

Schedule 14 Application

Addition of a public footpath from the county road opposite Broadmoor Farm to the county road south of Watergate Bridge, in the parish of Chittlehampton

Report of the Chief Officer of 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 to modify the Definitive Map and Statement in respect of the application.

1. Introduction

This report examines a Schedule 14 Application made in December 2017 by a resident of Chittlehampton for the addition of a public footpath in the parish.

The Definitive Map Review for the parish of Chittlehampton was completed in 1992. The application would normally have been deferred until the Review has been completed for the whole county, in line with the County Council's Statement of Priorities for keeping the Definitive Map and Statement up-to-date. However, the claim has been made in response to a planning application for development of the land over which the claimed path runs. As there is a risk of the claimed route being lost through the development, the application has been brought forward for investigation in line with current policies.

The evidence submitted in relation to the application is discussed in the appendix to this report.

2. Proposal

Please refer to the appendix to this report.

3. Consultations

General consultations have been carried out with the following results:

County Councillor Richard Edgell	– no comment
North Devon Council	– no comment
Chittlehampton Parish Council	– no comment
Chittlehamholt, Satterleigh & Warkleigh Parish Council	– no comment
British Horse Society	– no comment
Byways & Bridleways Trust	– no comment
Country Landowners' Association	– no comment
Devon Green Lanes Group	– no comment
National Farmers' Union	– no comment
Open Spaces Society	– no comment
Ramblers'	– support the application
Trail Riders' Fellowship	– no comment

Specific responses are detailed in the Appendix to this report and included in the background papers.

4. 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.

5. Legal Considerations

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

6. Risk Management Considerations

No risks have been identified.

7. Equality, Environmental Impact and Public Health Considerations

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

8. Conclusion

It is recommended that no Modification Order be made in respect of the Schedule 14 application.

9. Reasons for Recommendations

To undertake the County Council's statutory duty under the Wildlife and Countryside Act 1981 to determine the Schedule 14 application and to keep the Definitive Map and Statement under continuous review.

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Chulmleigh & Landkey

Local Government Act 1972: List of Background Papers

Contact for enquiries: Caroline Gattrell

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Tel No: 01392 383240

Background Paper	Date	File Ref.
Correspondence Files	Current	DMR/CHITT

cg240518pra

sc/cr/Addition of public footpath from county road opposite Broadmoor Farm to county road south of Watergate Bridge Chittlehampton 03 260618

A. Basis of Claim

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

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

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

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

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

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

Schedule 14 application for the addition of a footpath from the county road opposite Broadmoor Farm to the county road south of Watergate Bridge, as shown between points A – B on plan HIW/PROW/17/65.

Recommendation: That no Modification Order be made in respect of the application.

1. Background

- 1.1 The application was submitted in December 2017 by Mrs Sherwood of Ferndown. It was made in response to planning application number 63710 submitted to North Devon Council in September 2017 for a free-range egg production unit by Mr and Mrs Webber of Lower Rollestone, Tawstock. North Devon Council consulted on the planning application between October and December 2017.
- 1.2 The Definitive Map Review for Chittlehampton parish was carried out during 1991-2. There were no valid proposals put forward for consideration.
- 1.3 As there is a risk of the claimed route being lost through development, the application has been brought forward for investigation out-of-turn, in line with current policies.

2. Description of the Route

- 2.1 The route starts at the county road, opposite the entrance to Broadmoor Farm, in the parish of Chittlehamholt, Satterleigh and Warkleigh, at point A and runs northwards across a field to meet the county road south of Watergate Bridge at point B, near the junction with Chittlehampton Footpath No. 8.

3. Documentary Evidence

- 3.1 Ordnance Survey mapping, 1809 -1962. Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way".
 - 3.1.1 A route similar to the application route is shown on the 1st Edition large scale 25" Ordnance Survey mapping of 1888 generally as a double dashed track following field boundaries and marked 'FP'. This route also appears on the 2nd Edition 25" mapping of 1904, but not on subsequent mapping.
 - 3.1.2 Several maps using Ordnance Survey base mapping, and dated before the Definitive Map was compiled in the 1950s, were also submitted with the Schedule 14 application. These maps show a route on a similar alignment to the application route, following historic field boundaries.
- 3.2 Chittlehampton Tithe Map and Apportionment, 1840-42. Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, limiting the possibility of errors. Their immediate purpose was to record the official record of boundaries of all tithe areas. Public roads were not titheable and were sometimes coloured, indicating carriageways or driftways. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over a route shown. Such information was incidental and therefore is not good evidence of such. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not numbered are usually included under the general heading of *'public roads and*

waste'. Being first class, it is a legal and accurate record of all matters shown.

