

**Definitive Map Review 2018-2019
Parish of Bampton (part 1)**

Report of the Chief Officer for Highways, Infrastructure Development and Waste

Please note that the following recommendations are subject to consideration and determination by the committee before taking effect.

Recommendations: It is recommended that:

- (a) A Modification Order be made to modify the Definitive Map and Statement by: upgrading Bridleway No. 20, Bampton to a Restricted Byway (not a Byway Open to All Traffic) as shown on drawing number HIW/PROW/18/060A (Proposal 2); and**
- (b) No Modification Orders be made to modify the Definitive Map and Statement in respect of Proposals 1 and 3.**

1. Introduction

The report examines the routes referred to as Proposals 1 – 3 arising out of the Definitive Map Review in the Parish of Bampton in Mid Devon. Proposals 4 and 5 will be brought to the next committee.

2. Background

The original parish survey under s. 27 of the National Parks and Access to the Countryside Act, 1949 completed in the summer of 1950, initially proposed 24 routes (22 footpaths, 1 bridleway & 1 RUPP) for consideration as public rights of way. After review by Tiverton Rural District Council and Devon County Council and publication of the draft and provisional Definitive Map, 22 routes were recorded on the conclusive Definitive Map for Tiverton District Council published in June 1964.

No suggestions were made by the parish for changes to the public rights of way in the uncompleted Devon County reviews of 1968 and 1977. In the Limited Special Review of Roads Used as Public Paths (RUPPS), also carried out in the 1970s, RUPP No. 4, Bampton was re-classified as a bridleway and RUPP NO. 1, Huntsham (a neighbouring parish) was considered to have initially been recorded in the wrong parish and was re-classified as Bridleway No. 25, Bampton.

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

Mid Devon District Council Footpath No 3 Bampton Public Path Diversion Order 1979
Mid Devon District Council Footpath No 2 Bampton Public Path Diversion Order 1992
Mid Devon District Council Footpath No 1 Bampton Public Path Diversion Order 1992
Devon County Council Footpath No 12 Bampton Public Path Diversion Order 2006
Devon County Council Footpath No 7 Bampton Public Path Diversion Order 2009

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

The current review was opened with a parish public meeting in October 2018 held at the town council meeting. The consultation map showing 5 proposals for change was published in March 2019 and included three Schedule 14 applications made in 2005 by the Trail Riders Fellowship. The two other proposals were for the addition of bridleways along lanes connecting to a recorded bridleway

3. Proposals

Please refer to the appendix to this report.

4. Consultations

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

County Councillor Colthorpe	-	no response
Mid Devon District Council	-	no response
Bampton Town Council	-	do not support proposals
Borden Gate Parish Council	-	does not support proposal 3 (affecting parish)
Country Landowners' Association	-	no response
National Farmers' Union	-	no response
British Horse Society	-	no response
Ramblers'	-	do not support proposals
Trail Riders' Fellowship	-	no response
Devon Green Lanes Group	-	no response
Cycle UK	-	no response

5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

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

9. Conclusion

It is recommended that a Modification Order be made to modify the Definitive Map and Statement by upgrading Bridleway No. 20, Bampton to a Restricted Byway as shown on drawing number HIW/PROW/18/060A (Proposal 2), but that no Modification Orders be made in respect of Proposals 1 and 3.

10. Reasons for Recommendations

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

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Electoral Division: Tiverton West

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
DMR/Correspondence File	2018 to date	DMR/Bampton

tw050619pra
sc/cr/DMR Parish of Bampton (Part 1)
03 210619

A. Basis of Claim

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

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

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

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

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

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

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

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

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

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

1. Proposal 1: Schedule 14 Application for the proposed upgrade of Bridleway No. 4, Bampton to a Byway Open to All Traffic, as shown between points A – B – C – D on drawing number HIW/PROW/18/059.

Recommendation: It is recommended that no Order be made in respect of Proposal 1.

1.1 Background

1.1.1 In November 2005 the Trail Riders Fellowship submitted a Schedule 14 Application to the County Council for the upgrading of Bridleway No. 4, Bampton to a Byway Open to All Traffic (BOAT), supported by maps as documentary evidence and ten user evidence forms. This was one of a number of Schedule 14 applications made by local representatives of the Trail Riders Fellowship in 2005 prior to the NERC Act (Natural Environment & Rural Communities Act) that came into force in May 2006. The NERC Act would restrict the ways that rights of ways for motorised vehicles in the countryside could be created or recorded. A right for motor vehicles was preserved under NERC if a Schedule 14 Application had been made prior to 20th January 2005, that is compliant with the regulations for Schedule 14 applications under the Wildlife & Countryside Act 1981, or the surveying authority has made a determination of an application for a BOAT before 2 May 2006.

1.1.2 This application was made after 20th January 2005 and also was not fully compliant with the regulations as notice of the application had not been served on the landowners. However, as an application had been received, the claim was included in the parish review as made, for the upgrading of a recorded bridleway to a BOAT. As there are limited other exceptions in which vehicle rights may be preserved it would be likely that, subject to sufficient evidence, the route could only be upgraded to a restricted byway.

1.2 Description of the Route

1.2.1 The route starts at the bend in the county road south of Borough and Zeal Farms at point A (GR SS 9937 2204) and proceeds generally east north eastwards along a defined lane between two hedge banks, passing point B (GR SS 9837 2239). The way continues in generally the same direction, starts to go downhill and passes an entrance to Sunderleigh Farm to the north east) at point C (GR SS 9764 2258) and then continues down a steeper, deep cut section of the lane to end on the county road at Ford Mill Cross at point D (GR SS 9729 2271).

1.2.2 The total length of the bridleway is approximately 2250 metres with an improved stoned surface along most of the lane, with grass in the centre in some portions. There is loose stones and bedrock in the section between points C and D. The bridleway is called Wellington Lane by residents and users but is un-named on the maps viewed for this report. There are photographs of the route in the backing papers.

1.3 Documentary Evidence

1.3.1 Ordnance Survey and Other Maps

1.3.1.1 The Ordnance Survey and other mapping do not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.

- 1.3.1.2 Cassini Historical Maps 1809 – 1900 Sheet 191 Okehampton & North Dartmoor
These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.
- 1.3.1.3 Old Series 1809: The bridleway is shown as a defined lane in the similar manner to the now county roads running parallel to the north and south of the route. The new Huntsham road has not been constructed and so Bridleway No. 4 would have been the road eastwards from Bampton to Huntsham or into Somerset.
- 1.3.1.4 Revised New Series 1899-1900: The route is now shown as a narrow double-sided lane with dark shading between the lines and corresponding to 'Unmetalled Roads' in the map key. The new county road (constructed by early 1858 and called the new Huntsham road in the parish minutes) to the south of the bridleway between Ford and Downhills is now in situ, coloured orange and classed as a 'Metalled Roads; Second Class'. The new road follows the course of a stream as shown on the 1809 map and would have less of a gradient than the bridleway, particularly at the west end between points D and B.
- 1.3.1.5 Popular Edition 1919: The bridleway is shown as a solid black line along the route described as 'Minor Roads' with the connecting county roads shown with orange dashed lines 'Indifferent or Bad winding road' with the new road to the south having solid orange colouring 'Fit for ordinary traffic'.
- 1.3.1.6 Greenwood's Map of Roads 1825
These well-made maps were produced using surveyors and a triangulation system and are considered to be reasonably accurate. They were published in 1825 at a scale of one inch to the mile and date between the 1st edition OS maps and Tithe Maps published in the mid 19th century. Roads were shown as either turn pike roads with a bold line on one side of the road or as cross roads. The bridleway is shown as a cross road and follows the current alignment although the west end of the lane is slightly eastwards of point D. The current position of point D is shown on the Tithe map and later maps. The new Huntsham road had not been constructed when this map was published.
- 1.3.1.7 OS 1st Edition 25" to a mile 1880-1890
The route is depicted as a defined lane throughout its entire length with several mature hedgerow trees shown in the adjoining hedges. Pecked lines within the lane would indicate the difference in surfacing across the width of route at that time. The lane has six benchmarks shown along the route and its own compartment numbers of 456, 848 and 790 on the three sheets of the 25" maps, with respective areas of 0.476, 3.162 & 0.858. There is a pecked line across the east end of the lane at point A and a solid line across the west end at point D. The lane is not named on this map. This map does show the new Huntsham Road to the south of Bridleway No. 4, Bampton.
- 1.3.1.8 OS 1 inch to a mile maps of 1946, 1960 & 1965
On the 1946 edition the route is shown as an uncoloured defined double-sided lane and corresponding to 'Roads under 14' metalling – Bad'. The new road to the south is shown coloured orange 'Roads under 14' Metalling. Good'.
- 1.3.1.9 In the 1960 edition the route is shown by a double-sided white lane (Minor Roads in towns, Drives and Unmetalled Roads) for the east end of the lane only to south of Borough Farm. The remainder of the lane is shown by a dashed line corresponding

to 'Footpaths and Tracks'. The 1967 edition shows public rights of way as recorded on the Definitive Map. The route is shown as a defined white lane (as in 1960) from point A to approximately a third of the way with a dashed red line along the lane. The rest of the lane is only depicted by a dashed red line, indicating a 'Public Path – Bridleway'.

1.3.1.10 OS Post War Mapping A Edition 2500 1970

The route is shown as a defined lane along its entire length and labelled track on the two map sheets. No bench marks are now shown along the lane. There are two compartment numbers 7628 at 3.06 acres and 6358 at 1.51 acres. Pecked lines within the route at the east end indicate a differentiation in surface across the lane and there is a pecked line across the west end of the lane at point D.

1.3.1.11 OS 1:25,000 maps of Great Britain – Sheet 21/60 SS92 1950

The 1:25,000 'Provisional edition' or 'First Series', was Ordnance Survey's first civilian map series at this medium scale, the forerunner of the modern *Explorer* and *Outdoor Leisure* maps and published in limited colour between 1937-1961. By 1956 it covered 80% of Great Britain, everywhere apart from the Scottish Highlands and Islands. The series is useful for showing rural and urban areas in much greater detail than the standard one-inch to the mile (1:63,360) maps.

1.3.1.12 Minor roads, lanes and private drives/access lanes are all shown as white uncoloured roads/lanes described as 'Other Roads, Poor, or unmetalled'. The conclusive Definitive Map had not been published when this map was published. Some routes are shown as pecked and dashed lines labelled F.P. and B.R. and some as two narrow solid lines. The map contains the standard OS disclaimer 'The representation of any other roads, tracks or paths is no evidence of the existence of a right of way'.

1.3.1.13 Sheet SS92 published in 1950 shows the route as a defined uncoloured lane in the similar manner to the county roads it connects to at point A and described as 'Poor, or unmetalled Other Roads'. No lines across the route are shown along the full length of the route or at either end.

1.3.2 **Tithe Maps and Apportionments**

1.3.2.1 Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring can indicate carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not included within an individual apportionment are usually included under the general heading of '*public roads and waste*'.

1.3.2.2 Bampton Tithe Map & Apportionment 1844

On the Bampton Tithe Map the route is shown colour washed in the manner of what are now county roads in the vicinity. The lane is not numbered. The county road (referred to as 'the new road to Huntsham' in later parish council minutes) to the south of Bridleway No. 4 does not exist in 1844. From point A the lane is shown continuing eastwards and at the parish boundary and end of the map is written 'To Wellington'. As the main route to Wellington at that time, it could be the origin of the name Wellington Lane.

