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

County Hall
Topsham Road
Exeter
Devon
EX2 4QD

Date: 15 November 2023

Contact: Yvette Welsh, 01392 382406

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PUBLIC RIGHTS OF WAY COMMITTEE

Thursday, 23rd November, 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 - 4)
Minutes of the Committee meeting held on 13 July 2023 (previously circulated).
- 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 5 - 20)
Draft minutes of the meeting held on 18 September 2023 attached.

DEFINITIVE MAP REVIEWS

- 5 Parish Review: Definitive Map Review - Parish of Parracombe - Part 3 (Pages 21 - 44)
Report of the Director of Climate Change, Environment and Transport
(CET/23/89)

Electoral Division: Combe Martin Rural

- 6 Parish Review: Definitive Map Review - Parish of Littleham 2003-23 (Pages 45 - 52)
Report of the Director of Climate Change, Environment and Transport
(CET/23/90)

Electoral Division: Bideford East

- 7 Parish Review: Definitive Map Review 2020-2023 - Parish of Washfield (part 2)
(Pages 53 - 72)
Report of the Director of Climate Change, Environment and Transport
(CET/23/91)

Electoral Division: Tiverton West

- 8 Parish Review: Definitive Map Review - Parish of Aylesbeare (Pages 73 - 100)
Report of the Director of Climate Change, Environment and Transport
(CET/23/92)

Electoral Division: Otter Valley

- 9 Parish Review: Definitive Map Review 2020-2023 - Parish of Exminster (Pages 101 - 116)
Report of the Director of Climate Change, Environment and Transport
(CET/23/93)

Electoral Division: Exminster & Haldon

- 10 Parish Review: Definitive Map Review - Parish of Brixton (Pages 117 - 120)
Report of the Director of Climate Change, Environment and Transport
(CET/23/94)

Electoral Division: Brixton & Wembury

SCHEDULE 14 APPLICATIONS

- 11 Public Path Orders - Proposed Diversion: Footpath No.2 Bere Ferres (Pages 121 - 134)

Report of the Director of Climate Change, Environment and Transport
(CET/23/95)

Electoral Division: Tavistock Rural

MATTERS FOR INFORMATION

- 12 Definitive Map Modification Orders (Pages 135 - 138)
Report of the Director of Climate Change, Environment and Transport
(CET/23/97)

Electoral Division: Otter Valley

- 13 Public Path Orders (Pages 139 - 150)
Report of the Director of Climate Change, Environment and Transport
(CET/23/98)

**Electoral Divisions: Combe Martin Rural; South Molton; Okehampton Rural;
Creedy, Taw & Mid Exe; Seaton & Colyton; Broadclyst; Braunton Rural;
Chulmleigh & Landkey; Tiverton West**

- 14 Public Inquiry, Informal Hearing and Written Representation Decisions; Directions and High Court Appeals (Pages 151 - 154)
Report of the Director of Climate Change, Environment and Transport
(CET/23/96)

Electoral Divisions: Combe Martin Rural; Seaton and Colyton

- 15 Rights of Way Improvement Plan (Pages 155 - 158)
Report of the Director of Climate Change, Environment and Transport
(CET/23/99)

Electoral Divisions: All

- 16 Dates of Future Meetings
7 March, 11 July and 14 November 2024 and 6 March 2025.

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

Nil

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Induction Loop available



PUBLIC RIGHTS OF WAY COMMITTEE

13 July 2023

Present:-

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

Apologies:-

Councillors J Brook and M Squires

* 61

Minutes

RESOLVED that the minutes of the meeting held on 9 March 2023 be signed as a correct record.

* 62

Items Requiring Urgent Attention

There was no item raised as a matter of urgency.

The Chair informed the Committee that there was a request to defer agenda item 6 as representatives were unable to attend due to a family bereavement.

There was also a request to defer agenda item 7 to enable further assessments to take place including possible impact on part of the lane.

It was agreed to defer both items until the next meeting in November.

* 63

Devon Countryside Access Forum

The Committee received the draft minutes of the meeting held on 24 April 2023.

The minutes were noted.

* 64

Parish Review: Definitive Map Review - Parishes of East Budleigh with Bicton

The Committee considered the Report of the Director of Climate Change, Environment and Transport (CET/23/46) which examined one proposal that arose as a result of the Definitive Map Review in the parishes of East Budleigh with Bicton. This was for a 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.

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PUBLIC RIGHTS OF WAY COMMITTEE

13/07/23

Members were informed that from assessment of the user evidence, in conjunction with the lack of any historical evidence, it was considered that there is insufficient evidence to support the claim that this route is a public footpath.

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

RESOLVED that

(a) no Modification Order be made in respect of Proposal 1.

* **65** **Parish Review: Definitive Map Review - Parish of Parracombe - Part 3**

This item was deferred until the next meeting.

* **66** **Parish Review: Definitive Map Review - Parish of Washfield - Part 2**

This item was deferred until the next meeting.

* **67** **Parish Review: Definitive Map Review - Parish of Newton Poppleford & Harpford - Part 2**

Mr R Swan, the applicant for Proposal 3, attended the meeting under the Council's Public Participation scheme and spoke in favour of recommendation.

The Committee considered the Report of the Director of Climate Change, Environment and Transport (CET/23/49) on a proposal arising from the Definitive Map Review in the parish of Newton Poppleford & Harpford. This was the second report and examined a claimed footpath between High Street and School Lane in Newton Poppleford.

The Report stated from the assessment of the evidence, in conjunction with other historical evidence and all evidence available, it was 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.

There was further discussion regarding the full-length of the proposed route with claims that this was well used.

It was **MOVED** by Councillor Chesterton, **SECONDED** by Councillor Chubb and **RESOLVED**

- (a) 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; and
- (b) that prior to making the Order, the Council negotiates with the landowners with a view to extending the proposal to Point F on the plan

CCET/PROW/22/86, and subject to these negotiations being successful, delegate authority to the Chair of the Committee to determine the proposal.

* 68 **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/23/50) which outlined decisions received from the Secretary of State since the last meeting of the Committee.

Members noted the report.

* 69 **Public Path Diversion and Definitive Map Modification Orders**

The Committee received the report of the Director of Climate Change, Environment and Transport (CET/23/51) on Public Path Diversion and Definitive Map Modification Orders that had been confirmed as unopposed under delegated powers.

Members noted the report.

* 70 **Dates of Future Meetings**

Dates of future meetings were noted as:

23 November 2023 and 7 March 2024

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 2.45 pm



Minutes of the Sixty-Fifth meeting of the Devon Countryside Access Forum held at County Hall, Exeter EX2 4QD

Monday, 18 September 2023

Attendance

Forum members

Cllr Richard Chesterton
Chris Cole (Vice-Chair)
Lucinda Francis
Gordon Guest
Cllr Linda Hellyer
Sue Pudduck
Tino Savvas

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

Devon County Council Officers and others present

Richard Walton, Public Rights of Way and Country Parks Manager, DCC
Hilary Winter, Forum Officer, DCC
Philip Hackett, Access Field Officer, South West, British Horse Society
Ms J Mooney and five pupils (Stover School)
John Nuttall and Janet Lillie (Residents Against the Landfill)

1. Apologies

Apologies had been received from Andrew Baker, Jo Burgess, Tim Felton and Jo Hooper.

2. Declarations of interest

There were no declarations of interest.

3. To approve minutes of meeting held on 24 April 2023

Minutes of the meeting held on 24 April 2023 were approved and signed.

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4. Matters arising

4.1 Tamara Coast to Coast trail

The Tamara Coast to Coast trail had been officially opened at a well-attended event. Lorna Sherriff had been present as SW Coast Path Officer.

4.2 Devon Wildlife Trust

The request had been made for sight of management plans with a focus on recreational access elements. Path designs were being drawn up for Northbrook Park, Exeter, and the DCAF had been invited to comment. A site meeting would take place, probably in October. A couple of members would be sought for a small working group, via email.

Action: Forum Officer

4.3 Network Rail

The Level Crossing Manager for Network Rail had said earlier that works at Sandy Lane, Rewe, should be complete at the end of August, enabling the crossing to reopen to walkers. Finalisation of the project had not yet been confirmed.

4.4 British Horse Society and multi-use

The response to Philip Hackett, British Horse Society, from Devon County Council was noted. Concern was expressed that the main focus of grants from the Department of Transport, in particular Active Travel funding, was driven by sustainable transport for commuter journeys, and does not seem to recognise the importance of leisure-based travel. The DfT guidance does not seem inclusive.

Richard Walton, Public Rights of Way and Country Parks Manager, confirmed he was discussing the need for inclusion of horse riding with transport planners in Devon County Council. There might be some flexibility using the Rights of Way Improvement Plan as a supporting document.

The rural nature of Devon was discussed. The focus for funding was predominantly on larger urban areas not villages. Given the policy on multi-use, Richard Walton was asked to explore with colleagues whether such grants could be more creative with regard to rural areas.

Action: Richard Walton, Public Rights of Way and Country Parks Manager.

5. Public questions

Two public questions were submitted, both relating to item 13.1 Lower Brenton landfill planning application. It was agreed to consider these at that point

6. Correspondence log

The correspondence log was noted. Attention was drawn to item 5 and the response to a member of the public who had raised concerns about the vegetation cutting policy on recreational trails, with particular reference to the Wray Valley Trail.

Richard Walton confirmed that, due to the size of the network and resourcing, seasonal vegetation cuts need to be based on core principles, rather than bespoke arrangements for individual paths. A key focus is public safety and accessibility. The Wray Valley Trail cutting would be reviewed for 2024, to identify if there were opportunities to adjust the cutting regime and/or work with local organisations to provide a more tailored approach. Public comments for the network as a whole were generally equally divided between concerns about cutting too much and cutting too little. This year had seen considerable vegetation growth, with anecdotal evidence indicating greater emphasis on requests for more cutting. The Public Rights of Way team recognise the value of biodiversity in verges. However paths often need to be cut in May due to safety, sightlines and other factors.

Where P3 groups existed in parishes these could determine local cutting programmes using voluntary and community networks.

Richard Walton agreed that cutting and removing vegetation from site could reduce growth and increase biodiversity, but this was more labour and cost intensive and so was not currently viable across the network.

Chris Cole stated that the Trail Riders' Fellowship carry out maintenance of some unclassified Unsurfaced County Roads in the County, having successfully secured insurance from Zurich to cover working with county councils and use of power tools. Users have to be competent and have appropriate certification.

Tim Spray offered the help of Ramblers' members if sufficient training could be given.

7. Report on training events and meetings attended by DCAF members

7.1 Farm visit, Silverton

Andrew Baker was thanked for enabling an interesting farm-based training day in Silverton. It provided an opportunity to discuss land management and use of public rights of way.

7.2 Training day - Pebblebed Heaths and Lower Otter Restoration Project

Clinton Devon Estates had given significant time and support for the DCAF training day to the Pebblebed Heaths and the Lower Otter Restoration Project. It had been a very useful and informative day.

The new footbridge had just been put in place, but the breach had been delayed due to nesting birds.

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It was agreed it would be useful to revisit in the future.

7.3 Managing Dogs in the Countryside

Sarah Slade, Lorna Sherriff and the Forum Officer had attended a useful training day on Managing Dogs in the Countryside, organised by the ADEPT SW Enforcement Officers' Group and hosted by Dartmoor National Park. A number of organisations gave presentations on partnership working and good practice, including Devon and Cornwall Police.

The National Trust is looking to work with dog owners and use sites in the best way to protect wildlife.

Some of the focus was on dangerous dogs and ways of dealing with this issue. Training was part of the answer. Irresponsible dog owners were a perennial problem, not helped by the complexity of dog legislation.

Zoning land for dog walking and no dogs was mentioned.

Although the matter of varying dog legislation was raised, it was not the role of the Police to determine laws.

The next event would focus on livestock and people accessing the countryside.

7.4 Otter Landscape Recovery Stakeholder Group

Sarah Slade had attended a meeting of the Otter Landscape Recovery Project to represent the DCAF, alongside other stakeholders. Clinton Devon Estates would be submitting a Landscape Recovery Project bid to Defra for initial funding to look at the feasibility of putting together a significant bid for environmental change on a much bigger scale across a wider area in East Devon. This will include farming land of grade 1 and 2 value, as well as having access implications. The outcome will not be known until later in the year and would be a competitive process against other key players nationally.

8. To note minutes of the Public Rights of Way Committee held on 13 July 2023

Minutes of the Public Rights of Way Committee meeting held on 13 July were noted.

9. Public Rights of Way update

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

Staffing

An additional Senior Officer, Simon Houghton, had been appointed internally to lead the team of five wardens in the north of the County. Steve Gardner would lead the

wardens based in the southern area. There had been a couple of warden vacancies, one a longstanding vacancy and the other for the warden area previously covered by Simon Houghton. The P3 Coordinator had been appointed to the vacancy in south Devon. Subject to final details, a very experienced candidate had been appointed to north Devon to commence in mid-October. A very good response had been received to the external advertising for this post.

An approval request had been submitted to the senior leadership team to recruit for the now vacant P3 post. In the interim the P3 Coordinator had been doing some work to ensure continuity. A decision was expected shortly. It was hoped to seek opportunities to strengthen the wider partnership work of the role by working more closely with other voluntary groups and networks.

An approval case was still being worked on for the Senior Officer post to lead the Definitive Map Review and Technical team.

Lower Otter Restoration Project

The new bridge, which will become the route for part of the South West Coast Path and King Charles III England Coast Path, had been put in place. The Public Rights of Way team is working with the Environment Agency and East Devon District Council on Path Orders related to realignment of the paths onto the new bridge and other locations within the project area. East Devon District Council had done some earlier orders under the Town and Country Planning Act but these were withdrawn to allow mapping errors to be corrected.

The Environment Agency intended to work on the embankment at the end of October.

Exe Estuary Trail

The Environment Agency was using its powers to close part of the Exe Estuary Trail to carry out emergency embankment repairs. The PRow warden is liaising with Kier, the contractors, to look at managed access around the work. Recent flooding may potentially have impacted on the project.

Devon County Council is commencing a three-month closure to replace the rotting wooden boardwalk south of Topsham, a £1 million investment, using composite materials more resistant to the damp environment. This should have a significantly longer lifespan. A diversion will be in place, adding a mile or so to the trail, using a road crossing and minor roads. It is hoped to complete works before the Christmas holiday period.

Double Waters

The old, significantly eroded footbridge over the river at Double Waters, Walkhampton, had been replaced with a new footbridge. The aspiration was to provide a higher specification bridge suitable for horses and bicycles as the route across the river connects bridleways. A previous application to Dartmoor National Park in 2021 had been withdrawn due to the high level of objections to the design required to meet the required standards for a bridge suitable for cyclists and horse

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riders. Without action to replace the footbridge, public access would have been lost as the existing structure was no longer safe.

Flooding and climate change

Flash flooding in May had significantly impacted on Newton Poppleford and an historic culvert next to the Grand Western Canal at Lowdwells had been subject to excessive volume of water, impacting on nearby properties. Contractors should be on site shortly to repair sections of paths and the culvert. Remedial works were expected to cost £300,000.

A request was made for the PRoW team to put up information boards on some of the routes so that the public were aware of planned work.

Action: Richard Walton, Public Rights of Way and Country Parks Manager.

Concern was expressed about implications for budgets following unplanned expenditure. Richard Walton confirmed discussions were taking place with Government for additional investment if the relevant formulae could be met. Separate capital codes were identified for unplanned events. Ultimately it would have to balance out on the Highways capital programme.

Stover Country Park

Purchase of an area of agricultural land between the Country Park and Stover School had been completed. This would relieve pressure on the lake area. It would enable a new access loop and improve the trail network through connections to existing trails and permissive access on Sibelco land, as well as allowing partial restoration of part of the Serpentine Lake.

Contractors will be on site during the winter to carry out car park improvements and upgrade, remodel and extend the visitor centre. The building will become more energy efficient with new heat pumps and a better drainage system, thus producing revenue budget savings in the longer term.

It was not feasible for the costs of renovating the subterranean stables at Stover School to be included as part of the Delivery phase bid, but the Development phase produced conservation plans to RIBA Stage 3. Historic England remain interested in supporting stabilising and conserving the stables and temple, with potential future funding towards a related, separate project. Potentially there might be permissive access opportunities to enable visitors to the park to see the stables but not as a specific part of this Delivery phase.

Community Infrastructure Levy (CIL) funding had been approved linked to the role of Stover in meeting growth through the planning process. It was noted that the potential impact of planned increased visitor use would be a challenge if numbers were higher than anticipated. Additional information was requested regarding visitor numbers and projections.

Action: Richard Walton, Public Rights of Way and Country Parks Manager.

Funding details were being finalised with National Highways for the approved

grant regarding the Serpentine Lake and the Gatehouse.

Under-represented audiences and social enterprise organisations were being encouraged to use the park with supported visits and a focus on health and well-being. This work was progressing really well.

King Charles III England Coast Path

Works previously mentioned had been completed. Grant bids would be submitted on the Kingswear to Lyme Regis stretch within the next couple of months. Some improvement works had been completed since the initial reports were written. Projects identified were minor signage around the Exe Estuary and improved steps and handrails at Froward Point.

At Mothecombe in south Devon costings were being put together for steps in the wall at the top of the beach to enable it to become the high tide route.

Designation of the sections between Combe Martin and Marsland Mouth and Cremyll to Kingswear had not been finalised. These were due with the Secretary of State imminently with a decision likely early to mid-2024.

Other works

Improvements for disability access at the Tavistock Canal and on the South West Coast Path at Wembury, where a compressed stone path had been put in, were commended. Richard Walton confirmed that the Tavistock Ramblers had been pivotal in driving improvements forward on the Canal and the National Trust and South West Coast Path Association similarly at Wembury.

Highways Capital Innovation Fund

A bid had been put in to trial different surfaces to reduce carbon impact, including recycled rubber.

10. Rights of Way Improvement Plan review update and notes of DCAF working group

Richard Walton, Public Rights of Way and Country Parks Manager, confirmed that the timetable for the RoWIP review had been revised to allow more feedback from organisations, including some who had not previously had the opportunity to comment, such as the Slow Ways project. Some of the proposed updates already logically flow into policy and have informed the Highway Infrastructure Asset Management Plan.

DCAF members were asked to suggest any organisations which might not have been consulted.

Action: DCAF members

The Highway Asset Management Plan had now gone through formal adoption process.

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The revised proposal was for wider public consultation to take place in October. A further DCAF working group was suggested for late November. An update would go to the PRow Committee in November. It was envisaged that the final version would go to the January meeting of the DCAF and the Public Rights of Way Committee in March 2024.

Dates for a DCAF working group would be circulated.

Action: Forum Officer

Gordon Guest confirmed that the Sensory Trust document on Outdoor Accessibility, referenced on page 30 in the DCAF working group notes, covered all protected characteristics. The Government specifically mentioned wheelchairs and mobility scooters in its references to public rights of way.

Cllr Hellyer said councillors had been present at demonstrations of different types of highway surface, including elastomac which was self-sealing.

11. Defra response on dog issues

The Defra responses were noted. Disappointment was registered that the responses had not dealt with the main subject, the complexity of legislation, and had a focus on dangerous dogs.

It was agreed it would be useful to share information with other LAFs and see if a joint approach was possible. Organisations such as the Dogs Trust were mentioned, plus working with Natural England to clarify the position on different land types. A draft document, incorporating earlier research, would be agreed with DCAF members and circulated more widely.

The role of education in informing members of the public was discussed. Whilst a concern was registered that there was a danger of extending beyond the legislative concerns, it was thought education flowed on logically. The main focus was on scope for harmonising the legislation.

It was suggested it would be useful to see whether any members of the Responsible Dog Ownership Working Group are based in the south west.

Action: Forum Officer

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

12.1 Shercroft Close, Broadclyst to Mosshayne Lane (Devon County Council, DCC/4336/2023)

The response was noted and approved.

12.2 Felling licence, Trenchard Farm. Forestry Commission

The response was noted and approved.

12.3 Planning application for multi-use trail. Buttercombe - Foxhunters, West Down. DCC/4363/2023

The response was noted and approved.

Feedback had been received from the agent submitting the application.

- *The proposed bollards are easily removable using a key to unlock, allowing you to then pull them from a fixed ground socket. The ground socket is installed flush with the finished ground level and does not present a trip hazard. Identical bollards have recently been installed on the Tarka Trail near Braunton by DCC's PROW Team.*
- *With regards to the proposed surfacing, the trail will have a bound, tarmacked surface. The Design Manual for Roads and Bridges design standard CD 143 (Designing for walking, cycling and horse-riding) classifies this type of construction as being 'good' for horse-riding.*
- *This type of material will provide a more durable surface, which will require far less maintenance in future when compared to a crushed stone to dust option.*
- *Parts of the trail are also subject to occasional agricultural vehicle movements (which have an agreed right of way over the track), so therefore a crushed stone to dust surface would most likely need more regular maintenance at this location.*
- *Long lengths of the existing Tarka Trail between Braunton and Torrington have a tarmacked surface.*

Concern was expressed at the engineered surface and it being intrusive in the landscape. It was thought asphalt could be laid at particular crossing points. Defra funded stone to dust tracks for agricultural vehicles so this surface is appropriate for agricultural use. Although stone to dust required regular maintenance, tarmac had a high initial capital cost. It was resolved to re-emphasise the desire for a different surface.

Action: Forum Officer to circulate draft

13. Current consultations

13.1 Lower Brenton Farm landfill application DCC/4337/2023

Two public questions had been received:

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1. Question received from a member of the public

The stated objectives for the Devon Countryside Access Forum are to improve public access to land for the purposes of open air recreation and enjoyment.

Devon County Council's Green Infrastructure Strategy highlights the special qualities, distinctive character and diversity of Devon's landscapes, which is highly valued by those who live within and visit the county. One of its key guiding principles is:

"To protect, manage and plan an attractive green infrastructure network that conserves and enhances access to and enjoyment of valued landscapes for recreation, education and lifelong learning".

The proposed landfill site at Brenton Road sits in an Area of Great Landscape Value and should therefore be protected. Siting large earth bunds next to public footpaths and rights of way will destroy views currently enjoyed by walkers. Add to that, the noise generated by plant and vehicle movements on the site will eliminate the existing tranquility.

BT Jenkins have uploaded documents in support of their application. When the revised planning application (DCC /4337/2023), despite a second attempt at mitigation, is clearly in contravention of these stated objectives, how can approval for a landfill site operating for a minimum of 10 years be considered in any form?

2. Question received from John Nuttall

As a group of concerned local residents who all enjoy the local PRowS in the area of the proposed landfill site consisting of 3 footpaths:

- *Shillingford St George 14*
- *Kenn 54*
- *Kenn 16*
- *1 Bridleway, Shillingford St George 19*
- *Shillingford Lane, which is mostly used by walkers, horse riders and cyclists, and little used by motor vehicles*
- *Sampsons Hill unsurfaced county road*

It is our understanding that the forum is promoting improvements to and the enjoyment of PRowS. We are worried about the use of heavy machinery and a recycling plant, all of which will create noise and dust which affect all of the above paths, as well as spoiling the fabulous views.

What can you do to help maintain this rural area and prevent it becoming an industrial site for at least the next 10 years?

Sarah Slade and the Forum Officer had visited the site. This followed an earlier visit accompanied by Jo Burgess. Some initial reflections on the planning application had been sent to members and were discussed. These

focussed on:

- The bunds designed to reduce noise and dust would impact on the experience of using the public rights of way.
- Kenn footpath 16 would be gated where it crossed the site entrance road, now located to the south. The onus was on access users to cross safely rather than on the site operators to ensure vulnerable users were protected.
- Alongside Kenn footpath 54, it was proposed to offset a fence 4 m from the centre of the hedge. This was not considered adequate due to potential vegetation growth and the width of the hedge.
- Use of Shillingford Lane by access users had not been considered in creating the throughway to the upper landfill fields.
- Long views across the area would be impacted by bunds and subsequently by high hedges after restoration.

Additional points were raised. The consultants' reports included their judgements about mitigation and the impact of lorry movements. The proposed movements were 150-200 per day with working times from 7.00 a.m. to 6.00 p.m. daily and Saturdays from 7.00 a.m. to 1.00 p.m. These working times gave little opportunity for people to enjoy the PRow at times of quiet. It was suggested a planning condition could be justified to limit hours of operation on the site.

The operating hours also had an impact on safety of the crossing if people were using the public right of way at dusk.

Whilst any Environment Impact Assessment took account of dust and noise these could still impact on access users, even if at legal levels. This was difficult to monitor. There were statutory controls on crusher noise levels.

It was possible there could be mud and debris if wheels were not adequately cleaned.

The Phase 3 drawing referred to a cow track. It was not clear how this related to the adjacent public right of way and what the surfacing would be. Moving the fence to the north of the bund by the office and recycling centre was suggested.

Richard Walton, Public Rights of Way and Country Parks manager, reminded the Forum that the landowner/occupier does not have the right to put gates up on the public right of way. This could potentially be deemed an obstruction. Concern was raised by members as to whether Equality Act breaches might also be an issue.

The proximity of the public rights of way in the landfill area to new housing developments around the A379 meant it was likely PRow would be more used and valued.

It was unclear whether the site operator or the PRow team would bear the additional costs of vegetation clearance on public rights of way and

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vegetation growing out from bunds.

Members of the public present gave clarification on some points. They also mentioned that the new scheme was more disruptive as more public rights of way were impacted for the duration of the landfill operation. Shillingford Lane was used for recreational access. The bunds would be there for ten years and might potentially slip. Concern was expressed about cyclists using the Brenton Road overbridge or travelling across the entrance to the A379. The office and recycling area was large and would have crushers working with piles of waste. Bulldozers would be working across the landfill area.

A response to the planning application would be drafted and circulated for approval.

Action: Forum Officer.

13.2 A379 bridge

Chris Cole, Gordon Guest and the Forum Officer had been out on site with the bridge engineer and contractors in August. The initial proposal for a landing on the steep approach to the bridge had not been included but there were now plans to incorporate a rest area by taking down an area of fencing and cutting back into the bank. The bridge design was excellent and interesting with artwork and seating areas. The staggered swing barriers, which could be unlocked for maintenance, were easy to get through and highly visible.

Drawings for the rest area would be circulated to members for comment when available.

Action: Forum Officer

13.3 Felling Licence Application ref 018/2870/2023 Woldford Lodge (Dunkeswell Turbary)

A number of felling licences were coming through. These were usually for reasons of disease control or habitat management. There was a brief discussion about whether a standard response should be made but no definite conclusion was reached.

This licence was to fell scrub encroaching on priority heathland and to manage it with grazing cattle using no-fence technology. It was resolved to send a response incorporating the following points:

1. Signs should be erected to explain no-fence technology to the public should they be concerned about cattle grazing.
2. An emergency telephone number should be included should the no-fence technology fail.
3. It would be helpful to know timing of works.

On this occasion no public right of way was involved. There is one main track across the common. If felling took place across a public right of way a temporary traffic regulation order could be put in place.

Action: Forum Officer to circulate draft.

14. To approve annual report

The draft Annual Report was approved and would be published and submitted to Natural England.

Action: Forum Officer

15. Any other business

15.1 Local Cycling and Walking Infrastructure Plans

It was noted a number of Local Cycling and Walking Infrastructure Plans were being developed, including Cullompton and Tiverton, the Clyst Valley and County-wide. A response had been submitted earlier to the Exeter LCWIP.

It was agreed these were incredibly detailed and complex and it was difficult to give meaningful advice without knowledge of the area. DCAF members as individuals could respond.

It was noted that the LCWIPs were very commuter focussed yet leisure was highly important, particularly in rural areas and coastal towns. On the ground there was often little distinction between leisure and commuting.

It was resolved that the DCAF should continue to respond where it could. The process was well-designed but the critical part was what difference comments made.

The Forum Officer agreed to pull together some extracts from the DCAF position statements which could be used alongside specific comments.

