

**Definitive Map Review 2011-2018
Parish of Combe Martin North Devon - Part 6**

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 25, between points A-B-C-D and C-E as shown on drawing number HIWPROW/18/25.

1. Summary

This report examines the last proposal from the twenty-five that arose from the Definitive Map Review in the parish of Combe Martin in North Devon district.

2. Background

The Background for the Definitive Map Review in the parish of Combe Martin was set out in Committee report HTM/13/14 February 2013.

3. Consultations

The current review began in January 2011 with a special public meeting held in the Town Hall attended by about 50 people.

Public consultations were carried out through October and November 2011 for the twenty-five valid proposals that were put forward following the parish meeting. The review and proposals were advertised around the parish, in the North Devon Journal and notices were placed at the ends of each proposal and letters sent to land and property owners.

The responses were as follows:

County Councillor Andrea Davis	-	no comment on Proposal 25
North Devon District Council	-	no comment
Combe Martin Parish Council	-	supports Proposal 25
British Horse Society	-	no comment
Byways and Bridleways Trust	-	no comment
Country Land & Business Association	-	no comment
Open Spaces Society	-	no comment
Ramblers'	-	no comment
Trail Riders' Fellowship	-	no comment

Please refer to the appendix to this report.

4. Proposals

There were 25 proposals arising from the Definitive Map Review in the parish. Eleven proposals have been the subject of previous reports to the Committee. A further three proposals (1, 2 and 7) for the addition of footpaths to the Definitive Map and Statement cross land owned by the Parish Council and will be dealt with by means of creation agreements under delegated powers and three possible diversions which will be dealt with using delegated powers and 3 proposals further by agreement with the National Trust and part of the England Coastal Access Mapping process.

Proposal 25 is the final proposal in the parish and is referred to in the Appendix to this report.

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 its statutory duties.

6. Legal Considerations

The implications/consequences of the recommendation(s) have been taken into account in preparation 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 Order be made in respect of Proposal 25, between points A-B-C-D and C-E as shown on drawing number HIWPROW/18/25.

Details concerning the recommendation are discussed in the Appendix to this report.

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 North Devon District area.

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Electoral Division: Combe Martin Rural

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence Files	2011- date	AS/DMR/COMBE MARTIN

as060618pra
sc/cr/DMR parish combe martin part 6
02 260618

A. Basis of Claim

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 (2) (b) enables the surveying authority to make an order to modify the Definitive Map. The procedure is set out under WCA 1981 Schedule 15;

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;

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.

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

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

The Natural Environment and Rural Communities Act 2006 (NERC Act) extinguished the rights for mechanically propelled vehicles to use public rights of way 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 25: Claimed addition of footpath between points A-B-C-D and C-E as shown on drawing number HIW/PROW/18/25.

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 25, between points A-B-C-D and C-E as shown on drawing number HIWPROW/18/25

1 Background

1.1 During the course of the Definitive Map Review, Proposal 25 was put forward by members of the public following the Definitive Map Review meeting in Combe Martin.

2 Description of the Route

2.1 The claimed route starts at Five Turnings, point A, it travels north steeply down, along the edge of an undeveloped narrow plot of land. It is hedged on one side and has a retaining house and garden wall on the other. It has a very rough mud and stone surface with considerable over growth. This section is known locally as 'Monica's path'. The route then crosses a footbridge made of two planks at point B, before turning sharply westwards and onto a narrow un-adopted private road called Rosea Bridge Lane, it continues west along this lane to point C before turning south-westwards and along the continuation of Rosea Bridge Lane, to join Footpath No.13 at point D. Another spur of the path runs westwards from point C, over the un-adopted private road Rews Close, to join with Footpath No 3, Hangman path, at point E. Rosea Bridge Lane (B-D) and Rews Close (C-E) have tarmac surfaces and are used by the adjoining residents to access their properties in vehicles.

3 Documentary Evidence

3.1 Ordnance Survey Mapping

3.1.1 **The 1804 OS Surveyor Drawings**, clearly show the historical layout of the lanes in the parish of Combe Martin. This map does not show the claimed route (A-B-C-D and D-E) at all. For clarification the historical line into Combe Martin from point A was along the ancient hollow-way, which is now recorded as Footpath No. 13. This lane crossed the stream at point D (over Rosea Bridge) and then followed the line of the lane now known as Rosea Bridge Lane south-westwards to the High Street.

