

**Definitive Map Review 2017-2018
Parish of Sampford Peverell**

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

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

Recommendations: It is recommended that:

- (a) **an Order be made to modify the Definitive Map and Statement for the addition of a Public Bridleway along Whitnage Lane between points A – B – C – D as shown on drawing number HIW/PROW/18/012 (Proposal 1); and**
- (b) **no Order be made to modify the Definitive Map and Statement for the addition of a Public Footpath X-Z as shown on drawing number HIW/PROW/18/018 (Proposal 3).**

1. Introduction

The report examines two of the three proposals for change arising out of the Definitive Map Review in the Parish of Sampford Peverell in Mid Devon. A report detailing the final proposal will be presented at the next committee meeting.

2. Background

The original parish survey under s. 27 of the National Parks and Access to the Countryside Act 1949, completed in September 1950, initially proposed 18 routes for consideration as public rights of way with path number 19 submitted in 1955. After review by Tiverton Rural District Council and Devon County Council, 10 footpaths and 1 bridleway were agreed at a meeting with the parish clerk in February 1958 and published on the draft definitive map in 15 April 1958. Representations appear to have been made to Bridleway No. 13 as this was amended to Footpath No. 13 on the Provisional Definitive Map. A total of 11 footpaths were subsequently recorded on the conclusive Definitive Map for Tiverton Rural District Council published on 9 June 1964.

Three footpaths were transferred to Uplowman parish following construction of the North Devon Link Road and subsequent parish boundary change in 1983 and there are therefore now 8 footpaths currently recorded on the Definitive Map for Sampford Peverell parish.

The Devon County Council county wide reviews of the Definitive Map under s.33 of the 1949 Act, commenced in 1968 and 1977 but were not completed. In the 1968 review Sampford Peverell Parish Council made two proposals; for the addition of Whitnage Lane (proposal 1 in this current review) and also reinstatement of Footpath No. 8 into Burlescombe parish. In the 1977 review the parish made one proposal, again for the addition of Whitnage Lane as a bridleway. The request was made jointly with Uplowman Parish Council and user forms were submitted from users in both parishes. The addition of a public bridleway along Whitnage Lane was accordingly included as proposal 1 in the current Definitive Map Review for both parishes.

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 affecting the Definitive Map for Sampford Peverell have been made and confirmed since 1964:

Tiverton Rural District Council Sampford Peverell Footpath No. 1, Public Path Diversion Order 1973.

Secretary of State for Transport Side Roads Order Footpath Nos. 2,4,5, & 6, Sampford Peverell Stopping Up and Creation 1977.

Secretary of State for Transport Side Roads Order Footpath No. 13, Sampford Peverell Stopping Up and Creation 1981.

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

The current Definitive Map Review was opened with a parish public meeting in September 2017 held as part of the bi-monthly parish council meeting. Two other proposals, in addition to proposal 1, were received from the Parish Council, with no other proposals or suggestions received from the public or user groups. The Definitive Map Review parish consultation map was published in May 2018 with three proposals for the addition of a bridleway and two footpaths.

3. Proposals

Please refer to Appendix I to this report.

4. Consultations

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

County Councillor R Radford	-	no comment
Mid Devon District Council	-	no comment
Sampford Peverell Parish Council	-	no comment
Uplowman Parish Council	-	does not support Proposal 1
Country Landowners' Association	-	no comment
National Farmers' Union	-	no comment
British Horse Society	-	no comment
Ramblers' Association	-	no objection
Trail Riders' Fellowship	-	no comment
Devon Green Lanes Group	-	no comment

5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

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

9. Conclusion

It is recommended that an Order be made to modify the Definitive Map and Statement for the addition of a Public Bridleway along Whitnage Lane, between points A – B – C – D, as shown on drawing number HIW/PROW/18/012 (Proposal 1), but that no Order be made in respect of Proposal 3.

A report of Proposal 2 for the addition of a Public Footpath near Station Road will be presented to the next committee.

10. Reasons for Recommendations

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

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Electoral Divisions: Willand & Uffculme and Tiverton East

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
DMR/Correspondence File	2017 to date	DMR/Sampford Peverell

tw171018pra
sc/cr/DMR Sampford Peverell
03 051118

A. Basis of Claim

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

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

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

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

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

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

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

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

1. Proposal 1 – Addition of a Public Bridleway along Whitnage Lane

This proposal is for the addition of a public bridleway running along Whitnage Lane from the county road on the Uplowman parish boundary with Sampford Peverell, between Whitnage and West Pitt Farm, and proceeding northwards and then north eastwards to the county road east of Newhill Farm in Sampford Peverell parish (GR ST 0288 1580 to ST 0321 1673). The proposal is included in both this and the Definitive Map Review report for the parish of Uplowman.

Recommendation: It is recommended that an Order be made to modify the Definitive Map and Statement for the addition of a Bridleway along Whitnage Lane as shown between points A – B – C – D on drawing number HIW/PROW/18/012 (Proposal 1).

1.1 Background

1.1.1 A bridleway along Whitnage Lane was claimed by both Sampford Peverell and Uplowman Parish Councils in June 1978 as one of their requested amendments to be made in the county wide review of the Definitive Map that was opened in November 1977. In December 1978 thirteen user evidence forms were submitted to Devon County Council from users of the route residing in both Uplowman and Sampford Peverell parishes. The completed forms have remained on file following abandonment of the 1977 review.

1.1.2 The route was therefore included in the current review and put on the consultation map and schedule as Proposal 1 for both Uplowman and Sampford Peverell parishes.

1.2 Description of the Route

1.2.1 The route starts at the county road between Whitnage and West Pitt Farm at point A (GR ST 0288 1580) and proceeds northwards along Whitnage Lane, which is the parish boundary between Uplowman and Sampford Peverell. The lane proceeds uphill and is sunken below the adjacent hedge banks as it continues along the lane to point B (GR ST 0276 1623) where there is a field gate to the east side and the junction with a now closed Defra permissive footpath. The route then levels out and bears north eastwards to point C (GR ST 0290 1651) from where the parish boundary turns north westwards and the lane continues north eastwards solely in Sampford Peverell Parish. The route passes the entrance to Newhill Farm and turns east north eastwards to the county road south of Lee Ditch Copse and north of Middle Pitt (also called Lethbridge Cross) at point D (GR ST 0321 1673). The route has a surface of earth and grass/vegetation between points A and the Newhill Farm entrance with an improved stone surface from the farm entrance to point D. The entire route is between hedge banks and has a total length of approximately 1180 metres.

1.3 Consultations

1.3.1 No comments were received from Sampford Peverell Parish Council. Uplowman Parish Council does not now support the proposal.

1.3.2 The local representative of the Ramblers Association advised that they have no objections to the proposal.

1.4 Documentary Evidence

1.4.1 Ordnance Survey and Other Maps

- 1.4.1.1 The Ordnance Survey and other mapping do not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.
- 1.4.1.2 Cassini Historical Maps 1809 – 1900 Sheet 181 Minehead & Brendon Hills
These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.
- 1.4.1.3 Old Series 1809: Whitnage Lane is shown as a defined lane in a similar manner to the county roads it joins.
- 1.4.1.4 Revised New Series 1899-1900: On this edition Whitnage Lane is shown by two solid lines very close together (an unmetalled road) along the whole route with the connecting county roads shown coloured orange (Metalled Roads Second Class).
- 1.4.1.5 Popular Edition 1919: On this edition Whitnage Lane is shown by two solid lines very close together (Minor Roads) and the connecting county roads are dashed orange (Roads under 14' wide Fit for Ordinary Traffic).
- 1.4.1.6 OS 1st & 2nd Edition 25" to a mile 1880-1890 & 1904
Whitnage Lane is depicted as a defined lane throughout its entire length with several mature hedgerow trees shown along the route. The route is named Whitnage Lane and has three compartment numbers along the length of the lane, number 670 with an area of 0.429 for the southern section on map sheet XXXV.10 and number 459, area 0.684 and 99 area 1.497 on map sheet XXXV.14. There are dashed lines across the ends of the lane at points A and D, believed to indicate a change in surface between the lane and the county road. Bench marks are noted in two places, south of point B and north east of point C.
- 1.4.1.7 On the 2nd edition Whitnage Lane is shown as a defined lane, with dashed lines at points A and D and the same compartment numbers.
- 1.4.1.8 Bartholomew's Half Inch to the Mile Maps Sheet 35 North Devon 1903 & 1921
Bartholomew based their half-inch maps on more detailed Ordnance Survey mapping at one-inch to the mile and published at the half-inch scale from the 1890s to the 1970s. The maps were progressively revised and updated with new information and became Bartholomew's trade mark series. Associated mainly with recreation, the maps were popular and influential and sold well, particularly with cyclists and tourists. The suggestions for revisions by the Cyclists Touring Club were acknowledged on the maps in the heyday of rambling and cycling. The maps contained the disclaimer 'The representation of a road or footpath is no evidence of the existence of a right of way'.
- 1.4.1.9 On the 1903 edition Whitnage Lane is shown as an uncoloured lane and in the same manner as the now county road that it joins at point D. The key

advises that 'The uncoloured roads are inferior and not to be recommended for cyclists'.

