

Definitive Map Review 2016–18
Parish of Buckerell part 2, with part of Gittisham 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 Order be made in respect of:

- **Proposal 1 in Buckerell, for the claimed addition of footpaths from the parish boundary on the River Otter, passing Colhayes to Footpath No. 15 and the end of Byway Open to All Traffic (BOAT) No. 20, Orchard Lane in Buckerell, between points B–C–D and C–E shown on drawing number HIW/PROW/17/021; with**
- **Proposal 1 in Gittisham, the claimed addition of a footpath from old A30 to the parish boundary between points A–B shown on drawing number HIW/PROW/17/021.**

1. Summary

This report examines the last of three proposals arising out of the Definitive Map Review in the parish of Buckerell in East Devon district. It concerns a claim to add connected footpaths in the parish of Buckerell, as a continuation of a proposal in the adjoining parish of Gittisham.

2. Introduction – Background and Review

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

They are following on from an earlier report in connection with improvements proposed for the A30 in the area that had been 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 were made then that the 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 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 then 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 at that time to have a prima facie case for further investigation as part of the review for Buckerell and Gittisham parishes. One of those claims

was considered in the first part of a report into the current review process for the parish to a previous Committee meeting and the other is considered in a separate report on the review process for Gittisham parish, which is also ongoing.

The proposals in this report relate to the remaining routes claimed as public footpaths in parts of Buckerell, continuing across the parish boundary from the second of the two routes claimed in Gittisham.

3. Proposals

Please refer to the Appendix to this report.

4. Consultations

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

County Councillor Philip Twiss	-	supports Proposal 2, but not the claims for the other proposals;
East Devon District Council	-	no comment;
Buckerell Parish Council	-	support the landowner's views on Proposal 2 in their parish, but not the claims for the other proposals;
Gittisham Parish Council	-	do not support Proposals 1 and 2 in their parish;
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	-	no view on Proposal 2 in Buckerell and support all of the other 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.

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 have been taken into account in preparing 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.

9. Conclusion

It is recommended that no Modification Orders be made in respect of both Proposals numbered 1 in Buckerell and in Gittisham parishes, 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 Buckerell 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.

10. 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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Electoral Division: Feniton & Honiton

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence File	2008 to date	NSC/DMR/GITT

ns070218pra
sc/cr/DMR Parish of Buckerell part 2, with part of Gittisham parish
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. **Proposals 1 Buckerell and Gittisham:** Claimed addition of a footpath from the Buckerell/Gittisham parish boundary on the River Otter, passing Colhayes to Footpath No. 15 and the end of Byway Open to All Traffic (BOAT) No. 20, Orchard Lane in Buckerell, points B–C–D and another section between points C–E; with Proposal 1 Gittisham, a claimed footpath from the old A30 to the parish boundary, points A–B shown on drawing number HIW/PROW/17/021

Recommendation: It is recommended that no Modification Order be made in respect of Buckerell Proposal 1 and Gittisham Proposal 1 for the claimed addition of footpaths from the old A30 in Gittisham parish, passing Colhayes to Footpath No. 15 and the end of Byway Open to All Traffic (BOAT) No. 20 in Buckerell.

1.1 Description

- 1.1.1 The claimed paths start in Gittisham from the old line of the A30 road, now on the verge between a diverted section of it and the new A30 trunk road approaching the Honiton bypass, opposite the entrance of the access track for Colhayes Farm (point A). It follows the access track to the farm between fields towards the River Otter, which is the parish boundary with Buckerell. It crosses the river at point B, on a line away from the bridge on the current track, continuing in Buckerell parish to re-join the track crossing fields leading to Colhayes and then turns still following the track passing the farm buildings (point C). The main claimed route continues northeastwards along the track, turning between fields, to a junction with the line of the track recorded as Footpath No. 15 (point D).
- 1.1.2 The line of the other claimed route continues from the track near Colhayes (point C), generally northwards. It crosses the field north of the Colhayes buildings and continues through fields to join the same track of Footpath No. 15 near Buckerell village, at its junction with the end of Byway Open to All Traffic (BOAT) No. 20, Orchard's Lane (point E). (This is at the start of the section of Footpath No. 15 proposed to be upgraded to BOAT from a decision made in 1992, as referred to in the first part of the report on the review process for this parish to the previous meeting of the Committee on 9 November 2017.)

