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

County Hall
Topsham Road
Exeter
Devon
EX2 4QD

(See below)

Your ref :
Our ref :

Date : 26 February 2020
Please ask for : Wendy Simpson, 01392 384383

Email: wendy.simpson@devon.gov.uk

PUBLIC RIGHTS OF WAY COMMITTEE

Thursday, 5th March, 2020

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 12 November 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 - 12)
Draft minutes of the meeting held on 23 January 2020, attached.

DEFINITIVE MAP REVIEWS

- 5 Parish Review: Definitive Map Review - Parish of Holsworthy (Pages 13 - 16)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/20/4), attached, and background papers.


Electoral Divisions(s): Holsworthy Rural

- 6 Parish Review: Definitive Map Review - Parish of Cornwood Part 2 (Pages 17 - 22)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/20/5), attached,
and background papers.
Electoral Divisions(s): Bickleigh & Wembury
- 7 Parish Review: Definitive Map Review - Parish of Hockworthy (Pages 23 - 46)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/20/6), attached,
and background papers.
Electoral Divisions(s): Willand & Uffculme
- 8 Parish Review: Definitive Map Review - Parish of Lymptstone (Part 3) (Pages 47 - 54)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/20/7), attached,
and background papers.
Electoral Divisions(s): Exmouth
- 9 Parish Review: Definitive Map Review - Parish of Talaton (Pages 55 - 74)
Report of the Chief Officer for Highways, Infrastructure Development and Waste
(HIW/20/8), attached, and background papers.
Electoral Divisions(s): Whimble & Blackdown
- 10 Parish Review: Definitive Map Review - Parish of Payhembury (Pages 75 - 96)
Report of the Chief Officer for Highways, Infrastructure Development and Waste
(HIW/20/9), attached, and background papers.
Electoral Divisions(s): Whimble & Blackdown
- 11 Public Inquiry, Informal Hearing and Written Representation Decisions; Directions and
High Court Appeals (Pages 97 - 100)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/20/10),
attached.
Electoral Divisions(s): Feniton & Honiton; Sidmouth
- 12 Modification Orders (Pages 101 - 104)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/20/11),
attached.
Electoral Divisions(s): Broadclyst; Combe Martin Rural
- 13 Public Path Orders (Pages 105 - 108)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/20/12),
attached.
Electoral Divisions(s): Ilfracombe; Whimble & Blackdown

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

None

- 14 Next meeting date
The next meeting date has moved to Wednesday 8 July 2020.

Membership
Councillors P Sanders (Chair), T Inch, J Brook, I Chubb, P Colthorpe, A Dewhurst, L Hellyer, M Shaw and H Ackland
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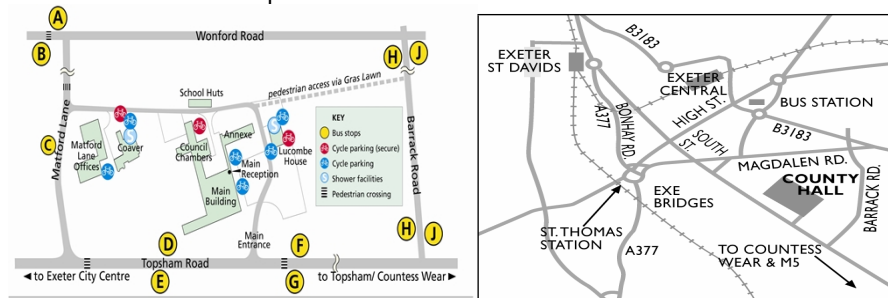
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Agenda Item 4

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Minutes of the Fifty-Fifth meeting
of the Devon Countryside Access Forum
held at The Wiltshier Room, Broadclyst Victory Hall, Broadclyst, Exeter EX5 3DX
Thursday, 23 January 2020

Attendance

Forum members

Andrew Baker
Sean Comber
Tim Felton
Gordon Guest
Jo Hooper
Charlie Lloyd

Sue Pudduck
Tino Savvas
Sarah Slade (Chair)
Bryan Smith
Maggie Watson

Devon County Council Officers and others present

Helen Clayton, Senior Officer, Public Rights of Way, DCC
George Coles, member of the public
Ros Mills, Manager, Public Rights of Way, DCC
Hilary Winter, Forum Officer, DCC

1. Apologies

The Chair paid tribute to John Daw, an upstanding and respected member of the community and member of the Devon Countryside Access Forum. A minute's silence was held.

Apologies were received from Chris Cole, Cllr Tony Inch and Cllr Philip Sanders.

2. Declarations of interest

There were no declarations of interest.

3. Minutes of the meeting held on 19 September 2019

Minutes of the meeting held on 19 September were approved and signed.

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4. Matters arising

4.1 Fly-tipping conference, Chartered Institute of Waste Management

Sean Comber reported that the conference had been postponed.

4.2 Stover Country Park. Letter sent in support of the Heritage Lottery Fund bid.

The letter sent in support of the bid was noted. The outcome would be known in March.

5. Public questions

No public questions had been received. An email about coastal access from a member of the public would be considered during the Forum's deliberations on this matter.

6. Correspondence log

The log was noted. The Chair drew attention to the importance of the Forum's position statements in responding to consultations without undue burden on members.

7. Meetings attended by DCAF members

7.1 Exe Estuary Partnership, DCC and Devon Countryside Access Forum working group

It had not been possible to arrange a further meeting of the working group during the autumn and it was hoped to hold the next meeting in March 2020.

Jo Hooper had emailed Exeter City Council and had received confirmation that the toilet close to the Turf Locks was only available to the boating community. Conversations with pubs might be helpful in securing disabled access. It was agreed to put this matter on the agenda for the working group as the Exe Estuary Partnership might be able to assist in promoting the message about disabled facilities.

Action: Ros Mills, DCC.

It was agreed that the trail statement, once agreed, would give more weight to any discussions with the service sector. The Devon Countryside Access Forum's remit was to give advice to specified organisations.

7.2 Active Devon Conference

Tim Felton and Sue Pudduck had attended the Active Devon conference and were thanked for their report. They reported that it had been very well-

organised and motivational. The new initiatives were exciting and were about getting people out and confident to use the outdoors and not just about elite sport. It was suggested that Active Devon could give a presentation at a future meeting. Tino Savvas said he was involved in a Connecting Actively to Nature (CAN) project in Torquay which had a turnout of thirty-nine in poor weather for the first event. It was noted Forestry England and running and cycling organisations were recognising the benefits to health of organised events.

7.3 Marsh Barton railway station

Tim Felton, Gordon Guest, Jo Hooper and Maggie Watson had been on a site visit to look at initial plans for the proposed Marsh Barton Railway Station. The scheme included a new bridge over the railway line, adjacent to the existing bridge, for walkers and cyclists. This now featured slightly steeper but shorter ramps than previously recommended by Network Rail. The proposed gradients are within recommended accessibility standards for Devon County Council footbridges and would offer a more favourable gradient than the existing hump back bridge, used by motorised traffic, along Clapperbrook Lane. A formal planning application would be made by Devon County Council later in the year.

The working group agreed that the principle is good and would in itself offer improvements to recreational and functional access. Officers accompanying the working group had explained the different responsibilities of train operators and Network Rail.

It was agreed the proposed bridge gradient was acceptable provided there are sufficient resting platforms of an appropriate length and suitable non-slip surfacing on the ramps.

There was concern about the existing and potentially much higher use of the car park at the end of Clapperbrook Lane due to the narrow road and numbers of recreational access users, commuters and rail station users. The proposals included disabled parking only.

The plans for the station and provision of information points and shelters were good, provided the latter were available for disabled users.

It was agreed space for cycles on trains was a problem, together with accessibility of some stations further down the line for cyclists and disabled users. These matters fall within the responsibility of the train operator. The Exe Estuary was currently a major destination and people may come up by train to cycle down the estuary.

Devon County Council expect the station to be a 'destination station' which would lessen car parking problems in Marsh Barton and encourage sustainable travel. Proposed new jobs and housing, together with increased recreational use, might mean this was not the case and additional parking was recommended.

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The draft response presented by the working group was agreed. A few amendments were suggested and the response would include the following:-

1. Pedestrian access is an important and integral part of the scheme.
2. The crossing of the canal is difficult and dangerous in the summer and it is recommended that the scheme is extended across the canal.
3. The scheme should be future-proofed. Parking and other access improvements in and around the station could be secured through use of s106, raised from future developments.
4. Members raised some concerns about chicanes. Instances were cited of the removal of chicanes between Digby Station towards Exeter Chiefs' ground.

Even if some cyclists continued to use the road section, some vulnerable users would be taken off the road.

Action: Forum Officer to circulate draft to members.

8. Draft recreational trail proposals

A discussion took place on the draft document developed following the last meeting. Changes to the draft text and order were made for clarification and impact. It was agreed to include electric scooters in the section about electric bikes and power assisted mobility vehicles.

It was agreed that 'share with care' conveyed a stronger message than 'share this space' and other suitable short messages such as 'respect other users', 'give space' and 'pass with care' had potential to encourage safe use of trails. It was important to intersperse messages. It was thought subliminal positive images, such as a smiling face, might be effective.

It was agreed to mention accessibility and include the Disability Position Statement.

Action: Forum Officer to circulate a re-worded draft.

Bryan Smith had recently cycled on the newly opened Wray Trail and said it was a wonderful asset.

9. Minutes of the Public Rights of Way Committee held on 12 November 2019

Minutes of the Public Rights of Way Committee held on 12 November were noted. A policy change to the Definitive Map Review had been agreed which changed the end date of the parish reviews from 1 January 2020 to 1 January 2025.

10. Public Rights of Way update

Ros Mills reported that the Public Rights of Way team would be moving to Great Moor House, Sowton, due to refurbishment of Lucombe House at County Hall.

Some capital money was being spent on improvements to the surface of the Exe Estuary Trail between Bridge Road and Turf Locks. Signs, press releases and social media would be used to inform the public of the five-day closure.

A new form had been developed to enable landowners to apply for consent to change/improve the surface of public rights of way and state what work they plan to do at their own expense. This will enable surface suitability to be checked and record future maintenance responsibilities and requirements.

An App was being developed to log the asset inventory on each public right of way and would be rolled out in the summer 2020 using ARC GIS. Wardens would need to carry out this work as part of their regular inspection programme. It may mean an additional year is added to the current three-year inspection programme policy.

The legal records associated with recreational trails are complex and include information on ownership, restrictions and covenants. A conclusive map of these is being gradually put onto the GIS system and will assist management and maintenance.

Marta Gawron was introduced as the new Public Rights of Way Assistant Officer. Part of her duties will include dealing with some chargeable public rights of way work and a business case was made for the post. The Legal team at the County Council previously undertook aspects of this Public Path Order work.

Helen Clayton reported that the next Public Rights of Way Committee would be on 5 March. There were delays in the Planning Inspectorate, mainly due to the demands of coastal access inquiries. Dates over an eleven-month period, rather than its target six months, are currently being sought by the Inspectorate to hold local PRoW Public Inquiries.

The Public Rights of Way team would be bidding into some additional highway money that had been allocated for drainage.

11. Presentation by Jane Beech and Richard Andrews, Coastal Access team, Natural England.

Richard Andrews and Jane Beech, Natural England, presented details from the Combe Martin to Marsland Mouth and Cremyll to Kingswear reports for the England Coast Path, currently out for consultation. The presentations focussed on proposals for estuaries, significant realignments and exclusions/restrictions. Much of the coast falls under designations such as Special Areas of Conservation, Marine Coastal Zones, Scheduled Monuments, Sites of Special Scientific Interest, Heritage Coast, Areas of Outstanding Natural Beauty and Biosphere Reserve.

The England Coast Path will differ from the South West Coast Path in providing coastal margin land; land between the trail and the mean low margin which the public can use at their own risk.

Each stretch had now been divided into individual reports allowing work to commence on a report length if no objections had been received. Any objections

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received by the Secretary of State will have to be determined before work on that report route can start.

Earlier discussions and consultations with the South West Coast Path Association, Devon County Council, the Ramblers, the Disabled Ramblers, the Devon Countryside Access Forum and others had informed the published reports.

With estuaries, Natural England had discretion to stop at the estuarine limit or at the first pedestrian crossing point.

Combe Martin to Marsland Mouth

Richard Andrew explained that, in summary, this included one estuary; one direction to exclude access; one direction to restrict access; sixteen realignments from the current South West Coast Path route and 1.4km taken off-road (3.6km if the road section of the 'American Road' is included).

For the Taw and Torridge estuary it was proposed to align the route to the first pedestrian crossings, the Taw Bridge (Barnstaple) and Bideford Long Bridge, using the existing SWCP/ Tarka Trail. This would provide a continuous route around the estuary.

Realignments were proposed for:

- a) Chesil Cliff, Croyde, to take 80m of path off road.
- b) Braunton Burrows and Horsey Island, to take approximately 500m off-road at Saunton. The trail will be aligned seaward, taking the trail off 5.3 km of the 'inland' American road and path. The existing public right of way along the American road would still be available. At Horsey Island, discussions had taken place with the Devon County Council archaeological team about stone stiles. Some would be removed to improve access. Where these were listed, a suitable gate would be erected alongside to British Standard 5709: Gaps, gates and stiles (2018).
- c) Scheduled monuments at Gallantry Bower and Embury Beacon. The proposal is to align the trail to protect scheduled monuments and provide information boards to advise walkers of the site sensitivity. A question was asked about whether public rights of way would be realigned but currently these would remain as on the Definitive Map.
- d) East-the-Water. Aligning the trail on nearby pavements will take the trail out of the railway cutting and avoid steps and a road crossing.
- e) Dyer's Lookout. The current route is badly eroded and the proposal is to align the trail inland of the current SWCP route.
- f) Watertown, Appledore. Aligning the trail on the edge of the field and foreshore will avoid the current low tide (foreshore) and high tide (road) route. The route would protect high tide roosts.

A couple of directions were proposed to deal with high tide roosts, issues with dogs and nesting birds, and safety concerns around the mud flats and salt marshes.

A section 25A direction to exclude people from salt marsh and flats was proposed. This would not stop people with existing historic rights having access. This included a RSPB reserve.

A section 26(3)(a) long term dog restriction for Home Farm Marsh, run by the Gaia Trust, was proposed. Notices would be erected in key places. Home Farm was accessible for mobility scooters.

It was confirmed that monitoring of restrictions would take place by the Gaia Trust at Home Farm and by the Taw/Torridge Estuary Partnership and the RSPB on the estuary. Natural England had funded work on high tide roosts.

A large development was planned at Yelland Quay and Natural England will be consulted on nature conservation and the coastal path.

It was confirmed that there would be signs for both the SWCP and England Coast Path. The importance of continued signing into towns was raised as vital for the economy.

The Treasury would be funding the England Coast Path. Advantage had been taken of Rural Development Programme for England funding from the European Union whilst this had been available.

As part of the coastal path, an additional 1km stretch of route at Westward Ho! would be improved to allow access by mobility scooters.

Cremyll to Kingswear

Jane Beech outlined the position on the Cremyll to Kingswear stretch. The Plymouth area was included in the reports but was outside the Devon Countryside Access Forum area.

Seven estuaries were included, including the Tamar and Plym in the Plymouth area, plus five exclusions and ten realignments from the SWCP totalling 32 km (including) and 3km (excluding) alternative and temporary routes.

Proposals for the estuaries were as follows:

River Yealm

Option 3, aligning the route to follow the existing SWCP via a seasonal ferry, had been proposed. This would have an alternative route when the ferry was not running, using existing highways, public rights of way and an existing permissive route to extend to the first pedestrian crossing point.

Other options considered were; option 1, aligning the trail around the estuary to the first pedestrian crossing points at Waplewell, Brixton and Yealmpton and, option 2, aligning the route to follow the existing SWCP route via the seasonal ferry. Option 1 would add 22.5 km to the path as gardens and historic parkland were excepted land. The alternatives were also constrained due to the convoluted nature of the estuary and limited views in dense woodland. The benefits of the other options would not justify substantial additional cost.

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It was noted that the former route of the old railway line had not been included as an aspiration/option. Natural England said it would have been hugely costly to replace the bridge.

River Erme

There were two options and option one had been selected. Option one would align to the existing SWCP across the estuary by fording at low tide between the two slipways at Mothecombe and Wonwell. It was acknowledged that this was only available for an hour either side of low tide and some users would not feel able to cross. Although there was an old footbridge farther up the estuary, the adjacent land was very marshy.

Option 1, along the estuary to the first crossing point on the A379 at Sequer's Bridge, had been considered. This route would have to avoid historic parkland (excepted land) and other challenges such as topography and land use of the estuary margins; nature conservation and land management interests; and pedestrian use of the A379.

River Avon

There were four options and option four had been proposed. This followed the existing SWCP route via an improved full-time ferry service between Cockleridge Ham and Bantham. Natural England would review the trail alignment and prepare a variation report if the ferry became less suitable. An alternative route, along the Avon Valley Walk, would be available when the ferry is not in service.

The other options considered were option 1, an estuary trail to the first crossing point at Aveton Gifford using the Avon Valley Walk. This would be away from the estuary with significant coastal margin. Option 2 would create a new estuary trail to Aveton Gifford. Option 3 was as option 4 but without the alternative route.

Kingsbridge Estuary

There were two options and option one, the existing SWCP route, had been proposed as there was a regular year-round ferry taking walkers between Salcombe and East Portlemouth. Option 2 would take walkers inland to the pedestrian crossing at Kingsbridge but the length of the estuary with all its inlets, 39 km, would make a waterside route challenging and expensive. There was also excepted land along the shoreline.

River Dart

Of the two options, option one following the existing SWCP route was proposed. The regular year-round ferry takes walkers between Dartmouth and Kingswear. Again, a waterside route was seen as inordinately expensive as option 2, to the crossing point at Totnes, would add 46 km and there was excepted land along the shoreline.

A number of key realignments within the Devon County Council highway authority area were suggested in the reports.

1. Mothecombe Beach. The current route is cut-off at high tide and for two hours either side. The proposal is to align the route along the seawall and

include new steps. The possibility of a ramp was raised but Natural England said this was not possible and it was noted that the onward route was challenging.

2. Hallsands and Beesands. The SWCP route had been affected by erosion of the road following storms. The new coastal path route would follow the reinstated road, with potential to move back. At Beesands a route had been negotiated through the corner of a field.
3. Torcross. The SWCP was closed in 2018 due to storm damage and a temporary closure was in place. The diversion is currently along a narrow road and includes steps. The plan is to repair and build a new stone wall to allow reinstatement of the path along its original route.
4. Slapton Ley. Again, the route of the SWCP was affected by storms in March 2018. Natural England worked with the County Council and stakeholders to reinstate the path to the landward side of the new section of the A379. This path would be a more sustainable route should there be further erosion of the shingle ridge and road.
5. Strete. Consideration was given to aligning the trail to the seaward side of the A379 and Strete. However, buildings and gardens are adjacent to the cliff and there is strong community support for the route to continue through the village. There have been recent improvements to trail infrastructure and a reduction in village speed limits.
6. Stoke Fleming. Discussions with landowners have not enabled a route adjacent to the coastline to be proposed due to areas of excepted land (buildings, gardens and curtilage). The owners did not wish to voluntarily dedicate a route. The option is for a trail following a new seaward alignment between Church Road, in the centre of Stoke Fleming, and Redlap Lane west of Warren Point, via the public footpath and fields along Shady Lane.

A few restrictions have been applied, some to conform to other relevant legislation.

- Carswell Estate. A year-round total exclusion due to game birds and shooting is proposed.
- Mothecombe Beach. A seasonal dog ban would be put in place.
- Burgh Island. A total year-round exclusion is proposed due to land management and commercial activity.
- Blackpool Sands. A dog ban would be put in place.

Natural England was asked whether there was scope to subsidise ferries and the reply was that there may be incentives to bolster ferries. Natural England allocates money for the maintenance of the SWCP, which includes 100% of the costs to subsidise the ferries and 75% towards trail maintenance. One ferry had been changed to reflect land management interests. Natural England suggested that improvements could be included in representations made by the DCAF.

Gordon Guest had been asked to look at accessible sections by the Disabled Ramblers.

A working group was proposed to consider a response and Sue Pudduck, Tino Savvas, Gordon Guest, Bryan Smith, and Sarah Slade expressed interest.

Action: Forum Officer to circulate potential dates to all members.

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There was an eight-week period to make representations. Landowners could make objections. Representations will be compiled into a written report on which the Minister would make decisions. The Planning Inspectorate would deal with objections before presenting a report to the Minister. After final decisions had been made, Natural England would work with the local authority to open the stretches of England Coast Path.

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

12.1 Jurassic Coast World Heritage Site Partnership Plan

The response was noted and approved. A report should be published in February and a final plan adopted in April 2020.

12.2 Fire Beacon Hill

The response was noted and approved. The RSPB would be publishing a report shortly.

12.3 Pebblebed Heaths Visitor Management Plan

The response was noted and approved. The consultation report and recommendations had been published and these were being taken to the South and East Devon Habitat Regulations Executive Committee on 28 January.

12.4 Cranbrook Local Plan Examination

The response was noted and approved.

13. Current consultations

13.1 Mid Devon Local Plan Review – Proposed Main Modifications Consultation

It was resolved to write in support of the main modifications outlined in the agenda paper which were in line with previous Forum comments.

Action: Forum Officer

13.2 Network Rail. Public consultation on revised plans to protect vital rail line between Teignmouth and Dawlish.

Bryan Smith had attended one of the consultation events. Proposals included a new trail and opportunities to link with the National Cycle Network. It appeared the existing public right of way would remain a

footpath. Jo Hooper mentioned there were objections to the beach access plans.

Details of the remaining consultation events would be circulated. It was agreed to hold a working group to examine the implications for access. Jo Hooper and Bryan Smith expressed interest.

Action: Forum Officer

14. Any other business

14.1 Devon Local Nature Partnership Conference - 20 March 2020.

The Devon LNP conference details would be circulated when available and consideration given to attendance, depending on the topics being covered.

Action: Forum Officer

14.2 Devon Countryside Access Forum membership

The Forum Officer had circulated details of Forum membership to a range of bodies and organisations and was publicising it through the press and social media. The closing date was 21 February.

The Chair thanked Chris Cole, Sean Comber, Jo Hooper and Maggie Watson for their valuable input and support over the past three years. Maggie Watson had decided not to apply for a further term and was thanked for her inspirational and thought-provoking contribution.

15. Date of next meeting

The next meeting would be on 23 April, venue to be advised.

HIW/20/4

Public Right of Way Committee
5 March 2020

Definitive Map Review Parish of Holsworthy

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

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

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

1. Summary

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

2. Background

The original survey, under s. 27 of the National Parks and Access to the Countryside Act, 1949, revealed three Footpaths and one Road Used as a Public Path (RUPP) to be recorded on the Definitive Map and Statement for Holsworthy Urban District with the relevant date of 1st 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 Holsworthy at that time.

The Limited Special Review of Roads Used as Public Paths (RUPPS), also carried out in the 1970s, did affect this parish:

RUPP No. 3 was reclassified to Bridleway No. 3.

