

**Definitive Map Review  
Parish of Ilfracombe – Part 2**

Report of the Head of Highways, Capital Development and Waste

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

**Recommendation:** It is recommended that:

**Modification Orders be made to modify the Definitive Map and Statement by:**

- (i) adding a footpath to the Definitive Map and Statement between points A1 – A2, as shown on drawing number HCW/PROW/14/124a (Proposal 11);
- (ii) deleting part of a public footpath between points B1 – B2 – B3 as shown on drawing number HCW/PROW/14/127a (Proposal 15) to resolve an anomaly affecting Ilfracombe Footpath No.69 and removing the dual status with the county roads, Witheridge Place and part of Cat Lane, and upgrading part of Footpath No. 69 between points between points B3 – B4 – B5 – B6 – B7 – B8 to bridleway along the remainder of Cat Lane as shown on drawing number HCW/PROW/14/127a (Proposal 15);
- (iii) deleting part of a public footpath between points C1 – C2 – C3 as shown on drawing number HCW/PROW/14/130a (Proposal 18) to resolve an anomaly affecting Footpath No. 95 and removing the dual status with the county road, Brookfield Place;
- (iv) adding a footpath between points D2 – D3 as shown on drawing number HCW/PROW/14/131a (Proposal 19) to resolve an anomaly and extending Footpath No. 97 along Cross Park to meet the county road, Wilder Road.

## **1. Introduction**

This report examines four proposals arising from the Definitive Map Review in the parish of Ilfracombe.

## **2. Background**

The current Review was started in 2009 with informal consultation on a number of proposals carried out in 2014 for modification of the Definitive map and Statement. Seven proposals were considered in a report to the Committee in March 2016. This report deals with the remaining proposals for Ilfracombe.

## **3. Proposals**

Please refer to the appendix to this report.

## **4. Consultations**

General consultations have been carried out with the following results:

County Councillor Edmunds	– no comment
Ilfracombe Town Council	– no comment
North Devon Council	– no comment
British Horse Society	– no comment
Byways & Bridleways Trust	– no comment
Country Landowners' Association	– no comment
Devon Green Lanes Group	– no comment
National Farmers' Union	– no comment
Open Spaces Society	– no comment
Ramblers'	– no comment
Trail Riders' Fellowship	– no comment

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

## **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 have been taken into account.

## **9. Conclusion**

It is recommended that Modification Orders be made in respect of Proposals 11, 15, 18, and 19.

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

## **10. Reasons for Recommendations**

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

David Whitton  
Head of Highways, Capital Development and Waste

**Electoral Division: Ilfracombe**

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence Files	Current	DMR/ILFRACOMBE

cg140616pra  
sc/cr/DMR Ilfracombe part 2  
03 290616

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

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

**1 Proposal 11: Proposed addition of a footpath between Footpath No. 65 and the county road, Chambercombe Lane, as shown between points A1 – A2 on plan HCW/PROW/14/124a.**

**Recommendation: That a Modification Order be made to add a footpath to the Definitive Map and Statement between Footpath No. 65 and Chambercombe Lane, in respect of Proposal 11.**

**1.1 Background**

1.1.1 The proposal was submitted by Ilfracombe Town Council during the incomplete Review of the 1970s.

**1.2 Description of the Route**

1.2.1 The route starts at point A1 on Footpath No. 65 at the southern corner of the former bakery site on Chambercombe Lane and proceeds generally southwards following a former boundary to meet the county road, Chambercombe Lane at point A2.

**1.3 Documentary Evidence**

1.3.1 Ordnance Survey mapping, 1890-1962. 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".

1.3.2 On the 1<sup>st</sup> Edition 25" mapping of 1890, the proposal route between points A1 – A2 is shown as a wide track following a boundary line as a continuation of Footpath No. 65 running generally southwards following the contours to meet Chambercombe Lane. No other route is shown.

1.3.3 On the 2<sup>nd</sup> Edition 25" mapping of 1904, the proposal route between points A1 – A2 is shown. Two other routes are shown, one running westwards along the boundary with the former factory site to Chambercombe Road, point A4, and another on the alignment of Proposal 12, which was dealt with in the previous Committee report on Ilfracombe parish in March 2016, to the junction of Chambercombe Road and Chambercombe Lane at point A3.

1.3.4 On the 4<sup>th</sup> Edition 25" urban areas mapping of 1932 shows the proposal route between points A1 – A2 and its surrounding area in a similar manner to the 2<sup>nd</sup> Edition.

1.3.5 On the Post War A Edition 25" mapping of 1963 shows the proposal route between points A1 – A2 and another on the alignment of Proposal 12 to the junction of Chambercombe Road and Chambercombe Lane (point A3).

1.3.6 On the Post War B Edition 25" mapping of 1969 and the C Edition of 1977 shows the proposal route and its surrounding area in a similar manner to the Post War A Edition.

1.3.7 The 3<sup>rd</sup> Edition and Post War D and E Edition 25" mapping do not cover the proposal area.

1.3.8 Ilfracombe Tithe Map, 1840. Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, limiting the possibility of errors. Their immediate purpose was to record the official boundaries of all tithe areas. Roads were sometimes coloured and the colouring generally indicates carriageways or driftways. Public roads were not titheable and were sometimes

coloured, indicating carriageways or driftways. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over a route shown. Such information was incidental and therefore is not good evidence of such. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible.

- 1.3.9 The Ilfracombe tithe map is first class and is a legal and accurate record of all matters shown. Land that was not subject to tithes was generally accepted to be either public, glebe or crown estates. In many cases public roads are coloured sienna as prescribed by Lieutenant Dawson, a military surveyor with the Ordnance Survey, to the Tithe Commissioners.
- 1.3.10 Neither the proposal route nor Footpath No. 65 are shown. Chambercombe Road and Lane are coloured sienna and shown as passing unenclosed across plot 98, known as The Grove in the ownership and occupation of William, Nathaniel and Mary Vye. No purpose is given for the plot or that of 97, the lime kiln and cleave, a short distance south along Chambercombe Lane.
- 1.3.11 Finance Act records, 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.
- 1.3.12 The proposal route between points A1 – A2 is excluded from any hereditaments with the adjacent triangle of waste land (points A1 – A2 – A3).
- 1.3.13 Aerial Photography, 1946. The photography shows the open and available physical existence of the proposal route between points A1 – A2, though it is not evidence of status.
- 1.3.14 Ilfracombe Parish Survey, 1950. 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 a draft, provisional and definitive stages with repeated public consultations.
- 1.3.15 The parish survey form for Footpath No. 65 describes the path as the footpath to Sterridge Valley, Berrynarbor, starting at Foxbeare Road where there was a direction post 'to Chambercombe'. The path then followed well defined limits to meet Chambercombe Lane, Bridleway No. 66 and Chambercombe Road. When checked by the County Surveyor, it was described further as meeting the north end of Bridleway No. 66 at its junction with the district road, Chambercombe Road. This alignment would not use the proposal route (points A1 – A2), as though it meets Bridleway No. 66, it does not meet the end of it and Chambercombe Road (point A3).
- 1.3.16 The survey map shows path 65 starting at its junction with Foxbeare Road and running along the definitive alignment between the gardens of Foxbeare and Chambercombe Park Roads. As it approaches the junction of Chambercombe Road and Lane, it follows the proposal route between points A1 – A2. After being completed by the Urban District Council, the County Surveyor has annotated the map to connect with Hillsborough Road at the north end, as Foxbeare Road was not considered a public highway. The connection of Footpath No. 65 with Chambercombe Lane was also altered to follow the alignment of points A1 – A3.

- 1.3.17 Ilfracombe Town Council Minutes, 1970s. These records are considered to be a positive indication of what the highway authority believe the status of roads included to be, and are evidence of a highway authority's acceptance of maintenance responsibility, a commitment not normally undertaken lightly.
- 1.3.18 19 April 1978. At a meeting of the Footpaths Committee it was resolved that a 100 yard section of Footpath 65 (the proposal route A1 – A2) was to be claimed as a definitive footpath.
- 1.3.19 31 July 1978. At a meeting of the Footpaths Committee the Clerk reported that the owner of the section of path, Mr Haywood, had opened it up. Although it was not as clear as it originally was, reasonable access was possible.
- 1.3.20 31 January 1979. At a meeting of the Footpaths Committee a report was given on Footpath 65 as a number of complaints had been received regarding overgrowth. The Clerk had written to adjacent landowners requesting it cut back. He reported that most had done so. Also a letter read from the County Area Secretary advising that Mr Haywood of Chambercombe Manor (Farm) seeking their permission to fill in a 100 yard section from the south end of Footpath No. 65 (point A1), the same section the Urban District Council claimed under the Footpath Review, in order to landscape the triangular piece of land between the path and Chambercombe Lane (points A1 – A2 – A3). The Clerk had replied giving a history of recent events and stating that the Town Council would strongly oppose the infilling of the path, and that local residents would also be against it. The actions of the Clerk were endorsed.
- 1.3.21 Definitive Map Review records, 1970s-80s. 7 April 1978. The Area County Secretary wrote the known owner of Chambercombe Manor as he had had received allegations that soil had been tipped in the vicinity of Footpath No. 65 and had in fact obstructed it, leaving a route available which is not on the Definitive Map and created by children making a short cut. Mr Seaman was asked to stop the work for the time being.
- 1.3.22 28 April 1978. Ilfracombe Town Council claimed the proposal route between points A1 – A2 as a footpath as part of the Definitive Map Review with ten user evidence forms attached. It was stated that this path had been used as part of Footpath No. 65 for years and possibly had been previously claimed. The path was being claimed because the owner Mr Hayward had started to fill in the area of the path recently.
- 1.3.23 19 October 1978. It was noted in a memo by the relevant County Area Secretary to the County Secretary that he had been approached by the owner of Chambercombe Manor, Mr Hayward, who wanted to improve some waste land adjacent to Ilfracombe Bridleway No. 66 (Chambercombe Lane) over which local people walked as a connection with Footpath No. 65. He sought the County Secretary's opinion of the claim in the light of the existence of Footpath No. 65 in close proximity (points A1 – A3).
- 1.3.24 27 October 1978. The County Secretary responded informing the Area Secretary that the route Ilfracombe Town Council had claimed between points A1 – A2, suggested this was an omission from the original Definitive Map and supported the claim with a number of user evidence forms. It was noted that Mr Hayward's actions had upset local residents.
- 1.3.25 4 March 1980. Mr Hayward again contacted the County Council regarding the alleged footpath between points A1 – A2.
- 1.3.26 13 March 1980. Mr Hayward again wrote seeking a meeting with the County Secretary to show why the Chambercombe Manor Trust wanted to tidy up the area crossed by the

claimed route and contain it within the bird sanctuary. He had been grading the area of waste land, having been told by the County Council that the route was not a footpath (points A1 – A2), but had then been told by a local councillor that it was and that the path should be cleared.

