

Definitive Map Review 2020-2023 Parish of Washfield (part 2)

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.

1. Recommendation

It is recommended that a Modification Order be made to modify the Definitive Map and Statement by the addition of a Bridleway between points S - T - U as shown on drawing number HIW/PROW/22/18a (Proposal 2 Washfield).

2. Introduction

This report examines the route referred to as Proposal 2 arising out of the Definitive Map Review in the Parish of Washfield in Mid Devon. A report on Proposal 1 was taken to the Devon Public Rights of Way Committee Meeting on 9 March 2023.

3. Background

The background for the Definitive Map Review in the parish of Washfield was set out in the Committee Report CET/23/14 of 9th March 2023.

4. Proposal

Please refer to the appendix to this report.

5. Consultations

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

County Councillor Cllr Chesterton	-	no response
Mid Devon District Council	-	no response
Washfield Parish Council	-	response received (ref. Section 3 below)
Stoodleigh Parish Council	-	response received (ref. Section 3 below)
Country Landowners' Association	-	no response
National Farmers' Union	-	no response
British Horse Society (Devon)	-	no response
Ramblers' Association (Devon)	-	no response
Ramblers' Association (Tiverton)	-	no response
Trail Riders' Fellowship	-	no response
Cycling UK (Devon)	-	no response

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(s) have been taken into account in the preparation of the report.

8. Risk Management Considerations

No risks have been identified.

9. Equality, Environmental Impact (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 a Modification Order be made to modify the Definitive Map and Statement by adding a Public Bridleway between points S – T – U as shown on drawing number HIW/PROW/22/18a (Proposal 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 deferred.

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

Report of the Director of Climate Change, Environment and Transport

Electoral Division: Tiverton West

Local Government Act 1972: List of background papers

Background Paper

DMR/Correspondence File 2019 to date DMR/Washfield

OS Mapping National Library of Scotland

Tithe Map South-West Heritage Centre

Parish Council Minute Books South-West Heritage Centre

Finance Act 1910 National Archives Kew

Stoodleigh Estate Catalogues South-West Heritage Centre & The Box at Plymouth

Contact for enquiries:

Name: Tania Weeks

Telephone: 01392 382833

Address: M8 Great Moor House, Bittern Road, Exeter

tw261023pra

sc/cr/DMR Parish of Washfield (part 2)

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Appendix 1 to CET/23/91

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.

Proposal 2 – Addition of Public Bridleway

This is a proposal for the addition of a public bridleway from the county road (Old Stoodleigh Drive) west of Shilhay Copse at point S (GR SS 9358 1877) and running generally north eastwards along a defined hedged and fenced green lane to the county road north of Springfield Cottage at point U (GR SS 9404 1931).

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement by the addition of a public bridleway S - T - U as shown on drawing number HIW/PROW/22/18a (Proposal 2).

1. Background

1.1 In January 2009, correspondence was received from Stoodleigh Parish Council seeking to claim a route from Parkhouse Water to Dryhill. A number of user evidence forms were received in February 2009 and some of these showed a continuation of that claimed route (proposal 1) which crossed the county road (Old Stoodleigh Drive) and continued along the track on the west side of Shilhay Copse that had no recorded status. This was sufficient to include the route as proposal 2 in the definite map review in Washfield parish.

2. Description of the Route

2.1 The route starts at the county road known as the Old Stoodleigh Drive just west of the property known as Shilhay at point S (GR SS 9358 1877) and proceeds north eastwards along a defined lane with hedges on both sides. There are three springs in the vicinity of the lane with two fords along the route either side of point T (SS 9380 1901). The northern end of the route is also the access to the property Springfield Cottage. The lane re-joins the county road and parish boundary with Stoodleigh at point U (GR 9404 1931).

2.2 The total length of the proposed bridleway (points S - T - U) is approximately 730 metres with a grass earth surface along most of the lane with an improved hardened surface at the northeast end where the lane is also the vehicular access to Springfield Cottage. The cattle grid mentioned in the parish council minutes in the 1960s and shown on some maps is no longer present. There are additional photographs of the route in the background papers taken in September 2020.



Point S looking north eastwards (Jul 2009)



Point U looking southwards (Dec 2021)

3. Consultations

- 3.1 Washfield Parish Council initially responded to say that they would support the proposal subject to landowner agreement and evidence of historical use. However, following the parish council meeting in November when some of the landowners advised the Parish Council that they were not in agreement, the Parish Council subsequently advised that they were not in support of the proposal.
- 3.2 Stoodleigh Parish Council support the proposal.

- 3.3 Mr George, a local resident, responded to the consultation. He wanted to show his complete support for the proposal as it would provide valuable additions to the current, rather limited rights of access.

4. Documentary Evidence

4.1 Tithe Maps and Apportionments

- 4.1.1 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 tithe able. 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*'.