- 1.4.1.10 On the 1921 map both Whitnage Lane and the county road at point D are shown as uncoloured lanes/roads although the key now says 'The uncoloured roads are inferior and not to be recommended'. This edition of the map refers to Motoring Roads and Indifferent roads as being passable for cyclists, presumably with the rise in car ownership (1,715,000 registered motor vehicles in the UK in 1926) and that the maps were now used by motorists as well as cyclists.
- 1.4.1.11 OS 1 inch to a mile maps of 1946, 1960 & 1966
On the 1946 edition Whitnage Lane is shown as an uncoloured defined lane (Unmetalled Roads) with the connecting county roads coloured orange (Roads Under 14' of Metalling Good). This map edition noted the location of gates and none are shown along the lane or at point D. Point A is obscured by the parish boundary marks.
- 1.4.1.12 In the 1960 edition Whitnage Lane is shown as a dashed line between points A and C and as a double sided defined white lane from point C to Point D. In the map key a dashed line refers to Footpaths and Tracks and a narrow white lane is Unmetalled Roads. No gates are shown at either end of the lane and there are no buildings at Newhill. The connecting county roads are coloured yellow as Roads Under 14' of Metalling, Tarred.
- 1.4.1.13 The 1966 edition shows public rights of way as recorded on the Definitive Map at that time. Whitnage Lane is again shown as a double sided defined lane throughout, as in the 1946 map (Unmetalled Roads) with the connecting county roads coloured yellow as before.
- 1.4.1.14 OS Post War Mapping A Edition 2500 1969 & 1970
The claimed route is depicted as a defined double hedged lane throughout the length of the route as on the earlier mapping. The lane is labelled Whitnage Lane (Track) and has three compartment numbers 8684 area 0.91 acres, 7917 0.70 acres and 17712.75 acres.
- 1.4.1.15 OS 1:25,000 maps of Great Britain – Sheet ST01 1961
The 1:25,000 'Provisional edition' or 'First Series', was Ordnance Survey's first civilian map series at this medium scale, the forerunner of the modern *Explorer* and *Outdoor Leisure* maps and published in limited colour between 1937-1961. By 1956 it covered 80% of Great Britain, everywhere apart from the Scottish Highlands and Islands. The series is useful for showing rural and urban areas in much greater detail than the standard one-inch to the mile (1:63,360) maps.
- 1.4.1.16 Minor roads, lanes and private drives/access lanes are all shown as white uncoloured roads/lanes described as 'Other Roads - Poor, or unmetalled'. Public rights of way are not recorded on this series. Routes are shown as pecked lines and two narrow solid lines, labelled F.P. on the map and described as Footpaths only (no mention of Bridleways, RUPPs or ORPAs) in the key. The map contains the standard OS disclaimer 'The representation of any other roads, tracks or paths is no evidence of the existence of a right of way'. The maps were published prior to publication of the conclusive Definitive Map for Mid Devon.

1.4.1.17 This map shows Whitnage Lane as a defined uncoloured lane throughout from point A to the junction with the county road at point D, corresponding to 'Other Roads - Poor, or unmetalled'. No buildings are shown adjacent to the route as Newhill Farm has not been established. No lines are shown across the full length of the route.

1.4.2 Tithe Maps and Apportionments

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

1.4.2.2 Uplowman Tithe Map 1843 & Apportionment 1841

The Uplowman tithe map does not include any colouring or numbering on any roads or lanes whether those roads are now county roads or lanes such as Whitnage Lane or access to fields/property. The southern section of Whitnage Lane is shown on the Tithe map along the same route as it runs today as far as the junction with the Sampford Peverell parish boundary and in a similar manner to the other minor county roads in the locality. The continuation of Whitnage Lane into Sampford Peverell is labelled 'to Hockworthy'. Adjoining apportionments on the Uplowman side of Whitnage Lane are part of the holdings known as Shapettes, Lower Murley and Gullmoor.

1.4.2.3 Sampford Peverell Tithe Map 1844 and Apportionment 1844.

The Sampford Peverell tithe map does include colouring of all roads and lanes on the map whether the road/lane is now a county road or other lanes or sections of cul de sac lanes giving access to fields or property. Whitnage Lane is shown in its entirety on the Tithe map, with the southern section (points A to B) of the lane shown as being to the west of the parish boundary (coloured blue). The centre section (points B to C) is depicted with the parish boundary running along Whitnage Lane and with the northeast section (points C to D) shown coloured brown and entirely within the parish of Sampford Peverell. Adjacent holdings to Whitnage Lane in Sampford Peverell parish are listed as Lee Ditch, Lower Ridge and Middle & West Pitt.

1.4.3 Deposited Plans Tiverton Roads 1829 (SWHC Ref QS/DP/89)

1.4.3.1 There are various plans and a book of reference headed Maps of the intended New Roads and Deviations in the Tiverton Trust 1829, though most of the proposals do not seem to have occurred. Plan number 12 includes a proposed new section of road from Whitnage hamlet eastwards, running south of the current county road and south of Lower, Middle and Higher Pit farms. The southern end of Whitnage Lane is shown on the plan in the same manner as the road eastwards toward Pitt which is a county road today. The field on the western side of Whitnage Lane is number 26 in the book of reference, premises Above Chapel, arable with owner John Adney Esq and occupier Thomas Brice.

1.4.4 OS Name Books Early 20th Century

- 1.4.4.1 The OS name books gave the definitions of features, houses, rivers, places, lanes printed on the large scale (6" and 25") OS maps first published in the late 19th century. The definitions were typically authorised by the owner where an object (say a farmhouse or gentleman's residence) was privately owned and by the district overseer/surveyor or someone in a public position where they were in public ownership.
- 1.4.4.2 In the OS Name Book 1903 covering Sampford Peverell, Tiverton & Uplowman parishes (Kew Ref OS 35/1689) Whitnage Lane is described 'An occupation road, extending from a junction of roads E of Whitnage to a junction of roads ½ mile N of West Pitt' and was signed for by Mr J Chave, assistant overseer, Uplowman.
- 1.4.4.3 In the summary sheets at the end of the book, Whitnage, Whitnage Lane and Uplowman Cross, amongst others, were also signed for by James Chave, assistant overseer.

1.4.5 Finance Act Plans and Field Books 1910

- 1.4.5.1 The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuer/surveyor and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.
- 1.4.5.2 The allowance given was often on the basis of a figure such as £1 times 25 yp. The yp refers to years purchase, a method of valuation used to convert a property's income flow (rent) into an appropriate capital sum on the basis that the capital value of a property is directly related to its income producing power. This method of valuation seems to be often used in Finance Act valuations.
- 1.4.5.3 On the Finance Act plan Whitnage Lane is excluded from the adjacent hereditaments. All the land on the east and south sides of the lane was included in one hereditament, number 184 and this holding also included two fields north of the lane between points C and D. The colouring across Whitnage Lane breaks in the same manner as the colouring breaks across the county road running south from point D for other land also included in the same hereditament.
- 1.4.5.4 The hereditament numbers for Uplowman are included in the field books for Sampford Peverell parish. Hereditament 184 which included Middle Pitt and West Pitt farms was 231 acres and owned by Mr Studley and occupied by T White. The field book makes reference to a public footpath through ordnance number 221, allowance £24 but there is no reference to Whitnage Lane.

1.4.5.5 The other hereditament numbers adjoining Whitnage Lane are numbers 156 – Lee Ditch, 208 - Hill, 292 – Wood & Gulmoor, 295 – Whitnage & Locks, 307 - Longthorn & 325 – Hurfords. Whilst the field books make reference to public footpaths in various ordnance numbers in hereditaments numbered 307, 292 & 295 which are now recorded as Footpaths Nos. 6, 7, 8, 9, 11 & 13, Uplowman; none of the field books make any reference to Whitnage Lane.

1.4.6 Vestry Minutes

1.4.6.1 Uplowman vestry minutes from 1820 to 1882 are held at the South West Heritage Centre (SWHC - ref 829A/PV1)

1.4.6.2 There are references to the waywardens of the highways and repairs to roads and bridges within the parish but no references to Whitnage Lane.

1.4.6.3 Sampford Peverell vestry minutes from 1810 to 1841 are also held at the SWHC (ref 1189A/PV1). There is no specific reference to Whitnage Lane although in 1826 it was decided that it is the duty of the occupiers of the different lands to repair the footpaths in their respective lands (unless they have been hitherto repaired by the parishioners). In 1841 it was decided to let the roads either together or in parts as may be agreed by tender but no further details were included in the minutes.

1.4.6.4 In the SWHC there is also a handwritten agreement (ref 1198A/PV2) between Sampford Parish Council and John Baker for the repair of the highways for 7 years from Ladyday 1851. No lists or maps were included with the agreement.

1.4.7 Parish Council Meeting Minutes

1.4.7.1 The Uplowman Parish Council minute books covering the period 1894 to date are retained within the parish and the parish council minutes since January 2003 available on the parish council website.

1.4.7.2 At the Annual Parish Meeting in April 1978 and in connection with the review of 1977, it was reported that almost all footpaths had been walked. The several amendments proposed to the current definitive map included 'Whitnage Lane to Ridge Road should be shown as unclassified bridle path'. In February 1979 there is discussion regarding the letter from Mr Gash, the County Solicitor, at Devon County Council to Dr J Graves-Morris, local District Councillor, regarding Whitnage Lane. The matter was to be dealt with at a later date.

