

**Definitive Map Review 2016-2018
Parish of Coldridge**

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 Order be made to modify the Definitive Map and Statement for the addition of a Byway Open to All Traffic A – B – C – D – E as shown on drawing number HIW/PROW/17/026 (Proposal 1).

1. Introduction

The report examines the route referred to as Proposal 1 arising out of the Definitive Map Review in the Parish of Coldridge in Mid Devon.

2. Background

The original parish survey under s. 27 of the National Parks and Access to the Countryside Act, 1949 completed in September 1950, initially proposed 15 footpaths for consideration as public rights of way. A further 5 paths were subsequently submitted by the parish council in November 1952. After review and inspection by Crediton Rural District Council and Devon County Council, 20 routes were published on the draft definitive map in February 1954. The route of Bridleway No. 12, Coldridge was amended for the provisional map and 20 public rights of way (14 footpaths and 6 bridleways) were recorded on the conclusive Definitive Map for Crediton Rural District Council published on 25 February 1958. An additional Footpath No. 23, Coldridge was added to the Definitive Map by way of a Creation Agreement in 2009.

The reviews of the Definitive Map under s.33 of the 1949 Act, which commenced in the 1960s and 1970s but were never completed, produced suggestions on behalf of the Parish Council in 1970 and 1977 proposing the deletion of Bridleway No. 8, part of Bridleway No. 9, Footpath No. 4 and part of Footpath No. 16 and the downgrading of Bridleway No. 7 to a footpath. The reasons for the deletions at that time were given as “paths not used”. These are not valid grounds for a Definitive Map Modification Order for deletion of a public right of way, which can only be made on the basis that a path was never a public right of way and was added to the Definitive Map by mistake. No additional supporting evidence was submitted and the proposed deletions were not followed up and they are not considered valid proposals for consideration under the current parish-by-parish Definitive Map Review.

The Limited Special Review of Roads Used as Public Paths (RUPPS), also carried out in the 1970s, did not affect this parish.

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

Mid Devon District Council Bridleway No 8, Coldridge Public Path Diversion Order 1979
Devon County Council Footpaths Nos 17 & 19 Coldridge Public Path Diversion Order 1992

Devon County Council Bridleway No 12 Coldridge Public Path Diversion Order 1993
Devon County Council Footpath No 15 Coldridge Public Path Diversion Order 1993
Mid Devon District Council Bridleway No 10 Coldridge Public Path Diversion Order 2000
Devon County Council Bridleway Nos 8 & 9 Coldridge Public Path Diversion Order 2007
Devon County Council Bridleway Nos 10 & 11 Coldridge Public Path Diversion Order 2008
Devon County Council Bridleway No 9 Coldridge Public Path Diversion Order 2009
Devon County Council Footpath No 23 Coldridge Public Path Creation Agreement 2009

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

A previous Definitive Map review was initially opened in Coldridge in 1998 with a parish meeting but not progressed further at that time. The review was re-opened with a parish public meeting in April 2017 held as a separate meeting to the bi-monthly parish council meeting. The consultation map of 2 proposals for change was published in November 2017 and included this Schedule 14 application made in 2005 by the Trail Riders Fellowship. A second proposal, regarding the description of Footpath No. 16, Coldridge, the southern end of which actually lies in Nymet Rowland parish, will be dealt with as an administrative procedure.

3. Proposals

Please refer to the appendix to this report.

4. Consultations

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

County Councillor Margaret Squires -	no response
Mid Devon District Council -	no response
Coldridge Parish Meeting -	response received
Bondleigh Parish Council -	response received
Country Landowners' Association -	no response
National Farmers' Union -	no response
British Horse Society -	no response
Ramblers' Association -	response received
Trail Riders' Fellowship -	no response
Devon Green Lanes Group -	no response

5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

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

9. Conclusion

It is recommended that no Order be made to modify the Definitive Map and Statement for the addition of a Byway Open to All Traffic A – B – C – D – E as shown on drawing number HIW/PROW/17/026 (Proposal 1).

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

10. Reasons for Recommendations

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

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Electoral Division: Newton St Cyres & Sandford

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
DMR/Correspondence File	1997 to date	DMR/Coldridge

tw140218pra
sc/cr/DMR Parish of Coldridge
04 280218

A. Basis of Claim

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

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

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

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

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

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

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

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

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

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

Proposal 1 – Addition of a Byway Open to All Traffic from Taw Bridge to Gulliver Lane

This is a Schedule 14 Application for the addition of a Byway Open to All Traffic from the north end of Millsome Lane at Taw Bridge, running southwards then south westwards and south south westwards along Millsome and Titterton Lanes and the north west end of Gulliver Lane to the end of the unsurfaced unclassified county road, also Gulliver Lane (GR SS 6739 0652 to SS 6678 0527).

Recommendation: It is recommended that no Order be made to modify the Definitive Map and Statement for the addition of a Byway Open to All Traffic A – B – C – D – E as shown on drawing number HIW/PROW/17/026 (Proposal 1).

