

**Definitive Map Review 2017- 2019
Parish of Lympstone (Part 2)**

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

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

Recommendation: It is recommended that:

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

- (i) adding to them a bridleway between points C and D and upgrading to bridleway part of Footpath No.1, Lympstone between points D-E-F-G as shown on drawing number HIW/PROW/19/02; and
- (ii) adding to them a bridleway between points D-H-G, as shown on drawing number HIW/PROW/19/02.

1. Introduction

This report examines the last proposal from the three that arose from the Definitive Map Review in the Parish of Lympstone, in East Devon District.

2. Background

The Background for the Definitive Map Review in the parish of Lympstone was set out in Committee report HIW/19/17 of 4 March 2019.

3. Proposal 2

Please refer to the appendix to this report.

4. Consultations

Public consultations for Lympstone Parish were carried out during August, September and October 2018. The review was advertised around the parish with notices placed in local notice boards, on the village hall notice board, at each end of the proposals and in the local press.

The responses were as follows:

County Councillor R Scott	- no comment on proposals
County Councillor J Trail	- no comment on proposals
East Devon District Council	- no comment
Lympstone Parish Council	- comments included on Proposal 2
British Horse Society	- no comment
Byways and Bridleways Trust	- no comment
Country Land & Business Association	- no comment
Open Spaces Society	- no comment
Ramblers' Association	- no comment
Trail Riders' Fellowship	- no comment
Cycle UK	- no comment

5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

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

9. Conclusion

It is recommended that Modification Orders be made in respect of Proposals 2.

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

10. Reasons for Recommendations

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

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Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence files	2017 - date	AS/DMR/LYMPSTONE

A. Basis of Claim

The Wildlife and Countryside Act 1981, Section 53 (2) (b) enables the surveying authority to make an order to modify the Definitive Map. The procedure is set out under WCA 1981 Schedule 15.

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

(i) a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.

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

The Highways Act 1980, Section 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.

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.

- 1** **Proposal 2:** Proposed addition of a bridleway along a section of unrecorded lane, between points C-D from Longbrook Lane to Footpath No.1, and upgrade a section of Footpath No.1, Lympstone to a bridleway from point D via E-F-G, and adding a bridleway along Watery Lane between points D-H-G, as shown on drawing number HIW/PROW/19/02.

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement by adding to them a bridleway between points C and D and upgrading to bridleway part of Footpath No.1, Lympstone between points D-E-F-G, and by adding a bridleway along Watery Lane between points D-H-G, as shown on drawing number HIW/PROW/19/02.

1.1 Background

- 1.1.1 The proposal was put forward by members of the public after a kissing gate was installed near Point E in September 2017, which coincided with Parish Review starting in Lympstone. Consideration of this proposal was deferred by the Public Right of Way Committee on 4 March 2019, to allow further clarification of points raised in public participation.

1.2 Description of the Route

- 1.2.1 Proposal 2 commences at point C on the plan. It starts at the minor county road Longbrook Lane and runs over a short section of unrecorded stoned lane to join Footpath No. 1 at point D. The claimed bridleway then follows the line of FP No. 1, up the track and over the Mill leat's overflow culvert at point E, which is known locally as the waterfall, to a metal kissing gate at point E. Then in a generally north-westerly direction along a rough stone and mud track above the Wotton Brook. It skirts a large shed at point F then passes across the ford to join the minor county road, Stone Lane, at point G. In the report this route is referred to as the Upper route.
- 1.2.2 To give the background, Footpath No. 1 was diverted from its original, cross field, line in 1962, to its current route above the Wotton Brook E-F-G.
- 1.2.3 The route of the claimed bridleway E-F-G was blocked to horse riders by the installation of a metal kissing gate at point E in mid-September 2017.
- 1.2.4 During research into Proposal 2, evidence for another route has been discovered. This route has also been used by some riders. It follows the same unrecorded lane as Proposal 2 between Longbrook Lane point C and D, then it uses the long ford in the Wotton Brook, known locally as Watery Lane, running parallel to Footpath No. 1, via point H to join Stone Lane at point G. It has a stone surface over which the stream flows. This route is used by some vehicles and horses. It is annotated Watery Lane on the plan and referred to as the Lower route and Watery Lane in the body of the report.

1.3 Documentary Evidence

1.3.1 Ordnance Survey Mapping

- 1.3.1.1 The 1801 Ordnance Survey Surveyors Drawing 2" to mile, clearly show the historical layout of the lanes in the parish of Lympstone. This map shows a lane

linking directly between Longbrook Lane, point C, via point H, to Stone Lane, point G; the Lower route, Watery Lane. The small cross field paths are not shown on this scale of mapping therefore the Upper route is not shown.

1.3.1.2 1906 1 to 6" OS map again clearly shows the lane from Longbrook Lane, point C, to Stone Lane point G, via Watery Lane point H. The Wotton Brook between points D-G appears to be less prominent on the map than Watery Lane. On this map the Mill leat appears to take most of the water out of the Wotton Brook further up the stream, discharging it back into the brook to the west of point G. leaving the lane almost dry.

1.3.1.3 All later editions of OS mapping have shown the route in the same way as above. Until the current mapping on which the committee plan is based. This mapping lacks the detail of the older maps, the colouring of the stream sharing the line of Watery Lane D-H-G. The mill leat is hardly visible, the leat is no longer the dominant water feature. The mill is no longer a working mill and it does not draw much water through its leat. The brook appears undefined along its whole length flowing over the lane, hence the local name of Watery Lane.

1.3.2 Tithe Map 1841

1.3.2.1 The Tithe Map clearly shows a lane that continues from Longbrook Lane, point C, to point D, and Watery Lane is shown as the link between points D-H-G. This lane is coloured in the same way as the other roads in the parish.

1.3.2.2 On the Tithe Map the original cross-field line of Footpath No. 1 is shown as a dashed line leading directly to the mill.

1.3.2.3 The Tithe Map does not show Wotton Brook between points D-H-G, it shows a lane, the brook is shown reappearing west of point G. The Mill leat is more strongly coloured than the Wotton Brook, depicting the leat taking more water than the brook.

1.3.2.4 The Tithe Map was drawn in 1841 when The Mill was a working watermill, using a water wheel to drive the machinery. The Mill would have needed a constant flow of water to refill the mill pond, to keep the wheel turning.

1.3.3 Sales Particulars from 1935,

1.3.3.1 In 1935 the Mill was sold with the surrounding fields, (the original line of FP No.1 was shown on the sale plan). The Mill and land were sold with the maintenance responsibility for the outfall from the brick culvert (the waterfall), and it was subject to such rights as exist for the Mill owners to use, repair and clean the leat. The Mill was bought by J Brooks for £1,510. Watery Lane from Longbrook Lane C-D-H-G was not included in this sale.

1.3.4 Highway Handover Book (1930's)

1.3.4.1 The line of C-D-H-G is not shown as having been considered highway maintainable at public expense at this time.

1.3.5 Definitive Map and Statement 1950s

1.3.5.1 The inclusion of a public right of way on the Definitive Map and Statement is conclusive evidence of its existence as shown. However, this does not preclude

that other rights, which are not currently recorded, may exist. The fact that a way is shown as a footpath does not therefore prevent presumption of dedication as a bridleway arising from later use. Thus, the definitive map is conclusive until proved otherwise.

