

**Definitive Map Review 2016–18  
Parish of Gittisham**

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 Order be made in respect of Proposal 2 to add a public footpath between the minor road Hayne Lane at Hayne Farm to the minor road Parsonage Lane at Goldcombe Farm, points C–D shown on drawing number HIW/PROW/17/024.

## **1. Summary**

This report examines the second of two proposals arising out of the Definitive Map Review in the parish of Gittisham in East Devon district. It concerns a claim to add a footpath based on its omission from the Parish Council's survey in 1950 for the Definitive Map and additional historical evidence submitted with an informal claim. The first proposal for a claimed footpath in Gittisham, with its continuation across the parish boundary into Buckerell, is considered separately in the second part of a report on the review process for Buckerell parish.

## **2. Introduction**

The original survey by Gittisham Parish Council in October 1950 under s.27 of the National Parks and Access to the Countryside Act of 1949 produced a map and details of six footpaths submitted to the County Council. Comments were added on behalf of Honiton Rural District Council in December 1950. Two of the routes surveyed continued across the parish boundary into Buckerell, with one not put forward for the Draft Map as its continuation was said to be a private right of way in that parish. Another was considered to be a bridleway, recorded in two parts, with continuations into other adjoining parishes, Sidmouth and Ottery St. Mary. An additional footpath, numbered seven, was identified three years later and noted then to have been omitted in the original survey in 1950 due to an oversight.

Four footpaths and the two sections of bridleway, but not the additional path, were recorded for consultations at the Draft Map stage in 1957 and included on the Provisional Map. All of those six routes were recorded on the Definitive Map, considered as having existed from the relevant date of 1<sup>st</sup> September 1957. 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 no suggestions by or on behalf of the Parish Council. In 1978, it was noted that they considered all of the paths to be correct as shown on the map.

A report in connection with improvements proposed for the A30 in the area was presented to a meeting of the Public Rights of Way Sub-Committee in September 1992. It included the investigation of historical evidence for several routes of paths in parts of Gittisham and Buckerell parishes, some of them crossing the existing A30 and the line of the new road as proposed. Claims had been made that the path routes, which were not recorded on the Definitive Map, could be affected by alterations with the construction of the line of a new road

in the area as proposed then with a bypass for Honiton. It was claimed that the path routes in both parishes should be investigated for recording as public rights of way in advance of the alterations. A copy of that report is included in the background papers for this report.

The recommendation in the report noted that the proposed alterations to the A30 in the area of both parishes did not appear to affect any potentially valid claims for additions to the Definitive Map. The conclusions from investigation of the historical evidence for the routes were that for several of them, some crossing the old A30 and the proposed line of the new road, it was not considered to provide the basis for valid proposals or claims. Three of the routes claimed were considered then to have a prima facie case for further investigation as part of the review for Buckerell and Gittisham parishes. Two of them have been considered in other reports for Buckerell parish, with the third included in the Appendix to this report as Proposal 2 in Gittisham.

The following additional Orders from a stopping-up and diversions to footpaths in Gittisham have been made and will require the making of a Legal Event Modification Order for recording on a revised Definitive Map in due course:

- (a) Highways Act 1959 s. 108, Magistrates' Court Stopping-up Order, part of Landscore Lane, reserving a bridleway 1977 (numbered 6 in Gittisham, also affecting Ottery St. Mary);
- (b) Highways Act 1980, Devon County Council (Footpath No. 2, Gittisham), Public Path Diversion Order 1992; and
- (c) Highways Act 1980, Devon County Council (Footpath No.5, Gittisham), Public Path Diversion Order 1994.

The current number of recorded public rights of way in the parish is four footpaths with three bridleways, one numbered as in two parts. Some of the informal claims made originally on behalf of the Ramblers in 1992, as repeated in February 2017 and including a route crossing from Gittisham into parts of the adjoining parish of Buckerell, have been picked up for further consideration as proposals in the current review process for both parishes.

### **3. Background**

The current Review was started with a public meeting in December 2016. There was further correspondence with the Parish Council, including the informal consultations, when no further valid proposals were put forward to add to those from the claims made in 1992.

