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

County Hall
Topsham Road
Exeter
Devon
EX2 4QD

Date: 3 March 2021

Contact: Wendy Simpson, 01392 384383
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PUBLIC RIGHTS OF WAY COMMITTEE

Thursday 11th March, 2021

A virtual meeting of the Public Rights of Way Committee is to be held on the above date at 2.15 pm to consider the following matters. The meeting can be viewed via this [livestream link](#).

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 26 November 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 21 January 2021, attached

DEFINITIVE MAP REVIEWS

- 5 Parish Review: Definitive Map Review - Parish of Trentishoe Part 2 (Pages 13 - 30)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/21/17), attached, and background papers.
Electoral Divisions(s): Combe Martin Rural
- 6 Parish Review: Definitive Map Review 2017-2020 - Parish of Holsworthy Hamlets (Pages 31 - 34)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/21/18), attached.
Electoral Divisions(s): Holsworthy Rural
- 7 Parish Review: Definitive Map Review - Parish of Exmouth (Pages 35 - 56)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/21/19), attached, and background papers.
Electoral Divisions(s): Exmouth
- 8 Parish Review: Definitive Map Review 2019-2021 - Parish of Morebath (Pages 57 - 92)
Report of the Chief Officer for Highways, Infrastructure and Waste (HIW/21/20), attached, and background papers.
Electoral Divisions(s): Tiverton West
- 9 Parish Review: Definitive Map Review - Parish of Payhembury Part 2 (Pages 93 - 104)
Report of the Chief Officer for Highways, Infrastructure Development and Waste (HIW/21/21), attached, and background papers
Electoral Divisions(s): Whimble & Blackdown

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

Nil

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Induction Loop available





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**Minutes of the Fifty-Seventh meeting
of the Devon Countryside Access Forum**
Virtual meeting
Thursday, 21 January 2021

Attendance

Forum members

Andrew Baker
Joanna Burgess
Chris Cole (Vice-Chair)
Tim Felton
Lucinda Francis
Gordon Guest

Jo Hooper
Sue Pudduck
Councillor Philip Sanders
Tino Savvas
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
Philip Hackett, British Horse Society Access Field Officer – South West
Ros Mills, Public Rights of Way Manager, DCC
Hilary Winter, Forum Officer

1. Apologies

Apologies had been received from Cllr Tony Inch, Sue Leith and Lorna Sherriff.

2. Declaration of interests

There were no declarations of interest.

3. To approve minutes of the meeting held on 24 September 2020

Minutes of the meeting held on 24 September were approved and would be signed in due course.

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4. Matters arising

4.1 Pebblebed Heaths Visitor Management Plan

The Devon Countryside Access Forum had responded to the consultation. Clinton Devon Estates had confirmed that it will be promoting Wheathill car park as the practical and safest option for horse box parking. Almost all parking areas would have height barriers installed as part of capital works when on site, but some will generally be kept open. All organised events required permission. It was hoped to complete phase one of the improvements by autumn 2021 and this included Four Firs and Joney's Cross car parks and the informal parking areas at Stowford Woods and Frying Pans. A consultant had been contracted in to manage the project. During 2020 the Pebblebed Heaths had seen much higher footfall so plans would be reviewed at the outset of each phase to make sure they are still appropriate.

The Forum Officer was asked to enquire which barriers would be left open and whether these would be advertised.

Action: Forum Officer to contact the Pebblebed Heaths Site Manager.

4.2 Advisory note on trails

The finalised advisory note on trails had been sent to the Public Rights of Way Manager who thanked the Forum for its hard work. Some aspects were aspirational but it was a helpful document in terms of policy development.

4.3 Annual Report

The Annual Report had been published on the Devon Countryside Access Forum website.

5. Correspondence log

The correspondence log was noted. The Forum's position statements on Neighbourhood Plans and Disability Access were useful in responding to Neighbourhood Plan consultations. Occasionally additional comments were made, such as a request to include a public rights of way map.

6. Public Questions

The Chair welcomed Philip Hackett, British Horse Society Access Field Officer South West, to the meeting.

Mr Hackett expressed the need for trails in the County to be opened up retrospectively for horses as soon as possible to get horses off-road. Sustrans policy was to remove barriers to multi-use. The multi-use trail in Cornwall, the Camel Trail, was successful and used by 400,000 visitors a year. He was particularly

interested in access on the Tarka Trail from Bideford to Fremington Quay and Torrington. There was evidence of rider use but riders would like to use the route legitimately and would avoid busy times. His view was that this would save lives and money and create benefits for tourism and the economy.

It was noted the British Horse Society's 'Dead Slow' campaign had been supported by Devon County Council's Cabinet, following a motion by Cllr Hannaford.

Mr Hackett asked whether the Devon Countryside Access Forum could examine the DCC policy of multi-use and urge the Council to conform to its own policy on multi-use and give retrospective rights? He had lobbied the Leader of Devon County Council, Cllr Hart, on this point when he attended Torridge District Council's Area Advisory Group Meeting in December.

Ros Mills, Public Rights of Way Manager, explained that the Countryside and Rights of Way Act 2000 established both local access forums and rights of way improvement plans. The DCC Rights of Way Improvement Plan was revised in 2012 and linked to the Devon Transport Plan. In this context, all vulnerable users, including horse riders, were considered in the use of new multi-use trails. The Forum did a lot of initial work in assisting with this. The audit trail required an examination of design, safety, connectivity and other factors. As a result, horse riders were permitted on the new Wray Valley Trail. The aspiration in the long term would be to look at existing routes.

It was noted that there are other potential new users of routes, such as electric bikes and scooters.

In answer to a question about horse poo, Mr Hackett said that this degraded quickly.

Whilst there was no issue in principle, members recognised there were practical limits in certain places. There were responsibilities on all users to recognise implications for others.

It was noted that there were some locations where landowners had granted permissive use but excluded horse riders.

Whilst the British Horse Society and Pony Clubs offer proficiency tests, Mr Hackett thought it an unwise move to insist on these to ride trails as cyclists did not have to do so.

Information was requested on the length of trails in the County where horses were not permitted and how many new routes did not permit horses.

It was noted that more women ride, and that it may be a gender equality issue that needed to be considered.

Whilst multi-use was the preferred option, it was agreed that retrospective use was slower and more problematic to achieve. When asked whether the BHS could identify quick wins, Mr Hackett said it had to be across the board to achieve progress. A safety audit would identify any issues such as parapet heights, visibility and other constraints.

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Ros Mills, Public Rights of Way Manager affirmed that many trails used public roads and legally defined bridleways which were historic and statutory routes and there was no say in the design. When new routes are built there was a design and safety audit. The development of routes was a very slow process requiring landowner agreement and funding. It was confirmed that no routes are owned or managed by Sustrans in Devon but they were built and designed by DCC to Sustrans, Department for Transport and other professional standards. Sustrans volunteers were helpful in looking after routes. It would be possible to use Sustrans risk assessments and DCC risk assessments on legacy routes plus the Forum's best practice. With the Camel Trail, Cornwall Council owned all the land and could make decisions.

Ros Mills said many of the legacy routes had caveats and agreements and looking into those would be part of any review. This was why a blanket approach was not possible. Routes also had to meet current standards. Whilst welcoming the involvement of the BHS on safety audits, Ros Mills, Public Rights of Way Manager, said that unfortunately the team did not have the time or resources to dedicate an officer to assist with this process at the current time.

Although bylaws could be put on the off-road trail network, the Council currently would not wish to do this.

It was noted the disabled ramblers' was going through a similar process and securing piecemeal improvements over time, despite the principle of accessibility.

Ros Mills, PROW Manager, said further information on horse incident statistics on roads had been presented to Devon County Council's Cabinet meeting earlier in January. She confirmed the unclassified, unsurfaced county road network (uUCR), and connectivity between parishes in the context of a review of off-road trails, would be tied into the DCC carbon plan.

The DCAF agreed to write to reinforce its position on multi-use trails and the RoWIP policy, the importance of funding to look at these routes retrospectively, and how people valued outdoor space during lockdown. Equality and aspirations for zero carbon were additional considerations.

Action: Forum officer to send round draft for approval.

7. British Horse Society and Council Local Cycling and Walking Infrastructure Plans

It was agreed that the Devon Countryside Access Forum would endorse the BHS request that horses should be considered in the context of Local Cycling and Walking Infrastructure Plans. It was resolved to write to Devon County Council.

Action: Forum Officer to circulate draft.

8. Public Rights of Way update

Jo Burgess reported that she had recorded a public rights of way defect on the online system and had been impressed with the quick response.

Ros Mills, Public Rights of Way Manager, gave some general updates:

- 1) The public rights of way network was busy but not quite as much as in the first lockdown. Routes were being resurfaced and sides cut back to facilitate use.
- 2) A press release had been sent out, following discussions with the NFU, about lambing and livestock. The website had been updated with this information.
- 3) Some sections of the England Coast Path had been approved between Cremyll and Kingswear and Combe Martin and Marsland Mouth. The team was assessing requirements and bidding for funding from Natural England for infrastructure.
- 4) Steve Gardner, Senior Officer, had not had time to do further work on the Pegasus Way. He was working on bridge installation in and around Colyton following decisions by the Planning Inspectorate.
- 5) Over fifty small contractors, spread across the County, had submitted tenders to be part of the Public Rights of Way Framework Contract from 1 April 2021.
- 6) Due to COVID-19 there had been some supply issues with materials and some prices had increased by 8%.
- 7) Capital budgets for 2021/22 were satisfactory but revenue budgets would be more of a challenge.
- 8) The Country Parks had been very popular during coronavirus. Stover had its Heritage Lottery Fund delivery team in place and Gary Prescod, Project Officer, could do a presentation to the DCAF at a future meeting.

Helen Clayton, Senior Officer, Public Rights of Way, gave the Legal and Development update:

- a) COVID-19 had impacted on the Legal and Development team. Consultations had been suspended to ensure people did not travel to look at proposals. Record Offices were also closed which could prejudice staff and others wishing to research routes.
- b) The Public Rights of Way Committee would be in March and the first virtual meeting had been held in November.
- c) Formal working parties by P3 groups had been suspended.
- d) A virtual Planning Inquiry, planned for February, had been postponed until June. The Planning Inspectorate would be holding some blended inquiries, partly virtual and partly at a venue, which might have implications for how local inquiries can be.
- e) Contact had been made with the coordinator of the Ramblers 'Don't Lose Your Way' project, Jack Cornish. He had acknowledged that not all the ways identified by comparing old and modern maps will have evidence. Their next steps would be to carry out checks to identify old paths legally diverted or extinguished, routes on the list of streets and those previously considered through parish reviews. Routes of benefit to communities will then be prioritised for further research. Mr Cornish had offered to speak at a DCAF meeting.

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Ros Mills said the uUCR network was taking up a lot of resources but it offered potential to help deliver the carbon plan.

In answer to a question about Brexit, Ros Mills said the new Environmental Land Management Scheme was trying to cover income previously received by farmers from the EU.

The National Farmers Union and Country Land and Business Association had tried to promote prospective new legislation on diverting paths. It was understood that this had not gone forward for legislation. Under the proposals, the definitive line had to stay open and the landowner was liable for the temporary route which did not reduce risk. The chances of legislative time were slim currently.

It was suggested and agreed that an agenda item on uUCRs would be useful at the next meeting to cover signage, maintenance, monitoring and extent. Chris Cole (member of the TRF) said members of the Trail Riders' Fellowship were available to assist with maintenance, when permitted, and was thanked by Ros Mills for the work they had previously undertaken to make such routes available for all users.

Action: Forum Officer to prepare agenda paper on uUCRs for the April meeting.

Cllr Philip Sanders had attended a meeting with the National Park, National Trust, Duchy of Cornwall and others and it had been noted that users were spreading out over moorland paths to avoid mud. Ros Mills confirmed this had been noticed on the urban fringe where paths had become very eroded. Although this could be managed with temporary closures this would be detrimental to local exercise and health and wellbeing. This matter had been raised in a BBC news item.

The Chair requested any thoughts on this for the next meeting.

Action: Members

9. Ludwell Valley Park

The agenda paper described the background to this park, managed for Exeter City Council by the Devon Wildlife Trust. A small working group had visited the park in September 2020, abiding by COVID-19 rules at the time.

The starting point for the submission to the DWT was more accessible and meaningful routes. The main problem for disability users was the number of kissing gates, narrow or small steps and steep hills. Large vehicle gates on the site were padlocked and used by agricultural machinery. The site was grazed at certain times so had to be secure.

The top ridge presented a useful starting point with access to Pynes Hill. Ludwell Lane was rather more complex. The DWT was amenable to doing what it could within limitations of funding and staff resources.

The site also presented obstacles to pushchairs and cycles. A cycle route could link Southbrook area to Pynes Hill commercial area and beyond to Topsham, provided there was no conflict with grazing cattle and no urbanised surfacing. Although there

was a Traffic Regulation Order on Ludwell Lane this was not traffic free as housing was on the road.

The DCAF working group did not walk by the playing fields but Gordon Guest suggested that a kissing gate at the end of the footbridge could be a priority to allow a pleasant stream walk. Gates could be opened off Ludwell Lane, particularly if there were no stock issues.

It was agreed to respond with priorities for the top ridge and bottom area and advise that disability access should be looked at on other DWT sites in the City.

It was noted that Southbrook School and the West of England School and College were on the boundary of the park and improved access would also assist access for their pupils.

Action: Forum Officer to circulate draft.

10. Disability Access Position Statement

The revised Disability Access Position Statement was approved.

Action: Forum Officer to put the new version on the DCAF website.

11. To note and approve responses to consultations

Two working groups had been held during the Autumn to discuss draft responses to items 11.2, 11.4, 11.5 and 11.6

11.1 Marsh Barton Railway Station

The response was noted and approved.

The application had been approved by Devon County Council with delegated decision on 1 December. Conditions included submission of detailed to scale drawings of the pedestrian and cycle path, junctions and crossing points.

The large number of people using Clapperbrook Lane was re-emphasised.

11.2 Planning for the Future

The response was noted and approved.

It was noted that The Rt Hon Robert Jenrick, Secretary of State for Housing Communities and Local Government, had subsequently abandoned the algorithm used in the consultation to thus allow an increase in housebuilding in urban areas.

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11.3 Review of the Highway Code

The response was noted and approved.

11.4 Lower Otter Valley planning application

The response was noted and approved.

The scheme has been approved by the East Devon District Council Planning Committee on 6 January. The DCAF's comments were included as part of the Committee report.

Conditions, prior to development, included submission of an access scheme for approval, in liaison with the Devon County Council Public Rights of Way team. This would include provision for the design of public rights of way routes including surfacing, widths, levels, gradients, landscaping, structures and any road crossing points.

Detailed plans of the proposed car park and a timetable for the phasing of the works for the removal of the existing car parking spaces and the delivery of the new car park would have to be submitted to and approved in writing by the Local Planning Authority. This included a minimum of 40 car parking spaces and 10 cycle parking spaces with associated facilities. The original application was for 30 parking spaces.

Planning approval meant work on the project could start shortly and be completed in 2023. The Lower Otter Restoration Project was part of a wider Project PACCo – Promoting Adaptation to Changing Coasts – which will receive €17.8m from the Interreg VA France (Channel) England programme.

Some of the Forum's comments had been taken into consideration. Concern was expressed about tidal flooding on public rights of way and the proposed sanctuaries for access users during periods of flooding. The Forum agreed that this should be monitored and requested regular updates from the Public Rights of Way team.

Action: Forum Officer to include project update for next meeting.

11.5 Teign Estuary Trail

The response was noted and approved.

Devon County Council, following consideration of consultation responses, hoped to put in a planning application in the spring/summer 2021.

11.6 Clyst Valley Regional Park Masterplan

The response was noted and approved.

The Masterplan raised many questions and it was agreed to monitor its progress. The consultation had triggered a very large number of responses.

12. Current consultations

12.1 Countryside Code update, Natural England

A discussion took place on the Countryside Code refresh.

One of the questions related to knowledge of the Countryside Code and a poll of members revealed differing levels of knowledge. It was agreed that the Code was not particularly well-known.

Members discussed the strapline Respect-Protect-Enjoy. There was concern that people did not necessarily know what they should respect and words had different connotations for people. The term 'right to roam' had, inaccurately, been taken up as meaning a right to walk where people wanted. One landowning member gave instances of stock worrying. There was also a possibility people might prioritise enjoy over respect. Members were not convinced that the strapline in its current form had value.

The existing short and long codes were not particularly easy to read or absorb and it was agreed clear and consistent messages were essential. There was a lot of ignorance about the Countryside Code and there needed to be a way of getting information across to people, such as the earlier successful collaboration with Aardman Animations.

The issue was how people were educated about the Code and how it was promoted. It was not possible to capture everything without making the Code too long. A Code that could be included in schools as an aspect of citizenship and which allowed simple straightforward conversations was necessary. This process was not included in the survey.

Cllr Sanders confirmed that as an assessor for Duke of Edinburgh expeditions, children were aware of the key points of the 1981 Code and their importance.

A short direct simple code could be affixed to a post or available on a mobile device, making it clear what people could do.

There was a feeling that outcomes had already been decided but that how to communicate the code had not been covered. It was difficult to feed into the consultation. Some things were open to interpretation, for example 'leave all gates as you found them' may not be the best advice if someone earlier had left a gate open.

There was a concern about stereotyping, for example comments that new people coming into the countryside due to coronavirus were causing a problem.

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The new Code needed to be much more targeted and focussed and engage with people in a powerful way. It was agreed the short messages of the 1981 Country Code were better.

It was resolved to send Natural England some general comments.

Action: Forum Officer to circulate draft.

12.2 Parks and Green Spaces, Exeter City Council

A brief discussion took place on the Parks and Green Spaces strategy. It was agreed the aims and actions were laudable and should be supported.

Additional points to be raised were:

- The importance of working across authority boundaries, especially in relation to planned housing developments and the need to create and improve green space;
- the need for a specific aim and action on mobility scooter accessibility;
- inclusion of the Devon Countryside Access Forum as an organisation the City Council could work with, as well as a continuation of public engagement; and
- to query where the Hoopern Valley sat in the strategy as it did not appear to be included.

The informative short videos on the Valley Parks produced by the Devon Wildlife Trust, as mentioned in the January DCAF newsletter, were commended.

Action: Forum Officer to draft response and circulate.

12.3 Devon Interim Carbon Plan

It was agreed that the outcomes and actions were laudable and it was resolved to send a letter supporting the Plan.

It was noted that people feeling safe in their space had not been included and would be added to the response.

A comment was made about the number of delivery vehicles on the road but this was not within the Forum's remit.

Action: Forum Officer to circulate draft response.

13. Dates of meetings 2021/2022

Dates for meetings in 2021/2022 were agreed. These would be at 10.00 a.m. on:

Tuesday, 27 April (virtual);
Tuesday, 21 September; and
Tuesday, 18 January 2022.

14. Recruitment and appointments to the Devon Countryside Access Forum

Devon County Council had suspended recruitment in 2020 due to the pandemic. Andrew Baker and Sue Pudduck would reach the end of their three-year term at the end of March 2021. The Chair was pleased to announce that both had been offered and accepted a further term.

15. Any other business

1. England Coast Path

The Secretary of State for Environment, Food and Rural Affairs, had approved some sections of the England Coast Path between Combe Martin and Marsland Mouth and Cremyll and Kingswear. The decision had arrived too late to include with agenda papers but the Forum Officer had let members have a briefing note. This would be on the agenda for the next meeting.

It was noted that it was disappointing little notice had been made of the Forum comments, particularly in relation to ferries. However, some stretches had not yet been determined, for example the River Erme section.

HIW/21/17

Public Rights of Way Committee
11 March 2021

Definitive Map Review Parish of Trentishoe – Part 2

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

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

Recommendation: It is recommended that no Modification Order be made to modify the Definitive Map and Statement in respect of Proposal 3.

1. Introduction

This report examines the remaining proposal arising from the Definitive Map Review in Trentishoe.

2. Background

This is the second report for the Definitive Map Review for Trentishoe parish. The background to the Review in Trentishoe was discussed in the first report of 4 March 2019.

3. Proposals

Please refer to Appendix I to this report.

4. Consultations

General consultations have been carried out with the following results:

| | |
|--|------------------------|
| County Councillor Andrea Davis | – no comment |
| North Devon Council | – no comment |
| Kentisbury & Trentishoe Parish Council | – support 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 |
| Cycle UK | – no comment |

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

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5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

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

9. Conclusion

It is recommended that no Modification Order be made to modify the Definitive Map and Statement in respect of Proposal 3.

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

10. Reasons for Recommendations

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

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Combe Martin Rural

Local Government Act 1972: List of Background Papers

Contact for enquiries: Caroline Gatrell

Room No: Great Moor House, Bittern Road, Exeter

Tel No: 01392 383240

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

cg260121pra
sc/cr/DMR Parish of Trentishoe Part 2
02 030321

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Appendix I
To HIW/21/17

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.

Proposal 3: Proposed upgrade of Footpath No. 5 to bridleway, as shown between points J – K – L – M – N and L – O on plan HCW/PROW/17/36.

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

1. Background

1.1 The proposal route was included in the consultation with the support of the Parish Council to be considered, following up on its proposal in 1978, in response to an incomplete review.

2. Description of the Route

2.1 The proposal route – currently recorded as Footpath No. 5, Trentishoe – starts at the county road at Trentishoe Combe near the junction with Trentishoe Hill at point J and proceeds south westwards along a woodland track to meet Footpath 21 at point K. It continues south westwards then westwards running parallel to the River Heddon at point L. From here it continues westwards then southwestwards still running parallel with the river to meet Footpath No. 23 at point M and then to meet the county road at point N. A spur also runs north eastwards from point L to point O at Rhydda Bank Cross.

3. Documentary Evidence

3.1 Ordnance Survey Draft Drawings, 1804

3.1.1 The Ordnance Drawings were carried out for southern England over the period 1789 – 1840. They were drawn to a variety of scales, 2 inches, 3 inches and 6 inches to the mile. Some of the drawings were made 20 years before the relevant one-inch map was published. Some larger scale drawings show footpaths which did not appear on the printed map.

3.1.2 The proposal route between points J – K – L – M – N is shown as an unenclosed road running parallel to the River Heddon between Trentishoe Combe and Rhydda, known in more recent times as Trentishoe Manor, part of a longer route between Martinhoe and Kentisbury. Neither of the roads between Trentishoe Combe and Rhydda Bank Cross, and Rhydda Bank Cross and the southern end of South Dean Oaks wood, currently recorded county roads existed at that time.

