

Definitive Map Review  
Parish of Trentishoe – Part 2

Report of the Chief Officer for Highways, Infrastructure 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 Order be made to modify the Definitive Map and Statement in respect of Proposal 3.

1. Introduction

This report examines the remaining proposal arising from the Definitive Map Review in Trentishoe.

2. Background

This is the second report for the Definitive Map Review for Trentishoe parish. The background to the Review in Trentishoe was discussed in the first report of 4 March 2019.

3. Proposals

Please refer to Appendix I to this report.

4. Consultations

General consultations have been carried out with the following results:

County Councillor Andrea Davis	– no comment
North Devon Council	– no comment
Kentisbury & Trentishoe Parish Council	– support the proposal
British Horse Society	– no comment
Byways & Bridleways Trust	– no comment
Country Landowners' Association	– no comment
Devon Green Lanes Group	– no comment
National Farmers' Union	– no comment
Open Spaces Society	– no comment
Ramblers'	– no comment
Trail Riders' Fellowship	– no comment
Cycle UK	– no comment

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

## 5. Financial Considerations

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

## 6. Legal Considerations

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

## 7. Risk Management Considerations

No risks have been identified.

## 8. Equality, Environmental Impact and Public Health Considerations

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

## 9. Conclusion

It is recommended that no Modification Order be made to modify the Definitive Map and Statement in respect of Proposal 3.

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

## 10. Reasons for Recommendations

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

Meg Booth  
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Combe Martin Rural

Local Government Act 1972: List of Background Papers

Contact for enquiries: Caroline Gatrell

Room No: Great Moor House, Bittern Road, Exeter

Tel No: 01392 383240

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

cg260121pra  
sc/cr/DMR Parish of Trentishoe Part 2  
02 030321

A. Basis of Claim

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

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

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

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

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

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

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

Proposal 3: Proposed upgrade of Footpath No. 5 to bridleway, as shown between points J – K – L – M – N and L – O on plan HCW/PROW/17/36.

Recommendation: That no Modification Order be made in respect of the Proposal.

## 1. Background

1.1 The proposal route was included in the consultation with the support of the Parish Council to be considered, following up on its proposal in 1978, in response to an incomplete review.

## 2. Description of the Route

2.1 The proposal route – currently recorded as Footpath No. 5, Trentishoe – starts at the county road at Trentishoe Combe near the junction with Trentishoe Hill at point J and proceeds south westwards along a woodland track to meet Footpath 21 at point K. It continues south westwards then westwards running parallel to the River Heddon at point L. From here it continues westwards then southwestwards still running parallel with the river to meet Footpath No. 23 at point M and then to meet the county road at point N. A spur also runs north eastwards from point L to point O at Rhydda Bank Cross.

## 3. Documentary Evidence

### 3.1 Ordnance Survey Draft Drawings, 1804

3.1.1 The Ordnance Drawings were carried out for southern England over the period 1789 – 1840. They were drawn to a variety of scales, 2 inches, 3 inches and 6 inches to the mile. Some of the drawings were made 20 years before the relevant one-inch map was published. Some larger scale drawings show footpaths which did not appear on the printed map.

3.1.2 The proposal route between points J – K – L – M – N is shown as an unenclosed road running parallel to the River Heddon between Trentishoe Combe and Rhydda, known in more recent times as Trentishoe Manor, part of a longer route between Martinhoe and Kentisbury. Neither of the roads between Trentishoe Combe and Rhydda Bank Cross, and Rhydda Bank Cross and the southern end of South Dean Oaks wood, currently recorded county roads existed at that time.

### 3.2 Cary's Map, 1821

3.2.1 Besides the Ordnance Survey, Cary was the leading map publisher in the 19<sup>th</sup> century. He maintained a high standard of maps, using actual trigonometric surveys and other up to date source materials including parliamentary documents, which was reflected by his employment to survey the 9,000 miles of turnpike roads in 1794.

3.2.2 A route, on a similar alignment to the proposal route between points J – K – L – M – N, is shown as an unenclosed road running parallel to the River Heddon between Trentishoe Combe and Rhydda, known in more recent times as Trentishoe Manor, part of a longer route between Martinhoe and Kentisbury. Neither of the roads between Trentishoe Combe and Rhydda Bank Cross, and Rhydda Bank Cross and the southern end of South Dean Oaks wood, currently recorded county roads existed at that time.

