

**Definitive Map Review 2006–16  
Parish of Luppitt (Part 1)**

Report of the Head of Highways, Capital Development and Waste

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

**Recommendation: It is recommended that no Modification Orders be made in respect of Proposals 1–8 for the applications to record claimed public footpaths in parts of Luppitt parish.**

**1. Summary**

This report examines proposals arising out of the Definitive Map Review in the parish of Luppitt in East Devon district. It concerns the investigation of Schedule 14 applications made by the Ramblers in 2008 to add claimed public footpath routes in parts of the parish.

**2. Introduction**

The original survey by Luppitt Parish Council in 1951 under s.27 of the National Parks and Access to the Countryside Act of 1949 produced a map and details of 53 footpaths and three bridleways submitted to the County Council. Comments were added on behalf of Honiton Rural District Council. Forty-eight of the routes surveyed were proposed to be omitted, with some described as not required and others were said to be roads or private, or were disputed. The remaining nine footpaths and three bridleways were recorded for consultations at the Draft Map stage in 1957. Two other additional footpath routes were included on the Provisional Map, with all 14 routes recorded on the Definitive Map, considered as having existed from the relevant date of 1 September 1957.

The reviews of the Definitive Map under s.33 of the 1949 Act, which commenced in the 1960s and 1970s but were never completed, produced several amendments proposed by the Parish Council in 1978 but with no supporting evidence. Forms were submitted in 1979 relating to evidence of use on unspecified footpath routes around and across open land in the parish at Dumpdon Hill and kept on file. There is now a right of public access to Dumpdon Hill as registered common under the Countryside and Rights of Way Act 2000 and the evidence is not considered now as needing to be investigated in this review. A route running through the defined open access area around Dumpdon Hill was included in an application considered with others made in Combe Raleigh parish for a previous report to the Committee.

The following additional Orders from diversions to footpaths have been made and will require the making of a Legal Event Modification Order for recording on a revised Definitive Map in due course:

- (a) Town and Country Planning Act 1971, East Devon District Council, (Footpath No. 54 Luppitt), Public Path Diversion Order 1985;

- (b) Highways Act 1980, Devon County Council (Footpath No. 23 Luppitt), Public Path Diversion Order 1995;
- (c) Highways Act 1980, Devon County Council (Footpath No. 26 Luppitt), Public Path Diversion Order 1996;
- (d) Highways Act 1980, Devon County Council (Footpath No. 17 Luppitt), Public Path Diversion Order 1998;
- (e) Highways Act 1980, Devon County Council (Footpath No. 23 Luppitt), Public Path Diversion Order 1998;
- (f) Highways Act 1980, Devon County Council (Footpath Nos. 23 & 24 Luppitt and Footpath No. 4 Upottery), Public Path Diversion Order 2008;
- (f) Highways Act 1980, Devon County Council (Footpath No. 17 Luppitt), Public Path Diversion Order 2009;

The current number of recorded public rights of way in the parish is 11 footpaths and three bridleways. Investigation of formal applications made by the Ramblers in 2008, which include some routes crossing into parts of the adjoining parishes of Combe Raleigh and Upottery, were deferred to be considered as the proposals in the current review process.

### **3. Background**

The current Review was started with a public meeting in April 2006, with correspondence in 2008 about the Ramblers' applications. There was further correspondence with the Parish Council in 2012, when no further proposals were put forward.

### **4. Proposals**

Please refer to the Appendix to this report. The proposal numbers correspond generally to those used by the Ramblers for their individual applications.

### **5. Consultations**

General consultations on the applications were carried out in July 2014 with the following results:

County Councillor Paul Diviani	-	does not support any of the proposals;
East Devon District Council/AONB	-	no comment;
Luppitt Parish Council	-	does not support any of the proposals;
Country Land and Business Association	-	no comment;
National Farmers' Union	-	no comment;
ACU/TRF	-	no comment;
British Horse Society	-	no comment;
Cyclists' Touring Club	-	no comment;
Ramblers	-	support all proposals from their own applications.

Specific responses, including from the owners of the land affected, are detailed in the Appendix to this report and included in the background papers.

### **6. Financial Considerations**

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

## **7. Legal Considerations**

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

## **8. Risk Management Considerations**

No risks have been identified.

## **9. Equality, Environmental Impact and Public Health Considerations**

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

## **10. Conclusion**

It is recommended that no Modification Orders be made in respect of the applications for Proposals 1–8, as the evidence is considered insufficient to meet the requirements of the legislation. Details concerning the recommendations are discussed in the Appendix to this report.

There are no recommendations to make concerning any other modifications in Luppitt parish. The claims from applications made for routes in other parts of the parish, numbered as Proposals 9–14, have been included in a previous report on the review process for Combe Raleigh parish. The remaining 10 proposals for claims from applications for routes in other parts of Luppitt, with one crossing the parish boundary into Upottery parish, will be included in a further report to complete the review process in the parish.

## **11. Reasons for Recommendations**

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

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### **Electoral Division: Honiton St Paul's**

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence File	2005 to date	NSC/DMR/LUPP

ns020616pra  
sc/cr/DMR parish luppitt part 1  
02 270616

**A. Basis of Claims**

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 (3)(c) enables the Definitive Map and Statement 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;

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

The 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; and

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.

Common Law presumes that a public right of way subsists if, at some time in the past, the landowner dedicated the way to the public. That can be either expressly, with evidence of the dedication having since been lost, or by implication in having not objected to the use of the way by the public, the landowner is presumed to have acquiesced, with the public having accepted that dedication by continuing to use it.

## **B. Introduction: Background to all applications**

Twenty-four formal applications under Schedule 14 of the Wildlife and Countryside Act 1981 were submitted in April 2008 on behalf of the Ramblers. They were for routes in the parish of Luppitt not currently recorded as public rights of way claimed for recording as public footpaths. They included three routes crossing the parish boundary to the west, which were duplicated in three of the 11 applications submitted at the same time for claimed routes in the adjoining parish of Combe Raleigh and connected with other routes in Luppitt. Another was for a claimed route crossing into the adjoining parish of Upottery to the east.

The Ramblers had served notice of their applications on those believed to be the owners of the land affected at that time. They certified having served that notice and submitted copies of all the evidence in support of their claims with the applications, which were mainly copies of historical maps with other historical documentary material. Most of those were included with individual applications and other evidence common to all of the applications, mainly historical maps, was submitted at that time in a separate appendix. Further supporting evidence in the form of copies from other historical maps and documents was submitted a year later.

### **Historical documentary evidence common to all applications**

Most of the documents providing evidence relating to all of the applications submitted in a separate appendix are historical maps. They were mainly produced by the Ordnance Survey at a range of scales between 1"/mile and 2½"/mile from 1809 to 2006, with one by Bartholomew at ½"/mile from 1960. Copies of the legends to the maps were also supplied, most of which included the standard disclaimer that the representation on the map of a road, track or footpath is no evidence of a right of way. Other historical maps and documents submitted later were also related to all of the applications.

The individual applications indicated which of the maps, if not all of them, was intended to be included with the evidence supporting the claim for that particular route, although with no interpretation of its significance as to whether or not it was shown, or how it was depicted. Other historical documents common to several of the applications are discussed in the individual sections for each proposal below.

### **User evidence**

No direct evidence of current or recent use by the public on any of the claimed routes was submitted in support of the applications. There is, therefore, no need to consider statutory dedication of any of the claimed routes as public footpaths under Section 31 of the Highways Act 1980 from 20 years' use of them by the public up to the date of the applications. There is no date other than the applications for any calling into question and also, therefore, no need to consider any evidence of actions by the landowners to show lack of intention to dedicate during that specific 20 year period.

The only statutory element is consideration of the historic maps and documentary evidence in accordance with Section 32 of the Highways Act. That is in relation to a test of whether an intention by the landowners to dedicate the routes as public footpaths at some time in the past can be inferred under common law. It would require sufficient evidence from which it can be inferred that there was use by the public of the claimed routes in the past, with the landowners acquiescing to that use and taking no actions to prevent it, with acceptance by the public in continuing to use them.

**Proposal 1: Schedule 14 application – claimed addition of footpath between minor road, Gullylane Farm and minor road, Overday Farm, points A–B shown on drawing number HTM/PROW/14/141**

Recommendation: It is recommended that no Modification Order be made in respect of Luppitt Proposal 1 for the claimed addition of a footpath.

**1.1 Description**

1.1.1 The claimed route for this application starts from a minor road, Gully Lane, west of Hense Moor in the north of Luppitt parish, at the entrance driveway to the Old Farm at Gullylane Farm (point A). It runs generally southwestwards across fields to the west of Hense Moor, passing through a gateway and crossing an open area of registered common land adjoining Hense Moor to end on Gully Lane opposite the buildings of Overday Farm (point B).

**1.2 The Definitive Map process**

1.2.1 The claimed route was included in the survey of paths on behalf of Luppitt Parish Council in 1951 to put forward for recording as public rights of way on the Definitive Map. It was surveyed as path No. 8 running from Overday across fields to Gullylane on the basis of being shown on old Ordnance Survey maps and also noted as recorded on the Rural District Council 1932 Rights of Way Act map. A route leading from it as a spur onto Hense Moor was surveyed as No. 9 on the same basis, but with a note that it had been used by the general public for over 50 years. Both were proposed to be omitted, with No. 9 said to be not required and they were not included at the Draft and Provisional map stages for recording on the Definitive Map. The route on the spur is not included in this claim.

**1.3 Documentary Evidence**

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

No parts of this claimed route are shown crossing the land between Gullylane Farm and Overday Farm on any of the earlier maps at smaller scales, which do not usually show the lines of footpaths.

1.3.2 Later 19<sup>th</sup> century historical mapping: Luppitt Tithe Map 1842 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

Some later maps at larger scales show the claimed route in more detail. The Tithe Map for Luppitt parish dated 1842 does not show the line of any path crossing the land from Gullylane to Overday. There is no reference to any path in the Apportionment or in the names of the fields on the claimed route, but the map does record the existence then of some gates in the field boundaries on parts of the line of the route. However, they are also shown on the lines of other tracks and in the boundaries of fields without showing tracks or paths throughout the parish. They indicate where access can be interpreted as being provided only for agricultural uses of the land.

1.3.3 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, although the lines of paths or unenclosed tracks appear to be shown crossing some fields in other parts of the parish. The Tithe Map records do not, therefore, provide any supporting evidence that the claimed route may have existed then to have been considered as a public footpath.

- 1.3.4 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows sections of a path with double-dashed lines labelled 'F.P.' from the yard at Gullylane crossing the fields on the line of the route as claimed, ending on the open land at the edge of Hense Moor at Overday Farm. It runs through some field boundaries where gates were indicated on the earlier Tithe Map and is connected with other paths shown in the same way crossing fields leading to another property and continuing across the open land of Hense Moor. The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century does not show the lines of any tracks or path on the route.
- 1.3.5 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records  
The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map. Copies of the same later maps used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation were submitted with the additional material for all of the applications. The map shows the claimed route to have been included in the defined hereditaments, or assessment areas of land, for Gully Lane Farm and Overday with total areas of 90 acres and 144 acres, respectively.
- 1.3.6 Copies of the Field Books for those hereditaments with details of the assessment for the farms were included with the application. They record total deductions of £25 for Gully Lane and £50 for Overday in respect of Public Rights of Way or User affecting the value of the land. Details of 'Charges, Easements and Restrictions' affecting the value of the land refer to those as 'R[ight] of Way' through several fields with Ordnance Survey numbers on the claimed route: 47 and 48 for Gully Lane; 127, 110, 66 and 68 for Overday.
- 1.3.7 Some of those are for fields on the line of the path shown on the claimed route and includes two fields not on the route, but also not including three fields on the route. They suggest that parts of the route may have been considered to carry some form of right of way at the time, although without any specific reference to it as a 'public footpath' and with some parts not included. The details also refer to rights of common on Hense Moor, with the path on the claimed route leading across the open land at Overday. It was connected with others leading to and crossing the main part of the open common land on Hense Moor, although it is not specified as included in the deductions.
- 1.3.8 Later Ordnance Survey mapping and Bartholomew's maps  
Smaller scale maps from the earlier 20<sup>th</sup> century, particularly Ordnance Survey and Bartholomew's map editions from 1910 to the later 1920s, do not show the claimed route. Later editions from 1937 show it with a dashed line as a path, marked 'F.P.' in 1948, up to the early 1970s but not on subsequent editions which showed recorded public rights of way. Their keys included dashed lines to show footpaths and bridleways, but were subject to the general disclaimer that they were not evidence of a right of way. Later Ordnance Survey 'A' edition larger-scale mapping from 1963, around the time that the Definitive Map was being drawn up, does not show the line of any path or track on the claimed route. A track is shown running from the start of the claimed route in the open land opposite Overday, leading towards a property and continuing onto Hense Moor.
- 1.3.9 The showing of the claimed route on some early and later maps records its physical existence as a path or track at those times until more recently. They do not indicate on their own or support the existence of public rights of way, which would require other more significant supporting evidence. That is in accordance with the disclaimer

carried by Ordnance Survey maps since 1889 and by other editions, which may be presumed to apply to earlier and other commercial maps as well.

#### 1.3.10 Aerial photography

Earlier and later aerial photography between 1946–9 and 2007 does not show the worn lines of any path or track crossing the fields or open land on the claimed route,.