3.2 Cary's Map, 1821

3.2.1 Besides the Ordnance Survey, Cary was the leading map publisher in the 19th century. He maintained a high standard of maps, using actual trigonometric surveys and other up to date source materials including parliamentary documents, which was reflected by his employment to survey the 9,000 miles of turnpike roads in 1794.

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- 3.2.2 A route, on a similar alignment to the proposal route between points J – K – L – M – N, is shown as an unenclosed road running parallel to the River Heddon between Trentishoe Combe and Rhydda, known in more recent times as Trentishoe Manor, part of a longer route between Martinhoe and Kentisbury. Neither of the roads between Trentishoe Combe and Rhydda Bank Cross, and Rhydda Bank Cross and the southern end of South Dean Oaks wood, currently recorded county roads existed at that time.
- 3.3 Greenwood's Map, 1827
 - 3.3.1 These well-made maps were produced using surveyors and a triangulation system and are considered to be reasonably accurate.
 - 3.3.2 Again, a route on a similar alignment to the proposal route between points J – K – L – M – N is shown as an unenclosed road running parallel to the River Heddon between Trentishoe Combe and Rhydda, known in more recent times as Trentishoe Manor, part of a longer route between Martinhoe and Kentisbury. Neither of the roads between Trentishoe Combe and Rhydda Bank Cross, and Rhydda Bank Cross and the southern end of South Dean Oaks wood, currently recorded county roads existed at that time.
- 3.4 Chapman & Hall's Map, 1833
 - 3.4.1 This well-made map was produced using the surveyor Sidney Hall and is considered to be reasonably accurate. Their maps were surveyed and engraved by Sidney Hall.
 - 3.4.2 A route is shown on a similar alignment to the proposal route between points J – K – L – M – N as the only route to the hamlet of Trentishoe through the parish and then on towards Martinhoe. No other routes are shown in Trentishoe parish.
- 3.5 Trentishoe Tithe Map and Apportionment, 1841-2
 - 3.5.1 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'.
 - 3.5.2 The Trentishoe tithe map is a second class map, surveyed at a scale of 3 chains to 1", by G. P. Williams, who did a number of tithe surveys in Devon. Being second class, it is considered only to be a legal and accurate record

of tithe matters. Land that was not subject to tithes was generally accepted to be either public, glebe or crown estates. In many cases public roads are coloured sienna as prescribed by Lieutenant Dawson, a military surveyor with the Ordnance Survey, to the Tithe Commissioners. The original document is held at the National Archives, with copies for the parish and diocese held locally.

- 3.5.3 The proposal route is shown as a coloured and unnumbered road, generally unenclosed for its entire length. It is not braced to any adjacent plots. The 'parish roads' are listed in the apportionment unnumbered. By this time, the road between Rhydda Bank Cross and Rhydda Bank (now Trentishoe Manor) had been constructed, but that between Trentishoe Combe and Rhydda Bank Cross still had not been constructed.
- 3.6 Mrs Griffith's Estate map, 1864
 - 3.6.1 Estate maps were normally compiled by professional surveyor and therefore are likely to be reasonably accurate, though would not necessarily show public rights of way which crossed the estate.
 - 3.6.2 The map was based on the Tithe Map. The entire proposal route is shown between points J – K – L – M – N and L – O, as the only route between Trentishoe Combe and Rhydda Bank Cross and Rhydda Bank Lane.
- 3.7 Ordnance Survey mapping, 1809 onwards
 - 3.7.1 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'.
 - 3.7.2 The proposal route between points J – K – L – M – N is shown as a cross road on the 1809 Old Series 1:50,000 running parallel with the River Heddon between Martinhoe and Kentisbury, with the spur up to Sowden, now known as South Dean. Neither of the roads between Trentishoe Combe and Rhydda Bank Cross, and Rhydda Bank Cross and the southern end of South Dean Oaks wood, currently recorded county roads existed at that time.
 - 3.7.3 On the later 1st Edition 25" scale mapping of 1889, the proposal route is shown as a mainly unenclosed double dashed track following the River Heddon between points J – K – L – M – N with a spur between points L and O up to Rhydda Bank Cross. By this time, the road between Rhydda Bank Cross and Rhydda Bank (now Trentishoe Manor) had been constructed, but that between Trentishoe Combe, Rhydda Bank Cross, and Trentishoe Down still had not been constructed.
 - 3.7.4 On the 2nd Edition of 1904, the proposal route shown in a similar manner as the 1st Edition. By this time, the road between Trentishoe Combe, Rhydda

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Bank Cross, and Trentishoe Down had also been constructed, by Colonel Lake who owned the Martinhoe and Woody Bay Estate.

- 3.7.5 On the Post War A Edition of 1975, the proposal route shown in a similar manner to the 2nd Edition.
- 3.8 Trentishoe & Martinhoe Vestry minutes, 19th century
 - 3.8.1 Prior to the formation of District Highway Boards in the early 1860s and the later Rural District Councils (1894), the responsibility for the maintenance of public highways generally belonged to the parish and was discharged by elected Surveyors of Highways. Relevant Acts of 1766, 1773 and 1835 included the provision for the use of locally available materials and there was a statutory requirement upon parishioners to fulfil a fixed annual labour commitment. The final responsibility for maintenance lay with the local Surveyor of Highways who was obliged to keep a detailed account of public monies expended.
 - 3.8.2 Due to small nature of the parish, the Trentishoe Vestry only met a couple of times a year, even after they joined with Martinhoe Vestry in 1885. The minutes contain very little detail about the business transacted.
- 3.9 British Newspaper Archive, 1824 onwards
 - 3.9.1 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.
 - 3.9.2 10th October 1895 – North Devon Journal. A press tour was taken of the parish and surrounding area. It was noted that with the Manor of Trentishoe having recently changed hands, the new owner from Kent, had 'resolved upon building a drive, as a result of which Trentishoe village is...approached from Easterclose can be avoided. Starting at the top of the Trentishoe Down, there will therefore be a new road, the contour of the hills being followed...to Hunter's Inn, a distance of nearly 2 miles and the gradient being sufficiently easy to readily admit of coaching traffic'.
 - 3.9.3 28th April 1898 – North Devon Journal. 'Mr GC Smyth-Richards asked for a cheque of £40 towards repairing the road leading from Hunter's Inn to the Cottage, Trentishoe, undertaken by Colonel Lake. The total cost was more than double that amount. The £40 will be paid, subject to a certificate from the Surveyor.' This has been identified as including the proposal route between points J – K – L – M – N. 'In answer to enquires by Mr Smyth-Richards (Colonel Lake's agent) as to the Council taking over the new road leading from Trentishoe Common to the bottom of Trentishoe Hill, the Chairman said application had to be made under the 23rd Section of the Highway Act'.

- 3.9.4 30th June 1898 – North Devon Journal. The Lord of the Manor of Trentishoe, Colonel Lake, 'gave notice of his intention 3 months hence to dedicate to the public the new road (1 mile 1 furlong and 7½ chains in extent and with a clear width of 16 feet) commencing at Trentishoe Downs, and branching from the existing highway at Trentishoe Combe'.
- 3.9.5 13th July 1899 – North Devon Journal. It was reported that the Lord of the Manor of Trentishoe 'was desirous of handing over to the Rural District Council the road he made 3 or 4 years ago from Trentishoe Combe to Trentishoe Down. He applied that...2 magistrates should be appointed to view the road. Captain Thompson and Mr Comer Clarke were appointed to see the road'.
- 3.9.6 1st June 1950 – North Devon Journal. The 'Sunbeam Exmoor Trial [had] nearly 70 riders. The 50 mile course included several North Devon favourite hills, among them being...Rhydda Bank'.
- 3.10 Ordnance Survey Boundaries Branch Map and Inspection Journal, 1885
 - 3.10.1 As well as producing maps, the Ordnance Survey, from 1841, was responsible for the Public Boundary Archive for Great Britain. Its files show each change to a public boundary (county, parish, parliamentary and local government boundaries). There are large numbers of Ordnance Survey reports and other files describing and defining local government boundaries as depicted and described in sketch maps, reports and remarks books
 - 3.10.2 The proposal route is shown as part of the local highway network, along with what is now recorded as Parracombe Footpath No. 23 at Invention.
- 3.11 Trentishoe Parish Meeting Minutes, 1894-1978
 - 3.11.1 The Minutes provide information about the management of the route and the Meeting's views regarding the public highways in the parish. A public body such as a Parish Council/Meeting had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.
 - 3.11.2 None of the Parish Meeting records appear to have survived and could not be discovered.
- 3.12 Barnstaple Rural District Council Minutes, 1893-1974
 - 3.12.1 The Minutes provide information about the management of 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.

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- 3.12.2 There are a number of references to the highways in Trentishoe parish in these records, with a number specifically dealing with the alternative to the proposal route between Trentishoe Common and Trentishoe Combe, but none regarding the proposal route specifically.
- 3.13 Ordnance Survey Name Books, 1903
 - 3.13.1 These Ordnance Survey records contain information on named routes may be found in the relevant Object Name Books, which provided details of the authorities for named features.
 - 3.13.2 The only roads included for Trentishoe parish are South Dean Lane, Trentishoe Lane, Trentishoe Hill, Dean Lane, and Dean Wood Lane. The majority of the parish roads which are public highways today, are not included.
- 3.14 Bartholomew's 2" to 1 mile mapping, 1903
 - 3.14.1 These maps were designed for tourists and cyclists with the roads classified for driving and cycling purposes. They were used by and influenced by the Cyclists Touring Club founded in 1878 which had the classification of First Class roads, Secondary roads which were in good condition, Indifferent roads that were passable for cyclists and other uncoloured roads that were considered inferior and not to be recommended. Additionally, Footpaths and Bridleways were marked on the maps as a pecked line symbol. Cyclists were confined to public carriage roads until 1968. The half-inch small scale does not permit all existing routes to be shown, omitting some more minor routes. The purpose of these maps was to guide the traveller along the routes most suitable for their mode of transport.
 - 3.14.2 The original main route shown through the parish between Kentisbury and Martinhoe ran parallel to the River Heddon and included the proposal route between points J – K – L – M – N. It was classed as a secondary road, which was considered a good road. This route was bypassed by the new road constructed by the Lord of the Manor.
- 3.15 Finance Act, 1909-10
 - 3.15.1 The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.
 - 3.15.2 The proposal route is wholly included within hereditaments 6 – South Dean Oaks, owned by Colonel Griffiths and 17 – Parsonage Wood, owned by Miss Lake, as is what is now recorded as uUCR 301 between Trentishoe Manor, formerly known as Rhydda Bank and Woodend, within hereditament

26 – Tattiscombe. There are no deductions for Public Rights of Way or User.

3.16 Bartholomew's ½" to 1 mile maps, 1903 onwards

3.16.1 The map dated 1903 depicts the proposal route between points J – K – L – M – N as a 2nd class road in 'good' condition. From the 1921 Edition onwards, the proposal route has been demoted to the classification of an 'inferior road' not to be recommended. The spur between points L – M is not shown, due the small scale of the mapping.

3.17 Trentishoe Estate sale, 1929

3.17.1 Sales particulars should be treated with special caution, as the art of embellishment in advertising is not a newly acquired skill. Such documents are primarily concerned with private rather than public rights. Nevertheless, if a public right of way were admitted, a convincing reason for disregarding the entry would need to be provided before it could be entirely discounted.

3.17.2 The Estate was put up for sale by the Public Trustee. Sections of the proposal route between points J – K, L – M – N, and L – O, were included in lots 1 and 9 listed as Rhydda Bank (later known as Trentishoe Manor) and 2 Enclosures of Pasture and Woodlands. The sale catalogue makes no reference to the proposal route.

3.18 Aerial Photography, 1946 onwards

3.18.1 The proposal route is visible where it is not obscured from view by the woodland.

3.19 Definitive Map Parish Survey, 1950s

3.19.1 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. Trentishoe had a Parish Meeting, which did not have a regular Chairman.

3.19.2 The proposal route was surveyed on 14th December 1950 by Messers Bray and Williamson, as a 'carriage road used as a footpath' (CRF) running from Mill Ham Road to Trentishoe Combe. The status was then altered to 'footpath' by the County Surveyor.

3.19.3 In the list of public rights of way agreed with the Parish Meeting in May 1957, Footpath No. 5 was described as starting from the county road north of Millham 'at its junction with Footpath No. 3 at 325 yards north of "Mill Ham", continuing along a private accommodation road (not repairable by the inhabitants at large) in a north-easterly direction through South Dean Oaks, then eastwards through Parsonage Wood and northwards through Birchey

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Cleave Wood to join County road No. 516 at Trentishoe Combe. Also a spur running north-westwards from a point 75 yards west of the western boundary of Parsonage Wood through South Dean to the Unclassified County road 200 yards south of South Dean’.

- 3.20 Definitive Map and Statement, 1957
 - 3.20.1 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.
 - 3.20.2 The Definitive Statement for the proposal route currently describes it in the same way as the parish submission, as starting ‘at the Unclassified County road at its junction with Footpath No. 3 at 325 yards north of "Mill Ham", continuing along a private accommodation road (not repairable by the inhabitants at large) in a north-easterly direction through South Dean Oaks, then eastwards through Parsonage Wood and northwards through Birchey Cleave Wood to join County road No. 516 at Trentishoe Combe. Also a spur running north-westwards from a point 75 yards west of the western boundary of Parsonage Wood through South Dean to the Unclassified County road 200 yards south of South Dean’.
- 3.21 Kentisbury & Trentishoe Parish Council Minutes, 1979 onwards
 - 3.21.1 The Minutes provide information about the management of the route and the Meeting’s views regarding the public highways in the parish. A public body such as a Parish Council/Meeting had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.
 - 3.21.2 6th September 1979. The clerk had received a letter from Mrs Attwood, Millham ‘bringing to the notice of this Council that bridleways had now been signposted footpaths at Dean Oaks [the proposal route from point N] and one from Trentishoe Manor to the Down and could this Council help in this matter’. It was resolved that the clerk write to North Devon District Council.
 - 3.21.3 11th October 1979. It was proposed by J Candy and seconded by E Pickles ‘that North Devon District Council be written to again about the bridleways re-Mrs Attwood as the reply received was not satisfactory’.
 - 3.21.4 22nd November 1979. A letter had been received ‘relating to bridleways in Trentishoe and as this seeming unsatisfactory Mrs Pickles volunteered to phone Mr Duddin [at the Exmoor National Park Authority]’.
 - 3.21.5 3rd January 1980. ‘Mrs Pickles informed the meeting that she had been in touch with Mr Wilkinson of Exeter [Devon County Council] and she had received information that would enable the clerk to write [to the] National Trust Area Office about footpaths and bridleways in Trentishoe’.

- 3.21.6 7th February 1980. 'Arising from the minutes of the last meeting [the] clerk had arranged a meeting between Mr Cook [the] National Park rep and Mrs Pickles and Mrs Attwood resulting in agreement that [the] footpaths could be used as bridleways'.
- 3.21.7 5th September 1985. 'Mrs Attwood raised the question of bridle paths in Trentishoe, and said that she'd been informed that although she could ride her horses on the paths, the gateways to them had been downgraded into footpath entrances which meant legally she could not now get onto the bridle paths with the horses. She had a licence for a riding stable and her property had been re-rated but this was ridiculous. Mr Andrews agreed to take this up with the Devon County Council and Exmoor National Park'.
- 3.21.8 3rd October 1985. 'Mr Andrews reported on his request for information about the downgrading of these paths following Mrs Attwood's complaint. However, it seems there has been no downgrading, but a question has been raised concerning planning permission for Mrs Attwood's stables. Mr Andrews would report further on this matter'.
- 3.21.9 7th November 1985. 'The Chairman opened the meeting to the public for discussions on bridleways and footpaths. Mr Baker of Lower Cowley was very unhappy concerning bridleways. The clerk had obtained a copy of the Definitive Map for both parishes, clearly showing all bridleways and footpaths, with the original descriptions of them. this map would be kept by the clerk at his home, for anyone to inspect, together with the original Kentisbury Definitive Map. Mr Candy [the former representative of the Trentishoe Parish Meeting] agreed to look for the original Trentishoe Definitive Map, and return this to the clerk'.
- 3.21.10 5th December 1985. 'Mr Baker's letter was read to the Council and it was decided to let the matter rest'.
- 3.22 Definitive Map records, 1970s
- 3.22.1 In response to the incomplete Definitive Review of the 1970s, the Trentishoe Parish Meeting representative, Mr JB Candy of Woodend Farm, proposed several amendments to the Definitive Map and Statement including the changing the status of Footpath No. 5 to bridleway. He stated that 'always in the past this had been known and used as a bridleway'. It was added by Mr Duddon that 'the change of use of this path would be useful as a horse traffic route, thus avoiding the highway, where considerable traffic volume is experienced during the summer'.
- 3.23 Route Photographs, 2017
- 3.23.1 Site photographs of the proposal route show that it is open and available, though little evidence of equestrian use can be seen.

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3.24 Land Registry, 2019

3.24.1 The section of the proposal route between points J – K is not registered, but is known to be owned by the National Trust, who have registered the remainder of the route under title number DN 565117.

4 User Evidence

4.1 No user evidence has been received for the proposal route.

5 Landowner Evidence

5.1 No response was received from the National Trust, which owns the land crossed by the proposal route.

6 Informal Consultation Responses

6.1 The Parish Council has no objection to the proposal. No other responses have been received.

7 Discussion

7.1 Statute – Section 31 Highways Act 1980. There does not appear to be a specific date on which the public's right, above that of foot, to use the proposal route has been called into question. Currently it is recorded as Trentishoe Footpath No. 5.

7.2 As there is no specific date of calling into question or user evidence, the proposal cannot be considered under statute law. However, the proposal route may still be proven to exist as a public right of way at common law.

7.3 Common Law. Evidence of dedication by the landowners can be express or implied. 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.

7.4 On consideration of the proposal at common law, the historical documentary evidence demonstrates the proposal route's physical existence and availability since at least 1804 as shown on the early Ordnance Survey Draft Drawings. It is shown in a similar manner to other recorded public highways. However, at that time the county road from Trentishoe Down to Trentishoe Combe via Rhydda Bank Cross did not exist. The only routes to Trentishoe Combe in the early 19th century were from the Down, via Trentishoe hamlet, or from Trentishoe Manor, via the county road R604 as far as the southern end of South Dean Oaks wood (point N) and the proposal route between points N – M – L – K – J.

- 7.5 This situation continues to be depicted on Cary's mapping of 1821, Greenwood's mapping of 1827, and Chapman and Hall of 1833. By the time of the 1840 Tithe Map, the proposal route is included partly in the acreage of 'parish roads' and coloured sienna throughout. At this time, the spur between points L – O is also shown in the same manner. A requirement of the Highways Acts of 1773 and 1835 was that ancient existing highways considered public unless proven that liability to repair lay elsewhere.
- 7.6 However, it has not been able to discover further information about the proposal route at that time, as it appears due to the small nature of the parish, minimal records were kept by the Trentishoe Vestry. Those records which have survived date only from 1862 onwards. In 1885, the parish joined with Martinhoe Vestry, but the records again, lack detail about the business transacted. This lack of information is compounded by the loss of the Trentishoe Parish Meeting records between 1894-1978, when it joined Kentisbury to form a joint Parish Council in 1978.
- 7.7 Reports of local authority meetings in the British Newspaper Archive are able to fill in some of the gaps in the local records, though most of the focus is on the new road constructed. It was a new 'drive' built by Colonel Lake, the then owner of the Martinhoe Estate and Manor, from Trentishoe Down to Trentishoe Combe via Rhydda Cross, bypassing the highway through the hamlet of Trentishoe as well as the proposal route, neither of which could really cater for carriage traffic. The new 'drive' is now recorded as a county road.
- 7.8 The inference of a higher public status of the proposal route is continued into the early 20th century on the Bartholomew's maps, with the proposal route being shown in 1903 as a 2nd class road in good condition, though by the 1920s, its status has dropped to an that of an 'inferior road', and 'not to be recommended, replaced by the 'new road from Trentishoe Down to Trentishoe Combe via Rhydda Bank Cross.
- 7.9 Though 19th and early 20th century mapping consistently depicts the proposal route as a public road, it is not excluded from hereditaments in the Finance Act records, nor are there any deductions for Public Right of Way or User. The Trentishoe Estate sale of 1929 also makes no reference to the proposal route. However, such documents were concerned with private rights, rather than public.
- 7.10 The Ordnance Survey Name Books for the parish are incomplete, so little weight can be given to them, though the Boundaries Branch records from 1885 depict the proposal route as part of the local network, and being one of the two routes to Trentishoe Combe. Their records were part of an actual survey, and show no road via Rhydda Bank Cross to Trentishoe Combe.
- 7.11 When the representatives of the Trentishoe Parish Meeting, Messers Bray and Williamson carried out the Parish Survey in 1950, they described the proposal route as a carriage road used as a footpath, a CRF. This may

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have been alluding to the route's historic use as part of the 'parish roads' network in the 19th and early 20th centuries, and public reputation as demonstrated by the Bartholomew's maps.

- 7.12 The status of CRF was downgraded to footpath by the County Surveyor, but it is not known why the change was made, though the proposal route is subsequently described as a 'private accommodation road' in the Definitive Statement for Footpath No. 5. It may have been considered that the public did not have vehicular rights along the route and was therefore described as such, in line with the 'Instructions to Road Foremen' for carrying out the survey.
- 7.13 It appears therefore that by the time of the Parish Survey the 'carriage road' was considered private. The Parish Meeting and Definitive Map Review records however do demonstrate the route's reputation and use as a bridleway, right up to modern times, which is corroborated by the Bartholomew's Maps of the early 20th century.
- 7.14 The use of the term 'private accommodation road' in the current Definitive Statement has no legal standing but may infer that the public may not have had full use of the proposal route, but this must be considered with all the other available evidence.
- 7.15 In response to the Limited Special Review, the Trentishoe Parish Meeting put forward the proposal route to be upgraded to bridleway as 'always in the past this had been known and used as a bridleway', which the Exmoor National Park Officer at the time supported. No evidence to support this designation was put forward at the time.
- 7.16 No evidence has been received from the landowner, the National Trust or any users. The National Trust has owned the land crossed by the proposal route since approximately 1963, but registered it in 2008. They have had a Section 31(6) deposit in place between 1993 and 2013, which has since elapsed.
- 7.17 The current Kentisbury and Trentishoe Parish Council support the proposal.