### 3.3 Greenwood's Map, 1827

3.3.1 These well-made maps were produced using surveyors and a triangulation system and are considered to be reasonably accurate.

3.3.2 Again, a route on a similar alignment to the proposal route between points J – K – L – M – N is shown as an unenclosed road running parallel to the River Heddon between Trentishoe Combe and Rhydda, known in more recent times as Trentishoe Manor, part of a longer route between Martinhoe and Kentisbury. Neither of the roads between Trentishoe Combe and Rhydda Bank Cross, and Rhydda Bank Cross and the southern end of South Dean Oaks wood, currently recorded county roads existed at that time.

### 3.4 Chapman & Hall's Map, 1833

3.4.1 This well-made map was produced using the surveyor Sidney Hall and is considered to be reasonably accurate. Their maps were surveyed and engraved by Sidney Hall.

3.4.2 A route is shown on a similar alignment to the proposal route between points J – K – L – M – N as the only route to the hamlet of Trentishoe through the parish and then on towards Martinhoe. No other routes are shown in Trentishoe parish.

### 3.5 Trentishoe Tithe Map and Apportionment, 1841-2

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

3.5.2 The Trentishoe tithe map is a second class map, surveyed at a scale of 3 chains to 1", by G. P. Williams, who did a number of tithe surveys in Devon. Being second class, it is considered only to be a legal and accurate record

of tithe matters. Land that was not subject to tithes was generally accepted to be either public, glebe or crown estates. In many cases public roads are coloured sienna as prescribed by Lieutenant Dawson, a military surveyor with the Ordnance Survey, to the Tithe Commissioners. The original document is held at the National Archives, with copies for the parish and diocese held locally.

- 3.5.3 The proposal route is shown as a coloured and unnumbered road, generally unenclosed for its entire length. It is not braced to any adjacent plots. The 'parish roads' are listed in the apportionment unnumbered. By this time, the road between Rhydda Bank Cross and Rhydda Bank (now Trentishoe Manor) had been constructed, but that between Trentishoe Combe and Rhydda Bank Cross still had not been constructed.
- 3.6 Mrs Griffith's Estate map, 1864
  - 3.6.1 Estate maps were normally compiled by professional surveyor and therefore are likely to be reasonably accurate, though would not necessarily show public rights of way which crossed the estate.
  - 3.6.2 The map was based on the Tithe Map. The entire proposal route is shown between points J – K – L – M – N and L – O, as the only route between Trentishoe Combe and Rhydda Bank Cross and Rhydda Bank Lane.
- 3.7 Ordnance Survey mapping, 1809 onwards
  - 3.7.1 Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: 'The representation on this map of a road, track or footpath is no evidence of a right of way'.
  - 3.7.2 The proposal route between points J – K – L – M – N is shown as a cross road on the 1809 Old Series 1:50,000 running parallel with the River Heddon between Martinhoe and Kentisbury, with the spur up to Sowden, now known as South Dean. Neither of the roads between Trentishoe Combe and Rhydda Bank Cross, and Rhydda Bank Cross and the southern end of South Dean Oaks wood, currently recorded county roads existed at that time.
  - 3.7.3 On the later 1<sup>st</sup> Edition 25" scale mapping of 1889, the proposal route is shown as a mainly unenclosed double dashed track following the River Heddon between points J – K – L – M – N with a spur between points L and O up to Rhydda Bank Cross. By this time, the road between Rhydda Bank Cross and Rhydda Bank (now Trentishoe Manor) had been constructed, but that between Trentishoe Combe, Rhydda Bank Cross, and Trentishoe Down still had not been constructed.
  - 3.7.4 On the 2<sup>nd</sup> Edition of 1904, the proposal route shown in a similar manner as the 1<sup>st</sup> Edition. By this time, the road between Trentishoe Combe, Rhydda

Bank Cross, and Trentishoe Down had also been constructed, by Colonel Lake who owned the Martinhoe and Woody Bay Estate.

