

## **Definitive Map Review 2006–16: Parish of Luppitt part 2, with part of Upottery parish**

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

***Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.***

**Recommendation:** It is recommended that no Modification Orders be made in respect of Proposals 15–19 for the applications to record claimed public footpaths in parts of Luppitt parish and an adjoining part of Upottery parish.

### **1. Summary**

This report examines five proposals arising out of the Definitive Map Review in the parish of Luppitt in East Devon district. It concerns the further investigation of Schedule 14 applications made by the Ramblers in 2008 to add claimed public footpath routes in the parish, which include one crossing into part of the adjoining parish of Upottery.

### **2. Introduction – Review and consultations**

The current review was started in April 2006 and consultations on the applications for routes in Luppitt parish, including some crossing from or into parts of the adjoining parishes, took place in July and November 2014. Some of the proposals in the consultations have been considered in reports to previous meetings of the Committee, with decisions not to make Orders for any of the claimed routes. Appeals against some of those decisions have been made to the Secretary of State.

The proposals in this report relate to five further applications claiming routes as public footpaths in Luppitt, with one of them crossing the parish boundary into an adjoining part of Upottery.

Responses to the overall consultations were as follows:

County Councillor Paul Diviani	- does not support any of the proposals;
East Devon District Council/AONB	- no comment;
Luppitt Parish Council	- do not support any of the proposals;
Country Land and Business Association	- no comment;
National Farmers' Union	- no comment;
ACU/TRF	- no comment;
British Horse Society	- no comment;
Cyclists' Touring Club	- no comment;
Ramblers	- support all proposals from their own applications.

Specific responses, including from the owners of the land affected, are detailed in the Appendix to this report and included in the background papers.

### **3. 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.

#### **4. Legal Considerations**

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

#### **5. Risk Management Considerations**

No risks have been identified.

#### **6. 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.

#### **7. Conclusion**

It is recommended that no Modification Orders be made in respect of the applications for Proposals 15–19, as the evidence is considered insufficient to meet the requirements of the legislation. Details concerning the recommendations are discussed in the Appendix to this report.

There are no recommendations to make concerning any other modifications in Luppitt parish. The remaining five proposals for claims from applications for other routes in Luppitt, will be included in a further report to complete the review process in the parish.

#### **8. Reasons for Recommendations**

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

David Whitton  
Chief Officer for Highways, Infrastructure Development and Waste

#### **Electoral Division: Honiton St Paul's**

Local Government Act 1972: List of Background Papers

Contact for enquiries: Nick Steenman-Clark

Room No: ABG Lucombe House

Tel No: (01392) 382856

Background Paper	Date	File Ref.
Correspondence File	2005 to date	NSC/DMR/LUPP

ns270916pra  
sc/cr/DRM Luppitt part 2 part Upottery parish  
04 161116

## **A. Basis of Claims**

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.

The Wildlife and Countryside Act 1981, Section 53 (3)(c) enables the Definitive Map and Statement 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; and

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

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

Common Law presumes that a public right of way subsists if, at some time in the past, the landowner dedicated the way to the public. That can be either expressly, with evidence of the dedication having since been lost, or by implication in having not objected to the use of the way by the public, the landowner is presumed to have acquiesced, with the public having accepted that dedication by continuing to use it.

## **B. Introduction: Background to all applications**

Twenty-four formal applications under Schedule 14 of the Wildlife and Countryside Act 1981 were submitted in April 2008 on behalf of the Ramblers. They were for routes in the parish of Luppitt not currently recorded as public rights of way claimed for recording as public footpaths. They included three routes crossing the parish boundary to the west, which were duplicated in the eleven applications submitted at the same time for claimed routes in the adjoining parish of Combe Raleigh and connected with other routes in Luppitt. Another was for a claimed route crossing into the adjoining parish of Upottery to the east.

The Ramblers had served notice of their applications on those believed to be the owners of the land affected at that time. They certified having served that notice and submitted copies of all the evidence in support of their claims with the applications, which were mainly copies of historical maps with other historical documentary material. Most of those were included with individual applications and other evidence common to all of the applications, mainly historical maps, was submitted at that time in a separate appendix. Further supporting evidence in the form of copies from other historical maps and documents was submitted a year later.

### **Historical documentary evidence common to all applications**

Most of the documents providing evidence relating to all of the applications submitted in a separate appendix are historical maps. They were mainly produced by the Ordnance Survey at a range of scales between 1"/mile and 2½"/mile from 1809 to 2006, with one by Bartholomew at 1½"/mile from 1960. Copies of the legends to the maps were also supplied, most of which included the standard disclaimer that the representation on the map of a road, track or footpath is no evidence of a right of way. Other historical maps and documents submitted later were also related to all of the applications.

The individual applications indicated which of the maps, if not all of them, was intended to be included with the evidence supporting the claim for that particular route, although with no interpretation of its significance as to whether or not it was shown, or how it was depicted. Other historical documents common to several of the applications are discussed in the individual sections for each proposal below.

### **User evidence**

No direct evidence of current or recent use by the public on any of the claimed routes was submitted in support of the applications. There is, therefore, no need to consider statutory dedication of any of the claimed routes as public footpaths under Section 31 of the Highways Act 1980 from 20 years' use of them by the public up to the date of the applications. There is no date other than the applications for any calling into question and also, therefore, no need to consider any evidence of actions by the landowners to show lack of intention to dedicate during that specific 20 year period.

The only statutory element is consideration of the historic maps and documentary evidence in accordance with Section 32 of the Highways Act. That is in relation to a test of whether an intention by the landowners to dedicate the routes as public footpaths at some time in the past can be inferred under common law. It would require sufficient evidence from which it can be inferred that there was use by the public of the claimed routes in the past, with the landowners acquiescing to that use and taking no actions to prevent it, with acceptance by the public in continuing to use them.

**1. Proposal 15: Schedule 14 application – claimed addition of footpath between minor road, east of Hillend Farm and minor road, South Cleave in Upottery parish, points S-T shown on drawing number HTM/PROW/14/141**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 15 for the claimed addition of a footpath.

**1.1 Description**

- 1.1.1 The claimed route for this application starts at the minor road in the north of Luppitt parish that crosses the open land of Hartridge Common (point S), from a gate and following the edge of a field to the parish boundary with Upottery. It continues in Upottery along the edge of another field, turning onto a track along the edge of woodlands on Aller Moor, passing the entrance to Culverwell Farm to end on the minor road leading to Upottery village (point T).

**1.2 The Definitive Map process**

- 1.2.1 Part of the claimed route was included in the survey of paths on behalf of Luppitt Parish Council in 1951 to put forward for recording as public rights of way on the Definitive Map. It was surveyed as path No. 18 running from the road along the edges of two fields to the Upottery parish boundary, on the basis of being shown on old Ordnance Survey maps and also noted by the Rural District Council as recorded on the 1932 Rights of Way Act map. It was proposed to be omitted and not included at the Draft and Provisional map stages for recording on the Definitive Map.
- 1.2.2 The continuation from the parish boundary across the field was not included in the survey by Upottery Parish Council in 1950. The rest of the route as claimed on the track from the road at point T was surveyed in that parish as part of a path numbered 8, but continuing through the woods passing Culverwell to Aller Hill and onto the road on the parish boundary below Braddicksnap Hill. It was described as a service path not a public path, never known to be repaired and said by the Rural District Council not to be shown on the 1932 Rights of Way Act map. It was considered by the Parish Council not to be required in the future and also not included at the Draft and Provisional map stages for recording on the Definitive Map.

**1.3 Documentary Evidence**

- 1.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and 1<sup>st</sup> edition 1<sup>st</sup>/mile map 1809 and later (Old Series); Greenwood's map 1827

Early historical maps at smaller scales, particularly from the Ordnance Survey drawings for the 1<sup>st</sup> edition map, do not usually show the lines of footpaths and no line of a path is shown on the start of the claimed route leading from the road in Luppitt to the parish boundary. A track is shown leading from the road in Upottery on part of the route as claimed, turning to continue past Aller Farm towards the road further east but as a cul-de-sac and not continuing to connect with the road. The track is shown in the same way as some of those recorded now as public roads, but also including others that are not recorded now as public or no longer existing. It is shown on the 1<sup>st</sup> edition map in the same way and also on Greenwood's later map, believed to have been mainly copied from earlier Ordnance Survey map editions.

