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

County Hall
Topsham Road
Exeter
Devon
EX2 4QD

Date: 18 November 2020

Contact: Wendy Simpson, 01392 384383

Email: wendy.simpson@devon.gov.uk

PUBLIC RIGHTS OF WAY COMMITTEE

Thursday, 26th November, 2020

A meeting of the Public Rights of Way Committee is to be held as a Virtual Meeting on the above date at 2.15 pm to consider the matters below. For the joining instructions please contact the Clerk for further details on attendance and/or public participation.

Phil Norrey
Chief Executive

A G E N D A

PART I - OPEN COMMITTEE

- 1 Apologies
- 2 Minutes
Minutes of the Committee meeting held on 5 March 2020 (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 24 September 2020, attached.

DEFINITIVE MAP REVIEWS

- 5 Parish Review: Definitive Map Review 2019/20 - Parish of Stoodleigh (Pages 13 - 16)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/20/45), attached.
Electoral Divisions(s): Tiverton West
- 6 Parish Review: Definitive Map Review - Parish of Clyst Hydon (Pages 17 - 20)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/20/46), attached.
Electoral Divisions(s): Broadclyst
- 7 Parish Review: Definitive Map Review - Parish of Clyst St Lawrence (Pages 21 - 24)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/20/47), attached.
- SCHEDULE 14 APPLICATIONS**
- 8 Addition of a public footpath between Sidmouth Road and Whitmore Way, Honiton (Pages 25 - 36)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/20/48), attached, and background papers.
Electoral Divisions(s): Whimble & Blackdown
- 9 Addition of a Public Byway Open to All Traffic from Footpath No. 6, Newton Abbot to Powderham Road (Pages 37 - 56)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/20/49), attached, and background papers.
Electoral Divisions(s): Newton Abbot South
- 10 Amendment of Northlew Footpath No. 3 (Pages 57 - 94)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/20/50), attached, and background papers.
Electoral Divisions(s): Hatherleigh & Chagford
- 11 Addition of a footpath at Kipling Tors (Pages 95 - 114)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/20/51), attached, and background papers.
Electoral Divisions(s): Northam

MATTERS FOR INFORMATION

- 12 Public Inquiry, Informal Hearing and Written Representation Decisions; Directions and High Court Appeals (Pages 115 - 120)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/20/52), attached.
Electoral Divisions(s): Sidmouth; Whimble & Blackdown
- 13 Modification Orders (Pages 121 - 124)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/20/53), attached.
Electoral Divisions(s): Combe Martin Rural; Tiverton West
- 14 Public Path Orders (Pages 125 - 128)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/20/54), attached.
Electoral Divisions(s): Broadclyst; Fremington Rural; Salcombe; Willand & Uffculme

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

Nil

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Devon Countryside Access Forum
c/o Public Rights of Way team
Great Moor House
Bittern Road
Sowton
Exeter
EX2 7NL

Tel: 07837 171000
01392 382084

devoncaf@devon.gov.uk

www.devon.gov.uk/dcaf

Minutes of the Fifty-Sixth meeting of the Devon Countryside Access Forum Virtual meeting Thursday, 24 September 2020

Attendance

Forum members

Andrew Baker
Joanna Burgess
Chris Cole (Vice-Chair)
Tim Felton
Lucinda Francis
Gordon Guest
Jo Hooper
Councillor Tony Inch

Sue Leith
Sue Pudduck
Councillor Philip Sanders
Tino Savvas
Lorna Sherriff
Sarah Slade (Chair)
Bryan Smith

Devon County Council Officers and others present

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

1. Welcome and introductions

The Chair welcomed everyone to the virtual meeting and, in particular, new members Jo Burgess, Lucinda Francis, Sue Leith and Lorna Sherriff. Introductions were made.

A minute's silence was held in memory of Dr Charlie Lloyd who had sadly died in August. The Chair paid tribute to his contribution to meetings and his passionate commitment to access and the environment.

The April meeting had been cancelled due to COVID-19.

2. Apologies

There were no apologies.

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3. Declarations of interest

There were no declarations of interest.

4. Minutes of the meeting held on 23 January 2020

Minutes of the meeting held on 23 January were approved, proposed by Cllr Sanders and seconded by Andrew Baker.

5. Matters arising

5.1 Stover Country Park

Stover Country Park had been awarded £341,000 from the National Lottery Heritage Fund for improvements to the park after resubmitting an earlier proposal. The two-year development phase grant will support further work and studies to help restore the Park and its environmental and historic setting.

A grant application for the second round of National Lottery Heritage funding will be prepared for the delivery phase of the project, scheduled to take place from 2022-2025. This will include a full fundraising plan, business plan, conservation management plan, and management and maintenance plan. Subject to approval, there will be four new sections of walking routes which will link into the existing Heritage Trail and Poetry Trail and create new circular routes.

Ros Mills, DCC, thanked the Forum for its helpful letter of bid support. Three posts were currently being advertised to progress the project and archaeological and hydrology surveys had been commissioned. The Country Park team were very pleased to be involved in the project.

In response to Gordon Guest, Ros Mills confirmed that accessible toilets and accessibility had been taken into account in the bid and as part of the aspiration to be an exponent of a neutral, sustainable and best practice project.

5.2 Jurassic Coast World Heritage Site Management Plan

The final plan had been published in early September and was available online.

5.3 Fire Beacon Hill

Members noted the new information posters and use of a GPS tracking system to control cattle. This did not use invisible fencing so would have no potential impact on pacemakers and the plan is to remove current temporary electric fencing.

Some welfare concerns had been expressed generally about electric controls and a law about electric collars on dogs is currently at the proposal stage.

5.4 Pebblebed Heaths Visitor Management Plan

The Forum had held a working group in 2019 and responded to the consultation. The South and East Devon Habitat Regulations Executive Committee has approved recommendations.

Signage and interpretation boards are in progress and some improvements made to boardwalks and path surfacing. Sufficient developer contributions had been collected to enable phased implementation of visitor access improvements. The South and East Devon Habitat Regulations Delivery Manager is investigating which work would require planning permission and looking at timescales and costs. Works are to be organised to provide significant upgrades prior to any scheduled restriction of access. Four car parks are to be improved during phase 1 in 2020-21 at a cost of up to £161,129. Signage focussing on behaviour and promoted routes had allocated spend of £13,000 in the first year of the five-year business plan and interpretation boards up to £10,000.

Gordon Guest reported that he had been involved in a couple of informal meetings through Disabled Ramblers to discuss earth bunds at car parks. He had been impressed with how responsive Clinton Devon Estates' staff had been in removing these.

The Forum Officer agreed to ascertain the outcome on horse box parking following the consultation.

Action: Forum Officer

5.5 Mid Devon Local Plan Review – Proposed Main Modifications

A response had been submitted following the last meeting supporting the main modifications. An additional comment was made, based on previous DCAF advice, stating that the Forum had concerns about the availability of green infrastructure in floodplain areas to provide access all-year round. It advised that it would be helpful for the Local Plan to be modified to reflect this. Appropriate safety measures and information boards may need to be put in place.

It was confirmed the Local Plan had subsequently been adopted.

6. Correspondence log

The correspondence log was noted. The Chair drew attention to the importance of position statements in responding to business between meetings. It was highlighted

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that landowners/land managers can apply to Natural England to close access land for 28 discretionary days each year and these applications were included on the log.

7. Election of Chair and Vice Chair

The Forum Officer took the Chair. In the current COVID-19 circumstances, Sarah Slade and Chris Cole had offered to continue as Chair and Vice Chair until April 2021. They had been acting in this capacity since the April meeting was postponed. No one else had put their names forward. This was very much appreciated in enabling the work of the Forum to continue smoothly. Cllr Sanders proposed Sarah Slade continue as Chair and Chris Cole as Vice Chair, seconded by Tim Felton.

8. Public questions

There were no public questions.

9. Meetings attended by DCAF members

Ludwell Valley Park

In accordance with COVID-19 rules, a small working group consisting of Sarah Slade, Chris Cole, Gordon Guest and the Forum Officer, had met with the Reserves Manager and Site Manager from Devon Wildlife Trust. The purpose of the meeting was to discuss accessibility as the number of kissing gates precluded use by disabled users and people with pushchairs.

Ludwell Valley Park is an extensive undulating park which includes woodland and agricultural land, surrounded by housing and Pynes Hill business park. It adjoins a large area of playing fields and is popular with dog walkers and runners. Devon Wildlife Trust (DWT) had taken over the management of Ludwell Valley and other Exeter countryside parks on a 30-year lease from Exeter City Council in May 2019.

The working group looked at the park from the Topsham Road end and from Ludwell Lane and witnessed some of the challenges of the site, including grazing cattle and grassland management. Use of the park had increased significantly during lockdown. The DWT was keen to preserve the rural feel and improve biodiversity. As an urban park, it was managed differently to the DWT nature reserves. There are some urban fringe type issues associated with anti-social behaviour.

The working group, in discussions with the Devon Wildlife Trust staff, identified some areas which were potentially more accessible if phased changes could be made to introduce accessible gates. Major improvements to surfacing had not been suggested as these were unnecessary and would reduce the countryside feel of the park. The top of the park and valley bottom presented opportunities. The group recognised the importance of cattle grazing and noted the Devon Wildlife Trust left existing gates open, where possible, when cattle were elsewhere. A friends' type group was active but resources for both improvements and day to day maintenance were limited.

The park presented an opportunity to incorporate cycling too, particularly for family groups, although there were cycling routes on the periphery of the park.

The working group had requested more details from the Devon Wildlife Trust and hoped to go back with recommendations, subject to agreement of the whole Forum. This might assist in formulating grant bids. It was noted that the Trust manage other parks in Exeter and some solutions might be transferable.

Action: Working group to put proposals to the Forum.

10. Minutes of the Public Rights of Way Committee held on 5 March 2020

Minutes of the Public Rights of Way Committee were noted.

11. Public Rights of Way update and discussion

Ros Mills, Public Rights of Way Manager, said staff had been busy during lockdown. Risk assessments had been carried out to allow site work with protocols established for contractors.

The network had proved very popular and there had been a 153% increase in use of the Exe Estuary Trail at the southern end, with much work to ensure social distancing.

Landowners had been permitted to put in temporary unofficial diversions on public rights of way where they felt vulnerable. These had been logged.

The asset and enforcement team had adapted to new ways of working and to an exponential rise in reports from the public. Many more new users were accessing the countryside who were less familiar with public rights of way and the off-road recreational trail network. Occasionally there were tensions when people strayed from paths and expected a parkland type experience – somewhere to play. It was a balance between managing people and their expectations and new challenges such as electric bikes and inexperience of farm animals and wildlife.

There had been some supply chain issues affecting maintenance work, for example quarries were closed, and contingency planning for the next six months was in hand. Expressions of interest were being sought by DCC for the next framework contract (2021-2025) for the maintenance and improvement works to approximately 5,000km of Public Rights of Way (comprising footpaths, bridleways, restricted byways and byways), 230km of off-road recreational trail network (for example, the Tarka Trail) and 590km of minor road network (mainly unmetalled). This included the South West Coast Path National Trail for which DCC is responsible, along with the areas covered by Stover Country Park and the Grand Western Canal Country Park. The historic annual spend for this work has been approximately £1.5m.

Capital budgets for big schemes such as resurfacing and bridges had been secured from central government, but revenue budgets were on the decrease. This would be a challenge in the future.

Helen Clayton, Legal and Development Team, reported a different impact with limited public engagement and face to face meetings. The Definitive Map Review team had been forced to suspend order making due to the statutory requirements for

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advertising. The team is now finding alternative ways of complying. Informal consultations had been suspended to avoid encouraging any unnecessary travel. The record offices had been shut, limiting historic research, and the Public Rights of Way Committee due to take place in July had been cancelled. The November PROW Committee would take place virtually.

P3 activities had been constrained but now volunteers were gradually undertaking work with COVID-19 measures in place.

More people were interested in claiming historic routes and enquiries had increased. Publicity about 2026 during lockdown had encouraged interest. A summary had been added to the Public Rights of Way website

<https://www.devon.gov.uk/prow/definitive-map-2026-cut-off-date-for-historic-paths/>

It is likely that Planning Inquiries will be virtual, with the first one planned in late September. These will be lengthier due to limits on screen time.

Activities were being carried out in a different way. The team is looking at Microsoft SWAY, a presentation application, to present information to the public in conjunction with virtual meetings with parish councils.

A question was asked about the impact of shared access and any research into people's perceptions and social media complaints. Ros Mills responded that there was data about numbers from key counters and social media feedback for popular routes. The Country parks had been very busy, despite the lack of facilities, as visitor centres and toilets were directed to be closed. The parks are still very busy, and facilities are opening (suitably risk assessed).

It was noted that mountain bikes using footpaths illegally and the increase in electric bikes on trails could heighten safety issues. Educating users and appropriate campaigns could take place but were complex and costly. The value of using outdoor space was increasingly recognised.

It was noted the University of Exeter had undertaken statistical analysis quantifying the benefits of green space which could be a useful starting point.

It was mentioned that people had been encouraged out during lockdown but lack of toilets and other facilities, which varied by district and town, had exacerbated some issues. This needed further thought in terms of public rights of way and trails. It was confirmed that toilets at Stover and the Grand Western Canal, under the auspices of DCC, had opened as soon as safe to do so. It was suggested the Forum might develop a position statement on toilet provision.

Some signs had been developed during the lockdown period by different organisations and a plea was put forward for continuity to ensure the same message was conveyed. Ros Mills, DCC, said that a downloadable sign had been available (from the Welsh Assembly and Natural England) and had police support and NFU support in Devon. PROW had tried to assist landowners, especially as lockdown was at its height at lambing time. Helen Clayton, DCC, confirmed there was no national sign. Guidance on keeping the message simple with links and qr codes had been promoted together with awareness of social distancing and dog control. Links

to national websites were used as too much information on posters could become outdated. The Countryside Code had been updated and some national organisations felt additional promotion would be helpful.

Coronavirus presented a huge number of issues. New users on the ground were a good thing in terms of mental and physical health benefits and the value of green space was more appreciated. At a local/national level it was important to consider recommendations to ensure the countryside was used responsibly. It was agreed that national initiatives, such as public information films or announcements in an accessible format, would be useful. The Aardman films had connected with people.

The Chair suggested that the Forum should consider how to take things forward and she would speak to Ros Mills and Helen Clayton in the first instance.

Action: DCAF Chair to speak to Public Rights of Way staff.

12. Break - ten minutes

13. Advisory note on trails

It was suggested that a new sentence should be incorporated to bring the document up to date by mentioning that usage has increased significantly since the advent of coronavirus through additional use of the trail for recreation, exercise and commuting. The word 'conflict' later in the document should be qualified by adding "in this context." These changes were agreed.

Action: Forum Officer to amend advisory note and circulate.

14. Annual Report 2019-2020

Members approved the annual report. It was agreed photographs should state the location. Some additional photographs would be inserted.

The Forum Officer was complimented on the monthly newsletter which was circulated to members and a range of individuals and organisations as well as being available online.

Action: Forum Officer

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

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

The response was noted and approved.

15.2 England Coast Path

The response was noted and approved.

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The eight-week objection/representation period ended in March and a number of objections and representations had been received for both stretches. Natural England had written up its reports and sent these to Defra. The next steps are to await Secretary of State approval for the reports where there have been no objections and wait for the Planning Inspectorate to confirm when an inspector will be visiting objection sites. Once there is Secretary of State approval the access authority (Devon County Council) can apply for England Rural Development Programme grants to install the necessary infrastructure.

Gordon Guest said the Disabled Ramblers had put in an extensive report with photographs and meetings were taking place with the South West Coast Path team, arranged through Tino Savvas, to discuss some possible works to improve accessibility.

The Chair confirmed that the timescale was not known, even without the coronavirus complications. The Planning Inspectorate had a backlog of work.

15.3 North Devon Pioneer Environmental Land Management Scheme

The response was noted and approved.

The Forum Officer had attended a virtual meeting. A number of the DCAF suggestions had been included and maps of access now distinguish between bridleways and footpaths. The priority outcomes incorporate many advisory clauses from the DCAF position statements.

The Chair confirmed work was progressing and that she had taken part in an early stage pilot scheme.

15.4 Tiverton EUE (Area B) Public Consultation

The response was noted and approved.

15.5 Public Spaces Protection Orders (dogs)

The responses to Mid Devon, North Devon, South Hams and West Devon councils were noted and approved.

The Chair commented on the complexity of submitting the responses in different formats but the plea for consistency had been put across.

15.6 Marsh Barton Railway Station

The responses were noted and approved. The application would be determined by the Development Management Committee and Cllr Sanders declared an interest as a member of that committee.

15.7 England Tree Strategy

The response was noted and approved. Members agreed with the decision to send a table reflecting the full range of member opinion as there had been no clear steer in the priorities identified by individual members.

16. Current consultations

16.1 Planning for the Future

The consultation sought views on a package of proposals to reform the planning system in England: to streamline and modernise the planning process, improve outcomes on design and sustainability, reform developer contributions and ensure more land is available for development. The closing date was the end of October.

Individual members were advised to respond if they had strong views.

Options presented to the Forum by the Chair were to focus on particular questions, either by setting up a working group or using position statements. A paper had not been included with the agenda.

Several members supported a working group as the proposals, if implemented, would be a fundamental change to the existing planning system. It was noted that the public rights of way network could be compromised close to urban areas where development might take place. The document did not appear to include much on access to the countryside. A large number of developments were taking place in Devon, such as Cullompton Garden Village, with pressure on public rights of way.

The importance of continued local input through Neighbourhood Plans and Local Plans was noted. Cllr Inch confirmed that councillors were asked for views on every planning application.

After discussion, it was agreed to form a working group to look at the proposals and implications for matters within the Forum's remit. Jo Burgess, retired member of the Royal Town Planning Institute, offered to explore some of the issues. Sarah Slade, Tim Felton, Gordon Guest and Sue Leith expressed interest in participating in the group too.

Action: Forum Officer to arrange virtual working group meeting.

16.2 Review of the Highway Code

A discussion took place on a small number of proposals within the Highway Code review within the DCAF's remit.

It was noted that the average driver does not read the Highway Code. For

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the review to be effective the public needed to read the Code periodically or the contents should be publicised, possibly using public service broadcasts, as in Germany, or on YouTube.

It was thought the matter of mobility scooters being unable to use cycle lanes had not been addressed in the review and the Forum Officer undertook to look into this.

Action: Forum Officer.

The Highway Code review proposed a hierarchy of users according to vulnerability. It was agreed this was a useful addition, subject to clarity about where each user group fell in the hierarchy and a visual depiction. People with learning disabilities had not been included as a group and they might react differently to expected. It was agreed dog walkers should be included and reference made to electric scooters and bikes. Faster moving modes of transport were more dangerous. It was noted that in many countries on the continent the car driver would be at fault in a collision with a more vulnerable user.

New rule 63 (rules for cyclists) was approved but clarification would be sought on what classifies as high speed as that was open to interpretation. Additional points that would be raised were the opportunity to use a 'share with care' message and that people with learning difficulties had not been mentioned.

Members considered changes to rule 163 - using the road. It was noted the Highway Code was not a legal document but incorporated road traffic legislation. It was agreed that the proposed passing distances at different speeds for different user groups were not clear. The distance should be consistent with a strong message to take care. References to high speed or low speed were ambiguous.

Members had mixed views on whether cycle bells should be compulsory. Advance audible warning was helpful but over-reliance on bells could give cyclists and more vulnerable users a false sense of security.

On narrow lanes and approaching narrow bridges, for example, it was agreed that cyclists might have to dismount. Equally car drivers in this situation might have to stop to allow users to pass, as well as holding back before overtaking. No mention had been made of farm animals which might be encountered on rural roads.

It was agreed the fundamental message should be about education: people who walk or use modes of transport should do so with consideration for other people at all times and think about their actions and the impact on others. Consideration and respect should be the key messages.

An amendment to rule 63 proposed that cyclists may pass slower moving or stationary traffic on their left or right, including at the approach to junctions. A discussion took place. Whilst some members thought this could improve

safety for cyclists who might not wish to pass on the right, others thought traffic may not remain stationary and drivers might not be able to see cyclists in their mirrors.

It was agreed that whilst primary schools might instil the highway code as part of cycling instruction, it was important for it to be embedded at secondary school level.

17. Any other business

Teign Estuary Cycle Trail – Value Management Workshop

The Forum had been invited to send a representative to a virtual meeting in October. Bryan Smith expressed interest but declared an interest as a resident of the area.

Action: Forum Officer to forward details

Dartmoor National Park

Gordon Guest had been working with Tim Russell at Dartmoor National Park Authority to look at improvements to wheelchair accessible routes. Work had taken place at Haytor, Haytor Quarry, Princetown and Bellever Forest and was ongoing.

Youth engagement

Bryan Smith suggested that it would be useful to contact the Youth Parliament for Devon to see whether they might engage or be interested in the workings of the Forum.

Torridge District Council Active Travel Group

Cllr Inch reported that he was on the district council Active Travel Development Group which was investigating cycle routes and footpaths that could be developed around Bideford and Torrington. It was interested in the former Kenwith railway line between Bideford and Westward Ho! and discussions were taking place with landowners.

Public Rights of Way offices

The Public Rights of Way team had moved to offices in Great Moor House, Sowton, and was now in the same building as Devon Archives and Local Studies (previously the County Record Office).

18. Date of next meeting

Unless circumstances changed, the next meeting on 21 January would be held virtually.

DRAFT

HIW/20/45
Public Rights of Way Committee
26 November 2020

Definitive Map Review 2019 - 2020 Parish of Stoodleigh

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

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

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

1. Introduction

The report examines the Definitive Map Review in the parish of Stoodleigh, in Mid Devon District.

2. Background

The original parish survey, under s. 27 of the National Parks and Access to the Countryside Act 1949, was undertaken by Mr W Cann and Mr L Palfrey in September 1950. A total of twelve public rights of way were initially proposed in Stoodleigh. Following a meeting with Tiverton Rural District Council and Stoodleigh Parish Council in October 1957, eight footpaths and two bridleways were agreed to be included on the draft definitive map. These ten routes were subsequently recorded on the Definitive Map and Statement for Stoodleigh in Tiverton Rural District Council with the relevant date of 9 June 1964. Footpath No. 10, Stoodleigh was added by way of a creation/dedication agreement in 2000.

In the 1968, subsequently uncompleted review, the Parish Council commented that a bridleway from Aldridge Mill to Halfpenny Bridge was omitted. Part of the bridleway route raised was in Oakford parish and part is now recorded as Footpath No. 10, Stoodleigh. In the 1977, also uncompleted review, the parish council agreed with landowner proposals made for the diversion of a footpath, downgrading of a bridleway and extinguishment of a footpath. The landowners did not proceed with the diversion or extinguishment of the footpaths and no evidence was submitted to support the downgrading of the bridleway.

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

The following Orders have been made and confirmed:

Department of Transport Bridleway No. 9, Stoodleigh Schedule 5 North Devon Link Road (Tiverton – Newton Side Roads) Order 1986

Devon County Council Footpath No. 10, Stoodleigh Public Path Creation Agreement 2000

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Devon County Council Bridleway No. 8, Stoodleigh Public Path Diversion Order 2008

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

The current review commenced in July 2019 with a parish public meeting held at Stoodleigh parish hall, which was well attended by parishioners and councillors.

3. Proposals

No new comments or evidence was received in respect of the proposals made in the 1968 and 1977 reviews and so these were not taken forward as valid proposals under the current review.

A claim was made in 2009 by Stoodleigh Parish Council for the addition of a bridleway through Barehills Woods that was supported by user evidence forms. As the route claimed lies solely in the adjoining parish of Washfield, it was confirmed that this claim would be considered during the Washfield Definitive Map Review that was due to commence in 2020.

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

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

4. Consultations

Public consultation for the Definitive Map Review in the parish was carried out in February 2020 to April 2020. The review consultation was advertised in the parish, on the parish website and in a local newspaper.

The responses were as follows:

County Councillor P Colthorpe	-	no comment
Mid Devon District Council	-	no comment
Stoodleigh Parish Council	-	see proposals above
British Horse Society	-	no comment
Devon Green Lanes Group	-	no comment
The Ramblers	-	no comment
Trail Riders' Fellowship	-	no comment
Country Landowners Association	-	no comment
National Farmers' Union	-	no comment
Cycling UK	-	no comment

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

5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

Equality, environmental impact (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 members note that the Definitive Map Review has been completed and there are no proposals for modifying the Definitive Map in the parish of Stoodleigh. Should any valid claim with sufficient evidence be made in the next six months, it would seem reasonable for it to be determined promptly rather than be deferred.

10. Reasons for Recommendation

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

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Tiverton West

Agenda Item 5

Local Government Act 1972: List of Background Papers

Contact for enquiries: Tania Weeks

Room No: Great Moor House, Bittern Road, Exeter

Tel No: (01392) 382833

Background Paper	Date	File Ref.
Correspondence files	2019 - date	TW/DMR/Stoodleigh

tw021120pra
sc/cr/DMR Parish of Stoodleigh
05 161120

Definitive Map Review Parish of Clyst Hydon

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

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

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

1. Introduction

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

2. Background

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 17 footpaths in Clyst Hydon, which were recorded on the Definitive Map and Statement with a relevant date of 5th November 1957.

The reviews of the Definitive Map under s.33 of the 1949 Act, which commenced in the 1960s and 1970s but were never completed, produced no valid proposals from the Parish Council.

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. 11, Clyst Hydon) Public Path Extinguishment Order 1980

East Devon District Council (Footpath No. 20, Clyst Hydon) Public Path Extinguishment Order 1980

Devon County Council (Twineys Lane, Clyst Hydon) Section 116 Highways Act Stopping Up Order 1985 - with reservation of public right of way on foot (now Footpath no. 22, Clyst Hydon)

Devon County Council (Footpath No. 12, Clyst Hydon) Public Path Diversion Order 1995

Devon County Council (Footpath No. 19, Clyst Hydon) Public Path Diversion Order 1995

Devon County Council (Footpath No. 8, Clyst Hydon) Public Path Diversion Order 1998

Devon County Council (Footpath No. 8, Clyst Hydon) Public Path Diversion and Definitive Map and Statement Modification Order 2019

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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 November 2019 with a public meeting, which was advertised in the parish, in the local press and online.

3. Proposals

No valid proposals arising out of this or previous reviews.

4. Consultations

General consultations have been carried out with the following results:

County Councillor Sara Randall-Johnson	-	no comment;
County Councillor Ray Bloxham	-	no comment;
County Councillor Ray Radford	-	no comment;
East Devon District Council/AONB	-	no comment;
Clyst Hydon 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;
Byways & Bridleways Trust	-	no comment;
4 Wheel vehicle Users	-	no comment;
Devon Green Lanes Group	-	no comment

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

5. Financial Considerations

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

6. Legal Considerations

The implications/consequences of the recommendation(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 Members note that there are no proposals for modifying the Definitive Map in the parish of Clyst Hydon. Should any valid claim with sufficient evidence be made in the next six months, it would seem reasonable for it to be determined promptly rather than be deferred.

10. Reasons for Recommendations

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

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Broadclyst

Local Government Act 1972: List of Background Papers

Contact for enquiries: Thomas Green

Room No: M8, Great Moor House

Tel No: (01392) 383000

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

tg031120pra
sc/cr/DMR Parish of Clyst Hydon
02 161120

HIW/20/47
Public Rights of Way Committee
26 November 2020

Definitive Map Review Parish of Clyst St Lawrence

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

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

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

1. Introduction

The report examines the Definitive Map Review in the parishes of Clyst St Lawrence in East Devon District.

2. Background

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 3 footpaths in Clyst St Lawrence, which were recorded on the Definitive Map and Statement with a relevant date of 5th November 1957.

The reviews of the Definitive Map under s.33 of the 1949 Act, which commenced in the 1960s and 1970s but were never completed, produced no valid proposals from the Parish Council.

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:

Devon County Council (Footpath No. 9, Clyst St Lawrence) Public Path Diversion Order 1993

Devon County Council (Footpath No. 5, Clyst St Lawrence) Public Path Diversion and Definitive Map and Statement Modification Order 2014

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

The current review began in November 2019 with a public meeting, which was advertised in the parish, in the local press and online.

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3. Proposals

No valid proposals arising out of this or previous reviews.