1.3.3 Finance Act Plans and Field Books 1910

- 1.3.3.1 The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.
- 1.3.3.2 The allowance given was often on the basis of a figure such as a £1 times 25 yp. The yp refers to years purchase, a method of valuation used to convert a property's income flow (rent) into an appropriate capital sum on the basis that the capital value of a property is directly related to its income producing power. This method of valuation seems to be often used in Finance Act valuations.
- 1.3.3.3 Bridleway No. 4, Bampton extended across three map sheets of the 25" OS 2nd Edition used. The east end of the lane is included within hereditament 343, Dowhills Farm and there is no break of colouring at the junction with the county road at point A. The two fields on the north side of the lane west of point A are included in hereditament 344, Borough. From point B westwards the lane lies wholly within hereditament number 504, Sunderleigh with the land on either side of the lane. The colouring does not break across the lane at point B or point D at the junction with the county road.
- 1.3.3.4 Hereditament number 343, Dowhills Farm of 268 acres, was owned by Hugh Troyte (Huntsham Estate) and occupied by James Hewson at an annual rent of £230 per annum. The second page of the field book includes the note 'F. P. & r/o/w over lane 1/-/- x 24 £24'. The sum of £24 for the footpath and right of way is carried forward to the page 4 heading of 'Public Rights of Way or User'. There is a pecked line labelled F.P. across two fields going north west from the farm buildings towards point A on the 2nd Edition mapping. However, the reference to the 'right of way over lane' could apply to two different lanes that lie within the hereditament. Bridleway No. 4 being one lane and the other one the lane running south from the farm buildings (unsurfaced, unclassified county road for the first part and has no legal status for the rest of the lane), to the junction with the county road at Bampton Down Cross. The holding included land on both sides of the lane.
- 1.3.3.5 Hereditament number 344, Borough was also owned by High Troyte and occupied by James Drew. The second page of the field book refers to 'F.P. 1 r/ow 1/10- x 24 £36'. The location of the right of way is not stated although there was a track labelled F.P. across two fields east of point A. Borough Farm did not include any land south of the lane. The £36 was carried forward to the page 4 heading of 'Public Rights of User'.
- 1.3.3.6 Sunderleigh, was hereditament number 504, owned by Hugh Troyte and occupied by James John then M Webber. On page 1 of the field book under 'Fixed Charges, Easements, Common Rights and Restrictions' is written 'R/o/w from Ford Mill to top of Dowhills Shed'. Page 2 refers to 'R/o/w over Lane 1/-/- x 24 say £25'. The sum of £25 is carried forward to page 4 under 'Public Rights of Way or User'. The holding included land on both sides of the lane.

1.3.4 Vestry Minutes

- 1.3.4.1 Prior to the formation of District Highway Boards in the early 1860s and the later Rural District Councils (1894) the responsibility for the maintenance of public highways generally belonged to the parish and was discharged by locally elected Surveyors of Highways. Vestry minutes from 1763 to 1881 are held by the South West Heritage Centre.
- 1.3.4.2 The Notice of a vestry meeting to be held on 18th February 1858 gave notice that the meeting was to *consider and determine whether the highway hereinafter described which Charles Troyte esquire, the Reverend Peter Acland, Arthur Mills Esquire and Frances Troyte Spinster have given notice that they intend to dedicate to the use of the public one of sufficient utility to the inhabitants of the parish of Bampton to justify their being kept in repair at the expense of the parish, a certain Highway already made and extending from the Hamlet of Ford Mill in a south easterly direction by way of Pipshayne and Dowells to the boundary of the parish of Huntsham and containing in length two miles eight chains and one pole.* This description refers to the setting out of the 'new' road to Huntsham, now a county road.
- 1.3.4.3 At the Vestry meeting it was proposed, seconded and *unanimously resolved that the Highway mentioned in the notice concerning this meeting is of sufficient utility to the inhabitants of the parish to justify it being kept in repair at the expense of the parish accordingly.* This shows that the parish accepted the new road as a highway maintainable at public expense.
- 1.3.4.4 In 1859 notice was given of the meeting to be held on 17th June 1859 to *consider and determine whether it is expedient that a certain highway situate in this parish and extending from the Hamlet of Ford Mill to Zeal otherwise Borough Three Cross Way, and of the length of two thousand four hundred and forty two yards (2233 metres), and of the average width of fourteen feet and four inches, shall be stopped up the same having become and now being a useless and unnecessary Highway.* This notice relates to the 'old' road, now recorded as Bridleway No. 4, the proposal route.
- 1.3.4.5 At the Vestry meeting it was proposed and seconded that *it is deemed expedient to entirely stop up the Highway mentioned and described in the notice concerning the meeting – carried unanimously.* This shows that the parish considered that the old road (Proposal 1) should be stopped-up.

1.3.5 Quarter Sessions/Magistrates Petty Sessions

- 1.3.5.1 After the parish vestry meeting had decided to stop up the lane, the relevant procedures were followed through. A certificate was obtained from two Justices and the appropriate notice of the stopping up published saying that application would be made to Her Majesty's Justices of the Peace assembled at Quarter Sessions at the Castle of Exeter on 18th October 1859.
- 1.3.5.2 The notice dated 9th July 1859 signed by the four Surveyors of the Highways of the parish stated that 'such highway had become and was wholly useless and unnecessary in consequence of a more level and commodious highway leading in a parallel direction having been recently made and which recently made highway is now used by the public instead of the highway proposed to be stopped up'. The

required proofs with plan of the said highway to be stopped up will be lodged with the Clerk of the Peace on 30th September 1859.

- 1.3.5.3 The Notice was published at the ends of the lane, in the Woolmer's Exeter and Plymouth Gazette on four consecutive Saturdays between 16th July and 6th August and on the door of the parish church on four consecutive Sundays in August. The plan attached to the application is for whole length of the lane that is now known as Bridleway No. 4, Bampton.

1.3.6 Urban District, Parish and Town Council Meeting Minutes

- 1.3.6.1 Bampton was an Urban District Council from 1894 to 1935 and then became a Parish Council and following local government reorganisation of 1974 it became a Town Council. The Council minute books covering the period 1935 (when Bampton became a Parish Council) to 2002 (after which the minutes are available on line) are retained within the parish. Books of draft minutes dating from 1900 to 1935 (when Bampton was an Urban District Council) are held in the South West Heritage Centre. The notes contained within the handwritten books are too vague but from February 1915 there are copies of the detailed reports on the monthly council meetings from the Tiverton Gazette and sometimes the Devon & Somerset News stuck with in the minute books. No parish minutes or draft minutes from 1894 to 1900 were found.
- 1.3.6.2 In 1901 Bampton Urban District Council published a tender notice requesting tenders to be submitted for the maintenance of the main and parish roads in the parish. No. 5 Division included as the Main Road 'The new Huntsham Road from Hukeley Bridge to Ford Mill to Dog Down Cross'. This would be the new road running parallel and south of Bridleway No. 4, Bampton constructed between the Tithe Map of 1844 and OS 1st Edition 25" map of 1880-1890. Later tender documents describe the mileage of this road as 2 miles, 6 furlongs and 8.5 chains. The tender list does not specially mention Bridleway No. 4 but it could have been included in No. 5 Division under 'All parish Highways between the New Huntsham Road (south of Bridleway No. 4) and the River Batherum (north west of the route).
- 1.3.6.3 In 1944, when the Rural District Council asked for details of any accommodation roads in the parish that the Parish Council would like to be taken over and maintained at public expense; Bridleway No. 4 was not proposed.
- 1.3.6.4 In April 1946 a letter was received from the Rural District Council Surveyor stating that he had been appointed to prepare a schedule of Public Footpaths and Rights of Way within the district together with the necessary maps and asking Bampton Parish council to forward him a list of such footpaths. In July 1947 the clerk had prepared a list of what he considered to be public footpaths and rights of way in the parish. Number 4 in the list included 'From Ford Mill via Lane to Zeal Road'. This is the route of Bridleway No. 4, Bampton.
- 1.3.6.5 In May 1950 it was resolved that the matter of charting Public Footpaths in accordance with the 'National Park and Access to the Countryside Act 1949 be deferred until the next meeting. Mr Seward agreed that he would try to obtain a copy of the local map issued by the Ramblers Association. The matter was left in the hands of a sub-committee. At a public meeting on 1st August 1950 it was resolved that all the paths named in the list (25 in total) be walked, investigated and submitted to the county council. Number four was listed as 'From Old Mill to Road above Downhills' which is the route of Bridleway No. 4, Bampton. The path was included on the draft map as a bridleway and received no objections.

1.3.6.6 In September 1960 it was reported that complaints had been received regarding obstruction to footpaths including Ford Mill to road above Dowhills. A copy of the final Definitive Map and accompanying statements were received by the parish in June 1964. The Parish Council wished to keep the maps. In June 1964 the clerk received a letter requesting that the parish council to carry out an inspection of all footpaths and bridleways in the parish at least once a year. The Council agreed to do this.

1.3.6.7 In the Autumn of 2001 there was some work carried out to the eastern end of the lane to reprofile the existing route and raise the level where sections of the lane were below the water table.

1.3.7 British Newspaper Archive (on line)

1.3.7.1 The Tiverton Gazette is only available in the archive for the years 1860 to 1889 and does include some reports of the meetings of Bampton Local Board, as the council was called at that time. No reports relating to the route were found. The Woolmer's Devon & Exeter Gazette issues of July and August 1859 include copies of the Notice proposing to stop up Bridleway No. 4, Bampton.

1.3.8 Bampton Web Site – Old Routes

1.3.8.1 On the Bampton.org.uk website there is an article titled Old Routes. The article mentions that Bampton was a crossing point for two very ancient tracks or trading routes. Possibly the oldest originated in the Bronze Age (1400-600 BC) and came from Wiltshire via Dorset, Somerset and passed the site of the Wellington Monument and entered Devon at Ashbrittle. It then went past Cudmore Farm and Ford (Point D) to Bampton and then onto North Devon.

1.3.8.2 The most direct route and in a straight line from Cudmore to Ford, prior to the construction of the new road south of Bridleway No. 4 between the 1740s and 1800s, would be westwards along the county road from Cudmore and then continuing westwards along the existing bridleway to Ford. An old map included in the article (date or source of map not stated) has this route labelled H. This is the route of Bridleway No. 4, Bampton.

1.3.8.3 The article continues to say that sections of the track still exist and the most impressive stretch in the Bampton area is the two mile long bridleway leading south-east from Ford towards Wellington. This was still the road from Bampton to Wellington until late in the 19th century. This supports the local name of the lane as Wellington Lane.

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

1.3.9.1 Bridleway No. 4, Bampton was proposed for addition to the Definitive Map by the Parish Council in January in 1950. The route was surveyed by Messrs R Tonkin and L Burnett and described as 'No 4 F.P. to road above Dowhills, along green lane that is overgrown in places but passable throughout'. The F. P is crossed out on the form and replaced with BR. At a meeting between Tiverton Rural District Council and the parish clerk in October 1957, the route was described as from the county road north west of Dowhills, westwards along the green lane to the county road at Ford Mill and as a bridleway. There were no objections to the bridleway's inclusion on the draft or provisional definitive maps and the route has been recorded as Bridleway No. 4, Bampton since June 1964.

1.3.10 Devon County Council Uncompleted Reviews of 1968 & 1977

1.3.10.1 The Parish Council in 1968 and Town Council in 1977 did not make any proposals for changes to this bridleway in these uncompleted reviews.

1.3.11 Aerial Photography RAF 1946-1949, 1999-2000 & 2015-2017

1.3.11.1 On the 1946-1949 aerial photography, the route of the way can be followed from the hedges and hedgerow trees which are more substantial at the western end of the route. The surface of the lane can be seen at the eastern end and in the centre portion of the lane, where the hedges appear neatly trimmed on the northern side.

1.3.11.2 In 1999-2000 there is little difference to the photograph of some 50 years earlier. The surface of the lane is visible along the eastern half of the lane. In the most recent photo the hedges are neatly cut from south of Sunderleigh Farm eastwards with the surface of the lane generally visible along this section.

1.3.11.3 In the most recent photograph, the west end of the lane is obscured by the hedgerow trees to south of Sunderleigh Farm with the remainder of the lane with trimmed hedges and the surface of the lane is generally visible.

1.3.12 Land Registry

1.3.12.1 The eastern section of the lane between points A and B is unregistered at HM Land Registry although the land to the north and south of the lane is registered. The remainder of the lane between points B and D forms the northern boundary of land registered under title number DN 433493, first registered in 1996, and owned by Mr R Cross of Huntsham Barton. The title register makes no references to any rights of way or otherwise with regard to the lane.

1.3.13 Planning Permission

1.3.13.1 A planning application was made to Mid Devon District Council in 2001 for engineering works to reprofile existing public footpath near Dowhills Farm. The applicant was Bampton Town Council and the landowner was stated as Devon County Council. The application plan confirmed that the 'footpath' referred to was Bridleway No. 4, Bampton.

1.4 Trails Riders Fellowship Schedule 14 Application

1.4.1 The application made by the Trail Riders Fellowship included reference to documentary evidence in support of their claim. This included the Tithe Map where they advised that the route is depicted in the same way as other roads that are public today; Greenwoods Map where the route is shown as a cross road; shown as a road on Blacks 1886 Guide to Devonshire and on the 1st Series OS map. The application also made reference to the judge's summing up in the case *Eyre v New Forest Highway Board 1892* which supports the contention that a road known to be public prior to 1835 would still be public to this day in the absence of a stopping up order even if it had never been publicly maintained at all since then.