- 3.2.1 Being first class, the Chittlehampton tithe map is a legal and accurate record of all matters shown. It was surveyed by Mr H Crispin of South Molton at a scale of 3 chains to 1". The original document is held at the National Archives, with copies for the parish and diocese held locally.
- 3.2.2 The land crossed by the application route are recorded as plots 2875 – Tree Field, 2878 – Quarry Field, 2879 – Waste, 2880 – Dunn's Field, and 2885 – Wicket Close, which are mainly arable. The plots are part of the Downs, owned by the Trustees of the late Lord Rolle and occupied by a Mrs Crocker. The application route is not shown or referred to on the map or apportionment.
- 3.3 Chittlehampton Vestry Minutes, 1846 -1894. Such records can provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Vestry had powers only in relation to public highways through the appointed Surveyor of Highways, which they had a responsibility to maintain.
 - 3.3.1 There are no references to the application route or any right of way across the Downs.
- 3.4 Chittlehampton Parish Council Minutes and Records, 1894 onwards. The Minutes provide information about the Council's views regarding the public highways in the parish and, in some cases, the management of such routes. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways, which they had a responsibility to maintain.
 - 3.4.1 The records contain a list of 'footpaths' dated circa 1927, which contains a route on a similar alignment to the application route, described as running from the '2nd gate [on] Dennis's Hill across [the] Downs to Broadmoor Road by Broadmoor Farm to [the] Warkleigh boundary'.
 - 3.4.2 At a meeting on the 16th December 1938 the Parish Council received a letter complaining that a stile near Broadmoor needed repairing and asking who was liable for the repair. It was resolved that the Parish Council would erect a new stile if the Estate (Rolle – Clinton Devon) provided the material.
 - 3.4.3 Amongst the Council's general papers from the 1950s, is a list of the 'public footpaths within the parish', which were grouped into those thought to be required in the future and those it was thought not. Paths 3, 9, and 10 were included in the group that were not thought to be required in the future. Additional comments noted that path 3 would be required but that 9 and 10 would not. Path 9 relates to a route shown on historic mapping on a similar alignment to the application route.
 - 3.4.4 In May 1958, following a meeting between the County Council representative, Mr Rowe and representatives of the Parish Council, a detailed list of footpaths in the parish had been received. The Clerk read the list and the Parish Council signified their approval. The list did not include the application route, on either the claimed or historic alignment.
- 3.5 Definitive Map Parish Surveys, 1950s. The compilation process set out in the National Parks and Access to the Countryside Act 1949 involved a substantial amount of work and such records are considered a valuable source of information. The rights of way included in the process had to pass through draft, provisional and

definitive stages with repeated public consultations.

- 3.5.1 Path 9 included in the Parish Survey, signed by Miss EH Potter the Parish Clerk, was a path on a similar alignment to the application route.
- 3.5.2 It was described as running 'from [a] point just below [the] mile-stone at Dennises Hill on [the] Chittlehampton – Chulmleigh Road, to [a] point on [the] road from Brightley Cross to Broadmoor Corner, opposite Broadmoor Farm to [the] parish boundary'.
- 3.5.3 It was described as a 'track across fields' which was very little used. The path was put forward for inclusion on the draft Definitive Map, but was withdrawn by the Parish Council on the 28th February 1958, before the draft map was published.
- 3.6 Finance Act, 1909-10. The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.
 - 3.6.1 The application route is included in hereditament 224, part of Eastacott. In the Field Book entry for this hereditament, there is a deduction for public rights of way or user of £125, for a right of way through fields with Ordnance Survey numbers 174, and 424, 471, 506, 505, 504, 474, and 475. The fields numbered 424, 471, 506, and 505, relate to what is now recorded as Chittlehampton Footpath No. 8, while the fields numbered 504, 474, and 475, likely relates to a path shown on base mapping with a similar alignment to the application route.
- 3.7 Aerial Photography, 1946 -2007. A route on a similar alignment to the application can be partially seen on the 1940s RAF photography, though by the 1999/2000 photography, there is no trace, and field boundaries have also been lost.
- 3.8 Land Registry, 2016. The application route passes through DN406564, registered Mr MJ Webber of Rosemoor Barn, Tawstock since 1998. No reference is made to any right of way on a similar alignment to the application route, though the Parish has a right of way for all purposes over and along the track over the enclosure numbered 505 between points C – D on plan 2, which is the eastern end of Footpath No. 8, to access fields 506, 472, and 465.
- 3.9 Route Photographs, 2018. Site photographs of the application route show that it has not been available or used for some time, with wooden fencing blocking it at either end. There is a reasonably substantial hedgerow grown around the fencing at point B, while at point A there is recent stock proof fencing inside the hedgerow and with additional soil dumped on the roadside verge opposite Broadmoor Farm.