- 3.7.5 On the Post War A Edition of 1975, the proposal route shown in a similar manner to the 2<sup>nd</sup> Edition.
- 3.8 Trentishoe & Martinhoe Vestry minutes, 19<sup>th</sup> century
  - 3.8.1 Prior to the formation of District Highway Boards in the early 1860s and the later Rural District Councils (1894), the responsibility for the maintenance of public highways generally belonged to the parish and was discharged by elected Surveyors of Highways. Relevant Acts of 1766, 1773 and 1835 included the provision for the use of locally available materials and there was a statutory requirement upon parishioners to fulfil a fixed annual labour commitment. The final responsibility for maintenance lay with the local Surveyor of Highways who was obliged to keep a detailed account of public monies expended.
  - 3.8.2 Due to small nature of the parish, the Trentishoe Vestry only met a couple of times a year, even after they joined with Martinhoe Vestry in 1885. The minutes contain very little detail about the business transacted.
- 3.9 British Newspaper Archive, 1824 onwards
  - 3.9.1 This is a digital database of scans of newspapers across the country. It includes local newspapers such as the Exeter Flying Post and the North Devon Journal, except for the years 1825-6 which have not survived. The newspapers included reports on the proceedings of the Magistrates Petty Sessions, Quarter Sessions and Assizes, along with those of the various district Highway Boards and Vestry's.
  - 3.9.2 10<sup>th</sup> October 1895 – North Devon Journal. A press tour was taken of the parish and surrounding area. It was noted that with the Manor of Trentishoe having recently changed hands, the new owner from Kent, had 'resolved upon building a drive, as a result of which Trentishoe village is...approached from Easterclose can be avoided. Starting at the top of the Trentishoe Down, there will therefore be a new road, the contour of the hills being followed...to Hunter's Inn, a distance of nearly 2 miles and the gradient being sufficiently easy to readily admit of coaching traffic'.
  - 3.9.3 28<sup>th</sup> April 1898 – North Devon Journal. 'Mr GC Smyth-Richards asked for a cheque of £40 towards repairing the road leading from Hunter's Inn to the Cottage, Trentishoe, undertaken by Colonel Lake. The total cost was more than double that amount. The £40 will be paid, subject to a certificate from the Surveyor.' This has been identified as including the proposal route between points J – K – L – M – N. 'In answer to enquires by Mr Smyth-Richards (Colonel Lake's agent) as to the Council taking over the new road leading from Trentishoe Common to the bottom of Trentishoe Hill, the Chairman said application had to be made under the 23<sup>rd</sup> Section of the Highway Act'.



- 3.9.4 30<sup>th</sup> June 1898 – North Devon Journal. The Lord of the Manor of Trentishoe, Colonel Lake, 'gave notice of his intention 3 months hence to dedicate to the public the new road (1 mile 1 furlong and 7½ chains in extent and with a clear width of 16 feet) commencing at Trentishoe Downs, and branching from the existing highway at Trentishoe Combe'.
- 3.9.5 13<sup>th</sup> July 1899 – North Devon Journal. It was reported that the Lord of the Manor of Trentishoe 'was desirous of handing over to the Rural District Council the road he made 3 or 4 years ago from Trentishoe Combe to Trentishoe Down. He applied that...2 magistrates should be appointed to view the road. Captain Thompson and Mr Comer Clarke were appointed to see the road'.
- 3.9.6 1<sup>st</sup> June 1950 – North Devon Journal. The 'Sunbeam Exmoor Trial [had] nearly 70 riders. The 50 mile course included several North Devon favourite hills, among them being...Rhydda Bank'.
- 3.10 Ordnance Survey Boundaries Branch Map and Inspection Journal, 1885
- 3.10.1 As well as producing maps, the Ordnance Survey, from 1841, was responsible for the Public Boundary Archive for Great Britain. Its files show each change to a public boundary (county, parish, parliamentary and local government boundaries). There are large numbers of Ordnance Survey reports and other files describing and defining local government boundaries as depicted and described in sketch maps, reports and remarks books
- 3.10.2 The proposal route is shown as part of the local highway network, along with what is now recorded as Parracombe Footpath No. 23 at Invention.
- 3.11 Trentishoe Parish Meeting Minutes, 1894-1978
- 3.11.1 The Minutes provide information about the management of the route and the Meeting's views regarding the public highways in the parish. A public body such as a Parish Council/Meeting had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.
- 3.11.2 None of the Parish Meeting records appear to have survived and could not be discovered.
- 3.12 Barnstaple Rural District Council Minutes, 1893-1974
- 3.12.1 The Minutes provide information about the management of and the Council's views regarding the public highways in the parish. A public body such as a District Council had powers only in relation to public highways through the appointed Surveyor historically, which they had a responsibility to maintain. The records for 1898-99 have not survived.

