

**Schedule 14 Application
Parishes of Loddiswell and Aveton Gifford**

Report of the Director of Climate Change, Environment and Transport

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 by the addition of a public footpath continuing from Stanton Lane to Footpath No.16, Aveton Gifford as marked C - D - E - F on drawing number HIW/PROW/22/28

1. Introduction

The report examines a Schedule 14 Application made by the British Horse Society (BHS) in February 2021 to add a public footpath along the lane known as Stanton Lane in the parish of Loddiswell. The application for the claimed route continues west from the northern end of Stanton Lane through Stanton Higher Coppice to join Footpath No.16 in the parish of Aveton Gifford.

2. Background

The Definitive Map Reviews for the parishes of Loddiswell and Aveton Gifford were completed in 2000. This Schedule 14 Application would usually have been deferred in line with the County Council's Statement of Priorities for keeping the Definitive Map and Statement up to date until the review has been completed for the whole county. However, a representation was made to Devon County Council in 2019 by the owners of Stanton Cottage on Stanton Lane who have applied for a Stopping Up Order under section 116 of the Highways Act 1980. This would in effect stop up the upper section of the cul-de-sac lane such that it would no longer form part of the public highway network. A date was initially given by the Magistrates Court for consideration of the application in April 2020, however this had to be cancelled due to Covid-19 restrictions in place at that time.

The contention made by the BHS is that there may be unrecorded public rights that exist from the northern section of Stanton Lane to Footpath No.16 Aveton Gifford; and if so, such public rights along Stanton Lane will need to be preserved.

It is possible for a Magistrates Court under s.116 of the Highways Act 1980 to stop up public vehicular rights along a route whilst preserving a right on foot or horseback, or as a restricted by way. To that end it is necessary for the Schedule 14 Application to be determined before any Stopping Up Order is taken to and considered by the Magistrates Court.

The evidence provided by the BHS in relation to the application is discussed in the appendix to this report.

3. Proposal

Please refer to the appendix to this report.

4. Consultations

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

| | |
|---------------------------------|---|
| County Councillor Cllr Gilbert | - no comment |
| South Hams District Council | - no comment |
| District Councillor Kate Kemp | - no comment |
| Loddiswell Parish Council | - no comment |
| Aveton Gifford Parish Council | -no comment |
| BBT | - no comment |
| Country Landowners' Association | - no comment |
| National Farmers' Union | - no comment |
| Open Spaces Society | - no comment |
| Devon Ramblers' Association | - support suspension of Stopping Up Order |
| Trail Riders' Fellowship | - no objection as never used. |
| ACU | - no comment |
| 4 wheel Drivers | - no comment |

5. Strategic Plan

The Devon County Council's Strategic Plan 2021 – 2025 Best Place - www.devon.gov.uk/strategic-plan/ has, where appropriate under the provisions of the relevant legislation, been considered in the preparation of this report.

6. Financial Considerations

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

7. Legal Considerations

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

8. Risk Management Considerations

No risks have been identified.

9. Equality, Environmental (including climate change) and Public Health Considerations

Equality, environmental impact (including climate change) and public health implications have, where appropriate under the provisions of the relevant legislation, been taken into account in the preparation of the report.

10. Conclusion

It is recommended that no Modification Order be made in respect of this application.

11. 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
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Electoral Division: Salcombe

Local Government Act 1972: List of Background Papers

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| Background Papers | Date | File Ref. |
|-------------------------|--------------|---------------------|
| DMR/Correspondence File | 2021 to date | Stanton Lane Sch 14 |

es200622pra
sc/cr/Schedule 14 Parishes of Loddiswell and Aveton Gifford
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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.

Schedule 14 Application:

The proposed footpath put forward by this application starts at point A on plan no. HIW/PROW/22/28 on the county road east of Languard Bridge and continues in a north westerly direction along Stanton Lane, past Stanton Court and Stanton Cottage to the brook by Higher Stanton Coppice. From here the claimed route continues south west through the trees to the parish boundary with Aveton Gifford. The claimed route continues west through pasture to join Footpath No.16, Aveton Gifford at point F as shown A - B – C – D – E – F on the plan.

Recommendation: It is recommended that no Modification Order be made to modify the Definitive Map and Statement for the addition of a public footpath along Stanton Lane C – D – E – F as shown on drawing number HIW/PROW/22/28 (Proposal 1).