The following Order has been made and confirmed:

Holsworthy Footpath No. 1 Public Path Diversion Order 1995.

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

The current Review began in March 2019 with a public meeting held in the Market Hall in Holsworthy.

3. Proposals

No valid proposals arising out of this or previous reviews.

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4. Consultations

A full public consultation was carried out in November 2019 – January 2020 and the Review was advertised in the parish and in the North Devon Journal.

The responses were:

County Councillor Parsons	– no comment
Torrige Devon District Council	– no comment
Holsworthy Town Council	– no comment
British Horse Society	– no comment
Byways and Bridleways Trust	– no comment
Country Land & Business 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/ACU	– no comment
Cycling UK	– no comment
British Driving Society	– 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 Holsworthy. 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 Torridge 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	2019-20	CG/DMR/HOL

cg030220pra
sc/cr/DMR Parish of Holsworthy
02 240220

HIW/20/5

Public Rights of Way Committee
5 March 2020

Definitive Map Review Parish of Cornwood 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 in respect of Footpath No. 26, Cornwood by deleting from it part of the footpath between points A – B and adding the footpath between points A – C – B, as shown on drawing number HIW/PROW/20/10 and as described in the Definitive Statement.

1. Introduction

This report examines a Definitive Map anomaly between the Definitive Map and Statement for Footpath No.26, Cornwood arising from the Definitive Map Review in the parish of Cornwood.

2. Background

The background for the Definitive Map Review in the parish of Cornwood was set out in the Committee report HCW/16/48 of 6 July 2016.

3. Proposal

Please refer to the appendix to this report.

4. Consultations

General consultations have been carried out with the following results:

County Councillor J Hart	-	no objection
South Hams District Council	-	no comment
Cornwood Parish Council	-	no comment
Byways and Bridleways Trust	-	no comment
Country Land & Business Association	-	no comment
NFU	-	no comment
Ramblers' Association	-	no comment
Devon Green Lanes Group	-	no comment

5. Financial Considerations

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

Agenda Item 6

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, been taken into account in the preparation of the report.

9. Conclusion

It is recommended that a Modification Order is made to correct a mapping anomaly currently reflected on the Definitive Map and reconcile the Map with the Definitive Statement for Footpath No.26, Cornwood. It is therefore recommended that an Order be made to modify the Definitive Map by deleting from it part of Footpath No. 26, Cornwood between points A – B and adding the footpath between points A – C – B, as shown on drawing number HIW/PROW/20/10

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 area.

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Bickleigh & Wembury

Local Government Act 1972: List of Background Papers

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Tel No: 01392 383000

Background Paper

Date:

File Ref.

Correspondence file

October 2019 - date

ES/DMR/CORNWOOD

es030220pra
sc/cr/DMR Parish of Cornwood Part 2
04 250220

Appendix I To HIW/20/5

A. Basis of Claim

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.

Agenda Item 6

1. **Footpath No.26, Cornwood: Variation of particulars of the Definitive Map to regularise the map with the Definitive Statement as shown on plan No. HIW/PROW/.**

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map in respect of Footpath No. 26, Cornwood by deleting from it part of the footpath between points A – B and adding the footpath between points A – C – B, as shown on drawing number HIW/PROW/20/10 and as described in the Definitive Statement.

1.1 Background

- 1.1.1 During routine inspection of the rights of way network in Cornwood, it was discovered that the line of part of Footpath No. 26 Cornwood, as shown on the Definitive Map, through Broomage Wood, was at odds with the Definitive Statement for the path. Further, that the line habitually walked by the public is that described in the Definitive Statement. It was therefore proposed that the Map be modified to reconcile it with the Statement for this section of the path.

1.2 Description of the Route

- 1.2.1 The Definitive Statement for the section of footpath under consideration states: *'It passes over a stone stile, through wood, Ord. Nos. 80 and 103, through a pole fence gateway.....'*

1.3 Documentary Evidence

- 1.3.1 1st Edition 25' – 1 mile Ordnance Survey mapping 1880 – 90 shows that field number Ord. No.80 is the parcel of woodland to the north of the line as shown on the Definitive Map. A pecked line is shown along the southern boundary of this parcel, then crossing over the boundary into Ord No. 103, indicating that a path physically existed on the line described in the Definitive Statement. No path is shown on the line as currently recorded on the Definitive Map, to the south of the Ord No. 80 boundary.
- 1.3.2 2nd Edition OS 1904 - 6 mapping shows the same as the 1st Edition map.
- 1.3.3 Survey for the Definitive Map 1950
The map submitted by Cornwood Parish Council showing rights of way for inclusion on the Definitive Map is not very precise with regards to the line marked for Footpath No. 26 at Broomage Wood, with the pen line obscuring the parcel boundary in question. However, the line for Footpath No. 26 in general appears to follow the pecked line marked FP on the OS base mapping.
- 1.3.4 There is no surviving record of the description of Footpath No. 26 that should have been submitted by the Parish Council with the map referred to above. The only surviving description is that written by the Divisional Surveyor for Devon County Council, Mr G A Stedman, who walked the path on 15th February 1954. The description does not provide any clarification, only describing the path as *'through wood'*.

1.4 Landowner Evidence

- 1.4.1 Mr K Bateman of Bateman of Hosegood Chartered Surveyors is the land agent acting on behalf of the landowner Mr M Rendle. They fully support the regularising of the mapping anomaly.

1.5 Rebuttal Evidence

- 1.5.1 None.

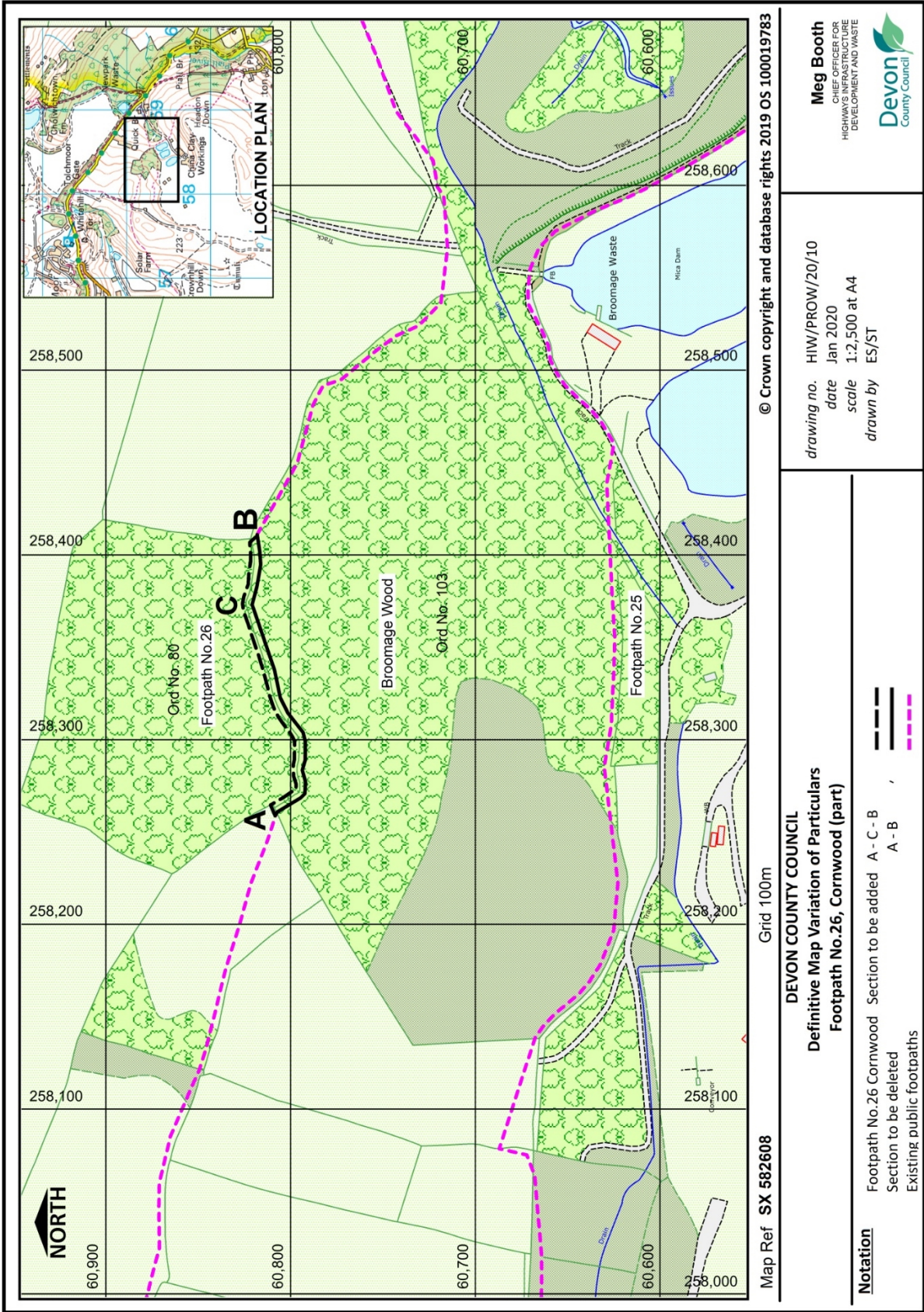
1.6 Discussion

- 1.6.1 The Definitive Map and the accompanying Definitive Statement are conclusive evidence of the legal status and line of a public right of way. Where a discrepancy is discovered, it is necessary to reconcile the difference by way of varying the particulars contained on the map or within the statement. Neither the Map nor Statement takes precedence in law, so the correct position must be determined by consideration of all the available evidence.
- 1.6.2 The Definitive Statement for Footpath No. 26 clearly details the line of the path going through Ordnance Survey field number 80 first and 103 second. The Ordnance Survey mapping of 1904 - 06 shows a path through Broomage Woods along the southern edge of field number 80, and then crossing into field number 103 further east. This is evidence that a path physically existed on the line reflected by Definitive Statement. There is no path indicated as existing at that time on the line shown on the Definitive Map.
- 1.6.3 The path habitually walked by the public is also along the southern boundary of the woodland of OS plot 80, continuing to the south eastern corner of the parcel and then into OS plot 103. There is no physical evidence of a path on the line shown on the Definitive Map to the south of the boundary of Ord No. 80.
- 1.6.4 Varying of the particulars on the Definitive Map, will resolve the conflict between the Map and the Statement and reflect the line walked by the public.

1.7 Conclusion

- 1.7.1 It is therefore recommended that a Modification Order be made to modify the Definitive Map in respect of Footpath No. 26, Cornwood by deleting from it part of the footpath between points A – B and adding the footpath between points A – C – B, as shown on drawing number HIW/PROW/20/10 and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

Agenda Item 6



HIW/20/6

Public Rights of Way Committee
5 March 2020

Definitive Map Review Parish of Hockworthy

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 the one proposal for change arising out of the Definitive Map Review in the Parish of Hockworthy (within Borden Gate Parish Council) in Mid Devon.

2. Background

The original parish survey under s. 27 of the National Parks and Access to the Countryside Act 1949, completed in September 1950, initially proposed four routes for inclusion as public rights of way. After review by Tiverton Rural District Council and Devon County Council and the inclusion of a footpath connecting to Somerset; two footpaths and three bridleways were published on the draft definitive map in 15th April 1958. These five routes were subsequently recorded on the conclusive Definitive Map for Tiverton Rural District Council published on the 9th June 1964.

The Devon County Council county wide reviews of the Definitive Map under s.33 of the 1949 Act, commenced in 1968 and 1977 but were not completed. In the 1968 review Hockworthy parish proposed that Bridleway No. 3, Hockworthy should be continued down Redgate Lane to Durley, Beer Down Cottage and out to Wood End. In the 1977 review the parish proposed the addition of path from top of Redgate Lane to Beerdown Cottage.

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 affecting the Definitive Map for Hockworthy has been made and confirmed since 1964:

Tiverton District Council Hockworthy Footpath No. 2, Public Path Diversion Order 1974.

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

The current Definitive Map Review was opened with a parish public meeting held at the Borden Gate Parish Council meeting in July 2018. Some user evidence was received following the meeting. The addition of a public bridleway along Redgate Lane was included as proposal 1 in the current Definitive Map Review for the parish.

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The other two parishes within Borden Gate Parish Council (formed in 1974 as a collection of the Hockworthy, Huntsham and Clayhanger Parish Meetings) had no proposals for change and reports on those two parishes were presented to the Devon County Council's Public Rights of Way Committee in March 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 R Radford	-	no response
Mid Devon District Council	-	no response
Borden Gate Parish Council	-	response received
Uplowman Parish Council	-	response received
Country Landowners' Association	-	no response
National Farmers' Union	-	no response
British Horse Society	-	no response
Ramblers' Association	-	response received
Trail Riders' Fellowship/ACU	-	no response
Devon Green Lanes Group	-	no response
British Driving Society	-	no response
Cycle UK	-	no response

5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact (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 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: Willand & Uffculme

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
DMR/Correspondence File	2018 to date	DMR/Borden Gate - Hockworthy

tw070220pra
sc/cr/DMR Parish of Hockworthy
034 260220

Agenda Item 7

Appendix I To HIW/20/6

A. Basis of Claim

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

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

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

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

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

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

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

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

1. **Proposal 1 – Addition of a Public Bridleway along Redgate Lane from the county road south of Dare’s Down in Hockworthy parish to the county road at Wood End in Uplowman parish, between points A – B – C – D – E as shown on drawing number HIW/PROW/19/58.**

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

1.1 Background

- 1.1.1 A bridleway along Redgate Lane was claimed by Hockworthy Parish Council in both the Devon County Council uncompleted reviews of 1968 and 1977. No user evidence forms or other evidence was submitted at that time. The addition of a bridleway along the route had not been raised by Uplowman Parish Council during their Definitive Map Review in 2017/2018.

- 1.1.2 After the opening meeting some limited user evidence was received, and some documentary evidence discovered. This, together with the parish’s previous wish in both 1968 and 1977 to have the route recorded, was sufficient for the addition of a bridleway to be included in the current review as Proposal 1 for Hockworthy parish.

1.2 Description of the Route

- 1.2.1 The route starts at the county road running between Chimney Down at point A (ST0244 1894), south of Dare’s Down and opposite the western end of Bridleway No. 3 Hockworthy. The route proceeds westwards along a hedged lane called Redgate Lane past point B (ST0173 1888), at the entrance to Redwoods Farm. After point B the lane narrows and then becomes a very overgrown and sunken lane, continuing westerly to point C (ST0138 1888). From point C the route turns sharply southwards and continues along another section of overgrown sunken lane. There is a field gate across it south of point C, then at point D (ST0139 1864) it crosses a stream and the parish boundary with Uplowman. Continuing in Uplowman the route turns west south westwards, initially still along a double sided hedge banked lane, then a single sided hedge bank before passing through a field gate at point X and following a track along the edge of the woodland. The bridleway joins the county road at point E (ST0091 1844) just south east of Wood End.

- 1.2.2 The route has an improved stone surface from point A to the field gate west of point B. The surface then changes to one of loose, stone, earth and vegetation for the overgrown portion of the lane between west of point B to point D. Between points D and E the surface is of the lane and track through the woods is of earth with some stone. Photographs of the route in the reverse direction from E to A are included in the backing papers.

1.3 Consultations

- 1.3.1 Following their meeting in January 2020, the Borden Gate Parish Council clerk advised that it was minuted that “all are agreed that the Redgate bridle path should indeed be reinstated as it was used and appreciated by many local people”. Uplowman Parish Council advised that their Councillors had no comments to make on the proposal.

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- 1.3.2 The local representative of the Ramblers Association advised that one of their members had walked the route but did not provide any additional information. They had no other comments and offered no objection to the proposal.
- 1.3.3 Two Hockworthy residents who had not used the route themselves responded to the consultation. One advised that horse riding friends used the route reasonably regularly 10-13 years ago before it became too overgrown. "As a local walker, runner and rider the addition of this public right of way would add substantially to the quality of the routes in the area. Looking at old maps and the general lay of the land, I am sure it was once a well-trodden/ridden path".
- 1.3.4 Another advised that as a resident in the parish for about 3 years he was unable to provide any evidence for the path's previous use as a public right of way, however it appears natural that it would have been so. The route would provide great benefit for walkers and riders in an area providing the "missing link" that would allow an approximately 9.5 km route almost completely off road.
- 1.4 Documentary Evidence**
 - 1.4.1 Ordnance Survey and Other Maps**
 - 1.4.1.1 The Ordnance Survey and other mapping does not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.
 - 1.4.1.2 Cassini Historical Maps 1809 – 1900 Sheet 181 Minehead & Brendon Hills
These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.
 - 1.4.1.3 Old Series 1809: Redgate Lane is shown as a defined lane between points A and D in a similar manner to the county roads it joins. On the OS surveyors' drawings of 1802 that were prepared at a scale of 2" to the mile for publication of the first 1" series, Redgate Lane is also shown as double sided hedged lane between points A and D. South of point D the land is shown as an area of land called Beer Down. By the time of the Tithe Map some forty years later some enclosure and formation of fields in this area had occurred.
 - 1.4.1.4 Revised New Series 1899-1900: On this edition Redgate Lane is shown as a defined lane to point D (Metalled Road: Third Class), the same as the county road it joins at point E and by pecked lines to point E. The word 'Smithy' is written in the location of Beer Down Cottage, west of point D.
 - 1.4.1.5 Popular Edition 1919: On this edition Redgate Lane is shown by two solid lines very close together (Minor Roads) for the whole length, points A to E. The connecting county road at point E is shown as an Indifferent Road under 14' wide and the county road at point A as Other Road Fit for Ordinary Traffic.

- 1.4.1.6 Greenwoods 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 1st edition OS maps and Tithe Maps published in the mid 19th century. Roads were shown as either turnpike roads with a bold line on one side of the road or as cross roads.
- 1.4.1.7 The map shows Redgate lane as a 'cross road' and as it is today between point A and point D on the parish boundary. From point D the route shown continues southwards to join a lane to the south over Bere Down. Durdley is shown called Durdley and there are two separate lanes running northwards from Redgate Lane to Redwood Farm.
- 1.4.1.8 OS 1st & 2nd Edition 25" to a mile 1880-1890 & 1904-1906
Redgate Lane is depicted as a defined lane throughout its length to just west of Beer Down Cottage and with occasional mature hedgerow trees shown along the lane. The route is named Redgate Lane in two places, one in each parish. The western end of the lane is shown as an unfenced track. A footbridge is shown north of point E giving access to Redgate Lane from the north west with a ford shown at point E.
- 1.4.1.9 There are four bench marks shown along the lane between points A and C. The dashed lines across the end of the lane at point A are believed to indicate a change in surface between the lane and the county road. On the 2nd edition very little has changed from the earlier map. There are now only two bench marks between points A and C.
- 1.4.1.10 Bartholomew's Half Inch to the Mile Maps Sheet 35 North Devon 1903, 1921 & 1943
Bartholomew based their half-inch maps on more detailed Ordnance Survey mapping at one-inch to the mile and published at the half-inch scale from the 1890s to the 1970s. The maps were progressively revised and updated with new information and became Bartholomew's trademark series. Associated mainly with recreation, the maps were popular, influential and sold well, particularly with cyclists and tourists. The suggestions for revisions by the Cyclists Touring Club were acknowledged on the maps in the heydays of rambling and cycling. The maps contained the disclaimer 'The representation of a road or footpath is no evidence of the existence of a right of way'.
- 1.4.1.11 On the 1903 edition Redgate Lane is shown as an uncoloured double solid sided lane throughout its length and including the section through Uplowman parish and in the same manner as the now county road that it joins at point E. The key advises that 'The uncoloured roads are inferior and not to be recommended for cyclists'.
- 1.4.1.12 On the 1921 map Redgate Lane is again shown as solid sided uncoloured lane for the entire length and the key now says 'The uncoloured roads are inferior and not to be recommended'. This edition of the map refers to Motoring Roads and Indifferent roads as being passable for cyclists, presumably with the rise in car ownership (1,715,000 registered motor vehicles in the UK in 1926) and that the maps were now used by motorists as well as cyclists.

Agenda Item 7

- 1.4.1.13 In the 1943 edition Redgate lane is once more shown as a solid sided lane throughout its length from point A to point E. The key for this map refers to the uncoloured routes as 'Other Roads & Tracks'. All three editions also show a lane running northwards from point B, through the site of Redwoods Farm and continuing northwards through Slantycombe Farm to re-join the now county road north of point A. This would be the route for which allowances were given in the Finance Act as a public road.
- 1.4.1.14 OS 1 inch to a mile maps of 1946, 1960 & 1966
On the 1946 edition Redgate Lane is shown as an uncoloured defined lane (Unmetalled Roads) between points A and west of D. The width of the lane reduces from point B to west of point D with the wider section corresponding to 'Roads under 14' metalling bad' and the narrower section as 'Unmetalled Roads'. The section through the woodland to point E is shown as an unfenced road. The connecting county roads are shown orange (Roads Under 14' metalling good) at point A and as the east end of Redgate Lane at point E.
- 1.4.1.15 In the 1960 edition Redgate Lane is shown as a defined uncoloured lane at the same width throughout the fenced/hedged section between points A to west of point D, which corresponds to Roads Under 14' metalling, Untarred. The unfenced section is shown by a pecked line, Paths and Tracks. The connecting county roads at point A are now coloured yellow as Roads Under 14' of Metalling, Tarred and white at point E, Unmetalled Roads.
- 1.4.1.16 The 1967 edition shows public rights of way as recorded on the Definitive Map at that time. Redgate Lane is shown as in the 1960 edition map with the connecting county road coloured yellow at point A as before. The county road, Morrells Lane to the north of point E is now also coloured yellow but the road at point E remains uncoloured. On all three editions a building is shown at Durley, although not named; but not at Beer Down Cottage.
- 1.4.1.17 OS Post War Mapping A Edition 1 : 2,500 1970
Redgate Lane is depicted as a defined double hedged lane between point A and west of point D to the edge of the woodland section in Uplowman parish. The lane is annotated 'Redgate Lane (Track)'. There are dashed lines across the track at points A and C and at the entrance track to Redwoods Farm, considered to represent a change in the surface of the lane. Durley is annotated on the map but there are no buildings shown at the site of Beer Down Cottage as on the earlier maps. The land through which Redgate lane passes east of point E is now shown as woodland.
- 1.4.1.18 OS 1:25,000 maps of Great Britain – Sheet ST01 1961
The 1:25,000 'Provisional edition' or 'First Series', was Ordnance Survey's first civilian map series at this medium scale, the forerunner of the modern *Explorer* and *Outdoor Leisure* maps and published in limited colour between 1937-1961. By 1956 it covered 80% of Great Britain, everywhere apart from the Scottish Highlands and Islands. The series is useful for showing rural and urban areas in much greater detail than the standard one-inch to the mile (1:63,360) maps.