1.4.2 The current Devon representative of the TRF was advised that the application was being considered as part of the Definitive map Review in Bampton but no response has been received.

1.5 User Evidence

- 1.5.1 Ten user evidence forms were received with the Schedule 14 Application completed in 2005 and covering a period in excess of 20 years. However, any user evidence dating from 1964 or later, when the route was recorded as a public bridleway, would be unlawful use unless with the permission of the landowner. Following the passing of the Natural Environment & Rural Communities Act in 2006, motor vehicle user evidence can no longer be used as evidence to support the creation or upgrading of a public right of way to a byway open to all traffic.
- 1.5.2 No other user evidence forms have been received in respect of the proposal.

1.6 Landowner Evidence

- 1.6.1 The landowners/occupiers who owned land crossed by or adjacent to Bridleway No. 4, Bampton were contacted individually and advised of the proposal. They were invited to submit their comments and information by way of a completed landowner evidence form or otherwise.
- 1.6.2 Mr Graham of Sunderleigh Farm to the north east of point C telephoned and returned a landowner evidence form with additional information. Mr Graham has owned the farm for 19 years and has observed frequent use of the bridleway by horse riders and walkers. He commented that as one of the few paths for riders and walkers without motor traffic, it would be a great loss of a valued public amenity if the status was changed to a BOAT. The lane has a profusion of wild flowers especially in Springtime that could be damaged by motorised traffic.
- 1.6.3 No responses were received from the other four landowners contacted in respect of this route.

1.7 Rebuttal Evidence

- 1.7.1 Eleven local residents, most of whom advised that they rode, cycled or walked the lane, contacted the County Council following publication of the proposal to upgrade the bridleway to a byway open to all traffic. All the responses were against the proposal and the comments made included those referring to the danger of horses and walkers meeting vehicles along the lane, making the lane muddier to the detriment of walkers, causing damage to the flora and fauna along the lane, noise and disturbance to the tranquil nature of the lane.
- 1.7.2 None of the consultation responses included any evidence of use of the lane by vehicles except for Mrs Newton who referred to meeting two trail bikes along the bridleway on an occasion during the 38 years she had ridden and walked this route. Mr Wielkopolski advised that his mother recounted stories of enjoying the peace and quiet of the bridleway when riding in the 1950s. Copies of the letters and emails received are in the backing papers.

1.8 Discussion

Statute (Section 31 Highways Act 1980)

- 1.8.1 Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant

period of 20 years is counted back from a date on which the public right to use the way has been challenged.

- 1.8.2 A Schedule 14 application for the upgrading of Bridleway No. 4, Bampton to a Byway Open to All Traffic was made by the Trial Riders Fellowship in 2005. The TRF had included documentary and user evidence in support of their claim. The application made by the TRF in 2005 could be considered sufficient to be the required calling into question under section 31 of the Highways Act 1980 for the upgrading. However, as any user evidence dating from 1964 or later, when the route was recorded as a public bridleway, would be unlawful use, unless with the permission of the landowner; the user evidence submitted in 2005 is insufficient to allow the upgrading to be considered under Section 31.

Common Law

- 1.8.3 A claim for a right of way or for upgrading an existing public right of way may also be considered under common law. At Common Law, evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway of the higher status and that the public has accepted the dedication.
- 1.8.4 Greenwoods map 1825, the Tithe Map 1844 and 1st Edition 1" OS map 1809 all show the lane in a similar manner to the surrounding lanes that are today county roads. The new road to Huntsham was constructed by the local landowners of the Huntsham Estate in the mid-1850s and prior to this Bridleway No. 4, Bampton would have been the main route from Bampton to Huntsham and also further eastwards, including to Wellington in Somerset. The lane is called Wellington Lane locally but not named as such on any maps.
- 1.8.5 Bampton vestry committee agreed to take over the new road as maintainable at public expense, as it was 'of sufficient utility to the inhabitants of the parish', in February 1958. At the vestry meeting of the following June it was resolved that the old road, Bridleway No. 4, Bampton, be stopped up as it was now 'a useless and unnecessary highway'. Presumably the parish did not wish to maintain both roads and the relevant notice and plan were prepared and published in July and August, prior an application to stop up the road being made to the Devon Quarter Session in October 1859.
- 1.8.6 On the 1910 Finance Act plans the lane is included within the adjacent hereditaments and the colouring does not break when crossing the lane or at either end. This would indicate that the route was not considered to be a public road at that time as it was included within the hereditaments. Following the stopping up of the old road in 1859 it would appear that the route was still used by the local landowners and members of the public although any maintenance would presumably have become the responsibility of the adjacent landowners. In the hereditament for Dowhills and Sunderleigh, the field books refer to a 'right of way over lane' for which an allowance for 'Public Rights of Way or User' is given. This could refer to Bridleway No. 4, Bampton particularly with relation to Sunderleigh and would indicate that the lane was considered to be a public right of way at that time. The status of the right of way is not stated in the field books but they do refer to right of way rather than just a foot path.
- 1.8.7 The route was initially proposed as a public right of way when the parish prepared a list for the District Council Surveyor in 1947. In the 1950 Parish surveys the route

was proposed as a footpath. Following a meeting with the Tiverton Rural District Council it was amended to a bridleway. There were no objections to its inclusion in the draft or provisional Definitive Maps as a bridleway and the route has been recorded as a bridleway since 1964.

- 1.8.8 The eastern end of the lane remains unregistered with HM Land Registry as would be expected for a public highway but the western end is registered, as would be expected for a public right of way crossing private land as opposed to public highway. In the planning application of 2001 for works to the eastern end of the lane, the landowner was stated as being Devon County Council.
- 1.8.9 The user evidence received from the TRF with the application dating from 1964 is not valid and no other user evidence has been received. Only one landowner responded to the consultation and advised that they would not wish to see the bridleway upgraded to a byway open to all traffic (BOAT). A number of local residents wrote letters or sent emails making objections to the proposed upgrading to a BOAT as they would not want motorised vehicles using the lane, although most of their objections are not valid considerations when determining what rights subsist along the lane under current legislation.

1.9 Conclusion

- 9.1 In the absence of sufficient, lawful, user evidence the existence of higher rights cannot be considered under section 31 of the Highways Act 1980. Under common law the documentary evidence indicates that the lane was originally used as an all purpose highway. However, those highway rights were stopped up in 1859, after the new Huntsham road was constructed. The route was still considered to be a public right of way of some description at the time of the Finance Act 1910 records, and also by the parish council in 1947 at the time of compilation of the Definitive Map. The route has been recorded as Bridleway No. 4, Bampton on the Definitive Map since 1964.
- 1.9.2 In the absence of evidence to show that any higher rights, apart from those as a public bridleway, have been acquired following the stopping up order, it is therefore recommended that no Order be made to modify the Definitive Map and Statement in respect of Proposal 1.

2 Proposal 2: Schedule 14 Application for the upgrading of Bridleway No. 20, Bampton to a Byway Open to All Traffic (BOAT)

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement by upgrading Bridleway No. 20, Bampton to a Restricted Byway E – F – G, as shown on drawing number HIW/PROW/18/060A.

2.1 Background

- 2.1.1 In November 2005 the Trail Riders Fellowship submitted a Schedule 14 Application to the County Council for the upgrading of Bridleway No. 20, Bampton (also known as Ridgeway Lane) to a Byway Open to All Traffic (BOAT), supported by documentary evidence and twelve user evidence forms. This was one of several Schedule 14 applications made by local representatives of the Trail Riders Fellowship in 2005 prior to the NERC Act (Natural Environment & Rural Communities Act) that came into force in May 2006. The NERC Act would restrict

the ways that rights of ways for motorised vehicles in the countryside could be created or recorded. A right for motor vehicles was preserved under NERC if a Schedule 14 Application had been made prior to 20th January 2005, that is compliant with the regulations for Schedule 14 applications under the Wildlife & Countryside Act 1981, or the surveying authority has made a determination of an application for a BOAT before 2 May 2006.

- 2.1.2 This application was made after 20th January 2005 and was also not fully compliant with the regulations as notice of the application had not been served on the landowners. However, as an application had been received the claim was included in the parish review as made, for the upgrading of a recorded bridleway to a BOAT. As there are limited other exceptions in which vehicle rights may be preserved it would be likely that, subject to sufficient evidence, the route could only be upgraded to a restricted byway.

2.2 Description of the Route

- 2.2.1 The route starts at the county road north of Ford Mill Farm and Ford Mill Cross at point E (GR SS 9731 2280) and proceeds northwards and then turns sharply eastwards before continuing east north east wards uphill along a defined lane between two hedge banks. The lane then bears northwards passing point F (GR SS 9778 2316) and continues downhill northwards to the end of the unsurfaced unclassified county road at point G (GR SS 9784 2351), south of Dipford Farm.
- 2.2.2 The total length of the bridleway is approximately 1020 metres with a mud and grass surface although with some evidence of a previously improved surface in some sections. There is a highway 'no motor vehicles sign' at point E together with a bridleway finger post. The bridleway is called Ridgeway Lane on the OS 25" 1st Edition map and subsequent OS maps. There are photographs of the route in the backing papers.

2.3 Documentary Evidence

2.3.1 Ordnance Survey and Other Maps

- 2.3.1.1 The Ordnance Survey and other mapping do not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.
- 2.3.1.2 Cassini Historical Maps 1809 – 1900 Sheet 191 Okehampton & North Dartmoor
These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.
- 2.3.1.3 Old Series 1809: The bridleway is shown as a defined lane along the current alignment except for a kink in the lane between points F and G and in the similar manner to the now county roads in the vicinity of the route.
- 2.3.1.4 Revised New Series 1899-1900: The route is now shown as a narrow double-sided lane with dark shading between the lines and along the present-day alignment. The depiction corresponds to 'Unmetalled Roads' in the map key.
- 2.3.1.5 Popular Edition 1919: The bridleway is shown as a solid black line along the route described as 'Minor Roads' with the connecting county roads shown with orange dashed lines or as white lanes, described as 'Indifferent or Bad winding roads'.

2.3.1.6 Greenwood's Map of Roads 1825

These well-made maps were produced using surveyors and a triangulation system and are considered to be reasonably accurate. They were published in 1825 at a scale of one inch to the mile and date between the 1st edition OS maps and Tithe Maps published in the mid 19th century. Roads were shown as either turn pike roads with a bold line on one side of the road or as cross roads. The bridleway is shown as a cross road and follows a similar alignment to the 1809 OS map with a kink north of point F.

2.3.1.7 OS 1st Edition 25" to a mile 1880-1890

The route is depicted as a defined lane throughout its entire length with several mature hedgerow trees shown in the adjoining hedges. The lane is annotated Ridgeway Lane and has its own compartment number of 749 with an area of 1.893 acres. Pecked lines within the lane would indicate the difference in surfacing across the width of route at that time. There is no indication on this map to indicate the junction between the bridleway and the unclassified county road.

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

On the 1946 edition the route is shown as an uncoloured defined double-sided narrow lane and corresponding to 'Minor Roads in towns, Drives and Unmetalled Roads'.

2.3.1.9 In the 1960 edition the route is shown by a double-sided white lane (Minor Roads in towns, Drives and Unmetalled Roads) for the length of the lane. The 1967 edition shows public rights of way as recorded on the Definitive Map. The route is only shown by the symbol for a RUPP 'Road used as a Public Path' as the lane was recorded on the Definitive Map at that time.

2.3.1.10 OS Post War Mapping A Edition 2500 1970

The route is shown as a defined lane along its entire length and named Ridgeway Lane on the two separate map sheets that the route covered. There are two separate compartment numbers 5589 at 0.72 acres and 7829 1.15 acres.

2.3.1.11 OS 1:25,000 maps of Great Britain – Sheet 21/60 SS92 1950

The 1:25,000 'Provisional edition' or 'First Series', was Ordnance Survey's first civilian map series at this medium scale, the forerunner of the modern *Explorer* and *Outdoor Leisure* maps and published in limited colour between 1937-1961. By 1956 it covered 80% of Great Britain, everywhere apart from the Scottish Highlands and Islands. The series is useful for showing rural and urban areas in much greater detail than the standard one-inch to the mile (1:63,360) maps.

2.3.1.12 Minor roads, lanes and private drives/access lanes are all shown as white uncoloured roads/lanes described as 'Other Roads, Poor, or unmetalled'. The conclusive Definitive Map had not been published when this map was published. Some routes are shown as pecked and dashed lines labelled F.P. and B.R. and some as two narrow solid lines. The map contains the standard OS disclaimer 'The representation of any other roads, tracks or paths is no evidence of the existence of a right of way'.