It was agreed that individual members could attend meetings as fact finding on behalf of the forum. Gordon Guest had been permitted to attend a presentation on the Cullompton and Tiverton LCWIP following email exchanges with the consultants, WSP, and had a particular interest in the links from Tiverton to Cullompton and Killerton. The concern was how local knowledge was included. With the urban focus, Gordon felt that the main priority was footpaths along main roads rather than better alternatives.

The LCWIPs, following internal scrutiny and some key stakeholder involvement, would go out for public consultation. It was agreed the DCAF should ask to be represented and involved in efforts to include wider leisure use and horse-riding, preferable at an early stage.

Action: Forum Officer

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It was proposed that a letter should go to Government. This would be considered in future.

15.2 Open access review

Natural England had confirmed that the review of open access maps would now take place in 2030 and initial planning had commenced.

15.3 Natural England Local Access Forum Sharepoint site

Natural England had set up a SharePoint site to facilitate working between local access forums. This had replaced the earlier Huddle site. It was at an early stage and details would be circulated. It was suggested this would be a place to share the information on dog legislation.

Action: Forum Officer

Additional items

15.4 Succession planning

The Chair raised the matter of succession planning for the positions of Chair and Vice Chair and suggested members should consider a transition period so ensure stability of the Forum. This would be on the agenda for the meeting in January.

Action: Forum Officer.

15.5 Disability access information

Gordon Guest had prepared an information sheet on disability access, available for members. This had also been emailed.

15.6 Ramblers' training event

Tim Spray reported there were spare places on a Ramblers' legal day on intermediate rights of way training at Chudleigh on 30 September. Anyone interested in attending to contact him.

Action: DCAF members

15.7 Equestrians and multi-use

Philip Hackett, Regional Access Officer for the British Horse Society, reiterated the importance of permitting horses to use off-road recreational trails.

16. Date of next meeting and meeting dates 2024/2025

The dates of meetings for forthcoming meetings were confirmed as:

Monday, 22 January 2024

Monday, 22 April 2024

Monday, 23 September 2024

Monday, 20 January 2025

A training date would be fixed early in 2024. The Tamara Coast to Coast trail was suggested. Revisiting the Lower Otter Restoration Project and associated landscape recovery project would be useful in a couple of years' time.

Meeting with other LAFs on a training day was mentioned and Philip Hackett, Chair of the Dorset LAF, would welcome this. It was noted that the Plymouth and Torbay LAFs appeared to be in abeyance.

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CET/23/89

Public Rights of Way Committee
23 November 2023

Definitive Map Review Parish of Parracombe – Part 3

Report of the Director of Climate Change, Environment and Transport

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

1) Recommendation

It is recommended that a Modification Order be made to modify the Definitive Map and Statement by varying 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;
- deleting Bridleway No. 3 between points G – H;
- adding Footpath No. 2 between points D – L;
- adding Bridleway No. 3 between points I – H; and
- upgrading Footpath No. 2 to bridleway between points K – J – I.

2) Introduction

This report further examines an anomaly on the Definitive Map in the parish of Parracombe, also affecting the parish of Challacombe.

3) Background

This is the third report for the Definitive Map Review in the parish of Parracombe (having been deferred from the meeting held on 13 July 2023). The background to the Review in Parracombe was discussed 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 – supports the proposal

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

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

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 K – J – I)
- upgrading part of Parracombe Footpath No. 2 between points K – J – I to

- become Parracombe Bridleway No. 2
varying Challacombe Bridleway No. 3 from the alignment G – H to the alignment I – H

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 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: DMR/Parracombe

Contact for enquiries:

Name: Caroline Gatrell

Telephone: 01392 383240

Address: Cleave Tor (M8), Great Moor House, Bittern Road, Exeter

Parracombe Committee Reports part 3

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Appendix I to CET/23/89

A. Basis of Claim

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

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

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

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

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

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

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

- 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 modify the Definitive Map and Statement in respect of Proposal 1, as shown on drawing number CCET/PROW/18/27. 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 examination of County Council records in preparation of a diversion under delegated powers, it was discovered that there was 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 The anomaly has been caused by errors which occurred when the Map and Statement were originally compiled in the 1950s-60s, these errors relating to the use of out of date mapping, and not completing a Committee resolution. Of particular relevance are impacts arising from construction of the former railway line (completed in 1898), and more especially, the A39 Parracombe Bypass (as built in 1926).
- 1.1.3 In respect of Parracombe Footpath No. 2 and Challacombe Bridleway No. 3, the issues are:
- 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 current incorrect alignment of the proposal as shown on the definitive map 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. This route does not exist on the ground, with part of this alignment below and underneath the A39.

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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. Records indicate that this has been the walked route for nearly 100 years.

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

On the later 2nd Edition 25" scale mapping of 1904, this alignment (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 currently walked, 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

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.

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

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.

9th 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 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.

18th 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.

16th 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.

27th 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

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.

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.

23rd April 1925. Letter 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*'.

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This is used alignment of the proposal.

7th May 1925. Letter Devon County Council to Parracombe Parish Council. 'Footpath to Highley. Referring to your letter of the 20th 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 used alignment of the proposal.

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

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.

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.

The Bill for the Lynton and Barnstaple Railway was passed by Parliament on the 27th June 1895, and the railway was opened on the 11th May 1898.

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

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.

There is no reference to the proposal route.

1.3.7 Finance Act, 1909-10

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.

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.

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

These 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 Definitive Map alignment was diverted by the road construction, and the diversion was at that time well used as shown by the level of wear.

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

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.

16th 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'.

22nd 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.

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19th 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 Devon County Council Minutes, 1924

These records provide information about the Council's views regarding issues within its power and area. There is some 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, there is discussion of the need for the compulsory purchase of land for the scheme.

19th June 1924. 'Report of the Bridges, Main Roads and County Buildings Committee...New Road, Parracombe. It has been found impossible to come to terms with some of the owners of land required, and it will therefore be necessary for the Council to make a Compulsory Purchase Order under the Unemployment (Relief Works) Act, 1920. A form of Order will be found in the Second Schedule, and the Committee recommend that the Common Seal of the Council be affixed thereto'. This Order affected the proposal route within Parracombe parish only.

1.3.11 Fortescue Estate records, 1924-29

These records provide information about estate matters and contain information relating to the Parracombe Deviation Road (Bypass) construction, now recorded as the A39.

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.

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.

A letter dated 19th 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 is no longer attached to the letter. This is part of the used alignment of the proposal.

1.3.12 Aerial Photography, 1946 onwards

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

1.3.13 Definitive Map Parish Survey, 1950s

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 2nd Edition 25" scale mapping which was dated 1906.

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.

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

1.3.14 Definitive Map Review records, 1950s-70s

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.

16th 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'.

21st 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*'.

1st 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'.

10th 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*'.

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11th 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'*.

18th 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'*.

23rd 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'*.

29th 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'*.

7th 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'*.

11th 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'*.

26th 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.

1.3.15 Challacombe Estate Sale, 1959

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.

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.

1.3.16 Devon County Roads General Purposes Sub-Committee, 1960s

26th 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.

1.3.17 Definitive Map and Statement, relevant date 1957

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.

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 Footpath Bridleway No. 3. Bridleway south from the A.39'. The error is underlined.

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.

On the reverse of the Challacombe 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 at Whitefield Barton in Challacombe parish and reclassify it as a bridleway, as well as reclassify its continuation in Parracombe parish, part of Footpath No. 2. The 1963 Committee decision is also included on the Parracombe Statement.

1.3.18 Route Photographs, 2016 onwards

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 obscured 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.

1.3.19 Land Registry, 2018

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.

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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 They state that to create 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.
- 1.5.4 Mrs Grob of Court Place, Parracombe did not respond to the informal consultation which included the proposal and has not completed a Landowner Evidence Form. Mrs Grob has stated that she has been opposed to correction of the public right of way anomaly the A39 Parracombe Bypass for many years on the grounds of health and safety. She does not believe it is safe to correct the anomaly. She has lived and owned the land affected by the anomaly on the north side of the A39 Parracombe Bypass for 35 years and considers this crossing to be dangerous.
- 1.5.5 Mrs Grob has also referenced other concerns regarding the proposed anomaly correction such as '*how best to enjoy the scenic surroundings of Parracombe*' and '*identifying the level of need*'. These grounds cannot be taken into account in the determination of what public rights exist, and where. Whilst officers are sympathetic to the concerns raised, the walked route has been in place for almost 100 years, with reasonable sight lines at the junctions with the A39.

1.6 Rebuttal Evidence

- 1.6.1 No additional rebuttal evidence has been received in respect of the proposal, other than concerns raised from one of the landowners as referenced above.

1.7 Discussion

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

- 1.7.2 The current proposal has two 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 The proposal definitive alignment, currently recorded as Parracombe Footpath No. 2 and Challacombe Bridleway No. 3 runs between points D – E – F – G – H, whilst the used unrecorded alignment between points D – L and K – J – I – H.
- 1.7.4 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.
- 1.7.5 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.
- 1.7.6 Common Law. On consideration of the proposal at common law, the historical documentary evidence demonstrates the used alignment's physical existence and availability since circa 1926, when the public rights of way were diverted by the A39 Parracombe Bypass construction. It is shown in a similar manner to other recorded public highways. The documentary evidence also demonstrates that the alignment shown on the definitive map has not been available since that time.
- 1.7.7 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.
- 1.7.8 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 follows between points K- J – I – H. The rights of way were acknowledged as being affected by the

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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.

- 1.7.9 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 2nd Edition dated 1904, which unfortunately by that time was 46 years out of date. The up to date 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 that took account of the 1926 A39 Parracombe Bypass. Unhelpfully, the relevant Survey Forms lacked useful detail.
- 1.7.10 However, the contemporary RAF aerial photography of the 1940s clarifies the situation regarding the pre-existing right of way alignment that was in use at the time that the Definitive Map was compiled - this being 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 the alignment error would have been noticed, and perhaps also that the classification modification had not been completed.
- 1.7.11 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 the bridleway continuation of Challacombe Bridleway No. 3, to meet the A39 Parracombe Bypass, though the Devon County Council Surveyor preferred Footpath No. 29.
- 1.7.12 The amendment was approved by the County Roads Committee in July 1963, and Challacombe Footpath No. 3 was upgraded to bridleway, but for unknown reasons, its continuation to the A39 Parracombe Bypass, Parracombe Footpath No. 2 was only upgraded on the Definitive Statement and not on the Definitive Map. The resolution of the Committee was therefore not fully implemented.
- 1.7.13 Current landowner evidence dates back 35 years and acknowledges the used alignment, although only the Le Dieu's of Tinnerdy on the south side of the Bypass accept that the anomaly is corrected as per this proposal. The Grob's of Court Place on the north side of the Bypass do not support the proposal. However, the landowners involved in the Parracombe Bypass construction did acknowledge the public right of way affected by the new road. The used alignment of the public rights of way affected, between points D – L and K – J – I – H, have been in use since 1926, when the Bypass was constructed, and were seemingly dedicated by the relevant landowners at that time and accepted and used by the public also since that time.

- 1.7.14 Parracombe Parish Council support the proposal, and Challacombe Parish Meeting also approves, along with the relevant County Councillor.

1.8 Conclusion

- 1.8.1 In considering 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 being due to the out of date mapping that had to be used in that exercise (dating from 1904). 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 upgraded from footpath to bridleway (Challacombe Bridleway 3). However, this change also required the upgrade of its continuation in Parracombe parish, which was proposed to be Footpath No. 2. The County Roads Committee decided this should happen, but the change was not completed.
- 1.8.3 The used alignments of the public rights of way affected by the construction of the Parracombe Bypass have been in use since 1926, and were seemingly dedicated by the relevant landowners at that time and accepted and used by the public, also since that time. Modern concerns regarding safety and need raised by one of the currently affected landowners cannot be taken into account when considering what public rights exist and along which alignment.
- 1.8.4 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, which should be recorded between points D – L and K – J – I – H, rather than D – E – F – G – H.
- 1.8.5 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.
- 1.8.6 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. If there are no objections, or if such objections are

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subsequently withdrawn, this should then be confirmed.

Path No.	As Currently Shown	Proposal (Used Alignmnet)
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	K – J – I (incorrectly shown as Footpath)	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.



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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.



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



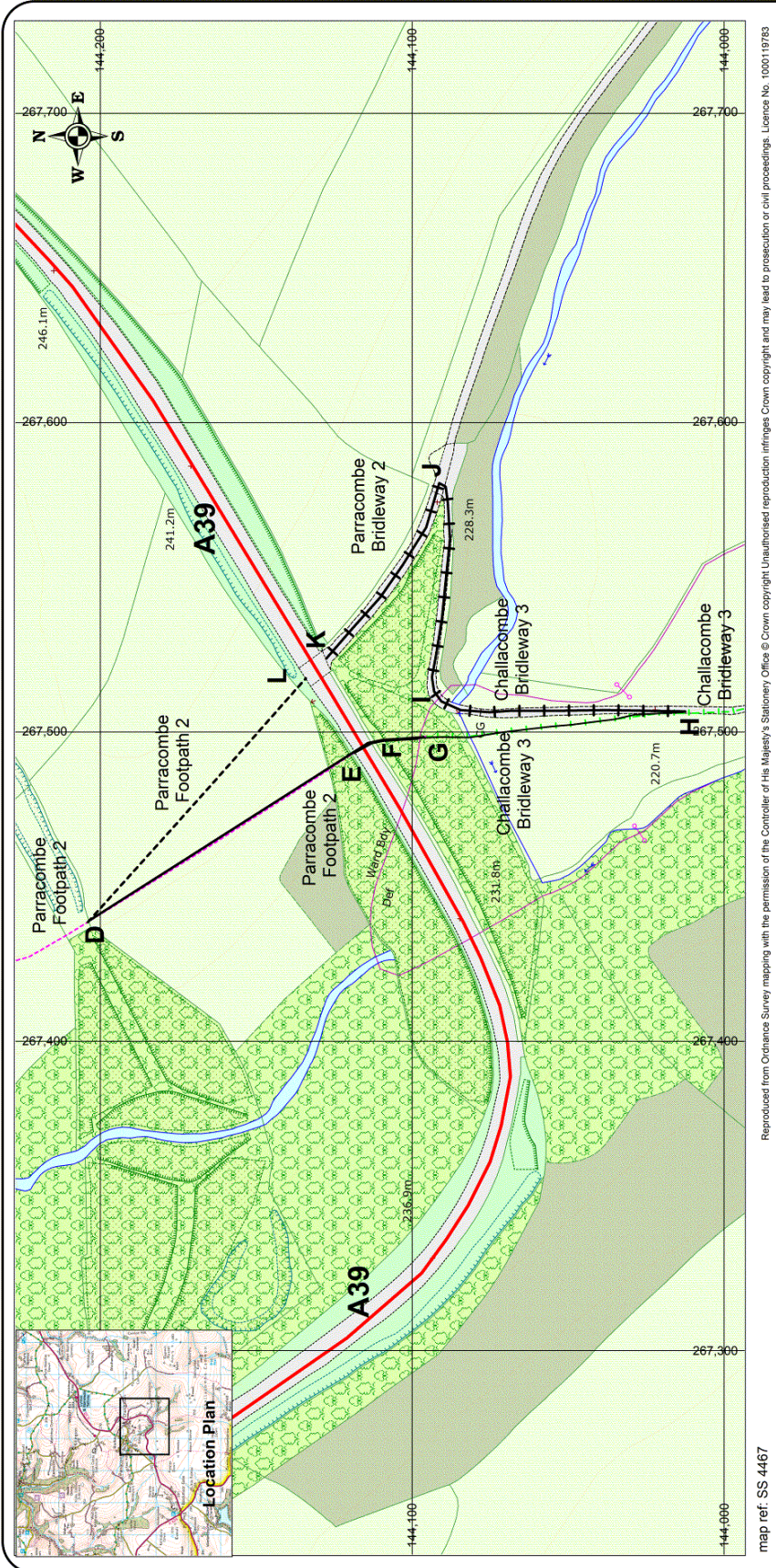
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At point J looking westwards towards point I at the parish boundary.



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





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Devon County Council
Definitive Map Review - Parracombe
Proposal 1: Proposed alignment variation and upgrade of part of Parracombe Footpath No. 2 and alignment variation of Challacombe Bridleway No. 3 near the A39

drawing number CCET/PROW/18/27
 date April 2023
 scale 1:1,250 at A3
 drawn by CLG

Meg Booth
 Director of
 Climate Change,
 Environment & Transport



Notation

Footpath No. 2 proposed deletion	D - E - F - G (approx 130m)	—
Bridleway No. 3 proposed deletion	G - H (approx 86m)	—
Footpath No. 2 proposed addition	D - L (approx 106m)	- - - - -
Bridleway No. 3 proposed addition	I - H (approx 81m)	+
Footpath No. 2 proposed and upgrade	K - J - I (approx 140m)	+

Existing footpaths
 Existing bridleways

CET/23/90

Public Rights of Way Committee
23 November 2023

Definitive Map Review Parish of Littleham 2003-23

Report of the Director of Climate Change, Environment and Transport

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

1) Recommendation

It is recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a footpath along Upadown Lane, Littleham between points A – B, as shown on drawing number CCET/PROW/23/78 (Proposal 1). This will update the decision originally resolved by this Committee on 24 March 2005.

2) Introduction

This report re-examines a proposal originally raised during the Definitive Map Review in Littleham parish in 2003-05.

The Definitive Map Review was opened in the parishes of Littleham and Landcross in 2003, with an informal consultation carried out in early 2005. This consultation included a proposal to add a footpath along Upadown Lane in Littleham village.

A report on the Upadown Lane proposal was subsequently presented to the County Council's Public Rights of Way Committee on 24 March 2005. The Committee resolved that a Modification Order should be made (initially shown the plan ED/PROW/05/58 and now shown on plan CCET/PROW/23/78).

The Committee minutes from March 2005, set out that:

(vi) **Definitive Map Review: 2003/2005 - Parish of Littleham**

The Committee considered the report of the County Environment Director (ED/05/86/HQ) and background papers.

RESOLVED

(A) that an order be made to add a public footpath to the Definitive Map and Statement running between Point A and Point B as shown on drawing no. ED/PROW/05/58;

(B) that no order be made to record Apps Lane as a Public Right of Way.

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3) Background

This is the second report for the Definitive Map Review in the parish of Littleham. The background to the Review in Littleham was discussed in the first parish report presented to this Committee at its meeting of 24th March 2005.

A summary of the March 2005 report is attached to this report.

Prior to the committee decision being implemented, and in response to requests from the local community, additional negotiations were undertaken to assess whether the route could be upgraded as a bridleway through a dedication agreement. Neighbouring landowners were not supportive, and so it was not feasible to enter into a dedication agreement. Reasons are unclear, but it is evident that the Order to add the route as a public footpath was not subsequently actioned.

This anomaly has only recently come to light, and so it is proposed is that the Modification Order now be made, as previously resolved by this Committee in March 2005.

4) Proposals

Please refer to the appendix to this report.

5) Consultations

General consultations were carried out in 2004 with the following results:

County Councillor Collins	- no reply
Torrige District Council	- no objections
Littleham Parish Council	- no comment on the proposal
British Driving Society	- no reply
British Horse Society	- no reply
Byway and Bridleways Trust	- no reply
Cycling UK	- no reply
Country Landowners & Business Association	- no reply
National Farmers' Union	- no reply
Open Spaces Society	- no reply
Ramblers' Association	- supported proposal

Responses are detailed in the appendix to the March 2005 Committee 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 and Public Health Considerations

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

10) Conclusion

It is recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a footpath along Upadown Lane, Littleham between points A – B, as shown on drawing number CCET/PROW/23/78 (Proposal 1).

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

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 Torridge area.

Meg Booth

Director of Climate Change, Environment and Transport

Electoral Division: Bideford East

Local Government Act 1972: List of background papers

Background Paper: Correspondence Files

Date: Current

File Reference: DMR/LITTLEHAM(TORR)

Contact for enquiries:

Name: Caroline Gatrell

Telephone: 01392 382833

Address: Cleave Tor, Great Moor House, Bittern Road, Exeter

cg031123pra

sc/cr/DMR Parish of Littleham 2003-23

02 141123

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Appendix 1 to CET/23/90

Summary of Report to Committee 24th March 2005

Definitive Map Review 2003/2005 Parish of Littleham

Report of the County Environment Director

Recommendation: It is recommended that:

- i) an order be made to add a public footpath to the Definitive Map and Statement running between Point A and Point B as shown on drawing no. ED/PROW/05/58;
- ii) no order be made to record Apps Lane as a public right of way.

1 Background

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed two footpaths and one bridleway in Littleham which were recorded on the Definitive Map and Statement 14 March 1958.

The Limited Special Review of Roads Used as Public Paths (RUPPs), carried out in the 1970s, did not affect this parish. In 1989 Littleham Parish Council, requested "Apps Lane be the subject of serious interest". It is discussed in appendix.

The following Diversion Order has been made in the parish under 1959 Highways Act: Public Path Diversion Order 1972 – Bridleway No.10, around The Old Rectory, Littleham.

2 Review

The current review began in October 2003 with a public meeting held in the Village Hall.

The review was advertised in the North Devon Journal and on the village notice boards. Consultations were carried out with the following results:

County Councillor Collins	- no reply
Torridge District Council	- no objections
Littleham Parish Council	- response to diversions only
British Horse Society	- no reply
Byway and Bridleways Trust	- no reply
Country Landowners & Business Association	- no reply
National Farmers' Union	- no reply
Open Spaces Society	- no reply
Ramblers' Association	- supports suggestions put forward
Cyclist Touring Club	- no reply
British Driving Society	- no reply
South West Water	- no reply
Transco	- no reply
BT	- no reply

Two applications have been received from landowners relating to diversions on Footpath Nos. 7 & 8. No objections have been received with regard to Footpath No. 8 and the

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Footpath No. 7 is currently under discussion. The resulting orders will be made under delegated powers.

3 Conclusion

It is recommended that an order be made in respect of Proposal 1, but no order made in respect of Apps Lane. There are no other recommendations to make concerning any further modifications. However, should a valid claim be made in the next six months it would seem sensible for it to be determined promptly rather than deferred.

4 Reason for Recommendation/Alternative Options Considered.

To progress the review of the Definitive Map in Torridge.

Electoral Division: Bideford Rural

Edward Chorlton

Local Government Act 1972

List of Background Papers

Contact for inquires: Richard Butler
Tel No. (01392) 382251

Back Ground papers	Date	File ref
Correspondence Files	2003 to date	AS/DMR/LITT

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Proposal 1

Background

The proposal to add a footpath to the Definitive Map and Statement was made by the Parish Council and members of the public at the meeting held in October 2003.

Description of the Route

The proposed footpath runs from just north of the Crealock Arms, indicated as Point A on drawing no. ED/PROW/05/58, along a hedged lane to the road between Littleham and Littleham Cross, Point B. It is about 180 metres in length.

User Evidence

Three user evidence forms from walkers have been submitted in support of the route covering a period of 32 years. These users have not been challenged and undoubtedly more evidence would be available if requested.

Historical Evidence

The route is shown on the historical map records of the Littleham: Tithe Map, 1st edition (and all subsequent editions) Ordnance Survey maps, and other historic maps of the area. However, none of these are sufficient on their own to suggest this route has enjoyed public status, only that it physically existed at the time the maps were drawn.

Landowner Evidence

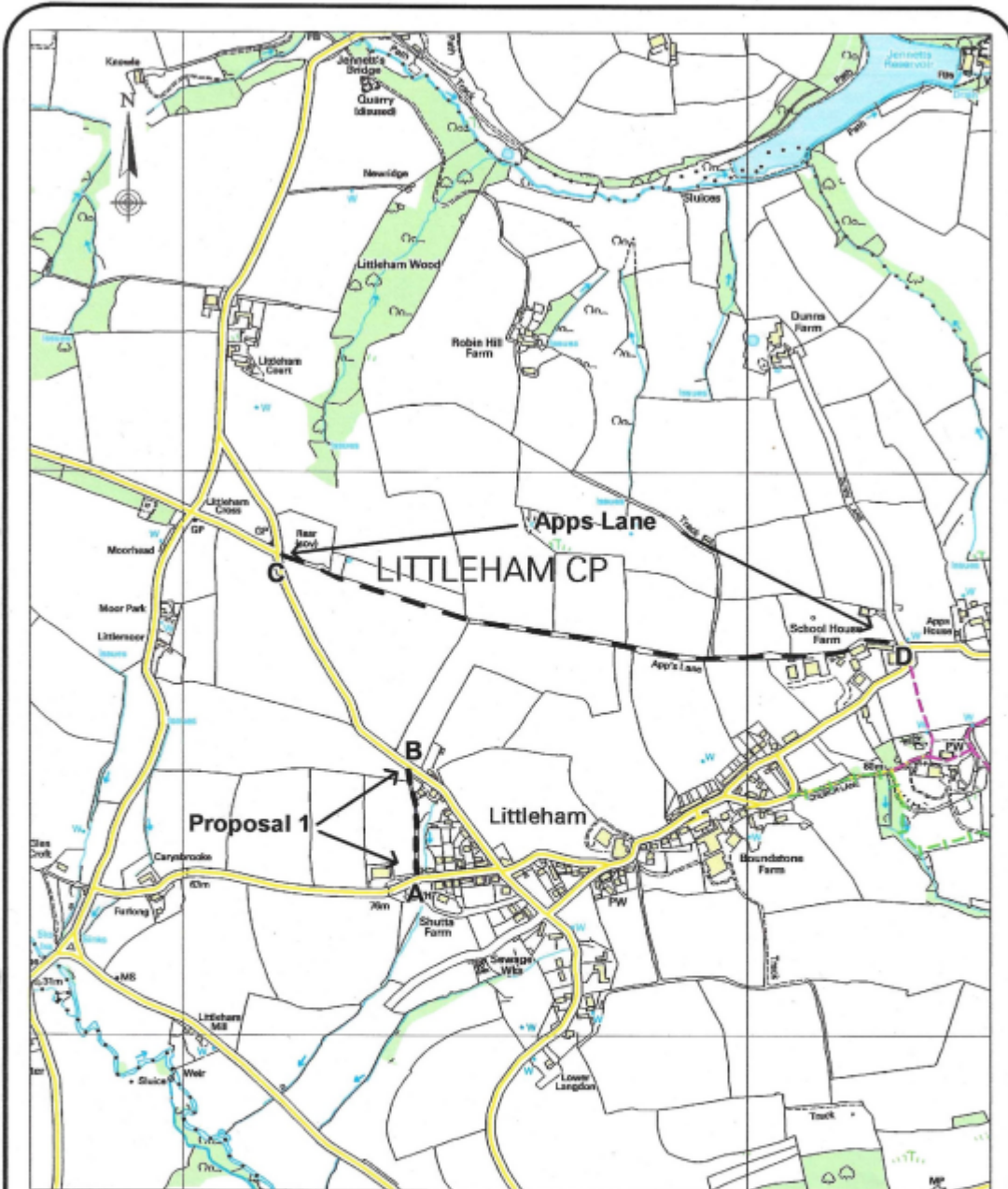
The lane abuts fields which were owned by Mr E Nicholls of Shutta Farm between 1945 and 2001. The route lies within a few hundred yard of the farm and as such was well observed by Mr Nicholls. He has stated that people had always used the route and that he regarded it as a footpath and trimmed its hedges from time to time. He did not challenge the public's right to use the path. Mr Nicholls sold the adjoining land to Mr Withecombe in 2001.

Mr Withecombe has been approached for his views of the route. He said he was aware of the path at the time of purchase and cleared it out on one occasion just after he bought the land. He has no objection to the footpath and has not challenged the use.

The land to the east of the route is in the ownership of several different properties with adjoining gardens. Each landowner has been consulted and indicated that they only own up to the hedge. They regard the path as public.