### **1.4 Definitive Map Reviews and Consultations**

1.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes that were started but not completed. The claimed footpath was included in the consultations in July 2014 on the basis of the applications submitted in 2008. The responses included objections on behalf of Luppitt Parish Council, by the affected landowners and the local County Councillor, with support only from the Ramblers as the applicants.

### **1.5 User Evidence**

1.5.1 No supporting evidence of claimed use was submitted with this application, or any of the others, for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

### **1.6 Landowner and Rebuttal Evidence**

1.6.1 Some of the owners of land and adjoining property on the claimed route completed landowner evidence forms. All of them indicated that the claimed route crossed or adjoined their land or property and none believed it to be public. None of them had seen, or been aware of, the public using the route or had required people to ask permission when using it and had not turned back or stopped anyone from using it.

1.6.2 None of them had obstructed the claimed route and most had not put up notices to say that it was not public, with none having made a Section 31 deposit to show lack of intention to dedicate. None reported that there were any gates on the route which may have been locked, with two indicating that there was an overgrown hedge on the boundary of the first field from Gully Lane making it impossible to use the route as claimed.

1.6.3 In additional information, all of the owners provided further details, particularly to indicate their knowledge that the claimed route had never been used by the public, including during previous ownership. The owner of Gully Lane Farm provided information from the background and history of the ownership of land and properties on that part of the claimed route. He said that he had investigated the existence of access rights from Gully Lane, particularly for private access to the farm buildings but also to clarify that there were no public rights, as well as never having been used, in support of his view that there was no valid historical basis for the claim.

1.6.4 Other information was provided by the Vice-Chairman of the Trustees of the Luppitt Commons, which is privately owned with common rights and designated as Open Access land under the Countryside and Rights of Way Act 2000, relating to the section of land crossed from point B on the claimed route. He reported his own views, as well as those of two older local residents involved in management of the common land and the recording of public rights of way in the parish. None of them believed the route to be public, or had ever seen anyone using or attempting to use as it a public footpath. He also supplied information, with a photograph, about a sign said to have been on the land at point B since about 1980 stating that the area is



designated as private open space belonging to the registered commoners of Luppitt and is not a public right of way.

## **1.7 Discussion**

- 1.7.1 As discussed in the background to all applications (part B, above), no evidence of use has been submitted to support the claimed addition, so that there is none during any 20-year period before the date of the application to consider whether a statutory presumption of dedication has arisen from use by the public.
- 1.7.2 Considering the application in relation to common law requires taking into account the historic maps and other historical documentary evidence submitted and discovered, but without being able to consider any evidence of claimed actual use by the public. Earlier historical mapping shows that a path on the route as claimed has existed on the ground since at least the later 19<sup>th</sup> century crossing the fields between Gully Lane and Overday, including a small section on the edge of the open common land of Hense Moor. Later mapping shows only that it continued to exist physically on the ground as a path on the claimed route up to more recently.
- 1.7.3 Finance Act records indicate that parts of it may have been considered to carry public rights in the early 20<sup>th</sup> century, with deductions for Public Rights of Way or User in the assessment process relating to some fields crossed by paths shown on the claimed route, but not including others. It is the only evidence that could be said to have been discovered for the claim that was not available to the Parish and County Councils when drawing up the Definitive Map in the 1950s, but is not considered to be sufficient on its own without any other more substantial supporting evidence.
- 1.7.4 There were no lists of what were considered to be public footpaths in Luppitt parish in 1913 and 1934, as for other claims made in Combe Raleigh from previous reports, for additional evidence suggesting that this route may have had the reputation of being public at those times. No records have been submitted of any expenditure by the Parish Council for maintenance or repairs on this route for any further evidence that it may have been considered to be public at any other time, as with other claims.
- 1.7.5 It was included by Luppitt Parish Council in its 1951 survey, but only on the basis of being shown on old Ordnance Survey maps and also noted as recorded on the Rural District Council 1932 Rights of Way Act map. No list of paths in the parish following that Act was compiled, as in Combe Raleigh. There was no reference to known use by the public for any previous period of time, although the spur running from it onto Hense Moor was noted to have been used by the public for over 50 years. Both were proposed to be omitted without sufficient evidence that they were public and they were not included at the Draft and Provisional map stages for recording on the Definitive Map.
- 1.7.6 No other more significant historic maps or references in historical documentary material have been submitted or discovered to add more substantial weight to any suggestion that the route had the reputation of being a public footpath in the past, or more recently. No claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Luppitt Parish Council.
- 1.7.7 Considering the historical evidence, but without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath, or an inference that it had the reputation

of being available and used by the public. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted any dedication and used it at any time in the past on foot, or have continued to use it on that basis.

- 1.7.8 A sign on part of the route could be taken to indicate some evidence of a lack of intention to dedicate a public right of way on part of the route, reported to have been in place since about 1980. However, that cannot be taken to apply retrospectively for the period covered by the main historical evidence relied on for the claim. It also relates to part of the claimed route crossing the edge of Hense Moor that has recently been recorded as open land with a right of public access.

## **1.8 Conclusion**

- 1.8.1 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the application for Luppitt Proposal 1.

### **Proposal 2: Schedule 14 application – claimed addition of footpath between Combeshead and Bridleway No. 9 via Footpath No. 14, points C–D–E, D–F shown on drawing number HTM/PROW/14/141**

Recommendation: It is recommended that no Modification Order be made in respect of Luppitt Proposal 2 for the claimed addition of a footpath.

## **2.1 Description**

- 2.1.1 The claimed route for this application starts from the same road as in Proposal 1, Gully Lane, at the junction with a minor road, Combeshead Lane, at Combeshead Farm (point C). It runs through a gateway and along a short section of track, then through another gateway onto the open registered common land of Hense Moor. It continues westwards following and then crossing a stream along the edge of the open land alongside enclosed fields, turning southwards to point D.
- 2.1.2 From there it turns to continue southwestwards onto a track across the open land passing the buildings of Penn Farm, to end on the dual classified maintainable highway recorded as Bridleway No. 9 (point E). A short spur is also claimed running southwards from point D onto the recorded Footpath No. 14 (point F), which runs generally south to north along the whole length of Hense Moor from the village of Luppitt.

## **2.2 The Definitive Map process**

- 2.2.1 Most of this claimed route was included in the survey of paths on behalf of the Parish Council in 1951. The start of it was surveyed as path No. 5 running from Coombes Head to Wind Whistle, a former property on Hense Moor, as a common route and crossing fields to point D. It was again only on the basis of being shown on old Ordnance Survey maps and noted as recorded on the Rural District Council 1932

Rights of Way Act map. Its continuation was surveyed as path No. 7 from Fairview Gate to Penn, on the same basis, as a common route to Windwhistle. The spur from point D onto Footpath No. 14 was not included in the survey. None of the paths went on to be included on the Draft and Provisional Maps and were not recorded on the Definitive Map.

## 2.3 Documentary Evidence

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

The whole of this route as claimed is not shown crossing the open land of Hense Moor on any of the earlier maps at smaller scales, which do not usually show the lines of footpaths. Some parts of it are shown as sections of tracks linked to others now recorded as a public footpath, bridleway and maintainable road.

### 2.3.2 Later 19<sup>th</sup> century historical mapping: Luppitt Tithe Map 1842 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

Some later maps at larger scales show the claimed route in more detail. The Tithe Map for Luppitt parish dated 1842 does not show the line of any path on the claimed route crossing the open land of Hense Moor. It does not show anything on the route recorded as Footpath No. 14 for the connecting spur. There is no reference to any path in the Apportionment details for the area of common land.

2.3.3 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, although the lines of paths or unenclosed tracks appear to be shown crossing some fields in other parts of the parish. The Tithe Map records do not, therefore, provide any supporting evidence that the claimed route may have existed then to have been considered as a public footpath.

2.3.4 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows a track or path with double-dashed lines, not labelled 'F.P.', on the line of the route as claimed running around the edge of the unenclosed open common land on Hense Moor. It connects with other route crossing the open land, including the line of the path recorded now as Footpath No. 14, passing Penn and the sites of old quarries to end on a track now recorded as part of the recorded maintainable highway and Bridleway No. 19. The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century shows the lines of unenclosed tracks or paths on the route.

### 2.3.5 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map. The same later maps used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation submitted with the additional material for all of the applications. The map shows the claimed route to have been included in the defined hereditament, or assessment area of land, numbered as part of 16 for all of the open common land in the whole parish, including Hense Moor.

2.3.6 Copies of the Field Book records for that open land, not submitted with the application, refer to it as an area of common and waste land with rights of common and 'probably many rights of way'. There is a large deduction specified for the rights of common, but no deduction for any public rights of way or user. Several lines of paths or tracks are shown on the maps crossing 230 acres of open common land in the parish, including what is now recorded as Footpath No. 14 and other tracks or

paths crossing Hense Moor. It would be difficult to specify whether that reference to rights of way could have included this claimed route, but without any specific deductions for them, as well as distinguishing them from what are likely to have been considered as routes connected with access for other common rights on Hense Moor.

#### 2.3.7 Later Ordnance Survey mapping and Bartholomew's maps

Smaller scale maps from the earlier 20<sup>th</sup> century, particularly by Ordnance Survey and Bartholomew's map editions up to more recently show the claimed route as an unenclosed track, or with a dashed line as a path not marked 'F.P.', including on later editions showing recorded public rights of way. Their keys included dashed lines to show roads or tracks and footpaths or bridleways, but were subject to the general disclaimer that they were not evidence of a right of way. Later Ordnance Survey 'A' edition larger-scale mapping from 1963, around the time that the Definitive Map was being drawn up, shows the line of an unenclosed track or path on the claimed route around the edge of the open land alongside the enclosed fields, labelled as a 'Cart Track' or 'Track'.

2.3.8 The showing of the claimed route on some early and later maps records its physical existence as a track or path at those times until more recently. They do not indicate on their own or support the existence of public rights of way, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889 and by other editions, which may be presumed to apply to earlier and other commercial maps as well.

#### 2.3.9 Aerial photography

Earlier and later aerial photography between 1946–9 and 2007 shows the worn lines of tracks and paths crossing the fields around the edge of the open land on parts of the claimed route.

### **2.4 Definitive Map Reviews and Consultations**

2.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes that were started but not completed. The claimed footpath was included in the consultations in July 2014 on the basis of the applications submitted in 2008. The responses included objections on behalf of Luppitt Parish Council, by the affected landowners and the local County Councillor, with support only from the Ramblers as the applicants.

### **2.5 User Evidence**

2.5.1 As with Proposal 1, no supporting evidence of claimed use was submitted with this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

### **2.6 Landowner and Rebuttal Evidence**

2.6.1 The owners of land and property at Penn Farm adjoining part of the claimed route and the Vice-Chairman of the Trustees of the Luppitt Commons on behalf of the owners of Hense Moor and commoners completed landowner evidence forms. They indicated that the claimed route crossed or adjoined their land or property and none believed it to be public. None of them had seen, or been aware of, the public using the route or had required people to ask permission when using it and had not turned back or stopped anyone from using it.

- 2.6.2 None of them had obstructed the claimed route and had not put up notices to say that it was not public, with none having made a Section 31 deposit to show lack of intention to dedicate. None reported that there were any gates on the route which may have been locked, or any other obstructions.
- 2.6.3 In additional information, the Vice-Chairman of the Trustees of the Luppitt Commons provided further details relating to Hense Moor as privately owned open land with common rights and designated as Open Access land under the Countryside and Rights of Way Act 2000, for the whole of the claimed route. As with Proposal 1, he reported his own views with those of two older local residents involved in management of the common land and the recording of public rights of way in the parish. None of them believed the route to be public, or had ever seen anyone using or attempting to use as it a public footpath.

## **2.7 Discussion**

- 2.7.1 As with Proposal 1, no evidence of use has been submitted to support the claimed addition, so that there is none during any 20-year period to consider whether a statutory presumption of dedication has arisen from use by the public.
- 2.7.2 Most of the historic maps and some of the other historical documentary evidence for this application are the same as for Proposal 1, with some significant differences in detail and there is again also no evidence of claimed use for an inference of dedication under the common law test. Earlier historical mapping shows that parts of a track or path on the route as claimed has existed on the ground since at least the early 19<sup>th</sup> century around the edge of the open common land of Hense Moor, although not shown on the larger-scale Tithe Map. It is shown on later maps until the early 20<sup>th</sup> century as a track across the open land, not labelled as a footpath but later as a track cart track. However, they do not provide any support for the claim that the route may have been considered to be public at those time.
- 2.7.3 There are no details from Finance Act records to indicate whether the route may have been considered then to carry public rights with no specified deductions in the assessment process for the open common land of Hense Moor, with several other routes crossing the land and other common rights affecting it. It reduces the weight of evidence supporting this claim, as not providing any that could be said to have been discovered and not available to the Parish Council in the 1950s. Later mapping with aerial photography and other records show only that it has continued to exist as a track or path on its current line on the claimed route more recently and up to the present.
- 2.7.4 Again, there were no lists of what were considered to be public footpaths in Luppitt parish in 1913 and 1934, as for other claims made in Combe Raleigh from previous reports, for additional evidence suggesting that this route may have had the reputation of being public at those times. No records have been submitted of any expenditure by the Parish Council for maintenance or repairs on this route for any further evidence that it may have been considered to be public at any other time, as with other claims.
- 2.7.5 This route was also included by Luppitt Parish Council as two paths for its 1951 survey, but not including the link to Footpath 14. It was again only on the basis of being shown on old Ordnance Survey maps and also noted as recorded on the Rural District Council 1932 Rights of Way Act map. No list of paths in the parish following that Act was compiled, as in Combe Raleigh. There was no reference to known use by the public for any previous period of time. Both were again proposed to be omitted

without sufficient evidence that they were public and they were not included at the Draft and Provisional map stages for recording on the Definitive Map.