2.3.1.13 Sheet SS92 published in 1950 shows the route as a defined uncoloured lane in the similar manner to minor county roads in the vicinity and described as 'Poor, or unmetalled Other Roads'. The lane is named as Ridgeway Lane. No lines across the route are shown along the full length of the route or at either end.

2.3.2 Tithe Maps and Apportionments

2.3.2.1 Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring can indicate carriageways or driftways. Public roads were not tithe able. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not included within an individual apportionment are usually included under the general heading of '*public roads and waste*'.

2.3.2.2 Bampton Tithe Map & Apportionment 1844

On the Bampton Tithe Map the route is shown colour washed in the manner of what are now county roads in the vicinity. The lane is not numbered and is also on the current alignment by this date.

2.3.3 OS Name Books Early 20th Century

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

2.3.3.2 OS Name Book 1903 Bampton Kew Ref OS 35/1649

Ridgeway Lane is described 'A road from Ford to Shillingford Corn Mill' with the change to Corn Mill written in red ink and signed for by Mr M G Ridler, District Surveyor, Bampton.

2.3.4 Finance Act Plans and Field Books 1910

2.3.4.1 The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.

2.3.4.2 The allowance given was often on the basis of a figure such as a £1 times 25 yp. The yp refers to years purchase, a method of valuation used to convert a property's income flow (rent) into an appropriate capital sum on the basis that the capital value of a property is directly related to its income producing power. This method of valuation seems to be often used in Finance Act valuations.

2.3.4.3 Bridleway No. 20 is all within one sheet of the plans and is excluded from the two different hereditaments either side of the lane at its southern end. The land south of the lane is in hereditament number 288, Ford Farm, whilst the land to the north and on both sides of the lane for the remainder of the route is hereditament number 282,

Dipford & Middle Barn Farm. There is one field situated just to the north east of point G with a separate hereditament number of 44 with the Dipford holding and accessed from the end of the now unclassified county road at point G.

2.3.4.4 The colouring for Dipford breaks across the lane, south of point F and appears to be broken at the county road at Dipford, but the colouring is very faint and difficult to see. Under hereditament 288 Ford Farm, owner Mr William Charles Rowcliffe and occupier John Cottrell/Mr Broom, there is no reference to any rights of way and no allowance for Public Rights of Way or User in the field book. Hereditament number 282 is Dipford & Middle Barn Farm, owned by Mr Rowcliffe and occupied by Saul Webber. There is again no reference in the field book to any rights of way or any allowance for Public Rights of Way in the field book.

2.3.5 Vestry Minutes

2.3.5.1 Prior to the formation of District Highway Boards in the early 1860s and the later Rural District Councils (1894) the responsibility for the maintenance of public highways generally belonged to the parish and was discharged by locally elected Surveyors of Highways. Vestry minutes from 1763 to 1846 are held by the South West Heritage Centre.

2.3.5.2 On the 30th April 1844 Mr Rowcliffe (Ford and Dipford Farms were both owned by W C Rowcliffe of London in the Finance Act field book) had published a notice in the parish for the stopping up of certain roads leading through his lands from Bampton to Shillingford village and the byway of Dipford Farm House to Ford Mill (the route of Bridleway No. 20). The proposed stopping up was discussed at the Vestry meeting on 23rd May 1844 and it was resolved that this meeting agrees to the said proposal. Further resolved that Bampton surveyor to request two Justices of the Peace from Cullompton to view said highways.

2.3.6 Quarter Sessions/Magistrates Petty Sessions

2.3.6.1 There is no evidence that the proposed stopping up was ever presented to Quarter Sessions and therefore it would appear that the way was not stopped up.

2.3.7 Urban District, Parish and Town Council Meeting Minutes

2.3.7.1 Bampton was an Urban District Council from 1894 to 1935 and then became a Parish Council and following local government reorganisation of 1974 it became a Town Council. The Council minute books covering the period 1935 (when Bampton became a Parish Council) to 2002 (after which the minutes are available on line) are retained within the parish. Books of draft minutes dating from 1900 to 1935 (when Bampton was an Urban District Council) are held in the South West Heritage Centre. The notes contained within the handwritten books are too vague but from February 1915 there are copies of the detailed reports on the monthly council meetings from the Tiverton Gazette and sometimes the Devon & Somerset News stuck with in the minute books. No parish minutes or draft minutes from 1894 to 1900 were found.

2.3.7.2 In 1901 Bampton Urban District Council published a tender notice requesting tenders to be submitted for the maintenance of the main and parish roads in the parish. The tender list does not specifically mention the lane from Ford Mill to Dipford but it could have been included in No. 5 Division under 'All parish Highways between the New Huntsham Road (south of Bridleway No. 20) and the River Batherum (north and west of the route). In December 1921 and November 1931

there are references regarding repairing the culvert at Dipford but this would be located on the section of the lane that is unclassified county road.

- 2.3.7.3 At the meeting on 11th March 1924 Mr Moore (a councillor) gave notice to move at the next meeting that *the road from Dipford Farm to Ford Mills should cease to be a bye road*. At the annual parish meeting on the 27th March 1924 Mr Moore moved a resolution that the Council should apply for an order to stop maintaining the road through Dipford Court. Mr Moore said that at the last meeting complaints were made that labour and material were wasted on this land and *as the public made very little use, if any, of this road, it appeared a waste of money for the Council to maintain same* – Mr F T Seward seconded the motion.
- 2.3.7.4 Mr Penwarden asked the Council not to be in a hurry in arriving at a definite decision. He thought they should take a comprehensive view of the whole parish as he considered there were other roads that could be brought under the same category and many miles could be taken off. Mr Moore agreed that all the roads should be considered and after discussion it was agreed that the surveyor should present the next meeting a statement showing the whole of such roads in the parish and their mileage.
- 2.3.7.5 A list of seven roads was presented at the next meeting by the Surveyor which included 'Dipford Road, from Doddiscombe road to Chapel Close (13 chains 50 lengths' (270 metres). This length corresponds to the part of the unclassified county road that Bridleway No. 20 joins at Dipford from the road junction north of Dipford to where the old Chapel is shown on the OS 1880-1890 25" map. At the May meeting the surveyor confirmed the amount spent on the proposed roads. Mr Seward observed that the Council did not intend to close the roads, as was thought by some people, all they proposed was to cease to maintain them. Farmers, who were big ratepayers, had told the Chairman that it was the most unfair suggestion the Council had discussed. If the Council ceased to maintain certain of the roads it would mean that they would be virtually closed. After being proposed and seconded the report was allowed to lay on the table.
- 2.3.7.6 At the meeting on 11th June 1929 the clerk reported that all classified and unclassified roads were to be placed under the control of Devon County Council after 31st March 1930. A list of Accommodation roads to be taken over by Devon County Council was prepared by the Parish Council in 1944. This did not include the route of Bridleway No. 20, Bampton. There were no roads in the parish that were considered unnecessary to the public.
- 2.3.7.7 In April 1946 a letter was received from the Rural District Council Surveyor stating that he had been appointed to prepare a schedule of Public Footpaths and Rights of Way within the district together with the necessary maps and asking Bampton Parish council to forward him a list of such footpaths. In July 1947 the clerk had prepared a list of what he considered to be public footpaths and rights of way in the parish. This initial list of 17 routes did not include Bridleway No. 20, Bampton.
- 2.3.7.8 In May 1950 it was resolved that the matter of charting Public Footpaths in accordance with the 'National Park and Access to the Countryside Act 1949' be deferred until the next meeting. Mr Seward agreed that he would try to obtain a copy of the local map issued by the Ramblers' Association. The matter was left in the hands of a sub-committee.
- 2.3.7.9 At a public meeting on 1st August 1950 it was resolved that all the paths named in the list (25 in total) be walked, investigated and submitted to the county council.

Number 20 was listed as 'From Dipford Farm along Ridgeway Lane to near Ford Mill' which is the route of Bridleway No. 20, Bampton. The path was included on the draft map as a RUPP (road used as a public footpath) and received no objections. A copy of the final Definitive Map and accompanying statements were received by the parish in June 1964. The Parish Council wished to keep the maps.

2.3.7.10 A public meeting was arranged for April 1971 to discuss the re-designation of byways as requested in a letter from the County Council. At the Parish Council meeting in February 1972 it was resolved that the Council objects to Public Path No. 20 being made a footpath. No public meeting appears to have been held with regard to the 1977 review and no proposals for changes were made by the Town Council.

2.3.7.11 At the meeting of the Town Council on 2nd July 1996 correspondence was received from the Devon County Council Divisional Surveyor regarding an application from Mrs Arthur of Dipford Farm, Shillingford to erect a gate on the bridleway in Ridgeway Lane to prevent livestock straying onto trafficked roads. All in favour, clerk to send letter to confirm.

2.3.8 British Newspaper Archive (on line)

2.3.8.1 The Tiverton Gazette is only available in the archive for the years 1860 to 1889 and does include some reports of the meetings of Bampton Local Board, as the council was called at that time. No reports relating to the route were found.

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

2.3.9.1 Path No. 20, Bampton was included on the survey forms as 'No 20 F.P.' and described as 'No 20 F.P. to Ford Mill Path starts at Dipford Farm and continues along green lane to Fordmill, lane is somewhat overgrown but is still passable. Not dedicated but used throughout living memory.' The route was surveyed by Messrs A J Seward and L J Burnett in Autumn 1950. At a meeting between Tiverton Rural District Council and the parish clerk in October 1957, the route was amended to a R.U.P.P. and described as 'From Shillingford to Ford via Ridgeway Lane Starts at the southern end of an U.C. County Road near Dipford and follows the green lane to end at the County Road C.446 at Ford'. There were no objections to the lane's inclusion on the draft or provisional definitive maps as a RUPP and the route was recorded as RUPP No. 20, Bampton on the Tiverton Rural District Council Definitive Map in June 1964.

2.3.10 Devon County Council Reviews of 1968, 1971 & 1977

2.3.10.1 No proposals for any changes were made by the Parish Council in the 1968 review. In 1971 the County Council commenced a Limited Special Review of the Definitive Map, under the Countryside Act 1968, which required all RUPPs to be reclassified as either a byway open to all traffic, bridleway or footpath. The County Council wrote to the parish in March 1971 and received the reply that at a Parish Public Meeting it was proposed and seconded that the parish RUPPs remain designated as the map states. The County Council wrote again in December 1971 asking which of the designations of a byway open to all traffic, a bridleway or a footpath should be applied to the right of way. The parish council responded that the council classed Footpath number 20 as a footpath.

2.3.10.2 The County Council then contacted the County Surveyor and asked whether he agreed with the recommendation that RUPP No. 20 should be re-designated as a footpath. The Surveyor replied that he had no objections. The County Council then wrote to the Parish Council in March 1972 to advise that the County Roads Committee will be recommended to approve the designation as a footpath.

2.3.10.3 However, in February 1974 Bampton Parish Council wrote to the Secretary of State for the Environment in London to strongly object to the re-designation of Footpath No. 20. 'Their grounds for objection are that they feel it should be classified as a bridleway as the roads are very dangerous for riders and especially children riders. Bridleways can be used by foot people, horses, cyclists and tractors possibly, but not motor vehicles. Therefore, to classify it as a Footpath would be of great detriment to the surrounding community.'

2.3.10.4 The County Council replied to the Department of the Environment advising that the Parish Council had themselves decided it should be a footpath. *So far as the County Council are concerned, there is no objection to the path being classified as a bridleway.* RUPP No. 20 was accordingly re-designated as Bridleway No. 20, Bampton.

2.3.10.5 In September 1977, in response to an enquiry from the County Council regarding maintenance on RUPP No. 1 Bampton, the Divisional Surveyor for Tiverton advised that during the past ten years or so, he has not maintained Bampton No. 20. No proposals for change were made by the then Town Council in the course of the 1977 uncompleted review.

2.3.11 Aerial Photography RAF 1946-1949, 1999-2000 & 2015-2017

2.3.11.1 On the 1946-1949 aerial photography, the route of the way can be followed from the lane's hedges and with more substantial trees visible at the southern end of the route. The surface of the lane can be seen more in the centre of the lane and at the northern end where the hedges appear neatly trimmed.

2.3.11.2 In 1999-2000 the hedgerow trees and hedges have grown particularly in the southern section. The surface of the lane is barely visible. In the most recent photograph, there is little change to the lane with the surface only visible for part of the route south of point F and south east of the buildings at Middle Barn.

