritage Site Management Plan consultation

The summary paper was considered. The policies and associated priority actions were seen as well-written and precise. In response it was agreed to submit comments on the following issues:

1. The Jurassic Coast should have a more lively and inspiring priority action on education so that young people can learn from the coast.
2. The linear nature of the Jurassic Coast underlines the importance of public transport so that people can explore and return to their starting point.
3. Links should be made with specific groups to consider accessibility. Villages are the access point to many trails and the Jurassic Coast yet many have lost toilet provision. Parishes should be made aware of the economic benefit. People should have ready access to information about parking and toilet facilities along the coast.

*Action: Forum Officer to circulate draft response.*

### Fire Beacon Hill

A consultation had been launched by the RSPB on Fire Beacon Hill. The DCAF had responded to the earlier consultation. The Forum Officer had attended a site visit to view the proposals and maps were passed around. The proposals recommended a fenced area which would include an area of Forestry England land to the west (Fire Beacon Plantation) and Woodland Trust land to the east (Core Hill Wood). The area would be grazed to improve biodiversity and access and achieve enhanced heathland and a wood pasture habitat. Some new path furniture was marked on the consultation map.

The DCAF had received an email from a member of the public expressing some concern about the use of temporary electric fencing restricting access to open access land and raising questions about use of livestock with horns.

Members of the DCAF agreed that use of invisible fencing, one of the options, would control stock well. Added advantages were reduction in the need for additional path furniture and better wildlife corridors, as well as minimising the visual impact. To reduce poaching, it was agreed that stock should graze in the spring, summer and autumn and not the winter. Devon cattle were regarded as a docile breed and suitable for grazing management on the common.

As raised in its earlier response, the partnership working between the different agencies involved with Fire Beacon Hill was seen as a positive development. The blurred boundaries between different areas of landownership were welcomed.

The issue of dog control and management was not included on the consultation questionnaire. The DCAF had previously raised the matter of differing dog legislation and members thought this should be mentioned again and specifically in relation to fouling and cattle issues, for example worming of dogs and control in the vicinity of stock.

The area to the east of Core Hill Wood, outside the proposed boundary, could become less accessible unless the invisible fencing option was chosen. This would be included in the response.

It was not known whether invisible fencing affected people with pacemakers and this specific question would be asked.

*Action: Forum Officer to circulate a draft response.*

## **13. Forthcoming consultations**

### **13.1 Pebblebed Heaths Visitor Management Plan**

The Forum Officer agreed to contact members once details of the consultation had been published.

*Action: Forum Officer.*

### **13.2 Coastal access**

The update from Natural England was noted. It was agreed a working group would be required to consider the reports, when published, in order to meet the consultation deadline. Andrew Baker, Tim Felton, Charlie Lloyd, Sue Pudduck, Tino Savvas and Sarah Slade put their names forward. Members not present would be invited.

*Action: Forum Officer.*

# Agenda Item 4

## 14. Dates of meetings 2020

Meetings for the coming year were agreed. These would remain at 10.00 a.m. for the time being.

Thursday, 23 January 2020  
Thursday, 23 April 2020  
Thursday, 24 September 2020  
Thursday, 21 January 2021

## 15. Any other business

### 1. Fly-tipping

Sean Comber reported that he would be attending a conference on Fly-tipping, organised by the Chartered Institute of Waste Management, on 29 October. He would report back on any access-related issues.

*Action: Sean Comber*

### 2. DCAF papers

Tim Felton raised the importance of archiving DCAF papers and it was agreed he should discuss this with the Forum Officer.

*Action: Tim Felton and Forum Officer.*

HIW/19/85

Public Rights of Way Committee  
12 November 2019

## **Legal and Development Review of the Definitive Map Statement of Priorities**

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

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

**Recommendation:** It is recommended that:

**(a) Definitive Map Review Policy Statement DM1A/3 be amended to:**

***DM1A/4 Completion of the parish-by-parish Definitive Map Review will be sought before 1 January 2025;***

**(b) that Policies DM1B/2, DM1C/3 and DM1D remain unchanged.**

### **1. Legislative Background**

The Definitive Map and Statement (the 'Definitive Map') is the legal record of all public rights of way (public footpaths, bridleways, byways open to all traffic and restricted byways) within the county. Under the provisions of section 53 of the Wildlife and Countryside Act 1981, Devon County Council is legally required to keep its Definitive Map under continuous review and to make modifications where it appears that routes should be added, regraded or deleted. The Council achieves this by carrying out the review on a parish-by-parish basis across the county, to ensure that public rights of way in each parish are correctly recorded. To date 357 parishes (83%) have been reviewed. The map at Appendix I indicates the parishes completed (green), those currently under review as either started or at Committee stage (pink and yellow), those that are proposed be started next (blue) and those still to be reviewed (white).

In addition to the county-wide Definitive Map Review there is a process whereby the public can make a formal application to the County Council to make a change to the Definitive Map. This process is set out under Schedule 14 of the Wildlife and Countryside Act 1981. Applicants have the right to ask the Secretary of State to direct a surveying authority to reach a decision on a Schedule 14 application if no decision has been reached within a specified time-frame and also a right of appeal against the Authority's decision not to make an order in respect of their application. These applications are generally dealt with as part of the parish-by-parish process, although sometimes it is considered necessary to deal with them out of turn.

Authorities are advised (Defra Circular 1/09) to have a Statement of Priorities which details how they intend to carry out the Review of the Definitive Map. Without a clear Statement of Priorities, applications to the Secretary of State on the grounds of the authority's failure to determine an application within the specified timeframe are more likely, and they are also more likely to be upheld.

Devon County Council's Statement of Priorities is published in the Council's Rights of Way Improvement Plan (RoWIP) 2005 (reviewed in 2012) and Policy Statements revised and

# Agenda Item 5

approved 26 February 2015 by the Public Rights of Way Committee (minute ref \*PR/37), as Policies DM1A/3, DM1B/2, DM1C/3 and DM1D detailed below at 2. In the event of an application to the Secretary of State for the non-determination of a Schedule 14 application the Secretary of State would take into account that the County Council has a programme in place for prioritising and dealing with such applications.

The County Council is required to keep a register of Schedule 14 applications. There are currently 180 applications in the county awaiting determination. However, 144 (80%) of these are only partially compliant with the requirements of Schedule 14, as the applicant has not certified to the County Council that notice of making the application has been served on the landowner(s). The relevant Regulations require that applications are added to the register when they are received by the authority in the prescribed form and accompanied by a map and copies of evidence relied upon, independent of the receipt of certification. Certification is regarded as a separate and potentially subsequent event. However, the obligation to determine the application within the specified timescale (12 months), and the right of the applicant to apply to the SoS for non-determination, does not start until receipt of certification.

The Countryside and Rights of Way Act 2000 has placed a time limit on the legal recording of routes. If a route is not recorded, or is incorrectly recorded, on the cut-off date of 1 January 2026, then it will not be possible to modify the Definitive Map based purely on historical evidence. The cut-off date has not yet been implemented as it is linked to the implementation of other rights of way legislative reforms, which seek to mitigate some of its potential impacts, for example setting out certain saving provisions. The Secretary of State may also make regulations to extend the cut-off date beyond 2026, although this has not yet been proposed.

As previously reported to the Committee (20 November 2013 Report HCW/13/65, 8 July 2016 Report HCW/16/47 and verbal updates), new provisions have been introduced by the Deregulation Act 2015 which will affect the procedures in relation to the determination and making of Definitive Map Modification Orders. However, the necessary Regulations to implement these rights of way provisions have not yet been brought into force. The detail of specific regulations and guidelines relating to different parts of the Act are important and will determine the clarity of processes and the impact on staff and resources. It is therefore anticipated that a review of the Definitive Map policies and procedures will be required once the full implications are known.

In the interim however, a review of the current Statement of Priorities is considered necessary to take account of current workload and staff resources within the Definitive Map Team and to ensure that it is clear, robust and achievable.

## **2. Proposal**

The County Council's Statement of Priorities for keeping the Definitive Map and Statement up-to-date is contained within the Rights of Way Improvement Plan (first published 2005 and revised in 2012) and updated Policy Statements approved by this Committee on 26 February 2015 (Report HCW/15/12).

Changes in staff resources, and the increasingly complex nature of the work, including an unprecedented number of Schedule 14 applications and casework from associated appeals, directions and order determinations, has had an inevitable impact on staff workload and progress of the Definitive Map Review programme. It is therefore proposed that one of the existing Definitive Map Review policies, which form the Statement of Priorities, is revised, but that others remain unchanged.

**2.1** *DM1A/3 Completion of the parish-by-parish Definitive Map Review will be sought before 1 January 2020.*

With the legacy of reduced staffing and increasing and complex workload it has not been possible to achieve this aim.

**It is therefore proposed that this policy statement be revised to:**

***DM1A/4 Completion of the parish-by-parish Definitive Map Review will be sought before 1 January 2025***

This revised completion date takes account of the existing rate of progress of the parish-by-parish Definitive Map Review, which exceeds our Annual Business Plan of completing the review in 8 parishes and/or Schedule 14 applications a year. It also still seeks completion ahead of the 2026 cut-off date for historical routes introduced by the CROW Act.

The Definitive Map Review Team is also continually exploring means of streamlining its procedures within the parameters of the legal process to further improve efficiency.

**2.2** *DM1B/2 Schedule 14 applications and other such claims will be dealt with as part of the parish-by-parish Definitive Map Review. However, exceptions may be made for particularly contentious claims which are supported by a large amount of user evidence and where there is no nearby alternative route available, or where a route is likely to be affected by development, or where a route will result in significant road safety benefits. Negotiation with the landowner(s) to establish whether a quicker solution is available, for example, by express dedication, will be the first option.*

The County Council's policy of determining claims as part of the parish-by-parish review, rather than on an individual basis, has been established to deal with them as efficiently as possible. It is therefore proposed that this policy remain unchanged at this time.

In determining an application for non-determination of a Schedule 14 application, the Secretary of State would take into account that the County Council has a programme in place for prioritising and dealing with such applications, and has taken this into account in the past. It is therefore essential that the Statement of Priorities, in particular, our timescale for completion of the parish-by-parish review, is reviewed periodically to ensure that it is practicable.

The provisions of the Deregulation Act will have significant implications for the Schedule 14 process in particular and this is one area where it is likely the County Council will need to review its procedures, once details of new processes have been clarified.

**2.3** *DM1C/3 New claims which arise in a parish where the review has been completed will be deferred until the whole of the County has been reviewed. However, exceptions may be made in line with the criteria in policy DM1B/2 above.*

It is proposed that this policy remain unchanged at this time. Deferring new claims, which arise in a parish where the review has been completed, until the whole County has been reviewed allows staff resources to be most effectively deployed as each District area is completed and prioritises completion of the review in the remaining parishes waiting to be reviewed. Exceptions may still be made in line with existing criteria however, as above.

Following completion of the parish-by-parish review, priority would be given to those applications which are fully compliant with the requirements of Schedule 14, i.e. where the applicant has certified to the County Council that notice of making the application has been

# Agenda Item 5

served on the landowner(s) and, consequently, has a right of appeal against non-determination. Currently, only 36 applications on the County Council's register of applications are fully compliant. Of those applications, two will be determined next year, following directions, and six will be dealt with as part of the parish review process.

- 2.4** *DM1D Any necessary legal event modification orders will be made and the several Definitive Maps and Statements will be consolidated to form a single Definitive Map and Statement for the whole county on completion of the parish-by-parish Definitive Map Review.*

It is proposed that this policy statement remain unchanged at this time, as previously discussed in Report HCW/15/12.

It may need to be reviewed in the future to take account of new legislation. The Public Rights of Way Team may also consider a phased approach to Legal Event Modification Orders as the Definitive Map Review nears completion.

## **3. 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.

## **4. Legal Considerations**

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

## **5. Risk Management Considerations**

No risks have been identified.

## **6. Equality, Environmental Impact (including Climate Change) and Public Health Considerations**

Equality, environmental impact (including climate change) and public health implications have, where appropriate under the provisions of the relevant legislation, been taken into account in the preparation of the report.

## **7. Conclusion**

It is recommended that Definitive Map Review Policy Statement DM1A/3 be amended to:

*DM1A/4 Completion of the parish-by-parish Definitive Map Review will be sought before 1 January 2025.*

Policies DM1B/2, DM1C/3 and DM1D to remain unchanged.

## **8. Reasons for Recommendations**

To ensure that the County Council's Statement of Priorities for keeping the Definitive Map and Statement under continuous review is clear, robust and achievable.



# Agenda Item 5

Meg Booth  
Chief Officer for Highways, Infrastructure Development and Waste

## **Electoral Divisions: All**

Local Government Act 1972: List of Background Papers

Contact for enquiries: Helen Clayton

Room No: ABG Lucombe House, County Hall, Exeter, EX2 4QD

Tel No: 01392 383000

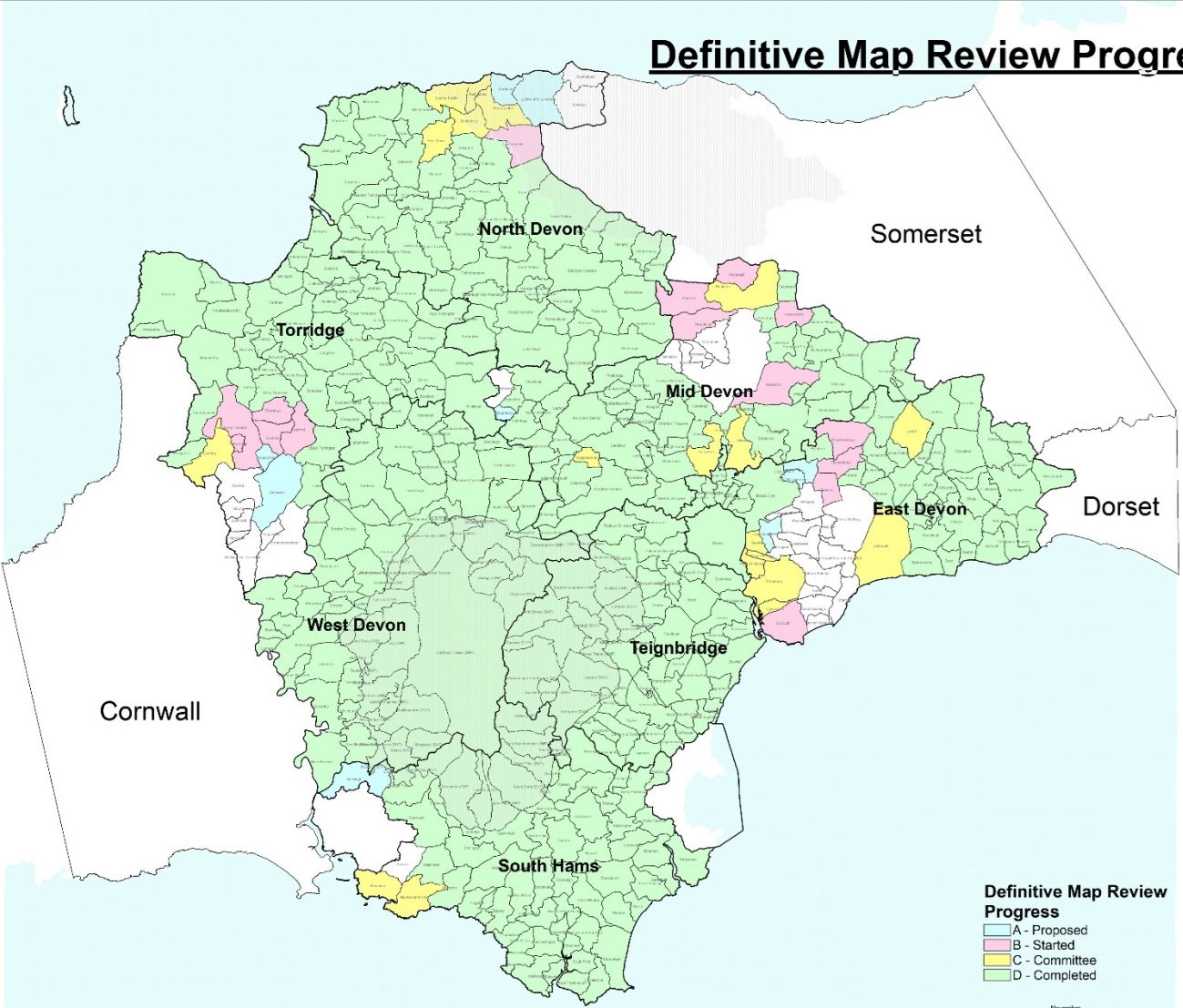
Background Paper	Date	File Ref.
------------------	------	-----------

None

hc260919pra  
sc/cr/Legal and Development Review of the Definitive Map Statement of Priorities  
02 041119

:

**Definitive Map Review Progress**



November  
2019

HIW/19/86

Public Right of Way Committee  
12 November 2019

## **Definitive Map Review 2017-19 Parish of Pyworthy**

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

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

**Recommendation: It is recommended that it be noted that the Definitive Map Review has been completed in the parish of Pyworthy and no modifications are required.**

### **1. Summary**

The report examines the Definitive Map Review in the parish of Pyworthy.

### **2. Background**

The original survey, under s. 27 of the National Parks and Access to the Countryside Act, 1949, revealed no public rights of way were recorded on the Definitive Map and Statement for Bideford Rural District with the relevant date of 1 July 1958.

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 Pyworthy 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 order has been made and confirmed:

Pyworthy Footpath No. 7 Stopping Up of Highways 1960

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

The current Review began in September 2017 with a public meeting held in the Village Hall in Pyworthy.

### **3. Proposals**

No valid proposals arising out of this or previous reviews.

### **4. Consultations**

A full public consultation was carried out in 2019 and the Review was advertised in the parish and in the North Devon Journal.

# Agenda Item 6

The responses were:

County Councillor Parsons	– no comment
Torrige Devon District Council	– no proposals
Pyworthy Parish Council	– no comment
British Horse Society	– no comment
Byways and Bridleways Trust	– no comment
Country Landowners' Association	– no comment
Devon Green Lanes Group	– no comment
National Farmers' Union	– no comment
Open Spaces Society	– no comment
Ramblers' Association	– no comment
Trail Riders' Fellowship	– 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 (including Climate Change) and Public Health Considerations**

Equality, environmental impact (including climate change) and public health implications have, where appropriate under the provisions of the relevant legislation have been taken into account.

## **9. Conclusion**

It is recommended that Members note that there are no proposals for modifying the Definitive Map in the parish of Pyworthy. 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 Torrige district area.

Meg Booth  
Chief Officer for Highways, Infrastructure Development and Waste

## **Electoral Division: Holsworthy Rural**

### Local Government Act 1972: List of Background Papers

Contact for enquiries: Caroline Gatrell

Room No: ABG Lucombe House, County Hall, Exeter

Tel No: 01392 383240

Background Paper	Date	File Ref.
Correspondence file: Pyworthy	2016-17	CG/DMR/PYW

cg130919pra  
sc/cr/DMR Parish of Pyworthy  
03 041119



HIW/19/87

Public Rights of Way Committee  
12 November 2019

## **Definitive Map Review 2019 Parish of Broadhembury**

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, 2 and 3.**

### **1. Introduction**

This report examines three proposals arising out of the Definitive Map Review in the parish of Broadhembury in East Devon district, including two Schedule 14 Applications made prior to the Review.

### **2. Background**

The original survey by Broadhembury Parish Council in 1950 under s.27 of the National Parks and Access to the Countryside Act of 1949 produced a map and details of 18 footpaths and 3 bridleways submitted to the County Council. Comments were added on behalf of Honiton Rural District Council. A fourth bridleway route was added by the Parish Council in 1958. Eight of the footpath routes surveyed were withdrawn or omitted or described as not required. The remaining fourteen routes were recorded for consultations at the Draft Map stage in 1957 and for the Provisional Map, which were then recorded on the original Definitive Map, considered as having existed from the relevant date of 1st September 1957.

The reviews of the Definitive Map under s.33 of the 1949 Act, which commenced in the 1960s and 1970s but were never completed, produced no valid proposals from the Parish Council with evidence, although suggesting an amendment by alteration to a recorded route.

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:

Honiton Rural District Council (Broadhembury No. 17) Public Path Extinguishment Order 1973, Kentisbeare boundary to Loyalty Hall

East Devon District Council (Broadhembury) Public Path Creation Order 1979, now Bridleway No. 24, Broadhembury

East Devon District Council (Broadhembury) Public Path Extinguishment (part) Order 1979, Bridleway No. 2, Broadhembury

East Devon District Council (Broadhembury No. 20) Public Path Diversion Order 1994

# Agenda Item 7

East Devon District Council (Broadhembury No. 21) Public Path Extinguishment Order 1994

East Devon District Council (Broadhembury No. 21) Public Path Creation Order 1994

Devon County Council Footpath no. 4 Broadhembury) Public Path Diversion Order 1995

Devon County Council (Bridleway No. 1 Broadhembury) Public Path Diversion Order 1995

Devon County Council (footpath No. 16 Broadhembury) Public Path Diversion Order 1995

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

The current review began in January 2019 with a public meeting held in the Memorial Hall, Broadhembury, which was advertised in the parish, in the local press and online.

### **3. Proposals**

Please refer to the Appendix to this report.

### **4. Consultations**

General consultations on the applications were carried out in June-September 2019 with the following results:

County Councillor Ian Chubb	-	no comment;
East Devon District Council/AONB	-	no comment;
Broadhembury Parish Council	-	comments included on specific proposals
Country Land and Business Association	-	no comment;
National Farmers' Union	-	no comment;
Trail Riders' Fellowship/ACU	-	no comment;
British Horse Society	-	no comment;
Cycling UK	-	no comment;
Ramblers	-	no comment

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

### **5. Financial Considerations**

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

### **6. Legal Considerations**

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

### **7. Risk Management Considerations**

No risks have been identified.



## 8. Equality, Environmental Impact (including climate change) and Public Health Considerations

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

## 9. Conclusion

It is recommended that no Modification Orders be made in respect of Proposals 1, 2 and 3, as the evidence is considered insufficient to meet the requirements of the legislation. Details concerning the recommendations are discussed in the Appendix to this report.

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

## 10. Reasons for Recommendations

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

Meg Booth  
Chief Officer for Highways, Infrastructure Development and Waste

## Electoral Division: Whimble & Blackdown

Local Government Act 1972: List of Background Papers

Contact for enquiries: Thomas Green

Room No: ABG Lucombe House

Tel No: (01392) 382856

Background Paper	Date	File Ref.
Correspondence File	2000 to date	TCG/DMR/BHEMB

tg161019pra  
sc/cr/DMR Parish of Broadhembury  
03 041119

# Agenda Item 7

## Appendix I To HIW/19/87

### A. Basis of Claims

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.

# Agenda Item 7

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 lawful 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 7

- 1 **Proposal 1: Schedule 14 application – upgrade Bridleway No. 22, Long-Go Lane, to Byway Open to All Traffic, a length of 1,310 metres, between points A-B-C shown on drawing no. HIW/PROW/19/25**

**Recommendation: It is recommended that no Modification 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. 22, Broadhembury 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 20th 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

- 1.2.1 The application route is that of Broadhembury bridleway no. 22. It starts at the end of the Unclassified County Road in Long-Go Lane (point A) and proceeds north-eastwards along the lane for approximately 1,100 metres, turning south at the end of the lane (point B) to continue for approximately 200 metres to the junction with the County Road near Hanger Lane (point C).
- 1.2.2 The route is hedged on both sides throughout and passes several small copses of woodland and has multiple access gates leading onto adjacent farmland. There are no gates present across the route at the current time, or indeed any other obstructions to the route. The surface of the track is compacted flint/gravel which has grassed over in the middle strip in places. The route appears to have been maintained by landowners in places to improve access for agricultural vehicles.

## 1.3 The Definitive Map process

- 1.3.1 The application route was not initially included in the survey of paths on behalf of the Parish Council in 1950 to put forward for recording as public rights of way on the Definitive Map. Following the publication of the Draft Map in 1957 the Parish Council lodged an objection stating that the bridleway had been omitted during the original survey. An objection was made by the landowner, Mr Gundry, but was later withdrawn and the route was finally recorded as a bridleway on the original Definitive Map published in 1966. Following the objection by Mr Gundry the Parish Council

collected user evidence forms for the route and these are discussed in the user evidence section below.

## 1.4 Documentary Evidence

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

Early historical maps at smaller scales, particularly the Ordnance Survey drawings and 1<sup>st</sup> edition map, show the route leading north east out of Broadhembury village, starting in the vicinity of the junction of the road leading to Bowerwood. It continues in the same manner, turning a right angle at the junction (point B on the map) and leading south east towards Polams Corner (Pothams on the later tithe map), which is today called Lane End Farm.

### 1.4.2 The track is shown in the same way as some of those recorded now as public roads, but also including others that are not recorded now as public or no longer existing. It is shown on the 1<sup>st</sup> edition map in the same way. It is noted that the location of Hembercombe (shown as *Hembercomb* on the 1809 map) appears to be incorrect, being in the location of what is shown on later maps to be Hanger Farm.

It is also shown similarly on Greenwood's 1827 map, believed to have been mainly copied from earlier Ordnance Survey map editions.

### 1.4.3 Later 19<sup>th</sup> century historical mapping: Broadhembury Tithe Map 1843 & Apportionment 1841; Ordnance Survey 25"/mile late 1880s

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

### 1.4.4 Broadhembury Tithe Map & Apportionment 1843

The route is shown on the Tithe Map for Broadhembury parish, produced in 1843, as an enclosed track on the same route as exists today. Roads were not labelled or identified in the Apportionment as public and included those which were obviously public, as well as others more likely to have been private tracks for access to fields and some not now existing. In this case the whole of the application route is shown to physically exist in the same manner as it does today. No roads are coloured or shaded on this tithe map.

### 1.4.5 Ordnance Survey 25" to a mile 1<sup>st</sup> edition map

Surveyed in 1887, this map shows all of the claimed route as an enclosed track, briefly shown as a single-pecked line but then as a double-pecked line throughout the rest of the route. It starts at the junction with the private accommodation road leading to Bowerwood and proceeds north eastwards, passing south of a small pond, Marlpit Copse and Little Moor Copse. It turns right at what is shown as a cross roads and heads south south-east towards the River Tale and Hanger Lane.

# Agenda Item 7

- 1.4.6 There are no gates or other obstructions annotated on the claimed route apart from what appears to be a small stream flowing across it at Little Moor Copse. This stream is still present today but is now piped under the lane.
- 1.4.7 The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century shows Long-Go Lane as an unmetalled track as a continuation from the third class metalled road at Wood Lane heading north east. It turns right at the cross roads and continues south south east towards Stafford Barton. It is depicted in the same way as other roads that are now public roads as well as others that are now private roads.
- 1.4.8 Broadhembury Vestry Minutes  
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 Broadhembury covering the period 1823 to 1889 are held by the South West Heritage Centre.
- 1.4.9 An entry in the Broadhembury Vestry Minutes dated 25<sup>th</sup> January 1827 appears to suggest that at that time the short section of the claimed route between points B and C was considered to be a public road. The entry states: *'It is unanimously agreed for the Waywardens to put the road leading from Stafford to Moor Gate in repair so as to make it passable, and not the other Road through Common as agreed at the last meeting – and to turn the water inside John Granger's hedge.'* Moor Gate seems to relate to the gate depicted on the 1<sup>st</sup> and 2<sup>nd</sup> Edition Ordnance Survey 25 inch to the mile maps halfway up the hill near where the track enters the open common, near a property called Moor (which is no longer in existence). It is also close to Moor copse and Little Moor Copse. Investigations have not identified any other locations in this parish that could be the 'Moor Gate' referred to.
- 1.4.10 A later entry in the minutes dated 14<sup>th</sup> April 1841 contains a copy of a road maintenance contract with a list of roads with mileages attached. One road on the list is: *'From Stafford Green to Moor Gate'* and it is listed as being three quarters of a mile and 107 yards in length. This distance converts to 1,335 metres. When measured on modern digital mapping the distance between the Stafford junction and the location of Moor Gate is 1,303 metres. This seems to help confirm that the location of Moor Gate has been correctly identified, as well as suggesting that the road was still considered public at this date.
- 1.4.11 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records  
The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the claimed route in the same way as in the 1<sup>st</sup> edition map. It shows the route as an enclosed track, briefly shown as a single-pecked line but then as a double-pecked line throughout the rest of the route. The same later maps were used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation, copies of which were submitted with the additional material for the applications. The map shows the claimed route to have been excluded from surrounding hereditaments (assessment areas of land) throughout.
- 1.4.12 The application route is adjacent to plots 3, 6, 51, 102, 103 and 108. Plots 3 and 51 have no deductions for rights of way and neither mentions the application route at all. Plot 6 is recorded as Bowerwood Farm and has a deduction of £50 for rights of way, which is recorded as crossing ordnance compartment numbers 688, 684, 652 and 687. This tallies with the current Footpath 4. Plot 108 is included within the Grange Estate. There are deductions recorded for hereditaments at other locations in the

parish but not for the plot of land adjacent to the application route. There is no mention of the application route in the entry. Plots 102 and 103 are recorded as a joint entry for Hembercombe Farm, having a deduction of £25 for a right of way across ordnance compartment numbers 729 and 730, again relating to the current Footpath 4. It is also recorded that there are 'no common rights' rather than merely leaving this section blank. There is no reference to the application route in the entry.

#### 1.4.13 Grange Estate sale plans 1902, 1903 and 1920

The entirety of the application route is shown on several sale plans of the Grange Estate produced in the early 20<sup>th</sup> century. In the 1902 plan it is shown coloured pink within land shown as for sale; public roads appear to be coloured yellow on this plan. On the 1903 plan the application route is uncoloured and excluded from coloured sale plots adjacent to it; again, public roads appear to be shaded yellow. In the 1920 plan the application route is shown uncoloured, as are all the other roads on the plan.

#### 1.4.14 Parish Council minutes

Minutes of the Broadhembury Parish Council are kept within the parish and cover the period from the 1894 up until they were digitised and published online in 2014. They vary in quality and detail, with early entries being particularly brief.

1.4.15 Broadhembury Parish Council minutes in 1934 contain a list of what may have been considered then to be public footpaths in the parish. It appears to have been drawn up by the Parish Council in response to the provisions introduced by the Rights of Way Act 1932. The Act established the process for the statutory presumption of dedication of public rights of way that went on to be included in subsequent and current Highways Act provisions. It also introduced the procedure for landowners to show that they did not intend to dedicate additional public rights other than those that they agreed or admitted were public. No part of the claimed route appears in the 1934 list. The list contains several paths in the vicinity of Long-Go Lane, for example 'Hanger to Sheldon Road', some of which are now recorded rights of way. There does not appear to be any item on the list that could be construed to be the claimed route.

1.4.16 Local authorities were encouraged to produce maps and schedules of what were considered by them to be public rights of way at that time. It was not a statutory requirement and without publication of Draft and Provisional versions of maps or consultations leading to a Definitive version, as with the procedures under the later legislation from 1949. Not all of the documentation from the 1932 Act procedures has survived locally, particularly in the form of maps, with only some background administrative documents and schedules or lists in the records of some Rural District Councils and Parish Councils or Meetings. Although the entry containing the Broadhembury list refers to maps, no copy of a map has been found in surviving records.

1.4.17 Several entries in the minute books in 1957-8 record discussions concerning the inclusion of Long Go Lane on the Definitive map. These are discussed in further detail in the definitive Map Review section below. A summary of the results of user evidence collected by the Parish Council is also discussed below in the user evidence section. Copies of the entries are also included in the backing papers.

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

Maps at smaller scales from the earlier 20<sup>th</sup> century, particularly by Ordnance Survey and Bartholomew's map editions from 1910 to the later 1940s, show the claimed route as an uncoloured or white road. Bartholomew's explanatory notes states that '*the uncoloured roads are inferior and not to be recommended to cyclists*'. The

# Agenda Item 7

Ordnance Survey mapping shows the route in much the same way as in earlier editions, though the 1960 One Inch edition shows the northern section with a dashed line on the northern side and a line across the route at the Bowerwood end, presumably to indicate a gate or other obstruction.

1.4.19 Later Ordnance Survey 'A' edition larger-scale mapping from 1949 to 1968, around the time that the Definitive Map was being drawn up, shows the route in a very similar manner to earlier editions. Some of the maps show a pecked line on some or all of the northern boundary, as referred to in the previous paragraph, along with a line across the route at the cross roads where it turns to the south east.

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

1.4.21 Highway maintenance records/Handover maps

Highway maintenance records from the 1960s and 1970s show that the application route was not at that time considered to be maintainable at public expense. The application route is left uncoloured and there are no notes or annotations relating to it. These maps did not show footpaths and bridleways, only public roads.

1.4.22 Aerial photography

Earlier RAF aerial photography from 1946–9 shows the application route in much the same manner as it exists today. The southern part of the route appears to be surfaced in some manner. The remainder of the route is not so clearly depicted due to tree cover but does seem to be hedged and there are glimpses of what appears to be a surfaced track. No obstructions are visible, but the tree cover and quality of the image does not allow this to be determined with any degree of certainty.

1.4.23 More recent aerial photography from 1999-2000, 2006-7 and 2015-17 shows the application route in much the same way as it exists today. The track is clearly surfaced where visible and no obstructions are visible. There is some tree cover obscuring the route, in places completely, making it impossible to state this with absolute certainty.

1.4.24 British Newspaper Archives

No articles relating to this route were found in the British Newspaper Archives.

## 1.5 Definitive Map Reviews and Consultations

1.5.1 The application route was initially not put forward for inclusion on the Definitive Map when the Parish Council carried out their survey in 1950. The Parish Council subsequently lodged an objection to the draft map with Devon County Council dated 30<sup>th</sup> April 1958, claiming that the bridleway had been omitted and it was accordingly added and appeared on the published Definitive Map in 1966. A landowner, Mr Gundry, lodged an objection to the proposal to add the route. The Parish Council subsequently collected user evidence forms (discussed below) and challenged the objection. Mr Gundry then withdrew the objection, leading to the inclusion of the route as a bridleway on the Definitive Map.

1.5.2 There has been one previous suggestion that the application route should be considered for recording with a higher status. A letter sent by the Broadhembury



Parish Clerk in 1971 stated that *'No. 22 joins the county roads, and although not suitable for all traffic – is used for farm traffic and seems to be more than a bridleway'*. This letter appears to have been sent following the review of the definitive map that was started in 1968 but not finished. No reply or further correspondence relating to this letter has been found, despite a note on the letter stating that a reply had been sent. The letter does not contain any explanation for the reasons behind this belief.

- 1.5.3 A further review in 1978 was started but not completed. The application route was not mentioned by the Parish Council in correspondence with Devon County Council during this review.

## **1.6 User Evidence**

- 1.6.1 Four 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 1966 or later, when the route was recorded as a public bridleway, would be unlawful (under the Road Traffic Acts of 1930 and 1988), 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.
- 1.6.2 Discounting the evidence of use on vehicle, some additional information regarding the route was recorded on these forms. Three of the forms answered no to the presence of stiles, gates or other obstructions as well as notices. The remaining form left this section blank. All four forms state that the path has always run over the same route and never been diverted. The answers given as to why they think the path is public (it must be presumed they understood this to mean public vehicular rights) vary: one states simply 'always has been'; one states 'DCC signs' but does not any further details of which signs; one states 'shown as a through road on 1911 Bartholomew's Map'; and the final one states 'tarmac to tarmac + evidence' but does not give any further clarification of what evidence.
- 1.6.3 During informal consultations four further user evidence forms were, covering the period 1978-2019. All four users claim use on foot, with two stating use on horseback also and one use on a bicycle on two occasions, and the frequency of use ranges from daily to 7-10 times per year. Forms and maps are included in the backing papers and are summarised below. Such use is consistent with the route's current status as a bridleway.
- 1.6.4 A form from Daya Rees (a Broadhembury Parish Councillor) records use for 13 years. She does not specify which years but it seems probable that she is referring to the 13 years prior to completing the form – 2006-19. She records her use as being on foot, for pleasure and as part of a circular walk along the claimed route and returning to Broadhembury past Lane End Farm and Stafford Barton. She states that 'occasionally gates closed for moving cattle' but that there have been no other obstructions to the route. She states that she believes the path to be a restricted byway.
- 1.6.5 A user evidence form was also completed by Chris Dunford, who has previously been the Parish Paths Partnership (P3) footpath warden for Broadhembury Parish. She states that she has used the path 7-10 times per year between 1978 and 2018 for 'exercise'. While she states that she used the route on foot she does note that she has used the route twice on a bicycle. Again, such use is consistent with the route's current recorded status as a bridleway. In further comments supplied with her form

# Agenda Item 7

she notes that Long Go Lane would have been used for many centuries to drive stock to graze on the commons and moor land on the top of the hill and *'I think that this tradition is what has led to the belief which I encountered, particularly in discussions on Long Go Lane and Wilderness Lane, that vehicular use of these lanes was solely for agricultural purposes'*.

- 1.6.6 A user evidence form was completed by a Mrs L Tancock of Annex, Bowerwood Farm. Bowerwood Farm is one of the landowners adjacent to the application route and a landowner evidence form has been received and is discussed below. Mrs Tancock states that she has used the route on foot and on horseback since 1995, at least 325 times per year for the purpose of pleasure. She states that there have never been any gates or other obstructions on the route and has circled both footpath and bridleway as the believed status of the route.
- 1.6.7 A form was submitted by S Alder claiming use on foot and horseback from 2008 to the present, at a frequency of 20 times per year. The route is believed to be a bridleway and has been used as of right during that time, with no obstructions encountered.
- 1.6.8 During the Definitive Map process in the 1950s an objection was made by Mr Gundry (the landowner) to the recording of Long-Go Lane. The Parish Council decided to continue with their claim to record the route and collected 54 user evidence forms. These forms have not been found but were summarised in the Parish Council minutes dated 29<sup>th</sup> March 1958 – *'Those forms revealed that there were 9 witnesses who had known, and mostly used, the lane over 60 years, 9 over 50 years, 7 over 40 years, 15 over 30 years, 10 over 20 years and 4, 10 years or under who make considerable use of it. 6 witnesses had ridden horseback, and 1 on motorcycle or car, and 1 witnesses' father had done so.'*

## **1.7 Landowner and Rebuttal Evidence**

- 1.7.1 The application route itself is unregistered. Landowners identified as owning land adjacent to the route were contacted with details of the proposal and asked to complete landowner evidence forms. Two landowners have completed evidence forms confirming that they own land adjacent to the route. Neither has claimed to own the land across which the route itself passes.
- 1.7.2 The majority of the application route is adjacent to land in the ownership of (or leased to) Lane End Farm. The owner of the farm, Martin Bennett, has completed a landowner evidence form along with an accompanying map showing which land he has owned for the past thirty years and that which he has rented for the past ten years. He states on his form that he has believed the route to be a bridleway for 30 years and has seen, or been aware of, regular use of the route by walkers. He states that he has never required anyone to ask permission to use the way but has stopped or turned back motorbikes from using it, though does not state when or how often he has done so. He also states that he (or someone on his behalf) has told people that the way is not public 'lots of times' but does not specify who he has told. He states that he has never put up any signs on the route but has obstructed the route (by locking gates and parking farm machinery and vehicles across it) to prevent travellers and vehicles using it. It is not stated how many times this has taken place. An additional comment is made that the lane is used daily for moving farm animals and that this would not be compatible with it being a public vehicular highway.
- 1.7.3 A landowner evidence form was also completed by John Persey of Bowerwood Farm, with an accompanying map showing the land in his ownership, who states that he has owned the land to the north of the application route at the far western end for more

than 50 years. He also states that he has believed the route to be a bridleway for 80 years. He states that he has seen, or been aware of, walkers and horse riders using the route but does not state how frequently he has seen them. He states that he has never required anyone to ask permission to use the route, turned anyone back or told anyone that the route is not public. Likewise, he states that he has never erected any signs on the route, never obstructed the route and has never been aware of any gates or obstructions on the route.

## 1.8 Discussion

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

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. This application was made in advance of new legislation and not in response to any event acting as a significant challenge to use of the claimed route. It did not result from any specific action taken by a landowner to obstruct or prevent access to it from a particular date. There is no clear evidence of any significant actions by a landowner having called into question use of the route at a specific time for consideration under statute law.

1.8.2 The Schedule 14 application for the upgrading of Bridleway No. 22, Broadhembury to a Byway Open to All Traffic made by the Trail Riders Fellowship in 2005 may therefore be taken as providing the date of an event that can be taken to have called the public's right to use a route into question. The period for consideration under statute is therefore 20 years from November 1985 to the date of the application in November 2005.