Conclusion

The route is in regular use by the public and is acknowledged as public by the current and former landowners. Additional user evidence could be provided if required, but as an Order is unlikely to attract objection, it has not been felt necessary to collect any. Dedication and acceptance of the route can thus be presumed and it is therefore recommended that an Order be made.



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DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - LITTLEHAM

drawing number ED/PROW/05/58
 date March 2005
 scale 1:10,000
 drawn by AS

Notation

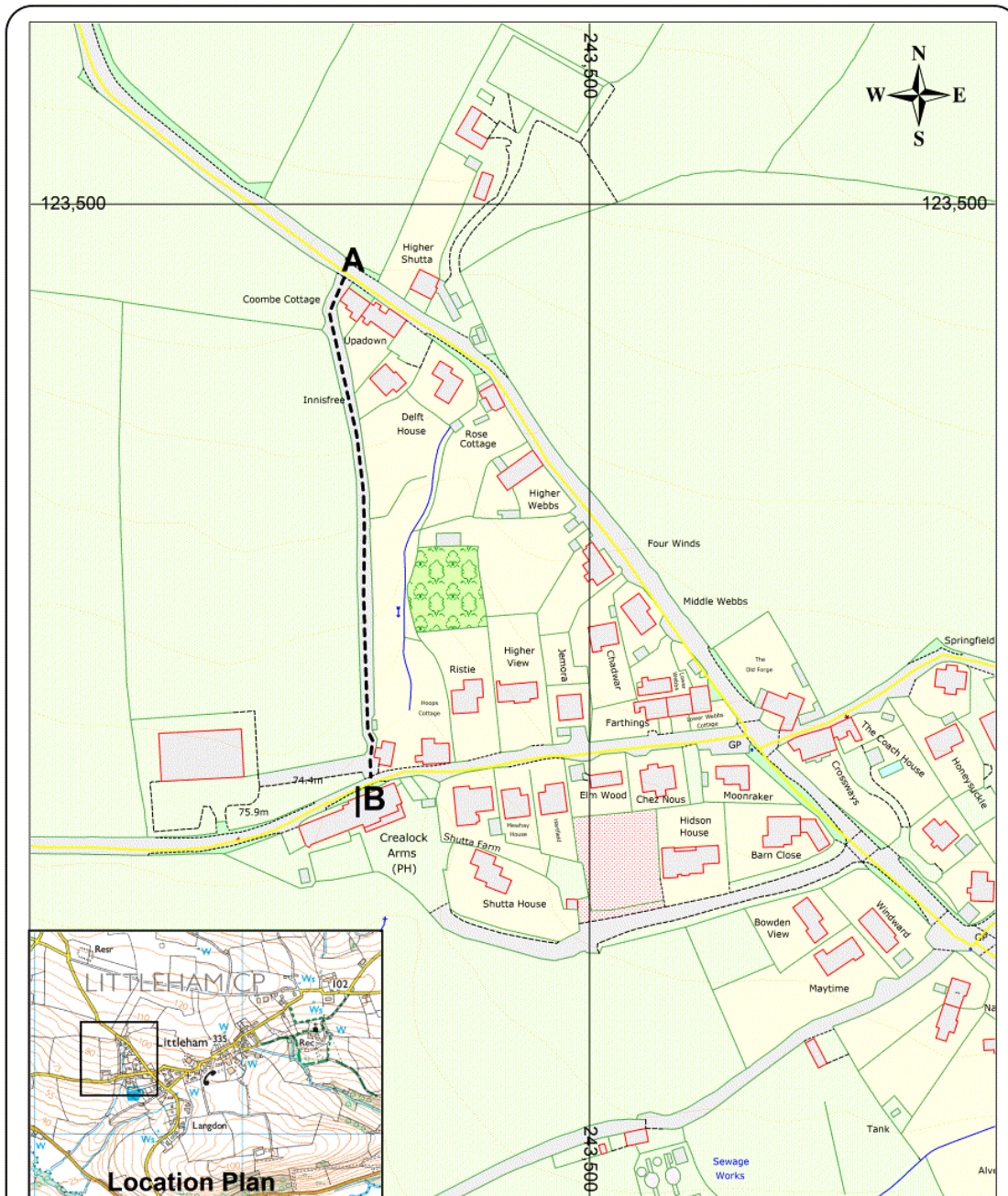
Proposal 1 A - B (180 metres) **-----**
 Apps Lane B - C (1120 metres) **————**

Edward Chorlton
 COUNTY ENVIRONMENT DIRECTOR



Devon County Council

Agenda Item 6



map ref: SS 4323

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Devon County Council
Definitive Map Review - Parish of Littleham
Proposed addition of a footpath
along Upadown Lane

drawing no. **CCET/PROW/23/78**
 date **August 2023**
 scale **1:2,000**
 drawn by **CLG**

Notation

Proposed addition A - B (approx 195 metres) -----
 Existing footpath - - - - -

Meg Booth
 Director of Climate Change,
 Environment & Transport



CET/23/91

Public Rights of Way Committee
23 November 2023

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

Report of the Director of Climate Change, Environment and Transport

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

1. Recommendation

It is recommended that a Modification Order be made to modify the Definitive Map and Statement by the addition of a Bridleway between points 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 taken to 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 9th 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 Cllr 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/22/18a (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

Report of the Director of Climate Change, Environment and Transport

Electoral Division: Tiverton West

Local Government Act 1972: List of background papers

Background Paper

DMR/Correspondence File 2019 to date DMR/Washfield

OS Mapping National Library of Scotland

Tithe Map South-West Heritage Centre

Parish Council Minute Books South-West Heritage Centre

Finance Act 1910 National Archives Kew

Stoodleigh Estate Catalogues South-West Heritage Centre & The Box at Plymouth

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Appendix 1 to CET/23/91

A. Basis of Claim

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

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

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

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

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

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

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.

Proposal 2 – Addition of Public Bridleway

This is a proposal for the addition of a 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 track on the west side of Shilhay Copse that had no recorded status. This was sufficient to include the route as proposal 2 in the definite map review in Washfield parish.

2. Description of the Route

2.1 The route 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 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 background papers taken in September 2020.

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Point S looking north eastwards (Jul 2009)



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 some of the landowners 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 Tithe Maps and Apportionments

- 4.1.1 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

- 4.1.2 On the tithe map of 1840 the proposal route is not shown as a defined land apart from a short length at the northern end from point U. The 'new Stoodleigh Drive' has not been constructed either. 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.*

4.2 Ordnance Survey and Other Maps

- 4.2.1 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.

4.2.2 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.

4.2.3 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 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

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were not permitted to use the drive as detailed in the estate sale catalogues of 1925 and 1926.

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

On the 2nd 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.

4.2.5 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.

4.2.6 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.

4.2.7 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.

4.2.8 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'.

4.2.9 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.

4.2.10 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.

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 23rd 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 4th 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

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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 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 13th 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 6th 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 8th 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 councillors. 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 7th 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.

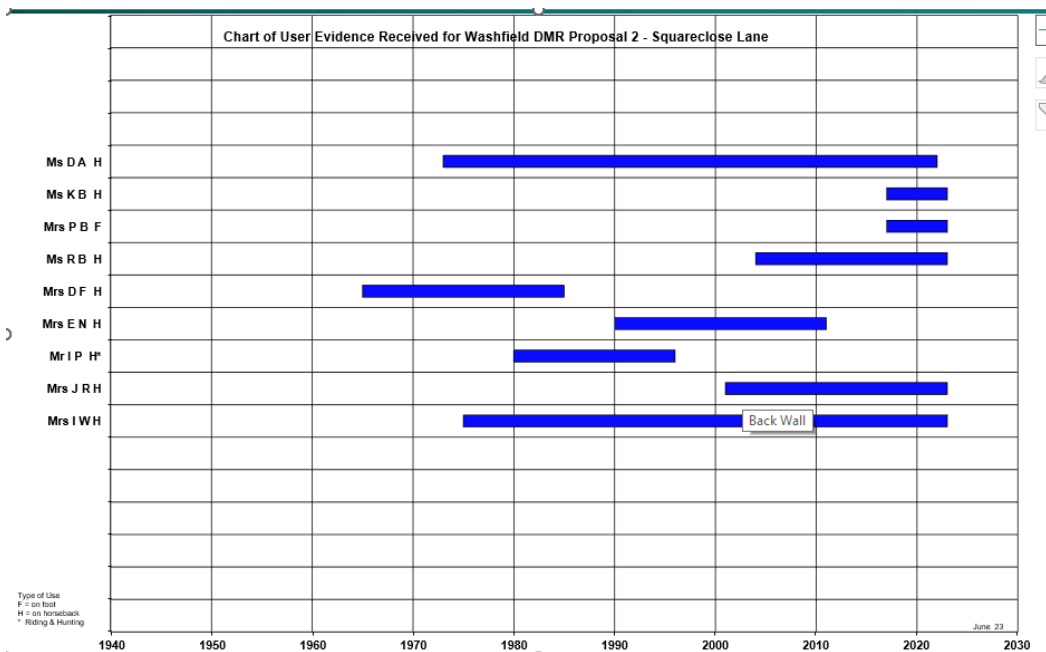
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4.10 Land Registry

- 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.
- 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 3rd 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. She said, 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 have 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 have 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 the *'track is used regularly by local walker, 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 had 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 have 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 have 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.

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- 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 have 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 vehicles. Use when hunting would not be use 'as of right' but Mr P also advises that he used the lane when not part of the hunt.
- 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 have 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 copse as the lane is unregistered throughout its whole length. Where a lane or track is unregistered, adjacent landowners could have a claim of rights to the middle of the way under the legal term 'ad medium filum viae'. The rule being a rebuttable presumption that an owner of land may own the soil of the adjoining highway up to its centre line. The 31(6) deposit expired in October 2000

and was not renewed. This section of woodland was 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 been 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 2020 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

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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.
- 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 or called into question.
- 8.2 The section 31(6) deposit was made in 1994 (although was not renewed and expired in October 2000). This deposit could be considered as a calling into question for part of the lane i.e., half of the lane on the eastern side between points S and T adjoining Shilhay Copse. The twenty-year period under statute would therefore need to cover the period from 1974 to 1994, for which the user evidence would be insufficient to raise the presumption of deemed dedication under section 31(1) of the Highways Act 1980.

- 8.3 However, there is evidence to indicate that the lane had already been dedicated under common law prior to 1974.

Common Law

- 8.4 A claim for the addition of a right of way may also be considered under common law. At common law, evidence of dedication by a landowner, who must have had the capacity to dedicate, 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.
- 8.5 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 19th 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, at that time, would have been within the ownership of the Stoodleigh Estate. 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.
- 8.6 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.
- 8.7 In the Stoodleigh Estate sale catalogues and plans of 1925 and 1926, the lane is not coloured or shown as being 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 be part of the estate at that time as it was shown in a similar manner to known public roads.
- 8.8 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

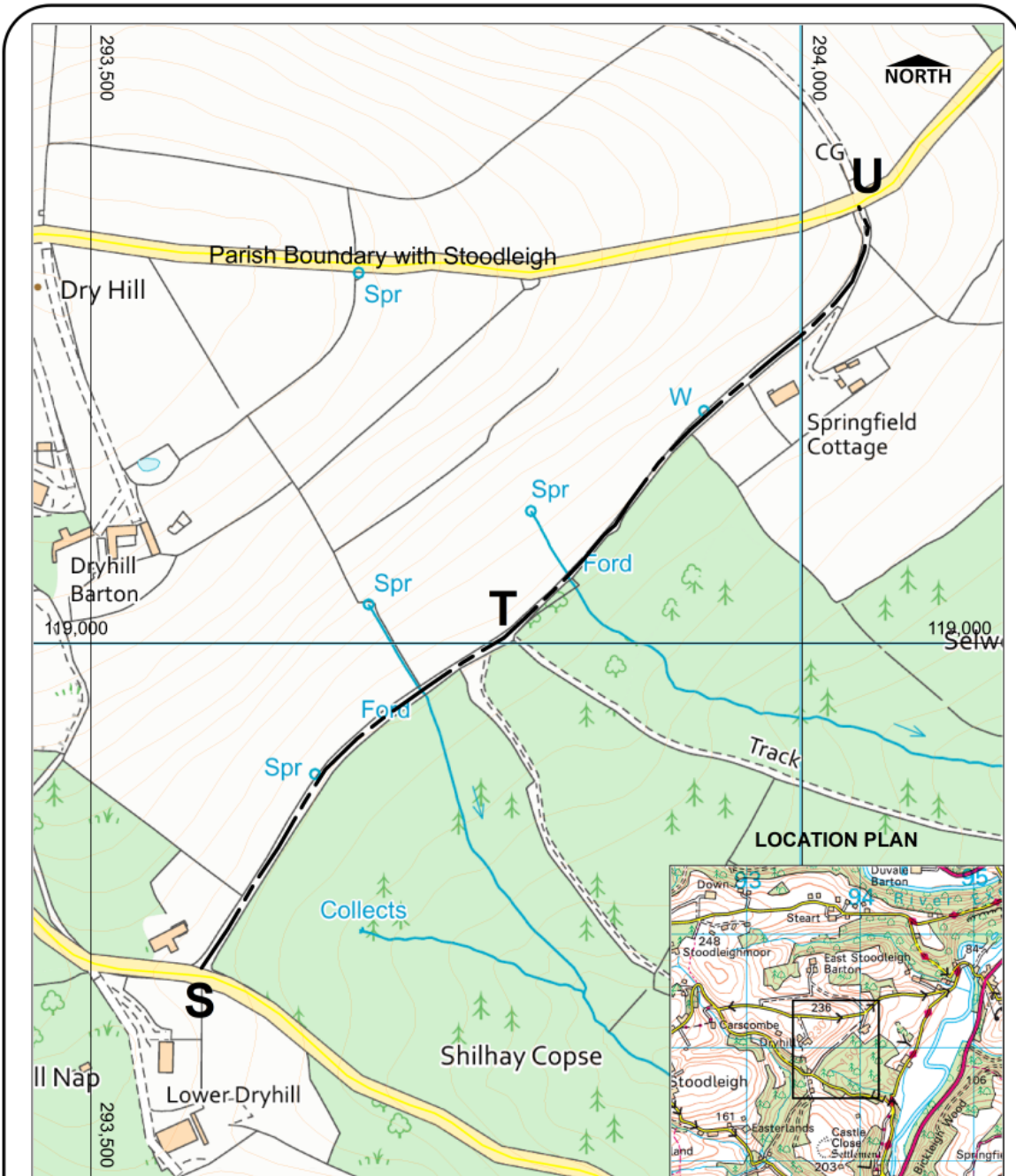
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that the lane was public. In 1966, the minutes record a long discussion regarding the lane that was understood to be a public one.

- 8.9 The lane is not registered at HM Land Registry although the majority of the land adjoining 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 no longer part of the estate by the 1920s.
- 8.10 User evidence has been received showing regular use of the lane by members of the public for over fifty years with none of the users 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 user evidence received is deemed sufficient to show acceptance of the lane by the public as a public right of way under common law.
- 8.11 The 31(6) deposit made in 1994 would under common law dedication show the landowner's lack of intention to dedicate a public right of way along that part of the east half of the lane that adjoined Shilhay Copse. However, the documentary evidence supports the whole width of the lane having been dedicated by an earlier landowner (Stoodleigh Estate) prior to the 1920s and so becoming a public way prior to 1994.
- 8.12 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. Apart from a previous owner of Shilhay Copse (pre-2020), there is no other rebuttal evidence.

9 Conclusion

- 9.1 As referenced in Section 8 above, the previous S31(6) deposit could be deemed a calling into question of the public's use of half of the lane for part of the route, and the user evidence for the relevant period would be considered insufficient to show presumed dedication under section 31(1) of the Highways Act 1980. However, under common law, there is documentary evidence to demonstrate implied dedication by a previous landowner prior to this deposit, added to which, there is user evidence indicating acceptance of this dedication by the public.
- 9.2 No evidence has been found to contradict the proposal route being public. Overall, the evidence is considered sufficient to show that a public right of way can be reasonably alleged to subsist and given the user evidence, such a public right of way is deemed to be a bridleway.
- 9.3 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.



Map Ref SS 9318 9319 9419 500m grid

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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - WASHFIED
CONSULTATION ON PROPOSAL NO 2 -
ADDITION OF A PUBLIC BRIDLEWAY ALONG GREEN
LANE BETWEEN SHILHAY AND SPRINGFIELD**

drawing number HIW/PROW/22/18a
date APR 22
scale 1:4,000 at A4
drawn by TW

Notation

Addition of Public Bridleway S - T - U - - - - -
(730 metres approx)

Meg Booth
DIRECTOR CLIMATE CHANGE,
ENVIRONMENT & TRANSPORT



CET/23/92

Public Rights of Way Committee
23 November 2023

Definitive Map Review Parish of Aylesbeare

Report of the Director of Climate Change, Environment & Transport

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

1) Recommendation

It is recommended that no Modification Order be made in respect of Proposal 1 or Proposal 2.

2) Introduction

This report examines two proposals arising from the Definitive Map Review in the parish of Aylesbeare.

3) Background

The original survey by Harpford Parish Council (as it was then called) in 1950 under s.27 of the National Parks and Access to the Countryside Act of 1949 produced a map and details of 34 routes submitted to the County Council. After several amendments and revisions during the draft and provisional stages, 26 footpaths and 1 bridleway were recorded on the Definitive Map and Statement with a relevant date of 17th May 1966.

The Limited Special Review of RUPPs, which commenced in 1971, did not affect this parish. The general review of the Definitive Map, under s. 33 of the 1949 Act, which commenced in 1977 produced several proposals for changes, one of which is considered in this report, the rest were for deletion of paths and which were not considered valid.

The following orders have been made and confirmed:

East Devon District Council (Footpath No. 17, Aylesbeare) Public Path Diversion Order 1981

Devon County Council (Footpath No. 7, Aylesbeare) Public Path Diversion Order 1986

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Devon County Council (Footpath No. 2, Aylesbeare) Public Path Diversion Order 1992

Devon County Council (Footpath No. 12, Aylesbeare) Public Path Diversion Order 2000

Devon County Council (Footpath Nos. 16 & 17, Aylesbeare) Public Path Diversion and Definitive Map & Statement Modification Order 2012

Devon County Council (Footpath No. 4, Aylesbeare) Public Path Diversion and Definitive Map & Statement Modification Order 2013

The current review began in December 2022 with a public meeting in the parish.

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;
Aylesbeare Parish Council	- support both proposals in principle - comments included in background papers
Rockbeare 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;
Open Spaces Society	- no comment;

Specific responses are detailed in the appendix to this report and saved within 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 no Modification Order be made in respect of Proposals 1 and 2.

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: Aylesbeare

Date: 2000-date

File Reference: TCG/DMR/AYLESBEARE

Contact for enquiries:

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sc/cr/DMR Parish of Aylesbeare

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Appendix I to CET/23/92

A. Basis of Claim

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

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

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

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

- (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

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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 1:

Proposed addition of a public Bridleway from the B3180 following Aylesbeare Footpath 11 to Manor Farm and then along Houndbeare Lane to meet the county road Quarter Mile Lane at Marsh Green. Points A-B-C-D-E-F on the proposal map CCET/PROW/23/22.

Grid Ref: SY 054918 – SY 041935

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

1.1 Background

1.1.1 In March 1978, during an uncompleted general review of the Definitive Map, Aylesbeare Parish Council submitted a form proposing the addition of a bridleway from the B3180 to Marsh Green via Manor Farm. A map showing the claimed route was also submitted, along with seven user evidence forms.

1.2 Description of the Route

1.2.1 The claimed route starts at the junction with the County Road B3180 (point A on map CCET/PROW/22/22) and follows the current Footpath 11 in a north westerly direction, passing to the north of Manor Farm (point B). It then turns more to the north and heads through Moor Plantation (up until this point the route passes over registered common land) to cross the County Road C93 (point C). It then continues in a north north-westerly direction along Houndbeare Lane (the first 120m of which is recorded as highway maintainable at public expense (HMPE) on the List of Streets), passing the junction with Withy Bed Lane at point D (this is the junction with proposal 2). It follows the enclosed lane, turning sharply westwards approximately 110m south of Great Houndbeare Farm, and continues to its junction with the County Road C306, Quarter Mile Lane in Marsh Green at point F. The section between E-F is in Rockbeare parish.



Point A (Junction of Footpath 11 and B3181)



Point C looking south – is now completely overgrown.

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Point F

1.3 Documentary Evidence

1.3.1 Quarter Sessions bundles, 1754

Extensive records from the Devon Quarter Sessions relating to highway matters are held at the Devon Records Office. At the Easter 1754 Sessions, it was recorded that the parish of Aylesbeare had received a suspended fine for failure to repair the highway between the parish church and 'Houndbeer Corner'. It is not known where 'Houndbeer Corner' is located and in any case the road in question is not the claimed route. However, the name of Houndbeare was clearly well-known enough to be included as a place of reference on the highway at this early date.

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

The Ordnance Survey Drawings produced in 1806-7 show some sections of the claimed route. The section between A-B is shown as an unenclosed road across the common at Aylesbeare Hill. The section between C-D is shown as an enclosed road, as is the section between Great Houndbeare Farm and point F at Marsh Green. The sections not mentioned are not shown at all.

1.3.3 The 1" First Edition map of 1809 shows the claimed route in a similar manner to the Surveyor's Drawings. Both of these early OS maps were produced well before the disclaimer concerning public rights of way was introduced in 1889. It can therefore be argued that routes shown on them may have held some sort of public status or reputation at the time they were produced.

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- 1.3.4 Greenwoods Map of 1827 shows the claimed route in much the same manner as the OS Drawings, of which they are believed to have been largely copied from.
- 1.3.5 Later historical mapping at smaller scales: OS 1" editions 1892-1972, Bartholomew's Mapping 1903-1943
OS 1" maps from the late-19th century continue to show the claimed route. A-B is shown as an unenclosed (or partially unenclosed) unmetalled road, while between B-C, it is not shown at all. Between C-F, the route is shown on the 1892 edition as a third-class road, though there appear to be gates at point D and at Great Houndbeare Farm indicated by solid lines across it. From the 1898 edition the stretch between point C and Great Houndbeare Farm is shown only as an unmetalled road, later as a '*minor road in towns, drive or track*'.
- 1.3.6 The section between points B-C is only shown on the OS 1" mapping from 1933 onwards. The gate indicated on the earlier edition near Great Houndbeare Farm also appears in later editions, from 1960 onwards. The fact that the stretch between points C-F is shown as an unmetalled road on the 1919 edition and as a metalled road or track from 1933 onwards suggests that at some point between these two editions it was surfaced.
- 1.3.7 The claimed route is partially shown on all the Bartholomew's editions. These commercial maps were produced for the benefit of '*tourists and cyclists*' and were widely available to the public. Sections A-B and C-F are shown as uncoloured roads, which are classed as '*inferior roads*' that are not recommended for cyclists.
- 1.3.8 Later historical mapping at larger scales: OS 25" editions 1888-1961, OS 6" editions 1889-1944
OS mapping from 1889 onwards, both 6"-to-the-mile and 25"-to-the-mile, all show the claimed route in a similar manner. The 6" editions all show the section between points A-C as a double-pecked line, consistent with a footpath and labelled as such on the 1889 edition. Only the very end of this section, before it reaches point C, is shown as a track. Interestingly, what is now the B3180 main road is also shown as a double-pecked line, far more akin to a footpath than a road. The remaining section between points C-F is shown as an enclosed track, named as Houndbeare Lane, and with solid lines across it at point D and at Great Houndbeare Farm, usually taken to indicate gates or similar obstructions.
- 1.3.9 The 25" First Edition 1889 map shows the claimed route from point A-B as a double-pecked line, as per the 6" maps. From B-C it is shown as a much narrower double-pecked line and is marked FP. Both the B3180 and the smaller C93 are shown as yellow roads. The remaining route from C-F is shown as a tree-lined enclosed lane, with gates in the same position as shown in the 6" editions. The 25" Second Edition map shows the claimed route in much the same manner, the main difference being that from A-C it is shown as per a footpath.
- 1.3.10 Ordnance Survey Name Books, 1903
These Ordnance Survey records were produced in conjunction with the Ordnance Survey mapping, and information on named routes may be found in

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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.

- 1.3.11 There is an entry for Houndbeare Lane, which states: '*applies to a lane starting at a point 6 chains NE of Marsh Farm to Aylesbeare Common.*' The person stated as giving authority for the mode of spelling is Mr Chard, who is listed as a '*Road Foreman*'.
- 1.3.12 Aylesbeare Tithe Map & Apportionment 1839; Rockbeare Tithe Map & Apportionment 1844; Woodbury Tithe Map & Apportionment
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 '*roads and waste*'.
- 1.3.13 The Aylesbeare Tithe Map, produced in 1839, shows the claimed route between points A-B and C-D as a road coloured yellow. There is no path shown between B-C as this is shown as a plot of '*common*'. Roads were not labelled or identified in the Apportionment as public and included those which were obviously public, as well as others more likely to have been private tracks for access to fields and some not now existing.
- 1.3.14 The Woodbury Tithe map shows the claimed route from approximately point D-E. The section is numbered 2255 in the apportionment, listed as a '*lane*' of 1 acre, 1 rood and 28 perches in size. It is separated into two distinct plots by the lane/driveway to Great Houndbeare Farm, though both are numbered 2255. It is owned by a Sarah Cornish but it is not clear what, or if, any tithes were payable on it. '*Roads and waste*' are listed in the apportionment but are not given a number.
- 1.3.15 The Rockbeare Tithe Map, produced in 1844, shows the claimed route between points E-F. It is numbered 643 and is listed in the apportionment as a '*lane*' owned by the Reverend John Elliott and occupied by Philip Tuck. It is stated as being of 2 roods and 38 perches in size but is not liable for any tithes.
- 1.3.16 Finance Act 1910 plans and field books
The Ordnance Survey 25" Second Edition 1904 maps were used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation, copies of which were submitted with the additional material for the applications. The map shows the claimed route to have been partly included within surrounding hereditaments (assessment areas of land). Only between points C-D and E-F is the claimed route excluded from surrounding hereditaments.

- 1.3.17 Where the claimed route is included within hereditaments there are no deductions recorded for public rights of way. Great Houndbeare Farm (plot 47) includes the section D-E and it is of particular note that there are no deductions recorded here. Plots 12 and 13 are adjacent to the claimed route but do not include it within their hereditaments and do not refer to it in the field book entries.
- 1.3.18 Parish Council and Vestry minute books – parishes of Aylesbeare, Rockbeare and Woodbury
The claimed route falls within the parishes of Aylesbeare and Rockbeare, with a small section previously included within the parish of Woodbury in the 19th century.
- 1.3.19 Minutes from Aylesbeare Parish Council meetings are held at the Devon Records Office. Entries are recorded showing that the PC participated in drawing up a map of paths for the Rights of Way Act in 1934 but no details of routes were included. Similarly, the minutes document the Definitive Map process but the claimed route is not mentioned. The only reference to '*Houndbeare Lane*' or similar appears in 1936-7 when a drain at the junction of Great Houndbeare Lane and the Aylesbeare-Tipton road was found to be damaged and was repaired. However, this is located at point C which is currently recorded as HMPE and so has no relevance to this claim.
- 1.3.20 St Thomas Rural District Council records, including Highways Board minutes 1878-1974
Records from St Thomas Rural District Council, including Highways Board minute books, are held at the Devon Records Office. These records have been checked and no references to the claimed route have been found. Though they mostly concentrate on the main roads within the district, there are occasional references to more minor/unclassified public roads in other parishes.
- 1.3.21 Aerial Photography 1946-2015
Aerial photography from 1946 shows the claimed route in some detail. Between points A-B it is visible first as a worn track across open ground and then following the surfaced drive of Manor Farm. Between points B-C it is visible as an enclosed, though unsurfaced track, the surface apparently being mostly grassed. From point C, the route is clearly well-surfaced and enclosed by hedges and trees until it turns west. The well-surfaced section continues to Great Houndbeare Farm, suggesting that this property may have been associated with it. From here the route continues as an enclosed track, possibly partially surfaced, until it meets the county road Quarter Mile Lane at point F.
- 1.3.22 More modern aerial photography from 1999-2015 is mostly consistent. Although the first section between points A-B is not visible at all in 1999, it is shown throughout the rest of the period as a clearly-visible wide track across the open common land. The section that passes along the driveway of Manor Farm is obscured by heavy tree cover but the line is distinguishable. The claimed route between points B-C is shown as an increasingly overgrown tree-lined strip or track, with the surface not visible. From point C to Great Houndbeare Farm is visible throughout this period as a well surfaced track, though partially obscured by the hedges/trees alongside.