2.3.12 Land Registry

2.3.12.1 Ridgeway Lane is unregistered with HM Land Registry except for a short section north of point E through the small copse which is included in the title number for Dipford Farm. The register title does make any reference to any rights of way for access across the holding.

2.4 Trails Riders Fellowship Schedule 14 Application

2.4.1 The application made by the Trail Riders Fellowship included reference to documentary evidence in support of their claim. This included the Tithe Map where they advised that the route is depicted in the same way as other roads that are public today; Greenwoods Map where the route is shown as a cross road, shown as a road on Blacks 1886 Guide to Devonshire and the Finance Act where the lane is excluded at the southern end. The application also made reference to the judge's summing up in the case *Eyre v New Forest Highway Board 1892*. They say this

supports the contention that a road known to be public prior to 1835 would still be public to this day in the absence of a stopping up order even if it had never been publicly maintained at all since then and also that there is little point in a cul-de-sac road unless it leads to a place of special interest. Hence there must be a presumption that the higher status prevails over the whole length of the route.

- 2.4.2 The current Devon representative of the TRF was advised that the application was being considered as part of the Definitive map Review in Bampton, but no response has been received.

2.5 User Evidence

- 2.5.1 Twelve user evidence forms were received with the Schedule 14 Application and covered a period in excess of 20 years together with a record sheet for a run that included using the lane in May 1991. However, any user evidence dating from the mid-1970s or later, when the route was re-designated as a public bridleway, would be unlawful use unless with the permission of the landowner. Following the passing of the Natural Environment & Rural Communities Act in 2006, motor vehicle user evidence can no longer be used as evidence to support the creation or upgrading of a public right of way to a byway open to all traffic.
- 2.5.2 No other user evidence forms have been received in respect of the proposal.

2.6 Landowner Evidence

- 2.6.1 The two landowners/occupiers who owned land crossed by or adjacent to Bridleway No. 20, Bampton were contacted individually and advised of the proposal. They were invited to submit their comments and information by way of a completed landowner evidence form or otherwise.
- 2.6.2 Miss Arthur of Dipford Farm responded and advised that they have considered the lane to be a bridleway for forty five years. Under other information and in a covering letter Miss Arthur advises that the lane is very narrow in places and not suitable for motorcycles and four wheeled vehicles. People are walking and riding horses up and down the lane about three times a week. Many of the walkers are elderly and horse riders like the bridleway as it is safe and quiet. As farmers they must cross the bridleway in places to access their fields and move livestock around the farm.
- 2.6.3 No response was received from the other landowner contacted in respect of this route.

2.7 Rebuttal Evidence

- 2.7.1 Nine local residents, most of whom advised that they rode, cycled or walked the lane, contacted the County Council following publication of the proposal to upgrade the bridleway to a byway open to all traffic. All the responses were against the proposal and the comments made included those referring to the danger of horses and walkers meeting vehicles along the lane, making the lane muddier to the detriment of walkers, causing damage to the flora and fauna along the lane, noise and disturbance to the tranquil nature of the lane. None of the consultation responses included any evidence of use of the lane by vehicles. Copies of the letters and emails received are in the backing papers.

2.8 Discussion

Statute (Section 31 Highways Act 1980)

- 2.8.1 Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.
- 2.8.2 A Schedule 14 application for the upgrading of Bridleway No. 20, Bampton to a Byway Open to All Traffic was made by the Trial Riders Fellowship in 2005. The TRF had included documentary and user evidence in support of their claim. The application made by the TRF in 2005 could be considered sufficient to be the required calling into question under section 31 of the Highways Act 1980 for the upgrading. However, as any user evidence dating from the mid-1970s or later, after the route was recorded as a public bridleway, would be unlawful use, unless with the permission of the landowner; the user evidence submitted in 2005 is insufficient to allow the upgrading to be considered under Section 31.

Common Law

- 2.8.3 A claim for a right of way or for upgrading an existing public right of way may also be considered under common law. At Common Law, evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway of the higher status and that the public has accepted the dedication.
- 2.8.4 The route was initially proposed as a public right of way when the parish prepared a list for the District Council Surveyor in 1947. In the 1950 across county Parish surveys the route was proposed as a footpath. Following a meeting with the Tiverton Rural District Council it was amended to a 'road used as a public path' (RUPP). In the initial parish survey of 1950, parish councils were asked to mark routes as footpaths, bridle paths, carriage roads used as a footpath or carriage roads used as a bridleway. The two carriage road designations were amended to the single 'road used as a public path' (RUPP) and these three types of public right of way were recorded on the Definitive Map. There were no objections to Ridgeway lane's inclusion in the draft or provisional Definitive Maps as a RUPP. The route has been recorded as a RUPP since 1964 (when the route could legally have been used by motorised vehicles) and a bridleway since the 1970s (when use by motorised vehicles became unlawful unless with the permission of the landowner).
- 2.8.5 Greenwoods map 1825, the Tithe Map 1844 and 1st Edition 1" OS map 1809 all show the lane in a similar manner to the surrounding lanes that are today county roads. The OS Name Book describes Ridgeway Lane as 'a road' signed for by the District Surveyor. The lane is considered to be excluded from the adjoining hereditaments in the Finance Act 1910 plans as the colouring breaks across the lane and therefore considered to be public at that time. These records all indicate that the lane was a parish highway.
- 2.8.6 Further evidence of this is provided by the reference in the vestry minutes of 1844 when the landowner of Dipford and Ford Farms at that time wished to stop up Ridgeway Lane as a bye road. Although the vestry agreed to this, there is no

evidence of the stopping up been taken to Quarter Sessions or taking place. This absence of a stopping up order is further confirmed as in 1924, Mr Moore, a member of the Bampton Urban District Council, proposed that the lane should cease to be a bye road (indicating that it was still considered a public road at that time). The Council then considered applying to stop up a number of roads in the parish but after consideration decided against it and no further action was taken.

- 2.8.7 The current HM Land Registry records support the lane being considered public as it is not included in the adjoining registered land apart from a small section at the southern end of the route.
- 2.8.8 The evidence of use by motor vehicles received from the TRF with their application is not valid and no other user evidence has been received. One landowner responded to the consultation and advised that they would not wish to see the bridleway upgraded to a byway open to all traffic (BOAT). A number of local residents wrote letters or sent emails making objections to the proposed upgrading to a BOAT as they would not want motorised vehicles using the lane, although most of their objections are not valid considerations when determining what rights subsist along the lane under current legislation.
- 2.8.9 The recording of the route as a RUPP in the 1950s is considered to accurately describe the lane at that time. An old parish carriage road that was (probably due to a lack of maintenance by the surveying authority of the time) unused by ordinary motorised traffic and so mainly used by walkers and riders. When the RUPPs were re-designated in the 1970s, it appears that the history of the route or other historic or documentary evidence was not considered and the parish council was merely asked what status they felt the lane should be. The parish initially said a footpath but changed this to a bridleway as they considered the roads dangerous for horse riders. On the basis of the evidence discovered, Ridgeway Lane perhaps ought to have been re-designated as a BOAT. The NERC Act of 2006 subsequently extinguished any unrecorded rights for mechanically-propelled vehicles, except in very limited circumstances.

2.9 Conclusion

- 2.9.1 In the absence of sufficient user evidence the existence of higher rights cannot be considered under section 31 of the Highways Act 1980. At common law the available evidence is considered to show that Ridgeway Lane was an all-purpose parish highway and therefore that higher rights than those of a bridleway can be reasonably alleged to subsist.
- 2.9.2 The NERC Act 2006 prevents the lane being recorded as a Byway Open to All Traffic as none of the exemptions to extinguishment of rights for mechanically-propelled vehicles are considered to apply. It is therefore recommended that an Order be made to modify the Definitive Map and Statement for the upgrading of Bridleway No. 20, Bampton to a Restricted Byway as shown on drawing number HIW/PROW/18/060A.

3 Proposal 3: Schedule 14 Application for the proposed upgrade of Bridleway No. 25, Bampton to a Byway Open to All Traffic, as shown between points R – S – T on drawing number HIW/PROW/18/061

Recommendation: It is recommended that no Order be made in respect of Proposal 3.

3.1 Background

3.1.1 In November 2005 the Trail Riders Fellowship submitted a Schedule 14 Application to the County Council for the upgrading of Bridleway No. 25, Bampton to a Byway Open to All Traffic (BOAT), supported by documentary evidence and twelve user evidence forms. This was one of several Schedule 14 applications made by local representatives of the Trail Riders Fellowship in 2005 prior to the NERC Act (Natural Environment & Rural Communities Act) that came into force in May 2006. The NERC Act would restrict the ways that rights of ways for motorised vehicles in the countryside could be created or recorded. A right for motor vehicles was preserved under NERC if a Schedule 14 Application had been made prior to 20th January 2005, that is compliant with the regulations for Schedule 14 applications under the Wildlife & Countryside Act 1981, or the surveying authority has made a determination of an application for a BOAT before 2 May 2006.

3.1.2 This application was made after 20th January 2005 and was also not fully compliant with the regulations as notice of the application had not been served on the landowners. However, as an application had been received the claim was included in the parish review as made, for the upgrading of a recorded bridleway to a BOAT. As there are limited other exceptions in which vehicle rights may be preserved it would be likely that, subject to sufficient evidence, the route could only be upgraded to a restricted byway.

3.2 Description of the Route

3.2.1 The route starts at the junction of county roads at Dog Down Cross county road at point R (GR ST 0059 2139) and proceeds west south westwards along a defined lane bordered with hedge banks and an improved partly stoned surface. The route continues passing the farmstead Huntsham Barton to Bampton Down Cross at point S (SS 9947 2109), the junction of Bridleway No. 25, Bampton, the county road southwards to Huntsham known as Bampton Down Road and green lane leading northwards to Dowhills and Giffords Farms. The lane continues in the same direction, although wider at this point, to the junction of the unclassified roads numbers 301 and 302 at the woods known as Burnt Plantation at point T (SS 9822 2071).

3.2.2 The total length of the bridleway is approximately 2480 metres with an improved surface in some sections, particularly between Dog Down Cross and Huntsham Barton and between Bampton Down Cross and east of Mason's Moor. The remainder of the surface is of grass, mud and stone in parts. The lane was initially claimed by Huntsham parish in the 1950s parish surveys of public rights of way and transferred to Bampton parish during the Limited Special Review of the early 1970s. There are photographs of the route in the backing papers.

3.2.3 Nowadays, it would be considered that the route lies in both the parishes of Bampton and Huntsham (Borden Gate Parish Council), as the boundary runs along

the length of the lane, and the public right of way would be considered to extend across the whole width of the lane.

3.3 Documentary Evidence

3.3.1 Ordnance Survey and other maps

- 3.3.1.1 The Ordnance Survey and other mapping do not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.
- 3.3.1.2 Cassini Historical Maps 1809 – 1900 Sheet 191 Okehampton & North Dartmoor
These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.
- 3.3.1.3 Old Series 1809: The bridleway is shown as a defined lane along the current alignment in the similar manner to the now county roads for the section westwards from Bampton Down Cross to point T. The pecked line on the northern side of the lane indicates that it was unfenced on that side. The section of route eastwards from Bampton Down Cross to point R, is shown by pecked lines on both sides and is on a more north western alignment than at present. The present location of the east end of the route at Dog Down Cross (point R) being south of Cudmore Farm. There are no buildings shown at Huntsham Barton
- 3.3.1.4 Revised New Series 1899-1900: The route is now shown as a double-sided lane with pale orange colouring between the lines and along the present-day alignment. The depiction corresponds to 'Metalled Roads: Second Class' in the map key. The parish boundary is shown along the route and Huntsham Barton is shown. The changes to the road layout at Cudmore Farm, north of point R and the 'new road to Huntsham' referred to in proposal 1 are shown.
- 3.3.1.5 Popular Edition 1919: The bridleway is shown as a double-sided lane along the existing route but no longer coloured and described as 'Roads under 14' wide, Indifferent or Bad winding road' with the connecting county road Bampton Down Road to the south shown in the same manner.
- 3.3.1.6 Greenwood's Map of Roads 1825
These well-made maps were produced using surveyors and a triangulation system and are considered to be reasonably accurate. They were published in 1825 at a scale of one inch to the mile and date between the 1st edition OS maps and Tithe Maps published in the mid 19th century. Roads were shown as either turn pike roads with a bold line on one side of the road or as cross roads. The lane is not clearly shown on this map as the boundary of the hundred as well as the parish runs along the route. The western end of the route does appear to be shown alongside the wood/copse east of point T with the route shown then bearing northwards towards Whitenhay.
- 3.3.1.7 OS 1st Edition 25" to a mile 1880-1890
The route is depicted as a defined lane throughout its entire length with several mature hedgerow trees shown in the adjoining hedges and extended across three map sheets when published. The lane has its own compartment number of 515 with an area of 1.976 acres for the section between points R and S; a number of 952 area 0.905 acres for the section west of point S and 1749 area 1.333 acres for the section east of point T. Pecked lines within the lane would indicate the difference in

surfacing across the width of route at that time. There are no lines across the route at either end or along the lane. The parish boundary is shown by a wide spaced dotted line along the southern edge of the route with the annotation '3ft R.H.'; indicating the boundary lies 3 feet from the root of hedge. This would indicate that most of the route would fall into Bampton as the parish on the northern side of the lane. The road northwards from the route to Whitenhay is no longer shown.