- 1.3.5.2 Footpath No. 1, Lypstone was put forward for inclusion on the Definitive Map and Statement by the parish council, following their survey of paths in the parish, in September 1950.
- 1.3.5.3 It was recorded on the Definitive Map and Statement, having been described by the Devon Rights of Way Advisory Committee, in June 1953.
- 1.3.5.4 The Definitive Statement for Footpath No. 1, Lypstone describes the route as starting *80 yds west of the junction of the Unclassified County Road, Strawberry Hill, with County Road 224, Station Road and proceeds along the Private Accommodation Road (not repairable by the inhabitants at large) turning south eastwards past its junction with Paths Nos. 2 and 3 thence eastwards along the private Accommodation Road by the Corn Mill and south eastwards along the boundary of field Ord. No.145 over another Private Accommodation Road (not repairable by the inhabitants at large) turning northwards across field Ord. No.137 over footbridge and along a Private Accommodation Road to join County Road 224, Mill Lane. (Stiles, Kissing gates, steps and footbridge on route).*
- 1.3.5.5 In 1962 St Thomas Rural District Council made a Diversion Order for part of Footpath No. 1, realigning the mid-section of the path that crossed OS field number 4802, Mill Meadow to its current line from the Mill to Stone Lane and then along the north eastern boundary of the same field (the proposal route).

1.3.6 Old Photograph

- 1.3.6.1 An old photograph, titled the Water Fall, has been produced. From its style and the collection, circa early 1900s. The photograph has been taken from a point approximating to point D, with the cameraman looking north-westwards along Watery Lane. This photo shows a small wooden pedestrian gate at the top of the slope over the overflow culvert, (the waterfall being dry in this photograph). Watery Lane, the Lower route, has a stoned surface with wheel tracks along the lane. The photograph shows Watery Lane as a dry track, with a few pot holes with puddles and a little trickle of water.

1.4 User Evidence

- 1.4.1 In September 2017 a kissing gate, which had been supplied some time before by the Public Right of Way Warden, was erected by Mr Tyrrell, a neighbouring landowner, on Footpath No. 1 at point E on the Upper route. This gate has prevented horses, people with pushchairs, and bicycles accessing this section of the path since that time.
- 1.4.2 In order to clarify points raised in the evidence, some users have been interviewed. During interviewing it has become clear that riders have ridden the Upper route between points C-D-E-F-G, with a few riders using the Lower route known locally as Watery Lane C-D-H-G. Since the gate (as mentioned above) was erected more riders have used the Lower route through necessity rather than by choice.

- 1.4.3 Eighteen riders have given evidence of use on horseback from 1964 to September 2017. The evidence forms, interview forms and letters are included in full in the backing papers and the evidence is summarised in alphabetical order as follows:
- 1.4.4 Mrs Beer, JP, has ridden the Upper route (C-D-E-F-G) in both directions from Longbrook Lane and from Stone Lane since 1970, about once a week or 50 times a year. When she was between the age of 11 and 14 she rode a shared pony. Since she was 14, she had her own ponies and horses and exercised horses for other people. She believed it was a public bridleway because of historical use, custom and practice. She said, a few years ago it was diverted for a while when a tree fell across the route during the storms. She had never been prevented from riding it until the metal kissing gate was erected. She had never asked or been given permission to use the route as a bridleway. She used to speak to Major Goddard, the landowner, if she saw him, when she was riding the route. He never challenged her or said it was not a bridleway. As a young girl she clearly remembers falling off a pony on the route. In the late 1970's she recalls that the Bainbridge's kept a horse in the mill field and the field was fenced off from the route. The route has never been gated, to her knowledge. The only gate was into the pony paddock, but this was not on the route of the claimed bridleway. She states that she has never been stopped or challenged. She states that there were never any notices on the route.
- 1.4.4 Mrs Brister used the Upper route from 1960 on foot and bicycle and started to ride the Upper route on her pony in 1968 once a week until 1972. She often rode it with a friend. Since 1972 she had ridden it less. She rode the route without the hindrance of a gate. She says that the metal kissing gate has blocked access to pushchairs, horses and bikes. There were no gates, stiles, or notices on the route. She saw and spoke to Major Goddard and she was never stopped, not even when on her pony. She comments that it provided a safe traffic free route avoiding the narrow lanes to exercise ponies.
- 1.4.5 Mr Brister has used the Upper route on foot and cycle since 1953 to 2017. He states that a large amount of people used it. As a teenager in the late 1960s he used to cycle along the route as a short cut from Stone Lane to Longbrook Lane when he was delivering meat.
- 1.4.6 Ms Connal has ridden the Upper route, once a week between 1980 and 1984, returning to the area and riding the Upper route again between 2014 and 2017 once a week, until the installation of the metal kissing gate. She rode it in both directions. She has ridden in a group of up to four horses. Until the new gate she states there has never been any gates on the route. The only gate was into the paddock and there has always been a fence of sorts, between the paddock and the route. Since the installation of the new kissing gate she has ridden the Lower route.
- 1.4.7 Ms Connal has given an account of two incidents, the full details of which are available in the backing papers. On 3rd October 2016, she had ridden the route and came across a truck in the ford, at point G, with a man in the stream. He shouted at her, got into his truck and drove into the works yard on Stone Lane, at that point she realised it was Mr Tyrell. She continued on her ride up Stone Lane.
- 1.4.8 Two weeks later, in October 2016, Ms Connal reports riding the Upper route. She says she had crossed the ford at point G and was heading up Stone Lane, a

county road, when Mr Tyrrell shouted and said she wasn't allowed to use the path, that it was his land and horses were not allowed. She said she asked if he could prove the land was his, but he continued to shout, so she removed herself and the horse from the situation and continued up Stone Lane. She records this incident took place on Stone Lane a county road, and that it was witnessed by a dog walker. Ms Connal also states that she reported the incident to the Police.

- 1.4.10 Mrs Dennis has used the Upper route on horseback from 1964 to 1970 as a young person, then since 2000 when she moved back to the area, about 24 times a year without hindrance. She has ridden with other riders. She says it links with the only other bridleway in the parish. She remembers Major Goddard working in his shed and they exchanged greeting as she passed, he never told her it was not a bridleway or stopped her. Sometimes there were cattle in the mill paddock, which was fenced from the bridleway. She states that there were never any gates or notices on the route, which she says was muddy at times.
- 1.4.11 Mrs Harrison has ridden a horse and bicycle and walked the Upper route since 1977. She has had ridden the Upper route about twice a week as it was her standard ride. She only used the route Lower stream route on odd occasions before the new kissing gate was installed. She gives more detail in an email and interview. She recalls the week this kissing gate was installed because she made a Facebook post about on 13th September 2017. She has said there were no notices gates or stiles. She was very sure that there were no gates as she remembers pushing her pushchair loaded up with horse hay each day from her home to her stable, (which was in the field that is now owned by Mr Tyrrell between points H-G containing his works yard). She used to regularly chat with Major Goddard when he was working on his boats, he used to chat and pat her pony, he never told her it was not a bridleway or asked her not to ride. She said the stream/ford between D-H-G has been used by horses, but only on the odd occasion in the summer when the water is low and its safe enough and the hedges overgrow and make Watery Lane quite difficult. She has enclosed a photograph of her son on their horse when riding the route in 1996.
- 1.4.12 Mrs Johnson has ridden and walked the Upper route since 1986 about 30 times a year. There were no stiles, gates or notices on the route until the metal kissing gate was installed.
- 1.4.13 Ms Lee-Smith has ridden the upper route frequently from 1970 until the kissing gate was installed in September 2017. It has always been a bridleway used by many horse riders. She states that there have never been any gates, notices or stiles and she has not been stopped from using the route.
- 1.4.14 Mr Love rode the Upper route on a horse from 1977 and in recent years has also walked the route which he continues to do so most days. He was never stopped or challenged when on a horse.
- 1.4.15 Mr McLennan-Wiggin, started to use the Upper route in 1986, he has since walked, cycled and ridden it on average once a week. He says the route has been used without restriction for many years, the only gate has appeared in the last 18 months. He adds "As a family we have used the path in question on foot, cycle and equestrian over many years and know other horse owners who have also used the path from either direction."
- 1.4.16 Mrs Norton has walked the Upper route since she was a small child and has ridden it since 1986 when she started to ride. She rode twice a week up to