8 Conclusion

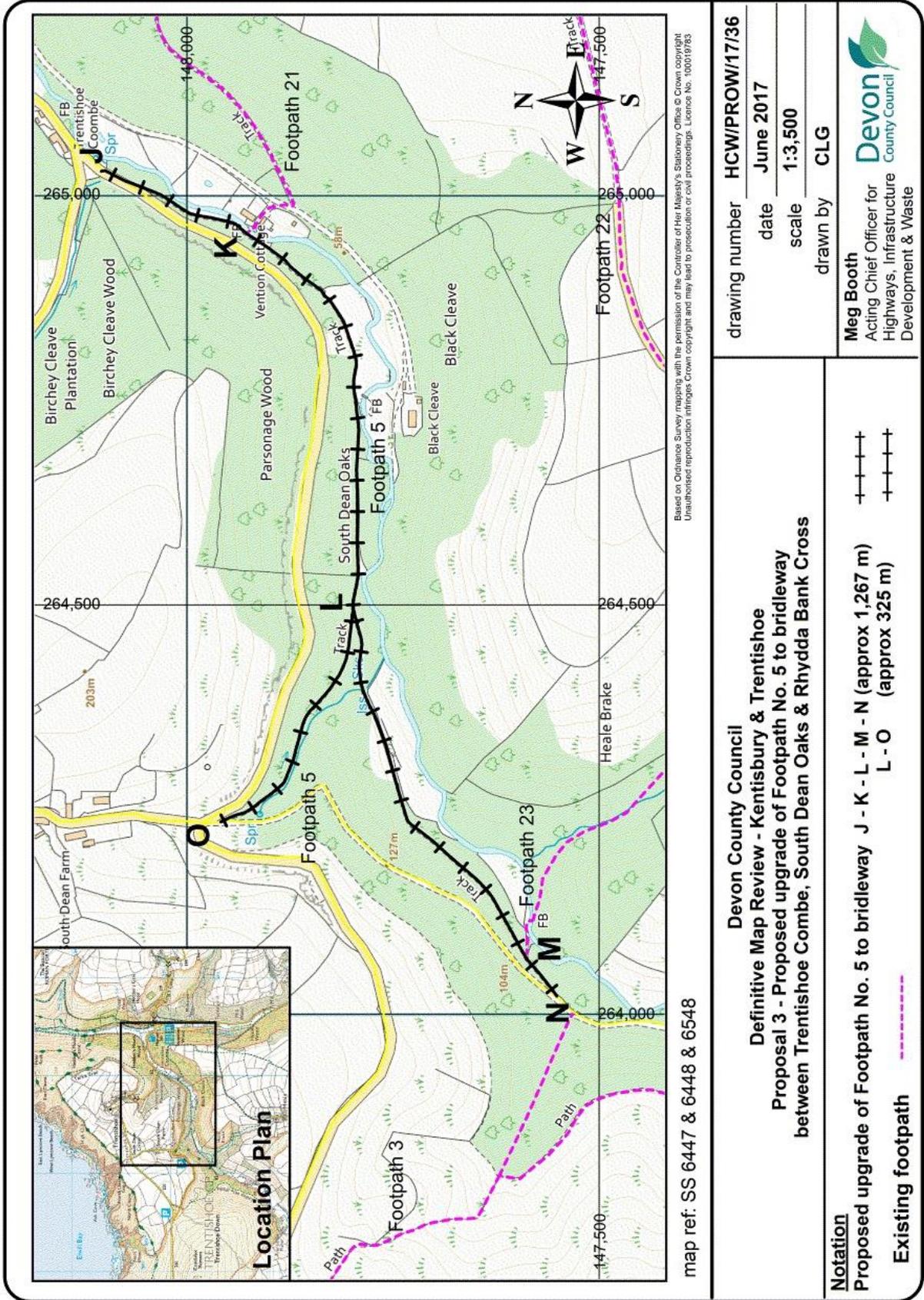
- 8.1 On consideration of all the available evidence, documents demonstrate that the proposal route between points J – K – L – M – N has existed since at least 1804.
- 8.2 Whilst the documentary evidence suggests the proposal route had a reputation of having higher status than footpath, when taken as a whole is considered insufficient to demonstrate that it should be shown on the Definitive Map and Statement as a highway of a different description. The documentary evidence shows that the route has been available at times in the past to users other than walkers, but it is considered insufficient to demonstrate that equestrian rights exist and consequently to record the

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route as a bridleway. There is no evidence of use by the public to demonstrate a higher status.

- 8.3 The evidence is therefore considered to be insufficient under Common Law to demonstrate that a public highway higher than footpath status exists between points J – K – L – M – N and L – O.
- 8.4 It is therefore recommended that no Modification Order be made in respect of Proposal 3.

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|----------------|----------------|
| drawing number | HCW/PROW/17136 |
| date | June 2017 |
| scale | 1:3,500 |
| drawn by | CLG |

Devon County Council
Definitive Map Review - Kentisbury & Trentishoe
Proposal 3 - Proposed upgrade of Footpath No. 5 to bridleway
between Trentishoe Combe, South Dean Oaks & Rhydda Bank Cross

Notation
 Proposed upgrade of Footpath No. 5 to bridleway J - K - L - M - N (approx 1,267 m) + + + + +
 Existing footpath L - O (approx 325 m) + + + + +

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

HIW/21/18

Public Right of Way Committee
11 March 2021

Definitive Map Review 2017-20 Parish of Holsworthy Hamlets

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 Holsworthy Hamlets and no modifications are required.

1. Summary

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

2. Background

The original survey, under s. 27 of the National Parks and Access to the Countryside Act, 1949, revealed 11 footpaths and 1 bridleway were recorded on the Definitive Map and Statement for Holsworthy Rural District with the relevant date of 1st July 1958.

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

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

The following Orders have been made and confirmed:

Holsworthy Hamlets Footpath No.9 Public Path Diversion Order 1990;
Holsworthy Hamlets Byway Open to All Traffic Definitive Map Modification Order 1990;
Holsworthy Hamlets Footpath No. 1 Public Path Diversion Order 1997;
Holsworthy Hamlets Footpath No. 5 Public Path Diversion Order 1997; and
Holsworthy Hamlets Footpath No. 6 Public Path Diversion & Definitive Map & Statement Modification Order 2014.

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

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

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No valid proposals arising out of this or previous reviews.

4. Consultations

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

The responses were:

| | |
|-----------------------------------|--------------|
| County Councillor Parsons | – no comment |
| Torrige Devon District Council | – no comment |
| Holsworthy Hamlets Parish Council | – no comment |
| British Horse Society | – no comment |
| Byways and Bridleways Trust | – no comment |
| Country Landowners' Association | – no comment |
| Devon Green Lanes Group | – no comment |
| National Farmers' Union | – no comment |
| Open Spaces Society | – no comment |
| Ramblers' Association | – no comment |
| Trail Riders' Fellowship | – no comment |
| Cycling UK | – no comment |

5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

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

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

9. Conclusion

It is recommended that Members note that there are no proposals for modifying the Definitive Map in the parish of Holsworthy. Should any valid claim with sufficient evidence be made in the next six months, it would seem reasonable for it to be determined promptly rather than be deferred.

10. Reasons for Recommendations

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

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Holsworthy Rural

Local Government Act 1972: List of Background Papers

Contact for enquiries: Caroline Gatrell

Room No: Great Moor House, Bittern Road, Exeter

Tel No: 01392 383240

| Background Paper | Date | File Ref. |
|--|---------|---------------|
| Correspondence file: Holsworthy Hamlets | 2019-20 | CG/DMR/HOLHAM |

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sc/cr/DMR Parish of Holsworthy Hamlets
03 020321

HIW/21/19

Public Rights of Way Committee
11 March 2021

Definitive Map Review
Parish of Exmouth

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

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

Recommendation: It is recommended that:

- (a) Modification Orders be made to modify the Definitive Map and Statement by adding to them:
 - (i) a public footpath between points between points C and D, as shown on drawing number HIW/PROW/21/04, in respect of Proposal 1.
 - (ii) a public footpath between points E and F, as shown on drawing number HIW/PROW/21/05, in respect of Proposal 2.
- (b) No Modification Order be made in respect of that part of Proposal 1 shown between points A – B – C, as shown on drawing number HIW/PROW/21/04.

1. Introduction

The report examines the Definitive Map Review in the parish of Exmouth 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 Exmouth, 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. 2 Exmouth) Modification Order 1953
Devon County Council (Footpath No. 14 Exmouth) Stopping up and Diversion 1962
Devon County Council (Footpath No. 6 Exmouth) Diversion Order 1966
Devon County Council (Footpath No. 8 Exmouth) Stopping Up 1967
Devon County Council (Footpath No. 2 Exmouth) Diversion Order 1971
East Devon District Council (Footpath No. 2 Exmouth) Public Path Diversion 1978
East Devon District Council (Footpath No. 6 Exmouth) Public Path Diversion 1980
East Devon District Council (Footpath No. 2 Exmouth) Public Path Diversion 1980
Devon County Council (Footpath No. 17 Exmouth) Modification Order 1990

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Devon County Council (BOAT No. 16 Exmouth) Modification Order 1991
Devon County Council (Footpath No. 7 Exmouth) Diversion Order 1992
Devon County Council (Footpath No. 18 Exmouth) Diversion Order 1992
Devon County Council (Footpath No. 19 Exmouth) Modification Order 1994
Devon County Council (Footpath No. 5 Exmouth) Diversion Order 1997
Devon County Council (Footpath No. 22 Exmouth) Dedication Order 1997
Devon County Council (Footpath No. 3 Exmouth) Diversion Order 1998
Devon County Council (Footpath No. 4 Exmouth) Diversion Order 1998
Devon County Council (Footpath No. 20 & 21 Exmouth) Diversion Order 1998
Devon County Council (Footpath No. 20 Exmouth) Extinguishment Order 1998
Devon County Council (Footpath No. 21 Exmouth) Extinguishment Order 1999
East Devon Council (BOAT No.16 Exmouth)TCPA Stopping up & Diversion Or. 1999
Devon County Council (Footpath No. 1 Exmouth) Diversion Order 2005
Devon County Council (Footpath No. 5 Exmouth) Diversion Order 2008

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

The current review began in September 2019 with a well-attended public meeting, held in the Town Hall, which was advertised in the parish, in the local press and online.

The two proposals discussed in this report were Schedule 14 Applications held on file until the parish review. No further valid proposals were put forward at the time of the review.

3. Proposals

Please refer to Appendix I to this report.

4. Consultations

General consultations have been carried out with the following results:

| | | |
|---------------------------------------|---|-------------------------|
| County Councillor Jeffrey Trail | - | no comment; |
| County Councillor Richard Scott | - | no comment; |
| County Councillor Christine Channon | - | no comment; |
| East Devon District Council | - | no comment; |
| Exmouth Town 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 | - | support both proposals; |
| 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 Modification Orders be made in respect of part of Proposal 1, shown between points C – D, and in respect of Proposal 2, but that no Modification Order be made in respect of that part of Proposal 1, as shown between points A – B – C.

Should any further valid claims 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: Exmouth

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Local Government Act 1972: List of Background Papers

Contact for enquiries: Alison Smith

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

Tel No: (01392) 383370

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

| | | |
|-----|--|--|
| Nil | | |
|-----|--|--|

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A. Basis of Claim

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

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

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

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

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

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

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1. Proposal 1: A claimed footpath from Exmouth Footpath No.1 (part of the South West Coast Path) Rodney Bay steps point A on drawing number HIW/PROW/21/04 along the beach at mean high water mark and up a zigzag path to the Devon Cliffs Holiday Park to re-join Exmouth FP No. 1 at point D.

Recommendation: That a Modification Order be made in respect of part of Proposal 1 to modify the Definitive Map and Statement by adding to them a public footpath between points between Points C and D as shown on drawing number HIW/PROW/21/04.

1.1 Background

- 1.1.1 This is a Wildlife and Countryside Act, Schedule 14 Application to add a footpath to the Definitive Map, which was made by The Ramblers Association in 2013, and incorporates the evidence that Exmouth Town Council collected in 2002.

1.2 Description of Route

- 1.2.1 Proposal 1, commences at the end of the spur of Exmouth Footpath No.1 (part of the South West Coast Path) that leads to the bottom of Rodney Bay steps on the beach, at point A. From here the claimed route travels south eastwards, around Orcombe Point, point B, then in a generally north-easterly direction along the beach and foreshore at the Mean High Water line for approximately 1.8 kilometres, almost to Straight Point cliffs. Just before the end of the beach, at point C, the claimed route climbs up the cliff on a zigzag concrete path to the top of the cliffs where it re-joins Exmouth Footpath No. 1 at point D. Currently at point D there is a wooden South West Coast Path signpost with three sign arms; two pointing along the coast path and a smaller arm pointing to the zigzag path, inscribed Sandy Bay. Attached to this post is also an unofficial sign that says, 'Please Note: No dogs allowed on the beach 1st May to 30th September Thank you.'
- 1.2.2 For reference, the holiday park at the top of the zigzag path is formally known as Haven, Devon Cliffs Holiday Park. It is also known locally by its previous name of Sandy Bay Holiday Park, and the end of the beach below the zig-zag path near point C, is known as Sandy Bay.

1.3 Documentary Evidence and Historical Evidence

1.3.1 Ordnance Survey Mapping

1888 -1913 6" to the mile mapping marks Rodney Steps at the west end of the claimed route (point A), it also shows the base of the cliff and beach and rocks of the foreshore. It does not show a path along the beach. It shows the line of a footpath that corresponds to the existing Footpath No. 1, all the way along the top of the cliffs. At the east end of this shown path, around point D, the old map shows the coast path splitting into two paths to cross the stream, the lower route going over a footbridge and then returning to the coast path. This lower path roughly corresponds with point D and the first slope of the zigzag

of the claimed route. However, there is no linking path shown down to the beach (to point C).

- 1.3.2 OS 1960 6" to the mile mapping, shows all the features mentioned above, with the inclusion of Sandy Bay Holiday Park. The footbridge on the coast path is shown on the higher path. The lower path from point D appears to correspond to the first easterly 'zig' of the claimed path and it continues to almost reach the beach above the high water line.
- 1.3.3 Subsequent OS maps show, the route of the path's easterly 'zig' and then the path turning westwards on the 'zag' and going less steeply to the beach. The modern maps show the stream has been piped underground, to emerge further down the cliff.
- 1.3.4 Rather unusually the beach and foreshore between Mean High and Low water at Sandy Bay, does not belong to the Crown Estates. The area was passed to the Clinton family many hundreds of years ago, it was held by Clinton Devon Estates until it was sold to the Lee Family in the 1960's.
- 1.4 User Evidence
 - 1.4.1 File records hold a letter from Exmouth Town Council dated October 2002, that simply says 'I enclose thirty-three Statements of Evidence relating to the footpaths listed over leaf'. They then referred to the proposed route as No.1. These forms have been amalgamated with additional forms were presented with the subsequent Ramblers Association Schedule 14 Application, submitted in December 2013. Further User Evidence Forms (UEFs) were submitted as a result of the 2019-2020 Definitive Map review.
 - 1.4.2 In total 78 UEFs and Statutory Declarations have been presented for this route. These evidence forms are included in full in the backing papers.
 - 1.4.3 Examples of the evidence, given by some people who had been using the path from Sandy Bay campsite over many years, give the history of the development of the route to the beach.
 - 1.4.4 David Chapman-Andrews born in 1933, records that at various times from summer 1939 he has used the route. In 1939 there were steps between the coast path at the cafe and the beach at Straight Point. In answer to whether the route had been diverted, he said the wooden steps were replaced with a zigzag concrete path but doesn't give a date. He also says that his uncle, who was born in Exeter in 1907, went camping in the 1920s in the fields near the wooden hut (prior to it being a café). Interestingly, he said they pushed a handcart with their tents and luggage from Littleham Cross railway station to the camping farm. He was told that they scrambled down a steep path to the beach.
 - 1.4.5 Trevor Bartlett has used 'the ramp in question' between 1984 to 1989. He gives additional information saying, 'This path in the early 1940s ran down the

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cliff face by the water gully - we used it as children coming down from West Down Farm, through the orchard, to Mrs Roystones bungalow on the cliff top'.

- 1.4.6 Ronald Bagshaw LLB, made a Statutory Declaration in 2004 and a further, more expansive formal declaration also witnessed by a JP. He writes: 'I was the last Clerk and Solicitor to the former Exmouth Urban District Council holding office from summer 1956 to March 1974'. He details his use of the path since 1956. He did not hear any suggestions that the Sandy Bay path was not a public footpath until autumn 2003, when he first observed the notices at the top of the path which said 'Private Land No Right of Way, Highways Act 1980 section 31'. He said, 'Prior to this date I have never known John Lee the former owner or his successors or employees challenge the public walker use the route to Sandy Bay'. He does not give a description of how he accessed the beach at Sandy Bay, but on the map signed in 2004, he clearly marks the zigzag track to the beach. On his retirement Mr Bagshaw worked for the Ramblers Association as Area Footpath Secretary.
- 1.4.7 Mr Ronald Coles, born in 1921, used this route between 1950 and 2005, when he completed his UEF. He used the route approximately 10 times a year and said it had been used by generations to access the low water path between Exmouth via Orcombe Point to Sandy Bay and area by the Marines site (the Rifle Range). He attached a clipping from the Exmouth Journal of a photograph of a large sign at the top of the zigzag path at Sandy Bay, that says 'Private Land No Public Right of Way Highways Act 1980 section 31'. The caption beneath the photo says, 'The sign on the path from the beach at Sandy Bay informing the public that the land is private and there is no public right of way.'
- 1.4.8 John Fowler used the path from 1960 to 2005 regularly for dog walks between 10 and 100 times a year. He always used the route along the beach and up the zigzag from the beach to Sandy Bay, without restrictions for many years. He believes the notices appeared a few years ago perhaps in 2003. He says, 'it's only recently that Sandy Bay camp has attempted to enforce restrictions'.
- 1.4.9 Norman Gibbs, born 1935, used the route since the mid-1940s from the Cliff top to the beach for walking and swimming. He thought it was public because of the vast number of people who have used it over the years. It has not been diverted but it has been improved. Since the 1940s school friends and local residents of the Exmouth area have always used the path to the beach as it was the only access to the beach, apart from at the Orcombe Point end, some distance of 1 to 1 1/2 miles away. He adds that it is not available at high tides.
- 1.4.10 Malcom Mitchell has walked the path since 1970 to 2002 (when he completed his form), 20 times a year, as a circular path using the coast path. His use had been unhindered for 32 years.

- 1.4.11 Mr McMillan, has used the path since 1932 except between 1940 and 45, to walk on the beach and the Cliff path for pleasure. No one has been stopped and all the other people from Exmouth have used it. He states the notice saying the path was private was only put up in 2003. He says he isn't aware of who owns the Cliff face but goes on to say that the route has always to his knowledge being a public footpath and the footpath in question connects the beach to this Cliff path. On his map he has clearly shown the zigzag path to the beach.
- 1.4.12 Suzan Martineau used the route between 1966 and 2003 (when she completed her form), from Exmouth to Sandy Bay and back, for pleasure. In approximately January 2003 she says that notices appeared at the top of the concrete path and at the high watermark on the beach. These said 'Private no Footpath'. She says since moving to Exmouth in 1966 'we have frequently at least once a week walked this route at low tide from Exmouth to Sandy Bay up the concrete path and back along the Cliff tops and vice versa. We always met people doing the same circuit it is very popular'.
- 1.4.13 Brian Payne has used the route between 1948 and 1952 and then started to use the route again between 1997 and 2005. He gives some history, saying 'In the years quoted, 1948 - 1952, I went with my parents and brothers and sisters, together with up to four other families (neighbours from Exeter) for picnic lunches (at Sandy Bay) most Sundays through the summer. We would park in the fields near the top of the path and walk down the path to the beach. There were always many other families doing the same thing. When I returned to use the path eight years ago (1997) I found the path to be in the same position, but it was now wider than it was 50 years ago'.
- 1.4.14 Kenneth Willoughby, born in 1922, has used the route from the Cliff top down to Sandy Bay beach shown on his map since 1935 approximately 12 times a year, on foot. He said it was public because it is being so freely used by pedestrians wishing to get down the Cliff path. Notices were put up in 2003 saying 'Private No Right of Way'. He had never been granted permission to use this route nor had been questioned when using it.
- 1.4.15 The above are a small sample of the 78 UEFs and Statutory Declarations. The evidence given in these show continuous use of the of the route from the 1940s to 2005 (when most of the evidence forms were completed). Some users have noted it is not possible to use the foreshore part of the route at high tides because it is completely covered by the sea. Most users seemed to time their walks to coincide with the low tides.
- 1.4.16 Many users have noted that until 2003 there was no indication that this was not a public path. They do acknowledge in 2003 and again in 2005 notices appear on the zigzag path down to beach and above the high water mark on the beach, that said no public right of way. However, users continued to walk the route. No one comments when the notices were removed, and no one had been directly challenged.

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1.4.17 Today there is an official wooden sign arm on the coast path sign that points to Sandy Bay and there are no notices to deter use.

1.4.18 With their UEFs many of the users have attached a pre-produced map on which a strong black line, that follows the mean high watermark, has been printed, to show the claimed path, between points A – B – C – D. Some users have enclosed this map with their form, others have highlighted this line in colour, a smaller number have included their own maps some hand drawn and others on different base mapping. Where they use a map that shows the whole route, all the users show the Mean High Water mark as the claimed route. Some individuals have just enclosed a small section of map that only shows the zigzag path at Sandy Bay. However, all the maps are consistent in showing use of the zigzag path between points C and D from the beach up to the coast path or from the coast path to the beach.

1.4.19 Apart from these maps (many of them pre produced for the users), there is no physical evidence on the ground to show that each one of the users has walked the same line along the beach. The beach is covered and washed twice daily by the tide.

1.5 Landowners Evidence

1.5.1 On 7th of November 2002 the County Council received a letter from Every's Solicitors Exmouth, on behalf of the landowner of Sandy Bay.

1.5.2 It says: 'We write on the instructions of our clients, Mr CJ Lee, Mrs ME Hawkins and Mrs BA Marriott ("the family") who are the owners of freehold of the land at Littleham, near Exmouth, which includes the Devon Cliffs Holiday Park (Sandy Bay). We have acted for them and their family for upwards of 50 years. The ownership includes the freehold of the part of the beach down to the low water mark. Attached is an extract of the plan on the conveyance of the freehold by the Clinton Estate to the family in 1950, the ownership being partly edged in red.