### **4. Proposals**

Please refer to the Appendix to this report.

### **5. Consultations**

General consultations on the applications were carried out in May 2017 with the following results:

County Councillor Philip Twiss	-	does not support the claims for any of the proposals;
East Devon District Council	-	no comment;
Gittisham Parish Council	-	do not support the claims for 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 both proposals from their own claims.

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

## **6. Financial Considerations**

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

## **7. Legal Considerations**

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

## **8. Risk Management Considerations**

No risks have been identified.

## **9. 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.

## **10. Conclusion**

It is recommended that no Modification Order be made in respect of Proposal 2 in Gittisham parish, as the evidence is considered not sufficient to meet the requirements of the legislation. Details concerning the recommendation are discussed in the Appendix to this report. The remaining proposal for the other route claimed originally in 1992, Proposal 1 in Gittisham continuing across the parish boundary into adjoining parts of Buckerell, is included in a second report to complete the review process in Buckerell parish.

There are no recommendations to make concerning any other modifications in Gittisham parish. However, should any further valid claim with sufficient evidence be made within the next six months it would seem reasonable for it to be determined promptly rather than deferred.

## **11. Reasons for Recommendations**

To undertake the County Council's statutory duty under the Wildlife 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.

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Chief Officer for Highways, Infrastructure Development and Waste

**Electoral Division: Feniton & Honiton**

Local Government Act 1972: List of Background Papers

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

ns070218pra  
sc/cr/DMR Parish of Gittisham  
02 280218

## **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 (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.

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.

1. **Proposal 2: Claimed addition of footpath between minor road Hayne Lane at Hayne Farm to minor road Parsonage Lane at Goldcombe Farm, points C–D shown on drawing number HIW/PROW/17/024.**

**Recommendation: It is recommended that no Modification Order be made in respect of Gittisham Proposal 2 for the claimed addition of the footpath.**

## **1.1 Description**

- 1.1.1 The route for this claim starts at the surfaced entrance track to Hayne Farm from the minor road, Hayne Layne, leading from Weston village in Buckerell parish towards Gittisham Hill (point C). It runs along the access track between the farm buildings, continuing along an unsurfaced track beyond the farm through fields then turning generally southwards to continue further across fields. It runs around the buildings of Goldcombe Farm and through a gateway to end on the minor road, Parsonage Lane, running from Gittisham Hill to Gittisham village (point D).

## **1.2 The Definitive Map process**

### **1.2.1 Parish Survey**

This route was not included in the original survey on behalf of Gittisham Parish Council in October 1950 for six paths to put forward for recording as public rights of way on the Definitive Map. A survey sheet for it as a path numbered 7 was partly completed later, but not dated, with a note that the Chairman of the Parish Council had stated that:

“... this path is required and was omitted due to an oversight. The R[ural] D[istrict] C[ouncil] confirm this. The path has been pencilled in on the map.” There were no other notes, with none on the grounds for believing it to be public, or any comments on behalf of Honiton Rural District Council, which were added on the survey forms for the other paths. Comments by the County Council indicated that it was a public footpath, with a description added by the Divisional Surveyor, signed and dated by him in November 1953.

- 1.2.2 The map used for the Gittisham Parish Council’s survey shows the line of the path numbered 7 drawn in pencil on the route of the path as described by the County Surveyor. It includes notes and initials for the gates and fences on the route from that description, in pen as with the other paths surveyed originally. Subsequently only the six paths in the original survey were put forward, for the Draft and Provisional map stages, without this additional seventh path, which led to all of those six being recorded on the Definitive Map but not the claimed route.

## **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”/mile map 1809 and later (Old Series); Greenwood’s map 1827**

No lines of any tracks at Hayne or Goldcombe Farms, or paths on any parts of this claimed route crossing the land between them, are shown on any of the earlier maps at smaller scales, which do not usually show the lines of footpaths.

