

Definitive Map Review 2019-2021
Parish of Morebath

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

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

Recommendations: It is recommended that no Modification Orders be made in respect of Proposals 1 and 2.

1. Introduction

The report examines the routes referred to as Proposals 1 and 2 arising out of the Definitive Map Review in the Parish of Morebath in Mid Devon.

2. Background

The original parish survey under s. 27 of the National Parks and Access to the Countryside Act, 1949 completed in the summer of 1950, initially proposed 15 routes for consideration as public rights of way. After review by Tiverton Rural District Council and Devon County Council and publication of the draft and provisional Definitive Map, 11 public rights of way were recorded on the conclusive Definitive Map for Tiverton District Council published in June 1964.

No suggestions were made by the parish for changes to the public rights of way in the uncompleted Devon County reviews of 1968 and 1977. In the Limited Special Review of Roads Used as Public Paths (RUPPS), also carried out in the 1970s, RUPP No. 4, Morebath was re-classified as Bridleway No. 14, Morebath on 30th April 1981. Byway Open to All Traffic No. 17, Morebath was added to the Definitive Map by way of a Modification Order in 1991 following a public inquiry.

The following Orders affecting the Definitive Map for Morebath have been made and confirmed since 1958:

Mid Devon District Council Footpath No. 3, Morebath Public Path Diversion Order 1980

Devon County Council Byway Open to All Traffic No. 17, Morebath Definitive Map Modification Order 1990

Devon County Council Bridleway No. 14, Morebath Public Path Diversion Order 2010

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

The current review was opened with a parish public meeting in July 2019 held at the village hall. The presentation was also made to the parish council in November 2019. The consultation map showing two proposals for change was published in September 2020 one of which was a Schedule 14 application made in 2005 by the Trail Riders Fellowship for the upgrading of Bridleway No. 14, Morebath to a Byway Open to All Traffic (BOAT). The other proposal was for the addition of a bridleway from the county road at Clay Pits in Morebath parish to connect to the end of the recorded public bridleway in the Somerset parish of Skilgate, which terminates at the Devon/Somerset county boundary.

3. Proposals

Please refer to Appendix I to this report.

4. Consultations

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

County Councillor Cllr Colthorpe	-	response received
Mid Devon District Council	-	no comment
Morebath Parish Council	-	object to both proposals
Skilgate Parish Council	-	no comment
Somerset County Council	-	no comment
Country Landowners' Association	-	no comment
National Farmers' Union	-	no comment
British Horse Society (Devon)	-	no comment
British Horse Society (Somerset)	-	no comment
Ramblers (Devon)	-	comments in the appendix
Ramblers (Somerset)	-	no comment
Trail Riders' Fellowship	-	no comment
Devon Green Lanes Group	-	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 recommendation(s) have been taken into account in the preparation of the report.

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

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

9. Conclusion

It is recommended that no Modification Orders be made in respect of Proposals 1 and 2.

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 be deferred.

10. Reasons for Recommendations

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

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Tiverton West

Local Government Act 1972: List of Background Papers

Contact for enquiries: Tania Weeks

Room No: M8 Great Moor House, Bittern Lane, Exeter

Tel No: 01392 382833

Background Paper	Date	File Ref.
DMR/Correspondence File	2019 to date	DMR/Morebath

tw090221pra
sc/cr/DMR Parish of Morebath
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 56(1) states that the Definitive Map and Statement shall be conclusive evidence as to the particulars contained therein, but without prejudice to any question whether the public had at that date any right of way other than those rights.

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

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

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

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

1. Proposal 1 – Schedule 14 Application for the upgrading of Bridleway No. 14, Morebath to a Byway Open to All Traffic, from the county road south of Southcombe Farm to the county boundary with Somerset and south west end of Restricted Byway No DU 8/12 Skilgate, as shown between points F – G – H on drawing number HIW/PROW/20/24.

Recommendation: It is recommended that no Order be made in respect of the Proposal.

1.1. Background

1.1.1 In November 2005 the Trail Riders Fellowship submitted a Schedule 14 Application to the County Council for the upgrading of Bridleway No. 14, Morebath to a Byway Open to All Traffic (BOAT), supported by maps as documentary evidence and seven user evidence forms. This was one of a number of Schedule 14 applications made by local representatives of the Trail Riders Fellowship in 2005 prior to the Natural Environment & Rural Communities Act (The NERC Act) that came into force in May 2006. The NERC Act would restrict the ways that rights of ways for motorised vehicles in the countryside could be created or recorded. A right for motor vehicles was preserved under NERC if a Schedule 14 Application had been made prior to 20th January 2005, that is fully compliant with the regulations for Schedule 14 applications under the Wildlife & Countryside Act 1981, or the surveying authority has made a determination of an application for a BOAT before 2 May 2006.

1.1.2 This application was made after 20th January 2005 and was also not fully compliant with the regulations as notice of the application had not been served on the landowners. However, as an application had been received, the proposal was included in the parish review as made, for the upgrading of a recorded bridleway to a BOAT. As there are limited exceptions in which vehicle rights may be preserved it would be likely that the route could only be upgraded to a restricted byway (subject to sufficient evidence) and not to a BOAT.

1.1.3 Bridleway No. 14, Morebath continues into the parish of Skilgate in Somerset as Restricted Byway DU 8/12 Skilgate. This section in Somerset was originally recorded on the Definitive Map as a Road Used as a Public Path (RUPP). It became a Restricted Byway on 2nd May 2006 after enactment of the Natural Environment & Rural Communities Act 2006 which automatically reclassified any remaining RUPPs to Restricted Byways on that date.

1.2. Description of the Route

1.2.1 The southern end of Bridleway No. 14 was formally diverted in 2010 and the route now starts about 150 metres north of Combe Cross on the unclassified county road leading to Combe at point F (GR SS9775 2535) and proceeds northwards along a track parallel to the unclassified county road. The bridleway then bears eastwards then northwards along a track

past Southcombe and East Combe to point G (SS9789 2554), south of Combe Copse. The route continues along a track proceeding north eastwards, then northwards along an old lane, adjacent to the stoned agricultural track and bears northwards to point H (SS9825 2619) at the County boundary with Somerset. The route then continues as Restricted Bridleway No. DU 8/12 in the parish of Skilgate in Somerset.

1.2.2 The total length of the bridleway is approximately 1,100 metres with an improved stoned surface along most of the lane, except for the section towards the farmyard at South Combe and the northern section south of point H, which is stone and grass. The track/lane is un-named on the Devon side but called Chalcombe Rocks Lane at the northern end for part of the route in Somerset. There are photographs of the route in the backing papers.

1.3 Consultations

1.3.1 Morebath Parish Council advised that they do not support the upgrading of the bridleway to a Byway Open to All Traffic as there is no feasible access near Southcombe. These comments were endorsed by the Morebath Parish Paths Partnership representative who also commented on the bridleway gate at the parish boundary and mentioned the pinch points and possible degradation of the grassland sections of the route making it unsuitable for 4x4 motorised vehicles.

1.3.2 The representative of the Tiverton Ramblers Association advised that he had no comments. No other responses were received apart from those as mentioned below.

1.3.3 Councillor Colthorpe advised that she would not encourage the upgrading of Bridleway No. 14 to a Byway open to All Traffic.

1.4 Documentary Evidence

1.4.1 Ordnance Survey and Other Maps

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

1.4.1.2 Cassini Historical Maps 1809 – 1900 Sheet 191 Okehampton & North Dartmoor

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

1.4.1.3 Old Series 1809: The bridleway is shown as a defined lane throughout its entire length, in the similar manner to the now county roads in the area, from Combe Cross to Skilgate village. The route shown follows the original

route of the bridleway at Combe (before the 2010 diversion) but otherwise looks to be on the same alignment as the remainder of the recorded route.

- 1.4.1.4 Revised New Series 1899-1900: The route is still shown as a double-sided lane throughout its length and on the original alignment as on the Old Series, with part of the route shown as unfenced. The width of the lane in comparison to other routes/roads in the vicinity indicates it was considered a 'Metalled Road. Third Class'.
- 1.4.1.5 Popular Edition 1919: The bridleway is still shown as a defined lane along the route as on the earlier editions through Combe with the double fenced south and north sections appearing to correspond to 'Roads under 14' wide. Indifferent or Bad winding road'.
- 1.4.1.6 Greenwood's Map of Roads 1825
These well-made maps were produced using surveyors and a triangulation system and are considered to be reasonably accurate. They were published in 1825 at a scale of one inch to the mile and date between the 1st edition OS maps and Tithe Maps published in the mid-19th century. Roads were shown as either turnpike roads, with a bold line on one side of the road, or as crossroads. The bridleway is shown as a crossroad and follows the alignment through North Combe and on to the county boundary as a defined lane.
- 1.4.1.7 OS 1st Edition 25" to a mile 1880-1890
The original route started from the end of the county road at South Combe and proceeded north eastwards past the buildings and continued northwards along a doubled pecked lane within a copse/woodland. The northern section of the bridleway then continues along the double pecked line track along the headland of a field. The section in Morebath parish has four bench marks along the route.
- 1.4.1.8 Across the county boundary, the route continues initially as a doubled sided lane, then as a headland path across two fields and alongside Hayes Down Plantation before entering a defined solid boundary lane, named Chalcombe Rocks Lane, with a separate compartment number, into Skilgate parish.
- 1.4.1.9 OS 1 inch to a mile maps of 1946, 1960 & 1965
On the 1946 edition the route is shown as an uncoloured defined double-sided lane and corresponding to 'Unmetalled Roads', to Combe and as an unfenced lane onto point G and then point H. The route follows the alignment north easterly towards North Combe rather than on the current bridleway alignment on the new track going eastwards and northwards between points F and G.
- 1.4.1.10 In the 1960 edition the route is shown as a distinct double-sided white lane (Unmetalled Roads) throughout the length of the route in Morebath and Skilgate parishes. The centre part of the bridleway (and restricted

bridleway in Skilgate) is unfenced on one side of the route but shown at the same width of the double fenced section.