3.1.2 **The 1890s 1st Edition OS map 6" to 1 mile** shows a lane from the High Street along a lane, part of which is now recorded as Footpath No. 13 to point D, then along part of the claimed route to point C and continuing north. This is named Rowe's Bridge Lane. This lane extends to the landlocked field known as Rews Close (as shown on the Tithe Map below). No other part of the claimed route is shown, only the section of the claim between D and C.

3.1.3 The surroundings of the area were undeveloped and shown as fields. From point C, neither the easterly continuation of Rosea Bridge Lane, nor the westerly continuation of Rews Close are shown.

3.1.4 **1904-1906 2nd Edition OS map 25" to 1mile**, shows the section D to C in the same way as the previous map, with the lane named Rowe's Bridge lane.

3.1.5 The **1963-64 Post War OS mapping** shows the area has started to be developed. There is a long thin strip of land between point A and B which has not been built on. Rosea

Bridge Lane (previously Rowe's Bridge Lane) has been extended between points B-C and some houses built on the north side of this lane. The map also shows the original line of Rosea Bridge Lane between C-D as the older maps did (see above). The map also shows the section of Rew's Close between C-E has been built and the land to the north of the claimed route, has been split into plots and four of these have houses built on them.

- 3.1.6 All subsequent OS maps show the claimed route in the same way with more house built in the plots.

3.2 **Tithe Map and Apportionments 1842**

- 3.2.1 On the Tithe Map, at point A the current county road (West Challacombe Lane) is numbered 1200 and in the apportionments, it is called a parish road. The claimed path from point A to B is not shown. Only a field called Beckham Meadows is shown in this location.

- 3.2.2 The Tithe Map clearly shows the historical continuation of West Challacombe Lane leading down into the village via the hollow-way, that is now recorded as Footpath No 13. At point D, the historical route (FP No. 13) crosses the stream on a substantial old bridge likely to be Rowe's or Rosea Bridge. The claimed part of Rosea Bridge Lane between B-C and is not shown.

- 3.2.3 From point D, the original route of a narrow lane is shown leading to a land locked field called Rew's Close, (on modern mapping this is the field that the properties called Spring Bank and Silver Springs are built in). The new lower section of the lane between C -E now called Rews Close was not shown at all.

3.3 **Highway Handover Book**

Proposal 25 does not appear on this.

4. **User Evidence**

- 4.1 The evidence forms that support this claim fall into three sets. The first of users who have walked the route from Point A, Five Turnings and along Rosea Bridge Lane to point B and C and some to D. The second set have walked from point D or C along Rew's Close to point E, and the third set who have combined the entire route.

4.2 **User Evidence Forms for the route A-B-C-D 'Monica's path' and Rosea Bridge Lane**