1.8.3 Evidence of use by the public during that period to support the claimed upgrade is forms relating to use on motorcycles by four people. However, as any evidence of use with mechanically vehicles dating from 1966 or later, when the route was recorded as a public bridleway, would be unlawful (unless with the permission of the landowner), it cannot give rise to a public right of way under Section 31. Other evidence of use submitted supports the route's existing recorded status as a bridleway.

### 1.8.4 Common Law

The only other basis for its possible consideration as a vehicular highway is if there was any other significant supporting evidence from which an earlier dedication of the route as such can be presumed or inferred 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 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.

1.8.5 Greenwoods 1825 map, along with the 1806 OS Surveyor's Drawings and 1809 1<sup>st</sup> Edition 1" map, all show the application route in a similar manner to surrounding lanes that are today county roads.

1.8.6 The title map provides evidence that the application route physically existed on the same line as it does today when it was drawn up in 1843. It does not provide

# Agenda Item 7

conclusive evidence of status but the fact that the route is excluded from the titheable plots raises a possibility that the route was considered to be public at that time.

- 1.8.7 The Vestry Minutes record that in 1827 and again in 1841 the section of the application route between points B and C was considered by the parish to be a public road. These records also confirm that the rest of the route between A and B appears not to have been considered to be a public road. However, these entries are concerned with roads and so make no mention of whether other public rights existed. Business conducted by the parish Vestry is unlikely to have received much scrutiny or publicity outside the parish. Part of the route, between points B and C, was doubtless maintained for the use of parishioners but considering that it was not a significant through route to any notable destination it is unlikely that awareness of the public reputation would have been widespread outside the parish.
- 1.8.8 Later Ordnance Survey and Bartholomew's Mapping records the physical existence of the application route on the same route from 1806 until the present day. Bartholomew's maps depict it as an inferior road, Ordnance Survey maps at a smaller scale depict it as an uncoloured road. Larger scale Ordnance Survey maps depict it as an enclosed track, naming it as Long Go Lane.
- 1.8.9 The application route is excluded from surrounding hereditaments on the Finance Act Map 1910, a likely indication that it was considered a public highway of at least bridleway status.
- 1.8.10 The route is not included in the list of public footpaths drawn up by Broadhembury Parish Council in 1934. There are several reasons why it may not have been included on this list: it may not have been considered to have any public rights over it at all; it may have been considered a road rather than a footpath; or it may simply have been omitted by mistake.
- 1.8.11 The application route was not initially included in the list of paths drawn up by Broadhembury Parish Council in 1950 during the original Definitive Map process. This omission was later noticed by the Parish Council who objected to it and proposed that the route be recorded as a bridleway. Despite an objection to the proposal by the landowner, the Parish Council successfully challenged the objection and the route was recorded. It is notable that the Parish Council obtained a large amount of user evidence in challenge to the objection, 54 forms being far higher than would be expected for a rural route today. This user evidence covered a period of more than 60 years, with only one form directly stating use with vehicle (and one other mentioning indirect use by their father). Despite the forms themselves not having survived, the summary of them in the Parish Council minutes appears concise and accurate and is suggestive of bridleway rights existing at that time.
- 1.8.12 Further entries in the Parish Council minutes in the late 1960s, concerning the then landowner wishing to erect gates across the route, confirm that the route was considered to be a public bridleway by the Parish Council. These entries refer to correspondence between the Parish Council, Devon County Council and the landowner and a site meeting following which it was agreed that four gates could be erected across the route as long as they were a minimum width of 12 feet and were not locked at any time to enable pedestrians and horse-riders unrestricted use. All parties acknowledged the route as being a bridleway rather than of any higher status.
- 1.8.13 The letter sent by Broadhembury Parish Council to Devon County Council in 1971 during an uncompleted review alludes to the application route as being 'more than a bridleway'. However, the paragraph in the letter is rather vague and gives no detail or

reasons for this belief other than that the route joins two county roads and is used by farm traffic. The review was not completed, there is no copy of the reply to the letter from Devon County Council and no record of further correspondence on the subject is noted in the Parish Council Minutes.

## 1.9 Conclusion

- 1.9.1 In the absence of sufficient, lawful, user evidence of higher rights, their existence cannot be considered under Section 31 Highways Act 1980. Lawful user and landowner evidence collected during informal consultations are all consistent with the route's current recorded status as bridleway. Under Common Law, the documentary evidence shows that the route has physically existed since at least the early 19<sup>th</sup> century. The Vestry Minutes, Tithe Map and Finance Act Maps all raise the possibility that the route (or at least part of it) may have had higher rights but no more conclusive evidence has been found to substantiate this. All the evidence from the original Definitive Map process to the present-day points to bridleway rights existing on the route and not any higher rights.
- 1.9.2 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that higher rights subsist on the balance of probabilities. Accordingly, the recommendation is that no Order be made to upgrade Bridleway 22, Broadhembury to a Byway Open to All Traffic in respect of the application for Proposal 1.

## 2 **Proposal 2: Proposed addition of a Bridleway, known as Burma Road, from Bridleway 22, Long-go Lane to Bridleway 24 at the Devon and Somerset Gliding Club, a length of 560 metres, between points B-D on drawing no. HIW/PROW/19/26.**

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

### 2.1 Background

- 2.1.1 The route was included as a proposal for informal consultations following a request by Broadhembury Parish Council that it be recorded as a bridleway during an uncompleted review in the 1970s.

### 2.2 Description

- 2.2.1 The start of the claimed route is at the junction where Bridleway 22 turns a right angle to head south east (point B). The route heads north north-east uphill along a gravelled track for approximately 330 metres. This section of the route is roughly metalled. It then enters an area of woodland, turning the corner and heading north-west as a smaller steeper path for approximately 140 metres to join Bridleway 24 (point D) which is on land owned by the Devon & Somerset Gliding Club. There are field gates at each end of the route, both of which were closed but not locked when recently visited.

### 2.3 The Definitive Map process

- 2.3.1 The claimed route was not included in the survey of paths on behalf of the Parish Council in 1950 to put forward for recording as public rights of way on the Definitive Map.

# Agenda Item 7

## 2.4 Documentary Evidence

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

In the Surveyors Drawings of 1806, the track is shown in the same way as some of those recorded now as public roads, but also including others that are not recorded now as public or in some cases are no longer existing. The lower section of the route appears to be shown as enclosed, the upper section as unenclosed. There are no obstructions shown on the route. It is shown on the 1<sup>st</sup> edition map on the same route, though it is difficult to distinguish any difference between the upper and lower sections. Although the lower section of the route is shown in the same manner as it exists today, the upper section is shown on a somewhat different route. There are two routes shown on both the 1<sup>st</sup> Edition and the Surveyor's Drawings that could possibly correlate with the claimed route that is on the ground today. The first is a road that leads to a property called The Moor, which seems to be on a close alignment with the claimed route but does not actually join up with the lower section on these maps. The second continues on from the lower section of the claimed route but runs on a more westward course than the claimed route. It is also shown on Greenwood's later map, believed to have been mainly copied from earlier Ordnance Survey map editions. The lower section is shown as an enclosed road, the upper section being shown as unenclosed.

### 2.4.2 Later 19<sup>th</sup> century historical mapping: Broadhembury Tithe Map 1843 & Apportionment 1841; Ordnance Survey 25"/mile late 1880s

The start of the claimed route is shown on the Tithe Map for Broadhembury parish in 1843 excluded from titheable plots in the lower half of the route. It runs into a plot of common land called Blackdown, stated in the apportionment as being owned by The Reverend William Heberdon (Glebe).

2.4.3 Although the Tithe Map does not provide strong supporting evidence that it may have been considered then to be public, the fact that it shows the route leading to an area of Glebe or common land does perhaps infer that public (or at least commoners') rights may have been a possibility if this was the route used to access it. The map records part of the route's physical existence, leading from what appears to be the road network at that time, but with no continuation further on the claimed route.

2.4.4 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows the start of the claimed route as an enclosed road or track. After a gate or other obstruction (which is the subject of further discussion below), the upper half of the route is shown as a double-dashed path initially between two fields and then as an unenclosed track across open ground to the end of the claimed route. It is shown continuing from there in a generally easterly direction along the top of Hanger Plantation.

2.4.5 The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century shows the lower half of the claimed route as an unmetalled road but does not depict any of the upper half of the route.

### 2.4.6 Broadhembury Vestry Minutes, 1827 and 1841

An entry in the Broadhembury Vestry Minutes dated 25<sup>th</sup> January 1827 states: *'It is unanimously agreed for the Waywardens to put the road leading from Stafford to Moor Gate in repair so as to make it passable, and not the other Road through Common as agreed at the last meeting – and to turn the water inside John Granger's hedge.'* Moor Gate seems to be the gate depicted on the First and Second Edition Ordnance

Survey 25 inch to the mile maps halfway up the hill near where the track enters the open common, near a property called Moor (which is no longer in existence). It is also close to Moor Copse and Little Moor Copse. Investigations have not identified any other locations in this parish that could be the 'Moor Gate' referred to. The Tithe Apportionment records John Granger as being the occupant of plots 383 and 384 which are located just to the southwest of the lower end of the claimed route. This appears to confirm that Moor Gate has been accurately identified and located. It also appears from this entry in the minutes that the Parish Vestry considered the road referred to be a public highway.

2.4.7 A later entry in the minutes contains a copy of a road maintenance contract with a list of roads with mileages attached, dated 14<sup>th</sup> April 1841. This is a contract drawn up between 'Mr John Blackmore and the Surveyor of the Highways of the parish of Broadhembury in the County of Devon by and with the consent of the parish in vestry assembled'. The contract is for a period of three years, Mr Blackmore being responsible for superintending and repairing all the public highways in the parish with the exception of the Turnpike road (as well as 'bridges, masonry and carpenters work). One road on the accompanying list is: '*From Stafford Green to Moor Gate*' and it is listed as being three quarters of a mile and 107 yards in length. This distance is 1,335 metres. When measured on modern digital mapping the distance between the Stafford junction and the location of Moor Gate is 1,303 metres. This seems to again support the notion that the location of Moor Gate has been correctly identified.

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

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map. The same later maps used as the basis for the 1910 Finance Act survey show the upper section of the claimed route to have been included in hereditament 3 for which there were no deductions made. However, the lower section of the route was excluded from the surrounding hereditaments.

2.4.9 Grange Estate sale plans 1902, 1903 and 1920

Several plans were produced in the early 20<sup>th</sup> century showing land for sale as part of the Grange Estate. In the 1902 plan public roads appear to be shown coloured yellow. The claimed route is shown coloured pink as part of the land for sale. The route is again shown coloured as part of a sale plot in the 1903 plan. In the 1920 plan the lower section of the route is shown uncoloured, while the upper section is just off the map; no roads are shown coloured at all on this plan.

2.4.10 Broadhembury Parish Council minutes, 1894-1994

The list of what were considered to be public footpaths in the parish in 1934 does not appear to include the claimed route. One path on the list is called 'Hanger to Sheldon road' which could possibly relate to this route. However, it seems more likely to relate to the route that is now Bridleway 1.

2.4.11 Local authorities were encouraged to produce maps and schedules of what were considered by them to be public rights of way at that time. It was not a statutory requirement and without publication of Draft and Provisional versions of maps or consultations leading to a Definitive version, as with the procedures under the later legislation from 1949. Not all of the documentation from the 1932 Act procedures has survived locally, particularly in the form of maps, with only some background administrative documents and schedules or lists in the records of some Rural District Councils and Parish Councils or Meetings. Although the Broadhembury list refers to

# Agenda Item 7

maps, no copy of a map has been found in surviving records. As such it is impossible to precisely allocate all the listed paths to physical routes on the ground.

2.4.12 An entry in the Parish Council minutes from a meeting on 13<sup>th</sup> November 1981 reads: *'Mr Blackmore said it had been brought to his notice that the gate at the bottom of Burma Road had been locked. He had spoken to Mr Allen about this. Mr Persey said he would have Burma Road on the agenda for the next meeting when it could be discussed.'*

2.4.13 At the next meeting on the 15<sup>th</sup> January 1982 the following was recorded in the minutes: *'Burma Road was discussed. Mr Blackmore said he owned the top part and had a right of way and had no objection to anyone using the road. The footpath warden had advised that to get Burma Road put on the Definitive Map it would mean finding 5 people who had used the road regularly over the past 20 years. It was agreed to let the matter rest for the time being and see what happened during the summer months.'*

#### 2.4.14 Bartholomew's mapping, 1903, 1923, 1943

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.

The southern part of the proposal route is shown on all Bartholomew's maps as an uncoloured route, therefore one that was 'inferior and not to be recommended to cyclists.' The northern section is not shown on any of the Bartholomew's maps. It appears that the section that is shown is the metalled lower section that runs up the hill to the woodland.

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

Most smaller scale maps from the earlier 20<sup>th</sup> century are generally too small to show the whole claimed route in any detail. The New Popular Edition with National Grid published in 1946 shows the lower half of the claimed route but not the upper section. The Seventh Series revised in 1957-8 shows the whole of the claimed route as an unmetalled road, the lower half being unfenced on the west side. All the Bartholomew's maps show the lower half of the claimed route as an uncoloured road but do not show the upper half of the route at all. All these maps are subject to the general disclaimer.

2.4.16 The later Ordnance Survey 'A' edition larger-scale mapping from 1962 and 1968, show the claimed route in a similar way to the other mapping. The 1962 edition shows the whole of the claimed route as a road, of which the lower half is unfenced on the eastern side. The whole route is shown on the 1968 map as a road, unfenced on the western side and mostly fenced on the eastern side. The continuation from the access track is not shown on the 'B' edition of the mapping from 1968. The showing of the route on some early and later maps records its physical existence at those times until more recently and up to the present. They do not indicate on their own or support the existence of public rights of way, in accordance with the Ordnance Survey disclaimer.



## 2.4.17 Highway maintenance records/Handover maps

Highway maintenance records from the 1960s and 1970s show that the claimed route was not at that time considered to be maintainable at public expense. The claimed route is left uncoloured and there are no notes or annotations relating to it. These maps did not show footpaths and bridleways, only public roads.

## 2.4.18 Land Registry

The lower section of the proposal route is unregistered. The upper section that runs through the wooded slope up to the Gliding Club is included in DN617156. A conveyance in 1965 granted the owners of this land a right of way '*over and along the trackway through Enclosure GR 7955*' which appears to be the upper section of the proposal route.

2.4.19 DN307336 covers the upper wooded slopes to the west of the claimed route. A right of way is included in a transfer in 1991 as follows: *In so far as the Transferor can transfer the same the full and free right of way at all times and for all purposes with or without motor vehicles and for the Transferee and his successors in title, his servants or agents over and along the land coloured brown on the said plan and from there to the public highway as a means of access to and from the land hereby transferred.*" This seems to clearly state that the right of way covers the lower metalled section of the claimed route to where it joins the current public highway. Subsequent sale/transfer of plots of this land have seen this right transferred to new owners.

## 2.4.20 Aerial photography

Aerial photography from 1946-9 shows the whole of the claimed route. The lower half is shown flanked by trees, and possibly hedges in places. The upper section is partially obscured by tree cover but is then shown crossing open ground rather than woodland as it does today. It looks to be a reasonably wide track rather than a narrow footpath.

2.4.21 Later aerial photography from 2006-7 and 2015-17 show how the route is now heavily wooded. The lower section of the claimed route is tree-lined, with just small glimpses of the track visible. The upper section passes through woodland, though it is possible to distinguish the course of the route on the upper section of the slope.

## 2.4.22 British Newspaper Archives

No articles relating to this route were found in the British Newspaper Archives.

## **2.5 Definitive Map Reviews and Consultations**

2.5.1 The claimed route was not included in the 1950 Definitive Map Review process. The route is first claimed in 1971 in a letter from the Broadhembury Parish Council to Devon County Council during a review that was started but not completed. In this letter the Clerk refers to the route as being called 'Burma Road' and that it is 'used a lot' before asking for it to be made a public bridleway. A further letter sent by the Parish Council in 1978 in response to a review (as before, started but not completed) does not mention the route at all.

## **2.6 User Evidence**

2.6.1 Three user evidence forms have been submitted relating to this proposal. One states use from 1985 until 2019 at a frequency of '4 or so' times per year; one from 1995 until 2019 at a frequency of 'at least 15' times per year; and one from 2008 until 2017

# Agenda Item 7

at a frequency of 3 times per year. Two state that they have used the route on foot, for pleasure and as part of a walk between Broadhembury and the Gliding Club land on top of the hill. One states use on horseback, again as part of a longer route from Broadhembury to the Gliding Club and Blackborough/Stafford Hill. None of the users has obtained permission, had a private right, been stopped or turned back or been told that it is not public; likewise, none states that they know of anyone else being told that it is not public. One states that they were told by a friend that it was public. None of the users has worked for any landowner or tenant of land crossed by the route. None has said they have ever seen any signs or notices to indicate that the route is not public. One form acknowledges gates at both ends of the route, the other two a gate at the top end. One of these states that the gate was occasionally tied shut but not locked. Two users believe the owner(s) was aware of the public using the route, the other states they did not know either way.

- 2.6.2 Chris Dunford, who has previously been the Parish Paths Partnership (P3) footpath warden for Broadhembury Parish, supplied some further information with her user evidence form. Firstly, she states that the Reverend Augustus M Toplady used the route as part of the way from Broadhembury to Sheldon, documented in his diary of 1767-8. Secondly, she states that the name 'Burma Road' was given to the route by Land Girls during the Second World War who were working on the land now owned by the Devon and Somerset Gliding Club. Thirdly, she states that 'discussions with the Gliding Club in the early 1990s produced an agreed path with gate for walkers onto the Gliding Field, to join Bridleway 2'. These discussions would have occurred during the time she was the P3 footpath warden for Broadhembury parish. She also supplies a copy of the Tithe Map showing the lower section of the claimed route. The information she provided is also contained in her book, Broadhembury: A Picture of our Parish, published in 2000.

## 2.7 Landowner and Rebuttal Evidence

- 2.7.1 A landowner evidence form was received from Mr Bennett of Lane End Farm who owns and rents land adjacent to the southern half of the claimed route. He has owned land to the west of the claimed route for 30 years and rented the field to the east for 10 years. He acknowledges that he has seen, or been made aware of, people using the route and stated the frequency as *'not regular but people seem to go "where they want."* He states that he (or someone on his behalf) has turned back or stopped people from using the route and also told people that it was not public. It states that this has been done *'a few times a year'*. The form states that there have always been gates at the bottom of the route. Mr Bennett states that he has obstructed the route by putting a piece of farm machinery across it to stop vehicles, though he doesn't state when or how often this has been done. Mr Bennett also gives the additional comment: *'The lane was made in the war for farming practices not for people to roam on farmland.'* This does not seem to be consistent with the mapping evidence which shows the route has existed far longer than this.
- 2.7.2 The Devon and Somerset Gliding Club (DSGC) submitted a landowner evidence form and additional comments, both with the form and via email, concerning this proposal. They do not acknowledge that a bridleway exists on the route, but do acknowledge pedestrian use of the route, though are unable to estimate the frequency. They have never erected signs, turned anyone back or told anyone that the route is not public. However, they do state that they have padlocked the gate at the top of the route regularly over the years, with the intention of preventing quad bikes from entering their land. It seems that they did not intend to prevent pedestrians using the route. Additional comments include concerns about MPV use, wishes for infrastructure to prevent this should the route be recorded and a desire to divert the existing Bridleway

24 (which this proposal route joins). An additional email notes that they have recently purchased the area of woodland through which the proposal route passes.

- 2.7.3 An email received from the DSGC was received on 29<sup>th</sup> September 2019. This describes a 'fun ride' that occurred on the 15<sup>th</sup> September and which appears to have been organised by the East Devon Hunt, who marshalled and signed a route. Some of the riders participating in this event are said to have come up the proposal route, though this appears not to have been the signed route. It is stated as being the first time an event such as this has been witnessed by the DSGC.
- 2.7.4 An email from the Buddhafield group who own land adjacent to the route claims that members could neither provide evidence to support or contradict the proposal. Informal use by the public on foot had been suspected but they could not confirm for sure. The spokesperson for the group, Paul McFadden, is a PROW Warden for Devon County Council, covering the South Hams area. He claims to have used the route to access their land as a private accommodation road, though has only done so only for a few years.

## 2.8 Discussion

### 2.8.1 Statute (Section 31, Highways Act 1980)

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. Despite some evidence to suggest that landowners have obstructed the route or locked gates, there is no evidence that this has been done to deliberately or permanently to prevent use of the route on foot. It appears to have been done on a very occasional and temporary basis to prevent unauthorised use of the route by vehicles. Considering this, and the fact that no one has ever contacted Devon County Council to report use of the route being challenged, statutory dedication cannot be considered in this case.

### 2.8.2 Common Law

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 of the higher status and that the public has accepted the dedication.

- 2.8.3 Historic mapping evidence suggests that the route has been in existence since at least the early 19<sup>th</sup> century. Though the lower half of the route is consistently depicted, the upper section of the route is not, perhaps due to the lower half being suitable for vehicle use and the upper section not. It is not always shown, particularly on later Ordnance Survey small scale mapping, and where it is shown there is some discrepancy on the route it follows. However, the general consensus of the historic mapping evidence is that the route existed and was available for use through the 19<sup>th</sup> century and up to the present day. Though the upper section of the route varies slightly in the mapping evidence, it is consistent in that the route is always shown joining the road to Sheldon.

- 2.8.4 The Tithe Map and Finance Act Plans both show the lower section of the route excluded from adjacent plots/hereditaments, both being a likely indication that the

# Agenda Item 7

route was considered public. In the case of the former, the upper section of the claimed route is not shown due to the area being within a plot of Glebe common land. In the latter, the upper section runs through a hereditament that does not have any deductions recorded for public rights of way, providing evidence that the landowner did not consider there to be any public rights of way across their land. Title deeds

- 2.8.5 The entries in the Vestry Minutes are strong evidence that the lower section of the claimed route was considered to be a parish road, maintained at public expense, during the first half of the 19<sup>th</sup> century. Though not conclusive evidence of status, it does correlate well with the mapping, Tithe Map and Finance Act evidence relating to the lower section of the route. However, while it was doubtless maintained for the use of parishioners, it was not a through-route and it is unlikely that awareness of the public reputation would have been widespread outside the parish. Title deeds for relevant land continue to contain private rights of way over the route.
- 2.8.6 Despite mapping evidence from the 20<sup>th</sup> century continuing to show the claimed route, it does not appear in Broadhembury Parish Council's list of footpaths compiled in 1934 in response to the Rights of Way Act of 1932. Likewise, it is not considered during the Definitive Map process in the 1950s. These suggest the route was not considered by the Parish Council to be public during this period. However, this was contradicted in the letter sent by Broadhembury Parish Council to Devon County Council in 1971 asking if the route could be recorded as a bridleway. Parish Council minutes from the early 1980s suggest that people were using the route and the landowner did not object. It seems the Parish Council wished to consider the inclusion of the route on the Definitive Map but the outcome of any consideration is not recorded in the minutes. Highway Maintenance records from the 1960s and 1970s confirm that the lower section of the route was not considered to be a public road at that time.
- 2.8.7 Direct user evidence for the route is sparse, only three user evidence forms being submitted. However, they all suggest use was as of right and for a considerable period – 9 years, 24 years and 34 years respectively.
- 2.8.8 The landowner adjacent to the lower section of the route, Mr Bennett, appears to have told users that the route was not public and turned people back on numerous occasions over several decades. However, he does not state that he has physically obstructed the route to prevent walkers or horse-riders, nor erected any signs prohibiting use. The Devon and Somerset Gliding Club state that they have locked the gate at the top of the route on numerous occasions over the years, though they acknowledge that pedestrian use has always taken place and that they have no wish to curtail this. Parish Council minutes from the early 1980s suggest that the landowner of the top section of the route at that time, Mr Blackmore, had no objections to anyone using it. The information supplied by these landowners is not conclusive of them dedicating the route. However, it does appear to acknowledge that the public have been using the route over several decades, albeit not necessarily always as of right.
- 2.8.9 There is therefore some documentary and anecdotal evidence to support the subsistence, at Common Law, of a public right of way over the proposed route. However, on its own, with the absence of enough direct user evidence to show acceptance by the public, of a right of way of any particular status, the evidence overall is considered insufficient to show that a public right of way subsists or is reasonably alleged to subsist.

## 2.9 Conclusion

- 2.9.1 It is in the light of this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, that it is insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law there is, also insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made in respect of Proposal 2.

## 3. **Proposal 3: Proposed addition of a Byway Open To All Traffic at Wilderness Lane, from the A373 to County Road C212 near Pitney Farm, a length of 1,260 metres, points E-F on drawing no. HIW/PROW/19/27**

**Recommendation: It is recommended that no Modification 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 to record a Byway Open to All Traffic (BOAT) on Wilderness Lane, Broadhembury, supported by maps as documentary evidence and five 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 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.
- 3.1.2 This application was made after 20th January 2005 and 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 recording of 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.
- 3.1.3 In June 2011 the TRF sent an email to Devon County Council requesting the withdrawal of several Schedule 14 applications, including this one for Wilderness Lane. However, as we have been provided with the evidence, we will continue to assess the application as part of the parish review.

## 3.2 Description of the route

- 3.2.1 The application route starts at the County Road, A373, at point E on the proposal plan. It heads in an east north-east direction in a roughly straight line for approximately 1,260 metres to join the County Road C212 approximately 230 metres north of Pitney Farm, at point F. It is currently not recorded as a highway of any description. It passes to the south of a woodland plantation called The Wilderness. It is an unmetalled track throughout, with some tree growth in the middle of the track in the central section of the route that makes it extremely difficult for 4-wheeled vehicles to pass. There are no gates or man-made obstacles on the route. At the western end there are national speed limit signs which appear to have been installed by

# Agenda Item 7

Devon County Council at some point in the recent past. The Highways Team have no record of the installation of these signs. However, it looks likely that they were installed at the same time as the concrete drains next to them that were installed as part of a scheme funded by DCC and Broadhembury Parish Council in 2014/15. None of the route is registered with Land Registry.

- 3.2.2 Historical mapping appears to show a track continuing to the north east on the other side of the County Road C212 to Wilderness Lane. It is possible that the application route was therefore once part of a longer continuous route that ran up to the top of the hill near Wolverstone Moor. Evidence for this continuation of the route is sparse but has been included in the report, especially as it concerns some modern user evidence that covers the whole length rather than just the application route.

### 3.3 The Definitive Map process

- 3.3.1 This route was not included in the survey of paths on behalf of the Parish Council in 1950 to put forward for recording as public rights of way on the Definitive Map.

### 3.4 Documentary Evidence

- 3.4.1 Early historical mapping – Donn’s Map 1765, early 19<sup>th</sup> century: Ordnance Survey, Surveyors’ Drawings 1806-7 and Cassini 1<sup>st</sup> edition 1”/mile map 1809 and later (Old Series); Greenwood’s map 1827

The eastern end of the application route is shown on Donn’s 1765 map as a cross road spur, in the same manner as other roads that are public today. This map is included as supporting evidence in the Schedule 14 application.

- 3.4.2 The application route is shown on the Ordnance Survey Surveyors’ Drawings of 1806-7 as an uncoloured road in the same way as some of those recorded now as public roads, but also including others that are not recorded now as public, or those no longer in existence.

- 3.4.3 This application route is shown on the 1<sup>st</sup> Edition map in the same way as some of those recorded now as public roads, but also including others that are not recorded now as public or no longer existing. It is also shown on Greenwood’s 1827 map as a cross road; with either end of the route being depicted but not the central section. Greenwood’s map is believed to have been mainly copied from earlier Ordnance Survey map editions.

- 3.4.4 Broadhembury Vestry Minutes, list of roads, 1841

An entry in the vestry minutes includes a copy of a three-year contract for the maintenance of roads in the parish, dated April 1841. Attached to this contract is a list of roads with their mileages that the contractor agrees to ‘superintend and repair’ on behalf of the Surveyors of the Highways of the parish. 19 roads are listed and none of them relate to the application route.

- 3.4.5 Later 19<sup>th</sup> century historical mapping: Broadhembury Tithe Map 1843 & Apportionment; Ordnance Survey 25”/mile late 1880s

The application route is recorded on the Tithe Map for Broadhembury parish in 1843. It is shown in the same way as roads and other tracks in the parish, some of which are now public and some of which are private. No roads are coloured or shaded on this Tithe map. The route is entirely excluded from the adjacent titheable plots. There are no annotations on the route, and it is not named or numbered on this map. There are no lines across the ends of the route or any other marks that may be taken to represent obstructions, the only mark being an unidentified dot in the middle of the

route. An entry is included on the apportionment as 'Rivers, Road and Waste', totalling 90 acres, 3 roods and 14 perches.

- 3.4.6 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map shows the application route as an enclosed track on the same physical route as it exists today. The western half is depicted as a double-pecked line. It is also named as 'Wilderness Lane', which appears to be the earliest documented use of the name. There are no obstructions shown on the route. This map comes with the general disclaimer used by the Ordnance Survey after 1889.
- 3.4.7 The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century shows the application route as a fenced unmetalled road.
- 3.4.8 Early 20<sup>th</sup> century estate sale plans 1902 and 1903  
Two plans produced during sales of the Grange Estate in 1902 and 1903 show the application route. In the 1902 plan the public road network appears to be coloured yellow, though there is no legend to confirm this. Wilderness Lane is coloured pink suggesting that it was included in the land that was being sold. The 1903 plan shows the public road network in a similar manner to the 1902 plan. Again, Wilderness Lane is not coloured yellow. However, it is not shaded at all which suggests that it was not included in the land that was being sold. It is named in this plan but was not in the 1902 plan.
- 3.4.9 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records  
The Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map, but without the dashed lines that were present in the previous version. There is also a dashed line across each entrance to the route. As in the 1<sup>st</sup> Edition 25" to the mile maps, the route is named as 'Wilderness Lane'. The same later maps used as the basis for the 1910 Finance Act survey show the application route excluded from the surrounding hereditaments.
- 3.4.10 There are 5 hereditaments recorded as being adjacent to the application route. The field books for plots 53, 55 and 282 have no deductions for rights of way and contain no references to the application route. Plot 9 relates to Home Farm, part of the Grange Estate, and has a deduction of £25 for a right of way across ordnance compartment number 1023 which is the current Footpath 20. There is no reference to the application route in this entry. Plot 108 relates to the Grange Estate and although a deduction of £10 for rights of way is recorded this is for a path on a different part of the estate. There is no reference to the application route in this entry either.
- 3.4.11 Bartholomew's half-inch to the mile mapping, 1903; 1923; 1946  
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. The whole of the application route between points E-F is shown on all Bartholomew's maps as an

# Agenda Item 7

uncoloured route, therefore one that was deemed 'inferior and not to be recommended to cyclists.'

## 3.4.12 Broadhembury Parish Council minutes, 1894-1994: lists of public footpaths 1934, obstruction of path 1960

Copies of extracts from Broadhembury Parish Council minutes in 1934, with a list of what may have been considered then to be public footpaths in the parish, have been investigated. It appears to have been drawn up by the Parish Council then in response to the provisions introduced by the Rights of Way Act 1932. The Act established the process for the statutory presumption of dedication of public rights of way that went on to be included in subsequent and current Highways Act provisions. It also introduced the procedure for landowners to show that they did not intend to dedicate additional public rights other than those that they agreed or admitted were public. No part of the application route appears in the 1934 list.

3.4.13 In a meeting on 9<sup>th</sup> September 1959 the minutes state: *'In a letter, Mr Drewe raised the question of "why Wilderness Lane had been blocked with barbed wire at the Honiton main road end". Other members of the council had noticed this and agreed with Mr Drewe that it is a right of way and an old Roman road. Mr Blackmore wondered if it ought to have been claimed with the Public Footpaths. Mr Lawrence said that he would also raise the question of Wilderness Lane when he saw the clerk concerned about the footpaths.'*

3.4.14 At the following meeting on the 11<sup>th</sup> January 1960 the minutes record the following: *'The Clerk reported that the barbed wire had now been taken away from Wilderness Lane and a notice put up by Mr Gundry (the landowner) warning people against parking and depositing litter. Mr Lawrence said he had been told that if Wilderness Lane should have been claimed as a public path it could be claimed in 5 years' time, as the footpaths would be revised again then, and probably any mistakes could be put right.'*

3.4.15 In September 1960 it is recorded in the minutes: *'It had been noticed by councillors that barbed wire had again been put across the lane at the main road end and after discussion it was agreed that the Clerk should write to Mr Gundry asking him to remove it, as the lane was a public road way and so the public should be allowed to walk through.'*

3.4.16 The following was also recorded in the minutes from the next meeting in October 1960: *'A letter was read from Mr Gundry stating that the barbed wire and rail across the lane were not fixed and that he had put it there to stop the lane being used as a public lavatory and a dump for broken bottles and filthy rubbish. It had been noted that the barbed wire had now been taken down.'*

## 3.4.17 Later Ordnance Survey mapping

The later Ordnance Survey 'A' edition larger-scale mapping from the 1950s and 1960s, shows the application route as a fenced road or track, named Wilderness Lane. The showing of the route on early and later maps records its physical existence at those times until more recently and up to the present. They do not indicate on their own or support the existence of public rights of way, in accordance with the Ordnance Survey disclaimer.

## 3.4.18 Highway maintenance records/Handover maps

Highway maintenance records from the 1960s and 1970s show roads that were at that time considered to be maintainable at public expense. They do not show footpaths and bridleways, only roads. The application route is not shown coloured in



as a part of the road network, which suggests it was not considered then to be a public road. Though not coloured, it is shaded lightly in pencil on one map along with the continuation of the route uphill to the north east, though there is no explanation of what this means. There are no notes or annotations relating to the application route in either of these maps.

#### 3.4.19 Aerial photography

In earlier aerial photography between 1946-9 Wilderness Lane is shown throughout with banks on either side. There is substantial tree growth on either side on the eastern half of the route, though much of the western side has some tree cover but some open banks. Later photography in the 21<sup>st</sup> century (1999-2000, 2006-7 and 2015-17) shows mature trees lining almost the entire length of the route to the extent that the surface of the track is completely obscured.

#### 3.4.20 British Newspaper Archives (online)

No articles relating to this route were found in the British Newspaper Archives.

#### 3.4.21 Definitive Map Reviews and Consultations

Other than the entries in the Parish Council minutes in 1960, there have been no previous suggestions that this application route should be considered for recording as a public right of way in earlier review processes.

#### 3.4.22 Land Registry

There is no title absolute registered for any part of the application route itself. A caution against first registration was registered with the Land Registry on 16<sup>th</sup> May 2012 – DN623378. The register states the following: ‘The statement of truth accompanying the caution states the cautioner claims the following interest in the estate: ‘the beneficiary of a claimed prescriptive right of way as detailed in the statutory declarations of Joanna Allen dated 14<sup>th</sup> June 2011 and Susan Phillips dated 27<sup>th</sup> June 2011.’

### **3.5 User Evidence**

- 3.5.1 Five user evidence forms were submitted with the application for this route. They cover the period from 1985 -2005. Four of the users have specified the type of use as either motorcycle or trail motorcycle, with the remaining form having had this section left blank. Four of the users state that they used the route between 1-2 times per year, while one user stated they used the route between 5-10 times per year. All these users state that they used the route for pleasure and as part of a circular trail ride or tour. None of the five forms mention any stiles, gates, notices or other obstructions, though one form had left this section blank. All of them state that the path has always run over the same route and that it has never been diverted. Differing answers are given as to why they consider the route to be public: ‘reputation and historic evidence’; ‘open at both ends, always used, on old maps as road’; ‘shows on old records’; ‘tarmac to tarmac’; ‘well-used – Finance Act evidence’. Four of the users state that they believe the owner of the route would have been aware of use due to tyre marks.
- 3.5.2 One user evidence form was submitted during the informal consultation period by Chris Dunford, formerly the P3 footpath warden for the parish of Broadhembury. She has also written and published a history of the parish. The form is accompanied by a map and covers the application route as well as what appears to be a continuation of the route to the north east, which is discussed in the next paragraph. The period of use is stated as between 1978 and 2012, at a frequency of 5-7 times per year, on foot for exercise/pleasure. No gates, stiles, notices or obstructions are stated to have

# Agenda Item 7

been present on the application route. She states that she has never obtained permission to use the route, had a private right, never worked for or been a tenant of any owner or occupier of land crossed by the route, never been turned back or told that it was not public or know of anyone else that has been. She states that during her use she never saw any notices indicating that the route was not public and believes that an owner or occupier would have been aware of use by the public.

- 3.5.3 Additional information is provided with the user evidence form on a separate sheet, suggesting that the application route (along with the continuation to the north east) is an ancient track that has been used for centuries for the purpose of moving stock to graze on common land on the hilltop. She refers to the 'Wriothesley Deeds' from the mid-13<sup>th</sup> century that '*ensure that when Geoffrey Coffin, Knight, gave land at Buvi to Dunkeswell Abbey he ensured that his men at Luton (Livington) and Pitney (Pittingehog) had free passage to Hembury Hill for their animals.*' This is summarised in her parish history book, published in 2000, extracts of which are included in the background papers. The deeds themselves appear to be held by the Hampshire Records Office and have not been viewed.
- 3.5.4 The additional path referred to in the user evidence form was preliminarily investigated prior to informal consultations being published. However, only one other user evidence form was received for this section of path and no documentary evidence was provided or discovered to support it being included as a proposal for informal consultation along with this application route.
- 3.5.5 A further user evidence form was received during informal consultation from S Alder. The form does not state a frequency of use or a period of use, simply stating '*not since the 1980s for road safety reasons*'. Means of use is stated as on horseback. The rest of the form has been completed, suggesting use was as of right with no notices or obstructions encountered, no private rights or relationships with landowners. Under the additional comments section concerns are raised about the safety at the junction of the proposal route with the A373 at point E, with particular reference to this being the case if the route should be recorded with Byway Open to All Traffic status.

## **3.6 Landowner and Rebuttal Evidence**

- 3.6.1 Details of the proposal were sent to all landowners identified as owning land adjacent to the application route. No landowner evidence forms were returned but a letter was received from the main landowner.
- 3.6.2 The letter was received from the agent acting on behalf of the JHB Gundry Wills Trust, who are the owner of the land to the north of the route and also a small parcel at the south east end, stating the historic use of the route and that the Trustees support it being recorded as a restricted byway. Joanna Allen lodged a statutory dedication with the Land Registry on 14<sup>th</sup> June 2011 to record that Wilderness Lane had been used continuously – by successive members of the Gundry Family – since the land was acquired in 1965 and 1968, for vehicular and pedestrian access to woodland plantations and agricultural fields. They state that this right of way was exercised without force, secrecy or permission and no third party had ever challenged it. The letter also states that the current agricultural tenants, Messrs Farley & Sons, have and continue to make regular and frequent use of Wilderness Lane for access to agricultural fields that adjoin the lane. There is no mention in the letter of use of the route by the public and no landowner evidence form accompanied the letter.

## 3.7 Discussion

### 3.7.1 Statute (Section 31, Highways Act 1980)

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. This application was made in advance of new legislation and not in response to any event acting as a significant challenge to use of the claimed route. It did not result from any specific action taken by a landowner to obstruct or prevent access to it from a particular date. There is no clear evidence of any significant actions by a landowner having called into question use of the route at a specific time for consideration under statute law.

3.7.2 Again, taking the application as providing the date of an event that can be taken to have called the public's right to use a route into question, the period for consideration under statute is the 20 years from November 1985 to the date of the application in November 2005. Evidence of use by the public during that period to support the claimed addition is forms relating to use on motorcycles by five people. However, vehicular use must be disregarded following NERC legislation and so these forms cannot be used as evidence of status. Therefore, the basis for its possible consideration is if there was any other significant supporting evidence from which an earlier dedication of a route as a vehicular highway can be presumed or inferred.

3.7.3 Having discounted the evidence of use on motorcycles submitted with the application, there remains the additional user evidence form submitted during the informal consultation period. The lack of direct user evidence supporting the application route ultimately means that it would not meet the test of having been enjoyed by 'the public' to raise a presumption of dedication. Whilst it appears that use was as of right and without interruption for over 20 years it cannot realistically be viewed as representative of the public at large, even in a rural parish. As such, the application route does not pass the test required for statutory dedication.

### 3.7.4 Common Law

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 of the higher status and that the public has accepted the dedication.

3.7.5 Historic mapping provides evidence that the route has been in existence since at least 1765 (potentially as early as the mid-13<sup>th</sup> century if the Wriothesley Deeds refer to this route), and that it appears to have been open and available for use by the public since then. Use of the name Wilderness Lane dates from at least as early as the 1880s, suggested by some to be an indicator of public status. Both the Tithe Map and Finance Plans, though not conclusive on the matter, suggest that the application route may have been considered public at the time they were produced.