4. Consultations

General consultations have been carried out with the following results:

County Councillor Sara Randall-Johnson	-	no comment;
County Councillor Ray Bloxham	-	no comment;
East Devon District Council/AONB	-	no comment;
Clyst St Lawrence 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;
Byways & Bridleways Trust	-	no comment;
4 Wheel vehicle Users	-	no comment;
Devon Green Lanes Group	-	no comment

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

5. Financial Considerations

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

6. Legal Considerations

The implications/consequences of the recommendation(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 Members note that there are no proposals for modifying the Definitive Map in the parish of Clyst St Lawrence. Should any valid claim with sufficient evidence be made in the next six months, it would seem reasonable for it to be determined promptly rather than be deferred.

10. Reasons for Recommendations

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

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Broadclyst

Local Government Act 1972: List of Background Papers

Contact for enquiries: Thomas Green

Room No: M8 Great Moor House

Tel No: (01392) 383000

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

tg031120pra
sc/cr/DMR Parish of Clyst St Lawrence
02 161120

HIW/20/48
Public Rights of Way Committee
26 November 2020

Schedule 14 Application

Addition of a public footpath between Sidmouth Road and Whitmore Way, Honiton

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 public footpath between points A – B as shown on drawing HIW/PROW/20/12.

1. Introduction

This report examines a Schedule 14 application made in September 2018 by Honiton Town Council for the addition of a public footpath in the town.

2. Background

A Definitive Map Review of the parish of Honiton was conducted between 2005-2012. This proposal was not put forward during the review and had not appeared in any previous reviews. A Schedule 14 Application was submitted by Honiton Town Council in September 2018, and in line with Devon County Council policy was added to the register for determination once the parish-by-parish review had been completed for the whole county. However, in September 2019 Honiton Town Council appealed to the Secretary of State requesting that the County Council be directed to determine the application. In February 2020 the Secretary of State granted that request and directed the County Council to determine the application.

3. Proposals

Please refer to the Appendix to this report.

4. Consultations

General consultations on the application were carried out in February to May 2020 with the following results:

Councillor Phil Twiss	-	comments included in background papers;
East Devon District Council/AONB	-	no comment;
Honiton Town Council (applicant)	-	comments included in background papers
Country Land and Business Association	-	no comment;
National Farmers' Union	-	no comment;
Trail Riders' Fellowship/ACU	-	no comment;

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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 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 in respect of Proposal 1 as evidence is considered sufficient to meet the requirements of the legislation. Details concerning the recommendation are discussed in the Appendix to this report.

10. Reasons for Recommendations

To undertake the County Council's statutory duty under the Wildlife and Countryside Act 1981 to keep the Definitive Map and Statement under continuous review in the East Devon district area, as directed by the Secretary of State.

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: M8, Great Moor House

Tel No: (01392) 382856

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

tg261020pra

sc/cr/schedule 14 Addition of a public footpath between Sidmouth Road and Whitmore Way,
Honiton

02 161120

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 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.

Schedule 14 application for the addition of a footpath between Sidmouth Road and Whitmore Way, Honiton, points A-B on the proposal map HIW/PROW/20/12.

Recommendation: It is recommended that a Modification Order be made in respect of the application.

1. Background

- 1.1 The route was first brought to the attention of Devon County Council in January 2018 when it was obstructed by caravans placed on the land that it crosses. The caravans were apparently placed there by someone who had purchased the land, but the sale subsequently collapsed, and the land remained in the same ownership. Honiton Town Council submitted a Schedule 14 Application to record the route in September 2018, accompanied by over 100 user evidence forms. In September 2019 Honiton Town Council applied to the Secretary of State requesting that the County Council be directed to determine the application. In February 2020 the Secretary of State granted that request and directed the County Council to determine the application within six months.

2. Description

- 2.1 The proposed route starts at Sidmouth Road, point A on the proposal plan, and follows a tarmac path through a long but thin area of green open space to come out on Whitmore Way at point B on the proposal plan. The open space is bordered on the south by a hedgebank that forms the boundary with the Tesco superstore, and to the north by residential properties on Whitmore Way.
- 2.2 The tarmac path was constructed when the estate was built in the early 1990s by Davies Homes. Other similar paths on the northern side of the estate were formally adopted as part of the street layout, and are now maintained footways, but the application route was not included in the adoption process or formally dedicated as a public right of way.

3. Documentary Evidence

Planning documents and Land Registry records

- 3.1 The plan submitted with the planning application 97/P0317 shows the application route in detail, with specifications and landscaping requirements. Whilst dated 'July 94' the plan has been date stamped 7th May 1997 by East Devon District Council. Although the plan shows that the area was intended to be an open space with a footpath through it, there is no direct mention of intended status. As such they are not conclusive evidence of express dedication. The plan contains a legend entitled: *Roads. To Devon County Council design, construction and adoption standards, the subject of a Section 38 agreement.* Paths are recorded in the legend as being constructed of pre-cast concrete slabs, rather than the tarmac that the application route is surfaced with. The only surfaces stated as being constructed from tarmac in the legend are shared vehicular areas, drives and parking bays. Devon

Agenda Item 8

County Council Highways have no record of the application route ever having been the subject of a Section 38 agreement.

- 3.2 Likewise, the planning application itself and the associated comments on reserved matters describe the construction and location of the footpath but do not discuss the status. It includes the comment: *'The scheme provides for the footpath and open space link from the Sidmouth Road along the north side of Tescos to provide pedestrian access to the proposed kickabout area, and the footpath network and the remainder of the development as envisaged in the overall strategic layout that formed the basis of the outline application'*. Other similar paths on the neighbouring development to the north (Persimmon Homes and Wimpey Homes) that were constructed around the same time were later adopted to become linking footways maintainable at public expense via a Section 38 agreement.
- 3.3 The Land Registry deeds for the land over which the application route crosses (DN291841) are complex due to the nature of the development. Larger units of land were purchased by developers and subsequently parcelled up as the housing estate was constructed, leading to a multitude of covenants on this particular plot of land, many of which relate to the rest of the estate. The application route is not explicitly referenced in the deeds, but there are two particular covenants that are of interest. The first, dated 28th May 1997, simply states: *'The estate roads and footpaths are subject to rights of way'*. The second, dated 22nd May 1998 states: *'The common accessways and footpaths are subject to rights of way'*. There is no further explanation of the nature of these rights of way, who they apply to or where they specifically relate to.
- 3.4 Further Deeds (DN402057) provide useful information explicitly relating to the application route. Deeds of the Transfer of Part cover the transfer of the housing plots on Whitmore Way (DN219841, DN398961) from the developer to the new owners of the houses. Both contain the same plan, dated August 1997, that shows the application route, along with Whitmore Way itself, hatched and described in the key as *'area for adoption as Public Highway under a Section 38 Agreement'*. The deeds themselves are dated to June/July 1998 and provide strong evidence that at this time both the transferor (who owned the land over which the application route crosses) and transferee believed that the application route was intended to become a public highway at some point in the future. As mentioned above, the application route was never included in any Section 38 agreements.
- 3.5 Aerial photography

Aerial photography from 1999-2000, 2006-7 and 2015-17 show the application route, though much of it is obscured by tree growth from the hedgebank on the southern boundary and the shadows cast by it, particularly in the later photographs. In all the photos it is possible to distinguish the tarmac surface of the path where it is visible.

4. Definitive Map Review

- 4.1 A Definitive Map Review was conducted in Honiton parish between 2005-2012. The application route was not put forward for consideration during this review.

5. User Evidence

- 5.1 122 user evidence forms were submitted with the application, almost all dated to January 2018 at, or just after, the period the caravans appeared on the site. The user evidence covers the period 1998 (exact date unknown) to January 2018. The average period of use of the 122 users is 11.1 years. The forms demonstrate very frequent use of the route, with 83 (68%) of the 122 users stating that they used the path either daily or several times per week, with many stating that they used the path more than once a day. 29 users (23.7%) state that they used the path every 1-2 weeks, with only nine users (7.3%) stating that they used the path less frequently than fortnightly.
- 5.2 All the users stated that they used the route on foot, with only four stating that they also sometimes cycled along it. Seven users stated that they believed the path to be a bridleway, three believed it to be a restricted byway and 109 believed it to be a footpath. Three users left this question blank. A few users have provided additional information to say that they have seen many other people using the route, including people on bikes and mobility scooters. One user wrote: *'I often see cyclists using the path on their way to and from Tesco.'* 113 of the users record that they used the route for pleasure, with only 13 also stating they used it for work or business. 35 users specifically stated that they also used the route for 'shopping' with most using it to access the Tesco store nearby.
- 5.3 None of the users state they had ever seen any signs or notices on the route other than Tree Preservation Order notices erected by East Devon District Council on or around 12th January 2018. Likewise, none state that there have ever been any barriers or obstructions on the route other than the staggered railings at the Sidmouth Road end at point A. These railings appear to have been installed when the tarmac path was constructed, and they are on the boundary where the path joins the pavement of Sidmouth Road. The staggered construction suggests that they are intended to slow down pedestrians or bicycles that have come down the path before they join the pavement of Sidmouth Road.
- 5.4 None of the 122 users record that they have ever obtained permission or been stopped or turned back.
- 5.5 Many of the users have added additional comments on their forms that have provided further information on the history of the path. Many users indicated that they presumed the path to have been owned by 'the council' due to the fact that the grass and shrubs beside the path were regularly maintained. Neither Devon County Council, East Devon District Council or Honiton Town Council have ever owned or maintained the area. Some users mention having

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seen contractors cutting the grass, with one referring to 'Goodwill Gardeners', which may be reference to Goodlife Gardeners, a small gardening company operating in the area. One user states that he believed the path was public because it was '*swept and gritted by council*'. Other users commented that they assumed the path was public because it looks the same as the other paths on the estate that are.

6. Landowner and rebuttal evidence

- 6.1 The application route itself crosses a plot registered with the Land Registry as DN219841, which at the time the informal consultation was published was showing as registered to Wessex (Somerton) Ltd. Subsequent investigation has discovered that Wessex (Somerton) Ltd was dissolved via compulsory strike-off in 2018, after which they were no longer the legal owners of the land. The land was subsequently disclaimed by the Treasury Solicitor in March 2020, becoming subject to escheat, and passed to the Crown Estate (assets subject to escheat are dealt with by Burges Salmon LLP on behalf of the Crown Estate). Legally the land now has no owner in fee simple, the Crown Estate merely arrange for it to be passed back into ownership. They accept no responsibility for the land and take no part in any management of the land. As such, they have not made any comment on the application as to do so could be deemed an act of management.
- 6.2 Properties in Whitmore Way beside the open space, through which the application route runs, were sent landowner evidence forms, having been served notice of the application by the applicant. Two returned forms, both stating that they do not consider that they own land adjacent to the route, helping establish with added certainty that the route passes solely through Land Registry plot DN219841. Both the residents who returned their landowner evidence forms also completed user evidence forms in 2018.

7 Discussion

- 7.1 Statute (Section 31 Highways Act 1980)
Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged. The user evidence forms were all completed in January 2018, around or shortly after the period when the supposed new owner placed of caravans on the land crossed by the route. Although the Schedule 14 application was not submitted until September 2018 it seems reasonable to conclude that the date on which the public right to use the way was challenged was in January 2018. As such the user evidence falls fractionally short of the full 20 years of uninterrupted use and therefore is not sufficient for statutory dedication of the application route based on the date of the application. The route has remained open, available and well-used by the public since the application was submitted.

7.2 Common Law

The other basis for its possible consideration as a highway is if there was any other significant supporting evidence from which a 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 combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.

7.3 Despite the planning application and associated documents appearing to indicate that the path was intended for adoption as a highway, this never occurred. Land Registry records paint a similar picture, with several references to '*rights of way*' and to the application route being '*for adoption as Public Highway*', though stopping short of anything conclusive. As such, there is insufficient evidence to conclude that express dedication occurred. Whether through oversight or intention, the path was never adopted as a public highway. However, these documents certainly suggest that the path was indeed intended to become a public footpath by the company who constructed it, as well as by the people who purchased the houses adjacent to the route. As such, they provide very strong evidence from which dedication may be inferred.

7.4 The user evidence shows that the path is heavily used and has been since it was first constructed. Most of those who completed user evidence forms have used the path very frequently, suggesting that it is a key pedestrian route to enable people to access the Tesco superstore as well as the residential areas to the west of Honiton, where there is a nursery and pub as well as access to the Heathpark Industrial Estate. Not a single user evidence form (from 122 forms) records any actions, overt or otherwise, taken by the landowner to suggest that the route was not public. It also appears that during the period from its construction up until late 2017 the landowner maintained the grass and trees on the open space through which the path runs. It therefore seems safe to conclude that the landowner was not only aware of the public using the route but took positive action to assist them to do so in comfort and safety.

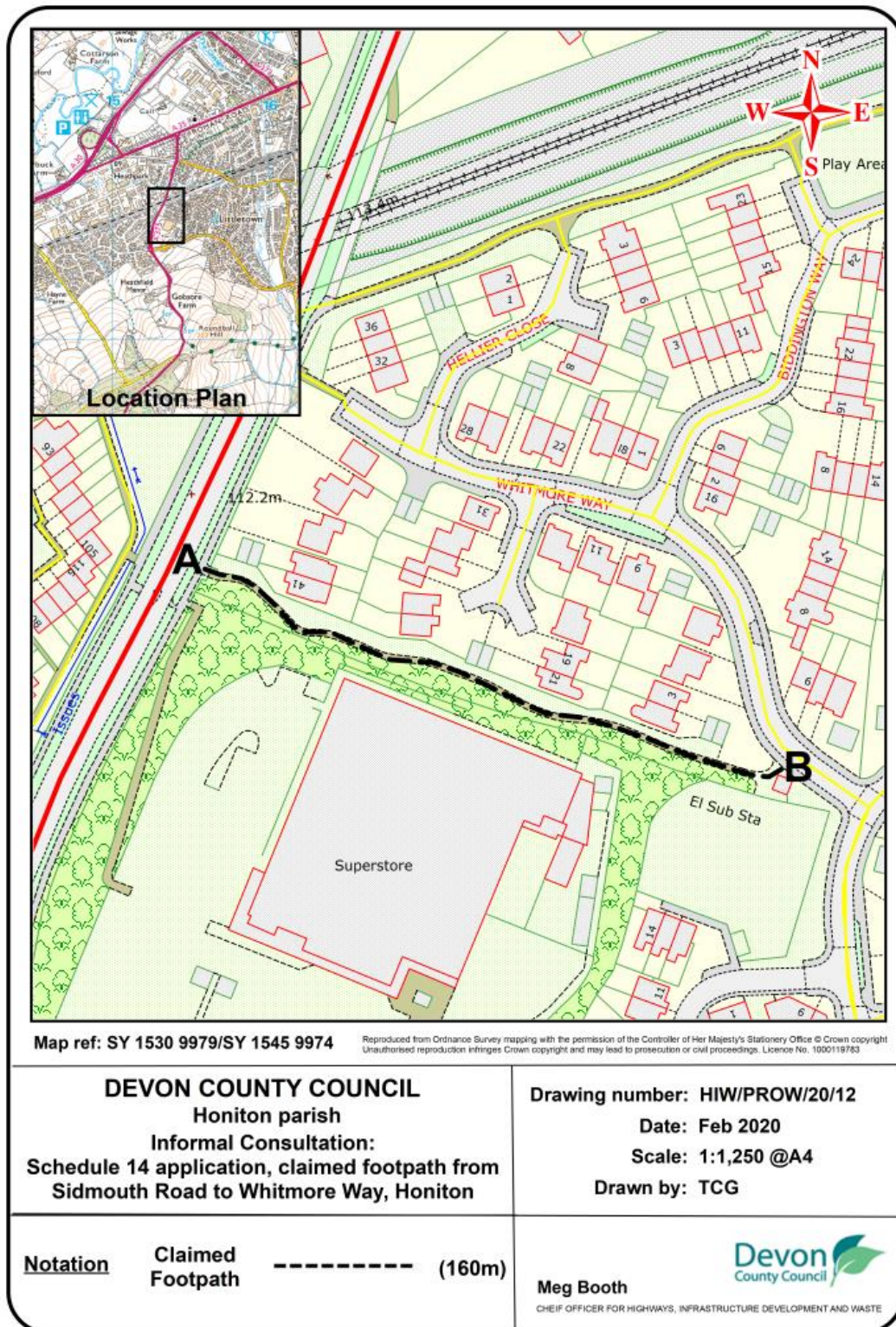
7.5 Use of the path by the public has been mostly on foot, with only four out of 122 (3.3%) stating that they had cycled the route. Other users have also commented that they regularly see cyclists using the route. Evidence of use on bicycle could suggest that bridleway rights may exist on the route, though this would depend on the level of use being sufficient to justify bridleway status. Although only four users claim to have used a bicycle on the route, ten users stated that they believed the path to be of bridleway or restricted byway status. Those users who have used the route on bicycle have done so frequently (between twice daily and weekly) and since 1998. The presence of the staggered railings at the western end of the route (at the bottom of the slope where it joins Sidmouth Road) suggest the path may have been constructed with cyclists in mind. However, the plans and documents submitted with the planning application for the estate do not refer to this, it being annotated as '*footpath route through POS*' (public open space) and staggered railings are also used to slow down pedestrians (small children

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being the obvious example) in other locations. The planning documents also use the phrase 'pedestrian access' when referring to the path. The National Traffic Survey 2018 (commissioned by the Department for Transport) shows that of the journeys made on foot or bicycle nationally, bicycle journeys account for 7.4% and foot journeys 92.6%. The 3.3% of bicycle use on the application route is therefore below what may be expected, though of course it is difficult to apply quantitative data across different paths and locations. Taking all this into account, it appears that the evidence is insufficient to conclude that the application route is of bridleway status and that the evidence is overwhelmingly consistent with it being a footpath.

8. Conclusion

- 8.1 In the absence of the full period of 20 years 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 1998, having been constructed as part of the Whitmore Way housing development. Whilst no single piece is conclusive evidence of an express dedication, collectively they do infer that the path was intended to be a public footpath in the future. Despite an express dedication not taking place or the path being adopted by DCC, the public have used the route as of right. There is no evidence to suggest that the landowner has ever objected to this use. On the contrary, it appears that the landowner encouraged public use by maintaining the grass and trees alongside the path. Therefore, the evidence shows that a dedication can be implied and that the public accepted the dedication, with use being overwhelmingly on foot.
- 8.2 From this assessment of the evidence, in conjunction with other historical evidence and all evidence available, it is considered sufficient to support the claim that public rights subsist or are reasonably alleged to subsist. Accordingly, the recommendation is that an Order be made to modify the Definitive Map and Statement by the addition of a public footpath between points A – B as shown on drawing number HIW/PROW/20/12, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.



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Point A



Point B

HIW/20/49

Public Rights of Way Committee
26 November 2020

Schedule 14 Application

Addition of a Public Byway Open to All Traffic from Footpath No. 6, Newton Abbot to Powderham Road

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 public footpath between points A – B as shown on drawing number HIW/PROW/20/17.

1. Introduction

This report examines a Schedule 14 application made in October 2016 for the addition of a byway open to all traffic in the town of Newton Abbot.

2. Background

A Definitive Map Review for the parish of Newton Abbot was carried out in 1995. This proposal was not put forward during the review and had not appeared in any previous reviews. A Schedule 14 application was first made in September 2015 but was withdrawn by the applicant shortly after. A further application was submitted (by the same applicant) in October 2016 and in line with Devon County Council policy was added to the register for determination once the parish-by-parish review had been completed for the whole county. However, in November 2017 the applicant appealed to the Secretary of State requesting that DCC be directed to determine the application. In July 2018 the Secretary of State granted that request and directed the County Council to determine the application.

3. Proposals

Please refer to the appendix to this report.

4. Consultations

General consultations have been carried out with the following results:

County Councillor Gordon Hook	-	no comment;
Teignbridge District Council	-	no comment;
Newton Abbot Town Council	-	no comment;
Country Land and Business Association	-	no comment;
National Farmers' Union	-	no comment;
Trail Riders' Fellowship/ACU	-	no comment;

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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 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(s) has/have been taken into account in the preparation of the report.

7. Risk Management Considerations

No risks have been identified.

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

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

9. Conclusion

It is recommended that a Modification Order be made in respect of this proposal as evidence is considered sufficient

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 in the Teignbridge area, as directed by the Secretary of State.

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Newton Abbot South

Local Government Act 1972: List of Background Papers

Contact for enquiries: Thomas Green

Room No: M8, Great Moor House, Bittern Road, Sowton, Exeter EX2 7NL

Tel No: 01392 382856

Background Paper	Date	File Ref.
Correspondence File	2014 to date	DMR/Sch14/FP6 Newton Abbot

tg031120pra

sc/cr/schedule 14 addition of a public byway open to all traffic footpath no 6 Newton
Abbot to Powderham Road

04 161120

A. Basis of Claim

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

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

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

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

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

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

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

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

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

- (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.

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Schedule 14 Application: Claimed Byway Open to All Traffic from Footpath No. 6, Newton Abbot to Powderham Road, between points A – B on plan no. HIW/PROW/20/17.

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a public footpath between points A – B as shown on drawing number HIW/PROW/20/17.

1. Background

- 1.1 In 2014 Dr Faizan Irshad of 34 Courtenay Road, Newton Abbot, contacted Devon County Council requesting the diversion of a section of Newton Abbot Footpath 6 around the perimeter of his property, an area he used for parking his vehicles. It was then discovered that the section proposed to be diverted was not recorded on the Definitive Map; there was a missing link between the end of the recorded footpath and Powderham Road. To resolve this anomaly, a creation agreement was drafted by Devon County Council to effect the formal dedication of a link, and Dr Irshad began construction of a wall separating the proposed new footpath from the rest of his land. The construction of this wall physically obstructed field gates to adjacent land, leading to complaints from the owners of the land and another local resident.
- 1.2 The adjacent landowners claimed that the whole area of land in question was part of the public highway, Powderham Road. In correspondence and discussion with the landowners, the County Solicitor confirmed that the land was not recorded on the County Council's records of highways maintainable at public expense (HMPE), the List of Streets. He advised that if they considered that unrecorded public rights existed, the appropriate procedure would be to make an application for modification of the Definitive Map and Statement.
- 1.3 A Schedule 14 application was submitted in October 2015 by Terry Ward of Powderham Lodge, but he subsequently withdrew this application in November 2015. A second application was made in October 2016 by Mr Ward and Mr Christopher Hickson for the addition of a Byway Open to All Traffic over the area of land. As the Definitive Map Review had already been completed in Newton Abbot, the application was added to the register to be dealt with once the countywide review had been completed, in line with the County Council's policies. In November 2017, the applicants applied to the Secretary of State for Environment, Food and Rural Affairs and in July 2018 Devon County Council was directed to determine the application within 20 months.

2. Description of the Route

- 2.1 The claimed route begins at the pedestrian gate where Newton Abbot Footpath No. 6 enters a small parcel of land used as a parking area at point A on the consultation map (HIW/PROW/20/17). It proceeds across the land in a east-southeasterly direction for approximately 14 metres to join the public road at Powderham Road at point B on the consultation map. The application seeks to add the whole width of the parcel of land as a Byway Open to All Traffic (shown hatched red on the attached plan for clarity).

3. The Definitive Map Process

- 3.1 Unlike in many parishes, the Definitive Map Process in Newton Abbot utilised six-inch-to-the-mile Ordnance Survey mapping from 1938. The area of land crossed by the application route is not distinguished from Powderham Road at this scale, indeed it appears as part of Powderham Road itself. Footpath 6 is marked on the parish survey map, terminating just beyond the solid line where it runs into what appears to be Powderham Road. The survey form records the eastern end of Footpath 6 as '*proceeding north of the boundary of "Highwood" to the junction with Powderham Road (a District Road). The Footpath terminates with a five-bar gate. Kissing gates en route.*' It is possible that this refers to a gate in the same location as the one that exists today. Instructions to those conducting the surveys included the requirement that proposed public paths link into the public highway network. This leaves two possibilities in this case; firstly, that the surveyors knowingly terminated Footpath 6 at this point as that was where they considered it to join the highway, in which case they considered the application route to be part of the highway; or secondly, that the gate was an obvious feature to terminate the route and the exact details of the extent of the HMPE were only considered in a very cursory manner, leading to an error.
- 3.2 The reason for believing the path to be public was stated as '*public use over a number of years*'.
- 3.3 There were no objections to the proposed Footpath 6 during the Definitive Map Process and it was included on the Definitive Map. Subsequent reviews during the 1970s and 1990s produced no proposals to modify Footpath 6 or to add the application route. Subsequent reviews were undertaken at times when rights of ownership were being exercised on the land and it is notable that no objections or errors were raised, either to the ownership of the land or to the right of way.

4. Documentary Evidence

- 4.1 Ordnance Survey Drawings 1806
Neither the application route, the currently recorded line of Footpath 6 or Powderham Road are shown on the Ordnance Survey Surveyor's Drawings. The area between Coach Road and Torquay Road/East Street is shown as agricultural fields.
- 4.2 Wolborough Tithe Map and Apportionment 1845
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'.

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- 4.3 Neither the application route, the currently recorded footpath 6 or Powderham Road are shown on the Tithe map. The area is shown as agricultural fields with no discernible tracks or paths marked anywhere near the location of the application route.
- 4.4 Ordnance Survey 25" to a mile 1st edition map
Surveyed in 1887, this map shows Powderham Road and Courtenay Road. Powderham Road is defined by solid lines leading almost to the current extent of Footpath 6. Footpath 6 is defined by pecked lines and is named Leonard's Road, which is coloured yellow in the same manner as Powderham Road. There is a solid line at the junction with Footpath 6 indicating the presence of a barrier, such as a gate. There is no distinction between the area now recorded as HMPE and the area crossed by the application route. There is a mature hedge/copse on the boundary with Mr Hickson's field.
- 4.5 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 application route in a similar way to the 1st edition map at the same scale. The mature hedge/copse on the boundary with Mr Hickson's land is not shown in this edition. There a solid line across the application route approximately at point A where the current Footpath 6 terminates. There is a pecked line turning the corner of Powderham Road, used on OS maps to show change of surface, possibly indicating the western extent of the road. The area crossed by the application route is braced with Powderham Road.
- 4.6 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 application. The map shows the application route to have been excluded from surrounding hereditaments (assessment areas of land) throughout, as was Footpath No. 6.
- 4.7 Ordnance Survey 25" to a mile 1939 revision
This revision shows the area in the same manner as the 1904 edition, the only substantial difference being that Powderham Road and the land over which the application route crosses is no longer braced.
- 4.8 Ordnance Survey One Inch/mile 1898
Powderham Road is shown on this map as a second-class road, unfenced on the western side. There are two pecked lines in the vicinity of the recorded Footpath 6 but it is unclear exactly what these refer to as they cross over rather than running parallel. It is possible that this shows two footpaths or perhaps an unmetalled road, or even an error in the draughting of the map. There is no clear distinction shown between what is Powderham Road and what would likely be the land crossed by the application route.
- 4.9 Ordnance Survey 25" to the mile 1943
This map shows the application route in a similar manner to the second edition. There a solid line across the application route approximately at point A where the currently recorded Footpath 6 terminates. There is a pecked line turning the corner of Powderham Road, possibly indicating the western extent of the

road. The area crossed by the application route is not braced with Powderham Road.

4.10 Ordnance Survey One Inch/mile 1946

Powderham Road is shown, along with the extent of Footpath 6, which is shown to be in the category of 'minor roads in towns, drives and unmetalled road.' It is shown as partially fenced on the boundary with Highwood but otherwise unfenced. At this scale it is not possible to distinguish any features of the land over which the application route passes.

4.11 Ordnance Survey One Inch/mile 1961

This edition shows Powderham Road in the same way as the previous 1946 edition. Footpath 6 is shown on this edition as a 'footpath or track.'

4.12 Ordnance Survey 6 inch to a mile 1961

This map shows the area crossed by the application route, with a solid line across it at the approximate position of the current field gate at Point A, presumably marking the existence of a gate or other obstruction. There is a short, curved line that appears to represent the edge of Powderham Road where it turns the sharp bend, but it does not extend all the way around the boundary with the land crossed by the application route. 34 Courtenay Road is not shown on this map. Footpath 6 is labelled as 'FP'.

4.13 Ordnance Survey 6 inch to a mile 1968

This map shows the area in much the same manner as the 1961 edition. The only differences being that 34 Courtenay Road is shown on this map and the footpaths (including Footpath 6) are labelled 'path'.