1.4.7.3 In January 1984 Mr White stated that Whitnage Lane was in a very poor state of repair and had become dangerous. In June 1991 under Any Other Business it was suggested that Whitnage Footpath should be designated a bridleway if possible. The current status was to be checked. In January 1992 under Matters Arising – Whitnage Footpath, the clerk reported that further information from DCC was required before a decision can be taken.

1.4.7.4 Under Any Other Business in March 1995, Mr White raised the question of the status of the 'green lane' in Whitnage and informed the meeting that it was being used by off road vehicles. Clerk was to check the status. In the

public participation forum prior to the parish council meeting in January 2005 there was a query concerning the clearing of 'bridal paths'. Uplowman Parish Council was to check responsibility for this. At the following meeting in March 2005, Mr White had checked the 'Whitnage Bridal path' 1 which was clear.

- 1.4.7.5 The Sampford Peverell Parish Council minute books dating from 1894 to 2002 (excluding the period June 1986 to November 1991) are held at the South West Heritage Centre (Ref 7717A/PX/1/1-6). Minutes since 2014 are available on the Parish Council web site.
- 1.4.7.6 The minutes show that matters concerning footpaths were regularly raised at the parish council meetings. In November 1934 OS maps had been obtained and a Public Footpaths Committee was formed from councillors. In February 1935 the sub-committee reported that certain pathways had been defined as marked on the OS map. A parish meeting to confirm the paths to be proposed for inclusion on the Definitive Map was held on 5th September 1950.
- 1.4.7.7 At a meeting of the Parish Council on the 15 October 1968, the Footpath Committee reported on their meeting of 26 September 1968 to review the public footpaths and make recommendations for which paths should be retained and sign posted where necessary. The path listed at number 10 was 'Whitnage to Leatheridge Cross'. The Parish Council accepted the recommendations as made to retain paths numbered 1 to 15 with the exception of number 6, which was considered private.
- 1.4.7.8 On 17 July 1970 Dr Graves-Morris was congratulated on the parish walks, great success, 45-50 walkers participating. A report on the condition of the paths used was presented at the next meeting in September. Walk 2 referred to Great Landslide farm, which in subsequent years was known to include Whitnage Lane in the walk route. In July 1972 it was reported that walks all completed in July with average of 30-40 walkers. In 1973 walk 3 – 4 July meet Richmond Close for Underdown and Landside. In summer 1975 walks to start 4 August, same arrangements as last year.
- 1.4.7.9 At the Parish Council meeting on 14 October 1977 reports were given on the footpaths walked in August and September. The report for walk a) going via Richmond Close, Underdown, Boehill, Landside, Whitnage Lane stated that 'Brambles etc either side of Whitnage Lane need trimming back'.
- 1.4.7.10 At the 14 April 1978 Parish Council meeting, Cllr Graves-Morris expressed concern that Whitnage Lane appeared to have been overlooked for the 1978 walks, possibly due to the fact that it marked a section of the boundary between Sampford Peverell and Uplowman. Cllr Bone proposed that a letter be sent to Devon County Council requesting that the hedges on either side of the lane in question be cut and maintained to enable unobstructed use of the lane by the public. At this meeting with respect to the 1977 review, it was generally agreed that the Definitive Map was otherwise correct. Clerk to return yellow and buff forms duly completed.
- 1.4.7.11 On the 21 July 1978 meeting under Matters Arising the Devon County Council Divisional Surveyor had replied stating the lane was private. Cllr Bone questioned should the council walk this particular section this year, however it was generally felt that as it had formed part of the walks on many

previous years, council should continue to use it. At the next meeting, Cllr Graves-Morris requested the letter from Devon County Council (stating that Whitnage Lane was private). He volunteered to further personal representations on behalf of the council which was agreed. In November 1978 Cllr Graves-Morris reported that he had met Mr Gash, the lane could be a bridleway, witnesses were needed and he had given some forms to Uplowman Parish Council. Cllrs Pester, Sharland, Bone, Thomas & Wright agreed to complete forms.

- 1.4.7.12 At the meeting on 11 January 1979 Cllr Graves-Morris read the letter he had sent to Mr Gash in December and advised he had had a very good response from parishioners. It was now in hands of Devon County Council. The 1979 footpath walks were discussed on 16 March 1979, and the walk to be held on 2 July 1979 included Whitnage Lane. In 1980 walk 2 on 16 June included Whitnage Lane and at the July Parish Council meeting it was reported that all the walks had been well attended. Whitnage Lane continued to be used in one of the parish footpath walks in the 1980s and in 1984 it was reported to be fairly clear.
- 1.4.7.13 The Parish Council minute book was missing between June 1986 and November 1991 but the walks took place in 1992 (no route details for 1992) and in 1993 – 1996 Whitnage lane was included in the route for one of the parish walks.
- 1.4.7.14 A letter with reports of the parish footpath walks was sent from the parish clerk to the Devon County Council rights of way warden in September 2002. The report for the walk on 24 June describes the route from Great Landside to Whitnage by road walking pass East and West Pitt. Whitnage Lane was not walked in 2002 and no walks occurred in 2001 due to the Foot and Mouth outbreak.
- 1.4.7.15 On contacting the parish council as part of the current review to ascertain whether Whitnage Lane was still included in the current parish walks, a response was received from a previous parish councillor. Mr Lucas advised that he understood that, possibly in the mid 1980s, that Whitnage Lane was no longer designated as a public track excluding access. He was a leader on parish walks from approximately 1989 to 2000 and did not walk Whitnage Lane.

1.4.8 British Newspaper Archive

- 1.4.8.1 The auction of the Whitnage Estate on 30 November 1937 was advertised in the Exeter & Plymouth Gazette of 29 October 1937. Seven lots of land/property were listed in the advertisement but did not include any reference to Whitnage Lane. A copy of the sale catalogue has not been seen.

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

- 1.4.9.1 The Parish Council survey of their public rights of way to be considered for inclusion on the Definitive map was undertaken in 1950 and the lane was not included as a proposal by either parish. Uplowman Parish Council initially proposed 25 footpaths but no bridleways or roads used as public paths

'rapps'. Sampford Peverell initially proposed 18 footpaths and 1 bridleway but did not include Whitnage Lane.

1.4.10 Devon County Council Uncompleted Reviews of 1968 & 1977

- 1.4.10.1 In a letter dated 4 July 1971 (in relation to the 1968 review) the clerk to Uplowman Parish Council advised the County Council that 'after inspecting the map enclosed with the letter it was agreed to confirm the Footpaths as shown thereon, with the exception of path numbered 1 which was closed in 1965'.
- 1.4.10.2 In respect of the 1977 review Uplowman Parish Council proposed that Whitnage Lane should be shown 'as an unclassified bridlepath' in a letter to the County Council in June 1978. In November 1978 Dr J Graves-Morris of Sampford Peverell wrote to Mr Gash, County Solicitor, at the County Council saying 'As Councillor for Ward 22 of the Mid Devon District Council (Uplowman & Sampford Peverell Parish Councils) I would like to discuss with you what appears to be an omission of a footpath or bridlepath from the definitive map owing to the belief by both Parish Councils along whose boundaries it runs that it was in fact, a county owned 'green lane' (or by whatever other name it could be called). I refer to Whitnage lane running from Whitnage to Leatheridge Cross.' Dr Graves-Morris had also been a Sampford Peverell parish councillor since the 1950s.
- 1.4.10.3 It appears that Dr Graves-Morris had then spoken to Mr Gash as a further letter was received dated 12 December 1978 enclosing a number of user evidence forms and saying 'Thank you for discussing this matter with me the other week. I enclose a sheaf of Claims for public right of way from both parishes which are in my ward. I was taken aback by the overwhelming response from Uplowman which I had not expected; you will note that two of the adjoining landowners, Mr White and Mr Bent both consider it is in the ownership of Devon County Council as do two others who have both known it for sixty years.'
- 1.4.10.4 Dr Graves-Morris' letter then refers to letters dated 19 May and 19 October 1978 c.c. to the Area Engineer from the Divisional Surveyor, Mr J Owen--Jones; in which the surveyor states it is privately owned and he would not like to adopt it as a private highway. Copies of these letters are not in the parish rights of way review files. Dr Graves-Morris concludes his letter by saying 'Obviously there are legal issues to be determined'.
- 1.4.10.5 The 1977 County wide review did not progress but the letters and evidence submitted by parish councils and parish meetings has been retained on file.

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

- 1.4.11.1 On the 1946-1949 aerial photography Whitnage Lane can be seen as a clearly defined lane with hedgerow trees and the hedges trimmed sufficiently to enable the surface of the lane to be seen for the length of the lane.
- 1.4.11.2 In 1999-2000 Whitnage Lane is clearly visible as a hedged lane with some hedgerow trees. The surface of the lane is visible except for the southern section where it is obscured by the hedgerow vegetation. The house and buildings are now visible at Newhill Farm between points C and D.

1.4.11.3 On the 2006-2007 photography the hedgerow trees and hedges obscure the surface of the lane between points A and B. The hedges have been neatly trimmed between points B and C, with larger hedgerow trees present between C and D. A track/path along which the Defra Countryside Stewardship permissive path ran between 2003 and 2013 can be clearly seen along the field headland east of point B.