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1.3.23 Between points E-F the surface is visible in 1999 as a pale brown colour between neatly cut hedges. By 2006-7 it is clearly grassed over, though the hedges remain neatly cut. This section appears to become more overgrown up to 2015, with the hedges widening and the lane becoming narrower.

1.3.24 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 vast majority of the claimed route was not at that time considered to be maintainable at public expense. The claimed route is left uncoloured and there are no notes or annotations relating to it. These maps did not show footpaths and bridleways, only public roads. The only section of the route shown to be recorded as highway maintainable at public expense is the section between points C-D which is still recorded as such today.

1.3.25 The claimed route, other than the short section from points C-D, is not recorded on the List of Streets, which is the current record of highways maintainable at public expense kept by Devon County Council.

1.4 Definitive Map process

1.4.1 Original Definitive Map process

The application route was not put forward by Aylesbeare or Rockbeare Parish Councils for inclusion on the Definitive Map in the 1950s.

1.4.2 Devon County Council reviews of 1970 and 1977

The claimed route was put forward for consideration during the uncompleted review of the Definitive Map in 1977. Aylesbeare Parish Council submitted a form proposing the route be added as a bridleway, along with seven user evidence forms which are discussed below.

1.5 User Evidence

1.5.1 7 user evidence forms were submitted by Aylesbeare Parish Council in 1978 along with their proposal form during the uncompleted review. A further 5 forms were received during informal consultation, making a total of 12.

1.5.2 The period of user runs from 1921 – 2005, though the period from the mid-1950s until the early 1980s is where the bulk of the use occurred. Only one user (Turl, W) claims to have used the route prior to 1953; only two users claim use of the route after 1984.

1.5.3 The seven forms submitted in 1978 were all completed and signed by the users but were also signed by S Turl (Parish Council Chairman) as the person who took the statement (excluding his own form). All seven forms claim that the route is a bridleway. Six of the forms state that they used the route for riding/on horseback, the remaining form does not state a type of use. On the question of how many times a year they have used the route, five of the users state 'several', while one states 'once or twice' and one leaves it blank. Three of the users state that there was a gate on the route (two say 'at the end of

Houndbeare Lane, the other '*near Great Houndbeare Farm*') but the others state that there was not. None of the users refer to any signs or notices being present on the route. W Turl states that he was either working for, or a tenant of, an owner or occupier of land crossed by the route, but he does not provide further details.

- 1.5.4 The five users who submitted evidence during the informal consultation period completed modern user evidence forms and so have provided more info than the earlier users (for ease, they shall be referred to as the 'modern users'). C Murray is the daughter of W Murray who submitted a form in 1978. All five of the modern users claim the route to be a bridleway, with four of them specifically claiming to have used the route on horseback and Turnbull also claiming use on foot and bicycle. Frequency of use varies from weekly (C Ratcliffe, P Ratcliffe) to every few months (Wakely-Stoyle). The period of use covered by the modern users is 1956-2005, though only Turnbull and F Ratcliffe claim use after the mid-1980s.
- 1.5.5 Some of the modern users provide some additional information. While none of them refer to there being any signs or notices on the claimed route, several mention the presence of gates, specifically at the point where it passes Great Houndbeare Farm.
- 1.5.6 Only one of the users (Wakely-Stoyle) state that they have ever sought or received permission to use the claimed route. However, no further details are given, and it does not appear that direct explicit permission was either sought or received.
- 1.5.7 Turnbull states that there were two gates on the claimed route and marks their location on the plan - the gate near the entrance to Great Houndbeare Farm, which was mentioned by other users, and a gate between points E-F. The latter gate is stated to have been erected and locked by Mr Davey of Marsh Farm around 2005. It is stated that this gate prevented use of this section of the claimed route.

1.6 Landowner and rebuttal evidence

- 1.6.1 Nine landowners were identified with the Land Registry as owning land adjacent to the application route, or sections of the claimed route itself, and were consulted.
- 1.6.2 Mr P Davey returned a landowner evidence form confirming his ownership of a section of the claimed route between points E-F. He states his family have owned the land since 1955 and does not believe that the claimed route is a public right of way. He states that he has seen people using the claimed route but '*not in the last 19 years*'. He states that he has turned back people using the lane on off-road motorbikes. He states that he installed locked gates across the claimed route in 2004 to prevent motorcycles using it. It is stated that permission was given to people to use the route, but this relates to a deed of grant for a water supply pipe and associated private access, rather than any permission being given to members of the public.

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- 1.6.3 Mr P Clarke returned a landowner evidence form as owner of the land between points A-C, which is partly already recorded as a public footpath and the registered common between A-B. Mr Clarke states that he has owned the land since 1980 and has never seen anyone using the route (assumed to refer to the section between points B-C), nor ever turned anyone back or done anything to make the route impassable. He provides some additional information about the section between points B-C through Moor Plantation, in that a storm twenty years ago brought down several trees across the route, making it impassable. Trees have since then self-seeded along the track and it is now part of the plantation.
- 1.6.4 Miss Parsons returned a landowner evidence form relating to Proposal 2 but also provided some information relating to this proposal. She states that *'Houndbears Lane is owned by Devon County Council and other third parties'* and that she has *'a right of access over the entirety of it and various accesses off it'* into her fields. She states that to her knowledge there has been no use of the claimed route adjacent to her land by the public, only by fellow landowners for agricultural purposes.

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. This claim was made during the uncompleted Definitive Map Review in 1978 and not in response to any specific action taken by a landowner to obstruct or prevent access to it at that time. There is evidence of actions by a landowner having called into question use of the route in 2004 by erecting locked gates for consideration under statute law. There is also evidence to suggest that the section of the claimed route between points B-C became impassable around the same time, though due to natural processes, in this case, a storm bringing down trees. Therefore, it seems that 2004 can be used as the date of calling into question for the purposes of determining statutory dedication, though the accuracy of this date is not wholly satisfactory. The relevant period will therefore be 1984-2004.

- 1.7.2 Though there was earlier use of the claimed route, only two users claimed use during the relevant period. It appears that they believed they were using the claimed route as of right and there is no evidence to suggest any signs or locked gates prevented use during the relevant period. However, two users are not representative of the public at large and so the test for statutory dedication has not been met.

1.7.3 Common Law

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

implied and an implication of dedication may be shown if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway of the higher status and that the public has accepted the dedication.

- 1.7.4 Historical mapping shows that the claimed route has physically existed since at least the early part of the 19th century. The OS Drawings, 1st First Edition and Tithe Maps suggest that much of the claimed route may have formed part of the local road network during this period. However, there is no further documentary evidence to substantiate or elaborate on this. Historic highway maintenance records show that the application route was not considered then to be highway maintainable at public expense, other than the short section between C-D which is already recorded as highway maintainable at public expense (HMPE). Finance Act plans and field books show the section between points E-F as being excluded from surrounding hereditaments, but the rest of the claimed route is included within hereditaments and no deductions were made for public rights of way. The OS Object Name Books suggest that the route may have held some sort of public status but are not conclusive in any way.
- 1.7.5 The fact that the claimed route was not proposed for inclusion during the original Definitive Map process suggests that at this time it was not considered to be public by the Parish Council. However, there is no evidence to suggest why it was not included and it may simply have been overlooked. As such, the Definitive Map process provides little evidence either for or against public rights on the claimed route.
- 1.7.6 The route was claimed by Aylesbeare Parish Council during the 1978 review, and so it can be assumed that they considered it to be public when doing so. However, this review was not completed, and the only evidence presented at this time were the seven user evidence forms.
- 1.7.7 The available user evidence suggests that there has been some public use of the route, up to approximately 2004-5 when the gate was erected and locked between points E-F. Although one user claims use since the 1920s, the bulk of the use occurred between the mid-1950s until the early 1980s. There is general consensus amongst the users that the landowner would have been aware of this public use. Conversely, frequency of use was not high and the landowners who returned evidence forms do not claim to have seen much public use. There is no evidence, either provided by users or landowners, to suggest that any landowners ever took any actions to challenge public use on horseback or foot prior to 2004. It therefore appears that what use there was can be considered to have been as of right.
- 1.7.8 There are however some problems with the user evidence. The forms submitted in 1978 appear to have been collected by one person and as a result are rather formulaic. They also do not provide much additional information beyond yes/no answers and as such cannot be attributed as much evidential weight as the modern forms. The modern forms, while providing more detailed information on the use of the route, do not build a picture of the claimed route being well-used by the public at large. While the route is undoubtedly rural, it is

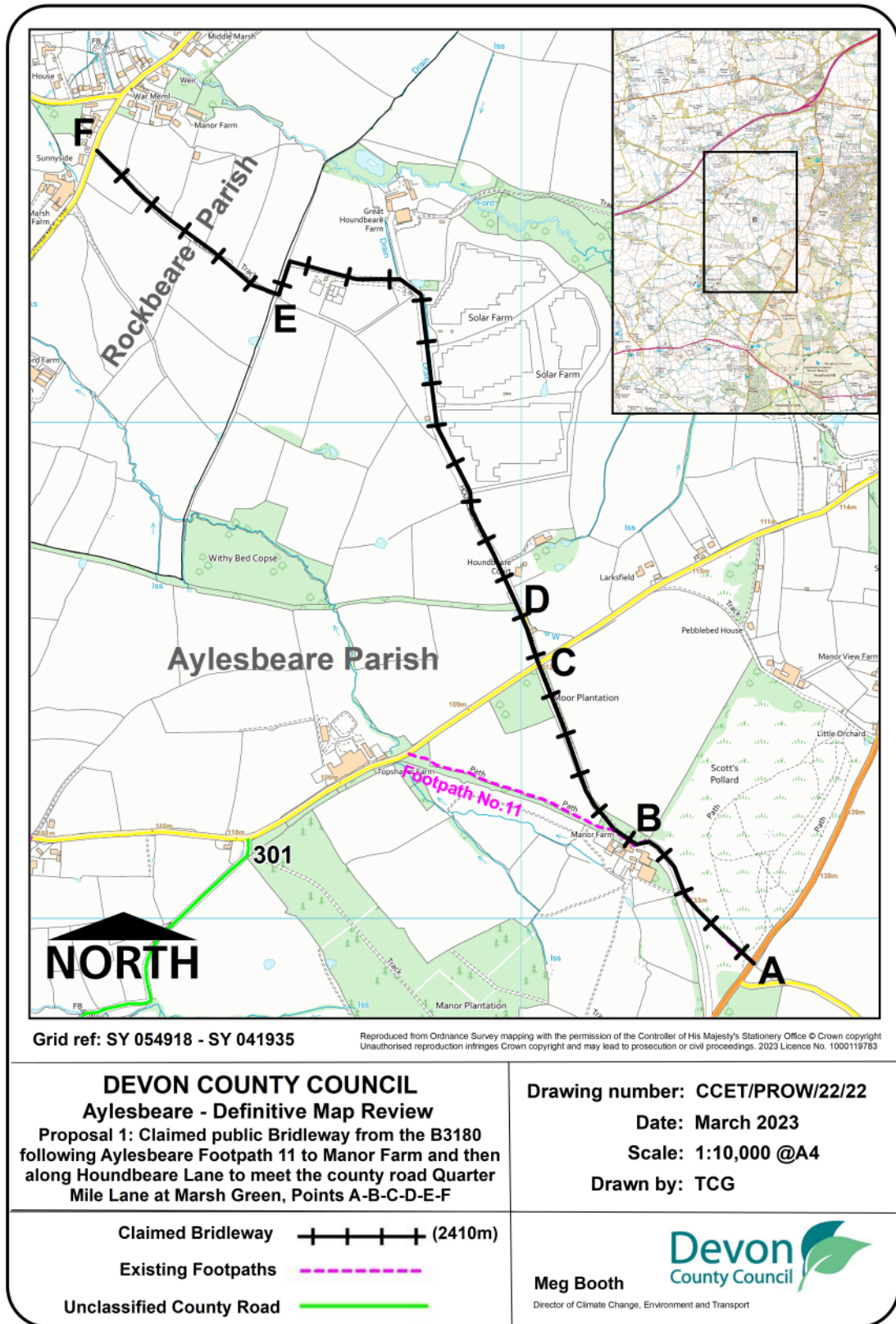
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not particularly remote and a higher number of users, particularly on foot, would be expected.

- 1.7.9 The evidence suggests that the route (at least in parts) may have held some sort of public status historically and was used by the public for several decades until it was blocked in 2004. However, the historic documentary evidence is not strong enough to raise more than a suggestion of public rights, and the user evidence is not of a quantity, nor use of a frequency, to be strong enough to demonstrate acceptance of a dedication by the public at large. It does not appear that any landowners took any action prior to 2004 that would rebut a claim, but nor does it appear that they witnessed much use of the route by the public; the small amount of user evidence corroborates this.

1.8 Conclusion

- 1.8.1 From this assessment of the evidence, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights subsist on the balance of probabilities. Accordingly, the recommendation is that no Order be made in respect of this proposal.



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Proposal 2: Proposed addition of public Footpath along Withy Bed Lane, between Houndbeare Lane and Quarter Mile Lane, points D-G on proposal map CCET/PROW/22/23.

Grid Ref: SY 049926 – SY 038927

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

2.1 Background

2.1.1 In 2021, Aylesbeare Parish Council contacted the Devon County Council Public Rights of Way team to enquire about the possibility of creating a footpath along Withy Bed Lane. The intention was to provide a green off-road route for pedestrians to access Aylesbeare Common and was part of discussions concerning a proposed solar development on nearby land. There was some anecdotal evidence of recent use of the route by the public on foot. Initial investigations highlighted that there was some evidence (Tithe Maps, Finance Act 1910 plans and Ordnance Survey Name Books) that the route may have held some public status historically and so it was decided to include it as a proposal in the forthcoming parish review.

2.2 Description of the Route

2.2.1 The route starts at point D on plan CCET/PROW/22/23, at the end of the recorded HMPE (and also the junction with proposal 1). It proceeds in a westerly direction along a wide but enclosed lane for approximately 220m. This section is still used for agricultural access to adjacent fields. At this point the route becomes very overgrown and is then crossed by a small stream. It continues westwards to the south of Withy Bed Copse until it meets the county road Quarter Mile Lane at point G. Although overgrown, the adjacent banks are visible for much of this section and in places there is a narrow worn path that weaves through it. Several sections are very waterlogged.

2.2.2 At point F, a South West Water (SWW) temporary pumping station is currently in situ that completely obstructs the route. SWW responded to consultation and confirmed that they are intending to make the pumping station permanent but that they would be willing to accommodate a public footpath through the site should the claim be successful.



Point D



Point G looking east, showing the SWW temporary pumping station.

2.3 Documentary Evidence

2.3.1 Early historical mapping – 18th century - early 19th century: Donn's Map of Devon 1765; Ordnance Survey, Surveyors' Drawings 1806-7; Cassini 1st edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827

Donn's Map of Devon, produced in 1765, does not show the claimed route. However, it does show a crossroad on the road from Aylesbeare to Tipton cross that corresponds with the short stub of HMPE that exists today leading up to the claimed route. Early historic mapping suggests that this crossroad may have only been able to represent the claimed route as the branch to Great Houndbeare is not shown until the Tithe Maps in the late 1830s. Although this does not allude to any public or private status, it does suggest that the claimed route physically existed at this time and was possibly considered part of the public road network.

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- 2.3.2 Ordnance Survey Drawings produced in 1806-7 show the entirety of the claimed route. These maps generally do not show footpaths, only roads/tracks. It is perhaps noteworthy that the continuation from point D to Great Houndbeare (part of proposal 1) is not shown on this map, with the farm being accessed from Marsh Green via Great Houndbeare Lane. As such, the claimed route is the sole link between the HMPE (points C-D of Proposal 1) and the county road at Quarter Mile Cross (point G). There are no properties/buildings shown adjacent to the claimed route on this map, nor in any other later maps.
- 2.3.3 The 1" First Edition map of 1809 shows the claimed route in the same manner as the earlier OS Drawings. Both of these early OS maps were produced well before the disclaimer concerning public rights of way was introduced in 1889. It can therefore be argued that routes shown on them may have held some sort of public status or reputation at the time they were produced, though limited weight can be attached to them.
- 2.3.4 Greenwoods Map of 1827 shows the claimed route in much the same manner as the OS Drawings, of which they are believed to have been largely copied from.
- 2.3.5 Later historical mapping at smaller scales: OS 1" editions 1892-1972, Bartholomew's Mapping 1903-1943
OS 1" mapping from 1892-1946 consistently shows the claimed route as an enclosed unmetalled road. The 1892 edition shows a solid line (presumably a gate) across the driveway leading down to Great Houndbeare Farm at point D. There is no such line across the claimed route at this junction.
- 2.3.6 The later editions (1960-1972) show two short sections of white road/track at either end of the claimed route, with the middle section shown as a dashed line that simply denotes '*path*'. From the 1967 edition the dashed line denoting path is a distinct category, with public rights of way now being shown following publication of Definitive Maps.
- 2.3.7 Like Proposal 1, the claimed route is shown on all of the Bartholomew's editions. These commercial maps were produced for the benefit of '*tourists and cyclists*' and were widely available to the public. The claimed route is shown as an uncoloured road, which are classed as '*inferior roads*' that are not recommended for cyclists.
- 2.3.8 Aylesbeare Tithe Map & Apportionment 1839; Rockbeare Tithe Map & 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*'.

- 2.3.9 The Aylesbeare Tithe Map, produced in 1839, shows the claimed route as an uncoloured road. The majority of the roads shown on this tithe map are coloured yellow. Roads were not labelled or identified in the Apportionment as public and included those which were obviously public, as well as others more likely to have been private tracks for access to fields and some not now existing.
- 2.3.10 The western half of the claimed route is shown on the Rockbeare Tithe Map, produced in 1844. It is shown in a similar way to other roads that appear to be public; it is not numbered in the apportionment, though unusually there is no category recorded for roads and waste. Some lanes (such as Houndbeare Lane, which is part of proposal 1) are numbered and listed in the apportionment but are not recorded as subject to tithes.
- 1.4.3 Later historical mapping at larger scales: OS 25" editions 1888-1961, OS 6" editions 1889, 1906, 1944
The OS 25" First Edition 1888 map shows the claimed route as an enclosed tree-lined track. There are no man-made barriers or obstructions indicated on the route, though there are springs/streams marked at several points across it. The route is named Withy Bed Lane on this map. The route is shown in much the same manner on the 25" Second Edition 1904 map, the only real difference being that a guide post is marked at Quarter Mile Cross (point G).
- 2.3.11 Later OS 25" mapping continues to show the claimed route as a track/road, though unnamed, and from 1961 onwards it is also annotated with FP.
- 2.3.12 OS 6" mapping shows the claimed route in a similar manner to the 25" editions, though as expected not in such detail. It is named as Withy Bed Lane in all three editions, and no obstructions are shown along the route. The 1944 6" edition also has a guide post annotated at point G where the route meets the county road Quarter Mile Lane.
- 2.3.13 Ordnance Survey Name Books, 1903
These Ordnance Survey records were produced in conjunction with the Ordnance Survey mapping and 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.
- 2.3.14 There is an entry for Withy Bed Lane, which states: '*applies to a lane extending from S. end of Quarter Mile Lane to Houndbeare Lane.*' The person stated as giving authority for the mode of spelling is Mr Chard, who is listed as a '*Road Foreman*'.
- 2.3.15 Finance Act 1910, plans and field books
The OS 25" Second Edition 1904 maps were used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation, copies of which were submitted with the additional material for the applications. The map shows the application route to have been excluded from surrounding hereditaments (assessment areas of land) throughout. Field book entries for surrounding hereditaments do not refer to the claimed route.

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- 2.3.16 Parish Council and Vestry minute books – parishes of Aylesbeare, Rockbeare
While the parish council records from both Aylesbeare and Rockbeare (though only a short section of the claimed route falls within the latter parish) record brief details of the original Definitive Map process and subsequent reviews, there are no entries relating to the claimed route.
- 2.3.17 Minutes from 1934 show that Aylesbeare purchased maps to comply with the Rights of Way Act 1932, upon which footpaths were marked and checked by the chairman. However, no details of these survive.
- 2.3.18 Similarly, in 1944 Aylesbeare Parish Council communicated with St Thomas Rural District Council concerning accommodation roads and '*unnecessary highways*', with parishes being consulted on plans to stop up minor roads no longer required or suitable to be publicly maintained. However, no details of individual roads are mentioned.
- 2.3.19 St Thomas Rural District Council records, including Highways Board minutes 1878-1974
Records from St Thomas Rural District Council, including Highways Board minute books, are held at the Devon Records Office. These records have been checked and, like Proposal 1, no references to the claimed route have been found. Though they mostly concentrate on the main roads within the district there are occasional references to more minor/unclassified public roads in other parishes.
- 2.3.20 Highway maintenance records/Handover maps
Highway maintenance records from the 1920s and used through to the 1970s, often called handover maps, show that the claimed route was not at that time considered to be maintainable at public expense. The claimed route is left uncoloured and there are no notes or annotations relating to it. These maps did not show footpaths and bridleways, only public roads.
- 2.3.21 List of Streets
The claimed route is not recorded as highway maintainable at public expense on the List of Streets.
- 2.3.22 Definitive Map process
The claimed route was not put forward for inclusion on the Definitive Map by either Aylesbeare or Rockbeare Parish Councils during the original Definitive Map process started in 1950.
- 2.3.23 Devon County Council reviews of 1970 and 1977
The claimed route was not put forward for inclusion on the Definitive Map during either of the uncompleted reviews.
- 2.3.24 Aerial photography
Aerial photography from 1946 shows the claimed route and some details can be gleaned. The section from point D until Withy Bed Copse is clearly flanked by hedges and trees but the surface (apparently unmetalled) of the enclosed lane is partially visible. A similar picture is visible where the route passes south of Withy Bed Copse but the northern side is more obscured by tree cover. The

western end of the route near point G is also flanked on both sides by hedges and there are fewer trees. The available width here appears to be approximately 3-4 metres, possibly more.

- 2.3.25 Modern aerial photography from 1999-2015 is of little help. All but the very eastern end (which is still used for agricultural access to adjacent fields) is hidden by extensive tree growth. While hedges are glimpsed in a few small places in 1999, by the end of this period they are only visible at the very eastern end.

2.4 User Evidence

- 2.4.1 During informal consultation, three people submitted user evidence forms, all of whom also submitted forms for Proposal 1.
- 2.4.2 S Wakely-Stoyle states that she used the route on horseback every few months from 1970 until approximately 1983 when it became too overgrown to be usable. She states that it has always been her understanding that the route was public, and that her mother also held this view, along with the Foxwell and Larcombe families who lived in the parish. She states that she never sought or was given permission to use the route, was never stopped or turned back and did not know who the landowner was.
- 2.4.3 P Ratcliffe states that she used the claimed route on horseback several times between approximately 1967 and 1982 as part of a circular route that included Proposal 1. She states that the *'track was difficult in wet weather so I rarely took my children this way.'*
- 2.4.4 F Ratcliffe (daughter of P Ratcliffe) states that she used the claimed route on both foot and horseback between 1971-1982 when she was a child. She states that she knows many people who used the claimed route over the years but that many of them have since died. She writes that: *'there were always locals walking and riding these lanes.'*
- 2.4.5 As well as the three user evidence forms, three additional people emailed in support of the proposal and claimed that they had used the route. However, despite being sent user evidence forms, they did not submit them and so the information that they provided cannot be given as much weight as those who returned forms. Their emails refer to their own use of the claimed route as well as other locals walking and riding along it. One claims to have worked at Otterdene stables in the 1980s and that they regularly took customers along the claimed route (as well as Proposal 1). One states that they got permission from the farmer to use the claimed route, so obviously this cannot be considered use as of right.

2.5 Landowner and rebuttal evidence

- 2.5.1 Six landowners were identified as owning land adjacent to the claimed route, which is itself unregistered. All six adjacent landowners were consulted, with one returning a landowner evidence form.

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2.5.2 S Parsons returned a comprehensive submission, including a landowner evidence form and detailed plan. She owns the land to the north of the claimed route from point D to the western edge of Withy Bed Copse; she also owns a small parcel of land to the south of the claimed route near point D. She states that she has owned the land for 30 years but that it has been owned by her family since the 1920s. She does not believe it to be a public right of way and states that it has only ever been used by herself and one other landowner for access, and never by the public. She has never been asked, nor given, anyone permission to use the route. She states that there has been a barrier in place across the claimed route at two points approximately 180m and 200m west of point D, consisting of a post and rail fence and two gates tied together, which have been in place throughout her 30 years ownership. She also mentions that a string has been in place across the route at point D at times when moving livestock. She states that the route is extremely wet and overgrown and impassable in places, plus lists concerns about dogs, trespassing and disturbance of wildlife should the route become a public right of way.

2.6 Discussion

2.6.1 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.

2.6.2 Landowner evidence suggests that the claimed route has had a post and rail fence across it for around 30 years (1993), though this date is only approximate. This would certainly act as a calling into question of the route. However, the user evidence available does not cover the whole of the twenty year period prior to this and so the test for statutory dedication has not been met.

2.6.3 Common Law

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

2.6.4 The historical mapping suggests that the route has physically existed since at least 1765 when it appeared partially shown on Donn's Map of Devon. The earlier maps, particularly the OS Surveyor's Drawings and 1" First Edition, were produced long before the OS disclaimer was introduced and can be considered to largely portray the public road network. As such, while they are not conclusive in any way, they can be considered to support the claimed route having some sort of public status or reputation at this time.

- 2.6.5 The two tithe maps that show sections of the claimed route do not provide strong evidence of public rights as they were not produced for this purpose. The Aylesbeare tithe map does not show the claimed route coloured yellow in the way that most of the road network is, which could be interpreted as indicating that it was not considered to be a public highway; conversely, it is not numbered and so does not appear subject to tithes, which could suggest that it was considered public. The section that is shown on the Rockbeare tithe map is not numbered, unlike other similar routes such as Houndbeare Lane; however, although these are numbered, they are not subject to tithes in the apportionment. As such, the tithe maps are of little help in building a picture of public rights along the claimed route at the time they were produced. They provide a confused and contradictory picture and, if anything, are slightly more supportive of the route not being considered public during the mid-19th century.
- 2.6.6 Later historical OS mapping from the late 19th – early 20th centuries continued to show the claimed route and does not depict it to be obstructed or gated, though the natural features (stream and springs) that currently render the route difficult to use are shown from 1889 onwards. While these maps do not provide any evidence of public rights, they do support the contention that the route was open and available for use at that time. The presence of the claimed route on Bartholomew's mapping could be construed as evidence of public reputation, though this does not help establish status.
- 2.6.7 The OS Object Name Book entry for Withy Bed Lane simply states that it is a '*lane*'. The entry was signed off by Mr Chard, the '*Road Foreman*' and so it is to be presumed that he would have had sound knowledge of the status of Withy Bed Lane. The mere fact that he has been deemed to have authority suggests the route may have been considered public. The fact that it is not noted as being a second- or third-class road suggests that if it did have any public status, it would have only been a minor parish road. It is not clear from the Name Book exactly whether the term '*lane*' itself implies any degree of public status or reputation or refers to a private lane or accommodation road.
- 2.6.8 The claimed route is excluded from surrounding hereditaments throughout on the Finance Act 1910 map, a likely indication that it was considered a public highway of at least bridleway status, though the status of highways or P^{RoW} were not a primary concern of the process.
- 2.6.9 The absence of any references to the claimed route in parish records, particularly as it is named route (Withy Bed Lane), is noteworthy. The absence of references to Withy Bed Lane in the parish records does not mean that the Vestry/Parish Council did not consider it to be public. However, it is perhaps slightly surprising that a public highway, albeit unsurfaced, would escape mention over the course of a century. As such, the parish records are slightly more suggestive of the claimed route not holding any public status.
- 2.6.10 The highway records also suggest that relevant highway authorities since the 1920s have not considered the claimed route to be a public road. However, these records do not generally include footpaths or bridleways and so the fact that the claimed route is not shown does not mean that lesser public rights were not present.