- 3.12.2 There are a number of references to the highways in Trentishoe parish in these records, with a number specifically dealing with the alternative to the proposal route between Trentishoe Common and Trentishoe Combe, but none regarding the proposal route specifically.
- 3.13 Ordnance Survey Name Books, 1903
- 3.13.1 These Ordnance Survey records contain information on named routes may be found in the relevant Object Name Books, which provided details of the authorities for named features.
- 3.13.2 The only roads included for Trentishoe parish are South Dean Lane, Trentishoe Lane, Trentishoe Hill, Dean Lane, and Dean Wood Lane. The majority of the parish roads which are public highways today, are not included.
- 3.14 Bartholomew's 2" to 1 mile mapping, 1903
- 3.14.1 These maps were designed for tourists and cyclists with the roads classified for driving and cycling purposes. They were used by and influenced by the Cyclists Touring Club founded in 1878 which had the classification of First Class roads, Secondary roads which were in good condition, Indifferent roads that were passable for cyclists and other uncoloured roads that were considered inferior and not to be recommended. Additionally, Footpaths and Bridleways were marked on the maps as a pecked line symbol. Cyclists were confined to public carriage roads until 1968. The half-inch small scale does not permit all existing routes to be shown, omitting some more minor routes. The purpose of these maps was to guide the traveller along the routes most suitable for their mode of transport.
- 3.14.2 The original main route shown through the parish between Kentisbury and Martinhoe ran parallel to the River Heddon and included the proposal route between points J – K – L – M – N. It was classed as a secondary road, which was considered a good road. This route was bypassed by the new road constructed by the Lord of the Manor.
- 3.15 Finance Act, 1909-10
- 3.15.1 The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.
- 3.15.2 The proposal route is wholly included within hereditaments 6 – South Dean Oaks, owned by Colonel Griffiths and 17 – Parsonage Wood, owned by Miss Lake, as is what is now recorded as uUCR 301 between Trentishoe Manor, formerly known as Rhydda Bank and Woodend, within hereditament

26 – Tattiscombe. There are no deductions for Public Rights of Way or User.

3.16 Bartholomew's ½" to 1 mile maps, 1903 onwards

3.16.1 The map dated 1903 depicts the proposal route between points J – K – L – M – N as a 2<sup>nd</sup> class road in 'good' condition. From the 1921 Edition onwards, the proposal route has been demoted to the classification of an 'inferior road' not to be recommended. The spur between points L – M is not shown, due the small scale of the mapping.

3.17 Trentishoe Estate sale, 1929

3.17.1 Sales particulars should be treated with special caution, as the art of embellishment in advertising is not a newly acquired skill. Such documents are primarily concerned with private rather than public rights. Nevertheless, if a public right of way were admitted, a convincing reason for disregarding the entry would need to be provided before it could be entirely discounted.

3.17.2 The Estate was put up for sale by the Public Trustee. Sections of the proposal route between points J – K, L – M – N, and L – O, were included in lots 1 and 9 listed as Rhydda Bank (later known as Trentishoe Manor) and 2 Enclosures of Pasture and Woodlands. The sale catalogue makes no reference to the proposal route.

3.18 Aerial Photography, 1946 onwards

3.18.1 The proposal route is visible where it is not obscured from view by the woodland.

3.19 Definitive Map Parish Survey, 1950s

3.19.1 The compilation process set out in the National Parks and Access to the Countryside Act 1949 involved a substantial amount of work and such records are considered a valuable source of information. The rights of way included in the process had to pass through draft, provisional and definitive stages with repeated public consultations. Trentishoe had a Parish Meeting, which did not have a regular Chairman.