1.1 Background

- 1.1.1 Stanton Lane is a minor highway maintainable at public expense and serves a group of barn conversions known as Stanton Court, and Stanton Cottage. In November 2019 a report, HIW/19/105, was submitted to the South Hams Highways & Traffic Orders Committee discussing the representation made by Mr Graham Hurt & Ms M Winter to stop up the public highway rights along the section of road through their property, points B – C as shown on plan HIW/22/28. The route is a cul-de-sac and doesn't serve any further properties nor connect to any other public highway.
- 1.1.2 Under Section 116 of the Highways Act 1980, a highway authority can apply to a Magistrates Court to stop up a highway on the grounds that it is unnecessary. Whether a highway is unnecessary is a question of fact. It should be unnecessary for the sort of purpose for which the public might reasonably be expected to use it, to reach a specific destination or for recreational purposes. Following a consultation exercise with local councils and statutory consultees, no objections or representation were made to the proposed stopping up order. To that end, the South Hams Highways & Traffic Order Committee decision was to recommend that the request for a stopping up order over part of Stanton Lane be approved. The application to the Magistrates Court was postponed due to the Covid -19 restrictions. In the meantime, this Schedule 14 Application has been made to explore if any unrecorded public rights may continue from Stanton Lane into the neighbouring parish of Aveton Gifford. It is necessary to determine the Schedule 14 Application ahead of the stopping up order as it would be considered an objection to any subsequent stopping up order.
- 1.1.3 The Notice for application to make a Schedule 14 application, Form A, was submitted by Ms L Wilson on behalf of the British Horse Society (BHS) to add a public footpath to the Definitive Map and Statement and was received by Devon County Council on 3rd February 2021.

- 1.1.4 The notice of the application was posted on site advising owners and occupiers that an application had been made, Form B, dated 1st February 2021.

1.2. Description of the Route

- 1.2.1 Stanton Lane from point A – B on the accompanying plan HIW/PROW/22/28 is currently recorded on the highways register as a minor road and from point B – C as a Category 12 road, both highways maintainable at public expense (HMPE). The claim starts from the county road east of Langland Bridge, point A and proceeds north past Stanton Court barn conversions and Stanton Cottage, over a metalled surface to point C. From this point, the claimed route continues through a field gate along a track then veers north northwest through a small gate into a paddock and follows a slight depression in the ground around the remains of a stone building. The path dips down under some electric fencing to a brook on the boundary of Stanton Higher Coppice, point D. Here there is a small slab footbridge. The path then climbs up a bank, over a barbed wire fence into Stanton Higher Coppice. There is no defined track through the woods, but the claimed route continues in a south westerly direction to the southwest corner of the coppice which is on the Loddiswell – Aveton Gifford parish boundary. There is another brook flowing along the parish boundary at point E and this is crossed by a slab bridge similar to that at point D. From the stream the route scrambles up a rock & earth bank, approximately six feet high, into a field via a hunting gate above point E. From here, the route goes west across arable land to join Footpath No.16, Aveton Gifford through a gate at point F.

1.3 Consultations

- 1.3.1 Consultations were carried out with the local County Councillor, district and parish councils, plus the local and statutory user groups. The Devon Ramblers' commented that; "We the Ramblers, were not aware of the planned Schedule 14 Application and therefore, although we are not at this time objecting to the stopping up order we would like the right to review our stance once the S14 application is resolved".
- 1.3.2 The Trail Riders Fellowship commented that Stanton Lane is a dead end and has never featured as part of the Trail Rider's network.
- 1.3.3 No other comments have been received from the consultee list.

1.4 Documentary Evidence

1.4.1 Ordnance Survey and Other Maps

- 1.4.1.1 The applicant has submitted the following documentary evidence in support of the British Horse Societies claim.

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

Stanton Lane is shown as a defined track leading northwest through a cluster of buildings on the eastern side of Stanton Higher Coppice. A double pecked line continues through the coppice to the parish boundary and then west across the field to join another pecked line, which is recorded as Footpath 16, Aveton Gifford.
No FP notation.

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

Stanton Lane is shown as a defined track until the solid line across at point C, above Stanton Cottage and before the remains of a former settlement. The route is then shown with pecked lines along the same line as the earlier map. There are only fragments of buildings remaining in the field to the east of Stanton Higher coppice. A footbridge is annotated on the parish boundary and FB in the brook near the ruins. No FP notation. The solid line marked across the track just north of Stanton Cottage indicates a gate or barrier.

1.4.1.4 OS 1 inch to a mile maps of 1937- 1961

The OS post war National Grid map 2500 A Edition 1955 shows Stanton Lane as double hedged track to point C. From this point there is a solid line across the track and the continuation is indicated as a single pecked line to Stanton Higher Coppice. From here, the route is marked as a double pecked track through the coppice, over a marked footpath bridge on the parish boundary and into the field to join Footpath No.16 Aveton Gifford at point F.