Washfield Tithe Map & Apportionment 1840

- 4.1.2 On the tithe map of 1840 the proposal route is not shown as a defined land apart from a short length at the northern end from point U. The 'new Stoodleigh Drive' has not been constructed either. The cottages at Squareclose/Springfields have been constructed and the apportionment records that number 728 is Cottage and part of Square Close, number 729 Cottage and part of Square Close. Both apportionments were owned by Thomas Daniel and occupied by 728 George Coles and 729 William Carpenter. *A track shown on the map from by point T going east to the county road at Emmerford passes through apportionment number 732 described as little field and road, cultivation arable.*

4.2 Ordnance Survey and Other Maps

- 4.2.1 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.

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

This edition shows the proposal route as a defined lane with solid lines on both sides between points S and U. The lane has its own compartment number 845 with the area of 0.976 acres. There is a dashed line across the lane at point S and the building adjacent to the north-eastern end of the route is named Squareclose Cottages. A well is shown on the northern side of the lane between points T and U. On the northern end of the lane there are some pecked lines shown either side within the lane indicating a different surface within that section of the lane. There is a dashed line across the lane at point S and nothing at point U.

4.2.3 OS 1 inch to a mile maps 1892, 1918 & 1933

Sheets 310 & 128 Tiverton. These three editions, all printed after the new Stoodleigh Drive had been constructed, all show a defined lane with solid sides along the proposal route. There are no lines across the lane at either end. It is not known, but is considered possible, that the proposal route was constructed at a similar time to the new Stoodleigh Drive as certain types of vehicles and other users

were not permitted to use the drive as detailed in the estate sale catalogues of 1925 and 1926.

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

On the 2nd edition map, the route is shown as a defined lane with the same compartment number and area. The building is named Squareclose Cottages and the well is shown. There are no pecked lines within the lane. There is a dashed line across the lane at point S and nothing at point U.

4.2.5 OS ½ inch to a mile Ministry of Transport Road Map 1923 Sheet 31 North Devon.

This map was the first to accurately show initial road numbers for the current A and B roads. The route is shown as a double solid sided lane along the whole length with a line across the southern at point S.

4.2.6 OS 1 inch to a mile maps of 1946, 1960, 1966 & 1972

Sheet 164 Minehead. On all four editions the lane is shown as a defined white lane with solid lines on both sides, and with no lines across either end. The width of the lane as shown appears to correspond with Roads under 14ft of Metalling Untarred in the map keys.

4.2.7 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.

4.2.8 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'.

4.2.9 On this edition the route is shown as a defined white lane with solid lines either side and in the same manner as the county road at point U. There are no lines across either end at points S or U.

4.2.10 OS Post War Mapping A Edition 2500 1969 & 1970

On this map, a defined hedged lane is shown labelled 'track' with three compartment numbers along the route, 6690 area 0.44, 8911 0.43 and 0325 0.18. A cattle grid is shown about 25 metres south of point U with a bench mark shown next to the cattle grid. There is a dashed line across the lane at point S but nothing at point U. Two springs are shown across the lane and a building labelled 'New Close' is shown at the south western of the lane by point S.

4.3 **Finance Act Plans and Field Books 1910**

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.

- 4.3.2 The proposal route has been excluded from any adjoining hereditaments. All of the land on the north-west side of the lane together with Squareclose Cottages and the field on that side between Shilhay Copse and Selwell Wood is part of Dryhill under hereditament number 3035. The boundary of this holding crosses the lane at four points and at all four places the boundary colouring breaks on crossing the lane. There is no mention of a right of way.
- 4.3.3 Shilhay Copse and Selwell Wood are included within hereditament number 3050 which is the woodland in Washfield parish belonging to the Stoodleigh Estate. No rights of way are mentioned in the field book. The land adjoining the northern end of the lane on the east side is part of 3044, Emmerford Farm. The field book includes the sum of £13 allowed for a public footpath but no field numbers were mentioned. There are several paths and tracks shown on the map in the area of the hereditament but the only one labelled 'F.P.' is between the buildings at Selwell and Emmerford. The road known as the Stoodleigh Drive, which at that time had not been taken over by the council as maintainable highway, was coloured blue on the plan and annotated Pt 4 Stoodleigh, which included the house, stables and gardens of 49 acres.