1.3.2 Later 19<sup>th</sup> century historical mapping: Luppitt Tithe Map 1842 & Apportionment 1840; Upottery Tithe Map 1841 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

Later maps at larger scales show parts of the route in more detail. The Tithe Map for Luppitt parish dated 1842 does not show the line of any path crossing the fields from the road near its entrance into the open land of Hartridge. There is no reference to any path in the Apportionment or in the names of the fields on the claimed route, but the map does record the existence then of gates in the field boundaries on part of the route, but not on its start from the road or at the parish boundary. They are also shown on the lines of other tracks and in the boundaries of other fields without showing tracks or paths throughout the parish, including on the road entering the open land. They indicate where access can be interpreted mainly as being provided only for agricultural uses of the land.

1.3.3 No path is shown on the Tithe Map for Upottery dated 1841 in the fields beyond the parish boundary on the claimed route, with no gates indicated between the fields or on to the track leading from the road in Upottery. The track is shown enclosed, running alongside the woodlands on Aller Hill, turning and with no indication of any link onto the claimed route to continue and end at fields beyond the woods. It is shown in the same way as all roads or tracks in the parish, which were not labelled or identified in the Apportionment as public. They included those which were obviously public, as well as others more likely to have been private tracks for access to fields and some not now existing.

1.3.4 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose. The Tithe Map records for both parishes do not, therefore, provide strong supporting evidence that any part of the claimed route may have been considered then to be public. It records only part of the route's physical existence as a track, leading from the road network in Upottery at that time, but with no indication of any link or continuation further on the claimed route crossing the parish boundary into Luppitt.

1.3.5 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows a path with double-dashed lines labelled 'F.P.' from the road in Luppitt along the edge of the fields on the line of the route as claimed, crossing the parish boundary into Upottery, but not labelled on that section. It ends on the track, which is shown in the same way as on the Tithe Map and indicating the presence of barriers at each end, which are likely to have been gates. The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century shows the track from the road in Upottery, as in the earlier editions, but is at too small a scale to show any path on the continuation of the claimed route.

1.3.6 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map, with the line of paths labelled 'F.P.' in both parishes. It shows a connection of a path linking onto the track through a barrier, with the end of the track indicated as open and with no barrier at its connection to the road in Upottery.

1.3.7 No records from the procedures under the Finance Act 1910 were submitted specifically in support of the application for this claim. Copies of Ordnance Survey maps used as the basis for the Finance Act survey to ascertain the value of land for the purpose of taxation were submitted with the additional supporting material for all of the applications. The maps show the claimed route to have been included in the defined hereditaments, or assessment areas of land, numbered as 95 in Luppitt parish and part of 105 in Upottery.

- 1.3.8 With no copies from the Field Books for those hereditaments submitted with this claim for details of the assessment for those areas of land, other records show overall details in the Finance Act 'Domesday Book' for the whole of both parishes. They show those numbered hereditaments to have been agricultural land in the larger Addington and Sidmouth estates in parts of Upottery and Luppitt parishes. There were no deductions for Public Rights of Way or User indicated for either of those hereditaments, suggesting that the route as claimed was not considered to carry any form of right of way at the time that could have been considered as public for such a deduction.

1.3.9 Honiton District Highways Board and Upottery Parish Council records

Copies of other historical documents were submitted in support of the application for this claim, from Honiton District Highways Board and Upottery Parish Council records. The copies of both Honiton District Highways Board records are undated, with a schedule of footpaths referring to a path numbered 13 in Upottery, describing it as:

‘From the left old lane on top of Aller Hill through one Field on Aller Farm to Luppitt boundary, and on to Luppitt.’

Without further information, or a date, it does not indicate the circumstances for producing the list, for instance as to whether it may have been part of any earlier formal procedure for recording footpaths in the parish that were considered then to be public rights of way.

- 1.3.10 The copy of an extract from a list of roads in Upottery was not accompanied by any explanation of which one was considered to be significant for the claim, but includes several leading towards Luppitt, including from Aller Hill. Their relevance may have been intended to suggest that the track on the claimed route was considered at some unspecified date to be part of a public road and continuing as a public footpath in Luppitt at some unidentified date. There has been no claim that any part of the route should be recorded now as a public right of way with higher status than footpath, or as a public road.
- 1.3.11 Copies of a transcript from Upottery Parish Council minutes, submitted with photographs, are dated with a report in March 1902 that a stile in the footpath at Aller Hill and leading to Luppitt was broken. It was noted that as the stile was on the boundary with Luppitt, it would be investigated and reported at the next meeting. No copies of records from any following meetings were submitted to indicate whether it was investigated further by the Parish Council, or if any subsequent actions were taken. Luppitt Parish Council minutes from the same period do not record that there was any consultation with them about whether any actions were needed for repair or maintenance if it was considered then to be a public footpath crossing the parish boundary.

1.3.12 Later Ordnance Survey mapping and Bartholomew's maps

Smaller scale maps from the earlier 20<sup>th</sup> century, particularly Ordnance Survey and Bartholomew's map editions from 1910 to the later 1920s, show only the track from the road alongside the woodlands at Aller Farm on part of the claimed route in Upottery parish. Later editions from 1937 show the other part of it leading from the road in Luppitt to the parish boundary with a dashed line as a path, later continuing in Upottery to connect with the track and marked 'F.P.' in 1948, up to the early 1970s but not on other subsequent editions that showed recorded public rights of way. Their keys included dashed lines to show footpaths and bridleways, but were subject to the general disclaimer that they were not evidence of a right of way.

1.3.13 Later Ordnance Survey 'A' edition larger-scale mapping from 1964, around the time that the Definitive Map was being drawn up, does not show the line of any path from the road in Luppitt crossing the parish boundary to connect with the track on the rest of claimed route. The track is shown as in earlier editions, running from the road alongside the Aller Hill woods passing the track to Culverwell and ending in a field beyond the woodland.

1.3.14 The showing of the track and path on parts of the claimed route on early and later maps records their physical existence at those times until more recently and up to the present. They do not indicate on their own or support the existence of public rights of way on them, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889 and by other editions, which may be presumed to apply to earlier and other commercial maps as well.

#### 1.3.15 Aerial photography

Earlier RAF aerial photography from 1946–9 shows the access track from the road in Upottery on part of the claimed route as unsurfaced and partly wooded. There is no worn track to shown the line of any used path in the fields leading to and across the parish boundary, apart from around the entrance from the track which was perhaps from agricultural access and trampling by stock.

1.3.16 More recent aerial photography between 1999–2000 and 2007 shows the access track on the claimed route as more wooded, with no worn track that can be interpreted as the line of any path crossing the fields, apart from vehicle tracks connected with ploughing and cultivation of the field in Luppitt.

### 1.4 **Definitive Map Reviews and Consultations**

1.4.1 There have been no previous suggestions in either parish that the claimed route should be considered for recording as a public right of way in earlier review processes that were started but not completed. The claimed footpath was included in the consultations in November 2014 on the basis of the application submitted in 2008. The responses included objections on behalf of the Parish Council, the affected landowners and the local County Councillor, with support only from the Ramblers as the applicants.

### 1.5 **User Evidence**

1.5.1 No evidence of claimed use was submitted in support of the application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

### 1.6 **Landowner and Rebuttal Evidence**

1.6.1 The owners of land on Aller Farm and Yard Farm, both in Upottery, on the claimed route and including the access track, completed landowner evidence forms. They indicated that the claimed route crossed land in their ownership and did not believe it to be public. They had not seen, or been aware of, the public using the route, had not required people to ask permission when using it and had not turned back or stopped anyone from using it.

1.6.2 They had not obstructed the claimed route or put up notices to say that it was not public and had not made Section 31 deposits to show lack of intention to dedicate. They indicated that there were gates on the route that were not locked, but reported that the gate on the parish boundary was overgrown and had never been used, with gateways at each end having been opened up at each end only recently.



- 1.6.3 In further information, the owners of both farms made references to their belief from local knowledge and having lived nearby that the claimed route had not been used for more than 50 or 60 years. One included a letter from the previous owners of some of the land since the 1950s up to recently, who reported that no member of the public had used the claimed route during that time, when the gateways at each end of the route had been grown over and were not accessible.