4.14 Bartholomew's Mapping 1903, 1923 and 1941

These maps were designed for tourists and cyclists with the roads classified for driving and cycling purposes. They were used by and influenced by the Cyclists Touring Club founded in 1878 which had the classification of First-Class roads, Secondary roads which were in good condition, Indifferent roads that were passable for cyclists and other uncoloured roads that were considered inferior and not to be recommended. Additionally, footpaths and bridleways were marked on the maps as a pecked line. Cyclists were confined to public carriage roads until 1968. The half-inch scale does not permit all existing routes to be shown, omitting some of the more minor routes. The purpose of these maps was to guide the traveller along the routes most suitable for their mode of transport. Bartholomew's Maps published between 1903 and 1941 do not show the main section of Powderham Road at all. However, they do appear to show Hill Road and the very southern section of Powderham Road leading into the application route and Footpath 6. This is shown in all three editions as an uncoloured road, which is deemed to be '*inferior and not to be recommended to cyclists*'.

4.15 Aerial photography – 1946-9

RAF aerial photographs from 1946-9 show the area crossed by the application route. However, a low sun casting deep shadows creates a chiaroscuro effect, making it difficult to distinguish any details. There appears to be a mature hedge or trees along the boundary between Highwood and the land over which

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the application route crosses, which is casting a deep shadow to the northeast. There is also a mature hedge visible on the boundary between the land over which the application route passes and Mr Hickson's land, continuing to what is now the boundary with 1 and 2 Powderham Close.

4.16 2006-7

The area over which the application route passes is shown, with at least two cars parked there. A deep shadow is cast over the southern area by trees on Dr Irshad's property making it impossible to distinguish what is there. There appears to be a fence line or barrier of some sort on the boundary with Footpath 6. There is a clear distinction in surface between the tarmac of Powderham Road and the area over which the application route passes, and the low railing is just visible. The area of land in question appears to be gravel/dirt or possibly burnt-off grass as these photos were taken in the summer months.

4.17 2015-17

Aerial photography taken between 2015 and 2017 show the area over which the application route passes in considerable detail. The blockwork wall constructed by Dr Irshad is clearly visible, as is the boundary with the tarmac surface of Powderham Road. There appears to be a gap in the wall allowing users of Footpath 6 to continue straight on over Dr Irshad's land to join Powderham Road. There are three cars parked on the area of ground with the wall.

4.18 Google Streetview images

Images from Streetview are available from the years 2009, 2011 and 2014, the latter being shortly before the construction of the blockwork wall and fence. All three images show low metal railings either side of with a gap at point B, in line with the recorded Footpath 6. The Devon County Council finger post for Footpath 6 is visible next to the kissing gate near point A in all three images. The images show that the area was gravelled at some point between 2009 and 2011.

4.19 Highway maintenance records/Handover maps

Newton Abbot was formerly an Urban District Council and was therefore responsible for maintaining public roads in the district until 1974, when, following Local Government reorganisation, responsibility was handed over to Devon County Council. The 'handover map' from this period shows roads that were considered to be maintainable at public expense at that time as 'district roads'. They do not usually show footpaths and bridleways, only vehicular roads.

4.20 Powderham Road is coloured brown as a 'district road' according to the key on the front of the map. The area correlating with Dr Irshad's land is clearly coloured grey, which denotes 'private' according to the key. Footpaths are not marked on this map but a strip of land on the line of a continuation of the recorded Footpath 6 (between points A – B) is uncoloured and therefore not denoted as either private or HMPE.

- 4.21 A Newton Abbot Urban District Terrier shows Powderham Road marked in yellow as a public road. The land over which the application route crosses is coloured blue, which denotes private (and it appears to be annotated as such). On this map Footpath 6 is clearly shown extending across the blue area marked as private to meet Powderham Road, approximately on the line of the application route. The date of this map is unknown but the Ordnance Survey 25" base mapping suggests that it is later than the 1943 edition but before 34 Courtenay Road (built in the 1960s) appeared on the mapping. Though not conclusive on the matter, it is evidence that the highway authority at that time considered the application route to be an extension of Footpath 6 and that Dr Irshad's land was then considered to be private land.
- 4.22 Newton Abbot Urban District Council Records (1864 onwards), including Highway Committee reports
No information relating to the route have been discovered in these records, which are held at the Devon Heritage Centre.
- 4.23 Land Charges mapping/List of Streets
The application route is not shown as HMPE on the List of Streets. However, the extent of the HMPE of Powderham Road appears to partially extend onto the land crossed by the application route and which is now being used by Dr Irshad. The List of Streets shows Powderham Road marked in brown and where it turns the sharp corner near the application route it is demarcated by hand-drawn dashed lines over a solid line that appear to show the limit of the road, and correlates approximately with the boundary of land registered to Dr Irshad. The mapping upon which the List of Streets is marked is not consistent with earlier edition OS maps. However, it does provide clear evidence that at the time the List of Streets was digitised in 2005 the application route was not considered to be part of the public highway by Devon County Council.
- 4.24 Additional map books, believed to be working copies of the land charges records, used by the highway engineers in the 1970s and 80s, are also held by the County Council. Powderham Road is shown coloured blue on two of these maps, denoting an unclassified county road. The area crossed by the application route is included in the area coloured blue where Powderham Road turns a sharp corner, though on one map it is only partially coloured. It seems unrealistic to assume that the person marking Powderham Road in blue intended to differentiate the area crossed by the application route on a map of this small scale. As such, and given their uncertain provenance, these two maps provide little evidence as to the status of the application route.
- 4.25 Land Registry Documents
The parcel of land over which the application route passes (DN125973) has an unusual history of registration. Mr Mohammed Irshad, the father of the current registered owner Dr Faizan Irshad, purchased 34 Courtenay Road in 1979. In the conveyance, the vendor states that over the land in question (outlined in green on the attached plan and corresponding with the current registered plot) she had exercised rights of ownership without any claim ever having been made against her since 1970. The previous owner of 34 Courtenay Road declared likewise during their ownership between 1964 and 1970. Mr Irshad

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subsequently claimed the possessory title to the land through adverse possession in October 1981.

- 4.26 During the 1981 registration process a small strip of land that connects the existing Footpath 6 to Powderham Road was left unregistered, as had been the case in the previous conveyance documents. Land subject to highway rights cannot be claimed by adverse possession so it seems logical to conclude that the unregistered strip was taken to be the continuation of Footpath 6 during the registration process, something that Dr Irshad confirms in his statutory dedication. There appear to have been no objections to the original claimed possession at the time. The possessory title was upgraded to absolute in November 2003.
- 4.27 In 2015, following the construction of the wall on the land, Mr Hickson applied to the HM Land Registry for alteration of the register under schedule 4(5) Land Registration Act 2002, for closure of Mr Irshad's title on the grounds that this title cannot have been legally claimed by adverse possession in 1981. Dr Irshad objected to the application and a tribunal was arranged. However, Mr Hickson subsequently withdrew his application and the tribunal did not take place.

5. User Evidence

- 5.1 No user evidence forms have been submitted with this application. However, one form was submitted with the withdrawn application by the applicant Mr Ward. Several letters from local residents were included with the application, mostly objecting to the fence and wall erected by Dr Irshad. These all mention crossing the application route on foot to access Footpath 6, particularly for dog-walking. None mention any use suggestive of higher rights, though private rights of access to land are mentioned, along with many comments on the erection of the blockwork wall. Many of the letters and statements submitted with the application appear to have been originally intended to support Mr Hickson at the Land Registry Tribunal.
- 5.2 Mr Ward submitted a user evidence form along with his Schedule 14 application (subsequently withdrawn). The form is dated 28th June 2016 and Mr Ward states that he has used the application route on foot since 1978. He believes the route to be a Byway Open to All Traffic. He states that the path has always run over the same route and never been diverted, with gates that were not locked. He states that he believes the land crossed by the route is owned by the Highway Authority. He states that he has been stopped or turned back from using the way '*briefly in Nov 14*'.
- 5.3 Mr Ward's withdrawn application was also accompanied by a petition against the wall and fence erected by Dr Irshad, signed by 31 people. Only one person has noted on the petition that they have used the route; it is not clear whether the people signing it were objecting to the appearance of the wall or the issue with the right of way.

- 5.4 A letter from M J Dyer states that he has walked footpath 6 '*on a daily basis for some 35 years*' and that there has never been any obstruction of any sort to the line of the footpath.
- 5.5 A statement of objection from Mr D Clarkson states that he has regularly used the footpath since 1983 and that the path has never been obstructed and that there '*has always been access for farm, or other vehicles*'. He refers to Mr Rew using the gated entrance to his land for access and moving livestock. He also states that access was used by the builder of Highwood Grange during construction of that property.
- 5.6 A statement from Linda Stanbury of 8 Hill Road states that she has known the route for 33 years and the public have always had open access across the application route to join Footpath 6. She mentions that there was once a DCC finger post sign near point B, but that this has been uprooted and is now tied to the post beside the kissing gate at point A. The statement refers to five-barred gates to both Mr Rew's and Mr Hickson's land but does not state whether they have been used for access or not.
- 5.7 A statement submitted by Mrs J Thompstone states that she has lived in the vicinity of the application route for 48 years and that until 2014 '*access across the disputed open space was used daily by ramblers and dog walkers*'. She states that the wall erected by Dr Irshad completely blocked access to Footpath 6 as well as the access to the land belonging to Mr Rew and Mr Hickson.
- 5.8 A letter from Mary Coleman states that since 1972 there has been '*free access to the site*' and that cars have sometimes been parked there.
- 5.9 A letter from M Semey (?) states that they have lived in Powderham Close for 35 years and walked their dog daily '*across the fields. Entering the fields by the public footpath over the land in question which was never ever fenced off*'.
- 5.10 A letter from Mr Terry Ward (applicant) to Dr Irshad states that he has '*used the existing right of way for 35 years*' presumably referring to the application route linking into Footpath 6. This letter was in addition to the user evidence form that Mr Ward submitted with the application that he withdrew.
- 5.11 A Mrs Jane Coleman of 32 Courtenay Road emailed stating that she has lived there since 1998 (and also lived in the area as a child) and that the application route has always been used as pedestrian access to the 'The Common' but not for vehicles. She states that the land has been used a car park for the occupants of 6 Powderham Road and that she believes they are the owners of it.

6. Photographs

- 6.1 Numerous photographs have been supplied both by Mr Hickson and Dr Irshad, in support and rebuttal of the application respectively. Mr Hickson submitted three photographs labelled 'File 4' with his application. Two of the photographs show the application route at point B, with a wooden fence visible and the 'private property no parking' sign mounted on it. The kerbstones at the edge of

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Powderham Road are clearly visible. The third photograph shows the whole of the application route from point B towards point A. The blockwork wall and fence erected by Dr Irshad are clearly visible, along with the two 'private property no parking' signs. The interior of the walled area is gravelled. There is a gap in the wall through which the gates at point A marking the start of the current Footpath 6 are visible. On this photograph a red line has been drawn on and the area within it labelled 'HMPE'.

7. Landowner Evidence

- 7.1 Dr Irshad completed a landowner evidence form with plan, along with numerous accompanying documents. His form states that he has owned the land over which the application route passes for 14 years and has always believed that a footpath has crossed it. He states that he has seen the public using the application route and has never stopped or turned anyone back from using the route or told them that it was not public. He states that he has erected two signs stating, 'private land – no parking' and that these have never been defaced or destroyed. He states that there are gates on the route which are locked but the pedestrian foot entrance is open. This presumably refers to where Footpath 6 currently terminates at point A on the consultation map.
- 7.2 Dr Irshad also provided further information in a letter submitted with his landowner evidence form. In the letter he outlines several issues relating to access over the land. He states that in the early 2000s a developer called Woodvale was given permission to go over his land into the neighbouring field to install services for the development at Highwood Grange. He states that he has never witnessed Mr Rew driving tractors or vehicles over his land to access his fields or driving cattle over his land. He states that his mother gave Mr Hickson temporary permission to have access over the land so that Mr Hickson could landscape his land.
- 7.3 Dr Irshad has also provided a statutory declaration dated 1st June 2015 containing a detailed account of the issues summarised in his covering letter. It essentially reiterates that his family hold the title absolute and have always used the land as if they were the owners, maintaining it and parking their cars on it. He declares that the public have always crossed on foot to access Footpath 6 and that other than this all access granted to neighbouring landowners has been on a temporary basis. Also, that no cars have been parked on the land without permission from his family. Dr Irshad also states that prior to the installation of the field gate at point A in the early 2000s there was only a solid wooden fence, with only a small gap to allow pedestrian access to Footpath 6.
- 7.4 Mr Hickson has also submitted a landowner evidence form as well as being the joint applicant. He states that he has owned the adjacent land for 25 years but has seen, or been aware of, members of the public using the way for '*walking and dog walking*' during the 50 years he has lived in the area. He believes the application route to be public and the status to be Byway Open to All Traffic. He states he has never stopped or turned anyone back from using the way, never told anyone that it was not public or erected any signs stating as much,

nor ever obstructed the way. He states that there is a kissing gate where *'Footpath 6 meets Powderham Road'* as well as a *'gate into my land'*.

- 7.5 Mr Anthony Rew provided a statutory declaration in February 2015, in support of Mr Hickson's application to the Land Registry. Mr Rew subsequently submitted this statutory declaration to Devon County Council during informal consultation for this application. Mr Rew states that his family have owned or occupied the land over which Footpath 6 crosses since the 1920s and up until the erection of the blockwork wall by Dr Irshad they have accessed this land over the application route, including in agricultural vehicles. Mr Rew also states that members of the local community have parked on the land whilst using Footpath 6 for dog-walking.

8. Discussion

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. Where there has been no such challenge the date of the Schedule 14 application is to be used instead.

- 8.2 In this case, the building of the blockwork wall to define a 'diverted' footpath link around the perimeter of Dr Irshad's land triggered the application. It appears that some members of the public took the construction of the blockwork wall by Dr Irshad as intending to block the footpath. However, the draft creation agreement with Devon County Council clearly points to the intention being to formalise the footpath on an alternative alignment, rather than block it. The adjacent landowners, Mr Hickson and Mr Rew also contested that the wall blocked vehicular access to their land and that the area of land carried public vehicular rights.

- 8.3 There is no evidence to suggest that Dr Irshad has challenged the right of the public to use the way as a public footpath, merely wishing to divert it around the perimeter of his parking area instead of across the front of his house. Dr Irshad quickly reinstated the access to the application route rather than the intended diversion and so the relevant period can reasonably be deemed to be the 20 years prior to the date of the application: October 1995 - October 2015.

- 8.4 Although the application was submitted with numerous letters and statements in support, direct user evidence submitted by users themselves via user evidence forms has not been forthcoming. As such there is little to discuss concerning evidence of use during the relevant period. All the inferences of use in the letters and statements submitted with the application are suggestive of use on foot. This is perhaps to be expected considering the application route links into the existing Footpath 6 and that anyone using this path during the relevant period can be assumed to have passed along the application route. Due to this situation, those using Footpath 6 during the relevant period can be

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assumed to have passed along the application route and that this can be weighed as evidence.

- 8.5 There is no evidence of use by the public during the relevant period to suggest that the application route is of a higher status than a footpath. There are references to agricultural vehicles accessing Mr Rew's land, but this is not considered sufficient evidence of public vehicular use as of right. There is also reference to members of the public parking their vehicles on Dr Irshad's land while walking their dogs. However, this would not constitute passing and re-passing along a defined route and so cannot be considered as evidence of use when assessing whether a public right of way exists.
- 8.6 There is no evidence to suggest that the owner of the land did not intend to dedicate the route as a footpath during the relevant period. On the contrary, it appears that the Irshad family acknowledged the existence of footpath rights along the application route, believing it to be part of Footpath 6, to the extent that they applied to divert the route around the perimeter of their property. Land Registry documents suggest that the Irshad family and previous occupants acknowledged the existence of the footpath, such that a strip for the footpath was not registered within their ownership. The existence of signs stating 'private property, no parking' suggest that the landowner did not intend to dedicate any vehicular rights across his land, though these were only erected in late 2014/early 2015.
- 8.7 Land Registry documents suggest that since 1964 the owners of the adjacent property (now 34 Courtenay Road) have exercised rights of ownership over the area crossed by the application route, a status made official in 1981 following Mr Irshad claiming adverse possession. Whilst technically possible, exercised rights of ownership and public vehicular rights seem implausible bedfellows on the land in question; the application route is a dead end and the only feasible reason that the public would have used it was as a parking area, which is not consistent with being use of a public right of way.
- 8.8 In summary, evidence of uninterrupted use by the public on foot across the land in question on a line A – B, to connect to the recorded Footpath 6, during the relevant period is strong and persuasive. There is no evidence of a lack of intention to dedicate on the part of the landowner, at least as far as footpath rights are concerned. Evidence of the public passing over the application route on bicycle, horseback or vehicle, either on a defined route or over the full extent of the area in question, during the relevant period has not been discovered. As such, although statutory dedication of vehicular rights is not met, there is clear and strong evidence that the test for statutory dedication has been met in relation to footpath rights.
- 8.9 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 combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.

- 8.10 For dedication to be inferred requires a landowner to be identified. Land Registry documents show that the land has been owned by the Irshad family since 1981. They also show that previous owners of 34 Courtenay Road have exercised rights of ownership over the land between 1964 and 1979. Mr Irshad purchased 34 Courtenay Road in 1979 and continued using the attached land as if he was the owner until successfully claiming the possessory title through adverse possession in 1981. Land over which a public highway passes cannot be claimed through adverse possession and it is significant that a strip of land linking Footpath 6 with Powderham Road was left unclaimed. These land registry documents implicitly acknowledge the existence of a public footpath across the land and therefore are strongly supportive of implied dedication in that no owners during this period objected to the use of the way by the public.
- 8.11 Ownership of the land crossed by the application route is unclear prior to 1964. Ordnance Survey mapping shows that the route existed at least as early as 1887, when it was shown as a track called Leonards Road that joined Powderham Road. Powderham Road is not shown at all in the Tithe Map of 1845 and so it can be deduced that it came into existence at some point between these dates. Ordnance Survey mapping does not provide any conclusive evidence of status. However, the fact that the area of land crossed by the application route is indicated as braced with Powderham Road does raise the possibility that it may have been considered within the curtilage of the highway. However, bracing to larger plots was also used as a convenient way of measuring smaller areas of land, regardless of ownership. The application route and the rest of the route named Leonards Road (now recorded as Footpath No. 6) are shown as a mostly unenclosed track, suggesting that it would have been wide enough for wheeled traffic. However, twentieth century Ordnance Survey mapping is consistent in showing a gate or obstruction across the route at point A which is somewhat incongruous with public vehicular rights.
- 8.12 Exclusion from the Finance Act plan, although not conclusive on the matter, suggests that the application route may have been considered public at the time it was produced. However, taxation of private property was the ultimate remit of the Act and any inference drawn from the plans regarding rights of way cannot be considered conclusive.
- 8.13 The Definitive Map survey recorded Footpath 6 as terminating at a gate in the approximate location of point A. There were no objections to the proposed Footpath 6 during the Definitive Map process, and it was included on the Definitive Map for Newton Abbot in 1963. Presumption of regularity applies to the survey process and so it can be assumed that Newton Abbot Urban District Council, as well as Devon County Council, believed that Footpath 6 joined the highway at the point recorded on the Definitive Map. At no point during the process was Footpath 6 purported to be of a higher status than footpath.
- 8.14 Subsequent reviews during the 1970s and 1990s produced no proposals to modify Footpath 6 or to add the application route. The fact that the error did not

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arise in subsequent reviews suggests that the public were continuing to use the route on foot during this period without any dispute from adjacent landowners. Likewise, from 1964 (the date at which evidence suggests rights of ownership have been exercised over the land) through until the current application, there has been no proposal or complaint about the loss of vehicular rights over the application route. The Irshad family have used the land registered to them for the parking of vehicles since 1979, as did previous owners since 1964, without challenge until recently.

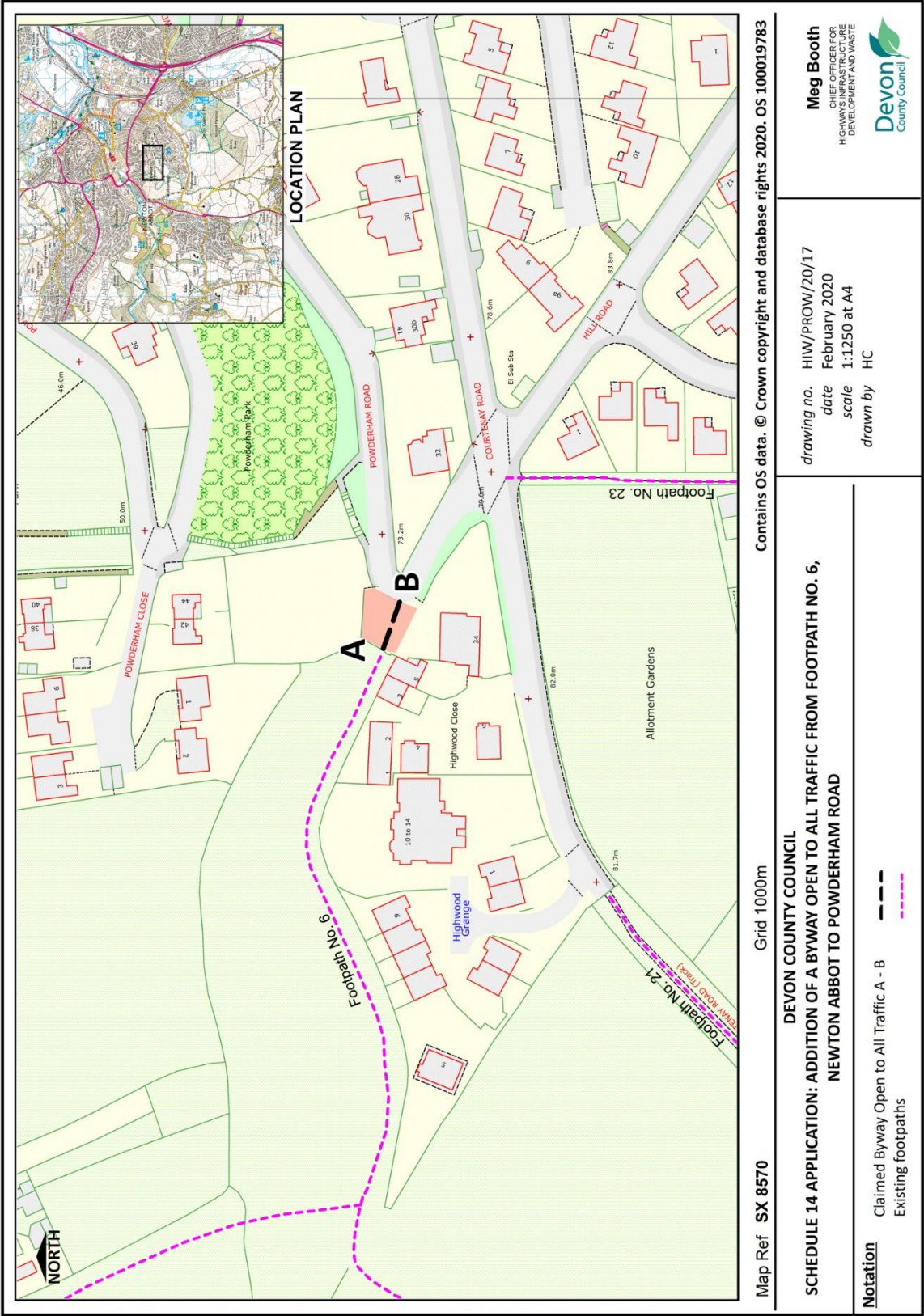
- 8.15 The highway maintenance records all show Powderham Road as a public road but only the handover map from the 1970s and the Newton Abbot Urban District Terrier show the area crossed by the application route in any detail. These maps provide strong evidence that at this time the area now owned by Dr Irshad was considered to be private property. The Terrier also suggests that at this time Footpath 6 was believed to cross the area on the approximate path of the application route to join Powderham Road. The other highway maintenance records throw very little light on the status of the application route due to their smaller scale and unknown provenance.
- 8.16 For an application to be successful under common law it is necessary for there to be evidence that the public has accepted a dedication. There is a dearth of evidence of the public passing along the application route in vehicles of any kind. Likewise, there is no evidence of the public using it on horseback or bicycle. Logically, it is safe to assume that anyone walking Footpath 6 would pass across the land which forms the application, there being no other way of accessing the start of the recorded footpath from Powderham Road, other than over the area crossed by the application route. The evidence points clearly to this having been the case since the original Definitive Map process, with nothing to suggest this has been interrupted since. Letters and statements from members of the public that were supplied with the application or submitted during consultation are wholly consistent with the application route being used on foot.

9. Conclusion

- 9.1 The evidence clearly shows that a track has existed on the route of Footpath 6 since at least the 1880s, linking up with Powderham Road where it turns a sharp corner on the hillside. Before the Definitive Map was created the status of the route is unclear, though the Finance Plans suggest that it may have been considered public in 1910. The Definitive Map process led to Footpath 6 being recorded without objection. The evidence since then overwhelmingly supports the existence of public footpath rights linking Footpath 6 to Powderham Road over the area which is subject of the application. The question then remains as to the extent (width) of the route and whether any higher rights exist over it.
- 9.2 Letters and comments from members of the public submitted with the application all support the existence of footpath rights, consistent with the Definitive Map process. Historic mapping appears to show that Footpath 6 itself was wide enough to be available to wheeled traffic, something that is supported by the Finance Plans which show Footpath 6, and its continuation over the land which is the subject of this application, excluded from surrounding

hereditaments. Whilst there is evidence that alludes to the possibility of higher rights, there is no evidence of their existence that is more than suggestive, unlike the solid evidence of footpath rights. The only vehicular use that is alleged, has been by the two adjacent landowners to access their land. Dr Irshad in rebuttal, states that any such use has been with his family's permission only and is not therefore 'as of right'. He also states that prior to the field gate into Rew's land there was a solid fence preventing vehicle access, with just a small gap for pedestrian access to Footpath 6. With no more significant evidence to demonstrate existing public vehicular rights this is therefore considered a private matter between the three landowners concerned. Further, as a consequence of the Natural Environment and Rural Communities Act 2006, use by mechanically propelled vehicles can no longer give rise to a public right of way.

- 9.3 The full extent of the area of land claimed is not consistent with a defined right of way to pass and re-pass; there being no reason why, or evidence of, the public using the whole area, instead taking the direct link to connect with Footpath 6 at point A. Further, evidence shows that the landowner has controlled this area for their own use, by parking vehicles over it and demarcating access from Powderham Road with a metal rail prior to the recently-constructed fence, with only a gap for access in line with the start of the recorded footpath at point A. The gap corresponds to the unregistered strip of land, not included within Dr Irshad's title.
- 9.4 From this assessment of the evidence, in conjunction with other historical evidence and all evidence available, it is considered sufficient to support the claim that public rights subsist, or are reasonably alleged to subsist, over a strip of land between points A – B of a width consistent with the unregistered land to connect with the line of Footpath 6 as recorded. It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a footpath between points A and B on plan HIW/PROW/20/17 and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.



HIW/20/50

Public Rights of Way Committee
26 November 2020

Schedule 14 Application Amendment of Northlew Footpath No. 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 no Modification Order be made to modify the Definitive Map and Statement in respect of the Schedule 14 application.

1. Introduction

This report examines a Schedule 14 application made in 2018 to delete part of Northlew Footpath No. 3 between points A – B and add a footpath between points C – B.

2. Background

The parish review was carried out between 1993 and 1996. This is the second such application from the applicant, Mrs Paton; the first application having been made in 2009 and refused when determined by the County Council in 2014. This application was received following the completion of the Parish Review in Northlew and was therefore deferred pending completion of the parish-by-parish review in the rest of the district, in line with County Council policy. However, in September 2019 the applicant applied to the Secretary of State requesting that DCC be directed to determine the application. In February 2020 the Secretary of State granted that request and directed the County Council to determine the application.

At its meeting of 4 March 2010, this Committee resolved that when a Schedule 14 application is received relating to a claim following an earlier determination by Committee under the general review, officers be authorised to determine that application in line with the Committee's previous decision unless the application is accompanied by substantially new and material evidence.

The applicants rely on all the evidence previously submitted in support of their previous application. However, as the applicant now refers to case law, which was not previously referenced, it was felt appropriate to again bring the matter to this Committee to ensure that it is given due consideration.