1.2 The Definitive Map process

1.2.1 Gittisham parish

The first part of these routes as claimed was included in the original survey on behalf of Gittisham Parish Council in October 1950 for six paths put forward for recording as public rights of way on the Definitive Map. It was numbered 6 and was described as leading from the Honiton–Exeter road to Colhayes Farm and Buckerell, indicating that it had always been a right of way, shown on the map from A–B.

- 1.2.2 It was noted as being assumed then that its continuation in Buckerell would be claimed in that parish, but also specifying that it was only a private right of way in Buckerell. Other notes from 1956 indicate that no evidence of public use had been supplied by Gittisham Parish Council and letters from the County Surveyor had produced no results, so the path was to be omitted. It did not go on to be included at the Draft and Provisional map stages for recording on the Definitive Map

1.2.3 Buckerell parish

Other parts of the paths as claimed were included in the survey by Buckerell Parish Meeting in May 1951, also numbered as 6 in this parish, crossing the fields from Colhayes to Footpath No. 15 (C–E), but not on the track leading to it further southeast

(C – D). The path was said to be shown on maps, but no grounds were given for believing it to be public. It was noted more specifically to be a private path then and not used by the public.

- 1.2.4 The section from the River Otter and the Gittisham parish boundary (B–near C) was numbered 19 and described as being from Colhayes to the river. No grounds were given for believing the path to be public and it was again said then to have always been a private path. Neither of the paths were included at the Draft and Provisional map stages for recording on the Definitive Map.

1.3 Documentary Evidence

- 1.3.1 Copies of historical maps and other historical documentary evidence were submitted in support of the Ramblers' repeat of the informal claim in February 2017 following the consultations. They are included with the background papers and are considered for this report in conjunction with other evidence available and discovered.

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

Parts of these claimed routes are shown on earlier maps as enclosed tracks, one leading from the line of the old A30 road to the River Otter and the parish boundary, (A–B) continuing beyond it in Buckerell parish towards Colhayes. A track is shown continuing further on the route from near Colhayes around the fields to join the track from the river now recorded as Footpath No. 15 to the north east (C–D). No line of any other track or path is shown crossing the fields north of Colhayes to join the continuation of that track nearer to Buckerell village (C–E) on any of the earlier maps at smaller scales, which do not usually show the lines of footpaths.

1.3.3 Later 19th 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 claimed routes in more detail. The Tithe Map for Gittisham parish dated 1838 shows the first section from the old A30 road as part an enclosed track (A towards B) leading round back to the road. A continuation is shown as an unenclosed track from a gate running through a narrow field, then through another gate and leading towards the river (to B). The Tithe Map for Buckerell parish dated 1845 does not show the line of any track or path crossing the field from the river towards Colhayes (A–B towards C). An enclosed track is shown running between the fields on the claimed route to join the track now recorded as Footpath No. 15 (C–D), but no line of any path or track is shown crossing the fields north of Colhayes (C–E), as in the earlier small-scale maps.

- 1.3.4 The only reference to a path is in the Buckerell Tithe Apportionment with the name of one pasture field on the route to the north of Colhayes (C–E), which is given as 'Churchpath' and may refer to what may have been considered its status at that time. Tithe Maps do not usually show footpaths and bridleways, so the older records do not help to provide any clear evidence that the routes may have been considered as public footpaths when they were compiled.

- 1.3.5 The Ordnance Survey 25" to a mile 1st edition map surveyed in 1887 shows the start of the route in Gittisham as a section of enclosed track, with double solid lines and its own parcel number with acreage, providing access to fields from the old A30 road. It continues as two unenclosed tracks or paths together shown with double-dashed lines, not labelled 'F.P.', leading from the end of the track through the narrow field towards the River Otter and the parish boundary. Approaching the river, it is shown

splitting with one path leading to a footbridge, labelled 'F.B.' and the other leading to what is labelled as 'Ford' on the route as claimed (point B).