2000, at which point she started to train for endurance riding, so between 2000 and 2011 she rode it 5 times a week. Since 2011 has gone back to riding it twice a week, until the kissing gate in September 2017. She now has to ride the Lower route in the stream. She says that there were never any signs and that she used to stop and talk to Mr Goddard quite frequently as he was often working on boats in his shed. She reports that he never told her not to ride the route, and that she has not been challenged by anyone else. On several occasions when riding, she says she met Mrs Goddard driving in Stone Lane and she pulled the horse in the gateway of the orchard field, that is now the entrance to Mr Tyrrells yard, smiled and waved and was acknowledged by Mrs Goddard. She says Mr Tyrrell never stopped or turned her away. She adds that the Lower route is far too dangerous (to ride) in wet weather as the stream runs fast.

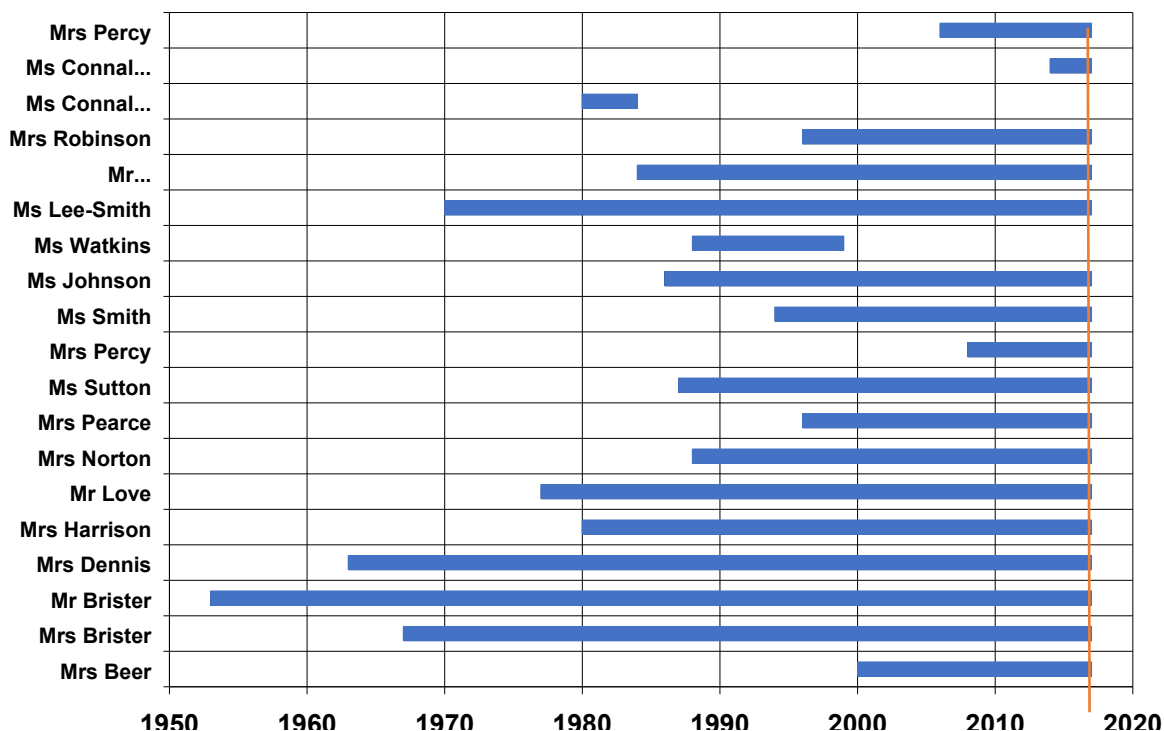
- 1.4.17 Mrs Pearce has ridden and walked the Upper route, and ridden the Lower route, since 1996, two to three times a week, to 2017. Her use being split about 50% of her journeys on the upper route and 50% on the lower route, depending on the weather and who she was with. She has always kept her horses in Lymptone parish. She says "This is a popular pathway/bridleway/cycle path used by many people. It is very pretty and pleasant and is an extension of the pathway that exits at Town Dairy on Longmeadow Road". Since the metal kissing gate was installed in September 2017, she has had to use the Lower route all the time. She has ridden the route with other riders and currently her granddaughter. She says there has never been any gate across the path; the only gate was into the paddock. The path has never been blocked, nor have there been any notices to say it was not a bridleway, only an electric fence warning notice on the paddock fence. She reports that there have been no obstructions on the route, except an accidental obstruction when a tree fell onto the route in the storms. She saw Mr Tyrrell clearing this, she has seen him on other occasions as well and says she has never been challenged by him or anyone else. She remembers in the early days of using the route, Captain Smyth of Sowden Farm riding through the mill route every morning to buy his paper in the village.
- 1.4.18 Mrs Percy wrote, completed a user evidence form and has been interviewed. She said that since 2006 she has ridden along the lane between points C to D and thought of it as part of the road network. Then she used the Lower route along the brook, between point D-H-G, sometimes 6 times a year, some years less as her horse is now further from the village and the roads are difficult. She had not ridden on the Upper path. She has ridden with other riders. She is not related to any other riders. She had not been stopped or challenged before the informal consultation notices went up in August 2018, when she and a friend were riding together. She says they were about to ride down the route from Longbrook Lane point D, when a car stopped, and an aggressive man started shouting at her, about horse riders. She says he claimed to be the owner and as he was so aggressive, they turned back. Previously when riding the route, she has spoken to people and never been stopped or challenged. She added it is good to take horses through the stream and it was a bit of off-road riding, she used it mainly on Sundays when the roads were quieter.
- 1.4.19 Mrs Robinson has ridden the Upper route since 1996 until the gate was installed September 2017 about twice a week and has walked and cycled the route as a child. She reports that there have never been any other gates, stiles or notices.