- 1.4.1.11 In 1967 only the southern section of the route to between points G and H the northern end of the lane in Skilgate are shown as a double sided hedged/fenced lane. The Road Used as a Public Path (RUPP), as it is by then recorded on the Definitive Map, is shown from the end of the county road at North Combe in Morebath, along the track shown and continues across the county boundary as a RUPP into Skilgate.
- 1.4.1.12 Geographia Ramblers' Map No. 12 Exmoor 1947
This map was published at a scale of 1 inch to 1.25 miles. The front cover of the map was illustrated with two walkers looking at a map and included the statement 'Footpaths & Bus Routes Distinctly Marked'. It would therefore appear that this map was marketed at walkers who would also use public transport to access the start and end points of their walks. In the key the red lines drawn on the map are described as 'Footpaths & Tracks' with the green lines as 'Bus Routes'.
- 1.4.1.13 On this map the present-day Bridleway No. 14, Morebath is shown as a through route, but not coloured red, from Combe Cross to and through Combe to the county boundary and onto Skilgate. The section north of Combe, within Devon and the first section in Somerset, is shown as unfenced on both sides of the lane.
- 1.4.1.14 OS Post War Mapping A Edition 2500 1970
The route is shown as a defined lane along its entire length and labelled track on the two map sheets. No benchmarks are now shown along the lane. There are two compartment numbers 7628 at 3.06 acres and 6358 at 1.51 acres. Pecked lines within the route at the east end indicate a differentiation in surface across the lane and there is a pecked line across the west end of the lane at point D.
- 1.4.1.15 OS 1:25,000 maps of Great Britain – Sheet 21/60 SS92 1950
The 1:25,000 'Provisional edition' or 'First Series', was Ordnance Survey's first civilian map series at this medium scale, the forerunner of the modern Explorer and Outdoor Leisure maps and published in limited colour between 1937-1961. By 1956 it covered 80% of Great Britain, everywhere apart from the Scottish Highlands and Islands. The series is useful for showing rural and urban areas in much greater detail than the standard one-inch to the mile (1:63,360) maps.
- 1.4.1.16 Minor roads, lanes and private drives/access lanes are all shown as white uncoloured roads/lanes described as 'Other Roads, Poor, or unmetalled'. The conclusive Definitive Map had not been published when this map was published. Some routes are shown as pecked and dashed lines labelled F.P. and B.R. and some as two narrow solid lines. The map contains the standard OS disclaimer 'The representation of any other roads, tracks or paths is no evidence of the existence of a right of way'.

1.4.1.17 This sheet published in 1950 shows the route starting as a defined uncoloured lane in the similar manner to the county road at Combe Cross and described as 'Poor, or unmetalled Other Roads'. The route passes through Combe and continues northwards as an unfenced lane/track on both sides towards the county boundary. Just south west of the county boundary the track shown turns north westwards towards 'Higher Linhay' with a faint pecked line going north eastwards to point H. From point H the route continues as defined lane, initially unfenced on one side, towards Skilgate.

1.4.2 Tithe Maps and Apportionments

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

1.4.2.2 Morebath Tithe Map & Apportionment 1838

On the Morebath Tithe Map the roads are not colour washed although some are numbered and, at the end of the Tithe apportionment, twenty roads are listed, and destination described. Road numbered 270 is described as 'To Skilgate' but refers to Court Lane at Claypits, currently recorded as Footpath No. 6, Morebath.

1.4.2.3 A track is shown as a double pecked line from the end of the county road at Southcombe Farm northwards along the route of Bridleway No. 14 although most of the plot numbers are too faint to read. In the apportionment for South Coombe the description for both plot numbers 331 and 475 reads Copse in Road. Number 320, through which the route passes is described as Homestead only.

1.4.2.4 In the apportionment for East Coombe (called only Coombe) plot number 356 is described as 'Goil and Road' but the location of 356 is not known. Plot number 351 refers to 'Lane in Eastern Mead'. Eastern Mead Meadow, plot number 322 of South Coombe, is south of the yard at South Coombe. The lane 351 could be an alternative route through the yard at South Coombe for Bridleway No. 14 and also as the access to East Coombe.

1.4.2.5 Skilgate Tithe Map and Apportionment 1844

The Somerset Tithe Maps are available to view on line and show the route on the Somerset side going northwards from the county boundary as a double sided lane, then a headland path through a field, then as a double sided lane except when passing by a plantation (with the only apparent

gate across the lane on the Skilgate side) and quarry where it is unfenced on the east side and finally as a double hedged lane into Skilgate village.

- 1.4.2.6 The online Tithe map also has the facility to view how the plot numbers were described in the apportionment. The headland part of the route is numbered 353, described as 'Road in Twelve Acres', part of Haynes Down, owned and occupied by Francis Merson. The field through which the route passes is called Twelve Acres. Where the route passes adjacent to a copse it is called 'Road etc', part of Haynes Down with owner and occupier F Merson.
- 1.4.3 Finance Act Plans and Field Books 1910
 - 1.4.3.1 The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.
 - 1.4.3.2 The allowance given was often on the basis of a figure such as a £1 times 25 yp. The yp refers to years purchase, a method of valuation used to convert a property's income flow (rent) into an appropriate capital sum on the basis that the capital value of a property is directly related to its income producing power. This method of valuation was often used in Finance Act valuations.
 - 1.4.3.3 The section of Bridleway No. 14 on the northern side in Morebath parish is included within hereditament number 26.
 - 1.4.3.4 On the Skilgate side the southern section is included with hereditament number 12. Chalcombe Rocks Lane at the northern end of the route is excluded from the adjoining hereditaments.
- 1.4.4 Vestry Minutes (Morebath Vestry 1867-1912)
 - 1.4.4.1 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 locally elected Surveyors of Highways. Vestry minutes for Morebath for the period 1867 – 1912 are held by the South West Heritage Centre.

- 1.4.4.2 Within the vestry minutes during the above-mentioned period, there are references to the parish roads at various times concerning improving, adopting and condition of the parish roads; tenders for repair, appointment of way wardens and dissolution of the Tiverton District Highway Board. There were, however, no specific references in respect of the proposal route.
- 1.4.5 Parish Council Meeting Minutes
 - 1.4.5.1 The minutes for Morebath Parish Council from 1894 to 1921 were available in the South West Heritage Centre and the minutes from May 2014 to 2018 are available on the parish council website. The minutes between 1921 and 2013 were not traced.
 - 1.4.5.2 Within the period between 1894 to 1921 there are references to paths that would correspond to public footpaths now recorded on the Definitive Map but nothing that refers to Bridleway No. 14, Morebath.
- 1.4.6 British Newspaper Archive (online)
 - 1.4.6.1 Within the British Newspaper Archive there are some references to the Tiverton Highway Board meetings and the farms at East Coombe, Higher Coombe and North Coombe being for sale or let but no reference to the proposal.
- 1.4.7 Parish Survey under National Parks & Access to the Countryside Act 1949
 - 1.4.7.1 Bridleway No. 14, Morebath was initially proposed for addition to the Definitive Map by the Parish Council in the parish survey. The path was surveyed by Major F Rothwell with the survey form signed by the Clerk to the Parish Council and dated 20th October 1950. The grounds for believing path to be public were 'Still being used by the public'. The path was described as 'Bridle Road – Commencing at North Coombe, by fenced lane, last field open track, to parish and county boundary'. A County Council pencil note comments 'Somerset including this R o W as Road used as a Public Path. Refer to Parish to change from Bridleway'. The route was then added to the Definitive Map as RUPP No. 14, Morebath.
 - 1.4.7.2 The Definitive Map statement for the path reads 'It starts at the northern end of the Unclassified County road at Combe and proceeds in a north-easterly direction along a fenced lane through Combe Copse and thence by open track to the Morebath/Somerset County boundary where it continues as RUPP No 8/12 in Skilgate Parish'.