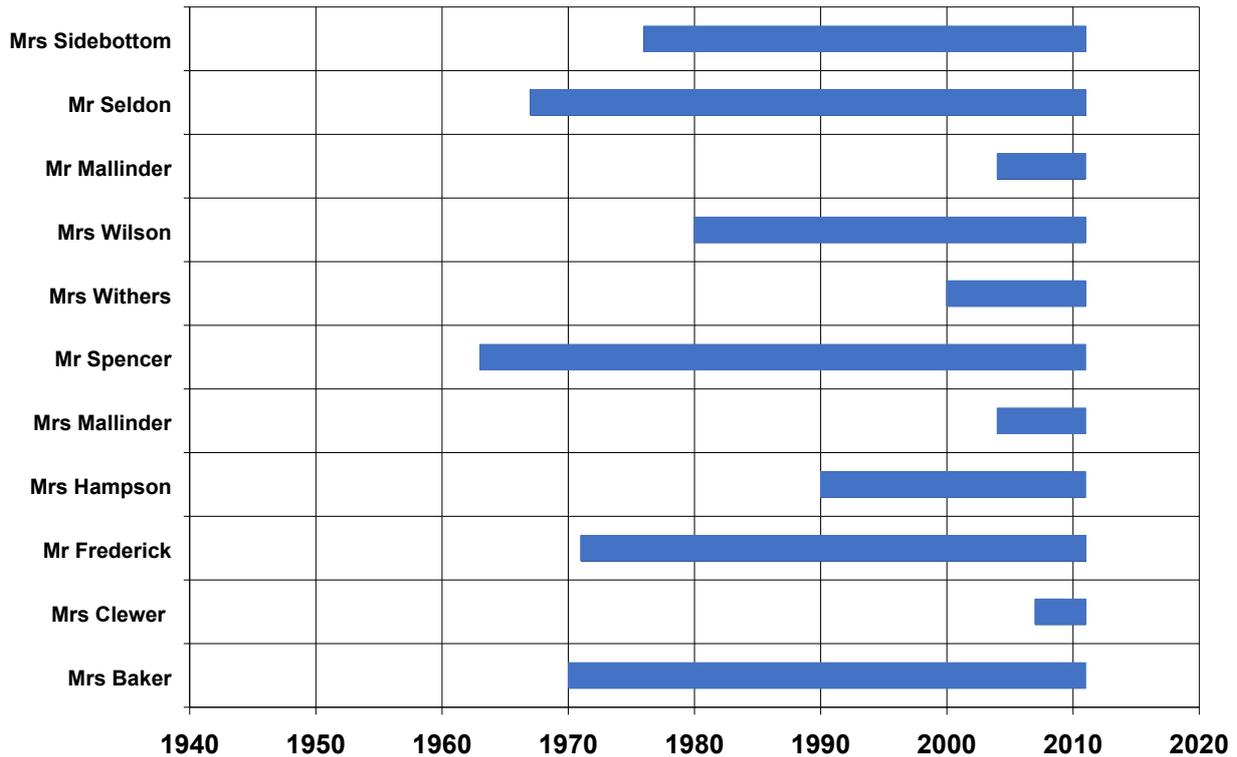
- 4.3 Mrs Baker has walked the path between A-B-C-D from 1970 to 2011, when she filled in the form, about 100 times a year. She says the path is by "kind agreement of Monica Rice" She says the path is owned by Monica Rice.

- 4.4 Mrs Clener has walked her dog along a path she describes as Monica's Lane about 200 times a year between 2007 and 2011. She has not been challenged but is not sure the owners are aware it is being used. From the map attached to her form she only shows the section between A-B.

- 4.5 Mr Frederick has used the path for about 50 years on foot about every fortnight. There were no notices until recently when notices were erected on Rew's Close which connects, to this route. There are no notices from the Challacombe Lane end. He knows that the land is owned by Mrs Monica Rice. He say's "This footway has always had access, via three successive footbridges, erected by CMPC (Combe Martin Parish Council). Only obstructed by notices as detailed."

- 4.6 Mrs Hampson has walked the route since 1990 about 75 times a year. She knows the route is owned by Monica Rice. She does not give the information to say if she had permission to use the route.
- 4.7 Mrs Mallinder has walked the route between 2004 and 2011 (when she completed her evidence form) about 30 times a year, she says it was shown on a walking map, and that she has not been stopped or turned back.
- 4.8 Mr Spencer has used "Monica's Path" since the 1960's to 2011, about 50 times a year on foot. He says CMPC have put up a street light. Before 2011 there has been a notice saying, "No vehicles or Foot Right of way from Rew's Close which leading into Monica's path." The route is owned by Monica Rice, but he has not had permission to use it. He says "access to the claim, at the south end, prevented by notices on Rews Close. It has had two footbridges erected over the stream by CMPC."
- 4.9 Mrs Withers has walked the route taking children to school since 2000. She says she thought it was signposted and has not noticed other signs or been turned away.
- 4.10 Mrs Wilson has walked the claimed route since 1980 to 2011. About 50 times a year when going to and from school, shops and the beach. She says there were no notices and everyone used it.
- 4.11 **User Evidence Forms for the route C-E Rews Close**
- 4.12 Mr Mallinder has walked Rew's close between 2004-2011. He says there is a sign stating, "Private Road No Access". He has not been given permission to use the route.
- 4.13 Mr Seldon has walked and cycled and used the route in a car from 1967 to 2011 when he filled in his form. He says a sign has been put up on Rew's close in approximately 2004 when the Sure Start centre was built. He has not obtained permission to use the route, additionally he says "Used it all the time even after the sign went up, when they built Sure Start. Used a lot as when a child, took own children that way, and played on bike to keep off main road."
- 4.14 Ms Sidebottom had used the route since about 1976, on foot for pleasure. She says in approximately 2008 a 'Private Road, No Public Right of Way on Foot or Vehicle' was erected. She appears to have continued to use it and says it had been used for many years and the street lights were paid for by CMPC.
- 4.15 **User evidence between points A-E: Combined Rosea Bridge Lane and Rews Close**
- 4.16 Mr Spencer has walked the route about once a week for 50 years. No notices until 2008, the street lights were put up by CMPC. The land was owned by Mr & Mrs Somerville. He adds "Rews Close formally open to public, but since 3 signs "Private Road, No Vehicular or Pedestrian Rights of Way" probably arising from improper HGV use to Combe Martin School. Street Light by CMPC arising from unrestricted used by public."
- 4.17 Mrs Withers has walked the route since 2000, about 100 times a year doing the 'school run' on foot and bicycle. On the user evidence form when asked "Have there to your knowledge ever Notices on the path? Her answer was "None that made sense."