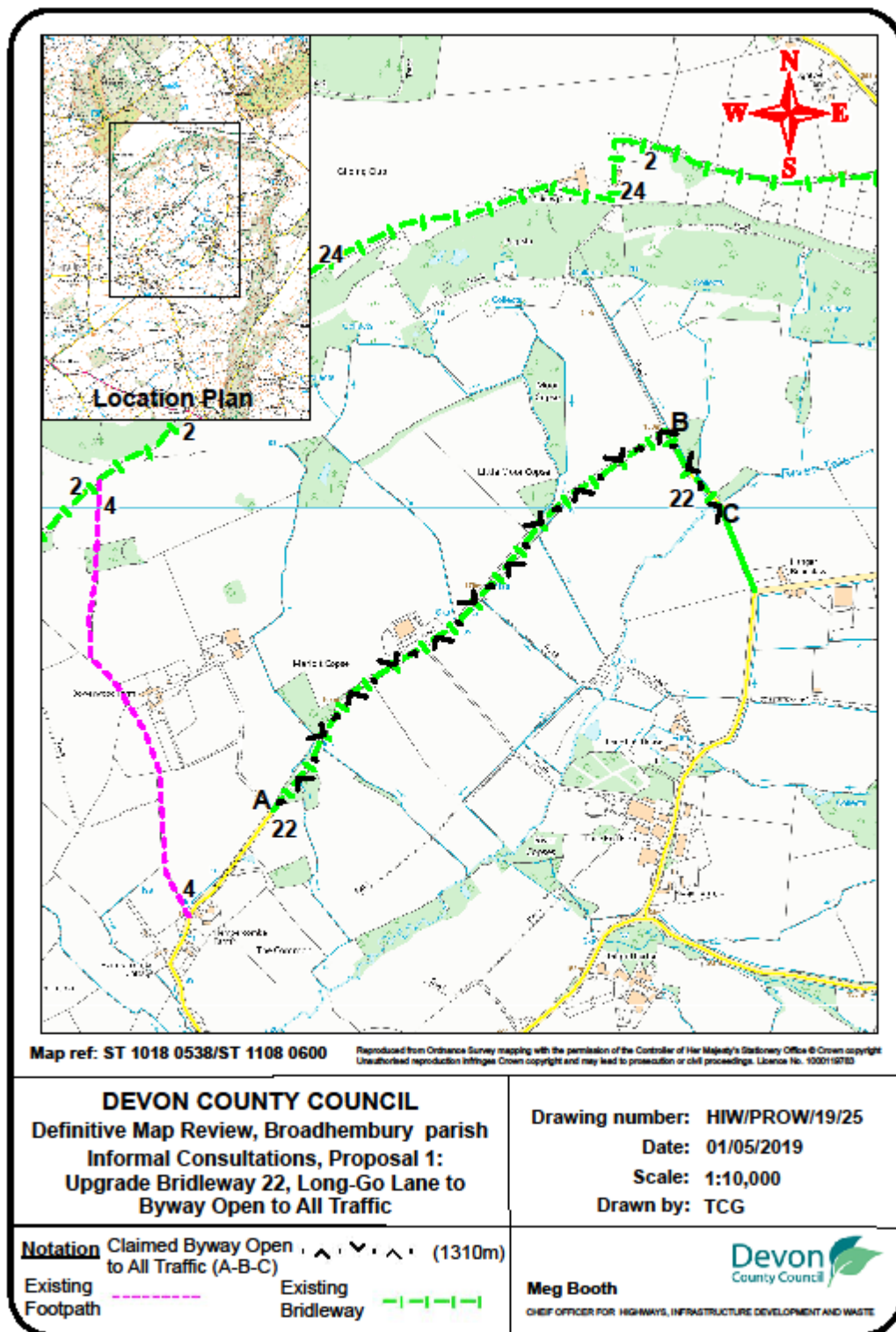
3.7.6 No evidence has been discovered of public money having been spent on the proposal route.

# Agenda Item 7

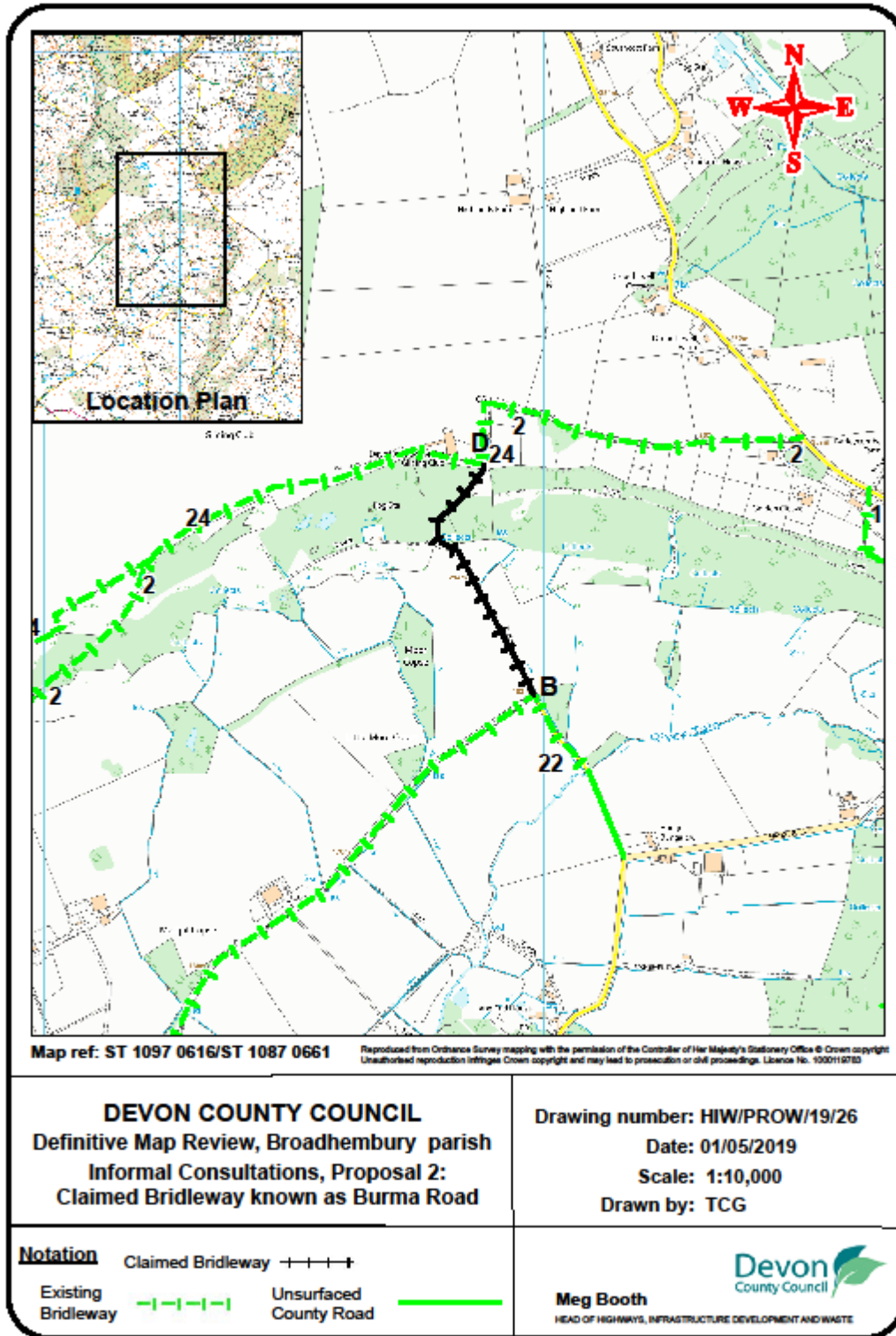
- 3.7.7 Although not included in the 1934 list of footpaths or the Definitive Map process in the 1950s, the Parish Council minutes from 1960 provide strong evidence that at that time the Parish Council considered Wilderness Lane to be public – agreeing that it was a right of way and referring to it as a public road way. The acknowledgement by the Parish Council that they appeared to have omitted the route from the Definitive Map process in error (and were keen to rectify this at the next review) add additional weight to these minutes as evidence of reputation of the route as a public right of way of some description. It is also notable that the Parish Council requested the landowner, Mr Gundry, to remove obstructions from the route and that he acquiesced. Also, the notice erected by Mr Gundry on the route appears to have been for the purpose of deterring parking and littering rather than to prevent people using the route. It is reasonable to consider these as evidence of implied dedication at that time by the landowner, Mr Gundry, whose family still own land adjacent to the route and support the proposal as a restricted byway. Since then there has been no evidence of any landowners taking action to demonstrate a lack of intention to dedicate.
- 3.7.8 The lane appears to have been available for use by the public and their use has been observed although only two valid evidence forms have been received to provide direct evidence of use by the public. There is physical evidence in the form of tyre tracks on the route itself, consistent with the evidence forms submitted by the TRF. The route has some public reputation on trail-riding websites, possibly encouraged by the incorrectly-sited national speed limit signs at the start of the route. Comments from Broadhembury Parish Council also suggest that the route is used by walkers and horse-riders within the parish. Parish Council minutes also suggest that the route was being used by the public during the 1960s.
- 3.7.9 There is therefore some documentary and anecdotal evidence to support the subsistence, at Common Law, of a public right of way over the proposed route. However, on its own, with the absence of direct user evidence to show acceptance by the public, of a right of way of any particular status, the evidence overall is considered insufficient to show that a public right of way subsists or is reasonably alleged to subsist.

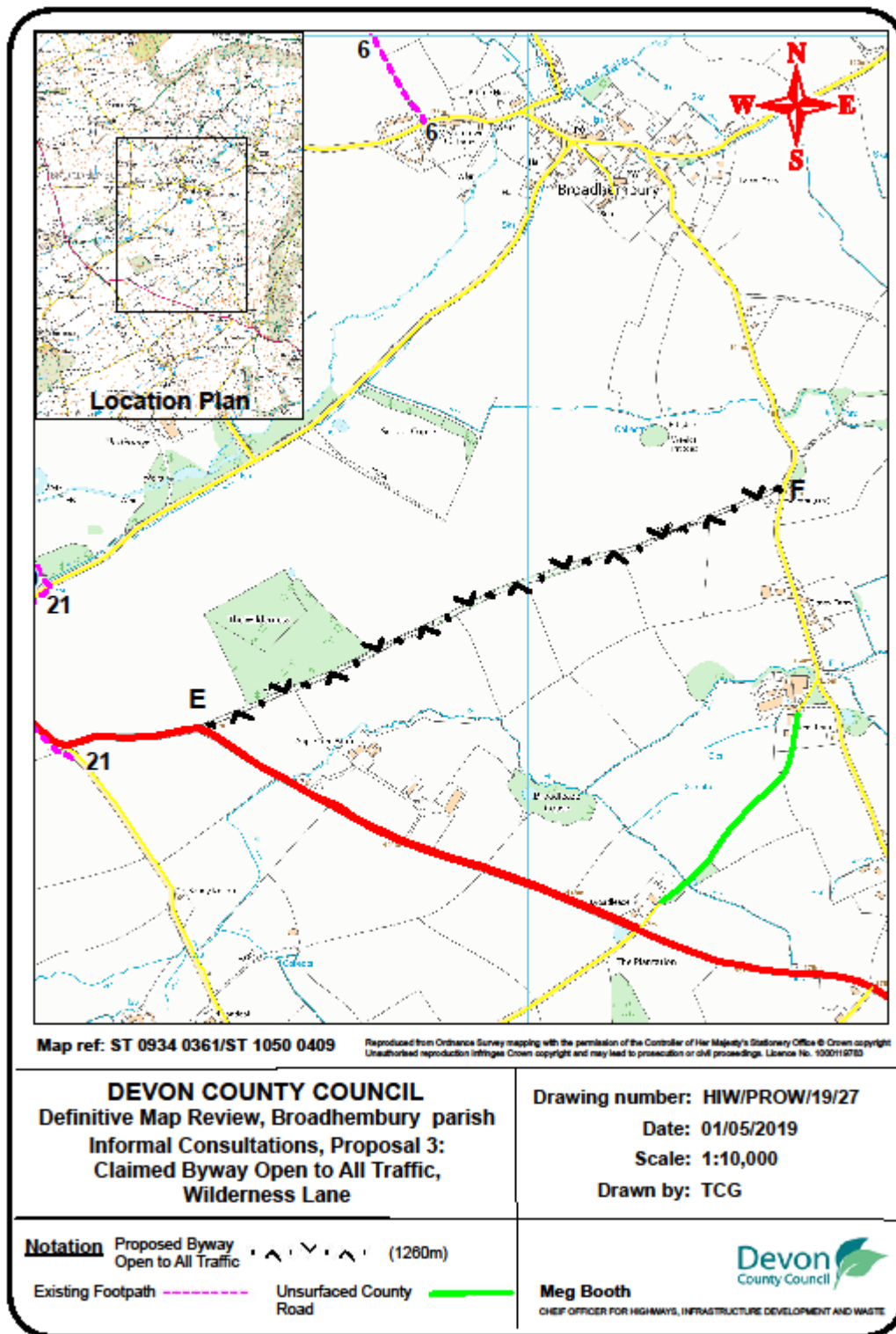
## **3.8 Conclusion**

- 3.8.1 In conclusion, it is considered that although there is strong evidence that the route has the reputation of being a public right of way of some description, the evidence discovered to date is insufficient to show, on the balance of probabilities, that a public right of way has been dedicated at common law; and in the absence of sufficient user evidence, to also indicate that such dedication has been accepted by the public. Accordingly, the recommendation is that no Order be made in respect of Proposal 3.



# Agenda Item 7









HIW/19/88

Public Rights of Way Committee  
12 November 2019

## **Definitive Map Review 2017- 2019 Parish of Woodbury**

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

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

**Recommendation: It is recommended that no Modification Order be made to the Definitive Map and Statement in respect of Proposal 1.**

### **1. Introduction**

This report examines the one proposal arising from the Definitive Map Review in the Parish of Woodbury, in East Devon District.

### **2. Background**

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

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

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

The following orders have been made and confirmed:

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

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

Devon County Council Footpath No. 7 Diversion Order 1997

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

The current Review began in May 2017 with a public meeting held in Church Rooms, Woodbury village, which was well attended by members of the public and parish councillors.

### **3. Proposal**

Please refer to the appendix to this report.

### **4. Consultations**

Public consultations for Woodbury Parish were carried out between September and November 2018. The review was advertised around the parish with notices placed in local notice boards, at the Parish Office, at each end of the proposal route and in the local press.

# Agenda Item 8

The responses were as follows:

County Councillor R Scott	- no comment on proposal
County Councillor J Trail	- no comment on proposal
East Devon District Council	- no comment
Woodbury Parish Council	- no comment on proposal
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	- supports proposal
Cycle UK	- no comment

## **5. Financial Considerations**

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

## **6. Legal Considerations**

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

## **7. Risk Management Considerations**

No risks have been identified.

## **8. Equality, Environmental Impact (including Climate Change) and Public Health Considerations**

Equality, environmental impact (including climate change) and 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 Modification Order be made in respect of Proposal 1.

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**

# Agenda Item 8

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:                      Tel No: (01392) 383370

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

as270919pra  
sc/cr/DMR Parish of Woodbury  
03 041119

# Agenda Item 8

## Appendix I To HIW/19/88

### 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.
- (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.

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.

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.

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

- (a) it is a way whose main lawful 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.

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

1. **Proposal 1: Proposed upgrade of Bridleway No. 8 to a Byway Open To all Traffic, as shown between points A - B - C on drawing number HIW/PROW/18/50.**

**Recommendation: That no Modification Order be made in respect of Proposal 1 as shown on drawing number HIW/PROW/18/50.**

## 1.1 Background

- 1.1.1 A public meeting was held in Woodbury Church Rooms with local people, parish councillors and the local County Councillors.

- 1.1.2 Proposal 1 was one of a number of Schedule 14 applications made by local representatives of the Trail Riders Fellowship in 2005-06 prior to the Natural Environment & Rural Communities Act (NERC Act) 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 the NERC Act if a Schedule 14 Application had been made prior to 20 January 2005, that is compliant with the regulations for Schedule 14 applications under the Wildlife & Countryside Act 1981, or the surveying authority has made a determination of an application for a Byway Open to all Traffic (BOAT) before 2 May 2006.

- 1.1.3 This Schedule 14 Application to upgrade Bridleway No. 8, to a BOAT was made by TRF in February 2006, it has been on file awaiting the Definitive Map Review of Woodbury Parish. It was supported by ten users. As the application was made after 20th January 2005 and was not fully compliant with the regulations, as notice of the application had not been served on the landowners, it therefore did not meet the NERC Act exception for Schedule 14 Applications. However, as an application had been made, the claim was included in the parish review for investigation in compliance with the County Council's statutory duty to keep the Definitive Map and Statement under continuous review. 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 Definitive Statement describes Bridleway No. 8 from point A, as shown on plan HCW/PROW/18/50 as follows:

*The path is a Bridleway. It starts at County Road B3179 300 yards north west of Four Firs and proceeds north west along the boundary of Woodbury Common past its junction with Bridleway Nos. 9 and 10 to join County Road 341 north of Soldiers Well [Point B]. Woodbury Common, subject to a Deed of Declaration under the Law of Property Act, 1925.*

- 1.2.2 Physically the route has a rough mud and pebble surface, and travels along the base of the scarp slope of Woodbury Common at the spring line, so it is wet in places. After passing Soldiers Well (at point B), the route enters a rough track that is bounded by low pebble walls.

- 1.2.3 The track is used by the landowners and their tenants in vehicles, to gain access to their fields and an area of ancient woodland.

# Agenda Item 8

## 1.3 Documentary Evidence

### 1.3.1 Ordnance Survey mapping

1.3.1.1 Ordnance Survey Drawings 1801. The drawings covering Woodbury Castle carefully drawn at the detailed scale of 3 inches to one mile. They were drawn by Thomas Budgen a highly regarded OS cartographer (British Library). The Map shows the area as un-enclosed common land. It does not show any depiction of the route. This early map does show other old roads that were in existence at the time of survey. A nearby example of this, is the depiction old road that bisects Woodbury Castle, the county road now known as the B3180.

1.3.1.2 The 1906 6" to the Mile OS mapping, and all subsequent large scale OS mapping, show the claimed route as an unfenced track.

1.3.1.3 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.

### 1.3.2 Woodbury Tithe Map and Apportionments 1839

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

1.3.2.2 The Woodbury Tithe Map shows the area around the route as un-enclosed area of common. This map does not show the line of the claimed route at all. It does however show the unfenced line of the road that bisects Woodbury Castle (current B3180).

### 1.3.3 Highway Handover Records

1.3.3.1 The Local Government Act 1888 brought County Councils into existence and these authorities, were charged with the maintenance of the major road network. The minor road maintenance being left with the district and urban councils. In 1930 County Councils became Highway Authorities and all roads (except trunk roads) were vested with them. As the result of this change in Devon, the Highway Handover Books were drawn up to show which roads the district councils and urban district councils had been maintaining. These consist of books of maps on which the highways were numbered, and the corresponding numbers listed in books. These records form the Highways Handover Records in Devon.

1.3.3.2 The route is not shown on the Highways Handover Records.

### 1.3.4 Finance Act 1910

1.3.4.1 The Finance Act Maps for Woodbury are missing, as are many from the Exeter District and therefore provide no evidence in respect of this route.

## 1.3.5 Woodbury Parish Files

- 1.3.5.1 Woodbury Parish Council put this route forward for inclusion on the Definitive Map as a Bridleway in the Original Parish submissions of 1950. In their submission, they write that the route *'has been used a bridleway by the public for 30 or 40 years prior to 1950'*. Giving bridleway evidence dating back to between 1910 and 1920. They stated that they had not repaired the route. There is no other evidence in the Parish files to suggest that the Parish Council considered it to have higher status than a bridleway.

## 1.4 Land Ownership

- 1.4.1 The area crossed by the route is owned by Clinton Devon Estates. Clinton Estates dedicated this area of Woodbury Common under a Deed of Declaration under the Law of Property Act, 1925 Section 193.
- 1.4.2 Section 193 of the Law of Property Act 1925 sets out the rights of the public over commons and waste lands:
- (1) Members of the public shall, subject as hereinafter provided, have rights of access for air and exercise to any land which is a metropolitan common within the meaning of the Metropolitan Commons Acts, 1866 to 1898, or manorial waste, or a common, which is wholly or partly situated within an area which immediately before 1st April 1974 was a borough or urban district, and to any land which at the commencement of this Act is subject to rights of common and to which this section may from time to time be applied in manner hereinafter provided:
  - (2) Provided that—
  - (3) (a) such rights of access shall be subject to any Act, scheme, or provisional order for the regulation of the land, and to any byelaw, regulation or order made thereunder or under any other statutory authority; and
  - (4) (b) the Minister shall, on the application of any person entitled as lord of the manor or otherwise to the soil of the land, or entitled to any commonable rights affecting the land, impose such limitations on and conditions as to the exercise of the rights of access or as to the extent of the land to be affected as, in the opinion of the Minister, are necessary or desirable for preventing any estate, right or interest of a profitable or beneficial nature in, over, or affecting the land from being injuriously affected, for conserving flora, fauna or geological or physiographical features of the land, or for protecting any object of historical interest and, where any such limitations or conditions are so imposed, the rights of access shall be subject thereto; and
  - (5) **(c) such rights of access shall not include any right to draw or drive upon the land a carriage, cart, caravan, truck, or other vehicle, or to camp or light any fire thereon;**

## 1.5 Trails Riders Fellowship Schedule 14 Application

- 1.5.1 In February 2006 Mr Cooke of the Trail Riders Fellowship (TRF) submitted a Schedule 14 Application to upgrade Bridleway No. 8, to a Byway Open to All Traffic (BOAT), in an attempt to try and avoid the guillotine that the NERC Act brought down on the claiming of vehicular rights on historical routes. The current

# Agenda Item 8

Devon TRF committee were asked if they would withdraw the application, but they wished it to be determined as part of the Definitive map Review in Woodbury. They had no further evidence to add.

## 1.6 User Evidence

- 1.6.1 The TRF application was submitted with the evidence of 10 users, on nine user evidence forms (Mr Burford & Mr Coats submitted a joint form). They provided evidence covering the period between 1975 and 2005. The evidence forms are included in full in the backing papers.
- 1.6.2 The evidence is summarised as follows:
- 1.6.3 Mr. Cooke has used this route between 1983 in 2005, 3 to 6 times a year as part of a circular ride for pleasure on his motorcycle. He thinks it is a byway open to all traffic because it is on old Maps and by its reputation. He states that the path has always run over the same route and it has not been diverted. Notices were put up that said bridleway in about 1995. He believes that other vehicles used it because there were tyre marks. He rode the route with a number of other members of the TRF between 1983 and 2005.
- 1.6.4 Ms. Putt has ridden the route between 2000 in 2005, 2 to 4 times a year as part of a circular ride on her trail bike, she believes its public because of frequent usage by vehicles. She has not been stopped or turned back.
- 1.6.5 Mr. White has used the route from 1975 to 2005, 4 to 5 times a year as part of a longer ride on his motorcycle for pleasure. He thinks it is a right of way because it is on the old Maps and by its reputation, he has seen motorcycle tyre marks and he has used the route with other trail riders fellowship members when they were on part of a longer circular ride.
- 1.6.6 Mr. Downes has ridden the route on a motorcycle between 1982 and 2005, 46 times a year. He's ridden it for pleasure, and he says it's on old Maps. He's not been stopped or turned back, and he said he's ridden this route when he's been on a ride with other members of the trail riders fellowship.
- 1.6.7 Mr. Sussex has ridden the route between 2002 10052 to 3 times a year as part of a circular ride with the trail riders fellowship. He has not been stopped or turn back or seen any notices and it's not a tenant of the owner. He said there were tyre marks in the track and this is an old route, it has been used by trail riders for decades without any problem.
- 1.6.8 Mr Harris has used the route between 1986 and 2005, 10 times a year ,as part of a scenic circular tour for leisure purposes on a quiet trail motorcycle. He said the route is always run over the same line and he has not had permission to ride it. He rode with a group of other trail riders.
- 1.6.9 Mr. Cumming has ridden the route between 2004 and 2005 about 6 times that a year on organised rides as a member of the trail riders fellowship.
- 1.6.10 Mr. Burford has used the route between 1993 and 2005 for pleasure on a vehicle as a member of the TRF. He said the route had always been there and has been public. He didn't know who owned it.



1.6.11 Mr. Coombs, rode with Mr. Burford and has used the route between 1993 and 2005, on pleasure rides motorcycle rides, he has not been stopped or turned back.

1.6.12 Mr. Cowing has ridden the route between 2004 and 2005, 12 times a year for pleasure on a motorcycle, he has not been stopped turned back and was not aware of who the owner was, he says there were never any notices or stile on the route.

## **1.7 Land Owners Evidence**

1.7.1 The land crossed by the route is solely owned by Clinton Devon Estates who have completed a Landowner Evidence form in response to the consultation. This area has been held by Clinton Devon Estates for over 200 years. They regard the status of the route as a public bridleway.

1.7.2 In answer to the question “has someone on your behalf ever turned back or stopped anyone using the way?” the Estate has said “the Foresters and the Common Rangers, regularly stopped 4x4 users and motorcyclists and have turned them away. These people have been informed that this is not route for public vehicles.” Clinton Devon Estates say they are “currently looking into putting a bar at both ends to stop the ongoing problems with Fly tipping and vehicles.”

1.7.3 The Estate also objects to this proposal on the basis that this bridleway is located in Woodbury Common and is part of the Devon Pebblebed Heaths. It has national and international conservation designations, it is a Site of Special Scientific Interest, Special Protection Area and a Special Area of Conservation.

1.7.4 The Estate says “to enable access to this site for vehicles would not only cause disturbance to wildlife, but also erosion of the geology. The route also leads to a designated Ancient Woodland site, vehicle access would be detrimental. They state that they have already have issues with off road users, vehicles and motorcycles fly tipping and illegal camping.

1.7.5 In addition to objection from the landowners there have been numerous other emails and telephone calls from individuals saying that it would be great detriment to the bridleway if this were to be upgraded to a BOAT and motor vehicles allowed to use the route. They say these would cause considerable damage to the route and to the enjoyment and safety of horse riders and pedestrians.

1.7.6 However, such objections cannot be taken into account as it is not possible to consider the suitability or desirability of the route for public use under the legislation. Neither can the effect on land use or liability be considered.

## **1.8 Discussion**

1.8.1 Bridleway No 8 Woodbury is subject to the Woodbury Common Deed of Declaration, under the Law of Property Act, 1925, as acknowledged in the Definitive Statement. The effect of this deed of declaration is that the public have had no right to draw or drive a vehicle on the common of Woodbury since 1925, making any public vehicular use over the common on routes that are not County roads unlawful.

# Agenda Item 8

- 1.8.2 Furthermore, use of footpaths and bridleways by mechanically propelled vehicles has been illegal since the 1930s (under the Road Traffic Acts of 1930 and 1988). Therefore, any public use of Bridleway No. 8 by motor vehicles dating from 1957 or later, when the route was recorded as a public bridleway, would be an offence, unless with the permission of the landowner. The passing of the NERC Act in 2006 put a stop to the implied creation of new public rights of way for mechanically propelled vehicles, preventing post-1930 use of a way by a mechanically propelled vehicle from giving rise to any future public right of way. Motor vehicle user evidence can therefore 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.
- 1.8.3 Notwithstanding the above, evidence of use by motor vehicles was provided in good faith to support the claim, prior to the introduction of the NERC Act. It is summarised in this report for completeness, and to give a full explanation for the record of how this recommendation was reached. Proposal 1 was supported by evidence of use by 10 individual motorbike riders. They used it with motor vehicles between 1975 and 2005, because they believed the route was a Byway Open to All Traffic and used it as such. Indeed, prior to the NERC Act, with the user evidence from the motorcyclists, it would have fitted the description for a Byway Open to All Traffic, which was a route that was mainly used on foot and horseback but had been used by vehicles.
- 1.8.4 The NERC Act extinguished the right to use mechanically propelled vehicles unless one of a few exceptions to this general extinguishment applies. These are set out below, with reference to Proposal 1:
- (a) a way whose main lawful use by the public during the period of 5 years ending with commencement (2006) was by mechanically propelled vehicles. For this exception to apply, the evidence would have to show that the route was lawfully used more by vehicles than by other users, e.g. walkers, cyclists, horse riders, horse-drawn vehicles, between 2001 and 2006. This is not the case; the user evidence shows it was used occasionally by small groups of motorcycle riders, rather than as a through road for all mechanically propelled vehicles and, crucially, such use of the bridleway is not lawful. This exception therefore does not apply.
- (b) a way that is not recorded on the Definitive Map but is recorded on the List of Streets of highways maintainable at public expense. Clearly this does not apply to Bridleway No. 8, which is shown on the Definitive Map. It is also not shown on the List of Streets.
- (c) a way that was expressly created for mechanically propelled vehicles. From the historical mapping the route of Bridleway No. 8 has existed for at least 130 years. It may have been used by the traffic of the day; on foot, packhorses, horse and carts and finally motor vehicles (albeit as explained above, vehicular use since 1925 would have been unlawful). It was therefore not expressly created for motor vehicles because the route physically existing before mechanically propelled vehicles were the norm.
- (d) a way created by the construction of a road intended to be used by such vehicles. As above, the route of Bridleway No. 8 was not constructed solely for use by mechanically propelled vehicles; it pre-existed these.
- (e) a way created by virtue of long use by such vehicles before 1 December 1930, when it first became an offence to drive a mechanically propelled vehicle “off-road”. The public rights over Bridleway No 8 were not created by mechanically propelled

vehicles before 1 December 1930. The evidence shows that the public were using the route as a bridleway. The Parish Council's submission for its inclusion on the Definitive Map describes the route as having been ridden from 1910.

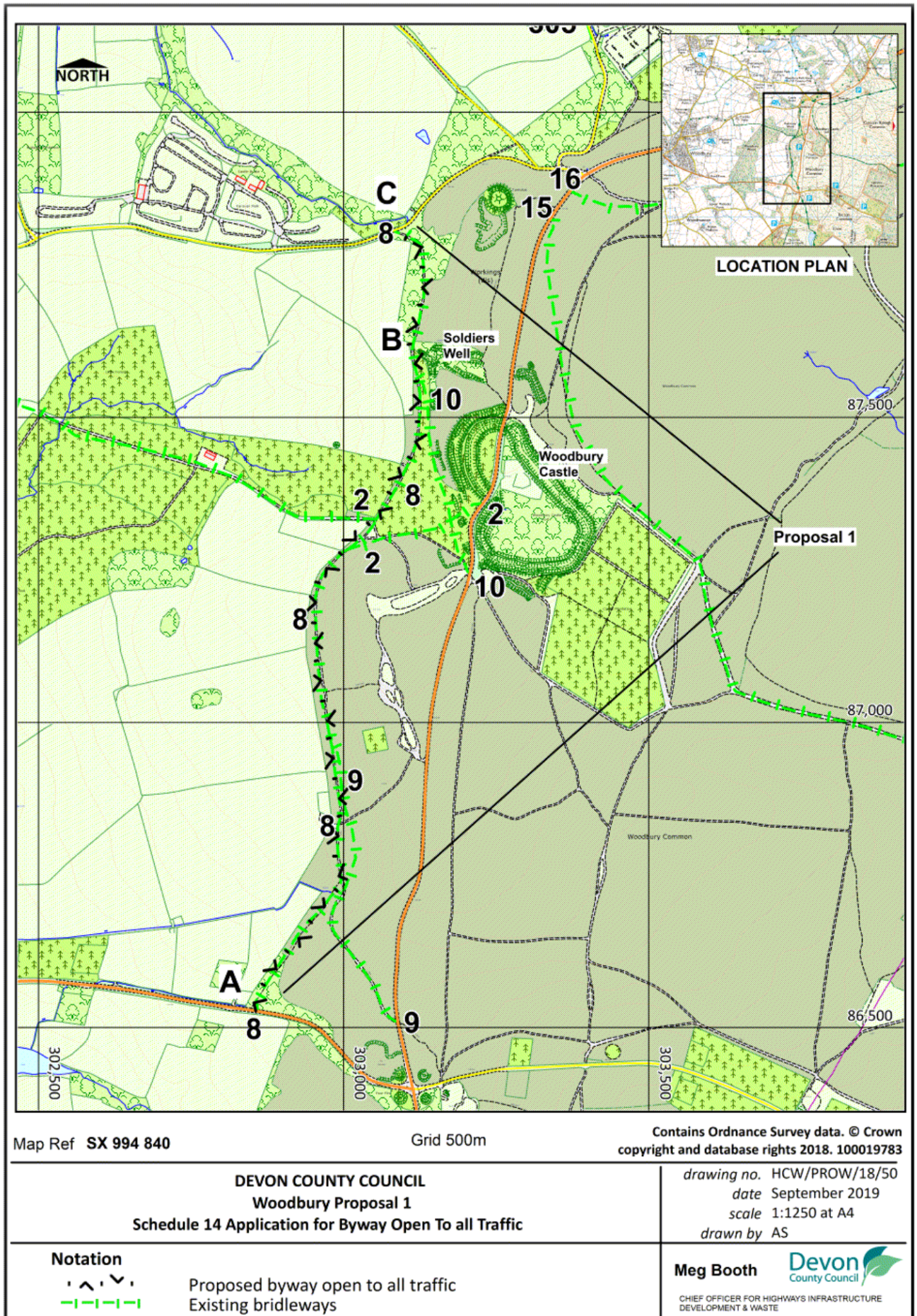
- 1.8.5 Therefore, as discussed, none of the NERC Act exceptions are considered to apply in this case and consequently any public rights for mechanically propelled vehicles have been extinguished.
- 1.8.6 The highest status that can be considered is that of Restricted Byway, i.e. for non-mechanically propelled vehicles, if public vehicular rights can be shown to subsist, until NERC Act extinguished those for motor vehicles. However, section 193(c) of the Law of Property Act 1925, Commons and Waste Lands, which applies to the land crossed by the route, says such rights of access shall not include any right to draw or drive upon the land a carriage, cart, caravan, truck, or other vehicle thereon. Therefore, the public cannot even have been lawfully driving or drawing horse-drawn carts along this route since 1925. There is no evidence of earlier public vehicular use, only evidence of riding from 1910 as shown on the Parish Council's submission.
- 1.8.7 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.
- 1.8.8 In this case the application made by the TRF in 2006 could be considered sufficient to be the required calling into question under Section 31 of the Highways Act 1980 for the upgrading. However, because of the Woodbury Common Deed of Declaration, under the Law of Property Act 1925, no use with vehicles can be considered post 1925. And compounding this since 1957, when the route was recorded as a public bridleway, use with vehicles would have also be unlawful under the relevant Road Traffic Acts.
- 1.8.9 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 if there is evidence, documentary, user or a combination of both from which it may be inferred that a landowner has dedicated a highway of the higher status in the past and that the public has accepted the dedication by continuing to use it.
- 1.8.10 This route is recorded on the Definitive Map as a bridleway. There is no historical evidence available to demonstrate higher rights and the Deed of Declaration under the Law of Property Act 1925 shows that the landowner did not intend to dedicate higher rights. The Parish Council have known it to be a bridleway since 1910 and have not spent any public money on it.

## **1.9 Conclusion**

- 1.9.1 In the absence of sufficient, lawful, user evidence the existence of higher rights cannot be considered under section 31 of the Highways Act 1980. The evidence when taken as a whole, on the balance of probabilities, is also considered insufficient to show that higher rights exist at Common Law over Bridleway No. 8, Woodbury. It is therefore recommended that no Modification Order be made in respect of Proposal 1.



# Agenda Item 8





HIW/19/89

Public Rights of Way Committee  
12 November 2019

## **Definitive Map Review Parish of Wembury (Part 2)**

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

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

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

### **1. Introduction**

The report examines Proposal 1 arising from a Schedule 14 Application made prior to the Definitive Map Review for the parish of Wembury. This proposal was deferred from the meeting on 4 July 2019 due to additional User Evidence forms being submitted from local horse riders.

### **2. Background**

The Background for the Definitive Map Review in the parish of Wembury was set out in Committee report HIW/19/56 of 4 July 2019.

### **3. Proposal**

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
British Horse Society	- no comment
Devon Green Lanes Group	- no comment
South West Coast Path Assoc Ramblers'	- possible conflict on proposal 1
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

# Agenda Item 9

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 (including Climate Change) and Public Health Considerations

Equality, environmental impact (including climate change) and public health implications have, where appropriate under the provisions of the relevant legislation, been taken into account in the preparation of the report.

## 9. Conclusion

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

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

## 10. Reasons for Recommendations

To undertake the County Council's statutory duty under the Wildlife 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

em101019pra  
sc/cr/DMR Parish of Wembury  
02 041119

## Appendix I To HIW/19/89

### A. Basis of Claim

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

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

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

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

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

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

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

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

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

# Agenda Item 9

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 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.

## **1 Proposal 1: Schedule 14 Application made by the Trail Riders Fellowship to upgrade Footpath No. 1, Wembury (part) to a Byway Open to All Traffic between points A – B as shown on plan HIW/PROW/19/53**

**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 part of 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 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 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, 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 route is invariably depicted on commercial maps as a minor road or track. (none were supplied with the application)
- 5) User Evidence form from one 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 on the 1<sup>st</sup> April 1967, Bovisand Lane is now in the parish of Wembury and part of Devon County Council's network of rights of way, recorded as part of Footpath No. 1 (pt), Wembury.

## 1.2 Description of the Route

- 1.2.1 Proposal 1 follows the route of Footpath No.1(pt) Wembury. It 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 lane, approximately 10 metres from the county road, which is openable, but walkers pass through a gap between two gate posts and the hedge. The route continues downhill through 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 locked gate across the track with a gap adjacent. 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 is hedged on the northern boundary. Footpath No.1 joins Footpath No.16 Wembury, part of the South West Coast Path.



Gate at the top of Bovisand Lane set back from its junction with Little Lane.

# Agenda Item 9



Gate/Gap on the route, west of Bovisand Lodge

Photos are included in the backing papers

## 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.

#### 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.

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

Shows the length of Bovisand Lane, indicating a gate near its junction with Little Lane and a barrier west of the drive to Bovisand Lodge.

#### 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.

1.3.2.2 Originally, Bovisand Lane was recorded as Footpath No.12 Plymstock in the rural district of Plympton St Mary. The description submitted for the footpath in February 1953, describes it as a public footpath and states "Footpath No.12. Starts from Wembury Parish Council Boundary (Footpath No.1) across pasture field, through iron kissing gate, down eight stone steps and along private accommodation road (not repairable by the inhabitants at large) known as Bovisand Lane, through iron gate and continues to the landing stage at Bovisand". In addition, the description says " Path is well defined, but in poor condition and obstructed at one point by timber. Gate and steps in good condition."

The path was walked 24<sup>th</sup> February 1953 by A.D Surcombe. The relevant date for the Plymstock Footpath No.12 is 11<sup>th</sup> October 1954.

Plymstock Boundary changes 1st April 1967, transfers Footpath No.12 Plymstock, to become part of Footpath No.1 Wembury.

1.3.2.3 Correspondence from Wembury Parish Council of 20th October 1969 indicates some paths to be put forward as part of the very early review of the Definitive Map. The letter included paths to be included, some corrections, including Footpath No.1 and lastly, paths to be designated as bridleways, and this included Footpath No.1 described as from "Bovisand Bay to the junction with Little Lane."

1.3.2.4 In a letter from the county council to Wembury Parish Council in November 1971, it explains that despite the review being started in Devon, the county council was under instruction from the Department of the Environment to carry out a Limited Special review to reclassify "roads used as public paths." (the RUPP review). This resulted in a temporary pause to the general review of the Definitive Map. Wembury parish was unaffected by the Limited Special Review as there were no RUPPs in the parish.

1.3.2.5 The general review in Wembury parish was active again in December 1977. In November 1978, Wembury Parish Council submitted a letter to Mr Jackson at the county council for their general review of the Definitive Map. The letter dated the 11 November 1978 starts "This Council has now considered in detail all the evidence forms they have received and apart from some minor adjustments there appears to be no evidence which would cause this Council to conclude any of the further paths they at first thought could be shown to be Rights of Way would stand up to any legal argument".

1.3.2.6 The last two paragraphs of this letter concludes, "We have claims submitted for the establishment of Bridleways but after careful consideration feel the persons who submitted the claims used the paths with the full knowledge and consent of their friends, the owners and do not think evidence could be produced of free use of the paths put forward by the public at large.

The above is our views on the proposed review of the paths and if you require clarification of any point please let us know."

1.3.2.7 Later correspondence between the Wembury Parish Council and the county council in April 1981, discusses a problem of horse riders on Footpath No.16, Wembury which is the long section of coastal footpath through the parish. The location was Wembury Beach and the Gunnery School as stiles had been erected on the path, thus obstructing the horse riders.