- 1.4.8 Devon County Council Reviews of 1968, 1971 & 1977
- 1.4.8.1 No proposals for any changes to the route were made by Morebath Parish Council in the 1968 review. As a RUPP, the route was to be re-designated in the Limited Special Review of 1971. The Parish Council wrote to the County Council in January 1972 to advise the re-designation should be a bridleway. On the 11th February 1972 the County Council wrote to the County Surveyor to ask if the surveyor would confirm that he agrees with the Parish Council's recommendation. The surveyor replied on the 23rd February to advise he had no objection to the proposed re-classification, except to point out that the continuation in Skilgate Parish is Footpath No. 8/1. However, this was incorrect as the continuation in Somerset was RUPP No. 8/12.
- 1.4.8.2 The surveyor's error was not noticed and the County Council wrote to the Parish Council in March 1972 to advise that as the continuation of the path in Somerset was a public footpath, it was essential that a public right of way, even if situate in two counties, has the same designation. The Parish Council replied in November 1972 to advise that the Council have agreed that RUPP No 14 should be a footpath. A County Council Special Sub-Committee met on the 18th October 1973 to consider a report that proposed the re-designations of the RUPPs which included Morebath 14 as a Footpath. Notice of the proposed changes in the Limited Special Review was then published in November 1973.
- 1.4.8.3 The proposed re-designation received objections from ACU/BMF Countryside Committee asking for byway open to all traffic classification and from the Devon Bridleways Association, Tiverton Branch, asking for bridleway classification. RUPP No. 14, Morebath was therefore included among other objected re-designations at a public local inquiry held at County Hall, Exeter on 6th and 7th September 1977. By the date of the Inquiry, Devon County Council had, in the light of the Hood decision, agreed to classification as a bridleway. There was no evidence to suggest that there was no public right of bridleway.
- 1.4.8.4 The Inspector therefore only considered the ACU/BMF objection. He commented that the route was of vehicular width throughout. When inspecting the right of way he found that the passage through the farm yard to be under two or three inches of liquid mud for 30-40 yards. He did not form the opinion that the right of way was at all suitable for motor vehicles; the surface was too rough for comfortable passage in any ordinary sort of vehicle. The evidence of vehicular use – very occasionally by motorcycles – was slight. He was unable to conclude that a vehicular right of way has been shown to exist. The Inspector recommended that the right of way, RUPP Morebath 14, be classified as a bridleway. The Inspector's decision was dated 19th October 1977 and the confirmation of re-designation as a bridleway was published on 30th April 1981.

- 1.4.8.5 No changes to the public rights of way recorded on the Definitive Map in Morebath were proposed by the Parish Council in the Devon County Council's uncompleted 1977 review.
- 1.4.9 Somerset County Council Records for Restricted Byway No 8/12 Skilgate
- 1.4.9.1 An inspection was made of the records available at Somerset County Council. From the information available it appears that the Skilgate parish rights of way were surveyed in April 1951 by Mr Powell and agreed by the Parish Meeting and then approved by the local Dulverton Rural District Council. Restricted Byway No. 8/12 Skilgate was not initially included on the draft map, published 30th November 1953 but was added to the next stage following an objection to its omission by the Ramblers Association. Their justification for inclusion was that 'This is an unclassified County road, but overgrown in places. Devon County Council claim continuation in their area'. Somerset County Council's summary of objections noted 'Add road used as a public path' with 8/12 added in blue pencil.
- 1.4.9.2 The 'modification' stage of the Definitive Map for Dulverton District Council was published on 9th February 1957 and included the addition for Skilgate parish of CRF (carriage road used as footpath) from Myrtle Cottage south westwards over Chalcombe Rocks Lane to Devon County boundary at B.M. 851.9. Somerset had four stages in preparing their Definitive Map; draft, modification, provisional with the final map published 24th June 1958 which included the Road Used as a Public Path (RUPP) No. DU 8/12 Skilgate. Although initially proposed as Carriage Roads Used as Footpaths or Bridleways (CRF or CRB) in both Devon and Somerset, these routes were subsequently added to the Definitive Maps as RUPPs.
- 1.4.9.3 An undated typed list headed Dulverton Rural District – Unclassified Roads in the Somerset records includes on the OS map sheet 68 N.W. Chalcombe Rocks Lane, Devon Bdy. Skilgate. There was also a handwritten list headed Dulverton Rural District List of routes suggested as CRFs which also includes Chalcombe Rocks Lane Skilgate. A second handwritten list headed Dulverton Rural District Schedule of Public roads used mainly as public paths. This list includes at number 40 Chalcombe Rocks Lane, Skilgate (county unclass rd no 79) from unclass cty rd no 72 to county boundary.
- 1.4.9.4 Somerset County Council started a Limited Special Review to reclassify their RUPPs following the passing of the Countryside Act 1968. In April 1970 Dulverton Rural District Council wrote to the Somerset County Surveyor with their Council's suggestions for the re-classifications of all C.R.F (RUPPs) in the District. DRDC proposed that DU 8/12 Skilgate be reclassified as a BOAT, as recommended by the Parish Council with the reasons 'used by all vehicles, residents, farmers, West Somerset Water Board'. It appears that this was amended as a letter from Somerset County Council to Devon County Council in September 1977 wrote to confirm that the CRF (RUPP) DU 8/12 has the proposed reclassification as a bridleway.

- 1.4.9.5 The Somerset review stalled due to a huge number of objections by the TRF to the proposed down gradings of the RUPPs to bridleways and footpaths. The Secretary of State agreed that Somerset County Council could formally abandon their review in October 1983. The route therefore remained as a RUPP and became Restricted Byway No. DU 8/12 on the 2nd May 2006 under the legislation included in the Countryside and Rights of Way Act 2000 (the Crow Act).
- 1.4.10 Aerial Photography RAF 1946-1949, 1999-2000 & 2015-2017
- 1.4.10.1 On the 1946-1949 aerial photography, the track along the way of the route can be seen from just south of point G northwards to point H. Across the county boundary the route can only be clearly seen at the northern end of the way along Chalcombe Rocks lane and the copse to the south of the defined lane.
- 1.4.10.2 In 1999-2000 photograph once the route has left the yard at South Coombe it is difficult to see the track beneath the trees to the county boundary. In 2006-2007 it is a similar position although the tree cover has reduced just south of point H.
- 1.4.10.3 On the most recent photography, the new access track to East Combe and on to which Bridleway No. 14 was diverted in 2010 is clearly visible. Proceeding northwards there are glimpses of the route beneath the trees to point H.
- 1.4.11 Land Registry
- 1.4.11.1 The records at HM Land Registry show that since the diversion of Bridleway No.14, Morebath in 2010, the route lies entirely across land registered at Land Registry. In Skilgate parish, the route of Restricted Byway 8/12 also lies across registered land except for the northern end of the route along Chalcombe Rocks Lane; although land of either side of that section is also unregistered.
- 1.4.12 Trails Riders Fellowship Schedule 14 Application
- 1.4.12.1 The application made by the Trail Riders Fellowship included reference to the Limited Special Review undertaken by Devon County Council in the late 1970s. The TRF had commissioned research by Independent Consultants which concluded that RUPPs are highways which are not public paths (bridleways or footpaths) but which are used mainly as if they were bridleways or footpaths. If they are not bridleways or footpaths they can only be carriageways. They advised that two of the three tests applied in the reclassification of RUPPs, that of suitability and need, are no longer relevant. They consider that their vehicular rights have not been removed.
- 1.4.12.2 They also included documentary evidence in support of their claim. This included the Tithe Map where they advised that the route is depicted in the

same way as other roads that are public today and Greenwoods Map where the route is shown as a crossroad. They also said that the route is shown as a road on the 1st Series OS map, pre 1922 Geographia Contour Map and Bartholomew's maps from 1927-28 to 1965. The application also made reference to the judge's summing up in the case *Eyre v New Forest Highway Board* 1892 which supports the contention that a road known to be public prior to 1835 would still be public to this day in the absence of a stopping up order even if it had never been publicly maintained at all since then.

1.4.12.3 The current Devon representative of the TRF was advised that the application was been considered as part of the Definitive map Review in Morebath, but no response has been received.

1.5 User Evidence

1.5.1 Seven user evidence forms were included with the TRF Schedule 14 Application received in 2005 and covering the period 1985 to 2005. The use varies between 1-2 to 5 times a year for pleasure purposes on a motorcycle. However, any user evidence dating from 1981 or later, when the route was reclassified as a public bridleway, would be unlawful use unless with the permission of the landowner. Following the passing of the NERC Act in 2006, motor vehicle user evidence can no longer be used as evidence to support the creation or upgrading of a public right of way to a byway open to all traffic.

1.5.2 No other user evidence forms have been received in respect of the proposal.

1.6 Landowner Evidence

1.6.1 The landowners/occupiers who owned land crossed by or adjacent to Bridleway No. 14, Morebath and Restricted Byway DU 8/12 Skilgate were contacted individually and advised of the proposal. They were invited to submit their comments and information by way of a completed landowner evidence form or otherwise.

1.6.2 Mr Williams, as agent for the Badgworthy land Company who are the owners of a 'Freehold Profit a Prendre' over Hunting rights in the area, wrote to advise that he did not think the proposals would interfere with his client's interest as holders of those rights.