4. Planning Application

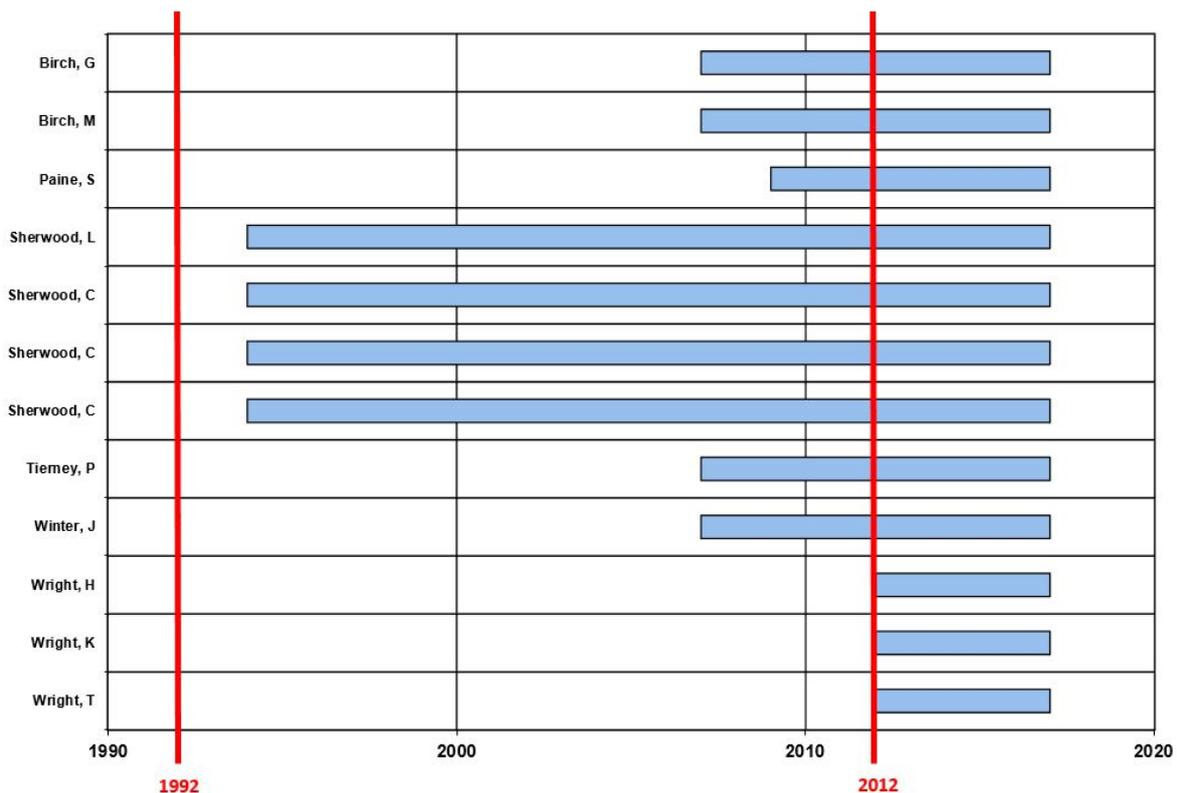
- 4.1 Mr and Mrs Webber submitted a planning application for an egg production unit which affects the application route on the 8th August 2017 and which may also impact on Chittlehampton Footpath No. 8. The planning application and associated planning statement did not initially deal with the matter of Footpath No. 8, which was subsequently raised by an objector and the County Council's public rights of way section. This application has now been given approval by North Devon Council.

4.2 Representations to the planning application were made by Mr Tierney, Mrs Winter, and Mr and Mrs Sherwood, who have submitted user evidence forms in support of the Schedule 14 application. Chittlehampton Parish Council also responded to the planning application. They all refer to a footpath being affected by the planning which is not currently included on the Definitive Map, which is the subject of the Schedule 14 application.

5. User Evidence

5.1 Ten user evidence forms were received in support of the Schedule 14 application detailing use on foot between 1994 and 2017, from 3 households in close proximity to the application route. No further forms were received in response to the informal consultation between February and April 2018.

5.2 Use of the route has been stated to vary between daily and a couple of times a year, as part of a circular walk incorporating Footpath No. 8. Users state that it has been accessed via a stile at point A and a gate at point B, until these were fenced off in about 2012. Since the stile and gate were obstructed, the users report that they have had to vary the alignment used and have used the gates at points C and D instead, and part of Footpath No. 8 between F-E-D (shown on plan HIW/PROW/17/65/2). Several users state that it is local knowledge that the application route is public. Some users recall being seen by farm workers.



