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

County Hall  
Topsham Road  
Exeter  
Devon  
EX2 4QD

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Date: 5 July 2023

Contact: Julia Jones

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### **PUBLIC RIGHTS OF WAY COMMITTEE**

Thursday, 13th July, 2023

A meeting of the Public Rights of Way Committee is to be held on the above date at 2.15 pm at Daw Room (Committee Suite), County Hall to consider the following matters.

Donna Manson  
Chief Executive

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

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

- 1 Apologies
- 2 Minutes (Pages 1 - 6)  
Minutes of the Committee meeting held on 9 March 2023, attached.
- 3 Items Requiring Urgent Attention  
Items which in the opinion of the Chair should be considered at the meeting as matters of urgency.
- 4 Devon Countryside Access Forum (Pages 7 - 18)  
Draft minutes of the meeting held on 24 April 2023, attached, for noting.

## **DEFINITIVE MAP REVIEWS**

- 5 Parish Review: Definitive Map Review - Parishes of East Budleigh with Bicton  
(Pages 19 - 32)

Report of the Director of Climate Change, Environment and Transport  
(CET/23/46), attached.

*Electoral Divisions(s): Exmouth &  
Budleigh Salterton Coastal*

- 6 Parish Review: Definitive Map Review - Parish of Parracombe - Part 3 (Pages 33 - 56)

Report of the Director of Climate Change, Environment and Transport  
(CET/23/47), attached.

*Electoral Divisions(s): Combe Martin  
Rural*

- 7 Parish Review: Definitive Map Review - Parish of Washfield - Part 2 (Pages 57 - 76)

Report of the Director of Climate Change, Environment and Transport  
(CET/23/48), attached.

*Electoral Divisions(s): Tiverton West*

- 8 Parish Review: Definitive Map Review - Parish of Newton Poppleford & Harpford - Part 2 (Pages 77 - 94)

Report of the Director of Climate Change, Environment and Transport  
(CET/23/49), attached.

*Electoral Divisions(s): Otter Valley*

## **MATTERS FOR INFORMATION**

- 9 Public Inquiry, Informal Hearing and Written Representation Decisions; Directions and High Court Appeals (Pages 95 - 100)

Report of the Director of Climate Change, Environment and Transport  
(CET/23/50), attached.

*Electoral Divisions(s): Bickleigh &  
Wembury; Combe Martin Rural;  
Salcombe*

- 10     Public Path Diversion and Definitive Map Modification Orders (Pages 101 - 102)  
Report of the Director of Climate Change, Environment and Transport  
(CET/23/51), attached.

*Electoral Divisions(s): Whimple &  
Blackdown*

- 11     Dates of Future Meetings  
23 November 2023 and 7 March 2024

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

Nil

*Members are reminded that Part II Reports contain exempt information and should therefore be treated accordingly. They should not be disclosed or passed on to any other person(s). They need to be disposed of carefully and should be returned to the Democratic Services Officer at the conclusion of the meeting for disposal.*

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## PUBLIC RIGHTS OF WAY COMMITTEE

9 March 2023

### Present:-

Councillors L Hellyer (Chair), R Chesterton (Vice-Chair), D Barnes, J Bradford, J Brook, I Chubb, D Sellis and D Thomas

### Members attending in accordance with Standing Orders 8 and 25

Councillors J Bailey, J Yabsley

#### **46      Chair's Announcements**

The Chair advised the committee that, following discussions with officers, the background papers pertaining to items on future Public Rights of Way agendas shall not be made available in hard copies by default. Each report shall include pertinent information from the background papers alongside details of who to contact to arrange viewing of the background papers.

The Chair also welcomed Mrs A Mayes MBE who was attending (remotely) in her capacity as a Co-opted Member of the Council's Standards Committee to observe and monitor compliance with the Council's ethical governance framework.

#### **\* 47      Minutes**

**RESOLVED** that the minutes of the meeting held on 3 November 2022 be signed as a correct record.

#### **\* 48      Items Requiring Urgent Attention**

There was no item raised as a matter of urgency.

#### **\* 49      Devon Countryside Access Forum**

The Committee received the minutes of the meeting of 20 October 2022, which were not available in time for the previous meeting of this committee. The committee also received the draft minutes of the meeting held on 31 January 2023.

A councillor highlighted that the minutes of the 20 October meeting raised concern about why it was necessary for the design proposals for the A379 bridge to include a step to resting areas which impacted on those with limited mobility. It was expressed that access for those with limited mobility is very important and that Devon County Council should be proactively demonstrating inclusivity in this respect.

# Agenda Item 2

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PUBLIC RIGHTS OF WAY COMMITTEE

9/03/23

\* 50 **Parish Review: Definitive Map Review - Parish of Newton Poppleford & Harpford - Proposals 1 and 2**

(Councillor J Bailey attended (remotely) in accordance with Standing Order 25 and spoke in support of the officer recommendation for Proposal 1).

Mr R Swan, the applicant for Proposal 1, attended the meeting under the Council's Public Participation scheme and spoke in favour of recommendation (a) regarding Proposal 1, and against recommendation (b) regarding Proposal 2.

The Committee considered the Report of the Director of Climate Change, Environment and Transport (CET/23/12) on two proposals arising from the Definitive Map Review in the parish of Newton Poppleford & Harpford.

It was **MOVED** by Councillor Hellyer, **SECONDED** by Councillor Brook and

**RESOLVED** that

(a) a Modification Order be made in respect of Proposal 1; and

(b) that no Modification Order be made in respect of Proposal 2.

\* 51 **Parish Review: Definitive Map Review - Parish of Bickleigh**

The Committee considered the Report of the Director of Climate Change, Environment and Transport (CET/23/13) which examined the Definitive Map Review in the parish of Bickleigh in the South Hams District. The review had been completed for the parish of Bickleigh and no modifications had been identified.

Members noted the report.

\* 52 **Parish Review: Definitive Map Review - Parish of Washfield Part 1 - Proposal 1**

Mrs K Duckett and Mr S Brooking attended the meeting under the Council's Public Participation scheme and spoke in favour of the officer recommendation.

The Committee considered the Report of the Director of Climate Change, Environment and Transport (CET/23/14) which examined the route referred to as Proposal 1 that had arisen out of the Definitive Map Review in the Parish of Washfield in Mid Devon. A report on Proposal 2 would be brought to the next committee meeting in July 2023.

It was **MOVED** by Councillor Chesterton, **SECONDED** by Councillor Hellyer and

**RESOLVED** that no Modification Order be made to modify the Definitive Map and Statement for the addition of a Bridleway A – B – C - D as shown on drawing number HIW/PROW/22/17a (Proposal 1).

\* **53**      **Schedule 14 Application - Parish of Honiton**

The Committee considered the Report of the Director of Climate Change, Environment and Transport (CET/23/15) which examined one proposal arising from a Schedule 14 application in the parish of Honiton in East Devon district.

It was **MOVED** by Councillor Thomas, **SECONDED** by Councillor Chesterton and

**RESOLVED** that no Modification Order be made in respect of Proposal 1.

\* **54**      **Proposed Diversion: Bridleway No. 6, East Anstey**

(Councillor J Yabsley attended in accordance with Standing Order 25 and spoke in support of the officer recommendation).

Mrs L Moore, the applicant, attended the meeting under the Council's Public Participation scheme and spoke in favour of the officer recommendation.

The Committee considered the Report of the Director of Climate Change, Environment and Transport (CET/23/16) examined a landowner application to divert a public bridleway in the parish of East Anstey.

The proposal was made to facilitate improved privacy, and to enable the applicant to better enjoy use of their garden and paddocks. The diversion would also benefit users of the bridleway by improving ease of access. The proposal was shown on plan no. CCET/PROW/22/15.

Members agreed that the proposed modification order would likely facilitate increased usage of the bridleway as users would not have to move conspicuously past the applicant's house and near their garden, which would be likely to discourage use.

It was **MOVED** by Councillor Hellyer, **SECONDED** by Councillor Brook and

**RESOLVED** that a Public Path Diversion and Definitive Map & Statement Modification Order be made to divert Bridleway No. 6, East Anstey from the line A – B – C – D to the line A – G – F – E as shown on drawing no. CCET/PROW/22/15 and that if there are no objections, or if such objections are made and subsequently withdrawn, it be confirmed as an unopposed order.

# Agenda Item 2

4

PUBLIC RIGHTS OF WAY COMMITTEE

9/03/23

\* **55**      **Public Inquiry, Informal Hearing and Written Representation Decisions; Directions and High Court Appeals**

The Committee received the report of the Director of Climate Change, Environment and Transport (CET/23/17) which outlined decisions received from the Secretary of State since the last meeting of the Committee.

Members noted the report.

\* **56**      **Public Path Diversion and Definitive Map Modification Orders**

The Committee received the report of the Director of Climate Change, Environment and Transport (CET/23/18) which informed that since the last meeting a Definitive Map Modification Order (Footpath No. 38, Newton Poppleford & Harpford) had been confirmed as unopposed.

Members noted the report.

\* **57**      **Public Path Orders**

The Committee noted the Report of the Director of Climate Change, Environment and Transport (CET/23/19) on the Public Path Orders made and confirmed under delegated powers.

\* **58**      **Public Path Orders - District Councils**

The Committee noted the Report of the Director of Climate Change, Environment and Transport (CET/23/20) on the Public Path Orders made, confirmed, and certified by local planning authorities, under powers through the Town and Country Planning Act 1990.

\* **59**      **Rights of Way Improvement Plan and Highway Infrastructure Asset Management Plan**

The Committee considered the Report of the Director of Climate Change, Environment and Transport (CET/23/21) which provided an update on progress in reviewing two key plans setting out priorities and actions pertinent to management, maintenance, and development of the public rights of way network.

Members highlighted the importance of the maintenance of Devon's public rights of way which residents often feedback on, including where additional work would be beneficial. Councillors considered that consideration should be given to increasing community giving.

\* 60

## **Dates of Future Meetings**

Dates of future meetings were noted as:

13 July 2023, 2.15pm

23 November 2023, 2.15pm

7 March 2024, 2.15pm

### **NOTES:**

1. *Minutes should always be read in association with any Reports for a complete record.*
2. *If the meeting has been webcast, it will be available to view on the [webcasting site](#) for up to 12 months from the date of the meeting*

\* **DENOTES DELEGATED MATTER WITH POWER TO ACT**

The Meeting started at 2.15 pm and finished at 3.18 pm





# Agenda Item 4

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## Minutes of the Sixty-Fourth meeting of the Devon Countryside Access Forum held at Silverton Community Hall, Wyndham Road, Silverton, Exeter EX5 4JZ

**Monday, 24 April 2023**

### **Attendance**

#### *Forum members*

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

Tino Savvas  
Robert Sewell  
Lorna Sherriff  
Sarah Slade (Chair)  
Bryan Smith  
Tim Spray  
Glynn Yabsley

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

Philip Hackett, Access Field Officer, South West. British Horse Society  
Richard Walton, Public Rights of Way and Country Parks Manager, DCC  
Hilary Winter, Forum Officer, DCC

### **1. Apologies**

Apologies were received from Councillor Richard Chesterton, Holly Daniels, Councillor Linda Hellyer, Jo Hooper and James Nevitt. The resignation of Holly Daniels was noted with regret. Glynn Yabsley was welcomed as a new member.

### **2. Declarations of interest**

There were no declarations of interest.

### **3. To approve minutes of the meeting held on 31 January 2023**

Minutes of the meeting held on 31 January were approved and signed.

# Agenda Item 4

## 4. Matters arising

### 4.1 Tamara Trail project

Mark Owen, consultant to the Tamara Landscape Partnership Scheme, had confirmed that use of the 'Miles without Stiles' categories included mobility scooters. The three categories are 'For All' (a gradient of less than 1:10 with tarmac or a compacted stone surface of less than 10mm); 'For Many' (gradients up to 1:8 with stone of 4cm or less) and 'For Some' (slopes greater than 1:8 will have improved surfacing or handrails with stone less than 10 cm and steps or breaks less than 10 cm in height). It is suggested that mobility vehicles could manage all three categories. Descriptions will be added to the website.

Some concern was expressed about the use of a range of standards for different projects with no nationally applied criteria.

### 4.2 Sustrans barriers project

Gordon Guest and Tim Spray had been out on the Exe Estuary Trail and produced a photographic report for Sustrans on gates and chicanes. No problems had been encountered regarding accessibility for mobility scooters. A potential consideration is whether there is a real need to remove or replace these barriers with less restrictive bollards. In addition to cost implications, removal might increase speed and so might potentially have an unintended negative impact on safety (e.g. at Lympstone).

The Forum Officer had been informed by Sustrans that hand cyclists, an additional group of users, experienced some difficulties with access. It would be helpful to ascertain dimensions required for hand cyclists. It was noted cargo bikes would have similar requirements.

Richard Walton, Public Rights of Way and Country Parks Manager, said that the timescales and conditions for Department for Transport and Sustrans funding were out of sync with DCC (for example, clauses around land ownership), and so related work might not be significantly funded via the grant. The PRow team is liaising with Sustrans. All work will be subject to a safety audit.

## 5. Election of Chair and Vice Chair

The Forum Officer took the Chair. Sarah Slade was elected Chair, proposed by Andrew Baker and seconded by Tim Spray. Chris Cole was elected Vice Chair, proposed by Sue Pudduck and seconded by Bryan Smith. All in agreement.

## 6. Public questions

There were no public questions.

## **7. Correspondence log**

The correspondence log was noted, in particular the response to Silverton Neighbourhood Plan (item 3) and four applications made to Devon County Council by the Open Spaces Society to register four areas of land near Stockland as common land (item 4).

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

### **8.1 Pebblebed Heaths National Nature Reserve Advisory Board**

Sarah Slade had attended part of the last Pebblebed Heaths National Nature Reserve Advisory Board meeting, held on 31 January. She had missed the site visit to the Estuary View car park but would be able to do this with Kim Strawbridge from the Pebblebed Heaths team separately. The Board discussed taking the Management Plan forward and work on the Lower Otter Restoration Project.

### **8.2 Devon Wildlife Trust**

Tim Felton, Gordon Guest and the Forum Officer had met Dean Holland (Discover Nature Manager), Emily Cuff (Nature Recovery Officer) and Elouise Keatley. Tim Felton reported that it was useful to get to know new staff with responsibilities for the Valley Parks in Exeter. The Devon Wildlife Trust is seeking to ensure accessibility is central to forthcoming projects and will liaise with the DCAF.

It was noted that the DWT would shortly have a new Chief Executive and it was agreed the Forum should continue to develop links. Whilst on the mailing list for project developments, it was agreed that Management Plans should be requested.

*Action: Forum Officer*

The DWT and Exeter City Council had invited Richard Walton to a workshop in March to discuss green space development and opportunities for Suitable Alternative Natural Greenspaces (SANGs).

It was noted that a further park, Matford Valley Park, is proposed on the outskirts of Exeter. If developed this would be a Suitable Alternative Natural Green Space (SANGS) site, managed by Teignbridge District Council.

### **8.3 Access for All conference**

Gordon Guest reported that he and the Forum Officer had attended the two-day Access for All Conference in Okehampton. His focus had been on mobility scooters but a breadth of other perspectives was included. The presentations and working group discussions would be fed back to the Cabinet Office and it would be interesting to see whether this would be

# Agenda Item 4

translated into action. All the different disability groups were campaigning.

It was noted there were no common standards and a range of interpretations. The British Standard requirement is for a 1.2m gate but it is not a legal requirement. The installation of gates potentially had an impact on the available width if not aligned correctly and there was no British Standard for installation. Comment was made that flexibility could be lost if standards were too heavily prescribed.

The size and power of mobility scooters was increasing and now included two-seater models. The Department of Transport had not yet decided how to deal with these, and they would also impact on access.

Pippa Langford, Principal Specialist Access and Recreation at Natural England, had mentioned a forthcoming guidance document on Outdoor Accessibility and this had just been published. This updated the earlier Fieldfare publication. This would be circulated and put on the Devon Countryside Access Forum website.

*Action: Forum Officer*

## **9. To note minutes of the Public Rights of Way meeting held on 9 March 2023**

The minutes were noted. In response to a query, Richard Walton confirmed that the reference to increasing community giving in paragraph 59 referred to community payback schemes and potential opportunities for practical maintenance support rather than financial donations.

## **10. Public rights of way update**

Richard Walton, Public Rights of Way and Country Parks Manager, gave an update.

### ***Staffing***

The new Chief Executive, Donna Manson, was now in post.

Agreement had been sought for a second senior post in public rights of way to work alongside Steve Gardner in managing the warden team. An internal recruitment was being carried out and interviews would take place shortly. The ten warden areas would be divided into two teams, north and south. This division was agreed as it would provide a central contact for each of the National Parks and Areas of Outstanding Natural Beauty, as well as the north and south coast path sections. Following this appointment, recruitment for warden vacancies would take place including the longstanding vacancy in South Hams.

An advertisement would be placed shortly for the third senior officer post to oversee the Definitive Map Review team.

The DCAF Officer would continue to report to Richard Walton.

## ***Budgets***

The revenue budget (£1m for off-road cycleways and public rights of way) had been frozen at the same level as 2022/23 which represented a cut in real terms.

The capital budget had been reduced from approximately £1.75m to £900,000, although this budget had tended to be underspent due to capacity issues. However, an additional capital sum of £1m had been ring-fenced for trail infrastructure, specifically for the Exe Estuary. A yearly agenda item on budgets was requested.

*Action: Richard Walton and Forum Officer*

There was some flexibility across the capital and revenue funding streams depending on procurement and financial regulatory rules.

## ***Stover Country Park***

Emily Cannon (Project Officer) and Chloe Morgan (Project and Volunteer Administrator) had been appointed and joined Eve Malster (Community Engagement Officer). This project is now in the delivery phase. Land purchase to complete the circular trail was being completed, together with a licence agreement with Stover School to allow partial restoration of the Serpentine Lake. SW Norse had been instructed to progress delivery of the visitor centre refurbishment. Teignbridge District Council had given formal approval for listed building consent. Appropriate specialists would be brought in as necessary.

## ***Drake's Trail***

Wooden structures on the Drake's Trail were currently being replaced (the aerial walkway near Gem Bridge). Where wood can be re-used elsewhere this was clearly listed for the contractors. The closure would be for five weeks without a recommended diversion as there is no route suitable for all the different types of user.

## ***England Coast Path***

Work at Down End, Croyde, had been completed with some minor adjustment to that planned due to a high spring tide and related sand movement. The scheme had improved accessibility. There had been a few adverse comments on Facebook, but this had been countered by lots of positive feedback.

The section between Croyde and Saunton Sands is still with the Secretary of State for approval. A new alignment is proposed on the landward side of the road. An exploratory route had been cut and walked with Natural England.

## ***Mothecombe***

The England Coast Path at this point is tidal so the official route will be along steps created on coastal stabilisation work at the top of the beach. This is supported by the landowners and will be subject to a grant bid.

# Agenda Item 4

## ***Lower Otter Restoration Project***

East Devon District Council had now made the order to realign the South West Coast Path. It was important for the Environment Agency to ensure this happened prior to doing the breach. The diversion will not formally exist until the new path is available.

Discussions are taking place with the Environment Agency about tree planting to ensure that biodiversity gains from construction work do not impact adversely on public rights of way, for example by planting too close to the path. This, and similar proposals along other planned new path routes, has potential to restrict future access and create maintenance issues, and so work is needed on improved guidance to cover wider issues such as blackthorn encroaching onto routes. The guidance should reflect Rights of Way Improvement Plan policies.

## ***Cabling project***

Discussions were taking place in association with cabling coming onshore at Saunton Sands and across to Yelland from a proposed off-shore wind farm near Lundy. DCC had been contacted as landowner for part of the Tarka Trail in that area. The intention was to minimise the impact, hopefully through cabling underground.

## ***E-scooter trial***

Part of the Tarka Trail just outside Barnstaple may be included as part of the e-scooter trial about to commence in the town.

## **11. Rights of Way Improvement Plan review**

Richard Walton explained a couple of organisations had yet to feedback and the consultation deadline had been extended.

The draft integrated the 2012 policy objectives with the summary table and included consultation outcomes from the DCAF working group and Parish Paths Partnership workshops.

Work still needed to be completed on some key items including the Equalities Assessment.

Richard Walton apologised for postponing the working group. After discussion it was agreed new dates should be circulated so that the working group could work through a revised edit.

*Action: Richard Walton and Forum Officer*

It was noted that the headings and structure were good and sound. A request was made for the Plan to identify the reporting process and frequency so that the success of the Plan can be evaluated.

It was suggested there should be a key target for each key topic, identifying the

desired achievement. This could be explored further at the working group.

Incorporating landscape character was mentioned, for example surfacing. Richard Walton acknowledged this was important and could feed into planning documents. Links to research and other policy documents could be included. It was noted that whilst there was a focus nationally and locally on active travel there was a balance between developing this agenda and not urbanising the countryside.