4.4 Stoodleigh Estate Auction Poster 1894 & Sale Catalogues 1925 & 1926

- 4.4.1 A poster advertised the complete Stoodleigh Court Estate of around 4,460 acres for sale by auction in London on 23rd October 1894.
- 4.4.2 A sale catalogue was produced for the auction of the house, farms, land and cottages totalling 3,952 acres to be held on 4th September 1925. The estate was initially to be offered as a whole and if not sold then lots 1 – 4 comprising the house and Ford Barton, Stoodleigh Barton and Dryhill Farms would be offered together. The private drive, the now county road at point S, was included in lot 1 the house and the details stated that there was a reservation of rights of way except for motor lorries, farm carts, implements, timber and cattle in favour of a number of lots. Lot 48 was a pair of cottages "Squareclose". On the plan within the catalogue, the proposal route was shown as a white lane and not included within any of the lots. Land belonging to Lot 1 the house and Lot 4 Dryhill, that was proposed to be offered as one lot, included land that extended over both sides of the lane. On the plan these four lots were encircled within a coloured line and where the boundary line crossed the proposal route, the colouring was broken in a similar manner to a Finance Act plan. This 1925 catalogue, described as the first edition, did not make any references to rights of way for certain lots over other lots.
- 4.4.2 In May 1926, a catalogue was produced for the sale of the house and part of the original estate including six farms and cottages totalling 1,247 acres in 51 lots. This

catalogue plan did not include Emmerford (already sold). A blue line was drawn around a number of lots included in the sale, though excluding Squareclose Cottages at Lot 36. Where this blue line crosses the proposal route, the colouring again breaks. The proposal route is also shown white and not included within any lots. Shilhay Copse was included in Lot 5 and the particulars clearly stated (as it did in the 1925 catalogue) that timber was to be carried away via Square Close Lane to Cove Halt or via Emmerford Lane to Cove Halt. No timber to be brought on to the Private Drive. The sale particulars gave details of private rights of way to some lots over other lots but did not give any right to Squareclose Cottages or other properties along the proposal route.

4.5 Parish Council Meeting Minutes

- 4.5.1 The minutes for Washfield Parish Council from 1894 to 1974 were available in the Southwest Heritage Centre. The minutes from 2018 to date are available on the parish council website. The minutes between 1974 to 2018 were not found.
- 4.5.2 Within the period between 1894 to 1974, there are several references to public footpaths and public rights of way that correspond to public footpaths in the parish. The parish council set up a Footpath and Bridges sub-committee meeting in 1896 but only two meetings were recorded in the minute book of July 1896 and October 1896.
- 4.5.3 There were references to the proposal route in 1962 to 1966 which referred to the original name of Squareclose (as used in the Tithe Map and estate sale catalogues of 1925 and 1926).
- 4.5.4 On 13th August 1962, the minutes reported *'It was brought to the notice that Mr Sawyer had built a cattle grid in the lane close to this house and the council queried as to whether he had a right to do this or not as it was interfering with the normal traffic and was dangerous. It was proposed and seconded that the clerk write to the clerk at the County Council asking for advice on the matter'*.
- 4.5.5 On 6th April 1963 *'A letter was received from the clerk to Devon County Council (Mr Godsall) regarding the cattle grid which had been installed in the lane at Squareclose. Mr Godsall had inspected the grid and found it to be in order as a small gate for pedestrians had been incorporated'*.
- 4.5.6 On 8th October 1966 *'Lane at Squareclose. A long discussion took place regarding the lane at Squareclose, which was understood to be a public one. There was some doubt whether an obstruction had been erected in the lane rendering it unuseable'*. There were not any further comments on the lane in the minute book for the period to 1974.

4.6 British Newspaper Archive (online)

- 4.6.1 The British Newspaper Archive holds digitised copies of many of the newspapers published.
- 4.6.2 There are advertisements and reports of the auction/sale of the Stoodleigh Court Estate from 1895 to 1926. In December 1895, the estate of 4,460 acres was sold to

Mr Dunning and then sold to Mr Money-Coutts in March 1908. In November 1908 a report stated that a lot of money had been spent on the estate by Mr Money-Coutts.

4.6.3 In September 1925, the estate was offered for sale but the house and farms of 3,000 acres were withdrawn at £28,500. The pair of cottages at Squareclose received no bid. In a May 1926 auction, it was reported that some lots including Squareclose cottages were withdrawn as they did not meet their reserves. In June 1926, offers were invited for the remaining unsold portion of the estate.

4.6.4 Other references found in relation to Squareclose were for the sale of a Lagonda car from the property in 1937 and the accidental death in North Devon of Richard Sawyer age 17, who resided at Squareclose, in 1964.

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

4.7.1 The parish survey for paths in the northern part of Washfield parish was completed in the Autumn of 1950. The survey forms advised that the persons carrying out the survey was the parish councillors. The forms were signed by Thomas Norman as clerk and Frank Voysey as Chairman. Nine footpaths and one bridleway were claimed but no path or route was claimed along the proposal route.