1. Background

- 1.1 In November 2005 the Trail Riders Fellowship submitted a Schedule 14 Application to the County Council for the addition of the route to the Definitive Map as a byway open to all traffic (BOAT), supported by map and documentary evidence and a user evidence form. This was one of a number of Schedule 14 applications made by local representatives of the Trail Riders Fellowship in 2005 prior to the NERC Act (Natural Environment & Rural Communities Act) that came into force in May 2006. The NERC Act would restrict the ways that rights of ways for motorised vehicles in the countryside could be created or recorded. A right for motor vehicles was preserved under NERC if a Schedule 14 Application had been made prior to 20 January 2005, that is compliant with the regulations for Schedule 14 applications under the Wildlife & Countryside Act 1981, or the surveying authority has made a determination of an application for a BOAT before 2 May 2006.
- 1.2 This application was made after 20 January 2005 and also was not compliant with the regulations as notice of the application had not been served on the landowners. However, as an application had been received the proposal was included in the parish review as made, for the addition of a BOAT. As there are limited exemptions in which vehicle rights may be preserved it would be likely that the route could only be recorded as a restricted byway.
- 1.3 The application was also jointly made with one for the addition of Half Farthing Lane in Bondleigh parish, which continues from point E southwards to the county road at Marepark Gates. As this section lies wholly within Bondleigh parish, in which the Definitive Map Review has been completed; this application will be determined when the review has been completed across the county.

2. Description of the Route

- 2.1 The route starts at the county road (B3220) at Taw Bridge at point A (GR SS 6739 0652) at the north end of Millsome Lane and proceeds generally southwards along the lane, a stoned track, between two hedge banks with ditches at the base of the hedge banks. The route continues along this track and then turns ninety degrees right (SS 6740 0601) and proceeds south westwards along the double hedged Millsome Lane to Millsome Farm and point B (SS 6690 0584).
- 2.2 After passing the farm buildings the route continues south westwards along a narrower doubled hedged section of lane downhill towards the end of Millsome Lane at the stream at point C (SS 6682 0572). The route then turns south south westwards and follows a track through a large arable field; the hedges on both sides of the old Titterton Lane having been removed (believed to be in the 1950s based on the OS maps). The southern end of Titterton Lane, originally passed between the buildings at Titterton, just north of point D. Following the removal of the lane's hedges, the route now passes just to the west of the original lane. At the south end of the old Titterton Lane at point D (SS 6675 0529) the route turns south eastwards and continues to meet the north-west end of the double hedged Gulliver Lane (which is the parish boundary with Bondleigh and an unsurfaced unclassified county road) and the junction with the north end of Half Farthing Lane (recorded as Footpath No. 1, Bondleigh) at point E (SS 6678 0527). The surface throughout the route varies between an improved stoned track to Millsome Farm and earth and grass in the final south-eastern end of the route along Gulliver Lane. The total length of the route is approximately 1,700 metres.

3. Consultations

- 3.1 Coldridge Parish Council advised that they are not supportive of the proposal for the addition of a Byway Open to All Traffic along Millsome and Titterton Lanes. As far as they are aware there has never been a right of way along these lanes and a BOAT will not be of benefit to anyone in the parish. The Parish Clerk also advised that no parishioners contacted him nor any of the Parish Council about the Definitive Map Review during the consultation period.
- 3.2 The local representative of the Ramblers Association advised that they would support the addition of more off road walking routes to the network. The route would create a link to other footpaths in the area but they do not have any evidence to support this addition.
- 3.3 The secretary of Bondleigh Parish Meeting advised that they have no comments to make with regard to the proposal.

4 Documentary Evidence

4.1 Ordnance Survey and Other Maps

- 4.1.1 The Ordnance Survey and other mapping do not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.
- 4.1.2 Cassini Historical Maps 1809 – 1900 Sheet 191 Okehampton & North Dartmoor
These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.