With regard to Traffic Regulation Orders, it was suggested that it was important to look not only at Government guidance but also best practice as some useful innovative work was being carried out.

From the land management perspective, it was proposed that land managers should have the ability to move paths out of farmyards for reasons of safety and to enable a thriving agricultural industry.

The new Outdoor Accessibility Guidance document might provide some additional actions.

Members were asked to feedback comments to the Forum Officer.

*Action: Members*

**12. To note and approve responses to consultations and submissions. To note any feedback.**

**12.1 New public greenspace at Station Road, Broadclyst. (East Devon District Council)**

The response was noted and approved.

**12.2 Teignbridge Local Plan. Regulation 19 consultation. (Teignbridge District Council).**

The response was noted and approved.

**12.3 Dog legislation. Letter to Trudy Harrison, Under-Secretary of State**

The response was noted and approved.

The letter had been acknowledged. No further comment had been received. A suggestion was made that the letter be sent to the Shadow Minister, but it was decided to chase up a response, copying in Natural England. It was agreed a letter should be sent to the Institute of Public Rights of Way Officers (IPROW magazine) and a draft would be circulated to members.

*Action: Forum Officer and Chair*

# Agenda Item 4

## **12.4 Exeter Local Cycling and Walking Infrastructure Plan. (Devon County Council).**

The response was noted and approved.

## **12.5 Horse riders' permit review. (Forestry England).**

The response was noted and approved. The timeline for a response to the review from Forestry England was not known.

## **13. Current consultations**

### **13.1 Shared use trail planning application - Shercroft Close, Broadclyst to Mosshayne Lane (Devon County Council, DCC/4336/2023)**

Members discussed the trail planning application. It was unclear whether the route was multi-use. It would appear that horses were excluded by inference, which was a missed opportunity, setting a bad precedent. The trail, although short, would ultimately link to the Clyst Valley Trail and on to Ashclyst Forest and the wider Killerton Estate. Nothing was proposed that would exclude horse-riders and serious priority should be given to including them at this stage in the process. It would provide an off-road route with potential to reach safer riding areas.

It had been the policy of the Devon Countryside Access Forum to have multi-use routes, particularly when new routes were made. This was echoed in the Rights of Way Improvement Plan policies 2012.

A question was raised as to whether proximity to the railway line made a difference. This had been cited as a reason on the Teign Estuary Trail. This was not regarded as a deciding factor.

The route would not be lit and there was a parallel commuting route.

The planning application stated a non-porous, bound surface. There were reservations about this from the point of view of horses and also the landscape. A stone surface or self-binding gravel were suggested.

Concern was expressed about the proximity of the trail to houses in Shercroft Close. The application also did not mention the Suitable Alternative Natural Green Space (SANGS) site which was adjacent to Shercroft Close and would include a car parking area.

While a grass verge could be included for horses this would depend on the surface.

The ongoing maintenance of wildflower and green space areas was raised with concern for the ongoing costs. Some hedge species such as blackthorn and hawthorn should not be planted too close to the edge. Trees were a

valuable landscape asset, but safety and sight lines needed to be taken into consideration to ensure people were not deterred from using the trail.

It was unclear how much agricultural land was needed during construction and its after-use.

At both ends of the trail there were concerns about onward travel. Legally defining the route itself, perhaps as a bridleway, and ensuring onward connections, for example permitting cycle and horse use on Mosshayne Lane, was essential.

The need to restrict vehicular access was noted. 1.5m access should cover most mobility scooters. A lockable, moveable bollard was raised as an option.

It was noted it would be useful to include reference to the new Outdoor Accessibility Guidance document.

A draft response would be circulated.

*Action: Forum Officer*

## **14. Training Day**

The Training Day would take place on Monday, 19 June with visits to the Pebblebed Heaths and the Lower Otter Restoration Project. Staff from Clinton Devon Estates would accompany members. It was suggested that input from the Environment Agency and Kier would be useful. A programme for the day would be circulated when finalised.

*Action: Forum Officer*

## **15. To approve annual report**

The draft Annual Report had not been finalised and would be emailed to members for approval.

*Action: Chair and Forum Officer*

## **16. Draft 2023-2024 Work Plan**

Members suggested additions to the draft Work Plan. It was proposed that the September meeting include a presentation on new forms of transport such as e-bikes, e-scooters and more powerful mobility scooters and the implications for public rights of way and landowners.

It was suggested that the Sensory Trust give a presentation on the difficulties experienced by blind and deaf people in accessing the countryside and green space, as well as children with impaired mobility. Jo Burgess would forward contact details.

# Agenda Item 4

It was agreed to include Yonder Oak Wood near Lymptone, a woodland being created by the Woodland Trust, on the progress update list.

Whilst not a direct role for the Forum, it was agreed to include education about responsible use of the countryside as an aspiration which could be incorporated in responses. This would be a role for the country parks although not specifically for the public rights of way team.

It was noted that trail development and maintenance could potentially be part-funded in future by incorporating adjacent land as tradeable carbon credit areas.

Succession planning for the Devon Countryside Access Forum was raised.

*Action: Forum Officer and Jo Burgess*

## **17. Any other business**

### **17.1 Update on Stakeholder Working Group and 2026 cut-off date**

In 2022 it was announced that the 2026 cut-off date for submitting claims for public rights of way based on historic evidence was not going to be implemented. The national Stakeholder Working Group had been advising on this matter since 2007. The Government had now stated an intention to implement the cut-off, but from 2031. This was already possible within the existing primary legislation. The Stakeholder Working Group made comment on this when it met last week.

Under the provisions of the Deregulation Act 2015, if the local authority fails to undertake a preliminary assessment or to determine an application within a prescribed period, the applicant (or the landowner) may appeal to the magistrates' court. This will replace the current appeals process to the Secretary of State. Again, these regulations have not yet been brought into effect.

### **17.2 Natural England - Local Access Forum support**

Danielle Radley, Natural England, had been tasked with providing support to Local Access Forums and would commence this shortly. One of the proposals is to have a dedicated LAF SharePoint to share information and good practice. It is intended Annual Reports will be uploaded to this site.

It was agreed it would be useful to explore sharing expertise with neighbouring LAFs in particular.

*Additional items, not on the agenda, were discussed during the meeting and minuted below.*

## **17.3 Network Rail**

Andrew Baker reported that the crossing at Rewe, which had been raised at a previous Forum meeting, was apparently to remain closed until November/December 2023. Access was currently restricted by concrete blocks. Richard Walton confirmed that the section over the railway only had pedestrian rights and was not a footpath. He agreed to pursue this with the appropriate Network Rail Manager.

Richard Walton and the Forum Officer had attended a virtual Network Rail and Institute of Public Rights of Way Officers' meeting earlier in April. This covered national standards and procedures that had been agreed. There was no agenda to close crossings, with focus on putting in mitigation measures.

It was noted the national Local Access Forum conference in 2017 had included a presentation on this topic from Lincolnshire.

Andrew Baker agreed to forward details to Tim Spray.

It was resolved to send a letter to Network Rail about the delay and timings. A draft would be circulated.

*Action: Forum Officer, Andrew Baker and Tim Spray.*

## **17.4 Countryside Code**

Natural England would be incorporating Aardman animations in its Countryside Code promotion. This would be available to preview in May and the email giving information would be circulated. Natural Resources Wales had produced dog walking codes.

*Action: Forum Officer*

## **17.5 Update from the British Horse Society**

Philip Hackett, Regional Access Officer for the British Horse Society, expressed concern that the Devon County Council's multi-use policy was not being adopted. Devon had a high rate of road incidents involving horses. He stated that a retrospective assessment of existing trails to consider horse use needed to be undertaken, plus consideration on new routes. He had emailed the Leader of the Council, Cllr John Hart, on this matter but had not yet received a response.

Mr Hackett explained he was now the Chair of the Dorset Local Access Forum and there was much to gain from sharing good practice and working together. The Forum had less support as the key member of staff had moved to a new job. There was no formal multi-use policy in Dorset.

## **18. Date of next meeting**

The next meeting would be on Monday, 18 September 2023.



CET/23/46

Public Rights of Way Committee  
13 July 2023

## Definitive Map Review Parishes of East Budleigh with Bicton

### Report of the Director of Climate Change, Environment and Transport

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

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#### **1) Recommendation**

Recommendation: It is recommended that no Modification Order be made for Proposal 1.

#### **2) Introduction**

This report examines one proposal that arose as a result of the Definitive Map Review in the parishes of East Budleigh with Bicton. The proposal was identified through the informal consultation process.

#### **3) Background**

In March 1952, during the original survey for the Definitive Map (carried out under s.27 of the National Parks and Access to the Countryside Act of 1949), East Budleigh Parish submitted a map and details of 16 paths in the parish. Bicton Parish Meeting submitted 1 bridleway and 2 footpaths and subsequently accepted 3 more paths that crossed into the parish from the adjoining parishes of East Budleigh and Colaton Raleigh. After several amendments and revisions during the draft and provisional stages, East Budleigh recorded 16 footpaths and Bicton recorded 5 footpaths and 2 bridleways on the Definitive Map and Statement with a relevant date of 8 March 1963.

East Budleigh with Bicton became a joint parish in the 1970's.

The general review of the Definitive Map (under s. 33 of the 1949 Act), was discussed at the parish council meeting 31<sup>st</sup> January 1978. The parish council at that time concluded that there were no omissions.

The Limited Special Review of Roads Used as Public Paths (RUPPS), which commenced in 1971, did not affect any rights of way in this parish.

The following Orders have been made and confirmed:

East Devon District Council (Footpath No's. 7) Diversion Order 1978

Devon County Council (Footpath No. 1) Public Path Diversion Order 1979

# Agenda Item 5

Devon County Council (Footpath No 10) Public Path Diversion Order 1980

East Devon District Council (Footpath No. 15) Public Path Diversion Order 1990

Devon County Council (Footpath No 10) Public Path Diversion Order 1995

Devon County Council (Footpath No 4) Public Path Diversion Order 1998

Where required, Legal Event Modification Orders will be made for these changes under delegated powers after the completion of the countywide parish by parish review.

The current Definitive Map Review began in July 2022, with a public meeting attended by approximately 20 members of the public and parish councillors. This was held in the Village Hall at East Budleigh. An online presentation was also made available for those unable to attend the event in person. The review and the public meeting were advertised in the parish, in the local press and online.

## 4) Proposals

Please refer to the appendix to this report.

## 5) Consultations

General consultations have been carried out with the following results:

County Councillor Christine Channon	- no comment;
East Devon District Council	- no comment;
East Budleigh with Bicton Parish Council	- no comment;
Country Land and Business Association	- no comment;
National Farmers' Union	- no comment;
Trail Riders' Fellowship/ACU	- no comment;
British Horse Society	- no comment;
Cycling UK	- no comment;
Ramblers	- no comment;
Byways & Bridleways Trust	- no comment;
4 Wheel Vehicle Users	- no comment;

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

## 6) 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.

## 7) Legal Considerations

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

## 8) Risk Management Considerations

No risks have been identified.

## 9) 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.

## 10) Conclusion

It is recommended that Members note that there are no proposals for modifying the Definitive Map in the parish of East Budleigh with Bicton. 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.

## 11) 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

Director of Climate Change, Environment and Transport

**Electoral Division: Exmouth & Budleigh Salterton Coastal**

### Local Government Act 1972: List of background papers

Background Paper

Correspondence file

East Budleigh and Bicton Parish records, Tithe Maps. Original OS Mapping

User evidence forms

Date 2022 to date

File Reference

AS/DMR/BUDLEIGH

Devon Heritage Centre

### Contact for enquiries:

Name: Alison Smith

Telephone: 01392 383370

Address: Room No: M8 Great Moor House

as150623pra

sc/cr/DMR Parishes of East Budleigh with Bicton

02 030723

# Agenda Item 5

## Appendix I to CET/23/46

### A. Basis of Claim

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

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

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

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

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

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

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

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

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

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

# Agenda Item 5

**Proposal 1: Footpath claim, for a path between Russel Drive and Oak Hill end of the Oakhill private estate road between points A-B-C on the plan CET/PROW/23/34 (Grid Ref: 0675 4500)**

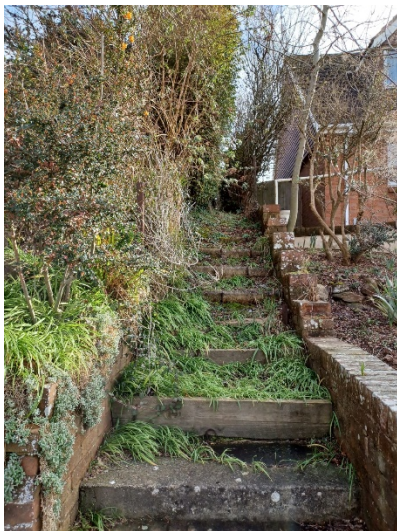
**Recommendation: It is recommended that no modification order be made in respect of Proposal 1.**

## **1.1 Background**

- 1.1.1 Following on from the opening meeting that started the parish review, and associated informal consultation process, a claim was submitted by Mrs Moyle for a footpath. This was accompanied with 4 user evidence forms including her own, plus some photographs of the site. No documentary evidence was submitted with the application.
- 1.1.2 The route has not previously been brought to the attention of Devon County Council by the parish council or others, and is currently unrecorded.

## **1.2 Description of the Route**

- 1.2.1 The claimed route starts from the pavement of Russell Drive at point A and follows some overgrown, old concrete and wooden steps between two bungalows, to a high, old fence at point B and a relatively recent 'Private Keep Out' sign. At this point, the route enters the garden of a house (Westering). Close to point B are the remains of a brick structure, with a concrete slab. From here, the route is indistinct in the garden of Westering. It is claimed to have followed a hedge bank, through a shrubbery, and onto the northern spur of Oakhill at point C, this being a private road, maintained by and for the residents of the Oak Hill estate.



Point A steps at Russell Drive



Point B from inside the gate



B1 remains of water tank



Point C at Oak Hill

## 1.3 Documentary Evidence

- 1.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and Cassini 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827  
Early historical maps at smaller scales, particularly the OS drawings and 1<sup>st</sup> edition map, do not show the claimed path. The area is marked as undeveloped fields. Oakhill House is shown.
- 1.3.2 Later historical mapping at smaller scales: OS 1" editions 1892-1950's Bartholomew's Mapping 1903-1943. Middle Town Lane is shown (which became Russell Drive after the development of the bungalows). Oakhill House is also shown. The claimed path is not shown.
- 1.3.3 Later historical mapping at larger scales: OS 25" editions 1888-1961, OS 6" editions 1889-1944. The area is shown as a field. The claimed path is not shown.
- 1.3.4 East Budleigh Tithe Map & Apportionment 1842 Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured, and colouring can indicate carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not included within an individual apportionment are usually included under the general heading of 'public roads and waste'.
- 1.3.5 East Budleigh Tithe Map produced in 1842, shows Oakhill House in a separate parcel of land. It also shows MiddleTown Lane. No linking path or track are shown on the claimed route.

# Agenda Item 5

- 1.3.6 Aerial Photography 1946. Aerial photography from 1946 shows Oakhill House and its garden, and Middle Town Lane with undeveloped fields between. No path is apparent.
- 1.3.7 Aerial Photography from 1999 shows Oakhill Housing Estate has been developed, as has Russel Drive. No path is apparent.
- 1.3.8 Highways maintainable at public expense. Russel Drive is an adopted highway. The Oak Hill Estate roads are not adopted highways. They are maintained by a Residents Association Limited company, for the sole use of the residents and their visitors.
- 1.3.9 Parish Council Minutes 1905, 1906, 1907 East Budleigh Water Supply. The Parish Council minutes indicate, that in 1879, the Rt Hon Mark Rolle installed 8 water taps in East Budleigh to supply water from springs to the village. The minutes go on to note that in 1905, 1906, and 1907, villagers were worried about their supply, as the Exmouth water company had started pumping and the springs were not reliable. Header tanks were built in various places around the village to hold more water, one appearing to being at around point B on the plan. Mains water was finally piped into the village in 1962. A collapsed brick tank like structure is still just visible near point B.

## **1.4 Definitive Map process**

- 1.4.1 Original Definitive Map process  
The route was not put forward by East Budleigh Parish Council for inclusion on the Definitive Map in the 1950s.
- 1.4.2 Devon County Council Definitive Map of 1970 (not completed)  
In a letter from October 1970, the Parish Council responded to the Survey of Rights of Way under the Countryside Act 1968 and state “in reply to your letter of August 1970 a Parish Meeting was held in the Village Hall on 27<sup>th</sup> inst., and at which your map was showing the public footpaths was discussed. It was agreed that this was correct except for the following:- Footpath No.15 this path is now non-existent,” (however it was subsequently diverted) and Footpaths No. 16 has been changed in a road realignment. The Claimed path was not put forward by the Parish Council for consideration during this review even though the recently submitted User Evidence claims it was in use at this time.
- 1.4.3 Devon County Council Definitive Map Review 1977 (Not completed)  
As a result of The General Review of the Definitive Map in 1977, the Parish Council wrote to DCC: “In replay to your letter of 9<sup>th</sup> November 1977. East Budleigh and Bicton public meeting was held in the Village Hall on 31<sup>st</sup> January 1978 when the parish footpaths were individually considered. It was agreed that the maps you sent were correct at the time, but the following diversions have or are being made:” They went on to list those change and continue “All other footpaths to remain on the map.” They gave no new additions. This is significant, as the claimed path had been called into question by 1977.

## 1.5 User Evidence

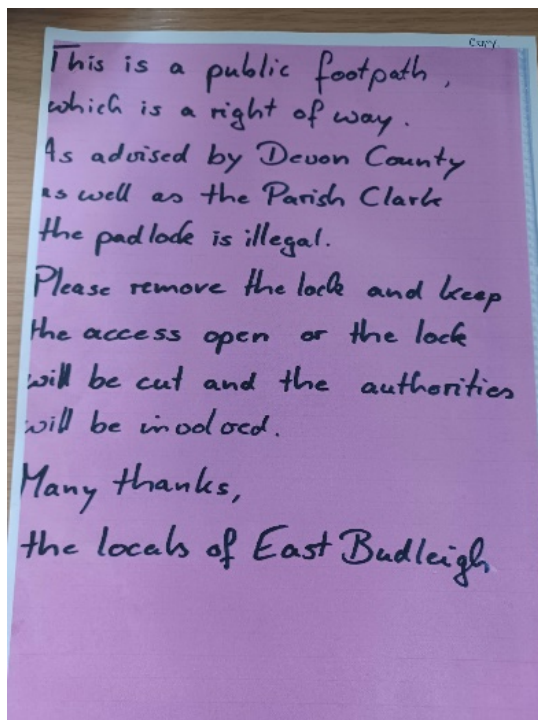
Five user evidence forms, and a letter were submitted with the claim. These are as follows:

- 1.5.1 Mrs Moyle has given her own evidence (and has also gathered the other user evidence forms). She walked the path between the 1960's and 1972, sometimes weekly or monthly. She states that it was nice to walk with children and dogs. She has not used it since the iron gate was erected and locked in 1972.
- 1.5.2 Mrs Pratt gives her evidence in a letter. She had lived in East Budleigh from childhood but has since moved away. She describes the route as "The path to 'Oakhill' which was from the bottom of the lane through a green door and up across the meadow to the House. This path was used by the village ladies during the 1914-18 war as they made medication for the wounded soldiers in the Moss Room at Oak Hill House and would have had a much longer journey around the village. As far as I can remember the path was there for a shorter route to 'Oak Hill House' long before Russell Drive or the large houses were there. There was often a Village Fete at Oak Hill which we all attended via this path."
- 1.5.3 Mrs Richter first attempted to use the path in 2021, when she went up the steps but could go no further. She says "I had recently moved into Orchard Close; I took an afternoon walk and discovered the footpath. However, it was not accessible as it was overgrown. I refrained from using it again."
- 1.5.4 Mrs Russell (nee Sage) used the path from 1945 to 1950, once a year to attend Mrs Russell's annual garden fete at Oakhill House, but she did not use it at any other time. She can remember lots of people attending the fete and says they 'mostly likely walked up the short cut through the field to go to the fete.'
- 1.5.5 Mrs Turner has never used the path. She says the locked gate prevented her from using it. She gives more information in her follow sheet. "We bought a house on the Oak Hill Estate in 1971. We were told by the previous owners that there was a footpath down to the village which went through the garden of Westering. The footpath was gated, and locked, and certain residents had access to the keys of the gate. When we asked if we could have a key, we were denied. This was a blow because it would have made trips to the village shorter and safer. Actually, when my children were older they used this path to get home from school by climbing the gate surreptitiously."
- 1.5.6 Mrs Woodland is visually impaired and so her user evidence form was completed on her behalf by Mrs Moyle. Mrs Woodland used the route once a month between 1963 and 1971. She thought it was public because people used it. She thought the field was owned by Mr Bolt, sometimes there were cows in the field. She thinks the owner was aware that the public were using the route as so many people used it at different times. People couldn't use it after 1972.