3.19.2 The proposal route was surveyed on 14<sup>th</sup> December 1950 by Messers Bray and Williamson, as a 'carriage road used as a footpath' (CRF) running from Mill Ham Road to Trentishoe Combe. The status was then altered to 'footpath' by the County Surveyor.

3.19.3 In the list of public rights of way agreed with the Parish Meeting in May 1957, Footpath No. 5 was described as starting from the county road north of Millham 'at its junction with Footpath No. 3 at 325 yards north of "Mill Ham", continuing along a private accommodation road (not repairable by the inhabitants at large) in a north-easterly direction through South Dean Oaks, then eastwards through Parsonage Wood and northwards through Birchey

Cleave Wood to join County road No. 516 at Trentishoe Combe. Also a spur running north-westwards from a point 75 yards west of the western boundary of Parsonage Wood through South Dean to the Unclassified County road 200 yards south of South Dean’.

3.20 Definitive Map and Statement, 1957

3.20.1 The inclusion of a public right of way on the Definitive Map and Statement is conclusive evidence of its existence. However, this does not preclude that other rights which are currently unrecorded may exist.

3.20.2 The Definitive Statement for the proposal route currently describes it in the same way as the parish submission, as starting ‘at the Unclassified County road at its junction with Footpath No. 3 at 325 yards north of "Mill Ham", continuing along a private accommodation road (not repairable by the inhabitants at large) in a north-easterly direction through South Dean Oaks, then eastwards through Parsonage Wood and northwards through Birchey Cleave Wood to join County road No. 516 at Trentishoe Combe. Also a spur running north-westwards from a point 75 yards west of the western boundary of Parsonage Wood through South Dean to the Unclassified County road 200 yards south of South Dean’.

3.21 Kentisbury & Trentishoe Parish Council Minutes, 1979 onwards

3.21.1 The Minutes provide information about the management of the route and the Meeting’s views regarding the public highways in the parish. A public body such as a Parish Council/Meeting had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.

3.21.2 6<sup>th</sup> September 1979. The clerk had received a letter from Mrs Attwood, Millham ‘bringing to the notice of this Council that bridleways had now been signposted footpaths at Dean Oaks [the proposal route from point N] and one from Trentishoe Manor to the Down and could this Council help in this matter’. It was resolved that the clerk write to North Devon District Council.

3.21.3 11<sup>th</sup> October 1979. It was proposed by J Candy and seconded by E Pickles ‘that North Devon District Council be written to again about the bridleways re-Mrs Attwood as the reply received was not satisfactory’.

3.21.4 22<sup>nd</sup> November 1979. A letter had been received ‘relating to bridleways in Trentishoe and as this seeming unsatisfactory Mrs Pickles volunteered to phone Mr Duddin [at the Exmoor National Park Authority]’.

3.21.5 3<sup>rd</sup> January 1980. ‘Mrs Pickles informed the meeting that she had been in touch with Mr Wilkinson of Exeter [Devon County Council] and she had received information that would enable the clerk to write [to the] National Trust Area Office about footpaths and bridleways in Trentishoe’.