1.6.3 Mr Brammer of North Combe Farm who own land adjoining the west side of the route northwest and south of point G commented that if the route became a BOAT it would be a 'road to nowhere' as it joins a Restricted Byway at the Somerset border. Most parts of the route are not wide enough for horses/walkers to safely pass if they met groups of motorbikes etc. He remembers when the path was previously classified as a BOAT (RUPP). Groups of motorbikes would treat their driveway and tracks as part of the route and riders were abusive when challenged.

1.6.4 Mr Sanders of East Combe initially telephoned to advise that he had concerns if the route became a BOAT and subsequently forwarded a written response. In the 1970s and 1980s the bridleway was not very used as it was blocked and not maintained but now it is more regularly used as a bridleway. Mr Saunders subsequently wrote and mentioned concerns with how motorbikes and 4x4s had used the route in the past. As a 4x4 would not be able to access the bridleway gate on the county boundary they would trespass onto his land to continue. The route is used by groups of young people undertaking their D of E expeditions.

1.6.5 No responses were received from the other landowners/occupiers contacted in respect of this route.

1.7 Additional Rebuttal Evidence

1.7.1 A local resident of Morebath parish wrote to object to the upgrading of the bridleway to a BOAT. They take many walks using the footpaths and rights of way in the local area and appreciate their tranquillity in the rural environment. These advantages would be destroyed by opening the way up to motorised traffic for which it was not designed for and would constitute a degradation of the environment. No evidence was included with the comments.

1.7.2 Mr Cross, a property owner in Skilgate, adjacent to proposal 2 wrote to object to the upgrading of Bridleway No. 14, Morebath. The upgrading would be undesirable on safety grounds and the deer, game birds and other wildlife would be threatened by vehicular traffic. The aspect of noise pollution would also provide grounds for objection.

1.8 Discussion

Statute (Section 31 Highways Act 1980)

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

1.8.2 A Schedule 14 application for the upgrading of Bridleway No. 14, Morebath to a Byway Open to All Traffic was made by the Trial Riders Fellowship in 2005. The TRF had included documentary and user evidence in support of their claim. The application made by the TRF in 2005 could be considered sufficient to be the required calling into question under section 31 of the Highways Act 1980 for the upgrading. However, as any user evidence dating from 1981 or later, when the route was re-classified as a public bridleway, would be unlawful use, unless with the permission of the

landowner; the user evidence submitted in 2005 is insufficient to allow the upgrading to be considered under Section 31.

Common Law

- 1.8.3 A claim for a right of way or for upgrading an existing public right of way may also be considered under common law. At Common Law, evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway of the higher status and that the public has accepted the dedication.
- 1.8.4 The map evidence considered shows that the route has existed since the early 19th century as though route to Skilgate parish in Somerset. The larger scale maps show that the route was partly unfenced and partly a headland route. Although maps show that the route has physically existed and has been available to the public, they do not confirm the status of the route shown. Morebath Tithe Map has numbered roads within the parish and listed them individually in the apportionment but does not include the proposal route.
- 1.8.5 The limited Morebath Vestry and Parish Council minutes available do not refer to the route or make any reference to what status it was considered to have by the parish. No evidence has been discovered to show that the route was ever considered to be or maintained by public money as an all-purpose public highway or carriage road.
- 1.8.6 On the 1910 Finance Act plans the route is included within adjacent hereditaments. Routes that were considered to be public highways would usually be excluded from hereditaments.
- 1.8.7 The route was added to the Definitive Map in both Morebath and Skilgate as a RUPP, initially a CRF (Carriage Road used as Footpath) or CRB (Carriage Road used as Bridleway). Records in Somerset County Council indicate that the Dulverton Rural District Council decided to add their minor unclassified county roads to the Definitive Map as RUPPs. A list of these roads includes the description of road number 79 Chalcombe Rocks Lane to county boundary.
- 1.8.8 In the Limited Special Review to reclassify RUPPS both Devon and Somerset proposed that the RUPP should be classified as a bridleway. In Somerset the review was abandoned. In Devon the designation as a bridleway was objected to and the existence of vehicular rights was accordingly considered at a public inquiry in 1977. The objector to the bridleway re-designation produced only limited evidence of vehicular use at the inquiry to support his objection. At this time the Inspector was also able to consider the suitability of the route for motorised vehicles and made comments to this effect in his decision. The Inspector considered the route

was of vehicular width throughout but was unable to conclude that vehicular rights had been shown to exist.

1.8.9 Although there is some evidence from the Dulverton Rural District Council records to show that the Skilgate side of the route was an unclassified county road there is no evidence that this was ever the situation in Morebath parish. Vehicular rights for the public were considered at the 1977 public inquiry but only occasional motorcycle use was presented. This would have been a legal use of the route when classified as a RUPP.

1.9 Conclusion

1.9.1 In the absence of sufficient lawful user evidence, the existence of higher rights cannot be considered under section 31 of the Highways Act 1980. Under common law the documentary evidence is considered insufficient to show that the route has ever been considered as a public vehicular highway or had ever been maintained as a public vehicular highway in Morebath parish.

1.9.2 In the absence of evidence to show that any higher rights, apart from those as a public bridleway, have been acquired, it is therefore recommended that no Modification Order be made to modify the Definitive Map and Statement in respect of Proposal 1.

2. Proposal 2 – Addition of Public Bridleway as a continuation of Bridleway No. DU 8/3 Skilgate in Somerset, from the county boundary to the county road at Claypits in Morebath parish, as shown between points A – B – C – D and B – E – C on drawing number HIW/PROW/20/25a.

Recommendation: It is recommended that no Order be made in respect of the Proposal.

2.1. Background

2.1.1 A public right of way would usually connect with another public right of way or county road and there does not appear to be a logical reason as to why this Skilgate cul-de-sac bridleway did not continue into Morebath parish. The Skilgate bridleway does not lead to a well or viewpoint where cul-de-sac public rights of way can sometimes be found. The lack of a continuation of the public right of way was raised by a member of the public in 1989. It was understood that a continuation of the bridleway in Morebath parish was used for walking and horse riding and there is no clear indication of the county/parish boundary at the end of the Skilgate bridleway when using the route. The anomaly warranted investigation and was accordingly included as proposal 2 in the Morebath review.

2.2. Description of the Route

- 2.2.1 The proposed addition starts at the Somerset/Devon county boundary on the west side of the stream, on a clearly defined stoned track and south of the ford at point A (GR SS 9723 2633). The definitive line of the south west end of Bridleway No. DU 8/3 Skilgate terminates on the east side of the stream although the definitive line of Bridleway No. DU 8/3 in Skilgate does not follow the currently used or available track, which has crossed to the west side of the stream before the county boundary. The proposed route on the Devon side follows the used track and is available to users. There is no clear indication of the position of the county boundary on the ground and from mapping measurements it appears to be approximately 50 metres south of the main ford crossing north of point A.
- 2.2.2 From point A the route follows a clearly defined and improved track south westward through Brockhole Wood along the west side of the stream to point B (GR SS 9696 2622). From point B the main route continues south south westwards along the track through East Timewell Wood to point C near Higher Little Copse (GR SS9663 2594). From point C the route proceeds in a southerly direction along the clear track through Lower Little Copse and Alder Copse to the county road west of Ben Brook Cottage at point D (GR SS 9657 2544). There are two field gates across the route between points C and D. The field gate closer to point D has a wooden sign affixed to the centre of the gate which says, 'Private Land No Right of Way'.
- 2.2.3 Between points B and C, an alternative route follows a track proceeding eastwards across the stream at a ford, then along a track south westwards through Pondclose Plantation to point E (GR SS 9687 2604) and then through an open field area before crossing westwards back over the stream to re-join the main route at point C.
- 2.2.4 The total length of the proposed bridleway (points A – B – C – D) is approximately 1,300 metres with an improved stoned surface along the track. The additional loop from the main track (points B – E – C) is approximately 490 metres and has a surface of earth and grass. There are photographs of the two routes in the backing papers.
- ## 2.3 Consultations
- 2.3.1 Morebath Parish Council advised 'with regard to the second proposal that it has never been an official right of way and if the landowner doesn't want it upgraded there is no benefit. It is a permissive path at the moment'.
- 2.3.2 The representative of the Tiverton Ramblers Association advised that the creation of a bridleway down the wooded valley looked very welcome and gives walkers an additional circular walk, but no evidence was forwarded.