# Agenda Item 5

## 1.6 Landowner and rebuttal evidence.

- 1.6.1 The Woodthorpe's have owned Westering Oak Hill since 1998 and have provided background knowledge of the property. Mr Bolt a local farmer bought the land 1959-1960 and put up the fence around it and gated it. The first owner of their property was Mr Shorto, who bought the land from Mr Bolt and built Westering. The Woodthorpe's understand that the gate at point B, was padlocked by 1971. This gate was in place when they bought the property in 1998, they have maintained the same locked gate since.
- 1.6.2 Mr Woodthorpe, in a letter to the Resident's Association and to East Budleigh Parish Council of 4<sup>th</sup> May 2022 provided a detailed account of what had happened to the locked gate at point B, on his property. On 28<sup>th</sup> April 2022 he noticed a large hole had been cut in the bottom of the gate with wire cutters, large enough for an adult to crawl through. He mended the gate with heavy wire and blocked it with a strong crate. On 2<sup>nd</sup> May 2022 "I decided to check the gate and luckily saw someone trying to attach the notice shown below to the gate" at Point B. He asked who she was, and she said she said she working on behalf of East Budleigh Villagers. The notice attached to the gate is shown below.



Mr Woodthorpe removed and retained the notice. He is of the opinion that this notice is untrue, and somewhat threatening. On 5<sup>th</sup> of May 2022, he reported the criminal damage to the gate to the police and gave them a copy of the notice. He explains that the steps in Russell Drive historically gave maintenance access to the manhole cover serving a former water tank. He maintains the locked gate and says it is not a public right of way.

## 1.7 Discussion

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

Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged. Use has to be without force, without secrecy, without permission. This route was brought into question in 1971 by the locking of the gate at point B, as detailed by Mrs Turner who moved into a property on Oak Hill. She had never been able to use the route as it already padlocked in 1971 and she was denied a key. Her children, who had on occasions climb the gate to come home, had done so with secrecy and stealth. The relevant 20-year period to show use is therefore between 1951 and 1971.

1.7.2 Of the 6 users, only 2 had used it as a footpath; Mrs Woodland used it for 8 years to 1971 and Mrs Moyle states that she used it for around 9 years until 1972. However, it would appear that the gate was locked in 1971, giving an 8-year period of use.

1.7.2 Of the other 4 people, who gave evidence; Mrs Russell walked the path once a year between 1945 and 1950, only to attend the Annual Fete at Oakhill House. Mrs Pratt also only used the route to attend the Annual Fete at Oakhill House. Because these users were allowed access by the landowner for the specific purpose of attending the Fete, the use can be deemed as permissive use. Mrs Turner never used the path as the gate was already locked in 1971, her children climbed the gate surreptitiously. Mrs Richter was unsuccessful when she tried to use the route for the first time in 2021 as the claimed path was overgrown, and the gate locked.

1.7.3 The current landowner has said the gate was locked when he bought the property in 1998. He has kept the gate locked. Mrs Turners' user evidence indicates that the gate was locked in 1971.

1.7.4 Devon County Council Definitive Map reviews took place in 1970 and 1977. East Budleigh Parish Council commented fully in response to these consultations, however, did not put this path forward for consideration. This is significant, as it is contemporaneous with the apparent use and the locking of the gate and calling the route into question.

1.7.5 Therefore, as the locked gate brought the route into question in 1971 and only 2 users gave evidence of walking the route for 8 years prior to that, the statutory test has not been met.

# Agenda Item 5

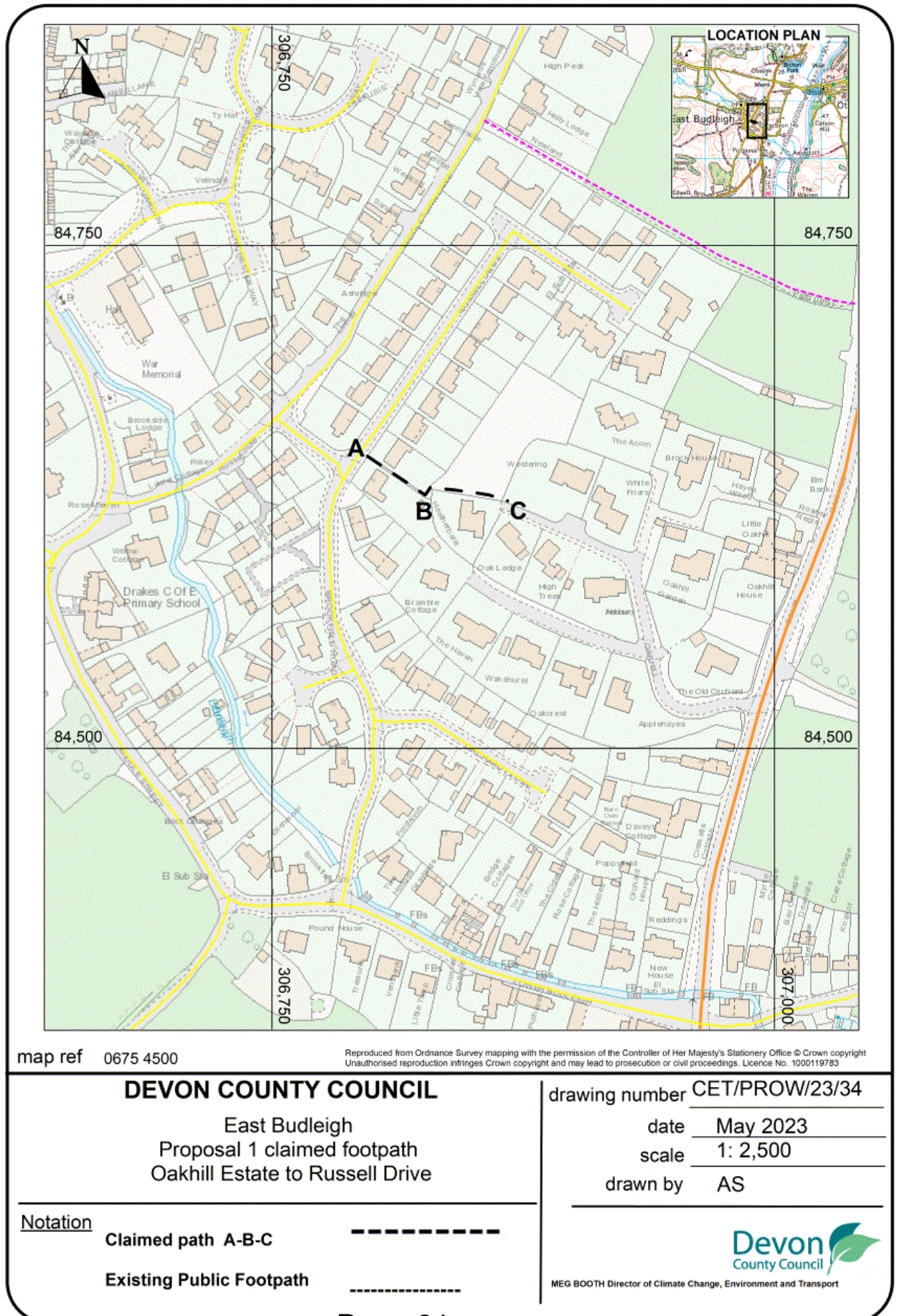
## 1.8.1 Common Law

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

1.8.2 There is no evidence in the historical mapping that a route physically existed. Nor is there any evidence that a path was historically maintained by the parish or highway authority, nor any evidence to show that it was previously dedicated by a landowner and accepted by the public.

## 1.9 **Conclusion**

1.9.1 From assessment of the user evidence, in conjunction with the lack of any historical evidence, it is considered that there is insufficient evidence to support the claim that this route is a public footpath; and that a public footpath does not subsist on the balance of probabilities. Accordingly, the recommendation is that no Order be made in respect of this route.





CET/23/47

Public Rights of Way Committee  
13 July 2023

## Definitive Map Review Parish of Parracombe – Part 3

### Report of the Director of Climate Change, Environment and Transport

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

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#### 1) Recommendation

It is recommended that a Modification Order be made to vary the particulars of Parracombe Footpath No. 2 and Challacombe Bridleway No. 3 as shown on drawing number CCET/PROW/18/27 (Proposal 1). The proposed changes are:

- deleting Footpath No. 2 between points D – E – F – G;
- adding Footpath No. 2 between points D – L;
- deleting Bridleway No. 3 between points G – H
- adding Bridleway No. 3 between points I – H; and
- upgrading Footpath No. 2 to Bridleway between points K – J – I.

#### 2) Introduction

This report examines anomalies in the Definitive Map and Statement in the Parish of Parracombe relating to Parracombe Footpath 2, and the connection of this to Challacombe Bridleway 2.

#### 3) Background

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

#### 4) Proposals

Please refer to the appendix to this report.

#### 5) Consultations

General consultations have been carried out with the following results:

County Councillor Andrea Davis	– no comment
North Devon Council	– no comment
Exmoor National Park Authority	– support the proposal
Parracombe Parish Council	– approve the proposal
Challacombe Parish Meeting	– no comment on this proposal
British Horse Society	– no comment
Byways & Bridleways Trust	– no comment
Country Landowners' Association	– no comment

# Agenda Item 6

National Farmers' Union	– no comment
Open Spaces Society	– no comment
Ramblers'	– no comment
Trail Riders' Fellowship	– no comment

Responses are further detailed in the appendix to this report.

## **6) 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.

## **7) Legal Considerations**

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

## **8) Risk Management Considerations**

No risks have been identified.

## **9) 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.

## **10) Conclusion**

It is recommended that a Modification Order be made to modify the Definitive Map and Statement in respect of Proposal 1, as shown on drawing number CCET/PROW/18/27. This entails:

- varying the alignment of part of Parracombe Footpath No. 2 from the alignment D – E – F – G to the alignment D – L (and then K – J – I)
- upgrading part of Parracombe Footpath No. 2 between points K – J – I to become Parracombe Bridleway 2
- varying Challacombe Bridleway No. 3 from the alignment G – H to the alignment I – H

## **11) 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**

Director of Climate Change, Environment and Transport

**Electoral Division: Combe Martin Rural**

## **Local Government Act 1972: List of background papers**

Background Paper - Correspondence Files

Date - Current

File Reference - CG/DMR/Parracombe

### **Contact for enquiries:**

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cg200623pra

sc/cr/DMR Parish of Parracombe Part 3

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## Appendix I - to CET/23/47

### A. Basis of Claim

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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- 1 **Proposal 1: Clarification of status of Footpath No. 2 between the A39 at its connection with Challacombe Bridleway No. 3, as shown between points H – I – J on plan CCET/PROW/18/27.**

**Recommendation:** That a Modification Order be made to vary the particulars of Parracombe Footpath No. 2 and Challacombe Bridleway No. 3 as shown on drawing number CCET/PROW/18/27 (Proposal 1). The proposed changes are:

- deleting Footpath No. 2 between points D – E – F – G;
- adding Footpath No. 2 between points D – L;
- deleting Bridleway No. 3 between points G – H
- adding Bridleway No. 3 between points I – H; and
- upgrading Footpath No. 2 to Bridleway between points K – J – I.

## 1.1 Background

1.1.1 On reviewing and assessing records in preparation of a proposed diversion under delegated powers, it was identified that there is an anomaly affecting how part of Parracombe Footpath No. 2 and its continuation, Challacombe Bridleway No. 3 are recorded on the Definitive Map and Statement.

1.1.2 This anomaly has been caused by several errors which occurred when the Map and Statement were originally compiled in the 1950s-60s, particularly in relation to previous impacts arising from construction of the former railway line (completed in 1898), and especially the A39 Parracombe Bypass (as built in 1926). Of particular relevance are errors relating to:

- alignment of Parracombe Footpath No. 2 either side of the A39 Parracombe Bypass;
- alignment of Challacombe Bridleway No. 3 on the south side of the A39 Parracombe Bypass; and
- status of Parracombe Footpath No. 2 on the southeast side of the A39 Parracombe Bypass.

## 1.2 Description of the Proposal

### 1.2.1 Definitive alignment

The definitive alignment of the proposal starts at point D on Parracombe Footpath No. 2 on the north side of the A39 and proceeds generally southwards via points E and F under the A39 Parracombe Bypass embankment and across part of a field to meet Challacombe Bridleway No. 3 at the Parracombe/Challacombe parish boundary at point G. Challacombe Bridleway No. 3 continues from point G across a field to point H.

### 1.2.2 Used alignment

The used alignment of the proposal starts at point D on Parracombe Footpath No. 2 on the north side of the A39 and proceeds generally south eastwards across a field to a field gate at point L, where it meets the A39 Parracombe Bypass. It restarts on the south side of the A39 at point K and proceeds south eastwards along a concrete track to point J where it turns westwards along a stoney track to the Parracombe/Challacombe parish boundary at point I. The route turns southwards, negotiating a bridge and cattle grid with a bypass gate, and continuing along the stoney track to meet Challacombe

Bridleway No. 3 at point H.

## **1.3 Documentary Evidence**

### **1.3.1 Ordnance Survey mapping, 1889 onwards**

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'*.

On the 1<sup>st</sup> Edition 25" scale mapping of 1889 an alignment similar to that shown on the Definitive Map, currently recorded as Parracombe Footpath No. 2, as a continuous unenclosed route. At that time neither the Lynton and Barnstaple Railway nor the Parracombe Bypass had been constructed.

On the later 2<sup>nd</sup> Edition 25" scale mapping of 1904, the alignment included on the Definitive Map, currently recorded as Parracombe Footpath No. 2, is shown as a continuous unenclosed route. By this time the Lynton and Barnstaple Railway had been constructed but not the A39 Parracombe Bypass.

On the Post War A Edition 25" scale mapping of 1975 no physical route is shown.

On the smaller scale mapping dated 1933-67, the post railway and bypass alignment of Footpath No. 2 is shown as a single dashed line northwest from the A39 Bypass and a double dashed line southeast from the A39 Bypass.

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

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

1.3.2.2 There are numerous newspaper reports on the new bypass road for Parracombe. However, there is no reference relating to the public rights of way affected by the scheme.

### **1.3.3 Parracombe Parish Council Minutes, 1894 onwards**

1.3.3.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.

1.3.3.2 9<sup>th</sup> May 1898. 'The next business has to consider the action of the Railway Company in placing locked gates across certain public paths in the parish. Mr F Sock proposed and Mr FR Crocombe seconded 'that notice be given to the Lynton and Barnstaple Railway Company that the said Company having

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blocked the public footpath from Parracombe to Challacombe at New Close and Brimballs by placing locked gates across them, the Council call on the Company to forthwith remove the obstacles – which are preventing children attending the public schools, and that stiles will not meet the requirements of the case but wicket should be placed’. The Clerk was instructed to write to the Secretary of the Company to this effect, and to say that if the Company do not immediately attend to this the Council will take further action to remove the obstruction’. This includes the route currently recorded as Parracombe Footpath No. 2 just north of point D.

1.3.3.3 18<sup>th</sup> October 1898. ‘A Committee consisting of Rev JF Chanter, F Widdon and J Lock, was appointed to inspect the wicket gates erected by the Railway Company at the public level crossings by order of the Council and report on same at the next meeting’. This includes the route currently recorded as Parracombe Footpath No. 2 just north of point D.

1.3.3.4 16<sup>th</sup> April 1925. ‘The Clerk read a letter received from Mr H Harding and Mr S Leworthy about the state of the footpath to Highley caused by the County Council in making of the New Road. After a discussion it was proposed by Mr D Knight seconded by Mr G Smyth that the Clerk write the County Council’. This is the used alignment of the proposal, currently recorded as Parracombe Footpath No. 2.

1.3.3.5 27<sup>th</sup> September 1958. ‘On a suggestion from the Devon County Council, a part of Footpath No. 2 from Big Bank to the Challacombe boundary was asked to be put on the Survey as a bridlepath, not as a footpath only. The Clerk to write accordingly’. This is the used alignment of the proposal.

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

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

1.3.4.2 There are numerous references to the ‘*Parracombe New Road*’ now recorded as the A39 Parracombe Bypass. However, there is little information regarding the public rights of way affected by its construction.

1.3.4.3 23<sup>rd</sup> March 1925. Letter from Devon County Council to Parracombe Parish Council. ‘*Main Roads...I have also sent him a copy of your letter as to the condition of the footpath*’. This is the used alignment of the proposal.

1.3.4.4 7<sup>th</sup> May 1925. Letter from Devon County Council to Parracombe Parish Council. ‘Footpath to Highley. Referring to your letter of the 20<sup>th</sup> ultimo., addressed to the Clerk of my Council, I have to state that except for unavoidable wheel tracks on either side of the footpath to the east of the railway little damage has been done. Instructions have been given that these wheel tracks shall be filled in’. This is the used alignment of the proposal.

- 1.3.4.5 The District Council's 'List of Public Footpaths in the Parish of Parracombe' describes Footpath No. 2 as a 'short cut out of Parracombe village to Challacombe. Entrance from the Coach Road via Sunnyside and New Road. stile at Parracombe and, stile at Pixey Lane and kissing gates at Railway Level Crossing and New Road. Kept in repair by owners of property'.

## **1.3.5 Quarter Sessions Deposited Plan 539: Lynton & Barnstaple Railway, 1895**

- 1.3.5.1 The legal deposit of plans or public undertakings was first provided for in the 1793 Standing Orders of the House of Lords. The need for such deposits was recognised following the canal mania of the early 1790s when it became evident that canal bills were being hurried through Parliament without proper scrutiny. Thereafter, promoters were required to submit to the Lords plans of works, books of reference, and other papers before a bill was brought up from the Commons to the Lords. In 1837 an Act compelled the local deposit of plans of public undertakings with the Clerk of the Peace, and therefore available to public inspection.
- 1.3.5.2 Any of this type of document may provide evidence on crossed or adjacent paths, roads or tracks and therefore could be relevant as evidence in relation to the existence of Highways, particularly if the scheme was constructed, as this was.
- 1.3.5.3 The Bill for the Lynton and Barnstaple Railway was passed by Parliament on the 27<sup>th</sup> June 1895, and the railway was opened on the 11<sup>th</sup> May 1898.
- 1.3.5.4 The definitive alignment of the proposal is included in plots 49 and 50, described as '*field, shed and footpath, and field and footpath*', owned by Charles Blackmore and occupied by William Jones.

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

- 1.3.6.1 These Ordnance Survey records were produced in conjunction with the Ordnance Survey mapping and contain information on named routes may be found in the relevant Object Name Books, which provided details of the authorities for named features. Such records can provide supporting evidence of the existence and status of routes.
- 1.3.6.2 Only Pixey Lane which carries a section of Footpath No. 2 just north of the proposal is mentioned as an '*occupation road*'.

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

- 1.3.7.1 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.

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- 1.3.7.2 The definitive alignment and used alignments of Parracombe Footpath No. 2 and Challacombe Bridleway No. 3 of the proposal, pass through hereditaments 17, 78, and 89 in Parracombe, and hereditament 91 in Challacombe.
- 1.3.7.3 Parracombe hereditament 17 is Court Place owned by Mr Blackmore and occupied by several tenants. It refers to a *'footpath across some fields'* and there is a deduction for Public Right of Way or User of £25. Hereditaments 78, the Lynton and Barnstaple Railway and 89, Highley Farm, also in that parish do not have any deductions. Challacombe hereditament 91 is Twineford, owned by Earl Fortescue and occupied by S Leworthy. *'There are footpaths to Parracombe thro Ord Nos. 816 814 815 796 and 790'*, and there is a deduction for Public Right of Way or User of £10. This relates to the definitive alignment of the proposal of Parracombe Footpath No. 2 and Challacombe Bridleway No. 3.

## **1.3.8 Historic Photographs, 1898-1935**

- 1.3.8.1 Photographs show the proposal route, currently used as Parracombe Footpath No. 2, after the construction of the Lynton and Barnstaple Railway (1895-98), and how it differed before and after the construction of the A39 Parracombe Bypass (1926). It shows that the alignment shown on the Definitive Map was altered by the road construction, and that at that time, this diversion was well used (as evident by the level of wear).