- 3.21.6 7<sup>th</sup> February 1980. 'Arising from the minutes of the last meeting [the] clerk had arranged a meeting between Mr Cook [the] National Park rep and Mrs Pickles and Mrs Attwood resulting in agreement that [the] footpaths could be used as bridleways'.
- 3.21.7 5<sup>th</sup> September 1985. 'Mrs Attwood raised the question of bridle paths in Trentishoe, and said that she'd been informed that although she could ride her horses on the paths, the gateways to them had been downgraded into footpath entrances which meant legally she could not now get onto the bridle paths with the horses. She had a licence for a riding stable and her property had been re-rated but this was ridiculous. Mr Andrews agreed to take this up with the Devon County Council and Exmoor National Park'.
- 3.21.8 3<sup>rd</sup> October 1985. 'Mr Andrews reported on his request for information about the downgrading of these paths following Mrs Attwood's complaint. However, it seems there has been no downgrading, but a question has been raised concerning planning permission for Mrs Attwood's stables. Mr Andrews would report further on this matter'.
- 3.21.9 7<sup>th</sup> November 1985. 'The Chairman opened the meeting to the public for discussions on bridleways and footpaths. Mr Baker of Lower Cowley was very unhappy concerning bridleways. The clerk had obtained a copy of the Definitive Map for both parishes, clearly showing all bridleways and footpaths, with the original descriptions of them. this map would be kept by the clerk at his home, for anyone to inspect, together with the original Kentisbury Definitive Map. Mr Candy [the former representative of the Trentishoe Parish Meeting] agreed to look for the original Trentishoe Definitive Map, and return this to the clerk'.
- 3.21.10 5<sup>th</sup> December 1985. 'Mr Baker's letter was read to the Council and it was decided to let the matter rest'.
- 3.22 Definitive Map records, 1970s
- 3.22.1 In response to the incomplete Definitive Review of the 1970s, the Trentishoe Parish Meeting representative, Mr JB Candy of Woodend Farm, proposed several amendments to the Definitive Map and Statement including the changing the status of Footpath No. 5 to bridleway. He stated that 'always in the past this had been known and used as a bridleway'. It was added by Mr Duddon that 'the change of use of this path would be useful as a horse traffic route, thus avoiding the highway, where considerable traffic volume is experienced during the summer'.
- 3.23 Route Photographs, 2017
- 3.23.1 Site photographs of the proposal route show that it is open and available, though little evidence of equestrian use can be seen.

### 3.24 Land Registry, 2019

3.24.1 The section of the proposal route between points J – K is not registered, but is known to be owned by the National Trust, who have registered the remainder of the route under title number DN 565117.

### 4 User Evidence

4.1 No user evidence has been received for the proposal route.

### 5 Landowner Evidence

5.1 No response was received from the National Trust, which owns the land crossed by the proposal route.

### 6 Informal Consultation Responses

6.1 The Parish Council has no objection to the proposal. No other responses have been received.

### 7 Discussion

7.1 Statute – Section 31 Highways Act 1980. There does not appear to be a specific date on which the public's right, above that of foot, to use the proposal route has been called into question. Currently it is recorded as Trentishoe Footpath No. 5.

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

7.3 Common Law. Evidence of dedication by the landowners can be express or implied. An implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.

7.4 On consideration of the proposal at common law, the historical documentary evidence demonstrates the proposal route's physical existence and availability since at least 1804 as shown on the early Ordnance Survey Draft Drawings. It is shown in a similar manner to other recorded public highways. However, at that time the county road from Trentishoe Down to Trentishoe Combe via Rhydda Bank Cross did not exist. The only routes to Trentishoe Combe in the early 19<sup>th</sup> century were from the Down, via Trentishoe hamlet, or from Trentishoe Manor, via the county road R604 as far as the southern end of South Dean Oaks wood (point N) and the proposal route between points N – M – L – K – J.

- 7.5 This situation continues to be depicted on Cary's mapping of 1821, Greenwood's mapping of 1827, and Chapman and Hall of 1833. By the time of the 1840 Tithe Map, the proposal route is included partly in the acreage of 'parish roads' and coloured sienna throughout. At this time, the spur between points L – O is also shown in the same manner. A requirement of the Highways Acts of 1773 and 1835 was that ancient existing highways considered public unless proven that liability to repair lay elsewhere.
- 7.6 However, it has not been able to discover further information about the proposal route at that time, as it appears due to the small nature of the parish, minimal records were kept by the Trentishoe Vestry. Those records which have survived date only from 1862 onwards. In 1885, the parish joined with Martinhoe Vestry, but the records again, lack detail about the business transacted. This lack of information is compounded by the loss of the Trentishoe Parish Meeting records between 1894-1978, when it joined Kentisbury to form a joint Parish Council in 1978.
- 7.7 Reports of local authority meetings in the British Newspaper Archive are able to fill in some of the gaps in the local records, though most of the focus is on the new road constructed. It was a new 'drive' built by Colonel Lake, the then owner of the Martinhoe Estate and Manor, from Trentishoe Down to Trentishoe Combe via Rhydda Cross, bypassing the highway through the hamlet of Trentishoe as well as the proposal route, neither of which could really cater for carriage traffic. The new 'drive' is now recorded as a county road.
- 7.8 The inference of a higher public status of the proposal route is continued into the early 20<sup>th</sup> century on the Bartholomew's maps, with the proposal route being shown in 1903 as a 2<sup>nd</sup> class road in good condition, though by the 1920s, its status has dropped to an that of an 'inferior road', and 'not to be recommended, replaced by the 'new road from Trentishoe Down to Trentishoe Combe via Rhydda Bank Cross.
- 7.9 Though 19<sup>th</sup> and early 20<sup>th</sup> century mapping consistently depicts the proposal route as a public road, it is not excluded from hereditaments in the Finance Act records, nor are there any deductions for Public Right of Way or User. The Trentishoe Estate sale of 1929 also makes no reference to the proposal route. However, such documents were concerned with private rights, rather than public.
- 7.10 The Ordnance Survey Name Books for the parish are incomplete, so little weight can be given to them, though the Boundaries Branch records from 1885 depict the proposal route as part of the local network, and being one of the two routes to Trentishoe Combe. Their records were part of an actual survey, and show no road via Rhydda Bank Cross to Trentishoe Combe.
- 7.11 When the representatives of the Trentishoe Parish Meeting, Messers Bray and Williamson carried out the Parish Survey in 1950, they described the proposal route as a carriage road used as a footpath, a CRF. This may