- 1.3.6 Beyond the river in Buckerell parish, it is shown merging from the footbridge and ford into one path, shown with double-dashed lines and not labelled 'F.P.', continuing alongside a field edge to the yard and buildings of Colhayes. The continuation of the claimed route is shown as an enclosed track running between the fields to join the track now recorded as Footpath No. 15, as in the earlier small-scale maps (C–D).
- 1.3.7 The other line of the route claimed is shown with double-dashed lines and labelled 'F.P.' crossing fields to the north of Colhayes (C–E). Below Orchard's Farm in Buckerell village it is linked to the lines of other paths crossing the same field, shown in the same way, including the section of Footpath No.15 extinguished more recently from the end of Orchard's Lane to the road leading from the village towards Feniton. The Revised New Series smaller-scale map for the area from the later 19th century shows the lines of the tracks and paths on the route as claimed, with the paths shown as single dashed lines, indicated in the key as 'Footpaths'.
- 1.3.8 Later historical mapping, from early 20th century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records
The later edition of the Ordnance Survey 2nd edition 25" to the mile map revised in 1903 shows the claimed routes in the same way as in the 1st edition map. Those later editions of the maps were used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation. Copies of the maps were submitted with this claim. They show the claimed routes to have been included in parts of, or excluded from, three defined and numbered hereditaments, or assessment areas of land. Those were for: Gittisham Farm (26), in Gittisham parish only; Colhayes (95), in Gittisham and Buckerell and; Orchards Farm (84) in Buckerell parish only.
- 1.3.9 The section of the enclosed track leading from the old A30 in Gittisham is included in hereditament 26. In Buckerell, both the track leading from Colhayes (C–D) and the track it joins now recorded as Footpath No. 15 are shown excluded from the adjoining hereditaments. It could suggest that those excluded sections of track may have been considered then as public, in the same way as roads, but their exclusion may have been for some other reason, perhaps due to shared private access rights and not included with ownership of the land. That may have been the case particularly for access to and across the River Otter, where fields were separated from the main land holding.
- 1.3.10 Copies of the Field Books for those hereditaments with details of the assessments for the farms were also included with the claim. They record some deductions in respect of Public Rights of Way or User affecting the value of the land crossed by parts of the routes as claimed, but not on other parts, particularly for those following parts of the enclosed tracks. No such deductions are recorded for any part of Gittisham Farm, although for this claim the route is only along part of the track from the old road, which also will have provided private access to two outlying fields nearer the river separated from fields in other hereditaments.
- 1.3.11 The Field Books for Colhayes and Orchard's Farm do record deductions for Public Rights of Way or User. For Colhayes, a total deduction of £50 is recorded 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 with Ordnance Survey numbers on the claimed route: 226, 320, 361 and 55 leading to and beyond the farm buildings

from across the river and the parish boundary. A separate deduction is also recorded for a numbered field, which the map shows to be west of Buckerell village and in another landowner's hereditament without any apparent connection with Colhayes.

- 1.3.12 For Orchard's Farm, there is a note of a 'public path through two fields'. A total deduction of £50 for Public Rights of Way or User is recorded, with details referring to Ordnance Survey field numbers on the claimed route: 183, 181, 211 and 210, north of Colhayes to the end of the track recorded now as Footpath No. 15 (point E). However, there are also several other paths shown on the map and labelled 'F.P.' crossing the last field nearest to Orchard's Farm, including one recorded later as the continuation of Footpath No. 15 leading to the road that was extinguished in 1989 (northwest of point E). Those paths connected with others shown in the same way crossing other fields between Orchard's Farm and the nearby Avenhayes Dairy on the road leading out of Buckerell village towards Feniton. They paths were not put forward for recording as public and are not recorded now as public footpaths, or included in this claim.
- 1.3.13 Other details show that there were private rights of way or access for the owners or occupiers of adjoining land, with deductions recorded in the Field Book for Orchard's Farm as 'Easements', but they are not for any of the fields on the claimed routes. The Finance Act records indicate, therefore, that parts of the routes in two of the three hereditaments were considered to carry some form of right of way at the time, although with only one specific reference to them as a 'public path'.
- 1.3.14 Later Ordnance Survey mapping, with Bartholomew's and other maps
Several smaller scale maps from the earlier 20th century, particularly Ordnance Survey and Bartholomew's map editions up to 1946 and 1960, show the line of tracks and paths on the routes as claimed, with the paths shown as dashed lines and not marked 'F.P.'. From those and other map evidence submitted, the Ramblers have suggested that the enclosed tracks marked on the claimed routes show that they were considered at those times to be public roads, including on the line of what is recorded now as Footpath No. 15.
- 1.3.15 Later Ordnance Survey 'A' edition larger-scale mapping of the area from 1959-61, around the time that the Definitive Map was being drawn up, shows the lines of the tracks and paths on the routes claimed as recorded in the earlier editions. The paths are mainly labelled 'F.P.', as previously, but as a 'Track' running through the field in Gittisham leading to the river and parish boundary with the ford and footbridge, also marked with a weir. The showing of some parts of the routes 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, or as evidence that parts of it may have been a public road, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way" and may be presumed to apply to earlier and other commercial maps as well.
- 1.3.16 Aerial photography
Earlier aerial photography from 1946-9 shows the lines of tracks on the main route as claimed, with worn lines in places crossing two of the fields north of Colhayes between gates on the other route, perhaps from use by farm vehicles. Later aerial photography between 1999-2000 and 2006-7 shows the access track leading from the old A30 to the River Otter and across it by a bridge and a ford, continuing to the Colhayes Farm buildings and then beyond between the fields to the junction with the Footpath No. 15 track. It does not show the clear worn lines of any path or track on