## **1.3.9 Devon County Council Bridges, Main Roads, & County Buildings Committee minutes, 1923-29**

- 1.3.9.1 These records provide information about the Council's views regarding issues within its power and area. There is a lot of discussion about the Parracombe New Road (Bypass), now part of the A39. Whilst there is no specific mention of the public rights of way affected by the scheme, Parracombe Footpath No. 2 and Challacombe Bridleway No. 3, there is some discussion about the private approach road which they follow on the south side of the A39.
- 1.3.9.2 16<sup>th</sup> February 1923. 'Proposed new road at Parracombe. The County Surveyor submitted a plan and provisional estimate for the construction of a new road...length 2 miles – or a ½ mile more than the existing road through the village, steepest gradient 1 in 20 – as compared with 1 in 5 on old road, as shown on the plan submitted'.
- 1.3.9.3 22<sup>nd</sup> May 1925. 'Parracombe New Road – Lord Fortescue's Land. Mr Smyth-Richards, Lord Fortescue's Agent, has asked that the approach road to his Lordship's property should be maintained by the County Council. The Sub Committee have instructed the Clerk to see Mr Smyth-Richards on the subject'. This refers to the used alignment for Parracombe Footpath No. 2 and Challacombe Bridleway No. 3, part of the proposal.
- 1.3.9.4 19<sup>th</sup> July 1929. Report of Northern Division Sub-Committee. 'Parracombe Deviation. Tinnerdy Approach. The Clerk reported that the negotiations with the owner were now nearing completion but that considerable difficulty was being experienced with the tenant (Mr Tamblin) who had refused to allow

possession to be taken pending a settlement of his claim for compensation. Recommended that the tenants compensation be referred to Mr Smale and the County Surveyor, and that the County Surveyor carry out the necessary works out of maintenance funds’.

## **1.3.10 Fortescue Estate records, 1924-29**

- 1.3.10.1 These records provide information about estate matters and contain information relating to the Parracombe Deviation Road (Bypass) construction, now recorded as the A39.
- 1.3.10.2 Various bypass construction plans show the alignment of old and new rights of way split by the road construction, but do not specifically differentiate between public and private. A number of the plans do refer to the ‘*old footpath*’ alignment – pre-road construction.
- 1.3.10.3 There is also detailed correspondence between the Estate, Devon County Council and Barnstaple Rural District Council, along with a draft copy of the conveyance regarding land required from the Blackmore Estate in order to construct a new approach way/accommodation road 9’ wide with a bridge for Twineford and Highley to the bypass road. This was to be facilitated by Devon County Council, along with the relevant works required. It was the second proposal which was constructed and completed. Initially, no route had been included in the bypass road scheme.
- 1.3.10.4 A letter dated 19<sup>th</sup> January 1928, refers to the right of way. It was from the Northern Division County Surveyor to Lord Fortescue’s agent, with which was enclosed a large scale plan of the approach road and a photograph showing the hillside before the approach road was completed. The letter stated that ‘*the photograph shews actually a very small portion of the existing pathway through the Blackmore Estate*’. Unfortunately, the photograph has since been lost, but the indication is that this is part of the used alignment of the proposal.

## **1.3.11 Aerial Photography, 1946 onwards**

- 1.3.11.1 This shows the used alignment of the proposal for Parracombe Footpath No. 2 and Challacombe Bridleway No. 3, after the construction of the A39 Parracombe Bypass (1926). It indicates that the definitive alignment of the public rights of way was diverted by the road construction and that the current used alignment was available and well use by 1946.

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

- 1.3.12.1 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. The process used the Ordnance Survey 2<sup>nd</sup> Edition 25” scale mapping which was dated 1906.

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1.3.12.2 Parracombe Parish Council described Path 2 as a 'footpath from Parracombe Valley to Challacombe Valley and farms on the way. Entrance from the Coach Road (near Christ Church) by stile through (Tuckingmill) now known as Sunnyside, stile where path joins Pixie Lane. Across old railway track by kissing gates, and on to Parracombe New Road, across this and on to Challacombe'. The map has the A39 Parracombe Bypass annotated on it, with the pre-A39 alignment also marked.

1.3.12.3 Challacombe Parish Meeting describe Path 3 as a 'footpath starting at N. Barton Road to Whitefield Barton, on to Twinford to Parracombe New Road'.

## **1.3.13 Definitive Map Review records, 1950s-70s**

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

1.3.13.2 16<sup>th</sup> March 1958. Mr JF Huxtable, the Chairman of the Challacombe Parish Meeting wrote to the County Council stating that *'the Draft Map and Statement for the Parish of Challacombe was inspected and the following mistakes were noted: Footpath 3 on map should be a bridleway'*.

1.3.13.3 21<sup>st</sup> March 1958. The County Council wrote to the Challacombe Parish Meeting and noted that the landowner affected by Footpath 3 had not mentioned in his recent objection *'that the path should be upgraded to a Bridleway'*.

1.3.13.4 1<sup>st</sup> April 1958. The Chairman of the Challacombe Parish Meeting wrote to the County Council stating that he had 'no evidence from maps etc that Footpath 3 should be a Bridleway, but the Meeting agreed to its being a Bridleway from long usage'.

1.3.13.5 10<sup>th</sup> April 1958. The County Council wrote to Mr Mackie, the relevant landowner, Lord Fortescue's agent, seeking confirmation as the landowner and whether they had *'any objection to [Footpath No. 3's]... designation as a bridleway'*.

1.3.13.6 11<sup>th</sup> April 1958. The County Council wrote to Parracombe Parish Council about the Challacombe Parish meeting's request that the *'path leading from Whitefield Barton northwards into [their]... Parish from Challacombe...should be shown as a bridleway throughout, and ... whether [the]... Council would agree with this'*.

1.3.13.7 18<sup>th</sup> April 1958. In an internal County Council memo, the Footpaths Assistant asked the Council's Clerk when writing to Parracombe Parish Council on the matter, he *'ask which of the two [rights of way connecting with the Challacombe route – Footpath Nos. 2 and 29] should be a Bridleway'*. It was the Footpaths Assistant opinion that *'No. 29 should be the Bridleway'*.

- 1.3.13.8 23<sup>rd</sup> April 1958. The County Council wrote to the Clerk to Parracombe Parish Council that 'it has now been pointed out to me that two paths connect with the Challacombe path in your Parish, Nos. 2 and 29. It appears to me that of the two, No. 29 should be designated a Bridleway, and I shall be glad to know whether your Council agree'.
- 1.3.13.9 29<sup>th</sup> April 1958. In a letter from the County Council to the Barnstaple Rural District Council, it was confirmed that 'the proposed modification would include reclassification as a Bridleway of Path No. 3, subject to the view of Parracombe Parish Council on the extension of this path in their Parish. I have written to their Clerk on the matter'.
- 1.3.13.10 7<sup>th</sup> June 1958. The Parracombe Parish Council replied to the County Council stating that 'regarding the path from Whitefield Barton, the Parish Council feel that No. 29 would be of little use as a bridleway. The part of No. 2 from the Challacombe boundary to Big Bank on the A39 only, is the part that the Council feel would be best as a bridleway'.
- 1.3.13.11 11<sup>th</sup> June 1958. The County Council informed the Parracombe Parish Council that it would be recommended to the County Council '*to alter part of Footpath 2 to a bridleway, as you suggest*'.
- 1.3.13.12 26<sup>th</sup> July 1963. At the Roads General Purposes Sub-Committee meeting it was recommended and resolved that Challacombe Footpath No. 3 should have its classification amended to bridleway.
- 1.3.14 Devon County Roads General Purposes Sub-Committee, 1960s**
- 1.3.14.1 26<sup>th</sup> July 1963. The Committee resolved to upgrade Challacombe Path 3 to bridleway and upgrade the part of Parracombe Footpath No. 2 on the south side of the A39 Parracombe Bypass also to bridleway.
- 1.3.15 Definitive Map and Statement, 1957**
- 1.3.15.1 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, or that an error may have occurred when recorded.
- 1.3.15.2 The Definitive Statement for Parracombe Footpath No. 2 is described as running from the 'Unclassified County road south of Christ Church in Parracombe continuing south-eastwards across fields to Tuckingmill (now known as Sunnyside), south-south-east along a private accommodation road (not repairable by the inhabitants at large) then across a field to Pixey Lane private accommodation road (not repairable by the inhabitants at large), follows this Lane for 75 yards then southwards across a field, the old Lynton railway track and county road A.39 to the Parish boundary 450 yards north-west by west from Highley, where it continues in Challacombe Parish as Bridleway No. 3. Bridleway south from the A.39'. The error is underlined.

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1.3.15.3 Challacombe Bridleway No. 3 is described as starting at the 'County Road B 3358 at Yelland Cross and continues northwards along West Land and on to bench mark 122 on the southern side of Challacombe Common continuing north alongside the eastern side of hedgebank to a Private Accommodation Road (not repairable by the inhabitants at large) passing to the east of Twineford and continuing north across two fields to the Parish boundary where it continues in Parracombe Parish as Footpath No. 2. Also including a spur from 250 yards north-east of Twineford in a north-easterly direction to the Parish boundary where it continues in Parracombe Parish as Footpath No. 29'. The error is underlined.

1.3.15.4 On the reverse of the Statement is noted any limitations, objections and decisions. Here it is noted that objections were received from Lord Fortescue and the Challacombe Parish Meeting Chairman. It is also noted that at the County Roads Committee meeting of September 1963, the decision was made to amend part of the route and reclassify it.

## **1.3.16 Challacombe Estate Sale, 1959**

1.3.16.1 Sales particulars should be treated with special caution, as the art of embellishment in advertising is not a newly acquired skill. 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.

1.3.16.2 The proposal route is included partly within lot 6 – Twineford (also known as Tinnerdy). There is no mention of the public rights of way crossing the property, only a reference to private rights along the access track from the A39 Parracombe Bypass.

## **1.3.17 Route Photographs, 2016 onwards**

1.3.17.1 The route photographs show the definitive and used alignments of the proposal. It shows that the definitive alignment of Parracombe Footpath No. 2 and Challacombe Bridleway No. 3 obstructed by the big bank of the A39 Parracombe Bypass between points D – E – F – G – H, whilst the used alignment is open and available between points D – L and K – J – I – H.

## **1.3.18 Land Registry, 2018**

1.3.18.1 The land crossed by the proposal is owned by Court Place on the north side of the A39 and by Tinnerdy on the south side. The A39 is not registered, but ownership is believed to lie with Devon County Council.

## **1.4 User Evidence**

1.4.1 No user evidence has been received in relation to the proposal.

## **1.5 Landowner Evidence**

1.5.1 Only one of the landowners responded to the informal consultation.

1.5.2 Mr and Mrs De Dieu of Tinnerdy (formerly known as Twineford) have owned their property since 1998 and agree with the alignment variation. The used alignment has been accepted by landowners and the public and uses a well maintained track with appropriate furniture for the public users. The A39 road crossing has good visibility.

1.5.3 To reinstate the pre-1926 definitive alignment would require considerable expense with the river crossing requiring a fording/bridging point, as well as disturbing damp meadow wildlife. Users would also have to negotiate the steep banks on either side of the A39 Parracombe Bypass.

## **1.6 Rebuttal Evidence**

1.6.1 Verbal objection has been received from Mrs Grob of Court Place, regarding the A39 Parracombe Bypass crossing, which users are required to negotiate.

1.6.2 No written rebuttal evidence has been received.

## **1.7 Discussion**

1.7.1 Section 32 of the Highways Act 1980 indicates how documents should be evaluated as a whole and how the weight should be given to the facts derived from them. Once the evidence sources have been assessed individually, they are comparatively assessed as required by the balance of probabilities test.

1.7.2 The current proposal has two key elements:-  
(a) the alignment of Parracombe Footpath No. 2 and Challacombe Bridleway No. 3; and  
(b) the status of Parracombe Footpath No. 2 south of the A39 Parracombe Bypass.

1.7.3 Statute – Section 31 Highways Act 1980. There does not appear to be a specific date on which the public's right to use the proposal route's used alignment has been called into question. The Definitive Map and Statement is conclusive evidence of the information it contains, though it does not preclude that other unrecorded rights or errors may exist. The definitive map currently shows an unusable alignment recorded as Parracombe Footpath No. 2 and Challacombe Bridleway No. 3. This runs between points D – E – F – G – H. The used but unrecorded alignment runs between points D – L and K – J – I – H.

1.7.4 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's used alignment may still be proven to exist as a public right of way at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.

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- 1.7.5 Common Law. On consideration of the proposal at common law, the historical documentary evidence demonstrates the used alignment's physical existence, and the availability of this since circa 1926. It is shown in a similar manner to other recorded public highways. The documentary evidence also demonstrates that the definitive alignment has been unavailable since that time.
- 1.7.6 Parracombe Footpath No. 2 and Challcombe No. 3 alignment. The Ordnance Survey mapping and historic photographs show how these public rights of way were first altered by the construction of the Lynton and Barnstaple Railway opened in 1895, to the alignment D – E – F – G – H, as enacted by Parliament, and later the A39 Parracombe Bypass in 1926 to the alignment D – L and K – J – I – H.
- 1.7.7 The minutes of the Parracombe Parish Council, Barnstaple Rural District Council, and Devon County Council show detailed discussions took place regarding the Parracombe bypass scheme construction between 1923 and 1926. It is also clear from these records and those of the Fortescue Estate, that not all details of the scheme were set out at the beginning. This included the approach road to Lord Fortescue's property of Twineford, now Tinnerdy, which the used alignment of the proposal follow between points K- J – I – H. The rights of way were acknowledged as being affected by the road scheme, though no detailed information about their diversion from the alignment D – E – F – G – H to D – L and K – J – I – H, appears to have survived.
- 1.7.8 When the Parish Surveys were carried out for the compilation of the Definitive Map in 1950, the most recent complete mapping for the county was the Ordnance Survey 2<sup>nd</sup> Edition, which unfortunately by that time was nearly 50 years out of date, as later mapping had been destroyed in the Second World War bombing of Exeter. This meant that the Parishes were unable to annotate the Survey Maps with the correct alignment. To compound this, their Survey Forms lacked helpful detail. However, the contemporary RAF aerial photography of the 1940s clarifies the situation regarding the right of way alignment in use at the time the Definitive Map was compiled, which was the used alignment of D – L and K – J – I – H. It appears from the Definitive Map compilation records that no site visit took place at that time, as otherwise the alignment error would have certainly been noticed, and perhaps also the classification error.
- 1.7.9 Parracombe Footpath No. 2 and Challcombe No. 3 status. On the publication of the Draft Definitive Map, the Challacombe Parish Meeting Chairman objected to the inclusion of Path 3 on the basis it was shown at the wrong status. The Chairman claimed that it had apparently been long used as a bridleway. Parracombe Parish Council were consulted regarding the continuation in their parish, and which right of way should be upgraded, either Footpath No. 2 or 29. It appears that they chose Footpath No. 2, as it was a more direct route to the A39 Parracombe Bypass, though the Devon County Council Surveyor preferred Footpath No. 29.

- 1.7.10 The amendment was approved by the County Roads Committee in July 1963, but for unknown reasons, the matter was not progressed and the section of Parracombe Footpath No. 2 on the south side of the A39 was not upgraded. The copies of the Modified Draft Map and the Provisional Map have not survived, but as the section of the footpath south of the A39 is not currently shown as a bridleway on the current Definitive Map, it is assumed that the amendment was not carried out as intended.
- 1.7.11 Current landowner evidence dates back 25 years and acknowledges and accepts the used alignment of the proposal. The Parracombe Parish Council supports the proposal and the Challacombe Parish Meeting has no objection.

## **1.8 Conclusion**

- 1.8.1 On consideration of all the available evidence, on the balance of probabilities, the documentary evidence demonstrates that the definitive alignment of Parracombe Footpath No. 2 and Challacombe Bridleway No. 3 between points D – E – F – G – H in the vicinity of the A39 Parracombe Bypass was recorded in error when the Definitive Map was compiled in the 1950s. This seems to be due to the out of date mapping that was used in that exercise (dating from 1906, prior to construction of the Bypass). The proposal route between points D – L and K – J – I – H, the alignment used since 1926 when the A39 Parracombe Bypass was constructed, has been open and available and appears to have been considered public since that time.
- 1.8.2 During the Definitive Map compilation process, an objection was received regarding the status of path 3 in Challacombe and it was accordingly upgraded from footpath to bridleway (Challacombe Bridleway 3). However, this change also required the upgrade of its continuation in Parracombe parish, which was proposed as Footpath No. 2. The County Roads Committee decided this should happen, but the change was not completed.
- 1.8.3 It is therefore considered to be sufficient under Common Law to demonstrate that an alignment error occurred in the recording of Parracombe Footpath No. 2 and Challacombe Bridleway No. 3 on the Definitive Map; and that this should be recorded between points D – L and K – J – I – H, rather than D – E – F – G – H.
- 1.8.4 It is also considered to be sufficient under Common Law to demonstrate that the upgrade approved by Devon County Council's County Roads Committee of Parracombe Footpath No. 2 between points K – J – I should also be progressed as intended in 1963.
- 1.8.5 Consequently, it is recommended that a Modification Order should be made to vary the alignment of Parracombe Footpath No. 2 and Challacombe Bridleway No. 3 from the alignment of points D – E – F – G – H to the alignment between points D – L and K – J – I – H, and upgrade that part of Parracombe Footpath No. 2 between points K – J – I to a bridleway on the Definitive Map and Statement, as shown on drawing no. CCET/PROW/18/27 (and as summarised in the table below). If there are no objections, or if such objections are

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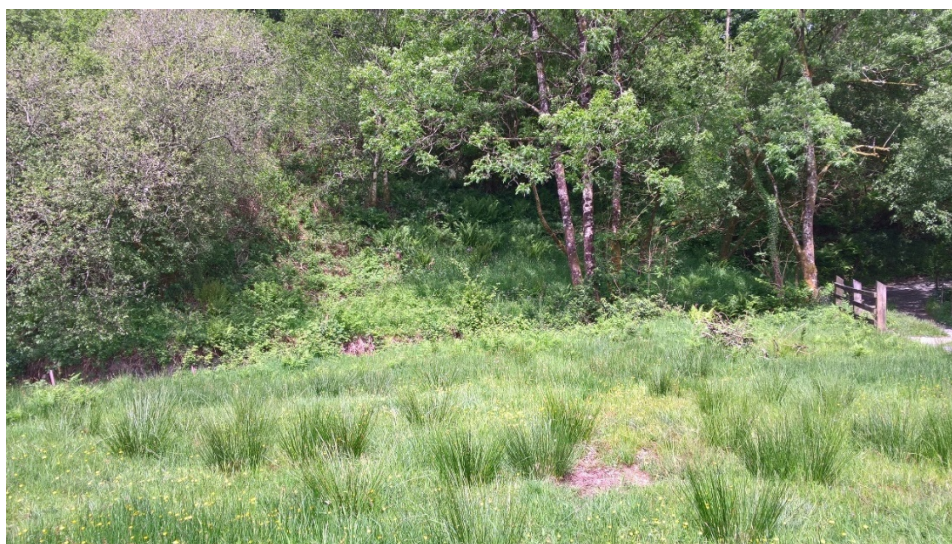
subsequently withdrawn, this should then be confirmed.

Path No.	Current	Proposed
Parracombe Footpath No. 2	D – E – F - G	D – L*
Challacombe Bridleway No. 3	G - H	I - H
Parracombe Footpath No. 2 to upgrade to Parracombe Bridleway No. 2	Used alignment of K – J – I but not shown on the Definitive Map	K – J – I*

\* N.B. If an Order is made L – K is not applicable as this public highway (A39) and will be the respective start/end points for Parracombe Footpath No. 2 and Parracombe Bridleway No. 2.

## Proposal 1

Looking north towards point G in the bypass embankment.



Looking at the crossing point (E – F) if you attempted to follow the definitive alignment.



Looking at point L from point K at the A39 Parracombe Bypass.



At point L looking northwards towards point D.

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Looking northwards from point H along the track towards point I at the parish boundary.