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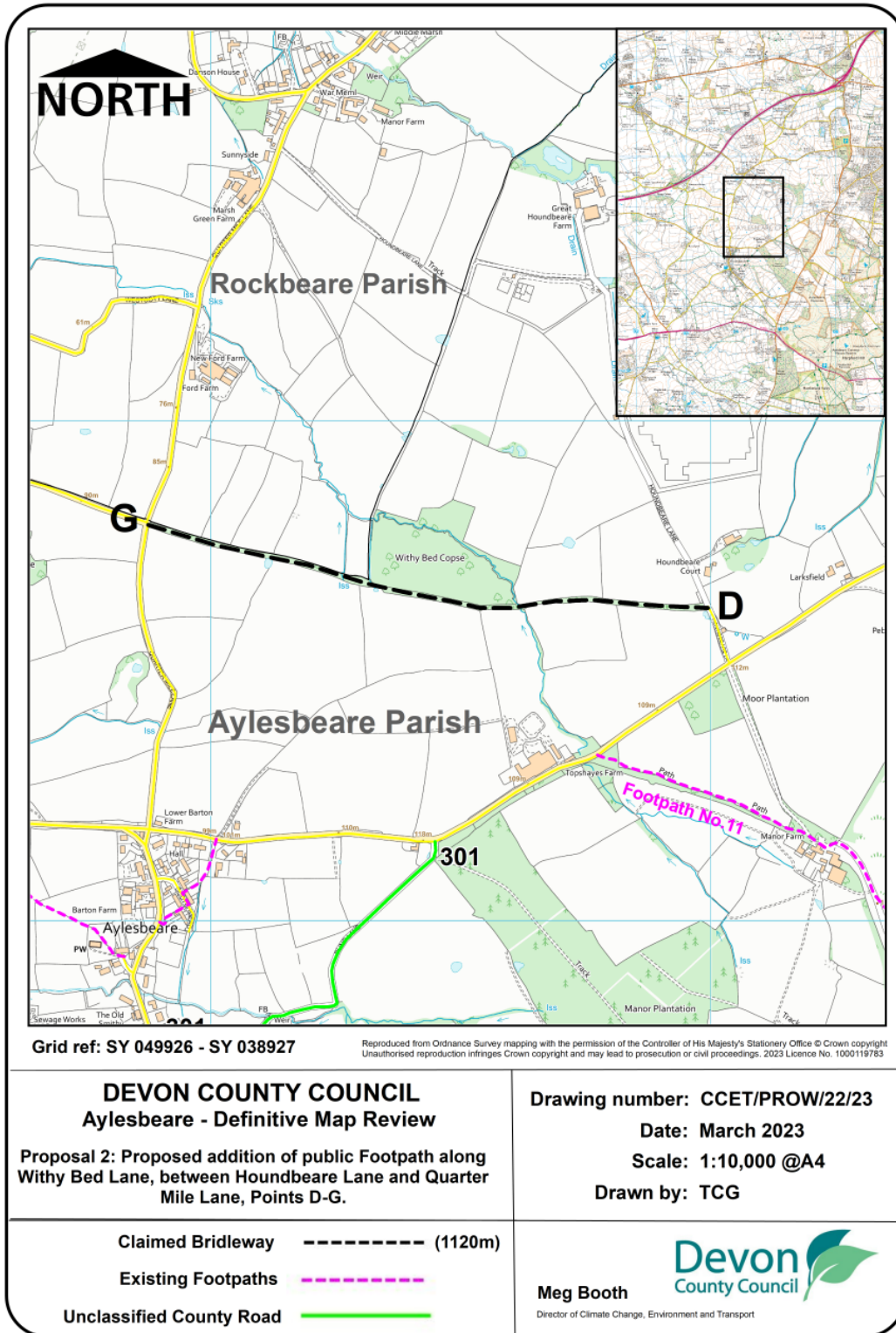
2.6.11 Landowner evidence suggests that the claimed route has been physically obstructed, including by a post and rail fence, since the early 1990s, though there is no evidence to suggest any actions to rebut public use prior to this.

2.6.12 In the absence of any conclusive documentary evidence, the claim would require direct evidence of use by the public in order for common law dedication to be inferred. However, the user evidence available is limited in quantity, does not cover a long period and is not reflective of use by the public at large. As such, although there is some evidence to suggest that the claimed route may once have held some sort of public status or reputation, when taken as a whole it is insufficient to support an inference of dedication under common law.

2.7 Conclusion

2.7.1 In the absence of sufficient user evidence of public rights during the relevant period, their existence cannot be considered under Section 31 Highways Act 1980. Under Common Law, the documentary evidence shows that the route has physically existed at least since the mid-18th century and may well have held some sort of public status or reputation up to the early 20th century. However, none of the documents are conclusive, several are rather conflicting, and none help clarify the status that the route may have held. As the documentary evidence is not strong enough by itself, evidence of use by the public as of right would be needed to demonstrate an inference of dedication at common law; in this respect the claim falls short due to the lack of user evidence.

2.7.2 From this assessment of the evidence, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights subsist on the balance of probabilities. It is therefore recommended that no Modification Order be made in respect of this proposal.



CET/23/93

Public Rights of Way Committee
23 November 2023

Definitive Map Review Parish of Exminster

Report of the Director of Climate Change, Environment and Transport

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

1) Recommendation

It is recommended that:

- (a) A Creation Agreement be made between Devon County Council and Exeter City Council to add Proposal 1 to the Definitive Map as a Footpath.

Should a creation agreement not be practicable, it is recommended that

- (b) a Modification Order be made for Proposal 1 to add it to the Definitive Map as a Footpath.

2) Introduction

This report examines one proposal to resolve the anomaly of a short section of unrecorded footpath across a footbridge between the parishes of Exminster and Exeter City.

3) Background

The Definitive Map in Exminster Parish and Exeter City were compiled at different times. The statement for Exminster Footpath No. 1 sets out that this path continues across the parish boundary into Exeter City to the Topsham Ferry. However, this public footpath was erroneously omitted from the Exeter City parish map.

In December 2019, following a bridge inspection arranged by Exeter City Council, the path between the end of Exminster Footpaths nos.1 & 2 and the Exeter Footpath nos. 23 was closed. The bridge was no longer safe due to considerable erosion of the abutments at and below the waterline. The bridge closure resulted in significant concern from path users, especially as it became clear that public access rights were not recorded. Due to uncertainty over status of the bridge and when it would be re-opened for public use, substantial user evidence was submitted setting out that the public access rights should be recorded on the Definitive Map and Statement.

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The Parish by Parish Definitive Map Review was carried out in Exminster in 1990. The issue of the missing section of footpath was not noticed at that time as the mapping was a paper-based system and did not allow enlargement. At 1:10,000 scale, this anomaly was not seen.

Up until 1994, Exeter City Council looked after the Definitive Map for the city area through an agency agreement with Devon County Council.

4) The Proposal

Please refer to the appendix of this report.

5) Consultations

General consultations have been carried out with the following results:

County Councillor Andrew Leadbetter (Topsham Ward)	- no comment
County Councillor Alan Connett (Exminster Ward)	- supports proposal;
Teignbridge District Council	- no comment;
Exeter City Council & Canal Authority	- agree in principle to Creation Agreement
Exminster Council	- supports proposal;
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 a Creation Agreement be pursued in the first instance with Exeter City Council. If this fails, a Modification Order should be made to add a public footpath as shown on plan No. CET/PROW/23/75

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.

Meg Booth

Director of Climate Change, Environment and Transport
Electoral Division: Exminster & Haldon

Local Government Act 1972: List of background papers

Background Paper

Correspondence file Exminster	2019 to date	AS/DMR/EXMINSTER
Parish records, Tithe Maps. Original OS Mapping, Canal Acts		Devon Heritage Centre
An Inland Haven Gill McLean Crossing the Exe Anna Adcock and Mark Dent		Topsham Museum
User evidence forms		Contact Alison Smith

Contact for enquiries:

Name: Alison Smith
Telephone: 01392 383370
Address: M8 Great Moor House, Bittern Road, Exeter

as021123pra
sc/cr/DMR Parish of Exminster
04 151123

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Appendix 1 to CET/23/93

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.

Proposal 1: Unrecorded Footpath between Exminster Footpaths nos. 1 & 2 and Exeter Footpath nos. 22 & 23 and Exminster Footpaths nos. 17 & 18 the Exeter Canal tow paths as shown between points A-B-C-D on the plan No. CET/PROW/23/75 Grid Ref: 96198790

Recommendation: It is recommended that:

- (a) a Creation Agreement be made between Devon County Council and Exeter City Council to add Proposal 1 to the Definitive Map as a Footpath.

Should a creation agreement not be practicable, it is recommended that:

- (b) a Modification Order be made for Proposal 1 to add it to the Definitive Map as a Footpath.

1. Background

- 1.1. The unrecorded section of footpath crosses a bridge from Exminster Parish into Exeter City and then over the Exeter Ship Canal (the Canal) on a swing bridge to footpath, to the canal tow path, and Exeter FP no. 22, and Exminster FP no. 17 on the northeast side of the canal. This footpath is a very old and well documented route between the Topsham Passage Ferry and Exminster dating back to 1660, prior to the building of the canal extension in 1827.
- 1.2. The Definitive Map for Exminster Parish was compiled in the 1950's. Exeter Urban District Council did not compile their Definitive map until the 1960s. The Definitive Statement for Exminster Footpath No. 1 details that the footpath continues across the parish boundary into Exeter Urban District to the Topsham Ferry and Topsham. This footpath was erroneously left off the Exeter Urban District map.
- 1.3. The Parish by Parish Definitive Map Review of Exminster was carried out in 1990. The issue of the missing section of footpath across the bridge to Topsham Ferry was not discovered at that time.
- 1.4. In December 2019, the bridge between points A to B was closed by Exeter City Council, following a bridge inspection. At the inspection, the bridge was found to be unsafe due to erosion of the joints in the abutments on and below the waterline. This closure led to an outcry from walkers, and as a result, significant user evidence was submitted – initially in 2019, and then additional evidence was submitted during the informal consultations in 2023.
- 1.5. Informal consultations were carried and included Exminster Parish Council, and also Exeter City Council as the owners of the Exeter Ship Canal.
- 1.6. Exeter City Council are considering entering into a Creation Agreement under s 25 of the Highways Act 1980 with Devon County Council to add the Footpath to the Definitive Map. However, if this is not possible, the evidence (as summarised below) demonstrates that it would be appropriate to make a Modification Order.

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- 1.7 In researching this matter, discussions have also included the Environment Agency to consider potential alternative options. Two different schemes have been considered, one for a large culvert to the west of point A, and the second for a standard wooden footbridge at a point either side of the old bridge. The indication is that the EA will only be able to support a scheme for a bridge is at the site of and at the same height as the original old bridge (A – B).

2. Description of the Route

- 2.1 The claimed route starts at the junction of Exminster Footpaths nos. 1 and 2 Exminster at point A, plan No. CET/PROW/23/75, crosses the bridge (which is currently closed) to point B, then to the canal tow path point C, Exeter FP no.23 and Exminster FP no 18, then continues across the canal on a swing bridge to the opposite canal tow path point D, Exeter FP no. 22 and Exminster no.17.



October 2019 before it was closed. Point A on right of photo



Current state of Bridge October 2023 point A on right of photo

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Point B looking towards C and over the bridge to point D and Topsham Ferry



From point C looking towards D (near the bike) and across the River Exe to Topsham Passage Slipway in the distance.

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Point D looking back towards point C and Exminster in the distance.

3. Documentary Evidence pre-existing Highway

- 3.1 The River Exe is a tidal estuary stretching from Exeter to Exmouth, with a few crossing places. There has been a bridge in Exeter since perhaps Roman times and a ferry between Exmouth and Starcross since 12th Century. Charles 1st was noted to have crossed the Exe at Topsham in 1625, and there are records of many people drowning whilst using Topsham Passage ferry in atrocious weather and floods.
- 3.2 1721 The Ferry Inn Topsham opened as a pub, later to renamed as the Passage House Inn. The Ferry Inn owner had the rights to run a passage ferry across the River Exe to Exminster.
- 3.3 In 1736 it is recorded in a Deed 5 May 1736 (re Ferry & Salt Marsh) (Devon Heritage Centre) that Waltham Savory, Lord of the Manor of Exminster, gave Benjamin Buttell and John Wear permission to make a 12 feet wide path, 'fit for man and horse', and a new landing place for passengers on the Newlands Salt Marsh (Exminster) from Topsham. They paid two shillings and sixpence yearly and made repairs to the landing place from time to time. Buttell and Wear were already the owners of a passage boat from Topsham to Exminster. The owner of the Passage House Inn had the rights to run the ferry and in the 1730's let these ferry rights to a ferryman for £80 a year (about £20,000 today). This was reduced to £30 in 1768 as the ferry lost the monopoly of crossing the River Exe, as the Countess Wear Bridge was opened by the Turnpike Trust to replace the dangerous and difficult ford.

- 3.4 Benjamin Donn's A Map of the County of Devon 1765 This shows Topsham Passage Ferry, crossing the river Exe and landing on the salt marsh of Exminster, thus indicating an established ferry was carrying passengers between Exminster and Topsham prior to 1765.
- 3.5 Ordnance Survey, Surveyors' Drawings 1801, this was the first full topographical survey of the Country. This map shows the Topsham Passage passenger ferry in the same place as 1765 Donn map, and the linking track across the Exminster Marshes called Great Droveaway. This map predates both the Canal extension and the railway.
- 3.6 Greenwood's map published in 1827 shows the line of the canal extension in hashed markings as was still under construction when the survey was undertaken.
- 3.7 Exminster Tithe Map of 1842 surveyed by Robert Dymond (the first map surveyed after the Canal extension was finished and open) shows the Canal extension with a bridge over the canal ditch on the Exminster side between points A and B, and a bridge over the Canal between points C and D onto the tow path to Topsham Passage. Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity. This would potentially limit the possibility of errors on the map.
- 3.8 1825 to 1827 Exeter Canal and the Proposed Extension and Improvements by James Green Civil Engineer and approved by Thomas Telford Civil Engineer. The Exeter Canal was extended by two miles from its then exit point into the River Exe, to the west of Topsham, at about the point where the current motorway bridge crosses the River Exe. The canal extension was needed as the old canal was inaccessible at some stages of the tide and too shallow for the larger cargo ships of the day.
- 3.9 The extension was given parliamentary consent and works started in 1825. It was a huge engineering project involving teams of 250 men working day and night to dig the canal along very difficult ground at the edge of the Exminster Salt Marshes. They had to make two huge, battered earth banks of about 4.5m tall to avoid the tide overtopping, plus the associated stone works at Topsham Ferry Footpath and Turf, where they had to make sea locks, basin and reclaimed land for Turf Inn and Lock keepers' accommodation. The Exeter City Chamber spent over £100,000, of which £85,900 was borrowed, it hoped to recoup the costs through increased trade to the City. (This is equivalent to over £11 million today).
- 3.10 The canal extension radically changed the nature of Exminster Salt Marshes by enclosing them and changing the habitat into freshwater marshes. This was achieved with a series of new drainage ditches and sluices included in the construction works of the canal. Which included the drainage ditch between point A and B.
- 3.11 The effect of the Canal extension was to cut the long-established Topsham Passage ferry off from Exminster by building over its landing place and cutting the footpath to Exminster.

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- 3.12 James Green's plans of 1825 show longitudinal sections for the canal extension, including the details of the works necessary for its construction. Those works include the provision a new ferry landing, abutments and bridges between points A and B and C and D were all drawn at the design stage.
- 3.13 Subsequently these structures were built as the canal works progressed to Turf Locks, thus allowing the continuation of a pre-existing foot highway across the canal and associated ditches. It is worth noting that the stone works at point A and B and C and D is the same as the stonework at Turf basin and locks, the rest of the canal has battered earth banks rather than stone banks.
- 3.14 The Canal was opened with great ceremony in 1827. This included a party of MP's and 40 other Gentlemen who boarded a barge at Exeter Quay and travelled through the improved waterway, accompanied by the ringing of cathedral and church bells, firing of cannon, artillery salutes and cheering crowds!
- 3.15 1845 The County Lunatic Asylum opened in Exminster, and many Topsham men and women were employed there. They are documented to have used the Topsham ferry to get to work as it was 'just 2 miles' rather than 4 miles each way if they used the Countess Wear Bridge.
- 3.16 1852 Exminster Railway Station opened nine years before Topsham Station. Rail passengers from Topsham caught the Topsham Ferry and walked to Exminster station to catch the new trains to London or Plymouth. This reduced the journey to London to a few hours rather than a day and a half in a stagecoach. This use continued even when Topsham station opened as it was quicker to catch a GWR train at Exminster to London than from Topsham as it was a different track and company.
- 3.17 1880 Agreement made between The Earl of Devon and Edward Harbottle (architect) 'to create a shorter & more easy Foot Path from Topsham Ferry to the station of the GWR at Exminster & Rt Hon Lawrence, Baron Haldon, has granted a right of way...to be a free way and no tolls.'
- 3.18 Ordnance Survey maps 25" editions 1888-1961, OS 6" editions 1889-1944, All show the canal bridge and ditch bridges in the same way with a well-worn track.
- 3.19 Exminster Parish Council Minutes
Exminster Parish Council was formed in 1896. At its first Parish Council meeting of 22nd July 1896, the Parish Council noted it needed to 'Inspect steps and wicket gate on the Topsham Ferry pathway, from Mr D's saltmarsh to Mr S's marsh.' Mr Dew undertook to speak to Mr Harbottle with respect to the condition of the path from Exminster Station to Topsham ferry.
- 3.20 The Exminster Parish Council minutes then detail numerous entries, often 4 in each year, for the maintenance and repair of the footpaths to the ferry crossing. They detail public money being spent on the (now known as Footpath 1 & 2) but do not spend public money on the Canal bridges.

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- 3.21 April 20th 1899, a letter was read from Mr Symonds in respect of the bad state of repair of the footpath from Station Road to the Topsham Ferry. It was resolved that a letter be written to GWR company pertaining to put the footpath into repair.
- 3.22 October 12th 1899, another letter written to directors of GWR asking them to cover a third of the cost of £11 for gravelling the path.
- 3.23 April 19th 1911, Clerk to write to Mr Harbottle (of Topsham, Owner of the Passage House Inn and Ferry operator) to draw his attention to the state of the path and bridges leading across the marshes to the Topsham Ferry.
- 3.24 1911 to Jan 1930, Numerous reference to the maintenance and repair of the footpath to Exminster with Mr Harbottle contributing to the expenses of keeping this footpath in good repair as it was “much used by very considerable numbers of people crossing the ferry.” 1919, Mr Harbottle was requested to contribute towards 30 loads of gravel , a cart, and a man to re-gravel the path.
- 3.25 January 7th 1930, bridges over marshes again damaged by flooding. Clerk had again contacted Mr Harbottle, who used to own the ferry rights together with the Passage House Inn. However, wrote saying he had sold the Inn and Ferry to Heavitree Brewery in 1928. So, the Parish Council wrote to Heavitree Brewery asking them for the contributions as Mr Harbottle used to make. The Parish Council got a quotation to replace wooden bridges with concrete ones. Brewery were asked for half the cost of £15.
- 3.26 References to maintenance of the bridges across the marshes, appear annually in the Exminster Parish Council minute books from 1930's until 1957, when the paths were recorded on the Definitive Map as Public Footpath Exminster Nos. 1 & 2. From that date, the County Council took over the maintenance and repair for the paths across the marshes.
- 3.27 The ferry rights were sold from the Heavitree Brewery to St Thomas Rural District Council for £30 in 1946. 1st April 1966 St Thomas RDC was incorporated into Exeter City Council thus taking over the ferry rights and the Canal. In 2020 the Port of Exeter, its canal and basin, was designated a Heritage Harbour. Exeter City and its associated charity the Exeter Canal and Quay Trust now owns and looks after the canal and its assets and liabilities.
- 3.28 RAF Aerial Photography 1946 clearly show the two bridges over the canal and ditch.

4. Definitive Map process

4.1 Original Definitive Map process

Exminster Parish Council recorded Footpaths Nos. 1 & 2 and 17 & 18 on the Definitive Map in 1957. The Definitive statement for Footpath No. 1 reads “It starts at the eastern end of the Unclassified County Road, Milbury Lane and proceeds in an easterly direction over a bridge crossing the railway line across pasture fields and marshes **to the Exminster Parish/Exeter City boundary and its junction with Path No.2 by Topsham Lock leading to the ferry to**

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Topsham. Exeter Urban District Council did not compile their Definitive Map until the late 1960s. There are notes on file that suggest the City Council were not in favour of recording the canal tow paths, as they thought it a liability, as fuel barges were using the canal at the time. However, they did finally record the tow paths as Exeter Footpaths Nos. 22 & 23 but did not record claimed path linking from Exminster FP nos. 1 & 2 to Topsham Ferry.

5. User Evidence

- 5.1 User Evidence Forms have been submitted from 38 people since 2019. This evidence shows frequent use of Proposal 1 since 1945, until the bridge A to B was closed when it was found to be unsafe in 2019. Some examples of the longest use are shown below;
- 5.2 Mr Ponsford, has lived in Exminster all his life and has walked the route weekly to get to the canal and Topsham Ferry (if not flooded) since 1945 (only stopping between 1980 and 84 when he was away from home). He continued to walk it on his return to the village. He is aware of the history behind this route and said it has been used by generations of people who have used the Topsham ferry, and the bridges were built by the Canal Company to allow the continuation of this old route as part of the New Canal extension in 1825. He says a significant part of passenger traffic at Exminster Railway station came from Topsham via this path.
- 5.3 Mr Scott as used has used the proposal monthly to get to the canal and Topsham since 1962 except when flooded.
- 5.4 Mrs Dyson has walked it since 1960's 20 times a year to get to the canal tow path and Topsham Ferry.
- 5.5 Mrs Moore has walked the proposed route since 1970 several times each year to get to Topsham and the canal until it was closed.
- 5.6 Mr Kukor has walked the route weekly since 1972 to get to the Canal and Topsham via the ferry until the bridge was closed.

There are many more user evidence forms detailing frequent and continued use of the path, until its closure in 2019.

6. Landowner and rebuttal evidence.

- 6.1 Exeter City Council (ECC) has not provided any rebuttal evidence. However, ECC closed the bridge between point A and B in December 2019 after an inspection found the bridge abutments to be unsafe. They did not close the bridge to bring the right of way into question. Alongside DCC, ECC has negotiated an informal diversion to ensure the public could still access the canal paths and the Topsham Ferry.

It was only after the bridge was closed in December 2019 that a close inspection of the Definitive Map took place, and the omitted section of path was discovered.

7 Discussion

- 7.1 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.

However, in this case the evidence has not been lost and does not need to be presumed, as the Deed of 5 May 1736 (re Ferry & Salt Marsh) the Waltham Savory, Lord of the Manor of Exminster, gave Benjamin Buttell and John Wear permission to make a 12 feet wide path, 'fit for man and horse', and a new landing place for passengers on the Newlands Salt Marsh Exminster from Topsham. This shows the express dedication of at least a footpath from the ferry across the Salt marshes to Exminster, predating the building of the canal by 91 years. In addition, there is substantial and robust evidence of many people using this route from Exminster to Topsham. There are records from 1852 of people walking this path from the Topsham ferry to Exminster Station to catch trains to Exeter and London.

- 7.2 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.

- 7.3 The Exeter Canal Extension and Improvement of 1825 was approved in Parliament, giving it the plans and longitudinal sections the highest status in the terms of documentary evidence. This set out Topsham Passage Ferry landing and provided bridges over the new canal and associated ditch to allow the continuation of an established highway with the classification of a Footpath. The bridges were built by the Canal Company and belong to them and their successors now Exeter City Council. (In the same way that Railway Bridges remain Network Rails property for bridges provided by the rail companies as they bisected the highway.)

- 7.4 The historical evidence shows the public have accepted and used the bridge built by the Exeter Canal Company as it bisected the established footpath when the Canal was constructed, and the public have continued to do so for 192 years until the bridge become unsafe.

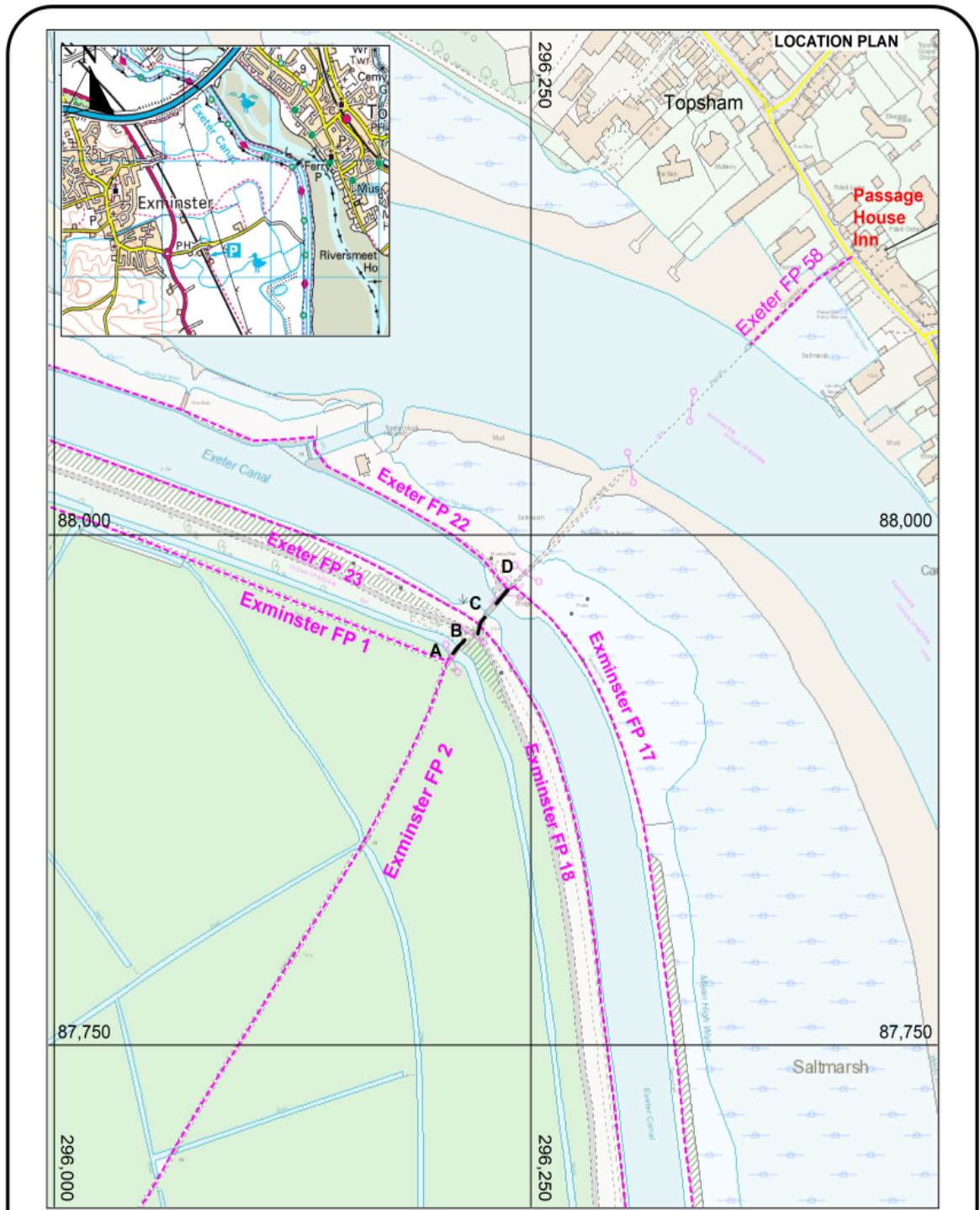
There is a mass of user evidence between 1999 and 2019. Therefore, it is considered there is sufficient evidence under Common Law and Statute Law.