4. Consultations

An informal consultation relating to the current application has been carried out with the relevant local authorities and landowners as required during August – October 2020. The responses are attached in the appendix to this report. A full public

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consultation was also carried out on a previous and identical Schedule 14 application submitted by the applicants between March and May 2014. The responses to this consultation were reported in the relevant report to the Committee at their meeting in November 2014, as attached.

5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

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

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

9. Conclusion

It is recommended that no Modification Order be made to modify the Definitive Map and Statement in respect of the Schedule 14 application.

10. Reasons for Recommendations

To undertake the County Council's statutory duty under the Wildlife and Countryside Act 1981 to determine the schedule 14 application and to keep the Definitive Map and Statement under continuous review.

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Hatherleigh & Chagford

Local Local Government Act 1972 - List of Background Papers

Contact for enquiries: Caroline Gatrell

Telephone No: 01392 383240

Background Paper	Date	File Ref.
Correspondence file: Northlew Footpath 3	2018-2020	CG/DMR/NTW FP3

cg021120pra
sc/cr/schedule 14 Amendment of Northlew Footpath No 3
04 161120

A. Basis of Claim

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

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

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

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

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

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

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

Schedule 14 application to alter part of the alignment of Northlew Footpath No. 3, by deleting between points A – B and adding between points C – B, as shown on plan HIW/PROW/19/51.

Recommendation: That no Modification Order be made in respect of the Schedule 14 application, to modify the Definitive Map and Statement by deleting between points A – B and adding between points B – C, as shown on plan HIW/PROW/19/51.

1 Background

- 1.1 In 2005 the land known as Glebe Yard in Northlew, crossed by Northlew Footpath No. 3 was sold for re-development. Subsequently, a dispute developed between the owners of Clome Cottage, Mr and Mrs Paton, adjacent to Glebe Yard and the Yard's new owners, Mr and Mrs Todd, caused by a Land Registry boundary error. This went to Court, where it was found that no-one owned the entranceway, shown as the red hatched area on drawing number HCW/PROW/14/28, into Glebe Yard from Queen Street, though the Todds have since transferred it to the Patons.
- 1.2 The Patons first contacted the Public Rights of Way Team in April 2009, disputing the definitive alignment of Northlew Footpath No. 3 between A – B. They were informed that if they believed the Definitive Map and Statement (DMS) to be incorrect the appropriate procedure would be to make an application for modification of the DMS under Schedule 14 application of the Wildlife and Countryside Act 1981. They subsequently made an application in July 2009. The effect of the application sought to delete the section A – B of Northlew Footpath No. 3 and add the section C – B under sections 53(3)(c)(iii) that “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 respectively”, and 53(3)(c)(i) “that a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates”.
- 1.3 As the parish review had been completed between 1993-6, the application was deferred until the review had been completed for the rest of the district, in line with Devon County Council policy. The applicants were unhappy with this and made a formal complaint between June-August 2009 which was refused as the matter would be considered through the due legal process. An appeal to the Local Government Ombudsman in October 2009 was also refused.
- 1.4 The Patons subsequently applied to the Secretary of State, as permitted under the provisions of Schedule 14, as their application was not considered within 12 months of receipt. The Planning Inspectorate refused this appeal in November 2010, as Devon County Council policy had been followed.
- 1.5 In January 2011, in relation to the claimed route C – B, the Patons served notice on Devon County Council under Section 130(A) of the Highways Act 1980 to remove an obstruction from a highway. This was refused, as the alleged obstruction was not on a recorded public highway.
- 1.6 Again, in relation to the claimed route C – B the Patons then served notice

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under Section 56 of the Highways Act 1980 that a highway which was maintainable at public expense was out of repair. This was refused by the County Council and the Patons appealed to Exeter Crown Court. A preliminary hearing was held in August 2011 with a full 3 day hearing in January 2012. Judgement was given in the Council's favour. The evidence used in the court case is the same as submitted by the Patons with this Schedule 14 application.

- 1.7 The Patons appealed to the High Court and a hearing was held in Bristol in January 2013. Judgement was again in the Council's favour.
- 1.8 In October 2013 the Patons again applied to the Secretary of State for the County Council to be directed to determine their Schedule 14 application. In February 2014 the Council was directed by the Planning Inspectorate to determine the application. An informal consultation on the application was carried out during April and May 2014. It was referred to the Public Rights of Way Committee on 14 November 2014 where it was resolved that no Modification Order be made in respect of that application. The report to that Committee is annexed to this report.
- 1.9 In June and August 2014, the Patons served second and third notices under Section 56 Highways Act 1980, in relation to the claimed route C – B, which were also refused by the County Council on the same grounds as previously.
- 1.10 In August 2018 the Patons made a second Schedule 14 application to again vary the alignment of Northlew Footpath No. 3 from A – B to C – B. However, it was returned, as it was not compliant. They remade the application in September 2018, quoting 3 new pieces of case law.
- 1.11 In September 2019 the Patons again applied to the Secretary of State for the County Council to be directed to determine their Schedule 14 application. In February 2020 the Council was directed by the Planning Inspectorate to determine the application. The Patons submitted an additional 35 pieces of case law in May 2020. These are summarised below.

2 Application Evidence

- 2.1 The applicants have submitted 35 pieces of case law in support of their application, which is included in full in the background papers to this report. Some of this case law has previously been relied on by them.
- 2.2 The quoted case law is as follows, with pertinent point of each case in italics:-
 - Absor v French (1689) – *The right to trespass if the public highway is not passable.*
 - Anisminic v Foreign Compensation Commission (1969) – *The tribunal acted without jurisdiction and consequently its decision is a nullity.*
 - Attorney-General v Ryan (1980) – *A decision which offends natural justice is outside the jurisdiction of the decision making body.*
 - Barlow v Wigan Metropolitan Borough Council (2020) – *If a Highway Authority builds a highway, it is highway maintainable at public expense, even if it was not intended be on construction.*

- *Boddington v Transport Police (1999) – Subordinate legislation or an administrative act made under primary legislation was ultra vires.*
- *Chesterfield Poultry Ltd v Sheffield Magistrates Court (2019) – Halsbury's Laws Volume 17 Current Edition Company & Partnership Insolvency – The definition of conclusive evidence.*
- *Dawes v Hawkins (1860) – The diversion of a public highway when impassable, and the legal presumption 'once a highway always a highway' application.*
- *Ernstbrunner v Manchester City Council and Another 2010 – It is possible for the Definitive Statement to omit information and not to be comprehensive. However, it is not necessarily inconsistent with information disclosed by the Definitive Map.*
- *Eyre v New Forest Highway Board (1892) – The legal presumption 'once a highway always a highway' application. The legal burden rests on the user throughout to prove dedication.*
- *Folkestone Corporation v Brockman (1914) – If a known road is used, then the road's origin is in that user, which raises the legal presumption of dedication.*
- *Harvey v Truro District Council (1903) – The consent of a highway authority to an obstruction or encroachment is ineffectual for the purpose of legalising that obstruction or encroachment.*
- *JA Pye (Oxford) Ltd v Graham (2003) – The intention to possess disputed land was not proven; the facts must be proven with the manner of occupation and use of the land.*
- *LE Walwin and Partners Ltd v West Sussex County Council (1975) – The Definitive Map and Definitive Statement are not independent and must be read together. The applicants alleged quotation is not from the judgement.*
- *Loder v Gaden (1999) – The legal presumption 'once a highway always a highway' applies.*
- *London & Clydesdale Estates Ltd v Aberdeen District Council (1980) – The procedures were not followed.*
- *Nicholson v Secretary of State for the Environment (1996) – The legal burden shifts once the presumption of dedication has been raised.*
- *O'Reilly v Mackman (1983) – The tribunal asked itself the wrong question and therefore the decision is a nullity.*
- *Oxfordshire County Council v Oxford City Council and Another – Assumed (2004) – This was referred to in Paton Crown Court judgement.*
- *Paton v Devon County Council and Another (2013) – This disregarded the legal rules and was a miscarriage of justice. There was an alleged discrepancy between the Definitive Map and the Definitive Statement. When compared with the Ernstbrunner, Walwin and Norfolk judgements, the applicants consider this judgement to be inconsistent with them. The applicants imply that this judgement is unsound.*
- *Randall v Tarrant (1955) – The public have rights to use a highway prima facie, rights of passage to and from places.*
- *R (on the application of Mackay) (2019) – Due to a procedural error there was an irregularity and consequently the decision was quashed.*
- *R (on the application of Newhaven Port & Properties Ltd) v East Sussex County Council (2015) – Megarry & Wade's The Law of Real Property 8th*

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Edition (2012) – *The issue here was regarding the capacity of a landowner to dedicate.*

- R (Norfolk County Council) v Secretary of State for the Environment, Food and Rural Affairs (2005) – *Where there is conflict between the Definitive Map and the Definitive Statement, there is no presumption that the map correct and the statement is not.*
- R v Oxfordshire County Council & Another, Ex parte Sunningwell Parish Council (1999) – *As per the Newhaven judgement regarding the capacity of a landowner to dedicate.*
- R v Petrie (1855) – *Open user as of right by the public raises a presumptive inference of dedication requiring to be rebutted.*
- R (Smith) v The Land Registry (Peterborough Office) (2010) – *A squatter cannot acquire a land title by adverse possession on which there is a public highway.*
- R (Williams) v Bedwellty (1997) – *As per the Mackay judgement.*
- Rouse v Bardin and Others (1790) – *The route on the Definitive Map and the route in the Definitive Statement are distinct and therefore it is physically impossible that they are the same route.*
- Secretary of State for Education and Science v Tameside MBC (1977) – *If there is an error of law, the decision being unlawful can be argued. It is not sufficient if a party to the action merely disagreed with it.*
- Stoney v Eastbourne Rural District Council (1927) – *If the evidence sufficient to establish the case for the party on whom the onus of proof lies, it can shift to another party.*
- Sturges v Bridgman (1879) – *Use which cannot be prevented raises no presumption of consent or acquiescence.*
- Suffolk County Council v Mason (1979) – *The legal presumption 'once a highway always a highway' applies.*
- Trevelyan v Secretary of State for Environment, Transport and the Regions – no date specified, either (2000) or (2001) – *The inclusion on the Definitive Map is some evidence of its existence.*
- Turner v Walsh (1881) – *The presumption of dedication rule.*
- Williams-Ellis v Cobb (1935)S – *The presumption of dedication rule. The identification of early landowners or dedication date is immaterial.*

3 Informal Consultation Responses

3.1 As a full consultation has been previously carried out with regard to the applicants' proposal, and is also not a requirement of the statutory Schedule 14 application process, a limited consultation was carried out between August and October 2020 with the landowners, Northlew Parish Council, and West Devon Borough Council.

3.2 No written responses have been received.

4 Landowner Evidence

4.1 Mrs Todd responded to the informal consultation by telephone. Mr and Mrs Todd own the former depot site, also known as Glebe Yard. They would support the variation of Northlew Footpath No. 3, as they could then fence off

their land from Mr and Mrs Paton, following a dispute with them dating from 2005.

- 4.2 Mrs Paton emailed a statement in response to the consultation, which is included in the relevant backing papers.

5 Discussion

- 5.1 The applicants have submitted a large amount of evidence and want this to be considered along with all other relevant evidence discovered since the matter was first raised in 2009.
- 5.2 Evidence dated after the 14th September 1967 is not relevant in relation to the deletion part of the application, if, as the applicants claim an error occurred in the recording of Northlew Footpath No. 3, as this is the date when the Definitive Map for the Okehampton district became definitive. It is still however relevant to the addition part of the application.
- 5.3 It is the applicants' responsibility to carry the evidential burden and demonstrate that on the balance of probabilities an error occurred in the recording of Northlew Footpath No. 3 on the Definitive Map. In considering the evidence relevant to the application regarding Northlew Footpath No. 3, Section 32 of Highways Act 1980 must be taken into account, which permits the consideration of facts regarding the source of evidence, such as its creation, purpose and production procedures, including public participation and consultation.
- 5.4 Section 32 of the Highways Act 1980 indicates how documents should be evaluated as a whole and how the weight should be given to the facts derived from them. Once the evidence sources have been assessed individually, they are comparatively assessed as required by the balance of probabilities test.
- 5.5 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.
- 5.6 As there is no specific date on which the public's right to use the application route has been called into question, the Schedule 14 application is considered to call the public's right to use the route into question for the purposes of section 31 of the Highways Act 1980. The application was made in 2018, and therefore the relevant statutory period could be considered 1998-2018. However, because the applicants' submitted their first Schedule 14 application in 2009, which has been determined, that application acts as the calling into question. Therefore, the relevant period is 1989-2009.

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- 5.7 The applicants have not submitted any evidence in support of this 2nd Schedule 14 application, either documentary or user, which dates from the relevant period. Consequently, the application fails at statute.
- 5.8 Additionally, the application may also be considered under 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.
- 5.9 Common Law. On consideration of the application at common law, the applicants have not submitted any additional historical documentary evidence in addition to that previously considered in the previous Committee report of 2014, supporting the alleged alignment between points C – B, or rebutting the definitive alignment between points A – B. Neither have they submitted any user evidence in relation to the alleged alignment between points C – B of Northlew Footpath No. 3 at any time. Due to this lack of user evidence, the applicants are unable to demonstrate acceptance of their alleged alignment, and consequently presumed dedication from user, as it is a legal requirement.
- 5.10 The applicants place great weight on the purpose and termini nature of the footpath to demonstrate that an error occurred in the recording of Northlew Footpath No. 3 on the Definitive Map, and the influence this would have on use regarding the alleged deviation from B – C to B – A. However, the alleged deviation has been unproven by the applicants twice previously, and the additional case law now cited does not alter the interpretation of the evidence on this point.
- 5.11 This historical documentary evidence relied by the applicants in this second application has been analysed and adjudged twice before, with the decisions from the two different legal procedures both being considered at the High Court. In both cases, the judgements decided against the applicants, Mr and Mrs Paton. It should be noted that the Section 56 action created case law for Northlew Footpath No. 3 supporting the definitive alignment between points A – B and rebutting the applicants' alleged alignment between points C – B. This case law has not been challenged or given negative judicial treatment.
- 5.12 The Patons' have submitted several statements citing 35 pieces of case law in support of this 2nd application, a number of which deal with the issue of whether a tribunal acted without jurisdiction – Anisminic (1969), Ryan (1980), Boddington (2020), London & Lydesdale Estates (1980), O'Reilly (1983), Paton (2013), Mackay (2019), and Tameside MBC (1977), and if so, any decision was a nullity (an act or thing that is legally void).
- 5.13 It appears from their statements that the purpose of this 2nd Schedule 14 application is to quash the High Court judgement in the Section 56 Highways Act 1980 case on the basis that they consider that judgement and also their first Schedule 14 application, to be unsound.
- 5.14 However, it is considered highly unlikely that such two independent processes

could both commit the alleged errors of law in relation to the same case and evidence. At High Court, no evidence of the mis-direction alleged by the applicants was found in either case. Consequently, the applicants' argument that these decisions are nullities is not considered valid.

- 5.15 Furthermore, any decision reached on this 2nd application could not quash either High Court judgment of 2013 or 2015. Any such quashing would have to be through the Court system, not by the making of a second Schedule 14 application.
- 5.16 A number of cases cited by the applicants, Dawes (1860), Eyre (1892), Loder (1999), and Suffolk (1979), refer to the legal maxim '*once a highway always a highway*'. The applicants have repeatedly claimed that this maxim applies to their alleged alignment between points C – B, but they have been unsuccessful twice previously. The alleged alignment C – B has to be proven to exist before the legal maxim can be applied.
- 5.17 The applicants also re-argue the alleged discrepancy between the Definitive Map and Definitive Statement for Northlew Footpath No. 3, citing the cases of Ernstbrunner (2010), Walwin (1975), Norfolk (2005), Rouse (1790), and Trevelyan (c. 2000 or 2001). This point, along with that of a claimed deviation due to an obstruction from the alleged alignment between points C – B to the definitive alignment between points A – B, have been argued unsuccessfully previously by the applicants, and the citation of the additional case law does not alter the analysis of the relevant evidence in relation to it.
- 5.18 The Patons also argue of the right of the public to use the '*highway*' as alleged by them, in line with the case of Stoney (1927). Yet the '*highway*' they refer to is their alleged alignment between points C – B, which they have failed to prove exists twice previously, based on the same evidence as now being relied upon. The additional case law now cited does not alter the interpretation of the relevant available evidence on this point.
- 5.19 The recent Barlow judgement is also not relevant because it has not been proven that a highway was ever created on the applicants' alleged alignment between points C – B, as was in that case.
- 5.20 The cases of Folkestone (1914), Nicholson (1996), Newhaven Port & Properties Ltd (2015), Oxfordshire (1999), Bedwelty (1997), Sturges (1879), Turner (1881), and Williams-Ellis (1935) cited by the applicants have previously been considered in the 2014 report and the 2011-13 Section 56 court action, and consequently need not be dealt with further.
- 5.21 The Patons rely on the case of Chesterfield Poultry (2019) for the definition of what is '*conclusive evidence*'. However, this case law does not alter the interpretation of the evidence being considered in relation to this application.
- 5.22 They re-argue that as the Definitive Statement refers to Northlew Footpath No. 3 as crossing Glebe Yard, it can only have crossed glebe land and therefore used their alleged alignment between points B – C and not passed over land in a potentially different ownership between points B – A. However, the traditional

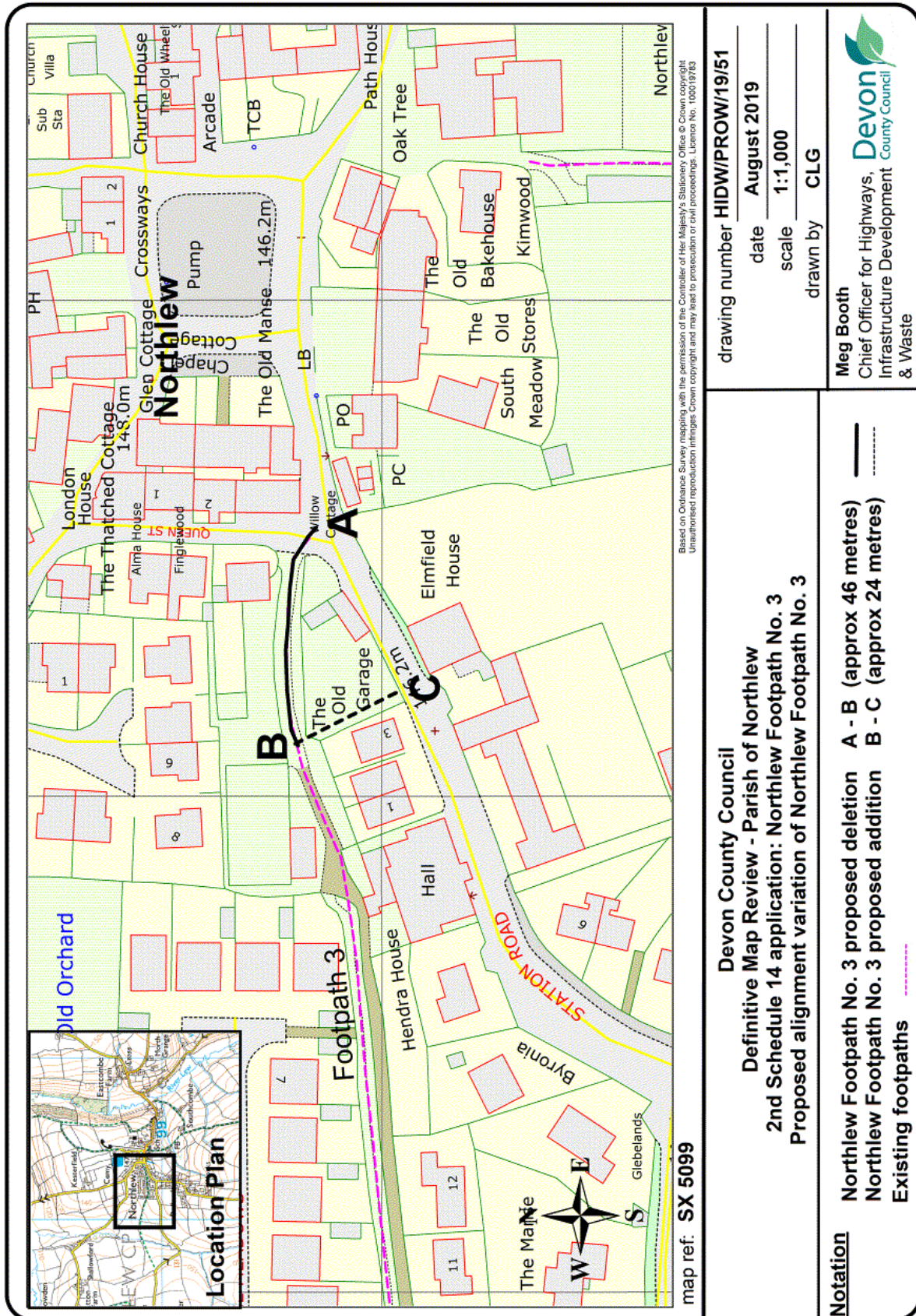
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access into Glebe Yard has always been along the alignment A – B, and public rights of way frequently pass over multiple ownerships. The applicants have not been able to prove this point twice previously and the additionally cited case law does not alter the interpretation of the evidence.

- 5.23 They also raise the point that the land crossed by their alleged alignment between points C – B, was acquired by the landowner by means of adverse possession. However, according to the case law they cite, adverse possession cannot occur if land is already occupied by a public highway. The applicants have not proven that their alleged alignment, as the additional case law cited does not alter the interpretation of the evidence, which does not support their alleged alignment. Because their case has not been proven with regard to this application, as in the two previous legal actions, they cannot shift the evidential burden.

6 Conclusion

- 6.1 In this case the method by which the definitive alignment of Northlew Footpath No. 3 was added to the Map is clearly documented and the proper procedures shown to have been followed. There is no evidence that demonstrates the alleged variation of alignment. The public right of way also has its own case law in *Paton v Devon County Council* (2013), a High Court judgement. This case considered the same evidence as the applicants' 1st Schedule 14 application, which they rely upon yet again. This case law has not been challenged or overturned, and consequently is considered to be sound.
- 6.2 As set out in the report for the 1st Schedule 14 application, it is for the applicants who contend that there is no right of way, to prove that the Definitive Map requires amendment due to the discovery of evidence, which when considered with all other relevant evidence clearly shows that the part of Northlew Footpath No. 3 between points A – B should be deleted. It is not considered that the applicants have provided the required new, sufficient or cogent evidence.
- 6.3 By virtue of the same evidence and the applicants' failure to meet the tests for deleting part of Northlew Footpath No. 3 based on that evidence, they also fail to prove that "a right of way subsists or is reasonably alleged to subsist" between points B – C.
- 6.4 The documentary evidence for the Schedule 14 application is the same as that analysis and interpretation which is now set in case law, and the additional case law cited by the applicants does not alter the interpretation of that evidence.
- 6.5 It is, therefore, recommended that no Modification Order be made in relation to the this Schedule 14 application relating to the alignment of Northlew Footpath No. 3 on the Definitive Map and Statement.



HCW/14/86

Public Rights of Way Committee
14 November 2014

**Schedule 14 Application
Variation of Footpath No. 3, Northlew**

Report of the Head of Highways, Capital 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 the schedule 14 application for the deletion and addition of Footpath No. 3, Northlew, as shown on drawing number HCW/PROW/14/28.

1. Summary

This report examines a Schedule 14 application made in 2009 to delete part of Footpath No. 3, Northlew across land at Glebe Yard between points A – B and add part over an alternative alignment between points C – B. The application was received following the completion of the Parish Review in Northlew and was therefore deferred pending completion of the parish-by-parish review in the rest of the district, in line with County Council policy. However, Devon County Council has now been directed by the Secretary of State to determine the application out-of-turn.

The applicants have submitted a large amount of documentary evidence in support of their application, which is examined in the appendix to this report. It is considered that the evidence provided is not sufficient to show that Footpath No. 3, Northlew was recorded wrongly and it is, therefore, recommended that no Order be made to vary the line of the path on the Definitive Map and Statement, as applied for.

2. Proposal

Please refer to the appendix to this report.

3. Consultations

General consultations have been carried out with the following results:

County Councillor	– no specific comments on proposal
West Devon Borough Council	– no comment
Northlew Parish Council	– object to the proposal
British Horse Society	– no comment

Byways & Bridleways Trust	– no comment
Country Landowners' Association	– no comment
Devon Green Lanes Group	– no comment
National Farmers' Union	– no comment
Open Spaces Society	– no comment
Ramblers'	– no comment
Trail Riders' Fellowship	– no comment

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

4. 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 the County Council's statutory duties.

5. Legal Considerations

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

6. Risk Management Considerations

No risks have been identified.

7. Equality, Environmental Impact and Public Health Considerations

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

8. Conclusion

It is recommended that no Modification Order be made in respect of the schedule 14 application.

9. Reasons for Recommendations

To undertake the County Council's statutory duty under the Wildlife and Countryside Act 1981 to determine the schedule 14 application and to keep the Definitive Map and Statement under continuous review.

David Whitton
Head of Highways, Capital Development and Waste

Electoral Division: Okehampton Rural

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Local Government Act 1972: List of Background Papers

Contact for enquiries: Caroline Gatrell

Room No: ABG

Tel No: 01392 383240

Background Paper	Date	File Ref.
Correspondence file	2009 to date	NOR/SCH14/FP3

cg071014pra
sc/cr/schedule 14 footpath 3 northlew
04 041114

Appendix I To HCW/14/86

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:

- (iv) 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.
- (v) 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.
- (vi) 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 **Schedule 14 application to delete part of Footpath No. 3, Northlew through Glebe Yard to Queen Street between points A – B and add a part to Footpath No. 3, Northlew through Glebe Yard to Station Road between points C - B, as shown on plan HCW/PROW/14/28.**

Recommendation: That no Modification Order be made in respect of the above application.

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1.1 Background

- 1.1.1 In 2005 the land known as Glebe Yard in Northlew, crossed by Northlew Footpath No. 3 was sold for re-development. Subsequently a dispute developed between the owners of Clome Cottage, Mr and Mrs Paton, adjacent to Glebe Yard and the Yard's new owners, Mr and Mrs Todd, caused by a Land Registry boundary error. This went to court, where it was found that no-one owned the entranceway, shown as the red hatched area on drawing number HCW/PROW/14/28, into Glebe Yard from Queen Street, though the Todds have since transferred it to the Patons.
- 1.1.2 The Patons first contacted the Public Rights of Way Team in April 2009, disputing the definitive alignment of Northlew Footpath No. 3 between A – B. They were informed that if they believed the Definitive Map and Statement (DMS) to be incorrect the appropriate procedure would be to make an application for modification of the DMS under Schedule 14 application of the Wildlife and Countryside Act 1981. They subsequently made an application in July 2009. The applicants believe that an Order should be made to delete the section A – B of Northlew Footpath No. 3 and add the section C – B under sections 53(3)(c)(iii) that “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 respectively”, and 53(3)(c)(i) “that a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates”.
- 1.1.3 As the parish review had been completed between 1993-6, the application was deferred until the review had been completed for the rest of the district, in line with Devon County Council policy. The applicants were unhappy with this and made a formal complaint between June-August 2009 which was refused as the matter would be considered through the due legal process. An appeal to the Local Government Ombudsman in October 2009 was also refused.
- 1.1.4 The Patons subsequently applied to the Secretary of State, as permitted under the provisions of Schedule 14, when their application was not considered within 12 months of receipt. The Planning Inspectorate refused this appeal in November 2010, as Devon County Council policy had been followed.
- 1.1.5 In January 2011, in relation to the claimed route C – B, the Patons served notice on Devon County Council under Section 130(A) of the Highways Act 1980 to remove an obstruction from a highway. This was refused, as the alleged obstruction was not on a recorded public highway.
- 1.1.6 Again in relation to the claimed route C – B the Patons then served notice under Section 56 of the Highways Act 1980 that a highway which was maintainable at public expense was out of repair. This was refused by the County Council and the Patons appealed to Exeter Crown Court. A preliminary hearing was held in August 2011 with a full 3 day hearing in January 2012. Judgement was given in the Council's favour. The evidence used in the court case is the same as submitted by the Patons with this Schedule 14 application.
- 1.1.7 The Patons appealed to the High Court and a hearing was held in Bristol in January 2013. Judgement was again in the Council's favour.
- 1.1.8 In October 2013 the Patons again applied to the Secretary of State for the County Council to be directed to determine their Schedule 14 application. In February 2014 the Council was directed by the Planning Inspectorate to determine the application.