4.8 Devon County Council Reviews of 1968, 1971 & 1977

4.8.1 No proposals for any changes to the public rights of way in Washfield parish were made by Washfield Parish Council in the uncompleted county review of 1968. The Limited Special Review of 1971 concerned the reclassification of RUPPS only and did not affect Washfield Parish. The Parish Council minutes of 7th June 1971 recorded *'Footpaths. The clerk had received a map of the village showing all present foot and bridle paths. The council were very interested in this matter and after a long examination of the map they decided that none of the footpaths shown on the map should be removed'*.

4.8.2 In the 1977 county review, the parish council responded to say that the existing recorded public rights of way should be on the definitive map. No other changes or requests for additions were made.

4.9 Aerial Photography RAF 1946-1949, 1999-2000, 2006-2007 & 2015-2017

4.9.1 On the 1946-1949 aerial photography, the surface of the lane is screened from view by the hedgerow trees for the majority of the length. The lane is visible at the northern end between points U and the entrance to Springfield.

4.9.2 In the 1999, aerial photography the majority of the lane surface is again hidden by the trees. In 2006, the hedges on the western side have been trimmed and the lane is clearer to see.

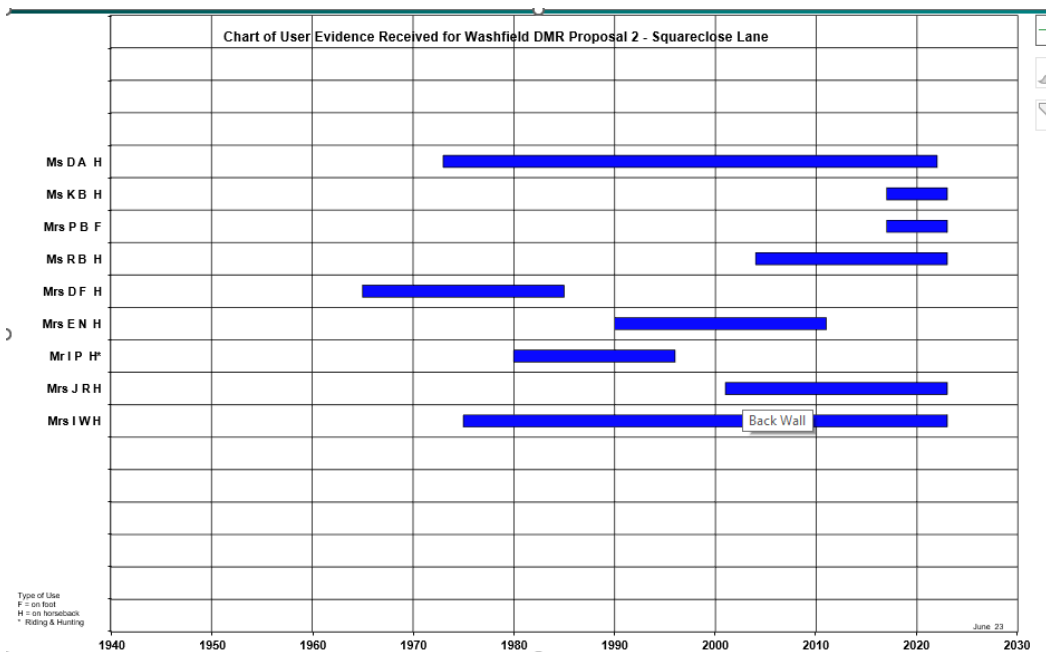
4.9.3 On the 2015 aerial photography, the western side hedges have again grown and the lane surface is only clearly visible at the northern end with trimmed hedges on both sides on the section adjacent to Springfield.

4.10 Land Registry

- 4.10.1 The lane is not registered at HM Land Registry. The land on the north western side is wholly registered to Dryhill Farm and Shilhay Cottage. The land on the south eastern side is registered to Shilhay Copse and Springfield Cottage with a small section at the northern end south of point U not registered, but understood to be part of Emmerford Farm.
- 4.10.2 The title for Shilhay Cottage makes no reference to the lane. On the plan for Dryhill Farm under DN590123, the lane is coloured blue. The property register includes at paragraph 2 dated 3rd July 2009 that *'The registered proprietor claims that the land has the benefit of a right of access over a track tinted blue on the title plan. The right claimed is not included in this registration. The claim is supported by a Statutory Declaration dated 19 June 2009 made by Diane Ruth Wheller'*.
- 4.10.3 The plan for Shilhay Copse DN590080 does not include any colouring along the lane although the property register includes at paragraph 2 dated 3rd July 2009 that *'The registered proprietor claims that the land has the benefit of a right of way over the road leading from the north western boundary of the property to the road leading from Stoodleigh to Iron Bridge. The right claimed is not included in this registration. The claim is supported by a statutory declaration dated 9 July 2009'*. This would correspond with the southern section of the proposal route that adjoins this registered title between points S and U. A conveyance of 19 May 1959 also gives the right to use the private drive (the now county road running along the southern boundary of the land) *'with or without horses, carts, carriages, motor carriages and other vehicles (other than motor-lorries, farm carts, implements, timber and cattle)'*. This wording corresponds to the right to use what was once the estate's private drive granted to property that was part of the Stoodleigh Estate in the 1925 sale catalogue.
- 4.10.4 The property register or plan for Springfields (understood to be known as Springfields when first registered in 1998 and formerly known as Squareclose) does not make any reference to any right of way along the proposal route.