- 2.7.6 No other more significant historic maps or references in historical documentary material have been submitted or discovered to provide any substantial weight to a suggestion that the route may have had the reputation of being a public footpath in the past, or more recently. No claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Luppitt Parish Council.
- 2.7.7 Considering the historical evidence, but without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath for an inference that it had the reputation of being available and used by the public for any previous period of time. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted any dedication and used it at any time in the past on foot, or have continued to use it on that basis.

## **2.8 Conclusion**

- 2.8.1 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route and its spur to the recorded footpath in respect of the application for Luppitt Proposal 2.

### **Proposal 3: Schedule 14 application – claimed addition of footpath between minor road, Combeshead and Bridleway No. 9, Fairview Gate, points G–H shown on drawing number HTM/PROW/14/141**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 3 for the claimed addition of a footpath.

## **3.1 Description**

- 3.1.1 The claimed route for this application starts from the minor road, Combeshead Lane, south of Proposal 2 (point G), running from a field gate eastwards across fields south of Hense Moor. It turns southeastwards to end at a gateway on the minor road crossing the southwestern edge of Hense Moor from Luppitt village, also recorded as Bridleway No 9, near point E on Proposal 2 and the buildings of Fair View Farm (point H).

## **3.2 The Definitive Map process**

- 3.2.1 This claimed route was included in the survey of paths on behalf of Luppitt Parish Council in 1951, as path No. 6 running from Fairview to Overday across ploughed and grass fields. That was again only on the basis of being shown on old Ordnance Survey maps and also noted as recorded on the Rural District Council 1932 Rights of

Way Act map and it was also not included on the Draft and Provisional Maps or recorded on the Definitive Map.

### **3.3 Documentary Evidence**

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

As with previous proposals, this route as claimed is not shown crossing fields adjoining the open land of Hense Moor on any of the earlier maps at smaller scales, which do not usually show the lines of footpaths.

#### **3.3.2 Later 19<sup>th</sup> century historical mapping: Luppitt Tithe Map 1842 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s**

Some later maps at larger scales show the claimed route in more detail. The Tithe Map for Luppitt parish dated 1842 does not show the line of any path on the claimed route crossing the fields adjoining the open land of Hense Moor. There is no reference to any path in the Apportionment or in the names of the fields on the claimed route, but the map does record the existence then of some gates in the field boundaries on parts of the line of the route. However, they are also shown on the lines of other tracks and in the boundaries of fields without showing tracks or paths throughout the parish. They indicate where access can be interpreted as being provided only for agricultural uses of the land.

#### **3.3.3 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, although the lines of paths or unenclosed tracks appear to be shown crossing some fields in other parts of the parish. The Tithe Map records do not, therefore, provide any supporting evidence that the claimed route may have existed then to have been considered as a public footpath.**

#### **3.3.4 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows a path with double-dashed lines labelled 'F.P.' from the road south of Combeshead crossing the fields on the line of the route as claimed and connected with a path continuing across the open common land on Hense Moor. The claimed route turns to end on another enclosed track leading to the open land of Hense Moor, now part of the recorded maintainable highway and Bridleway No. 9. The path runs through some field boundaries where gates were indicated on the earlier Tithe Map. The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century does not show the line of any track or path on the route.**

#### **3.3.5 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records**

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the path in the same way as in the 1<sup>st</sup> edition map, labelled 'F.P.' on the route. The same later maps used for the 1910 Finance Act survey show this claimed route to have been included in the hereditaments, or assessment areas of land numbered 44 and 51, for parts of Coombeshead and Mountstephens with Stone Acre Farms with total areas of 93 and 114 acres, respectively.

#### **3.3.6 Copies of the Field Books for those hereditaments with details of the assessments for the farms were included with the applications. For Coombeshead a total deduction of £25 is recorded in respect of a fixed charge for Public Rights of Way or User affecting the value of the land. Details of 'Charges, Easements and Restrictions' affecting the value of the land refer to it as for a 'right of way', but only for the field with Ordnance**

Survey number 515 on the claimed route and not for other fields with paths leading to it from the road at Combeshead.

3.3.7 For Mountstephens and Stone Acre, a total deduction of £50 is recorded in respect of a charge for Public Rights of Way or User. Details refer to it as for a 'Right of way', for several fields with Ordnance Survey numbers. They include two on the claimed route, numbered 520 and 554, with the path continuing from the field numbered 515 as above to the end of the track leading onto Hense Moor. The rest are for some fields on the routes of other claimed routes to be considered in the next report and one on what is now a recorded public footpath.

3.3.8 They suggest that some parts of the claimed route may have been considered to carry some form of right of way at the time, although without any specific reference to it as a 'public footpath' and not including part of it. The details for both farms also refer to unlimited rights of common, presumably including on Hense Moor, with the deductions for the path on part of the claimed route leading across fields connecting different parts of the open land. It was linked with other routes leading to and crossing the main part of the open common land on Hense Moor, although it is not specified as being relevant for inclusion in the deductions.

3.3.9 Later Ordnance Survey mapping and Bartholomew's maps

Most smaller scale maps from the earlier 20<sup>th</sup> century, particularly by Ordnance Survey and Bartholomew's map editions up to more recently, do not show the claimed route. Some of them show part of it from Combeshead as part of a track leading onto Hense Moor and in later editions with a continuation on the rest of the claimed route with a dashed line as a path. It was labelled 'F.P.' only in 1948, but was not shown on more recent editions including details of recorded public rights of way. Their keys included dashed lines to show roads or tracks and footpaths or bridleways, but were subject to the general disclaimer that they were not evidence of a right of way.

3.3.10 Later Ordnance Survey 'A' edition larger-scale mapping from 1963, around the time that the Definitive Map was being drawn up, shows the line of an unenclosed track or path on the start of the claimed route leading from the road at Coombeshead across the fields. It continues onto the track across the open land of Hense Moor, labelled as a 'Cart Track' or 'Track' on the route considered in Proposal 2, but with no continuation as a path on this claimed route. The showing of parts of the route on some early and later maps records their physical existence at those times. They do not indicate on their own or support the existence of public rights of way, in accordance with the Ordnance Survey disclaimer.

3.3.11 Aerial photography

Earlier and later aerial photography between 1946–9 and 2007 shows the line of the track crossing the fields at the start of the claimed route leading to the open land, but no worn line to indicate any path on its continuation further across fields.

### **3.4 Definitive Map Reviews and Consultations**

3.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes. The claim was included in the consultations in July 2014 on the same basis as the applications for the previous proposals, with the same responses in objection and support only from the applicants.



### **3.5 User Evidence**

- 3.5.1 As with previous proposals, no supporting evidence of claimed use was submitted with this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

### **3.6 Landowner and Rebuttal Evidence**

- 3.6.1 The owners of land at Combeshead and Fair View Farm on the claimed route completed landowner evidence forms. They indicated that the route as claimed crossed their land and none believed it to be public. None of them had seen, or been aware of, the public using the route or had required people to ask permission when using it and had not turned back or stopped anyone from using it.
- 3.6.2 None of them had obstructed the claimed route and had not put up notices to say that it was not public, with none having made a Section 31 deposit to show lack of intention to dedicate. None reported that there were any gates on the route which may have been locked, or any other obstructions.
- 3.6.3 In additional information, they provided details relating to the years that the land had been in their own or their families' ownership since the 1940s or 1950s to reinforce their views that there had never been a footpath on the claimed route and they had never seen anyone using it.

### **3.7 Discussion**

- 3.7.1 As with previous proposals, no evidence of use has been submitted to support the claimed addition, so that there is none during any 20-year period to consider whether a statutory presumption of dedication has arisen from use by the public.
- 3.7.2 Most of the historic maps and some of the other historical documentary evidence for this application are the same as for the previous proposals with some differences in detail and there is again also no evidence of claimed use for an inference of dedication under the common law test. Earlier historical mapping shows that parts of a track or path on the route as claimed has existed on the ground since at least the later 19<sup>th</sup> century leading from the road near Combeshead to the open common land of Hense Moor. Parts of it are shown on later maps until more recently connecting to a cart track crossing the open land, with its continuation on the claimed route labelled in only one edition as a footpath. However, they do not provide any support for the claim that the route may have been considered to be public at those time.
- 3.7.3 The Finance Act records are again the only evidence that could be said to have been discovered and not available to the Parish Council in the 1950s. However, its weight in support of this claim is reduced with the deductions suggesting that it may have been considered as public only being for parts of the claimed route and not others. Later mapping with aerial photography and other records show only that part of it has continued to exist as a track leading onto the open common land with no continuation on the claimed route more recently and up to the present.
- 3.7.4 Again, there were no lists of what were considered to be public footpaths in Luppitt parish in 1913 and 1934, as for other claims made in Combe Raleigh from previous reports, for additional evidence suggesting that this route may have had the reputation of being public at those times. No records have been submitted of any expenditure by the Parish Council for maintenance or repairs on this route for any

further evidence that it may have been considered to be public at any other time, as with other claims.

- 3.7.5 This route was also included by Luppitt Parish Council for its 1951 survey, but again only on the basis of being shown on old Ordnance Survey maps and also noted as recorded on the Rural District Council 1932 Rights of Way Act map. No list of paths in the parish following that Act was compiled, as in Combe Raleigh. There was no reference to known use by the public for any previous period of time. It was also proposed to be omitted without sufficient evidence that it was public and not included at the Draft and Provisional map stages for recording on the Definitive Map.
- 3.7.6 No other more significant historic maps or references in historical documentary material have been submitted or discovered to provide any substantial weight to a suggestion that the route may have had the reputation of being a public footpath in the past, or more recently. No claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Luppitt Parish Council.
- 3.7.7 Considering the historical evidence, but without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath for an inference that it had the reputation of being available and used by the public for any previous period of time. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted any dedication and used it at any time in the past on foot, or have continued to use it on that basis.

### **3.8 Conclusion**

- 3.8.1 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route and its spur to the recorded footpath in respect of the application for Luppitt Proposal 3.

### **Proposal 4: Schedule 14 application – claimed addition of footpath between minor road, Luppitt village and minor road, north of Meadow Croft, points I–J shown on drawing number HTM/PROW/14/144**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 4 for the claimed addition of a footpath.

### **4.1 Description**

- 4.1.1 The claimed route for this application starts at the minor road in Luppitt village, south of the Luppitt Inn (point I), running along a track recorded as part of Footpath No. 1. It turns off the track to continue across fields to the south of the recorded footpath, crossing streams and another track to end at a gateway on the minor road from Combe Raleigh north of Newhouse Farm (point J).

## 4.2 The Definitive Map process

- 4.2.1 This claimed route was included in the survey of paths on behalf of Luppitt Parish Council in 1951. The start of it was surveyed as part of what is now recorded as Footpath No. 1 running from Luppitt Post Office to New Buildings. Its continuation as claimed was surveyed as path No. 52, to the Post Office through grass fields and over a footbridge. That was on the basis of being mentioned in Parish Council minutes and again also noted as recorded on the Rural District Council 1932 Rights of Way Act map. The continuation as claimed was not included on the Draft and Provisional Maps or recorded on the Definitive Map.

## 4.3 Documentary Evidence

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

Earlier maps at smaller scales show a section of track leading from the road in Luppitt village on the line of the start of what is recorded as Footpath No. 1 and the route as claimed. No continuation of either the recorded footpath or the claimed route is shown, with maps at this scale not usually showing the lines of footpaths.

- 4.3.2 Later 19<sup>th</sup> century historical mapping: Luppitt Tithe Map 1842 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

Later maps at larger scales show the claimed route in more detail. The Tithe Map for Luppitt parish dated 1842 shows dashed lines of paths on the route as claimed and what was recorded as Footpath No. 1, crossing fields from the end of the track from Luppitt village. There is no reference to any path in the Apportionment or in the names of the fields on the claimed route, but the map does show gates in the field boundaries on the lines of the routes. They are also shown on other field boundaries nearby in and elsewhere in the parish without the lines of paths to indicate where access can be interpreted as being provided only for agricultural uses of the land.

- 4.3.3 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, but the records provide some supporting evidence that the claimed route existed at that time as a path to have been considered later as a public footpath.

- 4.3.4 The first edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map surveyed in 1887 shows the route as a path with double-dashed lines labelled 'F.P.' on the line of the route as claimed, continuing from the track across fields. It is shown crossing the line of another path in the first field, also labelled 'F. P.', running from another enclosed access track to connect with the line of the path now recorded as Footpath No. 1, which is shown not labelled.

- 4.3.5 The line of the path on the claimed route is shown crossing a stream, labelled with a footbridge, continuing to cross the track and linking with another path running from it. Further on, it crosses another stream with a bridge shown but not labelled and then crossing fields to end at an entrance from the road near Scottishayes Farm.

- 4.3.6 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route with double-dashed lines labelled 'F.P.' crossing the fields on the line of the route as claimed, in the same way as the other paths. The locations of three footbridges where the claimed route crosses streams are shown labelled 'F.B'.

The same later maps used as the basis for the 1910 Finance Act survey show the route to have been included in the hereditaments numbered as part of 102 for Dolish Farm and as 19 for Greenway, with those for other proposals.