## **1.7 Discussion – Statute and Common Law**

- 1.7.1 As discussed in the background to all applications (part B, above), no evidence of use has been submitted to support the claimed addition, so that there is none during any 20-year period before the date of the application to consider whether a statutory presumption of dedication has arisen from use by the public.
- 1.7.2 Considering the application in relation to common law requires taking into account the historic maps and other historical documentary evidence submitted and discovered, but without being able to consider any evidence of claimed actual use by the public. Earlier historical mapping shows that a track has existed on the ground since at least the early 19<sup>th</sup> century on part of the route as claimed in Upottery parish, but with no continuation shown crossing the parish boundary into Luppitt on the rest of the claimed route. Later mapping shows that the track has continued to exist physically on the ground on that part of the claimed route up to the present, with some editions showing a continuation from it into Luppitt labelled as a footpath up to later in the 20<sup>th</sup> century.
- 1.7.3 Without any detailed Finance Act records to indicate whether any parts of it may have been considered to carry public rights in the early 20<sup>th</sup> century, there is little or no new evidence that could be said to have been discovered for the claim and was not available to the Parish and County Councils when drawing up the Definitive Map in the 1950s. The only other new evidence from Honiton District Highways Board is undated and partly relating only to roads, although referring to a footpath crossing the parish boundary. Significantly, there are no lists from 1913 and 1934 of what were considered then to be public footpaths in Luppitt parish, as for other claims made in Combe Raleigh from previous reports, for any continuity of evidence suggesting that this route may have had the reputation of being public at those times.
- 1.7.4 The single record submitted of the report by Upottery Parish Council in 1902 about the condition of a stile on the parish boundary, which may have been on this route, does not provide any direct evidence that it was subsequently maintained or repaired from being considered then to be public. There is also no record that Luppitt Parish Council were consulted about it then to show whether they may have also considered it to be a public footpath at that time.
- 1.7.5 Part of the claimed route in Luppitt to the parish boundary was included in the Parish Council's survey nearly 50 years later, but only on the basis of being shown on old Ordnance Survey maps and also noted as recorded on the Rural District Council 1932 Rights of Way Act map. In the same way, part of the route on the track in Upottery had been included in their survey the previous year on a similar basis, but not connecting to it on the parish boundary. It was reported to be not recorded on the 1932 map and no list of paths were compiled in those parishes following that Act, as there had been in the adjoining parish of Combe Raleigh. There was no reference to known use by the public for any previous period of time.
- 1.7.6 Both sections were either proposed to be omitted or considered not to be public and not required, without sufficient evidence that they were public and were not included at the Draft and Provisional map stages for recording on the Definitive Map. There was no objection to their omission from the Draft Map. Accordingly, the route as claimed cannot be said to have been regarded by either Parish Council at that time as parts of one

continuous or connecting path crossing the parish boundary, or considered by either of them to be public on the basis of the evidence then available. That is also taking into account the very limited evidence submitted with this application that could be said to have been not available to them at that time and discovered since then, which is negligible and therefore considered to be not sufficient.

- 1.7.7 No other more significant historic maps or references in historical documentary material have been submitted or discovered to add more substantial weight to any suggestion that the route may have had the reputation of being a public footpath in the past, or more recently. No claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Luppitt and Upottery Parish Councils.
- 1.7.8 Considering the historical evidence, but without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath, or an inference that it had the reputation of being available and used by the public. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted any dedication and used it at any time in the past on foot, or have continued to use it on that basis.

## **1.8 Conclusion**

- 1.8.1 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the application for Proposal 15.

## **2. Proposal 16: Schedule 14 application – claimed addition of footpath between minor road, north of Corner House and minor road, east of Corner House, points U–V shown on drawing number HTM/PROW/14/142**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 16 for the claimed addition of a footpath.

### **2.1 Description**

- 2.1.1 The claimed route for this application starts from a minor road south of Luppitt village near the entrance to Newhouse Farm (point U). It runs from a roadside hedge with no gap or gateway and across the corner of a field to a hedge bank also without a gap or gateway on a minor road east of a cross roads, near the entrance to Blackenfields Farm (point V).

### **2.2 The Definitive Map process**

- 2.2.1 This claimed route was included in the survey of paths on behalf of Luppitt Parish Council in 1951, surveyed as path No. 50 to Scotchayes road. It was again only on the basis of being shown on old Ordnance Survey maps and noted as recorded on the Rural District Council 1932 Rights of Way Act map. It was also proposed to be omitted and did not go on to be included on the Draft and Provisional Maps and was not recorded on the Definitive Map.

## 2.3 Documentary Evidence

### 2.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827

No line of a path is shown on this claimed route crossing the land between the roads on any of the earlier maps at smaller scales, which do not usually show the lines of footpaths.

### 2.3.2 Later 19<sup>th</sup> century historical mapping: Luppitt Tithe Map 1842 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

Some later maps at larger scales show the claimed route in more detail. The Tithe Map for Luppitt parish dated 1842 does not show the line of any path crossing what was then a smaller field between the roads. There is no reference to any path in the Apportionment or in the name of that field on the claimed route, but the map does record the existence then of a gate in the field boundary at one end of the route on the road (point U) but not at the other end. However, they are also shown on the lines of other tracks and in the boundaries of fields without showing tracks or paths throughout the parish. They indicate where access can be interpreted as being provided only for agricultural uses of the land.

2.3.3 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, although the lines of paths or unenclosed tracks are shown crossing some fields in other parts of the parish. The Tithe Map records do not, therefore, provide any supporting evidence that the claimed route may have existed then to have been considered as a public footpath.

2.3.4 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows the claimed route as a path with double-dashed lines and labelled 'F.P.' crossing the field between the roads. Another path is shown in the same way in adjoining fields on the east and crossing the same field below Newhouse Farm onto the road near the entrance to the farm, which has not been the subject of any claim. The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century is at too small a scale to show any path on the claimed route.

### 2.3.5 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map. Another section of path is shown in the field connecting the path from adjoining fields onto the claimed route at the gate onto the road at point U. Copies of the same later maps used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation were submitted with the additional material for all of the applications. The map shows the claimed route to have been included in the defined hereditament, or assessment area of land, for New House with a total area of 51 acres.

2.3.6 Copies of the Field Book for that hereditament with details of the assessment for the farm were included with the application. They record a total deduction of £10 in respect of Public Rights of Way or User affecting the value of the land. Details of 'Charges, Easements and Restrictions' affecting the value of the land refer to those as 'R[ight] of Way' with the Ordnance Survey number for the field crossed by the claimed route. It suggests that the route may have been considered to carry some form of right of way at the time, although without any specific reference to it as a 'public footpath' and it could have been in connection with the other path shown in the same field.

### **2.3.7 Later Ordnance Survey mapping and Bartholomew's maps**

Most smaller scale maps from the earlier 20<sup>th</sup> century, particularly Ordnance Survey and Bartholomew's map editions from 1910 to the later 1920s, do not show the claimed route. Some of them show the line of the other path from adjoining fields leading onto the road at the end of it, as shown on the earlier larger scale editions. The only later edition showing the claimed route with a dashed line as a path marked 'F.P.' is from 1948, with other subsequent editions up to those in the early 1970s with recorded public rights of way not showing it, or showing only the other path leading onto its end

2.3.8 Their keys included dashed lines to show footpaths and bridleways, but were subject to the general disclaimer that they were not evidence of a right of way. Later Ordnance Survey 'A' edition larger-scale mapping from 1963, around the time that the Definitive Map was being drawn up, does not show the line of any path or track on the claimed route, or the lines of any other paths nearby.

2.3.9 The showing of the claimed route on some early and later maps records its physical existence as a path or track at those times until more recently. They do not indicate on their own or support the existence of public rights of way, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889 and by other editions, which may be presumed to apply to earlier and other commercial maps as well.

### **2.3.10 Aerial photography**

Earlier and later aerial photography between 1946–9 and 2007 up to 2011 shows that the small field crossed by the claimed route had been incorporated into a larger field between the later 1940s and the later 1990s. It shows only the lines of the roads and other farm access tracks in the area, with no worn line of any path on the claimed route shown crossing the field between the roads.

## **2.4 Definitive Map Reviews and Consultations**

2.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes. The claim was included in the consultations in November 2014 on the same basis as the applications for other proposals, with the same responses in objection and support only from the applicants.