### **1.3.2 Early 19<sup>th</sup> century documents – Gittisham Court Leet presentments 1803–19**

Copies from Gittisham Court Leet presentments from the early 19<sup>th</sup> century were submitted with the claim. Extracts were transcribed of reports that a bridge in a field called Ten Acres was out of repair in 1803, a bridge between two Closes called Jarvis Park and Ten Acres was said to be dangerous and out of repair in 1811 and in 1819

a rail was wanted at the bottom of Long Meadow 'in the footpath to Honiton'. They were noted as being liable for repair by the landowner, then Thomas Marker.

- 1.3.3 The Ramblers claim that they can only relate to a footpath identified by Ordnance Survey for its later maps as passing along the claimed route between Hayne Farm and Goldcombe Farm, from the field names as identified in the Tithe Map. However, later records and maps suggest that such a route towards Honiton may have been via Hodges Lane before the railway line was built and, without being identified specifically as a 'public' footpath it may have been related to other rights of access. Courts Leet were also used for other more general functions, such as to resolve other issues from any problems or disputes between tenants and the lord of the manor, including about manorial and common rights. They are likely to have included those connected with a range of tenants' rights, such as access to land for farming, separately from what might have been considered as any responsibility for rights of way and roads used by the wider public at that time.
- 1.3.4 Later 19<sup>th</sup> century historical mapping: Buckerell Tithe Map 1845 & Apportionment 1842; Gittisham Tithe Map 1838 & Apportionment 1839; Ordnance Survey 25"/mile late 1880s  
Some later maps at larger scales show parts of the route in more detail. The Tithe Map for Gittisham dated 1838 shows areas of land around Hayne Farm to have been detached parts of Buckerell parish then, which are now in Gittisham. The Tithe Map for Buckerell parish dated 1845 shows only a short entrance track to the Hayne Farm yard and buildings from Hayne Lane, but no lines of any path crossing the fields beyond. There is no reference to any path in the Apportionment or in the names of the fields on that part of the route.
- 1.3.5 The Gittisham Tithe map does not show any line of a path crossing the fields on the rest of the claimed route to Goldcombe. One of the fields on the route is named in the Apportionment as 'Path Halden', which is also written on the map as with the names of other fields, although without showing any line of a path crossing it. Tithe Maps do not usually show footpaths and bridleways, so the older records do not help to provide any evidence showing which line of a path on the route may have existed at that time to be recorded on later maps and considered for claiming now as a public footpath.
- 1.3.6 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows the line of a path with double-dashed lines from the yard at Hayne Farm labelled 'F.P.' leading into the adjoining field. It is shown there splitting into two paths crossing the field, with one turning north-west into a field adjoining the railway to join Hodges Lane, leading from the old A30 road and under the railway line, to the buildings at Hodges and beyond into fields. The other path is shown in the same way on the line of the route as claimed, turning to continue across fields to the boundary of the yard and buildings of Goldcombe Farm on Parsonage Lane.
- 1.3.7 It is shown connected with two other paths linking to fields, one leading back into a field at the end of Hodges Lane and the other into fields nearer Goldcombe Farm. The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century does not show the lines of any paths on the route as claimed, but shows the line of the track on Hodges Lane.
- 1.3.8 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 were used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation. Copies from those maps were submitted in support of this claim. They show the claimed route to have been included in parts of three defined and numbered hereditaments, or assessment areas of land. Those were for: Hayne Farm (25); Glebe land (88) and; Goldcombe Farm (84).