In the edition of the Exmouth Journal published on the 3rd of October 2002, notice is given concerning the omission of certain footpaths from the County Council definitive footpath map including "Sandy Bay West along the beach to Rodney point". It is this alleged pathway to which this letter relates.

It appears the Notice invites the members of the public to claim they have as of right exercised a right of way over the "pathway" so as to support an attempt to establish a public right of way which does not presently exist and so has not previously been omitted.

On behalf of the Lee family we register here a strong objection to the attempt to prove the existence of any such public right of way. Our instructions are to pursue the objection throughout any process which may be instituted to attempt to establish the claimed footpath.

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In as much as the matter is at an early stage, we regard this letter as a brief preliminary statement for some of the reasons for the objection. We reserve the right to introduce further reasons for objection and to expand these preliminary points in light of any signed statements which may be following the published invitation referred to above.

The preliminary reasons below are not in any particular order of importance:

- (i) The pathway is incapable of definition on the ground, which consists of shifting sands. No-one looking the length of the beach could possibly identify any pathway.
- (ii) Those who by licence of the Lee family have been allowed to use the beach will have chosen their own way, which would at most times be between high watermark and low watermark, depending also on the wind, sand blow, etc.
- (iii) The maintenance and security of the beach is the responsibility of the Lee family and their tenant. They look after the cleaning of the beach, the removal of seaweed and the control of beach activities. The existence of any public right of way would undermine this control and security.
- (iv) To allege the public right of way is to suggest the public restrict themselves to a particular route. This is totally impractical and incapable of policing. It is an invitation to "abuse" of the use of the beach.
- (v) The beach and its access have always been such signalled as "private". This is a statement of fact advertised in the publicity of the Holiday Park for at least 40 years. It has been an important factor in encouraging one of the largest and most important tourist attractions in the South West. It represents security and control for families. The Holiday Park houses about 15,000 people in the height of the Season.
- (vi) The exercise of control over the beach has been real. There have been instances of people with dogs causing a nuisance on the beach - they have been successfully ordered to leave. This would not be possible if a right of way over an indistinguishable part existed.
- (vii) The proposed pathway is not a route or way to a place. The access to the beach from the cliff top has been formed by the Lee Family.
- (viii) The route from Exmouth to Budleigh Salterton is an existing long established public footpath on the cliff top, which is regularly used. It is not on the beach.

Please acknowledge safe receipt of this letter. Yours Faithfully...'

1.5.3 There is no other correspondence from any landowners or their solicitors since this letter.

1.5.4 During the current Definitive Map Review, as the original landowners the Lee Family and the current landowners Haven Leisure Ltd were consulted.

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The Lee Family, in case they had kept 'an interest' in any of the land or beach at Sandy Bay, Devon Cliffs Holiday Park.

- 1.5.5 Mrs Lee has telephoned to say they have sold all their 'interests' in the Devon Cliffs Holiday Park and the freehold to Haven Leisure Limited, and they no longer have any interest in the holiday park or beach.
- 1.5.6 Haven Leisure Ltd. were consulted by recorded delivery letter sent to the Head Office and to the Site Manager at Devon Cliffs Holiday Park, Sandy Bay. There has been no correspondence or telephone contact in response.
- 1.5.7 It is, therefore, not known if the Haven Leisure object to this footpath claim or accept it. The new formal South West Coast Path sign has a sign arm directing people to Sandy Bay and has been erected during their tenure.
- 1.6 Discussion
 - 1.6.1 Statute (Section 31 Highways Act 1980) states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been called into question.
 - 1.6.2 Given the different nature of the sections A – B and C – D it is appropriate to consider them separately. Firstly, the zigzag section of the claimed footpath, Devon Cliffs Holiday Park, Sandy Bay, to the mean high water mark (C – D). Use by the public of the zigzag path, was called into question by the landowner, The Lee Family in writing to the County Council as the Surveying Authority, in November 2002. Then publicly, by the placing of the large 'Private Land. No Public Right of Way Highways Act 1980 Section 31' notice prominently at the top and bottom of the zigzag path, early in 2003 (as reported by many of the users). The users also report that a similar notice was erected again in 2005. The landowners made their intentions clear to the public using this path in early 2003. The relevant 20 year period of public use is therefore between 1983 and 2003.
 - 1.6.3 During this 20-year period, 1983 to 2003, there are 53 UEFs, each covering the whole period of that 20 years (and many covering several more years) and 15 other EUFs that include most of that period. The forms recording hundreds of journeys. All users have walked up or down the zigzag path at Sandy Bay beach. No-one reports that they had been given permission to use the route, they were just using it as if it were a right of way. All the maps attached to the forms show the zigzag route (C – D).
 - 1.6.4 The public access the beach at the Exmouth end, at Rodney Steps, is via a spur of Footpath No.1, which comes down to the beach on a set of steps and stops. The zigzag path is similarly confined and defined, to the beach where it stops.

- 1.6.5 The beach and foreshore section of the claimed path between Point A and C, is however different and difficult to define.
- 1.6.6 Rather unusually, the foreshore of the beach at Sandy Bay, does not belong to the Crown Estates. It was given to the Clinton family many hundreds of years ago by the Crown. Clinton Devon Estates rented their portion of the foreshore to the Lee family when they started their campsite in the 1950s. The Lee family subsequently bought the foreshore from Clinton Devon Estates in the 1960s. The Lee family subsequently sold their portion of the foreshore to Haven Leisure limited.
- 1.6.7 Many of the UEFs were accompanied by a standardised map, on which there appears a pre-printed blackened line, that corresponds to the mean high water mark. Some forms were accompanied with individual maps, but all show a defined line along the beach.
- 1.6.8 The tidal range for the Exmouth Approaches (the sea area between Straight Point and Orcombe Point encompassing the beach) varies dramatically between Spring tides and Neap tides. This variation is on a monthly luna and daily cycle. On a low Spring tide, the beach can be 300 metres wide, whilst six hours later, the sea will be touching the base of the cliffs. Conversely, on a small Neap tide the sea will not move away from the bottom of the Rodney Steps. Due to this dramatic, natural and continual variation in the beach area available to walkers, it is impossible to ascertain a single linear walked path, between points A – B – C. At each tide the beach is washed clean. Observation of the use of this beach area by the officer (who has known it for many years), shows that on any day, whatever the weather and if the tides allow, there will be walkers using the beach area to walk from Orcombe Point to Sandy Bay and vice versa. However, the walkers will fan across the whole span of the available sand. They do not follow one defined line, except when they reach the bottom of the zigzag path at Sandy Bay or the bottom of the steps at Orcombe Point.
- 1.6.9 It would therefore be impossible to define a linear footpath the area over this beach and foreshore.
- 1.6.10 Common Law 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 evidence suggests that there may be sufficient evidence that the path between Point C – D was dedicated by implication, by the landowner making no objection to the public's long and frequent use of the path since the 1940s. However, the section of the route between A – B – C could not give rise to dedication at Common Law because the public have wandered so widely over the beach, not establishing a linear right of way that any landowner could have dedicated.

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1.7 Conclusion

- 1.7.1 There is sufficient evidence to show that part of the footpath claimed, over the zigzag path between Points C – D at Sandy Bay, has actually been enjoyed by the public, as of right and without interruption for a full period of 20 years between 1983 and 2003; and 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. It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement by adding to them a footpath between points C – D as shown on drawing number HIW/PROW/21/04, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.
- 1.7.2 There is however, insufficient evidence to show that a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over the land of the beach and foreshore between points A – B – C, as a defined line is incapable of being demonstrated to have been used by the public. Rather the public wander anywhere along the beach depending on the tides and available sand on any particular day. It is therefore recommended that no Modification Order be made for the section of claimed footpath between points A – B – C. It is likely that the beach will become coastal margin under the provisions of the new England Coast Path.

2. Proposal 2: Claimed Footpath from Ellwood Road point E, across the carpark of Brixington Community Baptist Church and down the steps to Churchill Road point F on drawing No. HIW/PROW/21/05.

Recommendation: That a Modification Order be made in respect of Proposal 2 to modify the Definitive Map and Statement by adding to them a public footpath between points between points E and F as shown on drawing number HIW/PROW/21/05.

2.1 Background

- 2.1.1 A Schedule 14 Application was made by Mr T Hayes and Mr J Howlett in June 2013, to add a footpath to the Definitive Map, triggered by the planning application for redevelopment of the Church site crossed by the claimed route.
- 2.1.2 During the course of the current Parish Review of Exmouth the applicants were contacted. Mr Hayes has passed away. However, Mr Howlett wishes to continue as sole applicant and to have the claim determined.

2.2 Description of the Route

- 2.2.1 Proposal 2 starts on Ellwood Road at point E, at the entrance to the carpark of Brixington Community Baptist Church. It crosses the carpark in a southerly direction, before zigzagging down two flights of steps and onto Churchill Road at point F. The route is approximately 50 metres long and provides a short cut between these two roads and the parade of local shops on Churchill Road.

2.3 Background Information

- 2.3.1 There is no historical evidence for this claim. The housing and church were built in the 1960's on a green field site with no pre-existing footpaths indicated.
- 2.3.2 In 2013, the Church applied to East Devon District Council for planning permission to redevelop the site. The plan was to expand the footprint of the building to include meeting rooms, a restaurant and a worship area. The proposed footprint of the new building did not appear to affect the physical line of the subsequently claimed footpath.

2.4 User Evidence

- 2.4.1 Accompanying the Schedule 14 Application were 38 User Evidence Forms (UEFs), covering use of the route by local people for over 30 years. All the evidence forms were completed in 2013, leading up to the Application being made. No further forms have come in, although the route has continued to be used. However, the Schedule 14 Application will be taken as the date the route was brought into question, so no later user evidence was sort.

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- 2.4.2 Examples of the use follows and all the UEFs are available within the backing papers to this report.
- 2.4.3 Sheila Anniss has walked the route between 1986 and 2013, about 15 to 20 times a year. Going to and from her house in Ellwood Road and the Farmhouse Inn for pleasure. She knows the car park is owned by the church but says the pathway has been used between the Brixington shops, pubs, bus stops etc for all of the 27 years she has lived there.
- 2.4.4 Patrick Burt has used the route from Ellwood Road to Churchill Road across the car park of the church since 1993 until 2003. Frequently when going to and from the shops on foot. He says 'it's used by everyone and we do see people in the church as we pass'. He goes on to say that he has worked a lot in the area and has used it frequently when going down at lunchtime for a snack and to collect fuel for his mower or a shortcut to the shops.
- 2.4.5 Steven Driver has used the route between 1992 and 2013, 365 days a year. Going from his home in Ellwood Road to the shops, pub and bus stop on foot. He's used it as part of his daily route, as have many other members of the public.
- 2.4.6 Terrance Hayes of Ellwood Road (one of the applicants) used this route frequently on foot, from 1987 to 2013 to go shopping. He says, 'It crosses the car park of the Baptist church and I often saw people in the church as I passed by'. He said this path has been used by local people every day because it's the nearest route to get to the Farmhouse Inn, the restaurant and Tesco's express.
- 2.4.7 Valerie Hayes has used the route since 1987 to 2003. Mainly to go to and from the shops and the bus stop. She says it's always been used by the public. It's the shortest route to Churchill Road to get to the shops Tesco's the Farmhouse Inn and the restaurant. She knows the land is owned by the church.
- 2.4.8 Mr Oliver of Ellwood Road has used the route between 1973 and 2013, weekly to go to the shops and bus stop on foot. He said it is always been there and it's frequently used by the public and he has used it ever since he moved to Ellwood Road in 1973.
- 2.4.9 Jacqueline Owens has used the route every week of the years since 1986, on foot as she has been going shopping.
- 2.4.10 Mr Powell says he's used the route for more than 30 years around 110 times a year, to go from his home to the local shops on foot. Everybody has used it and he's never seen any signs to say it shouldn't be used. People are using it all the time, he comments.
- 2.4.11 Colin Ridgeway has used the route from his home in Ellwood Road on a daily basis between 1976 and 2013 to go to the shops, the bus stop etc. and it's been in constant use on foot, he says.

2.4.12 Phillip Slade has used the route since 1978 and 2013 three times a week to go to the Farmhouse pub, the shops and the garage on foot. Everyone has always used the path. He has never been stopped or turned back from using the path nor has he ever seen any signs.

2.4.13 Mrs Smith has used the route since 1975 to 2013, over 100 times each year to go to the shops, the bus stop and walking for pleasure. She says 'no one has ever objected to us using the path. All the years I've used it, there have never been any signs and I know the occupiers and owners were aware the path was being used'. She knew the Rev. Peter Eastman who lived nearby, and sometimes saw him near the church as she was using the path. She said, 'He never had a conversation about restrictions on the use of the path'.

2.4.14 The above are a selection of the 38 UEFs presented with the Application. Of those users, 20 have walked the route for the full period of 20 years between 1993 and 2013. The other 16 have all started to use the route after 1993, adding their use to the 20 year period. All the users were using the route as part of their daily lives. The route has not changed, and people continue to use it.

2.5 Landowner evidence

2.5.1 The Baptist Union Corporation limited (BUC) was registered as the proprietor of the land on the 10th of May 2013, following a transfer of trusteeship from Devon Baptist Association, who acquired the land in 1966 from the developer and built the current church.

2.5.2 The BUC solicitor Richard Wilson has completed a Landowner Evidence Form and a continuation sheet. He gives details of the Baptist Union's ownership of the freehold of the land since 1966. He says he is not aware of any legal right of way having been conclusively established over the ground. He has provided copies of the deeds and the conveyance dated 11.03.1966.

2.5.6 He writes, 'As the legal trustee off the land, the BUC is not in occupation of the land. However, I understand that persons are stopped from using the claimed route periodically throughout the calendar year, at the discretion of the church.

However, I understand that the church periodically obstructs the route from time to time throughout the year at its discretion'.

He says signs and locked gates have not been erected. And no section 31(6) deposit has been made.

2.5.7 The BUC encloses a copy of its conveyance and a map showing the area sold to the church in 1966 prior to the development of the area when the roads had been laid out and the church and surrounding houses had not been built. No path was shown on this map.

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2.5.8 Two further Landowner Evidence Forms have also been completed by the Reverend Simon Atkinson for Brixington Church as the occupier of the land. The first dated 15.01.2015 and the second on 16.12.2020.

2.5.9 He explains that the Church is the beneficiary of the freehold of the land.

2.5.10 When asked has he seen people using the route he had said Yes. He explained 'My tenure at the church commenced 14 years ago, during which time I have seen occasional use of the claimed route by persons on foot'.

2.5.11 When asked if he or others ever stopped or turned back people from the claimed route he answers 'yes' and then clarifies 'no one has been challenged to stop them or turn them back in person, but for the reasons set out in question 9 persons are stopped from using the claimed route periodically throughout the calendar year, entirely at the discretion of the church'.

2.5.12 In response to the question 'Have you ever locked any gates or placed any notices along the route?', he answers 'yes, cones laid out at access/egress points, as described in question 9 and shown on the attached plan'. He clarifies further on the continuation sheet.

2.5.13 'Access to the claimed route is closed periodically for maintenance of the land, to include cutting, strimming and white lining. Further, access to the claimed route is prevented through closure of the path and the car park in order to accommodate frequent church events during the calendar year to include weddings, fun days, church fetes and other similar activities typically hosted by churches as part of its community obligations. Closure is achieved by physically obstructing access which involves the string of cones across two access egress points secured by a rope. No notice is given to persons as to when access will be curtailed, and closure of the route is wholly at the discretion of the church to accommodate its events calendar and or periodically maintenance of its land. Dates are too numerous to relay access is obstructed on multiple occasions throughout the calendar year at the discretion of the landowners.'

2.5.14 In answer to the question 'have you ever erected any notices or signs please indicate and what was their wording?' he states: 'Minutes dated the 4th of February 1981 record agreement by the committee to the acquisition of two "Keep Off" signs. I expect the signs would have been sited at the North and South of the land where the access to the car park and steps is situated respectively'. He noted 'that the purpose of such signs was to make people aware that the land of the claimed route was Church property'.

2.6 Discussion

2.6.1 Statute

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 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.

- 2.6.2 The Schedule 14 Application in 2013 will be taken as the 'calling into question'. The Planning Application to rebuild the Church was the catalyst for it. Therefore the 20 year period of use without interruption, is between 1993 and 2013. There is considerable user evidence detailing this route has been used as a footpath, between Ellwood Road and the shops and pub on Churchill Road. Twenty of the users have each used it for the full 20 year period and many for longer, the other sixteen users have started and continued to use it during that period. Many people walk the route several times a week and some use it daily, when going to and from the shops, bus stop and pub.
- 2.6.3 None of the users have been challenged or seen any signs to say this was not a footpath. None of the users have reported the 1981 'Keep Off' signs, which would have been twelve years before the relevant period. None have said that their way has been physically obstructed at any time. The evidence was submitted in 2013, none of the users have mentioned fun days or church fetes etc. in the relevant period.
- 2.6.4 The landowners the BUC, and the occupiers, The Baptist Church, give different evidence to the public. The landowners say the route into the car park at Ellwood Road has been occasionally been blocked with cones and a rope, when there have been fetes etc. or the car park has been either full or being maintained.
- 2.6.5 However, the cones have not been specifically placed to block the right of way, rather to steward such events. As locals to the area, it is quite likely that some of the users attend the fetes etc. Footpath users have not directly been barred from using the path.
- 2.6.6 None of the users report there being any notices to stop footpath users from using the pathway. Nothing that said anything like 'This is not a public right of way'.
- 2.6.7 The Church Council minutes of 1981 record that it was agreed that two 'Keep off' signs be requested. But no information was presented to say where these signs were to be placed. It is supposition on the Reverend's behalf (he did not start at the church until 2006) as to where they might have been placed in 1981. None of the users report these signs. 'Keep off' signs are insufficient by themselves to show that landowner had no intention to dedicate a right of way and they do not appear to have challenged the use of the path by the public.

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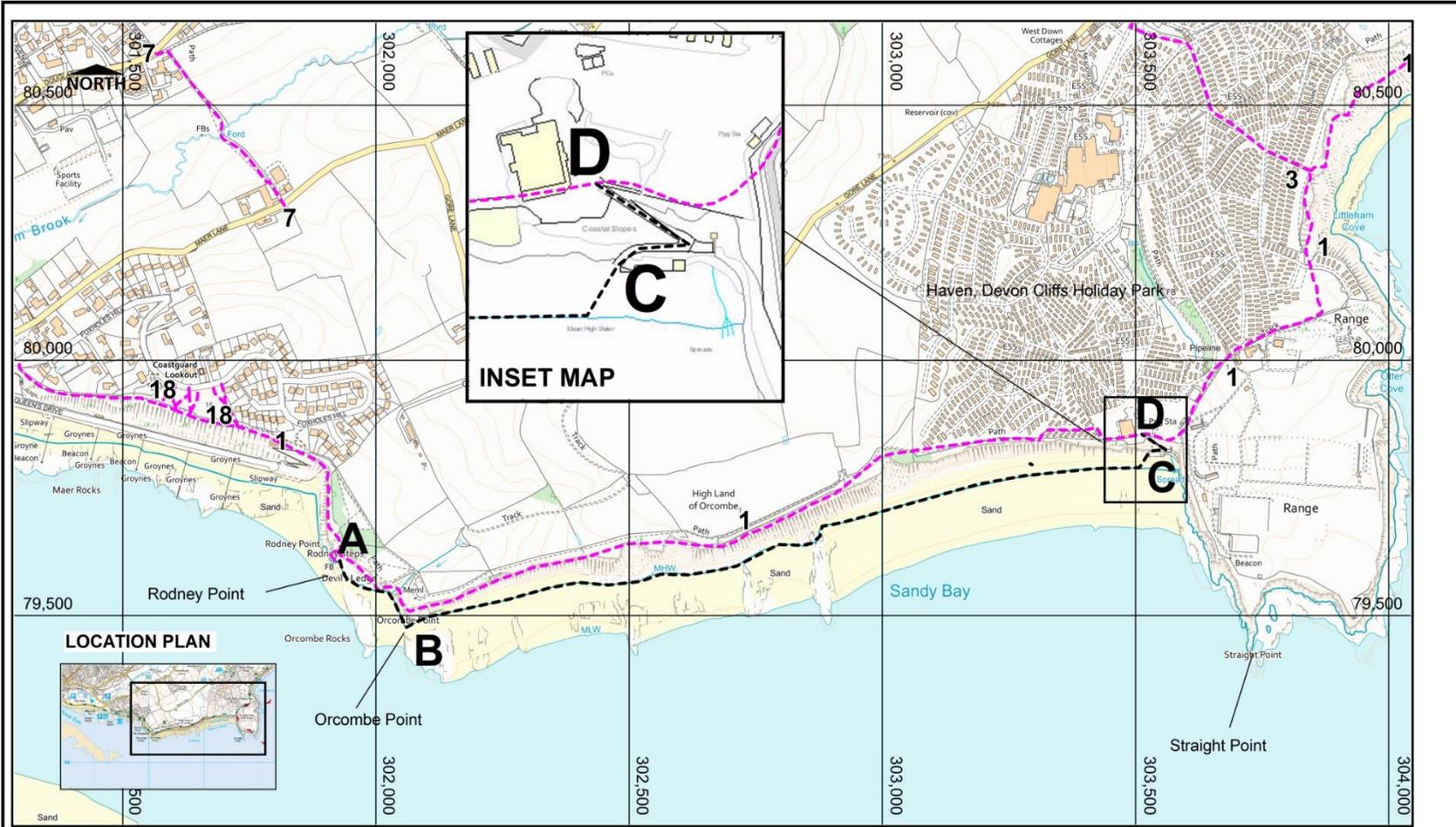
2.6.8 The best way for the landowners, the BUC or its predecessor to have protected its landholding from rights of way claims would have been to make a Section 31(6) deposit, effectively sealing their land from future rights of way claims. This has not been done.

2.6.9 Whilst there is some conflicting evidence from the landowners – that they have coned off the car park and in the past possibly placed ‘keep off’ signs somewhere on the property – none of these actions were done directly to deter use of the footpath. The users have walked the footpath for a full period of 20 years openly, without force without secrecy and without permission.