- 1.4.20 Miss Smith has always lived in Lymphstone and has ridden the Upper route since 1994 until the new kissing gate was installed in Sept 2017. She rode it most weeks as part of a circular ride in either direction. She says she often saw the owner working in his shed and he never told her she should not be riding the route and used to say hello as rode she passed. As a child she also walked and cycled along the route. However, her use since 1994 has been on a horse. She recalls that a tree come down a few years ago blocking the route for a short while but it was cleared away quite quickly. She was never challenged or stopped. She is not related to any other riders in the area. She adds, 'the installation of the gate came as a surprise.'
- 1.4.21 Ms Sutton has written the following statement: "Since 1987 I have regularly ridden down the stream or on the path above the stream, as have numerous children on their ponies throughout the years. This path is now not accessible to horse/pony riders due to the new metal gate. Lymphstone has only one bridle path. The path referred to runs adjacent to a small grass field which has been fenced off over the years, but I have never had any indication that horses/ponies are not welcome on the path". She clarifies that there was always a rather rickety fence between the paddock and the path, and this fence had a gate in it to access the paddock. She states that there has never been any sort of gate on the path.
- 1.4.22 When interviewed, Ms Sutton said she rode the Upper route once or twice a week, and since the kissing gate about once a month in on the Lower route in the brook. She has ridden the route while accompanying young riders and says, 'there was never anything to make me think I could not use the route on a horse.' She has not been challenged by Mr Tyrrell but has seen him. She did not know Major Goddard. In the last 5 years she has ridden the Lower route in the brook more than the Upper route, as she has a smaller horse who doesn't mind the water, but she does not ride it in bad weather. Previously her large horse was not keen on water, so she always used the Upper path more. If she was walking beside young riders, she said they would go through the stream on the Lower route, while she walked the Upper route.
- 1.4.23 Mrs Zervou has used the Upper route since 2016 when she moved her horse into a yard in the parish. She rode there 3 to 4 time a week, often meeting Ms Connal. She has ridden the Lower route through the brook since the kissing gate was installed. She was shown the route by a local rider when she first came to the yard. She says there not a gate until the kissing gate, nor any signs or notices. She met Mr Tyrrell on Stone Lane in Feb/March 2017 when she was long reigning her pony (walking behind a pony in training). She says Mr Tyrrell was washing a tractor in the stream. She asked him if she could pass, but he shouted at her and said she could not come through as it was his road, and how would she like it if he rode past her house. Because she did not want to frighten her young pony, she turned around in Stone lane and retraced her steps. She has used the Lower route since the kissing gate was erected.
- 1.4.24 Ms Watkins has ridden the Upper route between 1988 and 1999 over 100 times per year, to exercise her horse on a circular ride, she says there were no gates, sites or signs on the route and the Upper route was used by lots of people on foot and horse. Sometimes she rode through the Lower route.
- 1.4.25 Some walkers have filled in User Evidence Forms (UEF). However, as they had walked the Upper route which is currently recorded as a footpath, their evidence

does not add anything to the use of the route as a bridleway and therefore this evidence is not included. The walkers did not use the Lower route.

- 1.4.26 Mrs Letcher gave anecdotal evidence for horse use, in her UEF as she had seen riders using the brook (the Lower route) since 2000 when she was walking the Upper route.

1.5 User Evidence Chart



1.6 Landowner Evidence

- 1.6.1 Landowners and adjoining landowners were consulted as part of the informal consultation process and notices also posted on site. Site visits and interviews have been held with Mrs Goddard who was accompanied by one of her sons and her daughter, and Mr Tyrrell, who was accompanied by Mr Atkins, a parish councillor.
- 1.6.2 During the Rights of Way Committee meeting in March 2019, Mr Goddard speaking on behalf of his mother and family, raised some further points. Following this meeting a letter was sent to Mrs Goddard asking for clarification of these points. Those being, the vandalism of a gate and its position, and the position and content of any notices and when they were removed. A letter also was sent to Mr Tyrrell asking for details of the incident with Ms Connal that was referred to during committee, and the actions he had taken to stop horse riders on his property.
- 1.6.3 In response to these questions, Mrs Goddard and four other members of the Goddard family, an employee of the Goddards and their tenant have all written. Mr Tyrrell has also written, as have some others. Their comments and objections are summarised below. All the correspondence can be seen in full the backing papers.

- 1.6.4 For clarification Mrs Goddard owns the land to the southwest of points E-F-G. The Mill and the surrounding fields were bought by Mrs Goddard and her late husband, Major Goddard in 1963.
- 1.6.5 Prior to the March 2019 committee, Mrs Goddard completed a Landowner Evidence Form, and a detailed statement. She says the claimed route is just a footpath and used daily by the public as such.
- 1.6.6 Mrs Goddard says that before she and her husband bought the Mill in 1963 there was a gate at point E by the Waterfall/overflow. She attaches a photo of a cutting from a book showing what appears to be a wooden pedestrian gate above the waterfall that predated their ownership. Since their ownership she says that there has been a gate, around that area, in one form or another for most of the time she has lived at the Mill.
- 1.6.7 Mrs Goddard stated that, before the 1980s, the footpath was not separated from the field by a fence, and a farmer used to rent the Goddards' land to keep his cattle. There was a five-bar gate near the waterfall to keep the cattle from straying. When that farm closed in early 1980s, the Goddards put a sign on the gate, that said 'please close the gate', then it fell into disuse and remained open. Later the Goddards fenced the field from the path to contain the dog walkers to prevent dog fouling the field.
- 1.6.8 The Goddards had never required pedestrians to ask permission as it was a public footpath. She says, "On the occasions we have been aware of ridden horses or bicycles along the path and we have asked them to desist." She says, "Until my husband died in 2015, he could quite often be found working in the shed (near point E). He would stop any riders of horses and bicycles and remind them that the path was only for pedestrians. After his death, there being no 'policeman', the path was abused by riders, and more frequently by bicyclists. As a result, we felt obliged to reinstate the gate at the top of the hill by the overflow/waterfall in 2017."
- 1.6.9 Mrs Goddard goes on to say "in the winter and when it is very wet, this footpath becomes precarious. Were it to be used by riders and cyclist, it would make it even more treacherous. We have had complaints about this by walkers. In all the time we have been here the authorities have not undertaken improvements to the surface of this footpath. Indeed, all the work has been undertaken by me."
- 1.6.10 Mrs Goddard, her son and daughter are strongly opposed to the route C-D-E-F-G being recorded as a bridleway.
- 1.6.11 Post the March 2019 committee, Mrs Goddard writes in answer to the questions about the gates and notices saying; "I remember boys from the village swinging on the metal gate by the waterfall and in doing so breaking it, in 2006. There were other occasions both before and when the gate was damaged. My husband complained about these incidents and on at least one occasion, Max or one of my sons were asked to assist with repairs."
- 1.6.12 She goes on to say "Before the kissing gate by the waterfall fell into disrepair, I don't recall there being any signs. I imagine it wasn't necessarily as only those on foot could gain access. After the wooden gate was put in, there was a sign right next to it which pointed in the direction of the footpath." Later her husband installed the metal gate, moving its location so it could be seen from the shed, to

act as a deterrent to those who damaged the wooden gate. This metal gate had a sign on it saying, 'Please shut the gate'. John Orchard kept cattle and horses in the field by the shed and in front of the Mill for many years. To stop the cattle from straying he kept the gate closed and fenced the route from the path, he put up notices to ask walkers to keep to the path. Mrs Lynn Moxley kept her horses in the field by the shed, she also put signs up asking walkers to keep to the footpath and not to feed them.