5 User Evidence

- 5.1 A total of nine user evidence forms had been received for proposal 2. Eight of the users used the lane on horseback and five were weekly users. The period of use dated from 1965 to the present day.



- 5.2 Ms D A has used the lane on horseback every few months for pleasure between 1973 and 2022 apart from during Covid in 2020-2021 and foot and mouth in 2001. She thought the route to be public as she has always been able to ride along it. She had seen two gates at the northern end of the route near Springfield Cottage and by the road at point U. She said, the owner/occupier would have been aware of the use as could see horses had gone through.
- 5.3 Ms K B had used the route on horseback monthly and on foot every few months from 2017 to the present time and thinks the route has always been public. There have not been any notices, gates or other obstructions and she has never been stopped or told the route was not public. She thinks the owner/occupier was aware the public were using the route because they always have.
- 5.4 Mrs P B had used the route on foot for pleasure two to three times a week from 2017 to the present day. She thought the route to be public as a proper old track which links 2 council roads, obviously used for years. There have not been any notices, gates or other obstructions and she has never been stopped or told the route was not public. Under further information she commented that the *'track is used regularly by local walker, horses and the hunt. No reason why it shouldn't remain open as a bridleway. I walk the track at least twice a week all year round'*.
- 5.5 Ms R B had used the route weekly for pleasure on horseback from 2004 to the present day. She thought it was public as it was maintained by the council previously and is a marked track. There have not been any notices, gates or other obstructions and she has never been stopped or told the route was not public. She thought the owner/occupier were aware of the use as it was used by many walkers, riders etc.
- 5.6 Mrs D F had used the route on horseback for pleasure every few months from 1965 to 1985 except when living overseas for a few years. She thought the route to be public *'as just knew it was'*. There have not been any notices, gates or other obstructions and she has never been stopped or told the route was not public. She rode the lane with her mother who would have continued to use the route whilst she was overseas.

- 5.7 Mrs E N had used the route on horseback weekly for pleasure riding between 1990 and 2011 and occasionally since then. She thought the route to be public as it's marked on maps, a clear route and very accessible for horses. There has not been any notices, gates or other obstructions and she has never been stopped or told the route was not public. Mrs N comments it is well used and a nice track to ride on with a horse with good footing and not too many low branches.
- 5.8 Mr I P had used the route for hunting and riding on horseback every few months from 1980 to 1996. He thought the route public as it was always open as access/through route for the general public. There have not been any notices, gates or other obstructions and he has never been stopped or told the route was not public. No one claimed ownership of the lane. Under further information, Mr P commented that from 1980 to 1996 he was involved with the Tiverton Foxhounds. When master from 1989 to 1996, he would contact all landowners/farmers for permission to ride/hunt on their land. He never sought permission to use the green lane between Shilhay and Springfield and no one ever indicated to him that it was anything other than a public right of way/bridlepath. He wrote *'The hunt officials and followers mounted and on foot used the lane as of right without objection and without consent and without obstruction'*. The lane was rough and so far as he recalls seldom if ever used by vehicles. Use when hunting would not be use 'as of right' but Mr P also advises that he used the lane when not part of the hunt.
- 5.9 Mrs J R had used the lane weekly on horseback for pleasure from 2001 to the present day. There has not been any notices, gates or other obstructions and she has never been stopped or told the route was not public.
- 5.10 Mrs I W had used the lane weekly on horseback for pleasure from 1975 to the present day. She thought it was public as she was shown the route as a young child and had continued to use it. There have not been any notices, gates or other obstructions and she has never been stopped or told the route was not public. *'The track is well known by local walkers and riders and I'm sure has been used for many years'*.
- 5.11 Mr G was contacted in respect of proposal 1 in the Washfield review as his woodland adjoined the northern tip of that route. In his letter sent in response to the consultation he also added that he had used proposal 2 and had thought it was public. Mr G had not completed a user evidence form.

6 Landowner Evidence

- 6.1 A section 31(6) deposit was made in October 1994 by Fountain Forestry on behalf of the owners at that time, Gaskell & Hewer Woodlands. This covered Shilhay Copse on the southeast side of the lane between points S and T. The map submitted with the application included the section of the green lane between points S and T, although the Land Registry records do not include the lane within the ownership of the copse as the lane is unregistered throughout its whole length. Where a lane or track is unregistered, adjacent landowners could have a claim of rights to the middle of the way under the legal term 'ad medium filum viae'. The rule being a rebuttable presumption that an owner of land may own the soil of the adjoining highway up to its centre line. The 31(6) deposit expired in October 2000

and was not renewed. This section of woodland was sold in March 2020 to the current owners.