# Agenda Item 9

In their letter of 22 April 1981 about Footpath 16. Wembury Parish, the Parish Council replied “You will have been told I tried to contact you by phone; this was to have a talk about the riding of horses on this path. There are two bridleways in this Parish. Bridleway 9.....Bridleway 20..... This Council has always been opposed to horses trespassing on footpaths and particularly the Coastal path. There has been plenty of correspondence with you on this matter. We asked you, through the County Footpath Officer, to do something urgently about this hopeless situation developing on this path near Wembury and entirely support action taken to secure this important path as a footpath.”

These letters are contained in the backing papers.

## 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 Following the informal parish consultation for Wembury parish review there were 3 User evidence forms relating to use, other than on foot, over Bovisand Lane. One from the parish file from the mid-1970s, although the form is not dated, one submitted from the Trail Riders fellowship as part of their application, (1.4.25) and one from the current parish review.

Eighteen further User Evidence Forms (UEFs) relating to this proposal were submitted from local horse riders throughout June 2019. In total 21 UEFs have been submitted in support of higher rights along Footpath No.1 (pt) known as Bovisand Lane.

1.4.2 Nine of those User Evidence Forms submitted, show evidence of use of the route on foot and horseback for between 14 – 35 years.

1.4.3 Mrs Thompson’s evidence form has remained on file from the abandoned review in the mid-1970s. However, she states that she used the lane from Bovisand Beach, passed Bovisand Lodge and via Bovisand Lane to Little Lane and Hooe Lane. She says she has used it from 1956 – 1977 “innumerable” times for “hacking and therapeutic recreation”. Mrs Thompson said she used the path as part of a circular route from New Barton - 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". No plan attached to the evidence form.

- 1.4.4 Ms Robb completed a UEF in June 2019 saying she has used the route from Little Lane to Bovisand, going from Staddiscombe to the beach between 1984 – 2019 on foot and horseback at least once a month. She has always believed the route to be a right of way but said she tried to use the route in June 2018, but it was too uneven and overgrown to get her horse through. In reply to Q8 on the UEF: Were you working for, or were you a tenant of, any owner occupier of land crossed by the route at the time you used it? Miss Robb replies "Yes, Livery at Court Gates June 2018 – current" Q8. Part b. asks whether the owner occupier ever gave you instructions as to the use of the way by the public and, if so, what those instructions were? Miss Robb adds "it could be used to get to the beach on foot, bit too overgrown for my horse". She states that she hasn't been given permission to use the route. No map attached.
- 1.4.5 An email was sent to Ms Robb, 11th July asking for clarification on a few points e.g. how many times she used the route just on horseback as opposed to walking, where she kept her horse, did she ride alone or in company and did she meet any landowners on her ride? No reply to date.
- 1.4.6 Ms Reed completed a UEF in June 2019 and said she has used the route from Little Lane via Bovisand Lane to Bovisand Beach for 25 years since 1994 (age 10) to 2019, on foot and horseback about 30 times a year. She thought the path was public due to the "public signs" and says it has always run over the same route. She says she has not been stopped or turned back when using the path and has never been given permission.
- 1.4.7 A letter was sent to Ms Reed 5<sup>th</sup> August 2019 asking if she could clarify her evidence and submit a map of the route she used. In addition, she was asked where kept her horse? To date, no reply or map submitted.
- 1.4.8 Mrs Egglestone says she has used the route from Little Lane to Bovisand Beach and the coast path on foot and horseback for 34 years from 1985 -2019, 20 plus times a year. She states that she thought it was public as it was "signed" and says it has always run over the same route and that it has gates. Mrs Egglestone said she wasn't challenged or given permission to use the route.
- 1.4.9 On the 5<sup>th</sup> August 2019 a letter was sent to Mrs Egglestone asking if she would complete a map of where she rode. In addition, she was asked if she thought the landowners were aware of the public using the path and where did she keep her horse? A follow up email was sent to Mrs Egglestone on 18<sup>th</sup> September 2019 again asking for clarification of the route she had ridden, was it linear to the beach and back or as part of a circular ride to the beach including the section of coast path? She was also asked if she rode with others and where her horse is kept? No reply has been received.
- 1.4.10 Mrs Hendy lives at Court Gates Staddiscombe and has done so for the past 20 years. She says she has used the route from Staddiscombe, Little Lane to Bovisand to go to the beach from 1984 – 2019 on foot and horseback. Mrs Hendy says she thinks the route is public, "It's a traditional right of way and has been for over 200 years". She mentions that there are fallen trees and debris along the route from bad weather and fly tipping. In addition, she says Court Gates owns land on the right of the route and MacBeans own the other side. In reply to Q11: Have you ever had a private right to use the route in question? Mrs Hendy replies "yes, as farmers at Court Gates" and adds " The farm has been using this route for over 200 years, with horses, dogs & on foot". No map supplied.
- 1.4.11 Miss Hendy completed a user evidence form in June 2019. She describes the route as from Little Lane to Bovisand Beach and states she has used it in 2000, 100 times a year

# Agenda Item 9

for pleasure on horseback and dog walking. In reply to Q3: Why do you think the path is public? "Signed". Miss Hendy says that she is a livery yard owner and runs Court Gates Livery Yard. No map submitted.

- 1.4.12 Mrs Cannon says she has used Bovisand Lane from Staddiscombe Road/Hooe Lane to Bovisand Beach from 2002 to date 2019, monthly, for pleasure on horseback. She mentions that she thought the route was public because of "signage". She says she hasn't been turned back or stopped when using the path and thought the owners/occupiers of the lane knew the public were using it but doesn't say why. Mrs Cannon states the gates on the route were not locked and that she hasn't got a private right to use the lane. Mrs Cannon submitted a map with her form, showing two highlighted routes, one from Little Lane along Bovisand Lane to the junction with coast path, plus a spur from this route over the private drive from Bovisand Lodge. The latter is not part of the proposal.
- 1.4.13 In seeking clarification of Mrs Cannon's use of the route, an email was sent on the 11<sup>th</sup> July 2019 requesting a more detailed description of the route she had ridden, plus whether she rode in company, did she meet any landowners along the route and where she keeps her horse? Mrs Cannon replied saying she was "perplexed" as to why these questions were being asked as "all the information was provided on the form which was submitted..... Please would you kindly clarify why additional questions are being raised". A return email was sent to Mrs Cannon on 18/7/2019 explaining why it was helpful to have further clarifying information. No further reply has been received.
- 1.4.14 Mrs Shrimpton identifies the route as from Little Lane to Bovisand Beach. She says she has gone from Staddiscombe to Bovisand and visa versa from 2005 – 2019 on foot, horseback and dog walks. She says she has used the route 80 plus times a year, over the same route and thought it was public due to the "sign posts". She says there were gates and some notices about fly tipping and vandalism. She said she hasn't had permission to use the path and has not been stopped by a landowner and only turned back because the path is poorly maintained.
- 1.4.15 A letter was sent to Mrs Shrimpton on the 5<sup>th</sup> August asking if she would complete a map showing her riding route, why she thought the landowners were aware the public were using the route and where she kept her horse. In a follow up email 18/9/19 seeking clarification of her use of the route Mrs Shrimpton added "I have ridden the lane for years, sometimes alone, sometimes in company. I have had to turn back before but never because I've been told to, but because it is poorly kept, low branches or water damage to the path. I can't really give you more than that. I ride/walk early in the morning so don't often see anyone." No map submitted.
- 1.4.16 Ms Wise has given evidence of use on foot and horse from 1999. She says she has used the route from Little Lane to Bovisand 20 - 30 times a year to Bovisand Beach. She said it was public as it goes directly to the beach. Ms Wise states there is a gate at the start of the path and the it was route obstructed by trees. She mentions that she thought Court Gates - Peter Hendy owns the land crossed by the route.

Ms Wise has only completed page 1 of the user evidence form, page 2 is blank and unsigned. No plan supplied.

- 1.4.17 Five other users give evidence of covering 6 -10 years. Mrs Preston says she has ridden from Little Lane to Bovisand to the beach for 10 years but didn't say how many times a year she used it. Only page 1 of Mrs Preston's form has been submitted. An email was sent 18 &19 September asking for page 2, but none has been submitted to date. No map submitted.

- 1.4.18 Two riders have given evidence covering 8 years, from 2001 – 2019 with usage of 12 – 30 times a year.

Mrs Rogers says she has used the route horse riding from Bovisand Lane to Bovisand Beach from 2011 – date, every month. Mrs Rogers attached a plan indicating a route along Bovisand Lane to the coast path, although it is annotated Bovisand Beach. She says she has used it once a month and it has been occasionally obstructed by fallen trees and says there are no gates. Mrs Rogers adds that the owner of the route would have been aware of its use by riders as it “has been used for a long time by horses since everyone can remember with no issues”. Mrs Rogers says she hasn’t been given permission to use the route but doesn’t say if she has a private right to use the track as a tenant of the owner/occupier of the lane. In the additional information she says “This would have been a drovers route to bring seaweed up from the beach and as such has a very long history of horses on the path with no issues. We wish to continue to use the route officially as we do now and preserve its use for future generations of horse riders. There are very few routes open to riders in the area and very busy dangerous roads”. Mrs Rogers plan indicates that her route to the beach is used as an up and back route.

Mrs Rogers collected and submitted the user evidence forms through June & July 2019, and her own form arrived by email and has not been signed. Emails have been sent reminding her that is important that the forms are signed. No signed form received to date.

- 1.4.19 Ms Axworthy says on her evidence form that she has ridden Bovisand Lane to Bovisand Beach from 2011 to present approximately 30 times a year. She mentions a gate at the entrance to the path and regards it as public due to the signage. She says that everyone in the area uses it and has not been given permission to use the path. A letter was sent to Ms Axworthy asking for a map to clarify her route and where she kept her horse. No map or reply submitted.

- 1.4.20 Two other riders Mrs E & Ms E O’Brien have submitted evidence of riding and walking from Little Lane to Bovisand Beach from 2013 – present, 20 to 30 times a year for pleasure. Mrs O’Brien said she was going from Court Gates livery yard to Bovisand Beach and both mention the gate at Little Lane but never locked. One rider said they didn’t know who owned the land, the other thought it belonged to Devon County Council. Neither submitted a plan of where they rode.

- 1.4.22 Seven forms have been submitted indicating use on foot and horse between 1 – 4 years.

- 1.4.23 Ms Drake has used the route from 2015 – 2019, 4yrs, at least monthly from Staddiscombe to the beach on foot and horse. She says she thought it was public due to the “Signage – Public R.O.W”. Ms Drake mentions that Mr P Hendy owns land on the right-hand side of the track and Mr MacBean on the left-hand side, however no map was included to indicate where she meant. Ms Drake adds that she isn’t a tenant of the landowner, nor has she had permission to use the path. In her additional information she adds: “It would be such a shame to lose the ROW of this path. It has been used by family & friends for years dog walking & horse riding”. An email was sent to Ms Drake asking for clarification of the route she had taken, did she ride in company, why she thought the owners knew the riders were using the path and where did she keep her horse. No reply to date.

- 1.4.24 Miss Lethbridge has submitted an evidence form indicating she has used a route from Staddiscombe Road to Bovisand Beach from 2016 – 2019, 20 times a year on horseback for leisure. She says she thought the route was public by “local knowledge” and that she isn’t a tenant of the landowner nor has she had permission to use the route. Miss Lethbridge says there is an unlocked gate on the route and that there are no obstructions

# Agenda Item 9

on the path. Miss Lethbridge has attached a plan with 2 routes highlighted in yellow. One route from Little Lane via Bovisand Lane to the beach and a spur off from Bovisand Lane along the private drive to Bovisand Lodge. An email was sent to Miss Lethbridge asking for clarification of her route, plus the same questions as sent to Ms Drake above.

- 1.4.25 Five of these seven users, give evidence of use for 1 year. Elizabeth Millet was the only user evidence form in support of the Trail Riders Schedule 14 Application made in 2005. She says she used Bovisand Lane travelling from Bovisand to Brixton twice in 1999 on a motor bike. She said she didn't have permission to use the route and thought it was public due to its name, size of track, location and discussion with locals. She has attached a plan with the route highlighted in pink.
- 1.4.26 Ms Martin said she has used the route on horse during 2018 – 2019 a couple of times a year riding for pleasure. She describes the route as from Little Lane/Hooe Lane to end at Bovisand Beach. She says she thought it was public as "Used as access many years no signage to suggest otherwise". She adds that there is an unlocked gate at the top of the route. No map submitted.
- 1.4.27 Mrs Mills said she has used the route once in 2019 as she is new to the area and says she has used it on foot and horse. She says the route starts at Little Lane and ends at Bovisand Beach. Mrs Mills said she was told it was public and hasn't had permission to use it nor was she turned back. She thought the owner/occupier would have known it was being used as it is well trodden and fenced to the side in places. No map attached.
- 1.4.28 Ms Nicholls completed an evidence form in June 2019 and says she has ridden the route from Little Lane to Bovisand from 2018 – 2019 to go to the beach. She thought the route was public due to "signage". She also mentions she has just arrived in the area and is a "tenant" at Court Gates livery yard. She adds the route "needs maintenance – overgrown & path needs repairing – washed away in floods". No plan attached.
- 1.4.29 Ms Egglestone completed an evidence form in June 2019. She gives evidence of the nature of the lane in that there is a gate and overhanging trees at the top of the route. She also mentions that the Hendy's (Court Gates) gave her permission to use the path 3 years ago and that she is a Freelance Riding Instructor. In her additional information she says "I would like to use the route for pleasure on my own horse, but overhanging trees are making the path narrow. This would be hugely appreciated as we wouldn't have to use the fast roads as much".
- 1.4.30 Twelve users were contacted by email or letter seeking clarification of their use of the route as a bridleway. They were asked either to submit a plan of the routes they had ridden or describe where they had ridden to and from via where. In addition, 8 were asked: did they ride the route with anyone else, did they meet the landowners along their ride and where do they keep their horses. For those who have used the route on foot, they were asked to clarify just their horse-riding activities.
- 1.4.31 Four replied. One rider asked why more questions were being requested as all her evidence was on the form. Following an explanation of why, she did not reply again.

One rider replied stating "I have ridden the lane for years, sometimes alone, sometimes in company. I have had to turn back before, but never because I've been told to but because it is poorly kept, low branches or water damage to the path. I can't really give you much more than that. I ride/walk my dogs early in the morning, so I don't often see anyone".

A third rider replied saying "We ride the lane up and down. I assume the owners know, because it is certainly well known to riders who have used it regularly over the years.

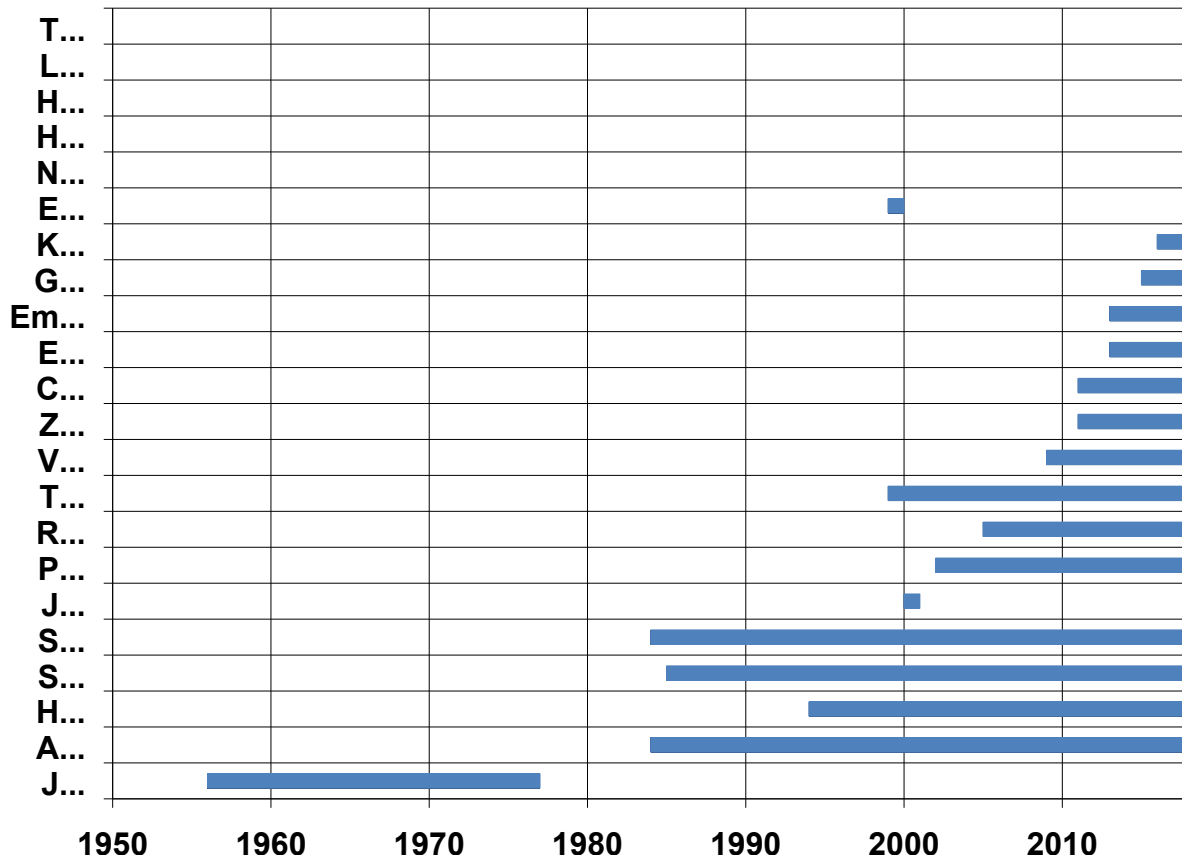


# Agenda Item 9

The horses I ride are kept in Wembury.” This rider has used the route from 2018-2019 on a horse twice.

The fourth horse rider was reminded she had only submitted page 1 of her form. They replied that they would send it back, however nothing has been received to date.

1.4.32 The User Evidence Forms are summarised in the following table:



## 1.5 Landowner Evidence

1.5.1 Mr P MacBean has completed a landowner evidence form on behalf of the family farm, Yolland View in Down Thomas. They have owned the land adjacent to the southern side of Bovisand Lane for 30 years and have regarded it as a footpath for 20 years. They have seen people walking the route and in reply to Q3 on the landowner’s form: Have you seen or been aware of members of the public using the way? The reply is “Yes. On foot”. Mr MacBean said they haven’t turned anyone back from the using the route but says, “This is a quiet pretty green lane and should remain so”. Mr MacBean 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 and it has been in the family for 200 years. In reply to Q2 on their landowner evidence form: Do you believe this way to be public? a) If so, with what status. The reply states “Footpath with use for horse riding” b) how long have you held this belief? Reply, “50 years and have seen people using the route for that duration.” Mr & Mrs Hendy said 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. They conclude their form by adding “Path has been used for walkers and horse riders for as long as we can remember i.e. 50 + years”.

# Agenda Item 9

1.5.3 Mrs Hendy completed a User Evidence form in June 2019 stating that she has walked and ridden from Staddiscombe to the beach at Bovisand from 1984 – 2019 on a monthly basis and she thinks its public because, “it’s a traditional right of way and has been used for over 200 years”.

1.5.4 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 the 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”.

1.5.5 Mr J Fraser owns the land crossed by the footpath from west of Bovisand Lodge to the coast path. In addition, Mr Fraser owns the private drive leading from Bovisand Lodge Estate to Coastguard Cottages. He believes the proposal is a footpath and is aware that it 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.

1.5.6 The landowners of Bovisand Lodge Estate have submitted evidence against the Trail Riders Schedule 14 Application to upgrade the Footpath No.1 (pt.) Wembury, to a Byway Open to all Traffic. 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 acerbate this problem further down the footpath, making it more difficult for South Hams Council to clean up”.

1.5.7 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. In response to Q3 on the form: Do you believe this was to be public? The reply states “Yes as a footpath with 2 farmers having rights for their horses”. In addition, they have seen walkers using the path daily, plus the occasional horse.

Q7. “Have you or someone on your behalf, ever told anyone using the way that it was not public?”, Mr Hart replies “No.. but have told motorcycles and horses that it is a footpath”.

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 installation of 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.

- 1.5.8 In a letter from Bond Pearce Elliott & Knape Solicitors to Mrs N. Hart 27<sup>th</sup> January 1966, it was mentioned that the route was maintained by the council as a footpath. The path is described in this letter as a continuation of Footpath No.1, Wembury and continues from the parish boundary at that time with Plymstock as Footpath No.12, Plymstock..." along a private accommodation road (not repairable by the inhabitants at large) known as Bovisand Lane. It continues through an iron gate to the landing stage at Bovisand".
- 1.5.9 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".
- 1.5.10 An extract from the Conveyancing Deeds dated 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 talks about water rights and access to springs. Then the conveyance continues: "Except and reserving unto the said William Pollexfen Bastard his successors in title and assigns and his and their tenants of Manor Farm and Court Gates Farm Staddiscombe aforesaid full right and liberty for him or them and any of them with or without vehicles to pass and re-pass over and along Boveysand Lane aforesaid from and to their farms to and from the seashore or any intermediary point and also to collect and cart away therefrom sand and seaweed for the use of the said farms or either of them and also the right to repair Boveysand Lane aforesaid but without being under any obligation to execute such repairs".
- 1.5.11 Following the Public Rights of Way committee meeting on the 4<sup>th</sup> July 2019, all the landowners and Wembury Parish Council were notified that Proposal 1 relating to Bovisand Lane had been deferred due to late submission of 18 additional user evidence forms relating to horse riding use over the lane. No additional information has been submitted from them.

## **1.6 Rebuttal Evidence**

- 1.6.1 Land Registry details for the land to the north of Bovisand Lane registered to Court Gate Farm, Staddiscombe, Plymouth DN399529 sets out the private right for Court Gate Farm, their heirs and successors, "Together with full right and liberty for the Purchaser his heirs and assigns the owners or occupiers of the said premises hereinbefore describe in common with all other persons who have or may hereafter have the like right with or without horses cattle sheep and other animals carts wagons and other vehicles to pass and repass over and along the private road or lane leading from the 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 hereinafter referred to as "Boveysand Lane".... Except also and reserving out of the assurance hereby made of the premises hereinbefore firstly and secondly described all such roads pathways rights of water and drainage and other easements privileges and advantages for the benefit of any other hereditaments now or formerly forming part of the Bastard Settled Estates and the owners and occupiers thereof respectively as such owners and occupiers have been accustomed to use exercise and enjoy."

# Agenda Item 9

- 1.6.2 Landowner evidence from the Hart Family reports that use of the footpath by horse riders and occasionally motorcycles has been challenged as the route is recorded as a public footpath and that is what they recognise it as. 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.
- 1.6.3 In a letter from Wembury Parish Council to the Hart Family in October 1968, it states “The Council have no objection to you 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”.
- 1.6.4 Mr MacBean & family and Mr Fraser as adjacent landowners are also clear that the status of the lane is a footpath.
- 1.6.5 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”.
- 1.6.6 The South West Coast Path Association submitted that the Trail Riders application would have a detrimental effect on the public footpath.
- 1.6.7 Dr Paul Naylor wrote, as chair, on behalf of the Wembury Marine Conservation Area Advisory Group stating that they strongly object to the proposal.
- 1.6.8 Thirty other representations have been made from local residents in and around Wembury stating how strongly they object to the Schedule 14 Application by the Trail Riders Fellowship to upgrade the route to a byway open to all traffic. (Included in full in the backing papers.)
- 1.6.9 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”.
- 1.6.10 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”.
- 1.6.11 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”.
- 1.6.12 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 of a path, in this case relating to the status of the right of way.
- 1.7.3 The Trail Rider's 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 therefore not a qualifying application for the specific Natural Environment & Rural Communities Act 2006 exemption. However, as the application had been made, the proposal was included in the parish review, for the upgrading of Footpath No.1 Wembury (pt) 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 definitive statement states that the path has been gated near its junction with Little Lane and goes to Bovisand Beach. The lane is not registered with land registry until Bovisand Lodge. However, it is clear from Land Registry that adjacent landowners, 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 access rights along the lane.
- 1.7.5 Although they do not provide direct rebuttal evidence, there are a substantial number of local people who strongly object to the notion of upgrading the current footpath to include motor vehicles, and one does object against use by horse riders.
- 1.7.6 Representations about safety and suitability, although understood are not factors that can be taken into consideration when establishing public rights way.
- 1.7.7 One user evidence form indicating use on a motor bike twice in one year, cannot be considered valid evidence, as the use of footpaths and bridleways by mechanically propelled vehicles is unlawful and, consequently cannot give rise to higher rights.
- To that end, the Schedule 14 Application to record Bovisand Lane as a Byway Open to All Traffic is unsuccessful. Nor can such use support the status of a Restricted Byway.
- 1.7.8 The next consideration is, does the Schedule 14 Application call the status of the route into question with regards to bridleway rights along its length, up to and including the year 2005 when the application was made.
- 1.7.9 Nine User Evidence forms, including the early one from Mrs Thompson, indicate use of the route to 2005. Further evaluation shows that of the nine, 2 are landowners at Court Farm, and therefore have a private right of way as indicated in the deeds to the farm, and 1 form is incomplete and unsigned.

# Agenda Item 9

- 1.7.10 To that end, six evidence forms remain for consideration of the claim under Statute law. These show a combined use on foot and horseback of the route from 1- 21 years. Mrs Thompson's form, indicating use from 1955 – 1977, may be the evidence referred to by the Parish Council in November 1978, indicating it was used with the consent of the owners.

The five other riders have been contacted by letter or email to seek clarification of their use, as only one had provided a map and 4 gave mixed use on foot or horseback between 12 to 80 times a year.

Only 2 replied. Neither gave any information of who they rode with, which route they took or where they kept their horses.

- 1.7.11 The test of public use to be applied to upgrade an existing public right of way is higher than for a currently unrecorded route. To upgrade the footpath to a bridleway, evidence must be shown that the higher rights subsist on the balance of probabilities; the lower test of reasonable allegation does not apply in this case.

On evaluation of the User Evidence, there is doubt about the validity of the evidence of some of the riders due to the connection to the Court Gates Livery Yard.

Six horse riders at face value would appear to offer enough evidence to upgrade the route. The riders have provided some additional evidence, but many have been unwilling to clarify their use. This causes uncertainty to the validity of their evidence and does not demonstrate sufficient use "as of right" by horse riders. No clarification has been submitted from those riders of how much use was on a horse and how much was on foot to raise a presumption of dedication of bridleway rights. The use must be demonstrated on horseback to show that such rights subsist, sufficiently under section 31 of the Highways Act 1980 to upgrade Footpath No.1, (pt) Wembury, known as Bovisand Lane to a public bridleway.

- 1.7.12 To that end, the user evidence up to and including the year 2005 is insufficient to give rise to a public bridleway under s.31 of the Highways Act 1980.

## Common Law

- 1.7.13 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.
- 1.7.14 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. At Common Law, use does not raise a presumption of an intention to dedicate, but merely evidence of such an intention. The burden of proof lies on those persons claiming a way as public, or claiming higher rights than those recorded, to show that the facts, when taken as a whole, were such that the rightful inference to be drawn from them was that the landowner intended to dedicate those rights and that the public has accepted the dedication. Each case turns on whether the facts indicated this intention.
- 1.7.15 The indications from the 1880 – 9 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 user and landowner evidence.

- 1.7.16 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, most of the landowners are clear that they regard the route as a footpath and at the very most recognise that horse riders may use the lane. The landowners at Bovisand Lodge have challenged motorcyclists and horse riders using the lane stating to those users that it is a public footpath.
- 1.7.17 None of the user evidence forms have mentioned the gate and gap arrangement to the west of Bovisand Lodge on the footpath to Bovisand Bay. None of the riders have mentioned or indicated on a map that they used the narrower coast path to access the beach at Bovisand Bay.
- 1.7.18 The consideration of the general Definitive Map review by Wembury Parish Council in the late 1970s and 1981 is clear about what routes at that time it recognised to be public footpaths and bridleways, and those that were not.
- 1.7.19 Out of the 21 User Evidence Forms submitted, only four had a map attached to them. One was from the Trail Riders supporter, who marked the Bovisand Lane, 1 from Mrs Rogers marking Bovisand Lane to the bay in a straight line not taking into account of the coast path section to reach the beach. Two other riders, who have used it just on horses marked 2 routes on their map, one route along Bovisand Lane to Bovisand Bay, the "beach", the other route continued along the private drive to the west of Bovisand Lodge. It remains unexplained where the riders went next. Equally, it is not clear if the horse riders went along part of the coast path to access Bovisand Beach, or whether they rode to the end of the path, looked at the view and rode back again.
- 1.7.20 Four riders keep their horses at livery at Court Gates Livery Yard and one rider has had permission from the Hendy family to use the lane on her horse. Some of the riders correctly identify the Hendy family as adjacent landowners. As owners of Court Gates, the Hendy family have a private right to use the lane to pass and repass over and along the private lane to access the beach as set out in their deeds. (1.3.3.2) This private right of way could be passed to the riders as customers of their livery yard, as well as to other acquaintances and local friends in the area of Staddiscombe. The riders all appear to come from a nearby local area and the evidence suggests that the route is not used on horseback by the general public at large.

There is no challenge to the use of the route as a public footpath and it will remain legally recorded as such if the test for bridleway rights fails under common law.

- 1.7.21 Similarly, the owners of Manor Farm and Bovisand Lodge are adjacent landowners, and all have private rights to use Bovisand Lane for access.

As the Wembury Parish Council wrote in November 1978, it would appear that the riders have used the route "with the full knowledge and consent of their friends, the owners and do not think evidence could be produced of free use of the paths put forward by the public at large."

- 1.7.22 The burden of proof under common law falls to the claimants to prove that they have ridden openly and freely without permission, as of right, including frequently so that the landowners would have been aware that they were riding their horses along the footpath and the south west coast path to the beach.
- 1.7.23 Some riders have stated on their forms that the route has been inaccessible to ride as the branches are overhanging a too low to get through on a horse. Other have added

# Agenda Item 9

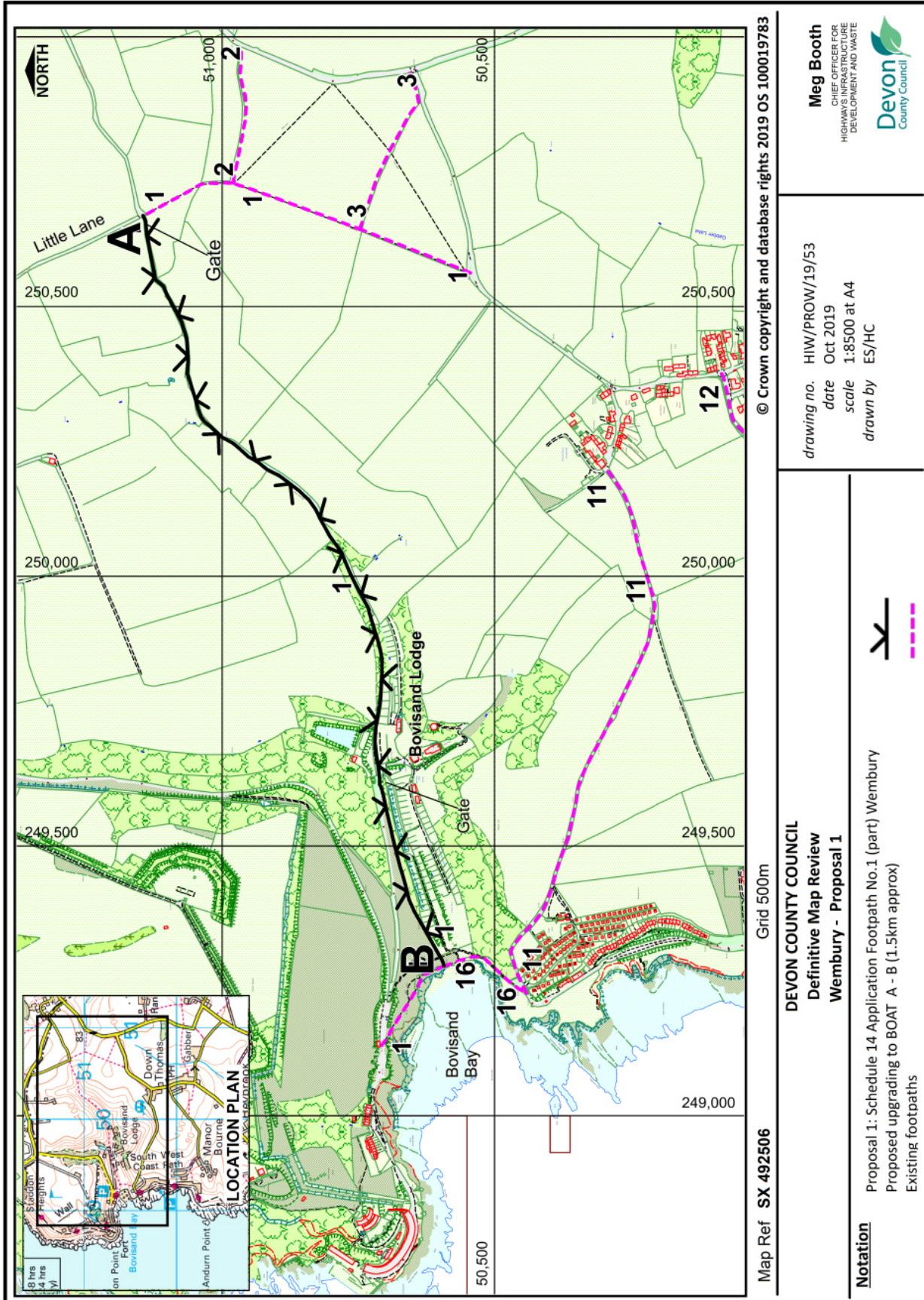
that the poor surface and debris after storms has made it difficult or impossible to use the route. Many riders say that they thought the route was public due to “signage”.

- 1.7.24 As a highway authority, Devon County Council is sensitive to the fact that roads are busy with traffic and the opportunity, in some parishes, for off road riding is limited. The review of the Definitive Map is not the mechanism for aspirational or desire routes to be added as publicly maintainable highways. The lack of information from the horse riders to clarify the inconsistencies in their evidence, including the line of route used, providing maps, no information as to where they keep their horses and their use solely on horseback undermines the value and robustness of their evidence.
- 1.7.25 It has been indicated by most of the adjacent landowners that the route is considered a public footpath and in fact some use by horses has been challenged and therefore their use could be with an implied permission. Three of the adjacent landowners have private rights along Bovisand Lane and this use by right may be transferred to those they know or are acquainted with. As mentioned above, little clarification has been offered by the horse riders to assist in understanding the connection with local landowners and the livery yard at Court Gates in order to establish whether the additional rights over the footpath have been acquired as of right. Therefore, the claim cannot succeed under common law.

## **1.8 Conclusion**

- 1.8.1 The NERC Act 2006 extinguished the right to use mechanically propelled vehicles unless one of a few exceptions to this general extinguishment applies. In the absence of meeting any of the exceptions of the NERC Act 2006, the Schedule 14 Application made by the Trail Riders Fellowship in November 2005 to upgrade Footpath No.1 (pt) Wembury to a Byway Open to All Traffic fails. Therefore, it is recommended that no Order is made in respect of this application.
- 1.8.2 In the absence of clear and cogent user evidence to combat the doubt surrounding the sufficient use on horseback as of right and the lack of consistency of the route claimed, it is therefore also recommended that no Order is made to upgrade this footpath to a bridleway, in respect of Proposal 1  
Should the local riders wish to pursue an Application under Schedule 14 of the Wildlife & Countryside Act 1981, that process is still open to them.





Map Ref **SX 492506** Grid 500m © Crown copyright and database rights 2019 OS 100019783

**DEVON COUNTY COUNCIL**  
**Definitive Map Review**  
**Wembury - Proposal 1**

**Meg Booth**  
 CHIEF OFFICER FOR  
 HIGHWAYS INFRASTRUCTURE  
 DEVELOPMENT AND WASTE  
 Devon  
 County Council

drawing no. HIW/PROW/19/53  
 date Oct 2019  
 scale 1:8500 at A4  
 drawn by ES/HC

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



HIW/19/90

Public Rights of Way Committee  
12 November 2019

## **Definitive Map Review 2018-2019 Parish of Bampton (part 2)**

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 a Modification Order be made to modify the Definitive Map and Statement by adding Restricted Byways between points Y - X - W and points X - G - Z as shown on drawing number HIW/PROW/19/012a (Proposals 4 & 5 Bampton).

### **1. Introduction**

The report examines two connecting routes, referred to as Proposals 4 and 5, arising out of the Definitive Map Review in the Parish of Bampton in Mid Devon. Reports on Proposals 1 – 3 were presented at the Devon Public Rights of Way Committee Meeting on 4 July 2019.

### **2. Background**

The Background for the Definitive Map Review in the parish of Bampton was set out in Committee report HIW/19/58 of 4 July 2019.

### **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 proposals considered in this report

County Councillor Cllr Colthorpe	-	no response
Mid Devon District Council	-	no response
Bampton Town Council	-	supports proposals
Country Landowners' Association	-	no response
National Farmers' Union	-	no response
British Horse Society	-	no response
Ramblers' Association	-	support proposals
Trail Riders' Fellowship	-	no response
Devon Green Lanes Group	-	no response
Cycle UK	-	no response

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

# Agenda Item 10

## 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 (including Climate Change) and Public Health Considerations

Equality, environmental impact (including climate change) and public health implications have, where appropriate under the provisions of the relevant legislation, have 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 adding Restricted Byways between points Y – X – W and X – G – Z as shown on drawing number HIW/PROW/19/012a (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 & 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

tw270919pra  
sc/cr/DMR Parish of Bampton (part 2)  
02 041119

## Appendix To HIW/19/90

### 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.

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

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



# Agenda Item 10

1. **Proposals 4 and 5: the addition of bridleways, as shown between points Y – X - W (proposal 5) and X – G – Z (proposal 4) on drawing number HIW/PROW/19/012a.**

**Recommendation: It is recommended that an Order be made for the addition of two Restricted Byways in respect of Proposals 4 and 5.**

1. **Background**

- 1.1 Proposal 3 considered at the previous committee in the Bampton Definitive Review concerned a Schedule 14 application for the upgrading of Bridleway No. 25, Bampton. After reviewing initial evidence for that application and speaking to the Bampton Parish Paths Partnership (P3) representatives it became apparent that two lanes running north north westwards and north north eastwards from Bampton Down Cross on Bridleway No. 25, Bampton to the county roads at Giffords and Dowhills Farms were also being used by the public as part of the local network. The northern end of the lane (Y) to Dowhills was recorded as a short section of unclassified county road but the remaining section and the lane to Giffords (Z) did not have any recorded status. The existence or otherwise of public rights of way along the routes was deemed to warrant investigation and the two lanes were included as Proposals 4 and 5 in the Bampton review.

2. **Description of the Routes**

- 2.1 The route referred to as Proposal 5 starts from point W (GR SS 9943 2117) at the northern end of the county road known as Bampton Down Road, at its junction with Bridleway No. 25, Bampton, at Bampton Down Cross. It proceeds along a defined lane/track in a north northwesterly direction to point X (SS9943 2117) before turning north north eastwards and continuing downhill to point Y (SS 9947 2110), at the south end of the unsurfaced unclassified county road number 304 Bampton, which continues towards Dowhills Farm. The surface of the proposed route is generally of earth, grass and stone, and it has a length of 540 metres.
- 2.2 The lane referred to as Proposal 4 starts from point X (GR SS9943 2117) on Proposal 5, 80 metres north northwest from Bampton Down Cross, and proceeds downhill in a north northwesterly direction along a defined lane/track, passing point G, for 470 metres to the county road at Giffords Farm at point Z (SS9920 2157). The surface of the proposed route is mostly earth with some stone underneath, with the middle portion of the lane suffering from some erosion from water and vehicular use. Photographs of both proposals are included in the backing papers.

3. **Documentary Evidence**

- 3.1 **Ordnance Survey and Other Maps**

- 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.
- 3.1.2 Cassini Historical Maps 1809 – 1900 Sheet 181 Minehead & Brendon Hills  
These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.