- 2.3.3 A local family from Shillingford wrote to advise that they were pleased to see this obvious historical oversight was being put right at last. It is a well-used local track. The current incumbents of the wood have always been very relaxed about them using it, but it would be super to have it confirmed officially. No other responses were received from the other consultees or local residents.
- 2.3.4 Councillor Colthorpe advised that she understood the suggested bridleway from Skilgate is permissive at the moment and as far as she knows, there has never been a problem between landowner and users. Formalising the arrangement may be welcome to the wider riding community but could also possibly result in a loss of local goodwill.
- 2.4 Documentary Evidence
- 2.4.1 Ordnance Survey and Other Maps
- 2.4.1.1 The Ordnance Survey and other mapping do not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.
- 2.4.1.2 Cassini Historical Maps 1809 – 1900 Sheet 191 Okehampton & North Dartmoor
These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.
- 2.4.1.3 Old Series 1809: The mapping does not show a route through the woods on the Devon side of the county boundary although the stream that runs parallel to the proposed bridleway is shown. Croft Lane at the northern end of the recorded bridleway in Skilgate parish is shown as a defined lane. This lane continues as a defined lane along the route of the currently recorded Bridleway DU 8/3 and then Footpath DU 8/2 in Skilgate, which continues as Footpath No. 6, Morebath.
- 2.4.1.4 Revised New Series 1899-1900 and Popular Edition 1919: The proposal route is still not shown on the later editions of the mapping as on the Old Series.
- 2.4.1.5 Greenwood's Map of Roads 1825
These well-made maps were produced using surveyors and a triangulation system and are considered to be reasonably accurate. They were published in 1825 at a scale of one inch to the mile and date between the 1st edition OS maps and Tithe Maps published in the mid 19th century. Roads were shown as either turn pike roads with a bold line on one side of the road or as crossroads. The map does not show a track or route along the line of the proposed bridleway although it does show the track now recorded as Footpath No. 6, Morebath.

2.4.1.6 OS 1st Edition 25" to a mile 1880-1890

The map shows a double pecked line running along the route of the proposed bridleway on the north west side of the stream from point A to the southern end of Alder Copse, north of point B and as a double sided lane from there to point D. The pecked line is braced to the compartments through which it passed. There is a 'Ford' is shown at point B and a double pecked line is shown between points B – C – E with 'Ford and 'Foot Bridge' east of point C.

2.4.1.7 In Skilgate parish the double pecked line stops at the county boundary on the south east side of the stream, with the Morebath line starting on the opposite bank. On the Skilgate side the pecked line is annotated 'F.P.' just north of the county boundary.

2.4.1.8 OS 2nd Edition 25" to a mile 1904-1906

On the 2nd edition map the pecked line from Skilgate parish is now shown as crossing over the county boundary, still on the south east side of the stream and then turning north westwards across the stream (labelled 'F.B.')

to join the track in Morebath parish on the north west side of the stream about 20 metres south west of point A. The rest of the route is as on the first edition although with point B annotated 'Ford' and with 'Ford' and 'F.B' near point C. A narrower double pecked line is shown coming northwards from Morebath Manor which joins the proposal route between points C and E and is labelled 'F.P.' in two places along that section.

2.4.1.9 OS 1 inch to a mile maps of 1946, 1960 & 1965

On the 1946 edition no track or path is shown along the line of the proposed bridleway through the woods. The stream is shown.

2.4.1.10 In the 1960 and 1967 editions the track at the southern end of the route is shown as an unfenced and then as a track with solid line boundaries for the section from south of point C to point D. A white lane corresponds to a Minor Roads in Towns, Drives and Unmetalled Roads. On the 1967 edition Bridleway DU 8/3 Skilgate is shown on the map along with Footpath DU 8/2 Skilgate/Footpath No. 6 Morebath.

2.4.1.11 Geographia Ramblers' Map No. 12 Exmoor 1947

This map was published at a scale of 1 inch to 1.25 miles. The front cover of the map was illustrated with two walkers looking at a map and included the statement 'Footpaths & Bus Routes Distinctly Marked'. It would therefore appear that this map was marketed at walkers who could use public transport to access the start and end points of their walks. In the key the red lines drawn on the map are described as 'Footpaths & Tracks' with the green lines as 'Bus Routes'.

2.4.1.12 On this map there is a red line shown extending from the end of Croft Lane in Skilgate parish and at the start of the woodland. The red line proceeds in a south westerly direction and across the county boundary. In Morebath parish the red line follows the route between points A – B – C to just south

westwards of point C before the proposed route turns southwards to Claypits.

2.4.1.13 OS 1:25,000 maps of Great Britain – Sheet 21/60 SS92 1950

The 1:25,000 'Provisional edition' or 'First Series', was Ordnance Survey's first civilian map series at this medium scale, the forerunner of the modern Explorer and Outdoor Leisure maps and published in limited colour between 1937-1961. By 1956 it covered 80% of Great Britain, everywhere apart from the Scottish Highlands and Islands. The series is useful for showing rural and urban areas in much greater detail than the standard one-inch to the mile (1:63,360) maps.

2.4.1.14 Minor roads, lanes and private drives/access lanes are all shown as white uncoloured roads/lanes described as 'Other Roads, Poor, or unmetalled'. The conclusive Definitive Map had not been published when this map was published. Some routes are shown as pecked lines labelled F.P. and B.R. and some as two narrow solid lines. The map contains the standard OS disclaimer 'The representation of any other roads, tracks or paths is no evidence of the existence of a right of way'.

2.4.1.15 The sheet published in 1950 shows the route including the loop section as a lane/track. Some sections have double solid lines whilst others have both sides pecked or pecked on one side. The section B – E - C is shown wholly unfenced/unhedged. The pecked lines indicated there was not a hedge or fence on the side of the track. The annotation 'F.B.' (Footbridge) is shown at point A with 'F.B.' and 'Ford' shown at the stream east of point C. On this map the track shown crosses from the north east side of the stream to the south west side at the county boundary at point A and location of the footbridge.

2.4.1.16 OS Post War Mapping A Edition 2500 1970

On this map a double pecked lane, labelled track, is shown along the route of the proposal on the Skilgate side which then crosses over the stream at a 'Ford' about 130 metres north of the county boundary in Skilgate parish. The track then continues south westwards from the county boundary along the proposal route between points A – B – C – D and between points B – E – C, with the last section north of point D being along a double solid sided lane. The double pecked lines are labelled 'track' in two places along the main section and twice along the loop section B – E – C. There is 'Ford' labelled at point B and 'Ford' and 'FB' near point C.

2.4.2 Tithe Maps and Apportionments

2.4.2.1 Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured, and colouring can indicate carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown. Public footpaths and bridleways are rarely shown as their

effect on the tithe payable was likely to be negligible. Routes which are not included within an individual apportionment are usually included under the general heading of 'public roads and waste'.

2.4.2.2 Morebath Tithe Map & Apportionment 1838

On the Morebath Tithe Map, which is feint, a double pecked line appears to be shown on the south eastern side of the stream from a point south of point A. This track continues on this side of the stream before crossing to the other side south of point C and then a marked track continues along the line of the proposed route to point D.

2.4.2.3 Skilgate Tithe Map and Apportionment 1844

The Skilgate Tithe map shows a track through the woods from the end of Croft Lane which follows the south east side of the stream to the county boundary.

2.4.3 Finance Act Plans and Field Books 1910

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

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

2.4.3.3 The majority of the proposal route A – B – C – D is included within hereditament number 59 in Morebath parish. Part of the loop section point E to the ford and footbridge east of point C and the section from the southern of Alder Copse to point D are included within hereditament 42 in Morebath.

2.4.3.4 Hereditament 59 was described as plantation and woods of 166 acres and owned and occupied by Richard Rothwell of Morebath Manor. The field book refers to 'Footpaths & rights of way 2/10/ x 20 £50' but no more details are provided or any field numbers. The allowance of £50 is carried forward to page 4 of the field book under 'Public Rights of Way or User'.

2.4.3.5 Hereditament 42 was described as 'Loyton House and Land' of 344 acres, owned and occupied by Richard Rothwell as above. The field book particulars refer to 'Footpaths 4 x 24 say £96' but no details are given re field numbers. The sum of £96 is carried forward to page 4 under 'Public Rights of Way or User'. The land included within hereditament number 42 includes land that is currently crossed by Footpaths Nos. 1, 3, 6 and 7, Morebath. Both hereditaments include an allowance for Sporting rights on the land.

2.4.3.6 In the Skilgate parish Finance Act maps, Bridleway DU 8/3 crosses land within hereditaments numbers 2, 18 & 22. The land within hereditament number 2, part of Skilgate Woods close to the county boundary and number 22, the main part of Skilgate Woods was sold to Mr Rothwell in 1920. Hereditament 18, Pitt Farm close to Skilgate village includes the section of the along Croft Lane. None of the Skilgate hereditaments make any reference to rights of way affecting the land.

2.4.4 Vestry Minutes (Morebath Vestry 1867-1912)

2.4.4.1 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 locally elected Surveyors of Highways. Vestry minutes for Morebath for the period 1867 – 1912 are held by the South West Heritage Centre.

2.4.4.2 Within the vestry minutes during the above-mentioned period, there are references to the parish roads at various times concerning improving, adopting and condition of the parish roads; tenders for repair, appointment of way wardens and dissolution of the Tiverton District Highway Board. There were, however, no specific references in respect of the proposal route.

2.4.5 Parish Council Meeting Minutes

2.4.5.1 The minutes for Morebath Parish Council from 1894 to 1921 were available in the South West Heritage Centre and the minutes from May 2014 to 2018 are available on the parish council website. The minutes between 1921 and 2013 were not traced.

2.4.5.2 Within the period between 1894 to 1921 there are references to paths that would correspond to public footpaths now recorded on the Definitive Map but no entries that refer to the proposal route.