1.4.1.5 On the OS SX75 sheet published in 1959 by the National Library of Scotland, part of Stanton Lane is shown as a track stopping at point C. There is no track indicated through the field to the north west, but a single pecked line is marked through the coppice, over the parish boundary to join a pecked line which is now Footpath No.16 Aveton Gifford.

1.4.1.6 OS Boundary Sketch book 1884 KEW public records OS 27/1112.

The OS Boundary Sketch name books checked the names and definitions of features, houses, rivers, places, lanes printed on the large scale (6" and 25") second edition OS maps that were first published in the late 19th century. The OS boundary sketch map dated 1884 for the County of Devon shows the parish perambulated was Loddiswell adjoining eight other parishes including Aveton Gifford. It is suggested that the road leading from Stanton and the track crossing the boundary from Stanton towards Wizaller is clearly depicted in both Sketch Map & Boundary Remark Book. No name or details are recorded at this point on the Aveton Gifford/ Loddiswell boundary. The only indication that the section mentioned is part of the claimed route is a pecked line running over a boundary, a stream and above a piece of land that is identifiable today.

1.4.1.7 Shrunken Settlement at Stanton, Loddiswell

Map from DCC Environment viewer.

Monument UID: MDV67069 it says in summary "A series of earthworks and ruined buildings are all that remains of the northern section of Stanton, a shrunken village with occupation documented from 1262. 26 houses were recorded in 1754, which had reduced to 12 by 1851".

- 1.4.1.8 The disclaimer added to all Ordnance Survey maps states:- 'The representation of any other roads, tracks or paths is no evidence of the existence of a right of way'.

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. Roads were sometimes colour washed and colouring can indicate carriageways or drift-ways and public roads were not tithable. 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 '*roads rivers and waste*'.

1.4.2.2 Loddiswell Tithe Map 1839 & Apportionment 1838

- 1.4.2.3 The extract of the Loddiswell Tithe map submitted by the BHS shows an enclosed lane from the main road to the edge of Higher Stanton Coppice. Marked in the middle of the track near Stanton Cottage is the number 1529. This number appears in the Tithe Apportionment Book for Loddiswell under the heading Roads Rivers & Waste not charged with Tithes. There is no continuation marked through the coppice or into the parish of Aveton Gifford.

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 sum of money, 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 Finance Act plans submitted by the BHS, show Stanton Land and Buildings as part of the hereditament No. 10. Each land holding, hereditament, is parcelled off by a solid band of coloured line as shown for No.9 Lower Wizzaller. For each hereditament number there is a corresponding entry into the Valuer's Field Book. For the entry corresponding to hereditament No.10, the holding is described as Land House & buildings there are no figures entered against the Charges, Easements and Restrictions affecting the market value of Fee Simple. There is no entry against the line Public Rights of Way or User.
- 1.4.3.4 The Field Book entry for part of hereditament No.9, Lower Wizzaller & Chillaton looks at the house and land. The heading Charges, Easements and Restrictions affecting the market value of Fee Simple includes "footpath" and allows money calculated to £12 for the total 25yp ie years purchased. This £12 is also included under Restrictions and Public Rights of Way or User when the Valuers calculated the market value of the holding.
- 1.4.3.5 The small hereditaments of No.12 and No.13 are described in the filed books as Stanton House & Garden appear from the Field Book entries to be rented and do not mention any reductions for a right of way or user.
- 1.4.3.6 The convention of map drawing for the finance Act 1910 considered public roads to be excluded from the hereditaments for example the main road to the south of Stanton and part of Stanton Lane itself. The Finance Act plans were usually compiled from the Ordnance Survey maps 1904-06, which carry the standard OS disclaimer with regards to public rights of way.

1.4.4 Parish Survey under National Parks & Access to the Countryside Act 1949

- 1.4.4.1 Footpath No. 16, Aveton Gifford which the proposal route joins just south of Lower Wizzaller Farm at point F, was surveyed by the parish Chairman in September 1950 and is described as a public footpath. There is a detailed description of Footpath No. 16, Aveton Gifford but it doesn't suggest any junction or meeting with a path from Loddiswell. There is no suggestion or survey form from Loddiswell in relation to the claimed route.