- 3.1.3 Old Series 1809: On this edition proposal 4 is shown in a similar position to the present day, leading from Giffords south southeast to Bampton Down Cross and shown as a defined lane. The southern section of proposal number 5 is shown as existing across the moor/common called Bampton Down but the northern end diverges east north east towards to join the county road south east of Dowhills. A lane running south from Dowhills (Dewhill on this map) goes to the edge of the common and appears to connect with proposal 5. There is no road/lane between Gifford and Dowhills and to access one from the other, the shortest route would be via proposals 4 and 5 and Bampton Down Cross at point W. The sections of the two proposals across Bampton Down are shown as unfenced.
- 3.1.4 The OS surveyors' drawings of 1802 are the preliminary survey work for the OS 1 inch first edition/old series of 1809. These show a lane from Dowhills with a spur branching north eastwards and the other branch of the lane continuing to Bampton Down Cross at point W. A defined lane is also shown from Giffords Farm to Bampton Down Cross. Both lanes are shown as unfenced across Bampton Down.
- 3.1.5 Revised New Series 1899-1900: By the time this map was published the new road to Huntsham had been constructed, which was south of the original road and passed adjacent to the southern boundary of Dowhills Farm buildings. A short section of lane has been made going from Giffords north to the new road, west of Dowhills. This is the current county road layout. Proposal 5 is now only shown on its current alignment between Dowhills and Bampton Down Cross. Both proposal routes are shown as fenced lanes with solid boundary lines. Proposal 4 is coloured white as is the county road to the west of Giffords towards Bampton (Metalled Roads: Third Class) whereas proposal 5; the new road to Huntsham and the road from Bampton Down Cross to Huntsham are coloured orange (Metalled Roads: Second Class).
- 3.1.6 Popular Edition 1919: Both proposals and the road from Bampton Down Cross to Huntsham are now shown as uncoloured defined lanes (Roads under 14' wide – Indifferent or bad winding road).
- 3.1.7 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 turnpike roads with a bold line on one side of the road or as cross roads. The road layout was somewhat different at the northern end of points Z and Y in that there is no connecting road shown between Gifford and Dowhills (spelt Dewhill on this map) (as per the OS 1809 map) and the road to the south of Dowhills running from west to east is also not shown. This road, the new road to Huntsham, was constructed later, by the Huntsham Estate in the 1850s and was subsequently taken over by the parish as a highway maintainable at public expense. The old road is now Bridleway No. 4 Bampton.
- 3.1.8 Bampton Down Road between Huntsham and Bampton Down Cross (point W) and both proposals 4 and 5 are shown on the Greenwoods map as cross roads and in a similar style to the other county roads they connect to. Both proposals would be a route to Huntsham from Bampton, with proposal 4 by Gifford being the shorter route.

# Agenda Item 10

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

The road layout is now as per the present day, with a road connecting Giffords and Dowhills and both proposals shown as defined lanes from Giffords and Dowhills to Bampton Down Cross. The lanes have solid lines along their boundaries. An area of Bampton Down that lies between the two routes and to the west of proposal 4 is now shown as fields within compartment numbers 429, 507 and 508. Proposal 4 has its own compartment number 506 with an area of 0.981 acre. Proposal 5 is numbered 509, area of 1.287 acres. The area of Bampton Down to the east of proposal 5 is depicted as being Moor, Furze and Brushwood and Brushes on this mapping. There are two bench marks shown on proposal 5. There are no solid lines across either proposal to indicate gates across the route. The pecked line at point Z, at where the county road 304 joins the metalled county road at Dowhills and at point X probably indicate a change in surface.

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

On the 1946 edition the routes are shown as uncoloured defined double-sided lanes and corresponding to 'Roads under 14' metalling – Bad'. The new road to Huntsham that passes on the southern boundary of Dowhills Farm is shown coloured orange 'Roads under 14' Metalling. Good'. Bampton Down Road running southeast from Bampton Down Cross (point W) to Huntsham village is shown in the same manner as the two proposals.

3.1.11 In the 1960 edition the routes are now shown by the narrower double-sided white lane (Minor Roads in towns, Drives and Unmetalled Roads) as is the section of now county road going west from Giffords. Bampton Down Road is shown as the wider white lane (Roads under 14' metalling Untarred). The new road to Huntsham is now shown in yellow (Roads 14' of metalling and over). On the 1967 edition the two proposals and Bampton Down Road are shown as in 1960 edition. The road between Giffords and the new road to Huntsham is now coloured yellow (Roads under 14' metalling Tarred). Bridleway No. 25, Bampton running west to east across Bampton Down is shown as a RUPP as it had been recorded on the Definitive Map by that time.

## 3.1.12 OS Post War Mapping A Edition 2500 1970

Both routes are shown as defined lanes along their entire length and labelled track on the map. No bench marks are now shown along the proposal 5. The lanes continue to have their own compartment numbers, proposal 4 is number 2931 at 0.9 acres and proposal 5 number 6044 at 1.36 acres. The pecked lines at points W, X and Z are deemed to represent a change in surface.

## 3.1.13 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.

3.1.14 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'.

- 3.1.15 Sheet SS92 published in 1950 shows the two proposals as defined uncoloured lanes in the similar manner to the county roads they connect to at points W and Z and in the same manner as the unclassified section of road north of point Y. The uncoloured lanes are described as 'Poor, or unmetalled Other Roads'. No lines, indicating any gates or barriers, are shown across the lanes or at either end.

## **3.2 Tithe Maps and Apportionments**

- 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*'.

### **3.2.2 Bampton Tithe Map & Apportionment 1844**

On the Bampton Tithe Map only the northern section of the proposal 4 leading south from Giffords (point Z to point G) is shown as a defined lane. Running south from Dowhills, it is only the section of unclassified county road north of point Y that is shown. South of point G and point Y the maps shows an area of open land without the later field boundaries. The north end of Bampton Down Road from Huntsham is shown at the bottom edge of the map (point W and the parish boundary with Huntsham). This large area of 119 acres is called Bampton Down with no description of cultivation stated. The landowner was the Reverend Troyte and the occupier William Stone.

- 3.2.3 There was no road connecting Giffords and Dowhills as at present. Dowhills farmyard has the apportionment number 1100 described as House, homestead, road, garden and orchard. The landowner was the Reverend Edward Troyte and the occupier John Henson. Giffords was owned by the Reverend Thomas Judboald and occupied by Thomas Davy. The lane to Giffords from the west and the section continuing south of point Z is not numbered.

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

- 3.3.1 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 descriptions would appear to describe the roads/routes or at least the northern ends of the proposals depending on whether the length extended to the parish boundary at Bampton Down Cross (point W) or just to the end of the hedged section of proposal 4 and the end of the unclassified county road, to the boundary of the old common land at points G and Y.

- 3.3.2 Although by the 1880s the lanes are shown with solid hedges/fenced boundaries with the common land only at the southern end of the proposals near point X and southwards. This would indicate that at least parts of the routes were maintained by Bampton rate payers at that time. Historically, the parish would likely only

# Agenda Item 10

maintain the northern ends of the lanes, as shown on the Tithe, 1<sup>st</sup> edition OS 1" and Greenwoods maps, to the edge of Bampton Down, as the routes across there in the early 1800s were unfenced and would not have been cropped so the route used across the common land could vary with ground conditions and vegetation.

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

- 3.4.1 The OS name books gave the definitions of features, houses, rivers, places, lanes printed on the large scale (6" and 25") OS maps first published in the late 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.
- 3.4.2 The lanes of proposals 4 and 5 are not named on the OS 25" maps and so would not appear in a name book. In the OS name book reference OS 35/1651 prepared in 1903 Bampton Down Cross was described as 'A cross roads on Bampton Down about 20 chains S.E. of Giffords'. The authority for the spelling was Mr Mildon, District Surveyor Ash Thomas, Tiverton. A cross roads would indicate that Bampton Down Road was not considered a cul-de-sac road. In the same name book Bampton Down was described 'as an extent of private common shown by band of colour SE of Giffords' which would indicate the type of land it was at that time. This entry was signed for by Mr Cleeve as agent for the Troyte Estate, Huntsham.
- 3.4.3 In the OS name book reference OS 35/1649 of 1903 Bampton Down is also described as a private common and signed for by Mr Cleeve as above. In the book reference OS 35/1687 Bampton Down Road is described as extending from junction of roads about ½ mile west of Huntsham Barton to junction of roads NW of Old Parsonage. This entry was signed for by Mr Mildon and also indicates that Bampton Down Road was not considered a cul-de-sac road at point W on the parish boundary.

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

- 3.5.1 The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the 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.
- 3.5.2 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.
- 3.5.3 Proposal 5 from point Y to point X lies within hereditament number 343 as does the section of unclassified county road north of point Y. The colouring for the boundary

of the hereditament breaks at point X where it crosses the route. The southern end of proposal 5 between points X and W is bordered by hereditament number 361, as above, on the west and by 343 on the east side.

- 3.5.4 Hereditament number 343 is Dowhills Farm of 268 acres, owned by Hugh Troyte (Huntsham Estate) and occupied by James Hewson. 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 at Dowhills. However, the reference to the 'right of way over lane' could apply to two different lanes that lie within the hereditament. Bridleway No. 4, Bampton being one lane to the north west of the farmstead and the other one being the lane which runs south from Dowhills (the unclassified county road and proposal 5) to the junction with the county road at Bampton Down Cross. The hereditament included land on both sides of this lane.
- 3.5.5 Proposal 4 is within hereditament number 352 for most of the route with the south eastern end approaching point X lying between and not included within hereditaments 352 and 361. The colouring breaks across the lane in hereditament 352 where the hereditament boundary crosses the lane. Hereditament number 352 was Giffords Farm of 170 acres owned by Hugh Troyte and occupied by William Coles. The field book entry makes no reference to any rights of way or easements.
- 3.5.6 Hereditament number 361 adjoins the south western side of proposal 4 in the area west of point X and was described as Bampton Down, agricultural land, area of 23 acres owned by Mr Troyte and recently occupied by Mr Webber. On the first page under Fixed Charges, Easements, Common Rights and Restrictions is written 'a road adjoining Bampton Down'. This could be referring to Bridleway No. 25, Bampton running along the southern boundary of the hereditament or to the sections of proposals 4 and 5 along the north eastern boundary. An allowance of £10 is given for a R/o/w on page two, which is carried forward to the page four heading for Public Rights of Way or User. This allowance could be for the pecked line labelled B.R. shown on the OS 25" mapping used for the Finance Act plans that runs within the hereditament and parallel to Bridleway No. 25, Bampton to Bampton Down Cross. This route is not recorded as a public right of way on the definitive map.

## **3.6 Vestry, Urban District, Parish and Town Council Meeting Minutes**

- 3.6.1 Bampton was an Urban District Council from 1894 to 1935, a Parish Council between 1935 and from 1974 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 to be useful 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 within the minute books. No parish minutes or draft minutes from 1894 to 1900 were found. Vestry minutes are available for the period 1763 – 1881.

# Agenda Item 10

- 3.6.2 In the Vestry minutes of March 1862 it was reported that the roads tender is up for renewal again. 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. Details of this tender were included in paragraph 3.3.
- 3.6.3 In the draft minute book for the Bampton Urban District Council Meeting of 13<sup>th</sup> January 1920 it was noted 'Road Giffords to Bampton Down badly washed requires about 40 yards ballast'. This meeting was reported on in the East Devon Herald of 20 January. The report included that 'the Surveyor was given permission to place 40 yards of ballast on the Bampton Down road, near Gifford's Farm.'
- 3.6.4 The newspaper report of the Annual Meeting of Bampton UDC in March 1924 included the heading Road Maintenance. Mr Moore, a councillor, moved a resolution that the Council should stop maintaining the road through Dipford Court. The public made very little use of this road; it appeared a waste of money for the Council to maintain same. Councillor Penwarden asked the Council not to be in any hurry in arriving at a definitive decision. He thought they should take a comprehensive view of the whole parish, for in his opinion there were other roads which could be brought under the same category. He thought that many miles of roads could be taken off and that a considerable saving could be made. It was eventually agreed that the surveyor should present at the next meeting a statement showing the whole of such roads with their mileage.
- 3.6.5 At the next month's meeting on 22 April 1924 the newspaper reported under the heading Road Closure Proposals that in accordance with a resolution at the last meeting of the Council, the Surveyor presented a list of roads which he considered unnecessary to maintain. A total of seven roads were listed including Huntsham to Bampton Down (11 chains 37 lengths (228 metres)), lane by Dowhills Farm (9 chains 79 lengths (197m)) and lane near Giffords House towards Bampton Down (10 chains (201m)). The total length of all the roads mentioned was 1 mile and 7.5 furlongs. In the draft minute book for this meeting the roads were described as Bampton Down Road, Dowhills and Giffords to Huntsham, which would describe the two proposal routes and the section of road north of Dowhills Farm. After various comments had been made by Councillors including; whether any metal had been put on these roads; that the roads were let for another two years and that it would cost more to close the roads that they would save; it was decided to ask the Surveyor to report at the next meeting on how much has been spent on these roads.
- 3.6.6 At the meeting on 13 May 1924 the Surveyor reported that the amounts expended during the last three years ending March last were Bampton Down Road (part) £1 16s. 10d; lane by Dowhills Farm £1 11s. 8d. and Giffords Lane (part) £5 2s. 6d. The Surveyor commented that generally speaking only manual labour was involved. Cllr Penwarden said that if nothing was done to the roads it was an argument in favour of the Council's ceasing to be liable for their upkeep. Cllr Seward said that there was a wrong impression abroad that they intended to close the roads. They did not propose to close the roads. All they proposed was that they should cease to maintain them. The Chairman said that farmers had come to him and said it was the most unfair suggestion the Council had discussed. If the Council decided not to maintain certain of the roads it would mean that they would be virtually closed and would be no good to anybody. If the Council ceased to maintain the roads, they would be practically impassable. Cllr Weston moved and Cllr Hill seconded that the report be allowed to lie on the table, which was agreed. There were no further reports on this matter in subsequent meetings.

- 3.6.7 In July 1929 Bampton UDC discussed the Local Government Act of 1929 and that all classified and unclassified roads were placed under the control of the County Council after March 31, 1930. The Chairman proposed that application be made for the delegation of powers over all roads in the Bampton Urban District. Bampton remained an Urban District Council until 1935.
- 3.6.8 In a newspaper report of a meeting of Bampton UDC on the 19<sup>th</sup> June 1934 under the heading Gifford's Lane (could be referring to proposal 4) it was reported that 'The Surveyor stated that one or two of the district roads needed attention. Gifford's Lane was in a deplorable condition. He suggested the men still remaining on part time work should be re-instated to full time work to carry out the job. The river could be cleaned out and the material obtained used for the work. The matter was left to the Surveyor's discretion'.
- 3.6.9 Next month, in July 1934 under the heading Road Work the newspaper advised that 'The Surveyor also reported that as instructed at the last meeting of the Council, all the Council's employees had been reinstated too full time. The bed of the river Batherum had been cleaned out and a considerable quantity of the gravel removed had been used on the district roads'. The report did not list the roads.
- 3.6.10 In October 1944 Tiverton Rural District Council asked the parish for details of any accommodation roads that the now Bampton Parish Council would like to be taken over and maintained at public expense and of existing roads which were regarded as unnecessary. The Council proposed four roads for adoption which did not include proposals 4 or 5, with there being no unnecessary roads in the Parish. Roads in the parish would have included the county road running north of point Y that was already recorded as a county road.
- 3.6.11 In April 1946 (prior to the parish survey for preparation for the Definitive Map) 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. Proposals 4 and 5 were not included in the list.
- 3.6.12 At the parish council meeting on 22 April 1947 under the heading Giffords Lane, it was recorded that 'Mr Vicary having referred to the bad state of the road between Wick and Giffords Farms it was resolved to request the District County Surveyor to have it put in proper order.' That meeting also resolved 'to request that the private road between Giffords Farm and the Bampton-Huntsham main road be taken over by the County Council and maintained as a public highway'. This was the lane between point Z and the county road west of Dowhills that was not publicly maintained at that time.
- 3.6.13 At the parish council meeting on 24<sup>th</sup> June 1947 it was reported that a letter received from the District County Surveyor said that he was arranging for Giffords Lane to be tidied up and for certain repairs to be carried out. A letter had also been received from the County Surveyor saying that the piece of private road between Giffords Farm and the Bampton to Huntsham main road (point Z to west of Dowhills as mentioned above) has been added to his list of accommodation roads, the question of taking over of which, is now being considered by the County Council.

# Agenda Item 10

- 3.6.14 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. The paths in the list did not include proposals 4 or 5.
- 3.6.15 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.
- 3.6.16 In October 2004 the West Somerset Ramblers Association wrote to Bampton Town Council suggesting improvements to the footpath network in the parish. It is believed this letter was prompted by the Devon County Council's preparation of a Rights of Way Improvement Plan for the County as required for in the CROW Act 2000. User groups such as the Ramblers Association would have been aware of the plan's preparation. One of the suggestions in the letter was that the two lanes, described as proposals 4 and 5 in the current review, should be added to the Definitive Map as public rights of way. The letter was raised at a Bampton Town Council meeting in February 2005 under the open forum section and the minutes recorded that 'As requested by BTC, comments and recommendations were presented relating to additions to the footpath network that had been suggested by the RA. Action Clerk.' The minutes do not include what the comments and recommendations were.

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

- 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. Apart from references to the meetings of the Bampton Borough Council no reports relating to either proposal were found.

## **3.8 Devon County Council Handover Roads Records 1947**

- 3.8.1 The Local Government Act 1929 gave County Councils increased powers as the ultimate highway authority for all roads in the county. Devon County Council acquired the additional responsibility for all the non-main roads previously in charge of the rural district councils. Urban District Councils & Rural District Councils continued to be responsible for the unclassified roads in their area. On the handover map the northern continuation of proposal 5 currently recorded as a county road is coloured blue (unclassified roads) and numbered 1990. The lanes proposed as proposals 4 and 5 are not coloured on the handover map.
- 3.8.2 The 'new' road between Bampton and Huntsham is coloured yellow, numbered 30. At Giffords Farm the road is coloured blue, numbered 1986 from point Z westwards. The now county road from point Z northwards to the Huntsham road is not coloured. Bampton Parish Council subsequently requested that this section of road be taken over as publicly maintained highway in 1947.

3.8.3 In the Mileage of Unclassified Roads register for Tiverton district road 1990 is described as 'From UC 1981 North of Dowhills Farm with spur south of Class III 30 (240 yards towards Bampton Down Cross)'. Mileage is 0.24 and under the remarks column is written 'cul-de-sac'. The distance of 240 yards equates to 220 metres, which is the distance from the county road at Dowhills to point Y.

3.8.4 In the register road number 1986 running westwards from point Z, is described as 'From Class III 74 (west of Sparkhayne) East via Week to road junction East of Giffords Farm'. The mileage was 1.42, amended to 1.36 with cul-de-sac under remarks. The end of the road is described as 'road junction' which would seem to indicate that the road joined other roads although the continuation of the lane from point Z northwards to the county road was not a publicly maintained road at that time.

3.8.5 Both sections of roads are noted as cul-de-sacs, but the lanes continue and are not dead ends as it would be if it was a section of county road leading to one farm only as is fairly common in Devon. The term cul-de-sac is considered to refer to the fact that maintenance of the highway ceased at a certain point as the lanes did physically exist to connect with another county road at point W on the parish boundary.

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

3.9.1 The survey of paths in 1950 to be included on the new definitive map in Bampton was undertaken by Messrs A Seward, W Gregory, J Yeo, D Vicary, F Webber, R Tonkin and L Burnett. Neither of proposals 4 or 5 were included in the list of paths proposed to be included.

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

3.10.1 The Parish Council in 1968 and Town Council in 1977 did not make any proposals for the addition of either of the two lanes in these uncompleted reviews.

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

3.11.1 On the 1946-1949 aerial photography, the southern two thirds of proposal 4 is a lane with the hedges neat and the surface of the lane visible except for the blurred photography near point X. There are hedgerow trees near Giffords Farm. Except for the section with blurred photography, the whole of proposal 5 is visible with neat trimmed hedges and a visible lane between.

3.11.2 In 1999-2000 the surface of the lane for proposal 4 is now hidden by hedgerow trees. The northern two thirds of proposal 5 is clearly visible still although some additional tree planting east of points X and W have obscured the southern section of the route. In the most recent aerial photography, some of proposal 4 is visible in the centre section and the surface of proposal 5 is clearer with the west side hedge appearing less prominent.

### **3.12 Land Registry**

3.12.1 The whole of proposal 4 and the southern end of proposal 5 are included within title number DN564598 described as Bampton Down, understood to be owned by Huntsham Estate Trustees and appears to have been first registered in 2008. The remainder of proposal 5 including the section of the unclassified county road is

# Agenda Item 10

registered under title DN566698, Huntsham Barton with the same ownership details and year of first registration recorded. Neither of the title registers makes any reference to any rights of way or otherwise with respect to the sections of proposals 4 and 5 included within the titles.

## **3.13 Other Consultation Responses**

- 3.13.1 A trustee of the Bampton Heritage and Visitor Centre, who are in the course of updating and reprinting the booklet of local walks called 'Bampton Bounds', commented that they would greatly value the addition of the two bridleways detailed as proposals 4 and 5 in the consultation notice.
- 3.13.2 Several local residents had contacted the County Council in response to the Definitive Map Review consultation for the parish. One of these commented that they would welcome the proposal to add two additional bridleways (proposals 4 and 5) but did not give any evidence of use.

## **4. User Evidence**

- 4.1 A number of user evidence forms were received for both proposals with most of the users having used both routes. With regards to proposal 5, eleven user evidence forms were received. The forms covered a period of use dating from 1983 to the present time (2019). Six of the users had used the route on foot, three on horseback and on foot and two users on foot, horseback and when cycling. The frequency of use ranged from ten times a year to maybe once a year. None of the users had ever obtained permission to use the route or reported of being stopped or turned back. Users considered the lane to be a bridleway or restricted byway.
- 4.2 Reasons for believing the route to be public included 'It has been used by locals since we moved here in 1993', 'it is regularly used by many people', 'have not been told otherwise' and 'proper track – never been questioned'. As well as the user evidence forms, an email was also received confirming use of the route on foot and horse from 1979.
- 4.3 With regards to proposal 4, eleven user evidence forms and one email advising of use were also received, although one user had only used the route once, on foot, in 2001. As for proposal 5, use was on foot, horseback or with a bicycle and dated from 1983 to 2019 with frequency (apart from the one time user) being from once a year to ten plus times a year. Reasons for believing to be public were as for proposal 5 and none of the users advised of having permission or being stopped or turned back when using the lane.
- 4.4 A tracking application called Strava (app) is used by runners, cyclists and walkers to log their routes taken and their distance and speed when walking, running or cycling. Using information uploaded by users, Strava publishes 'heat maps' of the routes used by their subscribers. A copy of the heat map for the Bampton area viewed in July 2019 showed that both proposals 4 and 5 had been used by Strava users with walkers/runners tending to use proposal 5 more than proposal 4, although cyclists had used both routes with about the same frequency. The various colours used on the heat map corresponding to the frequency of use by the app users. Although the identity and number of these users is not known, it is considered more likely that people operating Strava would have been doing so whilst undertaking leisure activities as opposed to using the routes in the course of their work or other business activities.



## **5 Landowner Evidence**

- 5.1 The landowners/occupiers who owned land crossed by or adjacent to the two proposals together with those at Dowhills and Giffords Farms were contacted individually and advised of the proposals. They were invited to submit their comments and information by way of a completed landowner evidence form or otherwise.
- 5.2 Ms Kaye of Giffords responded but as the proposal did not cross or adjoin her land no comments were made.
- 5.3 An email was received from Savills, advising that they act for the Huntsham Estate, but no additional response or comments were received. No responses were received from the other landowners, occupiers or named trustees contacted in respect of this route.

## **6. Rebuttal Evidence**

- 6.1 Near the northern end of proposal 4 south of point Z, an old sign nailed to a tree on top of the west side hedge bank, now slipped and hanging vertically instead of horizontally, says 'Pheasants. Please keep dogs on leads. Thank you. Game & Country Enterprises Ltd'. In the woods to the east of proposal 4 there are some pheasant rearing pens that do not appear to have been used in recent years. The company Game & Country Enterprises Ltd was incorporated in 2000 and dissolved in October 2011. The sign does not refer to the lane being private or raise a question of public access but requests that dogs are kept on leads near the pheasant pens.

## **7 Discussion**

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

- 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. As there has not been a calling into question of the public's use of either proposal the proposals do not fall to be considered under statute.

### **Common Law**

- 7.2 A claim for adding a 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 and that the public has accepted the dedication.
- 7.3 Greenwoods map 1825, the Tithe Map 1844 and 1<sup>st</sup> Edition 1" OS map 1809 all show both proposals in a similar manner to the surrounding lanes that are today county roads. At the time of these maps the shortest route to Huntsham from Bampton would have been via the roads eastwards from Bampton passing

# Agenda Item 10

Sparkhayne and Wick farms before turning southwards at Giffords (point Z) and using proposal 4 towards Bampton Down Cross (point W) and onto Huntsham. If travelling from Shillingford in the north of the parish or the northern parish of Morebath, the most direct route to Huntsham would have been via Dowhills Farm (and point Y) and then proposal 5 to Bampton Down Cross.

- 7.4 When the new road to Huntsham was constructed by the Huntsham Estate in Bampton parish in the mid-1850s it would appear this became the preferred route between Bampton to Huntsham, particularly in the 20th century following the development of motorised vehicles, as this was a wider, more level route and after adoption was maintained to a better standard as a 'main road'.
- 7.5 By publication of the OS 1" and 25" maps of the late 19<sup>th</sup> century both proposals are shown as defined hedged or fenced lanes throughout following the creation of fields within the section of Bampton Down Common between the two proposals. The section of lane connecting Giffords and Dowhills is now shown and this section of lane was adopted as maintainable highway in the 1940s. On the OS 25" 1<sup>st</sup> edition both proposals have separate compartment numbers and areas. On the OS 1" map in 1899 proposal 5 was a metalled road, second class with proposal 4 a metalled road third class but by the 1919 edition both proposals were now uncoloured lanes (roads under 14' wide – indifferent or bad winding road).
- 7.6 On the OS 1" maps of 1946 to 1965 the proposals are shown as roads under 14' metalling in 1946 and as unmetalled roads in 1960 and 1965. On the OS 1:25,000 map of 1950 both proposals are shown in a similar manner to the county roads they connect to at points W and Z and as other roads, poor or unmetalled in the map key. Overall the mapping evidence is consistent over time to show the two proposals in the manner of being public roads at the time of the maps' publication dates or at least routes that were available to and appeared to have been used by the public. The depiction of the proposals on the maps corresponds with the reduction of importance of the routes as access to Huntsham over time and consequently the reduced maintenance and condition of the lanes. Historically, the map evidence shows both proposals in a manner similar to what are now the public highways of today.
- 7.7 On the 1910 Finance Act proposal 5 from points Y to X together with the section of unclassified county road between point Y and Dowhills lie within hereditament number 343, with the colouring across the boundary breaking at point X. The field book for hereditament 343 includes an allowance of £24 for F.P. & r/o/w over lane. The lane reference could be to proposal 5 and the section of unclassified county road or to Bridleway No. 4, Bampton north west of Dowhills Farm.
- 7.8 With regard to proposal 4 the colouring breaks across the lane where the boundary of hereditament 352 crosses the lane. Hereditament number 361, adjacent to the south western side of proposal 4 includes a note re 'a road adjoining Bampton Down' which could refer to proposal 4 and 5 along the north eastern boundary of the hereditament or to Bridleway No. 25, Bampton running along the southern boundary. The breaking of the hereditament colouring across the boundaries is supportive that both lanes were considered to be public at that time. The reference to right of way over lane and public road could refer to the proposal routes and is also supportive of the routes' public status.
- 7.9 Bampton Vestry and then from 1894 Bampton Urban District Council (BUDC) were the authority responsible for the maintenance of the roads within the parish from prior to the available vestry minutes of 1763 until 1935. During the later half of the

19<sup>th</sup> century and early 20<sup>th</sup> century the Council would put out to tender for the upkeep of the parish main and other roads for a period of time. In the tender notice of 1901, the description of the sections of roads 'from Dowell's Farm to Bampton Down' in division 5 and of 'the Sparkhayne road by Gifford's Farm to Bampton Down' in division 4 of the list of roads included in the tender list, are considered to refer to proposals 5 and 4 respectively as these are the only lanes/tracks shown on any maps between the two farmsteads and Bampton Down. This is evidence that the two routes were maintained by the local ratepayers and at public expense at that time.

- 7.10 In the OS Name Book of 1901, Bampton Down Cross is described as a cross roads on Bampton Down and signed for by the District Surveyor. If only Bampton Down Road running southwards to Huntsham from Bampton Down Cross (point W) was considered to be a public road at that time; it is considered unlikely that Bampton Down Cross would be described as a cross roads. Bampton Down Road is also described as extending from junction of roads (point W) in an OS name book.
- 7.11 Additional references of public maintenance of proposal 4 are found in the parish minutes press reports of 1920 when it was reported that the road Giffords to Bampton Down as 'badly washed'. The parish Surveyor was given permission to place 40 yards of ballast on the Bampton Down Road, near Gifford's Farm. This description is considered to refer to proposal 4 as reference is made to Bampton Down.
- 7.12 After a councillor made a proposal in 1924 that Bampton Urban District Council (BUDC) should cease maintaining a particular parish road, it was considered that there were several other roads that could be considered at the same time. At subsequent meetings the parish Surveyor submitted a list of the recent cost spent on the roads that he considered unnecessary to maintain and their mileage. The seven roads proposed included the road described as Huntsham to Bampton Down or Bampton Down Road (part) (228 metres £1 16s 10d) and lane near Giffords House towards Bampton Down or Giffords Lane (part) (201 metres £5 2s 6d).
- 7.13 These descriptions are deemed to include the section of the unclassified county road between Dowhills and point Y (which is about 220 metres) and the northern end of proposal 4 between points G and Z (about 200 metres). The inclusion of the word 'part' in the descriptions of Bampton Down Road and Giffords Lane indicates that it was acknowledged at that time that the council did not maintain the whole length of these routes to the parish boundary with Huntsham. The length that was being maintained by the parish would correspond to the lengths that were as shown as hedged/fenced lanes on the Tithe Map 1844 and OS 1" 1<sup>st</sup> edition map of 1809-1900. This was the northern section of proposal 4 and the section of unclassified county road between Dowhills and point Y. The southern ends of proposal 4 and proposal 5 prior to the later 19<sup>th</sup> century, both crossed unenclosed common land as unfenced/unhedged tracks.
- 7.14 In June 1934 it was reported to the BUDC that Giffords Lane was in a deplorable condition. Although not named on any maps as Giffords Lane, the name could apply to proposal 4, although in 1947 parish minutes, the county road between Wick and Giffords Farm was referred to as Giffords Lane. If the publicly maintained road did not continue south of Giffords, it would seem unlikely that the council would spend money on maintaining what would have been a private access to Giffords Farm only. The continuation of the public highway north of Giffords (point Z) was not adopted until 1947.

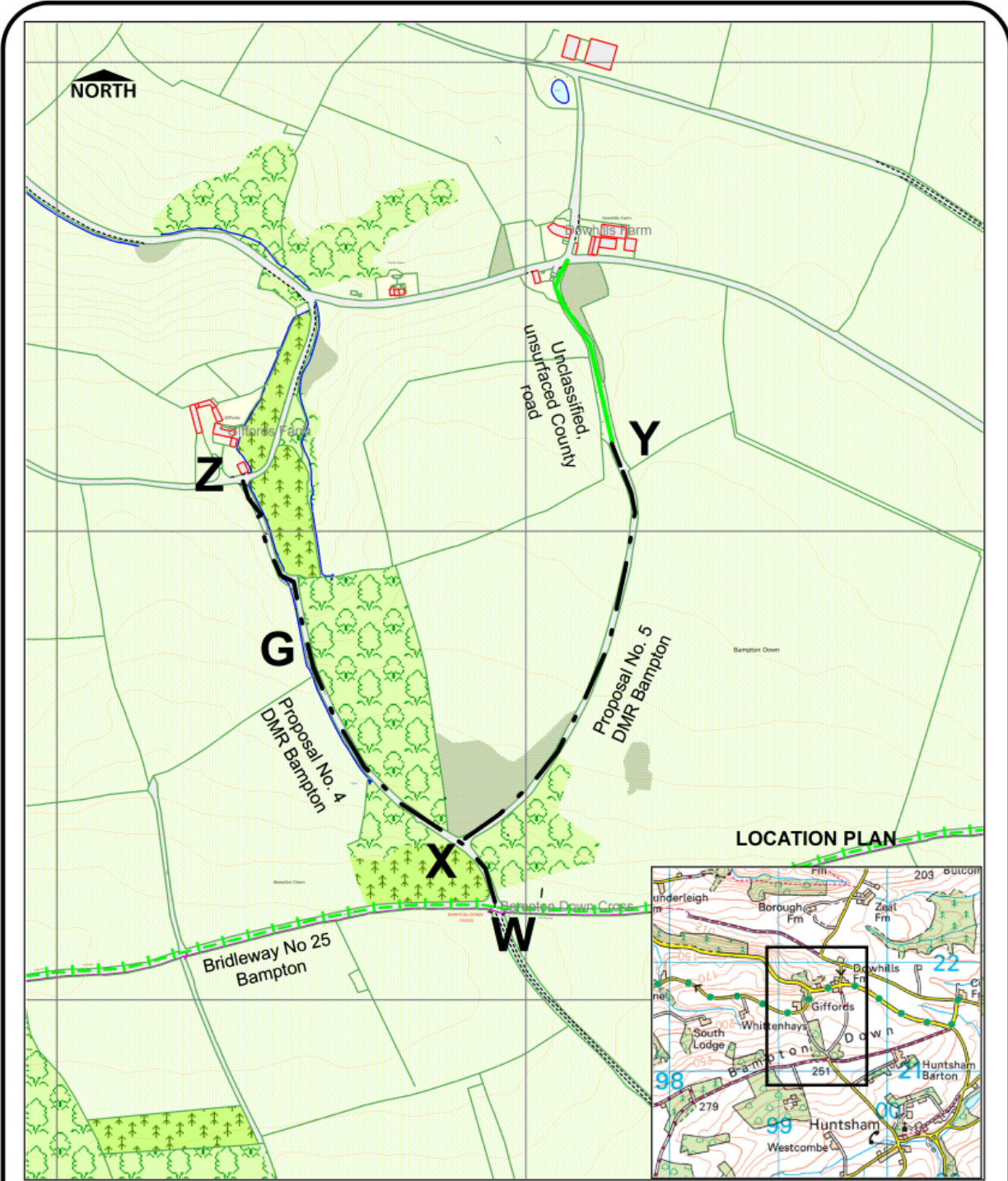
# Agenda Item 10

- 7.15 In 1944, when the now Bampton Parish Council had the opportunity to list any roads considered unnecessary to the public, they did not propose any roads that should cease to be maintained in the parish.
- 7.16 The proposals were not included in the 1947 handed over records and the end of the unclassified roads west of point Z and south of point Y were noted as cul-de-sacs. However, the end of the road at point Z was described as a 'road junction' indicating that a road or roads did continue from that point.
- 7.17 The user evidence forms received in the consultation period for both proposals shows evidence by the public on foot, horseback and bicycle from 1983 to the present day. The frequency of use is fairly low as the maximum advised is ten plus times a year but overall the user evidence is sufficient to show reasonable use by the public to support the status of the proposals as public rights of way. No users reported been stopped or challenged during their use of the routes. The old sign on proposal 4 would indicate that the tenants, of the adjacent land for pheasant rearing at that time, were aware of use by the public as they requested dogs to be kept on leads.
- 7.18 No comments or evidence has been received from the landowners or current occupiers to indicate that the proposals are not considered to have public rights of way.
- 7.19 The addition of the two proposals as public bridleways is supported by the Town Council and the local Ramblers Association representative. The addition of the lanes as public rights of way was also proposed by the West Somerset Ramblers Association in 2004 as part of the Devon County Council's Rights of Way Improvement Plan consultation.
- 7.20 Overall the documentary evidence is considered to show that at some time in the past and by an unknown landowner, public rights of way have been dedicated over the two proposals at common law and acceptance of the public right of way is supported by the user evidence received.

## **8. Conclusion**

- 8.1 In the absence of any calling into question of the public's use of the two proposals the existence of a public right of way cannot be considered under section 31 of the Highways Act 1980. The existence of public rights of way are therefore considered at common law. The user evidence supports bridleway status but overall the documentary evidence is considered to show that both proposals were considered to be and to some extent maintained, as all-purpose parish highways in the past. Therefore, higher rights than those of bridleway can be reasonably alleged to subsist.
- 8.2 The Natural Environment & Rural Communities Act of 2006 prevents the lanes being recorded as Byways Open to All Traffic and none of the exceptions to prevent extinguishment of rights for mechanically propelled vehicles are considered to apply. Private rights for motorised vehicles will continue as currently for landowners and occupiers.
- 8.3 It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement by adding Restricted Byways between points Y - X - W and points X - G - Z as shown on drawing number HIW/PROW/19/012a.





Map Ref SS 9921 500m grid

Contains Ordnance Survey data. © Crown copyright and database rights 2019. 100019783

**DEVON COUNTY COUNCIL  
 DEFINITIVE MAP REVIEW - BAMPTON  
 PROPOSALS NOS. 5 & 4  
 ADDITION OF RESTRICTED BYWAYS FROM  
 BAMPTON DOWN CROSS TO  
 GIFFORDS AND DOWHILLS FARMS**

Notation Addition of Restricted Byways **— · —**  
 Y - X - W & X - G - Z (540m & 470m approx)

Existing Public Bridleway **- - - -**  
 Unsurfaced County Road **— — — —**

drawing number HIW/PROW/19/012a

date Sep 2019

scale 1:6,000 at A4

drawn by TW

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





HIW/19/91

Public Rights of Way Committee  
12 November 2019

## **Definitive Map Review 2019 Parish of Oakford**

Report of the Chief Officer of 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 a Modification Order be made to modify the Definitive Statement by deleting the section describing the route of Footpath No. 6, Oakford between points A – B as shown on drawing number HIW/PROW/19/40 (proposal 1).

### **1. Introduction**

The report examines the only proposal arising out of the Definitive Map Review in the parish of Oakford, in Mid Devon.

### **2. Background**

The original parish survey, under s.27 of the National Parks and Access to the Countryside Act 1949 completed in the Autumn of 1950, initially proposed 12 routes (10 footpaths and 2 bridleways) for consideration as public rights of way. After review by Tiverton District Rural Council and Devon County Council and publication of the draft and provisional maps, all 12 routes were recorded on the conclusive Definitive Map for Tiverton District Council published in June 1964.

In the Devon County Council uncompleted review of 1968, the parish suggested that the lane to Lower Westcott should be a county road. The DCC surveyor did not agree and no change was made.

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

During the Devon County Council uncompleted review of 1977, it was suggested that the wording be amended of the statement for Footpath No. 2, Oakford at Westcott. No action was taken at that time and the path statements will be reviewed when the Definitive Map is consolidated on completion of the Definitive Map Review across the county.

The following Orders have been made and confirmed in the Parish since 1964.

Mid Devon District Council Footpath No. 8 Public Path Diversion Order 1977  
Mid Devon District Council Footpath No. 4 Public Path Diversion Order 1999  
Mid Devon District Council Footpath No. 11 Public Path Diversion Order 1999  
Devon County Council Footpath No. 5a Public Path Diversion Order 2006

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

# Agenda Item 11

The current review was opened with a parish public meeting in April 2019 held as part of the annual Parish Meeting in the village hall at Oakford, which was well attended by parishioners and councillors. The consultation map with the one proposal for change in respect of the anomaly found in respect of Footpath No. 6 was published in August 2019.

## 3. Proposals

During a review of the parish records prior to the opening meeting it was noticed that an anomaly existed with respect to Footpath No. 6, Oakford. The path statement for this footpath described an additional section of the footpath that was not shown on the Definitive Map. This anomaly was therefore a proposal for investigation under the review in the parish.

No other valid proposals for consideration under the definitive map review were received from parishioners or members of the public. The definitive map review consultation map for Oakford was accordingly published with the one proposal for change in respect of the anomaly between the map and statement for Footpath No. 6, Oakford.

## 4. Consultations

Public consultation for the Definitive Map Review in the parish was carried out in August and September 2019. The review was advertised in the Oakford newsletter, in a local newspaper and on and in the vicinity of Footpath No. 6, Oakford. General consultations have been carried out with the following results in respect of the proposal considered in this report.

The responses were as follows:-

County Councillor P Colthorpe	-	no comment
Mid Devon District Council	-	no comment
Oakford Parish Council	-	consider map correct
British Horse Society	-	no comment
Devon Green Lanes Group	-	no comment
Ramblers' Association	-	no objection
Trail Riders' Fellowship	-	no comment
Cycling UK	-	no comment

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

## 5. Financial Considerations

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

## 6. Legal Considerations

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

## 7. Risk Management Considerations

No risks have been identified.