the other part of the claimed route crossing the fields north of Colhayes to that track further on near Buckerell village, although indicating where field boundaries had changed.

1.4 Parish Council minutes

- 1.4.1 Copies of Buckerell and Gittisham parish minutes from between 1933 and 1973 were submitted in support of the claim. The Ramblers claim that references to one or two paths from Buckerell to Colhayes in connection with the 1932 Rights of Way Act meant that one or both of them were acknowledged then as being public. Later references in 1950, before the survey for the Definitive Map, record a view that the path to Colhayes was one of those in the parish not recognised then as public. There was a suggestion that it should be included in the parish list, although it was said to have been recognised by the Rural District Council that it was a 'service' path, with private rights of access only and not public.
- 1.4.2 In Gittisham, as part of their parish survey, the minutes record that there were discussions about whether the start of the claimed route from the old A30 should be recorded as public. Although assuming that its continuation in Buckerell parish would be included in their survey, no evidence of public use was supplied when requested, despite indicating some local knowledge of it as a path, although not referring to as a public footpath. Later discussions in 1957 about repairing the footbridge over the River Otter include references to the claimed route as an alternative footpath, although in 1959 it was noted specifically that the path though Colhayes was not to be recorded.
- 1.4.3 Later Buckerell parish minutes in 1965 record complaints by the tenant of Colhayes that the only access to the road in Buckerell at times of flooding using the track was blocked. It appears mainly to have been initiated as a dispute between adjoining landowners and their tenants about private vehicular access, probably for farm vehicles. Although referring to other named people's knowledge of its use for vehicular traffic, it does not indicate that the use was by the wider public and in vehicles other than just for farming. Further discussions in 1973 about replacement of the River Otter footbridge across the River Otter at the end of Footpath No. 15 onto footpath No. 2 in Gittisham, refer to the suggestion that the recorded public footpath crossing it could be diverted onto the claimed route to Colhayes crossing the privately-owned bridge on it, but which was rejected in favour of the public footbridge being rebuilt.

1.5 Definitive Map Reviews and Consultations

- 1.5.1 There have been no previous suggestions put forward that these routes should be considered for recording as public rights of way from consultations with Parish Councils in earlier review processes that were started but not completed. Gittisham parish indicated in 1978 that the rights of way shown then on the map were all correct and Buckerell's main concerns were with replacing the footbridge across the River Otter at the end of Footpath No. 15 onto footpath No. 2 in Gittisham.

1.6 User Evidence

- 1.6.1 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.

1.7 Landowner Evidence

- 1.7.1 The owners of the land crossed by the routes of the footpaths as claimed did not complete landowner evidence forms in response to the consultations on this proposal. A solicitor acting on behalf of a group of the landowners affected submitted a letter in response after seeing details of the evidence supporting the claims. He indicated that his clients opposed the claims strongly and intended to fight them as far as they have to be fought.
- 1.7.2 The starting point for his views was the County Council report in 1992, for which the assessment of the evidence concluded generally against the claims then for both of the Colhayes paths. He considered that the only piece of evidence possibly supporting footpath status from the conclusion then was that from the Finance Act, although without having seen details of which fields were involved or the precise routes of the footpaths from the base Ordnance Survey maps. He believed that the process was mainly an exercise in valuation and taxation, which had been discussed in a court case, *Maltbridge*, in 1998 with its weight limited and viewed as corroborative, with other cogent evidence needed for it to support on that basis.
- 1.7.3 That evidence would not come from being shown on old maps, which will have only shown the routes as paths but with no indication of status although used, which is not evidence of use by the general public. He reported that 19th century railway evidence had indicated that the southern approach to Colhayes was a private accommodation road and not a public right of way. They were not claimed in the 1950s and despite various opportunities were not thought then to be public routes.
- 1.7.4 He indicated that there is no evidence that the public have used them and there has been no public maintenance, particularly of the bridge crossing the River Otter and the ford next to it being just about useable at low water. The southern access was never the main entrance to Colhayes, but it was previously the north-eastern track on the claimed route from Buckerell, with the private bridge over the river built later for use as the current access track from the south. He believed that the public could not have had access over the bridge without the County Council having full responsibility for maintenance, including all use by farm vehicles, or putting in a new footbridge.