1.4.5 Devon County Council Definitive Map Review 1992

- 1.4.5.1 In response the Definitive Map Parish Review of Loddiswell in the autumn of 1992 a letter was submitted from the Honorary Footpath Secretary for the Devon Area Ramblers' Association. The letter says "We have examined the 2nd issue (4") Ordnance Survey Maps dated 1903/06 and they indicate

that there were or are the following Public Rights of Way. In the coming months our local representatives will endeavour to find the necessary evidence". No.7 on the list was "Higher Wizaller to Stanton" A series of grid references were given starting in Aveton Gifford parish and ended on the highway maintainable at public expense, recorded as Category 12 no. 304 Loddiswell. A map was supplied indicating the line the RAs were putting forward based on a previous parish map of Loddiswell. It is drawn in pink and is rather faint, but it reflects a similar line to the current claim.

- 1.4.5.2 A letter of response was sent back to the Ramblers acknowledging their suggestions and states; "Proposals 5,6,7,8,9 and 10 and Proposal 2", in that "Although tracks and paths shown on Ordnance Survey 2nd edition 6" maps do and/or did physically exist, the maps concerned bear the standard disclaimer the representation on this map of a road, track or footpath is no evidence of the existence of a right of way". No further evidence was produced.

1.4.6 Parish Council Meeting Minutes (1894 to 1981)

- 1.4.6.1 The minutes for Loddiswell Parish Council up to 1981 are located in the Cookworthy Museum Kingsbridge. It is recorded that at the Parish Council Meeting held in the British School Room, Monday February 17th 1896 that a request was made from a E Bond of Staunton with reference to repairs to two footbridges across the brook at Staunton. The discussion continued, "It was resolved that a bill received from E Bond of Staunton with reference to two footbridges across the brook at Stanton be adjourned for further consideration & that in the meanwhile Messrs Prowse & Stennard do visit the place & inspect the work done & repost at the next meeting of the Council".

- 1.4.6.2 Parish Council Meeting Monday March 9th 1896 records:- Repair of footbridges at Staunton. The Committee appointed to examine the repairs to two foot-bridges at Staunton for which E Bond has asked the Parish Council to contribute presented their report & considered the amount asked vis 5/- excessive – on a division Messrs Wise, Hodder, Hingston, Boulthee & Willing vote in favour of paying a small sum towards the cost of the work & Messrs Stennard, Galland, Prowse & coombe voted against any payment and it was ultimately resolvedthat Bond be paid the sum of two shillings as a gratuity".

NB Note the spelling is not the same as Stanton Lane today. Maybe this is due to a difference in the pronunciation.

- 1.4.6.3 Parish Council Meeting January 2nd 1934.
"Rights of Way Act 1932 – Our Chairman down the pamphlet it was decided by members present that the public paths be kept in repair and that no reputed public paths are omitted if any encroachments made by Landowners, refer same to District Council".

1.4.6.4 Parish Council Meeting 12th July 1935.

“The business consisted chiefly for the Council to confirm the public foot paths, which were marked out by Sub Committee to Schedule on maps, which are as follows, from Aswell Lane to Station Road, Stile Cottage to Yarnston Lane, Well Street Meadow, Townslane to New Barn Lane, Hatch Bridge to Hatch, Glebe Farm, Crannacombe to Topsham Bridge”.

1.4.6.5 Parish Council Meeting July 27th 1950 discussed the National Parks & Access to the Countryside Act 1949. It was suggested that “survey” maps were obtained, and it was suggested to meet up one or two nights during September to go over all the paths.

1.4.6.6 Public Meeting re Public Footpaths Friday September 29th 1950

“Mr A Grant opened the meeting & gave the reasons for calling this meeting. Paths inspected by members of the council were then described in full detail. Mr A Grant as Chairman of the meeting then asked if anyone had any reason to disagree with these paths as public & if in their opinion any footpaths might have been left out of the census. Nobody gave any veto on any path but several more paths were mentioned as possibly public”.

1.4.6.7 Meeting of Loddiswell Parish Council Tuesday June 14th 1977

Definitive Map Review. Under this heading it was noted that; “The Chairman read a letter concerning this proposed review which stated that an explanatory meeting for this area would be held at Diptford on Thursday June 16th. Mr. Johnson agreed to attend this meeting, and the Chairman stated that he also hoped to be present.”

1.4.6.8 Minutes of a public meeting called by Loddiswell Parish Council to discuss the revision of the Definitive Map. Held at Loddiswell Village Hall January 26th 1978.

“The chairman welcomed those present and summarised the purpose of the meeting, which was to decide whether the public footpaths shown on the Definitive Map should be diverted, altered or closed and whether any new footpaths were required. He pointed out that no other matters could be discussed at this meeting, and that these should be held over for the Annual Parish meeting in March. He then gave the meeting details of the footpaths in question and where they lead.