1.4.12 Land Registry

1.4.12.1 Whitnage Lane is not registered at HM Land Registry as part of any of the adjoining land which is registered under nine different titles. Three of these landowners would appear to require access along Whitnage Lane to access their land.

1.4.12.2 In the title number DN296339 (Locks Farm) for land on the west side of Whitnage Lane between points A and B, a conveyance dated June 1990 granted the following right 'Together (so far as the present owner can grant the same) with a right at all times and for agricultural purposes over the lane leading from the public highway to field OS Numbers 7391 and 7400'. Field numbers 7391 and 7400 can be seen on the OS Post War mapping A edition and title plan and the lane referred to is considered to be Whitnage Lane.

1.4.12.3 The title number DN347472 (Lee Ditch Farm) for land north west of Whitnage Lane between points C and D includes in the property register includes 'Notice entered in pursuance of rule 254 of the Land Registration Rules 1925 on 27 September 1994 that the registered proprietor claims that the land in this title has the benefit of a right of way over the land tinted brown on the filed plan'. The land tinted brown is Whitnage Lane from point D to north east of Newhill Farm.

1.4.12.4 The land in title number DN342038 includes a block of seven fields which includes the field adjoining the north west of Whitnage Lane, between north of point B to point C. This land would appear to be landlocked without access from Whitnage Lane although the register includes a right of way from Murley Farm on the north west boundary. No reference is made to any right of way along Whitnage Lane. The land is now part of Newhill Farm.

1.4.12.5 The land in title number DN320068, now Newhill Farm, first registered in 1992, would also be landlocked and the title makes no reference any right of way along or to Whitnage Lane.

1.4.12.6 None of the other titles refer to Whitnage Lane or any rights of access along the lane.

1.4.13 Planning Applications

1.4.13.1 The first planning application for residential accommodation at Newhill Farm appears to be in 1982. In a planning application for a wind turbine at Newhill Farm in 2008, Whitnage Lane was described as a farm track. In a prior notification application of 2018 Whitnage Lane was not included in the ownership boundary of Newhill Farm and was again described as a farm track.

1.4.14 Permissive Footpath

- 1.4.14.1 In 2003 the landowners at West Pitt Farm entered into a ten year permissive footpath agreement with Defra through the Higher Level Countryside scheme, in which landowners were paid an annual payment per linear metre of public footpath or bridleway provided. The permissive footpath ran north north westwards from West Pitt Farm along the headland of two fields before entering a third field and turning south westwards to meet Whitnage Lane at point B. On the plan prepared by Defra of this permissive access, Whitnage lane is described as a Byway Open to All Traffic whilst on the description of the walk Whitnage Lane is described as 'an ancient green lane'. The permissive access ended in September 2013 and a sign saying 'Private – No public right of way' is now fastened on the gate leading into the field to the east at point B.

1.5 User Evidence

- 1.5.1 A total of thirteen user evidence forms were submitted by Dr Graves-Morrish in December 1978 with his covering letter and the review form proposing the addition of Whitnage lane to the Definitive Map as a public bridleway. The user forms were completed by parishioners from both Uplowman and Sampford Peverell. None of the users report ever been stopped, turned back or seeing any notices, gates or obstructions on the route. At the time of these forms been completed, a map of the route referred to in the form was not requested but the description provided by the users describes Whitnage Lane.
- 1.5.2 The seven forms from Uplowman parish were all from Whitnage residents and with ages ranging from the early 40s to early 70s and completed in 1978. On these user forms 'the person taking this statement' box was completed by Mr J Vicary and Mr L J White who have both completed forms themselves.
- 1.5.3 Mr J Vicary of Whitnage advises that he used the lane five times a week for sixty years from 1968 to 1978 for business purposes going to Lee Ditch Farm. Use for business purposes is not use 'as of right'. Lee Dich Farm was located along the lane north of point D and it would not have been necessary to use Whitnage Lane to access the farm. Mr Vicary comments 'to my knowledge it is public. I have always known Whitnage Lane as a public footpath, a bridle path and carriage way'.
- 1.5.4 Mr White still resides at the same address in Whitnage and has completed a landowner form in respect of his ownership of the field north west of point A. In his 1978 user form, Mr White stated that he had known the lane to be public and had used the lane since 1973, forty times a year for pleasure, dog & pony exercise going from Whitnage to Lee Ditch. He believed the owner to be Devon County Council.
- 1.5.5 Mr Brain from Whitnage had known the lane to be public since 1951 and had used it every day for exercising horses and dogs. The precise years of use are not stated but he had never been stopped or seen any notices.
- 1.5.6 Ms Brakespear of Whitnage had known the lane to be public all her life (62 years old in 1978) and commented that it was marked as a public road on the 1904 Ordnance Survey map and was the old main road before the Ridge--Hockworthy road was cut. She had used the route since 1918, every

day at times for riding, driving and walking. Under ownership she stated 'I fancy the highways commission – since it is a made road – open both ends onto other county roads'. Other comments included 'As everyone in the district knows it is a public road. I have walked, ridden, not to mention driving in a land rover on this road all my life and I have lived here 61 years'.

- 1.5.7 Mr Hellier of Whitnage Farm and known or regarded the lane to be public for the last fifty nine years and has used the lane during that time, seventy times a year for business and pleasure, to inspect well from Whitnage and riding from Whitnage to Leathbridge Cross. He considered the owner to be Devon County Council.
- 1.5.8 E J Pinsent of Uplowman had known the way to be public for fifty years and had used the lane since 1928, two to three times a year as a round trip from Whitnage for walking the dog, courting etc. The lane was not considered to be in private ownership.
- 1.5.9 Mr Reichward, a schoolmaster, of Whitnage had known the way to be public and used the lane for walking for five and a half years from 1973, as a walk from Whitnage. He presumed it was public property but had no knowledge.
- 1.5.10 The six user evidence forms were from Sampford Peverell residents in their late forties to early seventies and the forms were again completed in 1978 with one in 1979. One of the forms was completed by Mr Bent, the farmer from West Pitt Farm. In 1978 Mr Bent was the landowner of most of the land on the east and south side of Whitnage Lane. He had known or regarded the lane to be public for twenty years and had used it innumerable times for business going from one end of his farm to the other. Mr Bent's use as part of his day to day farming business would not be use as of right. With regard to ownership, Mr Bent states 'it has always been regarded as a public thoroughfare, it crosses no ones land' and in other comments 'as previously stated this road has always been regarded as a public road'. All of the Sampford Peverell residents considered the lane as a bridleway.
- 1.5.11 Mr L Bone, retired, from Sampford Peverell regarded the way public and had used the route for seven and a half years since 1971, five to six times a year for recreation.
- 1.5.12 Mr R Pargeter, schoolmaster, from Sampford Peverell regarded the way public and used the route at least once or twice a year since 1962 for recreation. He added 'on geographical and physical consideration, I have unquestionably expected this lane to be public, probably a bridleway, possibly a byway – there is no sign that it has ever been gated.'
- 1.5.13 Mr F Pester, retired, from Sampford Peverell regarded the way as public for nine years and had used the route once or twice a year from 1970 for pleasure.
- 1.5.14 Mr T Sharland, mason/bricklayer, from Sampford Peverell had known or regarded the way as public for thirty plus years. He had only walked the route once in 1975 and 1976 as part of the annual parish council led footpaths walks in the parish. Under further particulars he commented 'This track is often overgrown and very muddy, with very pleasant views'.

- 1.5.15 Mr E Thomas, company director, from Sampford Peverell had known or regarded the way as public for twenty five years. He had used the route from 1950 approximately once a year for rambles with family and as parish council. He has commented 'sometimes very overgrown' and 'as far as I can ascertain from the older villagers, this has always been a common right of way'.
- 1.5.16 No recent user evidence has been received. Evidence of recent horse use was noticed in April 2017 but it is not known if this use was by a member of the public or an adjacent landowner with private rights. The local Ramblers Association representative had walked Whitnage Lane once in the Spring of 2013. His report refers to signs of a horse having been ridden along the lane and plenty of dog paw marks. The lane was not flooded south west of Newhill.

1.6 Landowner Evidence

- 1.6.1 Those landowners and occupiers who owned land adjacent to the proposal route were all contacted individually and advised of the proposal. They were invited to submit their comments and information by way of a completed landowner evidence form or otherwise.
- 1.6.2 Mr & Mrs A Branton either own or occupy all the land on the east side of Whitnage Lane between points A and C and the three fields on the west side of the lane from just north of point B for 42 years. In an additional letter they advise that they understand it to be a Green Lane, not adopted by highways and available for all who wish to use it, by foot, horse, on a bike or mechanical or non-mechanical vehicle. They cannot see any advantage to designating it and are in favour of maintaining the status quo. They are not aware of members of the public using the lane.
- 1.6.3 They are not prepared to maintain the lane hedges or trees on their land that adjoin the lane as would be their landowner responsibility if the lane is designated. Their cattle cross the lane for milking (about half way between points A and B) and the field gates are closed across the lane, but not locked, for the cows to return to the fields on the east side of the lane after milking. This arrangement must continue and the lane must remain as an undesignated Green Lane. They have public footpaths across their farmland elsewhere and do not want to encourage more members of the public onto their farm.
- 1.6.4 Mr R Branton of Murley Farm had owned the field north west of point B since 1977. He has rarely seen members of the public using this way and has not stopped or turned back anyone from using the lane. Mr Branton additionally advised that when the family purchased Locks Farm in 1977, Newhill Farm did not exist. Whitnage Lane, also referred to as Primrose Lane, was and is a track not a public highway. It does not fit any of the rights of way categories.
- 1.6.5 Mr A J Disney did not return a completed plan with his landowner evidence form but owns the field to the south east of Whitnage lane between points C and D. He has considered the lane to be a bridleway for 22 years but has not been aware of the public using the way.
- 1.6.6 Mr P Netherway owns the field north of the lane just west of point D. He does not consider the lane to be public and says it should be kept as it is. It

is used by himself and adjoining land owners only. He has told off-road/green-laners to disappear quickly.