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

On the 1946 edition the route is shown as an uncoloured defined double-sided lane and corresponding to 'Roads Under 14 feet of Metalling Bad (not classified by M of T)'. The parish boundary is shown along the lane and the 'new road to Huntsham' is shown as a road over 14 feet of metalling.

3.3.1.9 In the 1960 edition the route is shown by a double-sided white lane (Roads under 14ft of Metalling Untarred) for the length of the lane and in a similar manner to Bampton Down Road south of point S. The 1967 edition shows the route in a similar manner to the 1960 edition and as a defined double-sided lane. Public rights of way as recorded on the Definitive Map are shown on this edition and the lane has the symbol for a RUPP 'Road used as a Public Path' as the lane was recorded on the Definitive Map as a RUPP by that time.

3.3.1.10 OS Post War Mapping A Edition 2500 1970

The route is shown as a defined uncoloured lane along its entire length on the three separate map sheets that the route covered and labelled 'Track' on the western side of Bampton Down Cross. The three compartment numbers being 3329 0.99 acres, 0006 1.37 acres and 5388 1.57 acres. The parish boundary is shown along the southern side of the lane with the annotation 0.91m RH.

3.3.1.11 OS 1:25,000 maps of Great Britain – Sheet SS92 1950 & ST02 1961

The 1:25,000 'Provisional edition' or 'First Series', was Ordnance Survey's first civilian map series at this medium scale, the forerunner of the modern *Explorer* and *Outdoor Leisure* maps and published in limited colour between 1937-1961. By 1956 it covered 80% of Great Britain, everywhere apart from the Scottish Highlands and Islands. The series is useful for showing rural and urban areas in much greater detail than the standard one-inch to the mile (1:63,360) maps.

3.3.1.12 Minor roads, lanes and private drives/access lanes are all shown as white uncoloured roads/lanes described as 'Other Roads, Poor, or unmetalled'. The conclusive Definitive Map had not been published when this map was published. Some routes are shown as pecked and dashed lines labelled F.P. and B.R. and some as two narrow solid lines. The map contains the standard OS disclaimer 'The representation of any other roads, tracks or paths is no evidence of the existence of a right of way'.

3.3.1.13 Sheet SS92 published in 1950 shows the route as a defined uncoloured lane in the similar manner to the minor county roads of Bampton Down Road and Burnt Plantation, and described as 'Poor, or unmetalled Other Roads'. No lines across the route are shown along the full length of the route or at either end. This map does show a dashed line labelled B.R. running north of the route from west of Week Common and then parallel to Bridleway No. 25 to Bampton Down Cross.

3.3.2 **Tithe Maps and Apportionments**

3.3.2.1 Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have

limited the possibility of errors. Roads were sometimes coloured and colouring can indicate carriageways or driftways. Public roads were not tithe able. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not included within an individual apportionment are usually included under the general heading of '*public roads and waste*'.

3.3.2.2 Bampton Tithe Map 1842 & Huntsham Tithe Map 1841

The route is not shown on the Bampton Tithe Map except for the far western section bordering the woods/copse east of point T. This section is colour washed in the similar manner of county roads. On the Huntsham Tithe Map the route is only shown for the western end of the route from midway between points S and T to point T. The lane is colour washed in the manner of what are now county roads. The sections included on both maps are not numbered. As the lane was on the parish boundary and would not have been titheable it is understandable that it was not included in full on the maps.

3.3.3 **Finance Act Plans and Field Books 1910**

- 3.3.3.1 The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.
- 3.3.3.2 The allowance given was often on the basis of a figure such as a £1 times 25 yp. The yp refers to years purchase, a method of valuation used to convert a property's income flow (rent) into an appropriate capital sum on the basis that the capital value of a property is directly related to its income producing power. This method of valuation seems to be often used in Finance Act valuations.
- 3.3.3.3 The lane is excluded from hereditaments where there are different holdings on either side of the bridleway but the colouring also breaks across the lane in the hereditament number 4, for Huntsham Barton; which has land on both sides of the lane between points R and S. The whole lane lies in hereditament number 4, Huntsham Barton in Huntsham parish and adjacent to numbers 330, 343 – Dowhills, 360 – Coppice and Plantations and 361 – Bampton Down in Bampton parish.
- 3.3.3.4 Hereditament number 360 includes coppice and plantations situate at Venman's, Hunthills, Burrow and Zeal Ball owned and occupied by Hugh Troyte including 'a plantation of fair larch on Bampton Down'. There is no reference to any rights of way over the land included in the hereditament. Hereditament number 361, Bampton Down described as agricultural land, 23 acres owned by Hugh Troyte, amended to be occupied by Mr Webber. On the first page under 'Fixed Charges, easements, Common Rights and Restrictions' is written 'a road adjoining Bampton Down'. Page two of field book refers to 'Enclosure of Rough pasture Ord 430 of 23.732 acres' with R/o/w 10/- x 20 £10 included under the heading for Charges.

The sum of £10 was carried forward to page four under 'Public Rights of Way or User'.

- 3.3.3.5 Hereditament number 4 Huntsham is for Huntsham Barton. The first page of the field book had not been copied but the second page refers to 'F.P. across 4 fields 4/- x 20 say £100'. This value of £100 is carried forward to the item for Public Rights of Way and User on page 4. No allowance appears to have been made for the lane running through the farm.

3.3.4 Bampton Road Tender Notice April 1901

- 3.3.4.1 The list of roads, in the tender notice published by Bampton Urban District Council in 1901 for the upkeep of the Bampton parish main and other roads, included within No. 4 Division 'The Sparkhayne Road by Gifford's Farm to Bampton Down' and in No. 5 Division 'The Road from Dowell's Farm to Bampton Down'. These routes both lead southwards to Bampton Down Cross but did not seem to include the route of Bridleway No. 25, Bampton running east to west across Bampton Down. This would indicate that the route was not maintained by Bampton at that time.

- 3.3.4.2 No equivalent roads records for Huntsham have been discovered.

3.3.5 Urban District, Parish and Town Council Meeting Minutes

- 3.3.5.1 Bampton was an Urban District Council from 1894 to 1935 and then became a Parish Council and following local government reorganisation of 1974 it became a Town Council. The Council minute books covering the period 1935 (when Bampton became a Parish Council) to 2002 (after which the minutes are available on line) are retained within the parish. Books of draft minutes dating from 1900 to 1935 (when Bampton was an Urban District Council) are held in the South West Heritage Centre. The notes contained within the handwritten books are too vague but from February 1915 there are copies of the detailed reports on the monthly council meetings from the Tiverton Gazette and sometimes the Devon & Somerset News stuck with in the minute books. No parish minutes or draft minutes from 1894 to 1900 were found.
- 3.3.5.2 In April 1946 a letter was received from the Rural District Council Surveyor stating that he had been appointed to prepare a schedule of Public Footpaths and Rights of Way within the district together with the necessary maps and asking Bampton Parish council to forward him a list of such footpaths. In July 1947 the clerk had prepared a list of what he considered to be public footpaths and rights of way in the parish. This list included at number 12 the route described as 'From Bampton Down Cottage to Wick Common and Bampton Down to Bampton Down Cross'. This would include part of the west end of Bridleway No. 25, Bampton and would appear to describe the route of the bridleway shown on the OS 1:25,000 map of 1950.
- 3.3.5.3 Number 13 included in the list was described as 'From last named (Bampton Down Cross) (meaning number 12 as above) through Burnt Plantation to boundary of parish'. The description would seem to include the west end of Bridleway No. 25 from point S at Bampton Down Cross to point T at the boundary of Burnt Plantation.
- 3.3.5.4 In May 1950 it was resolved that the matter of charting Public Footpaths in accordance with the 'National Park and Access to the Countryside Act 1949 be deferred until the next meeting. Mr Seward agreed that he would try to obtain a copy of the local map issued by the Ramblers Association. The matter was left in the hands of a sub-committee.

- 3.3.5.5 At a public meeting on 1st August 1950 it was resolved that all the paths named in the list (25 in total) be walked, investigated and submitted to the county council. Numbers 24 and 25 of this new list included numbers 12 and 13 as previously described above.
- 3.3.5.6 The path was subsequently included on the draft map as a RUPP No 1 Huntsham (road used as a public footpath) on the Huntsham Definitive Map and not in Bampton parish. A copy of the final Definitive Map and accompanying statements for Bampton Parish were received by the parish council in June 1964. The Parish Council wished to keep the maps.
- 3.3.5.7 At the Bampton Town Council meeting in December 1972 it was decided to designate a footpath verging the Huntsham Parish as a byway open to all traffic. No public meeting appears to have been held in Bampton with regard to the 1977 review and no proposals for changes were made by the Town Council.

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

- 3.3.6.1 Although initially included in the list of public rights of way made by Bampton parish to be walked, investigated and submitted to the County Council in 1950 for inclusion on the new map of Public Rights of Way, no survey forms were in fact submitted by Bampton parish for paths numbered 24 and 25. A path numbered 24 was included in the list of paths agreed between Tiverton Rural District Council and Bampton Parish Council but this referred to a footpath 'From Cudmore Farm to Hern's Farm' which continued in the adjoining parish of Clayhanger. This footpath is currently record as Footpath No. 24, Bampton and Footpath No. 17, Clayhanger. The original proposal number 24 and 12 for the route shown as a bridleway on the OS 25" 1st and 2nd edition from Bampton Down Cottage across Week Common to Bampton Down (the east end running north of and parallel to the current Bridleway No. 25) was not claimed by Bampton Parish Council.
- 3.3.6.2 Bridleway No. 25 was included in Huntsham's submission as Path No 1 and described as 'From Dog Down Cross to public road at point 914 Burnt Plantation. Metalled surface. Passable for cars but surface very bad between Huntsham Barton and Bampton Down Cross. Bad patches after this. Chiefly used for farm traffic but from Bampton Down Cross west used by cars to some extent and whole length of the road used by people riding and on foot'. Under Grounds for believing to be public was written 'Has always been used as public road'. The path had been repaired in the past by some patching by owner and occupiers of adjoining land. The survey was carried out by Sir Gilbert Acland Troyte, Chairman of the Parish Meeting and form completed 4th September 1950.
- 3.3.6.3 At a meeting on the 22nd October 1957 between the Tiverton Rural District Council representative and Chairman of the Huntsham Parish Meeting, agreed Path No. 1 as a Road Used as a Public Path (RUPP), described as 'Starts from Dogdown Cross on the Class III County Road (No. 30) and follows the road used as a public path, in a westerly direction past the north side of Huntsham Barton across Bampton Down Cross and continuing to the U.C. County Road at the south east corner of Burnt Plantation, by the Tiverton Borough boundary'.
- 3.3.6.4 There were no objections to the lane's inclusion on the draft or provisional definitive maps as a RUPP and the route was recorded as RUPP No. 1, Huntsham on the Tiverton Rural District Council Definitive Map in June 1964.