## **2.5 User Evidence**

2.5.1 As with Proposal 15, no user evidence was submitted in support of this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

## **2.6 Landowner and Rebuttal Evidence**

2.6.1 The owner of the land crossed by the claimed route, part of Shapcombe Farm from claims considered in previous reports, completed a landowner evidence form. He indicated that the route crossed the land that he had owned for over 30 years and he did not believe it to be public. He had not seen, or been aware of, the public using the route, or had required people to ask permission when using it. He had not obstructed the claimed route, had not put up notices to say that it was not public and had not made a Section 31 deposit to show lack of intention to dedicate.

2.6.2 In additional information, he provided a statement from the previous owners of Newhouse Farm up to 1974, reporting that nobody had ever used the route of the claimed footpath.

## **2.7 Discussion – Statute and Common Law**

- 2.7.1 As with Proposal 15, no evidence of use has been submitted to support the claimed addition so that there is none during any 20-year period before the date of the application to consider whether a statutory presumption of dedication has arisen from use by the public.
- 2.7.2 Most of the historic maps and some of the other historical documentary evidence for this application are the same as for the previous proposals with some differences in detail and there is, again, also no evidence of claimed use for an inference of dedication under the common law test. Earlier historical mapping does not show the line of any path on the claimed route, although it is shown on some later maps until more recently and labelled in only one edition as a footpath. However, they do not provide any support for the claim that the route may have been considered to be public at those times.
- 2.7.3 The Finance Act records are the only evidence submitted in support of this application that could be said to have been discovered and not available to the Parish Council in the 1950s. It is, therefore, the only piece of evidence suggesting that there may have been any earlier reputation for this claimed route to be a public footpath, but without any other new evidence. However, there is no evidence for how that was determined as the basis from which any earlier presumed dedication by the landowner or the extent of any use by the wider public could be inferred. Its weight in support of this claim is also reduced with the deduction specified for the field shown to be crossed by another route on a different line. Later mapping with aerial photography and other records do not show that it has continued to exist as a path on the claimed route more recently and up to the present.
- 2.7.4 Again, there were no lists of what were considered to be public footpaths in Luppitt parish in 1913 and 1934, as for other claims made in Combe Raleigh from previous reports, for any additional continuity of evidence suggesting that this route may have had the reputation of being public at those times. No records have been submitted of any expenditure by the Parish Council for maintenance or repairs on this route for any further evidence that it may have been considered to be public at any other time, as with other claims.
- 2.7.5 This route was also included by Luppitt Parish Council for its 1951 survey, but again only on the basis of being shown on old Ordnance Survey maps and also noted as recorded on the Rural District Council 1932 Rights of Way Act map. No list of paths in the parish following that Act was compiled, as in Combe Raleigh. There was no reference to known use by the public for any previous period of time. It was also proposed to be omitted without sufficient evidence that it was public and not included at the Draft and Provisional map stages for recording on the Definitive Map. There was again no objection to its omission from the Draft Map.
- 2.7.6 No other more significant historic maps or references in historical documentary material have been submitted or discovered to provide any substantial weight to a suggestion that the route may have had the reputation of being a public footpath in the past, or more recently. No claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Luppitt Parish Council.
- 2.7.7 Considering the historical evidence, but without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath for an inference that it had the reputation of being available and used by the public for any previous period of time. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted

any dedication and used it at any time in the past on foot, or have continued to use it on that basis.

## **2.8 Conclusion**

- 2.8.1 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the application for Proposal 16.

## **3. Proposal 17: Schedule 14 application – claimed addition of footpath between minor road, Greenway Manor and minor road, north of Corner House, points W–U shown on drawing number HTM/PROW/14/142**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 17 for the claimed addition of a footpath.

### **3.1 Description**

- 3.1.1 The claimed route for this application starts on a continuation of the minor road in the previous proposal over the cross roads, Greenway Lane, opposite Greenway Manor (point W). It runs from the roadside hedge with no gateway across a field to a gate in the hedge bank and onto the minor road north of the cross roads, opposite the end of the previous proposal near the entrance track to Newhouse Farm (point U).

### **3.2 The Definitive Map process**

- 3.2.1 This claimed route was included in the survey of paths on behalf of Luppitt Parish Council in 1951, surveyed as path No. 51 to the road above Newhouse Farm. It was again only on the basis of being shown on old Ordnance Survey maps and noted as recorded on the Rural District Council 1932 Rights of Way Act map. It was also proposed to be omitted and did not go on to be included on the Draft and Provisional Maps and was not recorded on the Definitive Map.

### **3.3 Documentary Evidence**

- 3.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827

No line of a path on this claimed route is shown crossing the land between the roads on any of the earlier maps at smaller scales, which do not usually show the lines of footpaths.

- 3.3.2 Later 19<sup>th</sup> century historical mapping: Luppitt Tithe Map 1842 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

Some later maps at larger scales show the claimed route in more detail. The Tithe Map for Luppitt parish dated 1842 does not show the line of any path crossing the field between the roads. There is no reference to any path in the Apportionment or in the name of that field on the claimed route, but the map does record the existence then of a gate in the field boundary at both ends of the route on the roads. However, they are also shown on the lines of other tracks and in the boundaries of fields without showing tracks

or paths throughout the parish. They indicate where access can be interpreted as being provided only for agricultural uses of the land.

3.3.3 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, although the lines of paths or unenclosed tracks are shown crossing some fields in other parts of the parish. The Tithe Map records do not, therefore, provide any supporting evidence that the claimed route may have existed then to have been considered as a public footpath.

3.3.4 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows the claimed route as a path with double-dashed lines and labelled 'F.P.' crossing the field between the roads. The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century is at too small a scale to show any path on the claimed route.

3.3.5 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map. Copies of the same later maps used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation were submitted with the additional material for all of the applications. The map shows the claimed route to have been included in the defined hereditament, or assessment area of land, for Greenway with a total area of 186 acres.

3.3.6 Copies of the Field Book for that hereditament with details of the assessment for the farm were included with the application. They record a total deduction of £50 in respect of Public Rights of Way or User affecting the value of the land. Details of 'Charges, Easements and Restrictions' affecting the value of the land refer to those as 'R[ight] of Way' with the Ordnance Survey number for fields, including 964 crossed by this claimed route. It suggests that the route may have been considered to carry some form of right of way at the time, although without any specific reference to it as a 'public footpath'.

3.3.7 Later Ordnance Survey mapping and Bartholomew's maps

Most smaller scale maps from the earlier 20<sup>th</sup> century, particularly Ordnance Survey and Bartholomew's map editions from 1910 to the later 1920s, do not show the claimed route. Some later editions show a dashed line of a path on the claimed route up to 1960, marked 'F.P.' only on the 1948 edition, with other subsequent editions up to those in the early 1970s with recorded public rights of way not showing any path.

3.3.8 Their keys included dashed lines to show footpaths and bridleways, but were subject to the general disclaimer that they were not evidence of a right of way. Later Ordnance Survey 'A' edition larger-scale mapping from 1963, around the time that the Definitive Map was being drawn up, does not show the line of any path or track on the claimed route, or the lines of any other paths nearby.

3.3.9 The showing of the claimed route on some early and later maps records its physical existence as a path or track at those times until more recently. They do not indicate on their own or support the existence of public rights of way, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889 and by other editions, which may be presumed to apply to earlier and other commercial maps as well.

### **3.3.10 Aerial photography**

Earlier and later aerial photography between 1946–9 and 2007 up to 2011 shows only the lines of the roads and other farm access tracks in the area, with no worn line of any path on the claimed route shown crossing the field between the roads.

## **3.4 Definitive Map Reviews and Consultations**

- 3.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes. The claim was included in the consultations in November 2014 on the same basis as the applications for the previous proposals, with the same responses in objection and support only from the applicants.

## **3.5 User Evidence**

- 3.5.1 As with previous proposals, no user evidence was submitted in support of this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

## **3.6 Landowner and Rebuttal Evidence**

- 3.6.1 The owner of Churchlands, the property on the crossroads formerly known as Corner House, completed a landowner evidence form. He indicated that the route crossed or adjoined the land that he had owned for 20 years and he did not believe it to be public. He had not seen, or been aware of, the public using the route in more than 50 years, or had required people to ask permission when using it. He had not obstructed the claimed route and referred to a field gate on it that was not locked, in the bottom corner of the field at point U. He had not put up notices to say that it was not public and had not made a Section 31 deposit to show lack of intention to dedicate.
- 3.6.2 In additional information, he indicated that he had had lived at Greenway Manor (Farm), opposite the end of the claimed route, for 34 years and had lived at Churchlands for 20 years.