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

Equality, environmental impact (including climate change) 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 modifying the path statement in respect of Footpath No. 6, Oakford. Should any further valid claims 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 Recommendation

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

tw141019pra  
sc/cr/DMR Parish of Oakford  
02 041119

# Agenda Item 11

## Appendix I To HIW/19/91

### 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.

## Proposal 1: Proposed Variation of particulars for Footpath No. 6, Oakford

**Recommendation: It is recommended that a Modification Order be made to modify the Definitive Statement by deleting the section describing the route of Footpath No. 6, Oakford between points A – B as shown on drawing number HIW/PROW/19/40.**

### 1 Background

- 1.1 The Definitive Map Statement for Footpath No. 6, Oakford describes the path as *'It starts at Crosspark Hill, Class III County road, and proceeds in a north-easterly direction to Greenslades thence northwards across one field to join the Unclassified County road, High Way. **Starts again on the opposite side of the road, continuing north-east passing on the eastern side of Upcott to end at the Class I County road A.361, east of the entrance to Upcott Farm**'.*
- 1.2 However, on the Definitive Map only the first section of the path is shown between Crosspark Hill and the road known as High Way or High Way Lane. The second part of the footpath, in bold above, is not shown on the Definitive Map. This is an anomaly and the footpath was accordingly included as a proposal for change when the Definitive Map Review commenced in Oakford.

### 2 Description of the Route

- 2.1 The first part of the footpath that is shown on the Definitive Map starts on Crosspark Hill just north of the village centre and north of Cross Park house and proceeds north eastwards along a stoned track, which is also the access track to Greenslade Cottages. Just before the cottages the route bears northwards, goes through a field gate and continues northwards uphill across a field to another field gate and to the county road known as High Way.
- 2.2 The section of footpath that is not recorded on the map but described in the statement starts on the county road known as High Way opposite the field gate at point A and proceeds north eastwards across a paddock and field to point B, on the now B3227 county road and east of the old entrance (which is now considerably grown in and unused) to Upcott Farm.
- 2.3 The total length of the section described in the statement but not shown on the map is about 296 metres. The route has a surface with a small section of concrete drive just north of point A and of earth/grass for the rest of the route across the paddock and field.

### 3 Consultation Responses

- 3.1 Oakford Parish Council advised that they support the removal of the additional section of footpath described in the path statement and consider that the map is correct as it is.
- 3.2 The Tiverton Footpaths Officer for the Ramblers Association advised that they did not have any objections to the proposal. The Oakford P3 (DCC Public Paths Partnership) representative advised that he was not aware of anyone who can say that they ever walked this route.

# Agenda Item 11

## 4 Documentary Evidence

### 4.1 Ordnance Survey and Other Maps

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

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

This large scale mapping shows a double pecked line along the route of the southern section of footpath, that is shown on the definitive map. The pecked line is labelled F.P. No pecked line is shown across the fields between points A and B. An unfenced track is now shown to Upcott Farm buildings from point A and a line across the end of this track at point A would indicate the presence of a gate.

### 4.3 OS 1:25,000 maps of Great Britain – Sheet 21/92 SS92 Published 1950

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

4.4 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. This edition was however, published in 1950, which was the year that the parish survey of paths was completed by the parish council. 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'.

4.5 The map shows a pecked line along the section of the now recorded Footpath No. 6, Oakford that is shown on the Definitive Map which is labelled F.P. No line or other mark is shown on the map along the route of the section of footpath described in the statement (points A to B) and not shown on the map.

### 4.6 OS Post War Mapping 1:2,500 Scale 1970

On this map a double pecked track is shown along the first part of Footpath No. 6 between Crosspark Hill and Greenslades Cottages. No other tracks or paths are shown for the section of Footpath No. 6 from Greenslades to High Way Lane or along the route of the missing section of footpath from point A to point B.

### 4.7 Oakford Tithe Map 1840 and Apportionment 1841

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.

4.8 On the Oakford Tithe Map the fields layout for the southern section of the footpath that is recorded on the map is the same as the present day. The building of the nowadays Greenslade Cottages is shown and described as house, barn, Courtlage and garden. No track is shown on the map either leading to the buildings or along the line of the current public footpath. The two fields are pasture and meadow in the apportionment with no reference to a footpath.

- 4.9 In respect of the unmapped northern extension to the footpath, the house and building at Upcott are generally as at present. There is no track shown to Upcott to the south and the main entrance would appear to be the lane running north east from the buildings to the main road. The un-mapped section of Footpath No. 6 would pass across field numbers 1201 and 1203, both arable. There is no line shown on the map between the field 1201 and the road at point A, indicating that there was not a gate or other barrier here. There is no track shown across the fields and no reference to a footpath in the apportionment.
- 4.10 Finance Act Plans and Field Books 1910  
The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.
- 4.11 Both parts of Footpath No. 6 included in the map statement would be on land included within hereditament number 36; Upcott Farm, 175 acres owned by J Daniel add occupied by C Summers. The 2<sup>nd</sup> Edition OS 25" to a mile maps used for the survey include a double pecked line labelled F.P. along the line of the southern section of Footpath No. 6 by Greenslades cottages. No pecked or other line is shown on the northern un-mapped section. The field book refers to 'Footpath Ord No. 835. 10/- x 35. £13' Ordnance (field) number 835 is to the west of Upcott Farm buildings and the map does show a double pecked line labelled F.P. along the field's eastern headland. This path is now recorded as part of Footpath No. 5a, Oakford. No further allowances have been given for public rights of way or user in the field book for Upcott.
- 4.12 Oakford Vestry and Parish Council Minutes  
Oakford Vestry minutes for the period 1844 to 1889 and Oakford Parish Council Minutes for the period 1894 to 1971 are held at the Devon Heritage Centre. Mr C Summers senior and junior (of Upcott Farm) were members of the parish council between 1894 to 1940 and 1935 to 1949 respectively. The minutes show that the parish council were aware of public rights of way and had maintained footbridges in the parish on paths that were subsequently included on the Definitive Map.
- 4.13 In 1946 a Mr Kemp asked the Parish Council's help in making a list of Church paths, Postman's' paths in the parish. Reverend Kelly put forward a list of church paths which was accepted by members present. A list of the paths was not included within the minutes. In September 1950 a meeting was held to discuss the footpaths and the Chairman brought the maps showing what rights of way would be claimed by the parish council. Arrangements were also made to walk the final paths to be claimed. A list of the paths was not included in the minutes.
- 4.14 In December 1953 a letter was received from Somerset County Council regarding paths between Oakford and Brushford (bordering the north of Oakford parish) not claimed by Oakford parish council. The letter referred to a path number 6 but this related to the Brushford parish claimed number 6 and not the footpath number 6

# Agenda Item 11

claimed by Oakford. In October 1957 it was reported that the chairman, Mr Dascombe, and clerk had met with the assistant secretary for the Devon County Footpath Association at Oakford. The suggested paths had been accepted. In June 1964 it was reported that the rights of way footpath map was now on deposit and in March 1971 that apart from a reference to Westcott Lane (in the west of the parish), the meeting was satisfied with the registered footpaths as shown on the map.

- 4.15 Within the vestry and parish council minute books viewed no references have been found relating to a footpath at or near to Upcott Farm.
- 4.16 Parish Survey under National Parks and Access to the Countryside Act 1949  
The original parish survey, under s. 27 of the National Parks and Access to the Countryside Act 1949, was undertaken by Messrs W Boundy, H Dascombe, T Folland, G Nott & J Thorne in 1950 with the survey forms completed by the parish clerk in October 1950.
- 4.17 Footpath No. 6, Oakford was surveyed by Mr J Thorne. The survey form noted 'Whether likely to be disputed' was answered 'No'; 'Whether path required in future' was answered 'Yes'; 'Grounds for believing path to be public' was answered 'Path is used everyday by the public' and 'Who has repaired path in past' was answered 'Mr Summers Upcott Farm'. On the remarks section of the survey form was written 'As this path is used everyday by the people who live at Greenslades the path is excellent. Whenever repairs are required the owner of the property at Greenslades carries it out. Greenslades being the farm cottages belonging to Upcott Farm'.
- 4.18 The General Description of the path on the front of the form was 'From Crosspark to Greenslades, to High Way Lane, To Upcott Farm'. The County Surveyors remarks and queries were 'as per Path No 1'. These were 'Information Required. 1) Status of Path (whether F.P., Bridleway or Road used a Public Path) and 2) Further description of the route, query types of fields crossed & gates, stiles or footbridges along it & private accommodation roads crossed by path).
- 4.19 On the parish survey map that was completed by the parish council together with the survey forms, the section of Footpath No. 6, Oakford that is recorded on the Definitive Map is shown as a blue solid line from Cross Park Hill to the county road called High Way via Greenslades. A solid blue line continues from the road High Way to the buildings of Upcott Farm but no further. A dashed purple line is shown across the field south east of Upcott, from points A to B. Next to this purple dashed line is written in pencil 'Pte'. The writing is in the same hand as the County Surveyor's notes on the parish survey forms and understood to have been added to the parish map after it had been returned to the County Council. The note is an abbreviation for the word 'private'.
- 4.20 Within the parish survey papers held at county hall there is a blue sheet of paper with notes in pencil on each of the paths proposed by the parish. The handwriting appears to be that of the County Surveyor. For path 6 is written ' From UC Road (High Way) to Upcott Farm is there a R.O.W. thro to A361 if not cancel path (northern section) and add new length to (*m stone?*) A361. Next to the writing is a purple tick in the same colour as the dashed line shown on the parish survey map. Also next to the last sentence starting 'if not ...' is a pencil box with the word 'Pte' written in it.
- 4.21 The type list of path statements for Oakford included in the survey file describes the route of Footpath No. 6, Oakford as per the current statement. The list is not headed by a paragraph 'As agreed with the parish clerk on ...' or dated as is common on

other similar types of lists of parish path statements for other parishes in the Tiverton Rural District Council area.

- 4.22 The draft Definitive Map and Statement would have been forwarded to the parish council in April 1958 and the provisional map in June 1963. The path statements were sent to the parish council together with the parish map showing the rights of way proposed. It would appear that the omission from the draft and provisional maps of the additional section of Footpath No. 6 described in the statement was not noticed by the parish nor by any officers in the district or county councils. The Definitive map was accordingly published in June 1964 including the additional section of footpath on the statement for Footpath No. 6 Oakford.
- 4.23 Devon County Uncompleted Reviews of 1968 & 1977  
In May 1971 the parish council wrote that a parish meeting was held on 18<sup>th</sup> March. The minutes recorded that as no roads used as public paths were shown on the map question 1 did not apply. With regard to question 2 the council advised that no bridleways or footpaths should be re-designated with the exception of Footpath 2 which should be shown as a county road to Lower Westcott.
- 4.24 In the review of 1977, the parish council advised that the statement of Footpath No. 2, Oakford required slight re-wording and proposed an alternative. No other proposals were made.
- 4.25 Aerial Photography 1946 – 2015  
On the 1946 aerial photography a track can be seen from Crosspark Hill across to Greenslade Cottages and from the cottages north to the county road, known as High Way, south of point A. No signs of any track can be seen across the two fields between points A and B and there is also no sign of any gap in the hedge at the point a user would have had to go through the hedge to reach point B. The new entrance track to Upcott from point A is clearly visible as is the hedged lane access running north east from Upcott. The surface of this lane is visible and south eastern hedge neatly trimmed.
- 4.26 By the 1999 photograph the paddock has been fenced adjacent to the buildings at Upcott. There is a visible track across the field from point A but this goes to the farm building now constructed south west of point B and does not follow a line between points A and B. The entrance track to Upcott by point A appears ungated. On the lane entrance to Upcott near point B, the hedgerow trees have grown and the lane surface cannot be seen.
- 4.27 Land Registry  
The unmapped section of the footpath from Point A to Point B is registered to Mrs Summers of Crosspark and Mr & Mrs Rolfe of Jasmine Cottage. The property register for Jasmine Cottage includes reference to covenants included within the conveyance of Upcott Farm in January 1991. One of the covenants states 'within three months from the date hereof to erect a gate at point E on plan number 1 and thereafter to maintain same'. Point E on the title plan is located just north of point A on the proposal plan.
- 4.28 The property register for land at Upcott Farm (the remainder of the land crossed by the proposal, points A to B) includes reference to the conveyance dated January 1991. This includes a right of way for all times for all purposes over the land comprising a section of the southern entrance driveway to Upcott Farm. This refers to the southern section of driveway north of point A. The conveyance also includes for the erection of a gate within three months at point E on plan 1. The plan attached

# Agenda Item 11

to the conveyance notes ' Point E: New gate to be provided by vendor for his own use to provide access to OS 1482 – Right of way to be reserved over section of drive.'

- 4.29 Nether title register make any reference to any private or public rights of access over the route of the proposal.

## **5 User Evidence**

- 5.1 There has been no evidence found to indicate any use by the public of the unmapped section of the footpath and no user evidence has been received. No other reports have been received of any use by the public.

## **6 Landowner Evidence**

- 6.1 The two landowners who owned the land crossed by the section of path between points A and B were contacted, informed of the proposal and asked for any comments or evidence relating to the anomaly.
- 6.2 Mr & Mrs Rolfe own the paddock crossed by the proposal which adjoins their cottage at Upcott. They have owned and resided at the cottage for nine years and have never seen or being aware of anyone trying to walk across the field. They do not believe the way to be public. During their ownership no gates or stiles have existed in their paddock boundary fences to permit use along the proposed route.
- 6.3 Mrs Summers owns the field crossed by the route point A to point B which was formally part of Upcott Farm and purchased by her father-in-law in 1926 as the current tenant. Mrs Summers moved to Upcott Farm on her marriage in 1951. Mrs Summers is aware of the section of Footpath No. 6, Oakford as shown by the dashed line on the plan and had always understood that it ended at the county road High Way. Throughout her time at Upcott Farm and latterly at a property in the village she is not aware of anybody trying to walk or of walking the route A to B or of claiming the route to be a public footpath. She commented that no one had ever used it or tried to use it and does not believe the route shown on the plan to be a public right of way
- 6.4 Mrs Summers also advised that it was only in 1991, when the Upcott Farmhouse, buildings and land to the northwest of the farm was sold away, that a gateway was created at point B on the plan. The new gateway was required as they needed access to the land they still owned and farmed across the B3227, north of point B. Prior to then the only access to the B3227 from Upcott Farm was by using the old lane between the farm and the road. There is also no gate near point A to permit access to the field.
- 6.5 Mrs Summers' daughter had also contacted the Council to advise that her mother, sister or herself can ever remember there being a footpath as shown on the plan between points A and B. There was never a gate, stile or any other entrance through the hedge at point A until the farmhouse and that entrance drive from High Way was sold off in 1991. A new gateway was then constructed to give access to the field. As there was no entrance enabling access this could not have been the start of any footpath into the field. Her grandfather purchased Upcott Farm in 1926 and having looked at the maps and searches from that time there is no evidence that there was ever a footpath as marked on your map.



## 7 Rebuttal Evidence

- 7.1 No other evidence apart from that included in this report has been received either in favour of the additional section of the footpath being added to the map or for the additional section within the statement to be deleted.

## 8 Discussion

- 8.1 A claim for a public right of way can arise through use by the public under section 31 of the Highways Act 1980, if twenty years use can be shown after the public's use of the route is called into question. A claim for a right of way may also 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. A public right of way can also be deleted from the map if there is evidence to show that a mistake was made, at the time the path was added to the definitive map and that the path or way was never a public right of way.
- 8.2 A route described on the statement but not shown on the final Definitive Map is an anomaly and as such amounts to an event under s.53 (3)(c)(iii) of the Wildlife and Countryside Act, 1981, that particulars contained in the map and statement require modification to resolve the differences between the map and statement.
- 8.3 In *R (Norfolk CC) v Secretary of State for the Environment, Food and Rural Affairs* (2005) it was said that in the event of a discrepancy between the map and statement, the matter was to be determined by reference to the evidence presented, with neither the map nor statement having precedence with regard to the weight to be attached to the information on each.
- 8.4 In the latter case of *Kotarski v Secretary of State for the Environment, Food & Rural Affairs and Devon County Council* (2010) the judge, Simon J, concluded 'that the weight to be given to the statement in the absence of depiction of the route on the definitive map was a matter for the Inspector.' The Inspector had considered the weight to be attached to the evidence. The judge also stated that 'Notwithstanding a divergence between them, both the definitive map and the definitive statement are capable of being relevant evidence as to the existence or non-existence of the right of way in a review'.
- 8.5 In dismissing the third ground of the *Kotarski* appeal Simon J said 'The precondition for the exercise of the statutory power of review is the discovery of evidence which (when considered with all other relevant evidence) shows that particulars contained in the map and statement require modification. The discovery that there is a divergence between the two is plainly the discovery of such evidence, and it is unnecessary that it should be characterised as *new evidence*.' In his view it was sufficient that the Council had recently discovered that there was a divergence between the map and statement to bring the case with s 53(3)(c)(iii).
- 8.6 It is therefore necessary to consider all the available evidence to determine whether it is the map or the statement that needs amending. The maps reviewed do not include any reference to a track or path along the line of the missing section of footpath between points A and B. The larger scale OS 25" map of 1880-1890 and OS 1:25,000 map published 1950 both show a pecked line along the route of the section of Footpath No. 6 shown on the definitive map but nothing in respect of the additional section. Although maps do not indicate the status of tracks/lines shown on them, the

# Agenda Item 11

absence of any pecked line or track indicates that there was no visible indication on the ground of a track or path across the fields between points A and B. The Finance Act field book refers to a footpath in a numbered field which is not crossed by either the mapped or unmapped section of Footpath No. 6 and so does not support the existence of a footpath between points A and B.

- 8.7 The Vestry and Parish Council minutes indicate that the parish was aware of public rights of way before the definitive map was compiled. The minutes do not contain any reference to footpaths or rights of way at Upcott Farm. The minutes indicate that the proper procedures were followed in the preparation of the parish survey in 1950 but do not include any reference to individual paths. The parish survey map submitted by the parish council in 1950 recorded path number 6 from Crosspark Hill to High Way and then along the entrance drive to Upcott Farm only and not continuing to the county road (now B3227 was A361). The route was described as 'From Crosspark to Greenslades, to High Way Lane to Upcott Farm'.
- 8.8 It would appear that once the survey forms and maps had been received at the offices of the County Council and/or District Council that the section of the path shown on the map between High Way Lane and Upcott Farm was considered to be private. This was to be expected as this section of path only went to a farm and did not connect to a county road or other public right of way. The section was accordingly deleted and not included as part of Footpath No. 6. However, the surveyor's notes on the paths proposed by the parish include 'is there a ROW thro to A361'. In deciding that the section of path to Upcott Farm is private the surveyor has drawn on the parish survey map the route between points A and B as an alternative route between High Way lane and the A361/B3227. The path statement for Footpath No. 6 then appears to have been written to include this additional section of footpath that was not included by the parish council on their survey map.
- 8.9 The parish council minutes refer to a meeting between the chairman, clerk and assistant secretary of the Devon County Footpath Association but it is not known whether they would have had both maps and statements to consider/review at that meeting. Path statements would have been sent with the draft and provisional definitive maps in 1958 and 1963, but the parish minutes do not indicate whether the availability of these for inspection was widely advertised. By 1950 a member of the Summers family from Upcott Farm was not on the parish council.
- 8.10 The Summers family are believed to have been in occupation of Upcott from before 1894 (when Mr Summers was on the parish council) and definitely from 1910 (Finance Act field book). Mrs C Summers had moved to Upcott Farm in 1951 and both her and her daughters have confirmed that whilst they are aware of the footpath from Crosspark to Greenslades to High Way Lane they have never known a footpath across their fields from High Way Lane to the B3227 (points A to B). They have never seen anyone trying to walk along the proposed route and advise that until recently there was no gate to access the field at point A or a gate near point B to access the main road. This is supported by the conveyance dated January 1991 which requires the vendor (Mr Summers) to erect a gate just north of point A within three months of the sale. Aerial photography from 1946 and later also shows the absence of a gap in the field hedge between points A and B.
- 8.11 Mr & Mrs Rolfe have occupied Jasmine Cottage since 2010 and the paddock fencing between points A and B can be seen on the 1999 aerial photography. They have never seen anyone trying to walk along the proposal route. No user evidence has been received in support of the section between points A and B and there is no evidence to show that this route has ever been used by the public. The Parish

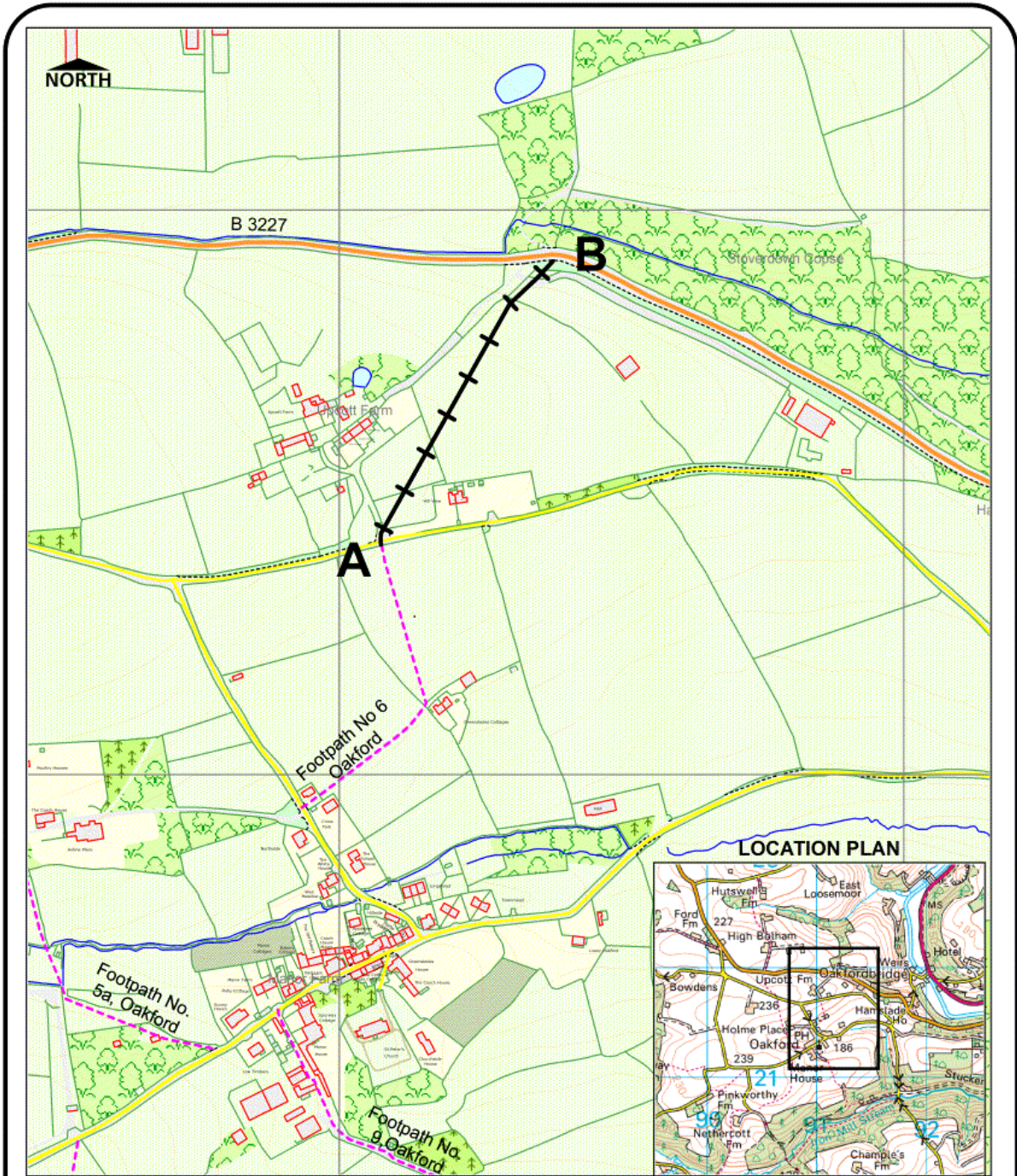
Council and parish P3 representative have never considered the proposal route to be a public right of way or used by the public.

- 8.12 There is no documentary evidence to support the existence of a public right of way between points A and B either in the past or in more recent times. The reason why the additional section of Footpath No. 6, Oakford was added to the survey map and described in the statement by the County Council is not known but it is considered to be an error made in the 1950s that was not discovered until the current review. The anomaly of the divergence between the map and the statement is considered as the discovery of new evidence for the purposes of falling within s 53(3)(c)(iii) of the Wildlife & Countryside Act 1981.

## **9 Conclusion**

- 9.1 The evidence when taken as a whole is not considered to support the subsistence of a public right of way, namely a public footpath, along the unmapped section of Footpath No. 6 from the county road known as High Way Lane to the B3227. On this basis the Statement for the Footpath No. 6, Oakford is considered to be incorrect and requires modification to correct the current anomaly between the Definitive Map and Definitive Statement for this public right of way.
- 9.2 It is therefore recommended that a Modification Order be made to modify the Definitive Statement by deleting the section describing the route of Footpath No. 6, Oakford between points A and B as shown on drawing number HIW/PROW/19/40 (proposal 1).

# Agenda Item 11



Map Ref SS 9121 500m grid

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

**DEVON COUNTY COUNCIL  
DEFINITIVE MAP REVIEW - OAKFORD  
PROPOSAL NO 1  
PROPOSED VARIATION OF PARTICULARS  
FOOTPATH NO. 6, OAKFORD**

drawing number HIW/PROW/19/40

date Jul 2019

scale 1:5,000 at A4

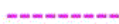
drawn by TW

**Notation**

Proposed Variation of Particulars A - B (296 metres approx)



Existing Public Footpath



**Meg Booth**

CHIEF OFFICER HIGHWAYS,  
INFRASTRUCTURE DEVELOPMENT AND WASTE





HIW/19/92

Public Rights of Way Committee  
12 November 2019

## **Definitive Map Review Parish of Parracombe – Part 2**

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 a Modification Order be made to modify the Definitive Map and Statement by upgrading Parracombe Bridleway No. 5 to a restricted byway between points A – B – C – D – E – F – G, as shown on drawing number HCW/PROW/18/28a in respect of Proposal 2a.

### **1. Introduction**

This report further examines the extension of the second proposal dealt with in the previous parish report of 15 November 2018.

### **2. Background**

This is the second report for the Definitive Map Review in the parish of Parracombe. The background to the Review in Parracombe was discussed in the first report of 15 November 2018.

### **3. Proposals**

Please refer to the appendix to this report.

### **4. Consultations**

General consultations have been carried out with the following results:

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

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

# Agenda Item 12

## **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 (including Climate Change) and Public Health Considerations**

Equality, environmental impact (including climate change) and 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 in respect of Proposal 2a ,by upgrading Parracombe Bridleway No. 5 to a restricted byway between points A – B – C – D – E – F – G, as shown on drawing number HCW/PROW/18/28a.

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 12

## Local Government Act 1972: List of Background Papers

Contact for enquiries: Caroline Gattrell

Room No: ABG Lucombe House

Tel No: 01392 383240

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

cg230919pra  
sc/cr/DMR Parracombe  
03 041119

# Agenda Item 12

## Appendix I To HIW/19/92

### 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:

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.

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.

there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

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

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

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

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



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

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

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

## **B. Definition of *Ratione Tenurae* Roads**

Research into Highway Board, Rural District Council and Parish Council minutes has indicated that '*ratione tenurae*' roads were, from the late 19<sup>th</sup> century types of road expected to be used by the public, but with the adjacent landowners/occupiers of the road/lane being responsible for the maintenance of the roads. Indictment for non-repair could only be brought by and on behalf of, the public.

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

# Agenda Item 12

1. **Proposal 2a: Proposed upgrade of Parracombe Bridleway No. 5 from Church Lane, Churchtown to the A39 Parracombe New Road and from there along Barton Lane and Stony Lane to meet Parracombe Restricted Byway No. 30, a short distance from the county road over Parracombe Common, as shown between points A – B – C – D – E – F – G on plan HIW/PROW/18/28a.**

**Recommendation: That a Modification Order be made in respect of Proposal 2a, to modify the Definitive Map and Statement by upgrading Parracombe Bridleway No. 5 to a restricted byway between points A – B – C – D – E – F – G along Barton and Stony Lanes, between Churchtown and Parracombe Restricted Byway No. 30 on Parracombe Common, as shown on drawing no. HIW/PROW/18/28a.**

## 1.1 Background

- 1.1.1 On examination of our records, it was discovered that there was an anomaly affecting Bridleway No. 5, where it did not continue to meet the minor county road, known as the Chapman Burrows Road over Parracombe Common. This missing link was considered by the Committee at its meeting of 4 March 2019 and it was resolved that a modification order be made to record it as a restricted byway. An order was subsequently made and confirmed for the addition of Restricted Byway No. 30, Parracombe.
- 1.1.2 From research carried out into this anomaly, the evidence discovered appeared to also suggest that Parracombe Bridleway No. 5 perhaps should be recorded with a status higher than that of bridleway.
- 1.1.3 Consequently, at its meeting of 4 March 2019 the Committee resolved that further investigation be made regarding the status of Parracombe Bridleway No. 5 in light of the evidence discovered.

## 1.2 Description of the Route

- 1.2.1 The proposal route starts at point A at the county road, Church Lane at Churchtown and proceeds in an easterly direction past the former St Petrock's Church and Church Cottage (formerly Barton), then in a south easterly direction along Barton Lane past Lady's Well to meet the county road, the A39 Parracombe New Road (Bypass) at point B.
- 1.2.2 It restarts directly opposite on the other side of the A39 and continues generally eastwards along Barton Lane via point C to point D. From point D the route turns and proceeds generally north eastwards along Stony Lane via points E and F to point G, where it meets Proposal 2, now recorded as Parracombe Restricted Byway No. 30, at point G, a short distance from the county road, known as Chapman Burrows Road, which runs over Parracombe Down Common (point H).

## 1.3 Documentary Evidence

### 1.3.1 Ordnance Survey mapping, 1804 onwards

- 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 On the Draft Drawing dated 1804 a route is shown on a similar alignment to Bridleway No. 5, the proposal route between points A – B – C – D – E – F – G and the pre-inclosure alignment of its continuation now recorded as Restricted Byway No. 30, as a through route to Woolhanger, Thornworthy, and beyond to Lynton and Lynmouth.
- 1.3.1.3 A route is shown on a similar alignment to Bridleway No. 5, the proposal route between points A – B – C – D – E – F – G and the pre-inclosure alignment of its continuation now recorded as Parracombe Restricted Byway No. 30 on the 1804 Old Series 1" to 1 mile as a through route to Woolhanger, Thornworthy, and beyond to Lynton and Lynmouth.
- 1.3.1.4 On the later 1<sup>st</sup> Edition 25" scale mapping of 1889 the proposal route, and Parracombe Restricted Byway No. 30, is shown as a continuous enclosed through-route. At that time neither the Lynton and Barnstaple Railway nor the Parracombe Bypass had been constructed.
- 1.3.1.5 On the later 2<sup>nd</sup> Edition 25" scale mapping of 1904, the proposal route, and Parracombe Restricted Byway No. 30, is again shown as a continuous enclosed through-route. By this time the railway has been constructed.
- 1.3.1.6 On the Post War A Edition of 1975 and subsequent mapping the proposal route is shown as an enclosed through-route between points A – B – C – D – E – F – G, but now split at point B by the A39, Parracombe New Road bypass.
- 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 9000 miles of turnpike roads in 1794.
  - 1.3.2.2 A route is shown on a similar alignment to Bridleway No. 5, the proposal route between points A – B – C – D – E – F – G.
- 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. The proposal route is shown as a cross road. Rights of way are generally not shown as the map is too small scale.
  - 1.3.3.2 A route is shown on a similar alignment to Bridleway No. 5, the proposal route between points A – B – C – D – E – F – G.
- 1.3.4 Parracombe Tithe Map and Apportionment, 1838-9**
  - 1.3.4.1 Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, limiting the possibility of errors. Their immediate purpose was to record the official record of boundaries of all tithe areas. Public roads were not titheable and were sometimes coloured, indicating carriageways or driftways. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over a route shown.

# Agenda Item 12

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

1.3.4.3 The proposal route, Parracombe Bridleway No. 5, between points A – B – C – D – E – F is shown. It is coloured sienna, with the section between A – B – C included in hereditament 90 – '*The Green*' owned by William Dovell and occupied by Charles Dovell. This hereditament includes the northern end of Church Lane, now recorded as a county road. The section between C – D – E – F unnumbered.

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

1.3.5.1 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.

1.3.5.2 7<sup>th</sup> July 1859 – Parracombe Down Inclosure. 'I...Thomas Braund Irish, the valuer in the matter of the above Inclosure, do hereby give notice, that the Public Way or Thoroughfare now leading from Woolhanger and the southern part of the parish of Lynton to Parracombe, and extending from the Fordage, north of 'Venus Mires', over the Common or Down to Parracombe Lane-Head, will from Saturday, the 6<sup>th</sup> day of August next, be diverted, as at present niched out in the direction of a tenement called 'Berries', situate in the parish of Martinhoe'. This is part of the original alignment of the proposal route prior to the Parracombe Common Inclosure Award of 1862.

1.3.5.3 31<sup>st</sup> January 1867 – District Highway Board [26.01.1867]. '...The Surveyor's Report...I have given Messers Dovell and Blackmore notice to remove their gates across the highway from the point at Rook's Gate to Parracombe Common, or to put the same 10' wide; and I have also given the same parties notice to repair the said highway...William Tamlyn Surveyor'. This includes the proposal route between points A – B – C – D – E – F – G and Parracombe Restricted Byway No. 30.

1.3.5.4 14<sup>th</sup> March 1867 – Ilfracombe Highway Board. 'Surveyor's Report...The road complained of by Mr Crocombe, leading from Rook's Gate to Highley and Hollardy Estates, [Barton Lane – the proposal route between points A – B – C – D] and also towards Parracombe Common Inclosure, [Stony Lane – the proposal route between points D – E – F – G and Parracombe Restricted Byway No. 30 between points G – H] are not completed. The owners, Messers Dovell

and Blackmore, have promised to do the work to the satisfaction of the complainant and the Surveyor...William Tamlyn Surveyor’.

- 1.3.5.5 18<sup>th</sup> April 1867 – Ilfracombe District Highway Board [08.04.1867]. ‘Surveyor’s Report...Notices given to Messers Dovell and Blackmore for repairing certain roads commencing at Rook’s Gate leading past the parish church [St Petrock’s] towards Highley and Hollardy Estates, [Barton Lane – the proposal route between points A – B – C – D] and also towards Parracombe Common Inclosure, [Stony Lane – the proposal route between points D – E – F – G and Restricted Byway No.30 between points G – H] are not completed...Ordered – That summonses be taken out against Messers Dovell and Blackmore, for not repairing a certain highway in the parish of Parracombe, as per notice served from the Board’.
- 1.3.5.6 16<sup>th</sup> May 1867 – Ilfracombe District Highway Board [07.05.1867]. ‘The following was the Surveyor’s Report...The roads of Messers Dovell and Blackmore of Parracombe, are not completed. They both say they will do if more time be given them...William Tamlyn, District Surveyor...The Surveyor stated that Mr Blackmore had agreed to give him £0/0/6 per perch for forming and repairing his road, in the parish of Parracombe, which he was willing to undertake and carry out. Adopted’. This includes the proposal route between points A – B – C – D – E – F – G and Parracombe Restricted Byway No. 30.
- 1.3.5.7 4<sup>th</sup> July 1867 – Ilfracombe District Highway Board. ‘Surveyor’s Report...Messers Dovell and Blackmore of Parracombe, have repaired their roads very satisfactorily. With regard to the gates, Mr Dovell expressed a wish to have a committee from the Board to view the road, to see how far it is practicable to hang a 10’ gate across this road...William Tamlyn Surveyor...As to the gates, hung across Messers Dovell’s and Blackmore’s roads, that it stand over for consideration to the next meeting of the Board’. This includes the proposal route between points A – B – C – D – E – F – G and Parracombe Restricted Byway No. 30.
- 1.3.5.8 4<sup>th</sup> July 1867 – Ilfracombe District Highway Board. ‘*Messers Dovell and Blackmore of Parracombe have repaired their roads satisfactorily*’. This includes the proposal route between points A – B – C – D – E – F – G and Parracombe Restricted Byway No. 30.

## **1.3.6 Parracombe Common Inclosure Award, 1862**

- 1.3.6.1 Inclosure awards can be evidence of repute of highways at the time they were made. Their significance as evidence depends on the powers given to the relevant Inclosure Commissioners. Awards and maps may provide supporting evidence of other matters, such as the existence of status of a route adjacent to but outside the awarded area. Evaluation of such evidence is considered in the context of the relevant inclosure act.
- 1.3.6.2 The Award states that certain ‘public roads and ways’ were to be ‘discontinued and stopped up’ including ‘a certain public turf road track or occupation way leading from a certain farm called Bartons in the said parish of Parracombe and extending from a certain lane called Stony Lane to the said common or down and passing thence through 2 certain fields or closes of land called the New Grounds part and parcel of a certain farm called Holworthy in the aforesaid parish of Parracombe’. This is the pre-inclosure alignment of Parracombe

# Agenda Item 12

Bridleway No. 5 and Parracombe Restricted Byway No. 30. 'Bartons' Farm is now known as Church Cottage.

1.3.6.3 The Award further states that certain 'public carriage roads or highways' were 'set out and appointed', including 'one other public carriage road or highway of the width of 20 feet to be called the Barton Road commencing at the point marked G and numbered 26 on the said map and extending thence from east to west adjoining old inclosures to and terminating at the point marked H on the said map adjoining a certain lane called Stoney Lane'. This set out the current alignment of the proposal route, Bridleway No. 5, between points F – G, and Restricted Byway No. 30, between points G – H as shown on the plan attached to this report. On such a route, all subjects enjoyed an equal right of vehicular passage.

1.3.6.4 The Award also set and appointed to 'the Churchwardens and Overseers of the Poor of the said parish of Parracombe all that part or parcel of land numbered 25 on the said map containing 2 acres to be held by them and their successors in trust as a place of exercise and recreation for the inhabitants of the said parish and neighbourhood'. This is the area on the southeast corner of point H on the Award adjacent to Parracombe Restricted Byway No. 30.

## 1.3.7 Quarter Sessions Order Books, circa 1862

1.3.7.1 Quarter Sessions records go back a long way, and they may provide conclusive evidence of the stopping up or diversion of highways. Presentments or indictments for the non-repair of highways may also be found here and may provide strong evidence of status where they are confidently identifiable. It should be borne in mind that Quarter Session records are conclusive evidence of those matters the Court actually decided, but are not conclusive in relation to other matters. Reliance on orders alone can be misleading and evidence of completion may be required.

1.3.7.2 Those public carriage roads or highways set out in Parracombe parish which were the subject of the Parracombe Down Inclosure Award of 1862 were noted at the Midsummer Quarter Sessions of 1862 as having been viewed by 2 Justices of the Peace, had been '*sufficiently formed and completed*'. This includes part of the proposal route between points F – G, and the continuation of the proposal route which is now recorded as Parracombe Restricted Byway No. 30 between points G – H.

## 1.3.8 Quarter Sessions Deposited Plan 433: Lynton Railway, 1879

1.3.8.1 The legal deposit of plans or public undertakings was first provided for in the 1793 Standing Orders of the House of Lords. The need for such deposits was recognised following the canal mania of the early 1790s when it became evident that canal bills were being hurried through Parliament without proper scrutiny. Thereafter, promoters were required to submit to the Lords plans of works, books of reference, and other papers before a bill was brought up from the Commons to the Lords. In 1837 an Act compelled the local deposit of plans of public undertakings with the Clerk of the Peace, and therefore available to public inspection.

1.3.8.2 Any of this type of document may provide evidence on crossed or adjacent paths, roads or tracks and therefore could be relevant as evidence in relation to the existence of Highways, particularly if the scheme was constructed.