have been alluding to the route's historic use as part of the 'parish roads' network in the 19<sup>th</sup> and early 20<sup>th</sup> centuries, and public reputation as demonstrated by the Bartholomew's maps.

- 7.12 The status of CRF was downgraded to footpath by the County Surveyor, but it is not known why the change was made, though the proposal route is subsequently described as a 'private accommodation road' in the Definitive Statement for Footpath No. 5. It may have been considered that the public did not have vehicular rights along the route and was therefore described as such, in line with the 'Instructions to Road Foremen' for carrying out the survey.
- 7.13 It appears therefore that by the time of the Parish Survey the 'carriage road' was considered private. The Parish Meeting and Definitive Map Review records however do demonstrate the route's reputation and use as a bridleway, right up to modern times, which is corroborated by the Bartholomew's Maps of the early 20<sup>th</sup> century.
- 7.14 The use of the term 'private accommodation road' in the current Definitive Statement has no legal standing but may infer that the public may not have had full use of the proposal route, but this must be considered with all the other available evidence.
- 7.15 In response to the Limited Special Review, the Trentishoe Parish Meeting put forward the proposal route to be upgraded to bridleway as 'always in the past this had been known and used as a bridleway', which the Exmoor National Park Officer at the time supported. No evidence to support this designation was put forward at the time.
- 7.16 No evidence has been received from the landowner, the National Trust or any users. The National Trust has owned the land crossed by the proposal route since approximately 1963, but registered it in 2008. They have had a Section 31(6) deposit in place between 1993 and 2013, which has since elapsed.
- 7.17 The current Kentisbury and Trentishoe Parish Council support the proposal.