1.6.7 Mr L J White owns the field at the southern end of the lane west of point A and was the Uplowman Parish Council Chairman for a number of years. He considers the route to be a green lane (BOAT) and has been aware of use by the public regularly/intermittently for fifty years. He has not required anyone to ask permission or stopped anyone using the lane.

1.6.8 Mr & Mrs Greenslade have owned Newhill Farm and land on the north west side of the lane between points B and C since 1992. They do not consider the lane to be public but a farm access lane. They have seen or been aware of use by 4x4s. Foot or horse very rare because of the deep pond in the track. They give permission for hunting but have not required other people to ask permission because it is so rare to see anyone. They refer to the deep pool of water between points B and C and the presence of a gate between points A and B. The section between points B to D has been maintained by themselves for the past 26 years at their cost.

1.7 Rebuttal Evidence

1.7.1 Apart from the comments received from the landowners, no other rebuttal evidence has been received.

1.8 Discussion

Statute (Section 31 Highways Act 1980)

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

1.8.2 A Schedule 14 application is considered to be a calling into question for the purposes of Section 31 but on this occasion no Schedule 14 application has been submitted. The proposal to add Whitnage Lane as a bridleway was made by Uplowman & Sampford Peverell Parish Councils, following the County Council's request for amendments to the Definitive Map in 1978. The user evidence submitted does cover twenty years use by the public from 1958 to 1978 but as the proposal as made would not be considered to be a calling into question under Section 31, it means that the existence or not of public rights of way cannot be considered under statute on this occasion.

Common Law

1.8.3 A claim for a right of way may also be considered under common law. At Common Law, evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence - documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.

- 1.8.4 The documentary map evidence records the existence of Whitnage Lane as currently, since at least the early 1800s as shown on the early 1" to a mile OS maps. On the 1" maps the lane is shown as similar in status to the adjoining county roads in 1809 but at a lower classification in 1899 and 1919. On the OS 25" maps of 1880 and 1904 the lane is shown as a defined lane, named and with its own compartment number and area stated. Dashed lines across the lane at points A and D could indicate a change in surface between the lane and adjoining county roads. The Bartholomew's maps of 1903 and 1921 show Whitnage Lane as the same status as the county road at point D.
- 1.8.5 The 1" OS maps of the 20th century continue to show the lane as an unmetalled road, footpath/track & unmetalled road and unmetalled road and Whitnage Lane is shown as an 'other road – poor or unmetalled' on the larger scale OS map of 1961. The maps show the physical existence of the lane and give an indication of it was viewed in connection with the local road network. The maps do not however, provide evidence as to status and whether the lanes were publicly maintainable at that time.
- 1.8.6 The Uplowman Tithe maps of 1841 did not include any colouring of roads/lanes within the parish. The section of Whitnage Lane within Uplowman Parish is shown and labelled 'to Hockworthy' at the parish boundary, indicating that the lane was considered a through route to Hockworthy. The Sampford Peverell Tithe map of 1844 did colour all roads /lanes on the map regardless of status. Whitnage Lane is shown on the map from points A to D and coloured brown.
- 1.8.7 Plans for the improvements of roads in the Tiverton area of 1829 show the southern end of Whitnage Lane in a similar manner to the county road going eastwards to West Pitt.
- 1.8.8 In the OS Name Book of 1904, Whitnage lane is described as an occupation road rather than as a parish road. However, the name and spelling of Whitnage Lane is signed for by the assistant overseer, indicating that the lane was considered to be part of the local highway network under his jurisdiction. The description as an occupation road is considered to support the status of at least public bridleway.
- 1.8.9 In the Finance Act plans of 1910, the whole of Whitnage Lane is excluded from the adjacent hereditaments and the colouring breaks across the lane when a hereditament includes land on both sides of the lane. Ownership of the lane was not claimed by adjacent landowners and this could indicate that the lane was considered to be public and part of the local highway network.
- 1.8.10 The Parish Council Minute Books from both parishes record regular items referring to the public rights of way in the two parishes. Whitnage Lane was not proposed for inclusion as a public right of way in either of the 1950 parish surveys but was proposed for addition as a bridleway by both parishes in the subsequently uncompleted 1977 review supported by user evidence collected from users in both parishes.
- 1.8.11 In Uplowman parish in 1991 it was again recorded that Whitnage Lane should be recorded as a bridleway. Use of the lane by off road vehicles in 1995 raised the question of the lane's status again. In 2005 a parishioner questioned the clearing of bridle paths and at the following meeting the chairman Mr White reported that the Whitnage bridle path was clear.

- 1.8.12 In Sampford Peverell parish a list of public rights of way in the parish compiled in September 1968 included Whitnage Lane as number 10. The earliest record of the annual parish walks was in 1970 and the minutes confirm that Whitnage Lane was included in the walk to the north of the village through Boehill and Landside Farms in the 70s, 80s and 90s. Following the 1977 walk it was reported that the brambles either side of Whitnage Lane needed trimming back. On being requested to do this the Divisional Surveyor for Devon County Council advised that the lane was private. From a road surveyor's perspective it is considered that he meant private as regard to maintenance or ownership, as the lane was not a recorded as a road maintainable at public expense nor owned by the County Council; rather than meaning with regard to use of the lane. The Parish Council minutes confirm that Whitnage Lane was used in the parish walks in the 1970s, 80s and 90s.
- 1.8.13 In the 1977 uncompleted parish review it was a Parish and Mid Devon District Council Councillor who spoke to Devon County Council about adding the lane as a bridleway and collected user evidence from both parishes for the lane to be added to the Definitive map as a bridleway. There are references in the minutes of both parish councils that indicate the lane was considered to have the status of a public right of way by both parishes. Uplowman Parish Council no longer supports the proposal, although it has not submitted any grounds in opposition.
- 1.8.14 Whitnage Lane is not registered at HM Land Registry although all the adjoining land is registered under nine different title numbers. Only two of the property registers make reference to a right of way along Whitnage Lane although six of the titles could be accessed by other means. It is considered that all the adjoining landowners would have a private right of access along the lane for all purposes to access their land even if such right is not included in the title register. If the lane was considered to have bridleway status, it would be prudent for the landowner's title to record a right for all purposes, thus including vehicle use, in the deeds when land is being transferred. None of the adjoining owners have claimed any ownership of the lane.
- 1.8.15 The Defra funded permissive footpath in force between 2003 and 2013, referred to Whitnage Lane as byway open to all traffic and an ancient green lane. This implies that the landowner at that time considered the lane to be public and that this was accepted by the Defra government officer as it would have been necessary for the permissive path to connect with a public right of way or county road. Had Whitnage Lane being considered private, the landowner could have claimed an additional sum for the section from point B to point A or D.
- 1.8.16 The aerial photography from 1946 shows the lane as a defined hedged with hedges trimmed and surface of the lane generally visible. The 2006-2007 photography shows the route of the Defra permissive footpath in the field to the east of point B. A worn path could indicate that the permissive footpath was well used and users would have then probably continued their walk along Whitnage Lane.
- 1.8.17 The user evidence forms submitted in 1978 remain valid and apart from the forms submitted by adjacent landowners, the use is considered to be as of right and covers the period from 1918 to 1978. Whitnage Lane was used for

parish walks into the 1990s and there is no evidence of landowners been contacted beforehand or of the route ever been considered permissive. One form was completed by the adjacent land owner, Mr Vicary, who advised that he had always known Whitnage Lane as a public footpath, a bridle path and carriage. Another landowner, Mr Bent of West Pitt, stated in his form that it had always been regarded as a public road.

- 1.8.18 No additional user evidence forms have been submitted during the review consultation. The lane remains available to users and appears to be used by local riders and walkers. In the past limited use by 4x4s has been reported by a landowner and to Uplowman Parish Council. Current landowners Mr Branton, Mr White and Mr & Mrs Greenslade report having seen members of the public on occasions. Mr & Mrs Greenslade reported that they had stopped 4x4s using the lane. The user evidence received is considered sufficient to show acceptance of a route previously dedicated as a public right of way.
- 1.8.19 Some of the landowners' have observed infrequent use by the public. None of the landowners advise ever stopping users apart from 4x4 vehicles and some consider the lane to be a bridleway or BOAT. Other landowners describe the lane as a farm track or access lane. The major occupier considers the lane to be green lane and available for all who wish to use it but do not see any advantage to designating the lane as a public right of way and other landowners agree with this view. They are concerned about their increased maintenance responsibilities in cutting the hedges and possible interruption to the practice of opening gates across the lane to allow the cows to come and go between adjoining fields at milking times. None of the landowners claim ownership of the lane but have a right of access.
- 1.8.20 Whitnage Lane was found to be clear and available to users in April 2017. The aerial photography indicates that the adjacent hedges have been trimmed in the past. It is quite common on public rights of way to find string or gates temporarily across the route for livestock direction and this is not a problem to users or considered an obstruction.