- 1.3.8.3 The Bill was proposed on the 11<sup>th</sup> November 1878, but the scheme was never constructed.
- 1.3.8.4 The proposal route is shown as part of the road to Lynton via Thornworthy. The section affected by this railway scheme is a continuation of the proposal route. It is listed in the Book of Reference as number 5 in the parish of Lynton as an occupation road owned by MT Lock Roe and T Baker. This railway scheme was not constructed.
- 1.3.9 Quarter Sessions Deposited Plan 467: Lynton Railway, 1883**
- 1.3.9.1 This Bill was proposed on the 8<sup>th</sup> November 1883, but the scheme was never constructed.
- 1.3.9.2 The proposal route is shown as part of the road to Lynton via Woolhanger and Thornworthy. The section of the route affected by the deposited plan is between points A – B at Churchtown. It is listed in the Book of Reference as number 38 in the parish of Parracombe, a private road owned by Mr James Nott Pyke Nott. This scheme was not constructed.
- 1.3.10 Quarter Sessions Deposited Plan 474: Lynton Railway, 1886**
- 1.3.10.1 The Bill was proposed on the 13 November 1885, but was never constructed.
- 1.3.10.2 The proposal route is shown as part of the road to Lynton via Woolhanger and Thornworthy over the scheme's overview map. However, the actual plan does not the proposed railway on that alignment, instead showing it crossing the public road to Woolhanger owned by the Ilfracombe District Highway Board and Benjamin Green Lake. This scheme was not constructed.
- 1.3.11 Quarter Sessions Deposited Plan 539: Lynton & Barnstaple Railway, 1895**
- 1.3.11.1 As referred to at paragraph 1.3.8.2, this type of document may provide evidence on crossed or adjacent paths, roads or tracks and therefore could be relevant as evidence in relation to the existence of Highways, particularly if the scheme was constructed, as in this case.
- 1.3.11.2 The Bill for the Lynton and Barnstaple Railway was passed by Parliament on the 27<sup>th</sup> June 1895, and the railway was opened on the 11<sup>th</sup> May 1898.
- 1.3.11.3 The county road, Church Lane is numbered 73 and is listed as a '*road*' in the ownership of the Ilfracombe District Highway Board and the Waywardens of Parracombe. Its continuation, the proposal route is shown between points A – B and numbered 74. It is listed as '*roads, field green waste, and watercourse*' with the road in the ownership of the Waywardens of Parracombe, and the field green waste, and watercourse in the ownership of Sally Dovell, and Charles Blackmore.
- 1.3.11.4 The northern end of Church Lane and the western end of the proposal route near point A, were the subject of road alignment diversion number 3.

# Agenda Item 12

## 1.3.12 Parracombe Parish Council Minutes, 1894 onwards

- 1.3.12.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.
- 1.3.12.2 There are numerous references to Bridleway No. 5, the proposal route, known as the Churchtown Road, concerning the section A – B between Churchtown and the 'New Road', now the A39 Parracombe Bypass. The Parish Council repeatedly requested that it be taken over as a county road.
- 1.3.12.3 22<sup>nd</sup> October 1897. 'It was explained to the Council that the occupation road above Churchtown leading to Holworthy was in a bad state of repair. The Clerk was advised to write to the District Council...that the Parish Council call the attention of the District Council to the bad state of the occupation road, belonging to Mrs Dovell, from the railway bridge at Churchtown to the end of Long Barton...the only approach to 4 farms...almost impassable. The abrupt turn from the railway bridge into this occupation road was ...making it impossible to turn with 2 horses...a resolution was...passed 'that the District Council cause the Railway Company to make satisfactory approaches at each end of the new bridge at Churchtown, as...the east end is very dangerous'. This includes the proposal route between points A – B – C – D.
- 1.3.12.4 16<sup>th</sup> June 1902. The 'Chairman brought before the Council the dangerous condition of the fencing belonging to the Railway Company by the roadside adjoining the siding or those especially that dividing the road from Mrs Dovell's property'. The road referred to is the proposal route at Churchtown between points A – B.
- 1.3.12.5 1<sup>st</sup> March 1954. 'The Clerk was instructed to write to the Devon County Council and ask them to take over the piece of road from Churchtown Bridge to the New Road [A39 Parracombe Bypass]. This resolution was...passed unanimously. The Clerk was told to stress that trades people and visitors to the old church use the road very considerably.' This is the proposal route at Churchtown between points A – B.
- 1.3.12.6 18<sup>th</sup> May 1954. 'It was unanimously agreed that a letter be written to the Devon County Council asking them to take over the piece of road from Churchtown Bridge to the New Road [A39 Parracombe Bypass], pointing out that the distance is less than 200 yards, that no owners are interested in supplying the £203 [£4,845 in 2017] asked for, and stress that the road is used by tradesmen and visitors to an ever increasing extent.' This is the proposal route at Churchtown between points A – B.
- 1.3.12.7 9<sup>th</sup> August 1954. 'The Clerk read a letter from the Devon County Council, stating that as the £203 [£4,845 in 2017] asked for regarding the taking over of the strip of road from Churchtown Bridge to the New Road [A39 Parracombe Bypass] was not forthcoming it was unlikely that the strip of road would be taken over. After some discussion Mr Latham proposed that a letter be written to the Barnstaple Rural District Council asking them to support the taking over the road, Mr Harding seconded and as the motion was carried unanimously the Clerk was instructed to write pointing out that the road was increasingly used by tradesmen



and that it was about 100 yards long.’ This is the proposal route at Churchtown between points A – B.

- 1.3.12.8 21<sup>st</sup> March 1956. At the annual parish meeting, ‘it was proposed...that the Clerk write to [Mr] Marshall Wright asking for support in getting the piece of road from the Railway Bridge to the New Road [A39 Parracombe Bypass] taken over. Agreement was unanimous’. This is the proposal route at Churchtown between points A – B.
- 1.3.12.9 20<sup>th</sup> March 1957. At the annual parish meeting ‘a motion that the Clerk write to the Devon County Council asking them to take over the piece of road from Churchtown Bridge to the New Road [A39 Parracombe Bypass], pointing out that tradesmen would benefit not the owners of nearby property...was unanimously carried.’ This is the proposal route at Churchtown between points A – B.
- 1.3.12.10 29<sup>th</sup> May 1957. ‘The proposition by Mr Latham that the Devon County Council be asked up the suitable deads on Churchtown Road, when they had lorries in the vicinity hauling deads; the Parish Council to pay for the spreading of the deads...was carried unanimously.’ This is the proposal route at Churchtown between points A – B.
- 1.3.12.11 21<sup>st</sup> August 1957. ‘A letter was read from Mr Ayres stating that he would be the request in mind regarding Churchtown Accommodation Road.’ This is the proposal route at Churchtown between points A – B.
- 1.3.12.12 13<sup>th</sup> March 1958. ‘Mr Court proposed that the Barnstaple Rural District Council be asked for their support in trying to get the Churchtown Road taken over, also if any grant was available for the purpose. The question had come up regularly over a long period...was carried unanimously.’ This is the proposal route at Churchtown between points A – B.
- 1.3.12.13 23<sup>rd</sup> February 1960. ‘A letter was read from Mrs Jones at Churchtown Cottage complaining about the dangerous state of the road outside her cottage. The Clerk was instructed to reply that the Parish Council had for years been trying to get the road taken over. A scheme was proposed in 1954 whereby the County Council would take over the road at a cost of £406, of which £203 [£4,845 in 2017] was to be paid by owners of houses and land adjoining the road, but the scheme failed through lack of support.’ This is the proposal route at Churchtown between points A – B.
- 1.3.12.14 9<sup>th</sup> March 1960. ‘There was a general discussion regarding the stretch of road from Churchtown Bridge to the New Road [A39 Parracombe Bypass]. No resolution was taken but all present hoped that the road may be taken over in the near future.’ This is the proposal route at Churchtown between points A – B.
- 1.3.12.15 14<sup>th</sup> March 1961. At the annual parish meeting, ‘Mr Martyn proposed that the Devon County Council be asked to take over the stretch of road from the Old Railway [Churchtown] Bridge to the New Road [A39 Parracombe Bypass]...which was carried unanimously. The Clerk was asked to write to the Devon County Council on the subject.’ This is the proposal route at Churchtown between points A – B.
- 1.3.12.16 13<sup>th</sup> March 1963. ‘Mr Latham proposed...a motion that a letter be sent to Mr Ford, asking him if the stretch of road from Churchtown Bridge to the New Road [A39 Parracombe Bypass] could be taken over under the Agricultural Scheme. It

# Agenda Item 12

was all agreed that the Clerk write accordingly.' This is the proposal route at Churchtown between points A – B.

- 1.3.12.17 12<sup>th</sup> March 1964. At the annual parish meeting, 'Mr Latham proposed...that a letter be sent Mr Ford asking him if the stretch of road from Churchtown Bridge to the New Road [A39 Parracombe Bypass], could be taken over under the Agricultural Scheme. It was all agreed that the Clerk write accordingly.' This is the proposal route at Churchtown between points A – B.
- 1.3.12.18 12<sup>th</sup> March 1965. At the annual parish meeting, 'the Clerk was instructed to write to the Divisional Surveyor on the following (2) Report on the bad condition of Church Lane and ask if any good waste material could be put onto Church Town Road.' This is the proposal route at Churchtown between points A – B.
- 1.3.12.19 29<sup>th</sup> April 1968. 'On matter arising from the Parish Meeting the Clerk was instructed to write to Divisional Road Surveyor and ask for something to be done to Church Town Road.' This is the proposal route at Churchtown between points A – B.
- 1.3.12.20 17<sup>th</sup> March 1969. At the annual parish meeting, [Mr] Smith proposed...[the] 'Clerk write and see if anything can be done to road at Church Town. Carried unanimously.' This is the proposal route at Churchtown between points A – B.
- 1.3.12.21 19<sup>th</sup> April 1971. 'This meeting was called to consider the re-designation of A) a byway open to all traffic, B) a bridleway, C) a footpath... After [the] Clerk had correspondence on the matter and existing paths had been shown, the following recommendations were approved. 1) Bridle path No. 5 from railway bridge to county road A39 be upgraded to a byway open to all traffic'. This is the proposal route at Churchtown between points A – B.
- 1.3.12.22 21<sup>st</sup> March 1975. 'Mr Richards raised the question of the length of road from the railway bridge to the bypass at Church Town. Clerk instructed to write and ask Council to take over responsibility for this section of road'. This is the proposal route at Churchtown between points A – B.
- 1.3.12.23 24<sup>th</sup> July 1975. A letter was read from Mr Richards regarding the Church Town Road. The 'Chairman reported he had requested the local representative on the Exmoor National Park to investigate this matter of having the road taken over by the County Authorities'. This is the proposal route at Churchtown between points A – B.
- 1.3.12.24 29<sup>th</sup> November 1977. It was proposed 'the existing footpaths and bridleways on the Definitive Map be retained with the exception of that portion of Parracombe Bridleway No. 5 between the old railway bridge and the A39 bypass at Church Town which should be upgraded to [an] unclassified county road'. This is the proposal route at Churchtown between points A – B.
- 1.3.13 Barnstaple Rural District Council Minutes, 1893-1974**
- 1.3.13.1 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.

- 1.3.13.2 There are numerous references to Bridleway No. 5, the proposal route, regarding the section A – B between Churchtown and the 'New Road', now the A39 Parracombe Bypass, which the Parish and Rural District Councils repeatedly requested to be taken over as a county road, which received the support of the District Council.
- 1.3.13.3 1st April 1949. 'The District Surveyor attended the meeting and conferred with the Council on highway matters... A letter was read from the Parracombe Parish Council asking that a recommendation be made to the Devon County Council to take over a piece of road in the parish, from the Old Railway Siding at Churchtown, to the New Road, a distance at 300-400 yards. It was resolved, that the Devon County Council be recommended to take over the road in question'.
- 1.3.13.4 On a list of the routes surveyed by the Parracombe Parish Council in 1950 for inclusion on the Definitive Map, paths 5 and 6 are described as '*carriage way's, 'from Churchtown Bridge via Barton Lane, Highley Farm, and Twinford to Challacombe', and 'from Barton Lane via the Ark and Stony Lane to Chapman Burrows Road'.*
- 1.3.13.5 10<sup>th</sup> September 1954. 'A letter was read from the Parracombe Parish Council enquiring whether a strip of road from Churchtown Bridge to New Road [A39, Parracombe Bypass] could be taken over. The Council were informed that the matter had already been considered by the County Council who had expressed the view that if the owners made the road up, it might be possible to take the road over. It was resolved that the letter from the Parracombe Parish Council be forwarded to the Devon County Council with a request that the matter be further considered.' This is the proposal route between points A – B.
- 1.3.13.6 24<sup>th</sup> September 1954. 'Letters were read from the Devon County Council as follows:-... (iii) stating that the question of taking over the road from Churchtown Bridge to New Road, [A39, Parracombe Bypass] had been considered twice. The estimated cost of the necessary works was £407 [£9,713 in 2017], and it had been decided that if a contribution of £203 [£4,845 in 2017] was forthcoming, favourable consideration would be given to its adoption.' This is the proposal route between points A – B.
- 1.3.13.7 18<sup>th</sup> May 1956. 'Letters were read...from Parracombe Parish Council... enquiring whether a piece of road from the Railway Bridge to the New Road [A39 Parracombe Bypass] could be taken over...it was resolved that the letters be forwarded to the Area Surveyor for attention.' This is the proposal route between points A – B.
- 1.3.13.8 3<sup>rd</sup> April 1958. 'A letter was read from the Parracombe Parish Council... enquiring whether any grant was available for the making up of the accommodation road from Church Town Bridge to the New Road [A39 Parracombe Bypass] and whether there is any likelihood of the road being taken over by the Highway Authority. It was explained that the road in question was apparently adequate for agricultural purposes and the enquiry arose because of its use by the public at large, although no grant was available for this purpose and there was no likelihood of the County Council taking over the road in its present condition.' This is the proposal route between points A – B.

# Agenda Item 12

## 1.3.14 Parracombe Parish Council Correspondence, 1950 onwards

- 1.3.14.1 These records provide information about the Council's views regarding issues in the parish, including the taking over the proposal route as a county road. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.
- 1.3.14.2 There are numerous references to Bridleway No. 5, the proposal route, known as the Churchtown Road, regarding the section A – B between Churchtown and the 'New Road', now the A39 Parracombe Bypass, which the Parish Council repeatedly requested to be taken over as a county road.
- 1.3.14.3 27<sup>th</sup> March 1950. Devon County Council to Parracombe Parish Council. Accommodation Road – Churchtown, Parracombe. 'In view of the present economic situation my Council regret that there are no funds available at the present time and accordingly I am directed to inform you that no action can be taken with regard to the adoption of the above accommodation road for the time being'.
- 1.3.14.4 29<sup>th</sup> April 1954. Devon County Council to Parracombe Parish Council. Road from Churchtown Bridge to the New Road, Parracombe. 'this matter was considered by my Committee at their recent meeting, when they were informed that the estimated cost of the necessary works was £407 [£9,713 in 2017]. The amount of funds available to my Council for work of this nature is very limited, and in the circumstances, therefore, I was directed to inform you that if a contribution of £203 [£4,845 in 2017] is forthcoming, favourable consideration will be given to its adoption by the County Council. Will you kindly, therefore, get in touch with the adjoining owners and interested persons and inform me in due course whether such contribution will be forthcoming'.
- 1.3.14.5 1<sup>st</sup> June 1954. Devon County Council to Parracombe Parish Council. Road from Churchtown Bridge to the New Road, Parracombe. '*...note that the suggested £203 [£4,845 in 2017] will not be forthcoming. In the circumstances, therefore, I am afraid it is very unlikely that the Council will agree to the adoption of the road, particularly owing to the fact that the amount of funds available to my Council for work of this nature is so limited. I will, however, as requested place the matter before my Committee again at their next meeting*'.
- 1.3.14.6 13<sup>th</sup> September 1954. Devon County Council to Parracombe Parish Council. Road from Churchtown Bridge to the New Road, Parracombe. '*...I placed this matter before the Committee of my Council again as requested by you, and I am directed to inform you that it is regretted that they are unable to depart from their previous decision, namely, that consideration be given to the adoption of this road subject to a contribution of £200 being forthcoming*'.
- 1.3.14.7 20<sup>th</sup> September 1954. Devon County Council to Barnstaple Rural District Council. Road from Churchtown Bridge to the New Road, Parracombe. '*...the Parracombe Parish Council have been informed that the estimated cost of the necessary works on this length of road, which will need to be carried out before it can be considered for adoption, is £407 [£9,713 in 2017], and my Council have decided that if a contribution of £203 [£4,845 in 2017] is forthcoming, favourable consideration will be given to its adoption. The Parish Council subsequently stated that this suggested contribution could not be met and asked that the road*

*should be taken over in any case, but at a recent meeting of the appropriate Committee of my Council they decided to adhere to their previous decision’.*

- 1.3.14.8 11<sup>th</sup> June 1957. Devon County Council to Parracombe Parish Council. Accommodation Road. ‘...I will keep your request in mind when deeds are available’.
- 1.3.14.9 23<sup>rd</sup> March 1958. Barnstaple Rural District Council to Parracombe Parish Council. ‘about the accommodation road leading from Churchtown Bridge to the New Road. I will see that your letter is considered by my Council...I am afraid, however, that it may not be possible to achieve the adoption of the road as a public highway. I understand that the road is admittedly a private one and was not used (except for agricultural purposes) until the New Road was constructed and it is unlikely that the County Council would be prepared to accept it as a public highway for which they are responsible, unless and until the surface was made up to their satisfaction. This would be an expensive matter and I do not suppose the owners of properties abutting on to the road would be prepared to face the cost. However, I will let you know the Council’s view after their next meeting’.
- 1.3.15 Devon County Council Various Roads Committee minutes, 1946-55**
- 1.3.15.1 24<sup>th</sup> February 1950. ‘5<sup>th</sup> report of the Special Sub-Committee appointed to consider accommodation roads in the County which should be taken over by the Council as highways repairable by the inhabitants at large...The Clerk reported requests received for the adoption of the following roads as public highways:- ...Barnstaple Rural...Churchtown Road, Parracombe’. This is the proposal route between points A – B.
- 1.3.15.2 30<sup>th</sup> March 1954. ‘On consideration of a request from the Parracombe Parish Meeting for the taking over of this road as a highway repairable by the public, the County Surveyor reported that the estimated cost of the necessary works was £407 [£9,713 in 2017]. Recommended that the Parish Meeting be informed that a contribution of £203 [£4,845 in 2017] will be required, and that when this is forthcoming the matter be left to the Chairman with power to act’. This is the proposal route between points A – B.
- 1.3.15.3 11<sup>th</sup> June 1954. ‘On consideration of a request from the Parracombe Parish Meeting for the taking over of this road as a highway repairable by the public, the County Surveyor reported that the estimated cost of the necessary works was £407 [£9,713 in 2017]. Recommended that the Parish Meeting be informed that a contribution of £203 [£4,845 in 2017] will be required, and that when this is forthcoming the matter be left to the Chairman with power to act’. This is the proposal route between points A – B.
- 1.3.15.4 30<sup>th</sup> July 1954. ‘The Clerk reported that a letter had now been received from the Parish Meeting stating that the frontagers were unable to raise the required contribution of £203 [£4,845 in 2017] and requesting that the Council should further consider taking over this road as a highway repairable by the public. Recommended that the previous decision of the Sub-Committee be adhered to’. This is the proposal route between points A – B.
- 1.3.15.5 3<sup>rd</sup> September 1954. ‘The Clerk reported that a letter had now been received from the Parish Meeting stating that the frontagers were unable to raise the required contribution of £203 [£4,845 in 2017] and requesting that the Council

# Agenda Item 12

should further consider taking over this road as a highway repairable by the public. Recommended that the previous decision of the Sub-Committee be adhered to'. This is the proposal route between points A – B.

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

- 1.3.16.1 These Ordnance Survey records were produced in conjunction with the Ordnance Survey mapping and contain information on named routes may be found in the relevant Object Name Books, which provided details of the authorities for named features. Such records can provide supporting evidence of the existence and status of routes.
- 1.3.16.2 The section of Bridleway No. 5, the proposal route, known as Barton Lane, is described as a '*3<sup>rd</sup> class road extending from a point extending 4 chains southeast of Barton [now known as Church Cottage] to a point 28½ south of Ark Cottage*'. This is the proposal route between points A – B – C – D.
- 1.3.16.3 The section of Parracombe Bridleway No. 5 known as Stony Lane is described as a '*3<sup>rd</sup> class road extending from Barton Lane to junction of road 29 chains south east of Brakebrook*'. This is the proposal route between points D – E – F – G and Parracombe Restricted Byway No. 30 between points G – H.

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

- 1.3.17.1 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.
- 1.3.17.2 The proposal route, Bridleway No. 5, passes through hereditament 156 between points A – B and hereditament 80 between points E - F. It is excluded between points B – C – D – E and F – G, where it is abutted by hereditaments 46, 73, and 125. Its continuation north eastwards from point F is also excluded.
- 1.3.17.3 Hereditament 156 is Churchtown owned by Mrs Dovell. It is described as cottage, garden and green, however, on the map the cottage and garden are actually hereditament 155. The inspection notes describe hereditament 156 as an old green with a right of way over the whole green, with a deduction for Public Right of Way or User of £18.
- 1.3.17.4 Hereditament 80 is Ark Farm owned by Mr Robert Blackmore. It is described as cottage, pasture and arable land. There is an easement which is described as of a right of way to adjoining farm, for which a deduction for Public Right of Way or User of £15.

## **1.3.18 Bartholomew's maps, 1900s onwards**

- 1.3.18.1 These maps were designed for *tourists and cyclists* with the roads classified for *driving and cycling purposes*. They were used by and influenced by the Cyclists Touring Club founded in 1878 which had the classification of First Class roads, Secondary roads which were in good condition, Indifferent roads that were passable for cyclists and other uncoloured roads that were considered inferior

and not to be recommended. Additionally, footpaths and bridleways were marked on the maps as a pecked line symbol. Cyclists were confined to public carriage roads until 1968. The small scale does not permit all existing routes to be shown, omitting some more minor routes. The purpose of these maps was to guide the traveller along the routes most suitable for their mode of transport.

- 1.3.18.2 Bridleway No. 5, the proposal route between points A – B – C – D – E – F and its continuation now recorded as Restricted Byway No. 30, is shown on the Bartholomew's maps from 1903 onwards as an '*Inferior road*', not to be recommended to cyclists, similar to much of the highway network in the area.

### **1.3.19 Handover Roads records, 1929-47**

- 1.3.19.1 These records are considered to be a positive indication of what the highway authority believe the status of roads included to be, and are conclusive evidence of a highway authority's acceptance of maintenance responsibility, a commitment not normally undertaken lightly. Such records were for internal use and did not purport to be a record of rights. The lack of a road's inclusion does not necessarily suggest it could not have been a public highway.

- 1.3.19.2 No part of the proposal route, Bridleway No. 5, is included.

### **1.3.20 Aerial Photography, 1946 onwards**

- 1.3.20.1 The aerial photography shows the proposal route, Parracombe Bridleway No. 5 between points A – B – C – D – E – F – G and Proposal 2, now recorded as Restricted Byway No 30 between points G – H, as one continuous route from Churchtown, Parracombe to Parracombe Common.

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

- 1.3.21.1 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.
- 1.3.21.2 Mr TJ Barrow on behalf of the Parish Council surveyed the proposal route and Proposal 2 as paths 5 (part) and 6. He described the route as a '*lane and cart track from Churchtown Bridge crossing Parracombe New Road*' and '*lane leading from Barton Lane via The Ark and Stony Lane to [the] Chapman Burrows Road*'.
- 1.3.21.3 The Survey map appears to show some indecision regarding the extent of public vehicular highway in relation to Parracombe Bridleway No. 5 and the proposal route. It appears that the extent of county road includes the section F – G – H, while Parracombe Bridleway No. 5 is shown to extend to point G. The County Surveyor has later annotated the only proposal route G – H as '*C.R.*', which is the abbreviation for '*county road*'. The section between points G – H is now recorded as Restricted Byway No. 30.

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

- 1.3.22.1 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 12

1.3.22.2 The Definitive Statement for Parracombe Bridleway No. 5 is described as running from 'Churchtown old railway bridge and along a private accommodation road (not repairable by the inhabitants at large) south of St. Peter's [the name is incorrect – actually St Petrock's] Church to County road A.38, continuing eastwards along a private accommodation road (not repairable by the inhabitants at large), Barton Lane, then generally north-eastwards along another private accommodation road (not repairable by the inhabitants at large), Stony Lane, passing Ark Cottage [formerly Ark Farm] to join the end of an Unclassified County road 450 yards north-east of Ark Cottage'.

## **1.3.23 List of Streets, 1970s onwards**

1.3.23.1 No part of Bridleway No. 5, the proposal route, is included.

## **1.3.24 Route Photographs, 2016 onwards**

1.3.24.1 The route photographs show the proposal route, Parracombe Bridleway No. 5 between points A – B – C – D – E – F – G and Proposal 2, now recorded as Restricted Byway No 30 between points G – H, as one continuous route from Churchtown, Parracombe to Parracombe Down Common.

1.3.24.2 A notice, indicating access to the A39 Parracombe Bypass via Barton Lane, Parracombe Bridleway No. 5, the proposal route, circa 1993 was situated at point A at the junction with Church Lane and Parracombe Footpath No. 14 (Centry Lane) outside the property known as Fairview.

1.3.24.3 Since the route has been visited as part of the Review, there have been small signs near points A and B stating 'Bridleway only. No unauthorised vehicles. Private access for residents'. It is not known why or when this was erected or by whom.

## **1.3.25 Land Registry, 2018**

1.3.25.1 The whole of Bridleway No. 5, the proposal route, is unregistered between points A – B – C – D – E – F, as is its continuation Restricted Byway No. 30.

## **1.4 User Evidence**

1.4.1 No user evidence has been received for the proposal.

## **1.5 Landowner Evidence**

1.5.1 Only two responses were received from affected landowners to the proposal.

1.5.2 Mr and Mrs Govier of The Ark (formerly known as Ark Farm/Cottage) have owned the property since 2012 and believe it is a bridleway. They have seen walkers daily and horse riders 3-4 times a week, and occasionally cyclists. They have a private right of way between points B – C – D – E – F – G – H. They believe there is no necessity to upgrade the proposal route from a bridleway. They have not erected any notices.

1.5.3 Mr Harrison of Church Cottage (formerly Barton) had a number of questions only regarding the proposal.



## 1.6 Rebuttal Evidence

1.6.1 No rebuttal evidence has been received.

## 1.7 Discussion

1.7.1 In considering the evidence it is necessary to consider the evidential facts in the context of the whole of the documents in which they are contained. Section 32 of the Highways Act 1980 indicates how documents should be evaluated as a whole and how the weight should be given to the facts derived from them. Once the evidence sources have been assessed individually, they are comparatively assessed as required by the balance of probabilities test.

1.7.2 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 Parracombe Bridleway No. 5, the proposal route exists between points A – B – C – D – E – F – G, though it does not preclude that other unrecorded rights may exist.

1.7.3 As there is no specific date of calling into question or user evidence, the proposal cannot be considered under statute law. However, the proposal route may still be proven to exist as a public right of way at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.

1.7.4 Common Law. On consideration of the proposal at common law, the historical documentary evidence demonstrates the proposal route's physical existence and availability since at least 1804. It is shown in a similar manner to other recorded public highways, though originally it was not entirely an enclosed lane, as part of it passed over the unenclosed Parracombe Down Common.

1.7.5 At the time of the Ordnance Survey Draft Drawings, Cary's, and Greenwood's mapping between 1804 and 1827 a route is depicted on an alignment similar to Parracombe Bridleway No. 5 and Restricted Byway No. 30, which continued onto Woolhanger, Thornworthy, and Lynton/Lynmouth. However, the Ordnance Survey mapping is not evidence of a right of right, only the existence of features on the ground at the time of the relevant survey.

1.7.6 A requirement of the Highways Acts of 1773 and 1835, which were contemporary with the Surveyors of Highways Accounts, was that all '*common highways*' (public) had to be named in order for indictment for disrepair, the names usually reflecting places they either went to, passed or what they were like, e.g. Barton Road, Stoney Lane. As private roads were not liable in this way, they did not need to be named. A named highway may therefore carry some inference of public status. The relevant parish body would only devote time and effort if they and their parishioners believed it was a public highway for which they were responsible.

1.7.7 If any public roads were to be stopped up or declared non-maintainable, it had to be done through the Quarter Sessions. There are no references in the Quarter Sessions or other local authority records regarding these roads in Parracombe

# Agenda Item 12

parish, except for those relating to the highway alterations from the Parracombe Down Inclosure Award.

- 1.7.8 Under the Parracombe Down Inclosure Award of 1862 enacted through Parliament, this ancient route, a *'public turf road'* was *'discontinued and stopped up'*, and a new route, *'a public carriage road'* was set out and awarded. On such a route, all subjects enjoyed an equal right of vehicular passage. The public carriage road includes part of Bridleway No. 5, between points F – G, and Proposal 2 between points G – H, the latter of which is now recorded as Parracombe Restricted Byway No. 30.
- 1.7.9 The first 40 metres of the proposal route between point A and Church Cottage (formerly Barton) and the northern end of Church Lane were diverted in 1895 by the construction of the Lynton and Barnstaple Railway, also enacted by Parliament. Church Lane was described as a road owned by the *'Ilfracombe District Highway Board and Waywardens of Parracombe'*, whilst the proposal route was described as a *'roads, field green, waste'* owned by the *'Waywardens of Parracombe, Sally Dovell and Charles Blackmore'*. The Waywardens, however, would only be interested in the road. The fact that this plan was actually constructed gives it greater weight than those that did not, and would have been specifically surveyed for the scheme.
- 1.7.10 The multiple ownership depicted in the 1895 Railway Plan between the Parish and private landowners is reflected in the Finance Act records which has the proposal route excluded between points B – C – D – E and F – G with the remainder included in the hereditaments belonging to Dovell and Blackmore. Though by the time of modern Land Registry, it is excluded for its entire length from adjacent landholdings.
- 1.7.11 This multiple ownership referred to in the Railway Deposited Plan between the Parish and adjacent landowners does not detract from the public vehicular nature of the proposal route or its dedication, as much of the highway network in this area of North Devon was repairable to a large extent *'ratione tenuræ'* – by adjacent occupiers.
- 1.7.12 This is supported by the Parish Council minutes from the turn of the 19<sup>th</sup>-20<sup>th</sup> centuries. The Ordnance Survey Name Books also describe the proposal route, Bridleway No. 5, known as Barton Lane between points A – B – C – D and Stony Lane between points D – E – F – G – H (including Parracombe Restricted Byway No. 30), as a *'3<sup>rd</sup> class road'*. Authorisation for the spelling was given by the District Surveyor. Meanwhile, Bartholomew's map dating from 1903 indicates it had a reputation as a road open and available to the public, albeit not recommended.
- 1.7.13 The Parracombe Parish Council since its inception in 1894 has at no time suggested that the proposal route could not be used with vehicles, and in the 1950 Parish Survey, they regarded the route as a *'carriageway used as a footpath'*, alluding to the route's historic use with vehicles. The list of public rights of way held by the Barnstaple Rural District Council from that time, describes it as a *'carriage way'* to *'Chapman Burrows Road'* and *'Challacombe'*.
- 1.7.14 The Parracombe Parish Council related records demonstrate a consistency with how they regard the proposal route as a *'carriage way'*. They have consistently considered it to be a public road to be kept by the relevant highway authority until relatively modern times, when notices appeared, possibly erected by adjacent

landowners, though none of those consulted as part of the current Review have claimed to have done so.

- 1.7.15 The section of Parracombe Bridleway No. 5 between points F – G and its continuation of Parracombe Restricted Byway No. 30, may have also been considered a county road in the 1950s. This may be the reason why there was the discrepancy on the Parish Survey map, though it is not included on either the Handover Roads Records of the same period, or on the subsequent List of Streets. It is also not known whether the 1862 Inclosure Award was consulted at that time. The Award taken with other evidence shows that the County Surveyor in the 1950s was incorrect in his amendment on the Parish Survey map, of the extent considered to be county road, which was actually between points F – G – H, not G – H.
- 1.7.16 Between 1950 and 1977, the Parish Council, and those it represented, made regular repeated requests to the Barnstaple Rural District Council to support and apply to the County Council to have the proposal route between points A – B taken over as a county road, detailing regular public use with vehicles. However, it was stipulated that adjacent landowners had to raise half the cost of the necessary works which was £203 [£4,845 in 2017], which they were unable to do. Consequently, the County Council would not take over that section due to a lack of financial resources.
- 1.7.17 The upgrade requests continued as part of an incomplete Review in the 1970s, the Parish Council proposed the upgrade of this section to a Byway open to all traffic, detailing public use in vehicles as supporting evidence. The current Parish Council supports the current proposal.
- 1.7.18 However, the refusal by the County Council to take over the section of the proposal route between points A – B, is not necessarily rebuttal evidence against a higher status than that of bridleway, rather it was a matter of whether it was considered of sufficient utility to be maintainable at public expense.
- 1.7.19 As to the question of what if any higher rights may exist, the NERC Act 2006 needs consideration. It is clear from the evidence that the exceptions relating to main lawful use by mechanically propelled vehicles, inclusion on the List of Streets, express creation for mechanically propelled vehicles, and creation of a road for use by mechanically propelled vehicles, do not apply.
- 1.7.20 What does need to be examined however, is the final exception, that of whether a right of way has been created by virtue of use by such vehicles, as there is evidence of vehicular use of the proposal route in the various local authority records. However, the majority of the references relating to mechanically propelled vehicle use date from the 1950s onwards, many years after Section 14 of the Road Traffic Act 1930 came into force on the 1<sup>st</sup> December 1930.
- 1.7.21 Lawful use of the proposal route by mechanically propelled vehicles would need therefore to be before the advent of Section 14 of the Road Traffic Act 1930 to enable the establishment of a vehicular way, a byway. Use without lawful authority of mechanically propelled vehicles, adapted or intended for use on roads, on footpaths, bridleways, and elsewhere other than roads, became a criminal offence after that date.
- 1.7.22 The historic highway authority records references before the 1<sup>st</sup> December 1930 do not mention mechanically propelled vehicles, only non-mechanically propelled

# Agenda Item 12

vehicles, i.e. horse and cart. Therefore, it is considered that the proposal route does not meet any of the NERC Act 2006 exceptions.

- 1.7.23 Two landowners responded to the informal consultation, but could only give information regarding the proposal route, which is currently recorded as Parracombe Bridleway No. 5 since 2012, noting use on foot, bicycle, and horse, though no user evidence was submitted in response to the informal consultation.
- 1.7.24 Issues such as necessity cannot be taken into account in the determination of the proposal. Presumed dedication is considered to have taken place many years prior to those events, and consequently the legal maxim '*once a highway, always a highway*' applies. Though no user evidence was received in relation to the proposal, evidence of user detailed in other evidential sources demonstrates the public's use of the route in all manners without any perceived issues.
- 1.7.25 Consequently, having been enacted by Parliament, the 1862 Inclosure Award is conclusive evidence regarding the public status of the section F – G, and consequently is evidence of express dedication. There is no evidence of such rights for this section having been stopped-up or diverted. Consequently, the legal maxim '*once a highway, always a highway*' applies.
- 1.7.26 With regard to the remainder of the proposal route between points A – B – C – D – E – F, presumed dedication is considered to have taken place many years ago based on all the available documentary evidence, and consequently the legal maxim '*once a highway, always a highway*' applies. Though no user evidence was received in relation to the proposal, evidence of user detailed in other evidential sources demonstrates the public's use of the route in all manners without any perceived issues.
- 1.7.27 In such a situation as this where there is a route of uncertain status existing, its status can be presumed from the highways linked to it, as set out in the case of *Eyre v New Forest Highway Board* (1892). Consequently, the evidence when considered as a whole supports access for the public to the proposal route, currently recorded as Parracombe Bridleway No. 5, of the higher status of restricted byway.

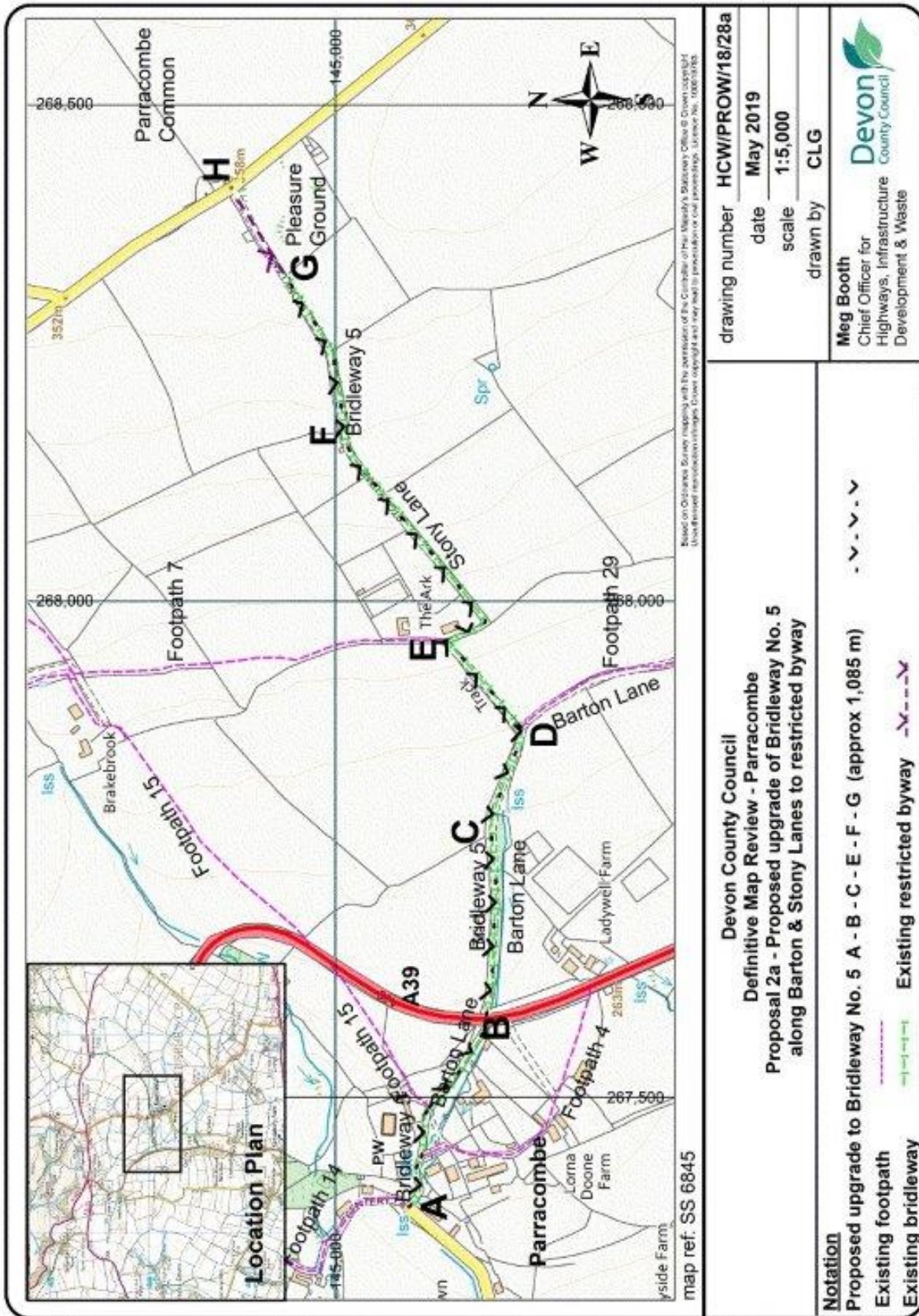
## 1.8 Conclusion

- 1.8.1 On consideration of all the available evidence, on the balance of probabilities, the documentary evidence demonstrates that the proposal route, currently recorded as Parracombe Bridleway No. 5, along Barton and Stony Lanes between points A – B – C – D – E – F – G has existed since at least 1804. It has been open and available and appears to have been considered public since that time, and in conjunction with Parracombe Restricted Byway No. 30.
- 1.8.2 At Common Law, all highways existing prior to the Highways Act of 1835 were automatically repairable '*prima facie*' by the parish unless the responsibility could be proven as lying elsewhere. This liability remained so long as the highway existed or until the liability was taken away or transferred by statute. The public nature of the proposal route along Barton Lane, and its continuation along Stony Lane, between points F – G – H was confirmed particularly in the 1862 Inclosure Award and the 1895 Barnstaple and Lynton Railway Deposited Plan, between points A – B, as a '*public carriage road*', under the ownership of the Parracombe Waywardens, as well as the later records of the Parish Council and other local authorities. Its continuation at its north western end, Parracombe Restricted

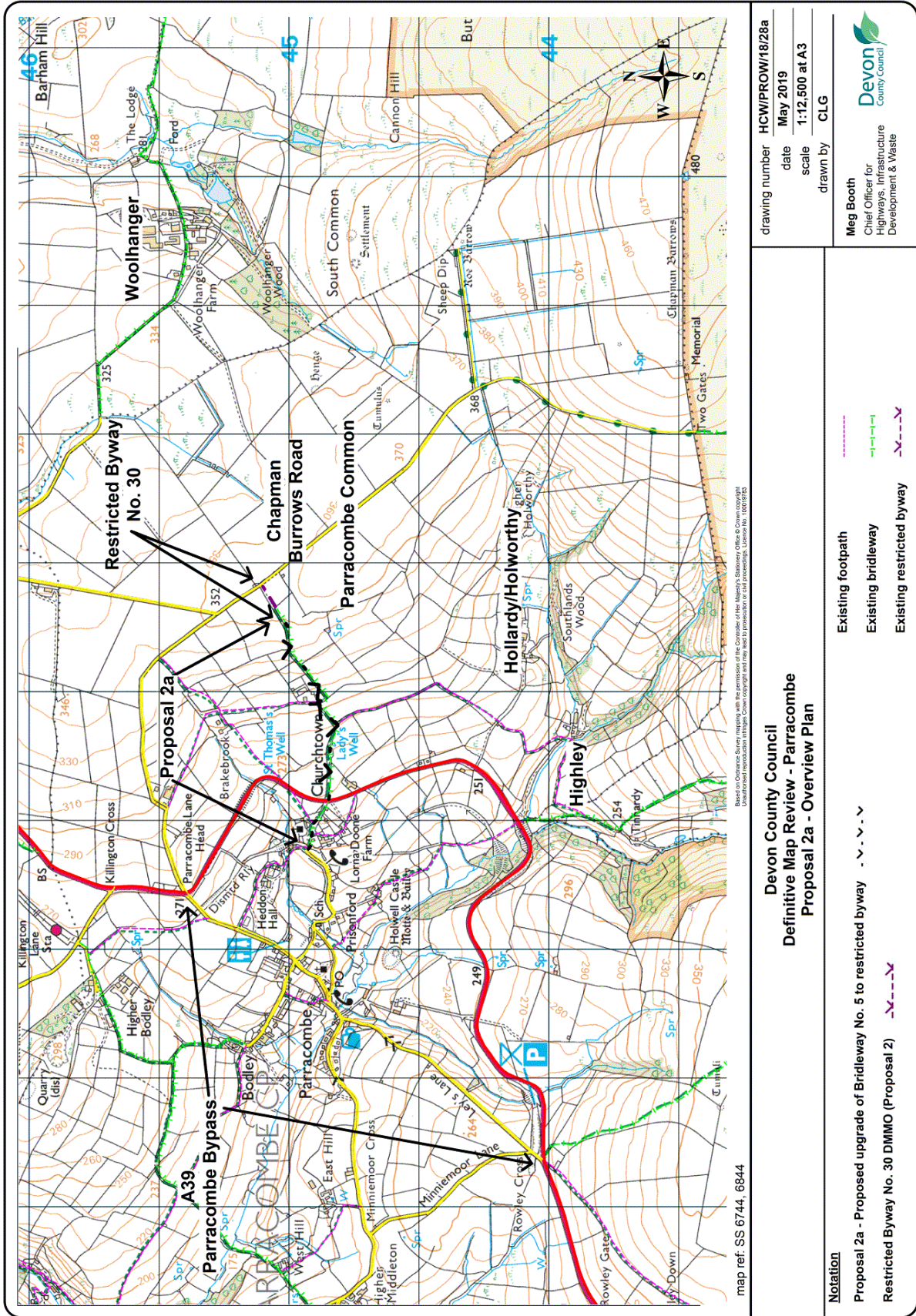
Byway No. 30, was also set out under the 1862 Inclosure Award as a '*public carriage road*'.