6. Landowner Evidence

6.1 Mr and Mrs Webber of Lower Rollestone, Tawstock have personally owned the land at the Downs since 1989 (registered in 1998), though their family have farmed it since 1945 and owned it since 1959. They do not live onsite, visiting the location to carry out their farming business. They have not seen anyone using the route and state that there are established hedgerows at the access points, A and B.

- 6.2 Mr and Mrs Hammett of Broadview, Broadmoor Farm opposite the southern end of the application route. The farm has been in their family for many decades.
- 6.3 Mrs Hammett was born at the farm in the 1940s and used a footpath on a similar alignment to the application route occasionally to go to and from school. She recalls that at some point in the 1960s, the path she had used was removed, which used the same access points, A and B, as the application route. There is currently no access at these points.

7. Discussion

- 7.1 Statute – Section 31 Highways Act 1980. There are several possible events which may be considered sufficient to call the public's use of the route into question. The Schedule 14 application itself can be considered as such an event if there is no other event which can be considered sufficient. Users do recall fencing being erected at points A and B in about 2012. It is not clear why this fencing was erected; however, it did affect how the application route was used, therefore, the relevant period to be considered is 1992-2012.
- 7.1.2 Though the application route appears to have been used regularly from 1994, without interruption or obstruction, it has not been used for the full 20-year period. Consequently, the application fails under Statute.
- 7.1.3 A claim for a right of way may also exist at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.
- 7.2 Common Law. On consideration of the application route between points A – B, the first time a route between these points appears on any maps is on the large-scale Ordnance Survey mapping of 1888 and 1904. These show a route on a similar alignment to the application route, following historic field boundaries. It does not appear on later additions, though from the aerial photography from 1947, a route can mostly be seen.
- 7.2.1 Under the Finance Act 1910, a deduction was made for a Public Right of Way or User which may relate to the claimed route.
- 7.2.2 A path on a similar alignment to the application route, following the historic field boundaries between points A – B rather than the straighter route as now claimed, was initially surveyed by the Parish Council for inclusion on the Definitive Map as path number 9, which suggests that it may have had a reputation of being a public footpath at that time. However, it was subsequently withdrawn by the Parish Council in 1957 and not included on the draft Definitive Map. No objection to the omission of the path was made following publication of the Draft and Provisional maps.
- 7.2.3 No other more significant historic maps or references in historical documentary material have been submitted or discovered to add more substantial weight to any suggestion that the route had the reputation of being a public footpath in the past.
- 7.2.4 This does not mean that re-dedication could not have taken place at a later date, through use by the public. At common law, a shorter period of time than the 20 years required under statute, combined with high frequency use, can be considered for

implied dedication, if such use was so open and notorious that a landowner could have been aware of it.

- 7.2.5 The user evidence submitted details use from 1994 until 2012, when fencing appeared at either end of the route. It is not known why this fencing was erected. However, because of it, users varied their route to use a different alignment with alternative access points. Therefore, the use dating from 2012 onwards does not relate to the application route.
- 7.2.6 Responses to the informal consultation from local residents indicates that an alignment similar to the application was used back in the 1940s and 1950s, but only to a minimal extent. They recall that this similar route was 'removed' in the 1960s.
- 7.2.7 The current landowners' knowledge dates back 1945, and they have not seen anyone using the application route, A – B. However, they do not live in the parish and would not necessarily have been aware of any use.

8. Conclusion

- 8.1 The documentary evidence, whilst suggesting that an alignment similar to the application route may have had a reputation of being a public footpath in the past, is contradictory and is considered insufficient to support a claim that a public right of way subsists or is reasonably alleged to subsist over the application route.
- 8.2 As discussed at 7.1.2 the period of use from 1994 – 2012, when fences were erected on the claimed route, is insufficient to raise a presumption of dedication at Statute. The user evidence is also considered of insufficient quantity, and not sufficiently open and conspicuous to support an inference of dedication at Common Law, of either the route as claimed or on an alternative alignment as shown on plan 2.
- 1.3.1 It is therefore recommended that no Order be made to add a footpath in respect of the Schedule 14 application.