- 4.3.7 Copies of the Field Books for those hereditaments with details of the assessment for the farms were included with the application. For Dolish Farm a total deduction of £40 is recorded in respect of a fixed charge for Public Rights of Way or User affecting the whole hereditament of 90 acres. Details of 'Charges, Easements and Restrictions' affecting the value of the land refer to those as 'R[ight] of Way' through the fields with Ordnance Survey numbers 686, 792 and 794 crossed by the claimed route from Luppitt village. For Greenway a total deduction of £50 is recorded for Public Rights of Way or User affecting the whole hereditament of 186 acres. Details of those are specified as 'R[ight] of Way' through fields with Ordnance Survey numbers, including 922 crossed by the rest of the claimed route to the road at Scotshayes. Others relate to separate claimed routes crossing parts of the land either investigated for a previous report, or considered in other proposals below and in a subsequent report.
- 4.3.8 The deductions refer to "R[ight]s of Way" and are included with Public Rights of Way or User, but not specified as for a 'public' footpath or right of way. It suggests that the route was considered to carry some form of right of way at the time, although without any specific reference to it as a 'public' footpath.
- 4.3.9 Luppitt Parish Council minutes – repairs to footbridges, 1907–59  
Transcripts of selected extracts from Luppitt Parish Council minutes, with photographed copies from the minute books, were included in the application and further transcript notes were submitted later. The notes were from references to the repairs of footbridges over streams at several named locations in the parish, including some identified as being on the path for this route and on other claimed routes.
- 4.3.10 Two of the locations were indicated as being on this claimed route: at Scotshayes, on near its end and Town Mead, the first field crossed south of Luppitt village, as identified from the Apportionment details for the Tithe Map. The presence of footbridges were noted on Ordnance Survey maps, as above, with one on a stream crossing Town Mead and two on a stream and a drain crossing other fields near Scotshayes.
- 4.3.11 The earliest Parish Minutes record in November 1907 that tenders put out for the repair of footbridges at Scotshayes and two other named places were considered. One of those was said to be on another of the claimed routes considered below, with the bill for payment of the repairs noted in April 1908. In December 1910, there were requests for footbridges across streams at White's Plot and Turf Houses, both on Hense Moor, which were said to be impassable in time of flood.
- 4.3.12 Nearly 10 years later, a complaint was made in December 1918 that the footbridge at Scotshayes was in a dangerous state. It was reported not to have been repaired by April 1919, but a bill was presented the next month for the cost of its repair, with another one at Week. That was said by the applicant to have been on a route now recorded as a public footpath. There were further reports in April 1924 that the footbridge at Scotshayes, with one at White's Plot on Hense Moor, were in need of repair.
- 4.3.13 An estimate for repairing them was received in the following July, but they were reported not to have been repaired by September. In November, a bill was presented for repairing the footbridges, with another on one of the claimed routes investigated

for the previous committee report. Three years later, it was said in September 1927 to require repairing again, with bills passed for payment in June 1928 for its repair along with another one at Turf House, which had been reported in January as needing to be repaired.

4.3.14 The footbridge at Scotshayes was reported in August 1932 again to be badly in need of repair, with the one in Town Mead. Arrangements were made for their repair, with the cost reported in September to be more than was available in funds, but in February 1933 the work was said to be satisfactory and the bill was paid. There was a report in April 1934 of steps needed for stiles on the footpath from the village to Scotshayes, which it was agreed to have repaired. The bill for repairs to footbridges and stiles was presented in September that year, with the work agreed as satisfactory but insufficient funds again to pay it.

4.3.15 There were further reports of repairs needed to the footbridge at Scotshayes in February 1942 and April 1948, with those on other routes including another claimed route considered in this report and at Week. The repairs were undertaken and bills were presented in March 1943 and May 1948 for their payment, respectively, which was agreed. In July 1959, repairs to the footbridge were said to be needed but were agreed to be delayed until it was known if the route was to be recorded on the Definitive Map.

4.3.16 Later Ordnance Survey mapping and Bartholomew's maps

Most smaller scale maps from the earlier 20<sup>th</sup> century, particularly by Ordnance Survey and Bartholomew's map editions from 1919 up to more recent versions including details of recorded public rights of way, show the claimed route with a dashed line as a path. It was labelled 'F.P.' only in 1948, also indicating then the locations of two footbridges. Their keys included dashed lines to show roads or tracks and footpaths or bridleways, but were subject to the general disclaimer that they were not evidence of a right of way.

4.3.17 Later Ordnance Survey 'A' edition larger-scale mapping from 1963, around the time that the Definitive Map was being drawn up, shows the path continuing from the track on the start of the claimed route, with the line of the recorded footpath and other paths leading across the fields. It is not labelled 'F.P.' and does not indicate the locations of footbridges where it crosses streams. The showing of the route with others on some early and later maps records their physical existence at those times. They do not indicate on their own or support the existence of public rights of way, in accordance with the Ordnance Survey disclaimer.

4.3.18 Aerial photography

Earlier and later aerial photography between 1946–9 and 2007 shows the track leading from the road in Luppitt village on the start of Footpath No. 1 and the claimed route. The lines of worn tracks are shown crossing some of the fields, including from the end of the track, but not on the route as claimed. On some of the later photographs, they appear to be the tracks from farm vehicles crossing the fields for access through field gates to other adjoining fields being cultivated and not on the claimed route.

#### **4.4 Definitive Map Reviews and Consultations**

- 4.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes. The claim was included in the consultations in July 2014 on the same basis as the applications for previous proposals, with the same responses in objection and support only from the applicants.

#### **4.5 User Evidence**

- 4.5.1 As with previous proposals, no supporting evidence of claimed use was submitted with this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

#### **4.6 Landowner and Rebuttal Evidence**

- 4.6.1 The owners of the land of Holmwood, Dolish and Shapcombe Farms crossed by the claimed route completed landowner evidence forms. All of them indicated that the route crossed the land that they owned and they did not believe it to be public. None of them had seen, or been aware of, the public using or wanting to use the route, or had required people to ask permission when using it. Most of them had obstructed the claimed route, with one indicating that hedge on the track had been fenced recently, with no knowledge of any path. None of them had put up notices to say that it was not public and had not made a Section 31 deposit to show lack of intention to dedicate.
- 4.6.2 In additional information, two of them referred to the land having been in their ownership for over 20 or 30 years, or previously in their families' ownership since the early 1920s. One provided a statement relating to the previous ownership of Newhouse Farm up to 1974, when nobody had ever used the route of the claimed footpath.

#### **4.7 Discussion**

- 4.7.1 As with previous proposals, there is no evidence of use to consider whether a statutory presumption of dedication has arisen from use by the public.
- 4.7.2 The historic maps and some of the other historical documentary evidence for this application are the same as for the previous proposals with differences in detail and there is again also no evidence of claimed use for an inference of dedication under the common law test. Earlier historical mapping shows that a track on the start of the route now recorded as part of Footpath No. 1 has existed on the ground since at least the early 19<sup>th</sup> century leading from the road south of Luppitt village into fields. A path leading from it across the fields on the claimed route is shown on the Tithe Map from later in the 19<sup>th</sup> century and on later maps, with others in that area, including Footpath No. 1 and others not recorded as public. Some of them are labelled in larger-scale maps as footpaths and only on one later smaller-scale edition for the claimed route, indicating the locations of footbridges on it and on the road near Scotshayes near its end. However they do not provide any support on their own for the claim that the route may have been considered to be public at those times.

- 4.7.3 The Finance Act records are again the only evidence that could be said to have been discovered and not available to the Parish Council in the 1950s. They suggest that the claimed route may have been considered then to carry public rights with a deduction in the assessment process for it, although without referring to it as a 'public' right of way or footpath. As with previous proposals, there is no evidence for how that was determined as the basis from which any earlier presumed dedication by the landowner or the extent of any use by the wider public could be inferred. Later mapping shows only that the track on part of Footpath No. 1 has continued to exist as a track leading into the fields, with the continuation from it on the claimed route shown more recently and up to the present, but with no worn lines shown on aerial photography.
- 4.7.4 Again, there were no lists of what were considered to be public footpaths in Luppitt parish in 1913 and 1934, as for other claims made in Combe Raleigh from previous reports, for additional evidence suggesting that this route may have had the reputation of being public at those times. The records submitted of expenditure by the Parish Council for maintenance or repairs of footbridges on this route during the first half of the 20<sup>th</sup> century suggest that they accepted some responsibility for minor repairs and provide some evidence that it may have been considered to be public. It was recognised to be a discretionary power rather than a duty, without any formal obligation, as there had then been no statutory recording of public rights of way.
- 4.7.5 However, it does not add sufficient substantial weight to evidence for its reputation of being used by the wider public at the time, rather than perhaps by a limited section of local inhabitants. The records show that there were repairs on footbridges at other locations on the open common land of Hense Moor that may not have been on routes either claimed or recorded later as public footpaths and perhaps connected with other and more limited common access rights.
- 4.7.6 This route was also included by Luppitt Parish Council for its 1951 survey, but only on the basis of being mentioned in Parish Council minutes and again also noted as recorded on the Rural District Council 1932 Rights of Way Act map. No list of paths in the parish following that Act was compiled, as in Combe Raleigh. There was no reference to known use by the public for any previous period of time. It was also proposed to be omitted without sufficient evidence that it was public and not included at the Draft and Provisional map stages for recording on the Definitive Map. A path crossing it from the line of Footpath No. 1 in the same field to another track not on any claimed route was included on the basis of being shown on old Ordnance Survey maps, but did not go on to be recorded as public and has not been the subject of any more recent claim.
- 4.7.7 As with previous proposals, no other more significant evidence from historic maps or historical documentary material has been submitted or discovered to provide a more substantial basis for consideration that the route had the reputation of being a public footpath in the past or more recently. No claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Luppitt Parish Council.
- 4.7.8 Considering the historical evidence and again without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath, or having the reputation of being available for use by the public. There is no evidence to suggest that the landowner

intended to dedicate the route as a public footpath, or that the public accepted any dedication and have used it on that basis on foot.

#### **4.8 Conclusion**

- 4.8.1 It is in the light of this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, that it is insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is again, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the application for Luppitt Proposal 4.

### **5 Proposal 5: Schedule 14 application – claimed addition of footpath between minor road, Meadow Croft and Greenway Lane, points K–L shown on drawing number HTM/PROW/14/144**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 5 for the claimed addition of a footpath.

#### **5.1 Description**

- 5.1.1 The claimed route for this application starts from the same minor road in Proposal 4 south of point J, at the entrance track to Meadow Croft (point K), running through a gateway and along the track passing a house and farm buildings. It continues across a field, then through woodland and across a field, crossing another track to end on the minor road, Greenway Lane (point L).

#### **5.2 The Definitive Map process**

- 5.2.1 This claimed route was included in the survey of paths on behalf of Luppitt Parish Council in 1951, as path No. 49 from Scotshayes ruin through rough ground. That was again only on the basis of being shown on old Ordnance Survey maps and also noted as recorded on the Rural District Council 1932 Rights of Way Act map. It was also not included on the Draft and Provisional Maps or recorded on the Definitive Map.

#### **5.3 Documentary Evidence**

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

This claimed route is not shown on earlier maps at smaller scales, which do not usually show the lines of footpaths.

- 5.3.2 Later 19<sup>th</sup> century historical mapping: Luppitt Tithe Map 1842 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

Some later maps at larger scales show the claimed route in more detail. The Tithe Map for Luppitt parish dated 1842 does not show the line of any path on the route as claimed, crossing fields from the road south of Scotshayes to Greenway Lane. There is no reference to any path in the Apportionment or in the names of the fields on the claimed route, but the map does show gates in the field boundaries on the line of the route and onto Greenway Lane. They are also shown on other field boundaries nearby in and elsewhere in the parish without the lines of paths to indicate where access can be interpreted as being provided only for agricultural uses of the land.



- 5.3.3 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose and the records do not provide any supporting evidence that the claimed route existed at that time as a path to have been considered later as a public footpath.
- 5.3.4 The first edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map surveyed in 1887 shows the route as a path with double-dashed lines labelled 'F.P.' on the line of the route as claimed across the fields between the roads. It is shown crossing the line of another path in the second field, not labelled 'F. P.', running from further along Greenway Lane into other fields and woodland adjoining the lane.
- 5.3.5 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records  
The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition. The same later maps used as the basis for the 1910 Finance Act survey show the route to have been included in the hereditament for Greenway, as in the previous proposal.
- 5.3.6 A copy of the Field Book for that hereditament with details of the assessment for the farm was included with this and other applications. For Greenway, the details of the deduction of £50 for Public Rights of Way or User related to the whole hereditament of 186 acres. Details of those are specified as 'R[ight] of Way' through fields with Ordnance Survey numbers, including 953 and 961 crossed by the claimed route. Others relate to separate claimed routes crossing parts of the land either investigated for a previous report, or considered for other proposals in this report and in a subsequent report.
- 5.3.7 The deductions are included with Public Rights of Way or User, but not specified as being for a 'public' footpath or right of way. It suggests that the the route may have been considered to carry some form of right of way at the time, although without any referring specifically to it as a 'public' footpath and may also have related to the other route crossing one field providing access only to other fields and woodland.
- 5.3.8 Later Ordnance Survey mapping and Bartholomew's maps  
Smaller scale maps from the earlier 20<sup>th</sup> century, particularly by Ordnance Survey and Bartholomew's map editions up to more recently show the claimed route with a dashed line as a path not marked 'F.P.', including on later editions showing recorded public rights of way. Their keys included dashed lines to show roads or tracks and footpaths or bridleways, but were subject to the general disclaimer that they were not evidence of a right of way. Later Ordnance Survey 'A' edition larger-scale mapping from 1963/4, around the time that the Definitive Map was being drawn up, does not show any line of a path on the claimed route, with the track crossing it from Greenway Lane, labelled as 'C.T.' as a cart track.
- 5.3.9 The showing of the claimed route on some early and later maps records its physical existence as a track or path at those times until more recently. They do not indicate on their own or support the existence of public rights of way, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889 and by other editions, which may be presumed to apply to earlier and other commercial maps as well.