- 4.1.3 Old Series 1809: A defined lane is shown as running between Taw Bridge (point A) and the north end of Gulliver Lane (point E), with the eastern side of the section between Taw Bridge and Millsome (Mallson on this map) showed as a pecked line indicating unfenced. This section of lane between Taw Bridge and Millsome is also shown as a straight line and in a position closer to the River Taw than the present day, and claimed, route which runs southwards and then turns sharply to proceed west to Millsome. Buildings are shown at Millsome and at Titterton (called Tilbern) just north of point D. Titterton Lane is also on a slightly different alignment to the current route (as claimed) at Titterton.
- 4.1.4 Revised New Series 1899-1900: The route is now shown as a defined lane with solid lines on both sides all the way along and in the current position of Millsome Lane, although still on the original at Titterton. It is shown as a continuation of Gulliver Lane and depicted as a Metalled Road Third Class from the key. There is a clear distinction as shown on the map between Millsome and Titterton Lanes (the claimed route) and Half Farthing Lane which continues southwards from the south end of the claimed route and is shown as an unmetalled road. Millsome and Titterton have their current spellings with buildings shown at both locations. The route passes between the buildings at Titterton.
- 4.1.5 Popular Edition 1919: The route is recorded as double sided defined lanes for its full length, as per previous edition, and continuing along Gulliver Lane (the current county road), which is shown as the same status. The parish boundary with Bondleigh is also now shown along Gulliver Lane. The lanes are uncoloured and appears to correspond to Roads under 14' wide – 'Indifferent or bad winding road', as opposed to a Minor Road as Half Farthing Lane is shown. The key advises that private roads are uncoloured (but it is not known if this refers to maintenance or ownership). Millsome (now shown as Milson) and Titterton are recorded with buildings.
- 4.1.6 Greenwood's Map of Roads 1825
These well-made maps were produced using surveyors and a triangulation system, and are considered to be reasonably accurate. This sheet appeared in 1825 at a scale of one inch to the mile, and includes a route shown along Millsome (Maltson) and Titterton (Tiltern) Lanes, as a "cross-road", unfenced on a section on the east side of Millsome lane, for the claimed route and with the northern section of Millsome Lane on the same (straight line between Millsome Farm and the B3220) alignment as on the Cassini Map of 1809, which is slightly different to the current, claimed alignment, and Titterton Lane also on its original alignment.
- 4.1.7 OS 1st Edition 25" to a mile 1880-1890
The route is depicted as a defined lane throughout its entire length with several mature hedgerow trees shown in the vicinity of the buildings at Millsome (called Milson on this edition). The route including both Millsome and Titterton Lanes has a single compartment number of 245 with an area of 2.618. There is a line across the northern end of the route at point A and a second line across at point D, the junction with the unrecorded section of Gulliver Lane. The lines could refer to the presence of gates. Gulliver Lane is shown as continuing westwards of point D. There are some buildings shown at Titterton just north of point D.

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

On the 1946 edition the claimed route is shown uncoloured in the current location between Millsome and Taw Bridge and as a defined double-sided lane leading into Gulliver Lane and corresponding to 'Roads under 14' metalling – bad'. Millsome and Titterton are annotated on the map and the parish boundary is shown along Gulliver Lane.

- 4.1.9 In the 1960 edition the route is only shown as a defined double sided lane until just past Millsome (A – C), and Titterton Lane (C – D) is not shown and neither are any buildings at Titterton or the name Titterton. On the 1967 edition the route is shown as in 1960, as a defined white lane which is Roads under 14ft of Metalling Untarred to Minor Roads in towns, Drives and Unmetalled Roads or as Roads. No reference is made to the road being private or otherwise.

4.1.10 OS Post War Mapping A Edition 2500 1956

The claimed route is depicted as a defined double hedged lane throughout the length of the route, although still on the original alignment at Titterton, to the east of the current track. No compartment number is shown although the adjacent fields have the same numbers and number 245 is not shown on the map. There are lines across the route at points A and D also south west of the buildings at Millsome (now called Millsome).

4.1.11 OS 1:25,000 maps of Great Britain – Sheet 21/60 SS60 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.

- 4.1.12 Minor roads, lanes and private drives/access lanes are all shown as white uncoloured roads/lanes described as 'Other Roads, Poor, or unmetalled'. Public rights of way are not recorded on this series. Routes are shown as pecked lines and two narrow solid lines, labelled F.P. on the map and described as Footpaths only (no mention of Bridleways, RUPPs or ORPAs) in the key. 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'.

- 4.1.13 Sheet 21/60 SS60 published in 1950 shows the route as a defined uncoloured lane throughout from Taw Bridge to Gulliver Lane. Buildings are shown at Millsome Farm and what appears to be one building at Titterton. No lines across the route appear to be shown along the full length of the route.

4.2 **Tithe Maps and Apportionments**

- 4.2.1 Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring can indicate carriageways or driftways. Public roads were not 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*'.

4.2.2 Coldridge Tithe Map & Apportionment 1844

The northern section of Millsome Lane from Taw Bridge to shortly before the 90 degree turn south westwards is not shown on the map apart from what appears to be the first bit of the lane at Taw Bridge. The section of lane that is shown from just north of the bend to Millsome Farm appears as it is shown on later mapping. This section of lane is numbered 693 as is the yard at Millsome (Milson) Farm and the south west end of Millsome Lane between points B and C. Number 693 is included under the holding of Millsome and described as 'Courtlage etc'.

4.2.3 Titterton Lane, between points C and D, appears as it is shown on its original alignment, as shown on later maps before removal of the hedges, and has the apportionment number 708 which includes the yard at Titterton. At the farmyard the route is shown entering the yard on the eastern side of the buildings and leaving the yard on the western side. The number 708, included in the holding of Titterton, is also described as 'Courtlage etc'. Gulliver Lane and routes that are now county roads are numbered 1214. In the apportionment, number 1214 is listed at the end and described as 'Parish Roads'. The turnpike road is numbered 1213 and described at Turnpike Roads.

4.2.4 The holdings of Milson (138 acres) and Titterton (71 acres) appear to have been farmed as one holding as both were occupied by Robert Luxton and owned by Lord Egremont. Lord Egremont was the second largest landowner in the parish after the Hon Newton Fellowes (Eggesford Estate).

4.2.5 Bondleigh Tithe Map & Apportionment 1842

On the Bondleigh Tithe Map Gulliver Lane is coloured yellow as are routes that are county roads today, as well as other lanes and access tracks. The parish boundary is shown by a pecked line following the south western boundary of Gulliver Lane and indicating that the lane lies in Coldridge rather than Bondleigh parish. A break in the northern boundary of Gulliver Lane can be seen where Titterton Lane joins Gulliver Lane (point D).