4.18 Combined User Evidence Table Proposal 25 A-B-C-D-E



5. Adjoining property holder’s evidence

- 5.1 During the public consultation, prominent notices were displayed at each end of the route and notices and letters also sent to all adjoining properties and many responses and a petition from 34 residents were received.
- 5.2 Both Rosea Bridge Lane and Rew’s Close between points B-C-D and C-E are used as shared private access for numerous properties and these properties all contribute to the maintenance of these access roads by a formal agreement.
- 5.3 The presumption of *ad medium filum* means that when land abuts a highway (or private right of way), the boundary of that land is presumed to extend to the middle of that right of way (or highway), unless it can be shown otherwise, and it may therefore mean that all the adjoining landowners may own the lane, and have the power to dedicate.
- 5.4 However in this case, Mr & Mrs Somerville of Hillside, Rew’s Close and their successors, own the freehold of Rew’s Close and Rosea Bridge Lane between points C-D.
- 5.5 Mr Somerville sold access to each of the properties as they were built, along his private roads. Each new owner having to pay a fee to allow access to building plots. The Grantors, Mr & Mrs Somerville, reserved rights to erect gates at either end of the private roadways, and had those people paying for the private access to legally guarantee they and their successors in title would pay a proportion of maintaining the private roads Rew’s Close and the additional section of Rosea Bridge Lane, between B-C-D-E.
- 5.6 Mrs M Gosh, Granddaughter of Mr & Mrs Somerville, has been interviewed. She was the successor in title of her Grandparents and is still a Combe Martin resident. She has knowledge of her Grandfather ‘roping off’ the roads at both ends, one day each year to make sure they remained private. She remembers her grandfather being most particular about this and he did it for many, many years. He died in 1996. She inherited the title to the roads, when her grandmother died 21 months ago in August 2016.

- 5.7 During Mrs Somerville's latter years, she asked Mr Webber, of Heather Brae (now of Blue Bay) Rews Close, to administer the upkeep of the private roads and to keep day to day control of the roads.
- 5.8 Mrs Gosh knew that her Grandmother had been approached in the mid 2000's, by Mrs Lawson the Head Teacher of Combe Martin Primary School, to see if she would allow permissive foot access along the private roads for a 'Safer Walking Route to School'. Mrs Somerville had agreed in writing with the School and had permitted foot access for the children and all the families. She also allowed contractors working at the school to access the grounds via Rew's Close when necessary.
- 5.9 Mrs Gosh said that matters of parking and access had come to a head when the Sure Start Building was erected next to the school, resulting in new very clear signs being erected to state the roads were private and there was no public right of way, or parking.
- 5.10 Mrs Gosh has recently sold the private roads and the rights to grant access for Rew's Close C-E and Rosea Bridge Lane B-C-D, to Mr Webber (who previously helped her grandmother and grandfather look after the roads).
- 5.11 Mr Webber has been interviewed and has completed evidence forms. Rew's Close C-E and Rosea Bridge lane, D to B, were sold to him by Mrs Gosh from her Grandmother's estate in the last two years. Mr Webber has lived on Rew's Close at Heather Brea, since 1970, when he bought access to his own house. He later bought extra access from Mr Somerville to get to his garage, then he bought further access as he built his latest house Blue Bay on Rews Close. This access is clearly laid out on his deeds.
- 5.12 Mr Webber helped to organise the resurfacing of the lanes with Mr Somerville in 1974 and 1987, and on behalf of Mrs Somerville in 2014. Each of the house holders had to contribute to this. He knew Mr Somerville regularly put a rope at each end of the routes through the 1970's and continued to do this for many years after this. "The Private Signs were erected and paid for by funds donated by the residents. The road is maintained by the residents and the signs erected to stop vehicles going the full length of the road only to find they could not turnaround."
- 5.13 Mr Webber was aware of the permitted access to allow school children to walk the route and permitted access for the maintenance of the school grounds on occasions. He erected the latest signs at each end of the route on behalf of Mrs Somerville.
- 5.14 Now as the landowner of Rew's Close and Rosea Bridge Lane, Mr Webber knows the claimed paths to be Permitted Footpaths and is more than happy to allow access on a permissive basis. People are not stopped from walking over the roads or visiting. He has continued to allow permitted access for the school children and their families to walk the path and annually remind the school about asking the parents not to park on the private roads. He has kept the signs clean and added 'No through road' sign to the signs.
- 5.15 Mrs Irwin owned and lived at Sunhaven, Rosea Bridge Lane from 1956, until she died a couple of years ago. In her landowner evidence form she says, that she has had reason to remonstrate, with some people when they abused the privilege granted to them to walk through. She has owned her property for 60 years and during that time on numerous occasions she has told people that it was not a public right of way. She says that to her knowledge barriers were put up every New Year's Day to stop it being made public.