1.9 Conclusion

- 1.9.1 In the absence of an event to be considered 'a calling into question' of the public's use of the lane, the existence of a public right of way cannot be considered under section 31 of the Highways Act 1980. At common law the documentary evidence supports the existence of public rights of way along Whitnage Lane. Together with the user evidence collected in 1978 and use of Whitnage Lane in annual parish walks, this is considered to be sufficient evidence to show that a public right of way has been dedicated at some time in the past and that such dedication has been accepted by the public. When the evidence is taken as a whole, a public bridleway, can be alleged to subsist.
- 1.9.2 It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement for the addition of a Bridleway along Whitnage Lane, between points A – B – C – D as shown on drawing number HIW/PROW/18/012, and if there are no objections to the Order, that it be confirmed.

2. Proposal 3: The addition of a Public Footpath from the county road at Lower Town to join Footpath No. 9, Sampford Peverell.

Recommendation: It is recommended that no Modification Order be made to add a public footpath between points X and Z as shown on plan HIW/PROW/18/018.

2.1 Background

2.1.1 Following the opening of the Definitive Map Review in the parish, proposals for change were requested from the parishioners, either through the Parish Council or from individuals where supported by evidence. The addition of a public footpath from the country road along the lane was supported by members of the Parish Council and accordingly included as proposal 3 in the Definitive Map Review for the parish.

2.2 Description of the Route

2.2.1 The route starts at the county road between Ford Orchard and Turberfield House at Lower Town in the village centre at point X (GR ST 0336 1433). It then follows the lane/track southwards to point Y (GR ST 0337 1429) and then south westwards for about 94 metres to join Footpath No. 9, Sampford Peverell at point Z (GR ST 0332 1426). Footpath No. 9, Sampford Peverell starts north of point Z at the county road, west of point X and then continues southwards along the lane/track before continuing as a cross field footpath.

2.2.2 The lane is bordered by the wall of Turberfield House and garden on the east side and by garden fences on the west side between points X and Y and by garden fences/boundaries and field hedge on the northern and southern sides of the section Y to Z. The lane surface is of hardcore/stone with earth/grass verges.

2.3 Consultations

2.3.1 No comments on the proposal were received from the Parish Council after publication of the schedule of proposals. The local representative of the Ramblers Association advised that they have no objections to the proposal. They did not have any evidence in support of the proposal.

2.4 Documentary Evidence

2.4.1 Ordnance Survey and Other Maps

2.4.1.1 The Ordnance Survey and other mapping do not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.

2.4.1.2 Cassini Historical Maps 1809 – 1900 Sheet 181 Minehead & Brendon Hills
These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.

2.4.1.3 Old Series 1809

On this edition the route is shown as the northern end of a cul-de-sac lane. The lane is open at the junction with the county road.

- 2.4.1.4 Revised New Series 1899-1900
Some hundred years later and the lane is still shown as a defined lane of two solid lines close together with the lane continuing from its southern end as a dashed line to another lane.
- 2.4.1.5 Popular Edition 1919
In this edition the map is not so clear but the lane is shown as a defined lane continuing as a pecked line from the southern end.
- 2.4.1.6 OS 1st & 2nd Editions 25" to a mile 1880-1990 & 1910
On the first edition the route is shown as the northern end of a defined hedged lane. The lane has its own compartment number of 435 and area 0.593 acres. There appears to be a pecked line across the end of the lane at point Z, considered to refer to a change of surface.
- 2.4.1.7 The second edition is very similar to the first edition mapping. The compartment number for the lane is the same although the area is now 0.631 acres. There is a pecked line across the lane at point X.
- 2.4.1.8 OS 1 inch to a mile maps of 1946, 1960 & 1967 Sheet 164 Minehead
The 1946 and 1960 maps were published prior to the Definitive Map being compiled. On the 1946 edition the route is shown as the northern end of a defined line continuing southwards and then continuing with a solid lane on one side and a pecked line on the other, indicating that side was unfenced. The lane corresponds to a minor or unmetalled road. In 1960 the lane is only shown by a pecked line, Footpaths and Tracks. In 1966 the lane is shown as a double sided lane to just south of point Z with the red dots, depicting a public footpath, continuing southwards.
- 2.4.1.9 OS 1:25,000 maps of Great Britain Sheet ST01 1961
The route is shown as a defined uncoloured lane corresponding to fenced footpath on the key. This map predates the publication of the Definitive Map and Statement for the Tiverton Rural District Council area in June 1964. Footpaths are shown on the map by a pecked line labelled 'FP'. The north end of the current Footpath No. 9 is not shown between Lower Town county road and point Z or continuing southwards from point Z. Footpaths are shown continuing from the end of the lane. There are no properties at Ford Orchard or Afterglow and the small strip fields of the Tithe Map are still present.
- 2.4.1.10 OS Post War Mapping A Edition 2500 1970
The route is shown as a defined lane labelled 'Track' south of point Z and with its own compartment number of 3509 and area 0.36 acres. There is no line at point X and building are shown at the site of Afterglow. Fields 439, 440 and 441 south east of point Z have been combined into one with boundary markers shown for the enlarged field. A building annotated 'Garage' is shown opposite the future site of Ford Orchard as referred to in the Parish Council minutes of 1939 and 1942.
- 2.4.2 18th Century Map of the Manor of Sampford Peverell 1796**
- 2.4.2.1 The Sampford Peverell Society web site includes a map of the village dated 1796. The map shows the route as a clearly defined lane with the fields to the south as strip fields. There is a line across the junction with the road at

point X. Each plot is labelled with a number and initials, which are presumed to be those of the occupier or owner of that plot. All plots are so annotated but the book of reference to accompany the map has not been seen.

2.4.3 Tithe Map and Apportionment 1844

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

2.4.3.2 Sampford Peverell Tithe Map & Apportionment 1844 shows the route as a defined lane coloured brown in the manner of the now county roads and other lanes in the parish. At point X there is no line (indicating a gate or fence) across the lane entrance. The route of Footpath No. 9, Sampford Peverell is also shown as a defined and coloured lane that runs parallel to this proposal southwards of point Z. The roads and lanes are not numbered or individually listed in the apportionment and are just included as 'Roads and Waste' at the end of the apportionment. The land to the west and north of the route is called Ford Orchard and owned and occupied by Henry Ellis. Turberfield House and the field to the east and south of the route are owned by the Trustees of Harriet Parkhouse and occupied by Selome Morse and Robert Payne respectively. Plots 72 and 75-76 south of point Z are owned and occupied by Mary Taylor and occupied by Mary Poundsford.

2.4.4 Finance Act Plans and Field Books 1910

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

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

- 2.4.4.3 On the Finance Act plan the route is not included within any of the three adjoining hereditaments between points X and Z and was not considered part of Turberfield House at that time. The lane appears to be excluded for its entire length as it proceeds southwards. The adjoining hereditaments are within separate /ownerships occupations as indicated by the different colour shading along the plot boundaries. Turberfield House is hereditament number 76 and the field book does not make any reference to the route or any public rights of way within the 3.77 acres of the property. The owner of Turberfield House is listed as Edward Pearce and occupier by D Hart Scott, the house being used as GP waiting room and surgery.
- 2.4.4.4 The hereditament number for Ford Orchard land is not readable. The field south of points Y to Z is number 352, called Rack Close, occupation pasture owned and occupied by J Bowden. The land is described as 'good close of meadow land, a very accommodation field' but there is no reference in the field book to any public or private rights of way along the proposed route.

2.4.5 Vestry and Parish Council Minutes

- 2.4.5.1 Sampford Peverell vestry minutes from 1810 to 1841 are held at the South West Heritage Centre (ref 1189A/PV1). The Sampford Peverell Parish Council minute books dating from 1894 to 2002 (excluding the period June 1986 to November 1991) are held at the SWHC (Ref 7717A/PX/1/1-6). Minutes since 2014 are available on the Parish Council web site.
- 2.4.5.2 At the annual Parish Meeting in April 1929, the clerk was to write to the Assistant Surveyor of Devon County Council on the condition of the footpaths in Lower Town near Turberfield House and adjacent to same. In July 1929 it was reported that the footpaths had been attended. It is thought that this is referring to the pavements (footways) rather than to a public footpath.
- 2.4.5.3 In January 1939 car parking outside Turberfield was raised. Mr Williams enquired by whom steps should be taken to prevent the parking of cars in the roadway leading to the public footpath by Turberfield House. After discussion it was decided that Messrs Vickery and Mr Pillar who were thought to be responsible, should be approached upon the matter.
- 2.4.5.4 In March 1942 there was a heading about car parking on footpath opposite Messrs Vickerys' garage. Mr Williams complained that the practice of parking cars and lorries there at night constitutes a danger to the public during black outs and the clerk was asked to interview Mr Vickery on the matter.
- 2.4.5.5 The route of the proposal does not appear to have been included in the list of footpaths made by the parish council in September 1968. The list included the routes at number 12 Memorial Hall – Venn Hill - Venn Farm and at number 13 Memorial Hall to Devils Track Lane. These are considered to refer to the recorded footpaths Footpath No. 9, Sampford Peverell and then Footpath No. 1, in Halberton for number 12 and Footpath No. 9, Sampford Peverell and Footpath No. 10, Sampford Peverell after crossing the road to the start of Devils Track Lane for number 13.