No comments were put forward concerning any of the rights of way other than No. 19, where it was suggested that a stile be placed over a fence that crossed the path in order to prevent the public from straying while trying to find a way through. He then turned to Footpath No. 16, which has been a subject of dispute for several years. This leads from Hatch Bridge across fields to Hatch Arundal where present it is shown on the definitive map as continuing down the private drive, in front of the house in order to join the lane.”

1.4.6.9 Minutes of a meeting of Loddiswell Parish Council Tuesday 13th November 1979

“Footpath Warden The chairman welcomed and introduced Mr A G H Tenniswood County Footpath Warden Devon (South) who then addressed the meeting.

Mr Tenniswood said that public footpaths were highways in law and stressed the importance of cooperation between the County Council and Parish Councils for their care and maintenance. The following code of practise was quoted as a guide for parish councillors:-.....”

1.4.6.10 Minutes of the Meeting of Loddiswell Parish Council Tuesday 11th December 1979

Footpath Procedure.

“Mr Johnson agreed to undertake the coordination of councillors to walk the footpaths and report. It was considered that April would be a suitable time. Further discussion should be held at the March meeting.”

1.4.6.11 Minutes of Meeting of Loddiswell Parish Council Tuesday 14th October 1980

Under Correspondence it was noted “Footpaths. A letter had been received from the County Secretary stating that owing to the present financial situation, revision of the Definitive Map was being deferred.”

1.4.6.12 A local resident from Stanton Court contacted the rights of way section in January 2022 following his attendance at a recent Loddiswell Parish Council meeting. He supports the claim by the British Horse Society and states that:- “Of the eight houses at Stanton Court, six would very much like to support the path application, the remaining two are ambivalent on the matter”. In addition, he says that prior to the stopping up application (2019) approximately 2 years ago there was a gate across the lane giving the impression of it being private. The local resident said he had recently walked to the end of the lane and was told by the landowner to go no further.

He continues “this path would create an opportunity of a small loop for a walk in this vicinity as well as opening up other routes to areas such as Andrews Wood. This would be a great asset for the locals for walking, jogging, dog walking etc.” He has lived at Stanton Court for five years. (For information Andrews Wood is north of Stanton Lane and is owned by the Devon Wildlife Trust and open to walkers.)

1.5 Landowner Evidence

1.5.1 The landowners of Stanton Cottage, Mr G Hurt & Ms M Winter, purchased their property in 2006. They own the fields to the west of Stanton Cottage, but not the coppice. They keep sheep, an Alpaca and two horses which are

grazed in paddocks on their land in and around points C – D on plan. There was a gate across the public road at point B for a while, approximately 2017, however the landowners were required to remove them and have done so.

- 1.5.2 In February 2022, they completed a Landowner Evidence form and state they are the sole owners of the land since August 2006. They do not consider the claimed route to be a public footpath and state that “OS map does not show evidence of a footpath. It has never been used as a footpath in our ownership”.

They continue on the evidence form that no one has asked permission to use the claimed route, nor have they given anyone permission to use it. In addition, they state they have not locked gates or placed other obstructions along the claimed route, and they have not erected notices or signs.

- 1.5.3 As additional information the landowners have added “Mr Reg Sampson purchased Stanton Cottage and adjacent land approximately 40 years ago. Miss Carole Constable bought it 21 years ago and we have been here for almost 16 years. To our belief nobody has used this route as a footpath during the past 40 years.”

- 1.5.4 In May 2022, the landowners added a paragraph to be considered; “We bought Stanton Cottage and grounds from a friend who had been here for five years prior to us. We have now been here for sixteen years. For these twenty-one years nobody has ever walked down our drive and across our field on the proposed route. Nobody has ever asked to use it, nor been refused. No maintenance has been carried out on it either. The existing footpath terminates onto the same lane a little further on. We cannot see how this new proposal would benefit anyone”.

- 1.5.5 The Land Registry map search for Stanton Cottage shows that the section of public road point B – C is included in their landholding title number.

- 1.5.6 John Crisp is an organic regenerative farmer and the landowner of the section of woodland known as Stanton Higher Middle and Lower Coppice and the fields crossed by the claimed route from Higher coppice and most of Footpath No. 16, Aveton Gifford. The farm consists of woodland management and sheep.

He completed a Landowner Evidence Form in March 2022 and has been the freehold owner of the land since March 2010. Mr Crisp does not think the claimed route is a public right of way. He mentions that the only footpath shown on his deeds is the existing no. 16 Aveton Gifford. There was no indication of another footpath following the searches when he purchased the land.