- 2.4.6 British Newspaper Archive (online)
 - 2.4.6.1 Within the British Newspaper Archive there are some references to hunting reports in Skilgate woods but no references to the proposal route.
- 2.4.7 Parish Survey under National Parks & Access to the Countryside Act 1949
 - 2.4.7.1 The parish survey for paths in the northern part of Morebath parish was completed by Major Rothwell in 1950. No path or route was claimed along the proposal route. No correspondence from Somerset County Council has been found in Devon County Council's files regarding the cul-de-sac bridleway in Skilgate parish and whether there was a continuation in Morebath parish.
- 2.4.8 Devon County Council Reviews of 1968, 1971 & 1977
 - 2.4.8.1 No proposals for any changes to the public rights of way in Morebath parish were made by Morebath Parish Council in the uncompleted county reviews of 1968 and 1977. The Limited Special Review of 1971 concerned the reclassification of RUPPS only.
- 2.4.9 Somerset County Council Records for Bridleway No 8/3 Skilgate
 - 2.4.9.1 An inspection was made of the records available at Somerset County Council. The equivalent of the Morebath parish survey file from the 1950s was not available. The number DU 8/3 (path number 3) for the bridleway in Skilgate would indicate that the public right of way was initially proposed in the 1950 survey. The route in Skilgate parish was described as path no. 3 and a BR on a handwritten form which described the route as 'The path starts at the entrance to Croft & on by Croft to Skilgate Wood. Taking the second right hand path it continues right through the wood to the County Boundary. There are several inches of mud on this path during wet weather, otherwise in good repair.' The current definitive line of Bridleway DU 8/3 Skilgate north of point A, does not appear to follow the track currently available to users when approaching the county boundary.
- 2.4.10 Aerial Photography RAF 1946-1949, 1999-2000 & 2015-2017
 - 2.4.10.1 On the 1946-1949 aerial photography, the track followed by the proposed route can be seen from south of point C to point D. A track can also be seen along the open field section of the route between points E and C.
 - 2.4.10.2 In the 1999-2000 photograph most of the track followed by the route can be seen between the trees along the route A – B – C – D, although parts south of points B and C are obscured by the trees. The route across the field between points E and C is also visible.
 - 2.4.10.3 On the 2006-2007 aerial photography the majority of the main route is now obscured by the trees except for the section between points A and B. The track is still visible between points E and C. On the most recent 2015

photography more of the track is visible between points A and C and points C and D.

2.4.11 Land Registry

2.4.11.1 The records at HM Land Registry show that the land crossed by the proposed route in Morebath is registered at HM Land Registry under title number DN453576. Profits a pendre (the hunting rights) are also registered across the land under title number DN571127. Profits a pendre gives people the right to share in/take produce from the land owned by another.

2.5 User Evidence

2.5.1 Seven user evidence forms were received in respect of use of the route. The user evidence forms were completed in the summer of 2019, shortly after the Definitive Map Review was opened in the parish.

2.5.2 Mrs Blackmore had used the route on horseback from 2015 about six times a year and used the route A – B – C – D. She had been told it was public when moving to Morebath in 2015. Mrs Blackmore mentions a gate halfway along but has not mentioned the sign. She had not obtained permission to use the route or ever been stopped or turned back.

2.5.3 Ms Brown had used the route A – B – C – D on horseback from 2016 about five times a year. She had thought the path was public through a friend in the village. Miss Brown refers to one gate on the route and does not refer to seeing the sign. She had not obtained permission to use the route or ever been stopped or turned back.

2.5.4 Mrs Courtney had used the route A – B – C – D since 1993 on foot, cycle and horseback for six to twelve times a year. She thought the path to be public as locals have always used it. Mrs Courtney refers to one gate on the route and does not refer to seeing the sign. She had not obtained permission to use the route or ever been stopped or turned back. Under any additional information she has added 'clearly a well-used road to Skilgate'.

2.5.5 Mr Courtney had used the route A – B – C – D since 1993 on foot and bicycle about six times a year. He had thought the path public as local residents always use it. Mr Courtney refers to gates, never locked but does not refer to the sign. He had not obtained permission to use the route and has never been stopped or turned back. He believed the owner or occupier was aware of the public using the path as he saw them, and nothing was said. Under additional information he commented 'obviously a road to Skilgate, locals have always used it'.

2.5.6 Ms Dawes has used the route A – B – C – D between 1978 to 2004 on horseback on a fortnightly basis. She thought the path public as a continuation of Bridleway Du 8/3 from Skilgate. Ms Dawes refers to the

gate but does not mention the sign. She has been a tenant of the landowner since 1977 and has met the owner/occupier on the path walking their dogs.

- 2.5.7 Mrs Dean has used the route A – B – E – C – D from 1983 at least once a week on horseback or on foot. She thought the path is public as always been used – only way to access marked bridleway. Mrs Dean refers to gates and extra gates for the pheasant shoot and also a notice for short time, though did not remember words. She had been told by Mr Alex Barnes in 1983 it was fine to use the path but to keep dogs on leads and had also received permission from the landowner's wife. Under additional comments Mrs Dean has commented 'historically Skilgate and Claypits joined by this path. Stops at parish boundary on Definitive Map in middle of stream. The bridleway not much use unless connected to Claypits'.
- 2.5.8 Mrs Moore has used the route A – B – E – C – D from 1995 once a month minimum on horseback. She thought the path to be public as always used. Mrs Moore refers to gate not locked but no notices. She has not obtained permission to use the route or ever been stopped or turned back. Under additional information she has commented 'bridleway path on map stops in middle of stream, gamekeepers and staff very friendly when I meet them while riding on path. Never been told otherwise'.
- 2.5.9 No additional user evidence forms were received following publication of the Review consultation in September 2020.

2.6 Landowner Evidence

- 2.6.1 The landowners/occupiers who owned land crossed by or adjacent to the proposed bridleway and Bridleway DU 8/12 Skilgate were contacted individually and advised of the proposal. They were invited to submit their comments and information by way of a completed landowner evidence form or otherwise.
- 2.6.2 Mr Williams, as agent for the Badgworthy land Company who are the owners of a 'Freehold Profit a Prendre' over Hunting rights in the area, wrote to advise that he did not think the proposal would interfere with his client's interest as holders of those rights.
- 2.6.3 Mr J Rothwell is the freehold owner of the land crossed by the route. He completed a user evidence form and confirmed that his family had owned the land since the early part of the 20th century. He lives in London but regularly stays at Rill Cottages, close to the southern end of the route near point D. Mr Rothwell states that the wood is private land over which he and his family have granted permissive rights of access. In 1977 the hunting rights were granted to the Badgworthy Land Company Ltd and hunts and their followers use the woods. Neighbours and tenants of their family properties are generally permitted to walk or ride in the woods.

- 2.6.4 It was not his intention that a public right of way should be created as a result of these activities and about sixteen years ago had the notice saying 'Private Land No Right of Way' put up at the Claypits entrance. Mr Rothwell advised that he has very occasionally seen people in the wood that he has not recognised as having permission. One group were seen about five years ago picnicking in the meadow, they were told it was private land and asked to leave. Gates along the route are sometimes closed and maybe obstructed by felled timber stacks and shoot member's vehicles.
- 2.6.5 He believes that there is a local understanding that these are private forestry tracks and as the family have generously granted access when requested, the local community believe their actions to be reasonable. It was never their intention to allow a Public Right of Way to be created as a result of their generosity. He strongly objects to the proposal to make this a Public Right of way; he is, however, happy to continue to grant permissive access on an ad hoc basis as and when requested and as and when he sees fit.
- 2.6.6 Mr A Barnes of Loyton Farm is the licensee of the sporting rights on the land crossed by the route proposed and they have been in occupation since February 2007. The land is private land over which permissive rights of access have been occasionally granted by the landowners either to tenants, adjoining landowners or friends. They are aware of these arrangements to enable he and his employees to differentiate between authorised and unauthorised users.
- 2.6.7 They have seen people in the woods over the last thirty years on the proposed route and other forestry tracks and most people are known to them as having permission. Unauthorised users may have seen people on the claimed route, without knowing that they have permission to be there. Confusion can arise at the County boundary as it is an open space with no obvious place to erect signs to end the bridleway, so users follow the track to find the nearest route to get back to a PROW. Unauthorised access has been infrequent at best.
- 2.6.8 Their employees and gamekeepers have stopped people they do not recognise as permissive users. There is a sign on the gate at the Claypits end of the track so unauthorised access is generally from the northern end. There has been an increase in unauthorised access in 2020. They release pheasants in mid-June and shoot on any one of the three drives in the valley maybe 2-3 times a week during the season. A number of vehicles use and obstruct the track at these times. They have erected signs in the woodlands asking users to keep dogs on leads. They do not place a person at the end of the route during a shoot drive as it is not a public right of way. Their employees, seasonal staff and family members have permission to use the woods.
- 2.6.9 The wooden field gate at the Claypits end is closed at certain times of the year and he understands has been historically locked on occasion. The gate part way along the track is shut from June/July onwards for about 6-8

weeks when birds are released. Due to the number of permissive users they have tried to avoid the need to lock the gates.