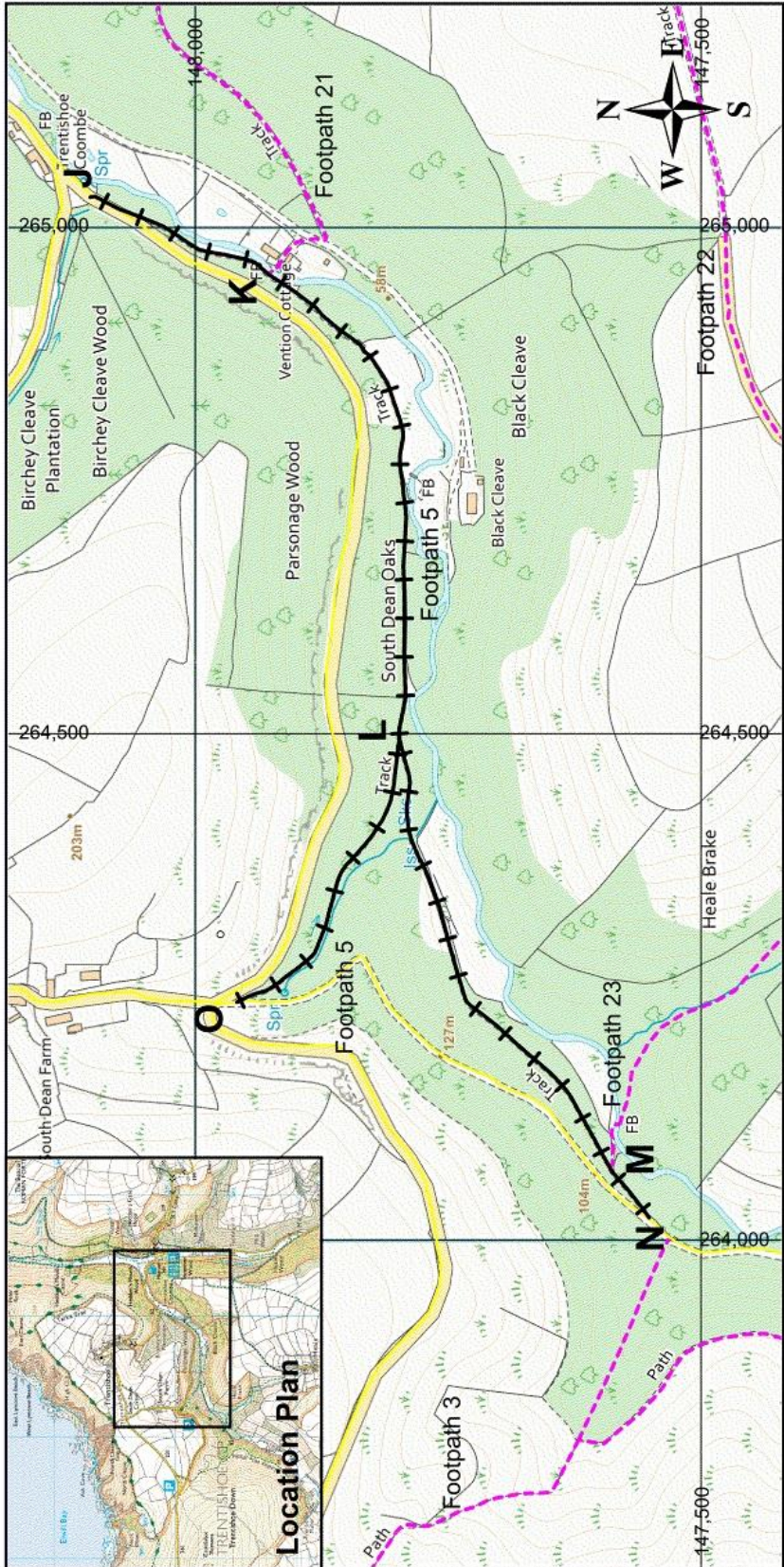
## 8 Conclusion

- 8.1 On consideration of all the available evidence, documents demonstrate that the proposal route between points J – K – L – M – N has existed since at least 1804.
- 8.2 Whilst the documentary evidence suggests the proposal route had a reputation of having higher status than footpath, when taken as a whole is considered insufficient to demonstrate that it should be shown on the Definitive Map and Statement as a highway of a different description. The documentary evidence shows that the route has been available at times in the past to users other than walkers, but it is considered insufficient to demonstrate that equestrian rights exist and consequently to record the



route as a bridleway. There is no evidence of use by the public to demonstrate a higher status.

- 8.3 The evidence is therefore considered to be insufficient under Common Law to demonstrate that a public highway higher than footpath status exists between points J – K – L – M – N and L – O.
- 8.4 It is therefore recommended that no Modification Order be made in respect of Proposal 3.



map ref: SS 6447 & 6448 & 6548

Based on Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Licence No. 100019783

**Devon County Council**  
**Definitive Map Review - Kentisbury & Trentishoe**  
**Proposal 3 - Proposed upgrade of Footpath No. 5 to bridleway**  
**between Trentishoe Combe, South Dean Oaks & Rhydda Bank Cross**

**Notation**  
 Proposed upgrade of Footpath No. 5 to bridleway J - K - L - M - N (approx 1,267 m)    - - - - -  
 Existing footpath    - - - - -

drawing number **HCW/PROW/17136**  
 date **June 2017**  
 scale **1:3,500**  
 drawn by **CLG**

**Meg Booth**  
 Acting Chief Officer for  
 Highways, Infrastructure  
 Development & Waste