- 5.16 Mrs Irwin, enclosed a detailed sheet with her landowner evidence form and it is copied verbatim below, because it provides much clarification:

“Circa 1953 - A hedge separated Rosea Bridge Lane and Rew's Close. This was taken down by Mr Challacombe, at that time living in Rosea Bridge Lane, to access land he had purchased in Rew's Close field, that he used as a builder's yard. Mr Somerville, then bought and laid out Rew's Close and the new section of Rosea Bridge Lane. Mr Somerville, closed the road each New Year's Day by placing a rope across, preventing access from Rosea Bridge Lane, to maintain his legal rights.

Circa 1958 – My Mother-in-law, then living at Cranleigh Terrace, West Challacombe Lane, was taken ill and my husband placed a plank across the stream (West Challacombe Water) with the owner's permission, to enable me to visit her more easily.

Later – The residents of Rosea Bridge Lane were approached by Parish Councillor Mr S Irwin asking if anyone would object to a more stable plank being placed across the stream, no one objected, but the owner of the land did not agree in writing as she was advised not to by her solicitor.

Subsequently – The Parish Council widened the plank, without any consultation with the residents, or owners, and we were inundated with scramble bike riders, day and evenings, using the route as a race track. After complaints from the residents, the plank was narrowed to prevent this.

No-one, to my knowledge, has objected to pedestrians using the roads but having given an inch, some it would appear, want to take a mile.

The only reason properties in Rosea Bridge Lane have access across Rew's Close (Becky Meadow) is because each property owner purchased a right of way from Mr Somerville in the 1960's, additional properties since that time have had to purchase a right of way from Mr Somerville's heirs. At present, the residents of Rew's Close and Rosea Bridge Lane have some control over the roads. But if they become designated rights of way/public footpaths this control would be lost.”

- 5.17 Mrs Irwin, also enclosed a copy of a letter she had sent to CMPC on 5th December 2005, following the Parish Council meeting in November 2005, regarding the alterations to the footbridge in Rosea Bridge Lane. In this letter she says “as landowners of the section of the tarmacked road outside my property, I would like to object to any proposal to alter the bridge.” She explains the nuisance use by motorbikes. Mrs Irwin goes on to say “I would also like to object that nobody has consulted the owners of Rosea Bridge Lane who all part-own their frontages, the rights of way over by others seems to have been taken for granted. This section of Rosea Bridge Lane is a private road with no unauthorised access.”
- 5.18 Mrs Thwaites, of The Old Forge, Rosea Bridge Lane Footpath No 13, (just at Point D) says it is a private road, access rights were sold to them with the acknowledgement of access only to Rosea Bridge residents it is not a Byway open to all traffic. She explains the Private Road signs were put up to stop traffic trying using the lane. She gives an example of a Transit Van actually getting stuck between her property and the side of the lane.
- 5.19 Mrs Harding of the Mooring Rosea Bridge Lane has owned the property since 2007. The signs saying Private Road were in place before she moved in. Rew's Close and Rosea Bridge Lane are private roads. Rew's Close is owned by the Somerville Family and is used for access to properties. It is maintained by residents and is not a through road it is a Private Road.