2.6.10 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. This is not a historical path; the housing and the church only being developed in the late 1960s. However, it is likely that the path was laid out during the development of the church and the public quickly took to using it as a public path as the evidence shows back from 1971.

2.7 Conclusion

2.7.1 When the evidence is taken as a whole, it is considered, that there is sufficient evidence to show that a footpath between point E – F between Ellwood Road and Churchill Road has actually been enjoyed by the public, as of right and without interruption for a full period of 20 years between 1993 and 2013; and 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. The evidence is also considered sufficient to show implied dedication at Common Law. It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement by adding to them a footpath between points E – F, as shown on drawing number HIW/PROW/21/05, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.



Map Ref **SX 994 840**

Grid 500m

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DEVON COUNTY COUNCIL
Proposal 1 Exmouth
Proposal to add a footpath

Notation

Existing Footpaths - - - - -
 Proposed Footpath A - B - C - D approx. 1800m - - - - -

drawing no. HIW/PROW/21/04
 date February 2021
 scale 1:10,000 at A4
 drawn by AS/HC

Meg Booth
 CHIEF OFFICER FOR
 HIGHWAYS INFRASTRUCTURE
 DEVELOPMENT AND WASTE





Map Ref SX 994 840

Grid 100m

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DEVON COUNTY COUNCIL
Proposal 2 Exmouth
Proposal to add a footpath

Notation
 Existing Footpaths - - - - -
 Proposed Footpath E-F Approx 50m - - - - -

drawing no. HIW/PROW/21/05
date February 2021
scale 1:1250 at A4
drawn by AS/HC

Meg Booth
 CHIEF OFFICER FOR
 HIGHWAYS INFRASTRUCTURE
 DEVELOPMENT AND WASTE

HIW/21/20

Public Rights of Way Committee
11 March 2021

Definitive Map Review 2019-2021

Parish of Morebath

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

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

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

1. Introduction

The report examines the routes referred to as Proposals 1 and 2 arising out of the Definitive Map Review in the Parish of Morebath in Mid Devon.

2. Background

The original parish survey under s. 27 of the National Parks and Access to the Countryside Act, 1949 completed in the summer of 1950, initially proposed 15 routes for consideration as public rights of way. After review by Tiverton Rural District Council and Devon County Council and publication of the draft and provisional Definitive Map, 11 public rights of way were recorded on the conclusive Definitive Map for Tiverton District Council published in June 1964.

No suggestions were made by the parish for changes to the public rights of way in the uncompleted Devon County reviews of 1968 and 1977. In the Limited Special Review of Roads Used as Public Paths (RUPPS), also carried out in the 1970s, RUPP No. 4, Morebath was re-classified as Bridleway No. 14, Morebath on 30th April 1981. Byway Open to All Traffic No. 17, Morebath was added to the Definitive Map by way of a Modification Order in 1991 following a public inquiry.

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

Mid Devon District Council Footpath No. 3, Morebath Public Path Diversion Order 1980

Devon County Council Byway Open to All Traffic No. 17, Morebath Definitive Map Modification Order 1990

Devon County Council Bridleway No. 14, Morebath Public Path Diversion Order 2010

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

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The current review was opened with a parish public meeting in July 2019 held at the village hall. The presentation was also made to the parish council in November 2019. The consultation map showing two proposals for change was published in September 2020 one of which was a Schedule 14 application made in 2005 by the Trail Riders Fellowship for the upgrading of Bridleway No. 14, Morebath to a Byway Open to All Traffic (BOAT). The other proposal was for the addition of a bridleway from the county road at Clay Pits in Morebath parish to connect to the end of the recorded public bridleway in the Somerset parish of Skilgate, which terminates at the Devon/Somerset county boundary.

3. Proposals

Please refer to Appendix I to this report.

4. Consultations

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

| | | |
|----------------------------------|---|--------------------------|
| County Councillor Cllr Colthorpe | - | response received |
| Mid Devon District Council | - | no comment |
| Morebath Parish Council | - | object to both proposals |
| Skilgate Parish Council | - | no comment |
| Somerset County Council | - | no comment |
| Country Landowners' Association | - | no comment |
| National Farmers' Union | - | no comment |
| British Horse Society (Devon) | - | no comment |
| British Horse Society (Somerset) | - | no comment |
| Ramblers (Devon) | - | comments in the appendix |
| Ramblers (Somerset) | - | no comment |
| Trail Riders' Fellowship | - | no comment |
| Devon Green Lanes Group | - | no comment |
| Cycle UK | - | no comment |

5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

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

9. Conclusion

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

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

10. Reasons for Recommendations

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

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Tiverton West

Local Government Act 1972: List of Background Papers

Contact for enquiries: Tania Weeks

Room No: M8 Great Moor House, Bittern Lane, Exeter

Tel No: 01392 382833

| Background Paper | Date | File Ref. |
|-------------------------|--------------|--------------|
| DMR/Correspondence File | 2019 to date | DMR/Morebath |

tw090221pra
sc/cr/DMR Parish of Morebath
02 030321

Agenda Item 8

Appendix I
To HIW/21/20

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.

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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 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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1. Proposal 1 – Schedule 14 Application for the upgrading of Bridleway No. 14, Morebath to a Byway Open to All Traffic, from the county road south of Southcombe Farm to the county boundary with Somerset and south west end of Restricted Byway No DU 8/12 Skilgate, as shown between points F – G – H on drawing number HIW/PROW/20/24.

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

1.1. Background

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

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

1.1.3 Bridleway No. 14, Morebath continues into the parish of Skilgate in Somerset as Restricted Byway DU 8/12 Skilgate. This section in Somerset was originally recorded on the Definitive Map as a Road Used as a Public Path (RUPP). It became a Restricted Byway on 2nd May 2006 after enactment of the Natural Environment & Rural Communities Act 2006 which automatically reclassified any remaining RUPPs to Restricted Byways on that date.

1.2. Description of the Route

1.2.1 The southern end of Bridleway No. 14 was formally diverted in 2010 and the route now starts about 150 metres north of Combe Cross on the unclassified county road leading to Combe at point F (GR SS9775 2535) and proceeds northwards along a track parallel to the unclassified county road. The bridleway then bears eastwards then northwards along a track

past Southcombe and East Combe to point G (SS9789 2554), south of Combe Copse. The route continues along a track proceeding north eastwards, then northwards along an old lane, adjacent to the stoned agricultural track and bears northwards to point H (SS9825 2619) at the County boundary with Somerset. The route then continues as Restricted Bridleway No. DU 8/12 in the parish of Skilgate in Somerset.

- 1.2.2 The total length of the bridleway is approximately 1,100 metres with an improved stoned surface along most of the lane, except for the section towards the farmyard at South Combe and the northern section south of point H, which is stone and grass. The track/lane is un-named on the Devon side but called Chalcombe Rocks Lane at the northern end for part of the route in Somerset. There are photographs of the route in the backing papers.
- 1.3 Consultations
 - 1.3.1 Morebath Parish Council advised that they do not support the upgrading of the bridleway to a Byway Open to All Traffic as there is no feasible access near Southcombe. These comments were endorsed by the Morebath Parish Paths Partnership representative who also commented on the bridleway gate at the parish boundary and mentioned the pinch points and possible degradation of the grassland sections of the route making it unsuitable for 4x4 motorised vehicles.
 - 1.3.2 The representative of the Tiverton Ramblers Association advised that he had no comments. No other responses were received apart from those as mentioned below.
 - 1.3.3 Councillor Colthorpe advised that she would not encourage the upgrading of Bridleway No. 14 to a Byway open to All Traffic.
- 1.4 Documentary Evidence
 - 1.4.1 Ordnance Survey and Other Maps
 - 1.4.1.1 The Ordnance Survey and other mapping do not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.
 - 1.4.1.2 Cassini Historical Maps 1809 – 1900 Sheet 191 Okehampton & North Dartmoor

These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.
 - 1.4.1.3 Old Series 1809: The bridleway is shown as a defined lane throughout its entire length, in the similar manner to the now county roads in the area, from Combe Cross to Skilgate village. The route shown follows the original

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route of the bridleway at Combe (before the 2010 diversion) but otherwise looks to be on the same alignment as the remainder of the recorded route.

- 1.4.1.4 Revised New Series 1899-1900: The route is still shown as a double-sided lane throughout its length and on the original alignment as on the Old Series, with part of the route shown as unfenced. The width of the lane in comparison to other routes/roads in the vicinity indicates it was considered a 'Metalled Road. Third Class'.
- 1.4.1.5 Popular Edition 1919: The bridleway is still shown as a defined lane along the route as on the earlier editions through Combe with the double fenced south and north sections appearing to correspond to 'Roads under 14' wide. Indifferent or Bad winding road'.
- 1.4.1.6 Greenwood's Map of Roads 1825
These well-made maps were produced using surveyors and a triangulation system and are considered to be reasonably accurate. They were published in 1825 at a scale of one inch to the mile and date between the 1st edition OS maps and Tithe Maps published in the mid-19th century. Roads were shown as either turnpike roads, with a bold line on one side of the road, or as crossroads. The bridleway is shown as a crossroad and follows the alignment through North Combe and on to the county boundary as a defined lane.
- 1.4.1.7 OS 1st Edition 25" to a mile 1880-1890
The original route started from the end of the county road at South Combe and proceeded north eastwards past the buildings and continued northwards along a doubled pecked lane within a copse/woodland. The northern section of the bridleway then continues along the double pecked line track along the headland of a field. The section in Morebath parish has four bench marks along the route.
- 1.4.1.8 Across the county boundary, the route continues initially as a doubled sided lane, then as a headland path across two fields and alongside Hayes Down Plantation before entering a defined solid boundary lane, named Chalcombe Rocks Lane, with a separate compartment number, into Skilgate parish.
- 1.4.1.9 OS 1 inch to a mile maps of 1946, 1960 & 1965
On the 1946 edition the route is shown as an uncoloured defined double-sided lane and corresponding to 'Unmetalled Roads', to Combe and as an unfenced lane onto point G and then point H. The route follows the alignment north easterly towards North Combe rather than on the current bridleway alignment on the new track going eastwards and northwards between points F and G.
- 1.4.1.10 In the 1960 edition the route is shown as a distinct double-sided white lane (Unmetalled Roads) throughout the length of the route in Morebath and Skilgate parishes. The centre part of the bridleway (and restricted

bridleway in Skilgate) is unfenced on one side of the route but shown at the same width of the double fenced section.

- 1.4.1.11 In 1967 only the southern section of the route to between points G and H the northern end of the lane in Skilgate are shown as a double sided hedged/fenced lane. The Road Used as a Public Path (RUPP), as it is by then recorded on the Definitive Map, is shown from the end of the county road at North Combe in Morebath, along the track shown and continues across the county boundary as a RUPP into Skilgate.
- 1.4.1.12 Geographia Ramblers' Map No. 12 Exmoor 1947
This map was published at a scale of 1 inch to 1.25 miles. The front cover of the map was illustrated with two walkers looking at a map and included the statement 'Footpaths & Bus Routes Distinctly Marked'. It would therefore appear that this map was marketed at walkers who would also use public transport to access the start and end points of their walks. In the key the red lines drawn on the map are described as 'Footpaths & Tracks' with the green lines as 'Bus Routes'.
- 1.4.1.13 On this map the present-day Bridleway No. 14, Morebath is shown as a through route, but not coloured red, from Combe Cross to and through Combe to the county boundary and onto Skilgate. The section north of Combe, within Devon and the first section in Somerset, is shown as unfenced on both sides of the lane.
- 1.4.1.14 OS Post War Mapping A Edition 2500 1970
The route is shown as a defined lane along its entire length and labelled track on the two map sheets. No benchmarks are now shown along the lane. There are two compartment numbers 7628 at 3.06 acres and 6358 at 1.51 acres. Pecked lines within the route at the east end indicate a differentiation in surface across the lane and there is a pecked line across the west end of the lane at point D.
- 1.4.1.15 OS 1:25,000 maps of Great Britain – Sheet 21/60 SS92 1950
The 1:25,000 'Provisional edition' or 'First Series', was Ordnance Survey's first civilian map series at this medium scale, the forerunner of the modern Explorer and Outdoor Leisure maps and published in limited colour between 1937-1961. By 1956 it covered 80% of Great Britain, everywhere apart from the Scottish Highlands and Islands. The series is useful for showing rural and urban areas in much greater detail than the standard one-inch to the mile (1:63,360) maps.
- 1.4.1.16 Minor roads, lanes and private drives/access lanes are all shown as white uncoloured roads/lanes described as 'Other Roads, Poor, or unmetalled'. The conclusive Definitive Map had not been published when this map was published. Some routes are shown as pecked and dashed lines labelled F.P. and B.R. and some as two narrow solid lines. The map contains the standard OS disclaimer 'The representation of any other roads, tracks or paths is no evidence of the existence of a right of way'.

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1.4.1.17 This sheet published in 1950 shows the route starting as a defined uncoloured lane in the similar manner to the county road at Combe Cross and described as 'Poor, or unmetalled Other Roads'. The route passes through Combe and continues northwards as an unfenced lane/track on both sides towards the county boundary. Just south west of the county boundary the track shown turns north westwards towards 'Higher Linhay' with a faint pecked line going north eastwards to point H. From point H the route continues as defined lane, initially unfenced on one side, towards Skilgate.

1.4.2 Tithe Maps and Apportionments

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

1.4.2.2 Morebath Tithe Map & Apportionment 1838

On the Morebath Tithe Map the roads are not colour washed although some are numbered and, at the end of the Tithe apportionment, twenty roads are listed, and destination described. Road numbered 270 is described as 'To Skilgate' but refers to Court Lane at Claypits, currently recorded as Footpath No. 6, Morebath.

1.4.2.3 A track is shown as a double pecked line from the end of the county road at Southcombe Farm northwards along the route of Bridleway No. 14 although most of the plot numbers are too faint to read. In the apportionment for South Coombe the description for both plot numbers 331 and 475 reads Copse in Road. Number 320, through which the route passes is described as Homestead only.

1.4.2.4 In the apportionment for East Coombe (called only Coombe) plot number 356 is described as 'Goil and Road' but the location of 356 is not known. Plot number 351 refers to 'Lane in Eastern Mead'. Eastern Mead Meadow, plot number 322 of South Coombe, is south of the yard at South Coombe. The lane 351 could be an alternative route through the yard at South Coombe for Bridleway No. 14 and also as the access to East Coombe.

1.4.2.5 Skilgate Tithe Map and Apportionment 1844

The Somerset Tithe Maps are available to view on line and show the route on the Somerset side going northwards from the county boundary as a double sided lane, then a headland path through a field, then as a double sided lane except when passing by a plantation (with the only apparent

gate across the lane on the Skilgate side) and quarry where it is unfenced on the east side and finally as a double hedged lane into Skilgate village.

- 1.4.2.6 The online Tithe map also has the facility to view how the plot numbers were described in the apportionment. The headland part of the route is numbered 353, described as 'Road in Twelve Acres', part of Haynes Down, owned and occupied by Francis Merson. The field through which the route passes is called Twelve Acres. Where the route passes adjacent to a copse it is called 'Road etc', part of Haynes Down with owner and occupier F Merson.
- 1.4.3 Finance Act Plans and Field Books 1910
 - 1.4.3.1 The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.
 - 1.4.3.2 The allowance given was often on the basis of a figure such as a £1 times 25 yp. The yp refers to years purchase, a method of valuation used to convert a property's income flow (rent) into an appropriate capital sum on the basis that the capital value of a property is directly related to its income producing power. This method of valuation was often used in Finance Act valuations.
 - 1.4.3.3 The section of Bridleway No. 14 on the northern side in Morebath parish is included within hereditament number 26.
 - 1.4.3.4 On the Skilgate side the southern section is included with hereditament number 12. Chalcombe Rocks Lane at the northern end of the route is excluded from the adjoining hereditaments.
- 1.4.4 Vestry Minutes (Morebath Vestry 1867-1912)
 - 1.4.4.1 Prior to the formation of District Highway Boards in the early 1860s and the later Rural District Councils (1894) the responsibility for the maintenance of public highways generally belonged to the parish and was discharged by locally elected Surveyors of Highways. Vestry minutes for Morebath for the period 1867 – 1912 are held by the South West Heritage Centre.

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- 1.4.4.2 Within the vestry minutes during the above-mentioned period, there are references to the parish roads at various times concerning improving, adopting and condition of the parish roads; tenders for repair, appointment of way wardens and dissolution of the Tiverton District Highway Board. There were, however, no specific references in respect of the proposal route.
- 1.4.5 Parish Council Meeting Minutes
 - 1.4.5.1 The minutes for Morebath Parish Council from 1894 to 1921 were available in the South West Heritage Centre and the minutes from May 2014 to 2018 are available on the parish council website. The minutes between 1921 and 2013 were not traced.
 - 1.4.5.2 Within the period between 1894 to 1921 there are references to paths that would correspond to public footpaths now recorded on the Definitive Map but nothing that refers to Bridleway No. 14, Morebath.
- 1.4.6 British Newspaper Archive (online)
 - 1.4.6.1 Within the British Newspaper Archive there are some references to the Tiverton Highway Board meetings and the farms at East Coombe, Higher Coombe and North Coombe being for sale or let but no reference to the proposal.
- 1.4.7 Parish Survey under National Parks & Access to the Countryside Act 1949
 - 1.4.7.1 Bridleway No. 14, Morebath was initially proposed for addition to the Definitive Map by the Parish Council in the parish survey. The path was surveyed by Major F Rothwell with the survey form signed by the Clerk to the Parish Council and dated 20th October 1950. The grounds for believing path to be public were 'Still being used by the public'. The path was described as 'Bridle Road – Commencing at North Coombe, by fenced lane, last field open track, to parish and county boundary'. A County Council pencil note comments 'Somerset including this R o W as Road used as a Public Path. Refer to Parish to change from Bridleway'. The route was then added to the Definitive Map as RUPP No. 14, Morebath.
 - 1.4.7.2 The Definitive Map statement for the path reads 'It starts at the northern end of the Unclassified County road at Combe and proceeds in a north-easterly direction along a fenced lane through Combe Copse and thence by open track to the Morebath/Somerset County boundary where it continues as RUPP No 8/12 in Skilgate Parish'.

- 1.4.8 Devon County Council Reviews of 1968, 1971 & 1977
- 1.4.8.1 No proposals for any changes to the route were made by Morebath Parish Council in the 1968 review. As a RUPP, the route was to be re-designated in the Limited Special Review of 1971. The Parish Council wrote to the County Council in January 1972 to advise the re-designation should be a bridleway. On the 11th February 1972 the County Council wrote to the County Surveyor to ask if the surveyor would confirm that he agrees with the Parish Council's recommendation. The surveyor replied on the 23rd February to advise he had no objection to the proposed re-classification, except to point out that the continuation in Skilgate Parish is Footpath No. 8/1. However, this was incorrect as the continuation in Somerset was RUPP No. 8/12.
- 1.4.8.2 The surveyor's error was not noticed and the County Council wrote to the Parish Council in March 1972 to advise that as the continuation of the path in Somerset was a public footpath, it was essential that a public right of way, even if situate in two counties, has the same designation. The Parish Council replied in November 1972 to advise that the Council have agreed that RUPP No 14 should be a footpath. A County Council Special Sub-Committee met on the 18th October 1973 to consider a report that proposed the re-designations of the RUPPs which included Morebath 14 as a Footpath. Notice of the proposed changes in the Limited Special Review was then published in November 1973.
- 1.4.8.3 The proposed re-designation received objections from ACU/BMF Countryside Committee asking for byway open to all traffic classification and from the Devon Bridleways Association, Tiverton Branch, asking for bridleway classification. RUPP No. 14, Morebath was therefore included among other objected re-designations at a public local inquiry held at County Hall, Exeter on 6th and 7th September 1977. By the date of the Inquiry, Devon County Council had, in the light of the Hood decision, agreed to classification as a bridleway. There was no evidence to suggest that there was no public right of bridleway.
- 1.4.8.4 The Inspector therefore only considered the ACU/BMF objection. He commented that the route was of vehicular width throughout. When inspecting the right of way he found that the passage through the farm yard to be under two or three inches of liquid mud for 30-40 yards. He did not form the opinion that the right of way was at all suitable for motor vehicles; the surface was too rough for comfortable passage in any ordinary sort of vehicle. The evidence of vehicular use – very occasionally by motorcycles – was slight. He was unable to conclude that a vehicular right of way has been shown to exist. The Inspector recommended that the right of way, RUPP Morebath 14, be classified as a bridleway. The Inspector's decision was dated 19th October 1977 and the confirmation of re-designation as a bridleway was published on 30th April 1981.

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- 1.4.8.5 No changes to the public rights of way recorded on the Definitive Map in Morebath were proposed by the Parish Council in the Devon County Council's uncompleted 1977 review.
- 1.4.9 Somerset County Council Records for Restricted Byway No 8/12 Skilgate
 - 1.4.9.1 An inspection was made of the records available at Somerset County Council. From the information available it appears that the Skilgate parish rights of way were surveyed in April 1951 by Mr Powell and agreed by the Parish Meeting and then approved by the local Dulverton Rural District Council. Restricted Byway No. 8/12 Skilgate was not initially included on the draft map, published 30th November 1953 but was added to the next stage following an objection to its omission by the Ramblers Association. Their justification for inclusion was that 'This is an unclassified County road, but overgrown in places. Devon County Council claim continuation in their area'. Somerset County Council's summary of objections noted 'Add road used as a public path' with 8/12 added in blue pencil.
 - 1.4.9.2 The 'modification' stage of the Definitive Map for Dulverton District Council was published on 9th February 1957 and included the addition for Skilgate parish of CRF (carriage road used as footpath) from Myrtle Cottage south westwards over Chalcombe Rocks Lane to Devon County boundary at B.M. 851.9. Somerset had four stages in preparing their Definitive Map; draft, modification, provisional with the final map published 24th June 1958 which included the Road Used as a Public Path (RUPP) No. DU 8/12 Skilgate. Although initially proposed as Carriage Roads Used as Footpaths or Bridleways (CRF or CRB) in both Devon and Somerset, these routes were subsequently added to the Definitive Maps as RUPPs.
 - 1.4.9.3 An undated typed list headed Dulverton Rural District – Unclassified Roads in the Somerset records includes on the OS map sheet 68 N.W. Chalcombe Rocks Lane, Devon Bdy. Skilgate. There was also a handwritten list headed Dulverton Rural District List of routes suggested as CRFs which also includes Chalcombe Rocks Lane Skilgate. A second handwritten list headed Dulverton Rural District Schedule of Public roads used mainly as public paths. This list includes at number 40 Chalcombe Rocks Lane, Skilgate (county unclass rd no 79) from unclass cty rd no 72 to county boundary.
 - 1.4.9.4 Somerset County Council started a Limited Special Review to reclassify their RUPPs following the passing of the Countryside Act 1968. In April 1970 Dulverton Rural District Council wrote to the Somerset County Surveyor with their Council's suggestions for the re-classifications of all C.R.F (RUPPs) in the District. DRDC proposed that DU 8/12 Skilgate be reclassified as a BOAT, as recommended by the Parish Council with the reasons 'used by all vehicles, residents, farmers, West Somerset Water Board'. It appears that this was amended as a letter from Somerset County Council to Devon County Council in September 1977 wrote to confirm that the CRF (RUPP) DU 8/12 has the proposed reclassification as a bridleway.