## **3.7 Discussion – Statute and Common Law**

- 3.7.1 As with previous proposals, no evidence of use has been submitted to support the claimed addition so that there is none during any 20-year period before the date of the application to consider whether a statutory presumption of dedication has arisen from use by the public.
- 3.7.2 Most of the historic maps and some of the other historical documentary evidence for this application are the same as for the previous proposals with some differences in detail and there is, again, also no evidence of claimed use for an inference of dedication under the common law test. Earlier historical mapping does not show the line of any path on the claimed route, although it is shown on some later maps until more recently and labelled in only one edition as a footpath. However, they do not provide any support for the claim that the route may have been considered to be public at those times.
- 3.7.3 The Finance Act records are, again, the only evidence submitted in support of this application that could be said to have been discovered and not available to the Parish Council in the 1950s. It is also, again, the only piece of evidence suggesting that there may have been any earlier reputation for this claimed route to have been a public footpath, but without any other new evidence. Again, there is no evidence for how that was determined as the basis from which any earlier presumed dedication by the



landowner or the extent of any use by the wider public could be inferred. Later mapping with aerial photography and other records do not show that it has continued to exist as a path on the claimed route more recently and up to the present.

- 3.7.4 Again, there were no lists of what were considered to be public footpaths in Luppitt parish in 1913 and 1934, as for other claims made in Combe Raleigh from previous reports, for any additional continuity of evidence suggesting that this route may have had the reputation of being public at those times. No records have been submitted of any expenditure by the Parish Council for maintenance or repairs on this route for any further evidence that it may have been considered to be public at any other time, as with other claims.
- 3.7.5 This route was also included by Luppitt Parish Council for its 1951 survey, but again only on the basis of being shown on old Ordnance Survey maps and also noted as recorded on the Rural District Council 1932 Rights of Way Act map. No list of paths in the parish following that Act was compiled, as in Combe Raleigh. There was no reference to known use by the public for any previous period of time. It was also proposed to be omitted without sufficient evidence that it was public and not included at the Draft and Provisional map stages for recording on the Definitive Map. There was again no objection to its omission from the Draft Map.
- 3.7.6 No other more significant historic maps or references in historical documentary material have been submitted or discovered to provide any substantial weight to a suggestion that the route may have had the reputation of being a public footpath in the past, or more recently. No claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Luppitt Parish Council.
- 3.7.7 Considering the historical evidence, but without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath for an inference that it had the reputation of being available and used by the public for any previous period of time. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted any dedication and used it at any time in the past on foot, or have continued to use it on that basis.

### **3.8 Conclusion**

- 3.8.1 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the application for Proposal 17.

**4. Proposal 18: Schedule 14 application – claimed addition of footpath between minor road, Combeshead and minor road, north of Calhayes Farm, points G–X shown on drawing number HTM/PROW/14/141**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 18 for the claimed addition of a footpath.

**4.1 Description**

- 4.1.1 The claimed route for this application starts from a minor road north of Luppitt village, Combeshead Lane, at a field gate near to the end of a proposal considered in the previous report (point G). It runs across two fields to a field gate in the hedge onto a minor road from Luppitt village leading towards Luppitt Common near Calhayes Farm (point X).

**4.2 The Definitive Map process**

- 4.2.1 This claimed route was included in the survey of paths on behalf of Luppitt Parish Council in 1951, surveyed as path No. 4 from Mountstephens to Coombeshead. It was again only on the basis of being shown on old Ordnance Survey maps and noted as recorded on the Rural District Council 1932 Rights of Way Act map. It was said to be a private path, was proposed to be omitted and did not go on to be included on the Draft and Provisional Maps and was not recorded on the Definitive Map.

**4.3 Documentary Evidence**

- 4.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827

No line of a path on this claimed route is shown crossing the land between the roads on any of the earlier maps at smaller scales, which do not usually show the lines of footpaths.

- 4.3.2 Later 19<sup>th</sup> century historical mapping: Luppitt Tithe Map 1842 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

Some later maps at larger scales show the claimed route in more detail. The Tithe Map for Luppitt parish dated 1842 does not show the line of any path crossing the fields between the roads. There is no reference to any path in the Apportionment or in the name of that field on the claimed route, but the map does record the existence then of a gate in the field boundary at one end of the route on the road (point G). No other gates are shown in the boundaries of the fields on the rest of the route, including onto the road then at point X. However, they are also shown on the lines of other tracks, in field boundaries and on roads without showing tracks or paths throughout the parish, in some places now without gates. They indicate where access can be interpreted as being provided only for agricultural uses of the land.

- 4.3.3 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, although the lines of paths or unenclosed tracks are shown crossing some fields in other parts of the parish. The Tithe Map records do not, therefore, provide any supporting evidence that the claimed route may have existed then to have been considered as a public footpath.
- 4.3.4 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows the claimed route as a path with double-dashed lines and labelled 'F.P.' crossing the fields between the roads. The line of another path labelled in the same way is shown crossing the first

field from point G, parallel with the hedge alongside the road to the corner of the field, where there is no longer a gate. The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century is at too small a scale to show any path on the claimed route.

#### 4.3.5 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s: Finance Act 1910 map & records

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map. Copies of the same later maps used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation were submitted with the additional material for all of the applications. The map shows the claimed route to have been included in the defined hereditament, or assessment area of land, for Mountstephens with Stone Acre with a total area of 114 acres.

- 4.3.6 Copies of the Field Book for that hereditament with details of the assessment for the farm were included with the application. They record a total deduction of £50 in respect of Public Rights of Way or User affecting the value of the land. Details of 'Charges, Easements and Restrictions' affecting the value of the land refer to those as 'R[ight] of Way' with the Ordnance Survey numbers of fields. They include two of those numbered 573 and 575 crossed on this claimed route, with others in the area. The first field from point G with the additional path is in a separate hereditament for land relating to a claim considered in a previous report, which had no deduction. It suggests that parts of the route may have been considered to carry some form of right of way at the time, although without any specific reference to it as a 'public footpath' and not for the whole route.

#### 4.3.7 Later Ordnance Survey mapping and Bartholomew's maps

Some smaller scale maps from the earlier 20<sup>th</sup> century, particularly Ordnance Survey and Bartholomew's map editions from 1910 to the later 1920s, do not show the claimed route. Later editions from 1937 up to those in the early 1970s with recorded public rights of way show a dashed line of a path or track on the line of the route as claimed and with double-dashed lines in 1948, but not marked 'F.P.'.

- 4.3.8 Their keys included those dashed lines to show footpaths and bridleways or some roads and tracks, but were subject to the general disclaimer that they were not evidence of a right of way. Later Ordnance Survey 'A' edition larger-scale mapping from 1963/4, around the time that the Definitive Map was being drawn up, does not show the line of any path or track on the claimed route, with some of the fields having been combined by that date.
- 4.3.9 The showing of the claimed route on some early and later maps records its physical existence as a path or track at those times until more recently. They do not indicate on their own or support the existence of public rights of way, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889 and by other editions, which may be presumed to apply to earlier and other commercial maps as well.

#### 4.3.10 Aerial photography

Earlier and later aerial photography between 1946–9 and 2007 up to 2011 shows only the fields from before and after they had been combined, with the lines of the roads and other farm access tracks shown in the area, but no worn line of any path on the claimed route crossing the fields between the roads.

#### **4.4 Definitive Map Reviews and Consultations**

- 4.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes. The claim was included in the consultations in November 2014 on the same basis as the applications for previous proposals, with the same responses in objection and support only from the applicants.