- 1.3.9 Copies of the Field Books for those hereditaments with details of the assessments for the farms and land were also submitted with the claim. They record some deductions in respect of Public Rights of Way or User affecting the value of the land crossed by two fields on part of the route as claimed, but not on other parts. One also has deductions relating to other fields nearby with paths shown crossing them, or tracks leading to other fields. No such deductions are recorded for any Goldcombe Farm fields towards the end of the claimed route or for the Glebe land in the middle, although referring to a footpath and 'R[ight] of Way' through the field with the Ordnance Survey number 289 crossed by the path on the route.
- 1.3.10 The Field Book for Hayne Farm does record deductions for Public Rights of Way or User, with a total deduction of £50 in respect of a fixed charge for 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' through several fields or on a track, with Ordnance Survey numbers 151, 189 and 191. Only one of those fields is on the claimed route (189), with the other numbers for Hodges Lane and the field at its end beyond the Hodges buildings with a path shown connecting to the path on the claimed route. It is significant that there are no deductions for any of the fields on the route near or next to Hayne Farm, or for the yard itself with the farm buildings adjoining Hayne Lane.
- 1.3.11 A separate charge is also recorded for a 'R[ight] of Way for Occ[upie]r of Ref. No. 89 thro: Ord. No. 200'. That is for a numbered track from the road south of Hayne Farm, shown on earlier maps as the former site of 'H[ighe]r Hayne', leading to the two fields of a smaller hereditament. That will have been for private rights of access by the owner of that land and is recorded as a separate deduction for 'Easements', although referred to in the same terms as the other deduction, only as a 'R[igh]t of Way'.
- 1.3.12 Hodges Lane is not shown on the map excluded from the Hayne Farm hereditament and the deductions could refer to other rights for using it as access to other fields at its end or near and beyond those on the claimed route. The same details of charges for Hayne Farm are written in the Field Book for Goldcombe Farm but crossed out, perhaps to correct a mistaken entry for the wrong tenanted farm in the same ownership.
- 1.3.13 The overall Finance Act Assessment (or 'Domesday') Book for Gittisham does not record details of any deductions, including for Public Rights of Way or User or Easements, for any of the hereditaments in the whole parish and appears not to have been completed fully. Some of the Finance Act records show, therefore, that only two fields in the middle of the claimed route were considered to carry some form of right of way at the time, but not others on the route, although with no specific reference to it as a 'public' footpath. That may have been in connection with other rights as part of another route for access to land on other parts of the estate nearby in the same ownership with different tenants.
- 1.3.14 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, do not show the line of any path on this claimed route. Later Ordnance Survey 'A' edition larger-scale mapping from 1958-60, around the



time that the Definitive Map was being drawn up, shows the line of an unenclosed track on the route leading from the Hayne Farm yard, labelled 'Track'. It continues on the claimed route labelled 'F.P.' as in earlier editions, connected to Hodges Lane and crossing another track from Rapshayes Farm to the southeast into another field, then as a path onto a track leading to the yard of Goldcombe Farm.

#### **1.3.15 Aerial photography**

Earlier aerial photography from 1946–9 shows the worn track leading from Hayne Farm into fields on part of the claimed route, connecting to other tracks leading to Hodges Lane, probably from use by farm vehicles. Other fields on the route beyond it do not show any worn track that might indicate use on foot, particularly where shown as having been cropped. The worn track leading from Goldcombe Farm on the rest of the route is shown, probably from farm vehicles using it for agricultural access to those and other adjoining fields, including from the road through the field next to the farm buildings.

- 1.3.16 Later aerial photography between 1999–2000 and 2006–7 shows the tracks from Hayne Farm and Goldcombe Farm on parts of the route, continuing to other adjoining fields used for vehicular access. Hodges Lane is shown as cut off from the old A30 road by the line of the new trunk road leading into the Honiton bypass. No worn lines of any paths or other tracks are shown crossing the fields connecting the farms to suggest that there may have been any continuous route on the ground between them which might have been available for use on foot, or used on foot at those times.

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

- 1.4.1 There have been no previous suggestions put forward that this route should be considered for adding in earlier review processes that were started but not completed. The proposal for addition of the footpath was included in the consultations on the basis of the informal claim submitted by the Ramblers. The responses included views from or on behalf of the landowners affected objecting to its addition and from Gittisham Parish Council, who did not support it.
- 1.4.2 There was also a response from two residents of Gittisham parish in support of the proposals in the parish, particularly for this claimed route. They did not refer to having ever used the claimed route, but said that it would be an ideal mid-length circular walk to avoid sections on the very busy, narrow and bendy sections of the A375 Sidmouth road. It would be of great benefit to the residents of Gittisham vale in the Heathfield area of Honiton east of Hayne Lane and including the 300-home development to the west of it on other parts of Hayne Farm's land in fields immediately to the north of the route, as well as to villagers.
- 1.4.3 Factors such as whether the route would be beneficial to the area cannot be taken into account under the provisions of the Wildlife and Countryside Act. It would be up to the developers and planners to suggest any additional access links as part of that development, which could involve other land crossed by parts of the claimed route but would need to be with the agreement of the landowner.