8. Conclusion

- 8.1 From this assessment of the conclusive historical evidence, and the user evidence, it is considered sufficient to support the claim that public rights subsist

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on the balance of probabilities. Procedurally, subject to agreement by Exeter City Council, a creation agreement is the simplest way in which to add this Path. However, a Modification Order to add this route to the Definitive Map and Statement as a Public Footpath is considered appropriate if a Creation Agreement with Exeter City Council should not be feasible.



map ref 9619791006

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DEVON COUNTY COUNCIL
 Exminster and Exeter
 Proposal 1 claimed footpath between
 Exminster FP 1 & 2 and Exeter FP 22 & 23,
 Exminster FP 17 & 18

drawing number CET/PROW/23/75
 date October 2023
 scale 1: 1,750
 drawn by AS

Notation
 Claimed path A-B-C-D **-----**
 Existing Public Footpaths **- - - - -**



MEG BOOTH Director of Climate Change, Environment and Transport

CET/23/94

Public Rights of Way Committee
23 November 2023

Definitive Map Review Parish of Brixton

Report of the Director of Climate Change, Environment and Transport

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

1) Recommendation

It is recommended that it be noted that the Definitive Map Review has been completed in the parish of Brixton and that no modifications have been identified.

2) Introduction

The report examines the Definitive Map Review in the parish of Brixton in the South Hams District.

3) Background

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 16 Footpaths, which were recorded on the Definitive Map and Statement with a relevant date of 11 October 1954.

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

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

The following orders have been made and confirmed:

Devon County Council Footpath No. 27, Brixton - Public Path Diversion Order 1979
Devon County Council Footpath No.3, Brixton - Public Path Extinguishment Order 1991

Devon County Council Footpath No.2, Brixton – Public Path Diversion Order 1995

Devon County Council Footpath No.16, Brixton – Public Path Diversion Order 1996

Devon County Council Footpath No.6, Brixton – Public Path Diversion Order 1997

Devon County Council Footpath Nos. 30 & 31, Brixton – Definitive Map Modification Order 2003

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South Hams District Council Footpath No.24, Brixton – TCPA Diversion Order 2004
South Hams District Council Footpath No.18, Brixton - TCPA Diversion Order 2019
South Hams District Council Footpath No.18, Brixton – TCPA Varying Order 2022

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

The current Review began in April 2023 with a public meeting held within the Parish Council meeting on Wednesday 26 April 2023 at 7pm in the Community Rooms, Brixton St. Mary's Primary School, Elliots Hill, Brixton, PL8 2AG.

4) Proposals

There have been no proposals arising out of this meeting.

5) Consultations

An informal consultation was conducted in September 2023.

The responses were as follows:-

County Councillor J Hart	-	noted
South Hams District Council	-	no comment
Brixton Parish Council	-	no proposals
British Horse Society	-	no comment
Byways and Bridleways Trust	-	no comment
Open Spaces Society	-	no comment
Country Land & Business Association	-	no comment
National Famer's Union	-	no comment
Ramblers' Association	-	no comment
Trail Riders' Fellowship	-	no comment

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 and Public Health Considerations

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

10) Conclusion

It is recommended that Members note, there are currently no proposals for modifying the Definitive Map and Statement in the parish of Brixton. 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 South Hams District area.

Meg Booth

Director of Climate Change, Environment and Transport

Electoral Division: Brixton & Wembury

Local Government Act 1972: List of background papers

Background Paper Correspondence files

Date 2022 – to date

File Reference ES/DMR/BRIXTON

Contact for enquiries:

Name: Emily Spurway

Telephone: 01392 383000

Address: M8 Great Moor House, Bittern Road, Exeter

es061123pra

sc/cr/DMR Parish of Brixton

02 151123

CET/23/95

Public Rights of Way Committee
23 November 2023

Proposed Diversion: Footpath No. 2, Bere Ferrers

Report of the Director of Climate Change, Environment and Transport

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

1) Recommendation

It is recommended that a Public Path Diversion and Definitive Map & Statement Modification Order be made to divert Footpath No. 2, Bere Ferrers from the lines A – B, to the line A - C - D – E, as shown on drawing no. CCET/PROW/23/77; and that if there are no objections, or if such objections are made and subsequently withdrawn, it be confirmed as an unopposed order.

2) Summary

This report examines an application by respective landowners to divert part of a public footpath in the parish of Bere Ferrers. The proposed diversion will support the applicants land management improvements, including for wildlife and heritage value, as well as improving their privacy. In addition, the proposal will address historic anomalies relating to path alignment. The current proposal is shown on plan no. CCET/PROW/23/77.

3) Background

Bere Ferrers Footpath No. 2 was initially included on the original Definitive Map and Statement as a pre-existing public highway following assessment by the Parish Council in the 1950s.

Tavistock Rural District Council Diversion Order, 1972

In 1971, an application was made to divert the western end of the footpath across Parsonage Farm. Mr Gill, the landowner at the eastern end at that time (at Shutcombe Farm) also expressed a desire to divert the footpath over his land. The purpose of this diversion was to *'provide for efficient use of the land and a shorter or more commodious path'*. Mr Gill wished to divert the footpath to a point north of his farm building.

A site meeting was carried out involving the relevant parties, including the Bere Ferrers Parish Council. The former Tavistock Rural District Council subsequently

Agenda Item 11

made a Diversion Order on the 13th April 1972. This was confirmed as an unopposed Order on the 11th April 1973, and came into force on the 12th July 1973.

Recent History of the Footpath

Although exact dates are not known, it is evident that approximately 30 years ago, a former landowner of Shutecombe Farm, encouraged and/or redirected the public to walk an alternative route to the alignment as set out in the 1972 Order – probably due to their farming practices and moving fences around for grazing compartments. This unofficial diversion of the footpath was not subject to challenge by the Parish Council and/or members of the public, and generally seemed to have been accepted by path users.

A former Public Rights of Way Warden for the area did become aware of changes in the route, and subsequently liaised with the landowner indicating that they should formally apply to divert the footpath from its definitive alignment to the used alignment. The landowner at that time did not complete the required application process, and a formal diversion was not progressed. As the landowner and path users were seemingly content with the walked route, this situation was not considered to be a significant issue, and follow up action was not prioritised.

Circumstances changed when the land was split into different parcels and sold into separate ownership. In 2022, two parcels of land were sold in 2 lots, each purchased by a different party.

With regards to Bere Ferrers Footpath No. 2, the alignment of the eastern section of the footpath (as set out within the 1972 Order) was predominantly within land purchased by the owners of Barn Cottage. However, the alternative, unofficially diverted, walked alignment for this part of the footpath was within the field to the north, purchased by a different party.

The new landowner of the lot through which the unofficial, walked route ran, had seemingly not been aware of the situation on the ground, and this would not have been identified through land searches. They were unwilling for unofficial diversion of the footpath to continue and required that the path follow the definitive alignment (as set out within the 1972 Order).

Due to the length of time since the 1972 Order alignment had been walked, the former path had become overgrown, with trees establishing along the route. The new landowner for this plot was seemingly unaware of the path (although the alignment will have been recorded within relevant searches). Consequently, it is not straight forward to simply revert to the alignment as set out within the 1972 Order.

Added complexity is that the alignment set out within the 1972 Order plan contains some inaccuracies when compared with the topography (most probably as a result of being hand drawn at that time). The line on the Order plan is very straight - whilst the main furniture is noted (stile and gate), the path alignment is not fully accurate.

Temporary Permissive Alignment

Given the above situation was not of the current landowners making, and issues relating to the historic complexities regarding alignment of the footpath, officers have adopted a sensitive approach to enforcement. This directly accords with Devon County Council policy and national guidance (issued by Defra) with a focus on negotiation where landowners are willing to work cooperatively.

Defra Guidance is that *“Local highway authorities should try to secure the removal of obstructions by approaching those responsible and seeking their cooperation. Formal measures should be used where dialogue fails....”* (Ref. Removal of obstructions from highways: enforcement of local highway authorities duty to prevent obstructions on rights of way Notes to accompany Statutory Instrument 2004 No. 370). This is also included in Devon County Council Policy M1D of the Rights of Way Improvement Plan 2012 (currently being reviewed) which sets out that *“Enforcement procedures will be used to assert and protect the rights of the public where goodwill and cooperation have failed.”*

As an interim measure, and in order to ensure that unobstructed public access is maintained, a temporary permissive alignment was agreed and opened up in March 2023. This is very close to the alignment set out in the 1972 Order, and broadly similar to the historic unofficial diversion route – albeit, within the same landownership as the definitive alignment for this location

Path users and the Bere Ferrers Parish Council generally appear happy with this permissive route. Whilst concerns have been raised by the neighbouring landowner, no other concerns or complaints have been raised regarding suitability of this permissive route.

The Current Diversion Proposal

A number of options have been considered in discussion with relevant landowners. These include considering reinstatement of the alignment as set out in the 1972 Order and applying to divert the footpath onto an alternative alignment.

It has become clear that the new landowner for the plot where the unofficial route ran is unlikely to support a diversion should this require additional sections of the path crossing their land. Accordingly, efforts have focused on formalising a route within land in the same ownership as the 1972 Order alignment.

This permissive alignment has subsequently been put forward by the relevant landowners as the application route for diversion of the definitive line.

This proposal has been subject to informal consultation.

The Diversion Proposal Objection

A single objection has been received from a neighbouring landowner.

Their land is adjacent to the proposed diversion route, but includes a short section

Agenda Item 11

immediately west of point A (approximately 8 metre length) of the definitive alignment, which is not changed by this proposal.

To summarise the main concerns raised:

- i. That that the proposed diversion will lead to a path that is longer than the route set out within the 1972 Order. Added to this, the available width may be narrower and less convenient when compared to the current legal route. They suggest that the proposal negatively impacts accessibility for walkers with mobility issues since the route climbs a steeper gradient, and has steps and roots on it. They suggest that this is in contrast to the current legal route which is wider, flatter and more accessible. They state that the current walked/permissive route is inferior.
- ii. Proximity of Point D to the access point and ownership of land to the north. On a similar point, concern has been raised regarding accuracy of the access at point A on the map. The suggestion is that this access point should be the same distance out from the southern boundary as the old stile.
- iii. That the proposal would negatively impact on privacy and security, and would also impact on intended use and associated measures such as fencing for grazing.

A suggestion has been put forward (by the neighbouring landowner) for an alternative alignment (within the land owned by the applicants), but this is not supported by the applicants.

With regards to the points raised:

They state that the proposal route is longer, narrower, and less convenient. The proposal route is only approximately 15 metres longer than the alignment from the 1972 Order, and is a little bit shorter than the previous walked, unofficial diversion (as used between the 1990s and 2022). The width of the proposal route is predominantly 2 metres (and at least 1.5 metres), and works are planned to improve the current nature of the proposal route as part of the Order process. The 1972 Order identifies a narrower width of 4ft (1.2m).

The proposal route between D – E follows an access track connecting to the unclassified county road at the south eastern end of the footpath. This has been used since the 1990s as part of the unofficial diversion route. A couple of steps are in place between C – D, with the majority of this section being reasonably level. The current steps are small and shallow, and do not provide an obstruction but rather an assistance to users. A – C is mostly flat, with a small gradient north east of point A. As stated above, works are planned to bring the proposal route to a higher standard.

The definitive alignment (from the 1972 Order) has not been in use for several decades. Reinstatement of this path requires significant tree and scrub clearance, negotiating uneven ground and either negotiating a hedge bank or field gate.

It should be noted that since 1972, users at the western end of Bere Ferrers Footpath No. 2 have accessed the footpath from the county road by means of a wooden ladder stile, and the footpath south west of point A is steep.

If progressed, the proposed diversion will not negate the ability for the neighbouring landowner to carry out livestock fencing works on their land. This would not be on the path alignment, and would be of a similar land use to that carried out by the previous owner.

Information collated to date indicates that the proposed diversion is within land owned by the applicants. More detailed, technical assessments are being carried out to ensure that this is correct.

No other objections have been received to the informal consultation. Bere Ferrers Parish Council are supportive, and no objection has been received from the Ramblers or any other statutory consultee.

4) Highway Considerations

The section 119 of the Highways Act 1980 sets out the criteria for making and confirming a public path diversion order. They are:

Section 119(1):

Whether it is in the interests of the owner, lessee or the occupier of land crossed by the path or way, or of the public that the path or way should be diverted.

The application to divert the path has been made by the landowner as the definitive line of the footpath runs through an extension of their garden, passes and overlooks the back of the house, and the digitised line then continues through a long-established car port/store. It passes the house approximately 10 metres at its closest point.

It is understood that this alignment has not been used since the 1990s, with the public using an unofficial diversion which passed through the field above the property. Previous attempts to formally divert onto this alignment with the previous landowners were not progressed.

The landowners would like to make better use of their extended garden, including to enhance wildlife and historic value. They believe that walkers would not like using the currently unusable and slightly erroneous definitive alignment. Regularising the route as per the 1972 Order would act to split the garden into two parts.

From a Highway Authority officer perspective, it is believed that this test is met.

Whilst there is no requirement that a path diversion must also be in the interest of the public, the public will also benefit from the proposal. More accessible pedestrian gates compliant with BS5709:2018 will be installed at Points A and D.

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Section 119(2):

That an altered termination is on the same highway or a highway connected to it, and that it is substantially as convenient to the public.

The proposed diversion will not alter the point of termination to that which has been in use.

Section 119(6):

Whether it is expedient to confirm the order having regard to:

Whether the path or way will not be substantially less convenient to the public.

This generally addresses issues of length, gradient, difficulty of using the proposed route, surface and safety. The new route will be 8.8% longer than the current unusable definitive alignment, but is of a similar, slightly shorter length than the unofficial diversion route used between the 1990s and 2022. The gradients on the definitive alignment, unofficial diversion, and current proposal are similar, and there are steeper gradients on other sections of the definitive alignment which are not being diverted. There is a grassy/earthy surface on both the definitive and proposal routes, with a length of the stoney/earth shared access also on the proposed route. The shared access roadway will only be used by the properties with associated access rights.

It is considered that these general requirements will be met.

And having regard to:

(a). the effect that the diversion would have on public enjoyment of the path as a whole;

This deals with issues such as views, noise (e.g. adjacent to a road), proximity of other routes. Both routes provide some, but limited views of the surrounding countryside, though the proposal route is further away from Shutecombe Barn Cottage itself, giving a more relaxed and less intrusive view of the property. The diversion will have a minimal effect on the overall length of the footpath and is not considered to adversely affect the public enjoyment of the route 'as a whole'. The proposal does, however, take the new path further away from Shutecombe Barn Cottage and improves enjoyment of the way, by being less intrusive, being on a similar alignment to that in use between the 1990s and 2022, as the definitive alignment passes 10 metres to the rear of the property. The proposal route offers glimpses across the Tamar Valley (within an Area of Outstanding Natural Beauty) towards the river.

(b). the effect of the coming into operation of the Order on land served by the existing right of way;

No other land is served by the existing right of way.

(c). the effect of the new public right of way on the land over which it is created (or land held with it;)

The new way passes around the edge of the extended garden and part of an access track in the ownership of the applicants and will not affect other land.

Any material provision in Rights of Way Improvement Plan.

The County Council's relevant policies state:

LP1A The making of diversion orders which are in the interests of the users and/or landowners will be supported. Examples of diversions in the interest of the public are those which achieve:

- i. a direct improvement in road safety for users; or
- ii. a direct improvement in provision of a circular route, or provide access to a national route, regional route, attraction or viewpoint.

LP1B Applications will be supported which seek to divert paths away from:

- i. residential buildings to improve privacy; and
- ii. working farmyards and farm buildings for safety reasons.

5) Other Considerations

The applicants have indicated that the application has been made to improve their own privacy and to enable them to make better use of their extended garden which is split in two by the definitive alignment, but to also improve the use and enjoyment of the path by the public, along a similar alignment to the unofficial diversion route which is no longer available.

The processing of diversion order applications is a discretionary power of the County Council. If the decision is taken not to proceed with an order, the landowners have no right of appeal.

6) Strategic Plan

The proposal is compatible with a number of strategic priorities.

Responding to the climate emergency, especially:

- More opportunities for cycling and walking – including active travel,
- Helping wildlife and landscapes to recover,

Supporting recovery and growth, especially:

- Maintain, and where necessary, improve our highway network and improve sustainable transport options,

Improve health and wellbeing, especially:

- Give people greater opportunities for walking and cycling to increase their physical activity.

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7) Financial Considerations

The County Council has waived the charges for the diversion order process, as it will resolve an historic anomaly. The diversion route, if approved, will not increase annual revenue budget spend on maintaining this public rights of way.

8) Legal Considerations

Section 4 above refers.

9) Environmental Impact Considerations (Including Climate Change, Sustainability and Socio-economic)

Implications have, where appropriate under the provisions of the relevant legislation, been taken into account.

10) Equality Considerations

Implications have, where appropriate under the provisions of the relevant legislation, been taken into account.

11) Risk Management Considerations

If it is not feasible to progress an Order to divert this footpath, Devon County Council may be required to pursue more extensive, formal enforcement action to reinstate the alignment as set out within the 1972 Order.

12) Reasons for Recommendation/Alternate Options Considered

The application is considered to meet the relevant legal tests and Devon County Council policy.

13) Conclusion

The application is considered to meet the requisite legal tests for the making and confirmation of a Public Path Order to divert the footpath and is in accordance with County Council policies.

Works, including fencing and waymarking will be required for the new path, and the Order will not come into effect until these have been carried out to the County Council's standards.

It is recommended that an Order be made and published.

Meg Booth

Director of Climate Change, Environment and Transport

Electoral Division: Tavistock Rural

Local Government Act 1972: List of background papers

Background Paper: Correspondence file

Date: 2022-

File Reference: PROW/BF/FP2D

cg071123pra

sc/cr/Proposed Diversion Footpath No 2 Bere Ferrers

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Looking East to Point D



Looking North Westwards Towards Point D

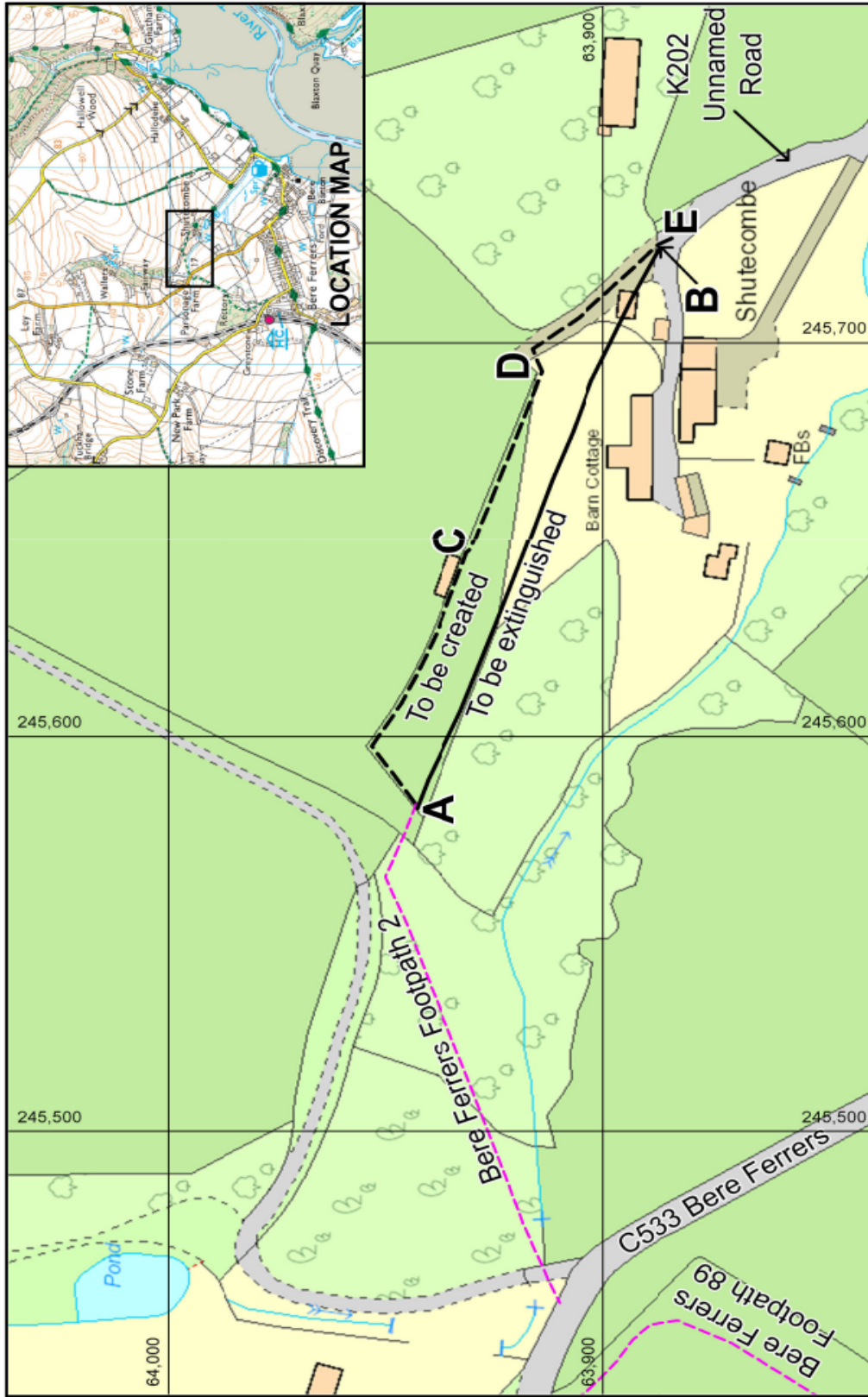


Looking North from Point A



Agenda Item 11

Diversion Proposal (as per informal consultation)



Map Reference SX4563 Grid 100m
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NOTATION

- Existing public footpaths
- To be extinguished (A-B) approx 155m
- To be created (A-C-D-B-E) approx 170m

**DEVON COUNTY COUNCIL
 PUBLIC PATH DIVERSION AND
 DEFINITIVE MAP & STATEMENT
 MODIFICATION ORDER 2023
 FOOTPATH No. 2, BERE FERRERS**

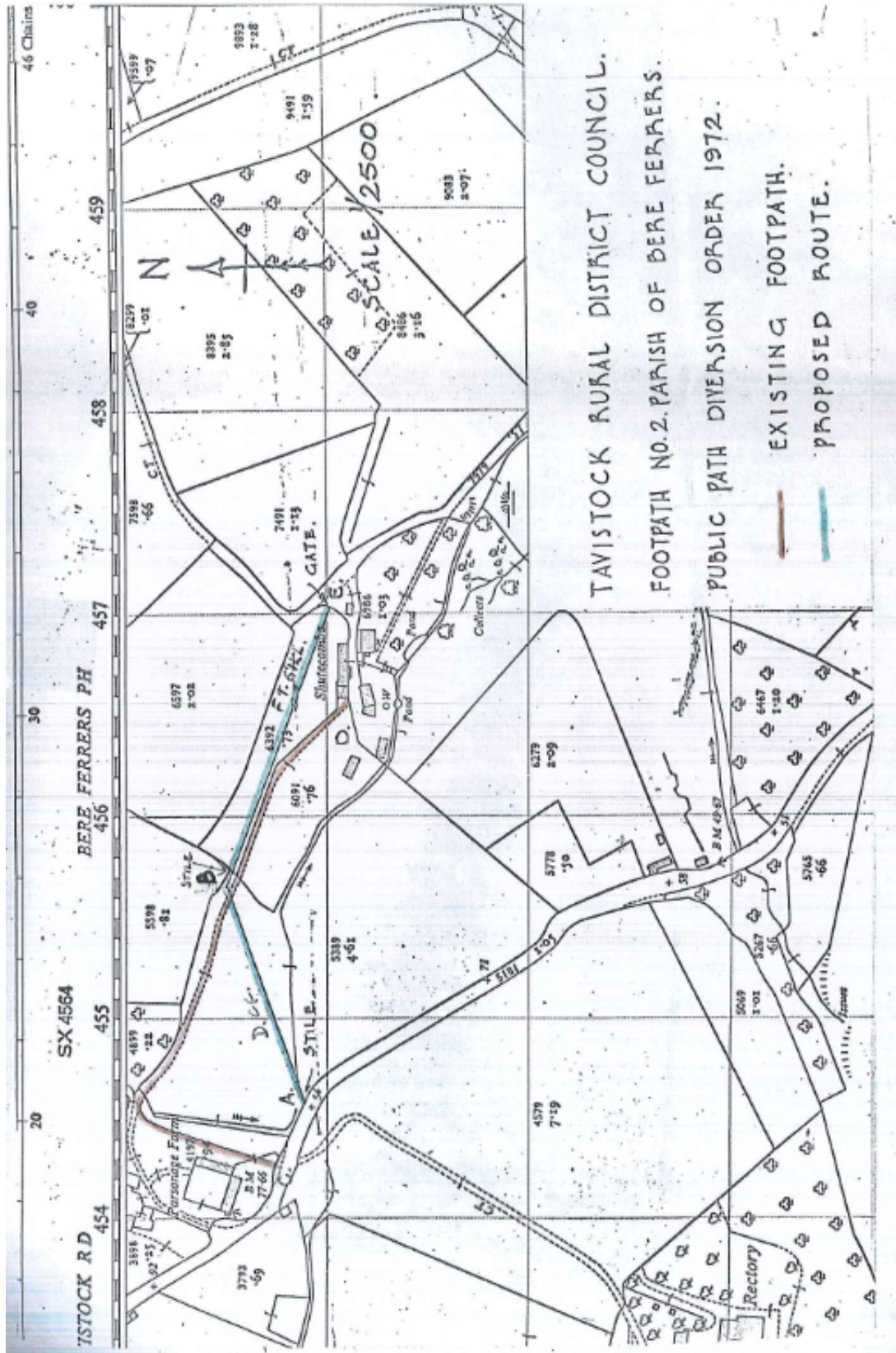
Devon County Council
 CCET/PROW/23/177
 Drawing No. August 2023
 Date 1:1250 at A4
 Scale Drawn by SCG
Meg Booth
 DIRECTOR OF CLIMATE CHANGE,
 ENVIRONMENT AND TRANSPORT

Original Definitive Map



Agenda Item 11

Tavistock Rural District Council Diversion Order, 1972



CET/23/97

Public Rights of Way Committee
23 November 2023

Definitive Map Modification Orders

Report of the Director of Climate Change, Environment and Transport

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

1) **Recommendation**

It is recommended that the report be noted.

2. **Summary**

Since the last Committee the following Definitive Map Modification Orders have been confirmed as unopposed. Plans are attached in the appendix to this report.