- 6.2 When the review consultation was published in 2022, the landowners/occupiers who owned land adjacent to the proposed bridleway, were contacted and advised of the proposal. They were invited to submit their comments and information by way of a completed landowner evidence form or otherwise.
- 6.3 The current owners of Shilhay Copse are the O'Connell Woodland Partnership and a landowner form was completed by Mr P O'Connell which confirmed their ownership of the woodland (adjoining the south east side of the lane between points S and T) but not the proposal route, from January 2020. They think the route is a public right of way as it is open to the public and not registered at Land Registry. They have seen dog walkers daily and use by farmer and their woodland management team. They have never stopped or turned back anyone, given or being asked for permission or put any locked gates or other obstructions along the route. Under other information they mention that there may be gunshot noise from the woodland as part of their regular woodland management.
- 6.4 They enclosed a copy of the statutory declaration completed in February 2020 by the previous owner Mr Aggett. The declaration states that he, together with his wife and visitors, have used the road coloured brown on the plan (this is the section of the proposal route between points S and T) for the purposes of access to and egress from the property with and without vehicles, machinery and equipment, since he purchased the property (in 2009). Such use has always been without interruption and as of right and without permission from or objection by any person whatsoever. This 2020 declaration does not appear to have been registered at Land Registry but refers to the same right as the declaration made in 2009.
- 6.5 Mr Aggett had purchased Shilhay Copse woodland and Dryhill Farm in 2009, and then sold Shilhay Copse in 2020 and Dryhill Farm in 2021. Mr Aggett did not think the way was public as it was in the ownership of the Stoodleigh Estate and has therefore always been private. He has seen people using the route. The only request for permission was by and was given to the Tiverton Staghounds. A couple of times, he told people not to use the track. He had not locked any gates or put obstructions along the route or erected any notices.
- 6.6 Under further information Mr Aggett comments *'This trackway and the land on both sides was a part of the Stoodleigh Estate. The land on either side was sold off at different times and neither sale included the track. The track therefore remains part of the Stoodleigh Estate. I would suggest nobody else (including Devon County Council) has any claim to ownership. The status of the track as a route the public can use should be decided only by the current owners of the Stoodleigh Estate with the input of the owners of Shilhay Woods, Dryhill Barton, Shilhay Cottage and Springfield Cottage.'*
- 6.7 Mr Morison has owned Springfield Cottage since 1997 which includes the land adjoining the south east side of the lane between points T and just south of U. He does not think that the route is a public right of way as it is not registered as a right of way. He has seen riders and walkers frequently and some vehicles and motorbikes less so. He has not stopped or turned anybody back or had anyone ask for permission. Tree cutting may have very occasionally obstructed the route. Under

other information he comments *'The route has never been classified in anyway and it works well like this and is currently known about. Changing its status is not really necessary. It may cause more difficulties to us if it is registered'*. Mr Morison also telephoned to speak about the proposal and suggested that things could be just left as they were.

- 6.8 Mr Mock of Emmerford Farm owns the field on the east side of the route south of point U. On his form Mr Mock just commented *'As it is not known who owns the track who would be responsible to make it passable on foot and maintain it as it is very wet.'*
- 6.9 Ms Chant responded for Dryhill Farm who own the land adjoining the north west side of the lane except for the boundary with Shilhay Cottage by point S. They also rent land at Shilhay Cottage that adjoins the lane. They have access gates from the track S T U to land they own. They believe the route to be a public right of way as they moved there in October 2017 and have free unhindered access to the track S T U. They have seen people using the lane, dog walking two to three times weekly, foxhounds once this season, ramblers, motorcycles infrequent and forestry access. They have not stopped anyone or been asked for or given permission to anyone.
- 6.10 Mrs Pennington has owned the bungalow at Shilhay adjoining the lane on the north west side near point S since 2003. She believes the route to be a public right of way as originally the track was the route from Stoodleigh Village to the railway station at Cove. The route is used on a daily basis by walkers and horse riders, mostly from the village. She has not stopped anyone or been asked for or given permission to anyone. Under further information she comments *'Stoodleigh Drive was built as a private drive for Stoodleigh Court in the 1880s. The track from S to U predates the Stoodleigh Drive as the route for villagers to get to Cove Railway Station on the A396'*.

7 Additional Rebuttal Evidence

- 7.1 No other rebuttal evidence has been received.