- 1.5.7 In reply to Q8 on the Landowner Evidence form ‘Has your use of the land made the claimed route difficult or impossible at any time?’ Mr Crisp replies “Yes. Electric fencing in field to create separate paddocks and mob graze sheep, plus felling timber in the woods”. He adds, no one has ever asked for

permission to walk the claimed route, and no one has ever been given permission. (Mob grazing helps to maximise soil health and carbon sequestration.)

- 1.5.8 In relation to obstructions along the claimed route, Mr Crisp says the gates are unlocked but they use electric fencing regularly in each field to rotate grazing for the sheep. This is ongoing eight times a year for about two weeks at a time, so about 16 weeks in a year. In addition, they fell timber from the woods. Mr Crisp states he has not seen anyone using the claimed route nor has he turned anyone back.
- 1.5.9 For additional information Mr Crisp adds: -“While the farm has an existing footpath (No.16 Averton Gifford) that is very much in use and was obviously highlighted by solicitors during the purchase of the land the searches they carried out did not reveal any other footpaths and nor did any of the maps. There is no actual path where the proposed route is shown and the woodland access is dangerous. While we see people use our existing footpath, we have never seen anyone on the proposed footpath and no one has ever asked to use this route. There does not appear to be local knowledge of it, nor any need.”

1.6 Rebuttal Evidence

- 1.6.1 The landowner evidence above provides the rebuttal to the claimed route.

1.7 Discussion

Statute (Section 31 Highways Act 1980)

- 1.7.1 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.
- 1.7.2 For the purposes of Section 31 of the Highways Act 1980, a Schedule 14 Application is considered to be a calling into question of a path, in this case whether the rights relating to the claimed route are laying unrecorded.
- 1.7.3 The rights of the public between point A – B – C are already recorded as highway maintainable at public expense thus the public already have a right of access to point C above Stanton Cottage. The public rights that need to be tested are those continuing from point C above Stanton Cottage to D - E – F to Footpath No.16 Averton Gifford.
- 1.7.4 No User Evidence has been submitted in support of the proposed route and only one neighbour has walked along Stanton Lane to point C which they are legally entitled to do.

1.7.5 To that end, if the relevant period of 20 years is counted back from the Schedule 14 Application date of February 2021 to February 2001 there has been no evidence of use as of right of this claimed route by the public. The landowners at Stanton Cottage have made attempts to deter people by erecting a gate at point B, however this was removed as an unauthorised structure over a highway but it seems clear that there was no intention by the landowners of Stanton Cottage, Loddiswell, to dedicate any route beyond point C. Equally there is no evidence of any use as of right between D – E – F to Footpath No. 16 Aveton Gifford, therefore this claim fails to satisfy the test of reasonable allegation under S31 of the Highways Act 1980, that public rights have been acquired along the length of the claim.

1.8.2 **Common Law**

1.8.2.1 A claim for 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 and an implication of dedication may be shown at common law if there is evidence, documentary, user, or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.

1.8.2.2 At Common Law, use does not raise a presumption of an intention to dedicate, but merely evidence of such an intention. The burden of proof lies on those persons claiming a way as public, to show that the facts, when taken as a whole, were such that the rightful inference to be drawn from them was that the landowner intended to dedicate those rights and that the public has accepted the dedication. Each case turns on whether the facts indicate this intention.

1.8.2.3 Documentary evidence suggests there was a small settlement beyond Stanton Cottage near the brook, but very little remains today.

1.8.2.4 The Tithe Map of 1839 certainly shows a track leading to the area of the settlement but stops at the boundary with the brook and an area of waste before the coppice. The BHS contention is that the numbering of 1529 marked in the Roads, Rivers & Waste in the Apportionment Book suggests that the road was public. The First Edition Ordnance Survey mapping of 1880 - 90 indicates a track along the same lines as the Tithe Map to the cluster of buildings. It continues as pecked lines through the coppice and the field to join with the path that is FP No.16 Aveton Gifford. There are no annotations for footbridges or footpaths marked on this line on the map. The Second Edition OS 1904 – 06 mapping shows a lesser marked track, fewer buildings and the FB and Foot Bridge annotation over the brooks. This map also indicates a solid line across the track to the northwest of Stanton Cottage indicating a barrier or gate at point C. This feature also appears on the Finance Act 1910 plan and the double coloured lines indicating the extent of a public road stops before Stanton Cottage just above point B. There is a join in the map pages so it is difficult to say exactly. There are no entries in the surveyors Field Books for Stanton to

suggest any public rights of way or easements. A deduction was made for Hereditament no.9 in Aveton Gifford, and this is likely to reflect the line of Footpath No.16, Aveton Gifford. The OS boundary Book of 1884 indicates a double pecked line crossing the parish boundary between Loddiswell and Aveton Gifford but gives no indication of what was there, or any names given to the boundary crossing. From this time forwards the OS mapping is consistent with the depiction of a solid line across the track at point C, and the track not being marked from that point. All the OS maps contain the disclaimer that the representation of any roads, track or paths is no evidence to the existence of a right of way.