4.3 **OS Name Books Early 20th Century**

4.3.1 The OS name books gave the definitions of features, houses, rivers, places, lanes printed on the large scale (6" and 25") OS maps first published in the late 19th century. The definitions were typically authorised by the owner where an object (say a farmhouse or gentleman's residence) was privately owned and by the district overseer/surveyor or someone in a public position where they were in public ownership.

4.3.2 OS Name Book 1904 Winkleigh & Coldridge Kew Ref OS 35/1740

Millsome Lane is described 'applies to a lane extending from Millsome to near Taw Bridge' and signed for by Mr L E Sharland, District Surveyor, Copplestone. The spelling of the name was changed from Milson Lane and the entry was initially signed for by Mr Fairchild, District Surveyor, Torrington before it appears it was realised that the lane was in Coldridge and not Bondleigh parish.

4.3.3 Titterton Lane is described 'applies to a lane extending from Millsome to Bondleigh'. The name was initially also signed for by Mr Fairchild but this was crossed out and replaced by Mr A Horne, agent Orchard Wyndham, Williton, Taunton. Millsome and Titterton Farms were part of the Orchard Wyndham estate at that time. Mr Horne had also signed for the names Millsome Castle, Millsome and Millsome Quarry.

- 4.3.4 In the summary sheets at the end of the book, Mr Sharland has signed for Millsome Lane only and Mr Horne for Millsome and Millsome Castle.

4.3.5 OS Name Book 1904 Bondleigh Kew Ref OS 35/1741

In this book Titterton Lane is described 'A road extending from Titterton to Milson' and signed for by Mr A Horne, Agent. Mr Horne has also signed for Titterton 'a cottage situate 24 chains E of Cholhouse'. Gulliver Lane, the current county road, is described 'A road extending from Titterton to Titterton Cross' and signed for by Mr F E Sharland, R D surveyor as above. Titterton Cross is described as the junction of three roads situate xx chains w of Skinnersland and signed for by Mr Sharland.

4.4 Finance Act Plans and Field Books 1910

- 4.4.1 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.
- 4.4.2 The allowance given was often on the basis of a figure such as a £1 times 25 yp. The yp refers to years purchase, a method of valuation used to convert a property's income flow (rent) into an appropriate capital sum on the basis that the capital value of a property is directly related to its income producing power. This method of valuation seems to be often used in Finance Act valuations.
- 4.4.3 All of Millsome Lane and the northern portion of Titterton Lane are included within hereditament number 105 Millsome with the southern end lying within or adjacent to hereditament number 36 Clapper Down. The colouring for hereditament number 36 breaks in two places where it crosses Titterton lane at and just north of the Titterton buildings. At the southern end of Titterton Lane the hereditaments numbered 8 and 59 adjoin the eastern boundary of the lane but the lane is not included within those two hereditaments.
- 4.4.4 Hereditament number 105, Millsome a holding of 171 acres was owned by William Wyndham and occupied by J and F Stone on a yearly tenancy from Lady Day 1907 at annual rent of £220. The field book entry for Charges, Easements and Restrictions includes Rights of Way £20 but no compartment numbers or other information is provided. The £20 is carried on to the sub heading Public Rights of Way or User. The 25" OS 2nd Edition mapping used for the Finance Act Plans shows pecked lines labelled 'F.P.' but it is not known whether the £20 allowance is for any of these.
- 4.4.5 Hereditament number 36, Clapper Down Farm a holding of 154 acres was also owned by W Wyndham and occupied by W Hooper on a yearly tenancy from 1900 at an annual rent of £92. The holding had a Right of Common. Under Charges, Easements and Restrictions is stated Footpath £1 x 25 = £25, but no compartment numbers or other information is provided. Under the Particulars, description and notes made on inspection is the comment 'Expensive Farm. Roads to keep up' but no additional information is provided regarding which road this refers to.

4.5 Bondleigh Estate Sale Catalogue 1915 (SHC Ref DD\WY/140/1)

- 4.5.1 Both Millsome and Titterton Farm were part of the Lord Egremont/Wyndham estates and the holdings were part of his Bondleigh estate in Devon. The Bondleigh estate, including eleven farms and other property, was sold at auction in June 1915 and included at Lot 4 – Millsome & Tawbridge Farm, Lot 6 – Clapperdown Farm which included Titterton and Lot 3 – Skinnersland Farm with land adjoining the east side of Titterton Lane.
- 4.5.2 The catalogue states that Millsome and Taw Bridge was tenanted by Messrs Joseph and Frank Stone. The schedule lists the field numbers on Ordnance map, field names or description for that number, cultivation and area. Ordnance number 238 is described as Road (in hand) at an area of 2 rods and 8 perches. The Ordnance numbers correspond to the numbers on the OS 1st Edition 25" to a mile mapping of 1880-1890 and number 238 is the lane heading north west from the farm buildings at Millsome. Millsome and Titterton Lanes have their own ordnance numbers but these are not listed on the schedule.
- 4.5.3 On the plan accompanying the sale catalogue, Millsome and Taw Bridge as Lot 4 is coloured washed pink and the colouring extends across and includes all of Millsome Lane from the now B3220 and extending to and including the northern section of Titterton Lane. The ordnance numbers for the two lanes are not shown on the plan. The county road, B3220, is uncoloured.
- 4.5.4 The southern end of Titterton Lane adjoins Lot 6 – Clapperdown Farm, tenanted by William Hooper. Titterton Lane is numbered 213 and this is not listed in the lot schedule. On the plan the southern end of Titterton Lane is uncoloured as is the unclassified county road known as Gulliver Lane. The land to the west of the section of this lane is part of Clapperdown Farm and the land to the east is part of Millsome, part Clapper Down, part land belonging to a Mr H Luxton not part of the estate and part by Lot number 3 - Skinnersland Farm.