8 Discussion

Statute (Section 31 Highways Act 1980)

- 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 or called into question.
- 8.2 The section 31(6) deposit was made in 1994 (although was not renewed and expired in October 2000). This deposit could be considered as a calling into question for part of the lane i.e., half of the lane on the eastern side between points S and T adjoining Shilhay Copse. The twenty-year period under statute would therefore need to cover the period from 1974 to 1994, for which the user evidence would be insufficient to raise the presumption of deemed dedication under section 31(1) of the Highways Act 1980.

- 8.3 However, there is evidence to indicate that the lane had already been dedicated under common law prior to 1974.

Common Law

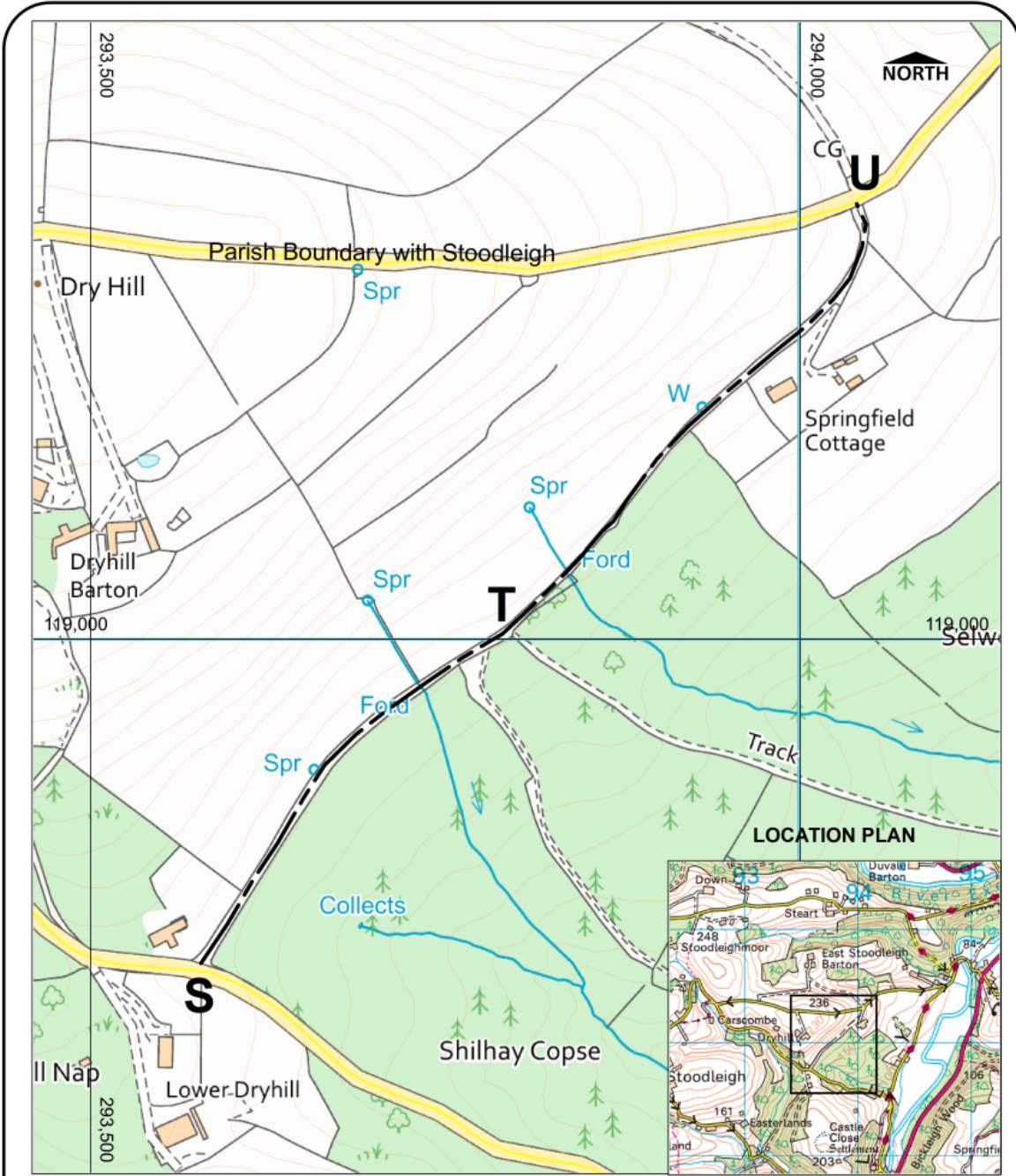
- 8.4 A claim for the addition of a right of way may also be considered under common law. At common law, evidence of dedication by a landowner, who must have had the capacity to dedicate, can be express or implied. An implication of dedication may be shown at common law if there is evidence of documentary 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.
- 8.5 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 mapping evidence shows that the lane was created between the Tithe Map of 1840 and the early OS maps of the late 19th century. The new Stoodleigh Drive (to which the proposal route connects at point S) is understood to have been constructed in the 1880s. A track through fields appears to have existed before this, which, at that time, would have been within the ownership of the Stoodleigh Estate. Since its construction, the lane has been shown as a defined double hedged lane with its own compartment number and area on the large scale maps and in the manner of other minor roads in the vicinity. The lane was shown on the OS ½ inch to a mile Ministry of Transport Road Map of 1923 for North Devon, which was the first mapping to accurately show road numbers for the A and B roads.
- 8.6 On the Finance Act plan of 1910, the lane is not coloured or included within any of the adjoining hereditaments. This indicates that the lane was not considered part of the Stoodleigh estate. Where hereditaments include land on both sides of the lane, the colouring breaks across the lane which is indicative of the lane been considered public at that time.
- 8.7 In the Stoodleigh Estate sale catalogues and plans of 1925 and 1926, the lane is not coloured or shown as being included as part of the estate or part of the adjoining lots. Where a lot included land either side of the lane, the colouring again broke across the lane. In the 1925 plan, this is in contrast to the private drive that was coloured blue and was included as part of Lot 1 of Stoodleigh Court House. The 1925 catalogue referred to a right of way for lots along the private drive but did not make any reference to the proposal route, even for those lots adjoining the lane. In the 1926 catalogue, details were specifically included giving private rights of way to certain lots over other lots within the estate but no such rights were mentioned in reference to the lane. This would indicate that the estate did not consider the lane to be part of the estate at that time as it was shown in a similar manner to known public roads.
- 8.8 The Washfield Parish Council minutes of 1962 record that a cattle grid had been built across the lane south of point U, near Squareclose and was interfering with the normal traffic. The presence of the cattle grid is shown on the OS map of the late 1960s. The clerk at the County Council was contacted and visited the site and advised that he found the cattle grid in order as there was a gate for pedestrians. It is very unlikely that a representative of the County Council and particularly the clerk himself would have inspected the lane and cattle grid if it had not been considered