1.8 Discussion – Statute and Common Law

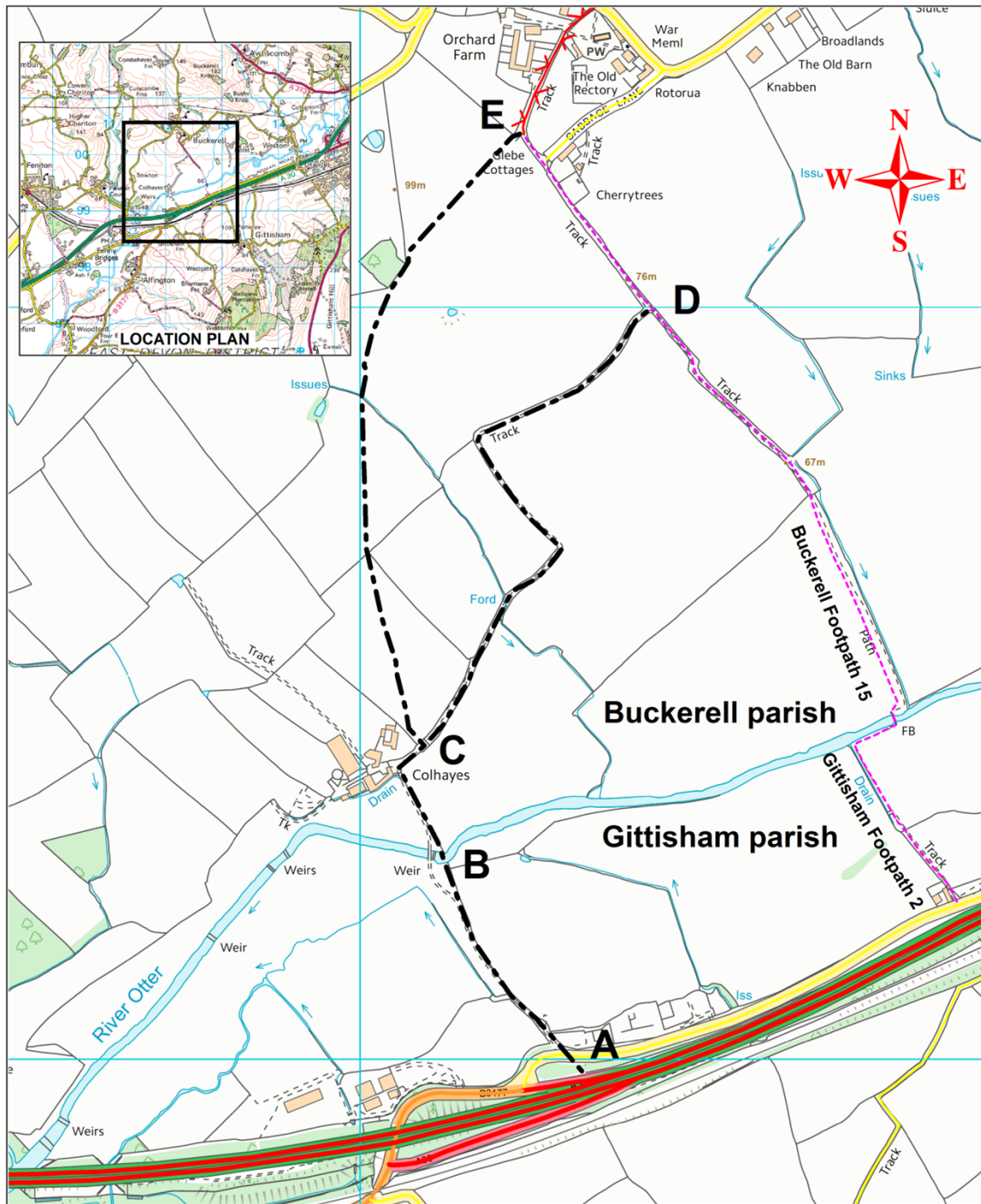
- 1.8.1 **Statute (Section 31, Highways Act 1980)**
There has been no formal application to record these claimed routes as public footpaths, with no challenge to their use and no event for calling any use of them by the public into question such as notices, or any obstruction to prevent their use. No user evidence has been submitted for investigating in connection with any previous claims connected with the parish review process and none has come forward as part of the current review, including after the consultations.
- 1.8.2 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 use submitted to support the claimed additions or later, 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 their use into question, to consider whether any statutory presumption of dedication has arisen from use by the public.