The applicants were informed that the matter would be referred to the Public Rights of Way Committee at this meeting. An informal consultation on the application was carried out during April and May 2014.

- 1.1.9 In June and August 2014 the Patons served second and third notices under Section 56 Highways Act 1980, in relation to the claimed route C – B, which were also refused by the County Council on the same grounds as previously.

1.2 Description of the Route

- 1.2.1 The Definitive Statement for Footpath No. 3 is given below, with the part relevant to the deletion application, A – B, underlined below:

It starts at County Road C.463 opposite the Chapel in Northlew and proceeds westwards through the Glebe Yard and over a short length of private accommodation road (not repairable by the inhabitants at large) crossing fields and a brook (footbridge demolished) to join the Unclassified County road approximately 400 yards east of the entrance to Lake Farm.

- 1.2.2 This is shown on the plan HCW/PROW/14/28 starting at Station Road at point A at its junction with Queen Street opposite the former chapel. It proceeds north westwards for a short distance along Queen Street turning westwards past Clome Cottage and along the traditional access into and through Glebe Yard towards point B, just east of the Northlew Band Hut.
- 1.2.3 The proposal for addition starts at the county road, Station Road at point C and proceeds northwards through a hedge bank and ramp into and through Glebe Yard towards point B.
- 1.2.4 From point B the definitive line continues westwards following a defined path through a development known as Kimblerlands then across fields to join the county road east of Lake Farm.

1.3 Matters for consideration

- 1.3.1 It should be noted that in an application for deletion, Department of the Environment Circular 1/09 applies; paragraph 4.34 states, that *"where there such an application, it will be for those who contend that there is no right of way...to prove that the map requires amendment due to the discovery of evidence, which when considered with all other relevant evidence clearly shows that the right of way should be...deleted."*
- 1.3.2 In a case taken before the Court of Appeal is that of Trevelyan v. Secretary of State for the Environment, Transport and the Regions [2001]. Lord Phillips, M.R., stated, *"Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on the Definitive Map in fact exists, he must start with the initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than a balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive*

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evidence that is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake."

- 1.3.3 The applicants claim that Footpath No. 3, Northlew was wrongly recorded on the Definitive Map. Evidence after 1967 is not relevant in determining whether an error occurred in the recording of Northlew Footpath No. 3 between points A – B on the Definitive Map, as this is the date when the map was taken off deposit and became definitive. However, this evidence can still be considered in relation to the addition part of the application, C – B.

1.4 Application Evidence

- 1.4.1 The applicants have submitted a large amount of documentary evidence in support of their application. The evidence is detailed below with a summary of the applicants' main points in **bold** and the County Council's comments in response.
- 1.4.2 The applicants' correspondence is not direct evidence relevant to the determination of the application, and therefore cannot be taken into account. All evidence and correspondence is however included in full in the background papers to this report.
- 1.4.3 **Ordnance Survey mapping, 1809-2009.** The applicants believe that the historic and current Ordnance Survey mapping shows the lawful and historic route origin of the footpath from Station Road (C – B) not Queen Street (A – B). The solid block of buildings along Queen Street means that there was no access or footpath. They claim that the working copy of the Definitive Map allegedly shows the unlawful diversion that occurred in 1950 and path starting from Queen Street through Clome Cottage to access Glebe Yard.
- 1.4.4 They believe that all scales of Ordnance Survey mapping show a great deal of detail and accuracy of information. The definitive footpath alignment was not a physical feature surveyed by the Ordnance Survey and was not the historic route with public rights claimed on the Definitive Map in 1950.
- 1.4.5 Response: All Ordnance Survey maps after the surveyors draft drawings circa 1809 have carried a disclaimer, which states that: "*The representation on this map of a road, track or footpath is no evidence of a right of way*". Therefore the mapping is only evidence of the physical existence and characteristics of features at the time when surveys were carried out, not of rights of way.
- 1.4.6 **Scale – 25" to 1 mile.** The applicants state that on the 1st Edition 25" mapping of 1885 the footpath is shown ending at a boundary wall adjacent to Clome Cottage and not proceeding eastwards onto Queen Street between points A – B.
- 1.4.7 Response: This mapping depicts a dashed track running west from the boundary of Glebe Yard with Queen Street at point X. A solid line at the junction with Queen Street at point X is a parcel boundary line and it cannot be said that it represents a wall rather than a gate, as gates were shown in the closed position. The entranceway area is shown in the same land parcel as Queen Street. No feature such as a track is shown on the claimed alignment C – B. The large scale 25" has the greatest amount of detail and accuracy of information depicted as features can be shown at actual scale, and therefore has more reliability than the 6" and especially the 1".

- 1.4.8 The same also applies for the 2nd Edition which was used for the Finance Act and Farm Survey records. The applicants also believe that the bench mark and spot height at the junction of the claimed alignment with Station Road confirm its local importance.**
- 1.4.9 Response: The 2nd Edition 25" of 1906 is essentially the same as the 1st Edition 25", though minor tracks are not shown including the track shown on the previous edition along X – B, along with other changes in detail shown. No feature such as a track is shown on the claimed addition alignment C – B.
- 1.4.10 Bench marks and spot heights are not considered to be indicative or confirmation of a public right of way or its local importance, as the surveyors had virtually unrestricted access and these features do occur on private land.
- 1.4.11 Later versions such as the Post War A Edition 25" mapping dated 1955, is essentially the same as the previous edition, along with other reductions in detail shown. No feature such as a track is shown on the claimed addition alignment C – B.
- 1.4.12 The Post War B Edition 25" mapping of 1978 depicts a dashed track with a different surface from the area around it west from point B. The boundary line at point X at Queen Street is also shown. No feature such as a track is shown on the claimed alignment C – B.
- 1.4.13 Scale – 6" to 1 mile. The applicants claim that throughout all the 6" mapping their correct alignment is shown between points C – B.**
- 1.4.14 Response: The 6" scale is the oldest series of Ordnance Survey mapping. The large scale mapping of 6" and 25" are considerably different from the 1" scale but are consistent with each other, though the 6" mapping has a greater degree of blocking buildings in urban areas, where buildings were below a certain size. Also less important features are put in the background giving greater effect to the more important ones. These standards may cause public rights of way and other information not to be shown in their true context, though this does not affect the actual rights.
- 1.4.15 A double dashed track is shown ending a parcel boundary line with Queen Street at point X on the 1st Edition, but it cannot be said if this line also represents a boundary wall or gate, which would have been shown closed. The entranceway area is shown in the same parcel as Queen Street. There is no dashed track or footpath shown on the claimed addition alignment C – B.
- 1.4.16 Throughout all the 6" mapping the applicants claim their addition alignment C – B is shown, but this is not the case. A copy of the Definitive Map they believe to be dated 1950 is actually circa 1990, and shows their claimed unlawful diversion A – B passing through a solid which block of buildings, which is an Ordnance Survey generalisation of the scale and does not affect the public's rights.
- 1.4.17 Scale – 2/2.5" to 1 mile. The applicants claim that this mapping shows a solid block of buildings along Queen Street with no access or footpath and that the 1803-7 Ordnance Survey field draft drawings show the existence of the claimed route from Glebe Yard westwards.**
- 1.4.18 Response: The Surveyors' Draft Drawings of 1803-7 only showed turnpike, enclosed or unclosed routes. As the plans were intended for military purposes, the maps showed all routes, regardless of whether public or private. This mapping only shows

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a similar alignment to Northlew Footpath No.3 west of the disputed section A – B, and therefore is not relevant to the determination of the application. The draft drawings are considered to contain wide variations in accuracy and standards, as well as inherent projection inaccuracies.

- 1.4.19 Only the mapping dated 1948 and 1963 still shows Clome Cottage as an individual building, though the outbuildings on the southern side of Glebe Yard are blocked. Buildings on Queen Street follow suit by the late 1960s. No dashed tracks are shown on either alignment.
- 1.4.20 2.5" scale is hybrid mapping, using surveys such as the 6" and amalgamating features such as buildings, besides using other standard Ordnance Survey generalisations and reductions in detail. However these generalisations do not affect the public's rights.
- 1.4.21 **Scale – 1" to 1 mile.** The applicants believe their claimed and lawful route C – B is shown in the same way as minor public roads pre-Highways Act 1835, and therefore is automatically a highway maintainable at public expense. On some maps the claimed route C – B is also alleged to be shown coloured like other roads.
- 1.4.22 **Response:** The principal use of small scale mapping was to illustrate the communications network, and the value of the legend was more superficial than real. It was derived from the 25" mapping via the 6" mapping, with the large scale information edited significantly. The maps showed all routes regardless of whether public or private and there was no overt differentiation between them. On the Revised New Series, roads were classed according to character, not status.
- 1.4.23 The limitations of the 1" scale however made it necessary for the Ordnance Survey to simplify the representation of many surface features and deliberate exaggeration of other features. This scale was unsophisticated with extremely limited detail. It is the scale with the highest degree of generalisation and distortion e.g. blocking buildings together. Because of this, the route shown cannot be definitely said to be the claimed alignment C – B. Given the larger scale mapping and alignment of the footpath on the Definitive Map, there is more similarity to the definitive (A – B) rather than the claimed (C – B) alignment. This scale is not accurate and merely depicts the representation of features and their relative importance to others.
- 1.4.24 On some maps the claimed addition alignment C – B is also alleged to be shown coloured like other roads; however this is merely inaccurate printing of Station Road's colouration and inaccurate mapping interpretation.
- 1.4.25 It is perhaps the inaccurate portrayal of the private accommodation road over which Northlew Footpath No. 3 partly runs, on various scales of Ordnance Survey mapping, which has influenced the applicants' belief that the definitive alignment of Northlew Footpath No. 3 is incorrect.
- 1.4.26 **Ordnance Survey Instructions to Field Examiners, 1905.** The applicants rely on extracts of the Instructions which relate to 1:2500 regarding roads and paths, and 1:500 mapping. The applicants do not rely upon the latter which did not exist for the Northlew area.
- 1.4.27 **Response:** The purpose of the instructions was to draw attention to points that might get overlooked and lay down rules on doubtful points of detail where there was likely to be a variety of practice in examination. The Instructions state that "*the Ordnance*

Survey does not concern itself with rights of way, and Survey employees are not to enquire into them”.

- 1.4.28 According to the Instructions, footpaths in private yards or convenience paths were not to be shown. A clearly marked path on the ground was not itself sufficient to justify the depiction of a path, unless it was in obvious use by the public. In relation to the trees along Station Road, single trees that were shown as being landmarks were to be surveyed and shown accurately in position. There is such a tree on the claimed addition alignment at point C, indicating a hedgerow/bank.
- 1.4.29 This is not direct evidence relevant to the determination of the application, and is only a useful tool in the interpretation of the Ordnance Survey mapping.
- 1.4.30 **Greenwood’s Map 1” to 1 mile, 1827.** The applicants state that this mapping shows the origin and existence of the road from Glebe Yard at this date.
- 1.4.31 Response: The map includes a route in a similar position to the alignment of A – B and the definitive alignment of Northlew Footpath No. 3. No route is shown on the claimed alignment of B – C.
- 1.4.32 **Northlew Tithe Map & Apportionment, 1843.** The applicants claim that the Glebe Lands area is separated by a boundary wall from the Queen Street properties, numbered 935, 936, 937 and 938 to the east, which also acts as a boundary between rectorial and manorial ownerships. Glebe’s entrance from the highway is from Station Road opposite Elmfield no 787.
- 1.4.33 Response: Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, limiting the possibility of errors. Their immediate purpose was to record the official record of boundaries of all tithe areas. Roads were sometimes coloured and the colouring generally indicates carriageways or driftways. Public roads were not titheable and were sometimes coloured, indicating carriageways or driftways. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over a route shown. Such information was incidental and therefore is not good evidence of such. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible.
- 1.4.34 The Northlew tithe map is second class and is therefore only evidence of facts with direct relevance to tithe commutation. The original document is held at the National Archives, with copies for the parish and diocese held locally.
- 1.4.35 The only break in the boundary colouration of the glebe land on the tithe map occurs where a fence is depicted adjacent to Clome Cottage on the currently recorded definitive footpath alignment A – B. There is no such boundary break or fence on the claimed alignment, C – B. There is also a pond depicted on the claimed addition alignment.
- 1.4.36 Rectorial/manorial ownership is not relevant to the consideration of this application.
- 1.4.37 **Northlew Manor sale catalogue, 1897.** The applicants claim that Lot 8 is Clome Cottage sold freehold from the Northlew Manor as a freehold cottage and front garden, pig house and shed, called Clome Cottage, part of 508.
- 1.4.38 Response: The sales particulars relating to Northlew Manor in 1897 should be treated with caution due to the possibility of advertising embellishments, along with the lack of

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a plan. No public right of way is mentioned in the document, and it does not contain information relevant to the determination of the application.

1.4.39 Finance Act, 1909-10. The applicants claim that the Valuation Office Survey Map of Northlew (2nd edition OS 25" County Series) indicates the boundary line of the cob wall between Clome Cottage and Glebe Lands no 207, across the alignment A – B. Clome cottage is number 18 and the line of the boundary wall is shown extending across to Clome's shed pt. 18. The map does not show Clome Cottage's second outbuilding, however it is mentioned in the accompanying field book listing and it was situated between the cottage and the shed against the boundary wall.

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

1.4.41 The proposed addition is wholly within hereditament 207 while the proposed deletion is partially included in 207 and excluded for the remainder. There is no evidence that the boundary line at approximately point X is a cob wall.

1.4.42 Bartholomew's Maps, 1921-7. The applicants claim that the ancient access into Glebe Yard is coloured red as a motoring road on the alignment C – B, and there is no access to Glebe road and Queen Street surveyed A – B.

1.4.43 Response: Bartholomew's maps were designed for tourists and cyclists with the roads classified for driving and cycling purposes. They were used by and influenced by the Cyclists Touring Club founded in 1878 and had the classification of First Class roads, Secondary roads in good condition, Indifferent roads passable for cyclists and other uncoloured roads considered inferior and not to be recommended. The maps were reductions or copies of Ordnance Survey mapping and carried a disclaimer. Bartholomew's did not employ independent surveyors to carry out any surveys on the ground nor to determine the nature and legal status of the roads on their maps. Footpaths and Bridleways were marked as a pecked line symbol. Cyclists were confined to public carriage roads until 1968.

1.4.44 The small scale of ½" and 1" to 1 mile permitted only the most important routes to be shown. The purpose of these maps was to guide the traveller along the routes most suitable for their mode of transport, not to encourage trespass. The scale of the mapping is too small to show Footpath No. 3, the claimed alignment C – B or even Queen Street.

1.4.45 On the Bartholomew's map of 1921, the applicants state that their claimed addition route C – B is shown and coloured red, however there is no route shown on this alignment. It is merely inaccurate printing of the colouration of Station Road, which is a secondary motoring road. The map's small scale and lack of information regarding the application route renders them unhelpful.

1.4.46 Aerial photography, 1930 onwards. The applicants claim that the aerial photography dated circa 1930 shows Glebe's entranceway to the yard and fields from Station Road at point C with a footpath sign beside it opposite Elmfield House. They also believe that the photography of 1946 and 1948 show a wall adjacent to Clome Cottage and across the definitive alignment of Northlew

Footpath No. 3, and that there is no path visible A – B. On the 1955 and 1960s aerial photographs the applicants admit that there are gates at the entranceway to Glebe Yard from Queen Street which they contribute to the unlawful diversion they claim occurred in 1950.

- 1.4.47 Response: Deduction of traces of use such as characteristic wear patterns left by habitual use and vegetation erosion may provide evidence which can be measurable for establishing the use of a feature as an access or path. Some of the copies supplied are of insufficient quality to comment.
- 1.4.48 Aerial photography dated circa 1912 not 1930 is claimed to show Glebe's entranceway at point C with a footpath sign beside it opposite Elmfield House. Due to the oblique angle of the photograph, some features are obscured by shadows and other features such as buildings, besides being of a relatively poor quality. No footpath sign is visible. These factors affect the definitive (deletion part of the application) and claimed (addition part of the application) alignments of Northlew Footpath No. 3.
- 1.4.49 The applicants believe that the 1940s aerial photography shows a wall adjacent to Clome Cottage and across the definitive alignment of Northlew Footpath No. 3 at point X, and that there is no path visible. However, the 1946 RAF photograph has good clarity. Consequently, it can be seen that the feature adjacent to the cottage due to its characteristics of light colouration and shadow is more likely to be a gate rather than a substantial cob boundary wall, compared to other walls and gates in the photograph. There is also a substantial wear pattern from Queen Street along A – B, while there is none on the claimed alignment opposite Elmfield from point C. There is no wear pattern on the claimed alignment C – B in the 1948 photograph.
- 1.4.50 On later aerial photographs the applicants admit that there are gates at the entranceway to Glebe Yard from Queen Street at point X, which they contribute to the unlawful diversion they claim occurred in 1950. No wear pattern is visible of the claimed alignment C – B but is clear on the definitive alignment A – B. Aerial photography is only evidence that a route or feature is discernible on the ground on the date when a photograph is taken.
- 1.4.51 **Deeds and conveyances, 1897-1980. The applicants believe that these show the same boundary line adjacent to Clome Cottage, with no right of way shown from Queen Street and the footpath believed to be wholly on glebe land.**
- 1.4.52 Response: Deeds and conveyances deal with private rights of property and are not prepared with a view to defining public rights. The transfer of mutual private rights in such documents is not conclusive evidence that there are not public rights.
- 1.4.53 A reference to a public right of way within a conveyance would be of some evidential value. However, such documents are primarily concerned with private rights. The reference on the plan dated 1980 is only relates to "*right of way to Glebe Yard*", and therefore is most likely to be private given the nature of the document. There is no relevant evidence in the determination of the application to vary part of Northlew Footpath No. 3.
- 1.4.54 **Chapman postcard photographs, 1927-51. The applicants state that the postcard dated 1933 is purported to show the remnants of a pig housing area and boundary wall on the definitive alignment of Northlew Footpath No. 3, A – B and no footpath or entranceway adjacent to Clome Cottage from Queen Street. Another dated 1951 is purported to show the narrow width of the recently added**

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footpath through the pig area and boundary wall. It is claimed that there is no field gate at point X to the private accommodation road on the alignment A – B.

- 1.4.55 Response: A postcard photograph dated 1933 is purported to show the remnants of a pig housing and boundary wall on the definitive alignment of Northlew Footpath No. 3 and no footpath or entranceway adjacent to Clome Cottage from Queen Street along A – B. The 1933 photograph angle limits what can be seen and though it shows part of the entranceway to Glebe Yard, dimensions cannot be ascertained. Features referred to by the applicants are outside the area of the photograph. Another dated 1951 is purported to show the narrow width of the footpath through pig area and boundary wall. It is claimed that there is no field gate at point X to the private accommodation road. However the photograph does show the pedestrian gate but also that the entranceway (area hatched red on the relevant plan) from Queen Street is much wider than it. The field gate on the parish survey and recalled by long standing residents is outside the area of the photograph. Another photograph dated 1927 photograph from the same collection shows the area of the claimed alignment from point C into Glebe Yard from Station Road and there is no wear pattern existing.
- 1.4.56 Rights of Way Act, 1932. According to the applicants the Northlew Parish Council submitted a map of parish public rights of way for this legislation as noted in their minute book, of which the Council and Ordnance Survey have refused to supply a copy. It would have been used with the Farm Survey map to produce the National Grid map. They state that there was also a definitive statement dated 1932.
- 1.4.57 Response: The Act's purpose was to introduce the procedure enabling landowners to deposit maps with authorities of admitted rights of way, now known as Section 31(6) deposits. Local authorities were encouraged to draw up public rights of way registers but not many did and these also had no legal status, unlike the current Definitive Map and Statement. No register was drawn up in Devon. The County Council has no record of a submission from Northlew Parish Council of their public rights of way at that time.
- 1.4.58 MAF Farm Survey, 1941. The applicants claim that the map of the National Farm Survey shows the junction of the accommodation road onto Station Road with a handwritten arrow, which was required to depict the junction of the access road from the highway. The base map used for the survey was the 1906 2nd edition as attached, to enable the comparison of the handwritten arrow, to the benchmark printed on the map.
- 1.4.59 Response: The Survey uses the 2nd Edition Ordnance Survey mapping and the applicants' evidence relates to that rather than the survey itself, and there is no direct relevant evidence to comment on. The survey also does not relate to the area crossed by the definitive or claimed alignments of Northlew Footpath No. 3.
- 1.4.60 Northlew Parish Survey, 1950. According to the applicants, following the National Parks and Access to the Countryside Act 1949, Devon County Council sent to the Northlew Parish Council a set of maps on which the routes of alleged public rights of way had already been plotted and numbered. It is believed these routes were taken from the maps prepared after the 1932 Act. The maps included the Glebe to Kimber route on the alignment A – B, but the original hand drawn arrow onto Station Road is visible on the map indicating the lawful route origin at point C from the original map before the diversion. The applicants believe the Northlew Parish Council returned the map, after having illegally

diverted the footpath on the alignment through Clome Cottage via point X to Queen Street altered from its point of origin from Station Road at point C.

- 1.4.61 The grounds for believing the path to be public was that it was dedicated to the public by usage many years ago, which although a true statement of the Glebe Yard to Kimber Road path from Station Road, was obviously not true of the illegal diversion through Clome Cottage from Queen Street A – B.
- 1.4.62 They state that as the parish described Northlew Footpath No. 3 as running from Glebe Yard, this means that that owner could not have dedicated the land between the yard and Queen Street, (the entranceway hatched red on the relevant plan) claiming the route does not meet the dedication test at common law.
- 1.4.63 Response: Messers Friend and Sanders, councillors on the Northlew Parish Council in 1950 described the path as *“Footpath to Kimber Road. Starts at the village, on through the Glebe Yard and, road to field gate no. 1. Along by a fence to field gate no. 2. Gate needs repair. The original path continues along by a bank fence to a brook, but now impassable owing to growth from bank fence. No footbridge is available to cross the brook. Continue across field to field gate no. 3 at the terminus at Kimber Road”*. The grounds for believing the path was public were that it had been *“dedicated to the public by usage many years ago prior”*. The form is dated 6th November 1950. The line drawn by the Parish Council on their survey map ran from the bottom end of Queen Street, opposite the chapel generally westwards along the alignment A – B.
- 1.4.64 Also written on the survey form by the District Surveyor was written ‘private yard and private road, which relates to Glebe Yard and vehicular access to fields on the same alignment as the definitive footpath.
- 1.4.65 Parish records have great importance especially those relating to the Parish Survey from which the Definitive Map was compiled. A public body such as a parish council had powers only in relation to public responsibilities. It would only devote time and effort to a route if it and its parishioners believed the route was a public highway.
- 1.4.66 **Definitive Map and Statement, 1958.** The applicants claim that the statement says that it starts at the county road C.463, which is Station Road, not Queen Street as shown on the map. According to the applicants, the line on the Map runs north from the chapel, not west with the road of origin being Queen Street, not Station Road, and through Clome Cottage’s pig housing and boundary wall to access Glebe Yard, not as described in the Definitive Statement. They believe that the Map contradicts the Statement on three points: the direction, start point, and the first property it goes through.
- 1.4.67 Response: The statement describes the definitive alignment of Northlew Footpath No. 3 as running between County Road C.463 and Unclassified County Road. *“It starts at County road C.463 opposite the Chapel in Northlew [point A] and proceeds westwards through the Glebe Yard [to point B] and over a short length of private accommodation road (not repairable by the inhabitants at large) crossing fields and a brook (footbridge demolished) to join the Unclassified County road approximately 400 yards east of the entrance to Lake Farm.”* The map accurately reflects this alignment, as surveyed by the Parish Council.

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- 1.4.68 Mapping claimed by the applicants to be a 1950s version of the Definitive Map was actually produced by the County Council in the late 1980s and early 1990s. It can be dated by the base mapping and public rights of way line styles. It reflects the Definitive Map accurately.
- 1.4.69 **List of Streets, circa 1970s onwards.** The applicants claim their alignment C – B as public highway despite its acknowledged absence from the County Council’s List of Streets. They acknowledge that the “*Glebe’s road*” – Northlew Footpath No. 3 along the alignment A – B is however included.
- 1.4.70 Response: This is the County Council’s record of highways maintainable at public expense, though it does show footpath diversions and private roads where such have been queried. It shows the definitive alignment of Northlew Footpath No. 3, A – B, in relation to the Kimberlands development to the west of point B. Devon County Council has chosen not to include routes included on the Definitive Map on the List of Streets, as it is only a record of maintenance liability. This record is not conclusive and has no legal status.
- 1.4.71 **Land Charges Searches, 1978-91.** The applicants state that these do not show the claimed deviated route between Clome Cottage via point X and its shed, as a highway maintainable at public expense. The answer was not accurate from the maps in its possession. The evidence indicates that the Council has not maintained either route, A – B or C – B.
- 1.4.72 Response: The documents relating to the highways searches are not relevant evidence in the determination of the application. However, they show that the entranceway into Glebe Yard from Queen Street was not always claimed to be part of Clome Cottage property by the applicants (red hatched area on the relevant plan). Only in the searches dated 1991 and 2011 is the additional optional question regarding public rights of way answered, referring the searcher to the Definitive Map.
- 1.4.73 **Land Registry information, 1990s onwards.** The applicants claim this shows adverse possession of the addition alignment C – B. They claim that the sewer pipe for the Kimberlands development was laid through Glebe Yard along the alignment A – B by virtue of the unlawful diverted public right of way.
- 1.4.74 Response: The documents relating to the Land Registry are not relevant evidence in the determination of the application to vary part of Northlew Footpath No. 3.
- 1.4.75 **The Book of Northlew, 2002.** The applicants state that the book extract demonstrates the affiliations of former Parish Council members who were also Glebe Yard’s owners.
- 1.4.76 Response: The book by the local history group gives a detailed history of the village and parish. It was and still is common for local landowners to be parish council members and represent their communities. It is recalled that long standing residents Mr and Mrs Bater “*ran a substantial haulage business from their yard [Glebe Yard/Bater’s Yard] in Queen Street*”, from the 1940s using the entranceway beside Clome Cottage, which is described as being adjacent to the yard.

- 1.4.77 **Ordnance Survey error, 2009.** The applicants cannot see how the Ordnance Survey and the Definitive Map can be allowed to show different routes, and how Devon County Council can permit houses to be built on the site of the legal footpath origin.
- 1.4.78 **Response:** The Ordnance Survey showed the definitive alignment of Northlew footpath No. 3 incorrectly. However, they have a responsibility to accurately depict the public rights of way information supplied by Devon County Council from its Definitive Map. The applicants discovered the error in June 2009 and brought the issue to the Survey's attention. The Survey admitted their mapping showed a different alignment, C – B, but could not explain why this was. As they had no legal order from the County Council to change the alignment, they had to amend their mapping to match the Definitive Map A – B, and correct the error.
- 1.4.79 The Ordnance Survey error is not direct evidence relevant to the determination of the application.
- 1.4.80 **Patons' correspondence, 2009 onwards.** The applicants have submitted a considerable amount of correspondence, which reiterates their views on the application.
- 1.4.81 **Response:** There is no relevant or direct evidence pertinent to the determination of the application to vary part of Northlew Footpath No. 3, and whether the definitive alignment A – B was recorded in error and whether public rights exist on the claimed alignment from Station Road C – B.
- 1.4.82 **Planning documentation, 2009 onwards.** The applicants claim that the present owner of Glebe Yard's planning applications to build houses on the claimed stopped up but still remaining lawful footpath/highway from Station Road would be an illegal act. Proposals for the development of the land affecting the claimed illegally diverted public right of way give rise to the urgent need for the legal modification of the footpath before the decision on the planning application can be taken.
- 1.4.83 **Response:** These documents occasionally refer to the established definitive footpath (including A – B) across the old depot site and the existing private vehicular access from Queen Street into the old depot site and the band hut and fields beyond. However this is not direct relevant evidence pertinent to the determination of the application.
- 1.4.84 **Freedom of Information request responses, 2009.** The applicants submitted a considerable list of questions with responses.
- 1.4.85 **Response:** This is not relevant evidence pertinent to the determination of the application to vary part of Northlew Footpath No. 3, and whether the definitive alignment A – B is an error and whether public rights exist on the claimed alignment from Station Road C – B.
- 1.4.86 **User evidence.** The applicants rely on their interpretation of the 1950 Parish Survey form to demonstrate their user evidence of the claimed addition alignment C – B. They also contend that the use of the definitive alignment of Northlew Footpath No. 3 between points A – B since circa 1950 is not 'as of right' since it is based on an error.