that the lane was public. In 1966, the minutes record a long discussion regarding the lane that was understood to be a public one.

- 8.9 The lane is not registered at HM Land Registry although the majority of the land adjoining is. Where a reference is made to two of the adjoining properties having a right of way along the lane, this is provided by the statutory declarations of a previous owner made in 2009, as the deeds did not make any reference to such rights. The recording of such a right of way would not be necessary if the lane was considered to be public when no longer part of the estate by the 1920s.
- 8.10 User evidence has been received showing regular use of the lane by members of the public for over fifty years with none of the users ever been turned back, stopped, or told it was not public. Although there is not extensive user evidence, the lane is in a rural area and not close to the village centres of Stoodleigh or Washfield. The user evidence received is deemed sufficient to show acceptance of the lane by the public as a public right of way under common law.
- 8.11 The 31(6) deposit made in 1994 would under common law dedication show the landowner's lack of intention to dedicate a public right of way along that part of the east half of the lane that adjoined Shilhay Copse. However, the documentary evidence supports the whole width of the lane having been dedicated by an earlier landowner (Stoodleigh Estate) prior to the 1920s and so becoming a public way prior to 1994.
- 8.12 Four of the five current adjoining landowners report seeing regular use by dog walkers and horse riders and three of these think the lane is a public right of way. Mr Morison comments that it is not a public right of way as it is not registered as a right of way. Apart from a previous owner of Shilhay Copse (pre-2020), there is no other rebuttal evidence.

9 Conclusion

- 9.1 As referenced in Section 8 above, the previous S31(6) deposit could be deemed a calling into question of the public's use of half of the lane for part of the route, and the user evidence for the relevant period would be considered insufficient to show presumed dedication under section 31(1) of the Highways Act 1980. However, under common law, there is documentary evidence to demonstrate implied dedication by a previous landowner prior to this deposit, added to which, there is user evidence indicating acceptance of this dedication by the public.
- 9.2 No evidence has been found to contradict the proposal route being public. Overall, the evidence is considered sufficient to show that a public right of way can be reasonably alleged to subsist and given the user evidence, such a public right of way is deemed to be a bridleway.
- 9.3 It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement in respect of the route considered under Proposal 2.



Map Ref SS 9318 9319 9419 500m grid

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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - WASHFIED
CONSULTATION ON PROPOSAL NO 2 -
ADDITION OF A PUBLIC BRIDLEWAY ALONG GREEN
LANE BETWEEN SHILHAY AND SPRINGFIELD**

drawing number HIW/PROW/22/18a
date APR 22
scale 1:4,000 at A4
drawn by TW

Notation

Addition of Public Bridleway S - T - U - - - - -
(730 metres approx)

Meg Booth
DIRECTOR CLIMATE CHANGE,
ENVIRONMENT & TRANSPORT