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

2.4.6.1 The route was not claimed as a public footpath by the parish council in the 1950 survey.

2.4.7 Devon County Uncompleted Reviews of 1968 and 1977

2.4.7.1 The route was not claimed in the Devon County Council uncompleted reviews of 1968 and 1977 and the status of the lane does not appear to have been queried with the rights of way section on previous occasions.

2.4.8 British Newspaper Archive

2.4.8.1 The only references found relate to the auction of cows at Turberfield in September 1870, the sale of the Turberfield house, outbuildings and orchard in 1875 and an inquest into the sudden death of Mary Case at Turberfield Dairy in December 1913.

2.4.9 Aerial Photography RAF 1946-1949, 1983, 1999-2000 & 2006-2007

2.4.9.1 On the 1946-1949 aerial photography the route is clearly visible with the surface of the lane the same colour as the adjacent county road through Lower Town. There is no indication of any gates across the route. The property known as Afterglow, south of the lane between points Y and Z and the houses at Ford Orchard have not been constructed and the fields south and east of the route are small strip fields as shown on the Tithe Map of 1844.

2.4.9.2 An aerial photograph of the village dated around 1983 is available on the Sampford Peverell Society website. The photograph shows the houses at Ford Orchard (believed constructed in the 1970s) and the bungalow Afterglow and Turberfield House. The entrance to the route a point X can be seen to be open and ungated. The garage premises opposite Ford Orchard is also visible.

2.4.9.3 In 1999-2000 the lane is clearly defined as previously with no gates visible. Houses at Afterglow and Ford Orchard have been constructed and the hedges removed from nearby fields to create larger fields. The garage appears to be still in operation.

2.4.9.4 In 2006-2007 the route remains visible as a clear lane with larger garden trees at Ford Orchard. The previous garage premises is now cleared of buildings and cars and is an area of grass and scrub.

2.4.10 Land Registry

2.4.10.1 HM Land Registry records show that the lane/track is not registered between points X and Z. Mr Cotton of Turberfield House has advised that he owns this section of the lane as shown in his deeds of 1920 and 1927 but the lane is not included within the registered title number DN460044 for Turberfield House. Turberfield House was first registered with land Registry in 2002.

- 2.4.10.2 The property Afterglow was first registered at Land Registry in 1992 and at the register includes a notice entered in pursuance of rule 254 of the Land Registration Rules 1925 on 17 July 192 that the registered proprietor claims that the land has the benefit of a right of way over the roadway shown coloured brown on the filed plan. The roadway coloured brown on the plan is the proposed route between points X and Z.

2.5 User Evidence

- 2.5.1 No user evidence has been received in respect of the proposal. It is understood that local people were informed of the three proposals for the Sampford Peverell Definitive Map Review at a Parish community day in the summer, but no user forms were completed at this event or subsequently received for this proposal.

2.6 Landowner Evidence

- 2.6.1 Landowner evidence forms were sent to the adjoining owners/occupiers at Turberfield House, Afterglow, numbers 1 to 3 at Ford Orchard and the field south east of point Z. Completed forms have been received from all the above except in respect of the field.
- 2.6.2 Mr Cutts of 1 Ford Orchard advised that he had resided at the property for 16 and a half years and did believe the route to be public. It was used by vehicles accessing the bungalow (Afterglow) and farm vehicles accessing barns and fields south of point Z. Approximately weekly he had been aware of the odd pedestrians, dog walkers and cyclists using the way. He had never required anyone to ask permission or stopped or turned back anyone from using the route. Mr Cutts commented that the lane is essential access for both the bungalow and for farm vehicles accessing cattle and barns daily.
- 2.6.3 Mr Stoneman has resided at 2 Ford Orchard for 43 years and believes the lane to be a right of way. He advised 'Walkers use this lane for years. We don't always see them'. He had never required anyone to ask permission or stopped or turned back anyone from using the route.
- 2.6.4 Mr MacDonald has resided at 3 Ford Orchard for 6 years and believed the route to be public. He has seen or being aware of people using the route daily. He had never required anyone to ask permission or stopped or turned back anyone from using the route.
- 2.6.5 Mr Cotton has resided at Turberfield House for 14 and a half years and advises that he owns the lane between points X and Z as shown on his title deeds in 1920 and 1927. The lane is private property and has never been a public right of way. He has been aware of or seen occasional dog walkers. If seen he advises them that it is private property and not a public right of way. Permission has not been granted to anyone other than agricultural use and access to Afterglow. Owners of properties adjoining have access for boundary maintenance and upkeep. Anytime he has seen people (very rarely) he has stopped and/or told them it is not public. He has erected signs at points X and Z stating 'Private No Public Access'. There is agricultural access only by foot or vehicle to land accessed along my private property. The lane marked XYZ is private land and has never been a public footpath nor has any permission ever been given for such use.

- 2.6.6 Mr Brice has resided at Afterglow for 25 plus years from May 1993 and during that time has occasionally seen members of the public walking the route; frequent use by farm vehicles, as well as neighbours maintaining borders which adjoin the way. He had never required anyone to ask permission or stopped or turned back anyone from using the route. Mr Brice refers to the signs erected (by Mr Cotton) at points X and Z at the end of June/early July 2018 which say 'Private No Public Access'.
- 2.6.7 As additional information, he advises that when his wife and he purchased the property in 1993, the solicitors could not find any ownership of the route X to Z. As use of the lane was critical for access to Afterglow, their solicitors established evidence of 20 plus years of uninterrupted and unchallenged use of the way. The Land Registry details refer to these rights. He only uses the section Y to Z to maintain the borders of his property, as do all the neighbours whose properties border X to Z. He does not recall any one other than himself doing any structural repairs or maintenance to the route and he has paid on several occasions for repairs to the surface to keep it reasonably even and safe for him and his family to drive or walk down.

2.7 Consultation Responses

- 2.7.1 Apart from initially proposing the route for inclusion as a proposal in the Definitive Map Review no further comments have been received from the parish council.

2.8 Discussion

Statute (Section 31 Highways Act 1980)

- 2.8.1 Section 31(1) of the Highways Act 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 as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.
- 2.8.2 At the time the addition of a public footpath was published as proposal 3 in the Definitive Map Review there had been nothing to challenge the public right to use the route. During the consultation period, notices were erected at either end of the route saying 'Private No Public Access'. These notices would be sufficient to be considered a challenge under Section 31 of the Highways Act. However, as insufficient user evidence has been received to show regular use by sufficient members of the public during a twenty-year period between 1998 and 2018, the existence or not of public rights of way cannot be considered under statute on this occasion.