- 2.6.10 Mr A Floyd has been the head keeper for the licensee of the sporting rights for 16 years. He understands that there is a public bridleway on the Somerset CC side but that south of the boundary there is only permissive access. This information was gained from his employer, the landowner/s and local residents. He and his keepers differentiate between any authorised and unauthorised users.
- 2.6.11 During the last 16 years he has seen people on foot, on mountain bikes, on horseback and a couple of instances of motorbikes. People are not always on the claimed route and there has been an upsurge in people in 2020. There are about 5 people they know about who have permitted use on horseback and a number who are allowed to walk there. He would stop to chat to or acknowledge people he saw who he recognised.
- 2.6.12 He has stopped people he does not recognise and also people on the Somerset side if not on the public right of way. The sign saying 'Private Land No Right of Way' on the field gate at the Claypits end of the track was put up by him 16 years ago. This sign has never been defaced or removed. This gate is closed at certain times of the year. Additional 'Keep dogs on leads please' signs were erected in June 2020 throughout the woodland due to increase in access.
- 2.6.13 Mr Floyd included a list of people that they are aware have permission to use the route, which was estimated to number about 30 people, to also include additional tenants in estate cottages. Other comments included were as stated by Mr Barnes with regard to the operation of the shoot.
- 2.6.14 Mr J Westcott farms at Brockwell Farm and his land adjoins a short section of the route south west of point C. He considers the route private. They have been given some permissive access by the landowner to move livestock along the track. They have rarely seen people on foot who have the permission of the landowner and shoot staff. He has stopped people using the route and asked why they were there. It would not be safe to move livestock if too many public users. The Claypit gate is often closed, also for shoot safety reasons. Permission has been granted to those who requested access but not a route for everyone to use due to the commercial nature of the woods.
- 2.6.15 No responses were received from the other landowners/occupiers contacted in respect of this route.

2.7 Additional Rebuttal Evidence

- 7.1 Apart from the landowner and leaseholder comments mentioned above, no other rebuttal evidence was received.

2.8 Discussion

Statute (Section 31 Highways Act 1980)

- 2.8.1 Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.
- 2.8.2 The erection of the sign on the gate near point D in 2004 would be 'a calling into question' as it clearly states that the track is on private land and not a right of way. It would therefore be necessary to consider the user evidence that dates from prior to 2004 to consider whether there is sufficient evidence of use by the public to raise a presumption of dedication prior to the calling into question. The relevant twenty-year period would therefore be 1984 to 2004.
- 2.8.3 Of the seven user forms received two were in respect of use after 2015. Of the remaining five forms three described using the main route between points B and C and two users the loop B – E – C. None of these users referred to seeing the sign on the field gate near point D although as the gate is usually understood to be left open, this is considered possible if they rode the route in a north to south direction. There is also no indication at the county boundary to mark the end of the Skilgate bridleway.
- 2.8.4 For the user evidence to be valid it is also necessary that the members of the public were using the route 'as of right'; that is without force, without permission and without secrecy. One of the users refers to being a tenant of the landowner and a second one refers to have been given permission to use the route. These users would be using the route 'by right', with permission and not as of right as a member of the public.
- 2.8.5 This means that there are only three user evidence forms that can be considered under Section 31 of the Highways Act. This user evidence is insufficient, firstly in the number of users, as it fails to show the presumption of dedication, due to regular use by members the public. Secondly because the period of use by these three users only dates from 1993, which is part way through the twenty-year period of use required and evidence of use throughout the twenty-year period is required for a valid claim.
- 2.8.6 Alternatively if the publication in Autumn 2020 of the Definitive Map Review for proposal 2 is taken as the calling into question of the public's use of the route; the existence of the sign would be a sign of 'the lack of intention to dedicate' by the landowner. As this sign would have been in place for sixteen of the twenty-year relevant period of use between 2000 and 2020, a claim for presumed or deemed dedication cannot be considered under Section 31 of the Highways Act 1980.

Common Law

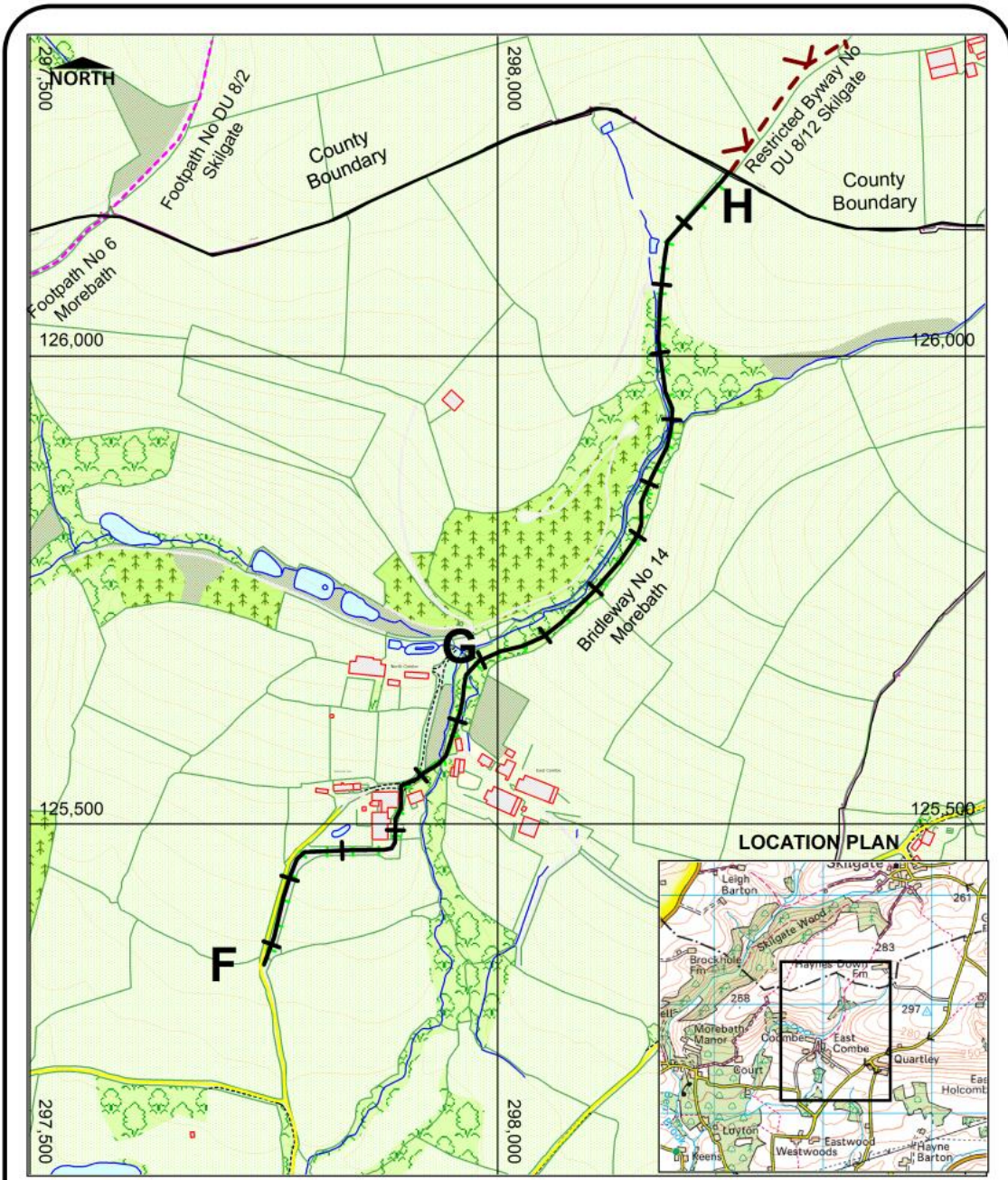
- 2.8.7 A claim for the addition of a right of way may also be considered under common law. At Common Law, evidence of dedication by the landowners can be express or implied. An implication of dedication may be shown at common law if there is evidence of documentary or user evidence and usually a combination of both; from which it may be inferred that a landowner has dedicated a public right of way and that the public has accepted the dedication.
- 2.8.8 The Morebath and Skilgate Tithe maps do show a route through the woodland between Skilgate village and Claypits in Morebath although the track shown is not along the line of the proposal route between point A to south of point C. The proposal routes seem to have been available by the end of the 19th century as shown on the OS 1st edition map of 1880-1890 with fords shown at point B and near point C. On the 2nd Edition of 1904-1906 the track from Skilgate parish is shown crossing the stream south of the county boundary. Over the years since then the position of the track in the vicinity of the stream near the county boundary has changed. The main ford and crossing point of the stream was shown at the county boundary in the OS 1:25,000 map published in 1950 but a 'Ford' was marked about 130 metres north of point A on the 1970 Post War Mapping. On this map the proposal route was marked 'track' on four places along the proposal route and the loop section.
- 2.8.9 Maps show the physical existence and location of a track or path but do not usually give any indication as to the status of the route shown. The only map that does is the Geographia Ramblers map published in 1947 which does show a red line, described as 'Footpaths & Tracks' in the map key following the proposal route between point A and south of point C. This map was published before the preparation of the Definitive Map of Public Rights of Way from 1950 onwards. It is not known from where the publishers Geographia obtained their information from but the inclusion of a footpath/track on the map would indicate that there was some reputation of a way for the public through the woodland.
- 2.8.10 On the 1910 Finance Act plans the proposal route and loop within Morebath parish are wholly included in two hereditaments. Both hereditaments refer to an allowance given of £50 and £96 respectively for rights of way but no information is given of the field/compartments numbers crossed by the right of way. The land included in hereditament 42 includes land crossed by public footpaths now recorded on the Definitive Map. It is therefore not possible to know if the allowances claimed for by the landowner for public rights of way included the proposal route. It is also possible that as the land crossed was woodland, rather than enclosed fields, no allowance was claimed as the presence of a public right of way through woodland would not have been considered to reduce the rental value of the woods.