3.3.7 Devon County Council Reviews of 1968, 1971 & 1977

- 3.3.7.1 No proposals for any changes to the route were made by Bampton or Huntsham Parish Council in the 1968 review. As a RUPP, the route was to be re-designated in the Limited Special Review of 1971. In April and July 1972, the County Council wrote to the Clerk to the Tiverton Rural District Council to request their assistance with arranging a parish meeting in Huntsham to discuss what designation should apply to RUPP No. 1, Huntsham.
- 3.3.7.2 In the summer of 1972 Sir Ferguson Davie, Chairman of Huntsham Parish Meeting wrote a response to a letter previously received saying 'It is much regretted that answer was not sent sooner but with the postal strike your letter was not received until the middle of March. However, a meeting has now been held and the result is as follows. The Public path indicated by the broken green line from Dog Down Cross to Burnt Plantation is only suitable as a bridleway. This road is used for farm vehicles but is quite unsuitable for general traffic – it is only a rough road with many potholes etc, and as far as is known has never been used other than for farm vehicles'.
- 3.3.7.3 In September 1972, the County Council's roads department wrote to the Clerk of the Council referring to their letter of the 25th August 1972. The letter was headed 'Limited Special Review R.U.P.P. No. 1 Huntsham' and the writer (believed to be the County Surveyor's Footpath Assistant) replied that 'this road is actually situated within the parish of Bampton, although not claimed by Bampton in the survey of 1950. The parish boundary follows the southern edge of the road and I am of the opinion that the road was not claimed by Bampton because it is an old public road, used more by vehicles than pedestrians. In the circumstances therefore, the opinion of Bampton Parish Council will need to be obtained. As this is a tree lined metalled road, with a surface and width suitable for use as a by-way, and as a designation to a bridleway leaves the road open to permission to plough, I would recommend that the R.U.P.P. be re-designated as a by-way'.
- 3.3.7.2 Bampton Parish Council were written to in November 1972 and replied in December 1972 advising 'My Council have discussed this bridleway and are fully in agreement that it should be designated as a byway open to all traffic'. In September 1977 in response to a letter/memo from the County Secretary, the Divisional Surveyor for Tiverton, Mr J Owen-Jones, replied advising that 'during the past 10 years or so, which is when the foreman for the area was appointed, no maintenance has been carried out on RUPP No. 1 in Bampton but I know that hunt followers in their cars regularly use it'.
- 3.3.7.3 Although Bampton parish had requested that the RUPP be re-designated as a Byway it appears that the lane was only designated as a bridleway, in accordance with the Huntsham parish meeting request and became Bridleway No. 25, Bampton.
- 3.3.7.4 In the County Council's subsequently uncompleted review of 1977, Huntsham Parish (now part of Borden Gate Parish Council) proposed that Footpath No. 2, Huntsham should be marked as a Public Accommodation Road as this lane has been used by the public for over 50 years. On the same form was also added 'Also the same for the Road marked with Green Broken Lines from Dog Down Cross to Burnt Plantation, this Road also has been used by the Public for over 50 years' – the proposal route.
- 3.3.7.5 A definition of a 'Public Accommodation Road was included in the information sent by Devon County Council to the Parishes regarding the 1977 review and stated that

it was 'a very unusual sort of road and none was shown on the Definitive Map. In Devon the term is used to describe a road over which the public has complete freedom of access but which the landowner rather than the county council is liable to maintain'. A Planning Inspectorate Inspector considered that the term 'complete freedom of access' would include use by vehicles. The definition of a Byway Open to All Traffic in Section 66(1) of the Wildlife & Countryside Act 1981 is that of "a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used". This description could similarly be considered to apply to 'a public accommodation road'.

3.3.8 Aerial Photography RAF 1946-1949, 1999-2000 & 2015-2017

- 3.3.8.1 On the 1946-1949 aerial photography (which is unusually blurred for this area), the route of the way can be followed from the lane's hedges and with hedgerow trees visible along the route. The hedges are neatly trimmed and the surface of the lane can be seen along the length of the route as a lighter colour, indicative of a stoned/metalled surface.
- 3.3.8.2 In 1999-2000, the hedgerow trees have grown and are more numerous although where visible the hedges are neatly trimmed, particularly at the eastern end of the route. The surface of the lane is visible along most of the route as a lighter colour as except where obscured by trees. In the most recent photograph, there is little change to the lane with the surface visible for most of the route and trimmed hedges particularly from between points S and T to point R at Dog Down Cross.

3.3.9 Land Registry

- 3.3.9.1 The bridleway is wholly included in land registered at HM Land Registry. The fields and woods adjacent to the route including the adjacent sections of the lane are registered to the Trustees of Huntsham estate. A section of the lane west of point S is registered under its own title number and described as 'Track at Bampton Down'. The lane was first registered in October 2007. There is no reference to any rights of way on the registered title for this section of the track or on any of the other titles through which the lane passes. Unusually the unsurfaced unclassified county road at Burnt Plantation is also registered under its own title number, described as 'Track at Burnt Plantation'. The title number would indicate this was also first registered in 2007.

3.4 Trails Riders Fellowship Schedule 14 Application

- 3.4.1 The application made by the Trail Riders Fellowship (TRF) included reference to documentary evidence in support of their claim. This included Greenwoods Map where the route is shown as a cross road, it is also shown as a road on Blacks 1886 Guide to Devonshire and on the Finance Act plans, the lane is totally excluded. The application also made reference to the judge's summing up in the case *Eyre v New Forest Highway Board* 1892. They say this supports the contention that a road known to be public prior to 1835 would still be public to this day in the absence of a stopping up order even if it had never been publicly maintained at all since then.
- 3.4.2 The application also makes reference to research and a subsequent report published in 2005 by Independent Consultants employed by the TRF. The report has a clear conclusion on page 59, supported to references to legislation, that RUPPs are highways which are not public paths but which are used mainly as if they were bridleways or footpaths. The TRF maintain that the vehicular rights have

not been removed as confirmed in Regina (Kind) v Secretary for State for DEFRA June 2005. Their research has not found any legal event, such as stopping up, that would have removed vehicular rights for the claimed Byway as 'Once a highway, always a highway'. The current Devon representative of the TRF was advised that the application was been considered as part of the Definitive map Review in Bampton, but no response has been received.

3.5 User Evidence

- 3.5.1 Ten user evidence forms were received with the Schedule 14 Application and covered a period in excess of 20 years. However, any user evidence dating from the mid-1970s or later, when the route was re-designated as a public bridleway, would be unlawful use unless with the permission of the landowner. Following the passing of the Natural Environment & Rural Communities Act in 2006, motor vehicle user evidence can no longer be used as evidence to support the creation or upgrading of a public right of way to a byway open to all traffic.
- 3.5.2 No other user evidence forms have been received in respect of the proposal.

3.6 Landowner Evidence

- 3.6.1 The major landowners, the Trustees of Huntsham Estate, who own the land crossed by or adjacent to Bridleway No. 25, Bampton and occupier of the agricultural land, were contacted and advised of the proposal. They were invited to submit their comments and information by way of a completed landowner evidence form or otherwise. No response was received from the landowners or occupiers in respect of this route.

3.7 Rebuttal Evidence

- 3.7.1 Eight local residents, most of whom advised that they rode, cycled or walked the lane, contacted the County Council following publication of the proposal to upgrade the bridleway to a byway open to all traffic. All the responses were against the proposal and the comments made included those referring to the danger of horses and walkers meeting vehicles along the lane, making the lane muddier to the detriment of walkers, causing damage to the flora and fauna along the lane, noise and disturbance to the tranquil nature of the lane. One rider commented that as it is wider and straighter, meeting other users on Bridleway No. 25 is such an issue as everyone has time to react safely and pass wide enough for the issue not to be intimidating. The surface of this track is firmer and not so affected by erosion.
- 3.7.2 None of the consultation responses included any evidence of use of the lane by vehicles. Copies of the letters and emails received are in the backing papers.

3.8 Discussion

Statute (Section 31 Highways Act 1980)

- 3.8.1 Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.

- 3.8.2 The application made by the TRF in 2005 could be considered sufficient to be the required calling into question under section 31 of the Highways Act 1980 for the upgrading. However, as any user evidence dating from the mid-1970s or later, after the route was recorded as a public bridleway, would be unlawful use (unless with the permission of the landowner), the user evidence submitted in 2005 is insufficient to allow the upgrading to be considered under Section 31.

Common Law

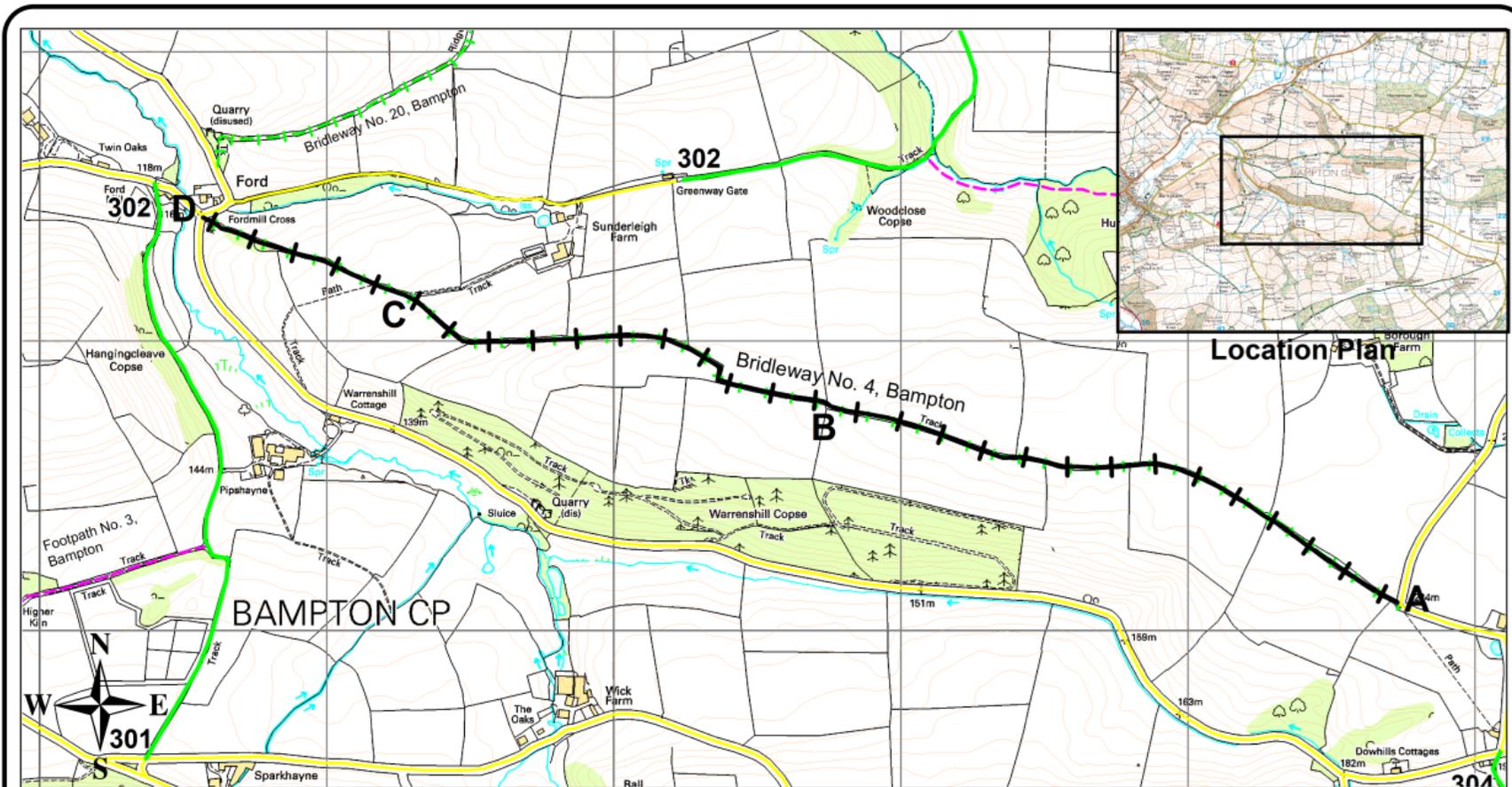
- 3.8.3 A claim for a right of way or for upgrading an existing public right of way may also be considered under common law. At Common Law, evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway of the higher status and that the public has accepted the dedication.
- 3.8.4 Part of the route was initially proposed as a public right of way when Bampton parish prepared a list for the District Council Surveyor in 1947 but it was not subsequently submitted as part of the parish survey. In the 1950 countywide parish surveys the route was proposed by Huntsham Parish Meeting. Following a meeting with the Tiverton Rural District Council representative the path was to be a 'road used as a public path' (RUPP). In the initial parish survey of 1950, parish councils were asked to mark routes as footpaths, bridle paths, carriage roads used as a footpath or carriage roads used as a bridleway. The two carriage road designations were amended to the single 'road used as a public path' (RUPP) and these three types of public right of way were recorded on the Definitive Map. There were no objections to the route's inclusion in the draft or provisional Definitive Maps as a RUPP. The route has been recorded as a RUPP since 1964 (when the route could legally have been used by motorised vehicles) and a bridleway since the 1970s (when use by motorised vehicles became unlawful unless with the permission of the landowner).
- 3.8.5 Greenwoods map 1825, the Tithe Map 1844, 1st Edition 1" OS map 1809 and OS maps of the first half of the twentieth century all depict the lane in the manner of a road. The lane is excluded from the adjoining hereditaments in the Finance Act 1910 plans as the colouring breaks across the lane and is therefore considered to be public at that time. These records all indicate that the lane had the reputation of being a parish road at that time but do not include any information regarding maintenance of the lane. The Huntsham parish survey form of 1950 stated regarding repairs 'Some patching done by owner and occupiers of adjoining land'. This indicates that the route was not maintained at public expense. Land Registry records show the lane to be registered to the estate whereas a public highway would not normally be included in adjacent land holdings.
- 3.8.6 The user evidence received from the TRF with the application is not valid and no other user evidence has been received. A number of local residents wrote letters or sent emails making objections to the proposed upgrading to a BOAT as they would not want motorised vehicles using the lane, although most of their objections are not valid considerations when determining what rights subsist along the lane under current legislation.
- 3.8.7 The recording of the route as a RUPP in the 1950s is considered to describe the reputation of the lane at that time. An old parish carriage road that was (probably due to a lack of maintenance by the highway authority of the time) unused by ordinary motorised traffic, and so mainly used by walkers and riders. When the RUPPs were re-designated in the 1970s, it appears that the history of the route or