- 1.6.13 Mrs Goddard also said "My husband used to spend almost every day of the week from 1997, the year in which Exeter Maritime Museum closed, until a year or so before his death in 2015, in his shed by the ford. This was where he looked after his boats and turned bowls on the lathe. I recall him commenting on how difficult it was unless he was actually outside the shed, to stop bicycles and horses from using the footpath. Part of the problem was his poor hearing for which he had a disability allowance from the Army." She says "There is a history of vandalism and abuse up and down this footpath which goes on for more than 20 years. Even now, with the new kissing gate we have seen bicycle tyre marks on the footpath coming down from the waterfall. Even when there is someone there at all times the occasional cyclist is going to use it."
- 1.6.14 Post March 2019 committee Mr S Goddard writes, in answer to the questions about vandalising of the gate and the signs. In 2005 he went to stay with his parents for 3 months before starting another job. During that time, he worked on the property. He says "one of my tasks was to repair the gate that stood at the top of the hill by the waterfall, and to replace the sign fixed to it. The gate was of metal, its predecessor being of wood. The problem was one of the uprights had become loose, which meant digging a hole around it. We then used some concrete to secure it. The sign was made of wood and hung from the gate. I think it said something like 'Please shut the gate'. It wasn't very secure, but the message was clear. The metal gate and wooden one that preceded it, so replacing the kissing gate, were chosen to allow a vehicle through. The great drawback was they were always being left open in spite of the signs. My father spent a lot of time in his shed... occasionally, he used to complain about the difficulty of catching bicyclists or horseback riders, as he called them, using the footpath. It didn't happen very often but if he was going to catch them on his land, he had less than a minute to do so. That assumed he could hear them, which would have been difficult if he was using machinery."
- 1.6.15 "The saga of the gates, the signs and the efforts to stop the occasional bicyclist or rider was a long-standing issue at home, which was never really resolved. Unless you were on that part of the footpath, there was little chance of catching them."
- 1.6.16 In a recent email Mr S Goddard adds some additional points saying; "Long before my mother bought The Mill in 1963 and ever since then, Watton Brook from between points D-H-G has been used by horse riders, farm animals and even vehicles. The attached photo, taken approximately from Longbrook Lane shows this very clearly. The photo is titled Watery Lane, and this stretch of the brook is still referred to by the same name today and continues to be used in the same way. The fact that it called Watery Lane confirms its use as a highway."
- 1.6.17 He enclosed a second photo of a horse going up Watton Brook/Watery Lane taken in March 2019. He says that this attests to the evidence that DCC already has for use of this route on horseback and with other animals. He says to regularise the use of Watery Lane by animals and horse riders, it might be a

good idea to signpost it, either as an unmetalled road or as a bridleway from point C-D-H-G.

- 1.6.18 He says “As we own the land to the south of Watery Lane/Wotton Brook, we have cut back the foliage to make it easier for those on horseback to continue using it. If Watery Lane can be signposted in this way, then the chances of riders and walker with dogs and children meeting on FP No.1 would be greatly minimised.” He goes on to say the Mill Leat overflow culvert, that FP No.1, runs across is not very strong. They family have already had to reinforce the banks to prevent a breach and were it to become a bridleway, use with heavy horses would run the risk of weakening it. If a breach was to occur it would wash away the footpath, cut off the supply of water to the mill and the cost of rectification could run into thousands of pounds. He concludes the historic route used by horses was Watery Lane, and they still use it today, with a parallel and separate is the route of Footpath No.1 and they should be signed posted accordingly.
- 1.6.19 Post March 2019, Miss T Goddard writes, “In the last 20 years I can remember asking people, a couple and numerous children to get off their bikes when riding down the footpath from the waterfall. I once saw father and son on their bikes and when I asked them to get off their bikes the father was abusive.”
- 1.6.20 She goes on to say, “I also remember my father repairing the gate by the waterfall and replacing signs that had disappeared. I come and go from the mill every day and I must say that apart from the above, I have very seldom seen either horses using Watery Lane or bikes use the footpath and yet we are being led to believe by the evidence we have seen that this is a regular occurrence.”
- 1.6.21 Post March 2019, Mr T Goddard wrote he lives abroad returning to his parents once or twice a year for several weeks in succession. He says, “During these visits it is customary for me to assist with various jobs involving fields, the stream the driveway and boundaries.” He says the area around the waterfall and sluice gate were particularly prone to vandalism. “My father who worked in the green shed adjacent to the path often had to put up with abuse from young teenaged boys on bicycles and on occasion motorcycle scramblers, using the footpath and the field more as a jump or ramp, with complete disregard for others. Many walkers would stop and chat and draw attention to new incidents or ask if he could discourage such behaviour.”
- 1.6.22 His father would ask the offending parties to desist and would be ignored and so he put in the gate and a sign at the top of the path by the waterfall in order to stop the damaging ‘traffic’ that was churning up the area. He remembers having to replace a lost padlock on the wooden gate on one occasion and to repair the wire fencing when the stands were cut.
- 1.6.23 He says “It has been a constant source of concern and cost to my parents a) because of petty vandalism and b) because they feel responsible to the people that use the path for simple recreational purposes who are affected by the consequences of the vandalism and misuse. To open this path up to use by horses would be asking for trouble. The horses would turn the gradients either side of the waterfall into a treacherous muddy mess in the winter and it simply would become impassable for all but the very able bodied and horse riders.”
- 1.6.24 Post March 2019, Mr A Goddard writes to say “I have been visiting my parents regularly over the last 25 years in that time I have never seen horses using the footpath in question. There were horses kept in small field alongside the

footpath to graze the grass, but this is all that I remember. My recollection is that over the years, there have been a variety of gates either side of the bridge over the leat overflow. I recall a wooden gate early on - perhaps overlapping with the earlier with the early years of the 1997 to 2017 period, and then in the middle years, a metal gate.”

1.6.25 He goes on to say “My father commented often on the people and traffic up and down the path, he was friendly with a number of regular walkers but was willing to challenge horse riders as he was concerned about the damage they did to the path and knew they had no right of way. I remember seeing notices on the side of the green shed and hanging on the fence around the field saying, ‘Footpath only’.”

1.6.26 And adds “As my parents have aged it has become more difficult for them to police the use of the footpath and the tendency has been for notices to be removed and vandalised. At their age it is unreasonable to expect them to be as vigilant as they were and to make changes now would seem to be taking advantage of them as at their age. Given that the footpath has, to my knowledge, never been maintained by the Council, and a bridlepath on such a steep slope would require much more maintenance if it were not to become impassable as a footpath, I cannot see that it is tenable to make what is already dangerous footpath and even more dangerous bridlepath.”

1.6.27 Post March 2019, Mr Meadows has written saying, “I have been Mrs Goddard’s gardener for 22 years. I remember when I first started there were signs saying no horse riding, I can’t remember when they disappeared. They weren’t replaced because Major Goddard use to keep the peace with his workshop been near the footpath. The Major has now deceased and no-one is keeping an eye on the footpath. I have noticed there are more mountain bikers coming through and have been causing a hazard to dog walkers and families with children. This is why you need a swing gate. There is still access for horse riders and mountain bikes down the brook.”

1.6.28 Post March 2019, Mr Orchard has written to Mrs Goddard and she has forwarded his letter to be included. He says; “I can confirm that I grazed your fields with cattle at least between 1996 and 2014. It may have been longer, but I have not found my earlier animal movement book. During that period, I used to park my car at the junction of Longbrook Lane with Stone Lane and climb the steep bank to gain access to the footpath through your field. This would have been done in daily in order to check the cattle.”

1.6.29 He adds, “During that period, I have never seen any horse riders attempt to use the footpath, rather than Stone Lane below. I recall riders hesitating at the ford, questioning whether the bridleway continued along the stretch of the Stone Way below the footpath, over which the Wotton Brook flowed. I accept that it may be unusual for a bridleway to continue along the river bed, but I imagine that it would be easier for a horse to get its feet wet than to make the horse climb and descend the steep bank at the Longbrook Lane end of Stone Lane.”

1.6.30 Post March 2019, Mr J Avery, who owns the fields to the northwest of the Goddards’ land has written saying “I own land in Lympstone, next to the footpath (For reference the land he owns is next to FP No. 2). The path that runs across the field in front of the Mill and then goes past a boatshed by the ford and up to the waterfall by the old mill pond. I know because I’ve walked the path for more than 20 years. I don’t know how many times I have told cyclists not to use this

footpath. When I see them I always tell them this is a footpath and they should stop using it. Some of them are polite and some get angry, but I don't care. I'm so fed up with them breaking the law and no one doing anything serious to stop them.”