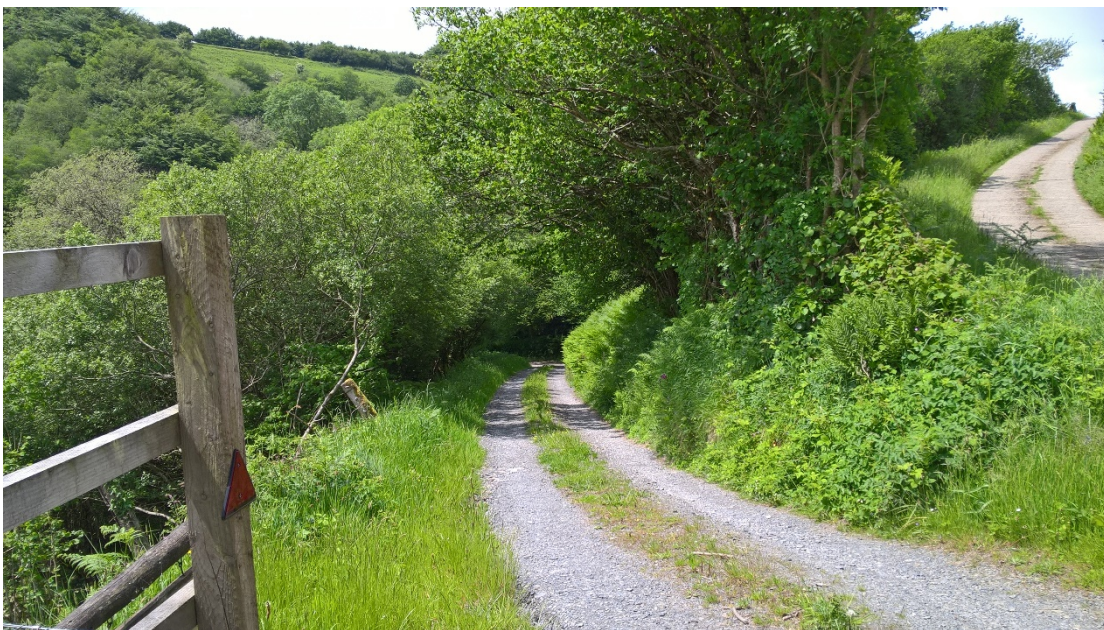


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Looking southwards from the parish boundary at point I, at the bridge, cattle grid and bypass gate and point H beyond.



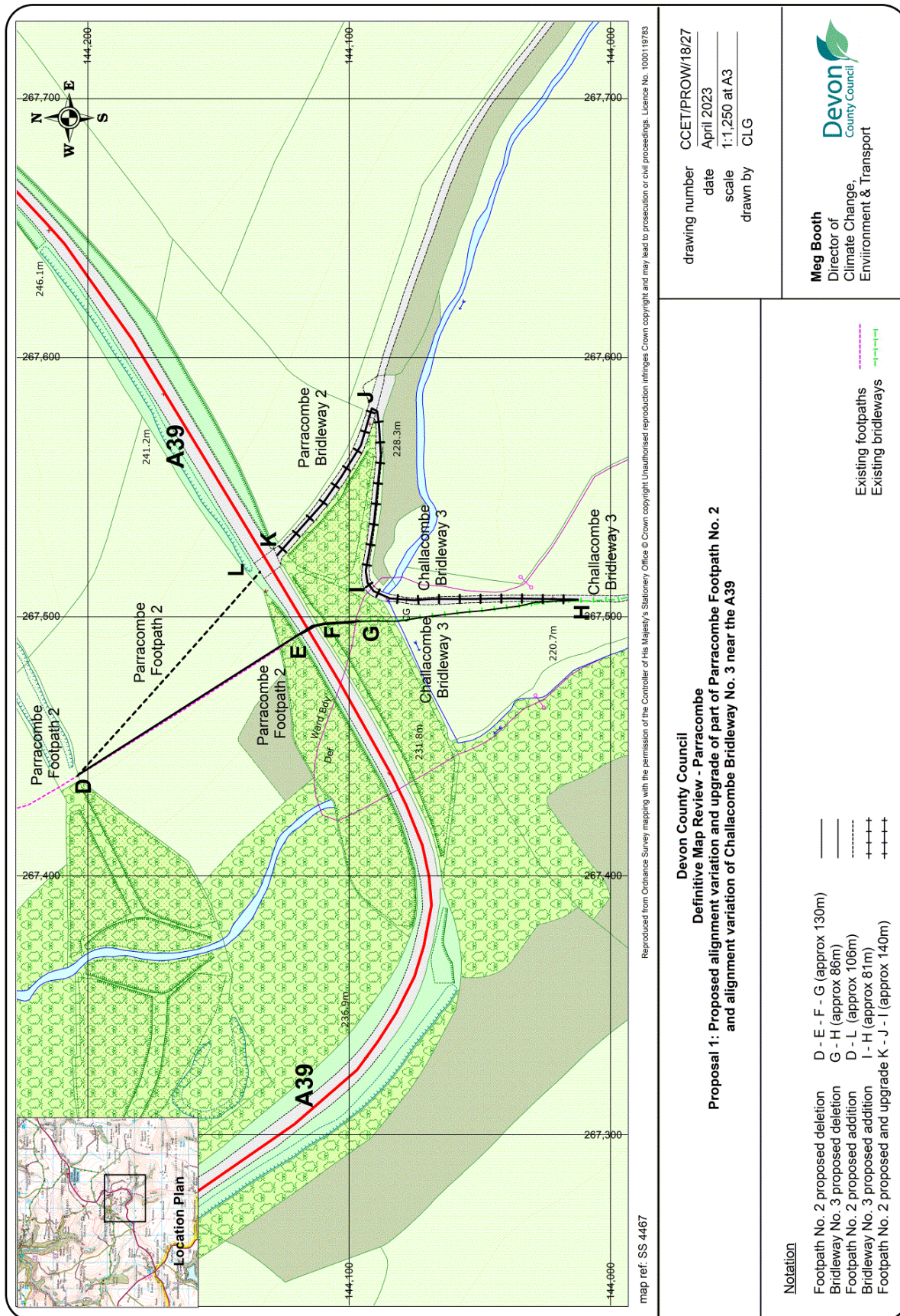
At point J looking westwards towards point I at the parish boundary.



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Looking north westwards from point J towards point K at the A39 Parracombe Bypass.







CET/23/48

Public Rights of Way Committee  
13 July 2023

## Definitive Map Review 2020-2023 Parish of Washfield (part 2)

Report of the Director of Climate Change, Environment and Transport

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

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### 1) Recommendation

It is recommended that a Modification Order be made to modify the Definitive Map and Statement by the addition of a Bridleway S – T - U as shown on drawing number HIW/PROW/22/18a (Proposal 2 Washfield).

### 2. Introduction

This report examines the route referred to as Proposal 2 arising out of the Definitive Map Review in the Parish of Washfield in Mid Devon. A report on Proposal 1 was considered by the Devon Public Rights of Way Committee Meeting on 9 March 2023.

### 3. Background

The background for the Definitive Map Review in the parish of Washfield was set out in the Committee Report CET/23/14 of 9 March 2023.

### 4. Proposal

Please refer to the appendix to this report.

### 5. Consultations

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

County Councillor Chesterton	-	no response
Mid Devon District Council	-	no response
Washfield Parish Council	-	response received (ref. Section 3 below)
Stoodleigh Parish Council	-	response received (ref. Section 3 below)
Country Landowners' Association	-	no response
National Farmers' Union	-	no response
British Horse Society (Devon)	-	no response
Ramblers' Association (Devon)	-	no response
Ramblers' Association (Tiverton)	-	no response
Trail Riders' Fellowship	-	no response
Cycling UK (Devon)	-	no response

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## **6. 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.

## **7. Legal Considerations**

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

## **8. Risk Management Considerations**

No risks have been identified.

## **9. 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.

## **10. Conclusion**

It is recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a Public Bridleway between points S – T – U as shown on drawing number HIW/PROW/22/18 (Proposal 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 deferred.

## **11. 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**

Director of Climate Change, Environment and Transport

**Electoral Division: Tiverton West**

## **Local Government Act 1972: List of background papers**

Background Paper - DMR/Correspondence File

Date - 2019 to date

File Reference - DMR/Washfield

### **Contact for enquiries:**

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tw210623pra sc/cr/DRM Parish of Washfield (part 2) 02 040723

## Appendix 1 - to CET/23/48

### A. Basis of Claim

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

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

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

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

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

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

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

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

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

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

**Proposal 2 – Addition of Public Bridleway from the county road (Old Stoodleigh Drive) west of Shilhay Copse at point S (GR SS 9358 1877) and running generally north eastwards along a defined hedged and fenced green lane to the county road north of Springfield Cottage at point U (GR SS 9404 1931).**

**Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement by the addition of a public bridleway S – T - U as shown on drawing number HIW/PROW/22/18a (Proposal 2).**

## **1. Background**

- 1.1 In January 2009, correspondence was received from Stoodleigh Parish Council seeking to claim a route from Parkhouse Water to Dryhill. A number of user evidence forms were received in February 2009 and some of these showed a continuation of that claimed route (proposal 1) which crossed the county road (Old Stoodleigh Drive) and continued along the green lane on the west side of Shilhay Copse that had no recorded status. This was sufficient to include the green lane as proposal 2 in the definite map review in Washfield parish.

## **2. Description of the Route**

- 2.1 The green lane starts at the county road known as the Old Stoodleigh Drive just west of the property known as Shilhay at point S (GR SS 9358 1877) and proceeds north eastwards along a defined green lane with hedges on both sides. There are three springs in the vicinity of the lane with two fords along the route either side of point T (SS 9380 1901). The northern end of the route is also the access to the property Springfield Cottage. The lane re-joins the county road and parish boundary with Stoodleigh at point U (GR 9404 1931).
- 2.2 The total length of the proposed bridleway (points S – T – U) is approximately 730 metres with a grass earth surface along most of the lane with an improved hardened surface at the northeast end where the lane is also the vehicular access to Springfield Cottage. The cattle grid mentioned in the parish council minutes in the 1960s and shown on some maps is no longer present. There are additional photographs of the route in the backing papers taken in September 2020.



Point S looking north eastwards (Jul 2009)

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Point U looking southwards (Dec 2021)

### 3. Consultations

- 3.1 Washfield Parish Council initially responded to say that they would support the proposal subject to landowner agreement and evidence of historical use. However, following the parish council meeting in November when a landowner advised the Parish Council that they were not in agreement, the Parish Council subsequently advised that they were not in support of the proposal.
- 3.2 Stoodleigh Parish Council support the proposal.
- 3.3 Mr George, a local resident, responded to the consultation. He wanted to show his complete support for the proposal as it would provide valuable additions to the current, rather limited rights of access.

### 4. Documentary Evidence

#### 4.1 Ordnance Survey and Other Maps

- 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.
- 4.1.2 OS 1 inch to a mile maps 1892, 1918 & 1933 Sheets 310 & 128 Tiverton. These three editions, all printed after the new Stoodleigh Drive had been constructed, all show a defined lane with solid sides all along the proposal route. There are no lines across the lane at either end. It is not known, but is considered possible, that the proposal route was constructed at a similar time to the new Stoodleigh Drive as certain types of vehicles and other users were not permitted to use the drive as detailed in the estate sale catalogues of 1925 and 1926.
- 4.1.3 OS 1st Edition 25" to a mile 1880-1890  
This edition shows the proposal route as a defined lane with solid lines on both sides between points S and U. The lane has its own compartment number 845

with the area of 0.976 acres. There is a dashed line across the lane at point S and the building adjacent to the north eastern end of the route is named Squareclose Cottages. A well is shown on the northern side of the lane between points T and U. On the northern end of the lane there are some pecked lines shown either side within the lane indicating a different surface within that section of the lane. There is a dashed line across the lane at point S and nothing at point U.

#### 4.1.4 OS 2<sup>nd</sup> Edition 25" to a mile 1904-1906

On the 2<sup>nd</sup> edition map the route is shown as a defined lane with the same compartment number and area. The building is named Squareclose Cottages, and the well is shown. There are no pecked lines within the lane. There is a dashed line across the lane at point S and nothing at point U.

#### 4.1.5 OS ½ inch to a mile Ministry of Transport Road Map 1923 Sheet 31 North Devon.

This map was the first to accurately show initial road numbers for the current A and B roads. The route is shown as a double solid sided lane along the whole length, with a line across the southern at point S.

#### 4.1.6 OS 1 inch to a mile maps of 1946, 1960, 1966 & 1972 Sheet 164 Minehead. On all four editions, the lane is shown as a defined white lane with solid lines on both sides, and with no lines across either end. The width of the lane as shown appears to correspond with Roads under 14ft of Metalling Untarred in the map keys.

#### 4.1.7 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.

#### 4.1.8 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'.

#### 4.1.9 On this edition the route is shown as a defined white lane with solid lines either side and in the same manner as the county road at point U. There are no lines across either end at points S or U.

#### 4.1.10 OS Post War Mapping A Edition 2500 1969 & 1970

On this map, a defined hedged lane is shown labelled 'track', with three compartment numbers along the route, 6690 area 0.44, 8911 0.43 and 0325 0.18. A cattle grid is shown about 25 metres south of point U with a bench mark shown next to the cattle grid. There is a dashed line across the lane at point S but nothing at point U. Two springs are shown across the lane, and a building labelled 'New Close' is shown at the south western of the lane by point S.

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## 4.2 Tithe Maps and Apportionments

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

### Washfield Tithe Map & Apportionment 1840

- 4.2.2 On the tithe map of 1840, the proposal route is not shown as defined land apart from a short length at the northern end from point U. The 'new Stoodleigh Drive' has not been constructed either. When constructed the remainder of the proposal route followed field boundaries shown on the Tithe Map. The cottages at Squareclose/Springfields have been constructed and the apportionment records that number 728 is Cottage and part of Square Close, number 729 Cottage and part of Square Close. Both apportionments were owned by Thomas Daniel and occupied by 728 George Coles and 729 William Carpenter. *A track shown on the map from by point T going east to the county road at Emmerford passes through apportionment number 732 described as little field and road, cultivation arable.*

## 4.3 Finance Act Plans and Field Books 1910

- 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.
- 4.3.2 The proposal route has been excluded from any adjoining hereditaments. All of the land on the north west side of the lane together with Squareclose Cottages and the field on that side between Shilhay Copse and Selwell Wood is part of Dryhill under hereditament number 3035. The boundary of this holding crosses the lane at four points and at all four places the boundary colouring breaks on crossing the lane. There is no mention of a right of way.
- 4.3.3 Shilhay Copse and Selwell Wood are included within hereditament number 3050 which is the woodland in Washfield parish belonging to the Stoodleigh Estate. No rights of way are mentioned in the field book. The land adjoining the northern

end of the lane on the east side is part of 3044, Emmerford Farm. The field book includes the sum of £13 allowed for a public footpath but no field numbers were mentioned. There are several paths and tracks shown on the map in the area of the hereditament but the only one labelled 'F.P.' is between the buildings at Selwell and Emmerford. The road known as the Stoodleigh Drive, which at that time had not been taken over by the council as maintainable highway, was coloured blue on the plan and annotated Pt 4 Stoodleigh, which included the house, stables and gardens of 49 acres.

## **4.4 Stoodleigh Estate Auction Poster 1894 & Sale Catalogues 1925 & 1926**

4.4.1 A poster advertised the complete Stoodleigh Court Estate of around 4,460 acres for sale by auction in London on 23<sup>rd</sup> October 1894.

4.4.2 A sale catalogue was produced for the auction of the house, farms, land and cottages totalling 3,952 acres to be held on 4<sup>th</sup> September 1925. The estate was initially to be offered as a whole and if not sold then lots 1 – 4 comprising the house and Ford Barton, Stoodleigh Barton and Dryhill Farms would be offered together. The private drive, the now county road at point S, was included in lot 1. The house and the details stated that there was a reservation of rights of way except for motor lorries, farm carts, implements, timber and cattle in favour of a number of lots. Lot 48 was a pair of cottages "Squareclose". On the plan within the catalogue, the proposal route was shown as a white lane and not included within any of the lots. Land belonging to Lot 1 the house and Lot 4 Dryhill, that was proposed to be offered as one lot, included land that extended over both sides of the lane. On the plan these four lots were encircled within a coloured line and where the boundary line crossed the proposal route, the colouring was broken in a similar manner to a Finance Act plan. This 1925 catalogue, described as the first edition, did not make any references to rights of way for certain lots over other lots.

4.4.2 In May 1926 a catalogue was produced for the sale of the house and part of the original estate including six farms and cottages totalling 1,247 acres in 51 lots. This catalogue plan did not include Emmerford (already sold). A blue line was drawn around a number of lots included in the sale, though excluding Squareclose Cottages at Lot 36. Where this blue line crosses the proposal route, the colouring again breaks. The proposal route is also shown white and not included within any lots. Shilhay Copse was included in Lot 5 and the particulars clearly stated (as it did in the 1925 catalogue) that timber was to be carried away via Square Close Lane to Cove Halt or via Emmerford Lane to Cove Halt. No timber to be brought on to the Private Drive. The sale particulars gave details of private rights of way to some lots over other lots but did not give any right to Squareclose Cottages or other properties along the proposal route.

## **4.5 Parish Council Meeting Minutes**

4.5.1 The minutes for Washfield Parish Council from 1894 to 1974 were available in the Southwest Heritage Centre. The minutes from 2018 to date are available on the parish council website. The minutes between 1974 to 2018 were not found.

4.5.2 Within the period between 1894 to 1974 there are several references to public footpaths and public rights of way that correspond to public footpaths in the

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parish. The parish council set up a Footpath and Bridges sub-committee meeting in 1896 but only two meetings were recorded in the minute book of July 1896 and October 1896.

- 4.5.3 There were references to the proposal route in 1962 to 1966 which referred to the original name of Squareclose (as used in the Tithe Map and estate sale catalogues of 1925 and 1926).
- 4.5.4 On 13<sup>th</sup> August 1962 the minutes reported *'It was brought to the notice that Mr Sawyer had built a cattle grid in the lane close to this house and the council queried as to whether he had a right to do this or not as it was interfering with the normal traffic and was dangerous. It was proposed and seconded that the clerk write to the clerk at the County Council asking for advice on the matter'*.
- 4.5.5 On 6<sup>th</sup> April 1963 *'A letter was received from the clerk to Devon County Council (Mr Godsall) regarding the cattle grid which had been installed in the lane at Squareclose. Mr Godsall had inspected the grid and found it to be in order as a small gate for pedestrians had been incorporated'*.
- 4.5.6 On 8<sup>th</sup> October 1966 *'Lane at Squareclose. A long discussion took place regarding the lane at Squareclose, which was understood to be a public one. There was some doubt whether an obstruction had been erected in the lane rendering it unuseable'*. There were not any further comments on the lane in the minute book for the period to 1974.

## **4.6 British Newspaper Archive (online)**

- 4.6.1 The British Newspaper Archive holds digitised copies of many of the newspapers published.
- 4.6.2 There are advertisements and reports of the auction/sale of the Stoodleigh Court Estate from 1895 to 1926. In December 1895, the estate of 4,460 acres was sold to Mr Dunning and then sold to Mr Money-Coutts in March 1908. In November 1908, a report stated that a lot of money had been spent on the estate by Mr Money-Coutts.
- 4.6.3 In September 1925 the estate was offered for sale but the house and farms of 3,000 acres were withdrawn at £28,500. The pair of cottages at Squareclose received no bid. In a May 1926 auction, it was reported that some lots including Squareclose cottages were withdrawn as they did not meet their reserves. In June 1926, offers were invited for the remaining unsold portion of the estate.
- 4.6.4 Other references found in relation to Squareclose were for the sale of a Lagonda car from the property in 1937 and the accidental death in North Devon of Richard Sawyer age 17, who resided at Squareclose, in 1964.

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

- 4.7.1 The parish survey for paths in the northern part of Washfield parish was completed in the Autumn of 1950. The survey forms advised that the persons carrying out the survey was the parish council. The forms were signed by Thomas Norman as clerk and Frank Voysey as Chairman. Nine footpaths and

one bridleway were claimed but no path or route was claimed along the proposal route.

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

- 4.8.1 No proposals for any changes to the public rights of way in Washfield parish were made by Washfield Parish Council in the uncompleted county review of 1968. The Limited Special Review of 1971 concerned the reclassification of RUPPS only and did not affect Washfield Parish. The Parish Council minutes of 7<sup>th</sup> June 1971 recorded *'Footpaths. The clerk had received a map of the village showing all present foot and bridle paths. The council were very interested in this matter and after a long examination of the map they decided that none of the footpaths shown on the map should be removed'*.
- 4.8.2 In the 1977 county review the parish council responded to say that the existing recorded public rights of way should be on the definitive map. No other changes or requests for additions were made.

## **4.9 Aerial Photography RAF 1946-1949, 1999-2000, 2006-2007 & 2015-2017**

- 4.9.1 On the 1946-1949 aerial photography, the surface of the lane is screened from view by the hedgerow trees for the majority of the length. The lane is visible at the northern end between points U and the entrance to Springfield.
- 4.9.2 In the 1999 aerial photography, the majority of the lane surface is again hidden by the trees. In 2006, the hedges on the western side have been trimmed and the lane is clearer to see.
- 4.9.3 On the 2015 aerial photography, the western side hedges have again grown and the lane surface is only clearly visible at the northern end with trimmed hedges on both sides on the section adjacent to Springfield.