- 1.4.1.19 Minor roads, lanes and private drives/access lanes are all shown as white uncoloured roads/lanes described as 'Other Roads - Poor, or unmetalled'. Routes shown as a single pecked line or as two narrow solid lines, and labelled F.P. on the map and described as Footpaths only (no mention of Bridleways, RUPPs or ORPAs) in the key. The map contains the standard OS disclaimer 'The representation of any other roads, tracks or paths is no evidence of the existence of a right of way'. The maps were published prior to publication of the conclusive Definitive Map for Mid Devon.
- 1.4.1.20 This map shows Redgate Lane as a defined uncoloured lane from point A to point E, corresponding to 'Other Roads - Poor, or unmetalled' and in a similar manner to the current county road that Redgate Lane joins at point E. The western section of Redgate Lane is shown as unfenced through the woodland in Uplowman parish.

1.4.2 Tithe Maps and Apportionments

- 1.4.2.1 Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring can indicate carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not included within an individual apportionment are usually included under the general heading of '*public roads and waste*'.
- 1.4.2.2 Hockworthy Tithe Map 1845 and Apportionment 1842.
The Hockworthy tithe map does not colour or shade the roads or lanes that are county roads of today and does not allocate numbers to these roads/lanes for the apportionment. Redgate lane is shown as a double solid sided lane throughout the length of the lane that lies within Hockworthy parish between points A and D, unshaded and not numbered. The section of lane running northwards from Redgate lane at point B and leading to the house and buildings at Redwoods Farm is numbered 299.
- 1.4.2.3 In the Tithe apportionment for Hockworthy, number 299 is included under the holding of Redwoods, total size 55 acres, owned and occupied by John Chave and called 'Redwoods Road', no state of cultivation mentioned and with an area of 19 poles. The area given would only relate to this short section of access lane running north of point B to Redwoods Farm and not to part of Redwood Lane.
- 1.4.2.4 Durley Farm, north of point C, is listed as a separate holding of 44 acres under the ownership of Arthur Buckmill and occupation of John Buckmill. The apportionment makes no reference to any road or lane in connection with the holding. Slantycombe Farm north of Redwoods was called Lammacombe or Sammacombe on the Tithe Map and number 270 was described as Road. Number 270 is the defined lane running north and then east from Slantycombe Farm to Chimney Down and is ordnance number 345 on the OS 25" 2nd edition.

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1.4.2.5 Uplowman Tithe Map 1843 & Apportionment 1841

The Uplowman tithe map does not include any colouring or numbering on any roads or lanes whether those roads are now county roads or lanes such as Redgate Lane or only access lanes to fields/property.

1.4.2.6 On this Tithe map Redgate Lane is shown a double solid sided hedged/fenced lane south west of point D, at the parish boundary. For about one third of the length of the lane that is in Uplowman, it is shown as a one sided hedged/fence with other side unfenced for about a quarter of the length and about the remaining three fifths of the length as an unfenced/hedged track through what is now the woodland. The part unfenced and wholly unfenced sections of the lane cross apportionment number 61, included under the holding called Beer Down and described as 'Common' of 19 acres, owned by the Executors of Thomas Elworthy and occupied by Joanna Elworthy. The cottage and buildings as seen on the Tithe and early 20th century 25" OS maps, west of point D, called Beer Down Cottage is included as a separate holding of just over an acre under the heading of 'Part of Beer Down'. The property is owned by the Executors of Thomas Elworthy and Robert Redwood and occupied by Robert Redwood.

1.4.2.7 The land included in the apportionment holdings of Durley and Beer Down Cottage was lot 3 of Redwoods Farm in the sale of 2007. There are now no occupied dwellings at Durley or Beer Down Cottage.

1.4.3 **OS Boundary Book 1886** (Kew ref OS 26/2688)

1.4.3.1 The OS Boundary Book includes sketches showing the precise position of the parish boundary between two parishes. The page headed 'The boundary of Uplowman' shows Redgate Lane as a defined double sided solid boundary lane running both northwards from the parish boundary at point D into Hockworthy parish and west south westwards in Uplowman parish. The plan is annotated 'C.S.' just south of the parish boundary (point D) which refers to the parish boundary being 'centre of stream'.

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

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

1.4.4.2 In the OS Name Book 1903 including Hockworthy parish (Kew Ref OS 35/1687) Redgate Lane is described as 'A road from Ford at NW Corner of Beer Down to junction of roads at SE Corner of Six Acres'. The entry was signed for by Mr Harry Cleave, agent, Estate Office, Huntsham. In the same Name Book the entries for Beer Down (land south of point B), Redwoods Farm and Dare's Plantation were also signed for by Mr Cleave.

1.4.5 Finance Act Plans and Field Books 1910

- 1.4.5.1 The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuer/surveyor and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.
- 1.4.5.2 The allowance given was often on the basis of a figure such as £1 times 25 yp. The yp refers to years purchase, a method of valuation used to convert a property's income flow (rent) into an appropriate capital sum on the basis that the capital value of a property is directly related to its income producing power. This method of valuation seems to be often used in Finance Act valuations.
- 1.4.5.3 On the Finance Act plan Redgate Lane is included with two hereditaments. From the northern field boundary west of point A to point X the lane is within number 4, Redwoods Farm and from point X to point E within number 327, Beerdown. The eastern end of the lane, west of point A, is excluded from any hereditament with the land to the north being within hereditament number 39 and the land to the south within number 15.
- 1.4.5.4 Hereditament number 4 in Hockworthy parish, Redwoods Farm, described as House, Buildings and Land was a holding of 127 acres owned by H L A Troyte (Huntsham Estate) and occupied by Joe Durman on a yearly tenancy. On the first page under the heading *Fixed Charges, Easements, Common Rights and Restrictions* is written 'Public Road'. On page 2 of the field book under *Particulars, description, and notes made on inspection* is written 'A mixed farm of medium quality land, well watered but with bad approach.' Under the heading *Charges, Easements, and Restrictions affecting market value of Fee Simple* is written 'Public Road in Ord Nos 355, £25'. The £25 referred to in page 2 is carried forward to page 4 under the heading *Public Rights of Way or User*.
- 1.4.5.5 Ordnance number 355 refers to a field crossed by a track that is part of Slantycombe Farm (north of Redwoods). The track joins into a lane leading to the north side of Redwoods Farm. This track across the field is not the claimed route. Although referred to as a public road, the track would appear to be for the benefit of Redwoods Farm only and would probably be accurately described as an easement rather than a public right of way or user.
- 1.4.5.6 Hereditament number 327, Beerdown (in the Sampford Peverell field books which includes Uplozman) is described as Land, House, Barn Stable of 305 acres was also owned by H Troyte and occupied by Joseph Sweet on a yearly tenancy. Under the heading of *Charges, Easements and Restrictions affecting market value of Fee Simple* on page 2 is written 'Easement over Ordnance no 7 for Occ of Beer Down Cottage say £10'. On page 4 of the

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field book the £10 is entered under the heading of 'Easements'. Ordnance number 7 is the land crossed by Redgate Lane between point X and E.

1.4.6 Vestry Minutes

1.4.6.1 Hockworthy vestry minutes from 1883 to 1942 are held in the South West Heritage Centre (SWHC ref 3083 A/PV1). In March 1885 authority was given for the surveyor to have power to make contracts for drawing, hauling, quarrying and purchasing materials as necessary for the parish roads. Between 1884 and 1889 the amount spent on the parish roads annually varied between £66 and £97. In March 1892 and again in 1893 complaints were made about the standard of the roads in the west side of the parish. Within the minutes there were no specific references to Redgate Lane.

1.4.6.2 Uplowman vestry minutes from 1820 to 1882 are also held at the South West Heritage Centre (SWHC - ref 829 A/PV1). There are references to the waywardens of the highways and repairs to roads and bridges within the parish but no references were found naming Redgate Lane.

1.1.4.7 Records of the Troyte (Huntsham) Estate 1800s ref 1926 B/T/E/10

1.4.7.1 The South West Heritage Centre contains a number of documents deposited by the solicitors who acted for the estate in the 1800s. Reference no 3 in this collection includes documents relating to Redwoods Farm. A poster advertises that Redwood Farm of 55 acres was to be auctioned on 5 July 1864. It seems that the farm was not sold then, or was again for sale, as in February 1866 Charles Troyte, the current tenant for life of the estate, wrote to say that there was an estate called Redwoods now for sale and asked what money the Troyte trustees still had to buy land.

1.4.7.2 In March 1866 a Mr Wright was instructed by the Huntsham estate to prepare a valuation of Redwoods Estate. The plan attached to the valuation shows all the land included was north of Redgate Lane except for one field south of point B. Redgate Lane is shown on the plan as fined lane but is not numbered or included in the schedule of the property. The individual fields are listed and numbered as per the numbers given in the Hockworthy Tithe Map & Apportionment. The access lane north of point B to Redwoods is numbered 299 and described as 'Road (private)' on the valuation schedule.

1.4.7.3 In a covering letter for the valuation Mr Wright has written '*The roads in every direction by which it is approached are of the very worst description, rendering not only the conveyance of manure to, but the removal of the produce therefrom very expensive.*' The farm was purchased by the estate in May 1866 at £1,750.

1.4.7.4 Redwoods Farm together with Slantycombe Farm was subsequently let to Mr Edwin Goddard from 1877 on a yearly tenancy. In the schedule of the land in the tenancy document there is no reference to Redgate Lane in the schedule of land included in the tenancy. The access lane north of point B is again included as number 299 and called Road (private).

1.4.8 Parish Council and Parish Meeting Minutes

- 1.4.8.1 Minutes for the Hockworthy Parish Meeting (prior to the formation of Borden Gate Parish Council in 1976) are available at the SWHC for the period 1894 to 1947 (ref 4386 A/PX5). The parish meeting minutes from 1948 to 1976 had not been deposited. The minutes for Borden Gate Parish Council from 2007 to 2019 are held by the current parish clerk. The minutes from 2016 are available on the parish council website but the minutes from the formation of Borden Gate Parish Council in 1976 to 2006 have not been traced.
- 1.4.8.2 The Hockworthy Vestry minutes make reference to a discussion in March 1890 on metalling of roads, which were in a very bad state. In March 1892 and 1893 there were complaints re the standard of the roads in the west side of the parish but no roads were mentioned by name. When Hockworthy Parish Meeting was formed in 1894, Mr Goddard, the tenant at Redwoods Farm, was appointed an overseer. There are no references to Redgate Lane in either the Hockworthy Vestry or Parish Meeting minutes or the Borden Gate Parish Council minutes that were available to view.
- 1.4.8.3 The Uplowman Parish Council minute books covering the period 1894 to date are retained within the parish and the parish council minutes since January 2003 are also available on the parish council website. There were no references to Redgate Lane within the minutes.

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

- 1.4.9.1 The Parish Council survey of their public rights of way to be considered for inclusion on the Definitive map was undertaken in 1950 and the lane was not included as a proposal by either parish.
- 1.4.9.2 Path number 2 which proceeds south westward from the village centre to the county road near Luckleigh Farm includes under remarks '*an old "church path", formerly used by those living at South Staple & Redwoods Farm to reach Hockworthy Village and church on foot.*' This path was recorded as Footpath No. 2, Hockworthy. Path number 3 starts from the west end of Footpath No. 2 and under remarks is written '*This is a continuation of path No. 2 and runs from Luckless Cottage to the Staple Cross Uplowman road opposite the lane leading to Redwoods Farm. An old church path and bridle way.*' This path was recorded as Bridleway No. 3, Hockworthy and crossed some fields.
- 1.4.9.3 Uplowman Parish Council initially proposed 25 footpaths but no bridleways or roads used as public paths 'rups'. The instructions on surveying the public rights of way in the parish were headed 'Footpath Survey' and it was not uncommon for parishes to include only those routes within field boundaries and not those that ran along green lanes or fenced or hedged tracks in their surveys.
- 1.4.9.4 Neither parish included Redgate Lane within the 1950 survey of their parish.

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1.4.10 Devon County Council Uncompleted Reviews of 1968 &1977

- 1.4.10.1 In response to the 1968 review a letter was received from Captain Fellowes as Chairman of Hockworthy Parish Meeting and referring to a parish meeting held on 30th March to consider the letter dated 8th February from Devon County Council (letter from DCC not in file). The copy letter in the file is not dated or date stamped and the parish minutes were not available for the late 1960s. Captain Fellowes letter writes that *'it was decided as follows. 3. The meeting expressed a wish that the existing bridleway marked 3 on the map running from Luckless Cottage to the county road south of Daresdown, should be continued and shown as registered as a public right of way (bridleway) down Redgate Lane to Durley, Beer Down Cottage and out to Woodend, where it joins Morrells Lane. I have marked this in ink (4) on the map.'*
- 1.4.10.2 On the copy of the Definitive Map sent to the parish with the review letter the letter number 4 in blue ink has been written in four places along the section of Redgate Lane that lies within Hockworthy parish.
- 1.4.10.3 In a letter dated 4th July 1971 (in relation to the 1968 review) the clerk to Uplowman Parish Council advised the County Council that 'after inspecting the map enclosed with the letter it was agreed to confirm the Footpaths as shown thereon, with the exception of path numbered 1 which was closed in 1965'.
- 1.4.10.4 With regards to the Devon County Council review of 1977, the clerk of Borden Gate Parish Council (formed in 1974 as a collection of the Hockworthy, Huntsham and Clayhanger Parish Meetings) wrote to Devon County Council in April 1978. The clerk wrote 'With reference to your letter of the 9th November 1977, I return herewith the Parish Maps of Hockworthy and Huntsham together with the submissions complied by the two Chairman of the Parish Meetings.' The yellow summary form provided by Devon County Council for Hockworthy had been pre typed with 'It is suggested that the following paths should be shown on the Definitive Map as public rights of way'. At number 2 it is written From: Top of Redgate Lane To: Beerdown Cottage. A copy of the blue form for a proposal for new entry of a right of way on map, with more information was not forwarded and no user evidence forms or any other evidence was supplied. No annotations were made to the copy of the Definitive Map supplied by the County Council.
- 1.4.10.5 For the 1977 review in Uplowman parish, a letter was received from the parish clerk in June 1978. The clerk had made a list of six suggestions for changes to the rights of way in the parish but these made no reference to Redgate Lane.
- 1.4.10.6 The 1968 and 1977 County wide reviews did not progress (apart from the Limited Special Review to reclassify RUPPs in the early 1970s) but the proposals and any evidence submitted by parish councils and parish meetings has been retained on file.

1.4.11 Aerial Photography RAF 1946-1949, 1999-2000, 2006-2007 & 2015

- 1.4.11.1 The 1946-1949 aerial photography is a little blurred although the route of Redgate Lane can be seen by the appearance of the line of trees in the hedgerows. The surface of the lane can only be seen in the section of lane northwards of point D and south westwards of point D through the woodland. Beer Down Cottage west of point D is visible together with buildings at Durley and Redwoods.
- 1.4.11.2 In 1999-2000 Redgate Lane is clearly visible as a hedged lane between points A and C with the hedges trimmed and the surface of the lane visible along this section. From point C southwards to point X the route of the lane can be seen by the width of the hedges bordering the lane. The lane is not visible through the woodland in Uplowman parish.
- 1.4.11.3 On the 2006-2007 photography the lane's hedges are neatly cut and the position of the lane and the surface in most parts is visible from point A to an entrance into the field on the western side of the lane south of point C. The remainder of the lane is hidden by the hedgerow trees and woodland at the south western end of the route. The farm was sold in 2007.
- 1.4.11.4 In 2015 the hedges are trimmed and surface visible to the field gate into a field to the south between points B and C. A track going across the lane from field to field can be seen south of point C. South of this point the hedgerow trees obscure the lane as does the woodland in Uplowman parish.

1.4.12 Land Registry

- 1.4.12.1 The land through which the majority of Redgate Lane passes, on the Hockworthy side between points A and X, appears to have been first registered following the farm sale in 2007. The eastern end of Redgate Lane between points A and B is registered to Redwoods Farm (called Lot 1 in the 2007 sale) under DN556688. The land to the west of points C to D, the field between points D and X together with the section of Redgate Lane between points B and C is registered under DN556743 (Lot 3 - the old Durley Farm and Beer Down Cottage). The land to the south of Redgate Lane between points A and C (Lot 2) is separately registered under DN556721. The one field north west of point A, part of Dare's Down, is registered as land adjoining Dare's Down Farm under DN440429.
- 1.4.12.2 The register of title for Durley/Beer Down Cottage makes no reference to any rights of access for the owners or occupiers of that land, over that part of Redgate Lane (west of point X or east of point B) that is not within the ownership of that title. Access over either end of Redgate Lane would be required to access the Durley land. The register of title for the Lot 2 land (south of Redgate Lane) makes no reference to any rights of access for the owners or occupiers of that land to use Redgate Lane to access their fields.
- 1.4.12.3 The western end of the route from point X to point E (wholly in Uplowman parish) is registered to DN566304 described as Woodland to the South of Grant's Copse Huntsham and owned by the Trustees of the Huntsham Estate. The land appears to have been first registered in 2008 and makes no reference to any rights of access along the section of Redgate Lane that passes through the woodland.

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1.5 User Evidence

- 1.5.1 Five completed user evidence forms have been received. A member of the local Ramblers group had also walked the lane but no dates or other information were provided.
- 1.5.2 Of the user forms received Mr Bainbridge advised that he had used the route at least once a month from 1982 to 2000 as part of a circular horseback ride. He rode unopposed and the lane is part of a long route of tracks. There were gates at either end of the two grass fields and no obstructions. He had not obtained permission to use the route and had never been stopped or turned back. He believed the owner/occupier was aware the public were using the lane as the occupants of Redwoods Farm would see them sometimes. He had never seen any notices deterring use by the public.
- 1.5.3 Mrs Bainbridge had ridden the route about three times a year between 1981 and 2000 as part of a circular hack. People used the lane and the gates were never locked. She had never obtained permission to use the route and had not been stopped or turned back when using the route or told it was not public. She believed the owner/occupier was aware people were using the lane because people did. Under any additional information she had added 'overgrown at times in parts, had to dismount doing gates & wet at Woodend so rode in dry/summer time only'.
- 1.5.4 Mrs Webber advised that she had used Redgate Lane from 2007 once or twice a year and more in earlier years on horseback. The route is clearly a lane on maps. The lane's overgrown hedges would mean that she would divert along the field headlands. In response to the question about obtaining permission to use the route she had commented 'Hunt uses'. She has not been stopped or told the route was not public and was not sure if the owner/occupier was aware of the public using the path. She had not seen any notices.
- 1.5.5 Mr Hughes advised that when he first moved to Hockworthy in 2006 he regularly rode Redgate Lane about 10 times a year for about two years with no problems. He had not obtained permission to use the route or seen any notices. After about two years of using the route, the new owner of Redwoods Farm stopped him and said it was not for riding for anymore. He had been advised that it was a regular route for many riders in the area, which could be seen by the number of hoof tracks. It did become muddy in winter and became overgrown.
- 1.5.6 Mrs Hughes advised she rode Redgate lane regularly from 2006 to 2008 about 8 times a year as part of a circular horse ride. The route had brambles and mud. She had not obtained permission to use the route or seen any notices. On her last use of the route she was seen and told by the owner of Redwoods Farm that she had no right to ride there.

1.6 Landowner Evidence

- 1.6.1 The landowners and occupiers who owned/farmed land crossed by the proposal or had land adjacent to the proposal route were all contacted individually and advised of the proposal. They were invited to submit their comments and any other information they wished to add by way of a completed landowner evidence form or otherwise.

- 1.6.2 Mr & Mrs Rowe had moved to Dare's Down in the mid eighties and own the field adjoining the lane north westwards of point A. They were informed by local farmers and other local residents about the bridleway, part of which was from points A to E; with the bridleway continuing eastwards from point A to Hockworthy and continuing through Hurds Farm to Lea Farm and beyond. Since 1985 they have considered the lane to be a public bridleway which connects up with Bridleway No. 3. The route was used on a regular basis by numerous riders, a popular ride but not now used as much as it was. Mrs Rowe was never asked or stopped from using it. There were two gates en-route, not locked. On three occasions she had trimmed parts of the bridleway between points A and E to maintain the access to make it easier to negotiate for horses. With new occupants the lane has become impassable for horses.
- 1.6.3 Mr & Mrs M Chapple have farmed at Redwoods Farm since 2007. They do not consider the lane to be a public right of way as this was confirmed by a local search to Mid Devon District Council when the property was purchased. They have seen people using the route irregularly but not all of the route as it is impassable. For the passable part of the route they gave permission to a neighbour and daughter in 2013 and two other neighbours at a later date. The three or four people to whom permission was given to use the lane have not completed user evidence forms. Local hunts have permission to go across their land. On the approximate dates of 2009 - horse and rider; 2010 and 2106 - walker; 2015 - off road vehicles and 2017 - motorbikes they have stopped someone from using the way and told them that it was not public.
- 1.6.4 They erected the Private – No Public Right of Way sign at point X in 2015 and a paper sign at point A which subsequently deteriorated. The gate at point X was not locked but gates just south and east of point C were tied across the lane. Moveable sheep hurdles are usually across the lane at point B. Under additional information they advise that they could not walk all of the lane in 2007 due to undergrowth and branches. The section from west of point B to point D is completely inaccessible to horses and a walker would have to attempt to crawl through brambles, climb over 2 tied gates and climb over and under tree branches across the lane.
- 1.6.5 Mr & Mr M Chapple and Mr A Chapple as landowners of the section of Redgate Lane that lies within Hockworthy parish made a Section 31(6) deposit for their land including Redgate lane in December 2019. A Section 31(6) does not apply retrospectively.
- 1.6.6 No response to the consultation has been received from the Trustees of the Huntsham Estate or their agents in respect of their ownership of the section of the route through their woodland between points X and E.

1.7 Rebuttal Evidence

- 1.7.1 In June 2018 a sign saying 'Young Pheasants Please Keep Dogs on Leads Thank you Game & Countryside Enterprises Ltd' was noticed near point E at the start of the track alongside the woodland owned by the Trustees of Huntsham Estate. The company Game & Country Enterprises Ltd was incorporated in 2000 and dissolved in October 2011. They are understood to have leased land from the estate for pheasant rearing. The sign requests

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that dogs are kept on leads near the pheasant pens which would indicate that they were aware of people using the track.

- 1.7.2 At point X, at the field gate separating the woodland owned by Huntsham Estates and the farmland owned by Redwoods Farm there is a sign (seen in June 2018) saying 'Private – No Public Right of Way' which was erected by Mr & Mrs Chapple in 2015. The gate was not locked. The sign would be better seen when travelling eastwards from point E towards point D but would probably be seen from the other direction when closing the field gate. No signs were visible elsewhere along Redgate Lane.

1.8 Discussion

Statute (Section 31 Highways Act 1980)

- 1.8.1 Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.
- 1.8.2 A Schedule 14 application is considered to be a calling into question for the purposes of Section 31 but on this occasion no Schedule 14 application has been submitted. The proposal to add Redgate Lane as a bridleway was made by Hockworthy Parish Meeting, following the County Council's request for amendments to the Definitive Map in 1968 and 1977. This would not be sufficient to be a calling into question. There is evidence of users been stopped from about 2008 - 2009 (landowner and user evidence) and this and the erection of the 'Private – No Public Right of Way' sign in 2015 could be considered a sufficient act to call into question the public's use of the lane. Although there is some user evidence for the relevant period, this is not of sufficient quantity to show that a public bridleway can be deemed to have been dedicated under statute.