Modification Orders

Ottery St Mary (Footpath No. 64) Definitive Map Modification Order

Newton Poppleford & Harpford (Footpath No. 39) Definitive Map Modification Order

Meg Booth

Director of Climate Change, Environment and Transport

Electoral Division: Otter Valley

Local Government Act 1972: List of background papers

Background Paper Nil

Contact for enquiries:

Name: Richard Walton

Telephone: 01392 383000

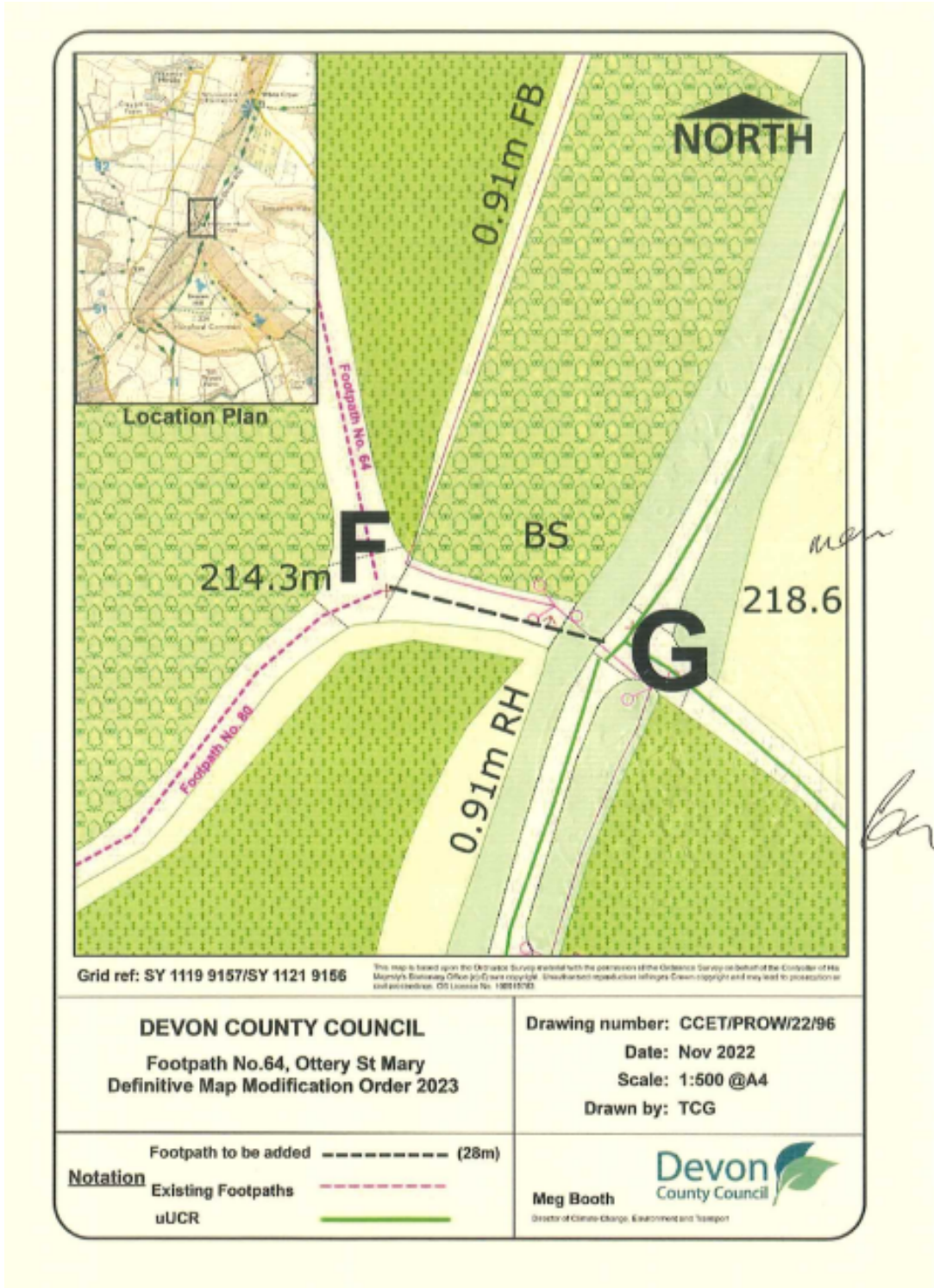
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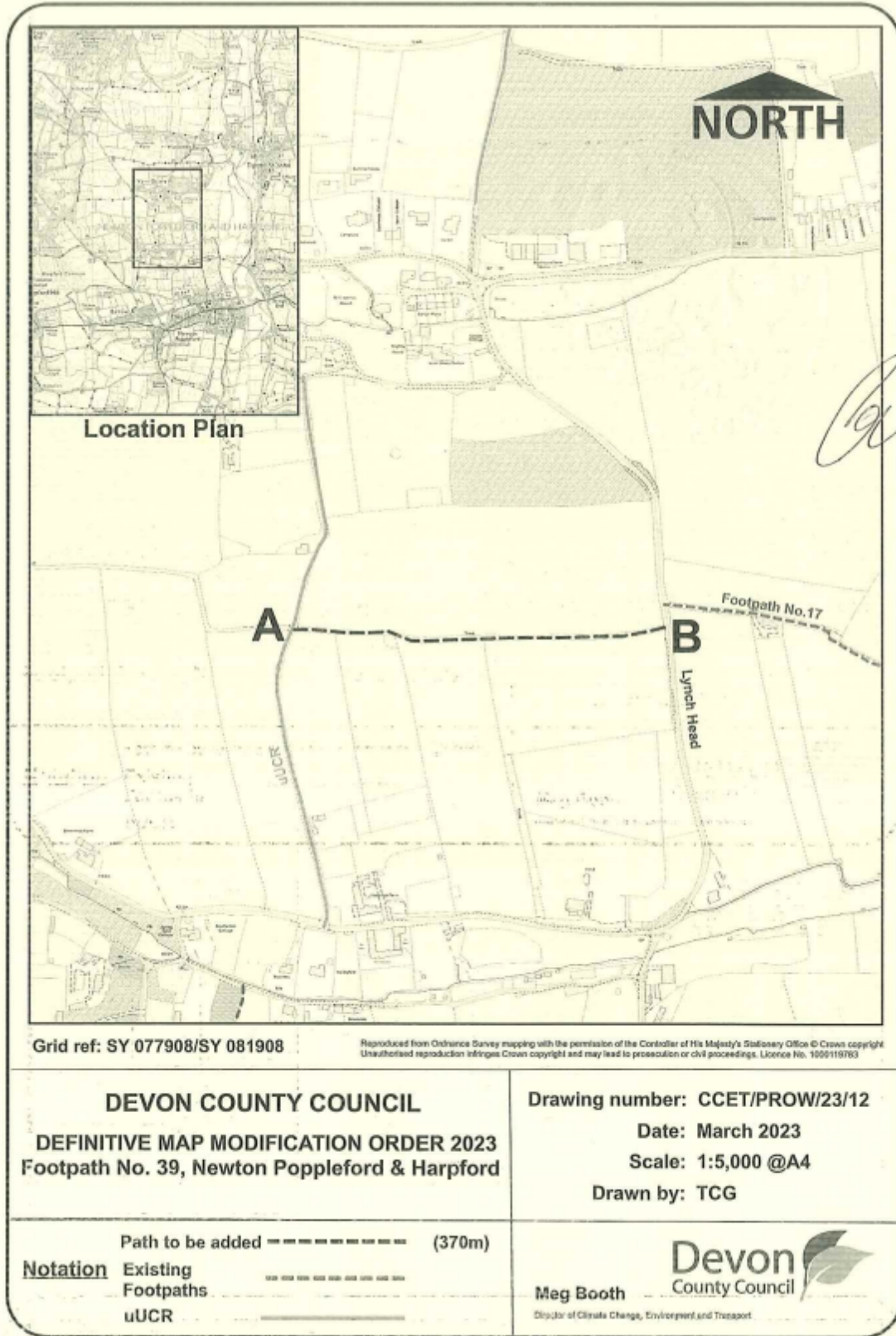
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sc/cr/Definitive Map Modification Orders

02 151123

Agenda Item 12





CET/23/98

Public Rights of Way Committee
23 November 2023

Public Path Orders

Report of the Director of Climate Change, Environment and Transport

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

1) Recommendation

It is recommended that the report be noted.

2. Summary

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

Diversion Orders

Parracombe (Footpath No. 2) Public Path Diversion and Definitive Map and Statement Modification Order

East Anstey (Bridleway No. 6) Public Path Diversion and Definitive Map and Statement Modification Order

Okehampton (Bridleway No. 2) Public Path Diversion and Definitive Map and Statement Modification Order

Puddington (Footpath No. 10 PART)) Public Path Diversion and Definitive Map and Statement Modification Order

Branscombe (Footpath No. 9) Public Path Diversion and Definitive Map and Statement Modification Order

Broad Clyst Footpath No. 22 (Part) Public Path Diversion and Definitive Map Modification Order

Heanton Punchardon (Footpath No. 13) Public Path Diversion and Definitive Map Modification Order

Bishop's Tawton (Footpath No. 11) Public Path Diversion and Definitive Map Modification Order

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Washfield (Footpath No. 6) Public Path Diversion and Definitive Map Modification Order

Meg Booth

Director of Climate Change, Environment and Transport

Electoral Divisions: Combe Martin Rural; South Molton; Okehampton Rural; Credenney, Taw & Mid Exe; Seaton & Colyton; Broadclyst; Braunton Rural; Chulmleigh & Landkey; Tiverton West

Local Government Act 1972: List of background papers

Background Paper Nil

Contact for enquiries:

Name: Richard Walton

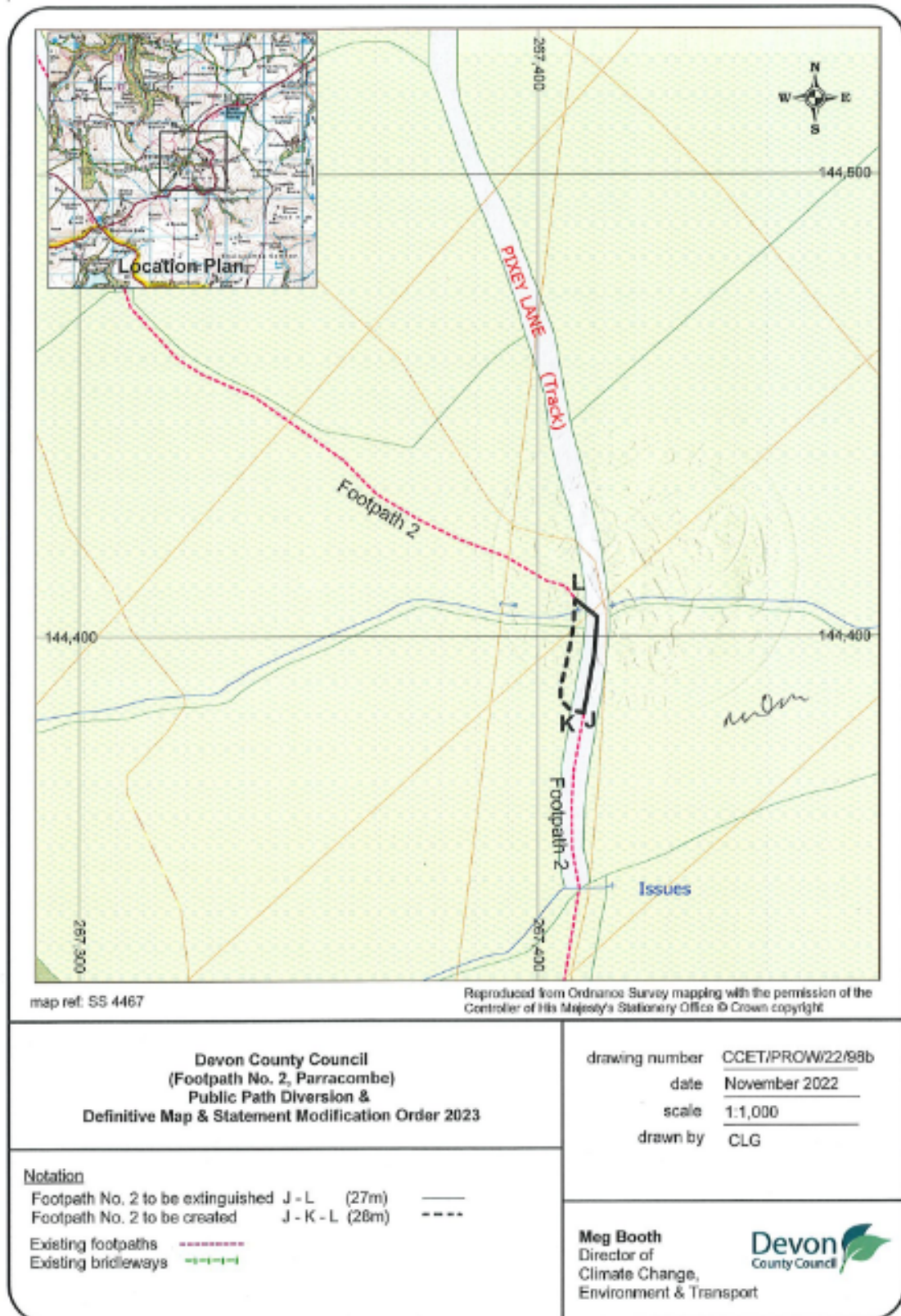
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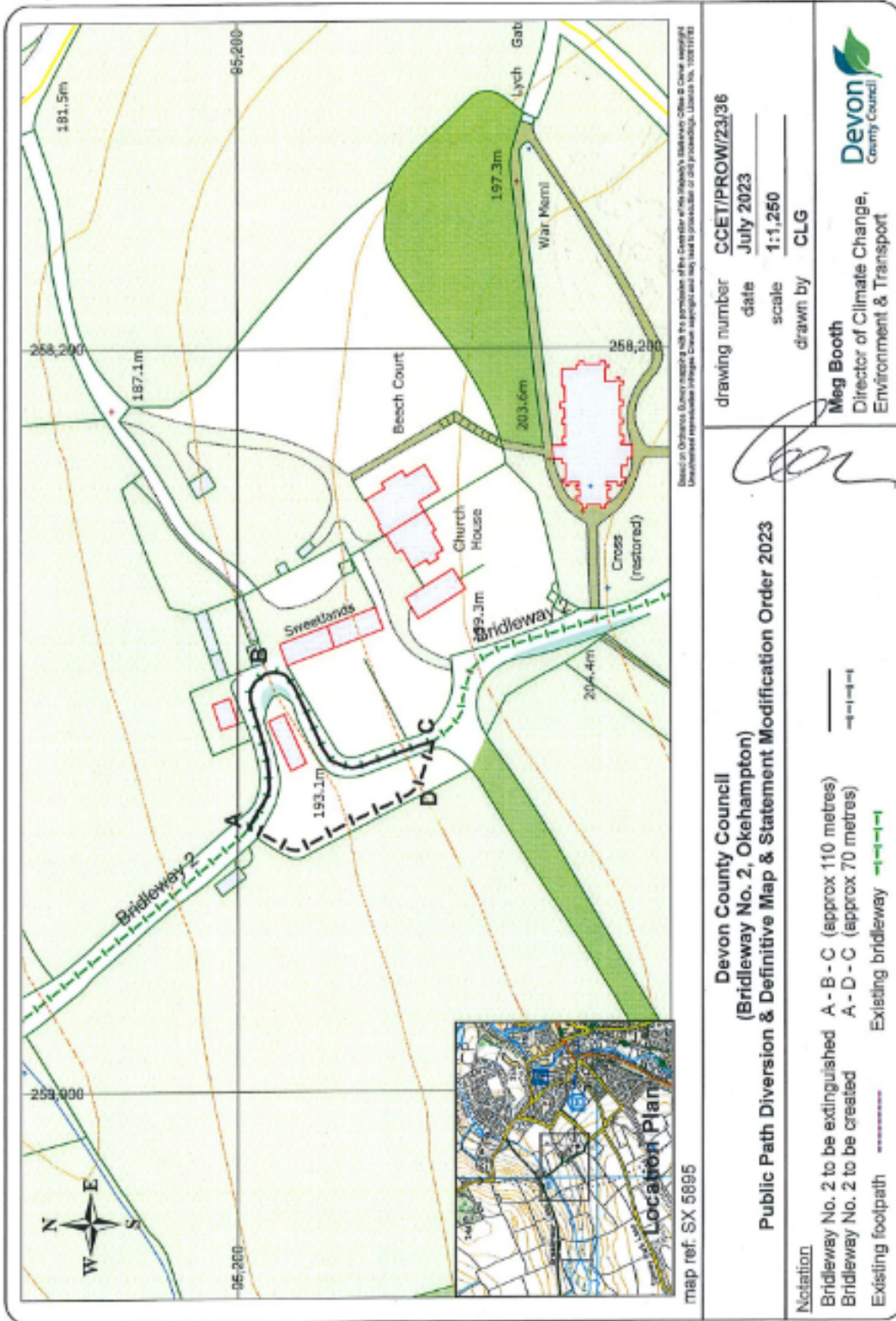
sc/cr/Public Path Orders

02 151123



Agenda Item 13





map ref: SX 6895

Based on Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office & Crown Copyright. Development permission for major route changes may be required for public footpaths. Okehampton No. 1001/11/12

drawing number **CCET/PROW/23/36**
 date **July 2023**
 scale **1:1,250**
 drawn by **CLG**



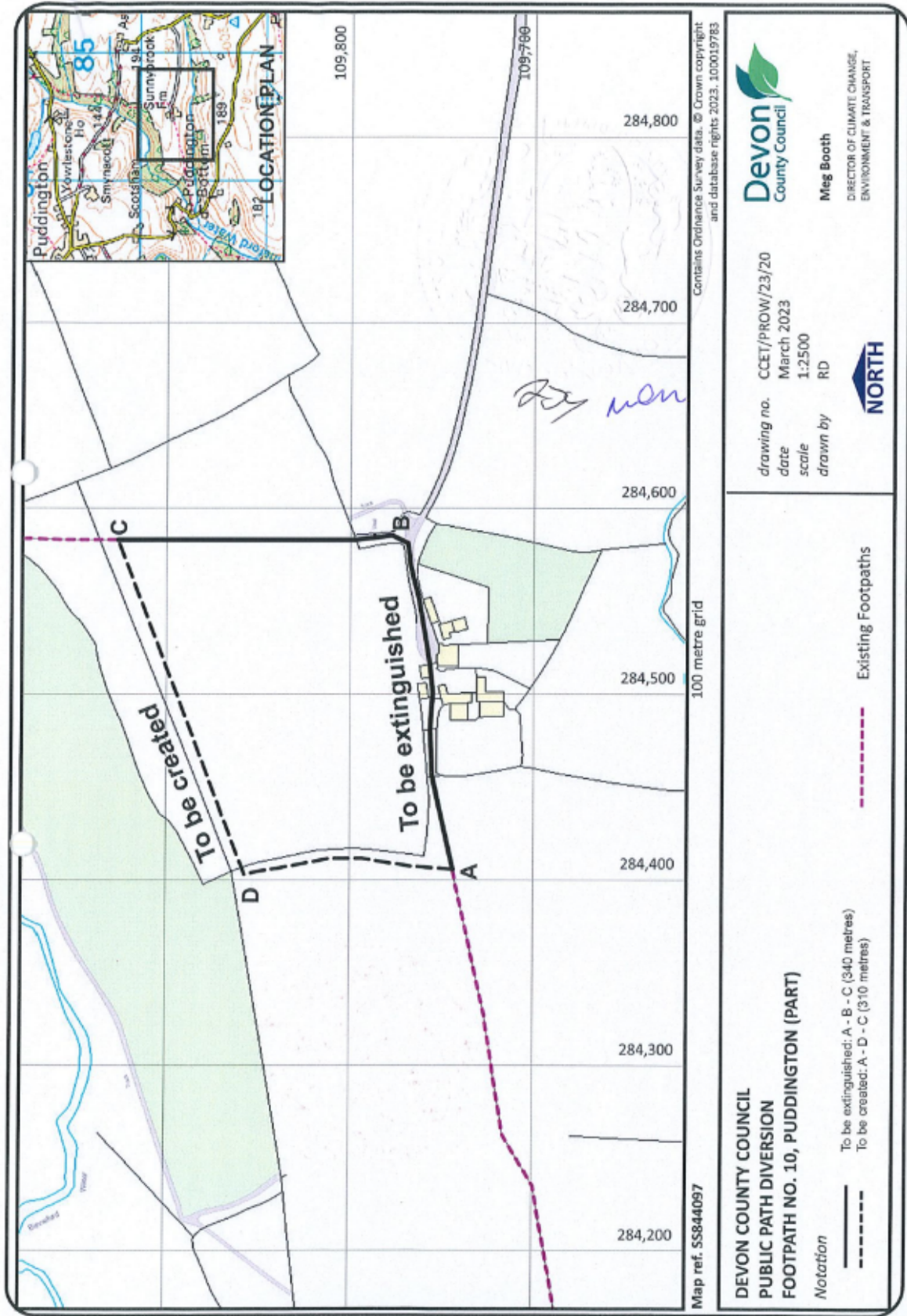
Meg Booth
 Director of Climate Change,
 Environment & Transport

Devon County Council
(Bridleway No. 2, Okehampton)
Public Path Diversion & Definitive Map & Statement Modification Order 2023

Notation:

- Bridleway No. 2 to be extinguished A - B - C (approx 110 metres)
- Bridleway No. 2 to be created A - D - C (approx 70 metres)
- Existing footpath Existing bridleway

Agenda Item 13



Map ref. SS844097

100 metre grid

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DEVON COUNTY COUNCIL
PUBLIC PATH DIVERSION
FOOTPATH NO. 10, PUDDINGTON (PART)

Notation

—— To be extinguished: A - B - C (340 metres)
 - - - - To be created: A - D - C (310 metres)

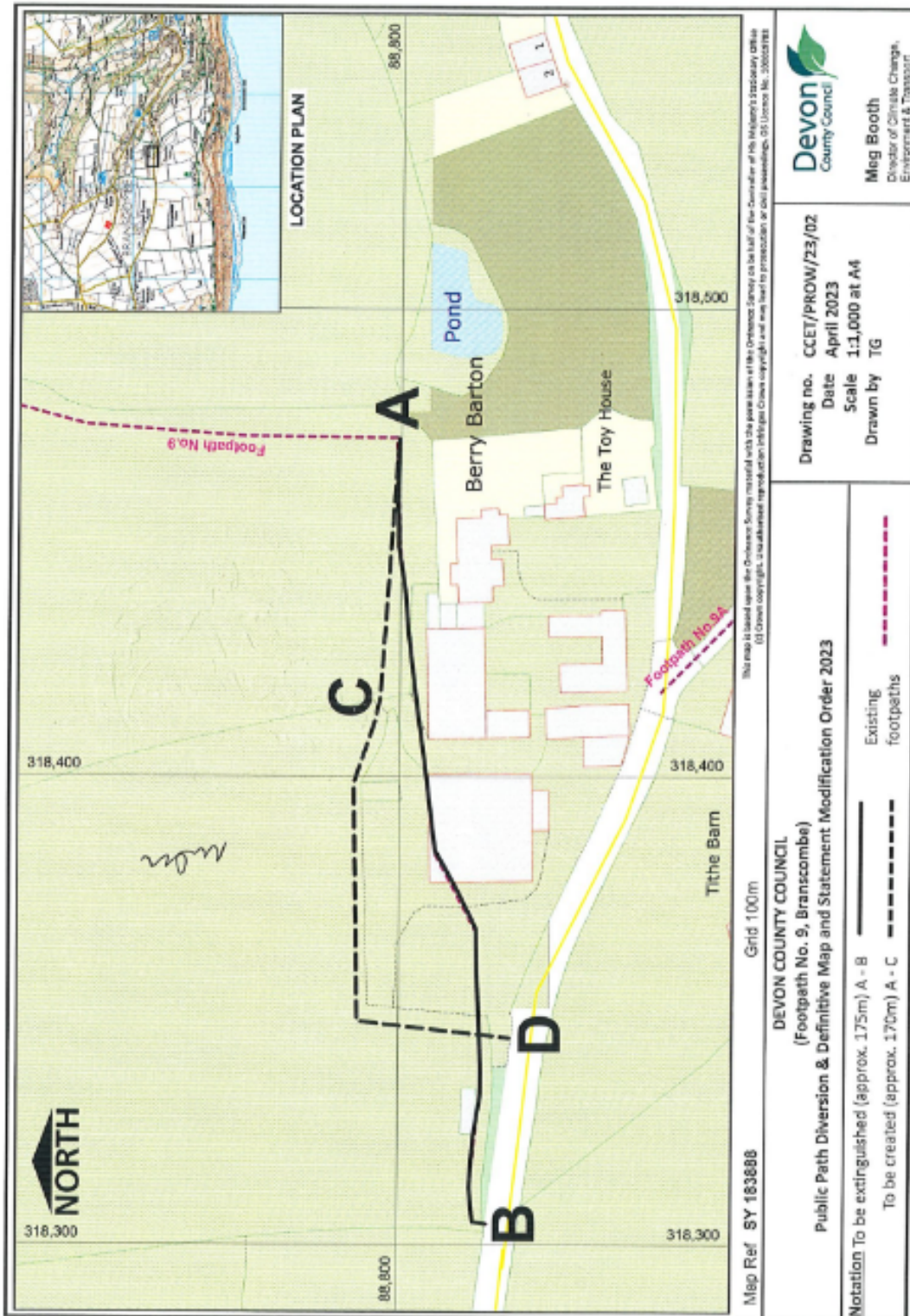
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 date March 2023
 scale 1:2500
 drawn by RD