#### 5.3.10 Aerial photography

Earlier and later aerial photography between 1946–9 and 2007 does not show the worn line of a path on the claimed route, but shows only the line of the track crossing it from Greenway Lane into the woodland. The later photographs show the house and farm buildings of Meadow Croft at the start of the route from the road.

### **5.4 Definitive Map Reviews and Consultations**

5.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes. The claim was included in the consultations in July 2014 on the same basis as the applications for previous proposals, with the same responses in objection and support only from the applicants.

### **5.5 User Evidence**

5.5.1 As with previous proposals, no supporting evidence of claimed use was submitted with this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

### **5.6 Landowner and Rebuttal Evidence**

5.6.1 The owners of the land at Meadow Croft and adjoining Greenway Lane crossed by the claimed route completed landowner evidence forms. Both of them indicated that the route crossed the land that they owned and they did not believe it to be public. None of them had seen, or been aware of, the public using the route, or had required people to ask permission when using it. Neither of them had obstructed the claimed route, with the owner of Meadow Croft indicating that a farm building obstructed the line of it as claimed. Neither of them had put up notices to say that it was not public or had made a Section 31 deposit to show lack of intention to dedicate.

5.6.2 In further information, the owner of Meadow Croft provided letters opposing the claim from older local residents who had lived in Luppitt for over 50 and 60 years, including a former resident of Greenway Farm, now Greenway Manor. Both reported that they had never seen or heard of anybody using or wanting to use the claimed route as a footpath. The other owner said that it was across wet and stony ground, grazed by cattle and sheep, with fragile woodland where rare and endangered species were thriving because it is undisturbed. She referred to another older local resident who would substantiate the view that it has not been a footpath for many generations, if ever.

### **5.7 Discussion**

5.7.1 As with previous proposals, there is no evidence of use to consider whether a statutory presumption of dedication has arisen from use by the public.

5.7.2 The historic maps and some of the other historical documentary evidence for this application are the same as for the previous proposals with differences in detail and there is again also no evidence of claimed use for an inference of dedication under the common law test. Earlier historical mapping shows that a path on the claimed route existed on the ground from later in the 19<sup>th</sup> century and on later maps, with others in that area. It was labelled in larger-scale maps as a footpath and shown on some later smaller-scale editions as a path but not labelled. However they do not

provide any support on their own for the claim that the route may have been considered to be public at those times.

- 5.7.3 The Finance Act records are again the only evidence that could be said to have been discovered and not available to the Parish Council in the 1950s. They suggest that the claimed route may have been considered then to carry public rights with a deduction in the assessment process for the two fields crossed by it, although without referring to it as a 'public' right of way or footpath and crossing another access track on a different line. As with previous proposals, there is no evidence for how that was determined as the basis from which any earlier presumed dedication by the landowner or the extent of any use by the wider public could be inferred.
- 5.7.4 Later mapping shows only that a path continued to exist on the claimed route shown more recently and up to the present, but with no worn lines shown on aerial photography. All mapping and later aerial photographs show the line of the access track from Greenway Lane into adjoining fields and woodlands, indicated in the 1960s to have been a cart track, crossing the line of the path on claimed route.
- 5.7.5 No records have been submitted of any expenditure by the Parish Council for maintenance or repairs on this route or any further evidence that it may have been considered to be public at any other time, as with other claims. It was also included by Luppitt Parish Council for its 1951 survey, but again only on the basis of being shown on old Ordnance Survey maps and also noted as recorded on the Rural District Council 1932 Rights of Way Act map. No list of paths in the parish following that Act was compiled, as in Combe Raleigh. There was no reference to known use by the public for any previous period of time. It was also proposed to be omitted without sufficient evidence that it was public and not included at the Draft and Provisional map stages for recording on the Definitive Map.
- 5.7.6 No other more significant historic maps or references in historical documentary material have been submitted or discovered to provide any substantial weight to a suggestion that the route may have had the reputation of being a public footpath in the past, or more recently. No claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Luppitt Parish Council.
- 5.7.7 Considering the historical evidence, but without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath for an inference that it had the reputation of being available and used by the public for any previous period of time. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted any dedication and used it at any time in the past on foot, or have continued to use it on that basis.

## **5.8 Conclusion**

- 5.8.1 It is in the light of this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, that it is insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is again, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the application for Luppitt Proposal 5.

## **6 Proposal 6: Schedule 14 application – claimed addition of footpath between minor road, Hillend Farm and minor road, Budgells Farm, points M–N shown on drawing number HTM/PROW/14/141**

Recommendation: It is recommended that no Modification Order be made in respect of Luppitt Proposal 6 for the claimed addition of a footpath.

### **6.1 Description**

6.1.1 The claimed route for this application starts from the minor road on the western side of Hartridge Common east of Luppitt village, near the start of the recorded Footpath No. 17 at Hillend Farm (point M). It follows a track crossing the open registered common land to the minor road running across Hartridge Common. It continues across the road along a track through a field and open land, both also part of the registered common, to end on the minor road near Budgell's Farm and the parish boundary southwest of Uppottery village, leading to Odle Farm (point N).

### **6.2 The Definitive Map process**

6.2.1 This route was included in the survey of paths on behalf of the Parish Council in 1951, as path No. 20 described as a common route to the road leading to Higher Odle. That was again only on the basis of being shown on old Ordnance Survey maps and also noted as having only part of it recorded on the Rural District Council 1932 Rights of Way Act map. It was also not included on the Draft and Provisional Maps or recorded on the Definitive Map.

### **6.3 Documentary Evidence**

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

A copy of Donn's map of 1765 was submitted with this application. It shows the line of a road or track from near Luppitt village, partly with dashed lines to indicate where it was unenclosed crossing the open common land of Hartridge Common. It crosses the road running through the common, to continue across the open land onto the road near Weddle (now Odle) leading to Uppottery. It is shown in the same way on some other maps at smaller scales from the early 19<sup>th</sup> century, only on part of the route leading to the road across Hartridge Common and with no continuation on the rest of the route as claimed.

6.3.2 Later 19<sup>th</sup> century historical mapping: Luppitt Tithe Map 1842 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

Later maps at larger scales show parts or all of the claimed route in more detail. The Tithe Map for Luppitt parish dated 1842 shows part of it as an unenclosed track as a continuation of the road from Luppitt across the open land of Hartridge Common to connect with a track running down the common on the line of the current road. No track is shown continuing across the open land on the rest of the claimed route onto where the road continues at Odle from another track around the edge of the common from the south. There is no reference to any path in the Apportionment for Hartridge Moor crossed by the claimed route, which is included with details of other common and waste land in the parish. No gates are shown on the line of the tracks leading onto and across the open common land.

- 6.3.3 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, although it shows the lines of paths crossing some fields in other parts of Luppitt parish. The Tithe Map records provide some supporting evidence that part of the claimed route existed as a track at that time, although not that it may have been considered then to public.
- 6.3.4 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows the line of a track on the claimed route, mainly with double-dashed lines as unenclosed, continuing from other tracks shown in the same way and now recorded as the minor public road from Luppitt crossing the open land of Hartridge Hill near Hillend Farm. It continues across the road through Hartridge, as an unenclosed track through the open land, with other tracks crossing it shown in the same way to meet the corner of the road leading to Lower Odle at the edge of the common. The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century shows a mainly unenclosed track on most of the route in the same way.
- 6.3.5 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records  
The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map. The same later maps used as the basis for the 1910 Finance Act survey show this claimed route to have been included in the defined hereditament, or assessment area of land, numbered as part of 16 for 629 acres with all of the open common land in the whole parish, including Hartridge Common.
- 6.3.6 Copies of the Field Book records for that open land, not submitted with this application, refer to it as an area of common and waste land with rights of common and 'probably many rights of way'. There is a large deduction specified for the rights of common, but no deduction for any public rights of way or user. Several lines of paths or tracks are shown on the maps crossing the open common land in the parish, and other tracks or paths crossing Hartridge Common. It would be difficult to specify whether that reference to rights of way could have included this claimed route, but without any specific deductions for them, as well as distinguishing them from what are likely to have been considered as routes connected with access for other common rights on Hartridge Common.
- 6.3.7 Later Ordnance Survey mapping and Bartholomew's maps  
Smaller scale maps from the earlier 20<sup>th</sup> century, particularly by Ordnance Survey and Bartholomew's map editions up to more recently show the claimed route as an unenclosed track, or partly with a dashed line as a path not marked 'F.P.', including on later editions showing recorded public rights of way. Their keys included dashed lines to show roads or tracks and footpaths or bridleways, but were subject to the general disclaimer that they were not evidence of a right of way. Later Ordnance Survey 'A' edition larger-scale mapping from 1963/4, around the time that the Definitive Map was being drawn up, shows the line of a mainly unenclosed track or path on the claimed route crossing the open lands of Hartridge Common and crossing the road, labelled in different parts as 'C.T.' as a cart track or as 'Track'.
- 6.3.8 The showing of the claimed route on some early and later maps records its physical existence as a track or path at those times until more recently. They do not indicate on their own or support the existence of public rights of way, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889 and by other editions, which may be presumed to apply to earlier and other commercial maps as well.

#### 6.3.9 Aerial photography

Earlier and later aerial photography between 1946–9 and 2007 shows the lines of mainly unenclosed tracks on the claimed route crossing the open land of Hartridge Common, with the lines of several other tracks crossing the land to buildings and into adjoining fields connected with it and leading to the road at Odle.

### **6.4 Definitive Map Reviews and Consultations**

6.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes. The claim was included in the consultations in July 2014 on the same basis as the applications for the previous proposals, with the same responses in objection and support only from the applicants.

### **6.5 User Evidence**

6.5.1 As with previous proposals, no supporting evidence of claimed use was submitted with this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law. In later consultations, the owner of adjoining land at Hillend Farm submitted a user evidence form for this route with her landowner evidence. However, it is considered to be insufficient on its own, or as public use by the owner of land adjoining the route.

### **6.6 Landowner and Rebuttal Evidence**

6.6.1 The owner of land at Hillend Farm adjoining part of the claimed route and the Vice-Chairman of the Trustees of the Luppitt Commons on behalf of the owners of Hartridge Common and commoners completed landowner evidence forms. They indicated that the claimed route crossed or adjoined their land or property. The owner of Hillend Farm had believed that it was public since 1978, from seeing regular use by pedestrians and horse riders as well as for moving flocks of sheep and sometimes cattle. The Chairman of the Commons Trustees did not believe it to be public and had not seen, or been aware of, the public using the route. Neither of them had required people to ask permission when using it and had not turned back or stopped anyone from using it.

6.6.2 Neither of them had obstructed the claimed route and had not put up notices to say that it was not public, or made a Section 31 deposit to show lack of intention to dedicate. None reported that there were any gates on the route which may have been locked, or any other obstructions. In additional information, the owner of

6.6.3 In additional information, the Vice-Chairman of the Trustees of the Luppitt Commons provided further details relating to Hartridge Common as privately owned open land with common rights and designated as Open Access land under the Countryside and Rights of Way Act 2000, for the whole of the claimed route. As with Proposals 1 and 2, he reported his own views with those of two older local residents involved in management of the common land and the recording of public rights of way in the parish. None of them believed the route to be public, or had ever seen anyone using or attempting to use as it a public footpath.

6.6.4 He also supplied information, with a photograph, about a sign said to have been on the land at the western end of the claimed route, near where it is crossed by the road on Hartridge Common. As with Proposal 1, it was reported to have been there since about 1980 stating that the area is designated as private open space belonging to the

registered commoners of Luppitt and is not a public right of way. In her additional information, the owner of Hillend Farm reported that Blackdown Hills Riding Group had put up a sign at point M on the route that had been destroyed, but did not indicate what it had said.