- 1.6.31 He also says that he when Major Goddard was alive “I used to have a good moan with him when he was working in his boat shed”. He also said Major Goddard had a problem with people vandalising the gate by the waterfall, chucking the signs saying public footpath or please shut the gate into the bushes. Mr Avery doesn't think that upgrading the footpath to bridleway is a good idea, because it is narrow and could be dangerous with horses and cyclists using it as well. He does not want to encourage horses to use the footpath across the field in front of The Mill and then on past his property.
- 1.6.32 Mr & Mrs Tyrrell, own two fields, one that bounds the route to the east of points C-D and separate field north east of points H-G, that contains his workshop and works yard.
- 1.6.33 In Mr Tyrrell's correspondence prior to the March 2019 committee he said; “I ran a very successful horticultural business with a store at the bottom of Stone Lane. The thought of encouraging more horses down this very narrow single track road would be a real problem with vehicles, trailers, and machinery going to and fro my store. we have monitored the horse movements (by CCTV) and have found just 5 horses have been using this route this last month. The gate that was replaced in the mill was supplied by DCC”.
- 1.6.34 He also commented that to allow horses to use the footpath would be a health and safety nightmare, commenting that children and elderly people use it as a safe off-road route.
- 1.6.35 Post 22nd March 2019 committee, Mr Tyrrell wrote a detailed letter, which is available in full the backing papers, adding to and clarifying his previous correspondence. In this he details an incident that took place between himself and Ms Connal on the 3rd October 2016. He says, “I was on the Mill side of the stream when a rider came across the ford into the Mill land and as usual, when I can, I confronted the rider and told her again that this was a footpath and not a bridle path. I have to say that I have not seen her since this incident.” He also reports that he reported the incident to the Police.
- 1.6.36 He goes on to say, that since 2003 a work colleague of his, has witnessed him telling horse riders and anyone on a bike that this is a footpath, not a cycle path or bridle path (and in many cases, he says he has received verbal abuse in return.) He uses the footpath more than once a day as he owns land bounding it.
- 1.6.37 He also says “On many occasions the signage that has been put up by Mr Goddard informing people that it is not a bridle path have been torn down almost as soon as they were erected. In fact, the footpath signage that DCC erected near Mr Goddard's store has been removed. The fencing along the FP No. 1 is always getting cut, more so in recent years making it difficult to keep animals in and dogs and horses out.”
- 1.6.38 After the March Committee Mr Edworthy wrote, saying that he has lived in Lympstone since 1962 and used to own a field on the other side of the ford. He says “I clearly recall there used to be a small gate at the top of the footpath by

the waterfall. The owner of the Mill, David Goddard, decided to try to make this route a means of escape by vehicle when the water in the stream was too high to use the ford". Mr Goddard widened the footpath and replaced the small gate with a five bar gate, even so he was still unable to get through safely with a car because of the construction of the leat and the drop down to the Watton Brook. A gate remained until it was vandalised and disappeared.

1.6.39 He says, "In the last 20 and more years I have told riders I met on this footpath that they were not allowed to use it for the simple reason that it is for pedestrians!" He says he has also spoken to bicycle riders and said they were not allowed and has spoken to the local council about this. He notes the lack of a footpath sign on this path.

1.6.40 Post the March Committee, Mr Cole has written, saying that he has walked the footpath for 27 years. "The top gate which was in place was erected for the safety of school children and the general public this gate and part of the fencing was vandalized and removed about 15 years ago and was never replaced. Six years ago, the footpath was vandalised again due to the frequent use of motorcycles then we had the arrival of the first horses turning the whole of the footpaths into a quagmire, it appeared that these people had no respect for the environment children and any public who wish to use them in safety." He says when the steel kissing gate was erected the problems dissipated and when he was using the footpath he has not encountered any horse riders, motorcyclists or cyclists.

1.6.41 After March 2019 committee, Mr R Harrison has written and says; "I write to express my concern about turning our footpath across the Mill field in Lymptstone into a bridleway. I find this idea most odd as the overhanging branches of many of the trees would create a hazard to any rider, be it horse or bicycle. Also, the path runs very close to the mill leat, any damage to the clay banks could cause a breach and the path would be lost. There is an adjacent path within the Wotton Brook, for riders to follow. Please have a little sympathy for us walkers and dog walkers who don't wish to see horses ruining our path."

1.7 Lymptstone Parish Council Comments

1.7.1 Lymptstone Parish Council have sent an extract from their parish council meeting minutes, to show the discussion that took place about the proposal.

1.7.2 Minutes from meeting 3/9/18. Proposal 2, members of the public spoke at the meeting giving their views on Proposal 2. These views ranged from support of the proposal because there is evidence it has been used by horses for many years, to others saying horses had always used the brook instead of the footpath line, others saying it provides a safe route for horses. Some wanting to know who would maintain the route if it got muddier because of horse use, and others who were opposed to the bridleway.

1.7.3 Parish Councillor Atkins read a statement he had written, as follows:

1.7.4 "In 1940s and 50s there was only a footpath from the waterfall to the mill from a kissing gate at the waterfall. At the time of major floods (1960ish) Major Goddard decided to open up the pathway to the waterfall, to enable access for his car. The footpath was diverted. It appeared that horse riders, cyclist etc decided that this allowed them the opportunity to ride up through this track way. This appears unchallenged by the landowners. It is worth pointing out that the

bed of the brook is the county road. The Wares use it to traverse to fields in their ownership. I rode a cart horse and tractor and trailers up the said waterway and walked cows up and down it. My daughter rode her horses up the field without challenge, nor did she seek permission to so traverse the field and nobody required the stile or gate to be replaced! Had I been aware that my daughter was using that private land, I would have reprimanded her and banned her from so using the footpath.”

1.8 Other consultation responses

- 1.8.1 Sixteen letters and emails have also been received from members of the local community opposed to the proposed bridleway addition/upgrade. These are included in full in the backing papers.
- 1.8.2 Grounds of objection include issues such as suitability and safety. In particular, they raise concerns about erosion of the path in the winter and use by cyclists, as the Exe Estuary Trail goes right through the centre of the village. Several also question the need for another bridleway, believing Watery Lane, the Lower route, to already be a bridleway and others are concerned by the effect on the landowner(s).
- 1.8.3 Post the March Committee, Mr Wilson written saying he has walked the route since 2002. He states that, until the recent gate, there were no notices or gates. He adds that pedestrians and cyclists would be an inherently bad mix from a health and safety point.
- 1.8.4 Several of the people which have written, acknowledge use by horse riders and cyclists, of both the Upper and Lower route. Saying the horse use has made the Upper route muddy, but since the installation of the kissing gate that it has become useable again for walkers.

1.9 Discussion

- 1.9.1 The evidence from both users and the landowners has been given genuinely but differs in content. This evidence cannot be tested in this committee report, only presented. Should the committee decide to make any Order, and if objections were received, the evidence would be tested by an inspector at a local public inquiry, by cross examination. At which point, questions can be asked of both sides and all parties can hear the answers and ask further questions, before the inspector makes their decision based on the evidence placed before them, to confirm an Order or not.

It has been stated by the landowners that the riders in Lympstone are related to each other however this does not appear to be the case, only Mrs Beer and Mrs Brister are sisters.