- 8.1.3 In such a situation as this where there is a route of uncertain status existing, its status can be presumed from the highways linked to it, as set out in the case of *Eyre v New Forest Highway Board* (1892).
- 8.1.4 Although there has been evidence of public use by mechanically-propelled vehicles, it is after 1930, and therefore, it does not satisfy the exceptions under the Natural Environment and Rural Communities Act 2006 do not need to be considered. Thus, any unrecorded rights for mechanically propelled vehicles are extinguished. Consequently, the highest status the proposal route could be considered to be is a restricted byway.
- 8.1.5 The Parish have consistently considered it to be a public road to be kept by the relevant highway authority until relatively modern times, when notices appeared, possibly erected by adjacent landowners, though none of those consulted as part of the current Review have claimed to have erected these.
- 8.1.6 The evidence when taken as a whole is considered sufficient to show that a highway of a particular description ought to be shown as a highway of a different description. It demonstrates that the route was considered historically as an all-purpose public highway, and is considered sufficient to demonstrate that historic vehicular rights exist and consequently to record the route as a restricted byway.
- 8.1.7 It is therefore considered to be sufficient under Common Law to demonstrate that a public highway of restricted byway status exists between points A – B – C – D – E – F – G, and that consequently Parracombe Bridleway No. 5 carries higher rights.
- 8.1.8 It is therefore recommended that a Modification Order should be made to upgrade Parracombe Bridleway No. 5 to a restricted byway between points A – B – C – D – E – F – G on the Definitive Map and Statement, as shown on drawing no. HIW/PROW/18/28a. If there are no objections, or if such objections are subsequently withdrawn, that it be confirmed.

# Agenda Item 12











HIW/19/93

Public Rights of Way Committee  
12 November 2019

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

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

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

**Recommendation: It is recommended that the report be noted.**

### 1. Summary

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

#### Modification Orders

<b>Order/Schedule 14 Application</b>	<b>Decision</b>
(i) Devon County Council (Restricted Byway No. 50, East Down) Definitive Map Modification Order 2018.	Confirmed on 17 September following a local hearing. For more information see The Planning Inspectorate's <a href="#">Order Decision</a> .
(ii) Schedule 14 Application for the addition of a footpath at Hayne Farm, Gittisham, linking Hayne Lane to Parsonage Lane at Goldcombe Farm.	Appeal allowed: Applicant's appeal to the Secretary of State against Devon County Council's decision not to make an Order in respect of the application was allowed on 26 September 2019. Accordingly, the Secretary of State has directed the County Council to make an Order to add a public footpath as claimed. For more information see The Planning Inspectorate's <a href="#">Appeal Decision</a> .

Meg Booth  
Chief Officer for Highways, Infrastructure Development and Waste

### **Electoral Divisions: Combe Martin Rural; and Feniton & Honiton**

Local Government Act 1972: List of Background Papers

Contact for enquiries: Helen Clayton

Room No: ABG Lucombe House, Exeter

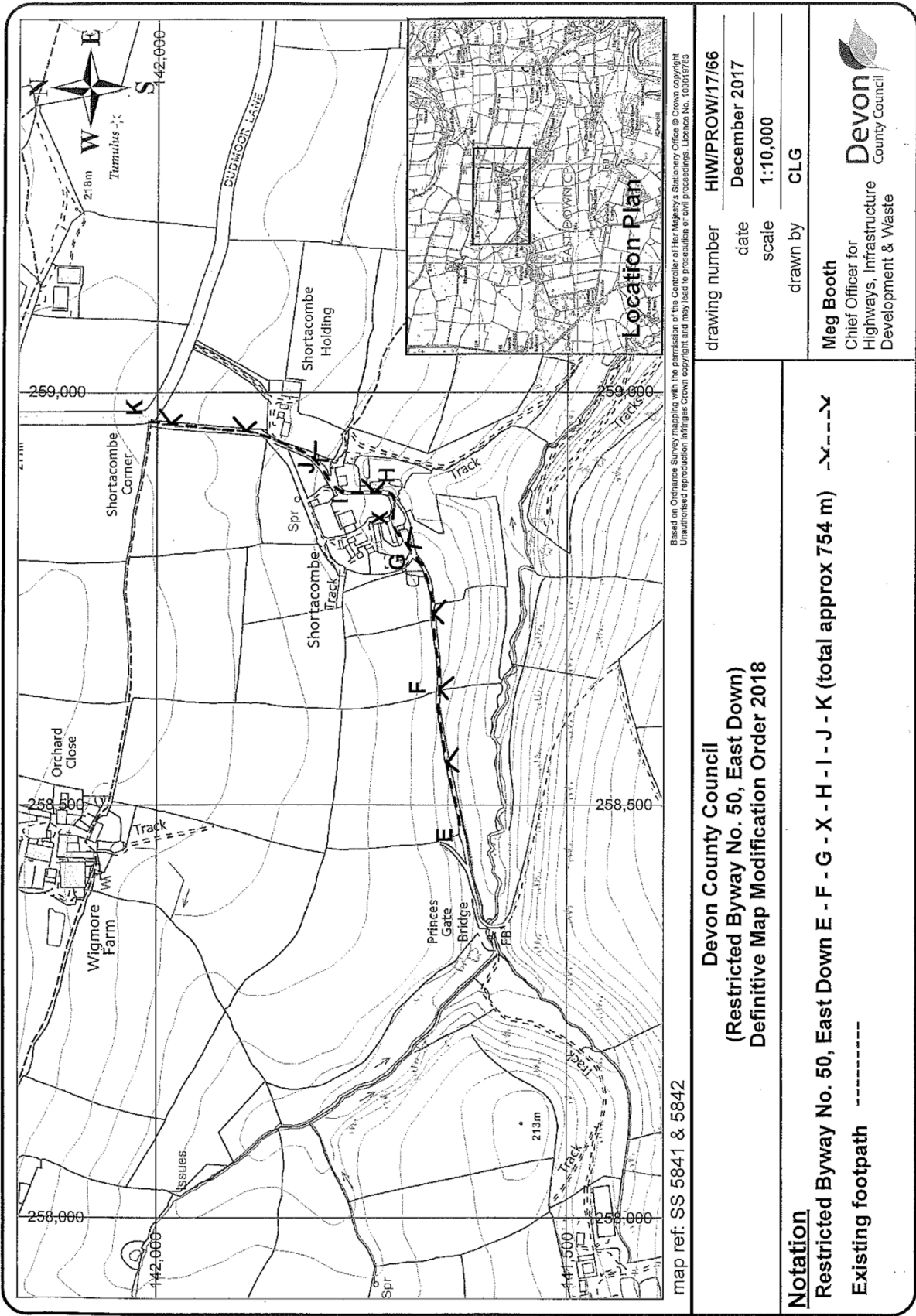
Tel No: 01392 383000

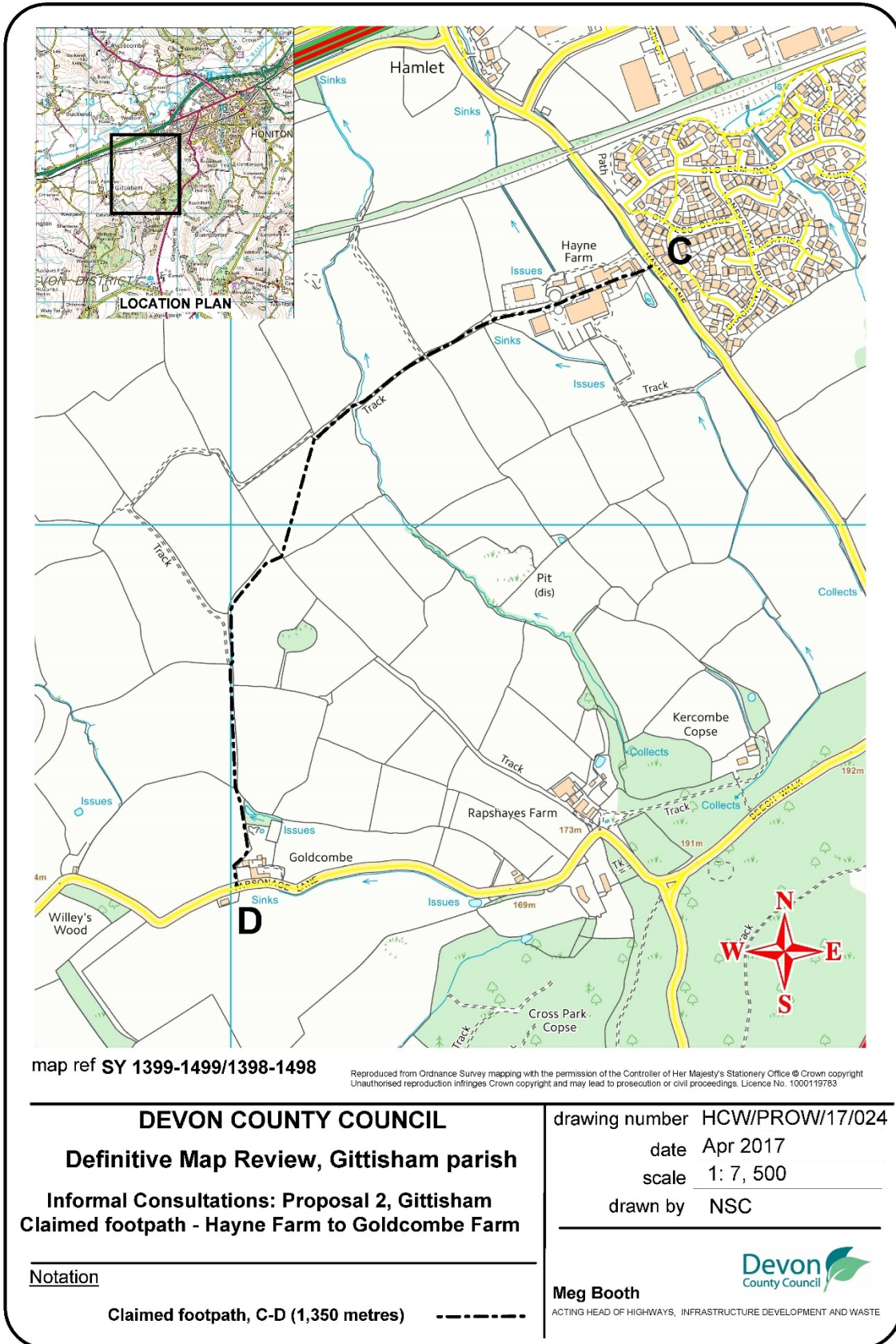
Background Paper	Date	File Ref.
------------------	------	-----------

None

hc260919pra  
sc/cr/Public Inquiry Informal Hearing High Court appeals  
03 041119

# Agenda Item 13







HIW/19/94

Public Rights of Way Committee  
12 November 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 Orders have been confirmed as unopposed under delegated powers. Plans are attached in the appendix to this report.

- (i) Footpath No. 33, Broadclyst Definitive Map Modification Order 2018
- (ii) Restricted Byway No. 20, Kentisbury Definitive Map Modification Order 2019
- (iii) Bridleway No. 9, Parracombe Definitive Map Modification Order 2019
- (iv) Restricted Byway No. 30, Parracombe Definitive Map Modification Order 2019

Meg Booth  
Chief Officer for Highways, Infrastructure Development and Waste

## Electoral Divisions: Broadclyst; and Combe Martin Rural

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

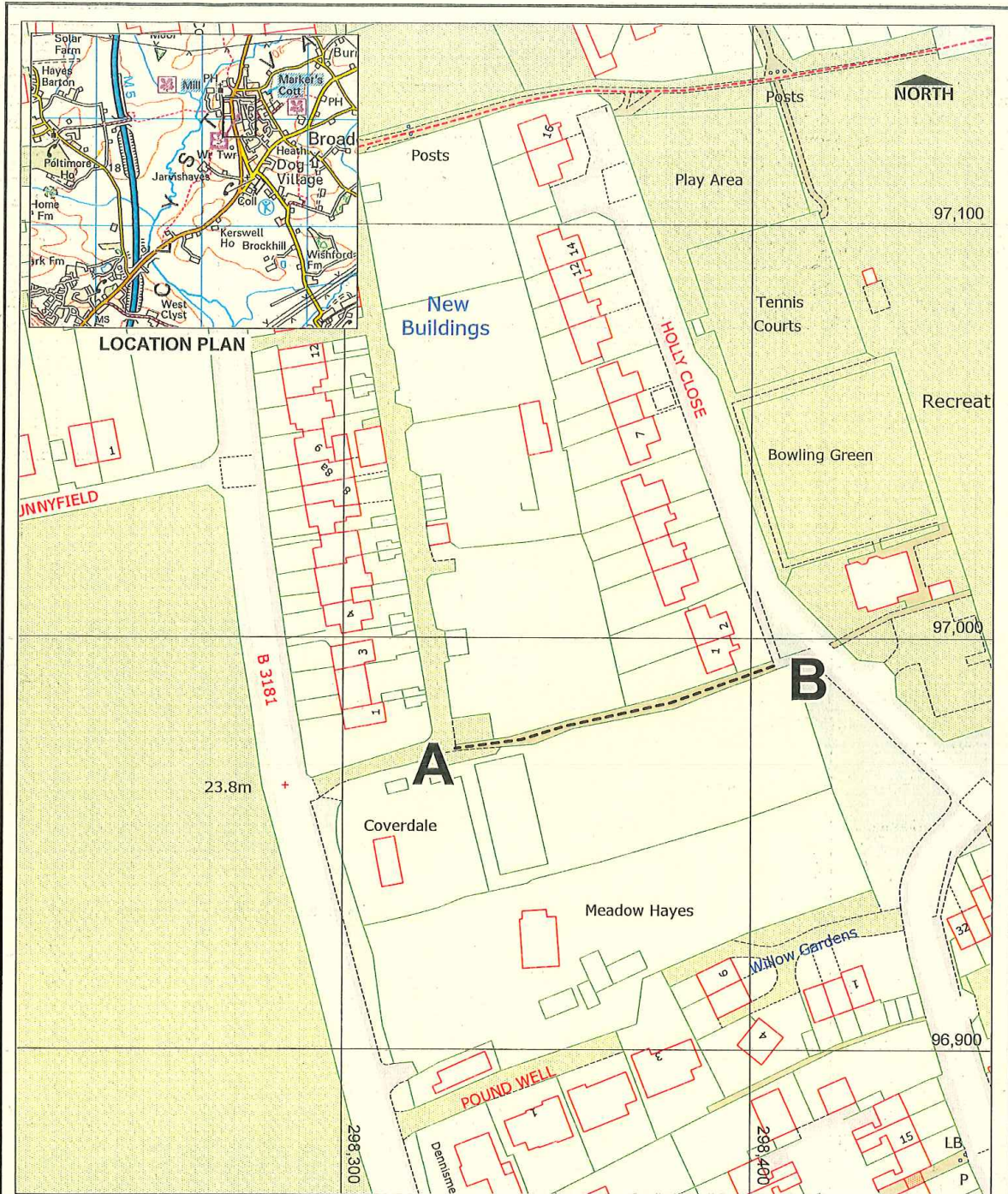
Background Paper	Date	File Ref.
------------------	------	-----------

None

hc260919pra  
sc/cr/Modification Orders  
02 041119



# Agenda Item 14



Map Ref **SX 9896**      Grid 100m      © Crown copyright and database rights 2018 OS 100019783

**DEVON COUNTY COUNCIL**  
**FOOTPATH NO. 33, BROADCLYST**  
**DEFINITIVE MAP MODIFICATION ORDER 2018**

drawing no. HIW/PROW/17/30  
 date October 2018  
 scale 1:1250 at A4  
 drawn by AS/HC

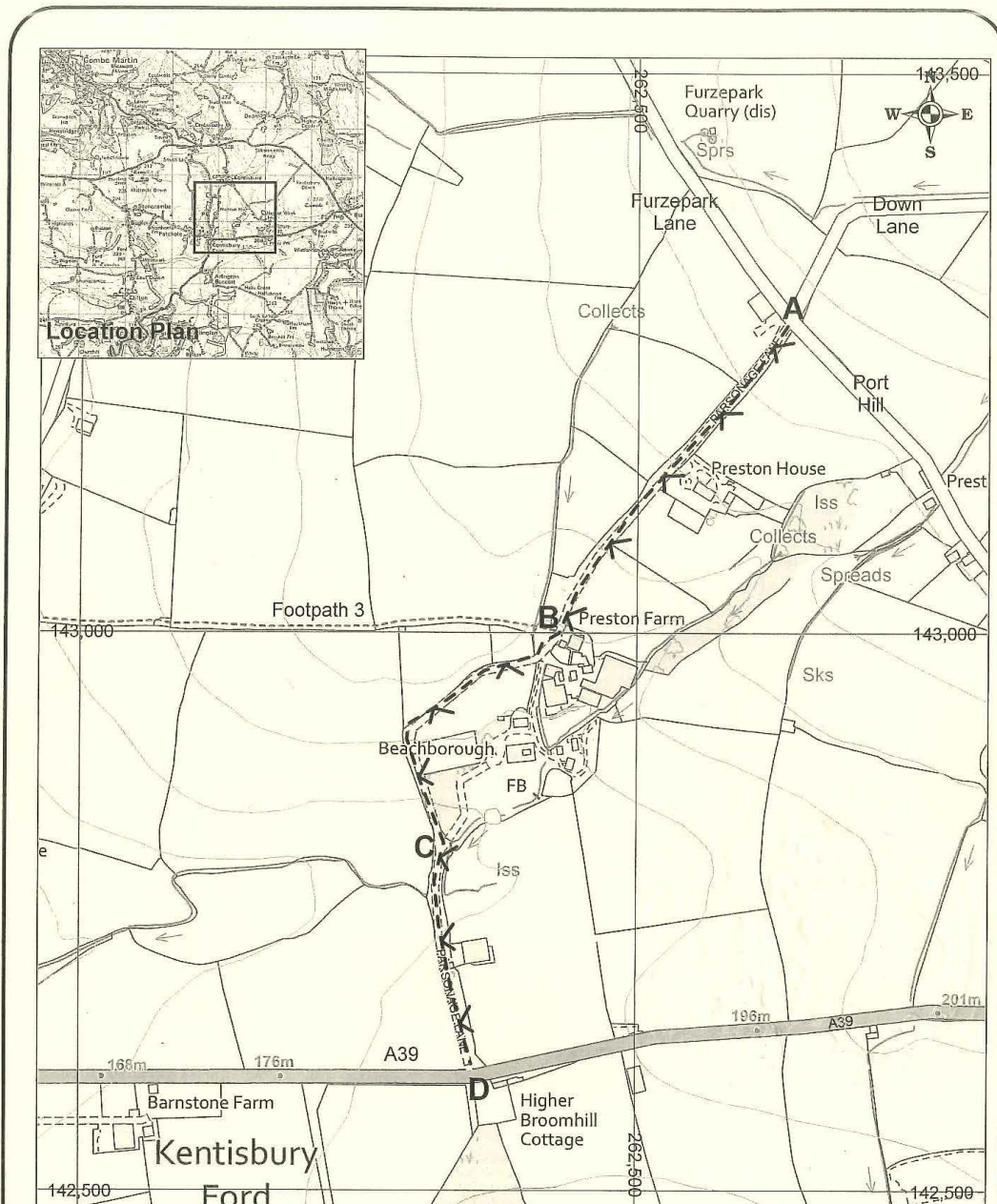
**Notation**    CH    *AS/HC*

Footpath No. <sup>33</sup>31, Broadclyst A - B    -----    80 metres approx

Existing footpath    - - - - -

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







map ref: SS 6242 & 6243

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. 1000118783

**Devon County Council  
(Restricted Byway No. 20, Kentisbury)  
Definitive Map Modification Order 2019**

drawing number HIW/PROW/19/21  
 date April 2019  
 scale 1:5,000  
 drawn by CLG

**Notation**

Restricted byway No. 20 A - B - C - D (approx 823m)   
 Existing footpaths 

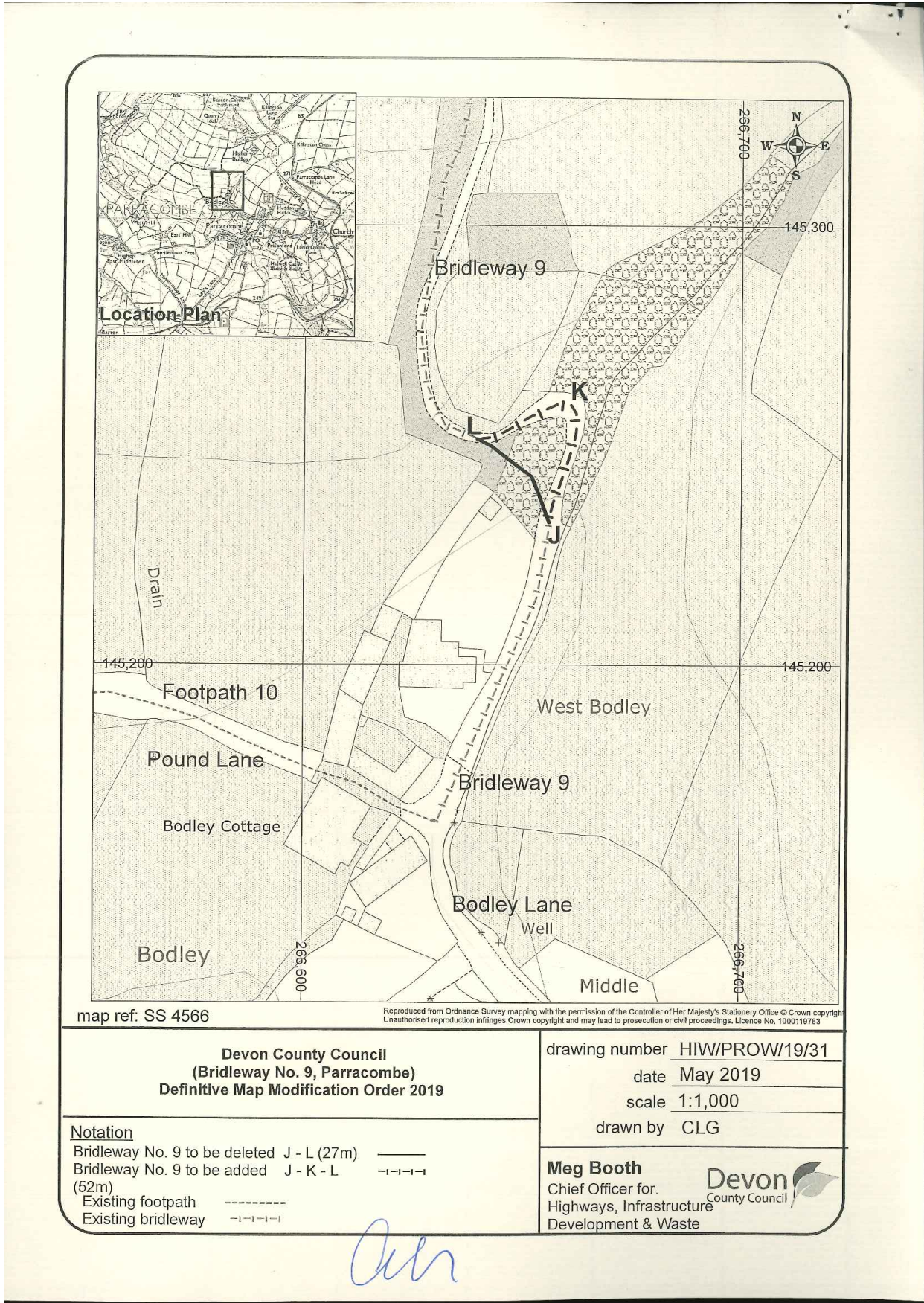
**Meg Booth**

Chief Officer for  
Highways,  
Infrastructure Development & Waste





# Agenda Item 14



map ref: SS 4566

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  
(Bridleway No. 9, Parracombe)  
Definitive Map Modification Order 2019**

drawing number HIW/PROW/19/31  
 date May 2019  
 scale 1:1,000  
 drawn by CLG

**Notation**

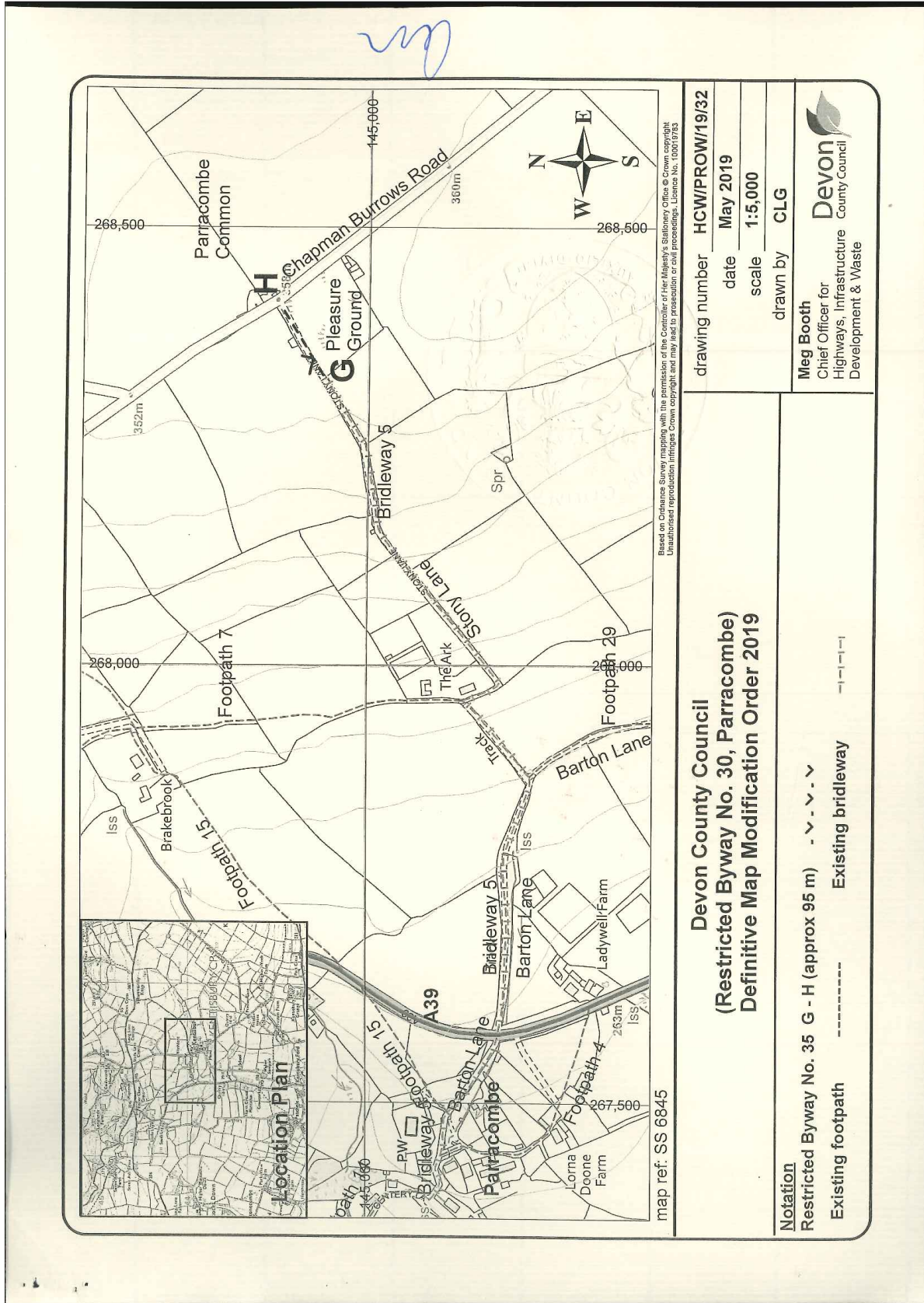
Bridleway No. 9 to be deleted J - L (27m) ———  
 Bridleway No. 9 to be added J - K - L (52m) - - - - -  
 Existing footpath -----  
 Existing bridleway - - - - -

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



*CLG*





**Devon County Council**  
**(Restricted Byway No. 30, Parracombe)**  
**Definitive Map Modification Order 2019**

drawing number **HCW/PROW/19/32**  
 date **May 2019**  
 scale **1:5,000**  
 drawn by **CLG**

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



**Notation**

Restricted Byway No. 35 G - H (approx 95 m) - - - - -  
 Existing footpath - - - - -  
 Existing bridleway - - - - -

Based on 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. 100019793

map ref. SS 6845



HIW/19/95

Public Rights of Way Committee  
12 November 2019

## Public Path Orders

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

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

**Recommendation: It is recommended that the report be noted.**

### 1. Summary

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

#### (a) Diversion Orders

- (i) Footpath No. 29, Wembury Public Path Diversion & Definitive Map & Statement Modification Order 2019
- (ii) Footpath No. 5, Sowton Public Path Diversion & Definitive Map & Statement Modification Order 2018

Meg Booth  
Chief Officer for Highways, Infrastructure Development and Waste

## Electoral Divisions: Bickleigh & Wembury; and Broadclyst

Local Government Act 1972: List of Background Papers

Contact for enquiries: Helen Clayton

Room No: ABG Lucombe House, Exeter

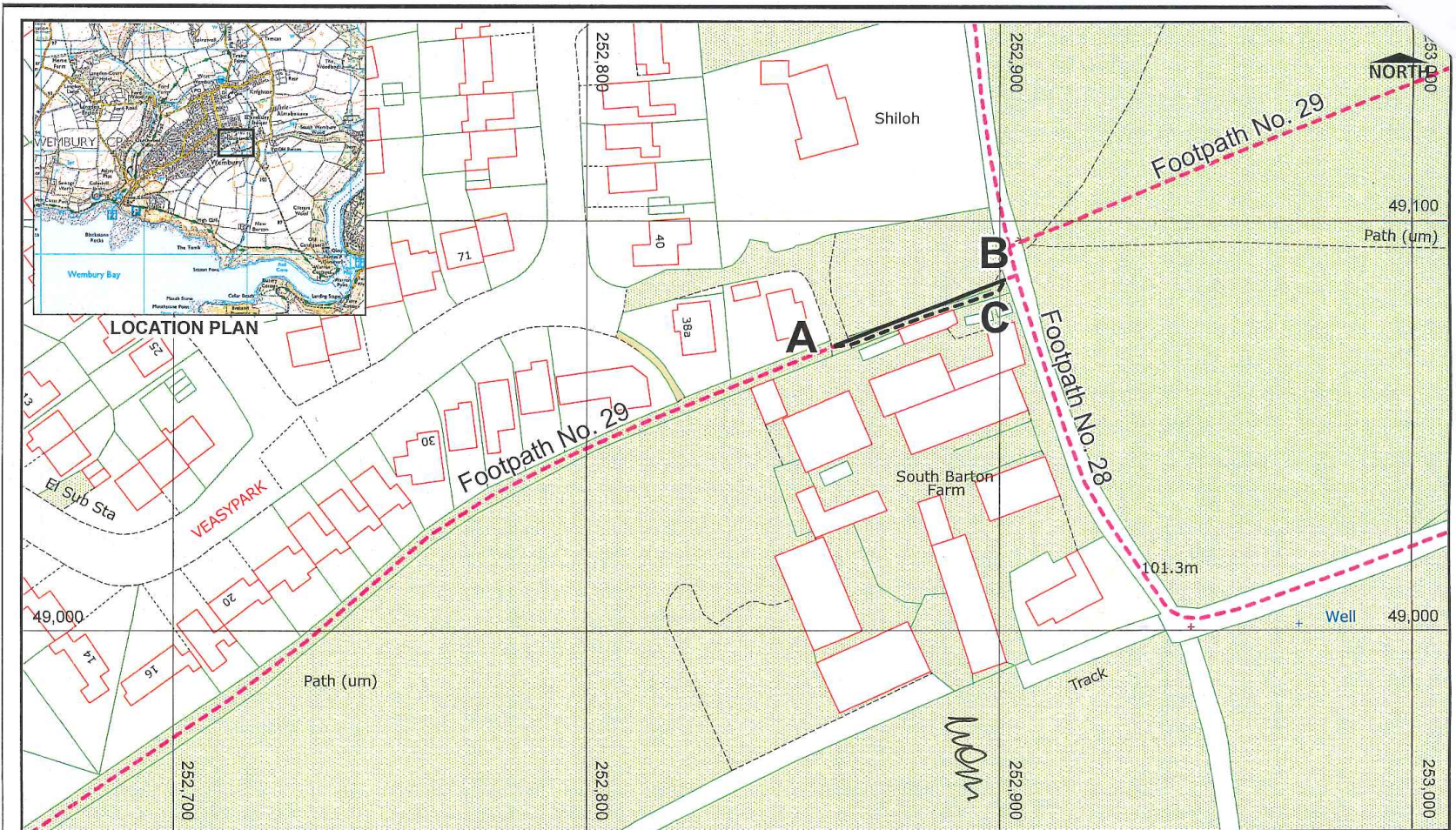
Tel No: 01392 383000

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

None

hc260919pra  
sc/cr/Public Path Orders  
02 041119








Map Ref **SX 5249** Grid 100m © Crown copyright and database rights 2019 OS 100019783

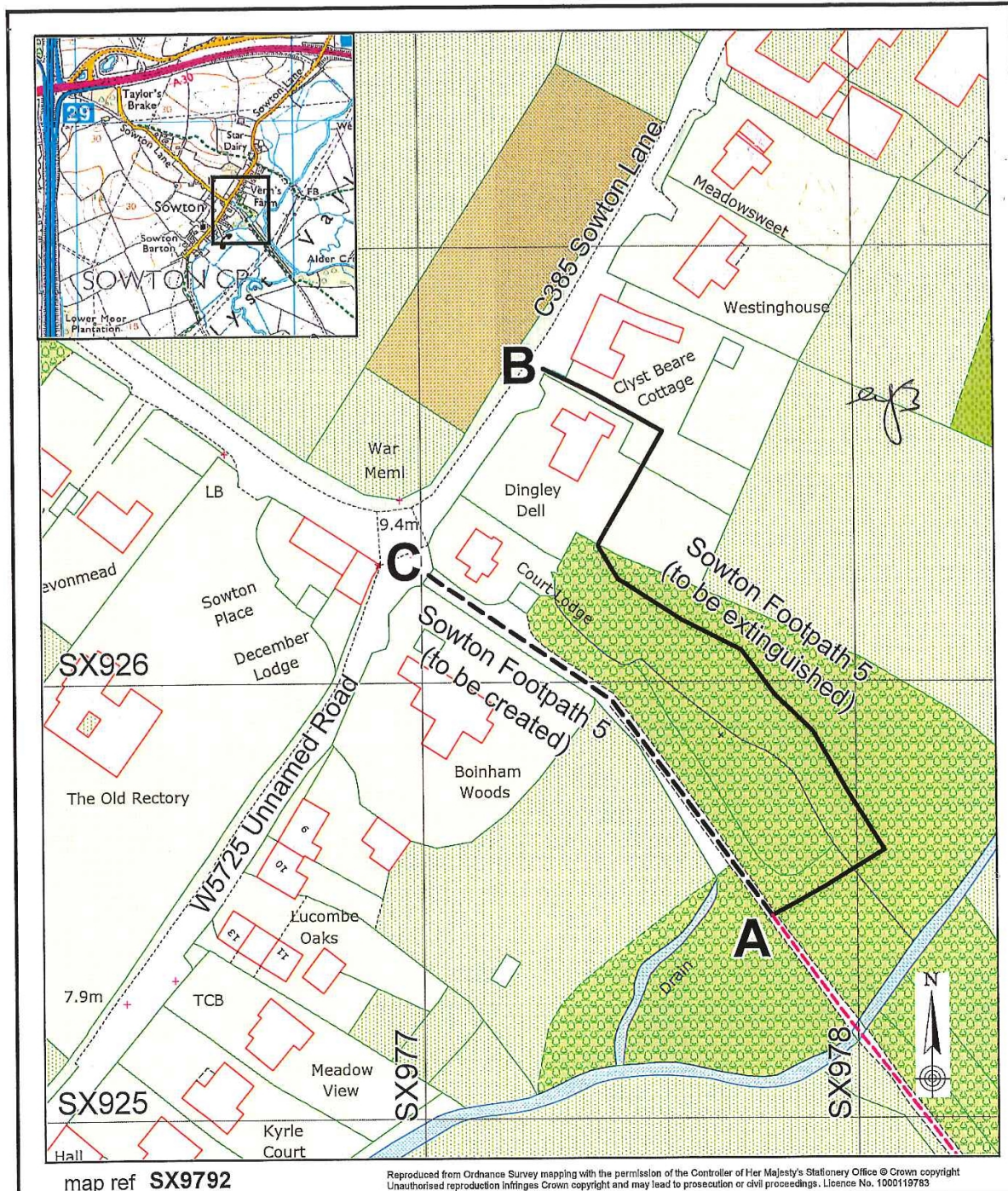
**DEVON COUNTY COUNCIL**  
**(FOOTPATH NO. 29, WEMBURY)**  
**PUBLIC PATH DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2019**

drawing no. HIW/PROW/19/33  
 date May 2019  
 scale 1:1250 at A4  
 drawn by HC

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


Notation	
To be extinguished A - B (approx 43 metres)	
To be created A - C - B (approx 45 metres)	
Existing footpath	





map ref **SX9792**

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 No. 5, SOWTON (PART OF)  
PUBLIC PATH DIVERSION AND DEFINITIVE MAP  
AND STATEMENT MODIFICATION ORDER 2018**

drawing no. HIW/PROW/17/046  
date November 2018  
scale 1:1,250  
drawn by SCG

<u>Notation</u>	<i>To be extinguished</i>	<i>To be created</i>
Footpath No. 5	A - B (approx 190 metres) —————	A - C (approx 110 metres) - - - - -

**Meg Booth**  
Devon County Council  
CHIEF OFFICER FOR HIGHWAYS,  
INFRASTRUCTURE DEVELOPMENT AND WASTE