- 1.4.9.5 The Somerset review stalled due to a huge number of objections by the TRF to the proposed down gradings of the RUPPs to bridleways and footpaths. The Secretary of State agreed that Somerset County Council could formally abandon their review in October 1983. The route therefore remained as a RUPP and became Restricted Byway No. DU 8/12 on the 2nd May 2006 under the legislation included in the Countryside and Rights of Way Act 2000 (the Crow Act).
- 1.4.10 Aerial Photography RAF 1946-1949, 1999-2000 & 2015-2017
 - 1.4.10.1 On the 1946-1949 aerial photography, the track along the way of the route can be seen from just south of point G northwards to point H. Across the county boundary the route can only be clearly seen at the northern end of the way along Chalcombe Rocks lane and the copse to the south of the defined lane.
 - 1.4.10.2 In 1999-2000 photograph once the route has left the yard at South Coombe it is difficult to see the track beneath the trees to the county boundary. In 2006-2007 it is a similar position although the tree cover has reduced just south of point H.
 - 1.4.10.3 On the most recent photography, the new access track to East Combe and on to which Bridleway No. 14 was diverted in 2010 is clearly visible. Proceeding northwards there are glimpses of the route beneath the trees to point H.
- 1.4.11 Land Registry
 - 1.4.11.1 The records at HM Land Registry show that since the diversion of Bridleway No.14, Morebath in 2010, the route lies entirely across land registered at Land Registry. In Skilgate parish, the route of Restricted Byway 8/12 also lies across registered land except for the northern end of the route along Chalcombe Rocks Lane; although land of either side of that section is also unregistered.
- 1.4.12 Trails Riders Fellowship Schedule 14 Application
 - 1.4.12.1 The application made by the Trail Riders Fellowship included reference to the Limited Special Review undertaken by Devon County Council in the late 1970s. The TRF had commissioned research by Independent Consultants which concluded that RUPPs are highways which are not public paths (bridleways or footpaths) but which are used mainly as if they were bridleways or footpaths. If they are not bridleways or footpaths they can only be carriageways. They advised that two of the three tests applied in the reclassification of RUPPs, that of suitability and need, are no longer relevant. They consider that their vehicular rights have not been removed.
 - 1.4.12.2 They also included documentary evidence in support of their claim. This included the Tithe Map where they advised that the route is depicted in the

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same way as other roads that are public today and Greenwoods Map where the route is shown as a crossroad. They also said that the route is shown as a road on the 1st Series OS map, pre 1922 Geographia Contour Map and Bartholomew's maps from 1927-28 to 1965. The application also made reference to the judge's summing up in the case *Eyre v New Forest Highway Board* 1892 which supports the contention that a road known to be public prior to 1835 would still be public to this day in the absence of a stopping up order even if it had never been publicly maintained at all since then.

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

1.5 User Evidence

1.5.1 Seven user evidence forms were included with the TRF Schedule 14 Application received in 2005 and covering the period 1985 to 2005. The use varies between 1-2 to 5 times a year for pleasure purposes on a motorcycle. However, any user evidence dating from 1981 or later, when the route was reclassified as a public bridleway, would be unlawful use unless with the permission of the landowner. Following the passing of the NERC Act in 2006, motor vehicle user evidence can no longer be used as evidence to support the creation or upgrading of a public right of way to a byway open to all traffic.

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

1.6 Landowner Evidence

1.6.1 The landowners/occupiers who owned land crossed by or adjacent to Bridleway No. 14, Morebath and Restricted Byway DU 8/12 Skilgate were contacted individually and advised of the proposal. They were invited to submit their comments and information by way of a completed landowner evidence form or otherwise.

1.6.2 Mr Williams, as agent for the Badgworthy land Company who are the owners of a 'Freehold Profit a Prendre' over Hunting rights in the area, wrote to advise that he did not think the proposals would interfere with his client's interest as holders of those rights.

1.6.3 Mr Brammer of North Combe Farm who own land adjoining the west side of the route northwest and south of point G commented that if the route became a BOAT it would be a 'road to nowhere' as it joins a Restricted Byway at the Somerset border. Most parts of the route are not wide enough for horses/walkers to safely pass if they met groups of motorbikes etc. He remembers when the path was previously classified as a BOAT (RUPP). Groups of motorbikes would treat their driveway and tracks as part of the route and riders were abusive when challenged.

1.6.4 Mr Sanders of East Combe initially telephoned to advise that he had concerns if the route became a BOAT and subsequently forwarded a written response. In the 1970s and 1980s the bridleway was not very used as it was blocked and not maintained but now it is more regularly used as a bridleway. Mr Saunders subsequently wrote and mentioned concerns with how motorbikes and 4x4s had used the route in the past. As a 4x4 would not be able to access the bridleway gate on the county boundary they would trespass onto his land to continue. The route is used by groups of young people undertaking their D of E expeditions.

1.6.5 No responses were received from the other landowners/occupiers contacted in respect of this route.

1.7 Additional Rebuttal Evidence

1.7.1 A local resident of Morebath parish wrote to object to the upgrading of the bridleway to a BOAT. They take many walks using the footpaths and rights of way in the local area and appreciate their tranquillity in the rural environment. These advantages would be destroyed by opening the way up to motorised traffic for which it was not designed for and would constitute a degradation of the environment. No evidence was included with the comments.

1.7.2 Mr Cross, a property owner in Skilgate, adjacent to proposal 2 wrote to object to the upgrading of Bridleway No. 14, Morebath. The upgrading would be undesirable on safety grounds and the deer, game birds and other wildlife would be threatened by vehicular traffic. The aspect of noise pollution would also provide grounds for objection.

1.8 Discussion

Statute (Section 31 Highways Act 1980)

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

1.8.2 A Schedule 14 application for the upgrading of Bridleway No. 14, Morebath to a Byway Open to All Traffic was made by the Trial Riders Fellowship in 2005. The TRF had included documentary and user evidence in support of their claim. The application made by the TRF in 2005 could be considered sufficient to be the required calling into question under section 31 of the Highways Act 1980 for the upgrading. However, as any user evidence dating from 1981 or later, when the route was re-classified as a public bridleway, would be unlawful use, unless with the permission of the

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landowner; the user evidence submitted in 2005 is insufficient to allow the upgrading to be considered under Section 31.

Common Law

- 1.8.3 A claim for a right of way or for upgrading an existing public right of way may also be considered under common law. At Common Law, evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway of the higher status and that the public has accepted the dedication.
- 1.8.4 The map evidence considered shows that the route has existed since the early 19th century as though route to Skilgate parish in Somerset. The larger scale maps show that the route was partly unfenced and partly a headland route. Although maps show that the route has physically existed and has been available to the public, they do not confirm the status of the route shown. Morebath Tithe Map has numbered roads within the parish and listed them individually in the apportionment but does not include the proposal route.
- 1.8.5 The limited Morebath Vestry and Parish Council minutes available do not refer to the route or make any reference to what status it was considered to have by the parish. No evidence has been discovered to show that the route was ever considered to be or maintained by public money as an all-purpose public highway or carriage road.
- 1.8.6 On the 1910 Finance Act plans the route is included within adjacent hereditaments. Routes that were considered to be public highways would usually be excluded from hereditaments.
- 1.8.7 The route was added to the Definitive Map in both Morebath and Skilgate as a RUPP, initially a CRF (Carriage Road used as Footpath) or CRB (Carriage Road used as Bridleway). Records in Somerset County Council indicate that the Dulverton Rural District Council decided to add their minor unclassified county roads to the Definitive Map as RUPPs. A list of these roads includes the description of road number 79 Chalcombe Rocks Lane to county boundary.
- 1.8.8 In the Limited Special Review to reclassify RUPPS both Devon and Somerset proposed that the RUPP should be classified as a bridleway. In Somerset the review was abandoned. In Devon the designation as a bridleway was objected to and the existence of vehicular rights was accordingly considered at a public inquiry in 1977. The objector to the bridleway re-designation produced only limited evidence of vehicular use at the inquiry to support his objection. At this time the Inspector was also able to consider the suitability of the route for motorised vehicles and made comments to this effect in his decision. The Inspector considered the route

was of vehicular width throughout but was unable to conclude that vehicular rights had been shown to exist.

1.8.9 Although there is some evidence from the Dulverton Rural District Council records to show that the Skilgate side of the route was an unclassified county road there is no evidence that this was ever the situation in Morebath parish. Vehicular rights for the public were considered at the 1977 public inquiry but only occasional motorcycle use was presented. This would have been a legal use of the route when classified as a RUPP.

1.9 Conclusion

1.9.1 In the absence of sufficient lawful user evidence, the existence of higher rights cannot be considered under section 31 of the Highways Act 1980. Under common law the documentary evidence is considered insufficient to show that the route has ever been considered as a public vehicular highway or had ever been maintained as a public vehicular highway in Morebath parish.

1.9.2 In the absence of evidence to show that any higher rights, apart from those as a public bridleway, have been acquired, it is therefore recommended that no Modification Order be made to modify the Definitive Map and Statement in respect of Proposal 1.

2. Proposal 2 – Addition of Public Bridleway as a continuation of Bridleway No. DU 8/3 Skilgate in Somerset, from the county boundary to the county road at Claypits in Morebath parish, as shown between points A – B – C – D and B – E – C on drawing number HIW/PROW/20/25a.

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

2.1. Background

2.1.1 A public right of way would usually connect with another public right of way or county road and there does not appear to be a logical reason as to why this Skilgate cul-de-sac bridleway did not continue into Morebath parish. The Skilgate bridleway does not lead to a well or viewpoint where cul-de-sac public rights of way can sometimes be found. The lack of a continuation of the public right of way was raised by a member of the public in 1989. It was understood that a continuation of the bridleway in Morebath parish was used for walking and horse riding and there is no clear indication of the county/parish boundary at the end of the Skilgate bridleway when using the route. The anomaly warranted investigation and was accordingly included as proposal 2 in the Morebath review.

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2.2. Description of the Route

- 2.2.1 The proposed addition starts at the Somerset/Devon county boundary on the west side of the stream, on a clearly defined stoned track and south of the ford at point A (GR SS 9723 2633). The definitive line of the south west end of Bridleway No. DU 8/3 Skilgate terminates on the east side of the stream although the definitive line of Bridleway No. DU 8/3 in Skilgate does not follow the currently used or available track, which has crossed to the west side of the stream before the county boundary. The proposed route on the Devon side follows the used track and is available to users. There is no clear indication of the position of the county boundary on the ground and from mapping measurements it appears to be approximately 50 metres south of the main ford crossing north of point A.
- 2.2.2 From point A the route follows a clearly defined and improved track south westward through Brockhole Wood along the west side of the stream to point B (GR SS 9696 2622). From point B the main route continues south south westwards along the track through East Timewell Wood to point C near Higher Little Copse (GR SS9663 2594). From point C the route proceeds in a southerly direction along the clear track through Lower Little Copse and Alder Copse to the county road west of Ben Brook Cottage at point D (GR SS 9657 2544). There are two field gates across the route between points C and D. The field gate closer to point D has a wooden sign affixed to the centre of the gate which says, 'Private Land No Right of Way'.
- 2.2.3 Between points B and C, an alternative route follows a track proceeding eastwards across the stream at a ford, then along a track south westwards through Pondclose Plantation to point E (GR SS 9687 2604) and then through an open field area before crossing westwards back over the stream to re-join the main route at point C.
- 2.2.4 The total length of the proposed bridleway (points A – B – C – D) is approximately 1,300 metres with an improved stoned surface along the track. The additional loop from the main track (points B – E – C) is approximately 490 metres and has a surface of earth and grass. There are photographs of the two routes in the backing papers.
- ## 2.3 Consultations
- 2.3.1 Morebath Parish Council advised 'with regard to the second proposal that it has never been an official right of way and if the landowner doesn't want it upgraded there is no benefit. It is a permissive path at the moment'.
- 2.3.2 The representative of the Tiverton Ramblers Association advised that the creation of a bridleway down the wooded valley looked very welcome and gives walkers an additional circular walk, but no evidence was forwarded.

- 2.3.3 A local family from Shillingford wrote to advise that they were pleased to see this obvious historical oversight was being put right at last. It is a well-used local track. The current incumbents of the wood have always been very relaxed about them using it, but it would be super to have it confirmed officially. No other responses were received from the other consultees or local residents.
- 2.3.4 Councillor Colthorpe advised that she understood the suggested bridleway from Skilgate is permissive at the moment and as far as she knows, there has never been a problem between landowner and users. Formalising the arrangement may be welcome to the wider riding community but could also possibly result in a loss of local goodwill.
- 2.4 Documentary Evidence
- 2.4.1 Ordnance Survey and Other Maps
- 2.4.1.1 The Ordnance Survey and other mapping do not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.
- 2.4.1.2 Cassini Historical Maps 1809 – 1900 Sheet 191 Okehampton & North Dartmoor
These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.
- 2.4.1.3 Old Series 1809: The mapping does not show a route through the woods on the Devon side of the county boundary although the stream that runs parallel to the proposed bridleway is shown. Croft Lane at the northern end of the recorded bridleway in Skilgate parish is shown as a defined lane. This lane continues as a defined lane along the route of the currently recorded Bridleway DU 8/3 and then Footpath DU 8/2 in Skilgate, which continues as Footpath No. 6, Morebath.
- 2.4.1.4 Revised New Series 1899-1900 and Popular Edition 1919: The proposal route is still not shown on the later editions of the mapping as on the Old Series.
- 2.4.1.5 Greenwood's Map of Roads 1825
These well-made maps were produced using surveyors and a triangulation system and are considered to be reasonably accurate. They were published in 1825 at a scale of one inch to the mile and date between the 1st edition OS maps and Tithe Maps published in the mid 19th century. Roads were shown as either turn pike roads with a bold line on one side of the road or as crossroads. The map does not show a track or route along the line of the proposed bridleway although it does show the track now recorded as Footpath No. 6, Morebath.

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

The map shows a double pecked line running along the route of the proposed bridleway on the north west side of the stream from point A to the southern end of Alder Copse, north of point B and as a double sided lane from there to point D. The pecked line is braced to the compartments through which it passed. There is a 'Ford' is shown at point B and a double pecked line is shown between points B – C – E with 'Ford and 'Foot Bridge' east of point C.

2.4.1.7 In Skilgate parish the double pecked line stops at the county boundary on the south east side of the stream, with the Morebath line starting on the opposite bank. On the Skilgate side the pecked line is annotated 'F.P.' just north of the county boundary.

2.4.1.8 OS 2nd Edition 25" to a mile 1904-1906

On the 2nd edition map the pecked line from Skilgate parish is now shown as crossing over the county boundary, still on the south east side of the stream and then turning north westwards across the stream (labelled 'F.B.')

to join the track in Morebath parish on the north west side of the stream about 20 metres south west of point A. The rest of the route is as on the first edition although with point B annotated 'Ford' and with 'Ford' and 'F.B' near point C. A narrower double pecked line is shown coming northwards from Morebath Manor which joins the proposal route between points C and E and is labelled 'F.P.' in two places along that section.

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

On the 1946 edition no track or path is shown along the line of the proposed bridleway through the woods. The stream is shown.

2.4.1.10 In the 1960 and 1967 editions the track at the southern end of the route is shown as an unfenced and then as a track with solid line boundaries for the section from south of point C to point D. A white lane corresponds to a Minor Roads in Towns, Drives and Unmetalled Roads. On the 1967 edition Bridleway DU 8/3 Skilgate is shown on the map along with Footpath DU 8/2 Skilgate/Footpath No. 6 Morebath.

2.4.1.11 Geographia Ramblers' Map No. 12 Exmoor 1947

This map was published at a scale of 1 inch to 1.25 miles. The front cover of the map was illustrated with two walkers looking at a map and included the statement 'Footpaths & Bus Routes Distinctly Marked'. It would therefore appear that this map was marketed at walkers who could use public transport to access the start and end points of their walks. In the key the red lines drawn on the map are described as 'Footpaths & Tracks' with the green lines as 'Bus Routes'.

2.4.1.12 On this map there is a red line shown extending from the end of Croft Lane in Skilgate parish and at the start of the woodland. The red line proceeds in a south westerly direction and across the county boundary. In Morebath parish the red line follows the route between points A – B – C to just south

westwards of point C before the proposed route turns southwards to Claypits.

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

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

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

2.4.1.15 The sheet published in 1950 shows the route including the loop section as a lane/track. Some sections have double solid lines whilst others have both sides pecked or pecked on one side. The section B – E - C is shown wholly unfenced/unhedged. The pecked lines indicated there was not a hedge or fence on the side of the track. The annotation 'F.B.' (Footbridge) is shown at point A with 'F.B.' and 'Ford' shown at the stream east of point C. On this map the track shown crosses from the north east side of the stream to the south west side at the county boundary at point A and location of the footbridge.

2.4.1.16 OS Post War Mapping A Edition 2500 1970

On this map a double pecked lane, labelled track, is shown along the route of the proposal on the Skilgate side which then crosses over the stream at a 'Ford' about 130 metres north of the county boundary in Skilgate parish. The track then continues south westwards from the county boundary along the proposal route between points A – B – C – D and between points B – E – C, with the last section north of point D being along a double solid sided lane. The double pecked lines are labelled 'track' in two places along the main section and twice along the loop section B – E – C. There is 'Ford' labelled at point B and 'Ford' and 'FB' near point C.

2.4.2 Tithe Maps and Apportionments

2.4.2.1 Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured, and colouring can indicate carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown. Public footpaths and bridleways are rarely shown as their

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effect on the tithe payable was likely to be negligible. Routes which are not included within an individual apportionment are usually included under the general heading of 'public roads and waste'.

2.4.2.2 Morebath Tithe Map & Apportionment 1838

On the Morebath Tithe Map, which is feint, a double pecked line appears to be shown on the south eastern side of the stream from a point south of point A. This track continues on this side of the stream before crossing to the other side south of point C and then a marked track continues along the line of the proposed route to point D.

2.4.2.3 Skilgate Tithe Map and Apportionment 1844

The Skilgate Tithe map shows a track through the woods from the end of Croft Lane which follows the south east side of the stream to the county boundary.

2.4.3 Finance Act Plans and Field Books 1910

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

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

2.4.3.3 The majority of the proposal route A – B – C – D is included within hereditament number 59 in Morebath parish. Part of the loop section point E to the ford and footbridge east of point C and the section from the southern of Alder Copse to point D are included within hereditament 42 in Morebath.

2.4.3.4 Hereditament 59 was described as plantation and woods of 166 acres and owned and occupied by Richard Rothwell of Morebath Manor. The field book refers to 'Footpaths & rights of way 2/10/ x 20 £50' but no more details are provided or any field numbers. The allowance of £50 is carried forward to page 4 of the field book under 'Public Rights of Way or User'.

- 2.4.3.5 Hereditament 42 was described as 'Loyton House and Land' of 344 acres, owned and occupied by Richard Rothwell as above. The field book particulars refer to 'Footpaths 4 x 24 say £96' but no details are given re field numbers. The sum of £96 is carried forward to page 4 under 'Public Rights of Way or User'. The land included within hereditament number 42 includes land that is currently crossed by Footpaths Nos. 1, 3, 6 and 7, Morebath. Both hereditaments include an allowance for Sporting rights on the land.
- 2.4.3.6 In the Skilgate parish Finance Act maps, Bridleway DU 8/3 crosses land within hereditaments numbers 2, 18 & 22. The land within hereditament number 2, part of Skilgate Woods close to the county boundary and number 22, the main part of Skilgate Woods was sold to Mr Rothwell in 1920. Hereditament 18, Pitt Farm close to Skilgate village includes the section of the along Croft Lane. None of the Skilgate hereditaments make any reference to rights of way affecting the land.
- 2.4.4 Vestry Minutes (Morebath Vestry 1867-1912)
- 2.4.4.1 Prior to the formation of District Highway Boards in the early 1860s and the later Rural District Councils (1894) the responsibility for the maintenance of public highways generally belonged to the parish and was discharged by locally elected Surveyors of Highways. Vestry minutes for Morebath for the period 1867 – 1912 are held by the South West Heritage Centre.
- 2.4.4.2 Within the vestry minutes during the above-mentioned period, there are references to the parish roads at various times concerning improving, adopting and condition of the parish roads; tenders for repair, appointment of way wardens and dissolution of the Tiverton District Highway Board. There were, however, no specific references in respect of the proposal route.
- 2.4.5 Parish Council Meeting Minutes
- 2.4.5.1 The minutes for Morebath Parish Council from 1894 to 1921 were available in the South West Heritage Centre and the minutes from May 2014 to 2018 are available on the parish council website. The minutes between 1921 and 2013 were not traced.
- 2.4.5.2 Within the period between 1894 to 1921 there are references to paths that would correspond to public footpaths now recorded on the Definitive Map but no entries that refer to the proposal route.