## **6.7 Discussion**

- 6.7.1 As with previous proposals, no evidence of use was submitted with the application to support this claimed addition. The only evidence is from one form submitted from informal consultations with landowners, which is not sufficient for any 20-year period to consider whether a statutory presumption of dedication has arisen from use by the public.
- 6.7.2 Most of the historic maps and some of the other historical documentary evidence for this application are the same as for previous proposals, with some significant differences in detail and in this case the only evidence of claimed use is also insufficient for an inference of dedication under the common law test. Earlier historical mapping shows that parts of a track on the route as claimed has existed on the ground since at least the middle of the 18<sup>th</sup> century and from the early 19<sup>th</sup> century as crossing the open land of Hartridge Common, including on the larger-scale Tithe Map. It is shown on later maps from the later 19<sup>th</sup> century until the early 20<sup>th</sup> century as a track or path across the open land, not labelled as a footpath but later as a track or cart track. However, they do not provide any support on their own for the claim that the route may have been considered to be public at those time.
- 6.7.3 There are no details from Finance Act records to indicate whether the route may have been considered then to carry public rights with no specified deductions in the assessment process for the open common land of Hartridge Common, with several other routes crossing the land and other common rights affecting it. It reduces the weight of evidence supporting this claim, as not providing any that could be said to have been discovered and not available to the Parish Council in the 1950s. Later mapping with aerial photography and other records show only that it has continued to exist as a track or path on its current line on the claimed route more recently and up to the present.
- 6.7.4 Again, there were no lists of what were considered to be public footpaths in Luppitt parish in 1913 and 1934, as for other claims made in Combe Raleigh from previous reports, for additional evidence suggesting that this route may have had the reputation of being public at those times. No records have been submitted of any expenditure by the Parish Council for maintenance or repairs on this route for any further evidence that it may have been considered to be public at any other time, as with other claims.
- 6.7.5 This route was also included by Luppitt Parish Council for its 1951 survey, referring to it as a common route or public accommodation road, but again only on the basis of being shown on old Ordnance Survey maps and also noted as having only part of it recorded on the Rural District Council 1932 Rights of Way Act map. No list of paths in the parish following that Act was compiled, as in Combe Raleigh. There was no reference to known use by the public for any previous period of time. It was also proposed to be omitted without sufficient evidence that it was public and not included at the Draft and Provisional map stages for recording on the Definitive Map.
- 6.7.6 No other more significant historic maps or references in historical documentary material have been submitted or discovered to provide any substantial weight to a suggestion that the route may have had the reputation of being a public footpath in

the past, or more recently. No claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Luppitt Parish Council.

- 6.7.7 Considering the historical evidence, but in this case with less than minimal evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred, or as a bridleway from the reported use by horse riders. The reported use for moving cattle and sheep is interpreted as private use for agricultural access, or under commoners' rights and therefore not public use.
- 6.7.8 The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath for an inference that it had the reputation of being available and used by the public for any previous period of time. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted any dedication and used it at any time in the past on foot, or have continued to use it on that basis. The whole route crosses land that is registered as common, now with a right of public access under the Countryside and Rights of Way Act of 2000.

## **6.8 Conclusion**

- 6.8.1 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the applications for Luppitt Proposal 6.

## **7 Proposal 7: Schedule 14 application – claimed addition of footpath between minor road, Hillend Farm and Bridleway No. 9 via Footpath No. 14, points O–P shown on drawing number HTM/PROW/14/141**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 7 for the claimed addition of a footpath.

### **7.1 Description**

- 7.1.1 The claimed route for this application starts from the minor road on the western edge of Hartridge Common, west of Hillend Farm and point M on Proposal 6 (point O). It runs through a gateway and across fields passing north of Goulds Farm, crossing a track and a stream to continue across the open registered common land of Hense Moor. It crosses the recorded line of Footpath No. 14 and turns to follow an access track to a property, ending on the minor road crossing Hense Moor from Luppitt village, also recorded as Bridleway No 9, near Honeywells (point P).

### **7.2 The Definitive Map process**

- 7.2.1 This claimed route was included in the survey of paths on behalf of Luppitt Parish Council in 1951, as path No. 11 to Goulds and Hillend Road. That was on the basis of being mentioned in Parish Council minutes and also noted as being recorded on the Rural District Council 1932 Rights of Way Act map. It was also not included on the Draft and Provisional Maps or recorded on the Definitive Map.



### 7.3 Documentary Evidence

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

This claimed route is not shown on earlier maps at smaller scales, which do not usually show the lines of footpaths.

7.3.2 Later 19<sup>th</sup> century historical mapping: Luppitt Tithe Map 1842 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

Some later maps at larger scales show parts of the claimed route in more detail. No line of any path is shown on the Tithe Map for Luppitt parish dated 1842 on the claimed route across fields between the unenclosed areas of land of Hawkridge Common and Hense Moor at each end. As with other proposals, there is no reference to any path in the Apportionment or the names of the fields, although the map does show gates in the field boundaries on parts of the line of the route, as in most fields throughout the parish.

7.3.3 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, although the lines of paths are shown crossing some fields in other parts of the parish. The Tithe Map records do not, therefore, provide any supporting evidence that this claimed route may have existed on the ground to be considered then as public.

7.3.4 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows the claimed route with double-dashed lines as an unenclosed path running from the track on the edge of Hartridge Hill, now the road at Hillend, across fields north of Gould's Dairy. It continues across a stream, marked with a ford and footbridge, onto the open land of Hense Moor to connect with other tracks or paths crossing the land, ending on a track at Honeywell now recorded as a maintainable highway and Bridleway No. 9. The path is labelled 'F.P.' in some places and, as with other proposals, some of the field, lane and road boundaries on the claimed route then are at points marked on the Tithe Map more than 40 years earlier as having gates.

7.3.5 The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century does not show the line of any path on the claimed route between the areas of open land.

7.3.6 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map, labelled 'F.P.' on some sections. The same later maps used as the basis for the 1910 Finance Act survey show this claimed route to have been included in three hereditaments, or assessment areas of land. They were those numbered 101 for Hillend Farm, with parts of 44 for Coombeshead and 16 for all of the open common land in the whole parish, including Hense Moor, both of which are considered in previous proposals.

7.3.7 No copies of the Finance Act records were submitted with this application. From other records, overall details in the Finance Act 'Domesday Book' for the whole parish show Hillend to have been 156 acres, including parts of open land on Hartridge Moor, but with no deductions for Public Rights of Way or User. The Field Books from the process considered previously for other proposals show a total deduction for Coombeshead of £25 in respect of a fixed charge for Public Rights of Way or User

affecting the value of the land at 93 acres. Details of 'Charges, Easements and Restrictions' affecting the value of the land refer to it as for a 'right of way' only for the one field on the claimed route in Proposal 3, as above, but not for any of those at Gould's Dairy on this claimed route.

- 7.3.8 As with previous proposals crossing the open land of Hense Moor, Field Book records that were not submitted with the application refer to it as an area of common and waste land with rights of common and 'probably many rights of way'. The large deduction is for rights of common, but with none for any public rights of way or user and several lines of paths or tracks shown on the maps crossing 230 acres of open common land in the parish, including Hense Moor. The reference to rights of way cannot be taken to have included this claimed route without any specific deductions for them, as well as distinguishing them from what are likely to have been considered as routes connected with access for other common rights on Hense Moor. Taken together, the records show that this route was not considered to carry any form of right of way that may have been considered at that time to be public.
- 7.3.9 Luppitt Parish Council minutes – repairs to footbridges, 1907–59  
As with Proposal 4, transcripts of selected extracts from Luppitt Parish Council minutes, with photographed copies from the minute books, were included in this application and further transcript notes were submitted later. The notes from references to the repairs of footbridges over streams and stiles at several named locations in the parish included some identified as being on this claimed route.
- 7.3.10 Two of the locations indicated on the route were for a footbridge and stile at Goulds and a stile at Hillend. The presence of a footbridge on the line of the route as claimed was identified on Ordnance Survey maps, as above, crossing a stream on the edge of Hense Moor. The earliest Parish Minutes record repairs to the footbridge at 'Gooles' in 1901, but in August 1907 the bridge was said to be in a dangerous state and then discussed at the next meeting in October when it was proposed that tenders should be invited for repairing it. Tenders for the repairs to the footbridge with others, as in Proposal 4, were considered at the November meeting and noted as being paid in April 1908 after being inspected.
- 7.3.11 In April 1910, the condition of stiles at Goulds and Hillend was raised and it was proposed that three members of the Council should inspect them, with their consideration in June adjourned to a future meeting. They were discussed again in October, but thought to be too expensive for the Parish Council to deal with and the proposal that the matter should be allowed to drop was carried unanimously. After nearly 15 years, in March 1925, a verbal complaint was reported to have been made that there were no steps on the stiles leading from Goulds to Hillend. It was agreed to be adjourned until the Annual General Meeting and discussed in April, but as the complaint had only been verbal it was agreed then to let the matter drop.
- 7.3.12 Further repairs to the footbridge over the river near Goulds were proposed and agreed more than 10 years later, in February 1937, with the bill for its repair noted in the following August to have been received and agreed to be paid. The latest reference to the footbridge at Goulds needing repair was in May 1952, when the Chairman asked to see it and get the necessary work put in hand. In August, it was reported that the necessary work on the bridge needed to be done, with the bills for timber and labour received in December. As they were considered to be rather large, the bridge was to be inspected with a request for a more detailed account.

#### 7.3.13 Later Ordnance Survey mapping and Bartholomew's maps

Smaller scale maps from the earlier 20<sup>th</sup> century, particularly by Ordnance Survey and Bartholomew's map editions up to more recently show the claimed route with a dashed line as a path, including on some later editions showing recorded public rights of way. It was marked 'F.P.' only on the 1948 edition, indicating the locations of the ford and footbridge. Their keys included dashed lines to show roads or tracks and footpaths or bridleways, but were subject to the general disclaimer that they were not evidence of a right of way

7.3.14 The later Ordnance Survey 'A' edition larger-scale mapping from 1963/4 shows the path on the claimed route, labelled 'F.P.' and showing the locations of the ford and footbridge. The showing of the route on some early and later maps records their physical existence at those times. They do not indicate on their own or support the existence of public rights of way, in accordance with the Ordnance Survey disclaimer.

#### 7.3.15 Aerial photography

Earlier and later aerial photography between 1946–9 and 2007 shows only the surfaced roads at each end of the claimed route, with no worn lines of any path or track shown connecting them on the rest of the route but only wear at the locations of gate used for agricultural access. The access track to a property on Hense Moor is shown on part of the route as claimed leading onto the minor road recorded as Bridleway No. 19 at Honeywell.

### **7.4 Definitive Map Reviews and Consultations**

7.4.1 There have been no previous suggestions that this whole claimed route should be considered for recording as a public right of way in earlier review processes. This current claim was included in the consultations in July 2014 on the same basis as the applications for the previous proposals, with the same responses in objection and support only from the applicants.

### **7.5 User Evidence**

7.5.1 As with previous proposals, no supporting evidence of claimed use was submitted with this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law. The owner of adjoining land at Hillend Farm from the previous proposal also submitted a user evidence form for this route with her landowner evidence in later consultations. However, it is again considered to be insufficient on its own to be public use.

### **7.6 Landowner and Rebuttal Evidence**

7.6.1 The owners of land at Goulds Farm and Chapelhayes Farm on the claimed route, with the Vice-Chairman of the Trustees of the Luppitt Commons on behalf of the owners of Hartridge Common and commoners, completed landowner evidence forms. They indicated that the claimed route crossed their land. None of them believed it to be public and had not seen, or been aware of, the public using the route and had not required people to ask permission when using it and had not turned back or stopped anyone from using it.

7.6.2 None of them had obstructed the claimed route and had not put up notices to say that it was not public, or made a Section 31 deposit to show lack of intention to dedicate. None reported that there were any gates on the route which may have been locked,

or any other obstructions. For additional information, the owner of Chapelhayes Farm submitted a letter from a resident of Luppitt who had worked at Hillend Farm from 1958 to 1966. He indicated that he had never seen anyone using the claimed route and had not seen anyone using it since then, adding that to his knowledge there had been no time when the public had tried to access the route and that no public right of way exists or is necessary.

- 7.6.3 In additional information, the Vice-Chairman of the Trustees of the Luppitt Commons provided further details relating to Hense Moor as privately owned open land with common rights and designated as Open Access land under the Countryside and Rights of Way Act 2000, for part of the claimed route. As with previous proposals, he reported his own views with those of two older local residents involved in management of the common land and the recording of public rights of way in the parish. None of them believed the route to be public, or had ever seen anyone using or attempting to use as it a public footpath.

## **7.7 Discussion**

- 7.7.1 As with previous proposals, no evidence of use was submitted with the application to support this claimed addition. The only evidence is again from one form submitted from informal consultations with landowners, which is not sufficient for any 20-year period to consider whether a statutory presumption of dedication has arisen from use by the public.
- 7.7.2 Most of the historic maps and some of the other historical documentary evidence for this application are the same as for previous proposals, with some significant differences in detail and, as in the previous proposal, the only evidence of claimed use is again also insufficient for an inference of dedication under the common law test. Earlier historical mapping shows that a path on part of the claimed route existed on the ground from later in the 19<sup>th</sup> century and on later maps, with others in that area, but not crossing the open land of Hense Moor. Part of it was labelled in larger-scale maps as a footpath and shown on some later smaller-scale editions as a path, with one indicating the locations of a ford and footbridge. However they do not provide any support on their own for the claim that the route may have been considered to be public at those times.
- 7.7.3 Finance Act records do not indicate that any part of the route may have been considered then to carry public rights, with no deductions in the assessment process and none specified for the open common land of Hense Moor, with several other routes crossing the land and other common rights affecting it. It reduces the weight of evidence supporting this claim, as limiting any that could be said to have been discovered and not available to the Parish Council in the 1950s. Later mapping with aerial photography and other records show only that it has continued to exist as a track or path on its current line on the claimed route more recently and up to the present.
- 7.7.4 Again, there were no lists of what were considered to be public footpaths in Luppitt parish in 1913 and 1934, as for other claims made in Combe Raleigh from previous reports, for additional evidence suggesting that this route may have had the reputation of being public at those times. Again, there were no lists of what were considered to be public footpaths in Luppitt parish in 1913 and 1934, as for other claims made in Combe Raleigh from previous reports, for additional evidence suggesting that this route may have had the reputation of being public at those times. The records submitted of expenditure by the Parish Council for maintenance or repairs of footbridges and stiles on this route during the first half of the 20<sup>th</sup> century

suggest that they accepted some responsibility for minor repairs and provide some evidence that it may have been considered to be public. It was recognised to be a discretionary power rather than a duty, without any formal obligation, as there had then been no statutory recording of public rights of way.