Existing Footpaths

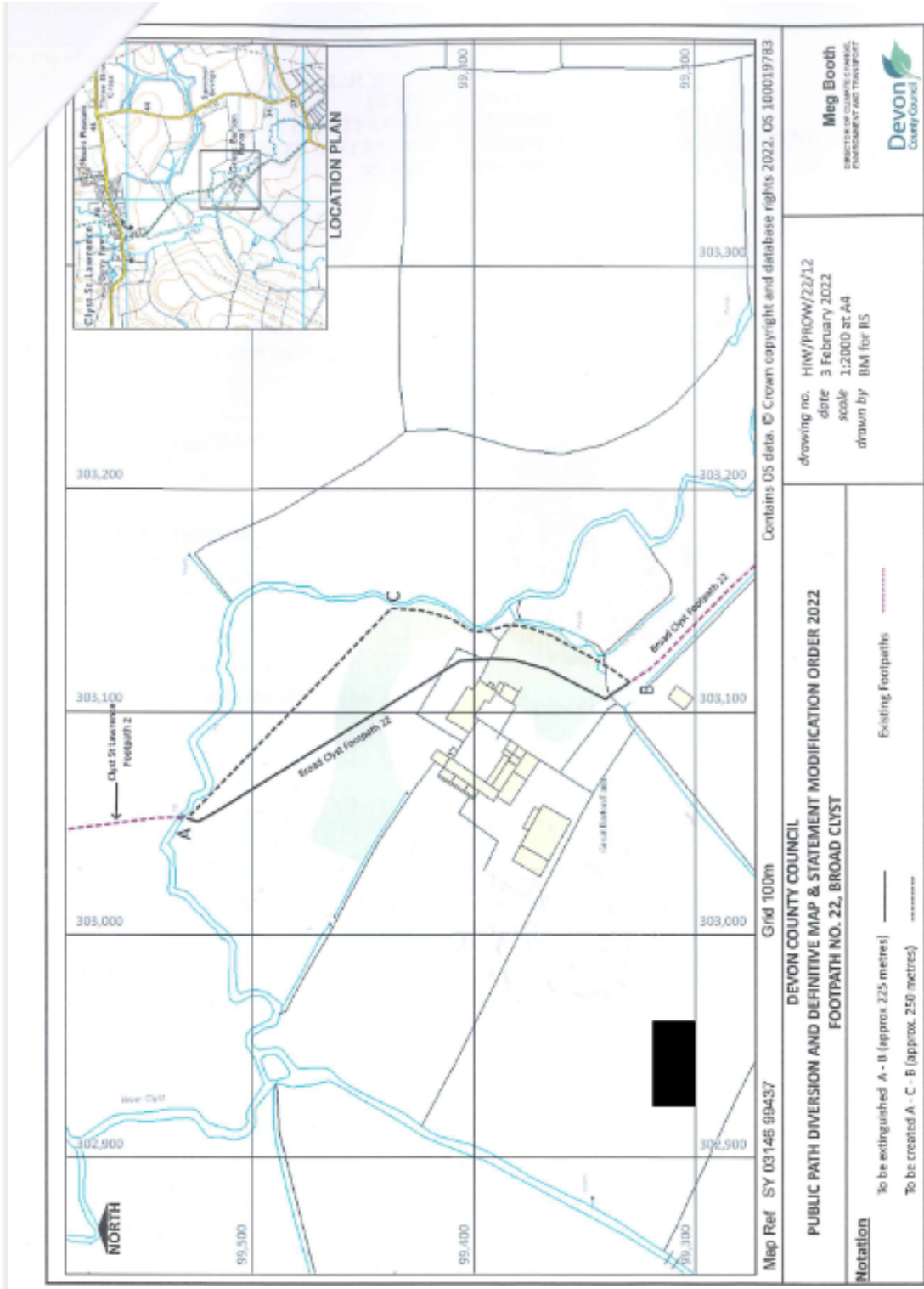
Devon
 County Council

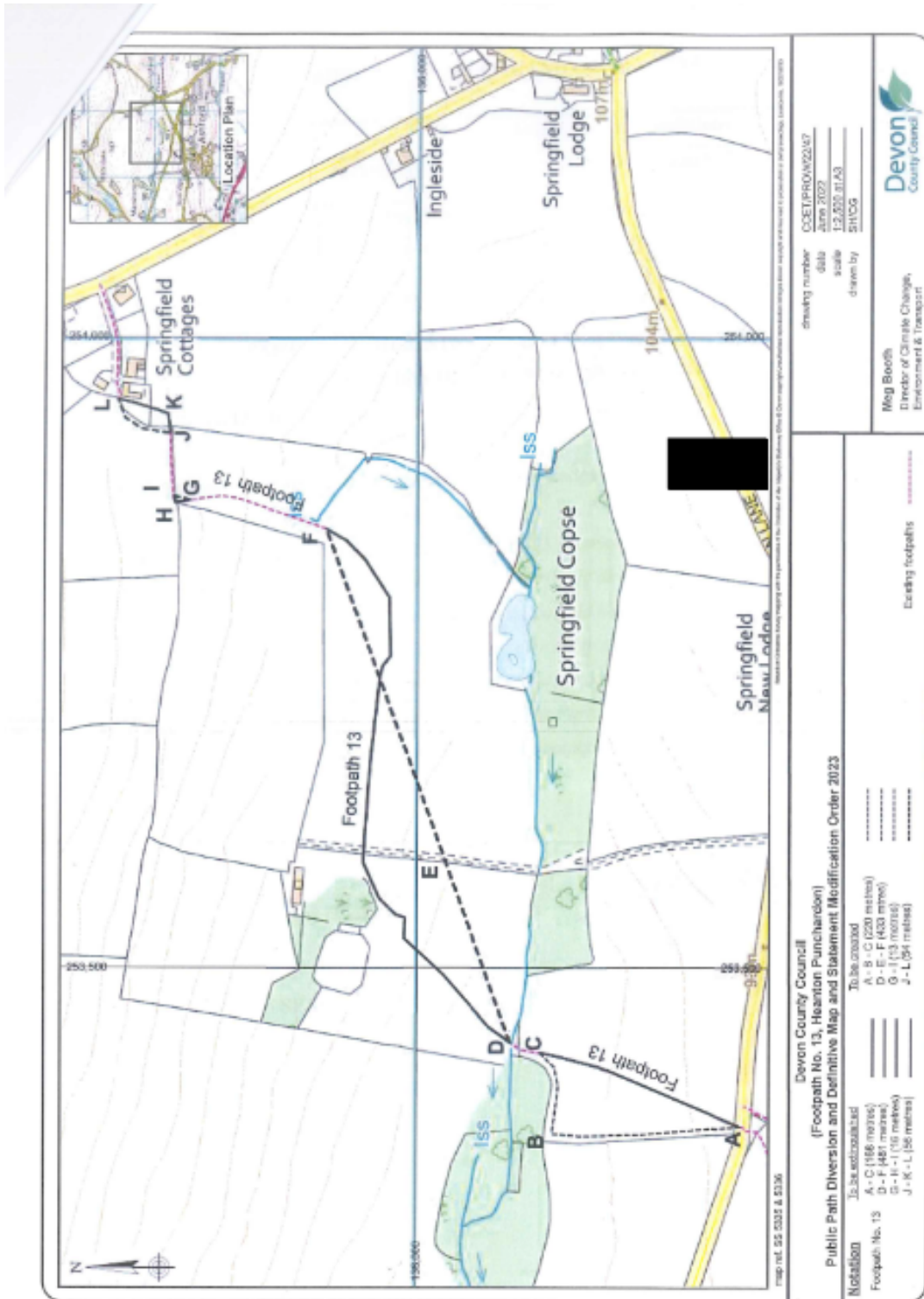
Meg Booth
 DIRECTOR OF CLIMATE CHANGE,
 ENVIRONMENT & TRANSPORT

NORTH

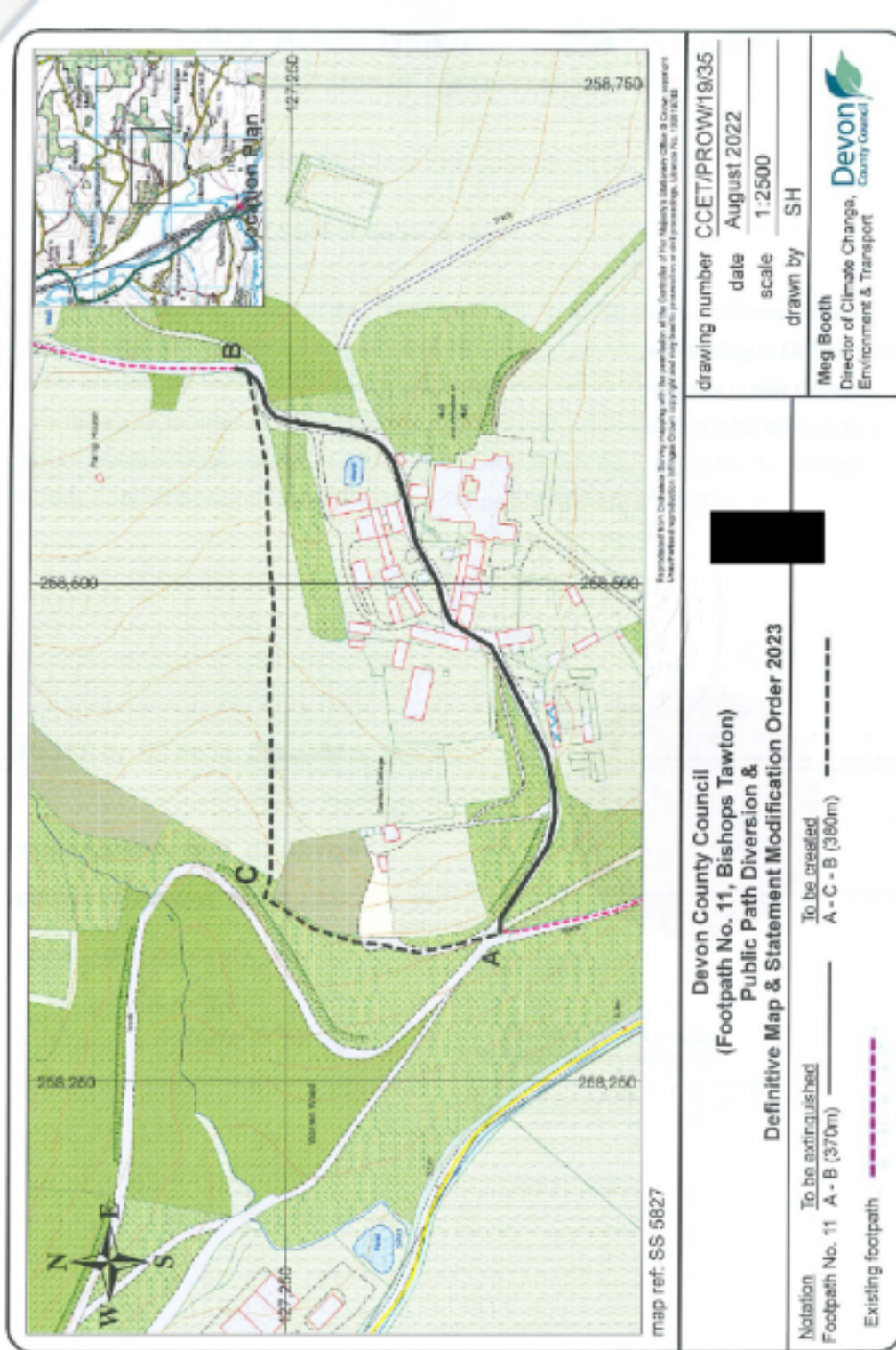


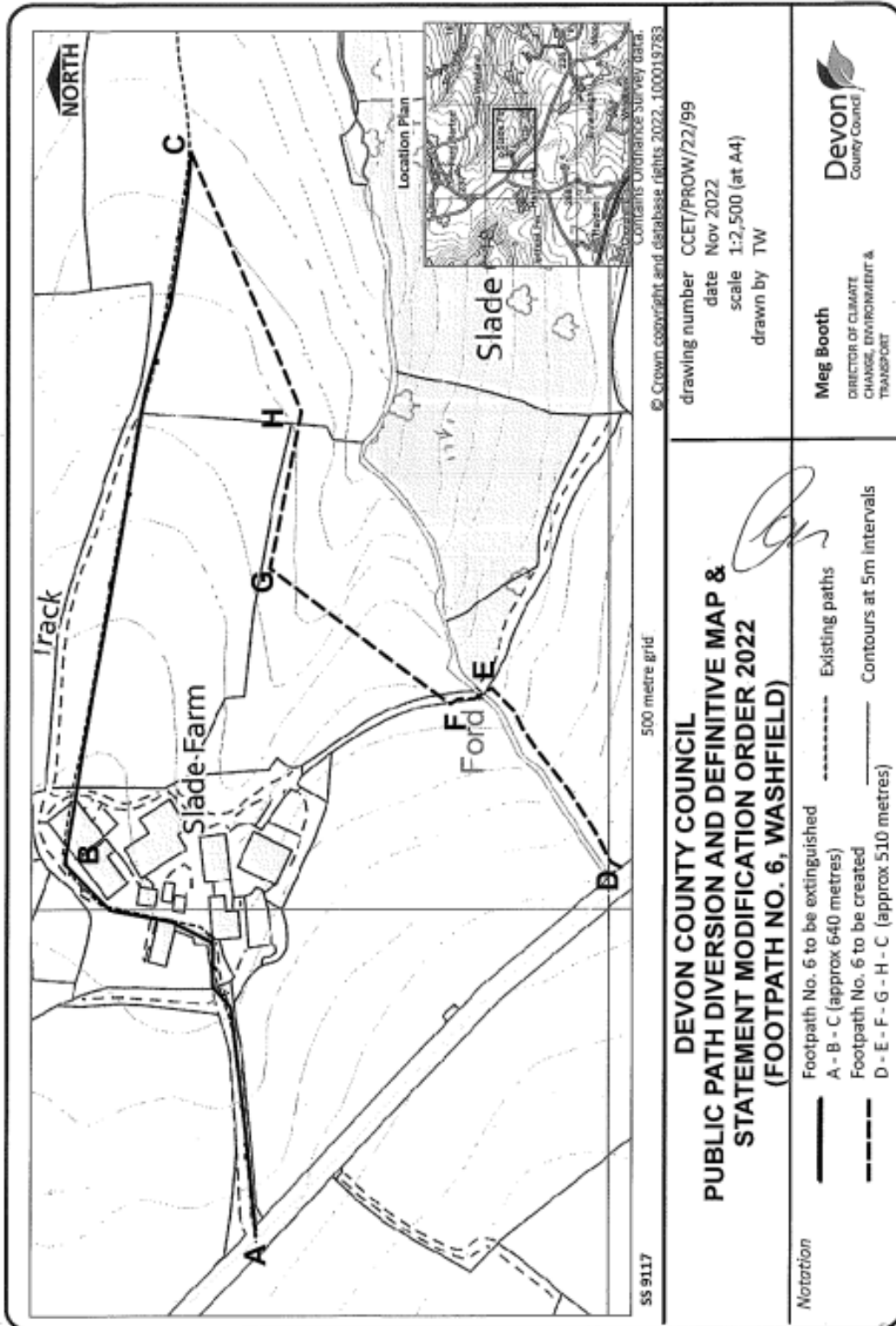
Agenda Item 13





Agenda Item 13





CET/23/96

Public Rights of Way Committee
23 November 2023

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

Report of the Director of Climate Change, Environment and Transport

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

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
<p>Devon County Council (Restricted Byway No. 48, East Down & Restricted Byway No. 48, Marwood) Definitive Map Modification Order 2017</p>	<p>The King (on the application of Richard Berry) v The Secretary of State for Environment Food and Rural Affairs</p> <p>Leave to appeal has been granted against confirmation of the Order with the modified status of Restricted Byway following a Public Inquiry held by the Planning Inspectorate.</p> <p>The substantive hearing in the above case has been listed for hearing on 14th December 2023 with a time estimate of 1 day.</p>
<p>Colyford (Footpath No. 7) Definitive Map Modification Order 2023</p>	<p>In accordance with paragraph 4 (2) of Schedule 14 to the 1981 Act Devon County Council is directed to make an order under section 53 (2) and Schedule 15 of the 1981 Act to add the public footpath to the Definitive Map and Statement.</p> <p>To be undertaken by 23 September 2023</p>

Agenda Item 14

Meg Booth

Director of Climate Change, Environment and Transport

Electoral Divisions: Combe Martin Rural; Seaton and Colyton

Local Government Act 1972: List of background papers

Background Paper Nil

Contact for enquiries:

Name: Richard Walton

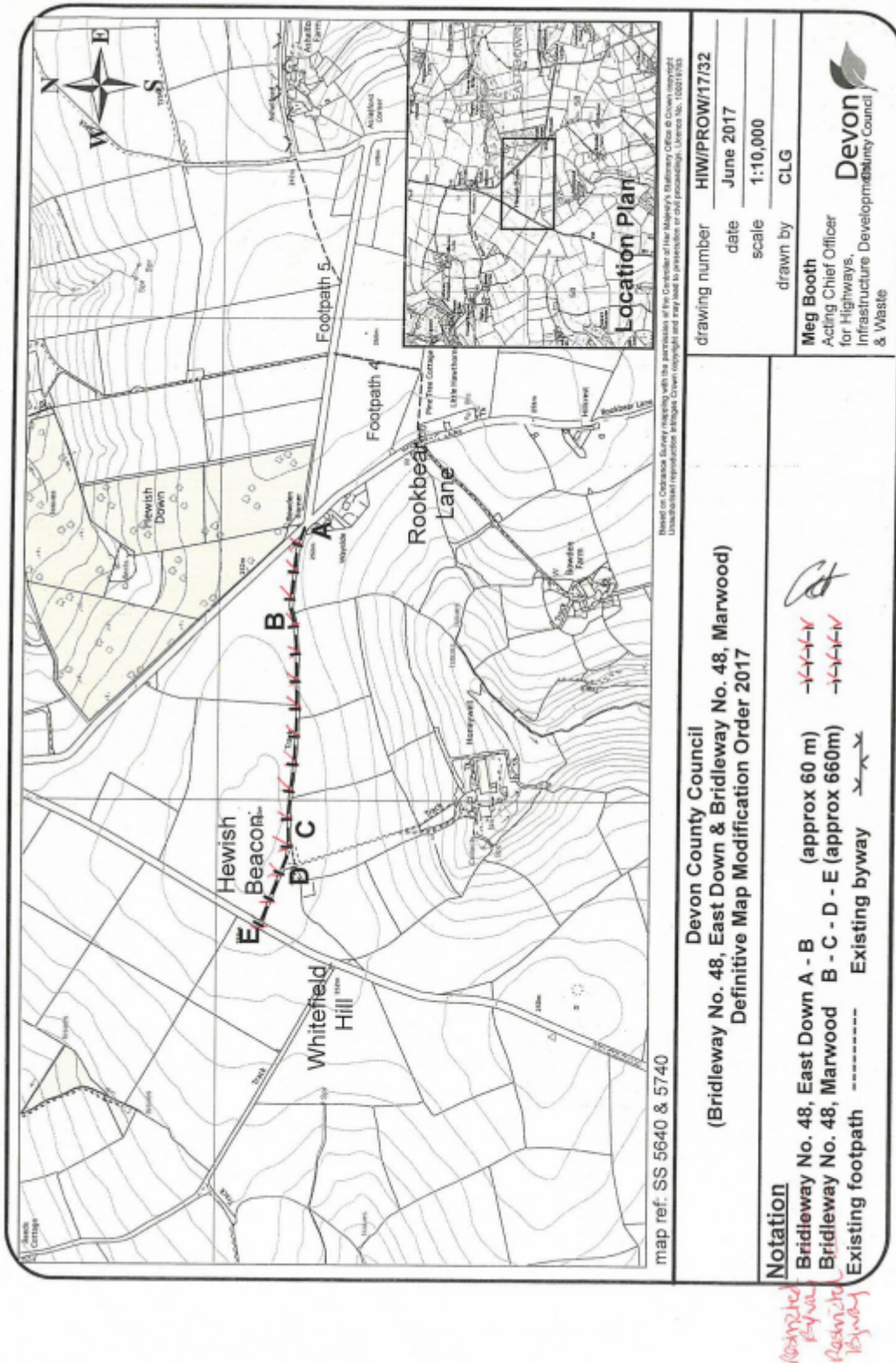
Telephone: 01392 383000

Address: M8 Great Moor House, Bittern Road, Exeter

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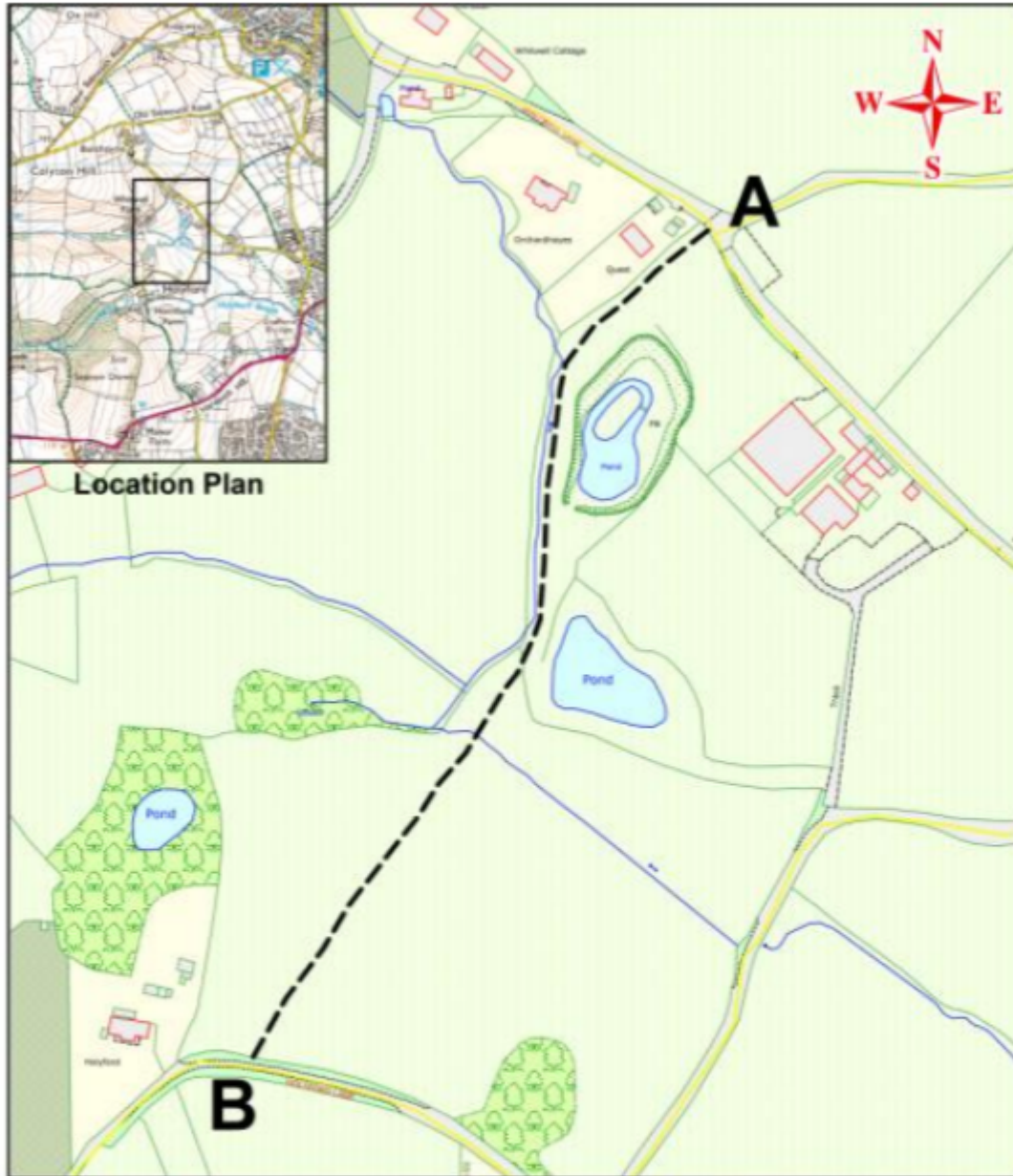
sc/cr/Public Inquiry, Informal Hearing and Written Representation Decisions;
Directions and High Court Appeals

02 151123



Agenda Item 14

Appeal Decision ROW/3305237



Map ref: SY 2388 9277/SY 2369 9242

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DEVON COUNTY COUNCIL
 Colyton parish
 Informal Consultation:
 Schedule 14 application, claimed footpath from
 Whitwell Lane to Holyford Lane, Colyton

Drawing number: HIW/PROW/22/10
 Date: Jan 2022
 Scale: 1:2,500 @A4
 Drawn by: TCG

Notation Claimed Footpath - - - - - (420m)

Meg Booth
 Chief Officer for Highways, Infrastructure Development and Waste



CET/23/99

Public Rights of Way Committee
23 November 2023

Rights of Way Improvement Plan

Report of the Director of Climate Change, Environment and Transport

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

1) Recommendation

It is recommended that the report be noted.

2) Introduction

This report provides an update on progress in reviewing The Rights of Way Improvement Plan (Devon on the Move, Rights of Way Improvement Plan Version 3). This follows on from a previous report considered at the meeting held on 9th March 2023.

3) Background

Introduction

The Rights of Way Improvement Plan (RoWIP) is produced by Devon County Council in accordance with the Countryside and Rights of Way Act 2000, and related guidance from the Department for Environment, Food and Rural Affairs, and Natural England.

The key purpose is to encourage and guide improvements to the public rights of way network to provide a better experience for walkers, cyclists, horse riders, horse and carriage drivers, people with mobility problems, and people using motorised vehicles, for example, motorbikes.

The initial Rights of Way Improvement Plan (Devon on the move) was published in 2005. This was reviewed, with a summary document published in 2012.

Review

A review of the 2012 version of the RoWIP commenced in 2022, initially co-ordinated alongside an update the Public Rights of Way Annex to the Highway Asset Management Plan. The Highway Asset Management Plan has subsequently been approved and is now published on the Devon County Council website.

Initial consultation included workshop sessions with local partners participating in the Parish Paths Partnership Scheme, with discussion focused on what has changed within the last 10 years which did or could impact on use and management of the Public Rights of Way network. Suggestions for potential priority actions were also invited for consideration within the updated RoWIP.

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Internal and external stakeholders have also contributed, including representatives for transport planning, ecology, landscape, heritage, agriculture, rural economy, protected landscapes (Areas of Outstanding Natural Beauty and National Parks), and interest groups.

Drafting of the plan has been co-ordinated through a Devon Countryside Access Forum (DCAF) working group, reporting back through the full forum, with the review also considered by this Committee.

Next Steps

Good progress has been made, with emerging drafts of the revised RoWIP reviewed through the DCAF working group. Further work is currently being carried to finalise the draft plan, prior to seeking endorsement and approval.

The plan is being updated utilising the feedback to date. It will then be subject to further consultation, including being publicly available via the Devon County Council website at Have Your Say. Initial consultees, and other relevant stakeholders will also be contacted, providing opportunity for additional input.

The revised RoWIP will be subject to review through the DCAF working group in November, prior to consideration at the next Forum meeting in January. The intention is for the final version of the plan to be considered by this committee in March 2024.

Revised Timetable:

- November 2023 – Revised draft to be completed.
- 30 November 2023 – Review with the DCAF working group.
- November and December 2023 – Additional wider consultation on the revised draft.
- 22 January 2024 – Report to the DCAF.
- 7 March 2024 – Report to PRow Committee.
- April 2024 – Revised RoWIP published.

4) Options

The main alternative option would be to continue working based on the existing RoWIP. This is considered inappropriate as information informing priorities and actions will be out of date, with resource allocation not necessarily reflecting relevant needs.

5) Consultations

The review is being carried out in consultation with key partners and stakeholders including parish and town councils participating in the Parish Paths Partnership, and the Devon Countryside Access Forum.

6) Strategic Plan

The Devon Rights of Way Improvement Plan (RoWIP) fits well with the Devon Strategic Plan – Best Place (2021 – 25) and actions to be fairer, healthier, caring, greener, and

prosperous. At the strategic level, public rights of way and access are of great importance to:

- connecting people and places (including Active Travel),
- the local economy (with the network providing essential infrastructure in support of recreation, leisure, and tourism),
- carbon reduction, biodiversity, landscape, and heritage (particularly provision for non-car based travel, contribution to climate change avoidance and mitigation measures, and as a key component of green infrastructure), and
- physical and mental health and wellbeing (with benefits directly attributable to exercising outdoors and contact with nature).

Directly relevant priorities set out within the Devon Strategic Plan include:

Responding to the climate emergency, especially:

- More opportunities for cycling and walking,
- Helping wildlife and landscapes to recover,
- Encourage sustainable lifestyles, and
- Continue to reduce carbon emissions across all our services.

Supporting recovery and growth, especially:

- Secure investment in transport infrastructure, and
- Maintain, and where necessary, improve our highway network and improve sustainable transport options

Tackling poverty and inequality, especially:

- Promote community cohesion.

Improve health and wellbeing, especially:

- Give people greater opportunities for walking and cycling to increase their physical activity.

Supporting people and communities, especially:

- Continue to support our vibrant community and voluntary sector,
- Enable a range of transport options, including public transport, and
- Engage directly with people in meaningful ways and encourage participation in decisions that affect them.

7) Financial Considerations

Updating the plan is cost neutral, being led by existing PROW staff. The plan will inform work priorities and resource allocation, with potential to support external funding bids.

8) Legal Considerations

There are no specific legal considerations.

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9) Environmental Impact Considerations (including Climate Change, Sustainability and Socio Economic)

Consultation on the RoWIP includes taking account of impacts, with inclusion of policies to ensure associated actions have either a neutral or positive effect.

10) Equality Considerations

The RoWIP is to be subject to appropriate assessments as part of the plan drafting process. Impacts will be positive, with policies to improve accessibility and social inclusion.

11) Risk Management Considerations

No risks have been identified.

12) Conclusion

The RoWIP is an important, statutory plan used to inform and guide work to manage, maintain and enhance the public rights of way and wider access network.

Meg Booth

Director of Climate Change, Environment and Transport

Electoral Divisions: All

Local Government Act 1972: List of background papers

Background Paper Nil

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