Common Law

- 1.8.3 A claim for a right of way may also be considered under common law. At Common Law, evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence - documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.
- 1.8.4 The documentary map evidence records the existence of Redgate Lane as currently, since at least the early 1800s as shown on the early 1" to a mile OS maps. On the 1809 Cassini 1" maps the lane is shown as similar in status to the adjoining county roads between points A and D. In 1899 and 1919 Redgate lane is shown as a through route between points A and E; as a 'Third Class Road' and 'Minor Road' respectively. The 1899 edition makes reference to a Smithy at Beer Down Cottage. The Greenwood's Map of 1825 is similar to the 1809 map.

- 1.8.5 The Hockworthy and Uplowman Tithe Maps did not colour roads or number the roads shown the map that are county roads today. On the Hockworthy map Redgate Lane was not numbered, although the access lane to Redwoods Farm was numbered and listed as Road in the Tithe Apportionment. The section of Redgate lane in Uplowman parish was also not numbered with the unfenced track through the woodland included in the apportionment number 61, described as Common. The properties at Durley and Beer Down Cottage had their own apportionment entries and Redwoods, Durley and Beer Down Cottage were separately owned and occupied at that time. All three would have used Redgate lane to access their properties.
- 1.8.6 On the OS 25" maps of 1880 and 1904 the lane is shown as a defined lane to point X and as an unfenced track west through the unimproved land. The lane is named with bench marks shown between points A and C. Dashed lines across the lane at point A could indicate a change in surface between the lane and the county road. A footbridge is recorded north of point E to give access to Redgate Lane from the north west with a ford at point E.
- 1.8.7 The Bartholomew's Half Inch Maps of 1903, 1921 and 1943 all show Redgate lane as a through route and as an uncoloured defined lane. The uncoloured road were classified as inferior and not recommended for cyclists (1903), not to be recommended (1921) and Other Roads & Tracks (1943).
- 1.8.8 The 1" OS maps of 1946, 1960 & 1967 continue to show the lane as through lane. In 1946 edition the section between points A and B is shown as a Road Under 14' of Metalling Bad with the remainder as an Unmetalled road. The later editions show the lane as an Unmetalled Road. Redgate Lane is shown as an 'other road – poor or unmetalled' on the larger scale OS map of 1961.
- 1.8.9 The map evidence shows that Redgate Lane has physically existed for many years and has been depicted as a through route during that time. The lane would have provided access to Redwoods Farm, Durley and Beer Down Cottage from either end. The way the lane was depicted in the mapping would indicate that it would have been available for the public to use. There was a ford and footbridge at point E in the early 1900s. The maps do not however, provide evidence as to status or whether the lane was ever publicly maintainable even if used by the public.
- 1.8.10 In the OS Name Book of 1904, Redgate lane is described as a 'Road' and not as a lane or occupation road. However, the description does not say parish road and the name and spelling of Redgate Lane is signed for by the Huntsham Estate agent. The Huntsham Estate are understood to have owned most of the land bordering Redgate Lane and a good part of the parish at that time. The description as a road though could indicate that the lane was more important than an access track to the three farms. Although the lane was considered to be owned/maintained by the estate, it could have been used by the public as part of the local highway network.
- 1.8.11 In the Finance Act plans of 1910, Redgate Lane is included within hereditaments number 4 Redwoods and 327 Beerdown, with a short section at the eastern end excluded. Hereditament number 4 included Redwoods, Durley and Beer Down Cottage within the one holding and owned by the Huntsham Estate. An allowance is made for a 'Public Road' within the hereditament but this for a track across a field north of Redwoods Farm and

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would appear to be more of an easement for Redwoods Farm, to provide an alternative access to Redwoods apart from using Redgate Lane. The field book makes reference to the farm having 'a bad approach'. There is no reference to Redgate Lane in the Hockworthy field book and inclusion with the hereditament indicates that the lane was not considered a public road at the time. However, the route did not pass through the farm yard or cross fields within the Redwoods hereditament and would therefore not interfere or cause inconvenience to farming the holding. It is therefore not unusual that an allowance was not included for a public right of way along Redgate Lane even if one was considered to exist at that time.

- 1.8.12 In the hereditament for Beerdown an allowance is included for an easement over the land crossed by Redgate Lane for the benefit of Beer Down Cottage. There is no reference to any public right of way. An easement or private right of way is usually for all purposes with all types of traffic and which would include wheeled vehicles. The 1899 OS 1" map showed a Smithy at Beer Down Cottage. The fact that an allowance for an easement was included would indicate that the Uplowman section of Redgate Lane was also not considered a public highway at that time. It is however possible that the route was used by the public at a lesser status than that of public highway such as footpath or bridleway. As the route passed across common land at that time, it is also not unusual that no allowance was included for a public right of way even if one existed at that time.
- 1.8.13 In the valuation prepared for the Huntsham Estate in 1866, Redgate Lane was shown on the plan but was not numbered or included in the schedule of the holding. The access lane northwards to Redwoods Farm from point B was included and called a private road. A covering letter by the valuer referred to the roads in every direction by which Redwoods Farm was approached to be of the very worst description. The valuation would indicate that Redgate Lane was not considered to be part of Redwoods Farm at that time and was referred to as a road by the valuer. It seems that both sections of Redgate Lane, west and east of point B, were not in a good condition for farm traffic of the day.
- 1.8.14 Redwoods Farm was subsequently purchased by the estate and let to a Mr Goddard in 1877. Redgate Lane was not included as part of the tenancy at that time although the access lane north of point B was included.
- 1.8.15 The Vestry and Parish minute books that were available for both parishes do not make any reference to Redgate Lane.
- 1.8.16 In the parish survey of 1950 Hockworthy included three bridleways and a footpath. The bridleways proposed included sections across fields which could be why Redgate Lane, as a defined lane for the whole length in Hockworthy parish, was not proposed at that time. Footpath No. 2 and Bridleway No. 3 run from Hockworthy village westwards and Redgate Lane continues this route westwards across the parish. Uplowman Parish Council proposed twenty five footpaths for inclusion on their Definitive Map but did not include any bridleways or RUPPs.
- 1.8.17 In the Devon County Council uncompleted reviews of 1968 and 1977 Hockworthy Parish requested that Redgate Lane be added as a bridleway on both occasions. No user or other evidence in support of the edition was added at that time but the request would suggest that the lane was being

used by walkers and riders at those times and that its omission from the Definitive Map was noticed.

- 1.8.18 The section of Redgate Lane between points A and X appears to have been first registered at HM Land Registry in 2007 following the sale of Redwoods Farm. This section is registered under the separate titles for Redwoods Farm and Durley. The register for Durley makes no reference to the owner/occupier having any rights of access over that part of Redgate Lane that is not included within their title. Access would be needed west of point B or east of point X to get to the land included in that title. Similarly, the register for the land south of Redgate Lane also includes no rights of access along Redgate lane to access that property. As a private right of way or easement is not included, it is possible that one was considered unnecessary if there appeared to be public rights on the basis of the deeds and conveyances supplied for first registration, or it could have been an oversight by the conveyancer as the previous single holding was divided into three lots for sale.
- 1.8.19 The western end of the route in Uplowman, first registered in 2008, also makes no reference to any rights of access. The easement for Beer Down Cottage referred to in the Finance Act records of 1910 is not recorded on the title. This would indicate that no easement or private right of way was included in the documents supplied to HM Land Registry at first registration. Public rights of way are rarely included in registered titles.
- 1.8.20 The aerial photography from 1946 shows the buildings at Durley and Beer Down Cottage. The lane's surface is visible in Uplowman parish and north of point D. The main length of Redgate Lane is blurred but this would indicate that the hedges were not kept well trimmed at that time. The 2006-2007 photography shows the lane visible between points A and C showing that the hedges had been trimmed at this time. The more recent 2015 photograph show the hedges only trimmed to west of point B where farm vehicle access is required to the field gate.
- 1.8.21 The five user evidence forms received record use from 1981 to 2008. One user advised that their use had continued when a section of the lane became impassable, by use of the field headland which could be used to bypass the obstructed section. Three of the users had only used the route since 2006 however. Use was not frequent, the most being about once a month and users refer to the lane been muddy in winter and becoming obstructed with vegetation. The users did not report on seeing any signs to indicate the lane was not public and were not stopped or told it was not public until about 2008. None of the users are the same as those who have been given permission to use the route by the owners of Redwoods Farm.
- 1.8.22 The lane had also been used as a bridleway by an adjoining landowner at the east end of Redgate Lane, who was told it was public by local farmers and residents in the mid-1980s and advised that lane was used by numerous riders and a popular ride. She had previously trimmed parts of the lane to maintain access for horses but since the farm was sold the lane has become impassable for horses. This landowner would not be considered to have a private right along the lane to access their land, except for possibly a short section of the lane west of point A.

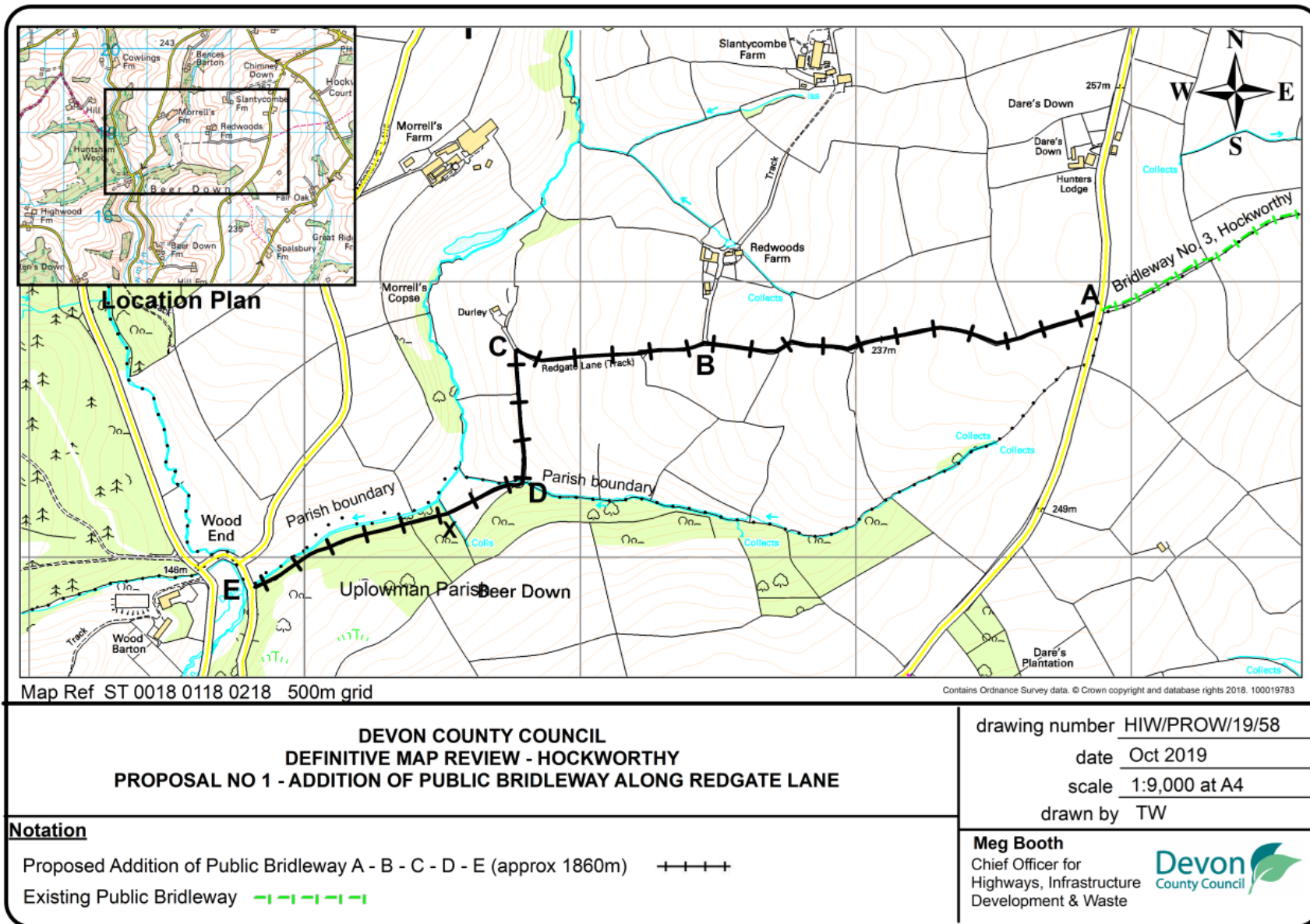
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- 1.8.23 Redgate Lane was found to be overgrown between west of point B to point D in summer 2018 and though just about passable on foot could not have been used by horses in more recent times. The gates found were not locked.
- 1.8.24 The comments of the valuer in 1866 indicates that Redgate Lane was not well maintained at that time as the roads leading to Redwoods Farm were described as being of the 'very worst description'. Similarly, the Finance Act 1910 valuer, some fifty years later, describes the holding 'with bad approach'. The quantity of what would appear to be old road stone on parts of the overgrown section of Redgate Lane would indicate that the surface had been improved at some time in the past.
- 1.8.25 There is no documentary evidence to indicate that Redgate lane was ever maintained by the public purse as an all-purpose highway, or considered to be one, although the lane was not numbered or included in either apportionment in the two Tithe Maps of the 1840s. The inclusion of Redgate lane within hereditaments under the Finance Act 1910 would indicate that the lane was considered privately owned by that time. However, public rights of way can and often do run across private land.
- 1.8.26 Since their occupation of Redwoods Farm in 2007, the new owners have been aware of the use of the passable section of Redgate Lane on an irregular basis and have stopped riders, walkers, 4x4s and motorbikes between 2009 and 2017. The sign saying 'Private – No Public Right of Way' was erected on the boundary gate at point X in 2015 and a paper sign was erected at point A. They do not consider the lane to be public but have given permission to some local people to use the passable section of the route.
- 1.8.27 The comments of the users and a landowner indicate that Redgate Lane was used freely by walkers and riders until shortly after Redwoods Farm was sold in 2007. As a through-route connecting two county roads there was nothing to indicate to users that the lane was not public, until people were stopped when using the lane from about 2008 onwards. The sign at the west end of the route at point E, in different ownership, would indicate that there was accepted use by the public, as the tenants erected a sign asking users to keep dogs on leads. No response was received from the landowners for the section through the woodland between points X and E in Upwold parish.
- 1.8.28 In response to the current consultation the Parish Council support the proposal and state that the Redgate bridle path should indeed be reinstated as it is used and appreciated by many local people.
- 1.8.29 The parish meeting and parish council's previous and current request support the lane having the reputation as a public right of way. It could be that the lane was not proposed in 1950 as the route did not cross any fields as did the other parish bridleways that were proposed in the parish survey. The user evidence and other comments received, relating to use of the route by the public, support that reputation. However, there is no more significant documentary evidence, such as maintenance at public expense, that shows the lane was considered to be a public right of way at that point in time. Similarly, the evidence discovered to date does not preclude the lane from being an unrecorded public right of way.

- 1.8.30 The matter is finely balanced. The route appears to have some reputation as a public right of way but there is very limited direct user evidence. Overall, when the documentary and user evidence available is taken together as a whole, it is considered insufficient to infer that a public right of way has been dedicated along the whole length of Redgate Lane at some time in the past, or that the public at large accepted that dedication. The test for dedication at Common Law is therefore not met.

1.9 Conclusion

- 1.9.1 It is therefore recommended that no Modification Order be made to modify the Definitive Map and Statement for the addition of a Bridleway along Redgate Lane, in respect of Proposal 1.



HIW/20/7

Public Rights of Way Committee
5 March 2020

Definitive Map Review Parish of Lympstone (Part 3)

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 a footpath between points J-K as shown on drawing number HIW/PROW/20/08 (Proposal 4)

1. Introduction

This report examines an additional proposal that was submitted within the six months of the last committee report when the parish council rights of way representative and flood wardens realised this route, that gives access to the foreshore and a tidal flood prevention gate, was not recorded on the Definitive Map Parish of Lympstone, in East Devon District.

2. Background

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

3. Proposal

Please refer to the appendix to this report.

4. Consultations

Public consultations for this additional proposal were carried out during January 2020. The proposal was advertised around the parish with notices placed at each end of the proposal route, in local notice boards and on the village hall notice board.

The responses were as follows:

County Councillor R Scott	- supports Proposal 4
County Councillor J Trail	- supports Proposal 4
East Devon District Council	- no comment
Lympstone Parish Council	- supports Proposal 4
Ramblers' Association	- no comment
Byways and Bridleways Trust	- no comment
British Horse Society	- 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.

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6. Legal Considerations

The implications/consequences of the recommendation has 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 in respect of Proposal 4.

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

10. Reasons for Recommendations

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

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Exmouth

Local Government Act 1972: List of Background Papers

Contact for enquiries: Alison Smith

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

Tel No: 01392 383000

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

as050220pra
sc/cr/DMR Lympstone part 3
03 260220

Appendix I To HIW/20/7

A. Basis of Claim

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

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

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

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

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

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

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1. **Proposal 4: Proposed addition of a footpath from Footpath No. 10 in front of 1 & 2 Beaches Houses to the foreshore, as shown between points J – K on drawing number HIW/PROW/20/08.**

Recommendation: That a Modification Order be made in respect of Proposal 4 to modify the Definitive Map and Statement by adding to them a public footpath between points J - K, as shown on drawing number HIW/PROW/20/08.

1.1 Background

- 1.1.1 The Background for the Definitive Map Review in the parish of Lympstone was set out in Committee report HIW/19/17 of 4 March 2019.
- 1.1.2 This report examines an additional proposal that was submitted within the six months of the last committee report when the parish council rights of way representative, realised that this small alleyway to the foreshore was not recorded as a public footpath on the Definitive Map Parish of Lympstone, in the same way that Footpaths Nos. 9, 10, 12a, 13 and 14 are defined. The Parish Estuary Volunteer Flood Wardens also wanted to ensure that they will always have access to the foreshore and flood gate, even if the properties on either side change hands.

1.2 Description of the Route

- 1.2.1 Proposal 4 commences at point J on the plan, from existing Footpath No. 10. The path runs along an alleyway in a south westerly direction between old houses in the Quay area of old Lympstone village, through the recent Storm Flood prevention gate Number 5 (known as Flood Gate 5) to the foreshore, at point K. It has a cobbled and concrete surface. The only signs on the route are no dog fouling signs on the flood gate.
- 1.2.2 Lympstone has recently had a tidal defence scheme to protect around 150 properties. This has involved sea wall improvements and flood gates along access points to the foreshore. One of these gates, Gate 5, was installed near point K. Flood gates were also installed on Footpath Numbers 9, 10, 12a, 13 and 14.

1.3 Documentary Evidence

- 1.3.1 Ordnance Survey Mapping
The small-scale historical maps are not detailed enough to show the route.
- 1.3.2 No other historical documentary evidence has been discovered for this route. However, the houses on each side of this alleyway, are well over a hundred years old. The route provided access to these properties and the foreshore of the Quay area. This foreshore was historically used for boat building and boat maintenance by numerous people, also for drying sails and laundry on tall washing lines. These washing lines are still used today for the same purposes.

1.4 User Evidence

- 1.4.1 User evidence has been gathered from long standing Lympstone residents who have always used the route as a public path. Eight people have completed user evidence forms giving evidence of use since 1955 through to the current day. They state that the route has not been blocked during this time. The individuals who have completed the user evidence forms appear to represent only a small proportion of the public who

walk and have walked this path. The County Council Public Rights of Way Officer has observed other people using the path.

- 1.4.2 The evidence forms are included in full in the backing papers and the evidence is summarised as follows:
- 1.4.3 Mr Acca has frequently walked the route since 1955 as part of his daily life as he grew up in Lymptstone. He says the path has always been used by villagers for as long as he can remember and that it has always been a public footpath. He has never been stopped from using it, nor has it been blocked and there have not been any notices.
- 1.4.4 Mr Burton has walked the route since 2001, about 30 times a year, to access the foreshore for pleasure and sometimes to open and close the new flood gate. He has never been stopped or challenged. He notes this is the only access to Flood gate 5.
- 1.4.5 Mrs Carter, lived in Cygnet cottage, Quay Lane between 1989 to 2016 and as one of the adjoining owners, believes the path is a public path, because people always used it without question during her ownership. She started to walk the path in 1989 and has continued to use to the present day, dozens of times a year, for pleasure to access the foreshore. The only time it has been closed was when the flood gate was shut.
- 1.4.6 Ms Dimond has walked the route since 2001 to date, about 12 times a year, for pleasure to get to the foreshore and on occasions to shut or open the flood gate. She says the only times that you cannot get all the way to the shore is when the flood gate is shut. She also states that "The path is regularly used by the Estuary Flood Wardens to close/open the gate as instructed by the Environment Agency, so it is vital it remains a Public Path."
- 1.4.7 Mr Fardell has used the route from 1973 to the present day, when going to the beach, or visiting friends. He says it has always been used by the public, he has never been stopped or blocked and that there have not been any notices.
- 1.4.8 Mr Harrison has walked the route since 1961 many times a year. He has used it when visiting as well as for pleasure and says, "anyone can use it". The only obstruction has been occasional flotsam and jetsam after spring tides.
- 1.4.9 Mrs Hodge has walked the path between 1970 to date, to access the beach and visit friends. She says many people use it and believes that the adjoining property owners are aware the path is being used everyone. The path has never been stopped or blocked except when there is a flood, and there are no notices.
- 1.4.10 Ms Mitchell has constantly used the path to the foreshore on foot from 2011. She says it has always been a public alleyway, it has not been stopped up or blocked.

1.5 Land Owners' Evidence

- 1.5.1 The land crossed by the route is not registered with the District Land Registry. Residents of each house adjoining the route were consulted on the proposal and notices were placed at each end of the path route.