## **4.10 Land Registry**

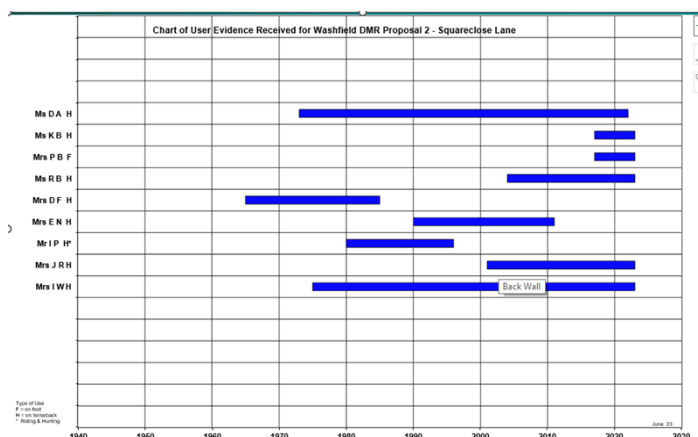
- 4.10.1 The lane is not registered at HM Land Registry. The land on the north western side is wholly registered to Dryhill Farm and Shilhay Cottage. The land on the south eastern side is registered to Shilhay Copse and Springfield Cottage, with a small section at the northern end south of point U not registered but understood to be part of Emmerford Farm.

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- 4.10.2 The title for Shilhay Cottage makes no reference to the lane. On the plan for Dryhill Farm under DN590123, the lane is coloured blue. The property register includes at paragraph 2 dated 3rd July 2009 that *'The registered proprietor claims that the land has the benefit of a right of access over a track tinted blue on the title plan. The right claimed is not included in this registration. The claim is supported by a Statutory Declaration dated 19 June 2009 made by Diane Ruth Wheller'*.
- 4.10.3 The plan for Shilhay Copse DN590080 does not include any colouring along the lane although the property register includes at paragraph 2 dated 3<sup>rd</sup> July 2009 that *'The registered proprietor claims that the land has the benefit of a right of way over the road leading from the north western boundary of the property to the road leading from Stoodleigh to Iron Bridge. The right claimed is not included in this registration. The claim is supported by a statutory declaration dated 9 July 2009'*. This would correspond with the southern section of the proposal route that adjoins this registered title between points S and U. A conveyance of 19 May 1959 also gives the right to use the private drive (the now county road running along the southern boundary of the land) *'with or without horses, carts, carriages, motor carriages and other vehicles (other than motor-lorries, farm carts, implements, timber and cattle)'*. This wording corresponds to the right to use what was once the estate's private drive granted to property that was part of the Stoodleigh Estate in the 1925 sale catalogue.
- 4.10.4 The property register or plan for Springfields (understood to be known as Springfields when first registered in 1998 and formerly known as Squareclose) does not make any reference to any right of way along the proposal route.

## 5. User Evidence

- 5.1 A total of nine user evidence forms had been received for proposal 2. Eight of the users used the lane on horseback and five were weekly users. The period of use dated from 1965 to the present day.



- 5.2 Ms D A has used the lane on horseback every few months for pleasure between 1973 and 2022 apart from during Covid in 2020-2021 and foot and mouth in 2001. She thought the route to be public as she has always been able to ride along it. She had seen two gates at the northern end of the route near Springfield Cottage and by the road at point U. The owner/occupier would have been aware of the use as could see horses had gone through.

- 5.3 Ms K B had used the route on horseback monthly and on foot every few months from 2017 to the present time and thinks the route has always been public. There has not been any notices, gates or other obstructions and she has never been stopped or told the route was not public. She thinks the owner/occupier was aware the public were using the route because they always have.
- 5.4 Mrs P B had used the route on foot for pleasure two to three times a week from 2017 to the present day. She thought the route to be public as a proper old track which links 2 council roads, obviously used for years. There has not been any notices, gates or other obstructions and she has never been stopped or told the route was not public. Under further information she commented that *'track is used regularly by local walkers, horses and the hunt. No reason why it shouldn't remain open as a bridleway. I walk the track at least twice a week all year round.'*
- 5.5 Ms R B has used the route weekly for pleasure on horseback from 2004 to the present day. She thought it was public as it was maintained by the council previously and is a marked track. There has not been any notices, gates or other obstructions and she has never been stopped or told the route was not public. She thought the owner/occupier were aware of the use as it was used by many walkers, riders etc.
- 5.6 Mrs D F had used the route on horseback for pleasure every few months from 1965 to 1985 except when living overseas for a few years. She thought the route to be public *'as just knew it was'*. There has not been any notices, gates or other obstructions and she has never been stopped or told the route was not public. She rode the lane with her mother who would have continued to use the route whilst she was overseas.
- 5.7 Mrs E N had used the route on horseback weekly for pleasure riding between 1990 and 2011 and occasionally since then. She thought the route to be public as it's marked on maps, a clear route and very accessible for horses. There has not been any notices, gates or other obstructions and she has never been stopped or told the route was not public. Mrs N comments it is well used and a nice track to ride on with a horse with good footing and not too many low branches.
- 5.8 Mr I P had used the route for hunting and riding on horseback every few months from 1980 to 1996. He thought the route public as it was always open as access/through route for the general public. There has not been any notices, gates or other obstructions and he has never been stopped or told the route was not public. No one claimed ownership of the lane. Under further information Mr P commented that from 1980 to 1996 he was involved with the Tiverton Foxhounds. When master from 1989 to 1996 he would contact all landowners/farmers for permission to ride/hunt on their land. He never sought permission to use the green lane between Shilhay and Springfield and no one ever indicated to him that it was anything other than a public right of way/bridlepath. He wrote *'The hunt officials and followers, mounted and on foot, used the lane as of right without objection and without consent and without obstruction.'* The lane was rough and so far as he recalls seldom if ever used by

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vehicles. Mr P's use when hunting would not be use 'as of right' but he also advises that he used the lane for normal riding as well.

- 5.9 Mrs J R had used the lane weekly on horseback for pleasure from 2001 to the present day. There has not been any notices, gates or other obstructions and she has never been stopped or told the route was not public.
- 5.10 Mrs I W had used the lane weekly on horseback for pleasure from 1975 to the present day. She thought it was public as she was shown the route as a young child and had continued to use it. There has not been any notices, gates or other obstructions and she has never been stopped or told the route was not public. The track is well known by local walkers and riders and I'm sure has been used for many years.
- 5.11 Mr G was contacted in respect of proposal 1 in the Washfield review as his woodland adjoined the northern tip of that route. In his letter sent in response to the consultation he also added that he had used proposal 2 and had thought it was public. Mr G had not completed a user evidence form.

## **6 Landowner Evidence**

- 6.1 A section 31(6) deposit was made in October 1994 by Fountain Forestry on behalf of the owners at that time, Gaskell & Hewer Woodlands. This covered Shilhay Copse on the southeast side of the lane between points S and T. The map submitted with the application included the section of the green lane between points S and T although the Land registry records do not include the lane within the ownership of the woodland as the lane is unregistered throughout its whole length. The deposit expired in October 2000 and was not renewed. This section of woodland appears to have been sold in March 2020 to the current owners.
- 6.2 When the review consultation was published in 2022 the landowners/ occupiers who owned land adjacent to the proposed bridleway, were contacted and advised of the proposal. They were invited to submit their comments and information by way of a completed landowner evidence form or otherwise.
- 6.3 The current owners of Shilhay Copse are the O'Connell Woodland Partnership and a landowner form was completed by Mr P O'Connell which confirmed their ownership of the woodland (adjoining the south east side of the lane between points S and T) but not the proposal route, from January 2020. They think the route is a public right of way as it is open to the public and not registered at Land Registry. They have seen dog walkers daily and use by farmer and their woodland management team. They have never stopped or turned back anyone, given or being asked for permission or put any locked gates or other obstructions along the route. Under other information they mention that there may be gunshot noise from the woodland as part of their regular woodland management.
- 6.4 They enclosed a copy of the statutory declaration completed in February 2020 by the previous owner Mr Aggett. The declaration states that he together with his wife and visitors have used the road coloured brown on the plan (this is the section of the proposal route between points S and T) for the purposes of access to and egress from the property with and without vehicles, machinery and

equipment since he purchased the property (in 2009). Such use has always been without interruption and as of right and without permission from or objection by any person whatsoever. This 2020 declaration does not appear to have registered at Land Registry but refers to the same right as the declaration made in 2009.

- 6.5 Mr Aggett had purchased Shilhay Copse woodland and Dryhill Farm in 2009 and then sold Shilhay Copse in 2019 and Dryhill Farm in 2021. Mr Aggett did not think the way was public as it was in the ownership of the Stoodleigh Estate and has therefore always been private. He has seen people using the route. The only request for permission was by and was given to the Tiverton Staghounds. A couple of times he told people not to use the track. He had not locked any gates or put obstructions along the route or erected any notices.
- 6.6 Under further information Mr Aggett comments *'This trackway and the land on both sides was a part of the Stoodleigh Estate. The land on either side was sold off at different times and neither sale included the track. The track therefore remains part of the Stoodleigh Estate. I would suggest nobody else (including Devon County Council) has any claim to ownership. The status of the track as a route the public can use should be decided only by the current owners of the Stoodleigh Estate with the input of the owners of Shilhay Woods, Dryhill Barton, Shilhay Cottage and Springfield Cottage.'*
- 6.7 Mr Morison has owned Springfield Cottage since 1997 which includes the land adjoining the south east side of the lane between points T and just south of U. He does not think that the route is a public right of way as it is not registered as a right of way. He has seen riders and walkers frequently and some vehicles and motorbikes less so. He has not stopped or turned anybody back or had anyone ask for permission. Tree cutting may have very occasionally obstructed the route. Under other information he comments *'The route has never been classified in anyway and it works well like this and is currently known about. Changing its status is not really necessary. It may cause more difficulties to us if it is registered'*. Mr Morison also telephoned to speak about the proposal and suggested that things could be just left as they were.
- 6.8 Mr Mock of Emmerford Farm owns the field on the east side of the route south of point U. On his form Mr Mock just commented *'As it is not known who owns the track who would be responsible to make it passable on foot and maintain it as it is very wet.'*
- 6.9 Ms Chant responded for Dryhill Farm who own the land adjoining the north west side of the lane except for the boundary with Shilhay Cottage by point S. They also rent land at Shilhay Cottage that adjoins the lane. They have access gates from the track S T U to land they own. They believe the route to be a public right of way as they moved there in October 2017 and have free unhindered access to the track S T U. They have seen people using the lane, dog walking two to three times weekly, foxhounds once this season, ramblers, motorcycles infrequent and forestry access. They have not stopped anyone or been asked for or given permission to anyone.

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- 6.10 Mrs Pennington has owned the bungalow at Shilhay adjoining the lane on the north west side near point S since 2003. She believes the route to be a public right of way as originally the track was the route from Stoodleigh Village to the railway station at Cove. The route is used on a daily basis by walkers and horse riders, mostly from the village. She has not stopped anyone or been asked for or given permission to anyone. Under further information she comments '*Stoodleigh Drive was built as a private drive for Stoodleigh Court in the 1880s. The track from S to U predates the Stoodleigh Drive as the route for villagers to get to Cove Railway Station on the A396*'.

## **7 Additional Rebuttal Evidence**

- 7.1 No other rebuttal evidence has been received.

## **8 Discussion**

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

- 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.
- 8.2 As there has not been a calling into question or challenge of the public's use of the route, the subsistence or otherwise of a public right of way cannot be considered under statute. The section 31(6) deposit made in 1994 would not be a calling into question as it would not have been brought to the users' attention. This is a necessary requirement following the House of Lords judgement in the Godmanchester case of 2007.

### **Common Law**

- 8.3 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.
- 8.4 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 mapping evidence shows that the lane was created between the Tithe Map of 1840 and the early OS maps of the late 19<sup>th</sup> century. The new Stoodleigh Drive to which the proposal route connects at point S is understood to have been constructed in the 1880s. A track through fields appears to have existed before this which is considered to have been land belonging to the Stoodleigh Estate at that time. Since its construction, the lane has been shown as a defined double hedged lane with its own compartment number and area on the large scale maps and in the manner of other minor roads in the vicinity. The lane was shown on the OS

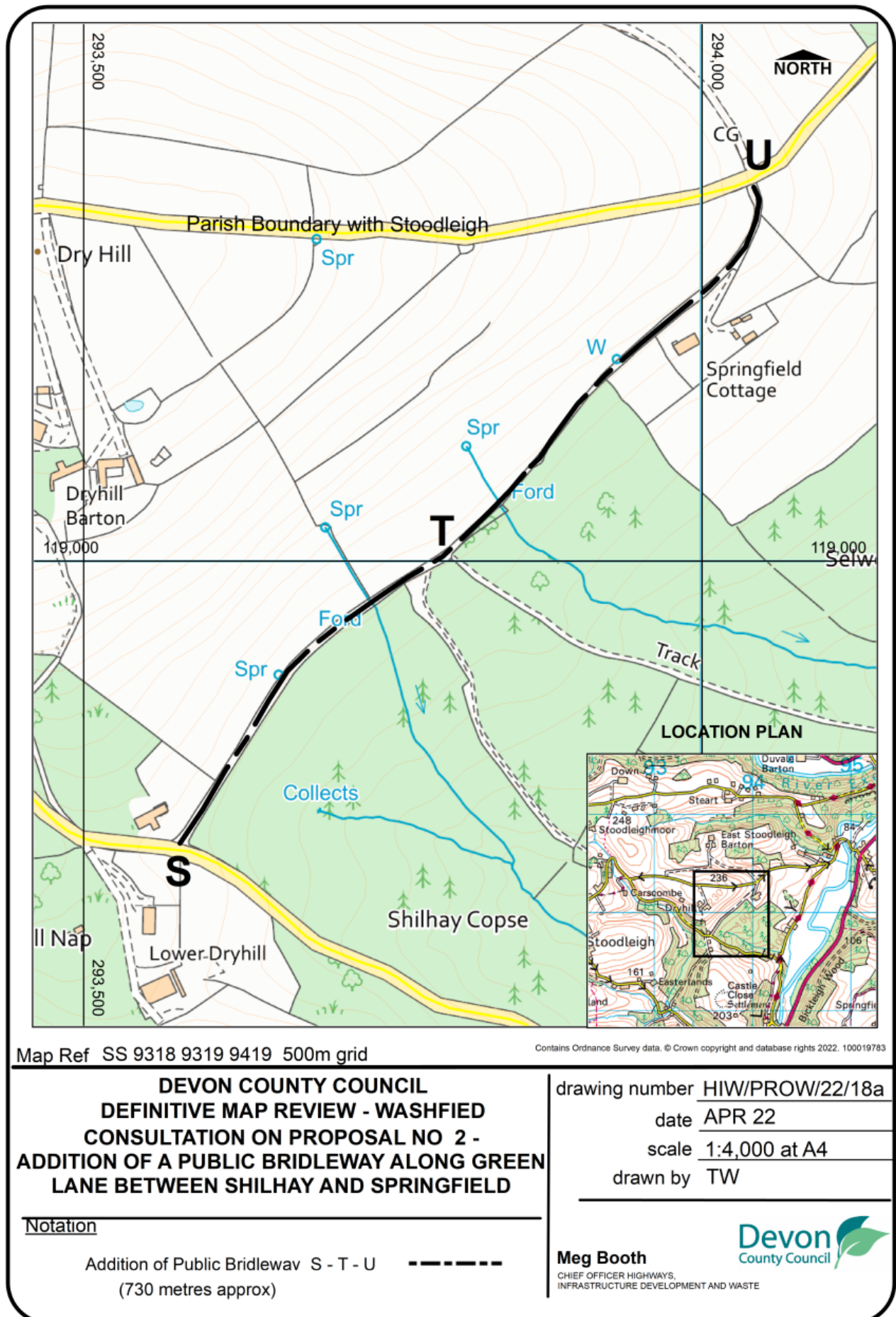
½ inch to a mile Ministry of Transport Road Map of 1923 for North Devon, which was the first mapping to accurately show road numbers for the A and B roads.

- 8.5 On the Finance Act plan of 1910, the lane is not coloured or included within any of the adjoining hereditaments. This indicates that the lane was not considered part of the Stoodleigh estate. Where hereditaments include land on both sides of the lane, the colouring breaks across the lane which is indicative of the lane been considered public at that time.
- 8.6 In the Stoodleigh Estate sale catalogues and plans of 1925 and 1926 the lane is not coloured or shown as been included as part of the estate or part of the adjoining lots. Where a lot included land either side of the lane the colouring again broke across the lane. In the 1925 plan this is in contrast to the private drive that was coloured blue and was included as part of Lot 1 of Stoodleigh Court House. The 1925 catalogue referred to a right of way for lots along the private drive but did not make any reference to the proposal route even for those lots adjoining the lane. In the 1926 catalogue details were specifically included giving private rights of way to certain lots over other lots within the estate but no such rights were mentioned in reference to the lane. This would indicate that the estate did not consider the lane to belong to the estate, and also that it was a public road at that time.
- 8.7 The Washfield Parish Council minutes of 1962 record that a cattle grid had been built across the lane south of point U, near Squareclose and was interfering with the normal traffic. The presence of the cattle grid is shown on the OS map of the late 1960s. The clerk at the County Council was contacted and visited the site and advised that he found the cattle grid in order as there was a gate for pedestrians. It is very unlikely that a representative of the County Council and particularly the clerk himself would have inspected the lane and cattle grid if it had not been considered that the lane was public. In 1966, the minutes record a long discussion regarding the lane that was understood to be a public one.
- 8.8 The lane is not registered at HM Land Registry, although most of the adjoining land is. Where a reference is made to two of the adjoining properties having a right of way along the lane, this is provided by the statutory declarations of a previous owner made in 2009, as the deeds did not make any reference to such rights. The recording of such a right of way would not be necessary if the lane was considered to be public when first sold away from the estate in the 1920s.
- 8.9 User evidence has been received showing regular use of the lane by members of the public for over fifty years. None of the users has ever been turned back, stopped or told it was not public. Although there is not extensive user evidence, the lane is in a rural area and not close to the village centres of Stoodleigh or Washfield. The evidence received is deemed sufficient to show acceptance of the lane as a public right of way.
- 8.10 Four of the five current adjoining landowners report seeing regular use by dog walkers and horse riders and three of these think the lane is a public right of way. Mr Morison comments that it is not a public right of way as it is not registered as a right of way. He felt it may cause them more difficulties if registered.

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## **9 Conclusion**

- 9.1 With no calling into question of the public's use of the route, the existence of a public right of way cannot be considered under section 31 of the Highways Act 1980. Under common law, there is some documentary evidence to support implied dedication by a landowner at some time in the past (probably the Stoodleigh Estate) and the user evidence available is also considered sufficient to show acceptance of this dedication by the public. No evidence has been found to contradict the proposal route being public, and so overall, the evidence is considered sufficient to show that a public right of way can be reasonably alleged to subsist. On the basis of the available evidence, such public right of way is deemed to be a bridleway.
- 9.2 It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement in respect of the route considered under Proposal 2.





CET/23/49

Public Rights of Way Committee  
13 July 2023

## Definitive Map Review Parish of Newton Poppleford & Harpford (Part 2)

### Report of the Director of Climate Change, Environment and Transport

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

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#### **1) Recommendation**

Recommendation: It is recommended that a Modification Order be made in respect of part of Proposal 3, as shown between points E and G on the plan CCET/PROW/23/33.

#### **2) Introduction**

This report examines a claimed footpath between High Street and School Lane in Newton Poppleford. A Schedule 14 application claiming this route was received following the opening of the parish review, although the affected landowners had not been served notice and so only part of the application process has been completed. The evidence submitted with the application is strong, and so the claim was put forward for consultation during the parish review.

#### **3) Background**

This is the second report for the Definitive Map Review for Newton Poppleford and Harpford parish. The background to the review in Newton Poppleford and Harpford was discussed in the first report of 9 March 2023.

#### **4) Proposals**

Please refer to the appendix to this report.

#### **5) Consultations**

General consultations have been carried out with the following results:

County Councillor Jess Bailey	- no comment;
East Devon District Council	- no comment;
Newton Poppleford & Harpford Parish Council	- supportive
Country Land and Business Association	- no comment;
National Farmers' Union	- no comment;
Trail Riders' Fellowship/ACU	- no comment;
British Horse Society	- no comment;

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Cycling UK	- no comment;
Ramblers	- no comment
Byways & Bridleways Trust	- no comment;
4 Wheel vehicle Users	- no comment;
Open Spaces Society	- no comment.

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

## **6) 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.

## **7) Legal Considerations**

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

## **8) Risk Management Considerations**

No risks have been identified.

## **9) 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.

## **10) Conclusion**

It is recommended that a Modification Order be made in respect of part of Proposal 3 as shown between points E and G on the plan CCET/PROW/23/33.