- 2.8.11 The limited Morebath vestry and Morebath Parish Council minutes do not include any references to the proposal. Morebath Parish Council have advised that the proposal has never been an official right of way and is a permissive path at the moment. The Ramblers Association supported the creation of a circular route but did not have any evidence.
- 2.8.12 The user evidence submitted by five of the users, where use was without permission and in the absence of reference to seeing the notice, would be use as of right. However, the quantity and frequency of use of the user evidence alone is insufficient to show that a public right of way could be implied to subsist at common law. With the appropriate documentary evidence, the user evidence could have been sufficient to show acceptance of a route dedicated under common law.
- 2.8.13 The landowner confirmed that it was never the intention of him and his family before him to dedicate a public right of way through the woods. They have always been happy to grant permission to their tenants and local residents to use the route where this is compatible with forestry operations and use of the woods for pheasant shooting. The sign at the Claypits end was erected sixteen years ago. He has stopped unknown people in the woods. He says the route should continue as a permissive path as it has always been.
- 2.8.14 The evidence provided by the landowner's current licensee and head keeper advised that they were aware of a number of people, possibly up to about thirty, who had permission to walk or ride through the woods but they would stop and question people they did not recognise and tell them it was not a public right of way. The sign on the field gate at the Claypits lane had been erected sixteen years ago by the head keeper and maintained in situ since then. They were aware that the Skilgate bridleway stopped at the county boundary and did not continue across into Morebath parish.
- 2.8.15 Mr Westcott, an adjacent landowner advised that he had been given permission to use the track to move livestock. He has occasionally seen people using the route who had permission. The route is not suitable for public use due to the commercial nature of the woods.
- 2.8.16 The available documentary evidence is limited. There is only the depiction of the proposal on the Geographia Ramblers' Map as a footpath & track and possible allowance granted in the Finance Act field books to show any indication of the existence of a public right of way on the proposal route. It is unusual for a public right of way to be a cul-de-sac path and there is no logical reason why the Skilgate bridleway does not continue into Morebath parish. However, the lack of continuation is not in itself sufficient evidence to support of the existence of the continuation of the public right of way in the adjoining parish. The total available evidence, together with the rebuttal evidence from the landowner and others is not sufficient to show that a public right of way can be reasonably alleged to subsist at common law.

2.9 Conclusion

2.9.1 The map evidence shows that the proposal routes have been available on the ground since the late 19th century, although with changes to the location of the ford and foot bridge near the county boundary, and could have been used by the public since that time. There is user evidence dating from 1978. However, in the absence of sufficient user evidence and evidence of a lack of intention to dedicate, the existence of a public right of way cannot be considered under section 31 of the Highways Act 1980. Under common law the documentary and user evidence available is also considered insufficient to show that a public right of way can be implied to have been dedicated.

2.9.2 It is therefore recommended that no Modification Order be made to modify the Definitive Map and Statement in respect of either of the routes considered under Proposal 2.



Map Ref SS 9725 9826 500m grid

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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - MOREBATH
PROPOSAL NO 1
SCH 14 APPLICATION FOR UPGRADING OF
BRIDLEWAY NO. 14, MOREBATH TO
A BYWAY OPEN TO ALL TRAFFIC**

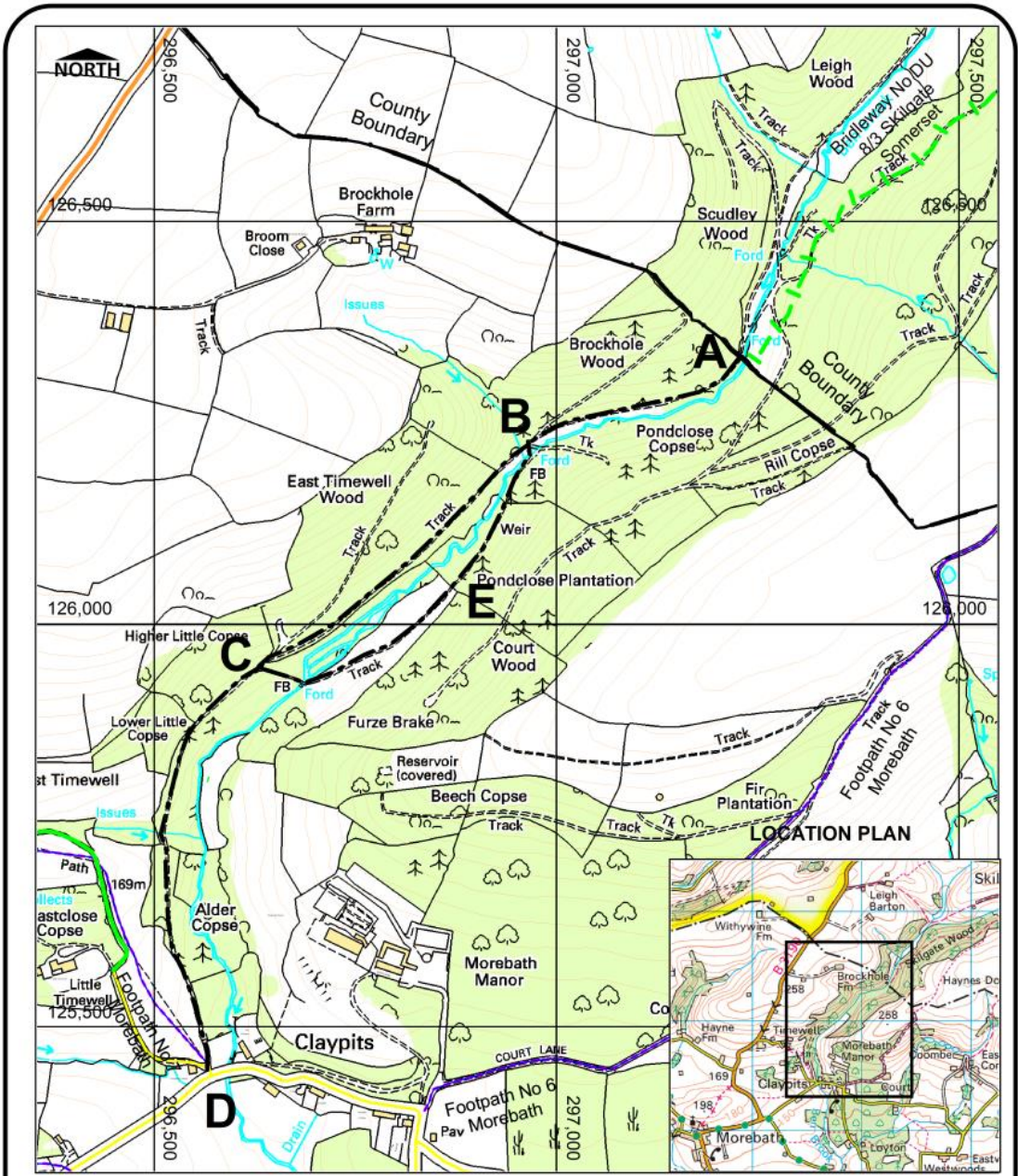
drawing number HIW/PROW/20/24
date Mar 20
scale 1:6,000 at A4
drawn by TW

Notation

Upgrading to BOAT F - G - H (1100 metres approx)	
Existing Public Footpath	
Restricted Byway	

Meg Booth
CHIEF OFFICER HIGHWAYS,
INFRASTRUCTURE DEVELOPMENT AND WASTE





Map Ref SS 9625 9626 9726 500m grid

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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - MOREBATH
PROPOSAL NO 2
ADDITION OF PUBLIC BRIDLEWAY FROM
SOUTH WEST END OF BRIDLEWAY DU 8/3
SKILGATE, SOMERSET TO CLAYPITS, MOREBATH**

drawing number HIW/PROW/20/25a
date MAR 20/JAN 21
scale 1:7,000 at A4
drawn by TW

Notation Addition of Public Bridleway A - B - C - D
& B - E - C (1300 & 490 metres approx)

Existing Public Footpath & Bridleway
Unsurfaced County Road

Meg Booth
CHIEF OFFICER HIGHWAYS,
INFRASTRUCTURE DEVELOPMENT AND WASTE