- 1.3.27 20 March 1980. The County Secretary responded, stating that the situation had been investigated in 1978 and that he had to abide by the local area office's conclusions on the matter.
- 1.3.28 7 April 1980. The Area Secretary wrote to the Chambercombe Manor Trust regarding the tipping of soil in the vicinity of Ilfracombe Footpath No. 65, having received allegations of the obstruction of the public footpath, notifying of possible enforcement action if the allegations were proven. He requested that the tipping cease for the time being. The Secretary referred to the definitive footpath being obstructed with an alternative route available created apparently by children taking a shortcut. However, the definitive footpath was not the obstructed route (points A1 – A3) but rather the route claimed originally in 1950 by the former Ilfracombe Urban District Council and in 1978 by the Ilfracombe Town Council, the proposal route (points A1 – A2).
- 1.3.29 14 April 1980. Mr Hayward wrote again wanting to know when the Definitive Map Review would take place. He was concerned that people would use the alleged path between points A1 – A2, preventing amenity tree and shrub planting in the area. He also stated that the Chambercombe Manor Trust would wish to oppose any confirmation of the claimed path.
- 1.3.30 18 April 1980. The County Council responded and explained that the Ilfracombe Town Council claimed the alleged footpath between points A1 – A2 should be on the Definitive Map as part of the current Review which the County Council would investigate and had supported it with evidence of long use, which Mr Hayward was welcome to rebut. It was noted that the alleged path corresponded closely to the alignment the former Ilfracombe Urban District Council claimed as part of its Parish Survey for the Definitive Map in 1950.
- 1.3.31 24 April 1984. Mr Hayward wrote again requesting an update on the Definitive Map Review.
- 1.3.32 16 May 1984. The County Council responded informing Mr Hayward that the Review had been abandoned due to new legislation, but that he would be notified when the issue was considered.
- 1.3.33 11 October 1988. Mr Hayward rang for another update and was also informed by letter that the situation had not changed since previous correspondence.
- 1.3.34 Site Photographs, 2014-16. The photographs show the proposal route between points A1 – A2.

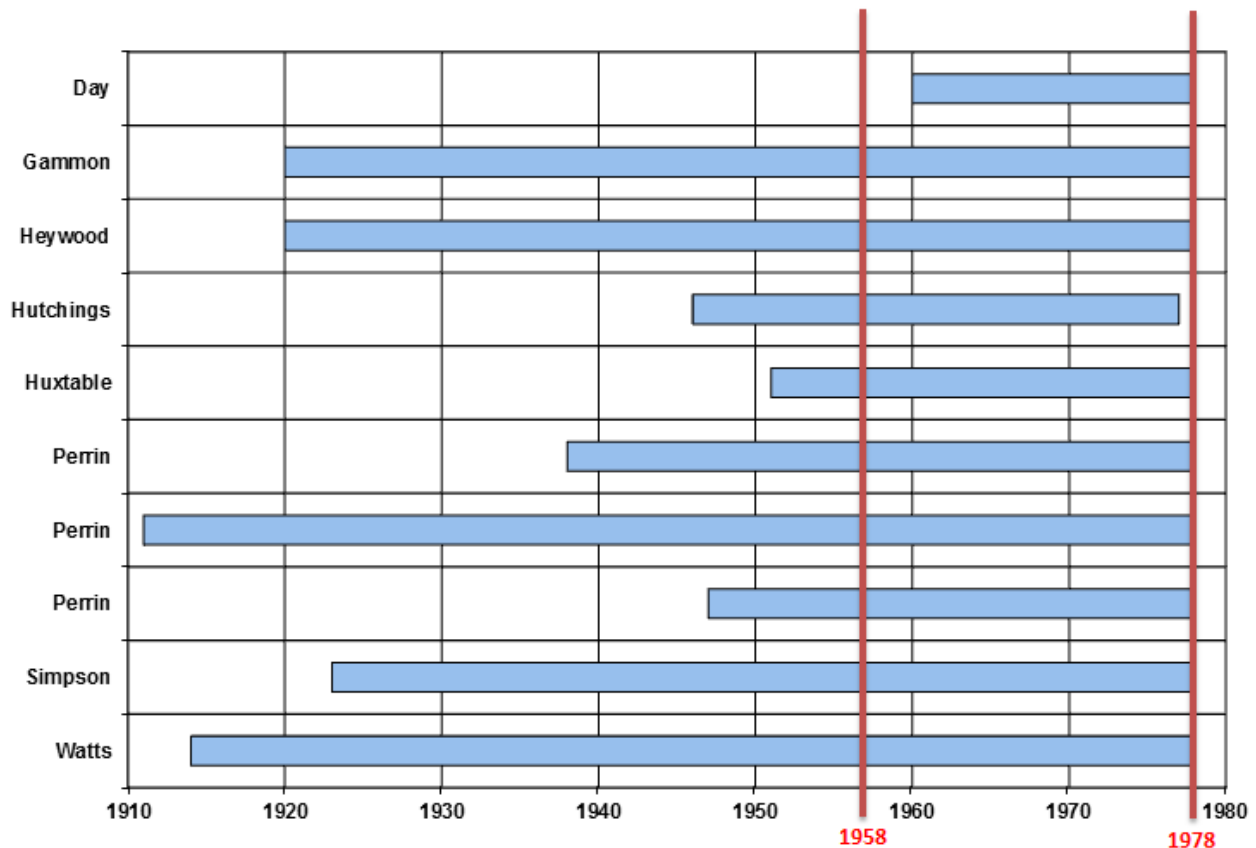
#### **1.4 User Evidence**

- 1.4.1 Ten user evidence forms were collected by the Clerk to Ilfracombe Town Council in 1978 in support of the 1978 claim for the proposal route between points A1 – A2. These detail use primarily on foot but also with horse and cart since between 1911 and 1978 when the forms were completed in response to the obstruction and threatened closure of the proposal route (points A1 – A2) by the landowner.
- 1.4.2 Mr Day used the path weekly to go to Hillsborough and Hele during 1960-78. He recalled it being cleaned by the Ilfracombe Urban District Council for many years.



- 1.4.3 Mr Gammon used the 'road' at one time up to twice a day to go to Yelland Farm beyond Chambercombe during 1920-71. He had known the path to be public for over 60 years and recalled the Council keeping the road cleaned and maintained. His use was never challenged.
- 1.4.4 Mrs Haywood used the path on foot up to twice daily between 1920 and 1978 for pleasure. She recalled an alternative when a steep path was made by land staff at Chambercombe Manor. Her use was never challenged.
- 1.4.5 Mr Hutchings used the route between 1946 and 1977 as part of an organised group walk 8-10 times a year. His use was never challenged or obstructed. He recalled recent efforts to obstruct the path.
- 1.4.6 Mr Huxtable walked the path which ran along a lane on a daily basis during 1951-78 to go to work or to the allotments. It had been regarded as public for generations.
- 1.4.7 Mr Perrin used the route on a twice weekly basis between 1938 and 1978 walking to and from Hele and Chambercombe. His use was not challenged or obstructed.
- 1.4.8 Mr Perrin (senior) used the path four times daily during 1911-78 for work and was never challenged or obstructed. He recalled seeing the route used by horse and cart and tractors.
- 1.4.9 Mr Perrin walked the route dozens of times a year during 1947-78 between Hele and Comyn. He recalled seeing the route used by horse and cart and tractors.
- 1.4.10 Mrs Simpson had used the route since 1923 on foot to go to Hele Post Office. Her use also included walks with her family and was never obstructed or challenged. She understood the path belonged to the Council as they cleaned and trimmed it.
- 1.4.11 Mr Watts from Comyn Farm, owned by Devon County Council, used the route with a horse and cart to deliver milk between 1914 and 1978 daily, besides walking to the post box. His use was never obstructed or challenged.

1.4.12 User evidence is summarised in the chart below.



## 1.5 Landowner and Rebuttal Evidence

1.5.1 A landowner evidence form was received from Mr Smith, trustee of the Chambercombe Manor Trust. The Trust has owned the land for at least 36 years and do not believe the proposal route between points A1 – A2 to be public as there has been no pathway or access for that time.

## 1.6 Discussion

1.6.1 Statute – Section 31 Highways Act 1980. The correspondence in the 1970s Definitive Map records demonstrates that the public's use of the proposal route was called into question in 1978, when the landowner of Chambercombe Manor at the time decided to improve the Grove area (points A1 – A2) by tipping soil, landscaping and fencing. It also demonstrates a lack of intention to dedicate by the then landowner. Consequently the relevant period to be considered is 1958-78.

1.6.2 Ten user evidence forms were received in support of the claim for the proposal route between points A1 – A2 submitted to Devon County Council in 1978 by the Ilfracombe Town Council proposal with all ten using the route regularly on foot, often with other family members. One of the users also used it with a horse and cart, while several others saw it used by tractors. Such use is documented to have started in 1911, with other users starting between 1914 and 1960. All the users are included within the relevant 20 year period. They never saw any notices against the public's use of the proposal route, nor were they ever challenged or obstructed until 1978. Since the obstruction in 1978, it is not known what if any public use there has been of the path; however, because presumed dedication is considered to have taken place prior to that

time, consequently the legal maxim 'once a highway, always a highway' applies.

- 1.6.3 Additionally, a claim for a right of way along the proposal route between points A1 – A2 may also exist 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.
- 1.6.4 Common Law. On consideration of the proposal at common law, the historical mapping shows that the proposal route between points A1 – A2 has physically existed as a through route from Chambercombe Lane to what is now recorded as Ilfracombe Footpath No. 65 since at least 1890 and up until 1977, through an area of what appears to be roadside and waste known as the Grove. This is the alignment shown on the Ilfracombe Parish Survey map completed in 1950, claimed by the former Ilfracombe Urban District Council.
- 1.6.5 Until the Post War A Edition mapping of 1963, no other alignment is shown between point A1 and Chambercombe Lane. However, the RAF aerial photography of 1946 does show that another route existed between points A1 – A3. This other alignment was included on the Definitive Map as part of Ilfracombe Footpath No. 65. Yet it is the proposal route between points A1 – A2 which appears to be the better used route, as shown on the aerial photography. It also has a greater width.
- 1.6.6 Definitive Map Review records from 1978 document a claim for the proposal route by the Ilfracombe Town Council in response to the owner of Chambercombe Manor (Farm) tipping soil onto the route, apparently as part of improvement works which also included fencing it off, which upset local residents and users. Recent site photographs show the piles of tipped soil on the route, which is still visible as a level track gently rising up to meet Chambercombe Lane.
- 1.6.7 The Finance Act records of 1909-10 show the proposal route as part of the highway area of part of Chambercombe Road/Lane, though it and the area known as the Grove which the proposal route passes over is now included within the ownership of Chambercombe Manor.
- 1.6.8 The Definitive Map records also show detailed correspondence between the landowner and Devon County Council, with both the County Secretary and the Area Secretary being involved for the Council regarding the alleged obstruction of a public footpath. It was realised that it was an unrecorded route (points A1 – A2) that was affected, but the County Council still recommended the landowner ceasing his works until the matter was determined. However recent site photographs demonstrate that though the tipping was stopped, the fencing was carried out.
- 1.6.9 The Manor has been in its current ownership since 1979. Mr Smith a current Trustee, states that the proposal route between points A1 – A2 is not and never has been a right of way, as there has been no access for the last 37 years. However, he has been aware of members of the public occasionally using it, though he has never required them to seek permission or stopped anyone from using it. There have been no notices on site and the Chambercombe Manor Trust has not made a Section 31(6) deposit.

1.6.10 Ten user evidence forms were received in support of the claim for the proposal route between points A1 – A2 submitted to Devon County Council in 1978 by the Ilfracombe Town Council proposal with all ten using the route regularly on foot and one also using it with a horse and cart. Such use is documented to have started in 1911, with other users starting between 1914 and 1960. They never saw any notices against the public's use of the proposal route, nor were they ever challenged. Since the obstruction in 1978, it appears that there has not been public use of the path; however, because presumed dedication is considered to have taken place prior to that time, consequently the legal maxim 'once a highway, always a highway' applies. The current Town Council is neutral to the proposal.

## 1.7 Conclusion

1.7.1 The documentary evidence demonstrates that the proposal route between points A1 – A2 has existed since the late 19<sup>th</sup> century, linking the Hillsborough/Brimlands area of Ilfracombe with Chambercombe. It has been open and available since that time, and appears to have been the subject of public maintenance and treated as part of the parish highway network, as detailed in the user evidence. This is confirmed by the user evidence detailing use on foot since at least 1911 which was not been called into question or challenged until 1978, by the landowner making land improvements. Until approximately the 1950s/60s, the proposal route alignment appears to have been the preferred option connecting Ilfracombe Footpath No. 65 with Chambercombe Lane, as shown by the 1950 Parish Survey. The evidence when taken as a whole is considered sufficient to show that a public right of way not shown in the Definitive Map and Statement subsists or is reasonably alleged to subsist.

1.7.2 The user evidence also shows that there has been some use of the proposal route between points A1 – A2 with motorised and non-motorised vehicles. However when such use is considered in relation to the NERC Act 2006 as set out in Part A of this report, the proposal route does not meet any of the exceptions listed in the legislation and consequently cannot be recorded as a byway open to all traffic. The highest status that could be considered is restricted byway. However, the evidence is insufficient to demonstrate that there is a public right of way of that status.

1.7.3 It is therefore recommended that a Modification Order should be made to add a footpath between point A1 – A2 to connect between Ilfracombe Footpath No. 65 and Chambercombe Lane to the Definitive Map and Statement. If there are no objections, or if such objections are subsequently withdrawn, that it be confirmed.

## 2 Proposal 15: Proposed upgrade of Footpath No. 69 between points B1 – B2 – B3 – B4 – B5 – B6 – B7 – B8, as shown on plan HCW/PROW/14/127a.

**Recommendation: That a Modification Order be made to delete part of Footpath No. 69 between points B1 – B2 – B3 to resolve an anomaly of dual status with the county roads known as Witheridge Place and the northern end of Cat Lane, and upgrade the remainder of Footpath No. 69 along Cat Lane to Comyn Farm between points B3 – B8 to bridleway, in respect of Proposal 15.**

## 2.1 Background

2.1.1 The proposal was discovered during the course of the Definitive Map Review as an anomaly in the public highway network which required resolution, as it was recorded as a footpath but has been used for many years as a bridleway. An additional issue of dual status was subsequently discovered. It was also raised during the 1940s by the owner of then Ilfracombe Riding School with Ilfracombe Urban District Council.

## 2.2 Description of the Route

2.2.1 The proposal starts at point B1 at the junction of Old Berrynarbor Road and Witheridge Place and proceeds south south westwards along the county road, Witheridge Place to point B2 where it turns south south eastwards onto Cat Lane. It continues past the end of the county road at point B3 past point B4 to a gate at point B5 after which the surface is unmetalled along an enclosed lane past point B6 to another gate into the yard at Comyn Farm at point B7 to meet Bridleway No. 66 at point B8.

## 2.3 Documentary Evidence

2.3.1 Ordnance Survey mapping, 1804-1977. 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".

2.3.2 On the Surveyors Draft Drawings dated 1804-5 at a scale of 1" to 1 mile, the proposal route is shown as an enclosed route in a similar manner to other recorded public highways above the status of footpath. Such maps tended not to show footpaths or bridleways.

2.3.3 On the 25" 1<sup>st</sup> Edition of the 1890 the proposal route is shown as open and available, with the only parcel line at point B7. It shown in a similar manner on all other mapping at that scale for the area up to the Post War C Edition of 1977.

2.3.4 Ilfracombe Tithe Map, 1840. Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, limiting the possibility of errors. Their immediate purpose was to record the official record of boundaries of all tithe areas. Roads were sometimes coloured and the colouring generally indicates carriageways or driftways. Public roads were not titheable and were sometimes coloured, indicating carriageways or driftways. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over a route shown. Such information was incidental and therefore is not good evidence of such. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible.

2.3.5 The Ilfracombe tithe map is first class and is a legal and accurate record of all matters shown. Land that was not subject to tithes was generally accepted to be either public, glebe or crown estates. In many case public roads are coloured sienna as prescribed by Lieutenant Dawson, a military surveyor with the Ordnance Survey, to the Tithe Commissioners.

2.3.6 The proposal route, from point B1 to almost point B8, is included in plot 1555, which has a pale sienna colouration, representing the parish's 'roads and waste' along with other currently recorded public highways, such as the county road Chambercombe Lane.

2.3.7 Ilfracombe Urban District Council Highways Committee etc minutes, 1881-1969. These records are considered to be a positive indication of what the highway authority believe the status of roads included to be, and are evidence of a highway authority's acceptance of maintenance responsibility, a commitment not normally undertaken lightly. The lack of a road's inclusion does not necessarily suggest it could not have been a public highway.

2.3.8 18 May 1900. The Committee recommended that the Surveyor be instructed to put the path from Hele to Comyn Farm (points B1 – B8) in order and make it passable.

- 2.3.9 13 March 1925. The Committee inspected the grating over the stream at Witheridge Place (part of Footpath No. 69 – B1 –B2) and recommended its reconstruction. It was resolved that the roadway be included in the list of roads to be dealt with under the next works estimate.
- 2.3.10 2 November 1925. It was resolved that the Committee visit Witheridge Place (part of Footpath No. 69 – points B1 – B2) and the Surveyor prepare a report as to piping the stream under the road.
- 2.3.11 9 November 1925. The Committee visited Witheridge Place (part of Footpath No. 69 – points B1 – B2) to view the stream and the condition of the road. It was noted that the grating was periodically choked causing stream water to flow along the road, along with the fact that it was not possible for the steam roller to go over the road when repairs were needed. It was resolved that the surveyor would supply a works estimate.
- 2.3.12 30 December 1927. The Committee inspected Cat Lane (points B2 – B7) and resolved that Mr Watts the tenant farmer at Comyn Farm (at the southern end of Footpath No. 69) be required to clean up the lane and remove the excess material onto his land. When this had been completed, the Council would put down some hardening material on the surface of the lane.
- 2.3.13 23 July 1935. It was resolved that the Surveyor interview the landowners adjacent to Cat Lane (points B2 – B7) and seek permission to drain the surface water from the lane onto their land, and then carry out works required and necessary for making up the lane.
- 2.3.14 11 May 1936. It was resolved that Devon County Council, the owners of Comyn Farm, be asked to make a defined footway through the yard to connect the public footpaths on either side of it. Also, the Surveyor was to report on possible bylaws preventing use of footpaths by users other than walkers.
- 2.3.15 6 June 1944. The Committee considered a report on the matter of rights of way at Comyn Farm after meeting with Devon County Council, the owners. Two proposals were discussed, that the IUDC would either buy the whole farm or just the woods and agree to divert the right of way out of the farm yard, and linking Chambercombe Lane and Cat Lane. It was resolved to ask the County Council what price they would sell the farm for.
- 2.3.16 27 September 1944. A letter was read from Devon County Council with a price for Comyn Farm. The IUDC Committee resolved to visit the location before further considering the offer.
- 2.3.17 17 October 1944. The IUDC Committee considered the County Council's offer for Comyn Farm and resolved to decline it.
- 2.3.18 12 March 1953. A letter was received from the owner of Littleton Farm asking that the lane to the farm, Cat Lane, which the Council was responsible for, be repaired as it was impossible for vehicles to use. The Surveyor stated that the public highway, Cat Lane (points B2 – B7), not the private accommodation road to Littleton (Littletown) Farm, was in fair condition and would be maintained as such.
- 2.3.19 30 March 1953. A letter was received from the Devon Agricultural Executive Committee requesting that the northern part of Cat Lane to the Littleton Farm access track (points B2 – B5) be cleaned and resurfaced. The Surveyor reported that repairs were in progress.
- 2.3.20 28 September 1954. A letter was read from a visitor to Ilfracombe requesting that the surface of Cat Lane be improved between Witheridge Place and where the Littleton

(Littletown) Farm track joined it (points D2 – D5). The complaint was referred to the Surveyor with instructions to keep the surface of Cat Lane in a reasonable state of repair and condition.

- 2.3.21 19 January 1965. The Clerk reported on the use of the right of way at Comyn Farm by local riding schools, about which a letter had been received from Devon County Council, the owners of the farm. It was resolved to meet the tenant, Mr Watts on site.
- 2.3.22 13 April 1965. The Committee Chairman and Vice-Chairman reported on their meeting with the tenant of Comyn Farm on site from which it appeared there was a problem through the use of the bridle path (Cat Lane) by local riding schools, as it went through the farmyard, which created difficulties with livestock. It was resolved that the relevant officers consider the steps to stop the bridle path (the proposal route) short of Comyn Farm and create a diversion around the farm.
- 2.3.23 18 May 1965. A letter was read from Devon County Council appreciating the IUDC's sympathy to the situation, and stating that arrangements would be made for the County Council's tenant to appeal to Quarter Sessions under Section 31 of the Rights of Way Act 1949 (National Parks and Access to the Countryside Act 1949) on the grounds that: 1) Cat Lane (points B2 – B7) should be designated a bridleway and not a footpath; and 2) that the bridleway from its junction with Cat Lane southwards should be re-designated as a footpath. If the appeal was successful then an application could be made under the Highways Act 1959 to divert the bridleway north of the farmyard. The IUDC were asked if they could provide witnesses to support if there were objections to the tenant's appeal, and they acquiesced to this request.
- 2.3.24 3 June 1969. A letter was read from Mr Watts of Comyn Farm complaining about the state of Chambercombe Lane and Cat Lane. The Surveyor had responded regarding Chambercombe Lane and intended to inspect Cat Lane and report at a later date.
- 2.3.25 24 June 1969. A complaint had been received from Mr Watts at Comyn Farm. The Committee Chairman and the Surveyor had viewed Cat Lane (points B2 – B7), and were of the opinion that it was in a reasonable condition for use by walkers. It was resolved that no further action would be taken in the matter.
- 2.3.26 25 November 1969. The Surveyor stated that in the Ministry of Transport return of Mileage of Public Highways, a full return was required showing the situation. After checking through the list and amendments since the first returns were made in 1928, discrepancies were found and further amendments made. These amendments included the exclusion of 0.31 miles of Cat Lane (points B5 – B7) which was a grassed road.
- 2.3.27 7 July 1970. The Surveyor reminded the Committee that Messers Harris and Reid had indicated they were setting back their development to allow for road improvement at Witheridge Place (points B1 – B2). It was resolved that the land be accepted as highway and surfaced accordingly.
- 2.3.28 1 December 1970. The negotiations for the road improvement land had not progressed. The Surveyor was instructed to negotiate for that portion of the building for improving the dangerous corner at Witheridge Place at point B1.
- 2.3.29 Ilfracombe Urban District Council, Public Rights of Way records, 1891-1957. In the Council's file for the Survey of Rights of Way for the compilation of the Definitive Map, is a variety of correspondence about particular rights of way issues.
- 2.3.30 The first item is a plan relating to '*footpaths*' diverted by the South Western Railway in 1894. It shows Cat Lane (points B5 – B7) as an occupation road from the hamlet of Hele

to Comyn Farm. It is shown ungated while Chambercombe Lane which also goes to Comyn is gated in several places.

- 2.3.31 An issue was raised regarding the continuation of the proposal route on 24 June 1941 through Comyn and its wood and again on 11 April 1944. This second incident resulted in a site visit from which two proposals were discussed, one of which was that the *'Council might consider making an offer ...for sufficient land to connect the existing road (Chambercombe Lane) with Cat Lane (point B7) near the farmyard entrance and then continue it on to link up with the existing roads on the east and west of the wood and the entrance to the wood thus extinguishing the right of way through the farmyard'*.
- 2.3.32 On 13 January 1947 Mr Dendle, proprietor of the Ilfracombe Riding School wrote to the Urban District Council. Following a conversation he had with the Council regarding rights of way from Chambercombe to Hele, he sent some horses that way which were stopped and turned back by Mr Watts at Comyn Farm (point B8) as they were about to enter the farm yard. Mr Dendle queried if this was permitted.
- 2.3.33 The same day, the Urban District Council wrote to the County Council who owned Comyn Farm (between points B6 – B8) at that time and whose tenant was Mr Watts asking that they instruct their tenant to refrain from interfering with the horse riders going from Chambercombe Road (Lane) to Cat Lane (point B7).
- 2.3.34 Finance Act records, 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.
- 2.3.35 The proposal route is excluded at the northern end between points B1 – B6. The remainder, points B6 – B8, is included within hereditament 2431, Comyn Farm with no deductions for this route or other recorded public highways included in the hereditament – the county road, Chambercombe Lane and Bridleway No. 66.
- 2.3.36 Ilfracombe Urban District Council Highways Expenditure Ledger, 1928. These records are considered to be a positive indication of what the highway authority believe the status of roads included to be, and are evidence of a highway authority's acceptance of maintenance responsibility, a commitment not normally undertaken lightly.
- 2.3.37 Witheridge Road (Place) between points B1 – B2 was the subject of maintenance by the Council during May and June 1928 while Cat Lane between points B2 – B7 was the subject of maintenance during November 1927 and April 1928.
- 2.3.38 Aerial Photography, 1946. The photography shows the open and available physical existence of the proposal route, (points B1 – B8), though it is not evidence of status. It also shows the route similarity in nature to other currently recorded public highways such as Chambercombe Lane.
- 2.3.39 Handover Records, circa 1947. These records are considered to be a positive indication of what the highway authority believe the status of roads included to be, and are evidence of a highway authority's acceptance of maintenance responsibility, a commitment not normally undertaken lightly. The lack of a road's inclusion does not necessarily suggest it could not have been a public highway. However such records were for internal use and did not purport to be a record of rights.



- 2.3.40 The proposal route is shown as a district road, now a minor county road, from its northern end at the junction of Witheridge Place and Old Berrynarbor Road at point B1 via point B2 to a point 15 metres south of Jewell Cottage, a length of approximately 90 metres at point B3.
- 2.3.41 Ilfracombe Parish Survey, 1950. 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 a draft, provisional and definitive stages with repeated public consultations.
- 2.3.42 The parish survey forms for paths 69 (points B5 – B8) and 70 (points B1 – B5) make up Ilfracombe Footpath No. 69. They are described as a CRF, a carriage road mainly used as a footpath, to Hele from Comyn Farm at its junction with paths 67 and 68 (66) along a well-defined roadway known as Cat Lane to its junction with the Old Berrynarbor Road. The form for path 69 was annotated by the County Surveyor with the abbreviation BR, bridleway, which was replaced by FP, footpath, but there is no indication why this was altered. The only gate shown on the survey map is at point D7.
- 2.3.43 The draft list of paths drawn up for Ilfracombe parish in 1956 included path 69 as a bridleway but this had been amended to FP, footpath. The final list sent to Ilfracombe Urban District Council for confirmation in 1957 included path 69 as a footpath, running along a private accommodation road, Cat Lane between Old Berrynarbor Road (point B1) and Comyn (point B8).
- 2.3.44 Definitive Map and Statement, 1958 onwards. These records are conclusive evidence of the information they contain and that the public rights of way existed on the relevant date.
- 2.3.45 The proposal route is currently recorded as Ilfracombe Footpath No. 69. It is described as running from the district road (now county road) Old Berrynarbor Road (point B1) along a private accommodation road, Cat Lane to its junction with Ilfracombe Bridleway No. 66 at Comyn Farm (point B8).
- 2.3.46 Ilfracombe Town Council Works Books, 1950s-70s. These records are considered to be a positive indication of what the highway authority believe the status of roads included to be, and are evidence of a highway authority's acceptance of maintenance responsibility, a commitment not normally undertaken lightly. The lack of a road's inclusion does not necessarily suggest it could not have been a public highway.
- 2.3.47 February 1952. The surface of Cat Lane had been cleaned and made up between points B2 – B7.
- 2.3.48 July 1955. Water tabling works were carried out on Witheridge Place between points B1 – B2.
- 2.3.49 April 1960. Witheridge Place (points B1 – B2) was the subject of road repairs.
- 2.3.50 May 1960. Road repairs were carried out on Witheridge Place (points B1 – B2).
- 2.3.51 June 1960. A section of Cat Lane was tarmacked and asphalted between points B2 – B5.
- 2.3.52 July 1960. Cat Lane was resurfaced (points B2 – B5).

- 2.3.53 September 1960. Cat Lane (points B2 – B5) was the subject of road repairs and resurfacing.
- 2.3.54 Ilfracombe Town Council Minute Books, 1970s. These records are considered to be a positive indication of what the highway authority believe the status of roads included to be, and are evidence of a highway authority's acceptance of maintenance responsibility, a commitment not normally undertaken lightly. The lack of a road's inclusion does not necessarily suggest it could not have been a public highway. There are some gaps in these records.
- 2.3.55 18 January 1978. At a meeting of the Footpaths Committee, a number of paths and issues were listed which included number 69 (points B2 – B8) – Cat Lane , which it was decided should be raised up to a bridleway.
- 2.3.56 30 March 1978. At a meeting of the Footpaths Committee, a number of paths and issues were listed which included number 69 (points B2 – B8) – Cat Lane, which it was decided to be left.
- 2.3.57 12 November 1979. At the Council's main meeting the footpath (points B2 – B8) at Cat Lane was discussed, and it was requested that the matter be postponed to a later date.
- 2.3.58 List of Streets, 1970s onwards. This is the County Council's register of highways maintainable at public expense. The proposal route is shown as a district road, now a minor county road, from its northern end at the junction of Witheridge Place and Old Berrynarbor Road (point B1) to a point 15 metres south of Jewell Cottage, a length of approximately 90 metres (point B3).
- 2.3.59 Site Photographs, 2014-16. The photographs show the proposal open and available, and well used by horse riders.

## **2.4 Landowner Evidence**

- 2.4.1 A landowner evidence form was received from Mr Challacombe the owner of Comyn Farm which includes the proposal route known as Cat Lane between points B6 –B8. The land has been in his ownership for the last 38 years. He believes the way to be public, as a footpath and bridleway but also for agricultural machinery. He has seen the public using the route and has never required the public to seek permission to use it or challenged users. Mr Challacombe has never erected notices against use above that of a footpath or obstructed the route against such users. There are gates on the route but they are never locked. He has not made a Section 31(6) deposit.

## **2.5 Rebuttal Evidence**

- 2.5.1 An objection to the proposal was received from Mr Skedgwell of Foxbeare Road, who had maintenance concerns.

## **2.6 Discussion**

- 2.6.1 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 has been called into question. No users have been challenged or notices erected against use by means other than on foot.
- 2.6.2 As there is no specific date of calling into question or user evidence, the proposal cannot be considered under statute law. However, the proposal route may still be proven to exist as a public right of way at common law. 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.

- 2.6.3 A claim for a right of way may also exist 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.
- 2.6.4 Common Law. On consideration of the proposal at common law, the historical mapping shows that the proposal route between points B1 – B8 has physically existed as a through route from the hamlet of Hele since at least 1804 when recorded on the Ordnance Survey's 1" to 1 mile scale mapping as a cross road in a similar manner to Chambercombe Lane which also goes to Comyn Farm. It is included on the Ilfracombe Tithe Map of 1840 included in the parish's roads and waste. This Tithe Map was first class and consequently considered a legal and accurate record of all matters included on it. However, in 1890 on plans drawn up by the Great Western Railway the proposal route between points B1 – B8 is described as an occupation road. However the proposal is a considerable distance from the former railway line and the plans are not part of any formal deposited plan enacted by Parliament.
- 2.6.5 The 25" scale Ordnance Survey mapping from 1890 onwards depicts the proposal route (points B1 – B8), open and available with the only parcel line on it at point B7, which is consistent with the acknowledged gate from Cat Lane into the farm yard at Comyn, as seen from the site photographs. The 1940s RAF aerial photography shows the proposal route between B1 – B8 as a well-worn unmetalled road, in a similar manner to Chambercombe Lane, which also goes to Comyn and is now recorded as a county road but has also been recorded as a bridleway.
- 2.6.6 During the first half of the 20<sup>th</sup> century, the Ilfracombe Urban District Council considered the proposal route which includes Witheridge Place (points B1 – B2) and Cat Lane (points B2 – B7) as public highways for which they had the responsibility to maintain, making up the surface and improving the drainage. This is demonstrated by their Highways Committee minutes and Highways Expenditure Books, and the later Ilfracombe Town Council minutes and Works Books.
- 2.6.7 By the time of the Parish Survey in 1950, the Urban District Council considered the route to be a carriage road mainly used as a footpath as shown on their map, but recorded it as a bridleway, on their survey form, and later reiterated during the incomplete Reviews of the 1960s and 1970s. This was amended to footpath status by the County Surveyor, though there is no information regarding this alteration.
- 2.6.8 However, it appears from the records of the former Ilfracombe Urban District Council and the County Council's Definitive Map records that the proposal route between points B1 – B8 was used as a bridleway during the time when the Definitive Map was compiled and has continued to be so right up until the current time. Though it appears from these records that the former tenant at Comyn Farm, Mr Watts, challenged some horse riders in the 1940s, which the Urban District Council requested the County Council ask their tenant to cease. Such a challenge was not done on behalf of the landowners. In fact after discussions between the Councils and the tenant, the County Council stated that the tenant would make an appeal to Quarter Sessions under the National Parks and Access to the Countryside Act 1949 on the grounds that Cat Lane had incorrectly been designated a footpath, and should actually be a bridleway. It appears this did not happen, and is therefore being dealt with through the current Review.

- 2.6.9 Comyn Farm is the only property which includes any part of Cat Lane, between points B6 – B8, which is consistent with the Finance Act map of 1909-10, though the Domesday and Field Books are incomplete. The section between B1 – B6 is not registered and no-one has claimed ownership over it, with B1 – B2 – B3 recorded as a county road, maintainable at public expense. Comyn Farm has been in its current ownership since 1979 when Mr Challacombe purchased it from Devon County Council, who owned it since 1911.
- 2.6.10 Mr Challacombe believes the proposal route is a footpath and bridleway, with additional use by agricultural vehicles, and has done so since he purchased the farm. Since 1979 he has been aware of members of the public occasionally using it, though he has never required them to seek permission or stopped anyone from using it. He occasionally sees such use. Site photographs show that Cat Lane is well used in the manner of a bridleway, connecting with Bridleway No. 66 at Comyn Farm.
- 2.6.11 There have been no notices on site against use above that of footpath and no owner of Comyn Farm is known to have made a Section 31(6) deposit.

## **2.7 Conclusion**

- 2.7.1 The documentary evidence demonstrates that the proposal route B1 – B8, including Cat Lane, has existed since at least the early 19<sup>th</sup> century, linking the hamlet of Hele on the east side of Ilfracombe with the Chambercombe valley via Comyn (Common) Farm. It has been open and available since that time.
- 2.7.2 The proposal route has been the subject of public maintenance and treated as part of the parish highway network, though having a lesser importance than Chambercombe Lane which also runs to Comyn Farm from Ilfracombe itself. This is demonstrated by the records of the former Ilfracombe Urban District Council and its successor, Ilfracombe Town Council from 1900 onwards. They repeatedly refer to its status as a public road between points B1 – B3 and that of bridleway from point B3 since at least the 1940s. Since that time there has been documented use by horse riders, and acceptance of such use by the relevant owners of Comyn Farm, Devon County Council and Mr Challacombe. There is no record of other adjacent landowners interfering in such use.
- 2.7.3 The evidence also shows that there has been some use of the proposal route between points B3 – B8 with motorised and non-motorised vehicles. However when such use is considered in relation to the NERC Act 2006 as set out in Part A of this report, this section of Cat Lane does not meet any of the exceptions listed in the legislation and consequently cannot be recorded as a byway open to all traffic. The highest status that could be considered is restricted byway. However, the evidence is insufficient to demonstrate that there is a public right of way of that status, as the vehicular use appears to be more of a private rather than public nature.
- 2.7.4 It is therefore recommended that a Modification Order should be made to delete that part of Footpath No. 69 between points B1 – B2 – B3 to resolve the dual status anomaly with the county roads, Witheridge Place and the northern part of Cat Lane, and upgrade the remainder of Footpath No. 69 along Cat Lane to Comyn Farm between points B3 – B8 to bridleway on the Definitive Map and Statement. If there are no objections, or if such objections are subsequently withdrawn, that it be confirmed.

**3 Proposal 18: Proposed deletion of part of Footpath No. 95 along Brookfield Place to resolve a section of dual status highway with the county road, Brookfield Place, as shown between points C1 – C2 on plan HCW/PROW/14/130a.**

**Recommendation:** That a Modification Order should be made to delete the short section of Footpath No. 95, Ilfracombe between points C1 – C2 – C3 to remove the section of dual status highway, in respect of Proposal 18.

**3.1 Background**

3.1.1 The proposal was discovered during the course of the Definitive Map Review as an anomaly in the public highway network which required resolution.

**3.2 Description of the Route**

3.2.1 The proposal starts at point C1 and proceeds generally west north westwards for 10 metres along Brookfield Place to point C2. Brookfield Place runs between Wilder Road and the High Street, with the approach to the High Street by means of a passageway.

**3.3 Documentary Evidence**

3.3.1 Ordnance Survey mapping, 1890-1962. Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way".

3.3.2 The proposal route between points C1 – C2 is shown as an integral part of Brookfield Place, which is shown as continuing up to the passageway between points C3 – C4 – C5, though of a slightly narrower width.

3.3.3 Ilfracombe Urban District Council Highways etc Committee minutes, 1881-1969. These records are considered to be a positive indication of what the highway authority believe the status of roads included to be, and are evidence of a highway authority's acceptance of maintenance responsibility, a commitment not normally undertaken lightly. The lack of a road's inclusion does not necessarily suggest it could not have been a public highway.

3.3.4 13 October 1909. The Committee Chairman stated that the bridge over the stream at the western end of Brookfield Place was in a dangerous condition and he was of the opinion that it was the place of the road's house owners to repair it. The Committee resolved that the Clerk write to the house owners calling their attention to the bridge's condition and request they put it into repair.

3.3.5 9 November 1909. A letter was read from Mrs Harrison and Mr Richards, owners of houses in Brookfield Place stating that the bridge did not belong to them but they paid for a right of way over it. The Committee resolved that the bridge's owner(s) be called upon to remedy the defective bridge within 7 days and if not the Council would carry out the works and recover their costs.

3.3.6 7 December 1909. The Clerk reported that the bridge at the end of Brookfield Place had been repaired by the owner of one of the houses in the road.

3.3.7 27 August 1912. A letter was read from the Ilfracombe Joint Stock Land and Investment Company Ltd asking the Council to put the Private Street Works Act into force with respect to a private street. The Surveyor submitted a list of the private streets in the district. It was resolved that the list be divided into two parts and that the first part would

be dealt with under the Private Street Works Act 1892 as soon as considered expedient by the Council. Brookfield Place was included on the second part of the list. All the owners abutting such roads were to be given notice to put the roads into repair within 2 months so that the Council could take them over.

- 3.3.8 3 January 1921. The Committee visited Brookfield Place and after inspecting it, resolved to recommend the Council taking over the road and carry out the necessary repairs and place a new bridge across the stream at the west end of the road, provided the house owners made a deposit of £2 per house.
- 3.3.9 10 March 1921. The Committee inspected the existing bridge and asked the owner Mr Smith if he would give up sufficient land for a bridge the entire width of Brookfield Place. He agreed to this for a sum of £30 and the Council reconstructing the sidewall of brickwork. It was resolved to accept this.
- 3.3.10 2 June 1921. The Surveyor stated that the bridge construction was in hand and suggested some technical alterations be incorporated into the scheme.
- 3.3.11 28 February 1933. The Surveyor reported a cement plinth constructed against a property wall near point C2 owned by Miss Harris which projected 1" over the highway for 15'. It was resolved that no action be taken.
- 3.3.12 21 December 1936. The Committee inspected the step adjoining Brookfield House. The step which was to prevent flooding by rainwater was on highway land but was flanked by stones resting against the property's wall to prevent its damage between points C2 – C3. Miss Harris, the property owner stated that it did not encroach out as far as the coping stone fixed previously and that the land was her property. She also stated that people in the road had a right under the archway and the Council had no right to interfere. The Clerk pointed out that Brookfield Place was a public highway having been taken over by the Council in 1922, and that the whole of the land between the walls of the premises on either side of the archway between points C4 – C5 constituted part of the public highway.
- 3.3.13 29 May 1940. The Clerk was instructed to apply to restrict traffic along the passageway section of Brookfield Place between points C3 – C4 – C5 (also recorded as Ilfracombe Footpath No. 95), as it was only 7' wide and only very small cars could use it. By August 1940, the Council received a letter from the Ministry of Transport who proposed to make the top part of Brookfield Place, which included Footpath No. 95, to one way only.
- 3.3.14 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.
- 3.3.15 The proposal route between points C1 – C2 is completely excluded from all hereditaments as is the whole of Brookfield Place, between Wilder Road and the High Street.
- 3.3.16 Ilfracombe Urban District Council, Highways Expenditure Books, 1928-48. These records are considered to be a positive indication of what the highway authority believe the status of roads included to be, and are evidence of a highway authority's acceptance of maintenance responsibility, a commitment not normally undertaken lightly.