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- 2.4.6 British Newspaper Archive (online)
 - 2.4.6.1 Within the British Newspaper Archive there are some references to hunting reports in Skilgate woods but no references to the proposal route.
- 2.4.7 Parish Survey under National Parks & Access to the Countryside Act 1949
 - 2.4.7.1 The parish survey for paths in the northern part of Morebath parish was completed by Major Rothwell in 1950. No path or route was claimed along the proposal route. No correspondence from Somerset County Council has been found in Devon County Council's files regarding the cul-de-sac bridleway in Skilgate parish and whether there was a continuation in Morebath parish.
- 2.4.8 Devon County Council Reviews of 1968, 1971 & 1977
 - 2.4.8.1 No proposals for any changes to the public rights of way in Morebath parish were made by Morebath Parish Council in the uncompleted county reviews of 1968 and 1977. The Limited Special Review of 1971 concerned the reclassification of RUPPS only.
- 2.4.9 Somerset County Council Records for Bridleway No 8/3 Skilgate
 - 2.4.9.1 An inspection was made of the records available at Somerset County Council. The equivalent of the Morebath parish survey file from the 1950s was not available. The number DU 8/3 (path number 3) for the bridleway in Skilgate would indicate that the public right of way was initially proposed in the 1950 survey. The route in Skilgate parish was described as path no. 3 and a BR on a handwritten form which described the route as 'The path starts at the entrance to Croft & on by Croft to Skilgate Wood. Taking the second right hand path it continues right through the wood to the County Boundary. There are several inches of mud on this path during wet weather, otherwise in good repair.' The current definitive line of Bridleway DU 8/3 Skilgate north of point A, does not appear to follow the track currently available to users when approaching the county boundary.
- 2.4.10 Aerial Photography RAF 1946-1949, 1999-2000 & 2015-2017
 - 2.4.10.1 On the 1946-1949 aerial photography, the track followed by the proposed route can be seen from south of point C to point D. A track can also be seen along the open field section of the route between points E and C.
 - 2.4.10.2 In the 1999-2000 photograph most of the track followed by the route can be seen between the trees along the route A – B – C – D, although parts south of points B and C are obscured by the trees. The route across the field between points E and C is also visible.
 - 2.4.10.3 On the 2006-2007 aerial photography the majority of the main route is now obscured by the trees except for the section between points A and B. The track is still visible between points E and C. On the most recent 2015

photography more of the track is visible between points A and C and points C and D.

2.4.11 Land Registry

2.4.11.1 The records at HM Land Registry show that the land crossed by the proposed route in Morebath is registered at HM Land Registry under title number DN453576. Profits a pendre (the hunting rights) are also registered across the land under title number DN571127. Profits a pendre gives people the right to share in/take produce from the land owned by another.

2.5 User Evidence

2.5.1 Seven user evidence forms were received in respect of use of the route. The user evidence forms were completed in the summer of 2019, shortly after the Definitive Map Review was opened in the parish.

2.5.2 Mrs Blackmore had used the route on horseback from 2015 about six times a year and used the route A – B – C – D. She had been told it was public when moving to Morebath in 2015. Mrs Blackmore mentions a gate halfway along but has not mentioned the sign. She had not obtained permission to use the route or ever been stopped or turned back.

2.5.3 Ms Brown had used the route A – B – C – D on horseback from 2016 about five times a year. She had thought the path was public through a friend in the village. Miss Brown refers to one gate on the route and does not refer to seeing the sign. She had not obtained permission to use the route or ever been stopped or turned back.

2.5.4 Mrs Courtney had used the route A – B – C – D since 1993 on foot, cycle and horseback for six to twelve times a year. She thought the path to be public as locals have always used it. Mrs Courtney refers to one gate on the route and does not refer to seeing the sign. She had not obtained permission to use the route or ever been stopped or turned back. Under any additional information she has added 'clearly a well-used road to Skilgate'.

2.5.5 Mr Courtney had used the route A – B – C – D since 1993 on foot and bicycle about six times a year. He had thought the path public as local residents always use it. Mr Courtney refers to gates, never locked but does not refer to the sign. He had not obtained permission to use the route and has never been stopped or turned back. He believed the owner or occupier was aware of the public using the path as he saw them, and nothing was said. Under additional information he commented 'obviously a road to Skilgate, locals have always used it'.

2.5.6 Ms Dawes has used the route A – B – C – D between 1978 to 2004 on horseback on a fortnightly basis. She thought the path public as a continuation of Bridleway Du 8/3 from Skilgate. Ms Dawes refers to the

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gate but does not mention the sign. She has been a tenant of the landowner since 1977 and has met the owner/occupier on the path walking their dogs.

- 2.5.7 Mrs Dean has used the route A – B – E – C – D from 1983 at least once a week on horseback or on foot. She thought the path is public as always been used – only way to access marked bridleway. Mrs Dean refers to gates and extra gates for the pheasant shoot and also a notice for short time, though did not remember words. She had been told by Mr Alex Barnes in 1983 it was fine to use the path but to keep dogs on leads and had also received permission from the landowner's wife. Under additional comments Mrs Dean has commented 'historically Skilgate and Claypits joined by this path. Stops at parish boundary on Definitive Map in middle of stream. The bridleway not much use unless connected to Claypits'.
- 2.5.8 Mrs Moore has used the route A – B – E – C – D from 1995 once a month minimum on horseback. She thought the path to be public as always used. Mrs Moore refers to gate not locked but no notices. She has not obtained permission to use the route or ever been stopped or turned back. Under additional information she has commented 'bridleway path on map stops in middle of stream, gamekeepers and staff very friendly when I meet them while riding on path. Never been told otherwise'.
- 2.5.9 No additional user evidence forms were received following publication of the Review consultation in September 2020.

2.6 Landowner Evidence

- 2.6.1 The landowners/occupiers who owned land crossed by or adjacent to the proposed bridleway and Bridleway DU 8/12 Skilgate were contacted individually and advised of the proposal. They were invited to submit their comments and information by way of a completed landowner evidence form or otherwise.
- 2.6.2 Mr Williams, as agent for the Badgworthy land Company who are the owners of a 'Freehold Profit a Prendre' over Hunting rights in the area, wrote to advise that he did not think the proposal would interfere with his client's interest as holders of those rights.
- 2.6.3 Mr J Rothwell is the freehold owner of the land crossed by the route. He completed a user evidence form and confirmed that his family had owned the land since the early part of the 20th century. He lives in London but regularly stays at Rill Cottages, close to the southern end of the route near point D. Mr Rothwell states that the wood is private land over which he and his family have granted permissive rights of access. In 1977 the hunting rights were granted to the Badgworthy Land Company Ltd and hunts and their followers use the woods. Neighbours and tenants of their family properties are generally permitted to walk or ride in the woods.

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- 2.6.4 It was not his intention that a public right of way should be created as a result of these activities and about sixteen years ago had the notice saying 'Private Land No Right of Way' put up at the Claypits entrance. Mr Rothwell advised that he has very occasionally seen people in the wood that he has not recognised as having permission. One group were seen about five years ago picnicking in the meadow, they were told it was private land and asked to leave. Gates along the route are sometimes closed and maybe obstructed by felled timber stacks and shoot member's vehicles.
- 2.6.5 He believes that there is a local understanding that these are private forestry tracks and as the family have generously granted access when requested, the local community believe their actions to be reasonable. It was never their intention to allow a Public Right of Way to be created as a result of their generosity. He strongly objects to the proposal to make this a Public Right of way; he is, however, happy to continue to grant permissive access on an ad hoc basis as and when requested and as and when he sees fit.
- 2.6.6 Mr A Barnes of Loyton Farm is the licensee of the sporting rights on the land crossed by the route proposed and they have been in occupation since February 2007. The land is private land over which permissive rights of access have been occasionally granted by the landowners either to tenants, adjoining landowners or friends. They are aware of these arrangements to enable he and his employees to differentiate between authorised and unauthorised users.
- 2.6.7 They have seen people in the woods over the last thirty years on the proposed route and other forestry tracks and most people are known to them as having permission. Unauthorised users may have seen people on the claimed route, without knowing that they have permission to be there. Confusion can arise at the County boundary as it is an open space with no obvious place to erect signs to end the bridleway, so users follow the track to find the nearest route to get back to a PROW. Unauthorised access has been infrequent at best.
- 2.6.8 Their employees and gamekeepers have stopped people they do not recognise as permissive users. There is a sign on the gate at the Claypits end of the track so unauthorised access is generally from the northern end. There has been an increase in unauthorised access in 2020. They release pheasants in mid-June and shoot on any one of the three drives in the valley maybe 2-3 times a week during the season. A number of vehicles use and obstruct the track at these times. They have erected signs in the woodlands asking users to keep dogs on leads. They do not place a person at the end of the route during a shoot drive as it is not a public right of way. Their employees, seasonal staff and family members have permission to use the woods.
- 2.6.9 The wooden field gate at the Claypits end is closed at certain times of the year and he understands has been historically locked on occasion. The gate part way along the track is shut from June/July onwards for about 6-8

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weeks when birds are released. Due to the number of permissive users they have tried to avoid the need to lock the gates.

- 2.6.10 Mr A Floyd has been the head keeper for the licensee of the sporting rights for 16 years. He understands that there is a public bridleway on the Somerset CC side but that south of the boundary there is only permissive access. This information was gained from his employer, the landowner/s and local residents. He and his keepers differentiate between any authorised and unauthorised users.
- 2.6.11 During the last 16 years he has seen people on foot, on mountain bikes, on horseback and a couple of instances of motorbikes. People are not always on the claimed route and there has been an upsurge in people in 2020. There are about 5 people they know about who have permitted use on horseback and a number who are allowed to walk there. He would stop to chat to or acknowledge people he saw who he recognised.
- 2.6.12 He has stopped people he does not recognise and also people on the Somerset side if not on the public right of way. The sign saying 'Private Land No Right of Way' on the field gate at the Claypits end of the track was put up by him 16 years ago. This sign has never been defaced or removed. This gate is closed at certain times of the year. Additional 'Keep dogs on leads please' signs were erected in June 2020 throughout the woodland due to increase in access.
- 2.6.13 Mr Floyd included a list of people that they are aware have permission to use the route, which was estimated to number about 30 people, to also include additional tenants in estate cottages. Other comments included were as stated by Mr Barnes with regard to the operation of the shoot.
- 2.6.14 Mr J Westcott farms at Brockwell Farm and his land adjoins a short section of the route south west of point C. He considers the route private. They have been given some permissive access by the landowner to move livestock along the track. They have rarely seen people on foot who have the permission of the landowner and shoot staff. He has stopped people using the route and asked why they were there. It would not be safe to move livestock if too many public users. The Claypit gate is often closed, also for shoot safety reasons. Permission has been granted to those who requested access but not a route for everyone to use due to the commercial nature of the woods.
- 2.6.15 No responses were received from the other landowners/occupiers contacted in respect of this route.
- 2.7 Additional Rebuttal Evidence
- 7.1 Apart from the landowner and leaseholder comments mentioned above, no other rebuttal evidence was received.

2.8 Discussion

Statute (Section 31 Highways Act 1980)

- 2.8.1 Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.
- 2.8.2 The erection of the sign on the gate near point D in 2004 would be 'a calling into question' as it clearly states that the track is on private land and not a right of way. It would therefore be necessary to consider the user evidence that dates from prior to 2004 to consider whether there is sufficient evidence of use by the public to raise a presumption of dedication prior to the calling into question. The relevant twenty-year period would therefore be 1984 to 2004.
- 2.8.3 Of the seven user forms received two were in respect of use after 2015. Of the remaining five forms three described using the main route between points B and C and two users the loop B – E – C. None of these users referred to seeing the sign on the field gate near point D although as the gate is usually understood to be left open, this is considered possible if they rode the route in a north to south direction. There is also no indication at the county boundary to mark the end of the Skilgate bridleway.
- 2.8.4 For the user evidence to be valid it is also necessary that the members of the public were using the route 'as of right'; that is without force, without permission and without secrecy. One of the users refers to being a tenant of the landowner and a second one refers to have been given permission to use the route. These users would be using the route 'by right', with permission and not as of right as a member of the public.
- 2.8.5 This means that there are only three user evidence forms that can be considered under Section 31 of the Highways Act. This user evidence is insufficient, firstly in the number of users, as it fails to show the presumption of dedication, due to regular use by members the public. Secondly because the period of use by these three users only dates from 1993, which is part way through the twenty-year period of use required and evidence of use throughout the twenty-year period is required for a valid claim.
- 2.8.6 Alternatively if the publication in Autumn 2020 of the Definitive Map Review for proposal 2 is taken as the calling into question of the public's use of the route; the existence of the sign would be a sign of 'the lack of intention to dedicate' by the landowner. As this sign would have been in place for sixteen of the twenty-year relevant period of use between 2000 and 2020, a claim for presumed or deemed dedication cannot be considered under Section 31 of the Highways Act 1980.

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Common Law

- 2.8.7 A claim for the addition of a right of way may also be considered under common law. At Common Law, evidence of dedication by the landowners can be express or implied. An implication of dedication may be shown at common law if there is evidence of documentary or user evidence and usually a combination of both; from which it may be inferred that a landowner has dedicated a public right of way and that the public has accepted the dedication.
- 2.8.8 The Morebath and Skilgate Tithe maps do show a route through the woodland between Skilgate village and Claypits in Morebath although the track shown is not along the line of the proposal route between point A to south of point C. The proposal routes seem to have been available by the end of the 19th century as shown on the OS 1st edition map of 1880-1890 with fords shown at point B and near point C. On the 2nd Edition of 1904-1906 the track from Skilgate parish is shown crossing the stream south of the county boundary. Over the years since then the position of the track in the vicinity of the stream near the county boundary has changed. The main ford and crossing point of the stream was shown at the county boundary in the OS 1:25,000 map published in 1950 but a 'Ford' was marked about 130 metres north of point A on the 1970 Post War Mapping. On this map the proposal route was marked 'track' on four places along the proposal route and the loop section.
- 2.8.9 Maps show the physical existence and location of a track or path but do not usually give any indication as to the status of the route shown. The only map that does is the Geographia Ramblers map published in 1947 which does show a red line, described as 'Footpaths & Tracks' in the map key following the proposal route between point A and south of point C. This map was published before the preparation of the Definitive Map of Public Rights of Way from 1950 onwards. It is not known from where the publishers Geographia obtained their information from but the inclusion of a footpath/track on the map would indicate that there was some reputation of a way for the public through the woodland.
- 2.8.10 On the 1910 Finance Act plans the proposal route and loop within Morebath parish are wholly included in two hereditaments. Both hereditaments refer to an allowance given of £50 and £96 respectively for rights of way but no information is given of the field/compartments numbers crossed by the right of way. The land included in hereditament 42 includes land crossed by public footpaths now recorded on the Definitive Map. It is therefore not possible to know if the allowances claimed for by the landowner for public rights of way included the proposal route. It is also possible that as the land crossed was woodland, rather than enclosed fields, no allowance was claimed as the presence of a public right of way through woodland would not have been considered to reduce the rental value of the woods.

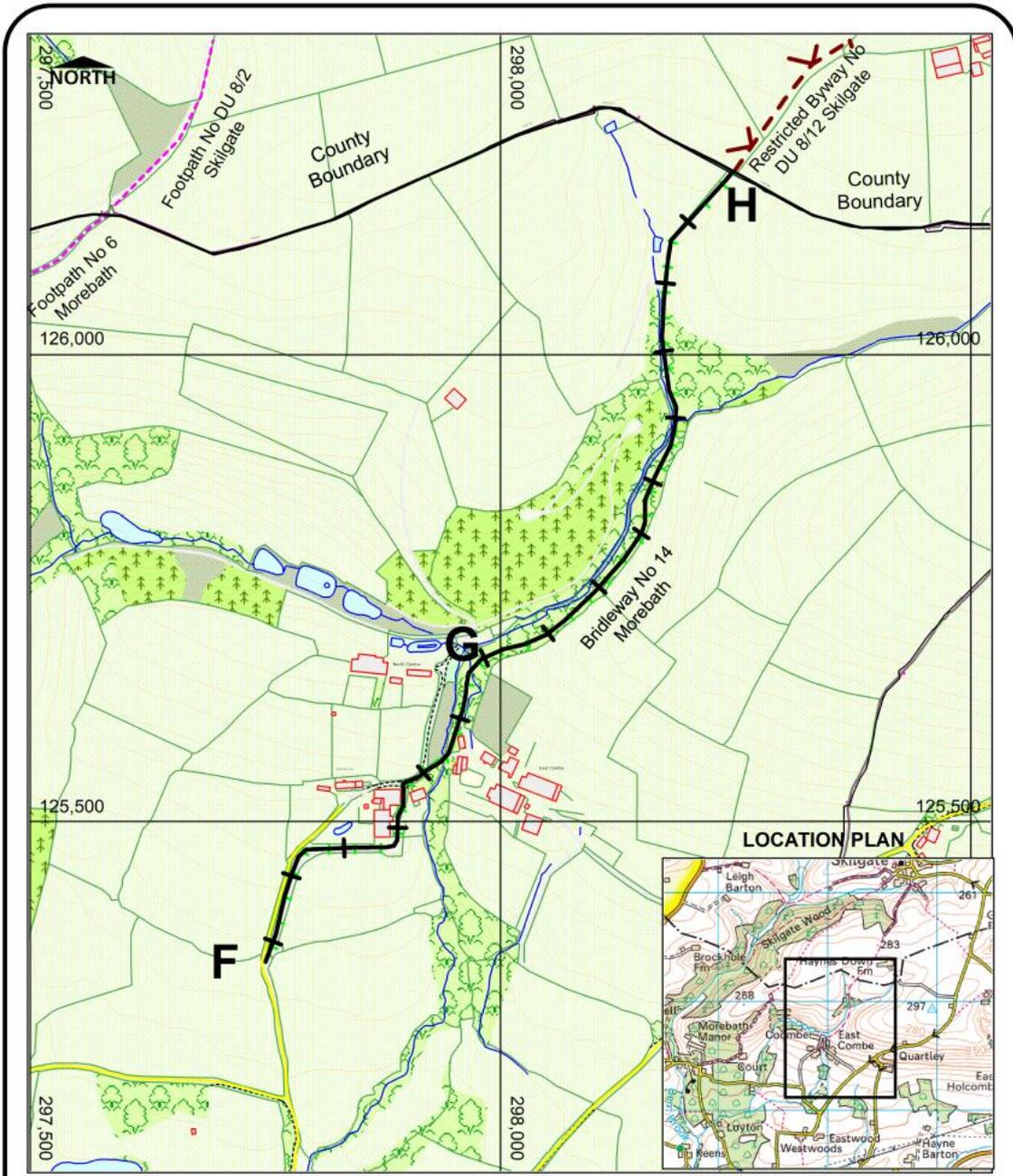
- 2.8.11 The limited Morebath vestry and Morebath Parish Council minutes do not include any references to the proposal. Morebath Parish Council have advised that the proposal has never been an official right of way and is a permissive path at the moment. The Ramblers Association supported the creation of a circular route but did not have any evidence.
- 2.8.12 The user evidence submitted by five of the users, where use was without permission and in the absence of reference to seeing the notice, would be use as of right. However, the quantity and frequency of use of the user evidence alone is insufficient to show that a public right of way could be implied to subsist at common law. With the appropriate documentary evidence, the user evidence could have been sufficient to show acceptance of a route dedicated under common law.
- 2.8.13 The landowner confirmed that it was never the intention of him and his family before him to dedicate a public right of way through the woods. They have always been happy to grant permission to their tenants and local residents to use the route where this is compatible with forestry operations and use of the woods for pheasant shooting. The sign at the Claypits end was erected sixteen years ago. He has stopped unknown people in the woods. He says the route should continue as a permissive path as it has always been.
- 2.8.14 The evidence provided by the landowner's current licensee and head keeper advised that they were aware of a number of people, possibly up to about thirty, who had permission to walk or ride through the woods but they would stop and question people they did not recognise and tell them it was not a public right of way. The sign on the field gate at the Claypits lane had been erected sixteen years ago by the head keeper and maintained in situ since then. They were aware that the Skilgate bridleway stopped at the county boundary and did not continue across into Morebath parish.
- 2.8.15 Mr Westcott, an adjacent landowner advised that he had been given permission to use the track to move livestock. He has occasionally seen people using the route who had permission. The route is not suitable for public use due to the commercial nature of the woods.
- 2.8.16 The available documentary evidence is limited. There is only the depiction of the proposal on the Geographia Ramblers' Map as a footpath & track and possible allowance granted in the Finance Act field books to show any indication of the existence of a public right of way on the proposal route. It is unusual for a public right of way to be a cul-de-sac path and there is no logical reason why the Skilgate bridleway does not continue into Morebath parish. However, the lack of continuation is not in itself sufficient evidence to support of the existence of the continuation of the public right of way in the adjoining parish. The total available evidence, together with the rebuttal evidence from the landowner and others is not sufficient to show that a public right of way can be reasonably alleged to subsist at common law.

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2.9 Conclusion

2.9.1 The map evidence shows that the proposal routes have been available on the ground since the late 19th century, although with changes to the location of the ford and foot bridge near the county boundary, and could have been used by the public since that time. There is user evidence dating from 1978. However, in the absence of sufficient user evidence and evidence of a lack of intention to dedicate, the existence of a public right of way cannot be considered under section 31 of the Highways Act 1980. Under common law the documentary and user evidence available is also considered insufficient to show that a public right of way can be implied to have been dedicated.

2.9.2 It is therefore recommended that no Modification Order be made to modify the Definitive Map and Statement in respect of either of the routes considered under Proposal 2.