- 1.8.3 With no event or date that can be specified for calling use of the routes 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.
- 1.8.4 **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 parts of the tracks to and beyond Colhayes on the start of the claimed routes and the continuation on one of the routes have existed physically since at least the early 19th century. The paths crossing fields north of Colhayes on the other part of the routes claimed were not shown on earlier small-scale maps, but were shown on later larger scale maps and some at smaller scales more recently. None of that mapping on its own can be taken as evidence indicating that the tracks were considered then to be public roads, rather that private access to farm buildings and fields, particularly for farm vehicles.
- 1.8.5 The Tithe Maps from the first half of the 19th century on their own do not provide any support for the claim that the routes were considered to be public at those times. They are not significant in showing the route in the same way as others now recorded as public roads, which also included others that have never been recorded as public and are now private tracks for access only to land or properties.
- 1.8.6 The later Finance Act records show parts of the claimed routes on tracks mainly excluded from the hereditament areas, in the same way as other routes now recorded as public roads. Although it could suggest that they might have been considered then as included in the public road network, it may have been for other reasons relating to ownership and other routes are shown excluded which are not now recorded as public roads. The deductions for other sections of the claimed routes not on tracks could suggest that some parts of them may have been considered to carry public rights in the early 20th century, although without referring to them as for 'public' rights of way or footpaths for the deductions in the assessment process.
- 1.8.7 There is no more specific evidence to show how that was 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 by a more limited number of people in the locality. Later Ordnance Survey and other mapping with aerial photography show only that the tracks continued to exist on their current line more recently up to the present, with some showing the continuation of paths crossing fields on other parts of the routes as claimed, although subject to the usual disclaimer.
- 1.8.8 The references to parts of the routes being recorded by the Rural District Council under the 1932 Act as what may have been considered as public footpaths in the parishes soon after that date could suggest that they may have had the reputation then of being public. However, those were not from any statutory process for recording public rights of way at that time and are only reported by the parishes in other records. There is no reference to any more significant evidence indicating the basis then for that belief, relating either to the extent of any use by the public or the views and intentions of landowners to add more substantial weight for any inference of an earlier dedication.

- 1.8.9 Other references to parts of the claimed routes in the Parish minutes are not consistent in showing any clear evidence that all of them as claimed together were considered to be public rights of way in both parishes, with conflicting views recorded and some appearing to be about private rights of access. They do not add any significant weight to evidence for their reputation of being public at those times, earlier or later, particularly from not going forward in the procedures for recording public rights of way on a statutory basis, although with parts being included initially in the Parish surveys. There was also no objection from the Parish Council or from anyone else to the routes being omitted at any of the stages in the procedures leading up to them not being recorded on the Definitive Map.
- 1.8.10 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. In particular, no claims for their addition or evidence relating to their past use have been made as part of the procedures for any earlier review procedures since then, in both parishes.
- 1.8.11 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 routes being considered as public footpaths, or an inference that they had the reputation of being available and used by the wider public. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the routes as public footpaths, or that the public may have accepted any dedication and used them at any time in the past on foot, or have continued to use them on that basis.

1.9 Conclusion

- 1.9.1 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 routes 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 routes in respect of the informal claim made for the Proposals numbered 1 in Buckerell and Gittisham parishes.



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DEVON COUNTY COUNCIL

Definitive Map Review, Gittisham & Buckerell
parishes

Informal Consultations, Proposal 1 Gittisham &
Proposal 1 Buckerell:
Claimed footpaths - A30 to Buckerell

Notation

Claimed footpaths, A-B-C-D; C-E

Existing footpaths

drawing number HIW/PROW/17/021

date Apr 2017

scale 1: 7, 500

drawn by NSC



Meg Booth

ACTING HEAD OF HIGHWAYS, INFRASTRUCTURE DEVELOPMENT AND WASTE