- 1.8.2.5 The landowner evidence suggests that over the past 40 years, no public have walked the claimed route from C – D – E – F. Certainly during the current landowners time at Stanton Cottage, they state that they have not seen anyone using the claimed route. One local resident from Stanton Court has walked to the end of the public road but was refused access any further by the current landowners. Similarly, the landowner evidence from John Crisp suggests that in the 12 years he and his family have owned the land and woodlands, he has not seen anyone using the claimed route nor has anyone asked his permission to use it. He states they use electric fences for grazing their sheep in the field crossed by the claimed route leading to Footpath 16. This is not deliberate to deter walkers, he uses them to assist in his stock rotation for part of the year.
- 1.8.2.6 The documentary evidence provided by Loddiswell parish minutes to 1981, show diligence to the public rights of way process through the years. The parish took a proactive stance towards rights of way in recognising and surveying them, plus open discussion in their meetings about changes, omissions or problems relating to them.
- 1.8.2.7 Loddiswell Parish minutes show the parish minutes from 1896 describe repairs of two bridges at Staunton. This may be interpreted as Stanton today allowing for difference in pronunciation. The discussion in the 1896 meeting was to the payment for repairs on two bridges at Staunton. The decision amongst the councillors was divided resulting in a vote on whether to pay for the works. In the end, it was agreed a gratuity be paid to E Bond for his work on the bridges. This suggests a lack of willingness on behalf of the parish to take responsibility for the bridges. The gratuity was paid as a token of goodwill rather than demonstrating upkeep. No further reference has been made in the parish minutes about Stanton/Staunton or repairs to the bridges. In the parish by parish review for Loddiswell carried out in 1992, the Secretary for the Devon Ramblers put forward, as part of their suggestions, a route from Higher Wizaller to Stanton. There was no description of the path, just logged with a series of OS grid references and no supporting evidence, documentary or user, was ever forthcoming.
- 1.8.2.8 In relation to the comments from the local resident at Stanton Court, the Definitive Map review cannot consider “desire routes” that may speculatively be enjoyed. It is necessary to establish whether the public

have acquired a right over the land as of right, openly and without permission and for that right to be accepted by the landowner.

- 1.8.2.9 Although Stanton may be historically interesting, there is no evidence that the claimed route has been used by the public as a through route from one highway to another. It could be plausible that former residents of the ancient village walked over the brook and through the coppice to Aveton Gifford to the bigger farm at Wizaller, but they do not constitute the public at large. There is no cogent evidence to suggest that the public have used the route from point C through the coppice to Footpath No.16, Aveton Gifford and beyond. The OS mapping conventions have demonstrated that beyond point C, the remains of the track has been barred by a gate or similar from 1904, to not existing at all. It cannot be shown that a landowner in the past has intended to dedicate a public right of way along the claimed route and there is no evidence that there has been acceptance by the public of any rights along it. To that end the claim at common law fails.

1.9 Conclusion

- 1.9.1 In the absence of any user evidence, it cannot be shown that the claimed route beyond point C has been used as of right and so therefore it fails to meet the reasonable to allege test under section 31 of the Highways Act 1980. The burden of proof under common law falls to the claimant to prove that the landowner intended to dedicate those rights and the public has accepted the dedication. To that end at common law, the documentary evidence is considered insufficient to show that there has been express or implied dedication by any landowner or any acceptance by the public of the claimed route as a public footpath.
- 1.9.2 It is therefore recommended that no Modification Order be made to modify the Definitive Map and Statement in respect of Proposal 1.