#### **4.5 User Evidence**

- 4.5.1 As with previous proposals, no user evidence was submitted in support of this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

#### **4.6 Landowner and Rebuttal Evidence**

- 4.6.2 The owner of land at Calhayes Farm on part of the claimed route completed a landowner evidence form. He indicated that the route crossed or adjoined the land that he had owned for 25 years and he did not believe it to be public. He had not seen, or been aware of, the public using the route, or had required people to ask permission when using it, as he did not believe that it was a 'way'. He had not obstructed the claimed route and referred to farm gates on parts of it that were not locked, with some having become overgrown. He had not put up notices to say that it was not public and had not made a Section 31 deposit to show lack of intention to dedicate.
- 4.6.3 In additional information, he indicated that some gates were so overgrown that they had become impassable, with one gate between fields on the route having been re-established recently to allow grazing. He re-iterated that he had never seen any member of the public using the proposed 'way' during his lifetime.

#### **4.7 Discussion – Statute and Common Law**

- 4.7.2 As with previous proposals, no evidence of use has been submitted to support the claimed addition, so that there is none during any 20-year period before the date of the application to consider whether a statutory presumption of dedication has arisen from use by the public.
- 4.7.3 Most of the historic maps and some of the other historical documentary evidence for this application are the same as for the previous proposals with some differences in detail and there is, again, also no evidence of claimed use for an inference of dedication under the common law test. Earlier historical mapping does not show the line of any path on the claimed route, although it is shown on some later maps until more recently and not labelled as a footpath. However, they do not provide any support for the claim that the route may have been considered to be public at those times.
- 4.7.4 The Finance Act records are again the only evidence submitted in support of this application that could be said to have been discovered and not available to the Parish Council in the 1950s. It is also, again, the only piece of evidence suggesting that there may have been any earlier reputation for this claimed route to have been a public footpath, but without any other new evidence. Again, there is no evidence for how that was determined as the basis from which any earlier presumed dedication by the landowner or the extent of any use by the wider public could be inferred. Later mapping with aerial photography and other records do not show that it has continued to exist as a path on the claimed route more recently and up to the present.

- 4.7.5 Again, there were no lists of what were considered to be public footpaths in Luppitt parish in 1913 and 1934, as for other claims made in Combe Raleigh from previous reports, for any additional continuity of evidence suggesting that this route may have had the reputation of being public at those times. No records have been submitted of any expenditure by the Parish Council for maintenance or repairs on this route for any further evidence that it may have been considered to be public at any other time, as with other claims.
- 4.7.6 This route was also included by Luppitt Parish Council for its 1951 survey, but again only on the basis of being shown on old Ordnance Survey maps and also noted as recorded on the Rural District Council 1932 Rights of Way Act map. No list of paths in the parish following that Act was compiled, as in Combe Raleigh. There was no reference to known use by the public for any previous period of time. It was reported to be a private path and also proposed to be omitted without sufficient evidence that it was public and not included at the Draft and Provisional map stages for recording on the Definitive Map. There was again no objection to its omission from the Draft Map.
- 4.7.7 No other more significant historic maps or references in historical documentary material have been submitted or discovered to provide any substantial weight to a suggestion that the route may have had the reputation of being a public footpath in the past, or more recently. No claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Luppitt Parish Council.
- 4.7.8 Considering the historical evidence, but without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath for an inference that it had the reputation of being available and used by the public for any previous period of time. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted any dedication and used it at any time in the past on foot, or have continued to use it on that basis.

#### **4.8 Conclusion**

- 4.8.1 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the application for Proposal 18.

### **5 Proposal 19: Schedule 14 application – claimed addition of footpath between minor road, Calhayes Farm and minor road, Luppitt Common, points Y–Z shown on drawing number HTM/PROW/14/144**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 19 for the claimed addition of a footpath.

## **5.1 Description**

- 5.1.1 The claimed route for this application starts at a minor road northwest of Luppitt village, near Calhayes Farm (point Y). It runs through a field gate at the top of the roadside verge crossing several fields and through a field gate onto a track leading to Lambert's Farm and Windsor Farm. It continues along the track to end on the minor road leading to Honiton crossing Luppitt Common near the parish boundary with Dunkeswell (point Z).

## **5.2 The Definitive Map process**

- 5.2.1 Part of this claimed route was included in the survey of paths on behalf of Luppitt Parish Council in 1951, surveyed as path No. 3 from Lamberts to Calhayes, but not including the section on the track to the road at Luppitt Common. It was again only on the basis of being shown on old Ordnance Survey maps and noted as recorded on the Rural District Council 1932 Rights of Way Act map. It was also said to be a private path and a cul-de-sac, was proposed to be omitted and did not go on to be included on the Draft and Provisional Maps and was not recorded on the Definitive Map.

## **5.3 Documentary Evidence**

- 5.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827

The start of this claimed route from the road at Calhayes is not shown on earlier maps at smaller scales, which do not usually show the lines of footpaths. The section from Lambert's Farm and through Windsor Farm to the road at Luppitt Common is shown as the continuation of a track from the road to Windsor. It continues to the common, where the road is shown then as unenclosed crossing the open land.

- 5.3.2 Later 19<sup>th</sup> century historical mapping: Luppitt Tithe Map 1842 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

Some later maps at larger scales show the claimed route in more detail. The Tithe Map for Luppitt parish dated 1842 also does not show the line of any path on the claimed route crossing the fields from the road at Calhayes to Lambert's. There is no reference to any path in the Apportionment or in the names of the fields on the route as claimed, but the map does record the existence then of gates in some of the field boundaries on that part of the route. However, they are also shown on the lines of other tracks, in field boundaries and on roads without showing tracks or paths throughout the parish, in some places now without gates. They indicate where access can be interpreted as being provided only for agricultural uses of the land.

- 5.3.3 A track, mainly enclosed, is shown on the rest of the claimed route leading from the road to Lambert's Farm and Windsor Farm, continuing from the adjoining field beyond as a track between fields to the boundary of the open land of Luppitt Common. Gates are shown at each end of the track, with others at the entrances to the farmyard and fields at Windsor Farm. The track is shown in the same way as roads and other tracks in the parish, but there is no indication that it may have been considered then as part of the public road network in the parish.

- 5.3.4 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, although the lines of paths or unenclosed tracks are shown crossing some fields in other parts of the parish. The Tithe Map records do not, therefore, provide any supporting evidence that part of the claimed route may have existed then to have been considered as a public footpath, or that part of it was a public road.

5.3.5 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows the start of the claimed route as a path with double-dashed lines and labelled 'F.P.' crossing the fields from the road at 'Calways' Farm to the enclosed track at Lambert's. The track is shown continuing to Windsor Farm, with barriers that were probably gates. It continues beyond the farmyard as an unenclosed track across the adjoining field, into an enclosed track between fields with gates leading to the open land of Luppitt Common. It ends as a section of unenclosed track, with others, running across part of the open land to connect with the unenclosed road crossing the common land. The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century is at too small a scale to show any path on the start of the claimed route, but shows the section of the track between the roads in the same way as on earlier maps.

5.3.6 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s: Finance Act 1910 map & records

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the claimed route in the same way as in the 1<sup>st</sup> edition map. Copies of the same later maps used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation were submitted with the additional material for all of the applications. The maps show the claimed route to have been included in the defined hereditaments, or assessment areas of land, numbered 149, 153 and 51 for parts of Calhayes, Windsor Farm and Mountstephens with Stone Acre with total areas of just over 60, 100 and 114 acres respectively.

5.3.7 The track from the road in Luppitt to Lambert's and Windsor Farm and Luppitt Common on part of the claimed route is not shown excluded in the same way as most of what are now recorded as public roads. A short section from the track to the end of the route as claimed continuing across the open land of Luppitt Common to the road crossing it was included in the hereditament numbered as part of 16 for all of the open common land in the whole parish.

5.3.8 Copies of the Field Books for the Calhayes and Windsor Farm hereditaments with details of the assessments for those farms were included with this application. Details from the Field Book for Mountstephens with Stone Acre were considered for the claim in the previous proposal. For Calhayes, they record a total deduction of £40 in respect of Public Rights of Way or User affecting the value of the land. Details of 'Charges, Easements and Restrictions' affecting the value of the land refer to those as 'R[ight] of Way' with the Ordnance Survey numbers of fields, including the field numbered 598 crossed on the start of this claimed route, with others elsewhere in the area. For Mountstephens with Stone Acre, they record a total deduction of £50 in respect of Public Rights of Way or User referring to those as 'R[ight] of Way' with the Ordnance Survey numbers of fields including 596, 595 and 717. Those are on the next section of the claimed route, with others elsewhere in the area including on other claimed routes considered in this report and in a previous report.