## **11) 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**

Director of Climate Change, Environment and Transport

**Electoral Division: Otter Valley**

## **Local Government Act 1972: List of background papers**

Background Paper - Correspondence file: Newton Poppleford

Date - 2000-date

File Reference - TCG/DMR/NPOPP

### **Contact for enquiries:**

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tg150623pra

sc/cr/DMR Parish of Newton Poppleford & Harpford (Part 2)

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## Appendix 1 to CET/23/49

### A. Basis of Claim

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

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

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

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

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

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

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

Section 69 of the Natural Environment and Rural Communities Act 2006 (NERC) amended the Highways Act 1980, to clarify that a Schedule 14 application for a Definitive Map Modification Order is, of itself, sufficient to bring a right of way into

question for the purposes of Section 31(2) of the Highways Act 1980, from the date that it was made.

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

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

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**Proposal 3: Claimed footpath between High Street and School Lane, through car park, points E-F on proposal map CCET/PROW/22/86.  
Grid Ref: SY 085897 – SY 086896**

**Recommendation: It is recommended that a Modification Order be made in respect of part of Proposal 3 as shown between points E and G on the plan CCET/PROW/23/33.**

## **1.1 Background**

- 1.1.1 Following a public meeting to open the Definitive Map Review in the parish in March 2022, the initial part of a Schedule 14 application was received from Mr Swan (the parish Footpath Warden) dated 20 June 2022 claiming a public footpath from High Street to the East Devon District Council School Lane car park. The application was accompanied by 20 user evidence forms. The affected landowners had not been served notice of the application, meaning that it was not fully made, but it was put forward for informal consultation as one of three proposals in the parish, two of which were dealt with at the previous Committee. Examination of the user evidence forms suggested that some people had continued through the EDDC car park to re-join the public highway at School Lane. As a result, the extended route (shown on plan CCET/PROW/22/86) was consulted on rather than the initial route indicated on Mr Swan's Schedule 14 application. The route is currently unrecorded, and the Neighbourhood Highways Officer has confirmed that DCC have never maintained it.

## **1.2 Description of the Route**

- 1.2.1 The claimed route starts at High Street at an area known as The Green (point E on plan CCET/PROW/22/86) and proceeds southwards along a tarmacked path between the church and cemetery to the EDDC car park. It then turns eastwards and passes through the car park and along the access road to meet School Lane at point F. The total length of the claimed route is approximately 130 metres. There are metal staggered barriers on the route where it is crossed by the path between the entrance to the church and the cemetery. There is also a metal handrail alongside the path between the church and the car park, along with a 'no cycles' sign and a directional sign containing the words 'public footpath to village'. A DCC streetlight is situated

on the claimed route near the entrance to the church.



Point E looking south  
Looking north from car park



Point F looking east towards car park

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## 1.3 Documentary Evidence

### 1.3.1 Aylesbeare Tithe Map 1842 & Apportionment 1844

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

1.3.2 The Aylesbeare Tithe Map, produced in 1842, shows a path leading off the High Street and heading south past the church to plot 1166, an orchard owned by William Tilke. Roads were coloured yellow but not identified in the Apportionment as public and included those which were obviously public, as well as others more likely to have been private tracks for access to fields and some not now existing. The path leading past the church that corresponds with the northern part of the claimed route is coloured yellow.

### 1.3.3 Historical mapping –19<sup>th</sup> and early 20<sup>th</sup> century: Ordnance Survey (OS)

Early historical maps at smaller scales are not capable of depicting the claimed route due to the scale. The first OS map showing the area in any detail is the 25" map published in 1889, which shows a small section of path or alleyway beside the church, leading to an orchard located on what is now the car park and cemetery. There are gates indicated by lines across either end. It is not coloured yellow in the same manner as the road network is.

1.3.4 The 25" Second Edition map from 1904 shows the same section of path as that shown in the previous edition but now with an extension to the west to a plot marked as a graveyard. The 1934 edition shows a similar picture but with a small expansion of the cemetery.

### 1.3.5 Later historical mapping at larger scales: OS A Series 1948 -1964

OS 1:25,000 'A' Series mapping from 1948-1964 provides little information on the claimed route itself but does depict the development of the area to some degree. The 1948 and 1958 editions show School Lane before the construction of the council housing on the western side. The 1964 edition shows a row of council houses built to the south of the existing row of terraced houses on the western side of School Lane, with no access road into the car park. The area where the car park is now situated is still shown as an orchard in the 1964 edition, with nothing to indicate a path across it.

### 1.3.6 Aerial Photography 1946-2015

Aerial photography from 1946 shows very little detail due to the poor quality of the image. It is possible to make out the church and possibly the alleyway forming the northern section of the claimed route. However, this is by no

means clear. There is a dark area corresponding to the orchard and School Lane is depicted in the same way as in the contemporary OS mapping.

- 1.3.7 More modern aerial photography from 1999-2015 offers little information as it shows the claimed route as it exists today. The surface is clearly tarmacked throughout this period and the surface does not appear to change (other than the car park being re-lined). The DCC streetlight is visible in the images from 2006 onwards.
- 1.3.8 Highway maintenance records/Handover maps/List of Streets  
Highway maintenance records from the 1920s and used through to the 1970s, often called handover maps, show that the application route was not at that time considered to be maintainable at public expense. The claimed route is left uncoloured and there are no notes or annotations relating to it. These maps did not show footpaths and bridleways, only public roads.
- 1.3.9 The very northern end of the claimed route is recorded on the List of Streets, which is the current record of highways maintainable at public expense kept by Devon County Council. Approximately 10 metres of the route falls with the recorded area of HMPE, in an area that includes the small green space containing the war memorial, known as The Green. According to the annotation on the map, this was added to the List of Streets on 28 April 1983. The rest of the claimed route is not recorded as HMPE.

## **1.4 Newton Poppleford & Harpford Parish Council minutes**

- 1.4.1 Minutes of Newton Poppleford & Harpford Parish Council meetings contain several references to the claimed route, as well as building a picture of the development of the land over which it runs. Minutes from 1967 show that the parish council was in correspondence with St Thomas Rural District Council over the site for a proposed car park, with the current location being put forward in 1968. The RDC had the land valued in 1969 and the car park was constructed following the sale. At the same time, the parish council suggested the car park as a site for public toilets, which appear to have been constructed at the same time as the car park or shortly afterwards (they were certainly up and running in 1973). In 1972 a Doctors Surgery was first proposed for the village. The minutes detail how the project progressed through to planning permission being granted in 1983 and it officially opening in 1984. Minutes from the meeting on 10 March 1983 show that it was agreed that *'a footpath from the Church to the site had to be provided'* which appears to relate to the pedestrian walkway running along the western side of the car park. The houses on Roberts Way were constructed following the granting of planning permission in 1982, with access through the car park from School Lane.
- 1.4.2 Other references concerning infrastructure and management of the path are found in the minutes. An entry on 1 November 1973 records that the no cycling sign was broken and in need of repair on the 'footpath from car park to The Green'. At this meeting it was also agreed that *'Councillor G R Compton obtain a quotation for the erection of triple barriers at the lower end*

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*of the path by the Church gate*’ due to complaints of cycling and horse-riding. A quote for a barrier was supplied at the next meeting, and a couple of months later, on 14 February 1974, it was recorded that the barriers had been delivered by the supplier.

- 1.4.3 On the 11 July 1974 it was recorded that the Clerk was to ask East Devon District Council for dog fouling signs on the path between the car park and The Green. Later, on 18 March 1976 it was recorded that the Public Health and Technical Services Officers of EDDC were investigating reports of dog-fouling on the path.
- 1.4.4 On 27 July 1978, under an entry titled ‘*car park, School Lane*’, it was reported that there were ‘*stinging nettles behind the toilets and garages and excess grass along the paths*’ and that the Clerk was to ask Mr Retter (the parish handyman) to deal with them. A further entry on 1 March 1991 states that the Clerk will deal with reports of litter on the path and the need for regular cleaning. However, it does not state that the handyman is to be instructed so could mean that the matter will be passed to EDDC.
- 1.4.5 Minutes from 10<sup>th</sup> November 1992 record a request from the local Womens’ Institute to erect a handrail on the path ‘*from St Lukes Church to the car park on the western side*’ to commemorate the 40th anniversary of the coronation of Queen Elizabeth II. The parish council approved of the idea and suggested that the W.I. contact EDDC. This handrail and the associated commemorative plaque are still in situ and run from the entrance to the cemetery to the former Doctors Surgery.

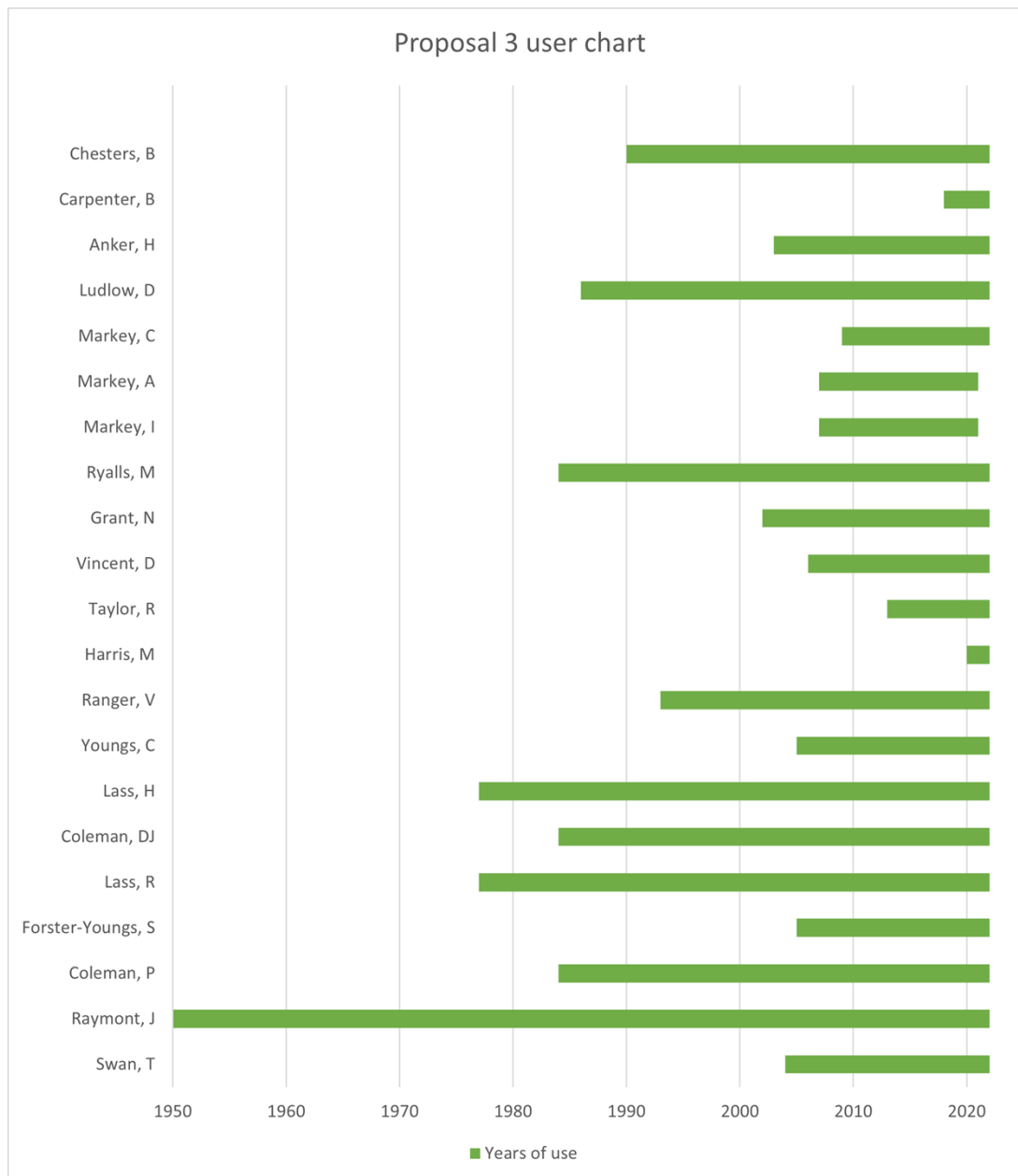
## **1.5 Definitive Map process**

- 1.5.1 Original Definitive Map process  
The application route was not put forward by Harpford Parish Council for inclusion on the Definitive Map in the 1950s.
- 1.5.2 Devon County Council uncompleted reviews of 1970 and 1977  
Likewise, the application route was not put forward for consideration during the incomplete reviews of the Definitive Map in the 1960s and 1970s.

## **1.6 User Evidence**

- 1.6.1 20 user evidence forms were submitted with the application, with one additional form being received during informal consultation. Of the 21 users who submitted forms, all of them claimed use on foot. One of the users also claims to have used the route on a bicycle, though only occasionally. Many of the users refer to the path being well-used and busy, which was the main reason that they believed it to be a public footpath. Three users also state that the signage was the reason that they believed it to be public.
- 1.6.2 The user evidence covers the period from 1950-2022 (see chart below) and there is no suggestion that it has ever been interrupted or stopped. Staggered barriers are located on the route and numerous users mention

these, inferring that they were intended to prevent bicycles but allow use on foot.



- 1.6.3 Ten of the users have used the application route for more than 20 years (eight of these in excess of 30). The mean average length of use is 25 years.
- 1.6.4 Frequency of use varies between users, as would be expected: ten users state use weekly, three users daily (or more than once a day), four claim monthly use and the remaining three claim use once or twice a year or less.
- 1.6.5 None of the users state that they have ever sought or received permission to use the application route. Lass provides some interesting additional information with his user evidence form as he has been the Churchwarden for more than 20 years and lived in the village since 1977. He refers to the 'footway' being created for access to the graveyard when it was expanded,

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which is shown on the OS First Edition 25" map of 1889. He refers to the plot of land south of the church being sold to St Thomas Rural District Council 'at some time before WW2' and that 'at some time in the 1950s, the management of the graveyard was passed to the District Council, along with more of the Glebe Land.... The RDC built more council houses in School Lane and extended the cemetery to its present extent.' He continues: 'The area now a car park was I think used by the housing builders. When the RDC formalised the car park, they surfaced the path down to the cemetery gate to link with the old path onto Church Green.'

- 1.6.6 The original application was only for the section of path between High Street and the EDDC car park. However, six of the user evidence forms refer to use of the route by people accessing the primary school on School Lane (the reason why the consultation plan was extended). Taylor states that her use of the claimed route could be as high as four times per day due to dropping off and collecting her children from school. Several users refer to it being a path to the church and cemetery, as well as the former Doctors Surgery located in the southeast corner of the car park. Users also consistently refer to the route being used to access the car park itself and the public toilets, with one user mentioning the 'village noticeboards' on the route.
- 1.6.7 As to why they used the route, twelve of the users state for pleasure (dog-walking being a common theme). Ten users also state they used it for business, with particular reference to visiting shops and/or the Doctors Surgery. Four users explicitly state they used it to access the school.

## 1.7 Signage and infrastructure

- 1.7.1 There are several items of signage and infrastructure on the route that may be suggestive of public rights. Of significant note is the large directional sign located in the car park and pointing north along the claimed route towards the High Street. It contains the words '*public footpath to village*' and appears to be of some age judging by the poor condition. It is not clear who erected this sign but it is situated in the EDDC car park and can be presumed to have been installed by them, or at least with their permission.



- 1.7.2 Also located in a similar position to the above sign is a short post containing a circular no cycling sign and a commemorative plaque, both referred to in the Parish Council minutes (discussed above). Across the claimed route near the entrance to the cemetery and church is a metal staggered barrier. Also present is an EDDC dog bin, a very old dog-fouling disc sign (possibly dating to 1974 as described in the PC minutes) and a wooden sign stating 'N.POP LINK TO E.D.W' which also has an East Devon Way waymarker attached to it.
- 1.7.3 Also present on the claimed route near the entrance to the cemetery and church is a DCC lighting column. There is also one located in the EDDC car park near School Lane. It is not known how these came to be situated on land that is not HMPE and not owned by DCC.
- 1.7.4 Two parish/community noticeboards are located on the claimed route – one near point E and one on the side of the garage block south of the church hall.

## **1.8 Landowner and rebuttal evidence**

- 1.8.1 East Devon District Council were identified with the Land Registry as owning the car park and alleyway section of the claimed route. Some of the northern section of the claimed route is unregistered, possibly being owned by the Church. Both landowners were consulted, along with the Church Green Cottages who appear to have access rights over the claimed route to reach the rear of their properties. Approximately 10 metres of the claimed route at point E falls within the extent of the HMPE recorded on the List of Streets and it can therefore be presumed that public rights exist on this section.
- 1.8.2 None of the landowners consulted formally responded. EDDC queried whether the proposed route would impact upon the use of the car park but supplied no further information relevant to the claim.

## **1.9 Discussion**

- 1.9.1 Statute (Section 31 Highways Act 1980)  
Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged. The Schedule 14 application, (although not fully made), was submitted during the Parish Definitive Map Review and not in response to any specific action taken by a landowner to obstruct or prevent access to it from a particular date. There is no evidence of any actions by a landowner having called into question use of the route at a specific time for consideration under statute law.

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## 1.9.2 Common Law

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

1.9.3 Historical mapping suggests the northern part of the claimed route has physically existed since at least the mid-19<sup>th</sup> century when it formed access to the church and Glebe land. However, the historic mapping does not indicate what rights this path may have held. Likewise, there is no other evidence to support the existence, or otherwise, of public rights at this early stage.

1.9.4 The claimed route was not proposed for inclusion during the original Definitive Map process. At the time of the parish survey in 1950 the claimed route did not physically exist in its entirety as the car park and associated access onto School Lane had not been constructed. The route was not put forward by the parish council during subsequent uncompleted reviews in the 1970s. As such, the Definitive Map process and reviews provide little evidence either for or against public rights on the application route.

1.9.5 The available user evidence suggests that the public have used the route since the construction of the car park in the late 1960s, particularly the section between the car park and The Green. None of the users refer to seeing any signs suggesting that use was permissive or under licence, nor did they mention use being challenged or the route restricted or obstructed at any time. There is a possibility that use may have been by right as permission was implied for people to access the car park. However, users state that they used the route for multiple purposes – to access the car park, former Doctors Surgery, toilets, church and cemetery, as well as cutting all the way through to School Lane and the primary school. The presence of the sign stating '*public footpath to village*' also adds weight to use of the route from the car park to High Street being as of right. Even if the wording of this sign was unintentional, there is no doubting that the message it conveys to anyone using the route is that they are using a public footpath. As such, the user evidence suggests that even if there may have been some limited and specific use by right, there were many decades of use as of right by the public at large.

1.9.6 The Parish Council minutes provide an outline of the development of the land over which the proposal route runs. Though the minutes do not record the parish council explicitly referring to the route as a public right of way, the fact that they spent public money on installing anti-cycling barriers on it suggests that they considered it to have some sort of public status. They took an active interest in the path over several decades, attempting to

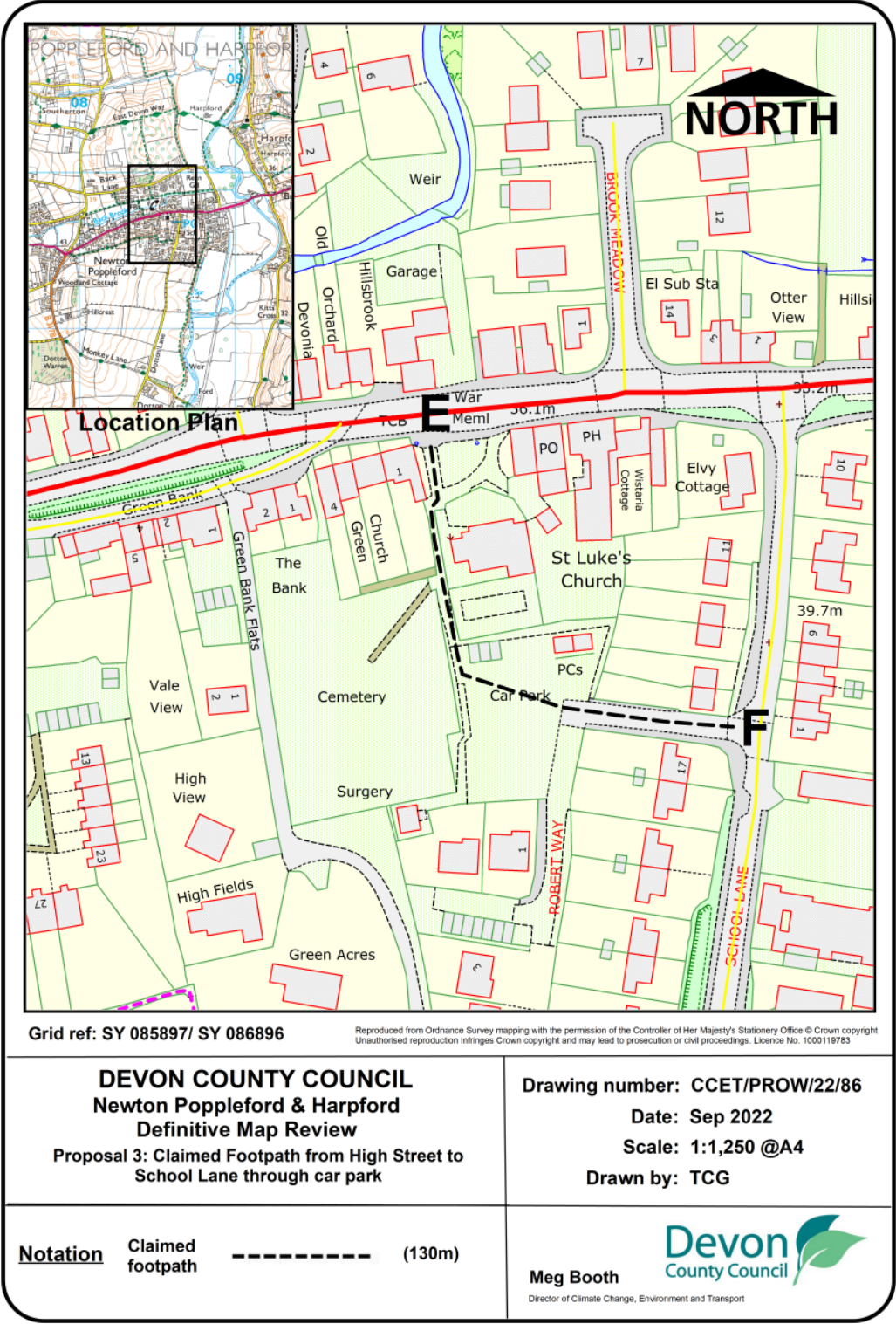
resolve issues such as dog-fouling and employing their handyman in keeping the area tidy. They also insisted on the path being re-surfaced when the former Doctors Surgery was constructed.