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- 1.4.87 Response: The applicants have not produced any actual user evidence from members of the public or acceptance of their claimed addition alignment C – B required to demonstrate presumed dedication.

1.5 Other Relevant Evidence discovered by the County Council

- 1.5.1 This is evidence discovered by the Council in addition to that submitted by the applicants which is relevant to the determination of the application.
- 1.5.2 Northlew Waywarden Account Books, 1823-36 & Vestry minutes, 1842-65. The Vestry were the local highway authority of the time and organised waywardens to maintain its parish highways. There are entries for East Kimber Moor Lane/Road leading to Northlew town, the former name for what is now partly known as Station Road. There are no references regarding Queen Street or Back Street as it was also known, demonstrating that it has not always been a highway maintainable at public expense.
- 1.5.3 Handover Roads Records, circa 1947 onwards. These records relate to vehicular highways maintainable at public expense handed back to the County Council in 1947 after the delegation agreements with the Urban and Rural District Councils was ended. They were used as a working document until the 1970s in conjunction with the UCR Mileage Register. No route in the area of Glebe Yard is included. Queen Street and Station Road are included.
- 1.5.4 UCR Mileage Register, 1950 -70s. This register was used with the Handover Roads Records after the County Council took back highways management from the Rural District Councils in 1947. In July 1950 Queen Street in Northlew is added to the register, from which time it was considered adopted and to be a highway maintainable at public expense.
- 1.5.5 Northlew Parish Council Minutes, 1949 onwards. At the meeting on 1st June 1950, the Clerk presented the blank survey maps of public rights of way received from Devon County Council, and it was resolved to call a parish meeting on the matter.
- 1.5.6 A meeting was duly held on 5th September 1950 to discuss the surveying of the parish's rights of way, but as it was harvest time, turnout was low and the meeting was adjourned. It reconvened on 15th September 1950 with a committee formed to carry out the survey, with councillors pairing up to inspect the rights of way in the parish. Messers Sanders and Friend were responsible for path 3.
- 1.5.7 At the Parish Council meeting on the 2nd October 1950 the committee gave their survey report which was approved, and detailed the process by which the report had been achieved, with a different pairing of councillors transferring the handwritten surveys onto the prescribed forms and another drawing up the maps from notes after surveying the routes.
- 1.5.8 On the 6th November 1950 the survey committee met again and the clerk presented the maps numbered and marked for inspection. Footpath No. 3 was registered among 22 routes.
- 1.5.9 On the 15th November 1957 correspondence from Devon County Council asked where the 'draft map and statement' could be kept for inspection by the public. It was decided that they would be kept at the Chairman's house.
- 1.5.10 Further correspondence was received from the County Council regarding further amendments to the 'draft map' until the Definitive Map compilation process was almost

complete in 1967. Footpath No. 3 was not objected to at either the draft, modification or provisional stages, or thought to be on an incorrect alignment.

- 1.5.11 Definitive Map compilation records, 1950-69. The records relating to the compilation of the original Definitive Map show the legal process in detail, from the guidance followed and the frequent communication between the County, Rural/Urban District and Parish Councils. They demonstrate the awareness of landowners and the public by the objections to inclusions and omissions from the draft, modification, and provisional map stages. There were issues with other public rights of way in Northlew parish but not with Footpath No. 3.
- 1.5.12 Route photographs, 1980s onwards. Site photographs demonstrate that the Definitive Map and Statement are accurate through the location of features. They show that the definitive alignment has a reasonable surface and not constantly flooded, though the surface has deteriorated since the yard has not been in constant use. The misleading and obstructive notices erected by the applicants on their garden fence adjacent to the definitive alignment in 2010 can be seen in situ, along with the result of the enforcement action. The gate post for the cottage's former pedestrian gate is still in place and by its close proximity to the cottage it would have been unlikely to have been used by the public on the footpath, besides being off the definitive alignment. The photographs also demonstrate the dogleg of the definitive footpath at its eastern end along A – X – B and how the end of the footpath where it meets Station Road is opposite the former chapel at point A.
- 1.5.13 The comparison of the 1927 Chapman photograph with that taken in 2014 from almost the same location show the same hedge bank in which it is claimed both the private vehicular and public footpath access ran into Glebe Yard from point C. There is no evidence of such access.

1.6 Landowner Evidence

- 1.6.1 There are 2 landowners affected by the Schedule 14 application: Mr and Mrs Paton who are the applicants, and Mr and Mrs Todd.
- 1.6.2 Mr and Mrs Todd. The Todds' have owned Glebe Yard since 2005, and they object to the application to alter the alignment of Northlew Footpath No. 3. They own the land west of the red hatched entranceway area shown on the relevant plan.
- 1.6.3 Mr and Mrs Paton. A landowner evidence form was received from the applicants. Mr and Mrs Paton state they have owned land crossed by Northlew Footpath No. 3 for 33 years though not formally until 2013 (red hatched area on the relevant plan). They have only believed the definitive alignment of Footpath No. 3 A – B not to be public since 2009. They have not made a Section 31(6) deposit. They rely on all their previous evidence and correspondence.
- 1.6.4 They have seen people weekly on foot and have advised people of their belief of the incorrect definitive footpath alignment A – B. Users with vehicles have also been stopped by the Patons though these are private access rights and do not relate to the public footpath.
- 1.6.5 Mr and Mrs Paton erected notices in 2010 stating "*No Trespassing. This is not a public right of way*" on the definitive footpath alignment, east of point X. However, these were removed after the Public Rights of Way Warden took enforcement action against the misleading and obstructive notices on a public right of way under Section 143 of the

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Highways Act 1980. The only gate they acknowledged is a small pedestrian gate that used to be adjacent to Clome Cottage.

- 1.6.6 What the Patons often refer to as the 1950 definitive statement/submission is actually the Parish Council survey submission for the Definitive Map. It is not definitive or conclusive, and does not have any legal status, although it shows the definitive alignment and is good evidence of what it contains. They also use the term 'parcel 342' which is misleading as both Northlew Footpath No. 3, X – B, and the claimed alignment, C – B, pass over this parcel area. The description of the footpath passing 'through a hedged track' is also incorrect. It is believed that this is a reference to the Ordnance Survey 25" mapping which shows a double dashed track across Glebe Yard, which was the Survey's method of distinguishing it from the surrounding area.
- 1.6.7 They claim that as the parish described Northlew Footpath No. 3 as running from Glebe Yard, this means that that owner could not have dedicated the land between the yard and Queen Street – the entranceway (red hatched area). They also believe that it is clear from the parish survey that only Glebe land was intended to be dedicated.
- 1.6.8 They state that the definitive alignment A – B has only been available for use from the 1950s by way of an error on the Definitive Map and that subsequent use has not been 'as of right'. They believe that there were issues with the capacity for dedication at the time the Definitive Map was being compiled in the 1950s.

1.7 Rebuttal Evidence

- 1.7.1 Northlew Parish Council. The Council objects to the Schedule 14 application proposal to alter part of the definitive alignment of Northlew Footpath No. 3.
- 1.7.2 In correspondence with the applicants in 2009, the Parish Council set out its stance against the application. They consulted older members of the community aged between 75 and 91 years for their memories of Glebe Yard and its access; some could recall the area back to the 1930s. The residents agreed that there had been no wall adjacent to Clome Cottage, but rather 2 gates, one small and another large farm type leading from Queen Street at point X into Glebe Yard and beyond. There was no recollection of a footpath from Station Road along the claimed alignment C – B.
- 1.7.3 Northlew Parish Council user statements, 2009. Following contact from the applicants, a member of the Parish Council contacted 7 long standing local residents for their memories of Glebe Yard and the footpath, making 5 statements of what they recalled.
- 1.7.4 Mr and Mrs Adams' knowledge dated back to the 1940s. According to their recollections, the entranceway into Glebe Yard had always been from Queen Street and there had never been a wall at the claimed location, point X. There was no entrance into the yard from Station Road at point C.
- 1.7.5 Mr and Mrs Gratton's knowledge dated back to the 1930s. According to their recollections, there were always 2 gates at the Queen Street entrance into Glebe Yard, one small one and a field gate at point X. They did not recall there ever being a wall at that location. There was no entrance from Station Road at point C.
- 1.7.6 Mr Luxton's knowledge dated back to the 1930s. He used the definitive alignment of the footpath daily to go to school. There was a 7 foot gate at the Queen Street entrance into Glebe Yard at point X and adjacent to it was a small gate which belonged to Clome

Cottage. He did not recall an entrance from Station Road at point C, but rather a bullock shed and pond which he used to skate on.

- 1.7.7 Mr Spry's knowledge dated back to the 1940s. He had no recollection on any entrance from Station Road into the yard point C, but did recall skating on the pond at that location. There were 2 gates at the entrance into the yard from Queen Street at point X, a little one, then a post, and then a larger gate. There was never a wall there.

1.8 Discussion

- 1.8.1 The applicants have submitted a large amount of evidence and want this along with all their correspondence to be considered in support of their Schedule 14 application. However, the correspondence is not evidence relevant to the consideration of the application. Additionally, some of the evidence itself such as planning documentation and land charges searches is not relevant; evidence dated after the 14th September 1967 is not relevant in relation to the deletion part of the application, if, as the applicants claim an error occurred in the recording of Northlew Footpath No. 3, as this is the date when the Definitive Map for the Okehampton district became definitive. It is still however relevant to the addition part of the application.
- 1.8.2 It is the applicants' responsibility to carry the evidential burden and demonstrate that on the balance of probabilities an error occurred in the recording of Northlew Footpath No. 3 on the Definitive Map. In considering the evidence relevant to the application regarding Northlew Footpath No. 3, Section 32 of Highways Act 1980 must be taken into account, which permits the consideration of facts regarding the source of evidence, such as its creation, purpose and production procedures, including public participation and consultation.
- 1.8.3 The applicants believe that the mapping demonstrates that their claimed alignment C – B is the historic alignment of Northlew Footpath No. 3, not the current definitive alignment A – B. However, the Ordnance Survey mapping carries the disclaimer that it is not evidence of rights of way, while the Northlew Tithe Map shows a pond on the applicants claimed alignment C – B. The Greenwood's and Bartholomew's Maps are also too small scale to show either of the application alignments or even Queen Street, while the Finance Act records partly exclude the definitive alignment A – X and totally include the claimed alignment C – B, with no deduction for any right of way. MAF Farm Survey documents included in the application do not relate to the area of the disputed and claimed alignments.
- 1.8.4 The Northlew Manor sale and other deeds are concerned with private rather than public rights, with such information being incidental to the documents' original purposes. None contain information regarding either the definitive or claimed alignments, and consequently they shed little light on the application alignments.
- 1.8.5 Aerial photography from 1912 onwards shows that the main access into Glebe Yard was from Queen Street along A – B and not Station Road opposite Elmfield along C – B as claimed by the applicants, with no characteristic wear patterns or access point on the latter alignment. Postcard photographs from 1927 also demonstrate this.
- 1.8.6 No records were compiled by Northlew Parish Council or submitted to Devon County Council under the 1932 Rights of Way Act.
- 1.8.7 Records relating to Northlew Parish Council and Devon County Council from the compilation of the Definitive Map during the 1950s and 1960s demonstrate the extensive nature of the legislation and guidance. They also show considerable

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thoroughness and diligence by both public authorities in relation to this task. There is no evidence that any unlawful diversion of the footpath took place.

- 1.8.8 The applicants also contend that the use of the definitive alignment of Northlew Footpath No. 3 along A – B since circa 1950 is not ‘as of right’. They state that as the parish described Northlew Footpath No. 3 as running from Glebe Yard, this means that that owner could not have dedicated the land between the yard and Queen Street, claiming the route does not meet the dedication test at common law. The Parish Survey dated 1950 however demonstrates that the definitive alignment was used well prior to 16th December 1949 as ‘*dedicated to the public by usage many years ago*’ and therefore is a highway maintainable at public expense, along with the recollections of long standing local residents gathered by the Parish Council.
- 1.8.9 Where there is satisfactory evidence of public user such as the various Northlew Parish Council records, Parish Survey, and user statements, which demonstrates public use ‘*as of right*’, dedication can be inferred even though there may be little or no evidence to show who the owner was at the time of the alleged dedication, or that they had the capacity to dedicate. The onus and burden of proof to prove otherwise rests on the applicants, who have not met the legal requirements in relation to the definitive (A – B) or claimed (C – B) alignments of Northlew Footpath No. 3 as per their application.
- 1.8.10 Parish records especially those relating to the compilation of the Definitive Map in the 1950s are of great importance and evidential weight. No evidence has been produced to demonstrate otherwise, and given the considerable time period that has elapsed since, the law would apply the presumption of regularity; that everything was presumed to have been done which should have been done. Living memory at that time would have gone back into the late 19th century.
- 1.8.11 Vestry and later highway authority records demonstrate that until July 1950 Queen Street was not a highway maintainable at public expense. The Northlew Parish Council minutes show that during the process of the compilation of the Definitive Map, the Parish Council was not aware that Queen Street had been adopted by the County Council as a county road, and so recorded Northlew Footpath No. 3 as starting from Station Road opposite the chapel at point A and running for a short length across the southern end of Queen Street before heading through Glebe Yard. Therefore the Definitive Map and Statement is not incorrect but accurately reflects the alignment of Northlew Footpath No. 3 recorded in 1950.
- 1.8.12 The Parish Council minutes also explain the difference between the number of gates on the Parish Survey form and map at point X, as two different sets of councillors completed the maps and the forms using notes taken on the survey. The difference does not lessen the weight of this evidence. The applicants often refer to the Parish Survey form as the definitive statement, however this is incorrect. It has no legal status unlike the Definitive Map and Statement, but is good evidence of what it contains. As the minutes are a public record they consequently carry significant evidential weight. The Council was a public body representing its community and would not have admitted to or spent money on things which were not a public responsibility.
- 1.8.13 There is no evidence in any of the records that an error or unlawful diversion occurred in the recording of Northlew Footpath No. 3 on the Definitive Map, whose compilation was subject to extensive public consultations throughout the process. This is supported by the user statements taken by Northlew Parish Council with living memory and knowledge of the footpath and the area dating back to the 1930s, and the local history group, along with the Definitive Map and Parish Council records. There was no access into Glebe Yard from point C on Station Road, and a pond and animal shed

existed on the claimed alignment C – B. Prior to 1950 Northlew Footpath No. 3 ran from Station Road opposite the chapel at point A, across the bottom end of Queen Street and into Glebe Yard via the large field gate at point X, across the yard to point B and beyond.

- 1.8.14 The applicants have not produced any actual user evidence of their claimed alignment C – B at any time, nor objections regarding any inaccuracy regarding the definitive footpath's alignment A – B since its inclusion on the 'draft' Definitive Map published on 24th January 1958. They rely on their interpretation on the 1950 Parish Survey form for their evidence of use, which is insufficient and also a misinterpretation of the records.
- 1.8.15 Land Charges information demonstrates that the applicants have not always claimed the entranceway into Glebe Yard as part of their property and have only done so since about 1994, but shows nothing relevant to the determination of the application. This also applies to the Land Registry records.
- 1.8.16 While the Ordnance Survey error is unfortunate, all such mapping carries their standard disclaimer that it is not evidence of rights of way and demonstrates their duty to accurately reflect Devon's Definitive Map.
- 1.8.17 The applicants' correspondence, planning documentation and Freedom of Information request responses are not evidence and therefore are not relevant to the determination of the application. The applicants' opinions of people involved in the compilation process of the Definitive Map in the 1950s is not evidence and therefore not relevant to the determination of the application.
- 1.8.18 The applicants have lived adjacent to the definitive alignment of Northlew Footpath No. 3 along A – B for 33 years but have not disputed its alignment until 2009. Prior to that time, they had reported obstructions on the definitive footpath alignment by the current yard owners. The entranceway in Glebe Yard has only been registered to them since 2013, though it was found in 2102 by a High Court judge in the Land Registry dispute that no-one owned the entranceway.
- 1.8.19 Since 2009 the applicants have challenged the public users on the definitive alignment of Northlew Footpath No. 3, A – B, besides other parties who have private access rights along a similar alignment to the definitive footpath. They also erected notices in 2010 stating "no trespassing no public right of way" on their garden fence adjacent to Footpath No. 3. Such notices are considered obstructive and misleading under the Highways Act 1980. Consequently enforcement action was taken by the Public Rights of Way Warden.
- 1.8.20 The only gate they acknowledge is the former pedestrian gate into the yard belonging to the cottage; however this is rebutted by the Parish Council who object to the application and their records, as well as the recollections of long standing residents with memory dating back to the 1930s that there was also a field gate adjacent to it at point X providing the main access into the yard from Queen Street along the A – B alignment, seen on the aerial photography. There was no cob wall blocking the definitive alignment as claimed.
- 1.8.21 Mr and Mrs Todd the owners of Glebe Yard object to the Schedule 14 application. They accept the definitive alignment of Northlew Footpath No. 3 A – B.
- 1.8.22 The Definitive Map Review was open in the parish during 1993-96 and was the subject of much local interest and debate, lasting until 2008. There were a large number of

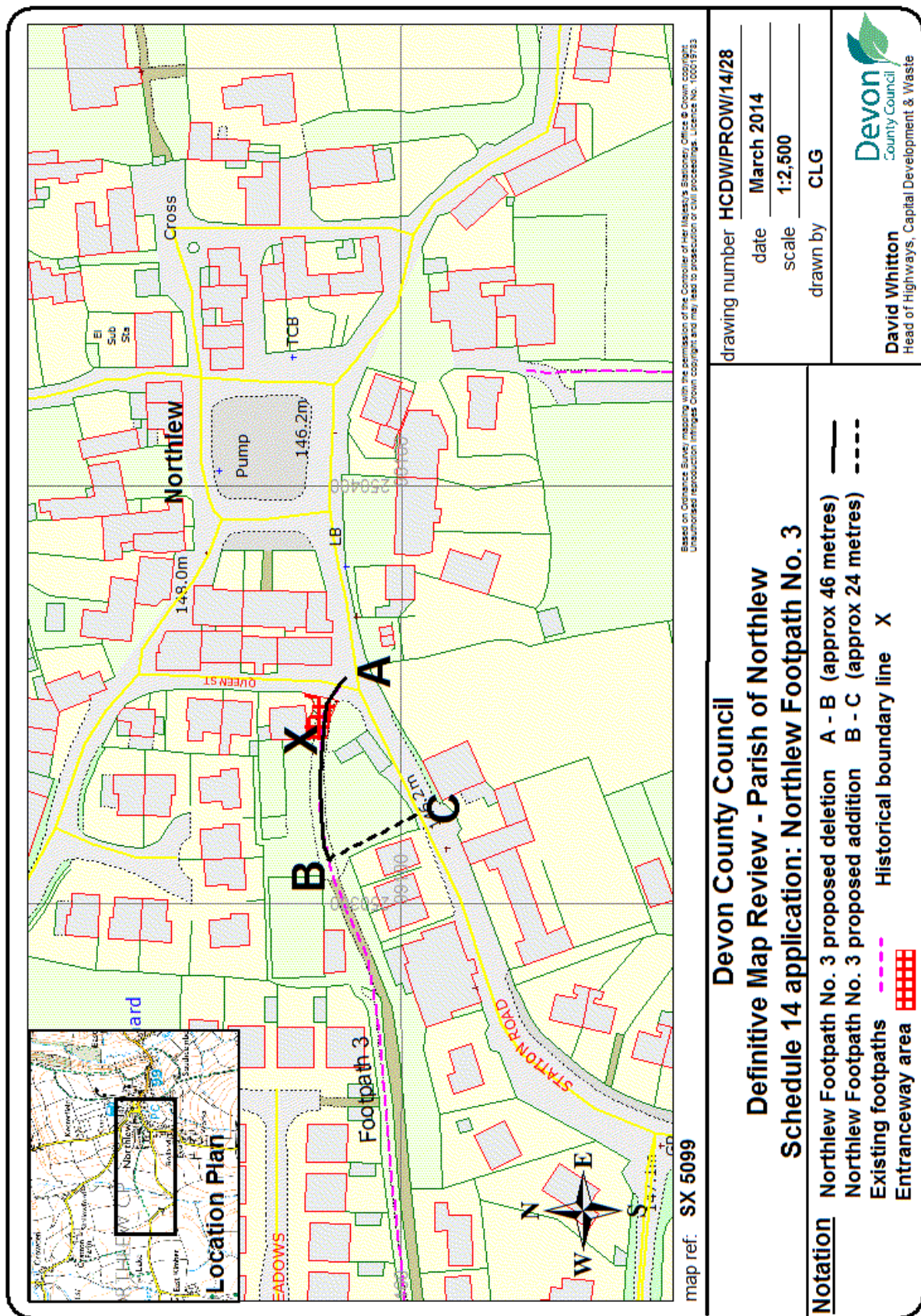
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proposals in the Review but none related to Footpath No. 3, except a diversion west of point B to enable the Kimberlands development to take place. It is unlikely that an error would have existed for over 60 years without being discovered, or that it would not have been discovered during the Definitive Map Review of the parish.

- 1.8.23 Additionally, the same evidence submitted in support of the Schedule 14 application and subsequently, was included in the Section 56 Highways Act 1980 court action started by the applicants in 2011. This evidence has been considered by Exeter Crown Court and the High Court in Bristol. Consequently, its analysis and interpretation are now enshrined in case law, with the judgement in the County Council's favour.

1.9 Conclusion

- 1.9.1 In *Trevelyan v. Secretary of State for the Environment, Transport and the Regions* [2001], Lord Phillips, M.R., stated that, *"If there were no evidence which made it reasonably arguable that such a right existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed."* In this case the method by which the definitive alignment of Northlew Footpath No. 3 was added to the Map is clearly documented and the proper procedures shown to have been followed. There is no evidence that demonstrates the claimed illegal diversion.
- 1.9.2 He further states that, *"the standard of proof required to justify a finding that no right of way exists is no more than a balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists."*
- 1.9.3 As set out in Circular 1/09 it is for the applicants who contend that there is no right of way, to prove that the Definitive Map requires amendment due to the discovery of evidence, which when considered with all other relevant evidence clearly shows that the part of Northlew Footpath No. 3 between points A – B should be deleted. It is not considered that the applicants have provided new, sufficient or cogent evidence, considered in line with the Planning Inspectorate's Consistency Guidelines, to tip that balance, according to the advice in the Department of the Environment, Food and Rural Affairs Circular 1/09, especially since the Definitive Map Review has been completed for Northlew parish.
- 1.9.4 By virtue of the same evidence and the applicants' failure to meet the tests for deleting part of Northlew Footpath No. 3 based on that evidence, they also fail to prove that "a right of way subsists or is reasonably alleged to subsist between points B – C. It is *"unlikely that a situation would have lain undiscovered over...many decades without having been previously brought to light"* as set out in Circular 1/09.
- 1.9.5 The evidence for the Schedule 14 application is the same as that whose analysis and interpretation is now set in case law.**
- 1.9.6 It is, therefore, recommended that no Modification Order be made in relation to the Schedule 14 application relating to the alignment of Northlew Footpath No. 3 on the Definitive Map and Statement.



HIW/20/51

Public Rights of Way Committee
26 November 2020

Schedule 14 Application Addition of a footpath at Kipling Tors

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 along the bottom of Kipling Tors between points A – B – C – D, as shown on drawing number HCW/PROW/16/16.

1. Introduction

This report examines a Schedule 14 application made in 2016 to add a footpath running between two parts of Northam Footpath No. 26 between points A – B – C – D. The application was received following the completion of the Parish Review in Northam and was therefore deferred pending completion of the parish-by-parish review in the rest of the district, in line with County Council policy. However, in April 2017 the applicant applied to the Secretary of State requesting that the County Council be directed to determine the application. In September 2017 the Secretary of State granted that request and directed Devon County Council to determine the application.

2. Background

The parish review was carried out between 2001 and 2010. No proposal was made in relation to the application route.

3. Proposal

Please refer to the appendix to this report.

4. Consultations

A full public consultation was carried out between November 2019 and January 2020.

The responses were:

County Councillor Eastman	–	no comment
Torridge District Council	–	accept the proposal
Northam Town Council	–	no comment
British Horse Society	–	no comment
Byways and Bridleways Trust	–	no comment

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Country Landowners' Association	–	no comment
Devon Green Lanes Group	–	no comment
National Farmers' Union	–	no comment
Open Spaces Society	–	no comment
Ramblers	–	no comment
Trail Riders' Fellowship	–	no comment

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

5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

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

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

9. Conclusion

It is recommended that a Modification Order be made to modify the Definitive Map and Statement in respect of the Schedule 14 application, by adding a footpath between points A – B – C – D, as shown on drawing number HIW/PROW/16/16.

10. Reasons for Recommendations

To undertake the County Council's statutory duty under the Wildlife and Countryside Act 1981 to determine the Schedule 14 application and to keep the Definitive Map and Statement under continuous review.

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Northam

Local Local Government Act 1972 - List of Background Papers

Contact for enquiries: Caroline Gatrell

Telephone No: 01392 383240

Background Paper	Date	File Ref.
Correspondence file: Northam Sch 14 appn Kipling Tors	2016-2020	CG/DMR/NTM KIP

cg041120pra
sc/cr/schedule 14 Addition of a footpath at Kipling Tors
03 161120

A. Basis of Claim

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

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

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

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

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

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

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.

Schedule 14 application to add a footpath connecting two parts of Northam Footpath No. 26 along the bottom of Kipling Tors, Westward Ho! between points A – B – C – D, as shown on plan HIW/PROW/16/16.

Recommendation: That a Modification Order be made in respect of the Schedule 14 application, to modify the Definitive Map and Statement by adding a footpath between points A – B – C – D at Kipling Tors, as shown on drawing no. HIW/PROW/16/16.

1. Background

- 1.1 In 2016, Mr Barnes of Bideford made a Schedule 14 application to record the claimed route in Northam parish, with some documentary evidence and 11 user evidence forms submitted in support of the application.
- 1.2 The parish of Northam was the subject of the parish by parish review between 2001 and 2010, when no claim was made for the application route. As the application was received after the parish review had been completed, it was kept on file, to be determined once the County was completed, in line with Devon County Council policy, as set out in the Rights of Way Improvement Plan.
- 1.3 The applicant appealed to the Secretary of State in April 2017 under the provisions of Schedule 14 of the Wildlife and Countryside Act 1981, against the County Council's non-determination within 12 months of receipt.
- 1.4 In September 2017 the County Council was directed by the Planning Inspectorate to determine the application within three years. Consequently, an informal consultation was carried out between November 2019 and January 2020.

2. Description of the Route

- 2.1 The claimed addition starts at its junction with Footpath No. 26 at point A and proceeds westwards along the bottom of Kipling Tors via points B and C to meet Footpath No. 26 at point D approximately 90 metres south of the junction with Footpath No. 25 at Seafeld House.

3. Application Evidence

- 3.1 The applicant has submitted several historic maps and 11 user evidence forms in support of their application, which are included in full in the background papers to this report.
- 3.2 Ordnance Survey mapping, 1897-1967
 - 3.2.1 The applicant submitted extracts of Ordnance Survey mapping with the application to support the claim. The Ordnance Survey mapping is discussed in further detail at paragraph 4.2.