- 5.20 The section of the route between points A and B crosses an empty plot of land that is owned by Mrs Monica Rice, she has owned it since the 1960's. Originally when the area was just fields, before the development in the 1950 and 60's, there was a gate at point A with the old gate post remaining. Mrs Rice regards the route as a permissive path. She has given permission for the route to be used a 'Safe route to School', but has not signed the route in any way at point A. Most Combe Martin residents still call the path between points A and B 'Monica's path'. Before retiring Monica owned a shop in the village and is very well known in the area.
- 5.21 Very clear notices were instated in 2004/5 paid for by the residents and the landowner at points B, C, D, E, saying at points B and C "Rosea Bridge Lane PRIVATE ROAD NO PARKING No vehicular or pedestrian right of way. Weight limit 7.5 tonnes." And at points C and E "Rews Close PRIVATE ROAD NO PARKING No vehicular or pedestrian right of way. Weight limit 7.5 tonnes."
- 5.22 A Petition was received in 2012, from the thirty-four residents and householders of Rew's Close and Rosea Bridge Lane, giving their names and addresses. They expressed very strongly that the roads were private and state:

"We the undersigned, as residents of Rews Close and Rosea Bridge Lane, strongly protest this proposal (the proposal to add a footpath). The only purpose for this proposal is to access West Challacombe Lane via the bridge at the top of Rosea Bridge Lane. There is a perfectly adequate footpath accessing West Challacombe Lane already designated via the lower part of Rosea Bridge Lane. We would suggest this proposal would be a gross misuse of tax payer's money as the bridge would have to be replaced to comply with health and safety regulations and the Council would be liable to pay for Liability insurance for both the roads and the bridge."

6. Parish Council involvement

- 6.1 It would appear from the landowner evidence that the original plank was put across the stream at point B, in 1958 by the one of the property owners to get to their relative's house more quickly than walking all the way round on Footpath No 13.
- 6.2 In the 1960s or 1970s another plank would appear to have been added, probably by CMPC, without permission from the landowner. This unauthorised work to enlarge the bridge, inadvertently allowed motorbikes and bicycles to use route and the Parish Council was quickly requested stop this from happening. Apparently, they subsequently installed handrails to narrow the bridge to stop this use. The structure remains unaltered today.
- 6.3 In the 1970s Combe Martin Parish Council apparently helped the residents of Rew's Close and Rosea Bridge Lane with street lighting, however this is no longer the case.
- 6.4 In 2005 it would again appear that CMPC wanted to upgrade the plank bridge and the landowners did not want the structure of the bridge changing because of the issues with motorbikes last time the parish council altered the bridge. The Parish Council were informed by letter that this was not a public right of way and the owners and frontages would not give permission for alterations on the permissive path. The Parish Council appears to have accepted this, as no physical changes have been made to the bridge.
- 6.5 In 2016 the Parish Council was again inquiring about repairing the footbridge, because the wood needed replacing and the underlying structure was badly corroded. They approached Devon County Council to ask when this path was likely to be considered for adding to the Definitive Map as a footpath and were told the review was still on going and at present it was not a recorded public footpath.

7 Rebuttal Evidence

- 7.1 There is direct rebuttal evidence given Mrs Goss the granddaughter of the first owner, Mr Somerville, who set out the private roads Rew's Close and the new part of Rosea Bridge Lane. She knows them to be private roads, with private access along them. Each of the plot owners having to purchase access rights on foot and in with vehicles from her Great Grandfather. Mr Somerville annually blocked access to the lane for all other users, by closing both ends of the lanes with a rope from 1953/54, to clearly demonstrate it was a private path and road, with permitted access only. Mrs Irwin, Mr Webber, Mr Harding and Mr and Mrs Thwaites corroborates this evidence stating that Rew' Close and Rosea Bridge Lane had been shut once a year to stop public rights of way from forming. This act clearly shows the lack of intention by the landowner to dedicate the route as any form of public right of way since it was first created in 1953/54.
- 7.2 Before 1958 there was no bridge of any kind at point B, the stream being too deep to cross. Mrs Irwin gives direct evidence that she asked permission from the owner to put a plank across the stream to enable her to reach an elderly relative more quickly. This plank bridge was put in with permission as a private access path.
- 7.3 The landowners jointly funded and have erected signs which clearly state it was a private road with no public rights, leaving no doubt that it was not a public highway or a public right of way. On occasions landowners have challenged users.