The Upper route

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

- 1.9.3 Gates and interruption of use
Gates are permitted on public rights of way for stock control purposes. The landowner and her family and employees detail a series of replacement gates, which they say were installed on the upper route near the waterfall. Mrs Goddard said the gates were damaged by village boys swinging on them and then the gates disappeared in 2006. The exact location of these has been difficult to ascertain, and it has not been clear if these were gates wholly on the line of the claimed Upper route or if they gave access to the adjacent paddock. Mr T Goddard remembers having to replace a lost padlock on a wooden gate and repair the wire fencing. Mr S Goddard and Mr Edworthy both refer to gates that could be used by vehicles.
- 1.9.4 None of the riders recall any gates on the route prior to September 2017, until the pedestrian gate was installed. The only gate they recall was into the adjacent paddock, which appears to correspond with Mr T Goddard's description above.
If, however there was a gate, it neither prevented nor impeded use of the route by horse riders. Until the metal kissing gate was installed at point E in September 2017, and this structure had just that effect, and stopped the use of the route by horse riders.
- 1.9.5 Therefore, the action that brought the obstruction of the route to the attention of the wider population of horse riders, was the installation of the metal kissing gate at point E in September 2017. It had the effect of bring the use of the claimed upper route by horse riders into question, making the relevant 20 year period of use between 1997 and 2017.
- 1.9.6 Analysis of user evidence
The analysis of the user evidence shows; there were 18 horse riders, of which 17 used the Upper route, (1 rider has exclusively ridden the Lower route, one rider having ridden the Lower route for 1/2 of her journeys and the one other rider has only ridden the Lower route on about a 1/4 of her journeys, the other one on occasions.)
- 1.9.7 Between 1995 and 2017, eleven riders were frequently using the Upper route, the other riders giving a spread of evidence back to the 1970s and Mrs Dennis to 1964 when she started to ride.
- 1.9.8 Many riders have commented that the Lower route was too dangerous and difficult to ride.
- 1.9.9 None of the riders have asked permission from the Goddards to use the Upper route and none had reported seeing any notices to dissuade them not to use the route on horseback. None of the users, report having been stopped or told it was not a bridleway by Major Goddard or Mrs Goddard, sole the landowners during the relevant period. Two riders report being challenged by Mr Tyrell, one in October 2016 and the other in February 2017.
- 1.9.10 Challenge
The evidence of Ms Connal and Mr Tyrrell, shows differing accounts of two incidents within a fortnight in October 2016, when Mr Tyrrell challenged Ms Connal when she was riding. They both acknowledge that this challenge took place, but the location and dates differ in each account. Ms Connal recording it took place on the county road, Stone Lane, near Mr Tyrrell's work yard. She records that she turned her horse and left by Stone Lane. While Mr Tyrrell's

account recorded the location of the challenge as across the ford and on the Mill land, neither of which are owned by Mr Tyrrell.

- 1.9.11 However, both of the people involved record this as a challenge to Ms Connal's use of the Upper route on horseback in October 2016. What has to be considered is; if this challenge was for the purpose of stopping the whole community of horse riders from using this path. The action took place between two people, other riders were not present and were not aware of the incident. No overt public action seems to have been taken to tell other riders that this route was not therefore to be used as a bridleway from that date.
- 1.9.12 The Planning Inspectorate (PINs) guidance says: For a landowner to benefit from the proviso to s31(1) there must be 'sufficient evidence' that there was no intention to dedicate. The evidence must be inconsistent with an intention to dedicate, it must be contemporaneous, and it must have been brought to the attention of those people concerned with using the way. Although s31 ss (3), (5) and (6) specify actions which will be regarded as "sufficient evidence", they are not exhaustive; s31 (2) speaks of the right being brought into question by notice "or otherwise".
- 1.9.13 The question is whether the challenge was sufficient to show lack of intention to dedicate the route by the landowners to horse riders in general, and whether it cuts into the period of 20 years use.
- 1.9.14 It does not appear that the challenge was overt and brought to the attention of other users, and it is unclear if Mr Tyrrell was acting as the landowner's agent or in his own right. Only the owner or their agent can show lack of intention to dedicate. There is no evidence to show Mr Tyrrell is the owner of either the Mill land or Stone Lane, a County Road, (the two sites at which the reported challenge took place) or that he was acting as the owner's agent. Mr Tyrrell's challenge is therefore not considered sufficient to show a lack of intention to dedicate on behalf of the landowners during the relevant period 1997 to 2017.
- 1.9.15 It does not appear that any other riders were challenged in September 2016. No one else recorded being challenged whilst using the route (Mrs Zervou was challenged on Stone Lane, the county road in February 2017). In August 2018, after the rights of way officer put up the informal consultation site notices, Mrs Percy was challenged as she read this notice.
- 1/9/16 If after hearing the evidence, an Inspector felt that the challenge of one rider by Mr Tyrrell, in September 2016, had brought the route into question, then the relevant period of use, would be between 1996 to 2016. (To recap the evidence shows that between 1995 and 2017, eleven riders were frequently using the Upper route, therefore covering this twenty year period.)
- 1.9.17 Many of the riders record that they met and spoke to Major Goddard over the years as they rode past his workshop at point F. They report he was affable and spoke to them and they passed the time of day with him. None record him challenging their use in any way. Unfortunately, this can no longer be verified as Major Goddard has died. However, the individual accounts of these meetings with the landowner over the years, by many different, unrelated, riders, gives a picture of the landowner's knowledge that the route was being used by horses, and that no direct challenge was made to that use.

- 1.9.18 This differs with the family interpretation of what happened. Mrs Goddard and her family, employee, and tenant, provide a different account, saying Major Goddard would and did challenge people riding the route.
- 1.9.20 The PINs guidance say; “Intention to dedicate” was considered in Godmanchester, which is the authoritative case dealing with the proviso to HA80 s31. In his leading judgement, Lord Hoffmann approved the obiter dicta of Denning LJ (as he then was) in *Fairey v Southampton County Council* [1956] who held “in order for there to be ‘sufficient evidence there was no intention’ to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large – the people who use the path...that he had no intention to dedicate”.
- 1.9.21 Lord Hoffmann held that “upon the true construction of section 31(1), ‘intention’ means what the relevant audience, namely the users of the way, would reasonably have understood the owner’s intention to be. The test is ... objective: not what the owner subjectively intended nor what particular users of the way subjectively assumed, but whether a reasonable user would have understood that the owner was intending, as Lord Blackburn put it in Mann v Brodie (1885), to ‘disabuse’ [him]’ of the notion that the way was a public highway”.
- 1.9.22 Notices
For a Notice to serve as being an overt act for this purpose and successfully disabuse the public at large of the notion that the route is not a public right of way, or to tell a class of user they could not use a route. The Notice must be clearly and specifically worded to disabuse the public of their notion they can use the route. An example of such a notice might be, ‘No Public Right of Way’ or ‘Public Footpath Only. No horses and Bicycles allowed’.
- 1.9.23 The landowners presented evidence of a notice, they detailed that said; ‘Shut the gate’. This notice nearly gave an instruction to a user who had gone through the gate, rather was an explicit sign banning the use of horses on the Upper route. It is commonplace to ask people to close gates. This notice would not have would have conferred to riders, that the landowner was barring horses from the route. None of the riders have seen any notices to say the route was not a bridleway.
- 1.9.24 Section 31(6) deposit
Mr & Mrs Goddard have not made a Section 31(6) deposit to protect their land from rights of way claims.
- 1.9.25 Other Objections
Whilst there are local objections to the proposal, these are largely concerned with damage to the surface of the route by horse riders, making it difficult for walkers, and also of conflict between users, particularly cyclists. Although understandable concerns, these are not factors that can be taken into consideration under the provisions of section 53 of the Wildlife and Countryside Act 1981 when determining, on the basis of the available evidence, whether the claimed rights have been established. The route is currently recorded and maintained as a footpath. If the route were to be upgraded to bridleway status, issues concerning surface maintenance may need to be addressed under the Council’s other duties.