- 3.3.17 There are frequent references to Brookfield Place and the nature and cost of works carried out, such as tar spraying on 30 June 1928, but no information regarding its extent.
- 3.3.18 Handover Roads Records, 1947. These records are considered to be a positive indication of what the highway authority believe the status of roads included to be, and are evidence of a highway authority's acceptance of maintenance responsibility, a commitment not normally undertaken lightly. The lack of a road's inclusion does not necessarily suggest it could not have been a public highway. However such records were for internal use and did not purport to be a record of rights.
- 3.3.19 The district road, Brookfield Place is shown to extend to approximately 20 metres further eastwards of point C1, to point C4.
- 3.3.20 Ilfracombe Parish Survey, 1950. 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 a draft, provisional and definitive stages with repeated public consultations. Ilfracombe Urban District Council did not do a particularly good survey and so much of the actual urban area was completed by the County Surveyor, Mr Carnegie and his staff.
- 3.3.21 Path 95 was completed by the County Surveyor. It was described as a footpath running from the east end of the district (county) road, Brookfield Place, which was considered to be at point C1 in an easterly direction between buildings (past points C2 – C3 – C4) to join the High Street, A361 at point C5.
- 3.3.22 Definitive Map and Statement, 1958 onwards. These records are conclusive evidence of the information they contain and that the public rights of way existed on the relevant date.
- 3.3.23 The definitive statement for Footpath No. 95 describes the proposal route as starting 'at the eastern end of the district (county) road, Brookfield Place which was considered to be at point C1, and proceeds in an easterly direction between buildings (past points C2 – C3 – C4) to join the High Street', the county road A361, at point C5. This means that the footpath was considered to start at point C1.
- 3.3.24 List of Streets, 1970s onwards. These records are considered to be a positive indication of what the highway authority believe the status of roads included to be, and are evidence of a highway authority's acceptance of maintenance responsibility, a commitment not normally undertaken lightly. The lack of a road's inclusion does not necessarily suggest it could not have been a public highway. However such records were for internal use and did not purport to be a record of rights.
- 3.3.25 The district (county) road, Brookfield Place is shown to extend to point C3.
- 3.3.26 Site Photographs, 2014. The photographs show the proposal open and available.
- 3.3.27 National Street Gazetteer, 2016. Brookfield Place is depicted in the Gazetteer as a category 10 minor service road running from Wilder Road to point D1.

3.3.28 Land Registry records, 2016. These records show that the properties with access onto Brookfield Place in its entirety do not have any private rights regarding the proposal route. The only private right of way recorded is for 61-2 High Street on its freehold documentation with reference to the passageway only, between points C4 – C5 which is not connected directly to the proposal route.

### **3.4 Landowner Evidence**

3.4.1 No adjacent landowners responded to the informal consultation regarding this proposal.

### **3.5 Rebuttal Evidence**

3.5.1 There is no rebuttal evidence for this proposal.

### **3.6 Discussion**

3.6.1 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 has been called into question. The Definitive Map and Statement is conclusive evidence of the information it contains, that Ilfracombe Footpath No. 95 exists. Therefore obstructions on Footpath No. 95 cannot call into question the public's rights.

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

3.6.3 Common Law. On consideration of the proposal at common law, the historical documentary evidence particularly the Ilfracombe Urban District Council records, demonstrates that historically the entire length of Brookfield place from Wilder Road to the High Street was adopted in 1922 as a public vehicular highway, which included the proposal route and what is currently recorded as Ilfracombe Footpath No. 95 on the Definitive Map and Statement. However the various highways records differ on the extent shown as public vehicular highway, with the 1947 Handover Roads Records showing it to extend to point C4, while the List of Streets dating from 1974 show it only to point C3, and the Definitive Map showing Ilfracombe Footpath No. 95 as running between points C1 – C2 – C3 – C4 – C5. However the Land Registry records show that none of the property owners up to point C3 have access rights included with their properties, and consequently would require the highway maintainable at public expense to do so.

3.6.4 After much discussion during World War II, the Ilfracombe Urban District Council appears to have implemented a traffic restriction on the eastern end of Brookfield Place between points C3 – C4 – C5, which is consistent with what is shown on the current List of Streets.

3.6.5 No landowner or rebuttal evidence has been received.

### **3.7 Conclusion**

3.7.1 It is therefore recommended that a Modification Order should be made to delete the short section of Footpath No. 95, Ilfracombe between points C1 – C2 – C3 to remove the section of dual status highway at Brookfield place, in respect of Proposal 18. If there are



no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

**4 Proposal 19: Proposed resolution of an anomaly between Wilder Road and Footpath No. 97 where the footpath connects with Cross Park, as shown between points D2 – D3 on plan HCW/PROW/14/131a.**

**Recommendation: That a Modification Order should be made to extend Ilfracombe Footpath No. 97 between points D2 – D3 along the private road, Cross Park, to resolve the anomaly in respect of Proposal 19.**

**4.1 Background**

4.1.1 The proposal was discovered during the course of the Definitive Map Review as an anomaly in the public highway network which required resolution.

**4.2 Description of the Route**

4.2.1 The proposal starts at point D2 at its junction with the north western end of Ilfracombe Footpath No. 97 and proceeds north westwards along Cross Park to meet Wilder Road at point D3.

**4.3 Documentary Evidence**

4.3.1 Ordnance Survey mapping, 1890-1962. 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".

4.3.2 The proposal route between points D2 – D3 is shown as part of the town highway network with Ilfracombe Footpath No. 97, which is shown as a narrow alley between Cross Park and the High Street.

4.3.3 Ilfracombe Urban District Council, 1894-1974. These records are considered to be a positive indication of what the highway authority believe the status of roads included to be, and are evidence of a highway authority's acceptance of maintenance responsibility, a commitment not normally undertaken lightly.

4.3.4 2 May 1905. A letter was read from Mrs Hildick asking that Cross Park Road between points D2 – D3 should be put into repair when the new sewer had been laid. It was resolved that the road should be restored to its previous state.

4.3.5 3 July 1906. A letter was read from the inhabitants of Cross Park (D2 – D3) asking the Council to have that road watered and swept regularly. It was resolved that this should be done.

4.3.6 11 March 1912. The Highways Committee visited Cross Park Road (D2 – D3) and the letter of Mr Broome was read. It was agreed that permission would be given to the Gas Company to remove the existing lamp into the inside of the Mrs Broome house forecourt provided Mrs Broome paid the removal cost.

- 4.3.7 22 April 1912. A letter was read from Mr Broome stating he would pay for the lamp's removal in Cross Park (D2 – D3) if it was usual practice for ratepayers to do so, but he understood that in a similar case on an adjoining street, the Council paid the cost. The motion was moved that if this were the case, the Council should pay, but the motion was lost.
- 4.3.8 27 August 1912. The Surveyor submitted a list of private streets in the district, which included Cross Park between points D2 – D3. The list was split into two depending on which ones the Council would deal with first with the Private Street Works Act, with a view to taking the same over once abutting property owners had brought such up to standard. Cross Park was included on the second list. It was resolved that these roads would be dealt with as soon as it was expedient to do so.
- 4.3.9 Finance Act records, 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.
- 4.3.10 The proposal route between points D2 – D3 is wholly excluded from any hereditaments. Its continuation of Ilfracombe Footpath No. 97 to the High Street is also excluded, though its eastern end connecting with the High Street is included within hereditament 405, but this is believed to relate to the building over the passageway.
- 4.3.11 Aerial Photography, 1946. The photography shows the open and available physical existence of the proposal route (D2 – D3), though it is not evidence of status. It also shows the route similarity in nature to other currently recorded public highways.
- 4.3.12 Ilfracombe Parish Survey, 1950. 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 a draft, provisional and definitive stages with repeated public consultations. Ilfracombe Urban District Council did not do a particularly good survey and so much of the actual urban area was completed by the County Surveyor, Mr Carnegie and his staff.
- 4.3.13 Path 97 was completed by the county Surveyor. It was described as a footpath running from the district (county) road, Cross Park at point D2, in an easterly direction along the north side of the congregational church to the High Street, A361 to point D1.
- 4.3.14 Handover Roads Records, 1947. These records are considered to be a positive indication of what the highway authority believe the status of roads included to be, and are conclusive evidence of a highway authority's acceptance of maintenance responsibility, a commitment not normally undertaken lightly. The lack of a road's inclusion does not necessarily suggest it could not have been a public highway. However such records were for internal use and did not purport to be a record of rights.
- 4.3.15 The proposal route between points D2 – D3 is not included as a highway maintainable at public expense.
- 4.3.16 Definitive Map and Statement, 1958 onwards. These records are conclusive evidence of the information they contain and that the public rights of way existed on the relevant date.

- 4.3.17 The definitive statement for Footpath No. 97 describes the proposal route as starting at the 'district road, Cross Park, (point D2) and proceeds eastwards...to the High Street' (point D1).
- 4.3.18 List of Streets, 1970s onwards. These records are considered to be a positive indication of what the highway authority believe the status of roads included to be, and are conclusive evidence of a highway authority's acceptance of maintenance responsibility, a commitment not normally undertaken lightly. The lack of a road's inclusion does not necessarily suggest it could not have been a public highway. However such records were for internal use and did not purport to be a record of rights.
- 4.3.19 The proposal route between points D2 – D3 is not included as a highway maintainable at public expense.
- 4.3.20 Site Photographs, 2014. The photographs show the proposal open and available. There are modern 'private road' and 'no parking signs' at its western end. There are 'Cross Park' road names at the junction with Wilder Road at point D3, and at the High Street end of Ilfracombe Footpath No. 97 at point D1.
- 4.3.21 National Street Gazetteer, 2016. This shows the proposal route, Cross Park road, between points D2 – D3, as a private road.
- 4.3.22 Land Registry records, 2016. These records show that Cross Park is almost entirely unregistered, except for a few car spaces near the junction with Wilder Road and the passageway connecting with the High Street at the eastern end of Ilfracombe Footpath No. 97. The majority of the property records do not refer to a private right of way along Cross Park nor any requirement of maintenance. Several properties now owned by management companies have reference to the right to use the '*roadway known as Cross Park...so far as the vendors can lawfully grant the same*'.

#### **4.4 Landowner Evidence**

- 4.4.1 A letter was received from Mr Manning on behalf of the Gloucester House Management Committee Ltd, who has lived there for 26 years. He has always known the public to have had access from Wilder Road to the High Street through Cross Park (points D3 – D2 – D1), and that the Cross Park residents have had the responsibility for maintaining the road (points D2 – D3).

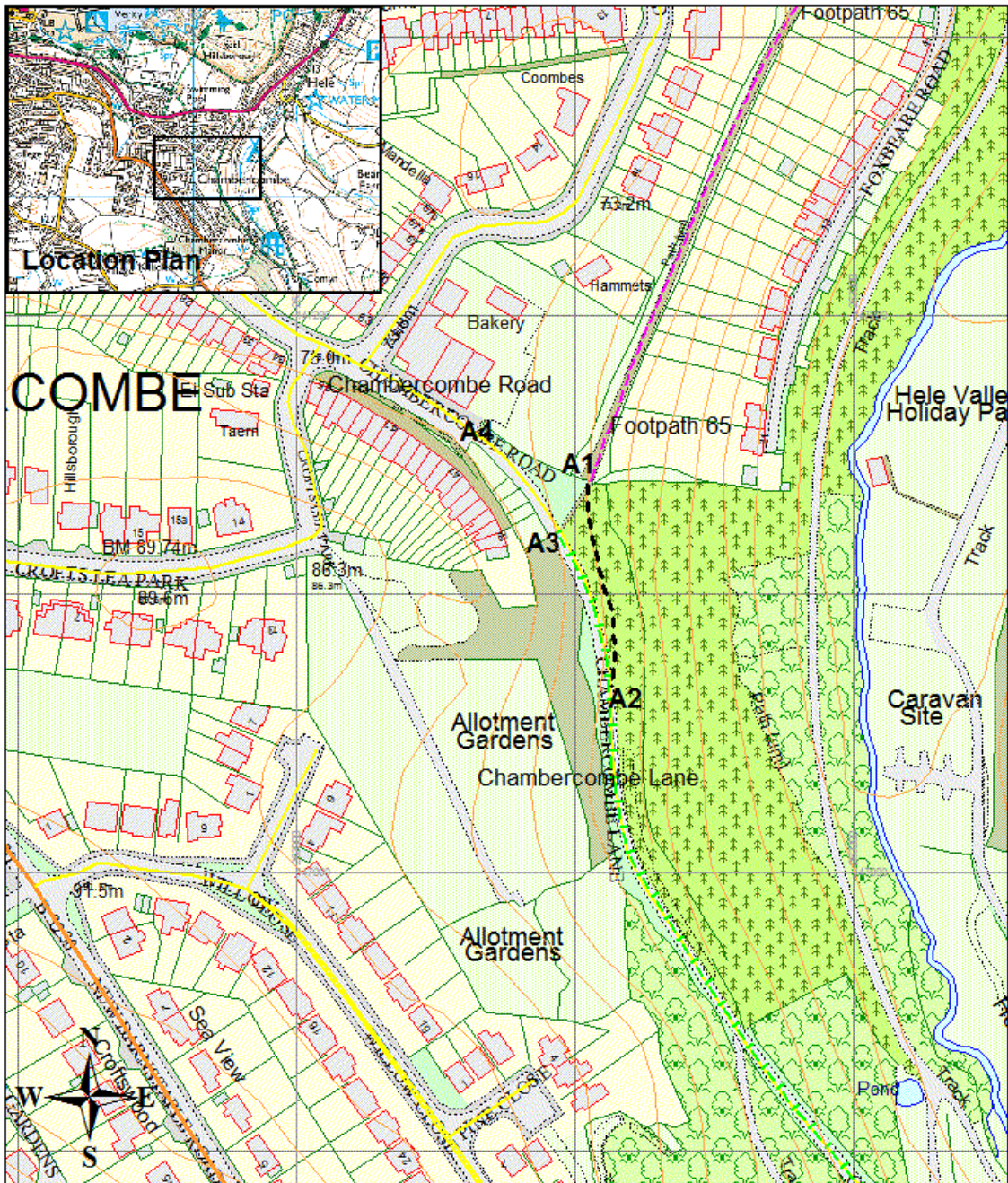
#### **4.5 Rebuttal Evidence**

- 4.5.1 A landowner evidence form was received from Ms Camus of 9 Cross Park. She has lived there for 9 years. Ms Camus states that Cross Park is a private road but that it is used constantly by the public going between Wilder Road and the High Street (points – D3 – D2 – D1). People have been stopped when causing a nuisance at night and littering. The 'private road' and 'no parking' signs are often ignored. She states that the alleyway (Ilfracombe Footpath No. 97) is for access to those properties adjoining it, with Cross Park being a private road.

#### **4.6 Discussion**

- 4.6.1 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 has been called into question. The Definitive Map and Statement is conclusive evidence of the information it contains, that Ilfracombe Footpath No. 97 exists. Therefore obstructions or challenges on Footpath No. 97 cannot call into question the public's rights.

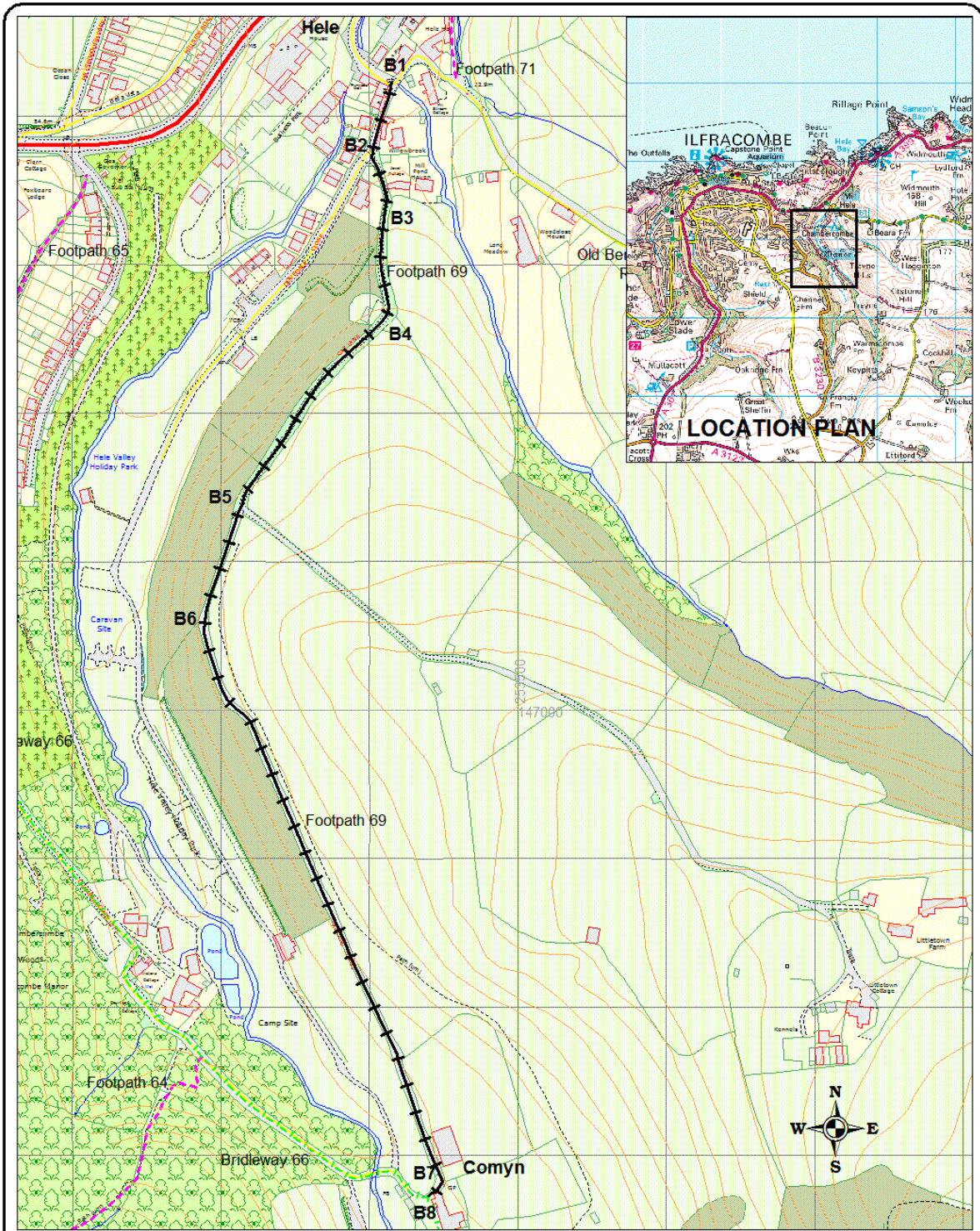
- 4.6.2 As there is no specific date of calling into question or user evidence, the proposal cannot be considered under statute law. However, the proposal route may still be proven to exist as a public right of way at common law. Evidence of dedication by the landowners can be express or implied and 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.
- 4.6.3 Common Law. On consideration of the proposal at common law, the documentary evidence demonstrates that Cross Park between points D1 – D2 – D3, which includes the proposal route has existed as a through route since at least 1890, which no-one historically has claimed ownership of. Records of the former Ilfracombe Urban District Council show that the proposal route has been considered a highway used by the public, to the extent whereby it had requested that the property holders along Cross Park bring it up to standard for the Council to take over as a public road.
- 4.6.4 Whilst Cross Park (points D2 – D3) was considered a district and therefore public road, when the 1950 Parish Survey was completed, it was not included on the Handover Roads Records by them or subsequently on the List of Streets as a county road.
- 4.6.5 Two property holders in Cross Park responded to the informal consultation with knowledge of the proposal route dating back 27 years. A recent property owner believed that the proposal route (points D2 – D3) was a private road and Ilfracombe Footpath No. 97 (points D1 – D2) was an alleyway access for residents of Cross Park only to the High Street. However this is rebutted by another resident who has lived in Cross Park since 1989 and has always known the public to have unrestricted access along Cross Park on foot throughout that time.
- 4.7 Conclusion**
- 4.7.1 It is therefore recommended that a Modification Order should be made to extend Ilfracombe Footpath No. 97 along the length of the proposal route between points D2 – D3 to resolve the existing anomaly. If there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.