- 7.7.5 However, it does not add sufficient substantial weight to evidence for its reputation of being used by the wider public at the time, rather than perhaps by a limited section of local inhabitants. The repairs were to a footbridge over a river and on a route giving access from farmland onto the open common land of Hense Moor. The records show that there were repairs on footbridges at other locations on Hense Moor that may not have been on routes either claimed or recorded later as public footpaths and perhaps connected with other and more limited common access rights.
- 7.7.6 This route was also included by Luppitt Parish Council for its 1951 survey, with reference to being mentioned in the Parish Council minutes and also being recorded on the Rural District Council 1932 Rights of Way Act map. No list of paths in the parish following that Act was compiled, as in Combe Raleigh. There was no reference to known use by the public for any previous period of time. It was also proposed to be omitted without sufficient evidence that it was public and not included at the Draft and Provisional map stages for recording on the Definitive Map.
- 7.7.7 No other more significant historic maps or references in historical documentary material have been submitted or discovered to provide any substantial weight to a suggestion that the route may have had the reputation of being a public footpath in the past, or more recently. No claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Luppitt Parish Council.
- 7.7.8 Considering the historical evidence, but again with less than minimal evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath for an inference that it had the reputation of being available and used by the public for any previous period of time. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted any dedication and used it at any time in the past on foot, or have continued to use it on that basis. Part of the route as claimed crosses land that is registered as common, now with a right of public access under the Countryside and Rights of Way Act of 2000.

## **7.8 Conclusion**

- 7.8.1 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the application for Luppitt Proposal 7.

## **8 Luppitt Proposal 8: Schedule 14 application – claimed addition of footpath between Greenway Lane, Greenway Manor and minor road, Higher Shelvin, points Q–R shown on drawing number HTM/PROW/14/142**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 8 for the claimed addition of a footpath.

### **8.1 Description**

8.1.1 The claimed route for this application starts from the minor road, Greenway Lane, south east from the end of Proposal 5 from the entrance driveway to Greenway Manor (point Q). It runs along the driveway passing the Greenway Manor buildings, then through woodland and crossing fields onto a track north of Little Shelvin Farm. It continues across fields west of Little Shelvin then following a track to end on the cul-de-sac minor road leading to Lower Shelvin, opposite the buildings of Higher Shelvin (Point R).

### **8.2 The Definitive Map process**

8.2.1 This claimed route was included in the survey of paths on behalf of Luppitt Parish Council in 1951, as path No. 47 to Greenway and reported to be very wet in one field. That was again only on the basis of being shown on old Ordnance Survey maps and also noted as having been recorded on the Rural District Council 1932 Rights of Way Act map. It was also not included on the Draft and Provisional Maps or recorded on the Definitive Map.

### **8.3 Documentary Evidence**

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

Most of this claimed route is not shown on earlier maps at smaller scales, which do not usually show the lines of footpaths. Parts of tracks are shown leading from the roads at each end into Greenway and at Higher Shelvin, but with no line of a connecting path between them.

8.3.2 Later 19<sup>th</sup> century historical mapping: Luppitt Tithe Map 1842 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

Some later maps at larger scales show parts of the claimed route in more detail. The Tithe Map for Luppitt parish dated 1842 shows the sections of track at each end, but no line of any path across the fields connecting them. As with other proposals, there is no reference to any path in the Apportionment or the names of the fields, with the track at Greenway described as a 'Drove-way'. The map shows gates in the field boundaries on parts of the line of the route, as in most fields throughout the parish.

8.3.3 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, although the lines of paths are shown crossing some fields in other parts of the parish. The Tithe Map records do not, therefore, provide strong supporting evidence that the whole claimed route may have existed on the ground to be considered then as public. They show only the physical existence of the roads at each end and tracks on parts of the route leading from them, but with no linking path across fields connecting them.

- 8.3.4 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows the start of the claimed route as an enclosed track from the road running past the buildings at Greenway Farm, alongside woodland. It continues through fields shown as a path with double-dashed lines, labelled 'F.P', passing the buildings at Little Shelvin onto a length of enclosed track that joins another track leading to the road at Higher Shelvin. As with other proposals, some of the field boundaries on the claimed route then are at points marked on the Tithe Map more than 40 years earlier as having gates.
- 8.3.5 The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century shows only the roads at each end and the tracks at Greenway Farm and Shelvin on part of the claimed route. It is at too small a scale to show any lines of paths connecting them.
- 8.3.6 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records  
The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map, labelled 'F.P'. The same later maps used for the 1910 Finance Act survey show this claimed route to have been included in the hereditaments, or assessment areas of land, for Greenway and Sansoms, now Little Shelvin, as considered previously for other proposals above and for claims in a previous report. The track leading to the road at Higher Shelvin is shown excluded from the adjoining land.
- 8.3.7 Copies of the Field Books for Greenway and Sansoms, with details of the assessment for those farms, were included with this application. For Greenway, a total deduction of £50 is recorded in respect of a fixed charge for Public Rights of Way or User affecting the value of the land for 186 acres. Details of 'Charges, Easements and Restrictions' refer to those as 'R[ight] of Way' through several fields with Ordnance Survey numbers, including 1070 with the buildings and curtilage of Greenway and 1074, crossed by part of this claimed route. Others relate to separate claimed routes crossing parts of the land either investigated for a previous report, or considered for other proposals in this report and in a subsequent report.
- 8.3.8 For Sansoms, with a total of 48 acres, there was no deduction specified for Public Rights of Way or User in the details of charges. In the inspection notes, there are details for 'R[ight] of Way' relating to the fields numbered 1096, 1099 and 1101 on the continuation of the route to the track, but with no figure for a deduction. It is also noted that there was a 'Right of the farms along the road Ord. No. 1190', which is recorded now as the minor public road passing Higher Shelvin, connecting to the track at the end of the route as claimed. The deductions as recorded suggest that parts of the route were considered to carry some form of right of way at the time, although without any specific reference to it as a 'public footpath' and without being clear about whether they related to the whole route through the fields.
- 8.3.9 Luppitt Parish Council minutes, 1908  
As for Proposals 4 and 7, a transcript of a selected extract from Luppitt Parish Council minutes, with a photographed copy from the minute books, were included in this application. The notes are from a reference to the clearance of an obstruction identified as being on this claimed route. The minute from September 1908 records that complaints had been received of an obstruction across the footpath in the first field after passing Greenway House towards Shelvin by branches of trees being thrown across. It was agreed that the Clerk should write to either the owner or occupier who had caused the obstruction requesting their removal. There is no

record following it up with any information on the outcome of that report, or any other instances of further reports that could be identified as referring to this claimed route.

#### 8.3.10 Later Ordnance Survey mapping and Bartholomew's maps

Most smaller scale maps from the earlier 20<sup>th</sup> century, particularly by Ordnance Survey and Bartholomew's map editions up to more recently, are at too small a scale to show the whole claimed route in any detail. Some of them show only the track at Higher Shelvin leading to the road, with later editions showing a path or track on the whole route. It is marked 'F.P.' only on the 1948 edition and was included on some later editions showing recorded public rights of way, but not more recently. Their keys included dashed lines to show roads or tracks and footpaths or bridleways, but were subject to the general disclaimer that they were not evidence of a right of way

8.3.11 The later Ordnance Survey 'A' edition larger-scale mapping from 1960/4 shows only the tracks at the start of the route leading from the road at Greenway Farm and at the end of the route leading to the road at Higher Shelvin, with no sections of paths connecting them on the rest of the route across fields. The showing of parts or all of the route on some early and later maps records their physical existence at those times. They do not indicate on their own or support the existence of public rights of way, in accordance with the Ordnance Survey disclaimer.

#### 8.3.12 Aerial photography

Aerial photography from 1946–9 is incomplete and shows only the track leading from the road to Greenway. Later versions from between 1999-2000 and 2007 shows only sections of the tracks at each end of the claimed route, wooded in parts, with no worn lines of tracks or paths connecting them across the fields.

### **8.4 Definitive Map Reviews and Consultations**

8.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes. This claim was included in the consultations in July 2014 on the same basis as the applications for the previous proposals, with the same responses in objection and support only from the applicants.

### **8.5 User Evidence**

8.5.1 As with previous proposals, no supporting evidence of claimed use was submitted with this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

### **8.6 Landowner and Rebuttal Evidence**

8.6.1 The owners of land at Greenway Manor and Little Shelvin Farm on the claimed route completed landowner evidence forms, with additional information submitted by a countryside access consultant acting on behalf of the owner of Greenway Manor. In the evidence forms, both of the landowners indicated that the claimed route crossed their land. Neither of them believed it to be public and had not seen, or been aware of, the public using the route. They had not required people to ask permission when using it and had not turned back or stopped anyone from using it. Both reported that it had never been used during their ownership.



- 8.6.2 Neither of them had obstructed the claimed route or put up notices to say that it was not public and had not made a Section 31 deposit themselves to show lack of intention to dedicate. The owner of Greenway Manor indicated that a previous owner had made a deposit. There are records of deposits by or on behalf of two different previous owners, in 1994 and then in 2008 after receiving notice of the application. He indicated as well the locations of gates on the route that were locked, at the entrance from Greenway Lane and with stock fencing on the boundary with Little Shelvin land. Neither referred to any other obstructions on the claimed route.
- 8.6.3 In additional information, the owner of Little Shelvin said that there had been no mention of the existence of any footpath, or a claimed footpath, in their preliminary enquiries and local authority searches when they bought the farm. With no physical evidence of a path, they did not believe it had been used for at least 20 years or, if so, used only on a private basis with the owner's consent. He considered that a public footpath would be damaging to the farm business and the property in general.
- 8.6.4 The additional information by the consultant included references to the legal background for the authority's duty to investigate evidence and her interpretation of the evidence submitted with this application, as considered above. She emphasised the requirement that changes to the Definitive Map could only be considered on the basis of sufficient evidence 'discovered' and not just what had been available when the Definitive Map was drawn up.
- 8.6.5 Her overall assessment of the detail in the evidence submitted with the application is generally the same as considered above relating to Ordnance Survey maps, 1910 Finance Act documents, Parish Council minutes and the 1951 Parish Council survey records, with the Tithe Map. She concluded that the documents available when the Definitive Map and Statement were prepared cannot be considered to provide cogent evidence of public rights over the claimed route. In particular, she considered that the Finance Act 1910 documents do not support an allegation that the claimed route is a public footpath, although submitted in support of the claim.

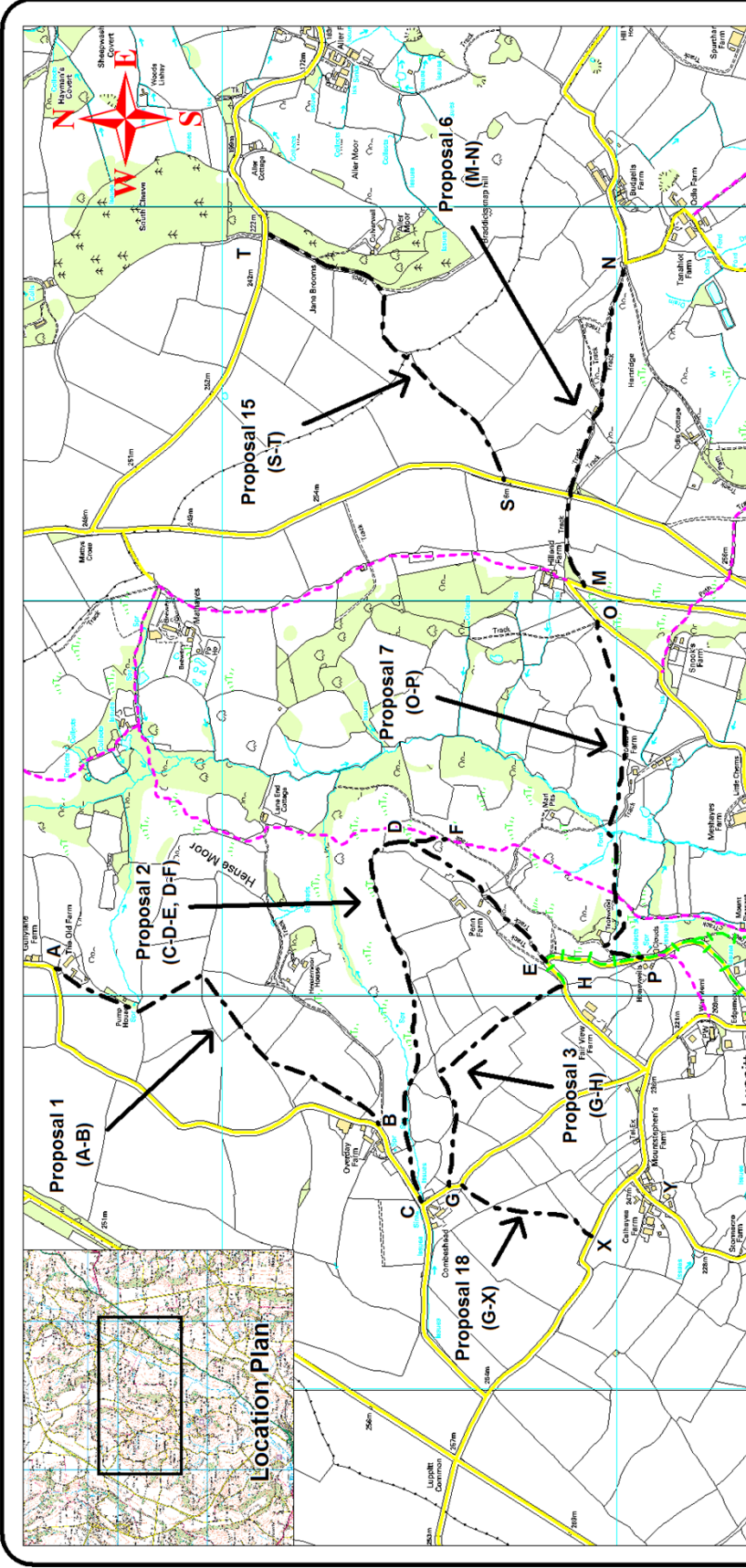
## **8.7 Discussion**

- 8.7.1 As with previous proposals, no evidence of use has been submitted to support this claimed addition, so that there is none during any 20-year period to consider whether a statutory presumption of dedication has arisen from use by the public.
- 8.7.2 Most of the historic maps and other historical documentary evidence for this application are the same as for previous proposals, with some differences in detail and there is also no evidence of claimed use for an inference of dedication under the common law test. Earlier historical mapping shows that the sections of tracks on parts of the claimed route have existed on the ground since at least the early 19<sup>th</sup> century with the public roads at the start and end of the route.
- 8.7.3 The larger-scale Tithe Map from the first half of the 19<sup>th</sup> century does not show any sections of path connecting the tracks on the claimed route across fields. They are shown on some of the later maps up to the later 20<sup>th</sup> century as paths crossing fields, but not more recently, parts of which are labelled 'F.P.' on one small-scale edition. However, they do not provide any support for the claim that the route may have been considered to be public at those times.