1.10 The Lower Route

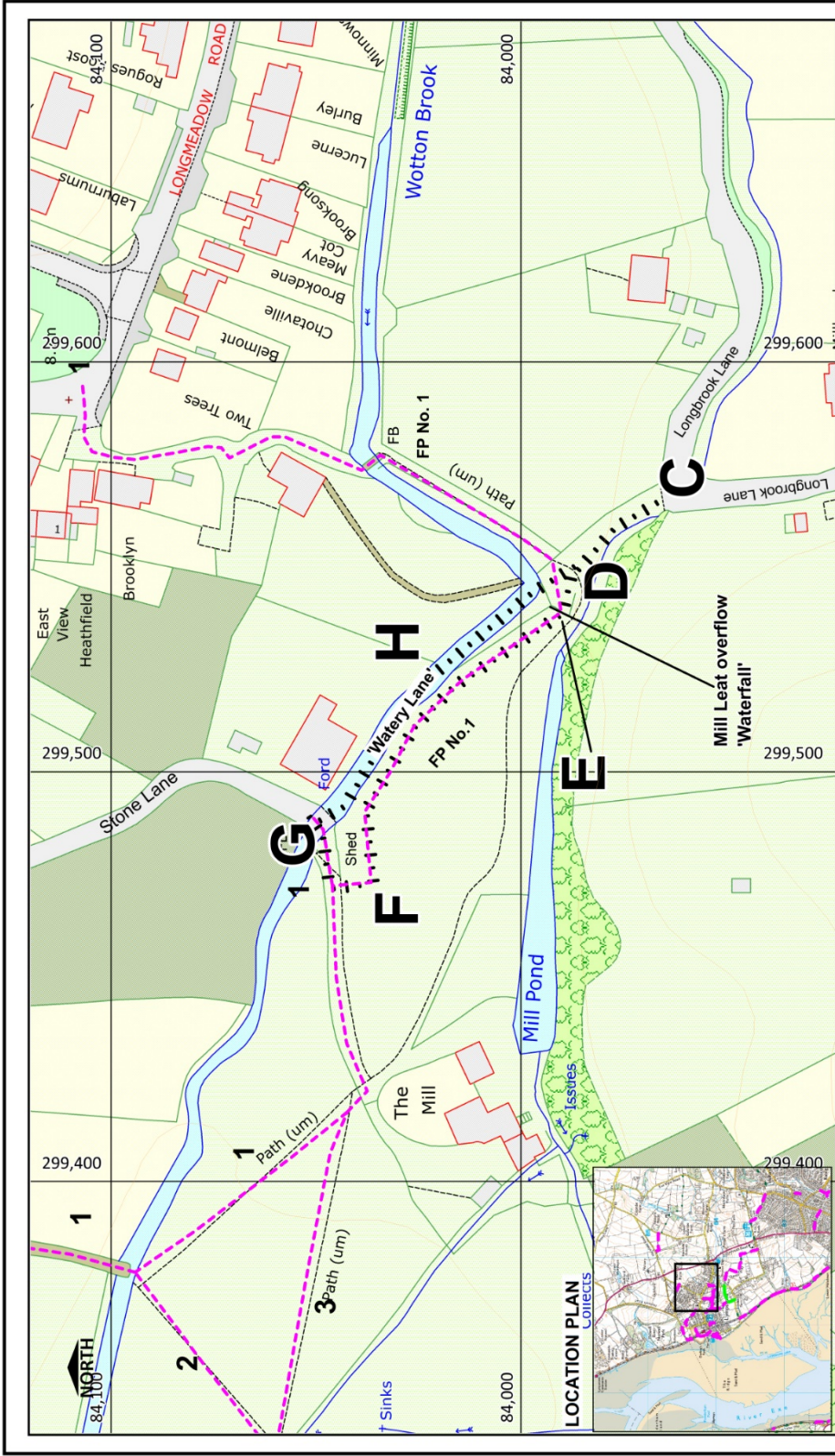
- 1.10.1 In light of the user evidence it is also necessary to determine is if there is sufficient evidence to record a bridleway on the Lower route Watery Lane.
- 1.10.2 Common Law presumes that at some time in the past the landowner has dedicated the way to the public, either expressly, the evidence of the dedication having since been lost, or by implication, by making no objection to the use of the way by the public.
- 1.10.3 On the Tithe Map the lane known as Watery Lane, the Lower route, appears coloured in the same way as other routes which are now public highways in the Parish of Lympstone. The earliest Ordnance Survey mapping of 1801, shows the route of Watery Lane as a through route in the same way as other roads in the parish. It has therefore been recorded as being in existence for at least 200 years.
- 1.10.4 The Old Photograph clearly show Watery Lane, the Lower route, free from obstruction, over growth and water with what looks to be wheel tracks along it.
- 1.10.5 In the most recent correspondence from Mr S Goddard, he appears to believe this route is an ancient highway called Watery Lane and that it should be signposted as either an unmetalled road or bridleway. The Goddards have recently had the hedges trimmed along this route to make it more available to riders.
- 1.10.6 The User Evidence shows that modern horse riders have continued used the Lower route between points D-H-G. One rider has solely used the Lower route, three other riders have occasionally used the Lower route. One of these riders had commented, she has ridden the ford route when the stream was low and safe. The use of the Lower route by riders, has not been brought into question. It seems to have been excepted by the landowners that riders continue to exercise their historical right to use the Lower route. Riders have used this route, instead of the Upper route, since the metal kissing gate was installed.
- 1.10.7 Some of the people who wrote in objection to the bridleway on the Upper route, have seen riders using the Lower route. Mr Atkins the Parish Councillor, said he thought the Lower route was the continuation of the County Road. He has used the Lower route with horse and cart and with a vehicle, but acknowledges that his daughter used the Upper route. (The Lower route is not recorded as a county road).
- 1.10.8 It would therefore appear that there is sufficient evidence that the Lower route should be recorded as at least a bridleway under common law, being an ancient highway, that at some time in the past the landowner had dedicated the way to the public either expressly, the evidence of the dedication having since been lost, or by implication, by making no objection to the use of the way by the public.

1.11 Conclusion

- 1.11.1 Proposal 2, while there is conflicting evidence for this route, that cannot be cross questioned in this forum, the evidence when taken as a whole, is considered sufficient to show that a bridleway subsists, or can be reasonably alleged to

subsist, on the balance of probabilities, over the Upper route of Proposal 2. It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement by adding to them a bridleway between points C-D and upgrading to bridleway that part of Footpath No.1 between points D-E-F-G, as shown on drawing number HIW/PROW/19/02, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

- 1.11.2 Evidence also suggests Watery Lane, the Lower route, appears to be an ancient highway. Accepted at common law that, at some time in the past the landowner had dedicated the way to the public either expressly, the evidence of the dedication having since been lost, or by implication, by making no objection to the use of the way by the public. It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement by adding to them a bridleway between points D-H-G as shown on drawing number HIW/PROW/19/02, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.



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DEVON COUNTY COUNCIL
Proposal 2
To add bridledways

Notation
 Existing Footpaths - - - - -
 Proposed Bridledways · · · · ·

drawing no. HCW/PROW/19/02
 date May 2019
 scale 1:1250 at A4
 drawn by AS

Meg Booth
 CHIEF OFFICER FOR
 HIGHWAYS INFRASTRUCTURE
 DEVELOPMENT AND WASTE