### **1.5 User Evidence**

- 1.5.1 No supporting evidence of claimed use was submitted with this claim 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 Evidence**

- 1.6.1 The agent acting for the main owners of land crossed by the route of the claimed footpath completed a landowner evidence form in response to the consultations on this proposal. It was submitted by the solicitors acting on behalf of the landowners in response after seeing details of the evidence supporting the claim, with a letter outlining detailed challenges to the evidence in objecting to the proposed addition. The agent indicated that the claimed route crossed land owned by Trustees of the Combe Estate or Glebe land held by them under lease. He had believed that the route was not public since he started managing the estate in 1999 and had not seen or been aware of the public using it. He had not required people to ask permission when using it and nobody had sought permission.
- 1.6.2 He had not turned back or stopped anyone from using the claimed route, as he had not seen anyone trying to use it. He had not obstructed it and had not put up notices to say that it was not public. He indicated that the estate had made a Section 31 deposit to show lack of intention to dedicate. He reported that there were gates on the route and other obstructions, highlighting that Hayne Farm is a working farm and the claimed route will have been obstructed from time to time throughout the period of his knowledge by farm operations. For additional information, he referred to the letter written by the solicitors on behalf of the Trustees of the estate.
- 1.6.3 The letter outlined the factual background, with details of the Trustees of the Combe Estate as freehold owners and leaseholders of the land, indicating that those are registered with Land Registry. It also outlined the legal framework for the authority's responsibility to keep the Definitive Map under review and consideration of evidence for making changes in relation to such claims. It referred to the legal tests and their interpretation by the Courts, citing the relevant case law in applying those tests to the evidence put forward in support of this claim.
- 1.6.4 Comments on the documentary evidence are in the categories as it was submitted by the Ramblers in the claim and included in the above consideration for this report. It was noted specifically that there was no evidence of use for the claimed route and therefore no period for time for any requisite use as a public way.
- 1.6.5 The comments are detailed in consideration of each category of the evidence from Tithe Maps, Court Leet presentments, Ordnance Survey maps, Finance Record plan and Field Book entries, with Parish Council comments, referring to relevant case law for interpretation of the Tithe and Finance Act maps. Overall, they submit that the evidence submitted for the Ramblers' claim was considered to be lacking and does not meet the relevant threshold to justify making a Modification Order.
- 1.6.6 The owners of Goldcombe Farm did not complete landowner evidence forms, but wrote letters to say that they vigorously opposed the claimed footpath. They suggested that should there be a need for a footpath, it should perhaps be parallel with the railway line on the south side, along the northern boundary of the Hayne Farm land.

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

### **1.7.1 Statute (Section 31, Highways Act 1980)**

There has been no formal application to record this claimed route as a public footpath, with no challenge to its use and no event for calling any use of it by the public into question such as notices, or any obstruction to prevent its use. No evidence of any use has been submitted for investigating in support of any previous

claims connected with the parish review process and none has come forward as part of the current review, including after the consultations.