5.3.9 For Windsor Farm, they record a total deduction of £25 in respect of Public Rights of Way or User referring to those as 'R[ight] of Way' with the Ordnance Survey numbers including 719 on the continuation of the claimed route to the track, with others elsewhere in the area. It suggests that the first part of the route may have been considered to carry some form of right of way at the time, although without any specific reference to it as a 'public footpath'.

5.3.10 There are no deductions referring specifically to any of the Ordnance Survey numbers for the sections of track on the rest of the claimed route leading to and beyond Windsor Farm to the boundary with Luppitt Common. It suggests that the continuation of the route as claimed on the track was not considered to be a public right of way, but may have had some other form of private or common rights including for access to Luppitt

Common. The Field Book records a specific deduction for 'Easements' of £25, which may have been for other private rights of way on the track that are not rights for use by the wider public.

- 5.3.11 A copy of the Field Book for all of the common land in Luppitt parish was obtained for the proposals considered in the previous report and refers to it as an area of common and waste land with rights of common and 'probably many rights of way'. There is a large deduction specified for the rights of common, but no deduction for any public rights of way or user. Many lines of paths or tracks are shown on the maps crossing the different areas of open common land in the parish. It would be difficult to specify whether that reference to rights of way could have included this small section of the claimed route. That is particularly without any specific deductions referring to them, as well as distinguishing them from what are likely to have been considered as routes connected with access for other more limited private and common rights on Luppitt Common.

5.3.12 Later Ordnance Survey mapping and Bartholomew's maps

Smaller scale maps from the earlier 20<sup>th</sup> century, particularly by Ordnance Survey and Bartholomew's map editions up to more recently show the track on the claimed route as mainly enclosed, leading to the road on Luppitt Common, in the same way as in earlier editions. Some later editions from 1937 up to those in the 1970s with recorded public rights of way show the first section with a dashed line or with double-dashed lines of a path or track on the line of the route as claimed from Calhayes, marked 'F.P.' only in the 1948 edition.

- 5.3.13 Their keys included those dashed lines to show footpaths and bridleways or some roads and tracks, but were subject to the general disclaimer that they were not evidence of a right of way. Later Ordnance Survey 'A' edition larger-scale mapping from 1963/4, around the time that the Definitive Map was being drawn up, shows the line of a path on the first part of the claimed route, labelled 'F.P.', leading on to the track as in earlier editions. The track on the rest of the route is also shown mainly enclosed and partly unenclosed, including on the connection with the road crossing Luppitt Common, as in earlier editions.

- 5.3.14 The showing of the claimed route on some early and later maps records its physical existence as a track or path at those times until more recently. They do not indicate on their own or support the existence of public rights of way, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889 and by other editions, which may be presumed to apply to earlier and other commercial maps as well.

5.3.15 Aerial photography

Earlier and later aerial photography between 1946–9 and 2007 up to 2011 shows only the lines of the mainly enclosed track on the continuation of the claimed route, with the roads in the area and no worn line of any path shown crossing the fields on the first section leading to the track.

## **5.4 Definitive Map Reviews and Consultations**

- 5.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes. The claim was included in the consultations in November 2014 on the same basis as the applications for previous proposals, with the same responses in objection and support only from the applicants.



## **5.5 User Evidence**

- 5.5.1 As with previous proposals, no user evidence was submitted in support of this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

## **5.6 Landowner and Rebuttal Evidence**

- 5.6.1 The owners of land at Calhayes Farm on the claimed route, as for the previous proposal and the owners of land at Windsor Farm completed landowner evidence forms. They all indicated that the route crossed or adjoined the land on the farms that they had owned for 25 and 51 years respectively and none of them believed it to be public. None of them had seen, or been aware of, the public using the route, or had required people to ask permission when using it and the owner of Calhayes did not believe that it was a 'way'. They had not obstructed the claimed route and the owner of Calhayes referred to farm gates on parts of it that were not locked, with some having become overgrown. They had not put up notices to say that it was not public and had not made Section 31 deposits to show lack of intention to dedicate.
- 5.6.2 In additional information, the owner of Calhayes indicated that some gates were so overgrown that they had become impassable, with one gate between fields on the route having been re-established recently to allow grazing. He re-iterated that he had never seen any member of the public using the proposed 'way' during his lifetime. The owners of Windsor Farm reported that members of the family had lived there since the 1930s and the 1960s, or at Lamberts Farm nearby since the 1980s and had never known of the existence of a public footpath on the claimed route.

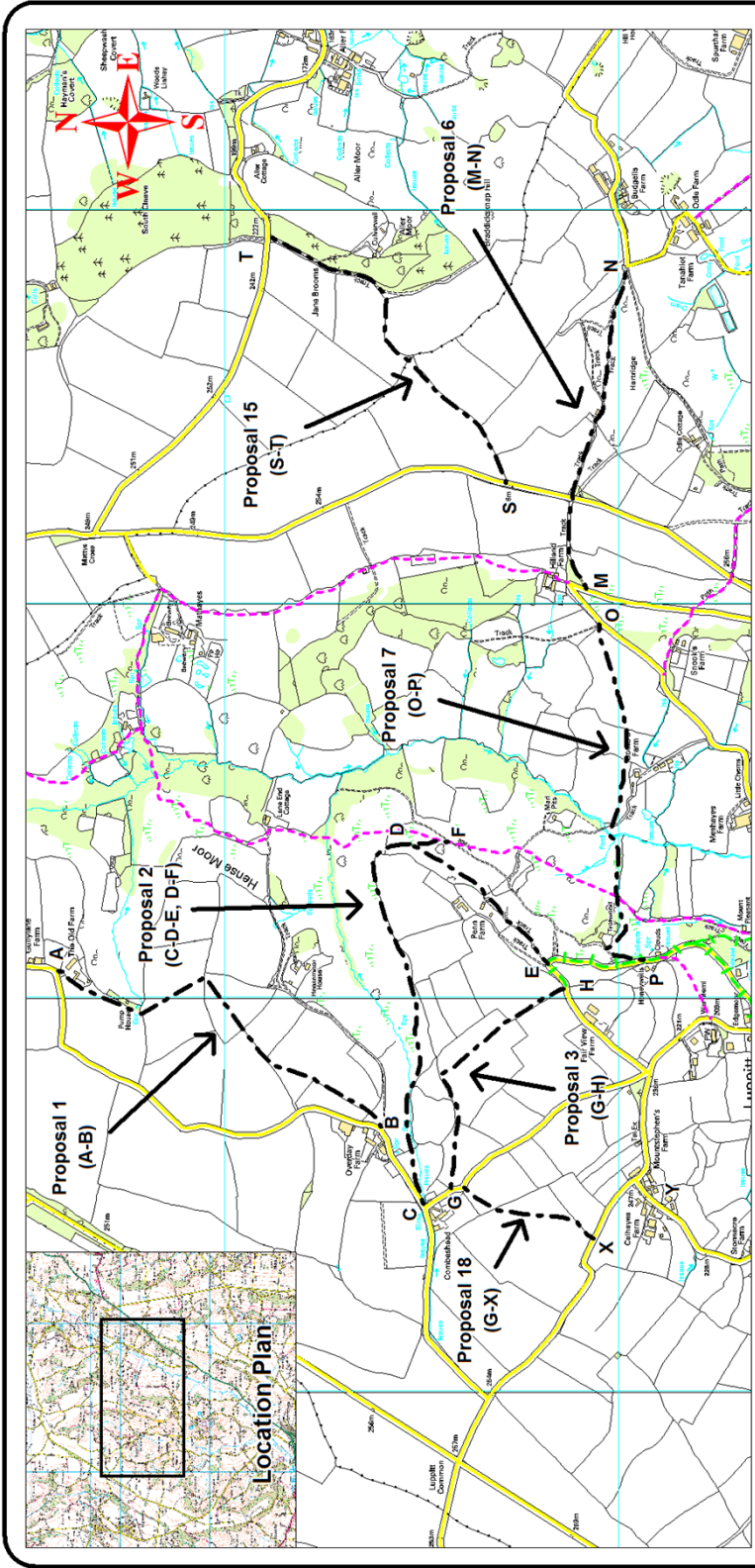
## **5.7 Discussion – Statute and Common Law**