Map Ref SS 9725 9826 500m grid

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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - MOREBATH
PROPOSAL NO 1
SCH 14 APPLICATION FOR UPGRADING OF
BRIDLEWAY NO. 14, MOREBATH TO
A BYWAY OPEN TO ALL TRAFFIC**

drawing number HIW/PROW/20/24

date Mar 20

scale 1:6,000 at A4

drawn by TW

Notation

Upgrading to BOAT F - G - H (1100 metres approx) 

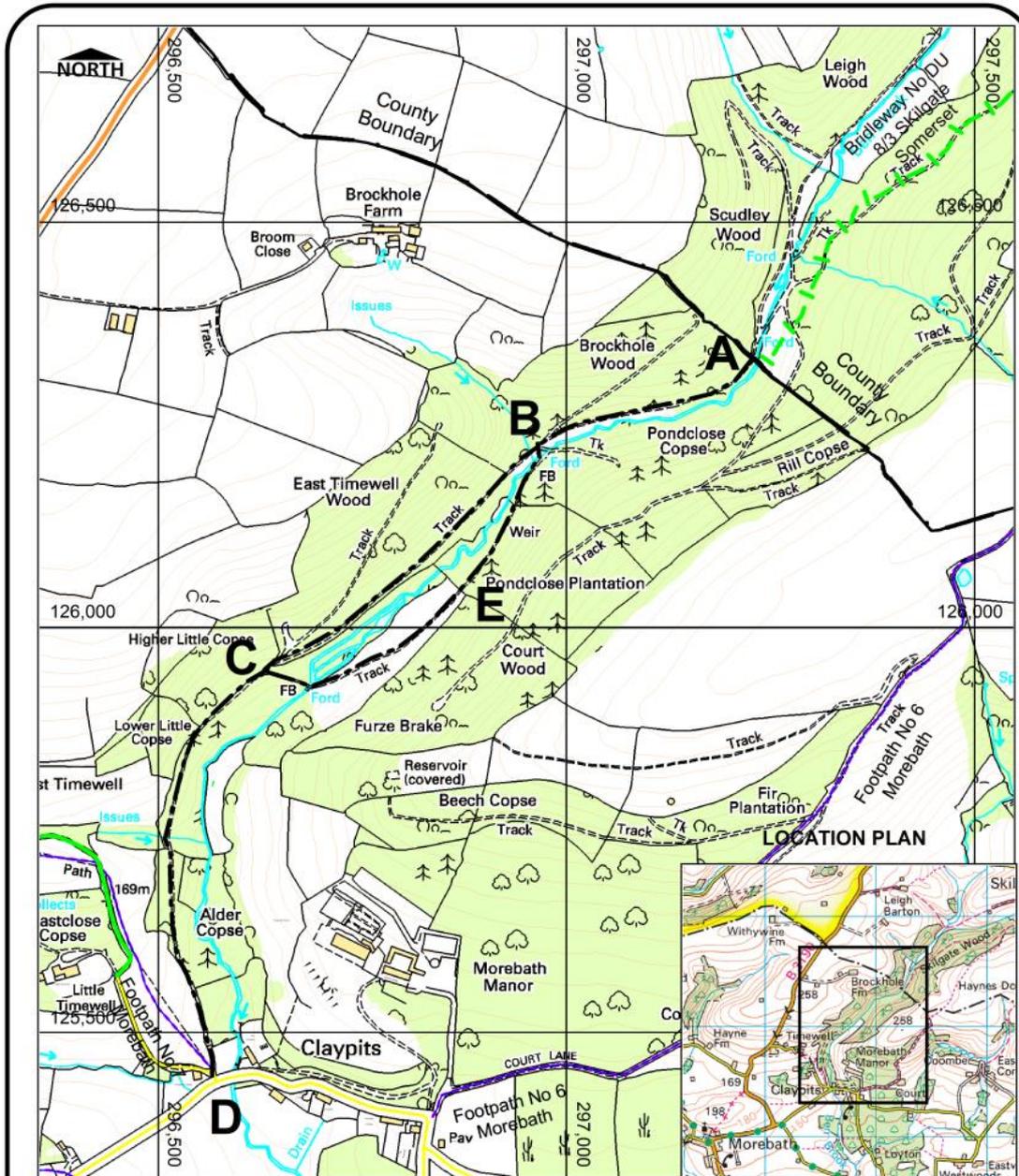
Existing Public Footpath  Restricted Byway 

Meg Booth

CHIEF OFFICER HIGHWAYS,
INFRASTRUCTURE DEVELOPMENT AND WASTE



Agenda Item 8



Map Ref SS 9625 9626 9726 500m grid

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DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - MOREBATH
PROPOSAL NO 2
ADDITION OF PUBLIC BRIDLEWAY FROM
SOUTH WEST END OF BRIDLEWAY DU 8/3
SKILGATE, SOMERSET TO CLAYPITS, MOREBATH

drawing number HIW/PROW/20/25a
 date MAR 20/JAN 21
 scale 1:7,000 at A4
 drawn by TW

Notation Addition of Public Bridleway A - B - C - D
 & B - E - C (1300 & 490 metres approx)

Existing Public Footpath  & Bridleway 
 Unsurfaced County Road 

Meg Booth
 CHIEF OFFICER HIGHWAYS,
 INFRASTRUCTURE DEVELOPMENT AND WASTE



IW/21/21

Public Rights of Way Committee
11 March 2021

Definitive Map Review
Parish of Payhembury: Part 2

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

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

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map by deleting the sections of Footpath No.11 between points V – W and U – N – P and adding public footpaths between points X – V and U – M – T as shown on drawing HIW/PROW/20/45.

1. Introduction

This report examines a proposal arising from the Definitive Map Review in the parish of Payhembury involving the correction of the recorded line of Footpath No. 11.

2. Background

This is the second report for the Definitive Map Review for Payhembury parish. The background to the Review in Payhembury was discussed in the first report of 5 March 2020.

3. Proposals

Please refer to Appendix I to this report.

4. Consultations

Limited consultations have been carried out with the following results:

| | | |
|------------------------------|---|---|
| Mr Carrel Jevons (landowner) | - | support the proposal, comments included in background papers; |
| Historic England | - | comments included in background papers; |
| Payhembury Parish Council | - | support the proposal, comments included in background papers; |
| East Devon District Council | - | no comment. |

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

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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 to modify the Definitive Map and Statement by deleting the sections of Footpath No.11 between points V – W and U – N – P and adding public footpaths between points X – V and U – M – T as shown on drawing HIW/PROW/20/45. Details concerning the recommendations are discussed in Appendix I to this report.

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

10. Reasons for Recommendations

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

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Whimple & Blackdown

Local Government Act 1972: List of Background Papers

Contact for enquiries: Thomas Green

Room No: M8 Great Moor House, Bittern Road, Exeter

Tel No: 01392 383000

| Background Paper | Date | File Ref. |
|---------------------|--------------|--------------------|
| Correspondence file | 2000 to date | TCG/DMR/PAYHEMBURY |

tg080221pra
sc/cr/DMR Payhembury part 2
02 030321

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Appendix I
To HIW/21/21

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.

1. Proposal 2: Proposed correction of the line of Footpath No. 11, Payhembury.

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map by deleting the sections of Footpath No.11 between points V – W and U – N – P and adding public footpaths between points X – V and U – M – T as shown on drawing HIW/PROW/20/45.

1.1 Background

- 1.1.1 A report to this committee in March 2020 recommended the addition of a footpath at Hembury Fort in the parish of Payhembury, resulting from the Definitive Map Review in the parish. The route to be added links the parking area on Witness Moor to the existing Footpath 11 on the top of Hembury Fort, a Scheduled Ancient Monument. Whilst carrying out a GPS survey to ensure the accuracy of the route for the Modification Order plan it became apparent that the line of Footpath No. 11 appeared to have been incorrectly drafted on the Definitive Map.

1.2 Description of the Route

- 1.2.1 The proposed route of Footpath No. 11 starts on the A373 at point X on the plan (HIW/PROW/20/45), signed at this point by a DCC finger post. It passes through field gates, via point V, and proceeds up and around the hillfort in a generally northerly direction to point M (another DCC fingerpost is located at point M). Along this section the route runs along a gravel surface, which was installed within the last decade as a sacrificial layer to protect the archaeology underneath from arboricultural machinery/vehicles. Between points M – T the route is over grass, with a low wooden post with waymarkers at point T.
- 1.2.2 There is no physical evidence of a path between points V – W and U – N – P, as currently shown on the Definitive Map.
- 1.2.3 The loop to the south between points N – P, as already shown on the Definitive map, is unaffected by these proposed changes.
- 1.2.4 The previous report of March 2020 resolved to add the two sections between point M – N and T – P, which pass through gaps in the earthworks to link into the existing, and correctly recorded part of Footpath No. 11.

1.3 Documentary Evidence

1.3.1 Definitive Map Process

- 1.3.1.1 The base mapping used by Payhembury Parish Council to conduct the Definitive Map Survey in 1950 was the Ordnance Survey 6 inch to the mile Second Edition, published in 1906. Hembury Fort, being a multivallate hillfort, has multiple deep ditches and ramparts within a small area which creates a complex area of hachures when mapped. Six inches to the mile

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(1:10,560) is not the best scale to accurately show such detail and this is apparent in the Payhembury Parish Survey map on which the upper loop of Footpath 11 appears to traverse obliquely across both the upper rampart and ditch on its circuitous route around the fort. The southern end of Footpath 11 is annotated following a path marked on the map and joining the A373 at a point approximately 50m to the west of where it does so on the ground now.

1.3.1.2 The Statement accompanying the Definitive Map for Footpath 11 is not particularly useful in clarifying the situation. The statement says the path starts at the A373 '*150 yards south east of Hembury Fort Cross*'. The true distance from Hembury Fort Cross to the start of the recorded route of Footpath 11 is 120 yards; the distance to where the signed route now starts is 180 yards, so this does not match the statement either. The rest of the statement – '*and proceeds northwards looping over the remains of Hembury Fort pre-Roman Fort of historical interest*' – provides no assistance in locating the exact course of the route on the ground.

1.3.1.3 The survey form that preceded the definitive statement does not provide any assistance in pinpointing the exact route either, merely describing the path as '*giving access to the open space and old Earthworks – early British and Roman.*'

1.3.2 Ordnance Survey Drawings 1806-7

The Ordnance Survey Drawings surveyed in 1806-7 show a track leading up to Hembury hillfort from the Honiton/Cullompton road. The scale makes it difficult to establish the precise location of the route but it is roughly comparable with both the proposed route and the recorded line of Footpath No. 11. However, it clearly shows that at this time a route up to the hillfort physically existed.

1.3.3 Ordnance Survey 6 Inch to the Mile 1888; Ordnance Survey 25 Inch to the Mile 1889

Neither of these maps show any paths marked on the hillfort.

1.3.4 Ordnance Survey 6 Inch to the Mile 1906; Ordnance Survey 25 Inch to the Mile 1904

The 25 inch to the mile map, published in 1904, shows a double-pecked line marked 'F.P.' leading from the A373 up to the west gate of the fort where it enters the northern enclosure. This path is consistent with the recorded line of Footpath 11, except for the very northern part. There is no path marked on the southern half of the fort that would correspond with the existing Footpath 11 where it loops south between points N-P. The 6 inch-to-the-mile edition published in 1906 shows the area in a very similar way, the only obvious difference being that the pecked line path leading up from the A373 is not marked FP.

1.3.5 Ordnance Survey A Series 1:10,560 1963

This map shows two dashed line paths on the hillfort marked with 'FP'. A path is shown that corresponds with the existing track running up from the

A373, which is the proposed route and which Footpath 11 runs on the ground today. A path is shown running northwards from the A373 and going straight up and over the fort, with a junction with the first path in the central earthworks.

1.3.6 Aerial photo 1930

This aerial photo, taken from south of the hillfort, clearly shows a path leading from the A373 at point X up to the top of the fort at point M as it exists on the ground today. A small triangular section of woodland is shown at the bottom of the south-west corner of the fort, though there is no sign of a path through it that would correspond with the route of Footpath 11 shown on the Definitive Map.

1.3.7 Aerial photography 1946-49

Aerial photography from 1946-49 shows the hillfort mostly clear of tree cover. The small triangular section of woodland is shown at the south-west of the fort adjacent to the A373; on the Definitive Map Footpath 11 is shown passing through this area but there is no visible path on this aerial photography. However, a path is visible running roughly along the route of the track which exists today – the proposed route – and which has been signed in recent decades as Footpath 11. On top of the fort there are several worn paths visible, corresponding roughly with the recorded line of Footpath 11 where it loops south between N – P, as well as the proposed route between points M – T.

1.3.8 Aerial photography 1999-2000

Tree cover is much more extensive on the hillfort by this date, though the track leading up from the A373 to point M is largely visible and follows the same route that it does on the ground today. The southern loop between points N – P is also largely visible as a worn path, though the very southern section does not correlate exactly with the Definitive Map line as it appears to be located further north. The northern section of Footpath 11 running west-east between points N – P is not visible in this aerial photography, though tree cover partially obscures this area. Similarly, the proposed route to the north of this section between points M – T is not visible as a worn path in the way that other paths on the upper enclosure are.

1.3.9 Aerial photography 2006-7

This shows much the same as the 1999-2000 photos, though there is more tree cover and so some sections are partially obscured.

1.3.10 Aerial photography 2010

Tree cover has extensively covered the southern half of the hillfort by 2010, making it difficult to see what is on the ground. Small sections on the track between points X – V – U are visible but it is impossible to make out any of the southern loop between points N – P.

1.3.11 Aerial photography 2015-17

This photography post-dates scrub and tree clearance on the top of the fort. The track between points X – V – U – M is mostly visible, as is a worn path

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around the southern half of the top of the fort, roughly corresponding with the line of Footpath 11 but slightly further in from the edge of the top rampart. It is not possible to make out a continuous worn path on the route where the footpath is currently signed running east-west between points M – T, the only visible part being at the very eastern end.

1.4 User Evidence

1.4.1 Although no user evidence has been submitted directly relating to this proposal, the user evidence forms submitted in 2012 and considered in the first report to Committee in March 2020 are of some use here. One user highlighted the line of Footpath 11 from the A373 northwards on the map accompanying their user evidence form rather than the actual track that the route follows on the ground. The route that they marked would be very unlikely to be used as it passes through dense vegetation/mature woodland and emerges on the A373 on a very steep bank at a hazardous point on the road. It appears that they simply marked on the route of Footpath 11 as it was shown on their map.

1.4.2 Multiple user evidence forms recorded use of the proposed route between points U – M – T, along with several others that appear to be vaguely representative of this route but not completely consistent. Again, this may be due to the scale of the maps used affecting the accuracy of the annotations by users. Only two users had marked the Definitive Map line of Footpath 11 east to west between point N – P.

1.5 Landowner Evidence

1.5.1 No evidence has been supplied by the current landowner in connection with this proposal, though they do support it. There is no evidence that previous landowners have questioned the recorded route of Footpath no.11, or the discrepancy between the Definitive Map and the route signed by DCC on the ground.

1.5.2 Hembury Fort is a Scheduled Ancient Monument and since 2014 has been the subject of a ten-year Higher-Level Stewardship agreement (in receipt of £129,958), under the supervision of Historic England and during which time the public have permissive access to the site. Historic England have reiterated the comments that they made during consultation on the first proposal (which they did not support): while generally supportive of public access they have concerns about erosion of paths damaging the monument. These are not relevant considerations and in any case this proposal will partially address these concerns by moving the recorded line away from the central earthworks that are particularly sensitive.

1.6 Rebuttal Evidence

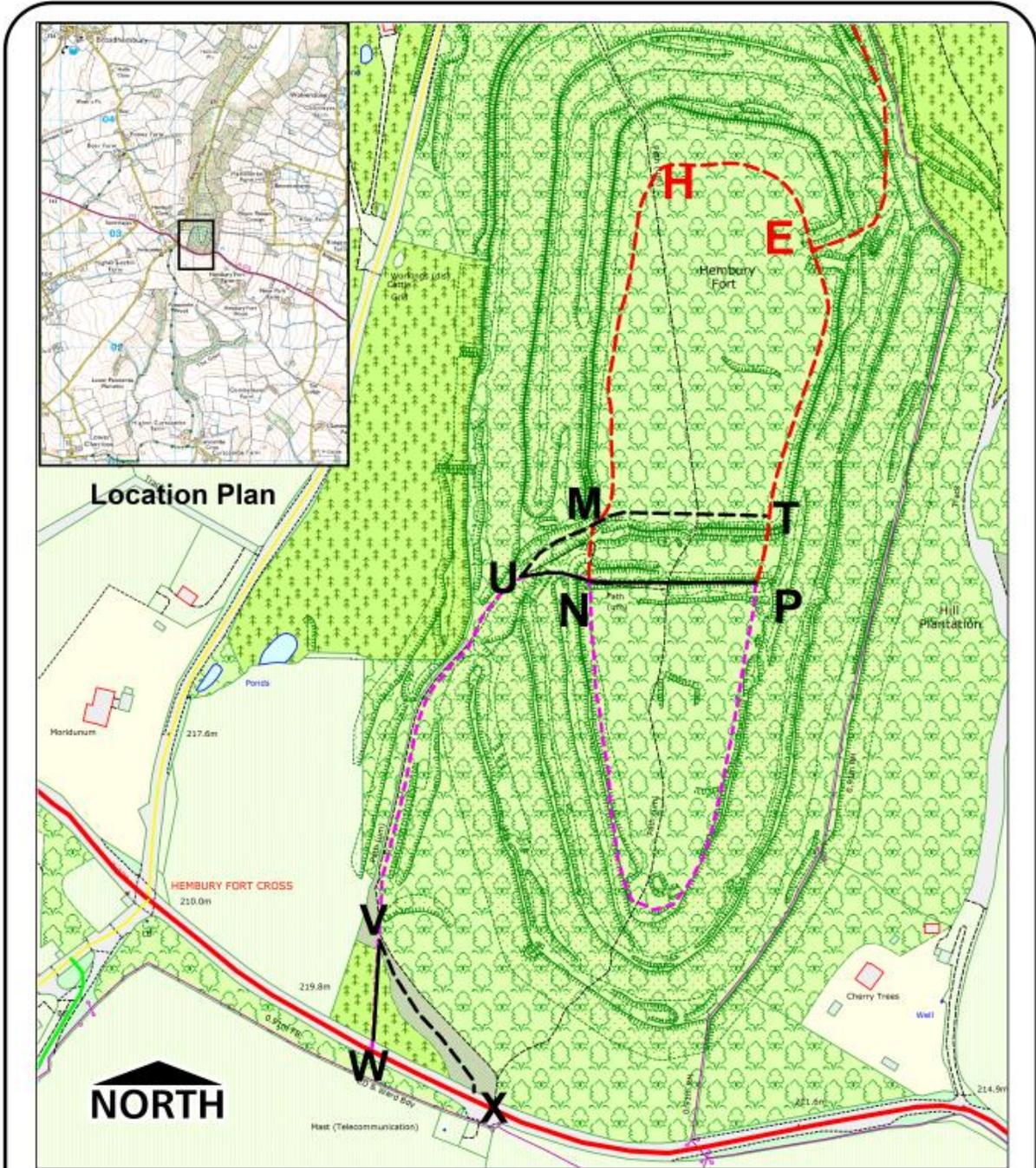
1.6.1 No positive evidence to rebut the proposed modification has been discovered.

1.7 Discussion

- 1.7.1 Representing the complex topography of Hembury Fort on a map is not easy, particularly at a smaller scale. The plan HIW/PROW/20/45 at 1:2,500 manages to show the earthworks in reasonable detail. However, the Definitive Map process was undertaken using six-inch-to-the-mile mapping (1:10,560) and this does not show much topographical detail at all. The mapping used in the survey was also out-of-date at the time, being published more than 40 years earlier in 1906. Both of these issues have created some discrepancy over the exact route of the footpath, though these have been very minor and ultimately not of enough concern to anyone to warrant correction previously. Payhembury Parish Council clearly requested Footpath No.11 be recorded because the public had accessed the hillfort on this route, which they have always been able to since, albeit on a slightly different route to the one originally recorded on the Definitive Map.
- 1.7.2 Historical mapping shows a mixed picture. The Surveyors Drawings of 1806-7 show a track leading from the current A373 up to the top of the fort, roughly corresponding with this section of Footpath 11. It is then not until 1904 that a footpath appears again - on the Second Edition 25 inch-to-the-mile map in 1904, followed by the 6 inch edition in 1906. However, these depictions are only consistent with a route leading from the A373 up to the top of the fort, not with the loop around the southern half of the top of the fort. There is therefore no depiction of the entirety of Footpath 11 in the historic mapping record prior to the Definitive Map.
- 1.7.3 The aerial photography from 1946-9 is very useful in that it shows the fort during a period roughly contemporary with the Definitive Map survey. The photos show a track that appears to be on the same line as the gravelled track today, with a triangular patch of woodland to the southwest. The aerial photo from 1930 shows a very similar picture. The line recorded on the Definitive Map would have to pass through the patch of woodland but there is no sign of it on either of these photos. Indeed, these early aerial photos both strongly suggest that at the time of the Definitive map survey the likely route was along the route that it is signed on the ground today (the proposed route). Subsequent modern aerial photography during this century does not suggest any path existing along the recorded line at the southern end of Footpath 11. There is no trace of a path on the ground today between points W – V, either recent or historic. Therefore, it seems likely that the use of old base mapping during the Definitive Map process led to a simple error in representing the intended line of the footpath.
- 1.7.4 There is no sign of the recorded route of Footpath 11 between points U – N – P in the historic mapping record, or in either historic or modern aerial photography. The section between points U – N is extremely steep and it seems improbable that Payhembury Parish Council intended this to be the route of the path, especially considering the existence of the logical route between points U – M in the historic mapping and contemporary photographic record.

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- 1.7.5 There is no doubt that footpath 11 was recorded on the Definitive Map due to the existence of public footpath rights leading from the A373 up onto the hillfort. Aerial photography suggests that at the time the map was drafted the route followed the same path as it does on the ground today. There is no path visible whatsoever at this time along the sections proposed for deletion, nor is there any evidence for them in contemporary or subsequent mapping. It is therefore logical to conclude that these sections did not exist on the ground at the time the Definitive Map was drawn up and that the line shown was an error.
- 1.7.6 To summarise, the existence of public footpath rights on Footpath 11 are not in any doubt; the intended route as described on the survey form and subsequent statement is very clear as to the general intentions of the route but lacking in any specific detail. The map used by Payhembury Parish Council to mark the line of the footpath during the Definitive Map survey was more than forty years out-of-date. The line was drawn on the pecked line path shown on the map, which is perfectly understandable. However, aerial photography and later mapping strongly suggest that the line drawn was incorrect at the time and was not an accurate representation of the route as it existed on the ground at the time and has done since. The available evidence suggests that the proposed route is what should have been recorded on the Definitive Map when it was first created and that the originally recorded line was incorrect due to the simple fact of the mapping being out of date.
- 1.8 Conclusion
- 1.8.1 It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement by deleting the sections of Footpath No.11 between points V – W and U – N – P and adding public footpaths between points X – V and U – M – T as shown on drawing HIW/PROW/20/45 and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.



Grid Ref: ST 1112 0289 / ST 1116 0282

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DEVON COUNTY COUNCIL
Definitive Map Review, Payhembury parish
Informal Consultations, Proposal 2:
Correction of alignment of Footpath 11,
Hembury Fort

Drawing number HIW/PROW/20/45
Date Dec 2020
Scale 1:2,500
Drawn by TCG

| | | |
|------------------------------|-------------------|--------------------|
| Notation | Path to be added | Path to be deleted |
| Route recommended March 2020 | | |
| | Existing footpath | |

Meg Booth

HEAD OF HIGHWAYS, INFRASTRUCTURE DEVELOPMENT AND WASTE



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Point X, looking towards point V



Fingerpost at point M