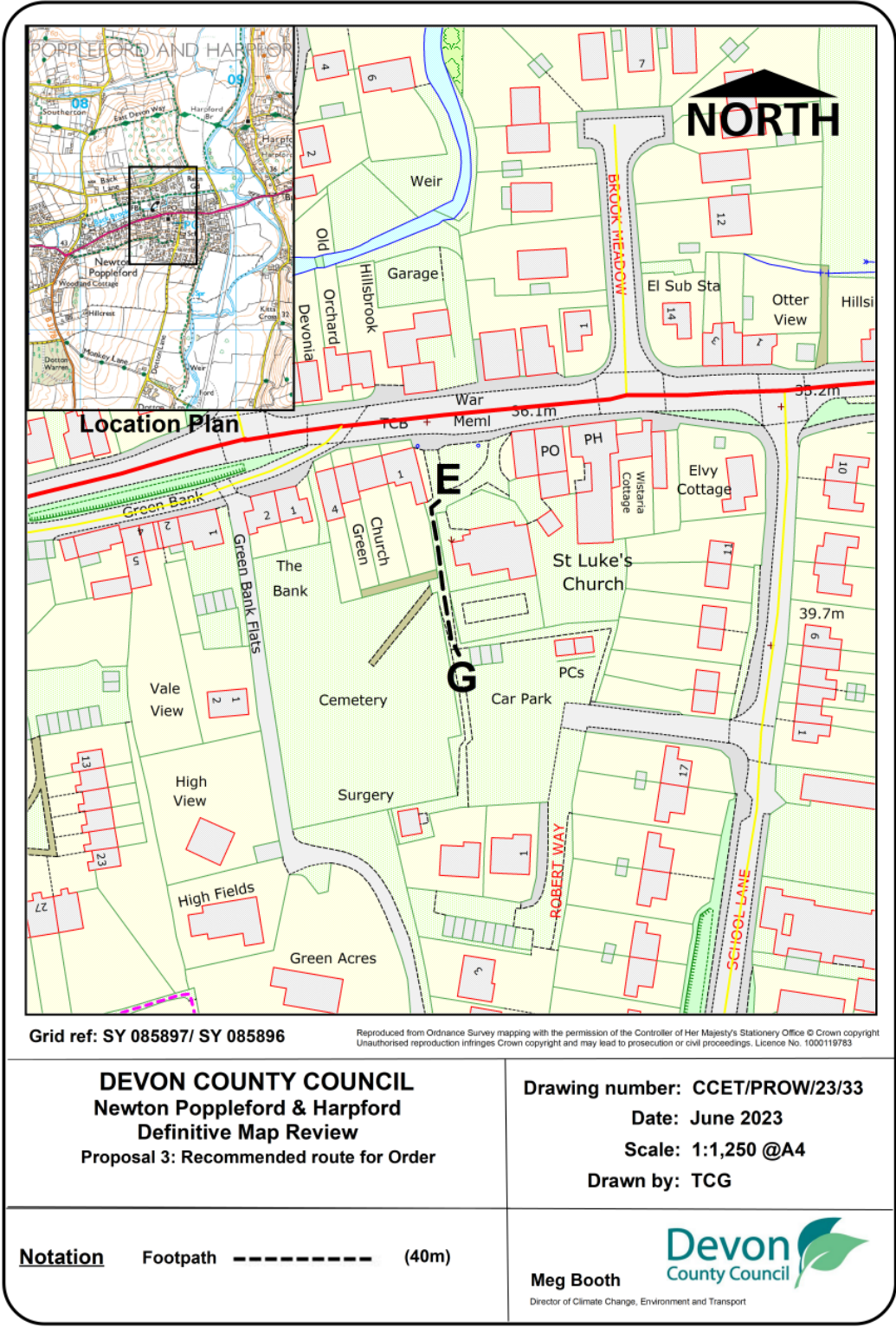
- 1.9.7 The evidence is strong for the enclosed section of the proposal route between The Green and the car park; however, it is less so for the rest of the proposal route through the car park to join School Lane. While there has undoubtedly been public use on this section only six of the twenty users who completed evidence forms referred to such use. Use of this section is not accompanied by corroborating evidence in the form of signage infrastructure or parish council minutes in the way the enclosed section is. No further user evidence was forthcoming during consultation to help establish an exact route through the car park that the public used, if indeed there was a set route. As such, although there is sufficient evidence to support dedication at common law for the claimed route between The Green and the School Lane car park, there is insufficient evidence to show dedication along the rest of the route through the car park itself and on to join School Lane.
- 1.9.8 With the evidence only supporting dedication of the section marked E to G of the claimed route, there arises the issue of it not terminating on a public highway. However, it is legally acceptable for a PROW to terminate at a 'point of interest' and the School Lane car park would qualify as such. It is a public car park (free to use), with public toilets situated in them (the toilets are managed by the parish council) and also a community noticeboard and until last year a Doctors Surgery.

## **1.10 Conclusion**

- 1.10.1 From this assessment of the evidence, in conjunction with other historical evidence and all evidence available, it is considered sufficient to support the claim that public rights subsist on the balance of probabilities on the northern part of the proposal route between the car park and The Green (with approximately the first 10m already recorded as HMPE). Accordingly, the recommendation is that an Order be made to record a Footpath in respect of this proposal as shown on the plan CCET/PROW/23/33.
- 1.10.2 Members should note that if the route is added to the Definitive Map as a public footpath, it will be more appropriate for the path to be inspected and maintained as a linking footway due to the path being tarmacked and in an urban area. As referenced at 1.1.1., the Neighbourhood Highway Officer has been consulted on this proposal.

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Public Rights of Way Committee  
13 July 2023

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

Report of the Director of Climate Change, Environment and Transport

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

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### 1) Recommendation

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

### 2) Summary

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

#### Modification Orders

Order	Decision
Devon County Council (Restricted Byway No. 48, East Down & Restricted Byway No. 48, Marwood) Definitive Map Modification Order 2017	On 9th March 2023 the above Order was confirmed with the modified status of Restricted Byway following a Public Inquiry held by the Planning Inspectorate. Following the confirmation of the Order, a challenge has been made to the High Court by the landowner.  A decision is awaited as to whether the landowner challenge is successful.
Devon County Council (Bridleway No. 28, Wembury) Definitive Map Modification Order 2022	Notification from PINS that the objection to the Order will be considered via written representations.
Decision that no Modification Order be made to modify the Definitive Map and Statement by the addition of a public footpath continuing from Stanton Lane to Footpath	Appeal lodged to PINS by the applicant. Deadline of 21 July for DCC to submit a response.

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No.16, Aveton Gifford as marked C - D - E - F on drawing number HIW/PROW/22/28	
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## **Meg Booth**

Director of Climate Change, Environment and Transport

**Electoral Divisions: Combe Martin Rural; Bickleigh & Wembury; and Salcombe**

## **Local Government Act 1972: List of background papers**

Background Paper Nil

### **Contact for enquiries:**

Name: Richard Walton

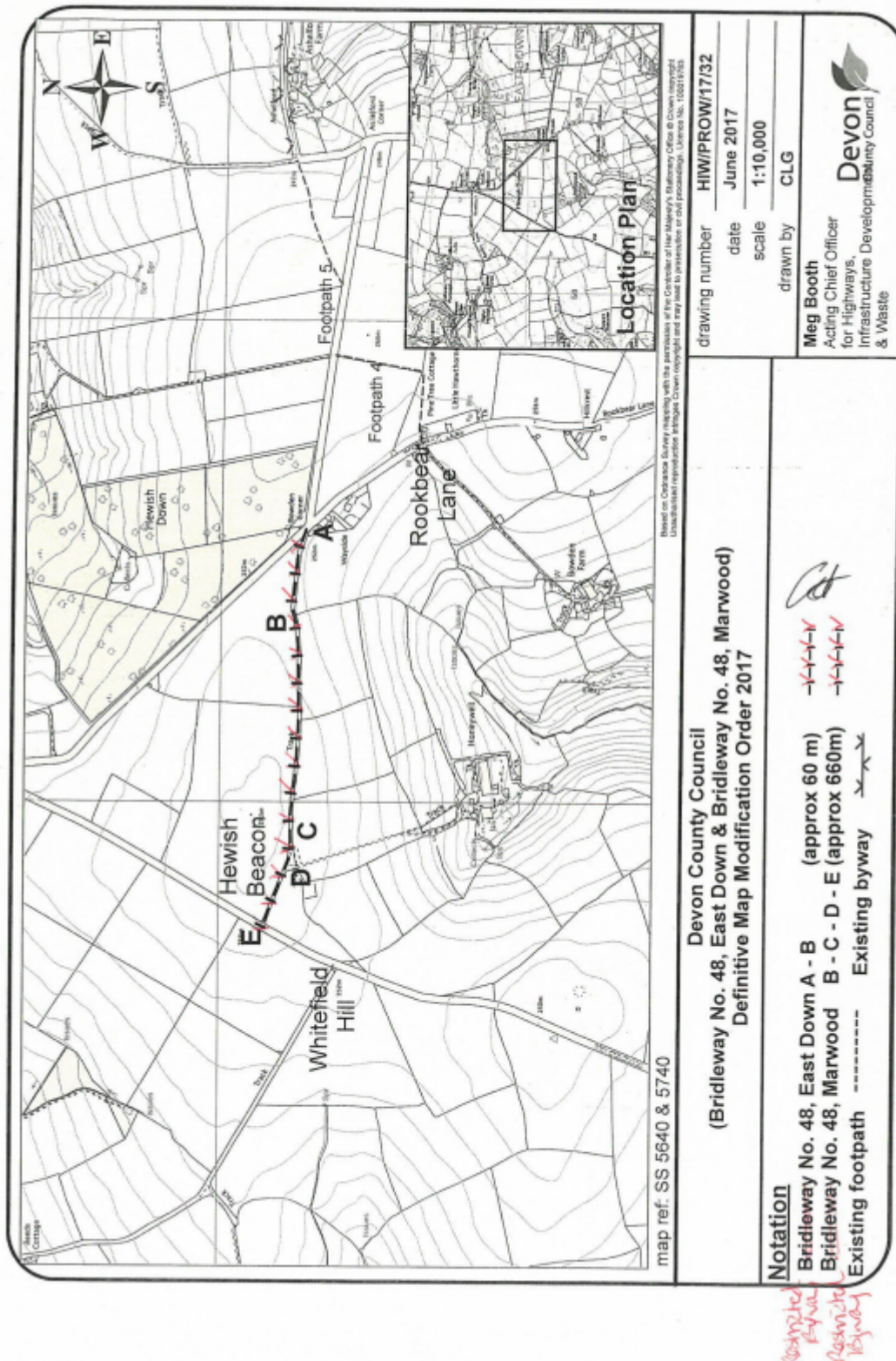
Telephone: 01392 383000

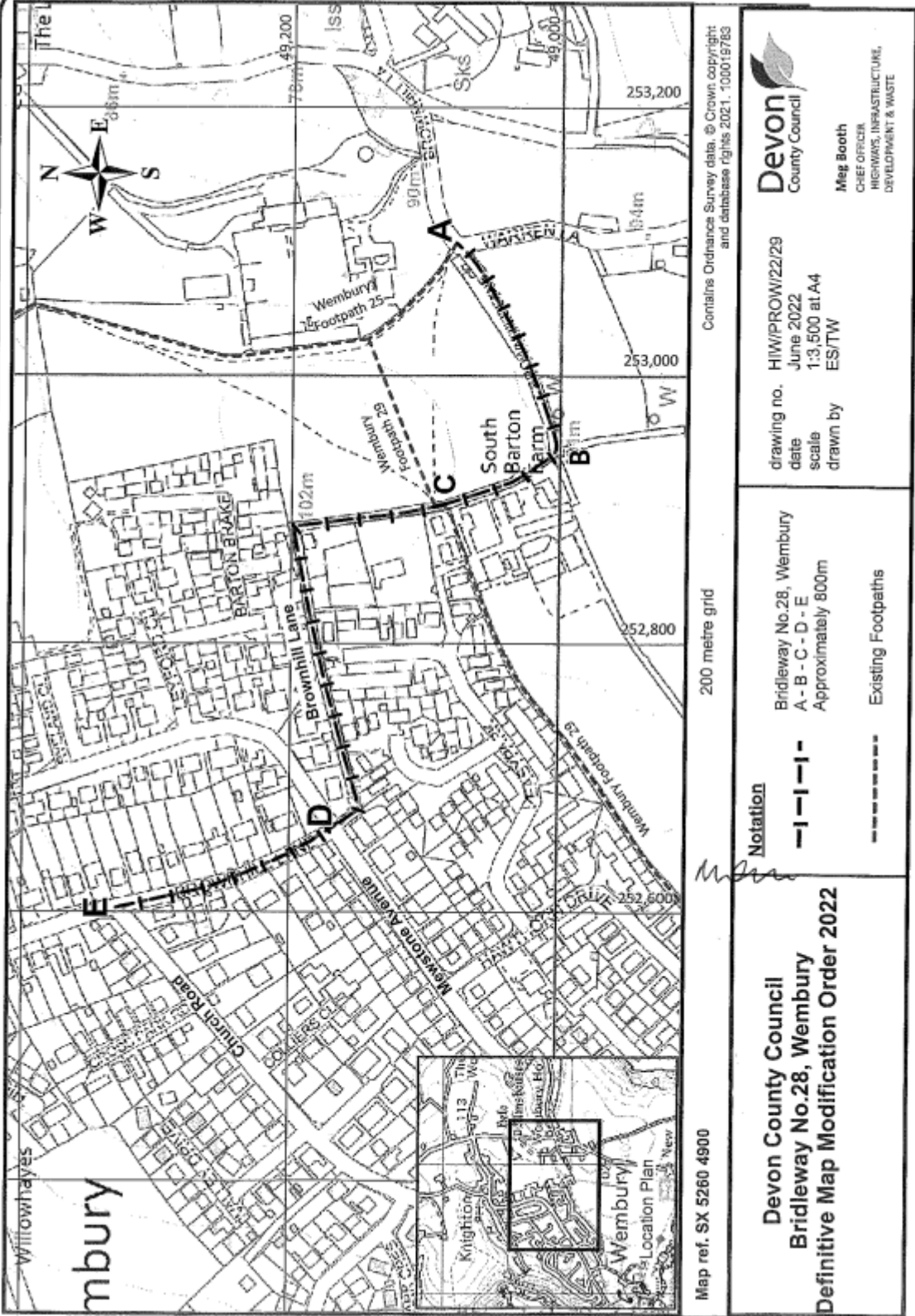
Address: M8 Great Moor House, Bittern Road, Exeter

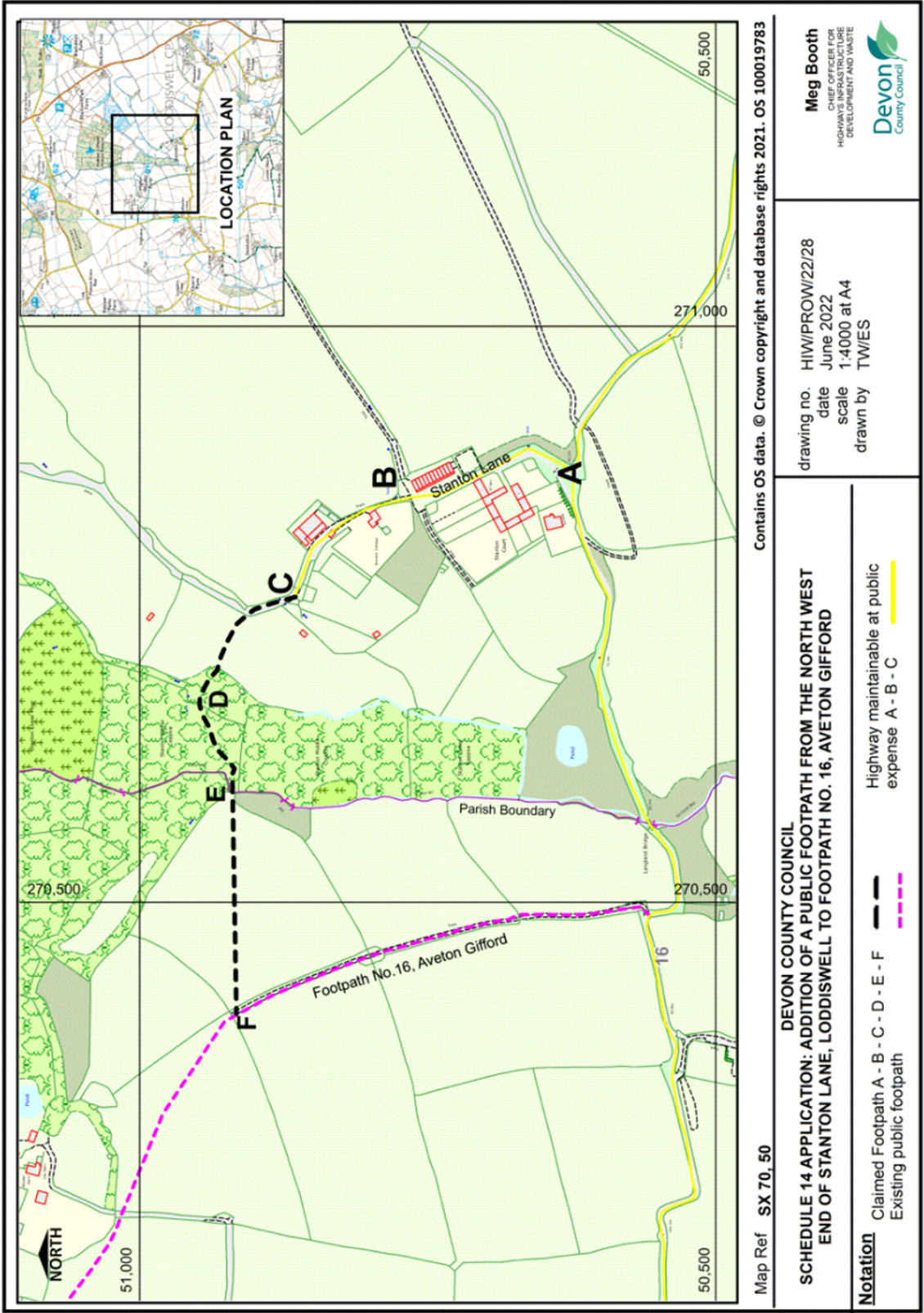
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sc/cr/Public Inquiry, Informal Hearing and Written Representation Decisions

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CET/23/51

Public Rights of Way Committee  
13 July 2023

## Public Path Diversion and Definitive Map Modification Orders

Report of the Director of Climate Change, Environment and Transport

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

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### **1) Recommendation**

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

### **2. Summary**

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

#### Diversion Orders

Payhembury (Footpath Nos. 11, 20 & 21) Definitive Map Modification Order 2021

#### **Meg Booth**

Director of Climate Change, Environment and Transport

**Electoral Division: Whimble & Blackdown**

### **Local Government Act 1972: List of background papers**

Background Paper Nil

#### **Contact for enquiries:**

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sc/cr/Public Path Diversion and Definitive Map Modification Orders

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# Agenda Item 10