- 5.7.1 As with previous proposals, no evidence of use has been submitted to support the claimed addition, so that there is none during any 20-year period before the date of the application to consider whether a statutory presumption of dedication has arisen from use by the public.
- 5.7.2 Most of the historic maps and some of the other historical documentary evidence for this application are the same as for the previous proposals with some differences in detail and there is, again, also no evidence of claimed use for an inference of dedication under the common law test. Earlier historical mapping does not show the line of any path on the first section of the claimed route, although it is shown on some later maps until more recently and labelled as a footpath. However, they do not provide any support for the claim that the route may have been considered to be public at those times.
- 5.7.3 The Finance Act records are again the only evidence submitted in support of this application that could be said to have been discovered and not available to the Parish Council in the 1950s. It is also, again, the only piece of evidence suggesting that there may have been any earlier reputation that the part of this claimed route leading to the track may have been a public footpath, but without any other new evidence. Again, there is no evidence for how that was determined as the basis from which any earlier presumed dedication by the landowner or the extent of any use by the wider public could be inferred.
- 5.7.4 However, they show that the section of the track on its continuation as claimed was not considered to be public and suggest that it probably had only more limited private rights. Later mapping with aerial photography and other records show only that the track has continued to exist on the claimed route more recently and up to the present, although indicating a section of path leading to it.

- 5.7.5 Again, there were no lists of what were considered to be public footpaths in Luppitt parish in 1913 and 1934, as for other claims made in Combe Raleigh from previous reports, for any additional continuity of evidence suggesting that the path and track on this route may have had the reputation of being public at those times. No records have been submitted of any expenditure by the Parish Council for maintenance or repairs on this route for any further evidence that it may have been considered to be public at any other time, as with other claims.
- 5.7.6 Only the first section of this route as claimed was included by Luppitt Parish Council for its 1951 survey, but again only on the basis of being shown on old Ordnance Survey maps and also noted as recorded on the Rural District Council 1932 Rights of Way Act map. No list of paths in the parish following that Act was compiled, as in Combe Raleigh. There was no reference to known use by the public for any previous period of time. It was reported to be a private path and also proposed to be omitted without sufficient evidence that it was public and not included at the Draft and Provisional map stages for recording on the Definitive Map. There was again no objection to its omission from the Draft Map.
- 5.7.7 It was also noted to be a cul-de-sac, ending on the track and there is no indication that a continuation on the track as claimed was ever considered by the Parish Council to be included with it for recording as a public footpath. However, there is also no evidence that the track may have been considered to be a public road for use by the wider public. A path numbered 2 also leading to the track, where it is named as Windsor Lane, from the road south of Calhayes was put forward by the Parish Council in the 1951 survey. It was also noted to be a cul-de-sac and a private path and proposed to be omitted so that it was not included at the Draft and Provisional map stages for recording on the Definitive Map. There was no objection to the omission of that path from the Draft Map and it has not been the subject of any application claiming that it should also be recorded as a public footpath.
- 5.7.8 No other more significant historic maps or references in historical documentary material have been submitted or discovered to provide any substantial weight to a suggestion that the route may have had the reputation of being a public footpath in the past, or more recently. No claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Luppitt Parish Council.
- 5.7.9 Considering the historical evidence, but without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath for an inference that it had the reputation of being available and used by the public for any previous period of time. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted any dedication and used it at any time in the past on foot, or have continued to use it on that basis.


## **5.8 Conclusion**

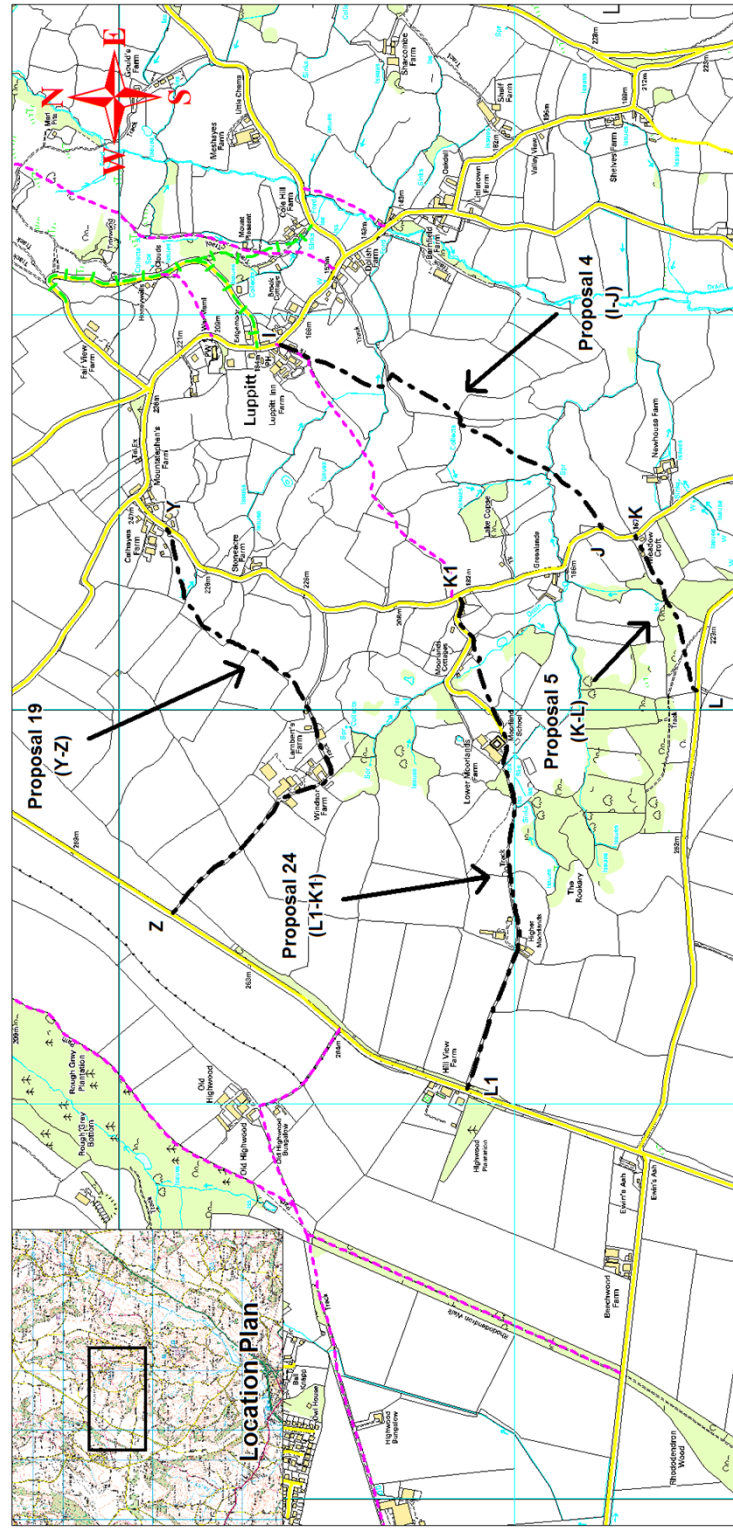
- 5.8.1 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the application for Proposal 19.



map ref: ST1508-1908/1507-1907/1506-1906

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

<div>DEVON COUNTY COUNCIL</div> <div>Definitive Map Review, Luppitt parish (North)</div> <div>Informal consultations - Claimed addition of footpaths:</div> <div>Proposals 1, 2, 3, 6, 7, 15 &amp; 18</div>		drawing number	HTM/PROW/14/141
		date	Nov 2014
		scale	1:15 000
		drawn by	NSC
<div>Notation</div> <div>Claimed footpaths</div> <div>Existing footpaths</div>		<div>David Whitton</div> <div>County Council</div> <div>HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT &amp; WASTE</div>	
		<div></div>	



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

**DEVON COUNTY COUNCIL**

Definitive Map Review, Luppitt parish (Central)

**Informal consultations - Claimed addition of footpaths:  
Proposals 4, 5, 19 & 24**

drawing number HTM/PROW/14/144

date Nov 2014

scale 1:15 000

drawn by NSC

<u>Notation</u>	Claimed footpaths	Existing footpaths
-----------------	-------------------	--------------------

Existing bridleway

100

**David Whitton**  
HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE