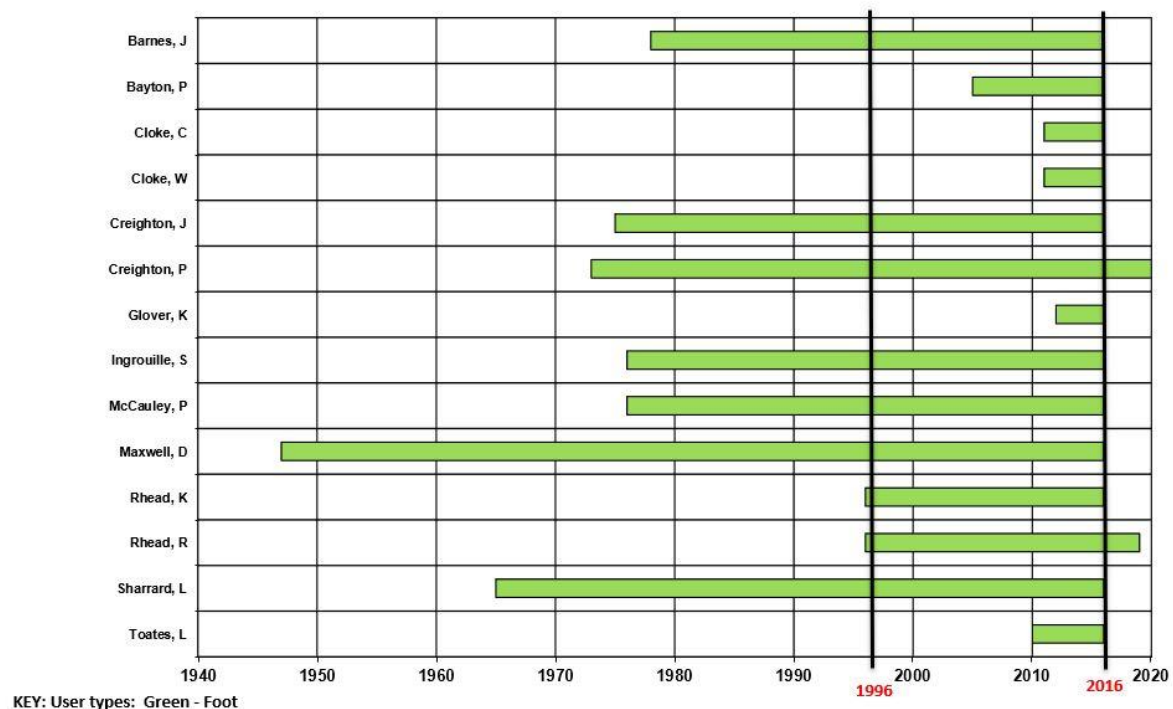
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3.3 User evidence.

- 3.3.1 The applicant submitted 11 user evidence forms in support of the application dating from the late 1940s to 2016.
- 3.3.2 Mrs J Barnes of Northam has used the application route 3-4 times a year since 1978 as part of a walk on the Tors. She believes it was an old road in the 19th century. She recalls a rotted gate and a footpath sign. Mrs Barnes has never been challenged or turned back.
- 3.3.3 Mr Bayton of Westward Ho! has used the route since 2005 without hindrance, when walking between Ocean Park to Seafield House. He recalls a gate which was always open, and that the path is well used.
- 3.3.4 Mrs Cloke of Westward Ho! has used the application route since 2011 on a weekly basis, walking her dog. She states that it is regularly maintained and well used. She recalls a large gate which was always left open, but never saw any notices or obstructions.
- 3.3.5 Mr Cloke of Westward Ho! has used the route since 2011 on a weekly basis walking his dog. He states that it is regularly maintained and well used. He recalls a large gate, possibly at point C, which was always left open, but never saw any notices or obstructions. He has never been challenged or turned back.
- 3.3.6 Mrs Creighton of Westward Ho! has used the application route between 5-100 times a year since 1975 as part of a walk to Kipling Tors and the Coast Path with her dogs. She has always known the path to be well used by locals and visitors. She recalls a gate at the Seafield end which has never been locked. It has become overgrown when there was a dispute as to who was liable for its maintenance. It is now regularly cut. She submitted an additional form detailing her use up until 2020.
- 3.3.7 Mrs Ingrouille of Westward Ho! has used the route since 1976 about 15 times a year as part of a walk on Kipling Tors. She recalls a stile at the Braddicks end and that there has been an obstruction of rubble and vehicles, (though this appears to be on Footpath No. 26 near Stanwell Hill).
- 3.3.8 Mr McCauley of Westward Ho! has used the route since 1976 on a monthly basis as part of a walk between Green Cliffs and Seafield House. He has never been challenged or turned back.
- 3.3.9 Mr Maxwell of Westward Ho! has used the application route since the late 1940s about 5 times a year walking between Stanwell Hill and Seafield. He states that it is well used and maintained. He has never been challenged or turned back.
- 3.3.10 Ms K. Rhead of Northam has used the route since 1996 about 3 times a year as part of a walk between home and Pierhouse, and believes it to be an old road. She recalls that it is well maintained by Torridge District Council. She

has never been challenged or turned back and does not recall the route ever being obstructed.

- 3.3.11 Mr Sharrard of Westward Ho! has used the application route frequently since 1965 walking his dog around Kipling Tors. He always thought it had the same status as the other paths on the Tors.
- 3.3.12 Mrs Toates of Westward Ho! has used the route since 2010 walking her dog between the Bath Hotel Road and Seafield, several times a week. She recalls a gate which was always open, but no other obstructions or notices. She has met numerous other dog walkers and other people using the path. She submitted an additional form detailing her use up until 2020.
- 3.3.13 Three additional user evidence forms were received in response to the informal consultation and are summarised below.
- 3.3.14 Mrs P Creighton of Westward Ho! has used the route on an almost weekly since 1973. She recalls a gate which was open and in disrepair towards to the Seafield end. She has never been challenged or turned back, and does not recall the route ever being obstructed.
- 3.3.15 Mrs Glover of Northam has used the proposal route since 2012 about 4 times a year between home and Kipling Tors. She has never been challenged or turned back, and does not recall the route ever being obstructed.
- 3.3.16 Ms R. Rhead of Northam has used the route about 6 times every year. She has never been challenged or turned back, and does not recall the route ever being obstructed.



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Other Relevant Evidence discovered by the County Council

3.4 Greenwood's Map, 1827

- 3.4.1 These well-made maps were produced using surveyors and a triangulation system and are considered to be reasonably accurate. The proposal route is shown as a crossroad. Rights of way are generally not shown as the map is too small scale.
- 3.4.2 A route is shown on a similar alignment to the application route between points A – B – C and its continuation Footpath No. 26 to Stanwell Hill.

3.5 Ordnance Survey mapping, 1809 onwards

- 3.5.1 Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: *'The representation on this map of a road, track or footpath is no evidence of a right of way'*.
- 3.5.2 The 1809 small scale mapping shows a route on a similar alignment to the application route between points A – B – C and its continuation Footpath No. 26 to Stanwell Hill.
- 3.5.3 The 1st Edition 25" mapping of 1888 shows the application route as a continuation of Footpath No. 26 from Stanwell Hill, a double dashed track on the alignment A – B – C, with a continuation onto meet Footpath No. 25 west of Seafield above the raised beach. At that time, there was no footpath shown on the alignment of Footpath No. 26 from point C up to the top of Kipling Tors and to Hillside, formerly known as Orme Lodge.
- 3.5.4 The 2nd Edition 25" mapping of 1904 shows the application route as a continuation of Footpath No. 26 from Stanwell Hill, a double dashed track on the alignment A – B – C, but the continuation westwards was cut off by the construction of the Bideford, Westward Ho! and Appledore Railway, and appearing no longer to connect with Footpath No. 25 west of Seafield.
- 3.5.5 The Post War A Edition 25" mapping of 1961 shows the application route as a continuation of Footpath No. 26 from Stanwell Hill, a double dashed track on the alignment A – B – C, with no physical continuation shown west of point C, but with a continuation now northwards along the alignment of Footpath No. 26 to meet Footpath No. 25 opposite Seafield.
- 3.5.6 The 1930s small scale mapping shows a route on a similar alignment to the application route A – B – C and its continuation of Footpath No. 26 to Stanwell Hill, and up to the top of Kipling Tors to Hillside (formerly Orme Lodge).

3.6. Northam Tithe Map and Apportionment, 1838-9

- 3.6.1 Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, limiting the possibility of errors. Their immediate purpose was to record the official record of boundaries of all tithe areas. Public roads were not titheable and were sometimes coloured, indicating carriageways or driftways. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over a route shown. Such information was incidental and therefore is not good evidence of such. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not numbered are usually included under the general heading of *'public roads and waste'*.
- 3.6.2 The Northam tithe map is a second class map, surveyed at a scale of 3 chains to 1" by Mr B Herman of Northam, who did a number of tithe surveys in Devon. Being second class, it is considered only to be a legal and accurate record of tithe matters. Land that was not subject to tithes was generally accepted to be either public, glebe or crown estates. In many cases public roads are coloured sienna as prescribed by Lieutenant Dawson, a military surveyor with the Ordnance Survey, to the Tithe Commissioners. The original document is held at the National Archives, with copies for the parish and diocese held locally.
- 3.6.3 The application route between points A – B is shown, and coloured sienna. The remainder of the route between points B – C – D is not shown.

3.7 British Newspaper Archive, 1824 onwards

- 3.7.1 This is a digital database of scans of newspapers across the country. It includes local newspapers such as the Exeter Flying Post and the North Devon Journal, except for the years 1825-6 which have not survived. The newspapers included reports on the proceedings of the Magistrates Petty Sessions, Quarter Sessions and Assizes, along with those of the various district Highway Boards and Vestry's.
- 3.7.2 7th September 1927. Western Morning News. *'In honour of Mr Rudyard Kipling, who used to frequent them when he was a student at the United Services College, the cliff walks on Western Hill, Westward Ho! are to be known as Kipling Tors'.*
- 3.7.3 15th October 1937. Western Morning News. *'It was stated that General RO Paterson had reported that the Kipling Memorial Council were prepared to make a grant towards the cost of acquiring Kipling Tors, Westward Ho! as a local memorial to the late Mr Rudyard Kipling. The Financial Committee recommended the Council should guarantee to support the proposal to acquire the Tors with attendant expense to the extent of £250 [£11,250 in 2017], the Northam and Westward Ho! Chamber of Commerce being asked to associate with the Council in the provision of this sum. This was decided. General Paterson said the proposal was that the Tors should eventually be*

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taken over by the National Trust, and if this were done that body would undertake the whole of the future maintenance after the Tors were fenced’.

- 3.7.4 21st October 1937. North Devon Journal. *‘The decision of Northam Urban District Council to borrow £225 [£10,125 in 2017] as the Council’s contribution to the purchase of Kipling Tors was referred to at Thursday’s meeting of that authority. Mr F Wilkey...said he was in no way opposed to a memorial to Rudyard Kipling, but his objection was he understood the portion purchased by the Council was only the top part of the Tors. He would guarantee 2/3 of the public did not know the lower part was not included in the purchase. Mr Fulford said the Committee were anxious to purchase the whole, but he pointed out the question of cost, and it was unanimously decided half a loaf was better than none. The Chairman (the Rev. AE Green) said no discussion would alter it now, but Mr A Reed said what Mr Wilkey had pointed out was news to him – he thought they had all the Tors’.*
- 3.7.5 26th March 1938. Western Morning News & Daily Gazette. *‘...The Tors at Westward Ho! where Kipling used to ramble in his younger days, had been purchased for a memorial...’.*
- 3.7.6 31st March 1938. North Devon Journal. *‘In his report to the annual meeting of Northam and Westward Ho! Chamber of Commerce...the...Secretary...said the Chamber was working in conjunction with Northam Urban Council and the Kipling Memorial Committee at Windsor in the provision of a local Kipling memorial. The Tors at Westward Ho! where Kipling used to ramble in his younger days, had been purchased for a memorial, and they hoped it would be possible’.*
- 3.7.7 1st April 1938. Devon & Exeter Gazette. *‘In his report to the annual meeting of Northam and Westward Ho! Chamber of Commerce...the...Secretary...said the Chamber was working in conjunction with Northam Urban Council and the Kipling Memorial Committee at Windsor in the provision of a local Kipling Memorial. The Tors at Westward Ho! where Kipling used to ramble in his younger days, had been purchased for a memorial and they hoped it would be possible to provide a memorial hall, with a Kipling library and museum, and seating for 400 or 500 people’.*
- 3.7.8 9th June 1938 – North Devon Journal. *‘Protest that only portion of Tors bought. The decision of Northam Urban District Council to borrow £225 [£10,125 in 2017] as the Council’s contribution to the purchase of Kipling Tors was referred to at Thursday’s meeting of that authority. Mr F Wilkey...said he was in no way opposed to a memorial to Rudyard Kipling, but his objection was he understood the portion purchased by the Council was only the top part of the Tors. He would guarantee 2/3 of the public did not know the lower part was not included in the purchase. Mr Fulford said the Committee were anxious to purchase the whole, but he pointed out the question of cost, and it was unanimously decided half a loaf was better than none. The Chairman (the Rev. AE Green) said no discussion would alter it now, but Mr A Reed said what Mr Wilkey had pointed out was news to him – he thought they had all the Tors’.*

- 3.7.9 1st July 1938. Devon & Exeter Gazette. *'Arising out of a report by General RO Paterson, it was agreed at yesterday's meeting of Northam Urban Council that it should be left to the Kipling Appeal Committee to arrange for the care under the National Trust of Kipling Tors, Westward Ho!'*
- 3.7.10 1st July 1938. Exeter & Plymouth Gazette. *'Arising out of a report by General RO Paterson, it was agreed at yesterday's meeting of Northam Urban Council that it should be left to the Kipling Appeal Committee to arrange for the care under the National Trust of Kipling Tors, Westward Ho!'*
- 3.7.11 8th December 1938. Western Morning News & Gazette. *'The Rudyard Kipling Memorial Fund Committee presented Kipling Tors near Westward Ho! to serve as a perpetual memorial to Kipling. There are 24 acres of gorse covered hillside, long known to the readers of 'Stalky and co.' as 'Kipling Tors'.*
- 3.7.12 2nd February 1939 – North Devon Journal. *'...the Kipling Tors were acquired by the National Trust'.*
- 3.7.13 3rd February 1939 – Exeter & Plymouth Gazette. *'The Kipling Tors were acquired by the National Trust'.*
- 3.7.14 23rd March 1939 – North Devon Journal. *'...the Kipling Tors, which have been preserved for the nation...'*
- 3.7.15 24th March 1939 – Western Times. *'...the Kipling Tors, which have been preserved for the nation...'*
- 3.7.16 8th April 1939. Express & Echo. *'Captain RA Richards...writing with regard to Kipling Tors, drew attention to what he alleged to be their disgraceful condition. On both sides of the path leading from the South Gate were numerous heaps of builders' rubbish, and there was a large dump of old pots and pans though not actually on Trust property. The Clerk...said the spot complained of was nothing to do with Kipling Tors or the Council, and they had merely a right of way along the path referred to. The Chairman (Rev AE Green) agreed it had nothing to do with the Council, but it was decided to write to the owners'.*
- 3.7.17 14th April 1939. The Western Times. *'Captain RA Richards...writing with regard to Kipling Tors, drew attention to what he alleged to be their disgraceful condition. On both sides of the path leading from the South Gate were numerous heaps of builders' rubbish, and there was a large dump of old pots and pans though not actually on Trust property. The Clerk...said the spot complained of was nothing to do with Kipling Tors or the Council, and they had merely a right of way along the path referred to. The Chairman (Rev AE Green) agreed it had nothing to do with the Council, but it was decided to write to the owners'.*

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- 3.7.18 14th April 1939. Devon & Exeter Gazette. *‘Captain RA Richards...writing with regard to Kipling Tors, drew attention to what he alleged to be their disgraceful condition. On both sides of the path leading from the South Gate were numerous heaps of builders’ rubbish, and there was a large dump of old pots and pans though not actually on Trust property. The Clerk...said the spot complained of was nothing to do with Kipling Tors or the Council, and they had merely a right of way along the path referred to. The Chairman (Rev AE Green) agreed it had nothing to do with the Council, but it was decided to write to the owners’.*

3.8 Northam Vestry Minutes, 19th Century

- 3.8.1 The Minutes provide information about the management of the route and the Council’s views regarding the public highways in the parish. A public body such as a District Council had powers only in relation to public highways through the appointed Surveyor historically, which they had a responsibility to maintain. The records for 1898-99 have not survived.
- 3.8.2 The records refer to named parish highways. It is not known if the application route was named, and therefore whether these records refer to it or not.

3.9 Quarter Sessions Deposited Plan 340: Bideford & Westward Ho! Light Railway, 1875

- 3.9.1 The legal deposit of plans or public undertakings was first provided for in the 1793 Standing Orders of the House of Lords. The need for such deposits was recognised following the canal mania of the early 1790s when it became evident that canal bills were being hurried through Parliament without proper scrutiny. Thereafter, promoters were required to submit to the Lords plans of works, books of reference, and other papers before a bill was brought up from the Commons to the Lords. In 1837 an Act compelled the local deposit of plans of public undertakings with the Clerk of the Peace, and therefore available to public inspection.
- 3.9.2 Any of this type of document may provide evidence on crossed or adjacent paths, roads or tracks and therefore could be relevant as evidence in relation to the existence of Highways, particularly if the scheme was constructed.
- 3.9.3 The railway proposed by this plan was not constructed. It records part of the application route between points A – B as lot 123, an occupation road owned by the Northam Burrows Hotel and Villa Company, Messers CJ Trupp, WM Dowell, and TA Thrupp, and Mesdames CS Pyke and CA Thrupp.

3.10 Quarter Sessions Deposited Plan 413: Bideford, Westward Ho! & Appledore Railway, 1896

- 3.10.1 The plan received Royal Assent on the 21st May 1896 and opened on the 24th April 1901.

- 3.10.2 Part of the application route between points A – B is recorded in lot 36, a field and private road and waste, owned by Mr GJ Taylor.

3.11 Northam Urban District Council Minutes, 1893-1974

- 3.11.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a District Council had powers only in relation to public highways through the appointed Surveyor historically, which they had a responsibility to maintain. The records for 1898-99 have not survived.
- 3.11.2 There are numerous references to Kipling Tors generally, rather than to specific routes.
- 3.11.3 7th August 1947. 'Kipling Tors. The Committee gave instructions to have the paths cleared of growth'.
- 3.11.4 11th September 1952. *'Kipling Tors. A letter from Miss Willes...was read complaining of the condition of the paths and other matters in the district. The letter was referred to the Surveyor to deal with'.*
- 3.11.5 13th November 1952. *'Miss Willes: A further letter from Miss Willes was read, complaining of matters which she considered required attention, the Surveyor reported on the interview he had had with Miss Willes'.*
- 3.11.6 11th June 1953. *'National Trust. A letter, enclosing correspondence and plan was read from the National Trust Local Agent, asking the Council's views on an offer which had been made to the Trust to sell land at the north of the Kipling Tors. The Council was of the opinion that it would be a definitive acquisition to the present Trust property and instructions were given for a reply to be sent, stating this and expressing the hope that the Trust would be able to acquire the land...'*
- 3.11.7 7th July 1960. *'Report of the Surveyor...following recommendations: - that posts be erected at the ends of the footpaths on Kipling Tors to prevent motorcycles using them'.*

3.12 Old Photographs, 19th Century onwards

- 3.12.1 These photographs show Footpath No. 26 and the whole of the application route as natural continuations of each other, open and available.

3.13 Bartholomew's maps, 1900s onwards

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

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

- 3.13.2 The application route between points A – B – C – D and its continuation recorded as Footpath No. 26 is not shown.

3.14 Handover Roads records, 1929-47

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

- 3.14.2 The application route is not included.

3.15 Aerial Photography, 1946 onwards

- 3.15.1 The aerial photography shows the application route A – B – C open and available to the public, connecting with Footpath No. 26 at several points.

3.16 Definitive Map Parish Survey, 1950s

- 3.16.1 The compilation process set out in the National Parks and Access to the Countryside Act 1949 involved a substantial amount of work and such records are considered a valuable source of information. The rights of way included in the process had to pass through draft, provisional and definitive stages with repeated public consultations.
- 3.16.2 Footpath No. 26 was surveyed and included in the Parish Survey, but not the application route between points A – B – C – D, though the initial path description could apply to it, as it stated that the path ran *'from Westward Ho! main road at Stanwell Hill by Tapp Cottages, north of OS no. 571 to Kipling Tors, and forming the north boundary of the Tors to a path at the end of Merley Road...'*

3.17 Definitive Map and Statement, 1957

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

- 3.17.2 The Definitive Statement for Northam Footpath No. 26 is described as running from *‘its junction with Footpath No. 25 at Seafeld and proceeds southwards for a distance of approximately 100 yards turning eastwards and rising to the top of Kipling Tors then southwards to meet the Class 3 county road at Hilltop. Also, a spur from the top of Kipling Tors eastwards to meet the Class 2 county road, B3236, at the bottom of Stanwell Hill’*.

3.18 Definitive Map Review records, 1970s onwards

- 3.18.1 A letter was received from Torridge District Council dated the 4th April 1989 regarding a recent meeting of their Environmental and Leisure Services Committee. They had given consideration to a request for a footpath on the application alignment to be recorded. It was noted that the path was commonly used but not registered. It appears that part of the footpath discussed is already recorded as part of Footpath No. 26. It was passed to Devon County Council to deal with.

3.19 List of Streets, 1970s onwards

- 3.19.1 This is the County Council's record of highways maintainable at public expense.
- 3.19.2 The application route is not included.

3.20 Northam Town Council Minutes, 1974 onwards

- 3.20.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.
- 3.20.2 The records are still held by the Town Council, and due to Covid-19, the Council office are closed, so it has not been possible to arrange to view them.

3.21 Westward Ho! History Society, 2002 onwards

- 3.21.1 The Society have gathered a number of newspaper articles, several of which refer to Kipling Tors, though not specifically the application route or Footpath No. 26.

3.22 Route Photographs, 2016 onwards

- 3.22.1 The route photographs show that the application route, between points A – B – C – D, is a natural continuation of what is currently recorded as Northam Footpath No. 26. It is open and available to the public, and well maintained.

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3.23 Land Registry, 2017

- 3.23.1 The main part of Kipling Tors was purchased by the Northam Urban District Council in 1938 at the cost of £700 (£27,542 in 2017). The northern part of the Tors and crossed by the application route was purchased by the Northam Urban District Council from Mrs MMJ Fulford in 1955 at the cost of £50 (£1,193 in 2017), and is now registered to Torridge District Council.
- 3.23.2 The 1955 conveyance refers to the application route as a private roadway which could be used with/without horses, carts, and carriages by authorised persons.

4. Informal Consultation Responses

- 4.1 Northam Town Council accept the proposal to add the application route to the Definitive Map.
- 4.2 The British Horse Society representative is aware that there may have been some use of the Kipling Tors area by horse riders, but no evidence has been submitted to support a higher status.

5. Landowner Evidence

- 5.1 The registered landowner, Torridge District Council, did not respond to the informal consultation.

6. Rebuttal Evidence

- 6.1 No rebuttal evidence has been received.

7. Discussion

- 7.1 In considering the evidence it is necessary to consider the evidential facts in the context of the whole of the documents in which they are contained. Section 32 of the Highways Act 1980 indicates how documents should be evaluated as a whole and how the weight should be given to the facts derived from them. Once the evidence sources have been assessed individually, they are comparatively assessed as required by the balance of probabilities test.
- 7.2 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.
- 7.3 As there does not appear to be a specific date on which the public’s right to use the application route has been called into question, the Schedule 14 application is considered to call the public’s right to use the route into

question for the purposes of section 31 of the Highways Act 1980. The application was made in 2016, and therefore the relevant statutory period to be considered is 1996-2016.

- 7.4 Eleven user evidence forms were received in support of the application, with another 2 received in response to the informal consultation, giving a total of 13. All 13 users detail their use during the relevant statutory 20-year period, with use ranging from daily to 4 times a year. Several users recall a gate, possibly at point C, where remains can be seen.
- 7.5 During the relevant statutory 20-year period, no users saw any notices or experienced obstructions to the route. None of the users were challenged or told that the route was not public.
- 7.6 There is also no evidence of any lack of intention to dedicate by the landowner, Torridge District Council, who have been actively maintaining the application route. Therefore, it is reasonable to allege that a public right of way on foot exists along the application route between points A – B – C – D.
- 7.7 Additionally, the application route may also be considered, and may be proven to exist as a public right of way at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.
- 7.8 Common Law. On consideration of the application at common law, the historical documentary evidence demonstrates the application route's physical existence and availability since at least 1804, when the section A – B was documented on the Ordnance Survey Draft Drawings Map. It is shown in a similar manner to other recorded public highways in the area.
- 7.9 From that time onwards, a route is depicted on an alignment similar to the application route between points A – B on the Ordnance Survey Old Series 1" mapping, Greenwood's map, and the Northam Tithe Map. The large scale Ordnance Survey mapping from 1889 shows the application route as a natural continuation of Northam Footpath No. 26.
- 7.10 The Bartholomew's Tourist Maps of the early 20th century do not show the application route, but these are small scale, and their purpose was to show appropriate routes for motorists and cyclists.
- 7.11 It is not known if the application has ever had a name, and therefore it is unclear whether any of the references to named parish highways in the Vestry minutes of the 19th century refer to the application route. The contemporaneous Railway deposited plans of 1875 and 1896, the latter of which was actually constructed, show the application route as a '*private occupation road*', as does the later National Trust Conveyance of 1938.
- 7.12 Whilst there are numerous references to Kipling Tors in the British

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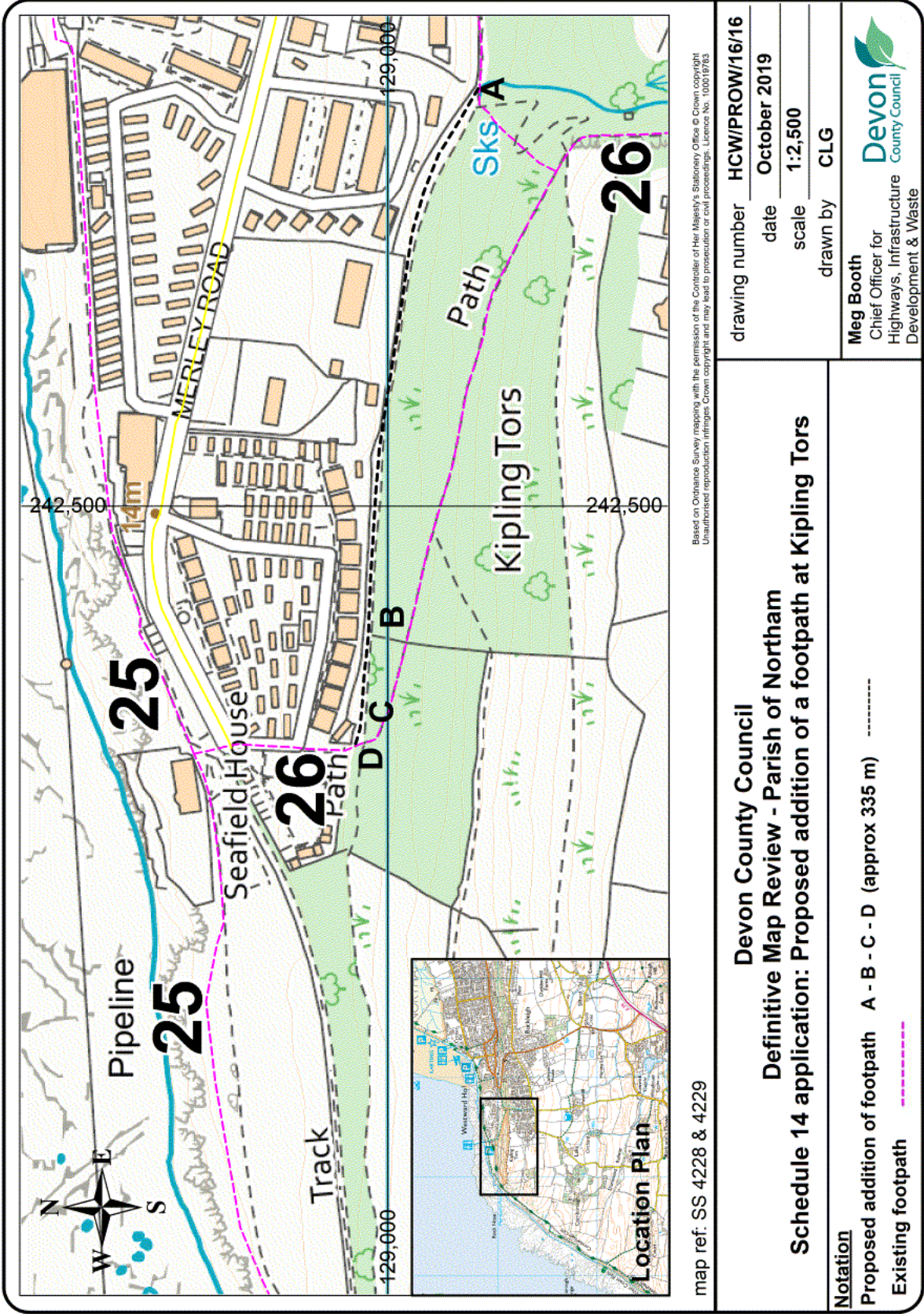
Newspaper Archive and Northam Urban District Council, particularly after Rudyard Kipling's death, when most of the Tors was purchased in the 1938 as a memorial to the author, there are none which refer to specific routes. There was concern at that time that only the southern portion of the Tors was being purchased. However, it was only that portion available for sale. What is clear from these records, is that the name '*Kipling Tors*' has been used to refer to not just that conveyed to the National Trust in the 1930s but also including the northern part conveyed to the Northam Urban District Council in 1955 from Mrs Fulford, the widow of the late Councillor Fulford. This northern section was transferred to Torridge District Council on the demise of the Urban District Council in the 1970s.