other historic or documentary evidence was not considered, although suitability was taken into account at that time. The relevant parish council was asked by Devon County Council at that time what status they felt the lane should be. Huntsham Parish Meeting advised that they considered the RUPP should be re-designated as a bridleway as it was only used by farm traffic, although this contradicts the 1950 survey form and local Council surveyor. It was then decided that the route actually fell in Bampton parish and Bampton Parish Council advised that they wished the RUPP to be re-designated a Byway Open to All Traffic.

- 3.8.8 The route known as RUPP No. 1, Huntsham was subsequently re-designated as Bridleway No. 25, Bampton, rather than as a BOAT, by Devon County Council, in the Limited Special Review in the 1970s although the reason for this is unknown. Suitability was a consideration at that time and there is nothing to indicate that the correct procedures were not followed. In the County wide 1977 uncompleted review Huntsham Parish proposed that the route should be a Public Accommodation Road although by this date it had been decided that the route lies in Bampton parish.

3.9 Conclusion

- 3.9.1 In the absence of sufficient user evidence, the existence of higher rights cannot be considered under section 31 of the Highways Act 1980. At common law, whilst there is some evidence which suggests that the route may have had a reputation of having higher status than that of bridleway in the past, when taken as a whole, the available evidence is considered insufficient to show that public vehicular rights subsist.
- 3.9.2 It is therefore recommended that no Order be made in respect of Proposal 3.



Map Ref SS 9722 9822 9922 500m grid

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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - BAMPTON
PROPOSAL NO 1 SCH 14 PROPOSED UPGRADING OF BRIDLEWAY NO. 4, BAMPTON
TO BYWAY OPEN TO ALL TRAFFIC**

drawing number	HIW/PROW/18/059
date	Nov 2018
scale	1:10,000
drawn by	TW

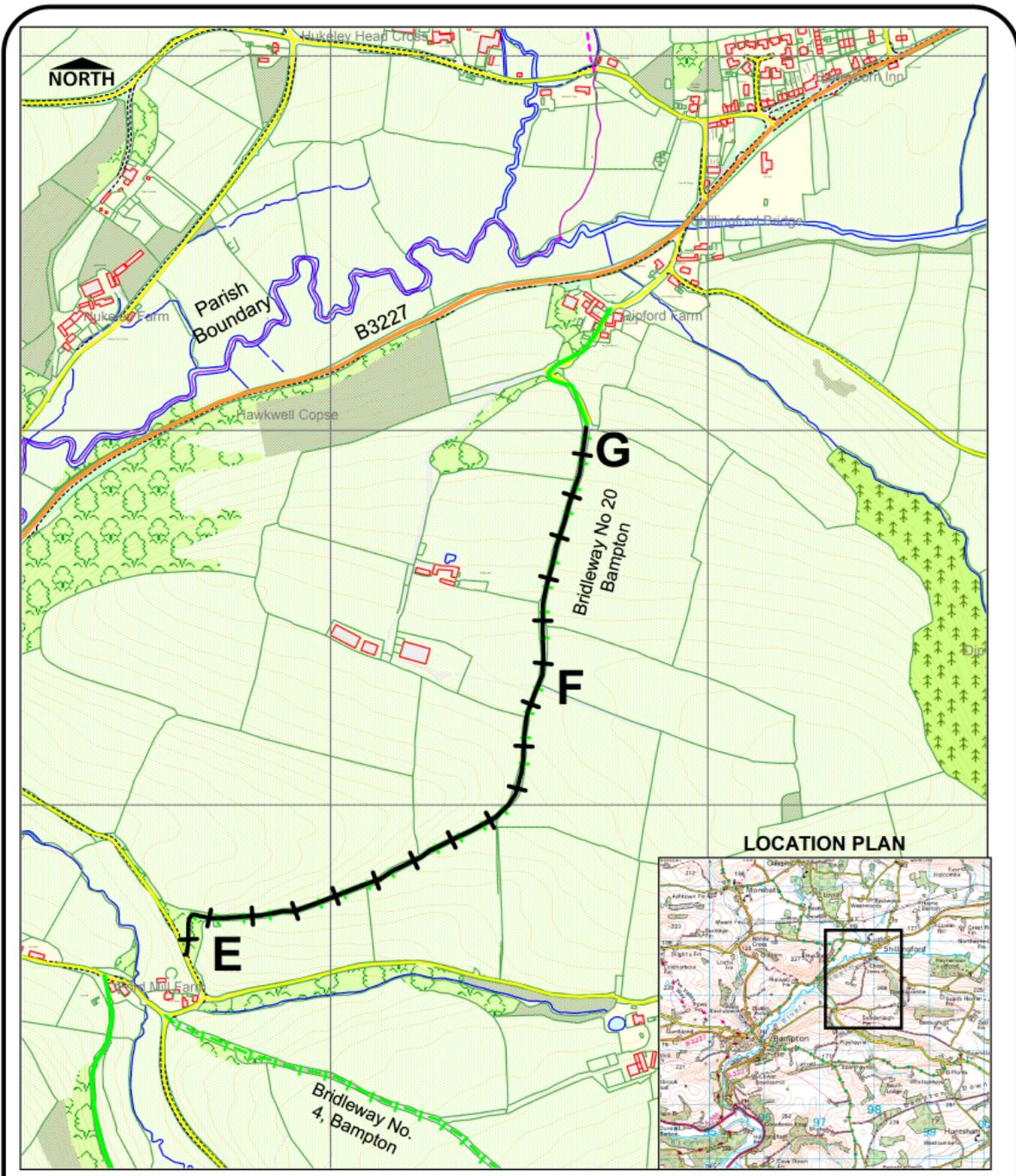
Notation

Proposed upgrade of Bridleway No. 4 to BOAT A - B - C - D (approx 2250m) + + + + +

Existing footpath - - - - - Existing bridleway - - | - - | - - Unsurfaced County Road - - - - -

Meg Booth
Chief Officer for
Highways, Infrastructure
Development & Waste





Map Ref SS 9722 9723 500m grid

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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - BAMPTON
PROPOSAL NO 2
PROPOSED UPGRADING OF
BRIDLEWAY NO. 20, BAMPTON TO
RESTRICTED BYWAY**

drawing number HIW/PROW/18/060A

date Nov 2018 & May 2019

scale 1:7,500 at A4

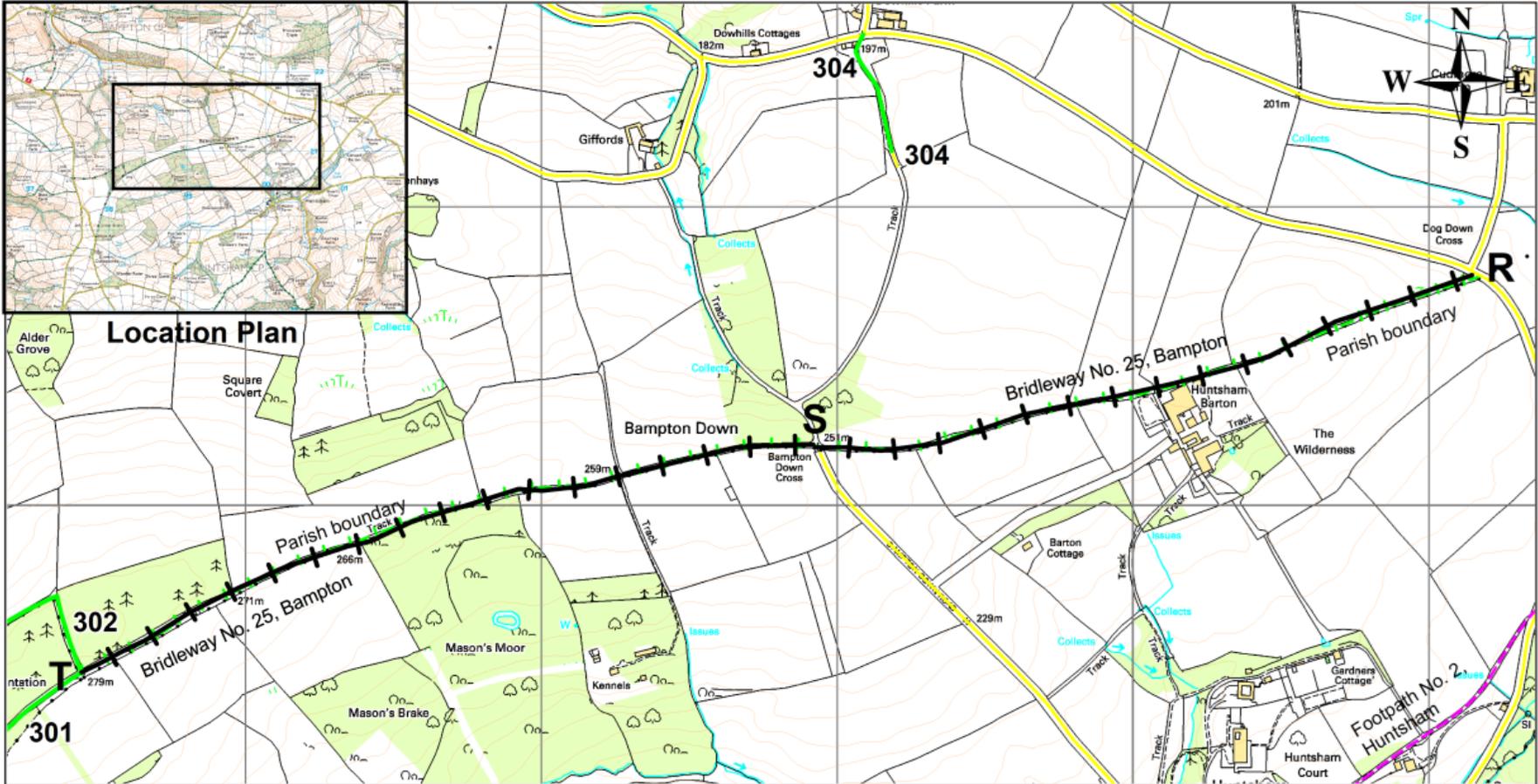
drawn by TW

Notation
 Upgrading to Restricted Byway E - F - G (1020 metres approx) 
 Existing Public Footpath  & Bridleway 
 Unsurfaced County Road 

Meg Booth

CHIEF OFFICER HIGHWAYS,
INFRASTRUCTURE DEVELOPMENT AND WASTE





Map Ref SS 9921 9820 ST 0021 500m grid

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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - BAMPTON
PROPOSAL NO 3 SCH 14 PROPOSED UPGRADING OF BRIDLEWAY NO. 25, BAMPTON
TO BYWAY OPEN TO ALL TRAFFIC**

drawing number HIW/PROW/18/061
date Dec 2018
scale 1:10,000 at A4
drawn by TW

Notation

Proposed upgrade of Bridleway No. 25 to a BOAT R - S - T (approx 2470m) + + + + +
Existing footpath - - - - - Unsurfaced County Road ————

Meg Booth
Chief Officer for
Highways, Infrastructure
Development & Waste