- 8.7.4 The later Finance Act records suggest that parts of the route may have been considered then to carry public rights with deductions in the assessment process for some of the fields crossed by it, but without referring to them as 'public' rights of way or footpaths and with details for others on the route not included. As with previous proposals, there is no evidence for how that was determined as the basis from which any earlier presumed dedication by the landowner or the extent of any use then by the wider public could be inferred.
- 8.7.5 Later mapping with aerial photography and other records show only that sections of track have continued to exist at each of the route from the road up to the present, but with no substantial evidence for it continuing to exist as a path across fields connecting them more recently to have been considered as a public footpath at those times.
- 8.7.6 No lists of what were considered to be public footpaths in the parish were compiled by Luppitt Parish Council equivalent to those recorded by Combe Raleigh Parish Meeting in 1913 and 1934. The single reference in Parish Council minutes to the report of an obstruction on the route submitted in support of this application is inconclusive, in terms of its location or any outcome and with no further reference it is considered not to provide any significant weight as supporting evidence.
- 8.7.7 The route was included in Luppitt Parish Council's 1951 survey in the later procedures for recording public rights of way on a statutory basis for the first time. As with other routes, the grounds for believing it to be public were that it was shown as a footpath on the Ordnance Survey map and being shown on a map prepared by the Rural District Council under the 1932 Act. It was not on the basis of having been used by the public for any previous period of time. There was no reference to known use by the public for any previous period of time. It was also proposed to be omitted without sufficient evidence that it was public and not included at the Draft and Provisional map stages for recording on the Definitive Map. Several other routes in that area of the parish were also included in the survey and not recorded, but have not been claimed with these applications.
- 8.7.8 No other more significant historic maps or references in historical documentary material have been submitted or discovered to add more substantial weight to any suggestion that the route had the reputation of being a public footpath in the past, or more recently. In particular, no claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Luppitt Parish Council.
- 8.7.9 Considering the historical evidence, but without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath for an inference that it had the reputation of being available and used by the public. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted any dedication and used it at any time in the past on foot, or have continued to use it on that basis.

## **8.8 Conclusion**

- 8.8.1 This assessment of the evidence is in accordance with its interpretation by the consultant on behalf of the landowner. The evidence submitted with the application for this claim, in conjunction with other historical evidence and all evidence available, is considered insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the application for Luppitt Proposal 8.



map ref: **ST1508-1908/1507-1907/1506-1906**

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**DEVON COUNTY COUNCIL**  
**Definitive Map Review, Luppitt parish (North)**  
**Informal consultations - Claimed addition of footpaths:**  
**Proposals 1, 2, 3, 6, 7, 15 & 18**

drawing number **HTM/PROW/14/141**  
 date **Nov 2014**  
 scale **1:15 000**  
 drawn by **NSC**

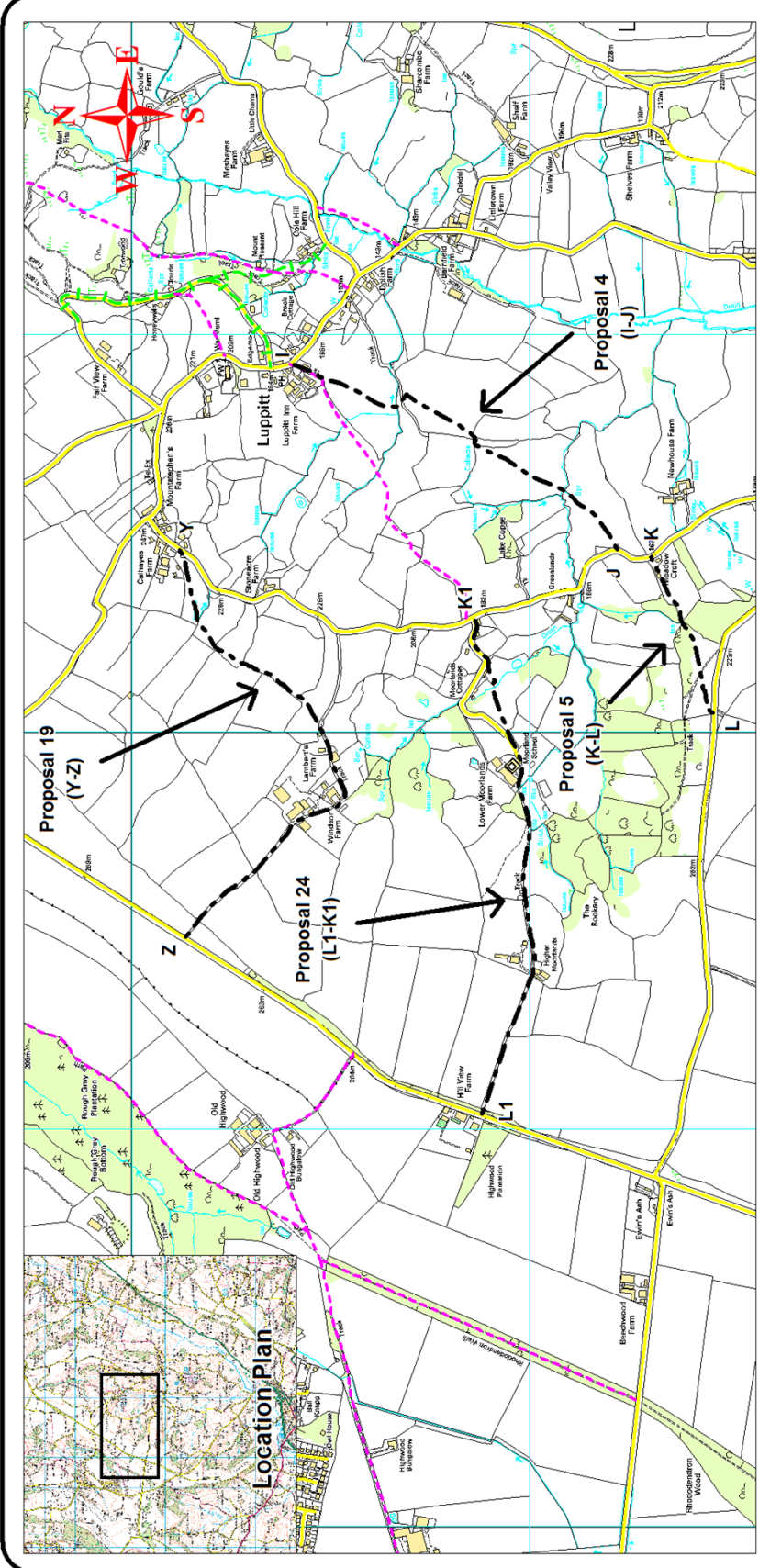
**Notation**  
 Claimed footpaths  
 Existing footpaths

Existing footpaths  
 Existing bridleway

Claimed footpaths

**David Whitton**  
 HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE





map ref: ST1407-1707/1406-17067/1405-1705

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**drawing number** HTM/PROW/14/144  
**date** Nov 2014  
**scale** 1:15 000  
**drawn by** NSC

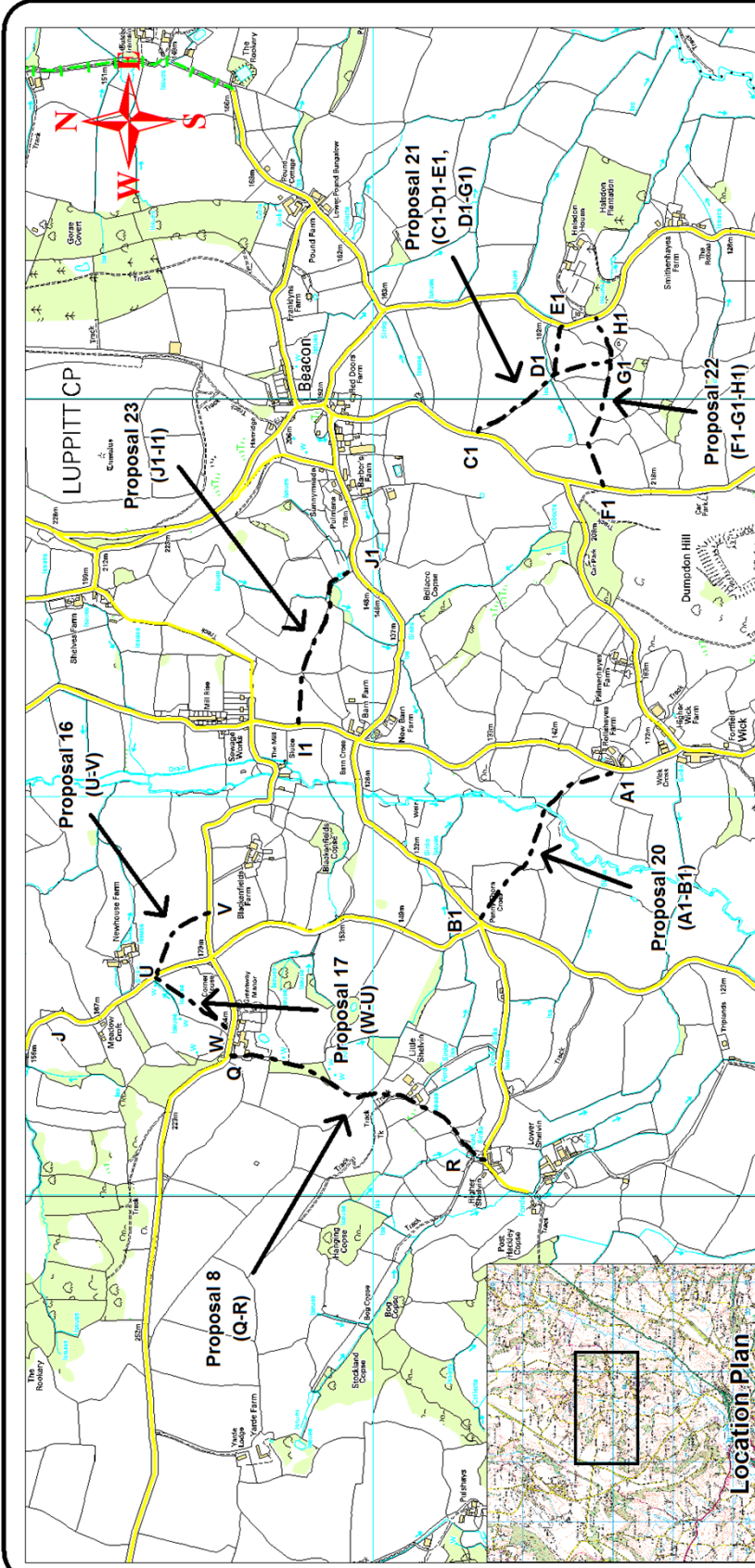
**DEVON COUNTY COUNCIL**  
**Definitive Map Review, Luppitt parish (Central)**  
**Informal consultations - Claimed addition of footpaths:**  
**Proposals 4, 5, 19 & 24**

<b>Notation</b>		<b>Claimed footpaths</b>
		<b>Existing bridleway</b>
		<b>Existing footpaths</b>

**David Whitton**  
 HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE







map ref: ST1505-1805/1504-1804

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<b>DEVON COUNTY COUNCIL</b> <b>Definitive Map Review, Luppitt parish (South)</b> <b>Informal consultations - Claimed addition of footpaths:</b> <b>Proposals 8, 16, 17, 20, 21, 22 &amp; 23</b>		drawing number <b>HTM/PROW/14/142</b> date <b>Nov 2014</b> scale <b>1:15 000</b> drawn by <b>NSC</b>
<b>Notation</b> Claimed footpaths Existing footpaths	- - - - - - - - - - . . . . .	<b>David Whitton</b> HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE