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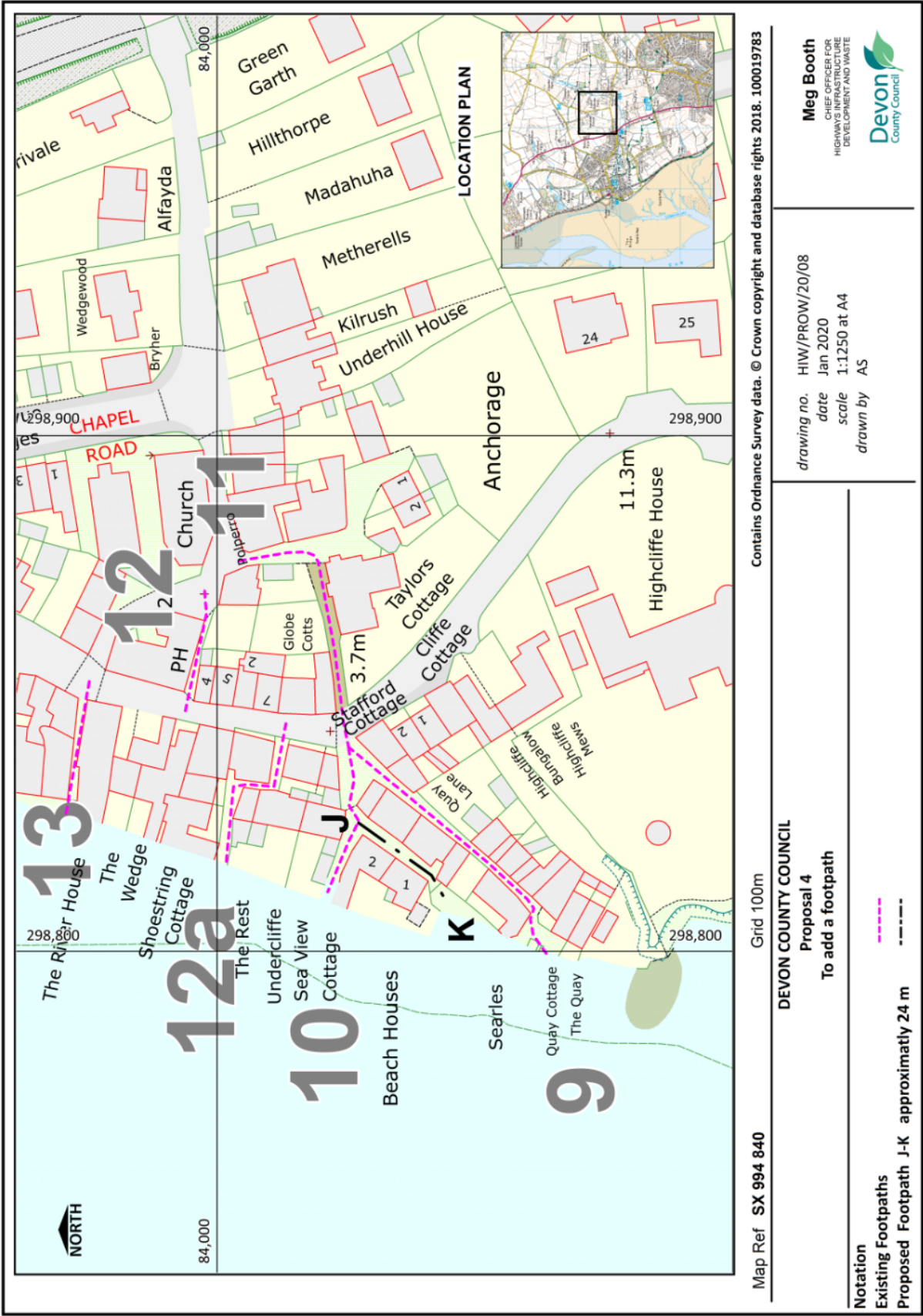
- 1.5.2 Mr Bartram has lived in 2 Beach House since 2008. He has not blocked the route or stopped members of the public from using it. He acknowledges it is used by the public and provides access to the flood gate and foreshore.
- 1.5.3 County Councillors Richard Scott and Jeff Trail have visited the site and spoken to some other residents. They report that the residents acknowledge the public use the path to get to the foreshore and flood gate and the residents do not appear to object.

1.6 Discussion

- 1.6.1 Statute – Section 31 Highways Act 1980. There does not appear to be a specific date on which the public's right to use the proposal route has been called into question. As there is no specific date of calling into question or user evidence, the proposal cannot be considered under statute law. However, the proposal route may still be considered at common law.
- 1.6.2 Common Law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both, from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.
- 1.6.3 Although a reasonable amount of user evidence has been received, the alleyway appears to have been used and accepted by the public at large for a great many years as a public footpath. It has been used in the same way as the identical adjacent alleyways, which are already recorded as Footpath Nos. 9, 10, 11, 12a and 13. These alleyways (including Proposal 4) have historically always given access to the foreshore. The footpaths along this section of shoreline, now also give access to the Environment Agency's Flood prevention Gates. Gate 5 is the only gate that is not accessed via a public footpath. The parish council considered it to be a public right of way in the same way as the other footpaths in the vicinity. There is no evidence that Proposal 4 has ever been blocked, or that the public's use has been challenged in any way. No objections have been raised to recording the proposed footpath.

1.7 Conclusion

- 1.7.1 The evidence is considered sufficient to show that a public footpath subsists, or is reasonably alleged to subsist, over the proposed route. It is therefore recommended that a Modification Order be made to add a footpath between points J – K as shown on drawing number HIW/PROW/20/08 and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.



HIW/20/8

Public Rights of Way Committee
5 March 2020

Definitive Map Review Parish of Talaton

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

This report examines one proposal arising out of the Definitive Map Review in the parish of Talaton in East Devon district.

2. Background

The original survey by Talaton Parish Council in 1950 under s.27 of the National Parks and Access to the Countryside Act of 1949 produced 8 footpaths and no bridleways submitted to the County Council. Two of the footpaths surveyed were withdrawn or omitted or described as not required. The remaining six were recorded for consultations at the Draft Map stage in 1957 and for the Provisional Map, then recorded on the original Definitive Map, with 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 requests to amend the Definitive Map.

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:

East Devon District Council (Footpath No. 4, Talaton) Public Path Diversion Order 1980

Devon County Council (Footpath No. 7, Talaton) Public Path Diversion Order 2006

Devon County Council (Footpath No.2, Talaton) Public Path Diversion Order 2009

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

The current review began in July 2019 with a public meeting held in the Parish Hall, Talaton, which was advertised in the parish, in the local press and online.

3. Proposals

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Please refer to the Appendix to this report.

4. Consultations

General consultations on the applications were carried out in August to November 2019 with the following results:

County Councillor Ian Chubb	-	no comment;
East Devon District Council/AONB	-	no comment;
Talaton Parish Council	-	comments included in background papers
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;
Byways & Bridleways Trust	-	no comment;
4 Wheel vehicle Users	-	no comment;
Devon Green Lanes Group	-	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 Order be made in respect of Proposal 1 as evidence is considered insufficient to meet the requirements of the legislation. Details concerning the recommendation 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.

Agenda Item 9

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/TALATON

tg030220pra
sc/cr/DMR Parish of Talaton
05 260220

Appendix I To HIW/20/8

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.

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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.

Proposal 1: Claimed Restricted Byway along lane known as Rosemary Lane or Moor Lane, between The Moor and Bittery Cross, points A-B on the proposal map
HIW/PROW/19/56

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

1.1 Background

- 1.1.1 The route was first brought to the attention of Devon County Council in June 2016 by Mr Chris Harwood of Moor Cottage, Talaton (a property adjacent to the route) asking if the route could be opened as a footpath as it was an historic track and was advised of the Definitive Map review process. The matter was discussed by Talaton Parish Council (of which Mr Harwood had previously been a member) in meetings in February and April 2018. As a result of this the route was put forward for informal consultation during the parish review.

1.2 Description

- 1.2.1 The proposed route starts at the end of the currently recorded highway maintainable at public expense (HMPE) at point A on the proposal plan, roughly level with the two properties Moor Cottage and Cobblers and at the far end of an area of registered village green called The Moor. The existing footpath 8 extends over the currently recorded HMPE near to point A. There is a marker stone beside the road at point A bearing the text 'DCC Bdy' which appears to have been installed by Devon County Council, but it is not known when. The route then heads in a generally north-east direction, passing between cottages before continuing as an enclosed track for approximately 465 metres (508 yards). Most of the route is unsurfaced and extremely overgrown to the point that it is currently impassable. It then joins the minor county road at point B on the proposal plan, near to Bittery Cross (supposedly the site where rebels loyal to the Duke of Monmouth were hanged after the rebellion in 1685). At this end the track has been blocked up with an earth bank and chain-link fence, installed by Devon County Council in the 1960s. The historic record suggests that the route has had several different names over time – Touchings Lane, Rosemary Lane, Moor Lane. This report will simply refer to it as the proposal route wherever possible to avoid unnecessary confusion caused by the etymology.



Point A



Point B

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The start of the currently recorded HMPE/FP8 at The Moor, looking up towards the start of the proposal route at Point A.



Extent of the registered Village Green at The Moor

1.3 The Definitive Map Process

- 1.3.1 The proposal route was not included in the survey of paths on behalf of the Parish Council in 1950 put forward for recording as a public right of way on the Definitive Map.

1.4 Documentary Evidence

1.4.1 Glebe Terriers, 1624 and 1680

Glebe terriers were returned, together with parish register transcripts, at the bishops' triennial visitations. They form a survey of the sources of the benefice income and give details of landholdings (including glebe houses), tithing rights, customs and modus (compositions for tithe), and surplice fees – essentially an audit of the running of church affairs within the parish. Terriers were compiled by church staff within the parish, and inspected and signed off by the Bishop, so can be considered to be reasonably accurate documents. Two sets of Terriers relating to the Parish of Talaton are held at the Devon Records Office. The Terriers are accompanied by a handwritten transcript of unknown date/provenance, but which appear to be accurate.

- 1.4.2 The Terrier of 1624 contains an inventory of glebe lands which includes the following: *'two closes of ground called Twychins containing five acres lyeing (words illegible) syde of a waye leading between Bittery Cross & Talaton Moor'*.

- 1.4.3 The Terrier of 1680 contains the listing: *'Then one field commonly called by ye name of Kicks Park, adjoining to a high way commonly called Touchings Lane, containing by estimation 4 acres of land, bounded within itself'*. Further down it lists a parcel of land as: *'Then one field commonly called by ye name of Touching adjoining to Touchings Lane = contains by estimation 5 acres of land all ye bounds belong to it.'*

- 1.4.4 A field called Great Tutching is listed on the Plan of Glebe Lands of c.1780 (discussed below) immediately to the south of the proposal route and next to another plot called Little Tutching. It is listed as being 5 acres in size. It is again recorded as Great Tutching on the Tithe Map and Apportionment of 1840 and listed as being 5 acres. It therefore seems almost certain that Touchings Lane is the proposal route, and credible to deduce that Twychins was an earlier form of the name. As such, the Terriers suggest that the proposal route existed at least as early as 1624 and that it may have had some sort of public reputation at that time.

1.4.5 Donn's Map of Devon 1765

The north-east section of the proposal route at Bittery Cross is shown on Donn's Map of Devon of 1765 as a spur or 'cross road' branching off the road from Ottery St Mary to Cullompton just south of Bittery Cross.

1.4.6 Map of Glebe Lands 1780s

The route is shown in detail on the Map of Glebe Lands belonging to the Parish of Tallaton, a particularly beautiful map commissioned circa 1780 by the Reverend Robert Palk Welland. It is coloured in the same manner as other roads in the parish that are now part of the public road network. No obstructions are shown on the route. The field names listed on this map correlate with those mentioned in the earlier Glebe Terriers, and also the later Tithe Map and Apportionment.

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- 1.4.7 Surveyor's Drawings 1806-7
The Ordnance Survey Drawings of 1806-7 show the proposal route in the same manner as other roads that are public today. The Moor is shown as part of Talaton Common and the proposal route joins this. There is no track or path shown running across The Moor to the unenclosed highway that would correspond with the current HMPE/Footpath 8.
- 1.4.8 Ordnance Survey first Edition One Inch 1809
The proposal route is shown in the First Edition one inch to the mile map of 1809 in a very similar way to the Surveyor's Drawings, that is in the same way as other roads that are now public. The Moor is not shown in as much detail, but the proposal route appears to terminate there in the same manner as the earlier map.
- 1.4.9 Greenwood's Map 1827
Greenwood's Map of 1827 shows the route in a similar way to the OS 1st Edition map, the only difference being that The Moor appears to be further east than on the OS map. The proposal route is shown in the same manner as other roads that are public today between the junction with Bittery Cross and where it meets Talaton Common/The Moor.
- 1.4.10 Talaton Tithe Map 1840 & Apportionment 1839
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'.
- 1.4.11 The proposal route is shown on the Tithe Map for Talaton parish, produced in 1840, 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 proposal route is shown excluded from titheable plots. No roads are coloured or shaded on this tithe map.
- 1.4.12 The field names of Twychin/Touching/Tutching referred to in the 17th century Glebe Terriers and Plan of Glebe Lands from 1780 appear again in the tithe Apportionment. Great Tutching, plot 378, is listed as exactly 5 acres in size which correlates exactly with the listing in the 1680 Glebe Terrier. There is also a 'Little Tutching', plot 375, that adjoins the proposal route.
- 1.4.13 Talaton Common Inclosure Award 1845
The Inclosure Award of 1845 covers the area that at the time was known as Talaton Common, encompassing the small triangle of land that is now known as The Moor and which remains common land, having been registered under the Commons Registration Act 1965.
- 1.4.14 The very start of the western end of the proposal route, from point A, is shown on the Inclosure Award map, annotated as 'Rose Mary Lane'. The lane is shown continuing beyond a building that appears to be Moor Park Cottage/Bakers

Cottage/Cobblers, which marks the point where the current HMPE terminates and the proposal route begins at point A. The lane between here and the main road through Talaton appears to run on a more southerly route than the current HMPE which turns to the north-west. A '*private way or footpath*' terminates on Rose Mary Lane just west of the cottages at a point marked G on the Inclosure map. The other end of the private way terminates further north on the main road through Talaton at point F on the Inclosure Award plan, which is described in the award as '*the said Public Highway leading from Escot to Talaton*'. There is no description of the status of Rosemary Lane in the award, but the path between points F and G '*is to be used as an occupation way...for the occupiers of the several tenements in or near to the Lane called on the said map or plan Rosemary Lane.*'

- 1.4.15 The very start of the currently recorded HMPE section of Rosemary Lane at The Moor is shown on the plan for an intended new road from Sidmouth to Cullompton dated 1843. The road is coloured yellow and appears to be in the ownership of the parish waywardens, Francis Pyle and James Salla, according to the accompanying reference book. The rest of the lane extending over which the proposal route extends is not shown.
- 1.4.16 Plan of Lands Belonging to Reverend L.P. Welland c1890
The proposal route is shown in the same manner as other roads that are public today on the plan of land belonging to the Reverend LP Welland, dated to approximately 1890.
- 1.4.17 Ordnance Survey 25" First Edition 1887
Surveyed in 1887, the Ordnance Survey 25" to a mile 1st edition map shows the proposal route as an enclosed track, partly tree-lined, running from The Moor between cottages and then through fields to join the road south of Bittery Cross. The eastern end has a dashed line across it, the western end where it joins the common land at The Moor does not. There are no other obstructions or features annotated on the proposal route.
- 1.4.18 Ordnance Survey Revised New Series 1898-1900
The Revised New Series smaller-scale map for the area from the later 19th century shows the proposal route as an unmetalled fenced road.
- 1.14.19 Ordnance Survey 25" Second Edition 1904; Finance Act 1910 map & records
The later edition of the Ordnance Survey 2nd edition 25" to the mile map revised in 1903 shows the proposal route in the same way as the 1st edition map at the same scale. There is again a dashed line across the eastern end of the route where it joins the road south of Bittery Cross, but not at the western end where it reached The Moor. 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 proposal route to have been excluded from surrounding hereditaments (assessment areas of land) throughout.
- 1.4.20 The proposal route is adjacent to plots 4, 5, 6, 24, 26, 46 and 137. None of the field books for these plots record deductions for public rights of way. The entries for plots 5 and 6 contain sketch plans with the proposal route annotated simply as 'lane' with no further information about it.

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- 1.4.21 Parish Council minutes
Minutes of the Talaton Parish Council are held at the Devon Records Office and cover the period 1894-2008. They vary in quality and detail, with early entries being particularly brief.
- 1.4.22 Talaton 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 proposal route appears in the 1934 list.
- 1.4.23 The minutes of the parish council meeting held on 26th March 1931 record that: *'Mr Pyle reported that the stile leading from the Park Field to the main road was in an unsatisfactory condition; also that rails had been placed across the road leading from the Moor to Bittery Cross, and the Chairman was asked to see the persons responsible for these matters and to request in the former case that the stile be made more convenient, and in the latter that the rails be removed.'* There is no further mention of any outcomes to this in subsequent minutes.
- 1.4.24 During the 1960s and 70s several entries mention issues relating to The Moor but mostly concerning fencing, car parking and landscaping. One entry dated 13th December 1971 refers to Rosemary Lane: *'A letter was read from Mr Wise referring to the barrier which Mr Ware had put across Rosemary Lane to hold back leaves, etc, during heavy rain. Mr Wise reported that this had been removed by new residents of Moor Park Cottage. The Clerk was asked to write to Mr Screeton about this and request that it be put back.'* It was then reported at the next meeting that the barrier had been put back.
- 1.4.25 Although references are made in the minutes to 'annual footpath inspections' having taken place there is never any reference to the proposal route, or in fact any specific paths.
- 1.4.26 Later Ordnance Survey mapping and Bartholomew's maps
Maps at smaller scales from the earlier 20th century, particularly by Ordnance Survey, and Bartholomew's map editions from 1910 to the later 1940s, show the proposal 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 depiction of the eastern end of the route appears to be inaccurate on all the editions of Bartholomew's mapping, joining the road running west from Bittery Cross towards the village rather than the road running south to Fairmile. The Ordnance Survey one-inch mapping from 1946 does not show the proposal route at all, nor does it show Footpath 8 or the currently recorded HMPE section of the lane. The 1960 one-inch map does show the currently recorded HMPE but not Footpath 8 or the proposal route.
- 1.4.27 Later Ordnance Survey 'A' edition larger-scale mapping from 1963, around the time that the Definitive Map was being drawn up, shows the proposal route as a fenced track with no obstructions and joining the highway at either end.

- 1.4.28 The showing of the proposal route on early and later maps records its physical existence at those times. 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.
- 1.4.29 Memoranda of Dedication 1966
In 1966 two landowners either side of the eastern end of the proposal route dedicated strips of land beside the highway from Bittery Cross to Escot to Devon County Council as part of safety improvement works to the junction at Bittery Cross. The proposal route itself is not marked in red to indicate it being included in the dedication on either of the plans. No mention is made of the status of the proposal route in the documents. It appears that physical improvement works to the junction took place at about this time and that during these the end of the proposal route was blocked up with earth and a concrete post and wire fence erected across it. The fence is mentioned in the Memoranda of Dedication, but these documents do not suggest that it was intended to go across the route itself. They do not mention the earth bank at all. No further records of these works exist within Devon County Council.
- 1.4.30 Highway maintenance records/Handover maps
Highway maintenance records from the 1960s and 1970s show that the proposal route was not at that time considered to be maintainable at public expense. The proposal 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. The current HMPE is shown on these maps and is recorded in the mileage register as *'spur off B3176 (east side) South of Weeks Farm to single cottage, cul-de-sac, 0.05 miles.'*
- 1.4.31 Aerial photography
Earlier RAF aerial photography from 1946–9 shows the proposal route lined with trees and hedge. From the cottages at The Moor the route appears to be enclosed between more formal hedges for a distance of approximately 60 metres where it runs between gardens before it reaches agricultural land.
- 1.4.32 More recent aerial photography from 1999-2000, 2006-7 and 2015-17 shows the proposal route in much the same way as those from the late 1940s but tree growth is heavier and the formal hedges flanking the route at the western end have been replaced by thicker tree and shrub growth. Depicted in these photos is a point midway up the proposal route where livestock appear to have been crossing the route between two adjacent fields. This is something mentioned by the landowner and is covered in the relevant section below.
- 1.4.33 British Newspaper Archives
An article in the Western Times on 17th May 1919 reports on an Inquest held in Talaton on Reginald Samuel Woodley, who was killed in an accident on the junction of 'Moor-Lane'. It states: *'George Chas. Woodley, brother of the deceased, said Moor-lane (at the corner which the accident occurred) was between the Talaton Inn and the railway bridge, and ran off the Ottery road. There was a good deal of traffic in Moor-lane, which was a parish road.'* 'Moor-Lane' appears to refer to the road running from The Moor and may therefore refer to the proposal route that runs up to Bittery Cross. However, it may simply refer to the short stretch that is currently HMPE.

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1.5 Definitive Map Reviews and Consultations

- 1.5.1 The proposal route was not put forward for inclusion on the Definitive Map when the Parish Council carried out their survey in 1950.
- 1.5.2 A further review in 1971 was started but not completed. The proposal route was not mentioned by the Parish Council in correspondence with Devon County Council during this review.

1.6 User Evidence

- 1.6.1 No user evidence forms have been submitted for this proposal route and anecdotally the route has not been used for several decades due to it being completely overgrown and impassable. Comments from Talaton Parish Council provide some anecdotal evidence of use but nothing more than this.

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. Five landowners have completed evidence forms, with 3 of these confirming that they own land adjacent to the route. None has claimed to own the land across which the route itself passes, though it is to be presumed that landownership is to the centre of the lane.
- 1.7.2 Christopher Harwood of Moor Cottage completed a landowner evidence form. He states that he has owned Moor Cottage, and the strip of land adjoining the south of the proposal route for approximately 180 metres, for more than 40 years. He has not specified whether he believes the route to be public but does state that he has believed it to be a footpath for 40+ years. He states that he has never seen or been aware of members of the public using the route in that time and has never stopped or turned back anyone from using the route. He has never erected signs on the route.
- 1.7.3 Mr Harwood has provided some further information via email and also copies of an indenture relating to his property. The Indenture dates to 1831 and refers to 'Rosemary Lane', the description identifying it as the proposal route, but does not mention status. This appears to be the earliest use of the name Rosemary Lane.
- 1.7.4 Paul Chivers of Talaton House states that he and his wife Diana Mase have owned the land to the north of the proposal route for 15 years and he believes it to be a public footpath. He states he has seen members of the public using the way '*until relatively recently when the entrance to the footpath was blocked by public dumping.*' This may refer to the blocking up of the eastern end of the route in the 1960s during highway improvements at Bittery Cross. Mr Chivers has never required anyone to ask permission or stopped or turned back anyone from using the way. Likewise, he has never erected any notices or signs, or blocked or obstructed the way.
- 1.7.5 A landowner evidence form was also completed by Simon Spencer of Moor Lane House. Although Moor Lane House is not adjacent to the proposal route Mr Spencer was included in informal consultations as a landowner as the plot is unregistered and it was suspected that a connected unregistered area of land adjacent to the route was in the same ownership. As it turned out this was not the case, but Mr Spencer's evidence form and email provide some useful evidence.

Mr Spencer has stated that he has never stopped or turned anyone back, never seen the public using the route and never erected any signs or obstructed the route. In the email to which it was attached Mr Spencer implies that the lane was included in Parish Council footpath inspections: *I have been in the village since 1961. My father was on the Parish Council soon after we arrived. The Parish had annual footpath walks which he went on, and this lane was walked with increasing difficulty, as no maintenance was ever done on it to keep it open. The Lane had become virtually impassable so it was decided to close it and divert the footpath, to its current position. Not sure exactly when but I suspect this is achieved around 1965, and it has remained closed ever since, 54 years.* Concerns about flooding from surface water runoff from the lane are raised in the email, as are concerns about disturbing current wildlife habitat should it be reopened. Some photographs of flooding in 1976 were attached to the email.

1.7.6 Mrs Wendy Adams completed a landowner evidence form confirming ownership of the field to the south of the proposal route for 20 years (plus in family ownership since 1922). She also states that she was a tenant of land to the north of the central section of the proposal route but does not specify when or for how long. Mrs Adams states that she does not believe the route to be public, has never seen the public using the way or required anyone to ask permission. She has never stopped or turned back anyone from using the route or erected any notices or signs. She states that the route has been fenced off at two points to allow livestock to pass between the two parcels of land on either side of the lane, and that there have been unlocked gates at these locations. One of these crossing points is clearly visible in the 20th century aerial photography.

1.7.7 A landowner evidence form was submitted with only the second page completed, hence there are no details of who submitted it other than the signature. The signature appears to be C Richardson, which makes it likely that it is from Bakers Cottage. The form states that they have never stopped or turned back anyone from using the route, never told anyone that it is not public, never erected any notices or obstructed the route. In the further information section is written: *'Having had a house at the bottom of Rosemary Lane for 40 years it has almost always been running with water.'*

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. Although the physical blocking up of the route in the late 1960s could constitute such a challenge, there is a complete lack of user evidence (either in the relevant period or at any other time) to enable consideration under statute.

1.8.2 Common Law

The only other basis for its possible consideration as a highway is if there was any other significant supporting evidence from which an earlier dedication of the route can be presumed or inferred under common law. At Common Law, evidence of dedication by the landowner can be express or implied and an implication of dedication may be shown if there is evidence, documentary, user or usually a

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combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.

- 1.8.3 The Glebe Terriers of 1624 and 1680, corroborated by later mapping and field name evidence, show that the route was in existence from that time. The reference to the route as a 'high way' in the 1680 Terrier suggests that it may have held some public status at that time. Whilst not conclusive or open to public scrutiny, the Terriers were compiled by people with local knowledge of the parish and audited by the Bishop and his staff, so can be assumed to hold a certain degree of evidential weight.
- 1.8.4 The two maps of glebe lands (c.1780 and c.1890) both show the proposal route in the same manner as other roads that are now part of the public road network. They do not provide any evidence of status but do give an indication that the route existed and was available for use at those times.
- 1.8.5 The tithe map provides evidence that the proposal route physically existed on the same line as it does today when it was drawn up in 1840. It does not provide conclusive evidence of status but the fact that the route is excluded from the titheable plots raises a possibility that the route was considered public at that time.
- 1.8.6 The Inclosure Award map of 1845 shows the very start of the proposal route and is the first time that use of the name Rosemary Lane appears in the historic record. However, the award does not relate to the proposal route itself and despite a reference to it by name it provides no evidence of status.
- 1.8.7 Ordnance Survey and Bartholomew's mapping records the physical existence of the proposal route from 1806 until the mid-20th century. 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. While they confirm the physical existence of the route, they offer no evidence of status.
- 1.8.8 The proposal 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 by those involved in the process.
- 1.8.9 The newspaper article in the Western Times in 1919 refers to 'Moor-Lane' as a 'parish road' in a report on a Coroner's Inquest. It is not entirely clear whether the Moor-Lane referred to meant the whole of the proposal route plus the HMPE at The Moor, or just the short section that is currently HMPE. Contemporary mapping suggests that the whole route was available for use – the OS Popular Edition One Inch maps show the whole route as a minor road. It is the first time the name Moor Lane appears in connection with the proposal route, leading to a degree of uncertainty about which road the article is talking about. However, from the description within the article, along with a complete lack of any other Moor Lane in the historic record of the parish, it can be said with a good degree of certainty that it refers to the route from The Moor to Bittery Cross encompassing the proposal route.
- 1.8.10 The route is not included in the list of public footpaths drawn up by Talaton 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. The entry in the minutes in 1931 concerning the removal

of a barrier across the lane suggest that the Parish Council considered the route to have some sort of public status. However, there is no further evidence of whether this was followed up or what status the Parish Council considered the route may have.

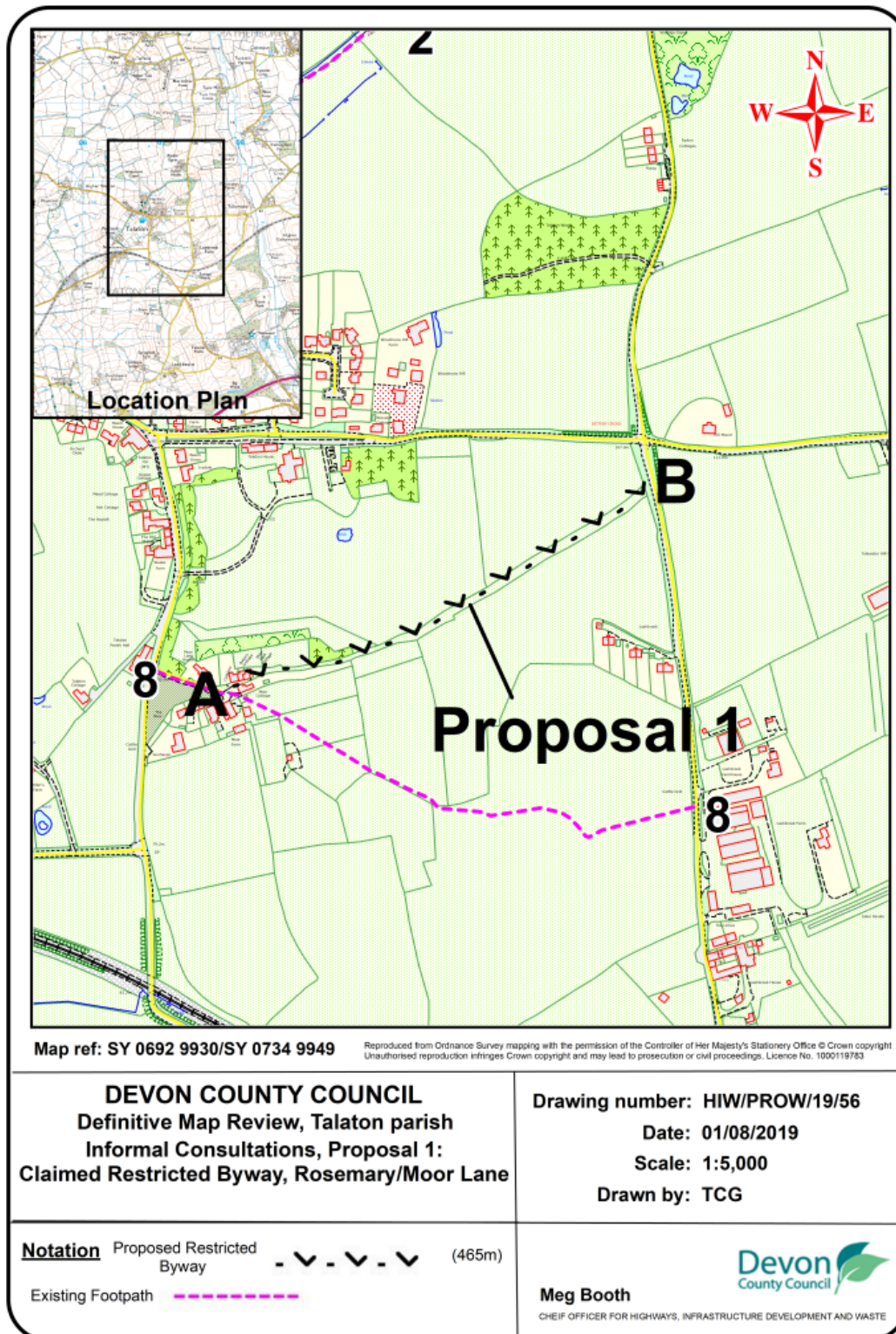
- 1.8.11 The proposal route was not included in the list of paths drawn up by Talaton Parish Council in 1950 during the original Definitive Map process. There were no objections to its omission at the time.
- 1.8.12 Further entries in the Parish Council minutes in the late 1960s mostly concern drainage and improvements to the common land at The Moor. The proposal route is mentioned merely because it was the source of much of the floodwater entering The Moor. The Parish Council requesting the removal of a leaf barrier placed across the route by a resident (who subsequently obeyed) suggests that they considered that they had some authority over the route. However, as before there is no mention of this being due to a highway status of any kind.
- 1.8.13 The dedication of land adjacent to the proposal route at Bittery Cross to Devon County Council in 1966 led to the route being physically obstructed with an earth bank and chain link fence, presumably as part of the improvement works at the cross roads. This strongly suggests that Devon County Council did not consider the route to be a highway of any description at that time. The route itself was not included in the plots of land dedicated but this is likely to reflect Land Registry boundaries rather than any indication of public ownership or rights.
- 1.8.14 Evidence provided by landowners is consistent but throws little light on there being any public status of the proposal route, mostly due to the length of time that the route has been out of use. It is interesting to note that Mr Spencer remembers his father walking the route while on the Parish Council annual footpath walks. These walks are noted in the Parish Council minutes but unfortunately no list of paths is included. None of the landowners appear to have used the route themselves (other than crossing it) and only one claims to have seen anyone else using the route. Likewise, none have taken any steps to prevent or dissuade the public from using the route.
- 1.8.15 No direct user evidence has been forthcoming, which is not surprising since the route was physically blocked at point B in the late 1960s and has been completely overgrown in recent times. As such there is no direct evidence that the public has accepted a dedication. Whilst anecdotally a few people did use the route historically there is no evidence available to indicate on what basis this use occurred or to what extent or frequency. This anecdotal evidence is not substantial or detailed enough to provide evidence that the public had accepted a dedication in the past.

1.9 Conclusion

- 1.9.1 In the absence of any direct user evidence of public rights, their existence cannot be considered under Section 31 Highways Act 1980. Under common law, the documentary evidence shows that the route has physically existed since at least the early 17th century. Whilst no single piece is conclusive, the documentary evidence indicates that the route may have had had some sort of public status. Whilst no single piece is conclusive, the documentary evidence taken together is suggestive and plentiful. However, without any evidence of the public having accepted an implied dedication the proposal falls short of the requirements needed to meet the test for dedication under common law.

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- 1.9.2 From this assessment of the evidence, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that any public rights subsist on the balance of probabilities. Accordingly, the recommendation is that no Order be made to record a Restricted Byway in respect of Proposal 1.



HIW/20/9

Public Rights of Way Committee
5 March 2020

Definitive Map Review Parish of Payhembury

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 public footpaths between points A – E, E – H – N and E – P as shown on drawing HIW/PROW/20/11.

1. Introduction

This report examines a proposal arising out of the Definitive Map Review in the parish of Payhembury in East Devon district, for the addition of a number of connecting footpaths at Hembury Fort.

2. Background

The original survey by Payhembury 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 31 footpaths submitted to the County Council. Comments were added on behalf of Honiton Rural District Council. Twenty-five of the footpath routes surveyed were withdrawn or omitted or described as not required. The remaining six 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 several requests to amend the Definitive Map. Two Class III roads were requested to be downgraded to bridleways but this did not take place. Requests were also made to delete Footpaths 5 and 7 and part of footpath 8. These were successfully pursued and are detailed below. There were no proposals made to add new routes during these reviews.

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

The following orders have been made and confirmed:

Highways Act 1959, Magistrates' Court, Honiton Petty Sessional Division S.108 Stopping Up Order 1968 (Footpath No. 12 Payhembury)

East Devon District Council (Footpath No. 8 Payhembury) Public Path Extinguishment Order 1977

East Devon District Council (Footpaths Nos. 5 & 7 Payhembury) Public Path Extinguishment Order 1983

Devon County Council & Roy John Coker (Bridleway No. 19 Payhembury) Public Path Creation Agreement 1993

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

The current review began in March 2019 with a public meeting held in the Village Hall, Payhembury, 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 August to November 2019 with the following results:

County Councillor Ian Chubb	-	no comment;
East Devon District Council/AONB	-	no comment;
Payhembury Parish Council	-	no comment;
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;
Open Spaces Society	-	no comment;
Byways & Bridleways Trust	-	no comment;
4 Wheel Vehicle users	-	no comment;
Devon Green Lanes Group	-	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 a Modification Order be made to modify the Definitive Map and Statement by adding public footpaths between points A – E, E – H – N and E – P, as shown on drawing HIW/PROW/20/11. 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/PHEMB

tg120220pra
sc/cr/DMR Parish of Payhembury
02 260220

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.

1. **Proposal 1: Claimed footpaths at Hembury Fort, consisting of two access paths from Witness Moor Car Park (1 and 2), a lower rampart circuit (3), a middle rampart circuit (4), an upper rampart circuit with links to FP11 (5), and the circuit within the top enclosure (6). Junctions within the network of routes are labelled A-S, as shown on plan HIW/PROW/19/43.**

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement by adding public footpaths between points A – E, E – H – N and E – P, as shown on drawing HIW/PROW/20/11.

1.1 Background

- 1.1.1 In the summer of 2012 Devon County Council was contacted by several members of the public reporting that signs had been erected on the site of Hembury Fort, a Scheduled Ancient Monument, stating 'Private Woodland – no right of way' or similar. These signs were purportedly erected by contractors undertaking tree felling and scrub clearance on behalf of the landowner, under a Higher-Level Stewardship Scheme (HLS) with input from Historic England. This prompted 19 user evidence forms to be sent in to Devon County Council in 2012, with a further 2 during informal consultations in 2019. Access was not physically restricted, and the landowner has allowed the public to access the site on a permissive basis under the HLS. No formal application has been made to Devon County Council under Schedule 14 of the Wildlife and Countryside Act to record the routes. Despite the site currently being accessible to the public, Historic England and colleagues in the Historic Environment Team at Devon County Council have both raised concerns that legally recorded footpaths on the ramparts could contribute to the erosion of the Scheduled Ancient Monument.
- 1.1.2 Despite some early evidence that refers to Hembury Fort as a 'common' it was not registered under the Commons Registration Act 1965, or as access land under the Countryside and Rights of Way (CROW) Act 2000. The Commons Act 2006 created new options for land to be registered in several pioneer authorities, of which Devon was one. However, an application to record a Town or Village Green cannot be submitted more than one year after use as of right has ceased. Therefore, it is not possible for Hembury Fort to be registered as either common land or a town or village green at this stage under this legislation. For this to occur would require dedication by the landowner.

1.2 Description

- 1.2.1 The claimed routes that were included for public consultation were extrapolated from the user evidence forms submitted to Devon County Council. Almost all the users accessed the hillfort by one or both of two access paths leading from the car park at Witness Moor (points A and L). The remaining routes indicated by users generally follow the lines of the ramparts of the hill fort and a circuit around the upper enclosure. All routes that were marked by more than 5 of the 19 users were included for informal consultation and appear on the proposal map HIW/PROW/19/43. To avoid undue confusion this report will generally refer to paths by the names that appear on the proposal map (access path 1, upper rampart circuit, etc). Points on the map will be referred to in specific cases where more detail of location is necessary.
- 1.2.2 Access path 1 (A-S-B-C-D-E) follows the line of the parish boundary, bounded on the east by a ditch and bank with mature beech trees and to the west by scrub and woodland, and runs across and up the ramparts and onto the top of the fort via the east gate. It is a well-trodden path with a firm flint-rich surface up until the ramparts

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of the fort It is of a substantial width between A-S but considerably narrower where it runs up and across the steep slopes of the ramparts. There is now an interpretation board and fencing, along with a kissing gate, near to point A on this route.

- 1.2.3 Access path 2 (L-K-J-I-H) runs from the minor country road near the Witness Moor car park through woodland in a southerly direction and then turns generally south-east and runs up the ramparts of the fort to the upper enclosure at point H. It is a narrow path, unsurfaced but well-trodden and passes through a timber chicane midway between point L-K. Where the path traverses the ramparts of the fort, between points K-H, it is extremely steep in places.
- 1.2.4 Three rampart circuits were indicated on user evidence forms, all appearing to follow the tops of the ramparts of the hillfort: the lower rampart circuit (B-R-K-S-B); middle rampart circuit (C-Q-J-C); and the upper rampart circuit (D-O-M-I-D). They generally follow the tops of the ramparts, this being the easiest topography to traverse, but twist and wind to a certain degree where they meet natural obstacles – trees, boggy ground, dense undergrowth, etc – on the route, as shown in the photos. The ramparts are most defined at the northern end of the hillfort, the southern end being less prominent but still a distinct and obvious feature. However, where the ramparts are less steep the paths are not always as well-defined, apparently due to users having a greater width available to them. The western section of the upper rampart circuit is currently very overgrown and appears very little used, if at all.
- 1.2.5 The upper rampart circuit links into the existing Footpath 11 via two short sections of path, M-N at the western side and O-P on the eastern side. Both sections are clearly visible on the ground and obviously well-trodden.

1.3 The Definitive Map Process

- 1.3.1 The claimed routes were not included in the survey of paths on behalf of the Parish Council in 1950 for recording as public rights of way on the Definitive Map. One path at Hembury Fort was put forward for recording, which ran from the Honiton-Cullompton road up to the top of the fort where it follows a small loop. This subsequently became the current Footpath 11. It is described on the submission form as *'giving access to the open space and old Earthworks – early British and Roman.'* It also states that it is *'A most important open space and renowned for its views.'* Under the grounds for believing the path to be public the parish council submitted *'undisputed passage of the walking public for generations.'* They also submitted that they had undertaken no repairs or *'upkeep'*. There were no objections to this addition.

1.4 Documentary Evidence

- 1.4.1 Ordnance Survey, Surveyors' Drawings 1806-7 and Cassini 1st edition 1"/mile map 1809 and later (Old Series);

Early historical maps at smaller scales do not show the site in enough detail to depict the proposed footpaths. The OS Survey Drawings and the First Edition 1" map both show a road or track leading from the Honiton-Cullompton road up to the top of the hillfort on the western side. The route is roughly (but not exactly) similar to the line of the current Footpath 11 which runs over a wide track from the A373 up to the top of the fort. A track is also shown on both these maps extending to the north from the northeast corner of the fort, appearing to be on a similar line to the claimed main access path (A-E) that runs along the parish boundary.

1.4.2 Greenwood's Map 1827

It is also shown similarly on Greenwood's 1827 map, believed to have been mainly copied from earlier Ordnance Survey map editions, though the route is only clear where it enters the fort and does not appear to be shown where it joins the Honiton-Cullompton road.

1.4.3 Payhembury Tithe Map 1839 & Apportionment 1839

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 Hembury Fort is shown on the Payhembury Tithe map, the bulk of the site falling within plot 52 which is recorded as in the ownership of John Venn and consisting of 'rough pasture & furze'. Plots 50 and 51 are in the same ownership and are recorded as arable land, both of which appear to be on land crossed by the two access paths on the proposal plan. There are no footpaths or bridleways marked on the map.

1.4.5 Ordnance Survey 25" to a mile First Edition map

Surveyed in 1887, this map shows no footpaths or tracks on the site of the hill fort. The fort itself is shown as open ground, with a few trees on the eastern slopes. It is named as Hembury Fort but there are no other annotations.

1.4.6 Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2nd edition 25" to the mile map revised in 1903 shows a footpath running up from the Honiton-Cullompton road and leading up to the west gate of the fort where it terminates. Up to this point it follows the line of the current Footpath 11. No other footpaths or tracks of any kind are shown on the site. 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.

1.4.7 The proposed routes fall within hereditament 733, recorded in the field book as Hembury Fort Hill, of 28 acres and in the ownership of Julia M. Paynter. There are no deductions recorded for public rights of way or other rights or easements other than the Tithe. Under the 'particulars, description and notes made on inspection' section ordnance no. 280, which is the fort itself, is noted as being 'common', as opposed to ordnance nos. 266 and 503 which are arable and plantation respectively. Also written in this section is the phrase '*Hembury Fort is an old Roman Encampment of historic interest*'.

1.4.8 Parish Council minutes

Records of Payhembury Parish Council meetings are held at the Devon Records Office as well as in the parish, though it appears that there is a large period for which the minutes do not survive. A small number of entries from the late 19th century have survived but do not contain any references to Hembury Fort. Likewise, the minute book covering the period from October 1976 – July 2001 does not contain any references that shed any light on public footpaths or public rights at Hembury Fort. There are no surviving minutes covering the Definitive Map process in the 1950s and 1960s.

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1.4.9 Later Ordnance Survey mapping and Bartholomew's maps

Maps at smaller scales from the earlier 20th century, particularly by Ordnance Survey and Bartholomew's map editions from 1910 to the later 1940s, are not detailed enough to show the site in any detail. They depict the hill fort but show no paths on or across the site.

1.4.10 Later Ordnance Survey 'A' edition larger-scale mapping 1963, around the time that the Definitive Map was being drawn up, shows several footpaths on the site. One runs from the A373 at the south of the site and leads roughly straight up and over the hill fort in a northerly direction, and then generally follows the line of access path 2 to join the minor county road, roughly at the spot where the Witness Moor car park is now located. A second path follows roughly the same line as the current Footpath 11 to the top of the fort where it then links to the first path described above. A third short section of path links the two paths described above near the southern boundary of the site.

1.4.11 The showing of the routes on early and later maps records their physical existence at those times until more recently and possibly 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.

1.4.12 Sale Plans and catalogues, 1899, 1923 and 1938

Hembury Fort is listed in the sale catalogues but there is no reference in any of them to any public rights. The lot is described the 'well-known Hembury fort Hill', 'historical Roman fort' and 'an archaeological feature of great interest.' The 1938 catalogue states that the site is sold subject to an agreement dated 24th April 1930 granting a license to excavate, which must be assumed to be for Miss Dorothy Liddell's excavations that took place in the early 1930s. It is also stated in the 1938 catalogue that it is sold subject to publication under Section 12 of the Ancient Monuments Consolidation and Amendment Act 1913.

1.4.13 Aerial photography

An aerial photograph of Hembury Fort from the early 1930s, contemporary with Miss Liddell's excavations which are visible in it, shows several clear paths on the site. The photo is taken from a southerly direction. The eastern slope of the fort is thickly wooded while the rest of the site, including the flat area to the north of the fort, is mostly open apart from a few trees in the central part of the western side. A path is clearly shown running from the A373 (where the current gateway is) up to the top of the fort and crossing the southern half of the upper enclosure. It does not appear to continue to the north beyond this point. A track is also clearly shown that is consistent with the line of the current Footpath 11 to where it reaches the top enclosure. It then continues diagonally across the upper enclosure to north-east gate, roughly at point E on the proposal plan. A path is also clearly shown running around the upper rampart on the south, east and west sides, possibly on the north side but it is not possible to make with any certainty. It appears there may be paths on some of the other ramparts, but these are not clearly visible.

1.4.14 RAF aerial photography from 1946–9 shows the path that was visible in the early 1930 running from the A373 up the southern ramparts to the top of the fort, as well as the track that is roughly on the line of the current Footpath 11 up to the top of the fort. The eastern ramparts are now far less thickly wooded than they were in the early 1930s. There appears to be a path on the upper rampart at the north of the fort, though in general the poor image quality means that it is difficult to see much detail.

- 1.4.15 An aerial photo dated to 1984 shows the site from the south-south-west. Footpath 11 is clearly visible, as is the enclosure circuit on the northern half of the fort. The photograph was taken shortly after excavations by Malcolm Todd and there appears to be infrastructure associated with this in the centre of the northern half of the fort. There appear to be traces of paths on the lower and upper ramparts on the south of the fort. The south-west ramparts are mostly clear of tree growth but appear to be covered in bracken, as is much of the top of the fort. The remaining ramparts are almost completely obscured by tree growth.
- 1.4.16 Aerial photography from 1999-2000 (clearly taken during the summer months) shows the site to be far more heavily wooded than it was half a century earlier. The route of the two access paths are completely hidden by tree cover, as are most of the ramparts bar those at the south-west of the fort. Most of Footpath 11 is visible except for the northern part which is under tree growth. There are paths clearly visible between point E-F and most of the enclosure circuit apart from the southern section.
- 1.4.17 Aerial photography from 2006-7 (again, clearly taken during summer months) shows a very similar picture to that of 1999-2000, although tree cover has become more extensive. Footpath 11 is not clearly identifiable except for some of the section on the top of the fort. A lot of the enclosure circuit is visible as before but only part of the section between points E-F can be made out.
- 1.4.18 Aerial photography from 2015-17 also shows the site during the summer months. Tree growth on the ramparts has continued to thicken but the top of the fort has been mostly cleared of tree and scrub growth. The enclosure circuit is visible in its entirety, as is the path between points E-F. Footpath 11 is visible in certain places.
- 1.4.19 Google Streetview
Images from Google Streetview taken in March 2009 show the western ramparts at the northern end of the fort. They show the slopes to be wooded but fairly open, with some understorey scrub growth underneath the mature trees. The images clearly show well-worn paths cutting through banks where the two access points meet the minor county road at points A and L. At point A the path is clearly visible leading off into the woods in the general direction of the proposal route towards point S.
- 1.4.20 British Newspaper Archives
Despite numerous articles relating to the excavations led by Miss Liddell, as well as several property sales, there is no record of any articles referring to either public rights of way or public access on Hembury Fort.

1.5 Definitive Map Reviews and Consultations

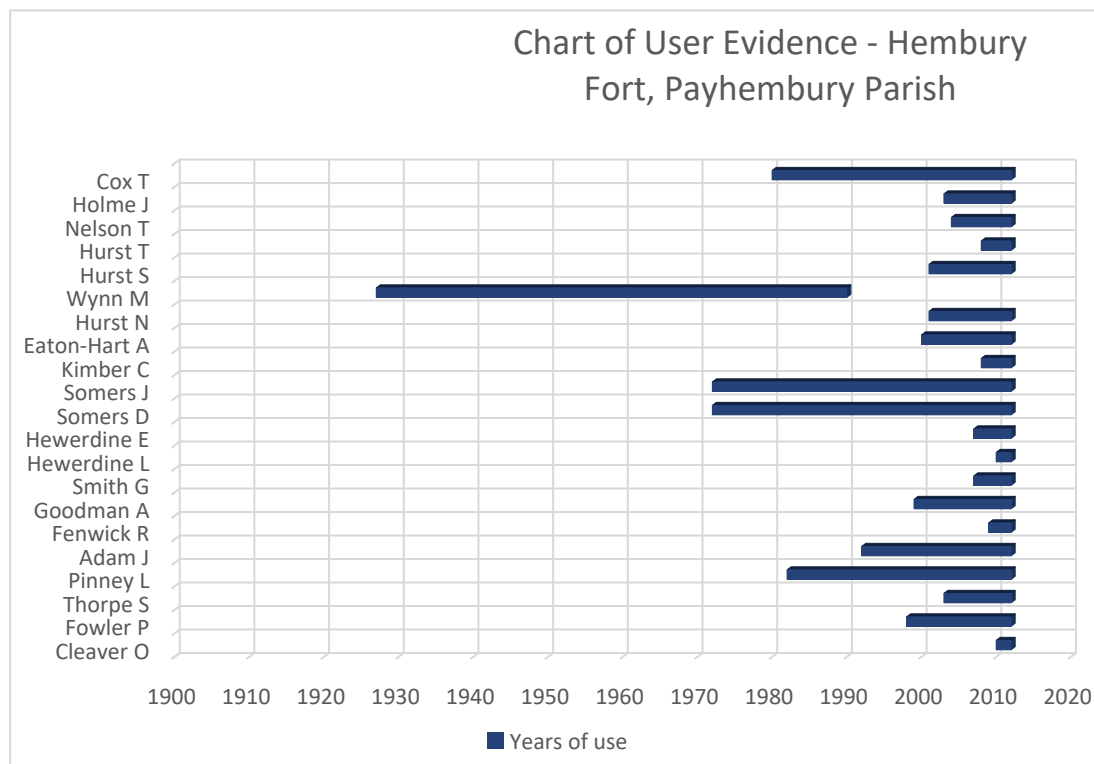
- 1.5.1 None of the proposed routes were considered for inclusion during the original Definitive Map process in the 1950s. Only the current Footpath 11 was recorded at that time, with no objections to it being recorded. There have been no proposals put forward to add paths or amend the existing Footpath 11 during uncompleted reviews in the 1970s.

1.6 User Evidence

- 1.6.1 19 user evidence forms were received by Devon County Council between August 2012 and June 2013. These were prompted by the erection of signs on the site in July 2012 that stated the land was private and access to the public was prohibited. A further 2 forms have been received during informal consultations, bringing the total to

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21 forms. The user evidence covers the period 1927-2012, the years of use being summarised in the chart below.



- 1.6.2 81% of users stated that they used access path 1 between A-S and then on to point E. Except for the two short paths linking to Footpath 11, this is the most common path indicated on the maps submitted with the user evidence forms. This route provides the main access from the car park at Witness Moor, which is the obvious place to park for people visiting the site. The car park at Witness Moor was constructed in its current form in the mid-2000s but it appears that prior to this people would still park in this area, either on the wide verges or on the area of rough ground where the current car park now exists.
- 1.6.3 48% of users stated that they used access path 2 between points L-H. This path also leads from the Witness Moor car park, though not directly as it joins the minor county road approximately 50m (55 yards) south of the car park. It traverses the ramparts of the fort between point K-H and is therefore very steep in places at this end. This may partly explain why fewer users state they have used this path compared to access path 1.
- 1.6.4 The upper and middle rampart circuits are included on 62% and 66% respectively of users' maps, either entirely or partly. The lower rampart circuit is only included on 38% of user evidence maps and is also less well-defined at present on the ground. Due to the nature of the site and the difficulty in capturing the terrain on a map it is not always clear precisely which routes have been marked on the users' maps. This is particularly the case concerning the upper rampart circuit and the enclosure circuit, where it is not always clear which one it is that users have intended to mark as they are in very close proximity on maps at the sort of scales submitted by users.
- 1.6.5 52% of users claim to have used some or all of the enclosure circuit on the top of the northern half of the fort. Unlike the rampart circuits that are inconsistently defined on the ground, the circuit around the top enclosure is currently a well-worn path and is

clearly shown on aerial photography from 1984 onwards. It appears that this forms part of a circuit around the top of the fort with the existing Footpath 11.

- 1.6.6 90% of users have recorded use of one or both of the short links between the upper enclosure/rampart and the existing Footpath 11 at points N and P. The best views have always been available at the south of the fort and seems logical that most users will have passed this area on their walks. To do so would require using one of these short links into Footpath 11 if you were accessing the site from the two main access paths.
- 1.6.7 Only one of the users stated that they had ever obtained permission from the landowner. Lucy Pinney states that in December 2003 she *'rang Mr Gundry, he said I was welcome to use the route or any other route on the fort.'* As to her knowledge of who owns the land she states that it *'Used to be Mr Gundry. Asked him in 2003 if it was okay to walk the route. He said I was welcome and he had no objection at all to anyone walking on Hembury Fort anywhere.'* It appears that the reason she contacted Mr Gundry to ask permission was because she wished to write a short piece in The Times newspaper recommending the site to other walkers. She supplied a copy of the article with her evidence form. The map accompanying the form suggests that she accessed the site from an unusual direction, certainly not consistent with the other users who almost exclusively used one or both of the two access paths on the proposal plan. However, she states on her evidence form that she has used the routes since 1982, so it appears that she used them for 21 years before obtaining permission. She states that the landowner *'used to be Mr Gundry'* which may imply that she was unsure if this was case at the time of completing the form. She also notes that there are *'many different paths on Hembury Fort, all used frequently by the public.'* Further information supplied via email suggests that Mr Gundry tolerated, and perhaps even encouraged, use by the public rather than allowing them to use the site only with his express permission.
- 1.6.8 The subsequent article in The Times newspaper was published on 20th December 2003. Walkers are recommended to park in the small layby indicated on Pinney's map and to follow a circular route similar to that marked on her map. However, it does not imply that you need to stick to any set routes and encourages readers to explore the site. Pinney writes that *'the fort is owned by John Gundry, a kindly local who doesn't object to walkers.'* According to Lucy Pinney the article was reprinted several years later and Mr Gundry did not contact her to object.
- 1.6.9 Of the 21 users who completed evidence forms 8 stated that they believed the land to be owned by Mr Gundry, Mrs Gundry or the Gundry Estate. One user – Mrs Fowler – simply stated *'I thought it was common land'*. The remaining users did not know who the landowner was or left it blank.
- 1.6.10 None of the 21 users say that they had seen any signs or notices prior to July 2012 to indicate that there was no public right of way or that the land was private. Several answered that they had seen signs but noted that this was only in 2012 and that prior to this they had never seen any on the site at all.
- 1.6.11 None of the 21 users who completed forms state that they were ever turned back or told that the way was not public, either by the landowner or by anyone else.
- 1.6.12 Of the 21 users, 18 believed that the landowner was aware that the public were using the paths. Several users commented on the well-trodden paths and large numbers of people walking there as being a reason for believing this to be the case. Of course, one user – Lucy Pinney as mentioned above – stated that she knew the landowner

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was aware because he had told her so. Only one user believed the landowner was unaware of use by the public, with the remaining two users leaving this question unanswered.

- 1.6.13 18 users state that they believe the paths they used to be footpaths. Two users have stated that they believe the routes to be bridleways but indicated that they used them on foot. Neither has given any explanation as to why they believe them to be bridleways. One user has left this section of the form blank.
- 1.6.14 18 of the users explicitly mention that the paths are well-used by others, using phrases such as '*often meet others using path*', '*all used frequently by the public*', '*everyone was using it*' and '*used by a number of members of the public on a regular basis*'. Several have commented that

1.7 Landowner and Rebuttal Evidence

- 1.7.1 The current landowner, Carrel Jevons, was sent a landowner evidence form along with details of the proposal during the informal consultations. A landowner evidence form has not been submitted by Mr Jevons, though a letter has been received from his solicitor. This letter suggests that there is an element of statutory incompatibility between the legal protection of the Scheduled Monument and the proposed addition of footpaths. A copy of the Judgement in the Newhaven case was enclosed with the letter. The comparison is not a direct one as the Newhaven case relates to a Town and Village Greens rather than public rights of way, but it is covered in the discussion below.
- 1.7.2 Mr Jevons acquired the land shortly before the use by the public was called into question, and in 2013 made a Section 31(6) deposit with Devon County Council. The previous owners appear to have been the late Mr and Mrs Gundry. Mr Jevons has not provided any evidence to suggest any direct or overt actions were taken by Mr and Mrs Gundry during the relevant period that would rebut the claim.

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. Although access was not physically restricted, the erection of signs reading 'Private Land No Right of Way' on the site in July 2012 were clearly a challenge to the use of the paths as of right by the public. As such, the relevant period for consideration in this case will be July 1992 to July 2012.
- 1.8.2 The user evidence clearly shows that the paths at Hembury Fort have been used by the public for the whole of the relevant period, with no evidence that this was interrupted at any time. The general consensus of the evidence is that this use was 'as of right'. There is no evidence that use took place with any force or secrecy. One user out of the 21 who completed forms sought permission midway through the duration that she claims that she used the paths. However, it appears that this was sought prior to publication of a short newspaper article about the site rather than as a simple request for permission to walk the paths, which she had been doing for the previous 21 years without permission. No other user received or sought permission

to use the paths and none stated that they considered that they were not allowed to use them without permission.

- 1.8.3 None of the users record there being any signs, notices, barriers or anything else on the paths during the relevant period to inform them that they were using them on a permissive basis. With the exception of the user who obtained permission from the late Mr Gundry, none of the users record that they were ever stopped, turned back or told that they could not use the paths. Nearly two thirds of the users were not aware who the landowner was, and those that were aware never considered that the landowner objected. Taking all of this evidence together it is very persuasive that the use by the public was as of right. The available evidence also suggests that the landowner, Mr Gundry, had no objections to people using the paths (or at least took no actions to communicate otherwise), and that he would certainly have been aware of the public using them. At present the site is very well used by the public, especially dog walkers, under permissive access as part of a Higher-Level Stewardship scheme. The user evidence forms suggest that the site was also very well-used by the public during the relevant period before the HLS, with many stating they saw many other people walking there.
- 1.8.4 The difficulty in determining the user evidence in this case occurs when assigning it to a defined way or ways. The number and variety of routes recorded on the user evidence forms creates a complex picture of use, as is demonstrated by the resulting proposal map. A public highway of any status allows the public to pass and re-pass along it, the means by which they may do so varying depending on the status. Evidence of roaming away from the proposed routes must therefore be discounted. As such, for the purpose of dedication the user evidence must support not only use as of right, but the users passing and re-passing along defined routes rather than roaming across an area. The fact that some of the proposed paths have always been visibly well-worn on the ground, as evidenced in the aerial photography, suggests that users were sticking to paths for the majority of the time. This is also suggested by the forms themselves and the further information supplied by a few of the users. Whilst roaming clearly did occur on the site it was obviously happening alongside frequent and heavy use along defined paths. As such it therefore seems logical to consider that a considerable amount of user evidence relates to users passing and re-passing along defined routes rather than roaming. This is particularly the case for certain sections of the claimed paths, as discussed below.
- 1.8.5 Analysis of the maps submitted by the users shows certain of the proposed paths to be more popular than others. The main access path between points A-E is used by more than three quarters of those who submitted forms. It runs alongside a historic boundary hedge bank, with woodland on the opposite side, and there is little evidence on the ground of people deviating from the route. It appears that most users travel to the site by car, park at Witness Moor then pass and re-pass along the path as a means of accessing the hillfort itself. This therefore suggests that the test of passing and re-passing along a defined route is met in the case of access path 1 between points A-E.
- 1.8.6 Upon reaching the fort itself most users state that they used part or all of one or more of the rampart circuits. The quality and accuracy of users' maps varies, and it is often difficult to depict exactly which path they claim to have used, though in general they seem to suggest the paths are on top of the ramparts. The ditches between are very boggy in wet weather and the sides of the ramparts are very steep, making it unlikely that these were used on a regular basis. However, many of the ramparts are difficult to traverse due to vegetation. Tree growth, particularly scrub, appears to have been very dense in many parts of the hillfort during the relevant period. More open areas

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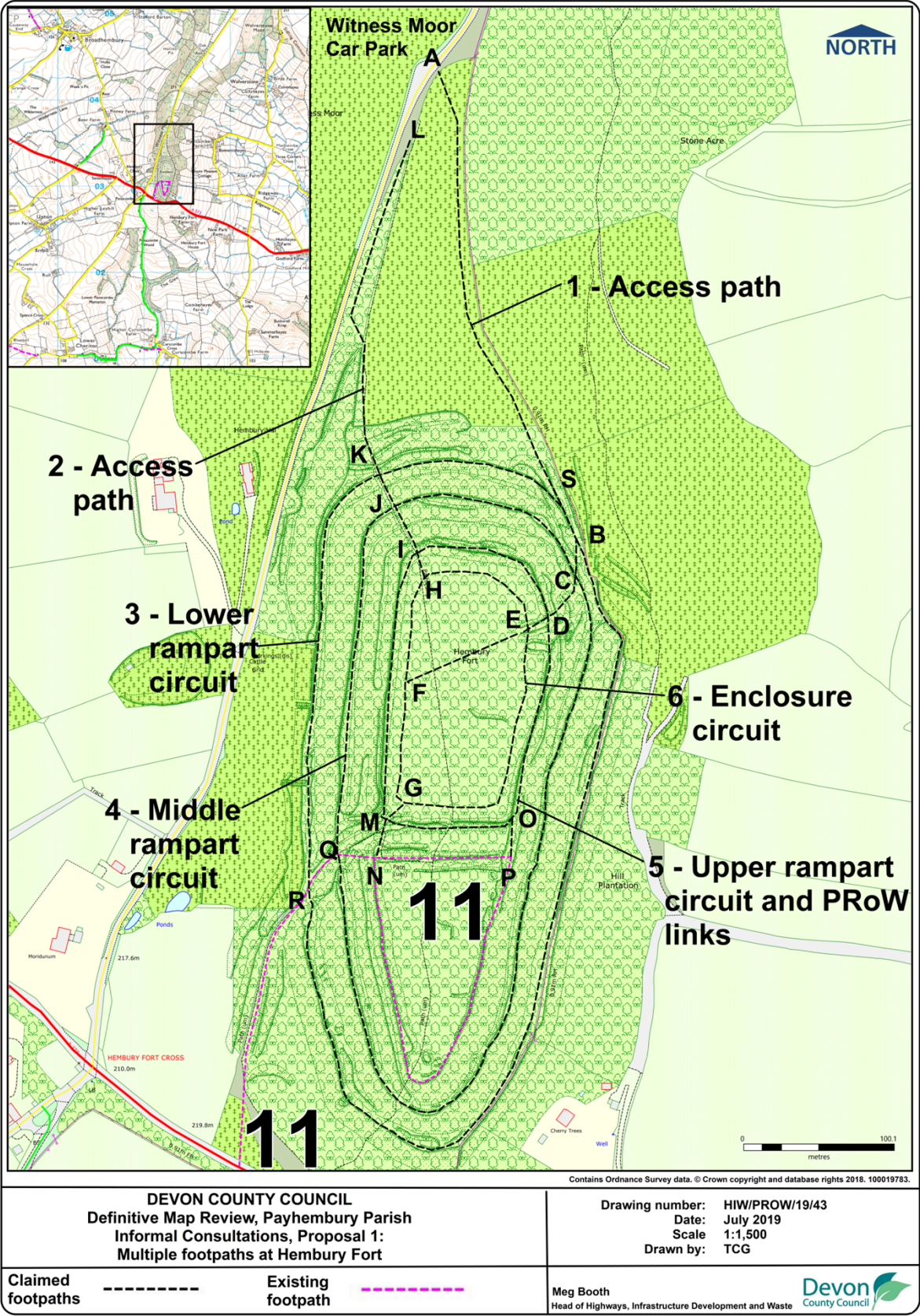
are also susceptible to bracken and bramble growth, particularly in the summer months. The aerial photography demonstrates the extent of the vegetation and also how trees block any view of defined paths that existed underneath. As such, from the aerial photography it is not possible to corroborate exactly which sections of the rampart circuits were accessible and being used during the relevant period.

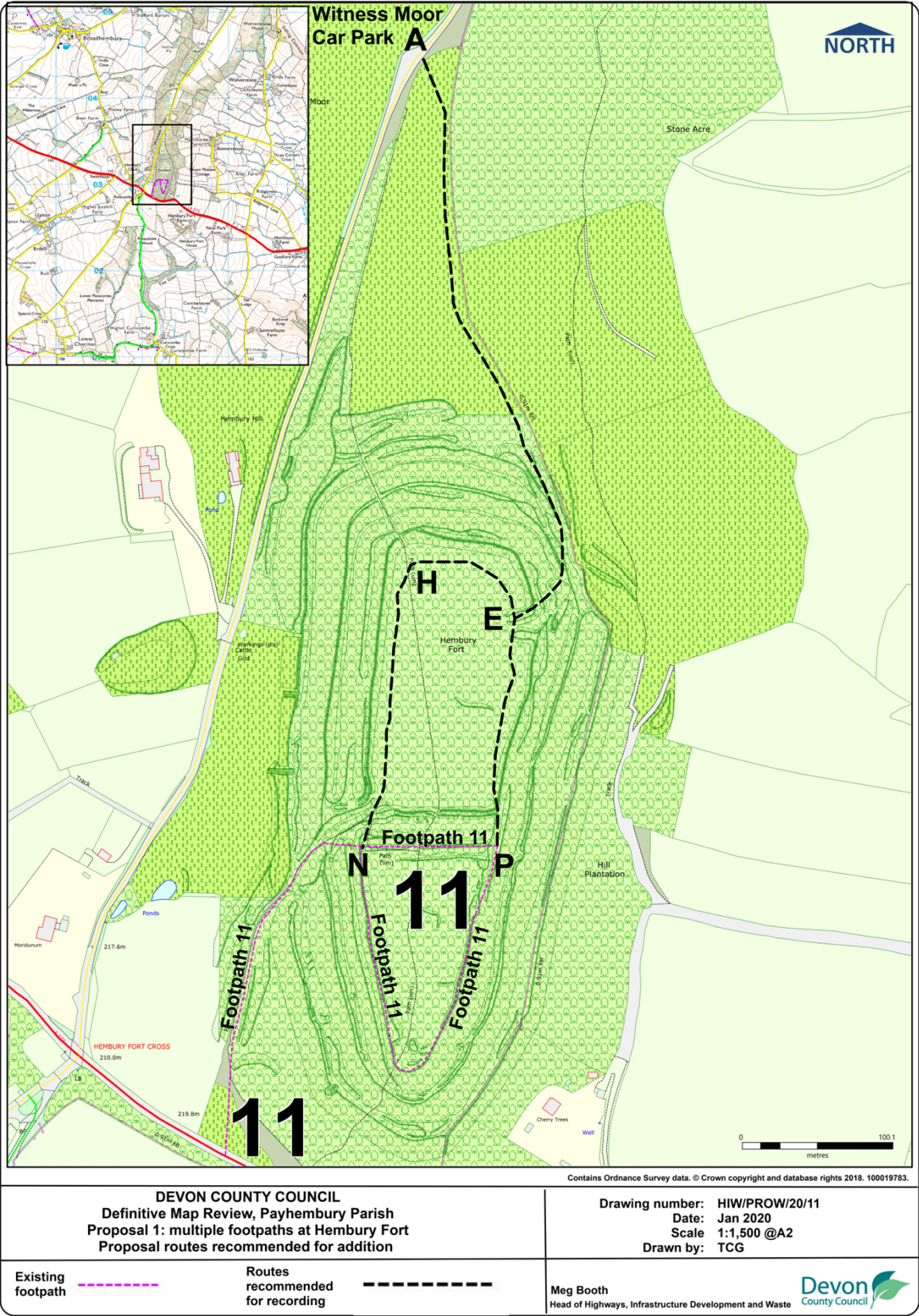
- 1.8.7 Due to the nature of the site it must be foreseen that there may have been a degree of roaming taking place as well as users following defined paths. Almost all the users saw fit to mark paths on the maps that accompanied their user evidence forms and none specifically refer to roaming. Many of the forms refer to the paths being 'well-used', well-worn' or similar descriptions that suggest the users were generally following paths that were clearly visible on the ground. The users who elaborated on their user evidence forms all appear to have stuck to clearly worn paths when they visited the site, with two stating that they roamed only occasionally when with their grandchildren. Therefore, while it is clear that some roaming around the site took place, it is also clear that most of the use can be considered passing and re-passing along defined routes, particularly so in the case of access path 1 and upper enclosure circuit.
- 1.8.8 The issue of statutory incompatibility has been raised by the landowner, and while the case referred to relates to a town and village green application there is some common ground between town and village green and rights of way law. A judgement in the Supreme Court in December 2019 [*Lancashire County Council*] v Secretary of State for the Environment, Food and Rural affairs and R (NHS Property Services Ltd) v Surrey County Council] established a three-point test for statutory incompatibility. The first two are that the land must be acquired for a statutory purpose, and then that it must for the time being be held, but not necessarily used, for that purpose. The third test is that the statutory purposes for which the land is held is incompatible with the use of that land as a town and village green. Whilst the Ancient Monuments and Archaeological areas Act 1979 provides the Secretary of State with powers to acquire compulsorily any ancient monument for the purpose of securing its preservation, this has not happened in the case of Hembury Fort. As such it seems that the first two tests for statutory incompatibility would fail, should it be held that the case law applies to rights of way. The third test would require the existence of public footpaths to be incompatible with preservation of the ancient monument. Public access (including a proposed permissive path) has been allowed and encouraged by the current landowner under the Higher Level Stewardship scheme. It is common for other scheduled monuments to have public footpaths recorded over them, with examples in the south west being Membury Castle, Lambert's Hill, Pilsdon Pen, Eggardon and Flower's Barrow among others. Many others such as Woodbury Castle are registered open access land. It would therefore seem that public access and footpaths are not incompatible with the preservation of a scheduled monument.
- 1.8.9 Common Law
The other basis for dedication is if there was any other significant supporting evidence from which dedication of the route as such can be presumed or inferred under common law. At Common Law, evidence of dedication by the landowner 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 and that the public has accepted the dedication.

- 1.8.10 As has already been discussed, the user evidence shows regular use by the public over many years. The extent and nature of this use makes it very unlikely that the landowner was unaware that it was taking place. Indeed, it appears that the landowner was expressly made aware of use by the public by one of the users. Historic aerial photography shows that certain of the proposal routes (as previously discussed) have been well-worn on the ground, reflecting the user evidence. There is no evidence to suggest that the landowner took any steps to communicate a lack of intention to dedicate prior to 2012 and in fact the evidence suggests that they were aware of use and appear to have acquiesced to it. The available evidence therefore indicates that the test for common law has been met, with evidence being particularly strong in the case of Access Path 1, the enclosure circuit and the two short links into Footpath 11.

1.9 Conclusion

- 1.9.1 The user evidence is consistent in suggesting the public used the claimed footpaths as of right during the relevant period between July 1992 and July 2012, prior to this use being challenged. Some of the proposed paths were clearly used more than others. The main access path has historically been used by people visiting by car (likely to be the majority of users) as it allows the easiest access between available parking and the hillfort itself, certainly during the relevant period. The circuit around the upper enclosure, linking into the current Footpath 11 to create a circular loop, is similarly well-used and is corroborated by aerial photography from 1984 onwards which confirms that it was present on the ground as a well-worn footpath during the relevant period as well as being recorded on user evidence forms. The user evidence, reflected and supported by the photographic evidence, clearly demonstrates that the public were passing and re-passing along these particular sections of path on a consistent and regular basis throughout the relevant period, without prejudice to any use that occurred concurrently on the rest of the site. The ramparts have clearly always been used but it is not possible to tell with certainty that they were definitely used (especially in their entirety) during the relevant period or if parts of them did not exist at that time due to the dense vegetation.
- 1.9.2 From this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, it is considered sufficient to support the claim that footpath rights subsist or are reasonably alleged to subsist on Access Path 1 (points A-E), around the upper enclosure circuit and linking in with the current Footpath 11 via the two short links (points E-H-N and E-P), as shown on drawing HIW/PROW/20/11. Accordingly, it is recommended that a Modification Order be made to record a footpath on the sections of Proposal 1 between points A – E, and E – H – N and E – P as shown on drawing HIW/PROW/20/11 and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.





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Access path 1 - Point A



Access path 1 - A-S



Access path 1 - S-B



Access path 1 - D-E up to top of fort



Enclosure circuit E-G



Enclosure circuit E-H



Upper rampart circuit D-I



Upper rampart circuit I-M

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Middle rampart circuit Q-J



Middle rampart circuit Q-C



Middle rampart circuit Q-C (south west)



Path in upper ditch by middle rampart Q-C



Lower rampart circuit R-B (east side)



Lower rampart circuit R-B (south west side)



Access path 2 - point L



Access path 2 - L-K

HIW/20/10

Public Rights of Way Committee
5 March 2020

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

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

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

Recommendation: It is recommended that the report be noted.

1. Summary

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

Modification Orders

Order/Schedule 14 Application	Decision
Devon County Council (Bridleway No. 174, Sidmouth) Definitive Map Modification Order 2014.	Interim decision on 19 December 2019, following written representations: Proposed to be confirmed subject to modifications. For more information see The Planning Inspectorate's Interim Order Decision .
Schedule 14 Application to add a Footpath from A375 Sidmouth Road to Whitmore Way, Honiton	The Council is directed to determine the application within 6 months of the decision date of 5 February 2020. For more information see The Planning Inspectorate's Direction Decision .

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Divisions: Sidmouth; 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

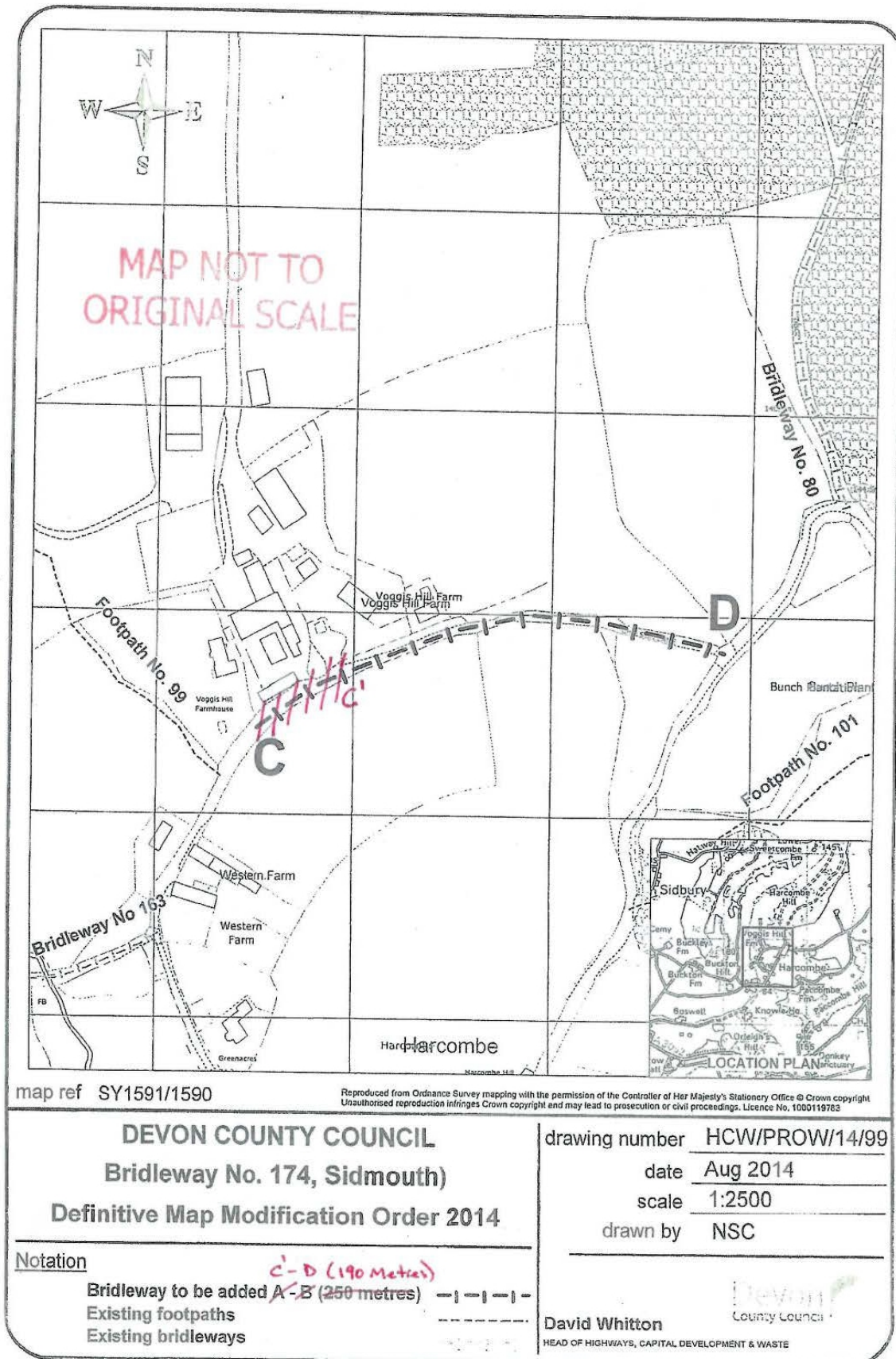
Date

File Ref.

None

hc050220pra
sc/cr/Public Inquiry Informal Hearing High Court appeals
03 260220

Agenda Item 11



A375 Chilcompton Road Honiton
& Lk. Tmore Loo, Honiton.



HIW/20/11

Public Rights of Way Committee
5 March 2020

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) Bridleway No. 13 & Footpath Nos. 1 & 5, Berrynarbor Definitive Map Modification Order 2016
- (ii) Footpath Nos. 10 & 11, Sowton Definitive Map Modification Order 2019
- (iii) Footpath No. 11, Clyst St George Definitive Map Modification Order 2018

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Divisions: Combe Martin Rural; and Broadclyst

Local Government Act 1972: List of Background Papers

Contact for enquiries: Helen Clayton

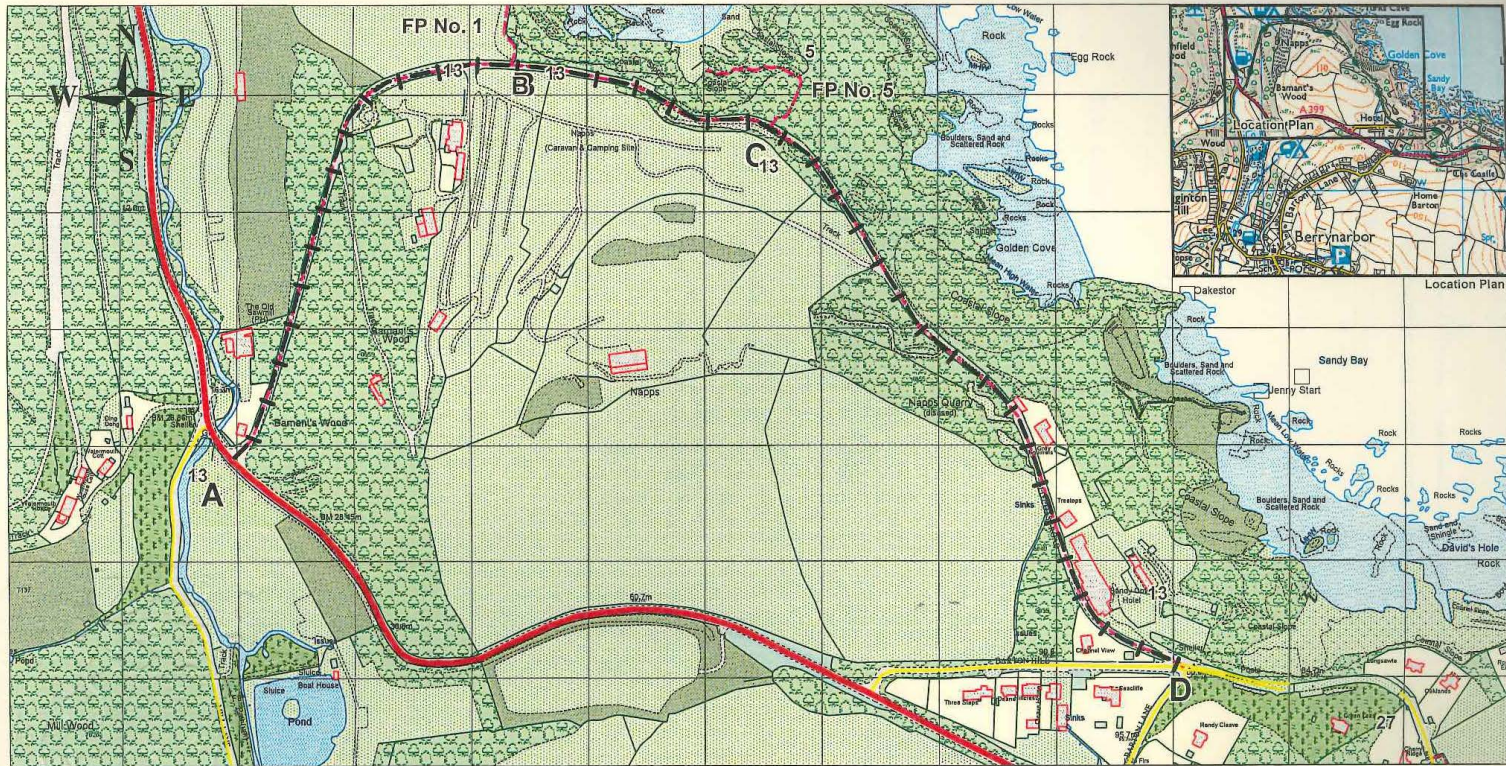
Room No: ABG Lucombe House, County Hall, Exeter

Tel No: 01392 383000

Background Paper	Date	File Ref.
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None

hc050220pra
sc/cr/Modification Orders
02 260220



map ref: SS 5547

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WILDLIFE & COUNTRYSIDE ACT 1981
COUNTY OF DEVON DEFINITIVE MAP & STATEMENT DEVON COUNTY COUNCIL
(BRIDLEWAY NO.13 BERRYARBOR)

Notation

Bridleway No. 13 A-B-C-D —|—|—|—|—|— approximately 1,300m

Existing footpaths 1 & 5 - - - - -

drawing number **HCW/PROW/16/64**

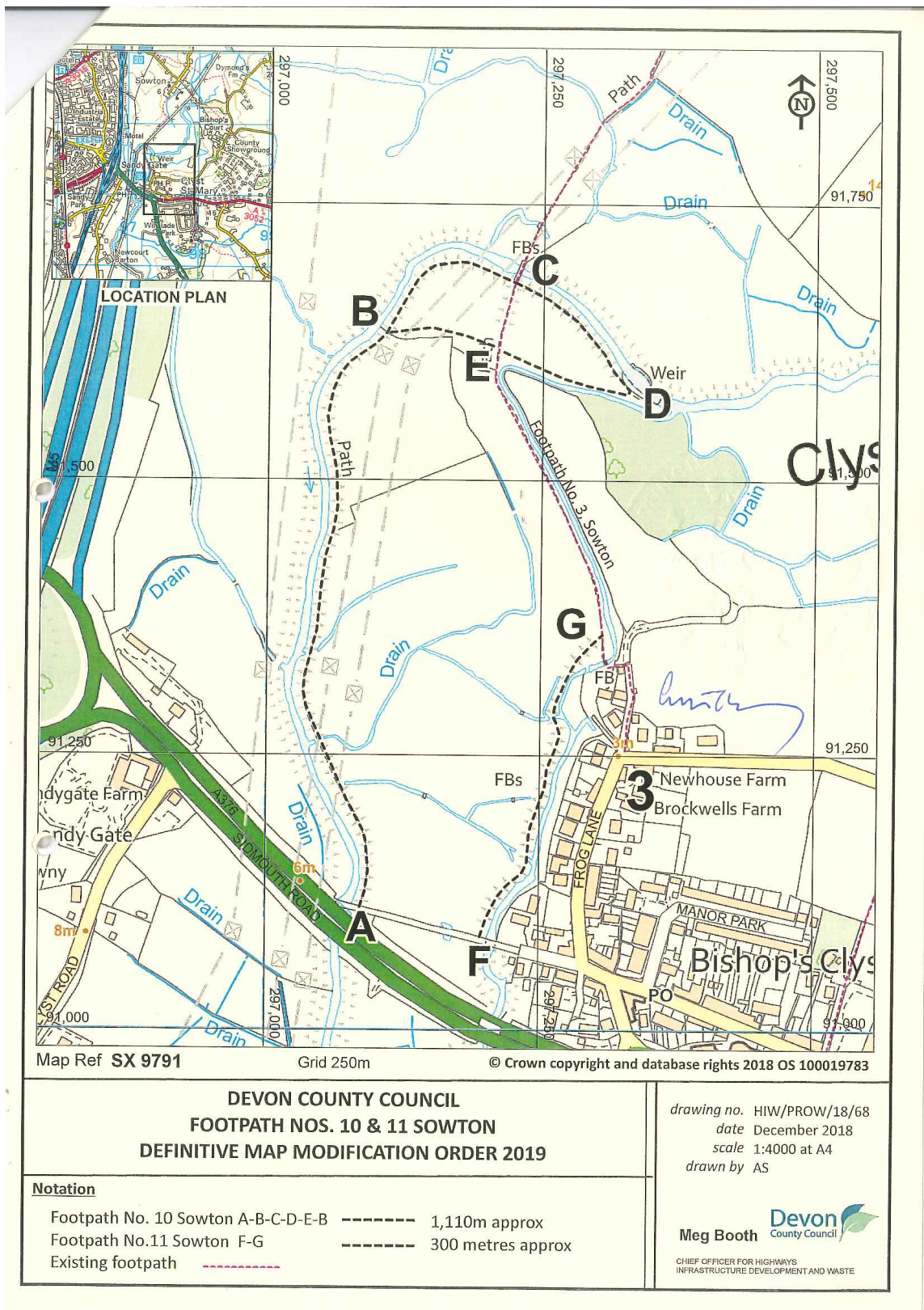
date **July 2016**

scale **1:5,000**

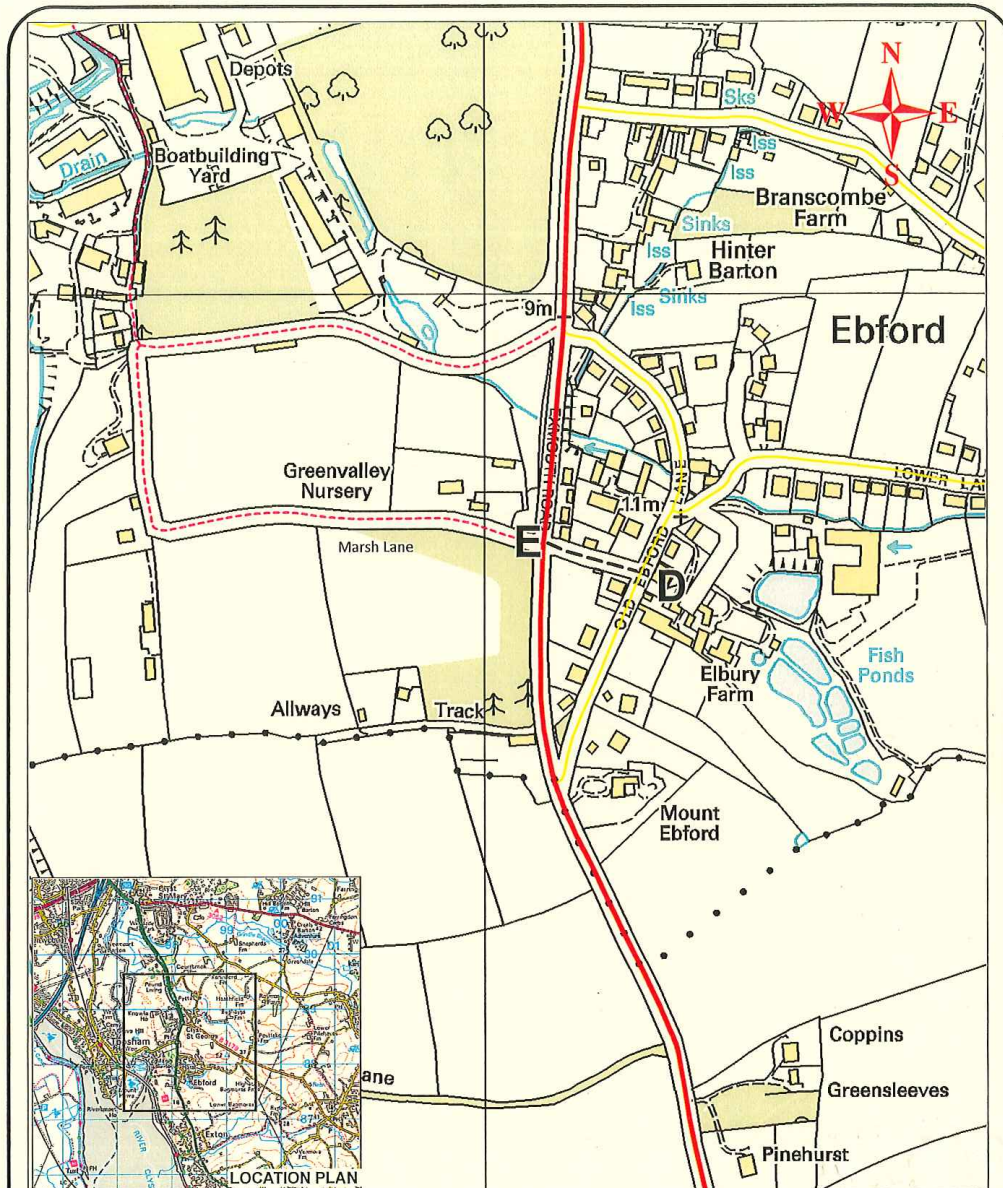
drawn by **AS**

David Whitton
Head of Highways, Capital Development & Waste





Agenda Item 12



map ref

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DEVON COUNTY COUNCIL

Definitive Map Modification Order
Clyst St George
Footpath No. 11

drawing number HTM/PROW/14/81

date November 2018

scale 1:5,000

drawn by AS

Notation

Footpath No.11 - - - - -

Existing footpaths - - - - -

Devon
County Council

Meg Booth
Chief Officer Highway, Infrastructure Development and Waste

HIW/20/12

Public Rights of Way Committee
5 March 2020

Public Path Orders

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

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

Recommendation: It is recommended that the report be noted.

1. Summary

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

(a) Diversion Orders

- (i) Footpath No. 6, Dalwood & Footpath No. 41, Stockland Public Path Diversion & Definitive Map & Statement Modification Order 2019
- (ii) Footpath No. 15, Ilfracombe Public Path Diversion & Definitive Map & Statement Modification Order 2018
- (iii) Footpath No. 34, Chardstock & Footpath No. 34, All Saints Public Path Diversion & Definitive Map & Statement Modification Order 2019

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Divisions: Whimble & Blackdown; and Ilfracombe

Local Government Act 1972: List of Background Papers

Contact for enquiries: Helen Clayton

Room No: ABG Lucombe House, Exeter

Tel No: 01392 383000

Background Paper	Date	File Ref.
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None

hc050220pra
sc/cr/Public Path Orders
02 260220