map ref: SS 5347

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<p style="text-align: center;"><b>Devon County Council</b>  <b>Definitive Map Review - Ilfracombe</b>  <b>Proposals 11 - Proposed addition of a footpath between</b>  <b>Footpath No. 65, Ilfracombe &amp; Chambercombe Lane</b></p>	<p>drawing number <b>HCW/PROW/14/124a</b></p> <p>date <b>October 2014</b></p> <p>scale <b>1:2,000</b></p> <p>drawn by <b>CLG</b></p>
<p><b>Notation</b></p> <p>Proposed addition A1 - A2 (approx 85 m)    - - - -</p> <p>Existing footpath    - - - -</p>	<p style="text-align: right;"><b>Devon</b> County Council</p> <p><b>David Whitton</b> Head of Highways, Capital Development &amp; Waste</p>



map ref. SS 5347 & 5346

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**Devon County Council**  
**Proposal 15 - Proposed upgrading of Footpath No. 69, Ilfracombe to bridleway along Cat Lane**

drawing number **HTM/PROW/14/127a**  
 date **October 2014**  
 scale **1 : 2,500 (at A3 only)**  
 drawn by **CLG**

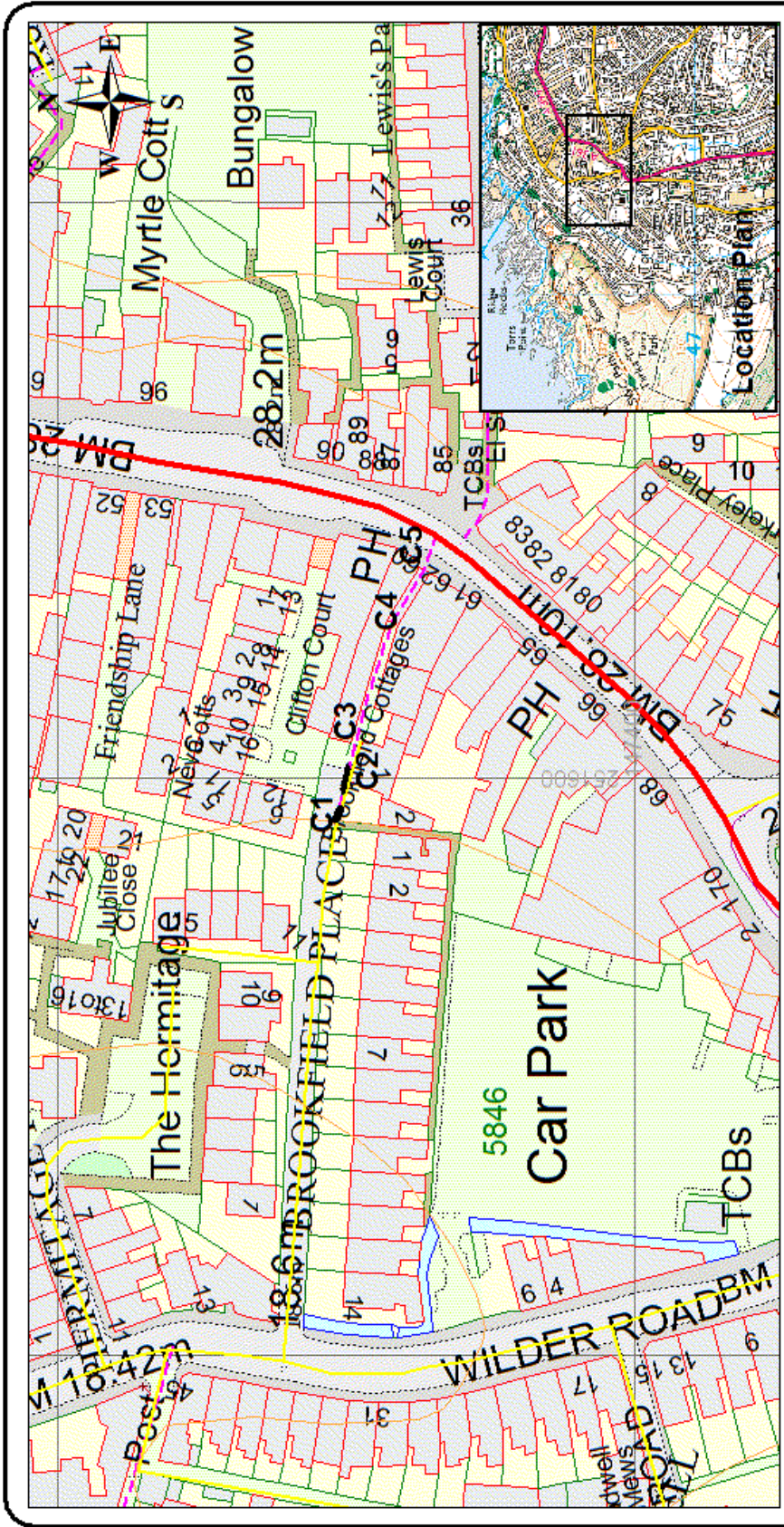
**Notation**

Footpath No. 69 to be upgraded **B1 - B2 - B3 - B4 - B5 - B6 - B7 - B8 (approx 834 m)**  
 Existing footpaths **---**  
 Existing bridleways **---**




**David Whitton**  
 Head of Highways, Capital Development & Waste

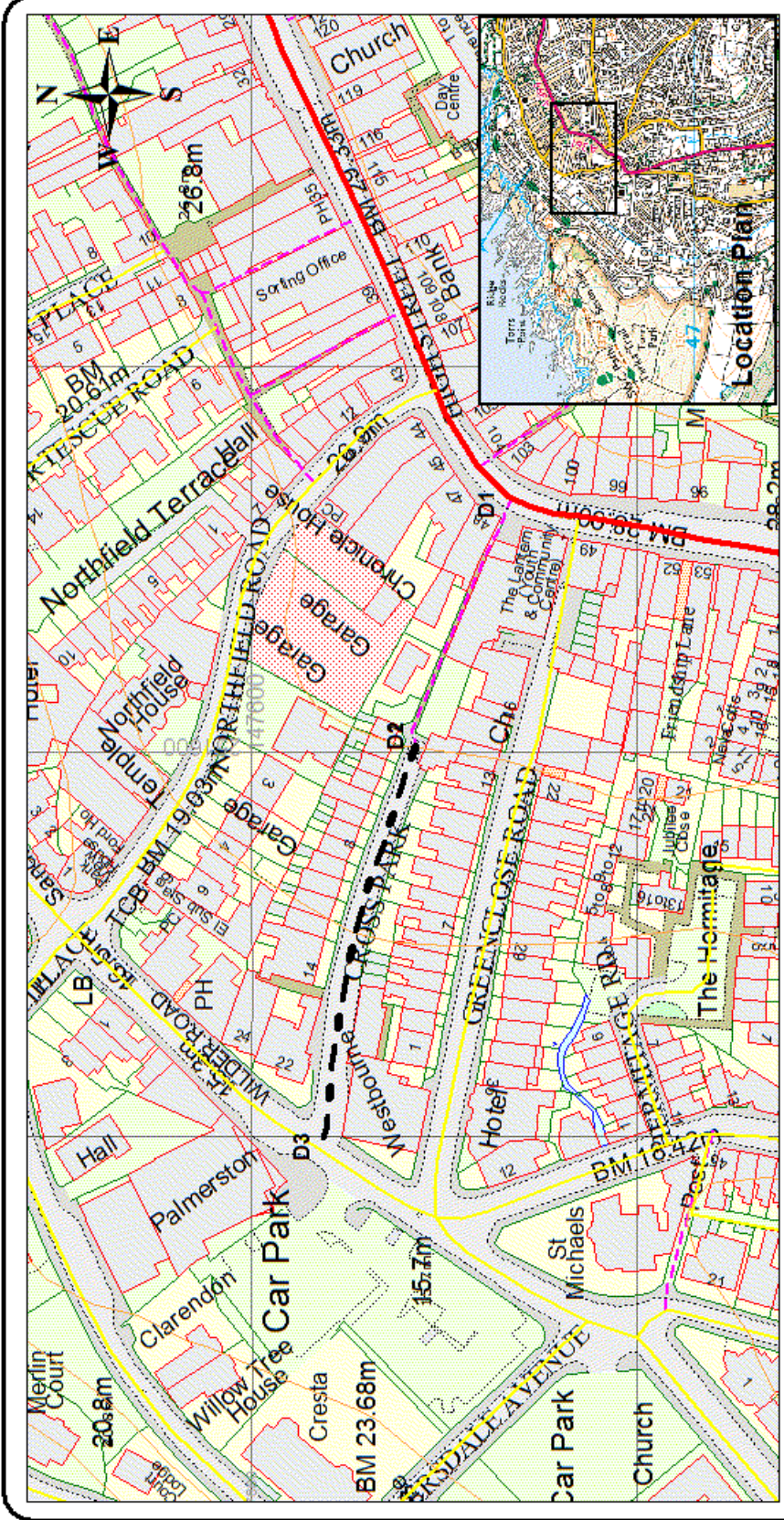




map ref. SS 5147

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<b>Devon County Council</b> Definitive Map Review - Ilfracombe Proposal 18 - Proposed resolution of anomaly between Footpath No. 95, Ilfracombe & Brookfield Place		drawing number <b>HCW/PROW/14/130a</b> date <b>October 2014</b> scale <b>1:1,000</b> drawn by <b>CLG</b>
<b>Notation</b> Proposed anomaly to be resolved C1 - C2 (approx 10 m) - - - Existing footpath - - -		<b>David Whitton</b> Head of Highways, Capital Development & Waste 



map ref. SS 4945 & 4946

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**Devon County Council**  
**Definitive Map Review - Ilfracombe**

**Proposal 19 - Proposed resolution of anomaly between Footpath No. 97, Ilfracombe & Wilder Road along Cross Park**

**Notation**  
 Proposed anomaly to be resolved D2 - D3 (approx 108 m) - - -  
 Existing footpath - - - - -

drawing number **HCWIPROW/14/131a**  
 date **October 2014**  
 scale **1:1,500**  
 drawn by **CLG**

**David Whitton**  
 Head of Highways, Capital Development & Waste

**Devon**  
 County Council