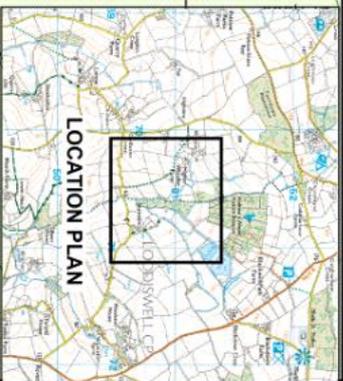
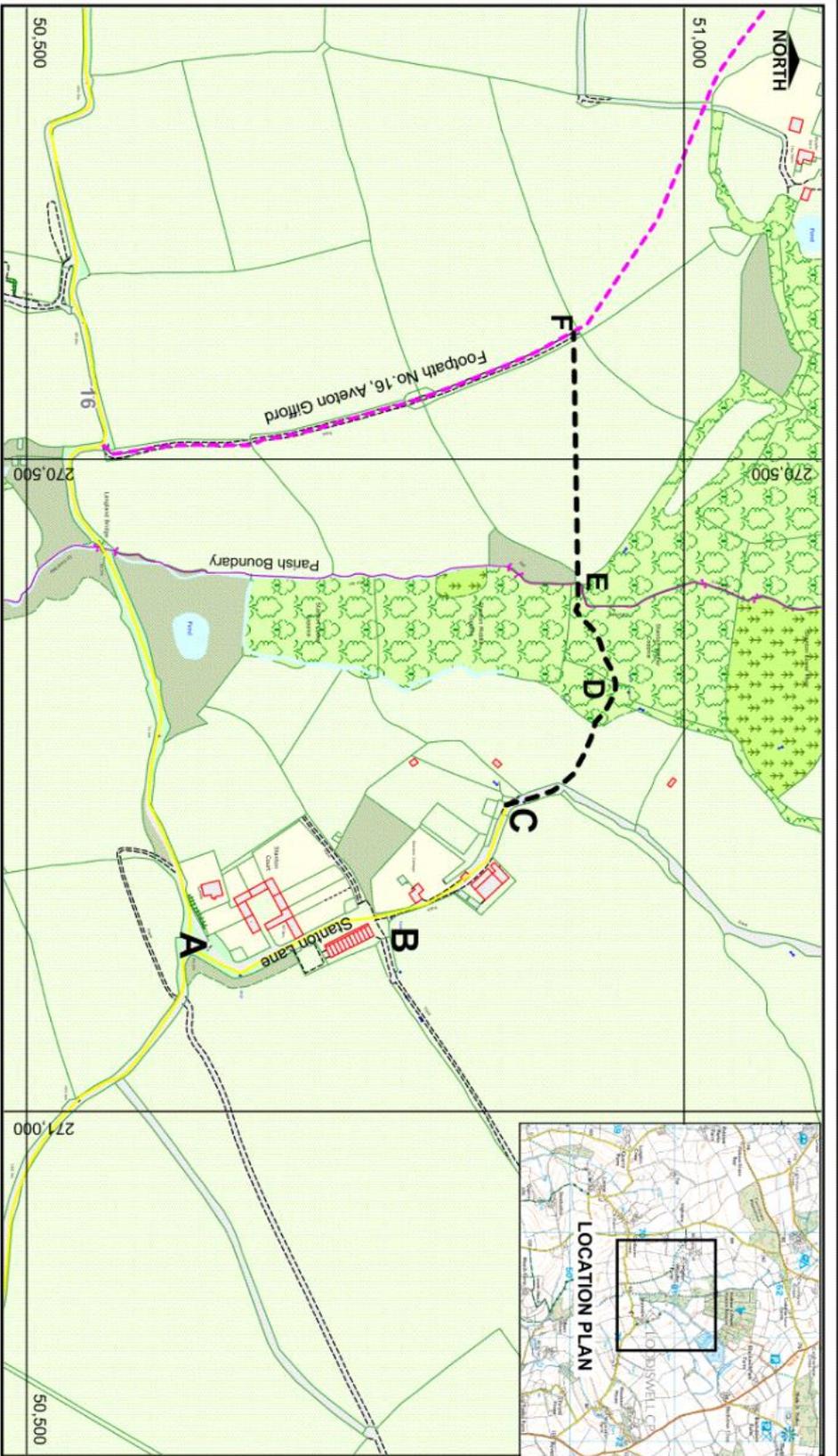
Point A on county road



Point B where the previous gate was located



Change of surface at point C (end of HMPE)



Map Ref SX 70, 50

DEVON COUNTY COUNCIL
SCHEDULE 14 APPLICATION: ADDITION OF A PUBLIC FOOTPATH FROM THE NORTH WEST
END OF STANTON LANE, LODDISWELL TO FOOTPATH NO. 16, AVEYTON GIFFORD

Notation
 Claimed Footpath A - B - C - D - E - F Highway maintainable at public expense A - B - C
 Existing public footpath

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drawing no. HIW/PROV/22/28
 date June 2022
 scale 1:4000 at A4
 drawn by TW/ES

Meg Booth
 CHIEF OFFICER FOR
 HIGHWAYS INFRASTRUCTURE
 DEVELOPMENT AND WASTE