8 Discussion

8.1 Statute (Section 31 Highways Act 1980)

- 8.2 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.
- 8.3 Proposal 25, is supported by eleven user evidence forms giving evidence back to 1960's. These people have used it on foot. Mrs Baker who had been using it for one of the longest periods actually described the route as 'by kind permission of Monica Rice'. Other users with long usage knew it to be Monica's Path and some gave the oldest evidence, acknowledge the permission of Monica Rice for the section between points A and B. Of the eleven users, five have either said by permission of Monica or have used it to get to school, with express permission of the Somerville family.
- 8.4 Mr Somerville, the original owner, went to great lengths to stop public rights being gained on his new private roads, by barring the ways each New Year Day, from 1953/4. None of the user's report having seen the annual barrier, perhaps because they were not using the route on New Year's Day.
- 8.5 Mrs Irwin gives a good history of the route, she installed the first plank to bridge the stream, after asking permission of the landowner, CMPC seen to have done the occasional repair to the footbridge, although Mrs Irwin records this was not welcomed and the landowner would not give permission because it was a private permissive path.
- 8.6 The landowner clearly intended not to dedicate these private roads as public paths. However, have the public gained rights over these roads in the intervening years between the early 1980's and the new notices in 2004? Mr Webber (now the owner of the roads) helped Mr Somerville the then owner, arrange resurfacing and maintenance of the roads in 1974, 1987 and 2014. He is adamant that it was still known as a private

road and that the school asked permission from Mrs Somerville to use the route because they knew it was not a public path.

8.7 This is not a historical path. Rew's Close and the part of Rosea Bridge Lane and Monica's Path were developed from 1958, and as plots were sold and houses developed each new owner has had to buy access from the landowner and their heirs.

8.8 Some users noted new signs in 2008 indicating that the path was not private. This may be considered a calling into question of the public's rights for the purposes of considering the claim under statute, with the relevant period of use between 1988 and 2008. However, only six people have claimed used of the route as of right during that period and those have only been using parts of the route, thereby reducing the weight of the evidence. This use is not considered sufficient to raise a presumption of dedication at statute.

8.9 The annual blocking from 1958 is also considered to show a very clear lack of intention to dedicate the path as a public right of way. The notices reinforced this to the next generation of users. Therefore, the proposed addition cannot be considered for presumed dedication under Statute.

9. Common Law

9.1 In addition to the presumption of dedication which arises under Statute, 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 either expressly, the evidence 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.

9.2 At Common Law use does not raise a presumption of an intention to dedicate, but merely evidence of such an intention. Thus, the onus of proof lies on a person claiming a way as public to show that the facts, when taken, were such that the rightful inference to be drawn from them was that there was an intention to dedicate the way as public. Each case turns on whether the facts indicated this intention. No minimum period is required to be shown.

9.3 About the meaning of the words 'as of right' the common law adopted the Roman law principle that for long usage to give rise to a presumption of dedication, the user had to be *nec vi, nec clam, nec precario*: without force, without secrecy and without permission. This is what 'as of right' means.

9.4 The facts are that this is not a historical route and it did not physically exist before 1958. The roads were laid out as private roads. The landowner overtly continued to show this by: the annual blocking of the rights of all those who had not purchased access; giving permission to the school to use the route as a permissive footpath; and by putting notices on site clearly challenging public use. The modern use has been without challenge, interruption, force, or secrecy however it has been with permission. Therefore, an inference of dedication cannot be shown.

9.5 All thirty-four adjoining property owners have formally objected says they are private roads and not public rights of way.

10 Conclusion

10.1 The evidence is therefore not considered sufficient to show that a public footpath subsists, or can reasonably be alleged to subsist, over the route of Proposal 25. It is

therefore recommended that No Modification Order be made to add a public path between points A-B-C-D and C-E as shown on drawing number **HIW/PROW/18/25**.



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**DEVON COUNTY COUNCIL
Proposal 25
Combe Martin
Request to add a Footpath the Definitive Map**

drawing no. HIW/PROW/18/25
date May2018
scale 1:1000
drawn by AS

Notation

Route to be added A-B-C-D-E - - - -
Existing Footpath - - - - -

Meg Booth 
CHIEF OFFICER FOR HIGHWAYS
INFRASTRUCTURE DEVELOPMENT AND WASTE