map ref: SS 6324

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Devon County Council
Definitive Map Review - Chittlehampton
Schedule 4 application:
Claimed footpath across the Downs

drawing number **HIW/PROW/17/65**

date **December 2017**

scale **1:5,000**

drawn by **CLG**

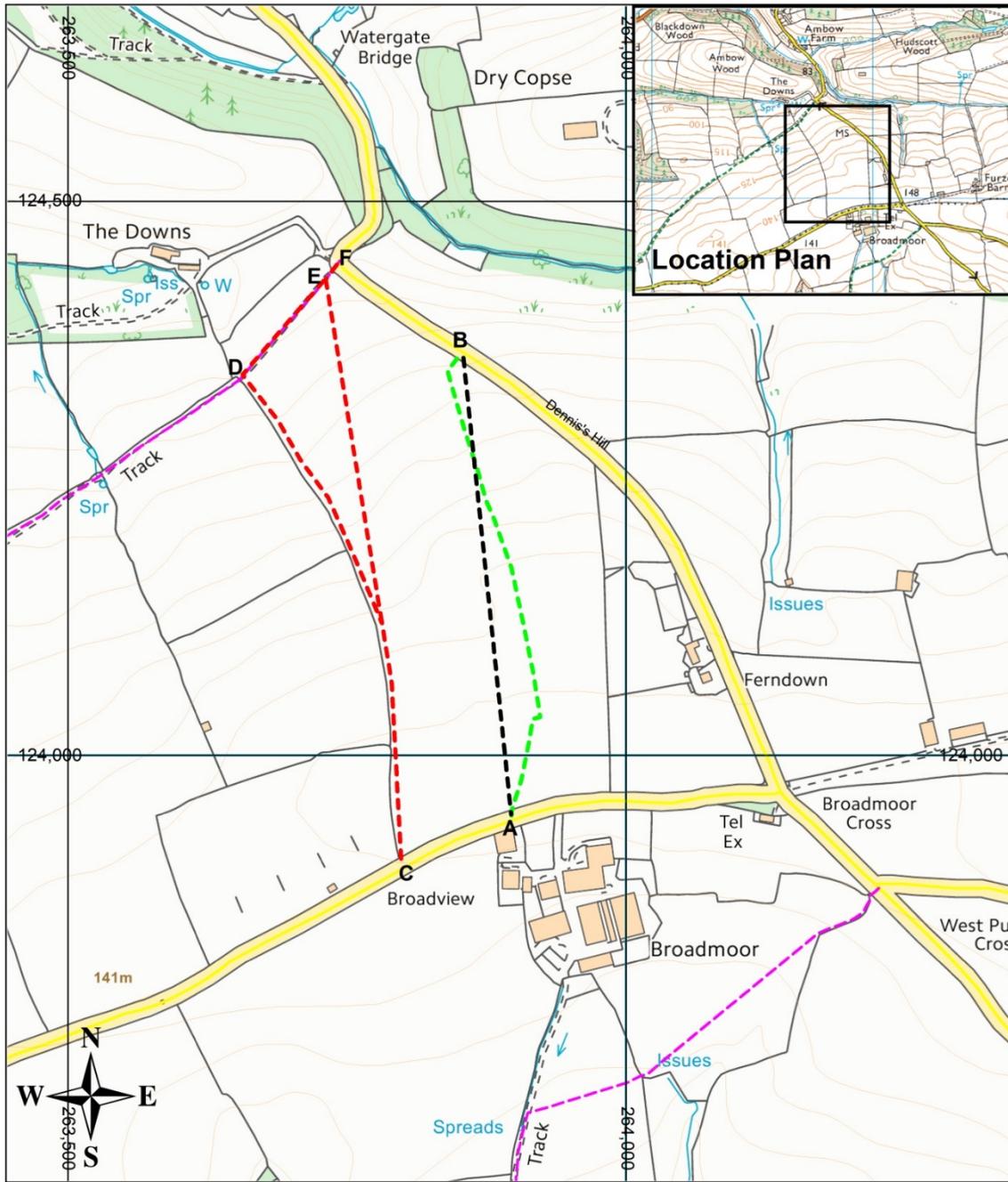
Notation

Claimed footpath A - B (approx 415 m) -----

Existing footpath - - - - -

Meg Booth
 Chief Officer for
 Highways, Infrastructure
 Development & Waste





map ref: SS 6324

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Devon County Council
Definitive Map Review - Chittlehampton
Schedule 4 application:
Claimed footpath across the Downs
Committee Plan 2

drawing number **HIW/PROW/17/65/2**

date **May 2018**

scale **1:5,000**

drawn by **CLG**

Notation

- Claimed footpath A - B (approx 415 m) - - - - -
- Historic alignment A - B (approx 435m) - - - - -
- Alternative alignment C - E - F (approx 550m)
- Alternative field edge alignment C - D - E - F (approx 615m) - - - - -
- Existing footpath - - - - -

Meg Booth
 Chief Officer for
 Highways, Infrastructure
 Development & Waste