- 7.13 Though there is no reference to the application route in the Northam Parish Survey or the Definitive Map and Statement, the contemporary RAF Aerial Photography shows the application route open and available, and a well-used continuation of Footpath No. 26. There is no evidence of gates, bollards, or other furniture on the route.
- 7.14 The later request of Torridge District Council in 1989 for Devon County Council to add the application route to the Definitive Map and Statement as part of the Review, can be taken as an action of intention to dedicate the route to the public. Their acquiescence to the current application supports this.
- 7.15 This is supported by the user evidence from 13 members of the public dating from the late 1940s to the present time, which has been regular and frequent. None were ever challenged, or encountered obstructions on the route. Several recall a large gate, possibly at point C, where there are the remains of a gate post, which was never locked. No notices against public use of the application route have ever been seen.
- 7.16 In such a situation as this where a route of uncertain status exists, its status can be presumed from the highways linked to it, as set out in the case of *Eyre v New Forest Highway Board* (1892). Consequently, the evidence when considered as a whole supports access for the public to the application route, currently unrecorded, of the status of footpath.
- 7.17 Due to Covid-19 a relatively small portion of the normal research could not be completed in time, however those sources are not particularly significant given the weight of the available evidence in support of the application route, and it meets the test of statutory presumed dedication.

8. Conclusion

- 8.1 On consideration of all the available evidence, the documentary evidence demonstrates that the application route, currently unrecorded between points A – B – C – D has physically existed since at least 1804. It has been open and available and appears to have been considered public since that time, and in conjunction with Northam Footpath No. 26.

- 8.2 In such a situation as this where a route of uncertain status exists, its status can be presumed from the highways linked to it, as set out in the case of *Eyre v New Forest Highway Board* (1892).
- 8.3 The former Urban District Council, and the current District and Town Councils have consistently considered it to be a public highway, with Torridge District Council requesting its inclusion on the Definitive Map in 1989.
- 8.4 The evidence when taken as a whole is considered sufficient to show that it is reasonable to allege that a public highway exists along the application alignment of the status of a footpath. It also demonstrates that the route was considered historically as a private vehicular highway.
- 8.5 It is therefore considered to be sufficient under Common Law to demonstrate that a public highway of footpath status exists between points A – B – C – D.
- 8.6 It is therefore recommended that a Modification Order should be made to add the application route as a footpath between points A – B – C – D on the Definitive Map and Statement, as shown on drawing no. HIW/PROW/16/16. If there are no objections, or if such objections are subsequently withdrawn, that it be confirmed.



HIW/20/52

Public Rights of Way Committee
26 November 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.	Confirmed 15 May 2020, subject to modifications. For more information see The Planning Inspectorate's Order Decision .
Devon County Council (Footpath Nos. 61 & 61, Luppitt) and Devon County Council (Footpath No. 62, Luppitt) Definitive Map Modification Orders 2017 – the County Council having been directed make the orders following a successful schedule 14 appeal.	<p>Not confirmed on 17 April 2020 following a local public inquiry. For more information see The Planning Inspectorate's Order Decision. However, that decision has now been quashed by order of the High Court and the Modification Orders will therefore return to The Planning Inspectorate for re-determination.</p> <p>The 2020 decision was also a re-determination – the orders were previously considered in July 2018 by the written representation procedure, but that decision to not confirm the orders was also quashed by order of the High Court on appeal.</p>

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Divisions: Sidmouth; and Whimble & Blackdown

Agenda Item 12

Local Government Act 1972: List of Background Papers

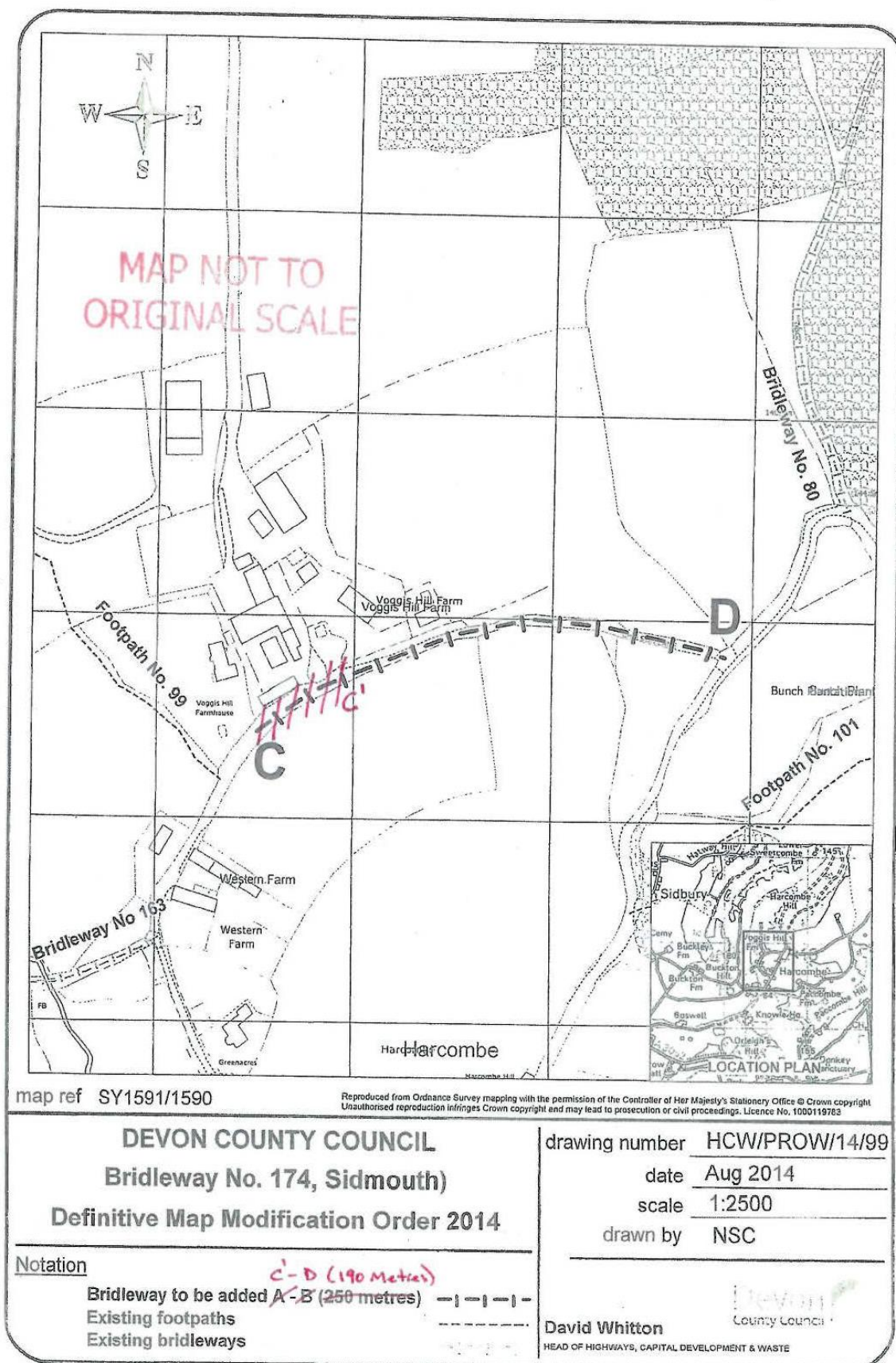
Contact for enquiries: Helen Clayton

Room No: Great Moor House, Exeter

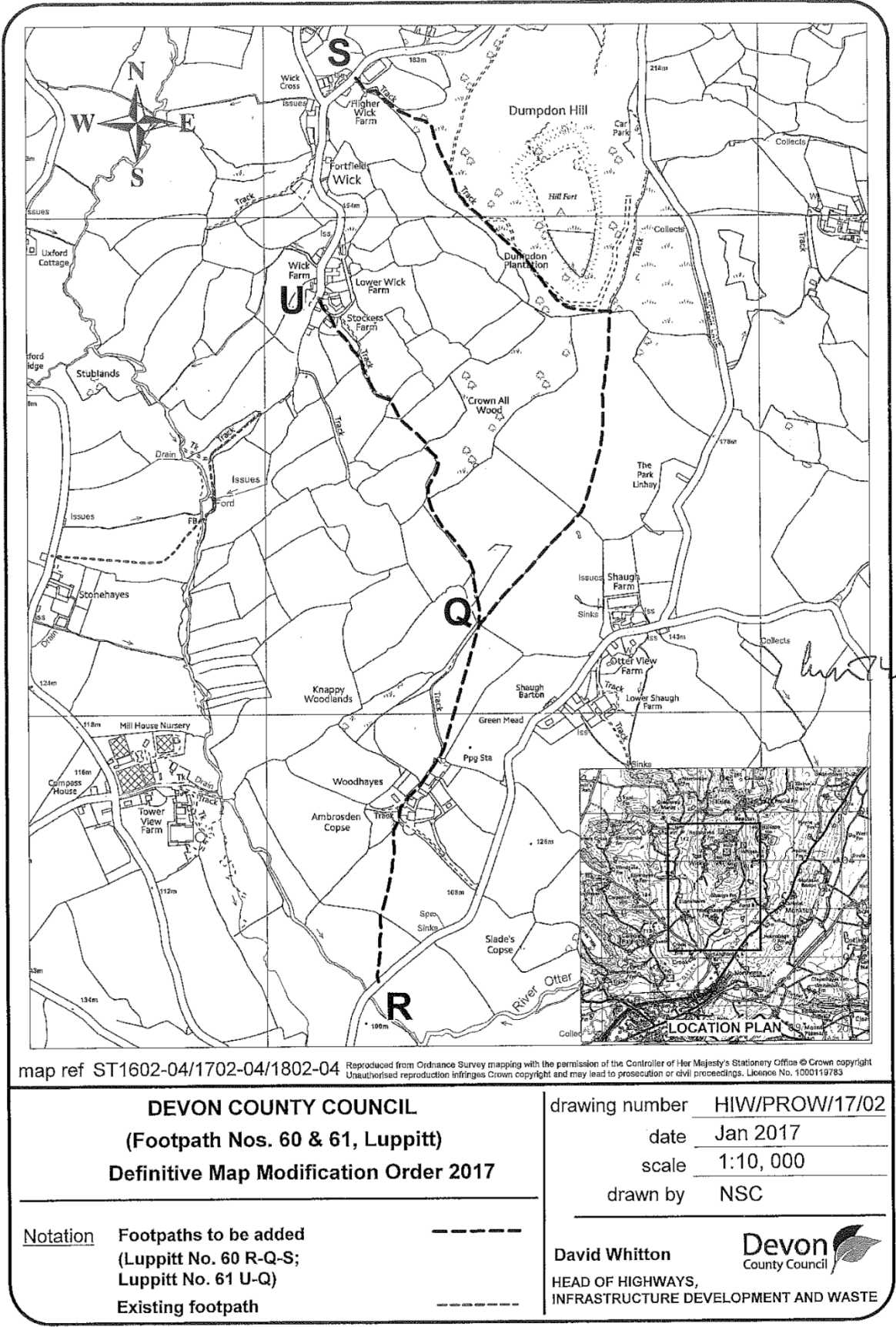
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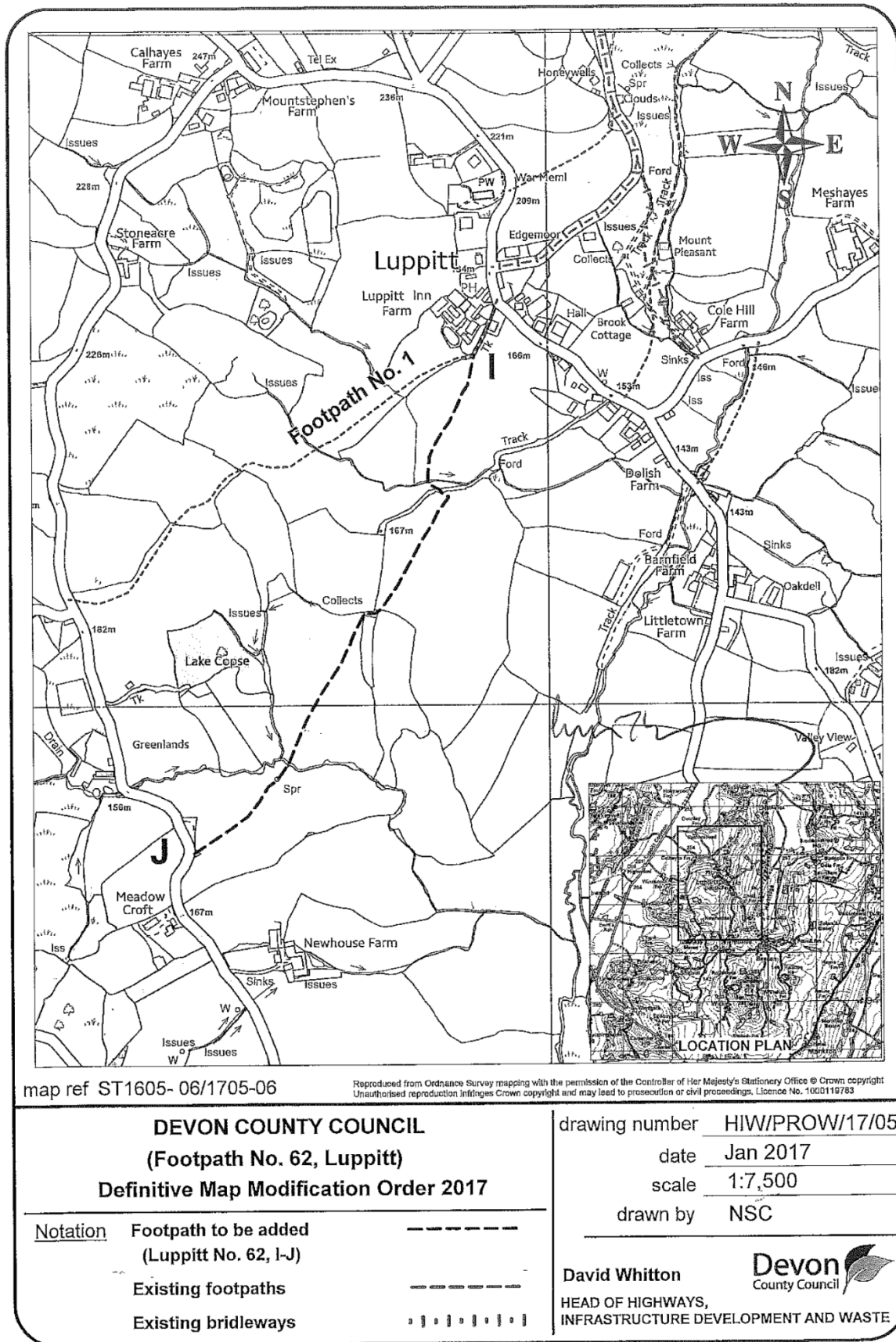
Background Paper	Date	File Ref.
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High Court Appeals
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Agenda Item 12





HIW/20/53

Public Rights of Way Committee
26 November 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) Restricted Byway No. 20, Bampton Definitive Map Modification Order 2020
- (ii) Footpath No. 6, Oakford Definitive Map Modification Order 2020
- (iii) Restricted Byway Nos. 5 & 30 and Footpath Nos. 4, 7, 15 & 29, Parracombe Definitive Map Modification Order 2020

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Divisions: Tiverton West; and Combe Martin Rural

Local Government Act 1972: List of Background Papers

Contact for enquiries: Helen Clayton

Room No: Great Moor House, Bitton Road, Sowton, Exeter

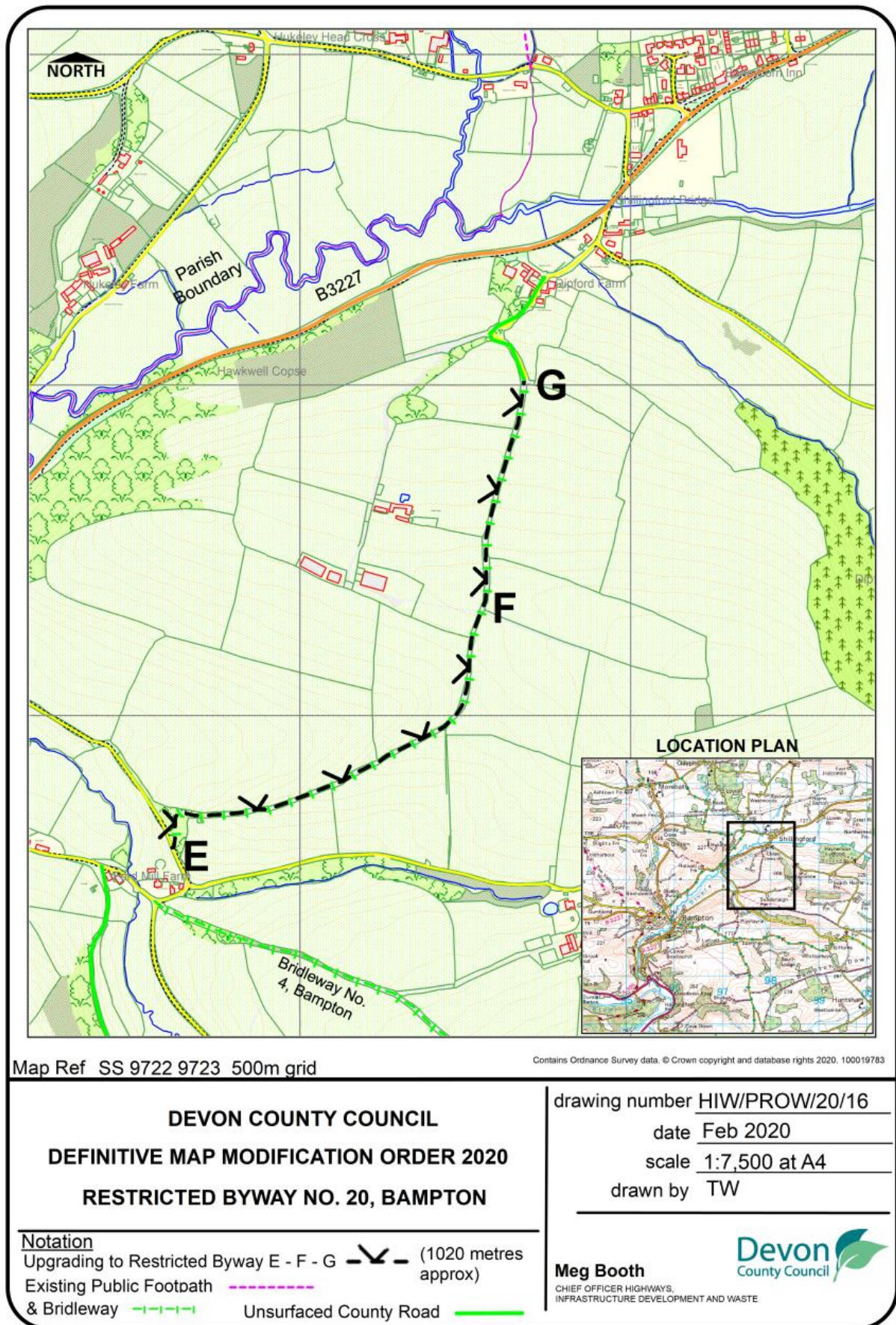
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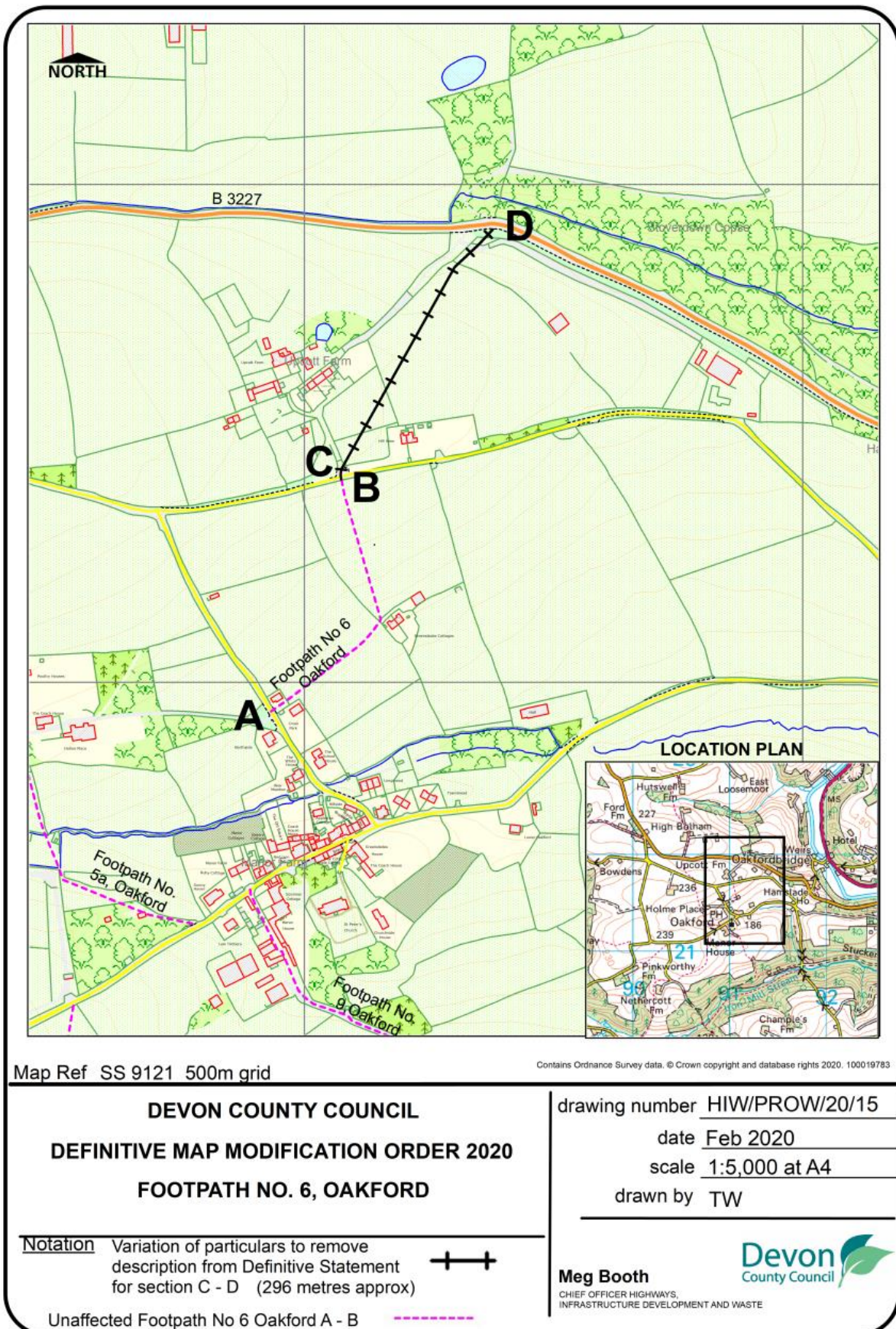
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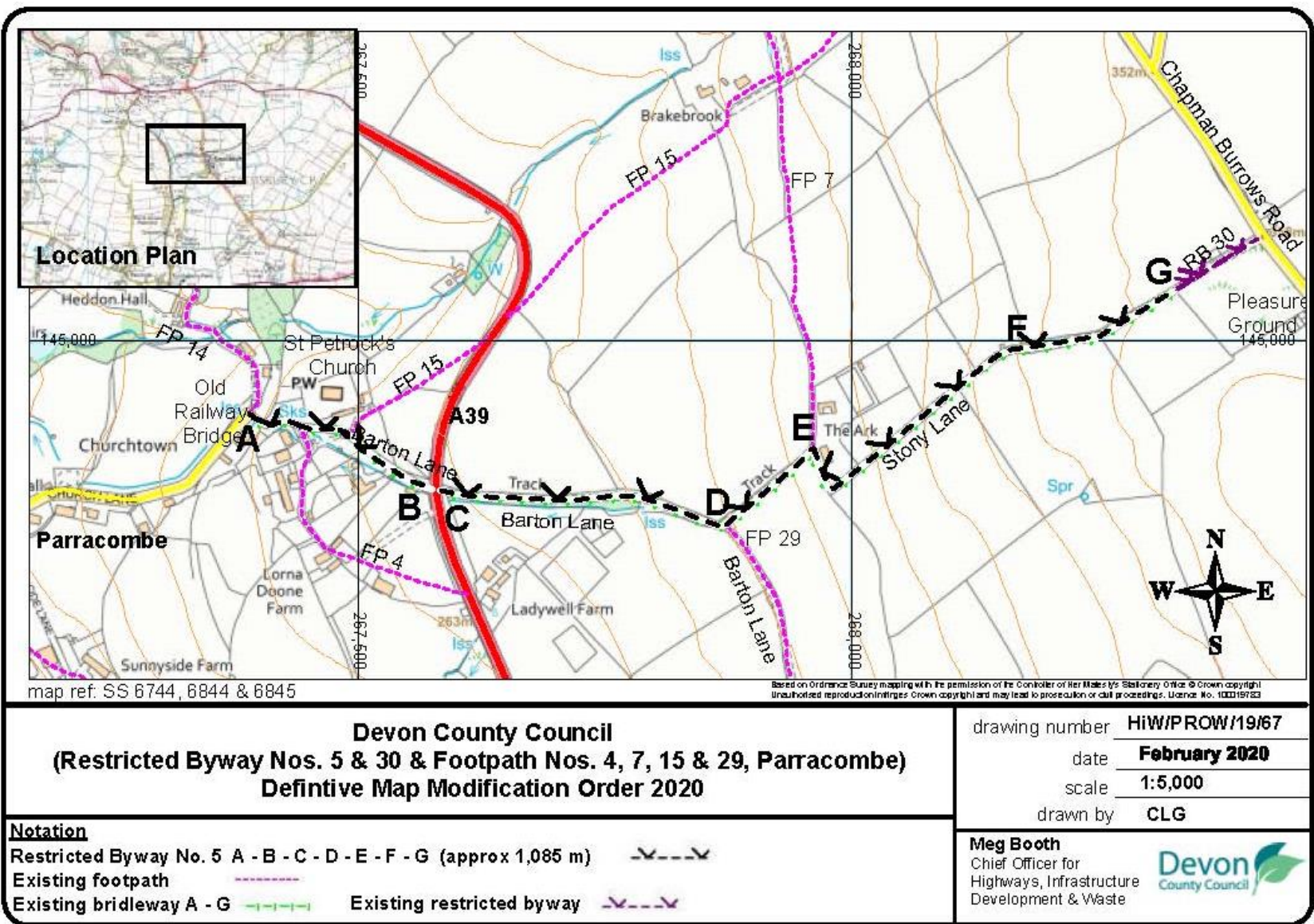
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Agenda Item 13







HIW/20/54

Public Rights of Way Committee
26 November 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. 8, Clyst Hydon Public Path Diversion & Definitive Map & Statement Modification Order 2019
- (ii) Footpath No. 3, Horwood, Lovacott and Newton Tracey Public Path Diversion & Definitive Map & Statement Modification Order 2018
- (iii) Footpath No. 4, Bigbury Public Path Diversion & Definitive Map & Statement Modification Order 2019

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Divisions: Broadclyst; Willand & Uffculme; Fremington Rural; and Salcombe

Local Government Act 1972: List of Background Papers

Contact for enquiries: Helen Clayton

Room No: Great Moor House, Exeter

Tel No: 01392 383000

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None

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