4.6 Parish Council Meeting Minutes 1945 – 2011

- 4.6.1 The Parish Council minute books covering the period 1945 to 2011 (after which the minutes were electronically made) are retained within the parish. The minute book/s dating from the inauguration of the parish council in 1894 and any vestry minutes were not available.
- 4.6.2 From the 1945 minutes onwards there are regular references to public rights of way within the parish which shows an awareness of the rights of way within the parish and that the parish council took the appropriate action when required regarding damaged or missing bridges or obstructions and spent parish funds on such works. Parish Meetings were held when required by Devon County Council in connection with the original parish survey of 1950 and subsequent reviews.
- 4.6.3 In November 1971 the Parish Council was contacted about a proposal for a Dartmoor to Exmoor bridleway. The clerk advised she would identify the suggested path with the maps of the footpaths and bridleways and write to the owners of the land for their observations. At the next meeting the clerk reported that Mr Heywood and Mr Bailey had objected but Mr Beer and Mr Hichens had been agreeable. Mr Bragg had written to say that he thought the path from Milson to Titterton was on Mr Netherway's property. The clerk was then asked to write to Mr Netherway.

- 4.6.4 There was no further reference to the Dartmoor Exmoor bridleway until March 1974 when Mr Quick asked if the Parish Council had ever heard the outcome of the proposed Exmoor-Dartmoor pathway. The clerk was asked to acquire a map showing all footpaths, bridle paths and unclassified roads in this area.
- 4.6.5 In January 2004 an entry in the minutes under Highway Matters referred to problems at Millsome Lane. A highway officer was named in the minutes and enquiries with him confirmed that the works relating to the clearing out of gullies and ditches at the junction of Millsome Lane and the B3220. Millsome Lane was considered private but it did have channels down the edge leading to gullies. Work was done to stop the water coming out the lane onto the B3220.

4.7 British Newspaper Archive

- 4.7.1 In the Western Times of 24th December 1906, Millsome and Tawbridge with 196 acres were to be let in 1907. The farm was described as being within a ring fence, intersected by good roads. In 1929, Taw Bridge and Millsome of 205 acres were again available to let from Lady Day.

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

- 4.8.1 The Parish Council survey of their public rights of way to be considered for inclusion on the Definitive map was undertaken in 1950 and the lanes were not included as a proposal.

4.9 Devon County Council Uncompleted Reviews of 1968, 1977 & 1998

- 4.9.1 The Parish Council did not propose Millsome or Titterton Lanes as a public right of way in the previous reviews of the Definitive Map in the parish.

4.10 Aerial Photography RAF 1946-1949, 1999-2000 & 2006-2007

- 4.10.1 On the 1946-1949 aerial photography, the northern section of the route along Millsome Lane is visible as a doubled hedged lane with the hedges trimmed and the surface of the lane visible to point B. The surface of Millsome Lane running south west from Millsome Farm is not visible due to the presence of mature hedgerow trees. This also the same for the southern section along Titterton Lane where there are large trees along the hedge banks/boundaries. The surface of Gulliver Lane is also visible between the trimmed hedgerow banks between points D and E.
- 4.10.2 In 1999-2000 Millsome Lane is clearly visible as a hedged lane but with no hedgerow trees. The eleven separate fields adjoining the lane in 1946 have reduced to six following the removal of hedges. The section of Millsome Lane between points B and C is now clearly visible as the hedge bank tress have gone and the boundary hedges are trimmed. A track is now visible running parallel along the north-west side of this section of Millsome Lane and this track leads into the track across a large arable field along the line of the original Titterton Lane between points C and D; where the original hedge banks and trees have been removed on both sides of the lane. The track at the southernmost end of Titterton Lane, near D, is now located to the west of the old buildings of Titterton Farm and the original route. The surface of Gulliver Lane is not visible due to the presence of the hedgerow vegetation.
- 4.10.3 There is no real change to the route as depicted on the 2006-2007 photography from that of 1999-2000 apart from the section of Millsome Lane between points B and C being less visible.

4.11 Land Registry

- 4.11.1 The northern section of the route from point A to about half way between points C and D is registered to title no DN203037, described as land and buildings lying to the south of Taw Bridge Toll House in the ownership of T and B Dennis. The title register contains a right, from the change in ownership of 1986, which allows the owners/occupiers of the field to the west of the northern section of Millsome Lane and their successors in title, the right of way at all times and for all purposes with or without vehicles and animals over and along that part of Millsome Lane that is shown coloured (blue) on the plan. The owners/occupiers of this field are also given the right to open a gateway or gateways from the said field onto Millsome Lane. The part of the lane coloured blue is the northernmost section of Millsome Lane, south of point A, for the length of the boundary with Taw Bridge Toll House land to the west of the lane.
- 4.11.2 Taw Bridge Toll House appears to have been first registered in 1994 under title number DN345618. The register includes 'A right of way at all times and for all purposes with or without vehicles and animals (in common with others having the like right) over and along that part of Millsome Lane which is shown coloured yellow on the said plan'. The section coloured yellow is the northernmost section of Millsome Lane, south of point A, for the length of the boundary with Taw Bridge Toll House land and is the same stretch of lane coloured blue on the plan under the title for DN203037.
- 4.11.3 The remainder of the land crossed by the route (from about half way between points C and D to point E) is not registered at HM Land Registry.

4.12 Planning Applications

- 4.12.1 Permitted development permission was received in 2016 for the conversion of the farm buildings at Millsome into three dwelling houses. The planning application made to Mid Devon District Council under the Transport and Highways section states that 'the site benefits from an existing access onto the public highway onto an unclassified road of a width and alignment common to rural areas and providing access to the B3220'. The planning officer report described the buildings as being 'accessed down a long private lane known as Millsome Lane, formed of hard core and stone and easily accessed by car'.

5. User Evidence

- 5.1 One user evidence form was received with the Schedule 14 application, from Mr Padley of Exeter a motor cycle user, completed in December 2005. Mr Padley considered the route to be a byway open to all traffic and had used the route between 1981 and 1996, various times a year for pleasure riding on a trails motorcycle. He considered the route to be public based on map evidence and had not obtained permission to use the route or ever been stopped or turned back.
- 5.2 No other user evidence forms were received in respect of the proposal.

6. Landowner Evidence

- 6.1 Those landowners and occupiers who owned land crossed by or adjacent to the proposal route were contacted individually and advised of the proposal. They were invited to submit their comments and information by way of a completed landowner evidence form or otherwise.
- 6.2 Mr & Mrs Bird have owned Taw Bridge Toll House, which borders the B3220 to the north and the north end of Millsome Lane to the east, south west of point A since 1997. They do not consider Millsome Lane to be public and have not seen or being aware of members of the public using the lane. They have a private access along the lane to access the rear of their property. They would be very concerned at the noise that would be made by motorbikes using the property close to their property. In their view Millsome lane is private land for the use of the farmer and his vehicles.
- 6.3 Mr Knapman and Ms Lowndes have owned the field to the south and west of the Taw Bridge Toll House, which lies between the River Taw and the west side of Millsome Lane since 1986. During this time the field has been let to Mr Dennis of Taw Bridge Farm who also purchased the 187 acres of land running south of the B3220 towards Millsome Farm in 1986. The land has only been visited by Mr Knapman from time to time but from discussions with the tenants and his recollection of the farm there has never been a public right of way between points A and C on the plan. He also recalls a gate across the entrance to the lane at Taw Bridge although unlocked. The fishing on both sides of the River Taw is let to Crediton Fly Fishing Club who were notified of the proposal by Mr Knapman. No response was received from the fishing club.
- 6.4 Mr T Dennis has owned land crossed by the proposal since 1940. He has never considered the way to be public. A member of the public was seen on a motorbike in 2015 and turned back. They have had to keep a fence at the top end of Titterton Lane to stop the neighbour's sheep going into their arable fields. Mr Denis's son and daughter in law also wrote to express concerns at the thought of motor cycles passing by the barns they were in the course of converting at Millsome Farm. They also raised concerns about farm security and use of the lane by large agricultural vehicles with minimal passing places.
- 6.5 Mr Bragg of Bankland Farm has owned the field to the east of the south end of Titterton Lane, near point D, for fifty years. He believes the way may be public, maybe footpath and bridleway. He has only observed use by farmer getting from farm to farm and does not see the point of it as the public roads need repairing anyway.
- 6.6 Mr & Mrs Hosegood own the field which borders the north-eastern side of Gulliver lane between points D and E. No response or comments were received.

7. Rebuttal Evidence

- 7.1 Apart from the comments received from the landowners, no other rebuttal evidence was 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.

- 8.2 A Schedule 14 application for the addition of the proposed route as a Byway Open to All Traffic was made by the Trial Riders Fellowship in 2005. The TRF had included documentary evidence and one user evidence form in support of their claim. Whilst the application made by the TRF in 2005 could be considered sufficient to be the required calling into question under section 31 of the Highways Act 1980, the absence of any further user evidence during the required twenty-year period, means that the existence or not of public rights of way cannot be considered under statute.

Common Law

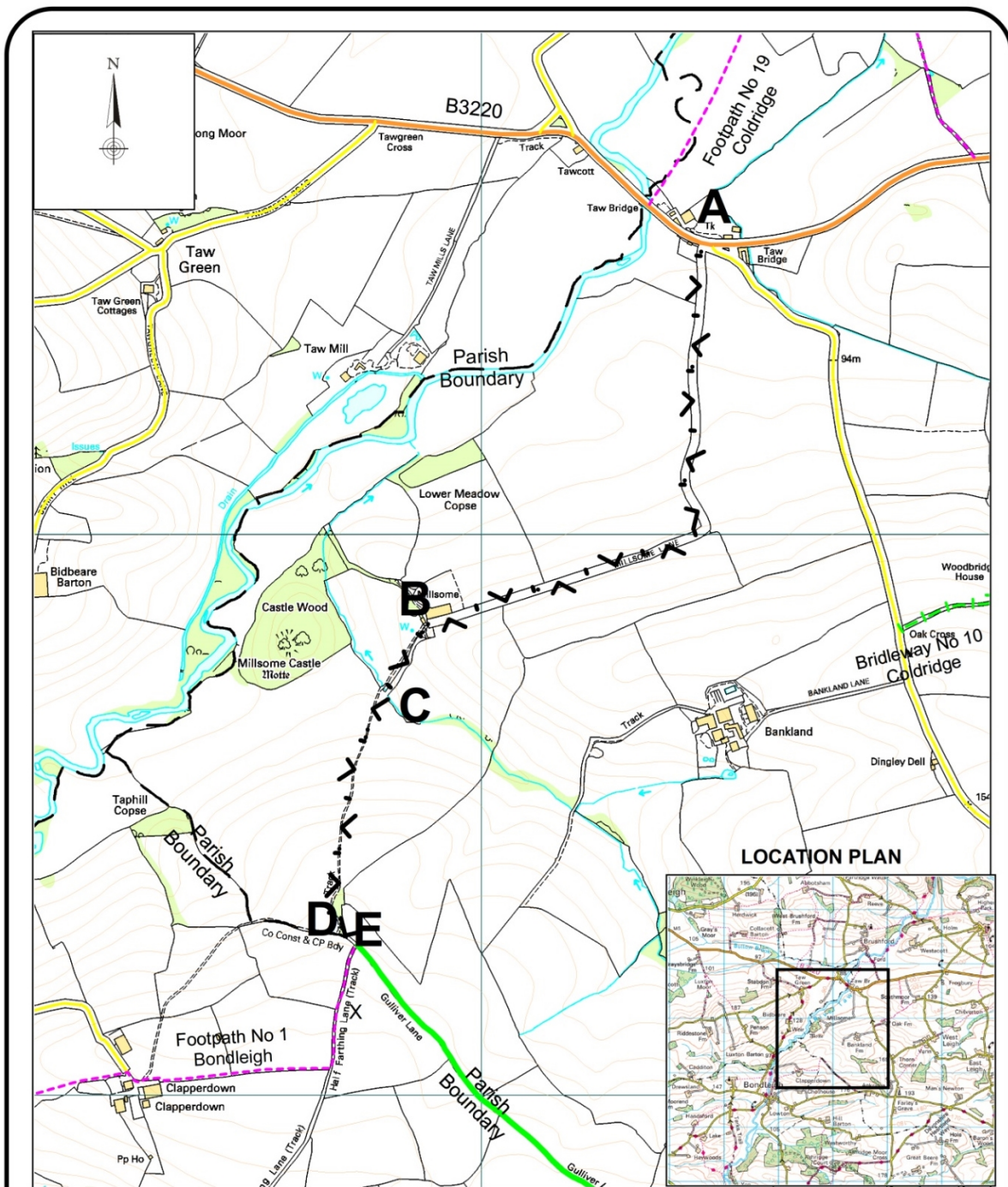
- 8.3 A claim for a right of way may also be consider under common law. At Common Law, evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.
- 8.4 The documentary map evidence records the existence of a route between Taw Bridge and Gulliver Lane since at least the early 1800s as shown on the early 1" to a mile OS maps, although the lanes are not shown on the current alignment until the late 19th century for Millsome Lane and later in the 20th century for Titterton Lane in the vicinity of the old Titterton buildings, north of point D. Millsome and Titterton Lanes are depicted on these early maps in the manner of a minor highway and at a similar status to Gulliver Lane, now recorded as an unsurfaced unclassified county road. By the OS 1" map of 1960, the hedged Titterton Lane has gone, although it was still shown as a lane on the Post War mapping of 1956. All OS maps contain the standard disclaimer. The maps show the physical existence of the lanes and give an indication of how they were viewed in connection with the local road network. The maps do not however, provide evidence as to whether the lanes were publically maintainable at that time.
- 8.5 The Coldridge Tithe map of 1844 has included the lanes within the curtilages of Millsome and Titterton farm buildings and they have not been allocated a separate number or described separately in the apportionment. Gulliver Lane is numbered with the same number as other routes in the parish and called 'parish roads' in the apportionment.
- 8.6 In the OS Name Book of 1904 for Coldridge, the name and spelling of Millsome lane is signed for by the local district surveyor indicating that the lane was considered to be part of the local highway network under his jurisdiction. Titterton Lane was initially signed for by a district surveyor but then crossed out and signed for by the local agent Mr Horne, indicating the lane/land was considered privately owned by the Wyndham estate. In the Bondleigh book of 1904, Titterton Lane is again signed for by the local agent Mr Horne. Gulliver Lane was signed for by Mr Sharland, district surveyor.

- 8.7 In the Finance Act plans of 1910, the whole of Millsome Lane and north end of Titterton lanes are included within the hereditament 105, Millsome and Taw Bridge. The southern end of Titterton Lane falls with hereditament number 36, Clapper Down Farm and the colouring breaking at two places along the lane could indicate that the lane was excluded from the holding and considered public. Both hereditaments included an allowance for Public Rights of Way or user of £20 and £25 respectively but no information was given as to any compartment numbers. Both hereditaments have pecked lines on the OS 25" base mapping labelled 'F.P.' and the allowance is considered more likely to refer to a cross field path rather than to the lanes. The field book entry for Clapper Down Farm noted 'Expensive Farm. Roads to keep up' but there was no additional information provided to indicate which road this refers to or what type of road such as whether the access to the farm, public or accommodation or for whose benefit. A road considered public would usually be kept in order by the district surveyor if part of the local highway network unless a 'ratione tenure' route.
- 8.8 Both Millsome/Taw Bridge and Clapper Down/Titterton Farms were sold with other farms/houses within the Bondleigh Estate in 1915. In the sale catalogue the compartment numbers for Millsome and Titterton lanes were not listed in the farm schedules. On the sale plan, the whole of Millsome lane and northern section of Titterton Lane were included within the colourwash for the farm indicating that they formed part of the holding. The southern end of Titterton Lane is left uncoloured (as is Gulliver Lane) with the land to the west being part of Clapper Down Farm and that to the east bordered by four different holdings, Millsome, Clapper Down, a Mr Luxton and Skinnersland Farm.
- 8.9 The Coldridge Parish Minute Books (as available) record that the parish council were active with regarding to maintaining the parishes public rights of way. The only references to the proposal route were in 1971 when it appears that the lanes were considered to be part of the proposed Dartmoor – Exmoor bridleway. It is believed that a possible route had been plotted on the map and parish councils contacted for their opinion. It is not known if the proposers had any evidence to support the lanes being public or whether they were just noted as green lanes on the map that provided a link from Bondleigh parish north to Brushford parish through Coldridge. The project subsequently became the Two Moors footpath and the eventual route chosen did not pass through Coldridge parish.
- 8.10 In 2004 highway works were undertaken by Devon County Council to the ditches/gullies at the north end of Millsome Lane but these were in respect to the prevention of flooding on the B3220 at Taw Bridge.
- 8.11 The lanes were not proposed for inclusion as public rights of way in 1950 or in any of the subsequent uncompleted reviews. The Parish Council minutes confirm that parish public meetings had been held in 1950 and for the later reviews. The Parish council have advised that they had not been contacted by anyone regarding the proposal during the current review consultation period.
- 8.12 The whole of Millsome lane and the northern two thirds of Titterton lane are registered to the title for Millsome & Taw Bridge Farms. This title includes the right for the owners of the field to the west of the lane to the right of way at all times and for all purposes along a section of Millsome Lane to access their field.

- 8.13 The title for Taw Bridge Toll House, situate on the B3220 also includes 'a right of way at all times and for all purposes' along the northernmost section of Millsome Lane. If Millsome lane was considered public it would not have been necessary to record these private rights of way on the title records at Land Registry.
- 8.14 One user evidence form was submitted with the TRF Schedule 14 application and no further user evidence forms were received to support the lanes being used by the public as a public right of way.
- 8.15 The major landowner and most of the other adjacent landowners did not consider the lanes to be public and no use by the public had been observed apart from a motorcycle user in 2015 who was turned back. The Parish Council do not support the route becoming a public right of way and as far as they are aware, the route has never being public.

9. Conclusion

- 9.1 In the absence of sufficient user evidence the existence of a public right of way is not considered under section 31 of the Highways Act 1980. Under common law the documentary evidence supports the physical existence of the lanes but sources are contradictory with regard to the route having any public status. Therefore, when taken as a whole, the documentary evidence is considered insufficient to show that a public right of way can be alleged to subsist.
- 9.2 It is therefore recommended that no Modification Order be made to modify the Definitive Map and Statement for the addition of a Byway Open to All Traffic A – B – C – D – E as shown on drawing number HIW/PROW/17/026.



Map Ref SS 6605 6705 6706 1km grid

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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - COLDRIDGE
PROPOSAL NO 1
SCH 14 ADDITION OF BYWAY OPEN TO
ALL TRAFFIC MILLSOME & TITTERTON LANES**

drawing number HIW/PROW/17/026

date May 2017

scale 1:10,000 at A4

drawn by TW

Notation Addition of BOAT A - E (1700 metres approx) . ^ . ^ . ^ .

Existing Public Footpath --- & Bridleway - - - - -

Unsurfaced County Road (Gulliver Lane) ———

Meg Booth

CHIEF OFFICER HIGHWAYS,
INFRASTRUCTURE DEVELOPMENT AND WASTE

Devon
County Council