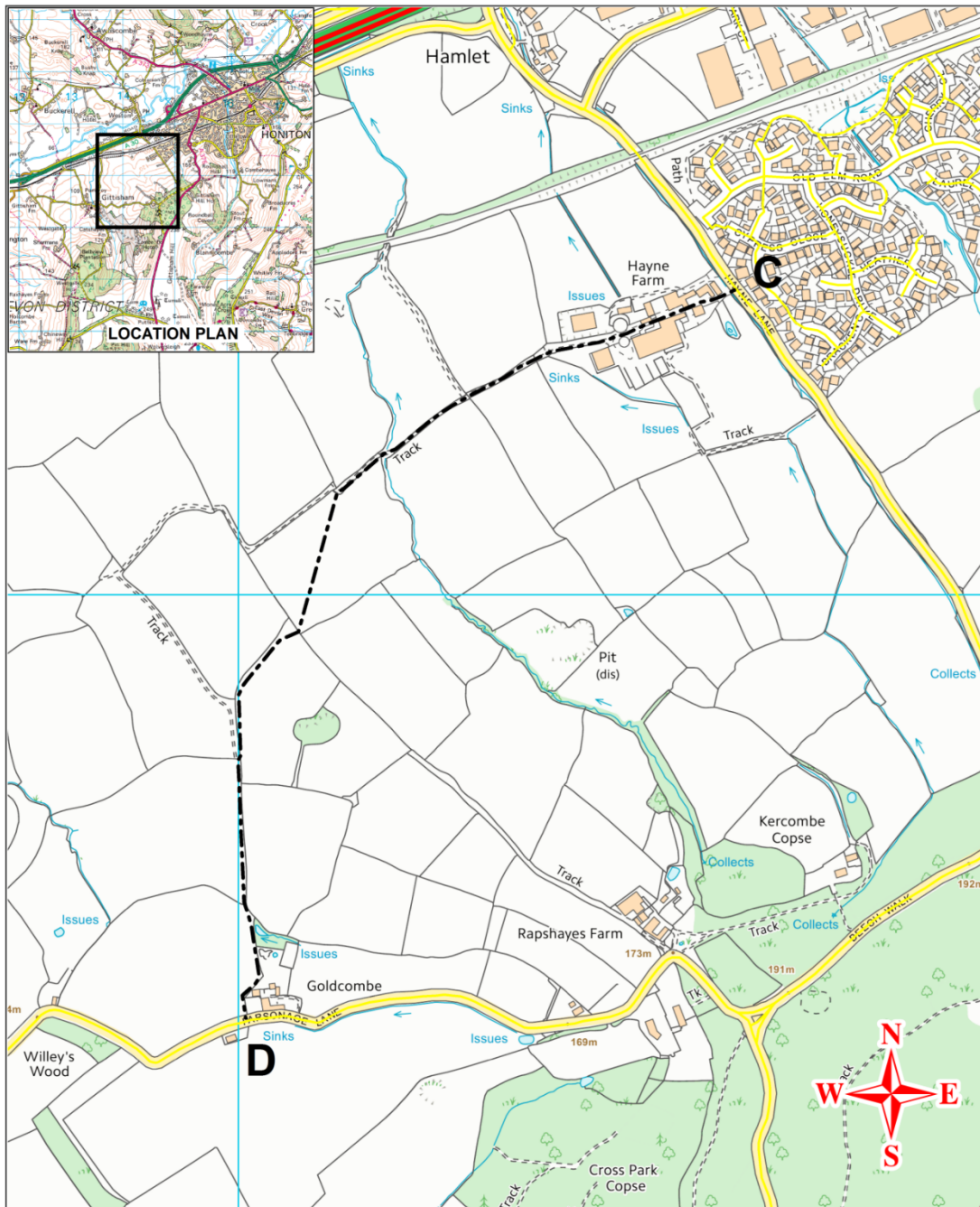
- 1.7.2 If there had been any formal application, challenge or obstruction, it could be used for investigating in accordance with the test for statutory dedication under Section 31 of the Highways Act 1980, taking into account any evidence of use and of the landowner's lack of intention to dedicate. However, with no evidence of any earlier or current use submitted to support the claimed addition, there is none during any 20-year period before the date of the Ramblers' letter with the informal claim, if that did provide a date for calling its use into question, to consider whether any statutory presumption of dedication has arisen from use by the public.
- 1.7.3 With no event or date that can be specified for calling use of the route into question, no formal application and no evidence of use submitted, it can only be considered in relation to a test under common law. That involves historical and documentary evidence submitted with the claim, with other evidence from which any earlier use could be inferred and with reference to landowner evidence.
- 1.7.4 **Common Law**  
Considering this informal claim in relation to common law requires taking into account the historical documentary evidence submitted and other historic maps and evidence discovered, but without being able to consider any evidence of claimed actual use by the public. Historical mapping shows that paths and some parts of tracks between Hayne Farm and Goldcombe Farm on the claimed route have existed physically since only at least the later 19<sup>th</sup> century. The paths crossing fields on the route claimed were not shown on earlier small-scale maps, but were shown on later larger scale maps and also not at smaller scales more recently. None of that mapping on its own can be taken as evidence indicating that the paths or tracks were considered at those times to be public rights of way or roads, rather than private access between farm buildings and fields then, particularly for agricultural vehicles.
- 1.7.5 The Tithe Maps from the first half of the 19<sup>th</sup> century do not show any parts of the route as a path and on their own do not provide any support that any tracks shown were considered to be public at those times, either as public roads, or footpaths. They also included others that have never been recorded as public and are now private tracks for access only to land or properties, including Hodges Lane. The extracts from Gittisham Court Leet presentments from the earlier 19<sup>th</sup> century are not specific enough to show that they can be identified as being on parts of the whole route as claimed. In addition, they may have been related to the lord of the manor's responsibilities for tenants' other manorial rights and access to land rather than for any wider public rights.
- 1.7.6 The later Finance Act records include deductions for only two fields crossed by paths shown on the maps for a small part of the claimed route. It could suggest that part of it may have been considered to carry public rights in the early 20<sup>th</sup> century, although without referring to them as for 'public' rights of way or footpaths for the deductions in the assessment process and, significantly, not for the whole of the route as claimed. There were also similar deductions for other paths and part of Hodges Lane in the area shown on the maps, but which were not considered later for recording as public footpaths or included as part of this claim.
- 1.7.7 There is no more specific evidence to show how those limited deductions were determined as the basis from which any earlier dedication by the landowner could be inferred, or the extent to which there may have been acceptance and use then by the wider public rather than perhaps by a more limited number of people in the locality.

They cannot be taken to apply to other parts of the route claimed, for which there are no specific deductions recorded. Later Ordnance Survey and other mapping with aerial photography show only that parts of the tracks continued to exist on their current lines more recently and up to the present, although subject to the usual disclaimer, with the continuation of tracks shown crossing fields onto other land from the route as claimed.

- 1.7.8 Although the claimed route was put forward for recording as a public footpath, it was three years after the Parish Council's original survey in 1950 and said to have been omitted due to an oversight. No details were given then of the grounds for believing it to be public, or any comments by the Rural District Council although noting that they confirmed later its omission by mistake. The Parish Council's record of its views in 1956 on use of the route does not indicate that any efforts were made then in support of recording the route as a public footpath, such as collecting evidence of use by the public. There was also no objection from them or from anyone else to it being omitted at any of the stages in the procedures leading up to the route not being recorded on the Definitive Map.
- 1.7.9 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 routes had the reputation of being public footpaths in the past, or more recently. No other claims for their addition with evidence relating to their past use have been made, particularly by the Parish Council, as part of the procedures for any earlier review procedures since then.
- 1.7.10 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 wider public. No significant or substantial evidence has been discovered 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 them on that basis.
- 1.7.11 Deposits were made on behalf of the owners of the Combe Estate under Section 31 (6) of the Highways Act 1980 in 1993 and repeated in 2002, with a statutory declaration. It is evidence to show a more recent lack of intention by the landowners to dedicate any public rights of way on the land, although it does not affect consideration of the historical evidence and no evidence of any use by the public since then or more recently was submitted in support of the claim.

## **1.8 Conclusion**

- 1.8.1 From this assessment of the evidence submitted with the claim as made and as considered previously in 1992, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support any 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 informal claim made for Proposal 2 in Gittisham parish.



map ref SY 1399-1499/1398-1498

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## DEVON COUNTY COUNCIL

### Definitive Map Review, Gittisham parish

Informal Consultations: Proposal 2, Gittisham  
Claimed footpath - Hayne Farm to Goldcombe Farm

#### Notation

Claimed footpath, C-D (1,350 metres)

drawing number HIW/PROW/17/024

date Apr 2017

scale 1: 7, 500

drawn by NSC

Meg Booth

ACTING HEAD OF HIGHWAYS, INFRASTRUCTURE DEVELOPMENT AND WASTE

Devon  
County Council