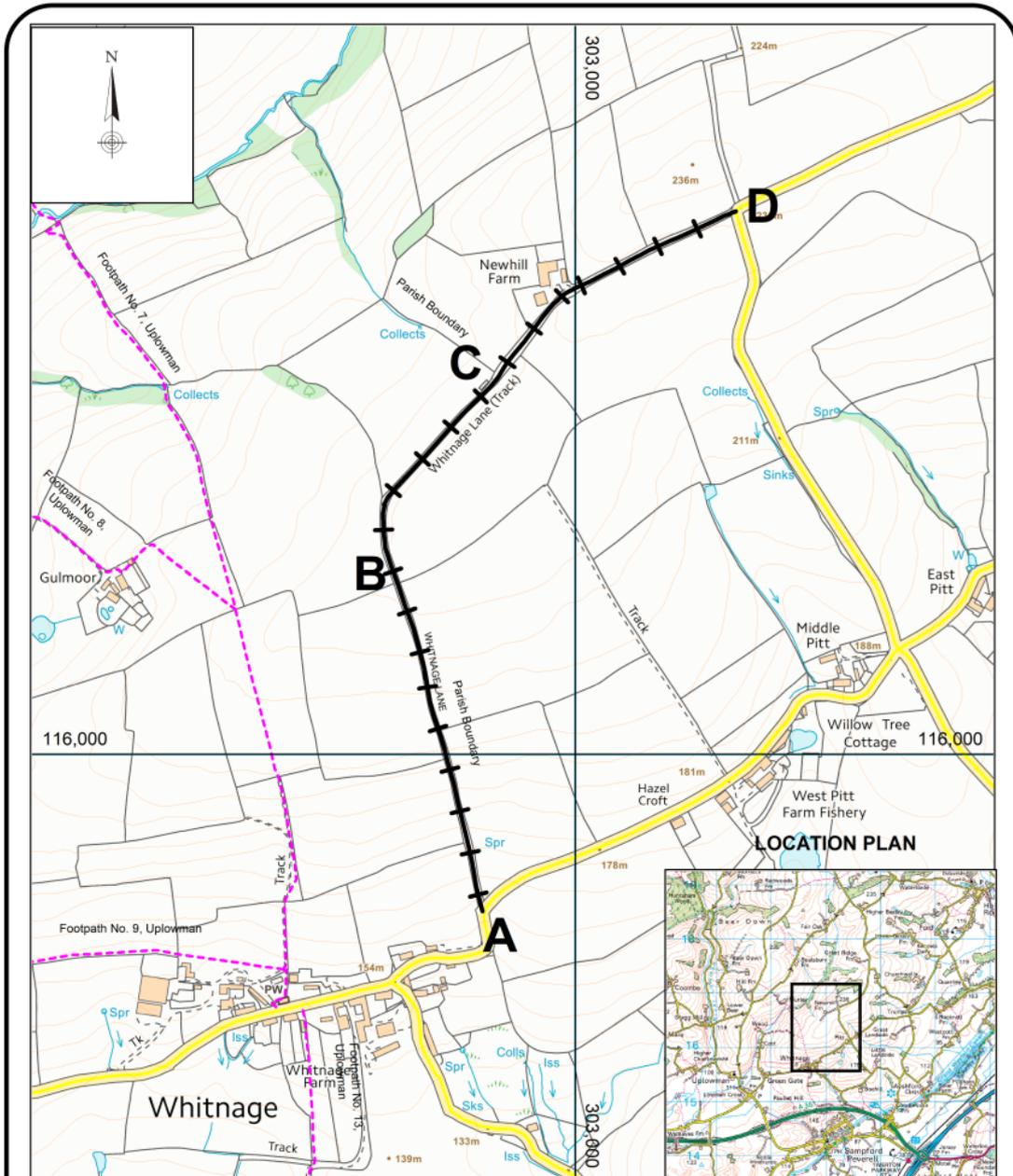
Common Law

- 2.8.3 A claim for a right of way may also be considered under common law. At common law, evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary or 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.

- 2.8.4 The documentary map evidence records the existence of the lane in the same alignment and as a defined lane with hedge/fence/wall boundaries since the manor of Sampford Peverell map of 1795. The OS mapping both at the 1" and 25" scales and other mapping consistently show the proposed route as a defined lane. The larger scale maps showed a pecked line across the end of lane at point X, believed to indicate a change in surface. The aerial photography from 1946 shows the lane clear and ungated.
- 2.8.5 In the Finance Act plan the lane is shown excluded from any of the adjoining hereditaments. As ownership of the lane was not claimed by any of the adjoining landowners this could indicate that the lane was considered to be public. The owners of the different fields which adjoined the lane at that time would require access along the route to access their land. This could be by using public or private rights.
- 2.8.6 At the Parish Council meetings in 1939 and 1942 the question of parking of vehicles in the roadway leading to the public footpath by Turberfield House was raised. This is deemed to refer to the proposed footpath and as the Parish Council agreed to contact those felt responsible, would indicate that the lane was used by the public to access the now recorded Footpath No..9, Sampford Peverell at that time.
- 2.8.7 The route has never been claimed by the Parish Council as a public footpath in the 1950 parish survey or 1968 or 1977 reviews but was proposed for inclusion in the current review.
- 2.8.8 The lane is not registered between points X and Z, although Mr Cotton advised that it is part of Turberfield House that is registered. In the absence of any reference to a right of access in the deeds for Afterglow, a right of access to the property was entered under rule 254 when Afterglow was sold and first registered at Land Registry in 1992.
- 2.8.9 The four landowners at Ford Orchard and Afterglow believe the lane to be public and advise seeing walkers using the route, although no user evidence has been received in support of use by the public. Mr Brice at Afterglow has maintained the lane for his own vehicular access. Mr Cotton at Turberfield House considers the lane to be private and has told members of the public so when they have been seen walking the lane and has now erected signs at points X and Z saying 'Private No Public Access'.

2.9 Conclusion

- 2.9.1 Although the recent erection of signs has called the use of the route into question, in the absence of user evidence the existence of a public right of way cannot be considered under Section 31 of the Highways Act. At common law there is some documentary evidence to support the subsistence of a public right of way along the proposed route. However, on its own, with the absence of user evidence to show acceptance by the public, the evidence overall is considered insufficient to show that a public right of way is alleged to subsist.
- 2.9.2 It is therefore recommended that no Modification Order be made to modify the Definitive Map and Statement for the addition of a Public Footpath, between points X – Y – Z as shown on drawing number HIW/PROW/18/018.



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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW
SAMPFORD PEVERELL & UPLOWMAN
PROPOSAL NO 1 - ADDITION OF
PUBLIC BRIDLEWAY ALONG WHITNAGE LANE**

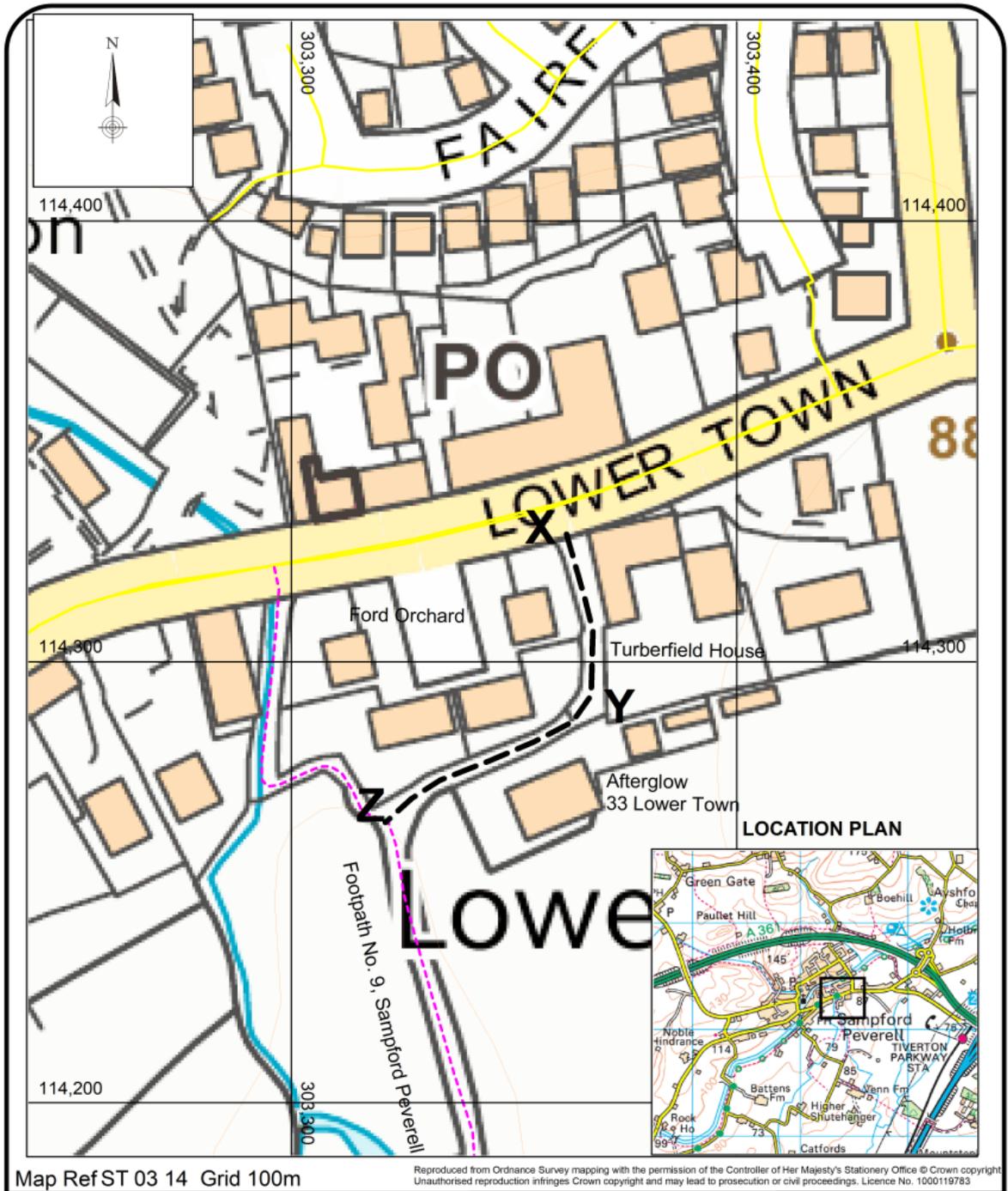
drawing number	HIW/PROW/18/012
date	Feb 2018
scale	1:7,500 at A4
drawn by	TW

Notation

Addition of Public Bridleway A - D (1180 metres approx)
Existing Public Footpath - - - - -

Meg Booth
CHIEF OFFICER HIGHWAYS,
INFRASTRUCTURE DEVELOPMENT AND WASTE





Map Ref ST 03 14 Grid 100m

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DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - SAMPFORD PEVERELL
PROPOSAL NO 3
ADDITION OF PUBLIC FOOTPATH
LOWER TOWN TO FOOTPATH NO. 9

drawing number HIW/PROW/18/018
 date April 2018
 scale 1:1,250 at A4
 drawn by TW

Notation

Addition of Public Footpath X-Y-Z (94 metres approx) **---**
 Existing Public Footpath **----**

Meg Booth

CHIEF OFFICER HIGHWAYS,
 INFRASTRUCTURE DEVELOPMENT AND WASTE

